
(1992) 12 MAD CK 0017
In the Madras High Court

The Assistant Commissioner, Hindu Religious and Charitable Endowments (Administrative) APPELLANT

Vs

Peria Nadar and Others RESPONDENT

Date of Decision : 08-12-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 103
Constitution of India, 1950 — Article 226

Citation : (1993) 1 MLJ 499

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—The defendant-Assistant Commissioner of the Hindu Religious and Charitable Endowments (Administrative) Department is

the appellant in this second appeal against the reversing judgment in A.S. No. 18 of 1980 on the file of the Additional Sub Court, Tuticorin. The

suit O.S. No. 135 of 1977 on the file of the District Munsif's Court, Tuticorin was filed by the five respondents-plaintiffs as representatives of

Hindu Nadar Community of Sebathiapuram, hamlet of Sawyerpuram, Srivaikuntam Taluk. It is for a declaration that the suit temples viz.,

Muthumalai Amman Temple, Narayanaswamy Temple and Ananda Vinayagar temple are denominational temples belonging to the abovesaid

plaintiffs' community and for a consequential permanent injunction.

2. The main defence to the suit is that the said Temples are not such denominational temples. One other defence is that the suit is bad for mis-

joinder of necessary party viz., the Commissioner, H.R. & C.E. Department, Madras. The trial court, though held that the suit is not bad for mis-

joinder of necessary party as claimed by the defendant, accepted the defence

that the suit temples are not denominational temples and so

dismissed the suit. The plaintiffs preferred the above referred to first appeal, wherein the lower appellate court though concurred with the trial court

on the abovesaid question of mis-joinder, held that the suit temples are denominational temples and decreed the suit as prayed for and allowed the

appeal. Aggrieved by the said decision of the lower appellate court, the defendant has preferred this second appeal.

3. No doubt, the lower appellate court has found that the suit temples were founded by the above referred to Hindu Nadars of Sebathiapuram

from out of their own funds as disclosed by Exs.A-4 to A-8, that the other community people living in Sebathiapuram did not have any right of

management in the suit temples and that P. Ws. 1 and 2 had spoken to the fact that Kodai Festival was used to be celebrated from out of the

contribution collected from the members of Hindu Nadar community of Sebathiapuram and not from Hindu Nadars of other villages and from the

members of other community of Sebathiapuram.

4. The learned Counsel for the appellant seriously argues the following submission:

There is no finding by the lower appellate court as to whether the abovesaid Hindu Nadars are a ""religious denomination"" There is also no plea or

proof regarding the ingredients of the term ""religious denomination"" as applied to the above referred to Hindu Nadar Community of

Sebathiapuram. In this connection, he drew my attention to the decisions in S.P. Mittal v. Union of India : [1983]1SCR729 , Acharya

Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another, , and Assistant Commissioner, H.R. and C.E., Salem,

etc. v. Nattamai K.S. Ellappa etc. 100 L.W. 240.

5. The learned Counsel for the respondents made the following submissions in reply: There is plea regarding the necessary ingredients of the term

religious denomination"" as it is applied to the above referred to Nadar community. The above referred to Supreme Court decisions explaining the

ingredients of religious denomination, will not apply in the present case. The abovesaid S.P. Mittal v. Union of India : [1983]1SCR729 , related

not to a temple, but to a society called Sri Aurobindo Society. The abovesaid Nadar community is a separate sect of Hindus and no further proof

is required to establish that they belong to a religious denomination. In N.K.S. Sankarakumara Nadar and Others Vs. The Assistant Commissioner

for Hindu Religious and Charitable Endowments, , a particular temple in the village Sivagurnathapuram belonging to Hindu Nadars of that village

was held to be a denominational temple.

6. I have considered the rival submissions. To find out whether the suit temple is a denominational temple belonging to the abovesaid Hindu Nadar

community of the abovesaid village Sebathiapuram, firstly, it has to be seen whether the said community of the said village is a religious

denomination by itself. If it is found to be so, then consequently, it has to be seen whether the said community has established the said temple and

whether it had exclusive right of management of the said temple. Both these requirements should not be mixed up and it has to be seen whether

each of the said requirements is satisfied. This aspect has also been pointed out in the abovesaid Assistant Commissioner, H.R. and C.E., Salem,

etc. v. Nattamai K.S. Ellappa, etc. 100 L.W. 240, in paragraph 23 thereof.

7. But, I find that the lower appellate court has not given a finding at all regarding the first of the abovesaid two questions to be decided. In fact, the

term "religious denomination" according to the decision in S.P. Mittal v. Union of India : [1983]1SCR729 , and the earlier decisions of the

Supreme Court must satisfy the following three conditions:

(1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that

is, a common faith;

(2) Common organisation and

(3) Designation by a distinctive name.

