

(1982) 04 MAD CK 0018

In the Madras High Court

Case No : Civil Revision Petition No. 661 of 1982

The Commissioner, Hindu Religious and Charitable
Endowments (Admn.) Dept., Madras

APPELLANT

Vs

V. Govindarajan

RESPONDENT

Date of Decision : 19-04-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 115, 17, 18, 20

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(7), 70

Citation : AIR 1982 Mad 417 : (1983) ILR (Mad) 63

Hon'ble Judges : Swamikannu, J

Bench : Single Bench

Advocate : C. Chinnaswamy, Addl. Govt. Pleader, for the Appellant; N. Sivamani, for T.P. Radha Krishnan, for the Respondent

Judgement

1. The point that arises for consideration in this Civil Revision petition is :

Whether the court in which the suit has been instituted for a declaration is maintainable inasmuch as the said Court has got jurisdiction as provided

in the special enactment viz., the Hindu Religious and Charitable Endowments Act 1959 (Tamil Nadu Act XXII of 1959)?

The submission, that is emanating on behalf of the State - the revision petitioner herein - advanced by the learned Additional Government Pleader,

is to the effect that the written statement filed in the suit itself involves a point that is now urged before this Court in the revision viz., that the Court

in which the suit has been instituted, has got no jurisdiction, Whatever may be the stage at which the suit may be lying in the trial court, nothing

prevents an argument being advanced with respect to jurisdiction, because, when once it is found that there has been no Jurisdiction vested with

the forum, thereafter, that forum is not entitled to entertain the matter. In this regard, the learned Additional Government Pleader refers to the

decision - K. Ramanujam Chettiar Vs. Arunachaleswarar Devastanam and Another, . where the observation of this Court reads as follows:-

The learned counsel for the petitioners submits that it is unnecessary to adduce any evidence for considering the question of want of jurisdiction of

the trial Court to entertain the suits under S. 41 of the Presidency Small Cause Courts Act, and that a perusal of the claims in the ejectment suits

alone would establish that the trial Court had no jurisdiction.. In this connection reliance was placed on the decision of Kulwant Sahay, J. in Ganpat

Pujari Vs. Kanaiyalal Marwari, where the learned Judge has observed that in order to determine the jurisdiction of the court, the plaint and not the

written statement should be looked into. In these circumstances, I agree with the counsel for the petitioners. that the question of the jurisdiction of

the court goes to the root of the matter and that it is open to the petitioners to raise that question for the first time before this court in these civil

revision petitions.

In this regard, the learned Additional Government Pleader also refers to the provisions under S. 115(1) cl. (a) and submits that there is absolutely

failure on the part of the trial Court in not having adverted to the provisions relating to jurisdiction as incorporated in the enactment of 1959 viz.,

Act XXII of 1959 as incorporated in S. 6 cl. (7) definition of "Court" as well as S. 70, the section which deals about the suits and appeals. In this

regard, he submits that S. 6 cl. (7) of the Act XXII of 1959 when it is incorporated in S. 6, cl. (7) of the Tamil Nadu Act XXII of 1959 that

"Court means:

(i) in relation to a math Or temple situated in the Presidency town, the Madras City Civil Court;

(ii) in relation to a math or temple situated elsewhere, the Subordinate Judge's Court having jurisdiction over the area in which the math or temple

is situated, or if there is no such Court the District Court having such jurisdiction;

(iii) in relation to a specific endowment attached to a math or temple, the Court which would have jurisdiction as aforesaid in relation to the math or

temple;

