

(1953) 02 MAD CK 0012
In the Madras High Court

Tirukoilur Sri Viratteswarar Devasthanam and Others	APPELLANT
Vs	
R.M.M.S.T.C.T. Ramanathan Chettiar and Others	RESPONDENT

Date of Decision : 04-02-1953

Acts Referred:

Citation : (1952) 2 MLJ 430

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Division Bench

Judgement

Basheer Ahmed Sayeed, J.—Defendants are the petitioners and being aggrieved by the order of the learned District Judge of South Arcot

on the preliminary issues tried by him, they have preferred this civil revision petition.

2. The preliminary issues on which the order in question has been passed are to the following effect : (1) Whether u/s 57 of the Madras Hindu

Religious and Charitable Endowments Act (Act XIX of 1951), the District Court had jurisdiction to try a suit without the matter being first

enquired into by the Deputy Commissioner. The second issue was whether Section 57 of the Act was itself ultra vires of the powers of the

legislature. On both the issues the learned District Judge found that the District Court had jurisdiction to try the suit that it was maintainable in his

Court and also held that there was no need for referring to the High Court the question as to the validity of Section 57 of the Hindu Religious and

Charitable Endowments Act (Act XIX of 1951). After giving this finding he has posted the case for trial.

3. The learned Counsel for the petitioners, Mr. T.V. Balakrishnan, contends that Section 57 is a bar to the maintainability of the suit in the District

Court. Section 57 of the Act provides for a procedure to be followed by the Deputy Commissioner in the case of certain disputes and matters.

The section says that:

Subject to the rights of suit or appeal hereinafter provided the Deputy Commissioner shall have power to enquire 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 ; (c)

whether any property or money is a religious endowment; (d) whether any property or money is a specific endowment; and (f) whether any

institution or endowment is wholly or partly of a religious or secular character, and whether any property or money has been given wholly or partly

for religious or secular uses.

The contention of the learned Counsel is that since this section lays down that the Deputy Commissioner shall have power to enquire into and

decide the kind of disputes that have arisen in the present suit before the District Court, a suit is not maintainable in the District Court before any

such enquiry had been conducted and concluded by the Deputy Commissioner. Relying on this section he would urge that the jurisdiction of the

Court is ousted in so far as the suit related to the question as to whether the property in dispute is a specific endowment or whether the institution is

wholly or partly of a religious nature. It must be observed that the enquiry by the Deputy Commissioner is nothing more than a preliminary enquiry

which does not become final. In support of his contention reliance is placed by him upon Section 93 of the same Act. It runs:

No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute shall for

determining or deciding which provision is made in this Act be instituted in any court of law, except under, and in conformity with, the provisions of

this Act.

This Section 93 provides that after the Act has come into existence, no suit shall be instituted in any Court of law except under and in conformity

with the provisions of this Act. Neither Section 57 nor Section 93, would, on a reasonable construction of the language employed therein, amount

to an ouster of the jurisdiction of the Court in so far as the present suit is concerned. Merely because a provision is made giving power to the

Deputy Commissioner to enquire into the disputes of the nature described in Section 57, it is too much to say that the Civil Court has lost its jurisdiction to try suits in which such disputes arise. Similarly even Section 93 does not appear to have any retrospective effect so as to prevent the trial of a suit already filed and pending at the time the Act came into force. It has reference only to suits to be filed under the new Act and possibly such suits cannot be filed under this Act after the Act has actually come into effect without exhausting the remedies provided in the special Act. But before the Act came into force, it cannot be said that suits could not have been filed for determining the relevant merits in regard to the disputes as to whether any property is specific endowment or whether any religious institution is wholly or partly religious or secular. There is no section in the new Act which makes Section 93 retrospective in effect. The other section that has been relied upon by the learned Counsel for the petitioners in this connection is section 103 and Sub-section (j) and the explanation thereto. A reading of the language of Sub-section (i) and explanation thereto in section 103 does not lend any support to the contention of the learned Counsel for the petitioners that the present suit cannot be maintained in the District Court. All that section 103, in my view, aims at is to safeguard the existing rights, reliefs and remedies between the parties to these pending suits. It does not establish the contention of the learned Counsel that before proceedings in the civil courts are further proceeded with the matter should be sent back to the Deputy Commissioner for enquiry and then the parties should be given a right to proceed on appeal to the Commissioner and thereafter to proceed with a suit in a civil Court. I do not think that such a construction is at all reasonable to be placed upon the language in Sub-section (j) to section 103 and explanation thereto, which is in the nature of a saving clause. It could never have been the intention of the legislature, that pending suits should be taken out of the jurisdiction of the civil Courts and that the new machinery, namely, the Deputy Commissioner, who is practically an executive officer intended to facilitate the enquiry in regard to the matter in disputes enumerated in Section 57, should have authority, which would in effect be much greater than the authority of the civil Court, to adjudicate upon disputes between the parties.

4. On a consideration of the sections referred to by the learned Counsel for the petitioners and after a careful consideration of the order passed by the learned District Judge, I am inclined to agree with the learned District Judge that the District Court has jurisdiction to try the suit and I do not think that this petition calls for any interference on my part. The petition is, therefore, dismissed with costs.