
(1990) 10 MAD CK 0072

In the Madras High Court

Case No : Appeal No. 462 of 1980

The Executive Officer, Sri Kallalagar Devasthanam, Alagarkoil	APPELLANT
Vs	
Tholappa Iyengar alias Alagar Iyengar and 7 others	RESPONDENT

Date of Decision : 08-10-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1990) 10 MAD CK 0072

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : R. Sundaravaradan, for the Appellant; V. Krishnan, for the Respondent

Judgement

Abdul Hadi, J.—The 6th defendant-Executive Officer of Sri Kallalagar Devasthanam, Alagarkoil is the appellant. The suit by the 1st

respondent-2nd plaintiff and the deceased 1st plaintiff is for declaration that the plaintiffs are entitled to keep undial in the Samayamandapam

constructed by the plaintiffs' ancestors for collections during Chitrai Festival and appropriate the said collections to themselves and for

consequential permanent injunction against the defendants. The 1st plaintiff died pending suit. His only heir was impleaded as the 7th defendant in

the suit, who is the 7th respondent in this appeal. The said 7th respondent is not making any claim. The 2nd plaintiff alone pursued the suit claim.

2. The suit is admittedly under S.70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the

Act"). Earlier, the plaintiffs sought the same relief before the Deputy Commissioner under S. 63(e) of the Act. But the said relief was negated by

the Deputy Commissioner. Subsequently, the Commissioner also confirmed the

decision of the Deputy Commissioner. Hence the present suit was filed. The plaintiffs succeeded before the trial Court and the suit was decreed as prayed for.

2-A Inter alia in the suit, there was also the issue, whether the suit is bad for want of notice under S. 80 C.P.C.?" The 8th defendant, who is the

Commissioner, H.R. & C.E., Madras, in his written statement opposed the suit, also alleging that the suit without issuing notice under S.

80/C.P.C., was not maintainable. But the trial court held that no relief as such, was asked for against the 8th defendant (8th respondent herein) and

that, therefore, no such notice was necessary.

3. Now, in the present appeal, the Learned Counsel for the 6th defendant-appellant argues that the Court below has erred in deciding this issue

and that if I concurred with him on the said issue he need not argue the appeal on its merits. He points out that the injunction relief is also against

the 8th defendant and that the trial court factually erred in stating that no relief was asked for against the 8th defendant. This contention of his, is

correct and the trial court is factually in error since the injunction relief is undoubtedly against the 8th defendant also.

4. The Learned Counsel for the appellant further submits that in view of the latest decision of a Division Bench of this Court reported in The

Executive Officer, Arulmigu Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th

Jeer of Sri Ahobila Math, Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others,

(which has held that notice under S. 80 C.P.C. is necessary even for the statutory suit under S. 70 of the Act), the present suit itself is not

maintainable and has to be accordingly dismissed.

5. But, the Learned Counsel for the 1st respondent-2nd plaintiff submits that contrary to the above referred to The Executive Officer, Arulmigu

Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math,

Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others, , another Division Bench of

this Court earlier held in P.S. Lakshmana Shah and Another Vs. The Commissioner for Hindu Religious and Charitable Endowments, Madras, that

such a notice under S. 80/C.P.C. was not necessary for the statutory suit under S. 70 of the Act and that, therefore, this question has to be

referred to a Full Bench. He also submits that this appeal itself was not maintainable by the 6th defendant-Executive Officer when defendants 1 to

5, who are respondents 2 to 6 herein and who are the trustees of the temple in question, did not choose to prefer an appeal against the decree of

the trial court. In other words, according to him, the 6th defendant-Executive officer has only to assist the said trustees in the administration of the

temple and that the temple administration vests only with the said trustees and not with the said Executive Officer and so when the trustees have not

chosen to prefer the appeal, the Executive officer cannot be considered as a person who could prefer this appeal. But, without going into the

question of the actual role played by the Executive Officer vis-a-vis the trustees in the Administration of the trust, I have no difficulty in holding that

since he was a party to the suit and since the relief was granted against him also he can certainly maintain this appeal.

