
(1989) 12 MAD CK 0039
In the Madras High Court

The Executive Officer of Arulmigu Kallalagar Devasthanam
Alagar Koil

APPELLANT

Vs

P.R. Seetharaman and Others

RESPONDENT

Date of Decision : 14-12-1989

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 108

Citation : (1990) 1 LW 110 : (1990) 1 MLJ 97(1)

Hon'ble Judges : Bellie, J

Bench : Division Bench

Judgement

Bellie, J.—The question in this second appeal is whether the decree granted by the first appellate Court is sustainable in law. The first defendant Executive Officer, Arulmigu Kallalagar Devasthanam, Alagar Koil, Madurai is the appellant herein.

2. The plaintiffs filed the suit for declaration that they are entitled to the suit mandapam and they are also entitled to possession of the appurtenant 42 cents and to perform mandagapadi every year during Chitra festival. As a consequential relief they prayed for permanent injunction restraining the defendants from fencing around the Mandapam and the appurtenant land and for a mandatory injunction directing the first respondent-Executive Officer to take the Lord Sri Kallalagar to the Mandapam during every Chitra festival.

3. The defendants denied that the plaintiffs are entitled to the Mandapam or possession of the appurtenant land and contended that the mandapam and the appurtenant land has been in possession and use of the Devasthanam and the plaintiffs are not entitled to the consequential relief of injunctions prayed for.

4. The Trial Court (District Munsif, Melur) on consideration of the evidence adduced held that the plaintiffs are not entitled to the mandapam and they are not entitled to possession of the appurtenant land, and that both of them are in possession and use of the Devasthanam. It further held that the plaintiffs are not

entitled to the injunction prayed for. With these finding the trial court dismissed the suit.

5. On appeal by the plaintiffs the first appellate Court (Fourth Additional Subordinate Judge, Madurai) agreed with the findings of the trial Court, but however held that they are entitled to perform mandagapadi. In the result the first appellate Court decreed the suit only declaring that the plaintiffs are entitled to Mandagapadi. With regard to other prayers it confirmed the dismissal of the suit. As stated above, the first defendant-Executive Officer has filed this second appeal

6. It is argued that the first appellate Court has no jurisdiction to pass a decree as it did. It is submitted that the question of entitlement of the plaintiffs to perform mandagapadi is a matter that shall be decided by the Deputy Commissioner, Hindu Religious and Charitable Endowments and not by a civil Court. In this connection Section 63 and section 108 of the Hindu Religious and Charitable Endowments Act are read out. Section 63 gives the Deputy Commissioner power to enquire into and decide certain disputes and matters. Section 108 bars a suit or legal proceedings, among other things, in respect of any dispute or matter for determining or deciding which provision is made in the Act. It is contended for the appellant first defendant that the point at issue i.e., whether the plaintiffs are entitled to perform mandagapadi to Lord Kallalagar in the mandapam in question is a matter that falls u/s 63(e) and therefore it must be decided only by the Deputy Commissioner. This is disputed.

7. As per the said provision i.e., Section 63(e) the Deputy Commissioner shall have power to enquire into whether any person is entitled by custom or otherwise, to any honour, emolument or perquisite in any religious institution and what the established usage of a religious institution is in regard to any other matter. According to the plaintiffs by long usage and custom they have right to perform madagapadi. According to the appellant-first defendant, as per the second part of Section 63(e) the Deputy Commissioner shall have power to enquire into what the established usage of a religious institution is in regard to any other matter and the dispute in question i.e., whether the plaintiffs have, by long usage and custom, right to perform Mandagapadi falls within that power of the Deputy Commissioner. But I find it difficult to accept this argument. The said part of Section 63(e) speaks about what the established usage of a religious institution is and not what the right of a person or persons by usage and custom in a religious institution is. In other words the said expressions used in the Section relates to established usage of a religious institution and not established right of a person or persons by usage and custom in the institution. This being the position it cannot be said that as to the person or persons' claim for right in an institution by established usage and custom the Deputy Commissioner has power to decide and not the civil Court. A claim of right to do mandagapadi in a mandapam by long usage and custom is of a civil nature and therefore that claim can be entertained by a civil Court. In Muniandi Kone and Others Vs. Sri

Ramanatha Sethupathi, Hereditary Trustee of Arulmigu Mangalanathaswami Temple and Another, it has been held that the right to worship is a civil right which can be agitated in a civil Court.

8. The learned Counsel for the appellant defendant however places reliance on the decision of a single Judge of this Court in Sadhu Sri Vaishnavar Nambi Srinivasa Iyengar v. K.K.V. Annan Srinivasachariar and Ors. (1989)1 L.W. 199. But the facts in that case are different from that of the present one. In that case, the plaintiff claimed exclusive right under an alleged established custom and mamool in the temple to appoint persons for reciting Divya Prabhandham in Adhyapaga Ghosthti and this claim of exclusive right was disputed. Therefore the question there was what was the established usage of the temple as regards appointment of persons for reciting Divya Prabhandham. Hence it has been held in that case that the matter comes within section 63(e) of the Hindu Religious and Charitable Endowments Act. No such question arises in our case. Thus I do not see merit in the point argued for the appellant defendant.

9. In the result the appeal is dismissed. But no costs.