

(1956) 07 MAD CK 0046
In the Madras High Court

T. Alagappa Goundar

APPELLANT

Vs

P.A. Karuppa Chetty Goundar

RESPONDENT

Date of Decision : 27-07-1956

Acts Referred:

Hindu Religious Endowments Act — Section 87(c)

Citation : (1956) 2 MLJ 453

Hon'ble Judges : Somasundaram, J

Bench : Division Bench

Judgement

Somasundaram, J.—The petitioner is the trustee (appointed by the Hindu Religious Endowments Board) of the Badrakaliammal Temple in Mecheri, Omalur Taluk, Salem District. u/s 87(c) of the Hindu Religious Endowments Act he made an application to the District Magistrate, Salem, to direct the respondent to deliver possession to the petitioner of the temple properties which are set out in the list attached to the certificate. After hearing both parties, the District Magistrate directed the respondent to hand over the articles mentioned in the list to the petitioner herein. Against this order the respondent filed a revision case (Cr.R.C. No. 676 of 1954) but the same was dismissed by this Court. After this, the petitioner went to take delivery of possession of these articles with the aid of the Police. But the police finding it difficult to identify the jewels applied to the District Magistrate for the issue of a search warrant so as to enable them to seize the jewels, if necessary, by force. Notice of this application by the Police was given to the other side. The respondent appeared before the District Magistrate and raised objections as to the issue of a warrant on the ground that the District Magistrate had no jurisdiction to issue such a warrant. The District Magistrate holding that Section 96 of the Code of Criminal Procedure will not in terms apply to the proceedings in question, held that it was not competent for him to issue such a search warrant. The result was that though the District Magistrate directed delivery of the properties he found himself unable to enforce his own order. The question is whether the District Magistrate has no power to enforce an order which he himself had passed earlier.

2. The learned advocate who appears for the petitioner contends that the Court has ample powers to enforce its own order. In support of his contention he relied on the principles laid down by the House of Lords in *National Telephone Co., Limited v. Postmaster-General* (1913) A.C. 546 , which have been adopted and followed by several decisions of our High Court. In the above decision Viscount Haldane, L.C. observed as follows:

When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach....

In the same judgment, Lord Atkinson, dealing with this question at page 555 says:

It is simply the question of extending the jurisdiction of an existing Court of law, with all its incidents including a right of appeal, to a new matter closely resembling in character those matters over which it has already jurisdiction as a Court of law.

Lord Shaw who was also one of the Judges in the above case observes at page 557:

...the whole of the statutory consequences of procedure before such a Court ensue.

The observations of Lord Moulton and Lord Parker in the same case are also to the same effect, namely, when by a statute, matters are referred to the determination of a Court with no further provision, the necessary implication is that the Court will determine the matters as a Court., Its jurisdiction is enlarged but all the incidents of such jurisdiction remain the same.

3. The above observations of their Lordships of the House of Lords in the above case have been adopted and followed by this Court in *Guruvammal Vs. Arumuga Padayachi and Others*, . In dealing with the powers of the District Court in respect of application under the former Section 78 of the repealed Hindu Religious Endowments Act, Curgenven, J., observes as follows:

When a duty of a particular character is cast upon an established Court, it imports in the words of Lord Haldane, L.C, in *National Telephone Co., Ltd. v. Postmaster-General* (1913) A.C. 546 , "that the ordinary incidents of the procedure of that Court are to attach".

In *S. Narayana Iyengar, Trustee of Sri Santhanagopalaswami Ranganathaswami Temple Vs. K.V. Desika Chariar*, , a Bench of this Court consisting of the then Chief Justice and Bardswell, J., dealing with a similar application u/s 78 of the Repealed Act have held that the Legislature in giving the Court jurisdiction u/s 78 to make orders for the delivery of possession, have impliedly granted the power of doing all acts necessary in execution of its order. After referring to the observations of Lord Haldane, L.C, Lord Atkinson and Lord Shaw, the Bench held:

...When once a Court is given a jurisdiction, the necessary consequences flow from its exercise of such jurisdiction without any express words.

To the same effect is the decision of Venkatasubba Rao, J., in R. Seshayee Aiyangar (deceased) E. Veeraraghava Aiyangar brought on record in the place of the deceased Vs. Puna Rena Govinda Pillai (deceased) Subramania Pillai, Legal Representative of the deceased and Others, .

4. The above decisions clearly show that once the Court is given jurisdiction to pass orders for delivery of property, then it impliedly carries with it power of doing all that is necessary for the execution of that order. The lower Court is, therefore, in error in holding that it had no jurisdiction to pass the necessary order to give effect to its previous orders.

5. The order of the lower Court is set aside and the lower Court is directed to issue such orders as may be necessary for the execution of its previous order.

6. The petition is allowed.