
(1973) 02 MAD CK 0043
In the Madras High Court

The Nagercoil, Asarimar Samudayam, Muthuraman and
Natesa Trust and Others

APPELLANT

Vs

Natarajan Asari and Others
Soosaimariyan Nadar, B.J.
Yovas and S. Siluvamony Nadar Vs N. Sastha

RESPONDENT

Date of Decision : 23-02-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1973) 86 LW 574 : (1973) 2 MLJ 306

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The plaintiffs in O.S. No. 373 of 1969 on the file of the District Munsiff, Nagercoil, are the appellants herein. They filed a suit for a declaration that plaintiffs a to 8 are the legally constituted trustees of one Nagercoil East Street, Asarimar Samudayam Mutharamman and Natesaswamy Trust and that in such capacity they are entitled to manage the affairs of certain temples and for an injunction restraining the defendants 1 to 5, the trustees appoint-ed by the area committee, Hindu Religious and Charitable Endowment Department, Suchindram, the sixth defendant from interfering with such management of the temples. Their case was that the temples in question belonged to the Asarimar community and that the trustees for the management of the temples are elected only by the members of the community and that the area committee constituted under the Hindu Religious and Charitable Endowments Act, 1959 had no right to interfere with the management of the temples by appointing trustees of its choice. In effect they sought a declaration that the order of the area committee appointing the defendants 1 to 5 as trustees of the temples in question was without jurisdiction.

2. The suit was resisted by the sixth defendant, the area committee, and "defendants 1 to 5, the trustees appointed by the. 6th defendant. Their contention was that the temples are public religious institutions that, therefore, the area committee has got powers for appointment of trustees u/s 49 of the

Act, and that the order appointing the trustees by the area committee will not fall within the expression matters of religion mentioned in Article 26 of the Constitution. The 6th defendant further contended that the suit is not maintainable (1) for lack of notice u/s 80 of the Code of Civil Procedure, and (2) in view of the bar contained in Section 108 of the said Act.

3. The trial Court found that the three temples in question are denominational in character, the worship therein being confined as of right to the Asarimar community alone and that, therefore, the Hindu Religious and Charitable Endowments Department will have no power to take away the right of management of the temples and its properties by plaintiffs 2 to 8 the trustees appointed by the community. It, therefore, held that the order passed by the 6th defendant was void under Article 26 of the Constitution. On the question of maintainability of the suit without exhausting the remedies provided under the provisions of Madras Act (XXII of 1959) hereinafter called the Act, the trial Court, following the decision in *James Manickam Vs. Jaya Narayan Daga*, , held that the suit is maintainable. On the question of lack of notice u/s 80 of the Code of Civil Procedure, it found that the suit was not against the State Government but it is only against the area committee and hence it is maintainable. Ultimately the trial Court decreed the suit as prayed for.

4. On appeal, the lower appellate Court has agreed with the view of the trial Court that the temples are denominational in character and that the order taking away the right of management of the denomination passed by the sixth defendant has to be held to be void in view of Article 26 of the Constitution. It, however, held that the plaintiffs' remedy is to go before the Deputy Commissioner, Hindu Religious and Charitable Endowments, for the necessary reliefs and not to file a suit before the civil Court, and that the suit is barred u/s 108 of the Act in view of the decision of the Supreme Court in *State of Madras v. Kunnakudi Melatnatam alias Annathana Matam and Anr.* (1968) 2 M.L.J. 41, and of this Court in *State of Madras Vs. Kunnakudi Melamatam and Another*, In that view the lower appellate Court allowed the appeal and dismissed the suit.

5. In this Second Appeal the only question that arises is as to whether the suit is barred u/s 108 of the Act. In *T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others*, , it was held that the question whether an institution is a religious institution is a question that has to be mooted out first before the Deputy Commissioner u/s 57 and then in the statutory suits in conformity with Section 62 of Madras Act (XIX of 1951). In *State of Madras Vs. Kunnakudi Melamatam and Another*, , it was held, following the above decision of the Supreme Court that when the applicability of the provisions of Madras Act (XXII of 1959) to a temple is challenged, the Deputy Commissioner has jurisdiction to decide that question u/s 63 (a) of that Act and that, therefore, a suit filed in a civil Court claiming certain reliefs on the basis that the provisions of the Act do not apply to the temple and as such is outside the purview of the Act would be barred by Section 63 (a) read With Section 108

of the Act.

6. The question is whether in the instant case the reliefs have been claimed by the the plaintiffs on the basis that the provisions of the Act do not apply to the suit temples. Having gone through the plaint averments, I am of the view that the reliefs claimed are not based on the inapplicability of the provisions of the Act to the suit temples but on the basis that the area committee had no jurisdiction to appoint trustees in view of Article 26 of the Constitution. In the plaint it is nowhere stated that the Hindu Religious and Charitable Endowments Act will not apply to the temples in question, and that the temples are not public. But what has been contended is that the temples are being exclusively managed by the Asarimar community and that the management of the temples which are denominational in character cannot be interfered with by the area committee in view of the protection contained in Article 26 of the Constitution. Therefore, the applicability of the Act to the suit temples in general has not at all been questioned. But the jurisdiction of the area committee to appoint trustees alone has been challenged. I am not able to see how such a question could come within the scope of Section 63 (a) of the Act. Section 63 (a) so far as it is relevant is set out below:

Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following disputes and matters:

- (a) whether an institution is a religious institution;
- (b) whether a trustee holds or held office as a hereditary trustee.

