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**(1956) 08 MAD CK 0044**

**In the Madras High Court**

**Case No :** Letters Patent Appeal No. 193 of 1952

Thayoth Puthiyapurayil Ayisomma

APPELLANT

Vs

Choolat Puthiyapurayil Kunhali and Others

RESPONDENT

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**Date of Decision :** 16-08-1956

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 9  
Madras Hindu Religious Endowments Act, 1926 — Section 84

**Citation :** AIR 1957 Mad 674 : (1956) 69 LW 1023

**Hon'ble Judges :** Ramaswami, J; Govinda Menon, J

**Bench :** Division Bench

**Advocate :** K. Kutti Krishna Menon and A. Achuthan Nambiar, for the Appellant;  
T.G. Nambiar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Govinda Menon, J.—We agree with the learned Chief Justice that a civil court has Jurisdiction to decide whether a particular institution is a

public temple or not. When such a question arises incidental to other disputes in the case before the court.

2. But the more important question which was strongly pressed upon me by Mr. Achuthan Nambiar, learned counsel for the plaintiff respondent,

was that the ordinary civil court in its original jurisdiction had no power to adjudicate upon a dispute whether a particular temple is not a temple

within the meaning of Madras Act II of 1927 and it is only the Board that could in the first instance adjudicate on the dispute. Even thereafter the

aggrieved party could only file an application to the District court. This, It was contended, followed from the provisions of Section 84 of the Act.

3. The argument of Mr. Achuthan Nambiar for the respondent, if I understood him aright, was that whenever there was any dispute between any

parties in any connection as to whether a particular temple was or was not a temple as defined in the Act no court had jurisdiction to decide that dispute and it was only the Board that was competent to decide it. According to this argument it did not matter that one of the parties to the dispute was or was not the Board itself. When I asked him what practical result would follow from such a state of law, that is to say, what should happen if incidentally in a suit between parties this question arose, learned counsel was unable to give a satisfactory reply. At one time he suggested that the suit must be dismissed, if it was necessary to establish the fact that a temple was a public temple. At another time he said that the question should be referred to the Board. I am unable to see under what provision an ordinary civil court, say a Munsifs court will have Jurisdiction to make a reference to the Board and compel the Board to take up the matter on file and submits its decision to the Court, It may be that the Board in a particular case may not at all be interested in deciding the dispute. Apart from any consideration of practical difficulty, I am clearly of opinion that on a reasonable construction of Section 84 the contention of the respondent is untenable. I think that the dispute referred to in Section 84 is a dispute between the trustee of an institution on the one hand and the Board on the other. In such a case the Act specially provides that the dispute shall be decided by the Board in the first instance, and it is only thereafter that the District Judge is given the right to set aside or modify or confirm such decision. It will not be open to aggrieved person to file a suit against" the Board for a declaration that a particular temple is not a temple within the meaning of the Act and therefore the Board had no jurisdiction in respect of it. The decisions relied upon by learned counsel for the respondent support him only thus far. In Sri Iswarananda Bharathi Swami of Ednir Mutt Vs. The Board of Commissioners for Hindu Religious Endowments, the Board after holding an enquiry passed an Order that a particular building was a math within the meaning of the Act. Then the trustee filed a suit for a declaration that it was not an institution coming under the act. It was held by a Division Bench of this Court (Curgenvan and Cornish JJ.) that such a suit was not maintainable, learned Judges applied the well established principle that when by an Act of the Legislature powers are given to a person for a public purpose from which an individual may receive injury and when the mode of redressing the injury is also

pointed out by the statute, the jurisdiction of the ordinary court is ousted. The ratio decidendi of this case is to be found in the following words of

Cornish J:-

The mode of redress open to the plaintiff in respect of the interference with his rights by the Board's order is definitely provided by Section 84(2)

of the Act, viz, an application to the District Court. In our opinion, therefore, it is not open to him to ask redress by means of this suit.

The decision in His Holiness Sinha Sri Vythilinga Pandara Sannadhi Avergal Vs. Sir T. Sadasiva Aiyar and Others, is instructive. The basis of the

decision in this case is that it is within the competence of the Hindu Religious Endowments Board to determine whether a math or temple is one to

which the Act applies, and where there is a dispute between the trustee or Matadhipathi and the Board the Act gives the Board the power to

determine this question subject to the right of the trustee to apply to the court to modify or set aside the decision of the Board. There is nothing in

this decision to countenance the view that even when the dispute is not with the Board, but there is a dispute between two private parties, the

ordinary civil court has no Jurisdiction to decide the dispute, but it is only the Board which is competent to decide it. There is no such express or

implied bar of the jurisdiction of the civil court in Section 84 of the Act.

4. The learned District Judge highly brushed aside the whole argument based on Section 76 of the Act with the remarks: ""Whether the temple is an

excepted temple and whether the sanction of the Religious Endowments Board is necessary are not germane for the disposal of this suit."" The

learned Judge has evidently not fully comprehended the plea of the defendants. If the Devaswom was a temple within the meaning of the Act any

sale of Immovable property belonging to the Devaswom would not be valid or operative without the sanction of the Board. As I have held that the

Devaswom is a temple within the meaning of the Act and as admittedly sanction of the Board has not been obtained the sale in favour of the

plaintiff must be declared to be invalid and inoperative.

5. What happened in this case was that the plaintiff's witnesses themselves admitted that the temple in question was one to which Hindus as a

matter of right resort for purpose of worship, in which case it was a temple as defined in Section 9(12). of the Madras Hindu Religious

Endowments Act, and if that is so, any assignment of such temple property would not be valid. We do not think that the difficulties visualised by

Mr. Kultikrishna Menon actually would arise in the particular case. When once this court agreeing with the court below holds that the institution is a

public temple, is next to an impossibility that the Hindu Religious Endowments Board would come to a different conclusion in order to create

conflict of decision. We are in entire agreement with the observations of the learned Chief Justice and it is not necessary to reiterate the reasons

given by him in his Judgment.

6. The Letters Patent Appeal is dismissed with costs,