

**(1952) 01 MAD CK 0004**  
**In the Madras High Court**  
**Case No : Appeal No. 434 of 1948**

Rao Saheb Dr. Ananda Baliga

APPELLANT

Vs

Srimat Ananteswar Temple, Manjeswar and Others

RESPONDENT

**Date of Decision :** 22-01-1952

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 9  
Madras Hindu Religious Endowments Act, 1926 — Section 73, 73(4), 79, 79A, 84(1)

**Citation :** AIR 1952 Mad 767 : (1952) 65 LW 450 : (1952) 1 MLJ 678

**Hon'ble Judges :** Satyanarayana Rao, J; Rajagopalan, J

**Bench :** Division Bench

**Advocate :** A. Narayana Pai, for the Appellant; M.K. Nambiar, M. Sekhara Menon, C.F. Louis, M. Seshachalapathi, T.K. Raman Nambisan, K.N. Karunakaran and V.V. Raghavan for Govt. Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

Satyanarayana Rao, J.—The plaintiff whose suit has been dismissed on a preliminary point by the lower court is the appellant in this appeal.

The suit was instituted under Order 1. Rule 8 of the Civil Procedure Code, with the leave of the court on behalf of the Gowd Saraswat Brahmin

Community in South Kanara; and two reliefs were claimed in the plaint with reference to the suit temple which is at present being managed by an

executive officer appointed by the Madras Hindu Religious Endowments Board in 1939 as the temple was notified under the Act (Vide Ex. B. I).

The reliefs which the plaintiff claimed in "the plaint were two: (1) a declaration that the first defendant temple belongs to and is of the exclusive right

of the members of the Gowd Saraswat Brahmin Community of South Kanara who alone have the exclusive right of management and performing

the puja therein; (2) a permanent injunction restraining the second defendant

from introducing any form of "agama" ritual or mode of worship in the said temple other than the existing form, contrary to the well-established custom and usage. The suit was instituted on the 16th of April 1947 and the objection taken was that the suit was barred by the provisions of the Madras Hindu Religious Endowments Act (II of 1927). The contention was upheld by the lower court. Hence this appeal.

2. Since the decision in the case, the Madras Hindu Religious Endowments Act, II of 1927, was repealed by the Madras Hindu Religious Charitable Endowments Act, 1951 (XIX of 1951) but the rules and the notifications issued under the repealed Act have been continued by Section 103 of the new Act.

3. The suit being of a civil nature it remains to consider whether the jurisdiction of the Civil Court is taken away either expressly or impliedly by any of the provisions of Act II of 1927. Our observations regarding the provisions of Act II of 1927 which have been relied on as barring the jurisdiction of the Civil Court would equally apply to the corresponding provisions of the new Act. It is, therefore, unnecessary to refer in the course of the judgment to the provisions of the new Act.

4. The main provisions that have been relied on as barring the jurisdiction of the Civil Court are Sections 84(1), Section 73(4) and 79 and 79A.

Section 84 (1) provides: "If any dispute arises as to:

- (a) Whether an institution is a math or temple as defined in this Act,
- (b) Whether a trustee is a hereditary trustee as defined in this Act, or not, or
- (c) Whether any property or money endowed is a specific endowment as defined in this Act or not, such dispute shall be decided by the Board

and no court in the exercise of its original jurisdiction shall take cognizance of any such dispute.

It is not claimed on behalf of the respondent that Clauses (b) and (c) would apply in the present case. But he relies upon Clause (a) and the

contention is that the dispute raised in the plaint in respect of which the declaration is sought is a dispute which raises the question whether the

institution is a temple as defined in the Act, or not; and therefore the relief sought for in the plaint is within Section 84 (1) (a) of the Act and the

cognizance of the suit by the Civil Court is barred. He refers in this connection to

the definition of "Temple" in Section 9, Clause (12) of the Act. It

states: " "Temple" means a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit

of, or used as of right by, the Hindu community or any section thereof, as a place of religious worship.

