

(1997) 12 MAD CK 0018
In the Madras High Court
Case No : Second Appeal No. 1015 of 1997

Revathy and 3 others

APPELLANT

Vs

Ramalingam and The Commissioner, Pondicherry Municipality,
Pondicherry

RESPONDENT

Date of Decision : 23-12-1997

Acts Referred:

Citation : (1997) 12 MAD CK 0018

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : N.D. Bahety, for the Appellant; S. Sundar for Mr. T.R. Rajaraman for 1st Respondent No appearance for 2nd Respondent, for the Respondent

Judgement

S.S. Subramani, J.—Defendants 2 to 4 in O.S. No. 515 of 1991, on the file of First Additional District Munsif's Court, Pondicherry, are

the appellants. The suit filed by plaintiff was to declare that the Deity "Ezhai Naga Muthumariamman" at the northern dead end of the Kumaran

Street, Pondicherry has become the absolute owner of the land it occupied and as such entitled to enjoy the said land absolutely without any

interruption from the defendants and from being interfered with any of its development as well, and to pass a decree of permanent injunction

restraining the first defendant authority and defendants 2 to 4 from in any manner interfering with the existence and in the offer of worship at the

Temple Ezhai Muthu Naga Mariamman at the northern dead end of the Street mentioned above, and for costs.

2. In the plaint, it is said that the Deity has been occupying the area for the last more than 60 years and the inhabitants of the locality are

worshipping in that Temple. The Idol and the Temple are in uninterrupted

possession of the site on which it stands and it has gained considerable prominence in and around the area. Defendants 2 to 4 are individuals who are living further beyond the dead end of the street and now they are attempting to interfere with the site in which the Temple stands and the Municipality has also colluded with the defendants 2 to 4. Certain allegations have been made in para 5 of the plaint regarding 1st defendant-Municipality. I do not want to further probe into the matter, for, the Municipality remained ex parte before both the Courts below.

3. Defendants 2 to 4 objected to the plaint claim, The existence of the Temple is not disputed.

4. Trial Court held that the plaintiff is entitled only to an injunction and not declaration of title.

5. Aggrieved by the judgment, plaintiff preferred A.S. 150 of 1994, and defendants 2 to 4 i.e., appellants herein, preferred A.S. 61 of 1995. Both

these Appeals were clubbed together and as per common judgment dated 17-12-1996, the Lower Appellate Court decreed the suit as prayed

for, i.e., even the declaration sought for was granted.

6. Appellants' appeal before the Lower Appellate Court was dismissed.

7. It is against the common judgment, the present Second Appeal is filed.

8. When the matter came for admission, I ordered notice of motion, and after respondents entered appearance, the entire Second Appeal was heard.

9. Even though five questions of law have been raised in the memorandum of Appeal, learned counsel for appellants argued only the second

question, and that alone need be considered in this Second Appeal. It reads thus:-

Whether the Deity or the Temple authorities are necessary parties and who alone can maintain such a suit for declaration of their title?

10. Learned counsel for appellants submitted that neither the Temple nor the Idol is a party to the suit either as plaintiff or as defendant. One

Ramalingam, claiming to represent the inhabitants of the street mentioned above, wants a declaration of title in favour of the Deity. Such relief

cannot be granted. The Idol itself could be represented by a proper person, and if the Idol does not want a declaration, the suit filed by a stranger

for such a relief cannot be maintained.

11. At the first blush, the argument seems to be impressive. But, when we go to the law regarding Idol, as known to Hindu Law, I feel the argument is only to be rejected.

12. In B.K. Mukherjea on The Hindu Law of Religious and Charitable Trusts - Tagore Law Lectures" - Fifth Edition (1983), while dealing with the suits on behalf of Deity, the learned Author has said thus:-

It would be clear from what has been suited above that the Deity is not a necessary party in all suits relating to Debuttor. The case of Jagadindra

v. Hemanta Kumari is itself an authority for the proposition that it is open to a Shebait to institute a suit in his own name to recover property

belonging to the Deity, and the deity need not be made a party to such a suit. If a worshipper brings a suit in his own name for declaring certain

properties as Debuttor, he need not make the Deity a party to such suit apart from the Shebait. If the Deity is vitally interested in the result of a suit

to its wishes have to be expressed through a disinterested person or if the Shebait has any interest adverse to that of the Deity, it is necessary

that the Deity should be made a party to such litigation.

