
(1912) 04 MAD CK 0076
In the Madras High Court

Soma Ballachariar and Others

APPELLANT

Vs

Thiruvengkatachariar and Others

RESPONDENT

Date of Decision : 23-04-1912

Acts Referred:

Citation : 15 Ind. Cas. 409

Hon'ble Judges : Sundara Aiyar, J; Ayling, J

Bench : Division Bench

Judgement

S. A. No. 1484 of 1909.

1. The plaintiffs in this case are persons who are entitled to the 1st, 3rd and 4th thirthams in the temple of Thirunagiri Ranganatha Swamy. Defendants Nos. 7 to 23 are entitled to thirtham along with them. Defendants Nos. 1 to 3 are the trustees of the temple and defendants Nos. 4 to 6 are the Archakas, whose duty it is to carry on the daily worship of the idol. The object of the suit is to establish the plaintiffs' right to receive the thirtham first after the conclusion of the siva and Sathu-murai, that is, after the recitation of Tamil Vedas and hymns. In the plaint, the " plaintiffs ask also for the establishment of their lights to other emoluments appertaining to the office they hold, "but the right to these other honours and emoluments was really not denied by any of the defendants. There was a previous suit by some of the defendants jointly entitled to the 1st thirtham along with the plaintiffs for the establishment of their right to the honours and emoluments attached to the office. That suit was against the trustees and the suit ended in a compromise which will be referred to hereafter. The plaintiffs stated that while that suit was going on, the trustees and the Archakas acting in combination introduced an innovation which consisted in the Archakas taking the thirtham before it was offered to the plaintiffs and the other co-owners of the first thirtham office. The plaintiffs state that at the time of the compromise in the previous suit, the parties agreed that this innovation should be put "an end to, bat it was considered unnecessary to enter this understanding in the compromise.

2. Both the trustees and the Archakas deny the particular right set up now,

namely, that the Archakas should not take the thirtham before it is given to the plaintiffs. In the written statement of the Archakas in para. 6, they state:

It is always the practice for these defendants to take the thirtham first and then serve it to the plaintiffs, etc. It is in consonance with the custom, the Shastras and practice. It is included in religious rights and ceremonies. The plaintiff has no right to ask for any relief in that regard in a Civil Court.

3. In addition to the issues relating to the merits, there was an issue as to the right of a Civil Court to take cognizance of the suit. Both the lower Courts have found as a matter of fact that according to the usage and practice of the temple, after the Siva and Sathumurai were over, the Archakas were not in the habit of taking thirtham themselves before making the distribution to the thir-thamgars or to the various persons entitled to precedence in the distribution of the thirtham. That finding is based on the oral evidence in the case as well as on three documents. It has been contended in second appeal before us that these documents have been misconstrued; and in the course of the arguments it was also urged that two of these documents, namely, Exhibit B and Exhibit I, are not admissible in evidence at all against the defendants. Exhibit B is not of much importance. It is an agreement executed between the holders of the offices of the first and second thirthams and the defendants; the Archakas and trustee were not parties to it. The inadmissibility would really be a matter of no consequence, as it is stated that it was superseded by Exhibit I, which was executed in the year 1836. This document is an award passed by first and second defendants' father who was then the trustee of the temple. It set out the rights of the thirthimgars. It was apparently contended before the District Munsif that it would in no way bind the Archakas and trustees. But there was evidence before him showing that the Archakas were also parties to the dispute and that they made statements regarding their rights. The document does not contain any reference to Archaka's rights to take the thirtham first and both the Courts have drawn the inference from that fact that no such right existed at the time, as otherwise it would have been put forward. How far this inference is well founded is not really a matter for our consideration in second appeal. No objection was raised in the grounds of appeal in the lower Appellate Court to the admissibility of the document in evidence against the Archakas or the trustees, evidently because the document was put forward by the defendants themselves. The contest in the lower Appellate Court was about its effect as against the Archakas and the trustees. If the question of its admissibility had been raised, the District Judge would, no doubt, have had to consider whether, as found by the District Munsif, the Archakas themselves were not really parties to the dispute which was settled by the compromise. We cannot allow any question regarding its admissibility to be raised at this stage.

4. The 3rd document is Exhibit A, the compromise in the previous suit O.S. No. 100 of 1906. In that suit some of the first thirthamgars claimed the right to be given the thirtham first though no express statement was made in the plaint that

the Archakas were not entitled to take it before them. In Exhibit IV, the written statement put in by the second defendant in that suit, the Archakas' right now put forward was alleged. In the compromise the right of the thirthamgars was stated in the term in which it was put forth in the plaint.

5. The Archakas' right was neither affirmed nor denied; but both the Courts believe the evidence adduce on behalf of the plaintiffs showing that Archakas' right was denied and that the denial was agreed to by the agent of the 2nd defendant, one of the present trustees who undertook to abolish the new practice. There is no question for consideration in second appeal with respect to the documents. None of these documents can be said to have been misconstrued. We must therefore, accept the finding that according to the usage of the temple, the Archakas have not been taking the thirtham before offering it to the thirthamgars.

