(1944) 10 MAD CK 0019

In the Madras High Court

Sri Kothandaramaswami Temple and Another APPELLANT

Vs

Veezhinatha Ayyar and Another RESPONDENT

Date of Decision : 04-10-1944

Acts Referred:

Madras Hindu Religious Endowments Act, 1923 — Section 44, 73

Citation : (1945) 58 LW 12 : (1945) 1 MLJ 63

Judgement

1. By a will dated the 6th June, 1895, one Ponnammal directed that out of the income of certain immovable properties belonging to her the cost of

performing religious services in temples specified by her should be met. One of the temples is the Sri Kothandaramaswami Temple at Adambar in

the Tanjore district, of which the appellants are the trustees. In 1941 they instituted a suit in the Court of the District Munsiff of Mayavaram against

the first and the second respondents, the successors in interest of one Subbaraya Aiyar who became possessed of the properties subject to the

charges created by the testatrix. There were other defendants but it is not necessary to state why they were joined as parties. The first and second

respondents strenuously defended the action. In the first place they denied that a valid charge had been created by the testatrix in favour of the Sri

Kothandaramaswami temple and they averred that the suit was not '' maintainable by reason of the provisions of Sections 44 and 73 of the Madras

Hindu Religious Endowments Act of 1926. The District Munsiff held that a valid charge had been created and under it the first and second

respondents were liable to pay to the trustees of the temple 15 kalams of paddy per annum. He considered, however, that the plea that the only

remedy of the trustees was an application u/s 44 of the Act must prevail, when the section was read together with Section 73 and accordingly he dismissed the suit. On appeal by the trustees the Subordinate Judge concurred in the opinion of the District Munsiff that a valid charge had been

created in favour of the Sri Kothandaramaswami temple. He did not agree with the District Munsiff that Section 44 was a bar to the suit, but went

on to hold that it was not maintainable by reason of Section 73, inasmuch as sanction for the institution of the suit had not been granted by the

Hindu Religious Endowments Board. The Subordinate Judge agreed with the District Munsiff that the charge in favour of the Sri

Kothandaramaswami temple was in respect of an annual payment of 15 kalams. The trustees then appealed to this Court. This appeal was heard

by Chandrasekhara Ayyar, J., who agreed with the District Munsiff that Section 44, read in conjunction with Sub-section (3) of Section 73,

prohibited the trustees from filing a suit and limited their remedy to an application u/s 44. The learned Judge gave, however, a certificate under

Clause 15 of the Letters Patent which has permitted the trustees to file this further appeal.

2. We are of the opinion that Section 73 of the Act has no application here. Subsection (1) permits the Board or any person having an interest and

having obtained the consent of the Board to institute a suit in the District Court to obtain a decree (a) appointing or removing the trusteeï¿½of a

math or excepted temple or of a specified endowment attached to a math or excepted temple, (b) vesting property in a trustee, (c) declaring what

proportion of the endowed property or of the interest therein shall be allocated to a particular object of the endowment, (d) directing accounts and

enquiries, or (e) granting such further or other relief as the nature of the case may require. The words ""granting such further or other relief as the

nature of the case may require"" cannot be read as extending the classes of suits contemplated by the section. The present suit does not come within

any of the categories specified in Sub-section (1). Sub-section (2) admittedly is not in point. Sub-section (3) states that Sections 92 and 93 and

Rule 8 of Order 1 of the First Schedule of the CPC shall have no application to a suit claiming relief in respect of the administration or management

of a religious endowment and no suit in respect of such administration or management shall be instituted except as provided by the Act. This is not

a suit for the administration or management of a religious endowment. It is a suit filed by the trustees to recover money due to the temple and secured by a charge on immovable properties. As the suit does not come within the categories referred to in Sub-section (1) and is not one for the

administration or management of a religious endowment, Section 73 cannot have application.

3. The more substantial question is whether Section 44 in itself precludes the institution of a suit in such a case as the present one. The section says

that, where an endowment for the performance of a charity or service connected with a temple consists merely of a charge on property and there is

failure in the due performance of the charity or service by the person responsible, the trustee of the temple may require the person in possession of

the property on which the endowment is charged to pay to the trustee the expenses incurred or likely to be incurred in causing the charity or

service to be performed otherwise. In default of the payment as required by the trustee the Court shall on his application pass an order for the

recovery of the amount and the order may be enforced as if it were a decree of the Court. The Court referred to in this section is the District

Court.

4. The section clearly permits the District Judge on a mere application to order the recovery of the amount so charged, but this does not in itself

mean that the trustees of a temple benefited by a charge are compelled to proceed under the section. Obviously where, as here, the validity of the

endowment is denied, it is far better to have the question decided in a regular suit, especially as the Act does not provide for an appeal against an

order passed u/s 44. In The Right Honourable the Secretary of State for India in Council Vs. Allu Jagannadham, , it was pointed out that to

exclude the jurisdiction of the Civil Court (which means the appropriate Civil Court) the exclusion must be explicitly expressed or clearly implied.

Therefore the question is whether Section 44 can legitimately be read as excluding the right of suit in the appropriate Civil Court. The section

certainly does not expressly exclude the right of suit and we do not think it can be read as implying its exclusion. Admittedly, if Section 73 is ruled

out, there is no other section which can be called in aid by the contesting respondents. It must be borne in mind that this is not a case where the

liability is statutory as opposed to a liability under the common law. As stated in The Right Honourable the Secretary of State for India in Council

Vs. Allu Jagannadham, , where the liability is statutory, the party must adopt the remedy given to him by the statute. The liability of the first and the

second respondents arises under the general law of the land and the ordinary method of enforcing that liability is in the Civil Court having

jurisdiction in the matter.

5. We hold that Section 44 does not preclude the trustees from filing the suit in the Court of the District Munsiff; and, as they have substantiated

their case, the appeal must be allowed and a decree passed in their favour. It is admitted that on this basis the plaintiffs are entitled to recover Rs.

105 from the first and the second respondents. Consequently there will be a decree for this amount with interest from the date of suit. The

appellants will have their costs throughout, based on this figure, against the first and the second respondents.