The argument is, if a question arises whether a temple is owned by the Hindu community as a whole or whether it is owned only by a section of

that community, the dispute would then be one which can aptly be described as raising the question whether the institution is a temple or not within

the meaning of Section 84 (1) of the Act, In our opinion, if the section is so construed, it would be placing a strained construction upon it and we

think that the language of the section does not warrant such an interpretation. The section is intended to give jurisdiction to the Board to decide a

dispute, when a dispute is raised, whether a particular institution is a math or temple as defined by the Act; and not a dispute which admits the

institution to be a temple but that the temple is exclusively owned by a particular religious denomination such as the Gowd Saraswat Brahmin

Community and not by the Hindu Community as a whole. Section 84 (1) (a) of the Act, therefore, in our opinion, does not cover the dispute raised

in the present suit, and, therefore, the prohibition against the exercise of the jurisdiction by the Civil Court u/s 84 (1) does not come into operation.

5. It was then argued that the suit is barred by Section 73 (4) of the Act which provides: "No suit or other legal proceeding claiming any relief

provided in this Act, in respect of such administration or management shall be instituted except under and in conformity with the provisions of this

Act." Section 73 was the subject of amendment several times and no useful purpose would be served by referring to decisions pronounced at a

time when the language of this clause was not identical. Under this clause what is required is that if the Act itself provides for a relief which is

claimed in the suit, the jurisdiction to entertain a suit for such a relief which has relation to the administration or management is taken away. The

only method by which the aggrieved person could get redress in respect of such an infringement is to adopt the procedure laid down in the Act and

achieve his object. In such a case, where the relief itself is provided by the Act in respect of the administration or management, it is not open to a

party to ignore the provisions of the Act and approach the civil court by a suit for obtaining an identical relief. In such a case the jurisdiction is

obviously barred

6. This takes us to the question whether any provision has been made for adjudication or for granting a declaration of the nature now sought for in

the suit under the provisions of the Act. Neither in Section 73 nor in any of the other provisions of the Act is there any provision to obtain a

declaration in a case of the description. The bar therefore contemplated by Sub-clause (4) of Section 73 does not apply in the present case in so

far as it is confined to the relief of declaration.

7. The learned counsel for the respondent then relied on Sections 79 and 79 (A) of the Act. His argument was that the declaration of the exclusive

rights of the denomination was founded on usage and therefore it is a matter which falls within the purview of Section 79, as consequence of which

the machinery provided for in Section 79A for an adjudication of that dispute is the only remedy provided for in such a case and no other. Sections

79 and 79A of the Act, in our opinion, are not intended to provide a forum for the determination of the denominational rights of a community over

the temple but are intended to apply to matters like the usage regarding the rituals, honours, perquisites, emoluments and so on. It is inconceivable that

the legislature could have intended to give jurisdiction to the Board to consider and adjudicate upon rights of such a magnitude as rights of a

particular denomination over a temple whether founded on usage or on other grounds by the simple and summary machinery provided u/s 79A of

the Act. We are, therefore, of the opinion that there is no bar laid down by Section 79A of the Act either, so far as the relief for declaration is

concerned.

8. As regards the second relief, however, it no doubt falls within the purview of Section 79A and it is not open to the plaintiff to at once resort to a

suit without going to the anterior process of getting an adjudication from the Board as provided by Section 79A of the Act. The learned advocate

for the appellant (plaintiff) saw the force of these objections and was willing to give up this relief on behalf of his client. The relief must, therefore, be

deleted from the plaint.

9. From the foregoing it follows that the plaintiff is entitled to maintain the suit

for the first of the reliefs set out above and the total dismissal of the suit by the learned Judge is not justified. The appeal therefore must be allowed and the decree of the lower court set aside, and the suit is remanded, for disposal in the light of the observations contained in this judgment. The costs of this appeal will abide and follow the result of the suit in the trial Court. The appellant is entitled to a refund of the court fee paid by him on the memorandum of appeal.