

(1966) 12 MAD CK 0011

In the Madras High Court

Case No : Second Appeal No. 73 of 1963

Srinivasalu Naidu

APPELLANT

Vs

Kavalmari Munuswami Naidu and Others

RESPONDENT

Date of Decision : 22-12-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1967 Mad 451 : (1967) 80 LW 296

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

(1) The plaintiff is the appellant. He sought for a declaration of his right to run the customary bull race before the Gangaiyammal temple and for a

permanent injunction to restrain the defendants from interfering with his right. His claim was that the bull race and a festival connected with it are

conducted in the village during the month of Thai Masi every year. According to the plaintiff, the right and the privilege to conduct the race and the

festival belong only to him that this right was in the past exercised by his father. It was stated that the plaintiff usually gives wide publicity to the race

and the festival in the neighbouring villages and also fixes a date therefor. The resident of the village and the neighbouring villages participate therein.

Before the race commences, the plaintiff has pooja performed in the temple, breaks the first ceremonial coconut and drives the bull first in the race.

He claims this as a hereditary right. It was alleged that the defendants some of whom are residents of other villages and one who has recently

settled down in his village attempted to prevent the exercise of the right as claimed and it is for that reason that the suit was laid. The defendant's

contention denied the right claimed by the plaintiff. It was claimed that one

Buddappa Naidu alone has this customary and hereditary right. After him his daughter's son, one Krishnappa Naidu, were exercising the right. It was contended that the Krishnappa Naidu is a necessary party to the suit. It was also claimed that the right the establishment of which was sought is not one of the civil nature within the meaning of S. 9, C. P. Code and that the court has jurisdiction to entertain the suit.

(2) The learned District Munsif found upon the evidence that the right set up by the defendant in Krishnappa Naidu was not established and that in

any event, it was only the defendants who caused obstruction to the exercise of the plaintiff's right, which was also found upon the evidence.

Krishnappa Naidu was held to be not a necessary party. But nevertheless the learned District Munsiff in dealing with the question of jurisdiction,

merely stated that though the plaintiff has proved his right to conduct his festival, there was no evidence to show that it is of a civil nature and

proceeded to dismiss the suit.

(3) The plaintiff appealed. The learned District Judge found that there was ample evidence to show that it was the plaintiff and his father who were

exercising the right in question for several years past. The defendant's contentions to the contrary were rejected. But upon the question whether

the suit is maintainable the learned District Judge held that as the plaintiff did not claim to have any right to any office in the temple in question and

such a right cannot be said to form part of the worship in the temple, the right sought to be agitated is not within the purview of S. 9. It upheld the

decision of the court below.

(4) the short question in his second appeal is whether the right claimed is not one of a civil nature an adjudication of which is competent under S. 9

C. P. Code Sec. 9 is in very broad terms. It states that all suits of a civil nature are within the jurisdiction to the court, except those of which

cognisance is either expressly or impliedly barred. The explanation to this section states that such a suit in which the right to property or to an office

is contested is a suit of a civil nature notwithstanding that such right may depend entirely on the decision of question as to religious rites and

ceremonies. The explanation certainly does not confine the limits of the nature of suits contemplated by the main section. What the Explanation

states is only that though religious rites and ceremonies may form the basis of a

right that is claimed, such right being a right to property or to office, a suit to establish such right would be a suit of a civil nature. The section takes within its broad sweep all questions where one person claims any privilege in himself as against others. There is no doubt that such a question would be one of a civil nature.

If I understand the judgment of the lower appellate court, it seems to have assumed that only a right which is claimed, in relation to a temple, such as the right to perform worship in a temple or the right, to receive religious honours or privileges attached to an office as its perquisite or remuneration, could be agitated under S. 9 C.P.C. The principal basis of the decision of the courts below is that the right claimed does not form part of the worship in the temple.

It seems to me that the claim has been entirely misconstrued. The right was not claimed in relation to any temple at all or to any office or emoluments attached to it. The reference to the temple or the right to break the first coconut is merely ancillary to the right claimed, which was the right to run the bull race. What was averred and what was proved in the evidence was that the plaintiff was the person entitled to organise this bull race during the month of Thai Masi and that before the bull race was started, the auspicious function of breaking the coconut to the Goddess was performed. It is not the plaintiff's claim that on this particular day no one else should break any coconut in the temple. In so far as the breaking of the coconut was part of the principal event, namely, the starting of the bull race, no one else could break the coconut as indicating the start of the bull race. The plaintiff was not seeking a declaration of any rights in relation to the temple. He claimed that he alone and no one else could start the bull race and if as part and parcel of the starting of the bull race the breaking of the coconut was called for, that is not a right in relation to any religious practice for ceremony.

(5) What is a civil right can hardly be defined. It is perhaps possible to define what is not a civil right. Mr. Gopalaswami Aiyangar on behalf of the appellant referred to *Thirumalai Alwar Aiyangar v. Lakshmi Sadagopa Aiyangar*, 31 Mad LJ 758=AIR 1917 Mad 903. That was a case where the plaintiff claimed the exclusive right to conduct a Mandagapadi on the first day of Pagalpathu festival in a temple paying all the expenses thereof,

and receiving all the honours and emoluments appurtenant to that right. It was held that a suit to establish such a right is maintainable in the civil court. The learned Judges pointed out that the line dividing cases where the right to perform acts of religious worship is arrived and those where the right is to receive honours and emoluments is sometimes rather narrow. In that case, the entire matter dealt with the right of worship associated with the receipt of the incidental honours or emoluments. In the case before them, the right to receive the Prasadam and other honours connected with the performance of the Mandapagapadi really involved nothing in the shape of emoluments which could be said to be attached to an office and that was the contention advanced before the learned Judge. But they noticed that a right would always be associated with a corresponding obligation and thought that even the performance of service by the plaintiff claiming the right could be legally enforced.

They referred to the finding that from time immemorial such a right had been exercised by the plaintiff's family and they were satisfied that the right was enforceable in the civil court. It was observed that the right claimed was a right to perform acts of worship in a particular manner and with particular incident attached to it, virtually bringing it within the scope of Explanation to Sec. 9. It would be noticed that that case was one which was in relation to the performance of worship of the deity of a temple in a particular manner. But the present case, as I have pointed out, is entirely different in that the reference to the temple is wholly incidental and the act of breaking the coconut is not an exclusive right claimed generally in relation to worship in the temple but exclusive in connection with the starting of the bull race. The entire claim is really one which is dissociated with the worship of the temple as the principal feature of the claim. It seems to me that the claim of the plaintiff which is merely that he is entitled to run the customary bull race during the month of Thai Masi and that no one has that right, is a right of a civil nature and the suit is cognisable under S. 9

C. P. Code.

(6) The decree of the Court below is accordingly reversed and the suit will stand decreed. The plaintiff will get his costs in all the courts from the contesting defendant. No leave.

(7) Appeal allowed.