

(1935) 02 MAD CK 0064
In the Madras High Court

R. Seshasayee Ayyangar and Another	APPELLANT
Vs	
Puna Rena Govinda Pillai and Others	RESPONDENT

Date of Decision : 06-02-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, Order 21 Rule 98

Citation : AIR 1935 Mad 612 : 157 Ind. Cas. 925 : (1935) 42 LW 45

Hon'ble Judges : Venkatasubba Rao, J

Bench : Single Bench

Judgement

Venkatasubba Rao, J.—These Civil Revision Petitions raise two important questions: (1) as to the scope of Section 78, Religious Endowments Act and (2) as to the applicability of Order XXI, Rules 97, 98 and 99, Civil Procedure Code, to a proceeding under that section. A scheme was settled in September 1927 by the Religious Endowments Board in respect of the temple in question u/s 57 of the Act. In virtue of that scheme, the petitioner became the trustee and applied to the District Court u/s 78 against the ex-trustee (who was the sole respondent to the petition) for being put into possession of the property. On March 30, 1929, the District Judge made an order granting the petitioner's request. In spite of that order, he was unable to obtain actual possession of either the temple or its properties, by reason of the resistance offered by two persons, Govinda Pillai and Veeraraghava Ayyanger. Thereupon he applied for delivery as against them, complaining of the obstruction offered and the question that was raised was, whether it was within the competence of the Court to hold an inquiry and decide either in favour of the petitioner or of the obstructors. The decision of the lower Court, as I understand it, is, the moment an adverse claim is put forward by a third party, the Court's power comes to an end and the trustee must be directed to enforce his remedy by filing a regular suit.

2. This view is totally opposed to the plain meaning of the section, which in terms enacts that when resistance is offered, the Court may on application by the trustee, order the property to be delivered to him. It must be observed, that

the section is not limited to the obstruction on the part of the ex-trustee alone: but the words are general and apply equally as much where the obstruction is by a third party as when it proceeds from the ex-trustee. Let us suppose that the resistance offered at the very outset is by a third party and it is as against him that the trustee is obliged to file an application in the first instance. Can it be said that the Court, under the wide terms of the section, has no power to make the necessary inquiry? I think not but from the fact that the Court has such power, it does not follow that it is bound to exercise it. The word used in the section being "may," I think that the proper construction is, that the Court has a discretion, that is to say, on the particular facts of each case, it must decide whether it will enter on an investigation or not. If the adverse claim put forward is of a bona fide "nature or if difficult and complicated questions have to be gone into, the Court may properly refuse to make an inquiry. I agree with the observations of Krishnan Pandalai, J. in this respect in *Katamreddi Ramireddi Vs. (Paderala) Sreeramulu Reddi and Others*, . Next, if the obstructor is the ex-trustee himself getting up an adverse claim, that the case is even stronger, goes without saying. The object of the section, as its very words show, is to enable a trustee to obtain possession when he is resisted in or prevented from obtaining it. Generally speaking, it is not likely that resistance will occur when the claim is admitted and I am not prepared to hold that the legislature intended that the Court should have no power of deciding just when its intervention would be most needed. Again, as Curgenven, J., observes in *Guruvammal v. Arumuga Padayachi* 136 Ind. Cas. 769 : A I R 1932 Mad. 164 : 34 L W 989 : (1931) M W N 1204 : 61 M L J 894 : Ind. Rul. (1932) Mad. 305, the Court performs a judicial and not an administrative function u/s 78 and a contention that deprives the Court of every vesting of judicial power must be rejected. But the respondents rely upon *Vemuri Subramanyam Garu and Others Vs. Avanigedda Subbayi and Others*, , where it is observed:

It seems to me that Section 78 was intended to apply only to the admitted endowments and it is not intended that the District Court should enter into questions of title.

3. I must, with great respect, dissent from this view. The respondents' Counsel next seeks to find support in an observation of mine in Civil Revision Petition No. 1031 of 1927 for his contention negating the Court's power, but it is perfectly clear that the words I used there, are not in the least capable of this meaning. I quote my words:

Now, turning to the house, Mr. Venkataramana Kao, for the trustee (the petitioner before us) attempted to argue that the Board decided, while settling the schemes, that, the house belonged to the temple and that on that ground the Court should make an order u/s 78 directing delivery. It is impossible therefore on the ground taken by the learned Counsel for the trustee to allow the application in respect of this item.

