

(1935) 02 MAD CK 0031
In the Madras High Court

R. Seshayee Aiyangar (deceased) E. Veeraraghava Aiyangar APPELLANT
brought on record in the place of the deceased

Vs

Puna Rena Govinda Pillai (deceased) Subramania Pillai, Legal RESPONDENT
Representative of the deceased and Others

Date of Decision : 06-02-1935

Acts Referred:

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

Citation : (1936) ILR (Mad) 36 : (1935) 69 MLJ 87

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—These Civil Revision Petitions raise two important questions : (1) as to the scope of Section 78 of the Religious

Endowments Act and (2) as to the applicability of Order 21, Rules 97, 98 and 99 of the CPC 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 the 30th March, 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 Aiyangar. 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 enquiry 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, in my opinion, 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 enquiry? 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 enquiry. 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 setting 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 Curgenvin, J., observes in *Guruvammal Vs. Arumuga Padayachi and Others*, the Court performs a judicial and

not an administrative function u/s 78 and a contention that deprives the Court of every vestige 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 respondent's Counsel next seeks to find support in an observation of mine in C.R.P. 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 Rao for the trustee (the petitioner before us) attempted to argue that the Board decided, while

settling the scheme, 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 refrain 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.

5. The question then arises, is the power of the Court exhausted when upon a petition directed against the extrustee, 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 of the CPC 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.

6. 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 21, 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 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 Curgenven, J., in another referring to the above observation of Haldane, L.C., extended to the Court exercising jurisdiction under

that section, such incidental powers as were in each case essential *Narayana Aiyangar v. Desikachariar* (1933) M.W.N. 363 and *Guruvammal v.*

Arumuga Padayachia (1913) 61 M.L.J. 894. Even without the aid of Section 141 that conclusion was reached in those cases, but the arguments

based upon general considerations are Reinforced by what has been expressly enacted by that Section.

7. 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.

8. 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 of 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.

9. 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 third parties. Such an

experiment is undesirable.

10. 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.

11. The result is this:

C.R.P. 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.

C.R.P. 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.

C.R.P. 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.