

(1994) 06 MAD CK 0002
In the Madras High Court

Sri Meenakshi Sundareswarar Devasthanam

APPELLANT

Vs

Chellappaperumal Pillai

RESPONDENT

Date of Decision : 24-06-1994

Acts Referred:

Limitation Act, 1963 — Section 31

Citation : (1994) 2 MLJ 545

Hon'ble Judges : Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The decree-holder is the petitioner herein. This revision is directed against the order passed in E.P. No. 149 of 1979

in O.S. No. 22 of 1963. The decree-holder/plaintiff filed E.P. No. 149 of 1979 under Order 21, Rule 32, C.P.C., to direct the first defendant in

O.S. No. 22 of 1963 to obey the decree of permanent injunction as per Clause (1) of the decree, granted by the High Court in A.S. No. 454 of

1955 and on failure to obey to commit him to prison. Under Clause (1) of the decree passed in A.S. No. 454 of 1955 by this Court against the

judgment and decree in O.S. No. 22 of 1963 the respondent/defendants 1 and 2 and their men, were restrained by means of a permanent

injunction from interfering with the possession and enjoyment of melmadam Vaidyanathasamy temple with its appurtenant. The 1st defendant filed

a counter stating that he is a hereditary poojari of the said temple. According to him he is in continuous possession of the temple and he is

performing the pooja to the deity. He further submitted that the execution petition filed by the decree-holder is barred by limitation. On considering

the facts, arising in this case, the execution court dismissed the execution petition filed by the decree-holder. It is against that order, the present

revision has been preferred by the decree-holder.

2. Learned Counsel appearing for the petitioner/decreed-holder submitted as under:

It is not correct on the part of the execution court to say that the decree of the High Court in AS. No. 454 of 1955 is not enforceable and the

execution petition is not maintainable. Though the suit was originally dismissed by the sub-court on appeal in A.S. No. 454 of 1955 it was held that

the temple belongs to the petitioner herein and it was also held to be in the possession of the petitioner. The respondent herein made an admission

before the High Court that they are not in possession of the said temple and that the property was not in their occupation. It is not correct on the

part of the lower court to say that the portion under the occupation of the respondent is not clearly demarcated. The execution petition was filed on

15.12.1978 on the basis that the 1st respondent and his wife are residing there and since they have violated the injunction order and since they are

also not performing the pooja the temple is entitled to be put back into the possession, and on failure, the respondent is liable to be committed to

civil prison. The respondent has no consistent case and that the case is governed by the proviso to Article 136 of the Limitation Act which

provides that an apprehension of the enforcement of a decree granting a perpetual injunction shall not be subjected to any period of limitation.

Though this article provides the decree for perpetual injunction will not be subject to any period of limitation and it can be enforced at any time

without any time limit. The suit is not for recovery of possession but an application filed under Order 21, Rule 32, C.P.C. for restoring the

possession and it is in accordance with the decree of the High Court in A.S. No. 454 of 1955, where the Court found that the respondent himself

had admitted that he had no title or possession. The decision relied on by the court below has no application after the amendment of Limitation Act

and to a case where the Proviso to Article 136 of the Limitation Act clearly applies. In paragraph 6 of the affidavit the respondent has stated that

he have been in enjoyment of the temple from the date of the dismissal of the suit, viz., 27.1.1955 which is clearly untenable and contrary to the

findings of the High Court, where he had himself admitted that he has no possession or title. In paragraph 4 the respondent says that he is the

Poojari. But earlier he said that he is not the Poojari of the said temple and one Arumugam Pillai was the Poojari of the temple. Thus the

respondent has no consistent case. In such circumstances the lower court was not correct in stating that no reply has been filed on behalf of the

petitioner herein. For all these reasons, it was submitted that the order passed by the lower court is unsustainable.

