

(1908) 11 MAD CK 0005
In the Madras High Court

Thandavaroya Pillai and Another

APPELLANT

Vs

Shunmugam Pillai

RESPONDENT

Date of Decision : 03-11-1908

Acts Referred:

Citation : (1909) ILR (Mad) 167 : 2 Ind. Cas. 341

Hon'ble Judges : Sankaran Nair, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. The plaintiff and the second defendant with their father, the first defendant, form members of a joint Hindu family. The plaintiff claims possession

of Sri Dandaynthapani temple with its endowment or in the alternative to joint possession and management of the same with the first and second

defendants. The Subordinate Judge has passed a decree that the plaintiff and defendants are entitled to management in turns of one year each and

that he should accordingly be put in possession of the temple and the properties attached thereto in the beginning of Fasli 1316 and he has also

directed the defendants to render an account to the plaintiff of their management.

2. The defendants appeal from this decree.

3. The plaintiff's case is that, on account of certain disputes between the parties, it was decided by certain arbitrators to whom the questions in

dispute were referred that, until the disposal of a suit then pending and until a final partition was effected, the family properties should be enjoyed in

three shares and the temple and its affairs should be managed in rotation for a year with liability to account for income and expenditure. The

defendants deny any arbitration and award and allege that there was only a

temporary arrangement which was to subsist till the disposal of the suit referred to by the plaintiff. We agree with the Judge that there was no submission to arbitration nor an award by the arbitrators, that, on the other hand, there was only a temporary arrangement which was to be in force only till the disposal of the proceedings in Original Suit No 12 of 1902.

Clause 3 of Exhibit A reciting that the management by turns was to go on till the said suit was disposed of"" and the evidence of defence witness

No. 1 clearly support this view. The proceedings in Original Suit No. 12 of 1902 terminated on the 18th January 1904.

4. But the Judge has also held that, since the plaintiff has a right to participate in the management as an undivided co-parcener since the co-

parceners are enjoying the private properties of the joint family separately, though undivided in interest, and as joint management will be difficult on

account of the strained relations between the parties, it seems safe to decree that the first defendant and his sons do enjoy the management in turns

each for one year until the final partition is effected.

5. We are of opinion that this decree cannot be supported. It is admitted that the office of trustee of this temple is vested in the family, that the

family has no beneficial interest and that the members are undivided.

6. So long as the members of a family remain undivided the senior member of the family is entitled to manage the family properties. He is also

entitled to exercise the right of management vested in the family on its behalf. He is the representative of the family in whom the administration of

the trust is vested. It may be open to the members of the family to limit his authority by a valid agreement as they have done in this case with

reference to their private properties. But until partition no junior member is entitled to management of the trust in rotation any more than he is

entitled to such possession or management of any family property. No instance where any such right has been recognized has been brought to our

notice. The only case we are aware of where a right of joint management was enforced is the one of Purappavanalingam Chetti v. Nullasivan Chetti

(1862) 1 M.H.C.R. 415. But that decision was based on the ground that, as two brothers were in joint management the son was entitled to

succeed his father in such management. It has been decided in Sri Raman Lalji Maharaj v. Sri Gopal Lalji Maharaj 19 A.B 428 that even the

divided members of a Hindu family are not entitled to claim rights of exclusive management and superintendence in rotation for any definite period

as decreed by the Subordinate Judge in this case. This decision has been approved in Ramanathan Chetty v. Murugappa Chetty 27 M. 193. A

fortiori, such a claim would be untenable before partition. In Ramanathan Chetty v. Murugappa Chetty 27 M. N 193 the dispute arose after

partition and the rights of the parties were based upon an arrangement made by them. We are, therefore, of opinion that the decree of the lower

Court must be reversed. We accordingly set it aside and dismiss the suit with costs throughout.