
(1917) 03 MAD CK 0005
In the Madras High Court

T. Krishnamacharlu and Others

APPELLANT

Vs

Appan Govinda Ramanuja Pedda Jiyangarlu Varu and Another

RESPONDENT

Date of Decision : 13-03-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30

Citation : AIR 1918 Mad 628 : 42 Ind. Cas. 275

Hon'ble Judges : Spencer, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—The defendants are the appellants. If I understand the pleadings aright, they have been made by the plaintiffs to

represent the Vadagalai Brahmin community in India. The two plaintiffs who originally brought the suit are Tengalai Vaishnava Brahmins residing in

Tirupati and they brought the suit in the very beginning of 1905 (more than twelve years ago) with the permission of the Court u/s 30 of the old

CPC on behalf of the Tengalai Sri Vaishnava Brahmins who are permanent residents of Tirumalai (that is, upper Tirupati), Tirupati (that is, lower

Tirupati) and of Tiruchanoor (a village a few miles distant from lower Tirupati). The plaint alleged that the Tengalai Brahmins who were the

permanent residents of those places were all entitled to the mirasi office of Adhyapakam in the Vaishnava temples in the two Tirupatis mentioned in

Schedule A of the plaint and that the Vadagalai Brahmins represented by the defendants obstructed the performance of the duties of the

Adhyapakam miras in those temples.

2. Now the duty of the Adhyapakam office is to recite the Tamil Tiruvoimoli Prabaudham on certain occasions in these temples. But just before the

recital proper, two preliminary recitals take place in such Vaishnava Temples.

3. The first preliminary recital is made by the Pedda Jiyangar (the 1st plaintiff and after his death the 4th plaintiff have been the Pedda Jiyangars)

and it is a Tamil phrase meaning "please instruct." Then those who are entitled to do the Adhyapakam duties perform the second preliminary recital

which is a short Sanskrit Anushtup sloka called ""pathram"". This ""pathram"" is an invocation of either the Vadagalai sub-guru Vedanta Desikar or the

Tengalai sab-guru Manavala Mabamuni. The first quarter of the former ""pathram"" sloka is ""Ramanuja Daya Pathram"" and the first quarter of the

second sloka is ""Srisailesa Daya Pathram"". The plaintiffs' case is that it is Srisailesa Daya Pathram that is recited before the Adhyapaka Tamil

verses are begun. The defendants' case is that both the pathra slokas are simultaneously recited by the Vadagalais and Tengalais respectively. The

defendants further denied that all the permanent Tengalai residents of the three places mentioned in the plaint are entitled to the mirasi office of

Adhyapakam. Various other defences were raised in the written statements, each of which written statements consisted of 37 paragraphs. As

many as 18 issues were framed in the case in the District Court. I shall only set out the principal issues, namely, the issues Nos. 4, 10, 12 and 16

as follows:--- ""4. Whether the plaintiffs and all the Tengalai Sri Vaishnava Brahmins referred to in the plaint, are an ill-defined, uncertain and

fluctuating, body; and if so, whether the office or right claimed can be acquired by them?

4. ""10. Whether the Tengalai Sri Vaishnava Brahmins of Tirumalai, Tirupati and Tiruchanoor are exclusively entitled to the mirasi office of

Adhyapakam as alleged in paragraph 5 of the plaint?

5. ""12. Whether the plaintiffs are entitled to have the Thodakkam performed by the Pedda Jiyangar or others as alleged in paragraph 7 of the plaint

and whether such a right can be enforced by law?

6. ""16. Whether the defendants as persons connected with the temple and as ordinary worshippers are entitled to recite the Stothrapatam and

exercise the other rights mentioned in paragraph 31 of the written state" merit?

7. The suit was then transferred from the District Court to the file of the Subordinate Judge's Court. The Subordinate Judge found the following

facts established:

Paragraph 24. (1) That the Pedda Jiyangar has the right and duty to do Adhyapakam in the Tirupati and Tirumalai temples and he does it along

with the Acharyapurushas and Adhyapakas, and the Sri Vaishnava assembly in front of the deity when the god goes out in procession;

(2) that the rights and duties of the Chinna Jiyangar and Ekangi are the same as those of Pedda Jiyangar, they being only his deputies;

(3) that the Yemunathorai service people, the descendants of one of the sharers in which the 3rd defendaat is, must perform Prabandha Sevakalam

along with the Jiyangar in the Tirumalai and Thirupati temples during the daily worship;

(4) that of the 7 Acharyapurushas of the temples, all but the Tholappachar, including the Vadagalai Dharmapuri man do Prabandha Sevakalam in

front of the deity, when the god goes out in procession;

(5) that there are Adhyapakas as distinguished from the above Acharyapurushas and the Jiyangar and his deputies, who have to do Prabandha