(iv) in relation to a specific endowment attached to two or more maths or

temples, any Court which would have jurisdiction as aforesaid in relation to either or any of such maths or temples." has to be interpreted only in one way and that is with reference to the situation of the properties involved in the charitable endowments. In the instant case, it is submitted by the learned Additional Government Pleader that page 4 of the written statement clearly states that the charities to be performed under the Will, which has not been exhibited, though it is common ground that the suit was posted for judgment and it is at that stage the revision has been filed before this Court, which is now being actually discussed and the subject matter of this revision petition, it is relevant, that it is the contention of the revision petitioner herein that the said Will relates to Sri Sabanayagar temple at Chidambaram and a few other temples in Tanjore District, and as such, the Courts that have jurisdiction over the matter are only those situate in Thanjavur District and any suit that has to be filed under S. 70 of the Hindu Religious and Charitable Endowments Act can only be filed before the court having jurisdiction in Thanjavur District under S. 6 (7) (iv) Of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959. It is also pointed out that in para 4 of the written statement, it is specifically contended that the Court, in which the suit has been instituted, has no jurisdiction to entertain the same in view of the express provisions of the Hindu Religious and Charitable Endowments Act and the ordinary provisions relating to jurisdiction provided for in the CPC will not be applicable to suit under S. 70 of the Hindu Religious and Charitable Endowments Act and the same has been expressly ousted. Therefore, it was even incorporated in the written statements by the revision petitioner herein that the said Court, in which the suit has been instituted, has no jurisdiction and the suit is incompetent and is liable to be rejected.

2. In this regard, it is relevant to note that the suit has undergone trial and it is common ground, as already stated, that the judgment in the suit has also been reserved. It is at the stage the civil revision petition has been filed now on behalf of the State in this Court.

3. Mr. N. Sivamani, learned counsel for the respondent, on the other hand, vehemently contends that it is not lying in the mouth of the State now at this stage to raise a point regarding jurisdiction when it has meekly submitted itself to the stage of trial and its completion and when the issues

involved in the same were about fructifying by way of decision in a competent judgment as contemplated by the procedural law of the land. In this

regard he submitted that the District Court had disposed the matter involved as early as 1970 and that the matter had been suo motu opened by

the Commissioner that the suit had been instituted and as per the Provisions of S. 20 cl. (a) or (c) of Civil P. C. together with Ss. 17 and 18 of the

Civil P. C., when read together, will go to show that the ratio decidendi imbedded in the decision Pulickel Estates (1947) Ltd. v, Joseph, 1955 2

MLJ 228 (Balakrishna Aiyer, J.), would be squarely applicable to the facts of the present case. It is also pointed out that the said decision of

Balakrishna Aiyer, J., has been followed by Kerala High Court in the decision - Velupillai Narayana Pillai, Advocate Vs. N. Gopala Pillai and

Others, . The observation of the Kerala High Court in para 3 of the said judgment may be usefully incorporated as has been pointed out by the

learned counsel for the respondent which reads as follows:--

The Subordinate Judge has followed the decision of the Madras High Court in Pulickel Estates (1947) Ltd. v. Joseph (1955) 2 MLJ 228 by

Balakrishna Iyer, J., who, in a similar case held that the Madras Court had jurisdiction and not the Ottappalam Court. The correctness of that

decision is being challenged in this revision petition. In the alternative, it is claimed that that decision does not apply to the present case.

Mr. Sivamani, learned counsel for the respondent also contends that a reading of S. 6 cl. (7) of the definition section of the Tamil Nadu Act XXII

of 1959 deals only with the charities that are concerned or connected with a math and temple and in the instant case that inasmuch as the charities

are in respect of the properties narrated in the Will and it is but necessary that when once the defendant had not raised this point of jurisdiction till

the stage of trial and that inasmuch as the trial Court also has reserved the matter for judgment, it is too late in the day to raise the very same point

here, especially when it has not been shown that abnormal situation has arisen as contemplated under S. 21 of Civil P. C. or S. 9 of Civil P. C. In

other words, Mr. Sivamani, learned counsel for the respondent submits that S. 115 of Civil P. C. cannot be brought to play a prominent part in the

disposal of this matter by way of revision, because. it has not been shown that there has been anything available on record which will be revisable

as provided by, the said section, In this regard, here refers to the decision - The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another, in support

of his contention that the lower court is perfectly correct in disposing of the petition by way of an order, which is nothing but the reliance of the

ratio decidendi imbedded in the decision reported in Kiran Singh and Others Vs. Chaman Paswan and Others, .

4. The Point for consideration in this civil revision petition now at stage is :

Whether the Court in which the suit had been instituted has got jurisdiction to dispose of the suit?