6. The point chiefly urged in the second appeal is that, according to the texts of Hindu religious books dealing with the way in which the puja and ceremonials in Vaishnava temples following vaikanasa, sutra should be conducted, it is apart of the ceremonial : enjoined that at the end of puja, the Archakas should sip the sacred water or thirtham and only thereafter distribute it to the Goshti, including those who have special rights of precedence. It is contended that a religious privilege like proceedings in thirtham cannot be acquired in contravention of the rules of the Hindu Sastras and that, however long a practice in contravention of the Sastras may have been in existence, no one can acquire a legal right to compel either the trustees or the worshipping Archakas to continue to act against the injunctions of the Sastras and that these latter must be at liberty to rectify any practice that may be against the Sastras. For the respondents it is contended that usage is really the determining principle as to the ceremonial to be observed in a temple, that what has to be looked to is whether any particular text of the Sastras has been adopted in the usage of any temple and that there are no texts of such paramount authority as to make it impossible for a temple to adopt a usage which may be contrary to what is laid down by them. The texts produced by the plaintiffs have been interpreted before us in different ways by both sides. As we understand the contention raised by the defendants in the lower Court, it was, not that the defendants were entitled to introduce an innovation which would not be questioned by the plaintiffs, but that the practice of the temple was in support of the defendants' case. It would appear, no doubt, that before the District Munsif the contention was urged that, according to the Sastras, it was a part of the puja or the ceremonial of worship that at the conclusion of the puja, the Archakas should sip the sacred water. But it does not appear to us that this was relied on as justification for any innovation. The texts appear to have been cited partly to support the defendants' evidence as to the actual usage and partly perhaps to show the a right which is against the injunction of the Sastras could not be legally acquired by a usage which was contrary to the texts. We are unable to say that it has been proved in this case that there are any texts of such coercive authority as to set aside a usage with respect to rights regarding

thirthams, that is, that there are any texts the disobedience of which has been proved to make it impossible that the plaintiffs could have the right to the thirtham in preference to the Archakas.

7. In the course of the arguments, another point was put forward. Briefly, it is this: the plaintiffs admittedly have the right to the thirtham only after the puja is over, the puja now including the Siva and Sathumurai. It is contended that a person, who is entitled to thirtham after the conclusion of the puja, cannot, by virtue of this right, object to any change in " the puja which would be in accordance with the Sastras requiring or permitting the Archaka to sip the sacred water as a part of the ceremonial of the puja. This contention again it is unnecessary to deal with in this case. If the trustees or the Archakas have a right to introduce such an innovation and if in the assertion of such right they introduced it, it will then be time to consider whether the plaintiffs on account of their right to the first thirtham, can object to any change which would have the effect of postponing their getting the thirtham, until the Archakas have taken it. As already stated, this was not the case of the defendants in the lower Courts. Their contention was not that they introduced an innovation but that the practice which they in no way violated allow the Archakas to take the sacred water first. On that question, the findings of the lower Courts are conclusive and must be accepted. With respect to the question of jurisdiction, the case of Sri Rungachariar v. Rungasami 32 M. 291 : 6 M.L.T. 33 : 3 Ind. Cas. 881 is practically on all fours with this case. If the plaintiffs have a right to have their right to receive the thirtham first protected, then they are also entitled to ask the Court to decide for the protection of that right that the Archakas should not take the thirtham before them. As pointed out in that case, the question itself is one of precedence, and whether the plaintiffs are entitled to precedence over the Archakas or not it has necessarily to be decided by the Court. The objection taken to the finding, therefore, cannot be sustained. The defendants complain that the form of the injunction granted by the lower Court is likely to lead to inconvenience in practice. There is a negative injunction against the Archakas and the trustees that they should not interfere with the plaintiffs' rights, and there is also a positive injunction that they should show the plaintiffs the maryadas or honours, mentioned in the decree. We think that the plaintiffs' rights will be sufficiently protected by the negative injunction. The words, therefore, after "defendants Nos. 7 to 23", in Clause 3 of the District Munsif's decree, will be expunged. In other respects, the decrees of the lower Courts will be confirmed. The appellants must pay the plaintiffs the costs of the second appeal.

S. A. No. 1590.

8. With respect to the memorandum of objections in S.A. No. 1590, both the Courts having found that the plaintiffs' rights have been infringed, it must be held that they are entitled to some damages. The District Judge disallowed the claim because the memorandum of objections before him was presented only by

one of the plaintiffs, namely, the 12th plaintiff. But he was entitled to do so on behalf of all and there can be no doubt that he did act on behalf of all as he did not claim any damages individually. The District Judge also says that there was nothing to show which particular plaintiff suffered annoyance. But as he himself points out, the right to the damages arises from the infraction of the plaintiffs' right and it is immaterial whether any, and if so, which of them suffer any annoyance. We must, therefore, modify the decree by decreeing Rs. 5 damages against the appellants. There will be no order as to costs on the memorandum of objections.