

(1925) 04 MAD CK 0022
In the Madras High Court

The Madura Devasthanam

APPELLANT

Vs

Sundaram Annavi and Others

RESPONDENT

Date of Decision : 01-04-1925

Acts Referred:

Citation : AIR 1926 Mad 57 : (1925) 49 MLJ 516

Hon'ble Judges : Phillips, J; Philips, J

Bench : Division Bench

Judgement

Phillips J.

1. The plaintiffs are holders of a pipe service in a temple and have brought this suit for setting aside the order of dismissal passed by the 1st

defendant. The 1st plaintiff has one-fourth share in the inam, the 2nd plaintiff has one-fourth share, plaintiffs 3 to 6 have one-fourth Share and the

3rd defendant has one-fourth share. Objection was taken to the framing of the suit on the ground of misjoinder of parties and causes of action. This

should undoubtedly have been upheld because the charges of misconduct against the several plaintiffs are not identical and each plaintiff's case

ought to have been dealt with on its own merits, and it might well have been found that in so far as some of the plaintiffs are concerned the order of

dismissal was unwarranted, whereas in respect of others it was fully justified. That alone is sufficient to constitute misjoinder but there is another

fact which shows that there is more than one cause of action. In the case of plaintiffs 3 to 6 the dismissal appears to have been based on acts

committed by their father. The father seems to have died while these acts of misconduct were being inquired into and the order of the Devasthanam

Manager is to the effect that the father who was at that time dead should be

dismissed. Subsequently orders of dismissal were sent to his sons, plaintiffs 3 to 6, who consequently had quite a different case to that of the other plaintiffs. However, this case has proceeded and in appeal the decree cannot be reversed on the ground of misjoinder. The First Court found that the dismissal of all the plaintiffs was fully justified. The Appellate Court, after finding that the acts of misconduct found by the First Court were true, has come to the conclusion that the plaintiffs are entitled to a locus penitentiae and that the order of dismissal was therefore wrong. It has no doubt been held in *Krishnaswami Tatachari v. Gomatum Rangachari* (1868) 4. MHCR 63. that the question of whether there is or is not sufficient ground for dismissal is one for determination upon the particular circumstances of the case and that when the question is one of degree and not of principle, the finding of the Lower Court must be treated as a finding of fact, conclusive and binding in special appeal. In the present case, however, I do not think that the Subordinate Judge has proceeded on the right principles in coming to his conclusion. He starts by finding that "" there has been undesirable neglect of service to an extent which cannot be tolerated in a temple "" but nevertheless finds that such conduct does not warrant a dismissal. He has treated the case not with a view to determine whether the facts warranted a dismissal but rather whether he personally would have dismissed them for that conduct. Different employers may have different feelings on a matter of this sort, and where one dismisses a servant, another, more kind-hearted, will give him one more opportunity to correct himself, and a Court has to determine whether there was justification for the order of dismissal and not whether he personally would have dismissed for such conduct. The Sub-ordinate judge is also wrong in saying that "" condoned faults ought not to have a cumulative effect in finally working out a dismissal. "" In this case it was found that the plaintiffs had been guilty of misconduct from the year 1904 up till 1912 and these acts of misconduct were repeated on five or six different occasions, the plaintiffs being punished or merely warned for each of these acts. When then, the Subordinate Judge holds as a matter of principle that the punishment to be awarded for a subsequent offence must be awarded without reference to a prior offence is wrong. No doubt when an offence has been condoned or dealt with and the offender retained in

service, it is not open to the employer to subsequently dismiss him for that same offence, but if the servant offends again, it is perfectly justifiable for

the employer to consider the prior offences in determining in Avhat manner he should be dealt with for the subsequent offence. The Judge is,

therefore, clearly wrong in this principle enunciated by him, and that is sufficient ground for my holding that this is not a pure finding of fact which is

binding upon me in second appeal. I think it is clear also from a perusal of the learned Judge's judgment that he was really inclined to the view that

the dismissal was justifiable, but in view of the severity of the punishment - which means the loss of a large amount of land - he has allowed his

kindness to intervene and has declared that the period of nine years which elapsed between the date of dismissal and the date of judgment should

be treated as suspension and that the dismissal should be set aside. Not only has he done this, but he has ordered the plaintiffs to pay the costs of

the 1st defendant who dismissed them, although he has given a decree in plaintiffs' favour. All these facts, together with the recital in the judgment,

clearly show that the learned Subordinate Judge did not mean to hold that the 1st defendant was not justified in dismissing the plaintiffs.

2. The District Munsif has found that the order of dismissal was justified and on the facts found it cannot be suggested that it was wrong. There

was persistent neglect of service, in-subordination, and disobedience of orders repeated from time to time. It would be impossible to say that a

servant who was guilty of these offences is not worthy of dismissal. The decree of the Subordinate Judge must therefore be set aside. I am asked

to remand the appeal for a fresh finding but I do not think that it is necessary in the present case as the facts have all been found and I can come to

a conclusion myself.

3. There is one point in respect of which the plaintiffs 3 to 6 are entitled to consideration. The order of dismissal so far as they are concerned was

clearly not justified. In the first place it does not appear that they had actually been appointed and in the second place the order of dismissal was

passed for acts committed not by them, but by their father. In this suit it is somewhat difficult to split up the causes of action contained in the plaint,

but in the circumstances I think that the decree of the First Court should be confirmed with the modification that there will be a declaration that the

dismissal of the plaintiffs 3 to 6 is invalid.

4. Plaintiffs 1 and 2 will pay the costs of the 1st defendant throughout, and plaintiffs 3 to 6 will bear their own costs throughout as in the case of a

suit framed as this is it would be unfair to ask the 1st defendant to pay costs in respect of a cause of action not specifically pressed when they have

not succeeded in their main contentions.

5. The memorandum of objections not being pressed is dismissed with costs.