3. On the other hand, learned Counsel appearing for the respondent/1st defendant submitted as under:

Sri Vaidyanathasamy Temple Melamadam is not a public temple, but it is a private temple belonging to the respondent predecessors-in-title. The

predecessors-in-title had been the poojari for the temple. Now this respondent is the Poojari. He is the hereditary Poojari. He is in actual

possession of the temple. The petitioner has no right to appoint any one as Poojari. The petitioner attempted to take possession of the temple from

the respondent. Hence the petitioner filed O.A. No. 51 of 1973 and O.A. No. 28 of 1977 on the file of the Deputy Collector, H.R. & C.E.,

Madurai. But those petition." were dismissed. The petitioner has admitted that the respondent has been in possession of the temple. This

respondent is in continuous possession of the temple. In cases where prohibitory injunction was granted and which was disobeyed, the decree-

holder will have a right to execute it within the period of three years from the date of breach. The petitioner has not taken any steps to execute the

decree within five years after the passing of the Limitation Act, 1956. "Hence this petition is clearly barred by limitation Even though the

petitioner's office officials were aware that the respondent has been in continuous possession of the building all these years, they have purposely

stated that it was in 1973 that the petitioner's wife had occupied, the temple. They are not living in the temple. It is not the case of the petitioner

that they were in possession and that they were dispossessed by the respondents. The petitioner's remedy, if at all, is to file a suit for recovery of

possession. It was, therefore, submitted that the lower court was correct in dismissing the execution petition.

4. I have heard the rival submissions.

5. The petitioner herein is the decree-holder in A.S. No. 454 of 1955. Under Clause (1) of the decree passed in A.S. No. 454 of 1955, the

respondents/defendants 1 and 2 and their men were restrained by means of a injunction from interfering with the Melmadam Vaidyanathasamy

temple with its appurtenant. According to the petitioner, the respondent and his wife had occupied the temple residing there from 1973. According

to the petitioner the respondent in gross violation of the decree for permanent injunction has failed to obey the injunction order. Therefore, it was

prayed that a notice may be issued to the respondent directing him to vacate item 1 and restore possession to the petitioner and on failure to do so

to commit him to the civil prison. But the respondent states that he is the hereditary poojari of the said temple and he is doing pooja there. He also

states that he and his wife are residing in door No. 34 and not in the temple. Regarding the performance of pooja by the respondent. R.W.I has

given convincing evidence. There is no evidence on the side of the petitioner to show that the respondent is not doing any pooja in the temple. In

paragraph 4 of the affidavit filed by the petitioner's officials, it is stated that the respondent is not even doing pooja. So it is admitted that the

respondent is to do pooja for the said temple. There is absolutely no evidence on the side of the petitioner to show that the respondent is

occupying the entire item I of the plaint schedule in O.S. No. 22 of 1953. In Ex. A-1, certified copy of the judgment in AS. No. 454 of 1955 the

High Court has held that "it is admitted that the respondents have no title to the item and to a portion lying north of it. That would comprise the

whole of T.S. No. 1032. The respondents have admitted that they are not in possession of the same. We see no reason why an injunction should

not have been granted in respect of that item. "The High Court did not decide as to the exact extent of the property to which the appellant would

be entitled to in T.S. No. 1032. Therefore, even if the respondent is in possession of some portion in T.S. No. 1032 barring the temple, the

petitioner is not entitled to recover the same in this execution petition and they have to file a separate suit for the recovery of possession.

6. The respondent states that he is in possession of the temple from 1955 as a Poojari and that he is not living in the temple, but he is living

separately in another house. This was stated in the counter-affidavit filed by the respondent. This was not controverted by the petitioner by filing a

reply affidavit or by letting in any evidence. In the proceedings before the Deputy Commissioner, H.R. & C.E. the petitioner has stated that after