5. It is common ground that evidence has been taken. It is specifically pointed out that in Para 4 of the written statement that the said question

regarding Jurisdiction has been raised. Under these circumstances. can it be said that the trial was conducted has to go to a waste, because, when

once on the point of jurisdiction it is held at this stage, even the evidence so far taken will be of no use. It is not open to this Court now at this

stage, if it comes to the conclusion that the court which will have jurisdiction on this plaint being transferred to that Court, can adopt the evidence

that had been already recorded. Under these circumstances, this court is not as if loses sight of these aspects, but, the point of law that has to be

followed is the only factor. In this view, whether the contention raised on behalf of the State by the learned Additional Government Pleader or the

contention raised on behalf of the respondent by Mr. Sivamani has to be upheld is the only question and that is nothing but this and namely whether

the properties involved in a suit is situated in Sirkali taluk, within the jurisdiction of East Thanjavur having its headquarters at Nagapattinam. has got

jurisdiction or is it that the City Civil Court at Madras in which the office of the learned Commissioner, who had suo motu reopened the matter that

had been disposed of by the learned Deputy Commissioner is the proper forum is the question that has to be decided by way of this civil revision

petition?

6. It is also relevant in this connection to note that the suit had been filed for declaring that the orders of the defendant - the Commissioner. Hindu

Religious and Charitable Endowments, (Administration). Madras-34. in A. P. No, 200/76, dated 18-3-1976 setting aside the orders of the

Deputy Commissioner, Hindu Religious and Charitable Endowments, Madras

dated 10-5-1971 in O.A. No. 25/70 are null and void and without

Jurisdiction and have violated the principles of natural justice. In the cause of action para of the plaint it is stated as follows:-

The cause of action to this suit arises within the jurisdiction of this Hon"ble Court on 10-5-1981 when the Deputy Commissioner, H. R & C. E.,

Madras passed his final orders in). A. No. 25/ 70, on 18-3-1978 when the defendant Passed his orders in A. P. No. 200/76 setting aside the

orders of the Deputy Commissioner. H. R. & C. E.. Madras and subsequently.

Now it is this suit that had gone to the stage of reservation of the judgment after both sides having let In evidence. It is submitted by the learned

counsel for the respondent herein that both sides have inducted in certain documents on consent, which were taken by the lower court as evidence.

No oral evidence has been let in either to prove the documents nor to speak to the contents of the same, This is something strange, When a

document becomes evidence? Is it not that it has to undergo the scrutiny of whether the same is relevant and admissible? Can by this suit a

jurisdiction conferred on the Court, a kind of Damocles" sword having over the heads of the parties, making them subject to the decision of either

side to take certain documents as evidence, which is not quite in conformity with the provisions of the Civil P, C.? Certainly it cannot be done, nor

if the court had resorted to accept such documents as evidence, it is worth looking at it as evidence. Because, the Provisions of Law of Evidence

as is available in the Evidence Act as well as the Procedural Law of the Land regarding the admission of the documents have to be fully

commended and under these circumstances, this matter need not be discussed at this stage. In as much as the suggestion emanated by the learned

counsel for the respondent now itself, this Court feels that this observation has to be made in the course of the delivery, of the judgment and it has

been done.

7. Reverting back to the stage at which the suit that had been actually handled by the trial Court that it must go to the proper court, which has got

Jurisdiction. it is relevant to note that the matter regarding jurisdiction had been the subject matter of the order in the preliminary issue No. 1.

delivered by the Third Assistant City Civil Judge, Madras, on 7-11-1981 in O. S. 6763 of 1978. The issue was, whether the said Court had no

territorial jurisdiction to try the suit. The provision under S. 6 cl. (7) was adverted to together with the provisions of S. 70 of the Act XXII of 1959

by the lower court and it is observed as follows:-

It must be remembered that the present suit does not relate to any property temple. On the other hand suit has been instituted challenging the order

Passed by the Commissioner in Madras. This suit does not relate to any property of a mutt or temple. The learned Government Pleader drew my

attention to an unreported case decided by our High Court in C. M. P. No. 2652/81. The abovesaid petition was filed to transfer O. S. No. 5/80

on the file of Principal Subordinate Judge, Chengalpattu to the Principal Judge, City Civil Court, Madras. The abovesaid suit was instituted

claiming that the temple is the personal property of a trust and that the provisions of the said Act do not apply. The above said decision has no

application to the facts of the present suit, because the above said decision dealt with a question whether the temple is a personal property or not?