7. It is only when a declaration is sought for or a dispute is raised that the temples are not religious institutions as defined in the Act, the matter has to go before the Deputy Commissioner u/s 63 (a). But where, as in this case, no dispute has been raised that the suit temples are not religious institutions as defined in the Act the matter cannot be agitated before the Deputy Commissioner. Ismail, J., in T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others, held that having regard to the reliefs claimed in that suit wherein the plaintiff sought a declaration that the suit temple was outside the purview of Madras Act (XXII of 1959), the suit was not maintainable in a civil Court. The learned Judge has made the position clear by saying:

My decision in this case holding that the present suit is barred by the provisions contained in the Madras Hindu Religious and Charitable Endowments Act is based solely on the ground that the respondents 1 and 2 had claimed the relief on the basis of the contention that the suit temple is outside the purview of the Act. Whether the respondent will be entitled to file a suit in a civil Court for a declaration that the suit temple is a denominational temple entitled to the protection conferred by Article 26 of the Constitution of India and that the provisions contained in the Madras Hindu Religious and Charitable Endowments

Act, 1959, can be applied only subject to the constitutional right is recognised by Section 107 of the Act itself and that in any particular matter the authorities under the Act have not kept within their limits with reference to the rights of the denomination under Article 26 of the Constitution, does not arise for my consideration in the present suit and therefore my decision in this case will not affect any such question.

8. From the above observations it is obvious that the learned Judge was not concerned with the question as to whether a suit for a declaration that a temple is a denominational one entitled to the protection of Article 26 of the Constitution and as such the Madras Act (XXII of 1959) can be applied to those temples subject to the said constitutional guarantee is barred or not. The question of maintainability of a similar suit was considered in *Muthuswamy Mudaliar v. Subbarayan* (1970) 84 L.W. It has been held in that case that a suit for a declaration that a temple was a denominational one to which Madras Act (XXII) of 1959 would have a restricted application and that, therefore, the authorities constituted under the Act cannot interfere with the administration of the temple was one maintainable in a civil Court. I am, therefore, of the view that in the face of the pleadings and the dispute between the parties in this case, the suit cannot be treated as one coming under Clause (a) or (b) of Section 63 of the Act. This view of mine is supported by an earlier decision of a Bench of this Court in *James Manickam Vs. Jaya Narayan Daga*, , where the learned Judges have expressed:

Sections 79 and 79 (a) of the Act, in our opinion are not intended to provide a form for the determination of the denominational rights of a community over the temple but are intended to apply to matters like the usage regarding the rituals, honours, perquisites, emoluments and so on. It is inconceivable that the Legislature could have intended to give jurisdiction to the Board to consider and adjudicate upon rights of such a magnitude as rights of a particular denomination over a temple whether founded on usage or on other grounds by the simple and summary machinery, provided u/s 79 (a) of the Act.

9. For the reasons stated above, the decree and judgment of the lower appellate Court are set aside and those of the trial Court are restored. There will, however, be no order as to costs. No leave.

10. The Civil Revision Petitions arise out of two eviction orders passed against two different persons who became tenants of portions of the trust property under the trustees appointed by the community who are plaintiffs 2 to 8 in the suit. The eviction petitions had been filed by a mortgagee from the said trustees, for demolition and reconstruction u/s 14 (1) (6) of the Madras Buildings (Lease and Rent Control) Act, 1960. One of the defences taken by the tenants was that the mortgage executed by the trustees is invalid and will not bind the trust and that the trustees appointed by the area committee can alone deal with the trust properties. Now that the right to manage the trust and its properties by the trustees appointed by the community has been upheld in the Second Appeal, this

objection raised by the tenants has to fail.

11. The other defence taken in the eviction petitions was that they had not attorned to the usufructuary mortgagee, that there was no provision in the mortgage deed enabling the mortgagee to demolish and reconstruct the structures in the mortgaged property and that, in any event, the petitions for eviction on the ground of demolition and reconstruction were not at all bona fide. The District Court had held that notwithstanding the fact that there has been no attornment by the tenants, still the usufructuary mortgagee who becomes a landlord under the definition in the Act can maintain an eviction petition, that though there is no provision in the mortgage deed enabling the mortgagee to demolish and reconstruct, having regard to the fact that the mortgage was for a period often years the mortgagee is entitled to put the mortgaged property to any use he likes and if at all such an objection can be taken it can be only by the mortgagor and that the petitions for eviction have been filed bona fide, for the mortgagee required the premises for demolition and reconstruction and for the purpose of his business of carrying on a workshop for repair of lorries, buses and radios, which business he is at present carrying on. On the facts and circumstances of the case I have to accept the finding of the learned District Judge that the applications for eviction are bona fide, that the mortgagee has got sufficient funds for carrying out the intended reconstruction and that in fact he has obtained the necessary sanction from the local authority. Therefore, the eviction orders passed in the cases have to be upheld. The Civil Revision Petitions are, therefore, dismissed, but without costs. The petitioners are given three months' time to vacate. It is stated that pending Civil Revision Petitions certain amounts have been deposited by the tenants towards the arrears of rent. It is made clear that the petitioners in the eviction petitions are entitled to be paid out those amounts towards arrears of rent.