4. This is a very guarded statement and far from deciding the question, I

carefully refrained from dealing with it. My conclusion, therefore, is this: by whomsoever the obstruction is offered at the outset, whether by the ex-trustee or by a stranger, in either case the Court has power to deal with the question: but it does not follow that the Court is in every case bound to hold an investigation, for, in the exercise of its discretion, which the section vests in it, it may decline to do so, directing the trustee to seek his remedy in an independent legal proceeding. The question then arises, is the power of the Court exhausted when upon a petition directed against the ex-trustee, it has made an order directing the delivery of possession. In the present case, the trustee procured such an order in the first instance but complained that the execution of it was prevented by reason of the resistance offered by the third parties, i.e., the respondents. Section 141, Civil Procedure Code, provides:

The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

5. The applications mentioned in Section 78 must under the Act be to a District Court and there is, therefore, no reason to hold that they are not proceedings in a Court of Civil Jurisdiction within the meaning of Section 141 mentioned above. If that be so, the provisions of Order XXI, Rules 97, 98 and 99 (dealing with resistance by judgment debtor or bona fide claimant) become applicable and the Court can in virtue of the power conferred by them make the investigation. Moreover, as observed by Viscount Haldane in *National Telephone Co, Ltd. v. Postmaster-General* (1913) A C 546 : 82 L J K B 1197 : 57 S J 661 : 209 L T 562 : 29 T L R 637, when a certain duty is cast upon an established Court, it imports that the ordinary incidents of the procedure of that Court are to attach when dealing with certain matters u/s 78 of the Act closely akin to the matter in hand. Sir Owen Beasley, Chief Justice, and Bardswell, J. in one case and Curgenvin, J., in another referring to the above observations of Haldane, L.C. extended to the Court exercising jurisdiction under that section, such incidental powers as were in each case essential; *Narayana Ayyangar v. Desikachariar* 57 M 35 : 145 Ind. Cas. 335 : A I R 1933 Mad. 669 : (1933) M W N 363 : 6 R M 49 : 38 L W 399 : 55 M L J 315 and *Guruvammal v. Arumuga Padayachi* 136 Ind. Cas. 769 : A I R 1932 Mad. 164 : 34 L W 989 : (1931) M W N 1204 : 61 M L J 894 : Ind. Rul. (1932) Mad. 305. Even without the aid of Section 111 that conclusion was reached in these cases, but the arguments based upon general considerations are reinforced by what has been expressly enacted by that section. I must, therefore, hold that the lower Court's view that it had no jurisdiction to make the enquiry is wrong. Although, as already observed, the Court may at its option decline to hold the enquiry, I think that on the facts of the present case and having regard to the nature of the claim put forward by the respondents (third party claimants), it is extremely desirable that the question should be tried in these proceedings, and I therefore, direct that the necessary enquiry shall be made.

6. The lower Court has revoked the order made in favour of the trustee even as

regards the temple. u/s 57 of the Act, no suit for the kind mentioned in it, having been filed, the order of the Board settling the scheme became final, and in the words of the section, it is binding on the Committee, the trustee and all persons having interest. The fact that the obstructor is not an ex-trustee, but a third party, makes no difference. Section 57 applies only to non-excepted temples, and when the Board settles a scheme under that section, that act involves the decision on its part that the temple is a non-excepted one. The order settling the scheme and the decision which it involves are equally binding on all persons having interest and therefore no further enquiry is needed in regard to the temple (as distinguished from its properties) and the lower Court's order as regards it is vacated. As stated above, an order was originally made in favour of the trustee directing the delivery to him of the temple. But the reason for rescinding that order, in the words of the learned District Judge, is:

There is a likelihood of breach of peace, if the Amin should effect forcible delivery, in spite of the obstruction by the thud parties. Such an experiment is undesirable.

7. That an order may be defied is certainly no reason for refusing to make what, in the circumstances, is a just and proper order, and all I need say is, that if the execution is likely to be attended with a breach of the peace, it is for the proper authorities to take such steps as they may deem necessary. The result is this. Civil Revision Petition No. 360 of 1930. The lower Court's order in I.A. No. 274 of 1929 is set aside and the application is remanded to the lower Court for fresh disposal, in so far as it relates to the properties of the temple (as distinguished from the temple itself), in the light of my observations. Each party will bear his costs throughout. Civil Revision Petition No. 361 of 1930 The lower Court's order in I.A. No. 275 of 1929 is set aside and the Civil Revision Petition is allowed with costs. Civil Revision Petition No, 362 of 1930. The lower Court's order in I.A. No. 792 of 1929 is also reversed and the Civil Revision Petition is allowed with costs.