It was so held in a Patna case, where it was observed that where the Shebait denied the right of the Idol to the dedicated properties, it was

desirable that the Idol should file the suit through a disinterested next friend appointed by the Court, and where the suit was for altering certain

provisions in respect of the Sheba of a Deity contained in a will under which the endowment was made, it was held that the Deity had a right to be

heard, and would not be bound by any alteration made behind its task." (Emphasis supplied)

At page 270, in paragraph 629, the learned Author has summed up the entire legal position, and in clause (4) at page 271, the learned Author says

thus:-

Once it is found that the plaintiffs, whether they be Shebait or the founder or the members of his family, or the worshippers and members of the

public interested in the endowment, are entitled to maintain the suit - and that is a matter of substantive law - the further question whether an Idol

should be impleaded as a party to it or whether the action should be brought in its name is one purely of procedure. Such a suit is really the suit of

the Idol, instituted by person whom the law recognises as competent to act for it, and the joinder of the Idol is unnecessary. Indeed, it may even

result in embarrassment. But where the matters in controversy in a suit would affect the interests of the Deity, as for example when the trust is

denied, or is sought to be altered, it is desirable that it should also be impleaded as a party.

In this case, there is no manager legally appointed for the Idol. The suit has been filed by a worshipper of the Temple claiming to represent the

inhabitants of a particular Street. The right of a worshipper to file a suit is recognised by the Supreme Court in the decision reported in *Bishwanath*

and Another Vs. Shri Thakur Radhaballabhji and Others, . In para 10 of the judgment at page 1047, their Lordships have said thus:-

The question is, can such a person represent the Idol when the Shebait acts adversely to its interest and fails to take action to safeguard its

interest. On principle we do not see any justification for denying such a right to the worshipper. An Idol is in the position of a minor and when the

person representing it leaves it in lurch, a person interested in the worship of the Idol can certainly be clothed with an ad hoc power of

representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred

the property, can only bring a suit for recovery in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for, more

often than not, he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the

transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order

to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the Idol

may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the Idol and to recover the property

for the Idol, it has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an

endowment...

Their Lordships, in para 11, have extracted what the learned Author has said in "B.K. Mukherjea's The Hindu Law of Religious and Charitable

Trust - 2nd Edition, among others, at page 249:

An Idol is a juristic person in whom the title. to the properties of the endowment vests. But it is only in an ideal sense that the Idol is the owner. It

has to act through human agency, and that agent is the Shebait, who is, "in law, the person entitled to take proceedings on its behalf. The

personality of the Idol might, therefore, be said to be merged in that of the Shebait.

Where, however, the Shebait refuses to act for the Idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the

interests of the Idol, then there must be some other agency which must have the right to act for the Idol. The law accordingly recognises a right in

persons interested in the endowment to take proceedings on behalf of the Idol.

13. Two decisions of our High Court have also taken the same view. In 81 L.W.610 (Amirjan v. Shaik Sulaiman Sahib and others), it has been

held thus:-

A worshipper will be entitled to maintain a suit for possession of a trust property where the trustee has alienated the trust property and would not

proceed to recover possession of the same or has disabled himself otherwise from maintaining a suit in respect thereof, or declines to institute a

suit. The worshippers are in that case entitled to maintain a suit for preserving the trust property or restoring the property to the trust either by

instituting a suit for declaration or for an injunction or even for possession. If the suit is one brought for possession by the worshippers, the Court

can, after declaring the property to be trust property and setting aside the alienation, direct delivery of possession to the trustees. In cases where

there is no trustee, it is open to the Court to direct delivery of possession to the worshippers on behalf of the trust. Where the trust property has

been alienated by the trustee and is in wrongful possession of a trespasser, it is open to any worshipper to maintain a suit even for possession, if

there is no lawful trustee.

14. Similar is the case in 82 L.W. 547 (Chandrasekaran Pillai v. Muthu Bogi) wherein it has been held thus:

Suit was filed on behalf of a temple for recovery of possession alleging that the property belongs to the temple which belongs to the plaintiff and

other families in the villages and that the defendants encroached upon the suit

property. The defendants contended that the temple did not belong to the families referred to in the plaint, but also to other villagers, and the site did not belong to the temple and the plaintiffs who were only a section of the community could not maintain the suit.

Held, the suit is maintainable for declaration of the title of the temple to the suit property. The suit is not to establish the title of the plaintiffs and the members of their community to the temple to the exclusion of the other residents and members of other communities in the village. It is only to establish the right of the temple itself to the suit property. There is no objection to such a suit being filed.

Since the legal position is answered against the appellants, and the other questions of law relate only to facts. I do not find any merit in this Second Appeal. Consequently, the Second Appeal is dismissed. No costs. C.M.P. 9753 of 1997 for injunction is also dismissed.