Sevakalam in the daily worship and also Utsavam of the temple;

(6) that the right of both the Vadagalais and Tungalais to do the Adhyapakam in all the plaint temples of Tirumalai and Tirupati (except those of

Vedanta Desikar and Manavala Mahamuni wherein the Vadagalais and Tungalais are entitled to exclusive right respectively) has been recognised

by the temple authorities from the earliest times;

(7) that the Tamarupu family has been claiming to be one of the Mirasi Adhyapakas of the Tirumalai and Tirupati temples since before the year

1838 and had, according to plaintiffs' own case, been doing Adhyapakam service as well at least till 1861 A. D., when the Pedda Jiyanger claims

to have dismissed the 1st and 2nd defendants' ancestor, Srinivasachari;

(8) that there had been no instance of any Adhyapaka being appointed by the Pedda Jiyangar prior to the year 1846; and

(9) that even subsequently he has been appointing his Adhyapakas only for the Tirupati temple, and their service extends to the Tirumalai only on

the occasions of the Brahmotsavam and Adhyayanotsavam there, but not in respect of ½ the daily worship in the temple there: and

(10) that the Vadagalais and Tungalais who are entitled to do the Adhyapakam do so after uttering, each sect, their own ""patram;

(11) the right to the recital of the Stothrapatam when that has to be recited

follows the right to the Prabandha Seva kalam. Further there is no dispute about the ""patram"" in connection with the recital of it with the words ""Sreeman Venkata Madharya"", which is common to both the Vadagalais and Tungalais.

8. It will be seen from the above that one Acharyapurusha who is a Vadagalai, namely the Dharmapuri man, is entitled to do Prabandha

Sevakalam and hence the plaintiffs, the Tungalai residents of the three places, cannot support their alleged exclusive claim to do the Prabandha

Sevakalam. Again it appears from the evidence of the plaintiffs' own 5th witness that a Tungalai Acharyapurusha is entitled to Prabandha

Sevakalam, though he is not a permanent resident of any of the three places" Hence also the plaintiffs' suit, to which this gentleman has not been

added as a party and which claims exclusive right in the permanent Tungalai residents alone of these places, has to fail. Again it is clear (and both

Courts have found) that every permanent Tungalai Brahmin resident is not and cannot be entitled to the Adhyapakam office claimed in the plaint,

including (I suppose) the minor Brahmin Tungalai boys. Only 5 or 6 Tungalai Acharyapurushas (who hold other offices), one of whom is not a

resident, the Jiyangar and his deputies and certain persons appointed by the Jiyangar and a Vadagalai Acharyapurusha have the duty of performing

the Adhyapakam recitals.

9. The learned Subordinate Judge, therefore, dismissed the plaintiffs' suit as the right sought to be established was not sustained. In concluding his

judgment, the learned Sub-ordinate Judge says:---""The plaintiffs' Vakil argued that even on those findings, a decree may be given in favour of the

persons who are found entitled to the Adhyapakam miras in suit, as was done in Srinivasa Thathachariar v. Srinivasa Aiyangar case (1), but I do

not think it can be done in this case, because the persons who have been, found entitled to the Adhyapakam in question are not on record in this

suit, unlike in Srinivasa Thathachariar v. Srinivasa Aiyangar 9 M. L. J 355, so far as the Tungalais at least are concerned. I say they are not on

record because the persons who had been found entitled to the office along with the Vadagalais have been so found entitled to it, not as permanent

Tungalai residents of Tirumalai, Tirupati and Tiruchanoor who alone are the real plaintiff?, but persons occupying some other capacity, Further,

when the claim sought to be made out has failed, and that set up by the defendants has been found for them, I do not think that any decree should be given for plaintiffs according to the defence case.

10. On appeal to the District Judge, he found (10 a) that according to the custom of the temple?, the Srisailesa Daya Patram should alone be

recited just before the Prabandha Sevakalam. He generally agreed with the other findings of the Subordinate Judge. But he considered that even

on those findings a decree should be granted to the plaintiffs and he accordingly passed a decree as follows: ""that it be declared that the

Acharyapurushas and persons duly appointed to Adhyapaka service are exclusively entitled to the Adhyapaka office in the temple mentioned in

Schedule A hereto, (5) that the Pedda Jiyangar and his deputies the Chinna Jiyangar and Ekangis are exclusively entitled to perform the

Thodakkam in the words Sayitharula" and that the Acharyapurushas and Adhyapakas are bound to use only the Tengalai patram and perform the

Prabandha Sevakalam and recite the Stothrapatam in accordance with the Tengalai ritual before the deity on all occasions when such Prabandha

or Stothrapatam is recited in the said temples mentioned in Schedule A and in processions of the deity inside and outside the temples, (c) that the

members of the Vadagalai sect represented by the defendants be restrained by a perpetual injunction from interfering with the exercise of the

exclusive right of the plaintiffs and other holders of the said office to the performance of the duties of the said Adhyapaka office by pronouncing

the Vadagalai patram" before the deity in the temple or the procession of the deity inside or outside the said temples either separately or in a

goshti.