6. Nextly, coming to the above said question of notice under S. 80, C.P.C. no doubt I find that the decision in *The Executive Officer, Arulmigu*

Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math,

Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others, referred to above conflicts

with the above said decision in *P.S. Lakshmana Shah and Another Vs. The Commissioner for Hindu Religious and Charitable Endowments,*

Madras, . There are also other decisions of single Judges of this Court following the above said *P.S. Lakshmana Shah and Another Vs. The*

Commissioner for Hindu Religious and Charitable Endowments, Madras, They are (1) *Commissioner H.R. & C.E. v. Kacherichamy* 1981 2

M.L.J. 375:94 L.W. 555, (2) *His Holiness S.S.S.V.D.Y. Mahadesikan v. Commissioner, H.R. & C.E.* 1985 1 *M.L.J. 82:98 L.W. 303 (D.B.)* (it

was this decision which was reversed in *The Executive Officer, Arulmigu Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri*

Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math, Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of

Sri Ranganatha Swamy Temple and Others, referred to above) and (3) *S.N. Chinna Kandar v. Commissioner, H.R. & C.E., Madras* ILR 1980 II

Madras 213.

7. In P.S. Lakshmana Shah and Another Vs. The Commissioner for Hindu Religious and Charitable Endowments, Madras, referred to above no

doubt there was not much discussion on this point. It was simply stated thus; ""No notice under S. 80, C.P.C. is required in respect of a statutory

suit to set aside or cancel the order of the Commissioner under the provisions of the Act. Even assuming that such a statutory suit could be

combined with a suit in which the applicability of the Act to the suit temple is challenged, the requirements of the valid institution of the later suit

should be complied with."" In the above said K.R. Sivagami, Proprietor, Rajendran Tourist Vs. Mahaboob Nisa Bi and Others, also I find that the

above said passage in P.S. Lakshmana Shah and Another Vs. The Commissioner for Hindu Religious and Charitable Endowments, Madras, was

referred to and the decision in P.S. Lakshmana Shah and Another Vs. The Commissioner for Hindu Religious and Charitable Endowments,

Madras, was explained as follows:-

Thus, it would be seen that it was a mere statutory suit for setting aside the order of the Commissioner, but reliefs which are beyond the scope of a

suit under S. 70 of the Act were also sought, and, therefore, the learned Judge held that even if a statutory suit could be combined with a suit in

which the applicability of the Act to the suit temple is challenged, the requirements of a valid institution of the latter suit should be complied with. In

other words, a notice under S. 80, Civil Procedure Code, in respect of the latter suit is mandatory.

So, if the suit was a mere statutory suit, no such notice was necessary according to the above referred to P.S. Lakshmana Shah and Another Vs.

The Commissioner for Hindu Religious and Charitable Endowments, Madras, and 1981 2 M.L.J. 375 : 94 L.W.555.

8. However, the Learned Counsel for the 1st respondent-2nd plaintiff points out that the above said latest decision The Executive Officer,

Arulmigu Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri

Ahobila Math, Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others,) discusses;

the question fully and elaborately and, relying, on two Supreme Court decisions

in State of Maharashtra and Another Vs. Shri Chander Kant, and Sawai Singhai Nirmal Chand Vs. Union of India, , has held that such notice was necessary for the maintainability of the suit under S. 70 of the Act.

According to S. 80, C.P.C., no suit shall be instituted against the Government or against a "public officer" in respect of any act purporting to be done." by such public officer in his official capacity, until the expiration of two months next after notice in writing has been given to the government or the public officer as the case may be. So, the question is whether the Commissioner is a "public officer" and whether the suit against the Commissioner under S. 70 of the Act can be said to be in respect of any "act purporting to be done" by the Commissioner. The Division Bench in The Executive Officer, Arulmigu Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math, Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others, after holding that the Commissioner was a public officer has also held, relying on State of Maharashtra and Another Vs. Shri Chander Kant, referred to above that the suit against the Commissioner is in respect of "any act purporting to be done" by the Commissioner. In State of Maharashtra and Another Vs. Shri Chander Kant, the suit was filed against the order under S. 5 of the M.P. Public Trust Act, 1951. Under that Act, the Registrar of the Public Trusts, on application by any person for registration of the public trust, shall make an enquiry as contemplated in S.5 of the Act and record his findings with reasons and any person aggrieved by any finding of the Registrar may, within six months from the date of the publication of the notice institute a suit in a civil court to have such finding set aside or modified. The question arose whether in such a suit notice under S. 80 C.P.C. to the Registrar was necessary. It was held by the Supreme Court that the Registrar was a public officer and his order was an act purporting to be done in discharge of his official duties and that, therefore, notice under S. 80 C.P.C. was necessary. The Division Bench in the above said The Executive Officer, Arulmigu Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math, Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha

Swamy Temple and Others, held that the facts in the abovesaid State of Maharashtra and Another Vs. Shri Chander Kant, were "quite analogous

to the facts in the case before it and so the Division Bench held that notice under S. 80, C.P.C. was necessary for the maintainability of the suit

under S. 70 of the Act also.

