

(1939) 03 MAD CK 0025
In the Madras High Court

Ramaswami Goundan and Others

APPELLANT

Vs

Lakshmana Reddi and Others

RESPONDENT

Date of Decision : 13-03-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1939 Mad 886 : (1940) ILR (Mad) 40 : (1939) 50 LW 206 :
(1939) 2 MLJ 420

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—There is a Mari Amman temple in a village called Thammampatti and a Selli Amman temple in Koneripatti, a hamlet of the

above village. The two plaintiffs claimed two different rights but we are concerned in this appeal only with the right claimed by the first plaintiff. The

right claimed by him is the right to lead the horse on a particular festival day whenever that festival is performed. It is said that this festival is not

performed every year or at stated intervals but it is performed whenever funds permit. The right that is claimed is not a right to worship but a right

to an office. It is claimed that leading the horse is an office, that the plaintiff and his predecessors have been performing this office from generation

to generation and that therefore the plaintiff is entitled to be protected against disturbance from the defendants. The District Munsif of Salem

decreed the suit holding that the plaintiff had established his right. On appeal the Subordinate Judge of Salem upheld the contention but he made a

very important addition to the decree of the trial Court. He held in effect that the first plaintiff could not be compelled to perform this act of leading

the horse and that if he did not bring a horse at the time of the festival and was

not willing to lead it, the defendants would be entitled to make other arrangements for the conduct of the festival. The decree of the Subordinate Judge accordingly directs that in the event of the first plaintiff's failure

or refusal to lead the horse, the Perithanakars and Kariakars are entitled to make other necessary arrangements for the conduct of the festival.

With this modification the Subordinate Judge confirmed the decree granted by the trial Court. There was a second appeal filed in this Court and

the appeal was disposed of by King, J. He confirmed the decree of the Subordinate Judge but granted a certificate under Clause 15 of the Letters

Patent.

2. We are concerned in this appeal with the question whether the right that is claimed by the first plaintiff is to an office which can be made the

subject-matter of a suit in a Civil Court u/s 9 of the Code of Civil Procedure. That section says that,

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature except suits of which their cognizance

is either expressly or impliedly barred.

3. An explanation is added that 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. The point that we have got to decide is whether the suit in

this case is of a civil nature and whether it is for a right to an office. There are admittedly no emoluments attached to the office. As was held by this

Court in *Srinivasa Thathachariar v. Srinivasa Aiyangar* (1899) 9 M.L.J. 355, the conception of an office involves a corresponding obligation to

perform the duties of the office. It was pointed out by the learned Officiating Chief justice at page 358 that,

The term, office, in the sense with which we are concerned, implies, of course, a duty in the office-holder to be discharged by him as such - see if

authority were necessary, Kent's Commentaries where it is pointed out, offices consist in a right, and correspondent duty, to execute a public or

private trust and to take the emoluments belonging to it".

4. In this case on the findings of the Subordinate Judge which were accepted by King, J., there is no compellable duty on the part of the first

plaintiff. He cannot be compelled to bring a horse or to lead it if he chooses not

to do either. Provision is accordingly made that if he did not bring a horse or if he refused to lead it the temple authorities might make other arrangements to bring a horse or to have it led. Mr. Desikan the learned Advocate on behalf of the respondents argues that this provision is only meant as a rule of suspension in case the office-holder does not do the duty properly, but how it strikes us is that this provision has an important bearing on the question whether there is an office at all. The evidence taken as a whole leads to the conclusion that to start with there was no compellable duty at all but that if the plaintiff chose he might bring a horse and lead it. The mere circumstance that in the past a member of the plaintiff's family was allowed to do it is not a guide or a test for deciding whether what is claimed by the plaintiff is an office. The decisions relied on by the learned Counsel for the respondents are all in cases where the right to perform worship in a temple or other religious institution was the subject of dispute. If the trustees or other persons in charge of a religious institution deny the right of worshipping to a member of the public who has a right to perform worship therein, then that member has got a right to have it declared that he is entitled to perform worship. These decisions are of no help in considering the question whether what is claimed in a particular case is an office or not. One test which is necessary to constitute an office is a corresponding compellable duty. That being absent in this case, we are of opinion that what is claimed is not an office but merely an honour.

5. The result is that this Letters Patent Appeal must be allowed, the decrees of the lower Courts set aside and the suit dismissed with costs throughout. It follows that the memorandum of objections must be dismissed but we do not award costs.