Even assuming that there is satisfaction of second and third of the abovesaid three conditions in the present case, it has to be seen whether the first

of the three conditions has been satisfied. Regarding this, first of all, it has to be seen whether there is plea to this effect. If there is plea, we have to

see whether there is proof to that effect. The learned Counsel for the respondents-plaintiffs points out that the following passages in the plaint

would amount to the abovesaid plea relating to the first of the abovesaid conditions:

Hindu Nadars are a minority community with peculiar customs, manners and mode of religious worship, living mostly in Tirunelveli, Ramnad,

Madurai Districts, of Tamil Nadu. At Sebathiyapuram, a section of that community is living and their ancestors have put up from out of their own

funds, the three temples....The Hindu Nadars, whom the plaintiffs represent have a special mode of worship with distinct specific rituals. The

plaintiffs collect subscription from among themselves and celebrate "Kodai" festival in the month of Panguni and in Adi every year. The "Kodai"

festival itself is evolved by the plaintiffs as a separate cult not ordinarily followed by the recognised Siva and Vishnu Temples. The plaintiffs also

offer special pujas at the time of Vinayagasadurthi....

But, even after reading the above passages, I am unable to say that they speak about the abovesaid first condition mentioned in the Supreme Court

decision. In the said first condition what is mentioned is that the collective body of individuals concerned must have a ""system of beliefs or

doctrines"". Such system of beliefs or doctrines is not spoken to in the abovesaid passages. What is mentioned in the said passages is only about the

mode or manner of worship and not any system of belief or doctrine, which is conducive to the spiritual well-being of the abovesaid Nadar

community. No doubt, while referring to Kodai Festival, it is mentioned that it is evolved by the plaintiffs as a separate cult. The word ""cult"" may no

doubt refer to a system of religious belief. But the celebration of a particular festival would normally represent only a mode of worship and not

strictly a system of religious belief.

7-A. Anyway, in having used the word ""cult"", if it is assumed that there is the requisite plea, it has to be seen whether there is proof regarding the

abovesaid first condition mentioned in the Supreme Court decisions, But, I find that neither of the two witnesses, who have given evidence on

behalf of the plaintiffs, have spoken to this fact, viz., that the abovesaid Nadar Community of the abovesaid village had any such separate system of

beliefs or doctrines which they regard as conducive to their spiritual well-being. P.W. I, the Accountant of the abovesaid community only spoke

about the management of the abovesaid temples being exclusively with the said community. Likewise, P.W. 2, the 4th plaintiff also laid emphasis

on the abovesaid management aspect. Though he also spoke about the

abovesaid Kodai festival, he did not say that the said Kodai festival was evolved by the abovesaid Nadar community of the abovesaid village as a separate cult not ordinarily followed by the recognised Siva and Vishnu Temples. In fact, he also did not speak of any exclusive system of beliefs or doctrines held by the abovesaid Nadar Community of the abovesaid village. There is also no documentary evidence showing and such system of beliefs of (doctrines of the abovesaid community.

7-B. In Assistant Commissioner, H.R. and C.E., Salmi, etc. v. Nattamai K.S. Ellappa, etc. 100 L.W. 240 also it has been observed thus:

As seen from the decision Of the Supreme Court the words "Religious denomination" must take their colour from the word "Religion". It is,

therefore, clear that the common faith of the community should be based on religion. It is essential that they should have common religious tenets.

The basic chord which con-sects them should be religion and not anything else. If the aforesaid tests are applied in the present case, it will be seen

that Senguntha Mudaliar community of Tharamangalam can-not claim to be a religious denomination. There is absolutely no evidence on record to

prove that the members of the community have common religious tenets peculiar to them-selves other than those which are common to the entire

Hindu community....It is well known that communities were formed in this country on account of various reasons under several circumstances. It is

not as if religion is the only common bond for the members of the communities found in this country. Instances are not wanting where communities

were formed on the basis of profession or business or calling.

While so, it is difficult to hold that the abovesaid community of the abovesaid village in the present case comes under the term ""religious

denomination.

7-C. No doubt, earlier, the Supreme Court in one other decision, viz., The Commissioner, Hindu Religious Endowments, Madras Vs. Sri

Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., , observed thus:

After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu Religion that we

find in India at the present day. Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a

distinctive name, in many cases it is the name of the founder-and has a common

faith and common spiritual organization.

But, I think the above reference to sects and sub-sects which go by the name of founder if the sect or sub-sect is different from the different castes

in the Hindu religion, one of which, viz., the Nadars, to which the plaintiffs claim to belong. Further, in the abovesaid observation of the Supreme

Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , while noting that

one of such sects or sub-sects can certainly be called a religious denomination, the Supreme Court proceeds on the assumption that each of them

has a separate system of beliefs or doctrines which is regarded as conducive to its spiritual well-being.