9. One of the arguments advanced before the said Division Bench was that the order against which the suit was filed, had been passed by the

Commissioner himself, that he knew that a suit could be filed against him, that no useful purpose would be served by giving him notice under S. 80,

C.P.C. and that therefore, in a case like this the Legislature would not have intended notice under S. 80, C.P.C. Dealing with this arguments, the

said Division Bench after observing that in view of the above said decision in State of Maharashtra and Another Vs. Shri Chander Kant, the said

question need not be considered, it also pointed out that another decision of the Supreme Court reported in Sawai Singhai Nirmal Chand Vs.

Union of India, directly covered the said question. In that case, the question was whether in a suit under O.21 , R.63, C.P.C. against the

Government, a notice under S. 80 C.P.C. was necessary. In that context it was argued that the suit was only a continuation of the attachment

proceedings, that therefore the Government already knew that a suit might be filed against it and the purpose of giving a notice under S. 80 C.P.C.

(viz., giving an opportunity to the Government to consider whether the claims against it could be settled or not) did not arise, and that therefore

notice under S. 80 C.P.C. was unnecessary. This contention was negated by the Supreme Court stating that the contention was inconsistent with

the plain categorical and unambiguous words used in S. 80 C.P.C. Therefore, based on these two Supreme Court decisions, the Division Bench in

the above said 1989-1-L.W. 361 came to the conclusion it reached.

10. Though it may be said that this later Division Bench which decided the above said 1989-1-L.W.361, did not expressly refer to the earlier

Division Bench judgment in the above said P.S. Lakshmana Shah and Another Vs. The Commissioner for Hindu Religious and Charitable

Endowments, Madras, , it should be noted that the decision in the above said The Executive Officer, Arulmigu Ranganathaswami Devasthanam

Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan

44th Jeer of Sri Ahobila Math, Hereditary Trustee of Vedantha

Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others, is only in appeal against the above referred to single Judge

decision reported in (1985) 1 M.L.J. 82 : 98 L.W. 303, which had referred to the above referred to P.S. Lakshmana Shah and Another Vs. The

Commissioner for Hindu Religious and Charitable Endowments, Madras, So, though the decision reported in the above said The Executive

Officer, Arulmigu Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of

Sri Ahobila Math, Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others, does not

expressly refer to the earlier Division Bench decision reported in the above referred to P.S. Lakshmana Shah and Another Vs. The Commissioner

for Hindu Religious and Charitable Endowments, Madras, , it could be safely concluded that the earlier Division Bench decision also was taken

note of by the later Division Bench. (The decision in the above said The Executive Officer, Arulmigu Ranganathaswami Devasthanam Vs. His

Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math, Hereditary Trustee of Vedantha Desikar

Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others, reversed the decision in the above said (1985) 1 M.L.J. 82 : 98 L.W.

303).

11. I may also point out that in one other earlier decision of mine (Judgment dated 5-9-1990 in A.S. No. 230 of 1981) I have held, following the

above said Division Bench judgment reported in 1989-1-L.W.361, that notice under S. 80 C.P.C. was absolutely mandatory and condition

precedent to the maintainability of the suit under S. 70 of the Act. No doubt, in deciding the said appeal, the above said earlier Bench Judgment

reported in the above said P.S. Lakshmana Shah and Another Vs. The Commissioner for Hindu Religious and Charitable Endowments, Madras,

or similar decisions were not brought to my notice.

12. But, in the present appeal, those earlier decisions have been brought to my notice. So only, the question now is which of the two views I

should follow and whether I should refer the matter to a Full Bench. The Learned Counsel for the appellant drew my attention to Govindanaik v.

West Paten Press Co., AIR 1980 Karn 92 (F.B.) of five Judges, wherein it was held by a majority of 3:2 that if two decisions of the Supreme

Court on a question of law cannot be reconciled and if both Benches of the Supreme Court consist of equal number of Judges, the later of the two

decisions should be followed by High Courts and other courts. Therefore, the Learned Counsel for the appellant contends that I should follow the

later Division Bench Judgment, viz. the above said The Executive Officer, Arulmigu Ranganathaswami Devasthanam Vs. His Holiness Srivan

Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math, Hereditary Trustee of Vedantha Desikar Sannadhi within

the precincts of Sri Ranganatha Swamy Temple and Others, In the said Karnataka decision the minority view expressed by two of the total five

judges, is that in the above situation of conflicting decisions of two Benches of the Supreme Court of equal number of judges, the High Court

ought to follow that which is better in point of law"" and not that which is earlier in point of time. I also find that, while, for the above said minority

view, reasons have been given, for the majority view no reason has been given. This is also noticed in the decision reported in Amar Singh Yadav

and Another Vs. Shanti Devi and Others, (vide paragraph 18 thereof) which concur with the said minority view in the above referred to AIR 1980