11. It is apparent that there are some errors both positive and negative in the learned Judge's decree, firstly, he gives the right to the Adhyapakam

office to all the 7 Acharyapurushas, though one of them (Tholappachar) has no right to the Adhyapakam service. Secondly, he gives a decree¹ to

a person who is not at all represented in the suit either on the side of the plaintiffs or on the side of the defendants namely, the Purisai

Acharyapurusha, P. W. No. 5. Thirdly, he has omitted to consider the 16th issue and to protect the rights of the Vadagalais to join in the recitals as

ordinary worshippers (excepting, of course, the Thodakkam recitals).

12. It is unnecessary to consider for the purpose of deciding this second appeal whether the finding which I have numbered as 10 or that given by

the Subordinate Judge which I have numbered as 10 (a) (that is, on the question of patram) is the more correct finding. I think that the suit must fail

for the reasons which are mentioned by the learned Subordinate Judge in paragraph 45 of his judgment and which I have already quoted.

13. The two plaintiffs who originally brought the suit professed to represent the common rights of all the Tengelai Vaishnava Brahmins in the three

villages mentioned in the plaint and those rights only. The two plaintiffs who now remain on the record as respondents were brought in after -the

death of the original plaintiffs and two succeeding plaintiffs as again representing only the same common rights of all the Tengelai Brahmins of the

three places. Such alleged common rights on which the suit was based have been negated by the lower Courts and the only course thereupon

was to have dismissed the suit which sought to declare the said alleged rights. The particular individual rights which the original two plaintiffs or the

present two plaintiffs along with a few others enjoy cannot be said to be the subject-matter of the suit as brought,

14. As regards the case of Srinivasa Tha-thachariar v. Srinivasa Aiyangar (1) relied upon by the respondents, the allegations in the plaint in that

case were in the first place slightly different. The allegation there was that the plaintiffs, the remaining Thirthakars, and the other Tengelai Sri

Vaishnava Brahmins, who were connected with the plaintiffs and who were the permanent residents of Srivilliputtur, had the exclusive right to the

Adhyapakam Miras in the said temples. As the plaintiffs and the remaining Thirthakars, were indicated in the plaint as forming a special class

apart from the other Tengelai Sri Vaishnava Brahmins? the learned Judges seem to have considered that there was no objection to declaring the

rights of the plaintiffs and the Thirthakars forming a distinct separate class, though the other ill-defined remaining class was not proved to have any

right to the Adhyapakam office jointly with the first class. Further, all the remaining Thirthakars were parties to the suit in that case either as plaintiffs

or defendants. Lastly, no objection seems to have been taken on the part of the defendants in that case to the modification of the decree of the

lower Court so as to confine its scope to the Thirthakars, and no contention seems to have been raised that the whole suit ought to be dismissed.

In the present case no distinction was made in the plaint between the two plaintiffs who brought the suit and the other members of the ill-defined

Tengalai Vaishnava community in the three places. Secondly, the decree of the District Judge declares the right (1) of a person not a party to the

suit, (2) of Vadagalai Acharyapurushas, and (3) of Vadagalais appointed to the Adhyapakam office by the Jeer, who were not admitted in the

plaint to be entitled to the office (whereas in the Srivilliputtur case, the plaint admitted that the Thirthakars in whose favour the decree of the High

Court was passed were entitled to the office). Lastly, the objection to the passing of the decree in favour of certain specified individuals alone

found to be entitled to perform the duties was taken in this case in the first Court itself.

14. It is no doubt regrettable that all the labour of the Courts over this suit during the last twelve years and more has to be thrown away without the

establishment of rights and facts which would be binding on a few persons at least, so as to prevent further litigation as between them in respect of

those rights and facts. But it is clear to me that the decree given by the District Judge cannot be said to be in favour of persons who form a small

number out of a larger class. It is in favour of certain persons quite distinct on legal conception from the class of persons on whose behalf the suit

was brought, such legal distinctness being conclusively established by the decree being in favour of some persona not included in that class and

even of a person not ranged on either side as a party to the suit. I might here add that the District Judge, seems to have fallen in error in holding

that the Adhyapakam servants to be appointed by the Jeer must necessarily belong to the Tengalai community.

15. In the result, I would set aside the District Judge's judgment and restore the decision of the Subordinate Judge with costs on the plaintiffs in all

the Courts.

The memorandum of objections is dismissed with costs. Spenceb, J.-I agree.