
(1937) 01 MAD CK 0054
In the Madras High Court

Ramalingachi Reddi and Others

APPELLANT

Vs

Elayyaperuma Goundan and Others

RESPONDENT

Date of Decision : 08-01-1937

Acts Referred:

Citation : AIR 1937 Mad 403 : (1937) 45 LW 384

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The two plaintiffs in this suit claimed certain rights and honours in connexion with the Selli Amman festivals in Thammampatti (Salem District). Plaintiff 1 claimed that he had the right to lead a horse whenever this festival was held, and plaintiff 2 the right of holding the "kalasam" and both claimed that as reward for these religious services they were entitled to receive the honours (ceremonial gifts of pansupari) before any other worshippers received them. These rights were declared by the first Court and an injunction granted against the defendants. In appeal the learned Subordinate Judge of Salem upheld the 1st plaintiff's rights but refused to recognize those claimed by plaintiff 2. His decree in favour of plaintiff 1 was also to some extent modified. It omitted the injunction and added a condition that if plaintiff 1 should fail or refuse to lead the horse the defendants might make other arrangements for holding the festival. Against such of the decree as was unfavourable to them the two plaintiffs have filed this second appeal, and there is a memo of cross-objections by three of the respondents. The memorandum of cross-objections raises the main issue in the case, viz., whether plaintiff's suit is maintainable. This issue has to be decided with reference to the language of the Explanation to Section 9, Civil P.C., which runs as follows:

A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies;

and the question at issue clearly resolves itself into this: "Does the leading of the

horse, or the holding of the kalasam in this festival, form part of or the whole duty of any "office"?

2. It is argued for the respondents that what plaintiff 1 or plaintiff 2 claims to do is not the duty of an office or the rendering of any service in the ordinary sense of the word. The plaintiffs are not temple servants, they receive no remuneration which has any financial value for what they do, and they cannot be compelled to do it. In support of this argument I have been referred to two cases *Srinivasa Thathachariar v. Srinivasa Aiyangar* (1899) 9MLJ 355 and *Subbarayamudaliar v. Vedantachariar* (1905) 28 Mad 23, in which an exclusive right was claimed to recite sacred texts at festivals. A distinction was drawn in these rulings between "an office" and "an act of worship" or "rights in religious ceremonies" and the recitations of sacred texts was held to fall within the latter category. But a very important feature of both cases was this--that the plaintiffs were filed on behalf of a large community of worshippers--and the learned Judges who decided them point out how absurd it is to say that a vast fluctuating body of worshippers can hold any "office" connected with a temple. In the present case no such difficulty exists. The plaintiffs are individuals, and though what they do may be "an act of worship" and what they claim may be "a right in a religious ceremony" I am unable to see how it may not also be the performance of the duties of an office even though that office may be in abeyance whenever no festival is being held and may have no other duties attached to it. Amongst the large number of cases cited by both sides the true parallel to the present case appears to me to be that reported in *Srinivasa v. Tiruvengada* (1888) 11 Mad 450. There the exclusive right claimed was the right to present to certain persons at a certain festival a gold crown and some sacred water, and it was held that the distributing of the water and the serving of the crown themselves amounted to an office. This decision has never been overruled, and in my opinion applies to the facts of this case far more cogently than *Srinivasa Thathachariar v. Srinivasa Aiyangar* (1899) 9 MLJ 355 and *Subbarayamudaliar v. Vedantachariar* (1905) 28 Mad 23 can be held to do.

3. It is finally argued for the respondents that even if the leading of the horse can be called an "office" in the sense that it is the performance of an act of religious service, it still cannot be an "office" because there can be no office without emoluments, and emoluments which possess a definite money value. This argument however cannot be sustained in the face of *Mamat Ram Bayan v. Bapu Ram Atai Bura Bhakat* (1888) 15 Cal 159, *Thirumalai Alwar Iyengar v. Srinivasachariar* AIR 1917 Mad 903 and *Debendra Narain Sarkar and Others Vs. Satya Charan Mukerji and Others*, . These are the only authorities amongst those cited which seem to me to require discussion, and their examination shows clearly enough that the learned Subordinate Judge was right in holding that this suit was maintainable. The memorandum of cross-objections is therefore dismissed with costs. The appeal requires very little discussion. Plaintiff 1 can have no real quarrel with the clause of the decree which provides for the possibility of his wilful refusal to perform the duties of his office and the case for

or against plaintiff 2's claim has been decided entirely upon an appreciation of oral evidence with which I cannot interfere in second appeal. All that I think is necessary in plaintiff 1's interests is to restore to the decree the injunction which restrains the defendants from interfering with the exercise of his rights. Except for this slight modification the appeal also is dismissed with costs. Leave to appeal granted. The costs having been set down to be spoken to this day, the Court passed no order.