In the present suit no property is involved. I am of opinion that the above said decision has no application to the facts of the present suit.

Moreover, no prejudice is caused to the defendant if the present suit is tried by this Court. I am of opinion that this Court is having ample

jurisdiction to try the present suit. Therefore I find that this Court is having territorial jurisdiction to try the suit. I find this issue accordingly.

8. It is to be noted that this decision, arrived at by the lower Court in the suit with respect to the preliminary issue that is the subject matter of the

revision now. It is submitted by the learned Additional Government Pleader that the date of the order is 7-11-1981 and the copy application was

made on 20-11-1981 and copy was ready on 23-12-1981 and that the present revision has been filed on 2-1-1982 because of the intervention of

Christmas Holidays. These particulars are furnished in order to submit before this Court that the trial Court, whose order is now challenged on the

question of non-availability of jurisdiction had been filed in time and it is not as if that at the last stage this Court is moved with respect to this aspect

regarding jurisdiction. Section 20 of Civil P. C. reads as follows:-

Other suits to be instituted where defendants reside or cause of action arises -

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction:-

- (a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works or gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally work for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, aforesaid, acquiesce in such institution: or
- (c) the cause of action, wholly or in part, arises"".

Section 17 of Civil P. C. reads as follows:-

Where a suit is to obtain relief respecting, or compensation for wrong to immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate;

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court."" Section 18 of Civil P. C. reads as follows:-

Place of institution of suit where local limits of jurisdiction of Courts are uncertain - where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and there upon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-sec. (1), and an objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and thereto has been a consequent failure of justice"".

Section 115 of Civil P. C. reads as follows:-

Revision - (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in

which no appeal lies thereto, and if such Sub ordinate Court appears-

(a) to have exercised a Jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks

fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or

other proceeding. except where-

(a) the order, if it had been made in favour of the Party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any

Court Subordinate thereto?

Section 21 of Civil P. C. reads as follows:-

Objections to Jurisdiction- (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection

was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and

unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate; or

Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are

settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate

or Revisional Court unless such objection was taken in the executing Court at the

earliest possible opportunity, and unless there has been a consequent failure of Justice.

Section 9 of Civil P. C. reads as follows:-

Courts to try all civil suits unless barred - The Courts shall (Subject to the provisions herein contained) have Jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Section 6 of Civil P. C. reads as follows -

Pecuniary Jurisdiction.- Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

The above sections are incorporated in this judgment in order to appreciate the various submissions that had been made by either side with respect

of this interested question of jurisdiction relating to the properties that the admittedly situated in Sirkali taluk, within the jurisdiction of the District

Judge of East Thanjavur at Nagapattinam. Admittedly any suit has to be filed before a court, which is presided over by a Subordinate Judge. The

learned Third Assistant Judge, City Civil Court, Madras, who had tried and delivered a judgment regarding the jurisdiction is also of the rank of the

Subordinate Judge. Now it is argued what if either the Third Assistant Judge, City Civil Court Madras decides it or the Subordinate Judge at

Nagapattinam, who has got jurisdiction over Sirkali Taluk tries but it is only with respect to a suo motu order that had been pronounced by the

Commissioner that has to be held and it has been held and it is too late in the day to interfere with the collection of materials that had seized of the

matter. In this regard, the learned Government Pleader, as already pointed out, submits that even is the written statement the aspect relating to

jurisdiction was contended, and therefore, that was the reason why the Third Assistant Judge, City Civil Court has also taken as preliminary issue

and decided the matter. Mr. Sivamani, learned counsel for the respondent points out that as early as 1955, Balakrishna Aiver, J.. has held that if

the relief asked for is the crucial aspect that has to be taken into account with respect to the question of jurisdiction that is raised. In this regard the

observation of Balakrishna Alver, J., which occurs at page 229 in the decision

Pulickel Estates (1947) Ltd. v. Joseph 1955 2 MLJ 228 runs as

follows:-

If a prayer made in the plaint is to be the governing criterion, then it is easy to see that a plaintiff can bypass all the ""provisions of the CPC for

determining the proper forum and can choose his own Court. Suppose A were to enter into a contract with B for the supply of, let us say,

groundnut oil, in Madras. A fails to deliver the oil. But he has immovable property in Travancore, Mysore and Assam. Can B merely by asking for

a charge on some of these properties confer jurisdiction on the Courts either in Travancore, or Mysore, or Assam? I conceive not.

