

(1992) 02 SC CK 0079

In the Supreme Court Of India

Case No : Civil Appeal No. 1029 Of 1979

R. Thathadesika Thathachariar and Another

APPELLANT

Vs

K.V. Alagai Manavala and Others

RESPONDENT

Date of Decision : 04-02-1992

Acts Referred:

Citation : (1995) 4 SCC 570 Supp

Hon'ble Judges : S. Mohan, J;M. M. Punchhi, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. THIS appeal by certificate is from the judgment and decree of the High Court of Madras passed in Letters Patent Appeal No. 45 of 197 4/09/1976, arising out of a suit for mandatory injunction.

2. WE have heard learned counsel S/Shri K. Parasaran and T.S. Krishnamoorthy iyer. We have been taken through the judgment under appeal and other relevant material. The dispute, as it appears, is within a very narrow compass. In the ancient temple of Sri Devarajaswami at Kancheepuram in the State of Tamil Nadu, the Vaishnavites of the two sects named Thengalai and Vadagalai are the devotees performing worship. On festive occasions such as the annual procession the presence of an elephant is a must. Normally an elephant had been maintained by the temple. On the forehead of the elephant the distinctive mark of the sect was painted. This has been the practice for decades. Evidence was led in the suit to the effect that whenever at one point of time or the other, the temple had no elephant of its own the respective sects brought their own elephants for ceremonial purposes. Claiming the exclusive right to the use of the temple elephant and for painting its forehead with its own distinctive mark the Thengalai sought a mandatory injunction from the Munsif's court asserting that the elephant maintained by the temple was meant for use by that sect alone to the exclusion of the Vadagalai sect. This claim was refuted by the Vadagalai sect. It claimed that it had a right to use the elephant of the temple and paint its

forehead with its own distinctive mark. Otherwise, the parties were agreed that when paint on the forehead of the elephant required removal for wiping out one distinctive mark to be replaced by the other, the process was painful to the elephant. The Thengalai sect has been successful throughout and has obtained the requisite injunction.

3. IT now transpires that the temple elephant is dead and another one has not so far been procured. The periodic ceremonials and worship, as has been stated at the Bar, have been carried on with the private elephants of the respective sects.

4. AS an interim measure, this court on 20/05/1980 had passed the following order:

"The court feels that it is reasonable to permit two elephants - one painted with Thengalai Narnam and another painted with Vadagalai Narnam - to lead the procession side by side on festive occasions pending disposal of the appeal. The appellants shall provide the elephant to be painted with Vadagalai Narnam and the respondents (plaintiffs in the trial court) shall provide an elephant to be painted with Thengalai Narnam. The interim order made in the above terms shall be in force during the pendency of the appeal, This order is made without prejudice to the respective contentions of the parties and the final decision in the appeal. The Executive Trustee shall carry out this order. The local police is directed to give necessary protection to the parties and to ensure that this order is carried out without any disturbance. This order shall be communicated telegraphically at the cost of the respondents to the Executive Trustee of Shri Devarajaswamy Devasthanam Temple and to the Superintendent of Police, Kancheepuram." This order, reportedly, has worked without any friction between the two sects for the last 12 years. The Executive Trustee, presumably, has carried out the above orders to the satisfaction of all concerned.

5. SINCE we have decided to make the above interim order of this court the basis of the final decision in the instant appeal, we have consulted learned counsel for the parties for any variation therein. On consulting them we have come to the view that instead of the elephants being placed side by side on festive occasions, the procession should be headed by the elephant of the Thengalai sect followed by the elephant of the Vadagalai sect and, thereafter, the procession shall be as it has been per custom and tradition with the usual paraphernalia. Thus on this basis the appeal is partially allowed by modifying the judgment and the decree of the High court defining the placement of the respective elephants of the two sects in the festive procession and other ceremonials. It is further directed that the temple is no longer under any obligation of maintaining any elephant of its own or for the exclusive use of the Thengalai sect, as the two sects shall now be required to maintain their own elephants for being employed in the worship and ceremonials. Be it ordered accordingly with the rider that should the temple at any stage come to acquire an elephant, that elephant be rotationally put for ceremonial use by the two respective sects; the period of rotation being annual, and further should the

temple come to acquire two elephants, then one elephant each shall be kept allocated to the respective sects for the purpose aforementioned. It is, however, made clear that the procession shall be headed, as said before, by two elephants and not more than two elephants. The Executive Trustee shall be responsible to carry out this order finally passed. When fixing the rotation, he will start with the Thengalai sect. The parties shall bear their own costs throughout.