Ganapathia Pillai the respondent appears to have been in possession of the temple. It is not the case of the petitioner that they were in possession of the temple and they were disposed by the respondent at any point of time. All these facts would go to show that the respondent is in possession of the temple as a hereditary Poojari and if at all he is in possession of some other portion of T.S. No. 1032. Further, it was pointed out by the counsel for the respondent that the Executive Officer of the petitioner in his affidavit has not stated that the petitioner was in possession of the temple and that they were disposed at the some point of time. It was further submitted that under the new H.R. & C.E. Act, the proper person to file the execution petition would be the trustee and not the Executive Officer. In order to verify whether the Executive Officer has got any power to file the execution petition, the petitioner herein has been given sufficient opportunity to produce the relevant document on this aspect, but no document was forthcoming. Therefore, on facts, I have to accept the contention put forward by the respondent herein that the only remedy for the petitioner to obtain possession is to file a suit for possession against the respondent herein.

7. The respondent next contended that the execution petition is barred by limitation. In cases where prohibitory injunction was granted and which was disobeyed the decree-holder will have a right to execute the decree within the prescribed period of limitation from the date of the decree. Ex.

A-1, dated 31.3.1959. Therefore according to the respondent within a period of three years from 31.7.1959 i.e. 31.7.1962, the decree-holder's

right to file the execution petition has come to an end since the present execution petition was filed only in the year 1979. It was pointed out that

since the decree was passed on 31.7.1959, the old Law of Limitation i.e. Limitation Act, 1908 alone will be applicable and the period of limitation

will be only three years. However, learned Counsel appearing for the petitioner pointed out that as per the new Limitation Act, 1963, under Article

136 no limitation period is prescribed for executing the decree for permanent injunction even though the period of limitation is only three years as

per the Limitation Act, 1908. According to the petitioner the execution arises only when the respondent attempted to interfere with the possession

of the petitioner. In support of this contention, learned Counsel appearing for the petitioner relied upon the following decisions viz., Bangali Mal Vs.

Firm Ganga Ram Asharfi Lal, , Bohray Jugul Kishore Vs. Emperor, . The above two decisions relate to the earlier Limitation Act. The new law of

Limitation came into force from 1.1.1964. On the date of filing of the execution petition three years period as contemplated under Article 182 of

the Limitation Act, 1908 has expired. Section 31 of the Limitation Act, 1963 gives time limit of five years to file an execution petition after the

expiry of the period of three years given by the old Act. In the present case, the execution petition was filed long after the expiry of three years as

contemplated by the old Act of Limitation, 1908. The execution petition was not filed within five years as contemplated u/s 31 of the Limitation

Act, 1963. While considering Section 30 of the Limitation Act, 1963, this Court in the case of Baby Ammal Vs. K.N. Rangababu and Others, ,

held as under:

Where the period of limitation prescribed under the Limitation Act of 1963 for a suit is shorter than that prescribed under the Act of 1908, then

Section 30 of the former Act has to be applied.

Where, however, the period prescribed for a suit under Article 120 of the Limitation Act of 1908 had expired even prior to the filing of the suit the

plaintiff cannot invoke Section 30 of the Limitation Act of 1963 and say that the suit has been filed within the time permitted therein after the

commencement of the Act of 1963.

So also while considering the provisions of Section 31 and Article 136 of the Limitation Act, 1963, this Court in the case of Dhanalakshmi

Ammual and Others Vs. C.N. Ramaswamy Pillai, , held as under:

The execution petition was filed beyond 12 years from the date of the decree and it is not permissible to tack on the time taken for prosecuting the

previous execution petition. Under the former Limitation Act, lime is taken to run from the date of the order passed in the last execution petition for

the purpose of Article 182 of that Act. But under the provisions of the Limitation Act, 1963 lime begins to run only from the date of the decree and

when execution petition is not filed within 12 years therefrom it clearly gels barred.

Therefore, the new Limitation Act, 1963 would not render any assistance to the petitioner to say that the execution petition is not barred by

limitation. In view of the foregoing reasons, I am unable to interfere with the

order passed by the execution court in dismissing the petition filed by the decree-holder.

In the result, the revision is dismissed. However, there will be no order as to costs.