7-D. At any rate, in the subsequent Supreme Court decision, viz., the above referred to *S.P. Minal v. Union of India* : [1983]1SCR729 and

Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another, , it is specifically reiterated that all the

abovesaid three conditions must be satisfied if a group or community could be called a "religious denomination". I may also state that the decision in

K. Eranna v. Commissioner, H.R. and C.E. AIR 1970 Mys. 191, cited by the learned Counsel for the respondents will have no application to the

present case. There, it was only held that Hindus in the larger sense including all sections of Hindus constitute a religious denomination. In view of

the above, I am of the view that the plaintiffs have not established that the abovesaid Hindu Nadar Community of the abovesaid village would

come within the definition of the religious denomination.

7-E. In this context I must also point out that the case of the plaintiffs is not that Hindu Nadars in general constitute a religious denomination, but

that the Hindu Nadars of the abovesaid Sebathiapuram village would constitute a religious denomination. To this effect also, there is no proof in

present case.

8. No doubt in *N.K.S. Sankarakumara Nadar and Others Vs. The Assistant Commissioner for Hindu Religious and Charitable Endowments*, , it

was held that the suit temple therein was a denominational temple belonging exclusively to the Hindu Nadars of Sivagurunathapuram village. But,

simply because it was held so in that case, it cannot be held in the present case that the suit temples herein are denominational temples exclusively

belonging to the Hindu Nadars of Sebathiapuram village, holding that the said Nadars constitute a religious denomination. Each case turns on its

facts and unless there is the required plea and proof satisfying the above laid down conditions set out by Supreme Court decisions, the relief

prayed for in the present suit, cannot be given.

9. No doubt, the learned Counsel for respondents drew my attention to the decision in *Arya Vyasa Sabha and Others Vs. The Commissioner of*

Hindu Charitable and Religious Institutions and Endowments, Hyderabad and Others, , also and sought to contend that this question regarding

religious denomination is a question of fact and the decision arrived at by the lower appellate court should not be disturbed. The said Supreme

Court decision, did not say positively that the said question is only a question of fact. In fact, the Supreme Court, in the abovesaid decision,

extracts the following observation from the judgment of the High Court, which earlier decided the case:

Likewise, whether a particular religious or charitable institution is or is not a religious denomination or any section thereof within the meaning of

Article 26 of the Constitution, is also a question of fact or, in any event, a mixed question of fact and law which can be more satisfactorily and

effectively adjudicated upon in a competent civil court.

Actually, the question before the High Court and the Supreme Court therein was whether the jurisdiction under Article 226 of the Constitution of

India could be invoked or whether the proper remedy would be only a suit in a civil court, and the High Court and the Supreme Court came to the

conclusion that since the matter involved is a disputed question of fact, it could not be appropriately determined under Article 226 of the

Constitution of India. The said decision has no application to the present case. That apart, here, the lower appellate court did not at all give a

finding on the abovesaid question regarding religious denomination, even though the case warrants a finding on the said question. Therefore, it is but

proper particularly in view of Section 103, C.P.C. that this Court goes into that question and gives a finding and dispose of the second appeal

accordingly.

10. No doubt, in the present case, there is factual finding by the lower appellate court that the abovesaid temples were established and managed

exclusively by the abovesaid Nadar Community of the abovesaid village. However, in view of the other fact, viz., that there is no proof that the said community constitutes a religious denomination, the relief prayed for cannot be given.

10-A. No doubt the learned Counsel for the respondents also relied on a passage in *V. Balakrishnan and Ors. v. The Assistant Commissioner,*

H.R. and C.E., (Admn.) Department, Tirunelveli and Ors. (1978) T.L.N.J. 359, saying that ""the worshippers of communities other than those

belonging to the denomination having access to the temple and offering wordship therein is not conclusive of the question whether it is a

denominational temple or not"". This is no doubt true. But this passage has no relevance to the abovesaid discussion on the question whether the

abovesaid Nadar Community is a religious denomination or not. Likewise, *A. Palaniandi Pillai v. Commissioner, H.R. and C.E., Madras, 93 L.W.*

12, cited by the learned Counsel for the respondents, has no relevance to the abovesaid point of discussion.

10-B. The other submission of learned Counsel for appellant regarding the above referred to other question of non-joinder has no merit at all and

hence is not dealt with in any detail.

11. In the result, the second appeal is allowed, the judgment and decree of the lower appellate court are set aside and that of the trial court are

restored. However, in the circumstances of the case, there will be no order as to costs.