Kar 92 (F.B.). Further Neyveli Lignite Corporation Ltd. v. Spl. Thasildar No. III, Land Acquisition 1988 2 L.W. 79 was also brought to my

notice, where it was argued that where there was a conflict between two decisions of Supreme Court, the decision which stated the law more

elaborately and accurately should be followed. In support of this proposition, the above referred to judgment of a Full Bench of the Patna High

Court, reported in Amar Singh Yadav and Another Vs. Shanti Devi and Others,) was also relied on before the learned Judge, who heard the

above said 1988 2 L.W.79. The Full Bench in the above said Amar Singh Yadav and Another Vs. Shanti Devi and Others, does hold that where

there is a direct conflict between two decisions of the Supreme Court rendered by co-equal Benches, the High Court must follow that judgment

which appears to it to state the law more elaborately and accurately. Applying the same reasoning even when there is conflict between the views of

two Division Benches of this High Court, I think I should follow only the above said The Executive Officer, Arulmigu Ranganathaswami

Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math, Hereditary Trustee

of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others, (not simply because the said decision is later in point of time).

13. No doubt the decisions cited by the Learned Counsel for the 1st respondents-2nd plaintiff, viz., Sri Venkateswara Rice, Ginning and

Groundnut Oil Mill Contractors Co. and Others Vs. State of Andhra Pradesh and Others, Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal

Patel, and Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, may not strictly apply to the present

situation, where the question is which of the two conflicting views of two differing Division Benches of this Court it should follow. In the above said

Sri Venkateswara Rice, Ginning and Groundnut Oil Mill Contractors Co. and Others Vs. State of Andhra Pradesh and Others, and Sundarjas

Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, it has been no doubt held that one co-ordinate Bench of the

same High Court cannot take a view contrary to the decision given earlier by another Bench of that Court. Further, in the above said Tribhuvandas

Purshottamdas Thakur Vs. Ratilal Motilal Patel, and also Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and

others, it was no doubt observed that if a single Judge finds two conflicting decisions of the same court, he may pass an order for the papers to be

placed before the learned Chief Justice with a request to form a Full Bench to resolve the conflict. But, in the present case, the later Division Bench

which decided the above said 1989-1-L.W.361 relied on two Supreme Court decisions and came to the conclusion it reached. Therefore, I have

necessarily to follow the same.

14. The Learned Counsel for the 1st respondent-2nd plaintiff also drew my attention to the unreported decision dated 22-10-1987 of

Venkataswami, J. in W.P. No. 9138 of 1986, where the learned Judge held that in the light of a Supreme Court decision it was doubtful whether

an earlier view of the Division Bench of this Court was correct and so he suggested reference to a Full Bench. In the other decision of a Full Bench

of this Court, viz., Sembayee v. Genga Naidu 1989 T.L.N.J. 118 (F.B.) cited by the

Learned Counsel for the 1st respondent-2nd plaintiff, it was no doubt mentioned that the matter in question therein was referred to the said Full Bench since the learned single Judge who heard the matter earlier noticed that the view of the Bombay High Court which was approved by the Supreme Court was contrary to an earlier Division Bench judgment of this Court. But, it should be noticed that in the above referred to two decisions the learned single Judge in each of them, suggested reference to a Full Bench only because he noticed a later Supreme Court view contrary to an earlier Division Bench view of this Court. But here on the question before me, I find that a later Division Bench of this Court (which decided *The Executive Officer, Arulmigu Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math, Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others*, thought it fit to lay down a different view (different from that of the earlier Division Bench though not specifically referring to it) in the light of two Supreme Court decisions). While so, I feel I cannot and should not sit in Judgment with its reasoning or the view it had taken and the question of my suggesting reference to a Full Bench does not therefore arise. Therefore, I think, I should only follow the decision of the later Division Bench, viz. *The Executive Officer, Arulmigu Ranganathaswami Devasthanam Vs. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan 44th Jeer of Sri Ahobila Math, Hereditary Trustee of Vedantha Desikar Sannadhi within the precincts of Sri Ranganatha Swamy Temple and Others*, . Therefore, I hold that notice under S. 80 C.P.C. having not been given, the suit itself is not maintainable. In the result, the appeal is allowed, the judgment and decree of the Trial court are set aside and the suit is dismissed. But in the circumstances of the case, there will be no order as to costs.