9. In the instant case, it is seen that the order, which is sought to be set aside by the plaintiffs-respondent therein, is one that had been passed by

the learned Commissioner of the Hindu Religious and Charitable Endowments, who had taken it suo motu and directed remand of the matter to the

learned Deputy Commissioner for disposal in accordance with several directions he had given. It is this suo motu order of the appellate authority so

far as the order of the learned Deputy Commissioner is concerned, that is sought to be set aside by the institution of the suit in question. The

plaintiff has specifically stated in Para 5 of the plaint that the properties in question are situated in Sirkali Taluk. it is argued by Mr. Sivamani,

learned counsel for the respondent, that unless the property is specifically stated to be owned by temple or math, the properties as in the case,

which are the subject-matter of a Will, cannot be construed under the definition provision under S. 6 (7) so far as the Court's jurisdiction is

concerned. On the other hand, the learned Additional Government Pleader, who has appeared for the revision petitioner here in, submits that it is

not the forum that had suo motu taken the matter on its own file and remanded the matter giving directions and the seat of the same has to be taken

as a criterion for fixing the venue of the jurisdiction but it is the situation of the properties in the trust that has to be borne in mind for determining the

Court, which has got Jurisdiction. In this regard, the learned Additional Government Pleader as already stated, refers to the decision K.

Ramanujam Chettiar Vs. Arunachaleswarar Devasthanam and Another, . The observation in Para 5 of which has already been incorporated in the

earlier portion of this judgment. The point that requires deep consideration in

this civil revision petition is, whether this Court has got the power of revision contemplated under S. 115 of Civil P. C. to say now at this stage especially in the instant case it is clear as seen from Para 17 of the Plaint as well as Para 4 of the written statement that the property in question is situate in Sirkali taluk, East Thaniavur District. It is also relevant here to note that it is not the case of the respondent herein that the temple to which these properties are attached by the Will, it is yet to see the light of the day that they are attached to Sri Sabanayagar temple at Chidambaram though the properties in question are all actually situated in Sirkali taluk, which Comes under the Jurisdiction of the District Judge of East Thanjavur at Nagapattinam. Of course, Sri Sabanayagar Temple at Chidambaram is situated With in the jurisdiction of the learned District Judge of South Arcot. But these are all matters which are receding to the background, but, we are now concerned is, whether the City Civil Court, Madras has got jurisdiction or the Subordinate Judge, who has got the Jurisdiction over Sirkali Taluk has got jurisdiction. In this view, this Court comes to the conclusion that it is only the Subordinate Judge, who exercises jurisdiction over Sirkali taluk has got jurisdiction, because, if there is no specific provision available in the special enactment, then it is the principle involved in the general principle of the law viz., Civil P. C., that has to be resorted to. In this view, for covering the position as it exists in the instant case, it is clear that it is only the Subordinate Judge, who has got jurisdiction over the properties situate in Sirkali taluk, which is dealt with by the Will, that will have jurisdiction to entertain the suit, Therefore. the entertainment of the suit so far by the learned Third Assistant Judge, City Civil Court, Madras is wrong and with out jurisdiction. Therefore, necessarily this civil revision petition has to be allowed and it is hereby allowed. The plaint will be returned for representation to the proper forum, which will take afresh the suit and the evidence so and does not mean that the deposition taken will not be evidence so far as this suit is concerned and the suit has to be taken afresh on the file and the matter has to be gone into afresh after giving opportunity to both sides to adduce evidence both oral and documentary. Under O. VII, R. 10 of Civil P. C.. this Court directs the lower court, viz., the Court of the learned III Assistant Judge, City Civil Court. Madras to return the plaint and the relevant documents to the

respondent-plaintiff to enable him to present the same to the Court of the learned Subordinate Judge. Nagapattinam, who has got jurisdiction over

Sirkali taluk. The suit should be represented in the proper forum, as mentioned above, within fifteen days from the date on which the plaintiff gets

custody of the records from the Court concerned under the provisions of R. 10-A of O. VII, Civil P. C. Under the circumstances, there is no

order as to costs.

10. Revision allowed.