

(1972) 08 MAD CK 0013
In the Madras High Court
Case No : Appeal No. 592 of 1965

Tiruvengada Varadachariar and Others	APPELLANT
Vs	
Srinivasa Iyengar and Others	RESPONDENT

Date of Decision : 02-08-1972

Acts Referred:

Madras Hindu Religious Endowments Act, 1926 — Section 84
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 93
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 108,
145, 57, 63, 69

Citation : AIR 1973 Mad 281 : (1973) ILR (Mad) 280

Hon'ble Judges : Palaniswamy, J;Ismail, J

Bench : Division Bench

Judgement

Palaniswamy, J.—This appeal filed by the plaintiffs raises the question as to the scope of Section 63 of the Madras Hindu Religious and

Charitable Endowments Act, 1959 (hereinafter referred to as the Act.). The plaintiffs and defendants 3 and 4 are the descendants of one Chinna

Ramanuja Aiyangar. The suit was laid for recovery of possession of the plaintiff mentioned temple called Sri Venugopalasami temple, Katteri,

Mannargudi, and the immovable properties described in the plaintiff. Relief's were sought against defendants 1 and 2 on behalf of the plaintiff and

defendants 3 and 4. The plaintiffs alleged that the lands described in the plaintiff belonged to the suit temple and that they and defendants 3 and 4

were the sole hereditary trustees thereof. They referred to several litigation's in their family with regard to the affairs of the temple and stated that

with a view to enable the members to reach an amicable arrangement and settlement of disputes between them, the members of the family were

advised to appoint an agent to look after the temple and its management. According to them, all the members of the family had confidence in one Ranganatha Aiyangar, father of the second defendant and natural paternal uncle of the first defendant. The plaint alleges that the said Ranganatha Aiyangar was, in or about October, 1926, requested to look after the temple and the properties and manage them on behalf of the members of the family of the plaintiffs till the hereditary trustees came to an amicable arrangement amongst themselves about the management thereof. Ranganatha Aiyangar is alleged to have taken possession of the temple and its properties in pursuance of the alleged request and was said to be functioning as an agent in pursuance of a deed of agency executed on 28-10-1926. According to the plaintiffs, Ranganatha Iyengar was in possession of the temple and its properties only on behalf of the members of the plaintiff's family. The plaint proceeds to refer to certain litigation's between several members of the plaintiffs' family and states that the hereditary trustees could not come to any arrangement, and, therefore, the second defendant was requested to look after the temple and its properties after the death of Ranganatha Iyengar. It is further alleged in the plaint that as the second defendant expressed his inability to look after the temple and its properties, fathers of the plaintiffs 4 and 5 requested the first defendant in about 1957-58 to look after the affairs of the temple and its properties on behalf of the hereditary trustee in the place of the second defendant and that the first defendant accordingly assumed management and has been functioning as such agent ever since. The plaintiff claimed to have issued a notice to the first defendant on 10-2-1962 terminating the agency and calling upon him to deliver possession of the temple and the properties. Reference is made in the plaint to the reply sent by the first defendant in which the first defendant put forward the contention that neither the plaintiff nor defendants 3 and 4 were hereditary trustees of the temple, that the properties mentioned in the plaint were kattalai properties constituting a specific endowment for the purpose of performing certain services connected with the temple of Sri Venugopalaswami, and that the lands were endowed by the mirasdars as a specific endowment by a document of the year 1861. Reference is also made to the allegation of the first defendant that the father of the second defendant was in possession and management of the

temple as kattalai trustee and not as the agent of the plaintiffs. Various other allegations made by the first defendant denying the right of the plaintiffs

to institute the suit are also referred to in the plaint. According to the plaintiffs, the said allegations of the first defendant are untenable. With these

allegations, the plaintiffs have prayed for recovery of possession of the temple and its properties from defendants 1 and 2 and for a decree

directing the first defendant to render a true and proper account of the income from the year 1957 and for other relief's.

2. Among the several defenses put forward by the defendants 1 and 2, which have been referred to in the plaint itself, one was that the suit was

barred by Section 63 of the Act. According to these defendants, the only remedy open to the plaintiffs was to invoke the jurisdiction of the Deputy

Commissioner under that section for declaration of their title as hereditary trustees and also for a declaration that the suit properties are not kattalai

properties but belong to the temple. It is pointed out that as a matter of fact, the father of the third plaintiff himself had been appointed by the Hindu

Religious and Charitable Endowments Board as a trustee, and he filed a suit in O. S. 11 of 1940 on the file of the Subordinate Judge,

Kumbakonam, against the first defendant. The first defendant further contended that he was previously appointed as a trustee by the Area

Committee and that subsequently he was appointed by the Endowments Board itself. It is in these circumstances that it was urged that the suit was

not competent.

3. The trial Court framed the necessary issues, one of which related to the maintainability of the suit, namely, whether the suit was barred by

Section 63 of the Act. the trial Court took up this issue as a preliminary issue and held against the plaintiffs and dismissed the suit. This appeal is

filed questioning the correctness of that decision.

4. Section 63 of the Act enumerates disputes and matters which could be enquired into and decided by the Deputy Commissioner. It reads as

follows:--

63. Deputy Commissioner to decide certain disputes and matters: 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;

(c) whether any property or money is a religious endowments;

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

(e) whether any person is entitled, by custom or otherwise, to any honor, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter;

(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; and

(g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character of where any property or money given is appropriated partly to religious and partly to secular use, as to what portion of such property or money shall be allocated to religious uses.

Against the decision of the Deputy Commissioner, the aggrieved party has got a right of appeal to the Commissioner u/s 69. Against the decision of the Commissioner, the aggrieved party has got a right of suit in the ordinary civil court u/s 70. Against the decision of the Civil Court, a right of appeal to the High Court is provided in the same section. Section 108 imposes a bar of suits except in conformity with the provisions of the Act. It reads:--

108. Bar of suits in respect of administration or management of religious institutions, etc. No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any court of law, except under, and in conformity with, the provisions of this Act.

5. The 1959 Act is an amending and consolidating Act. It repealed the Madras Hindu Religious and Charitable Endowments Act 1951. Similar provisions had been enacted in the 1951 Act also. Section 57 of that Act corresponds to Section 63 of the 1959 Act. The 1951 Act also

contained provisions for appeal to the Commissioner, suit and an appeal to the High Court. Section 93 of that Act corresponds to Section 108 of

the present Act which imposes a bar upon the institution of legal proceedings except in conformity with the provisions of the Act in respect of

matters of disputes for deciding which provision is made in the Act. the 1951 Act itself was in turn an amending and consolidating Act. It repealed

the Madras Hindu Religious Endowments Act 1927. The 1927 Act did not contain elaborate provisions. The only provision dealing with this

matter was Section 84, which ran thus :--

84. (1) If any dispute arises as to--

(a) whether an institution is a math or temple as defined in this Act,

(b) whether a trustee is a hereditary trustee as defined in this Act or not, or

(c) whether any property or money endowed is a specific endowment as defined in this Act or not, such dispute shall be decided by the Board and

no court in the exercise of its original jurisdiction shall take cognizance of any such dispute.

(2) Any person affected by a decision under sub-section (1) may, within six months, apply to the court to modify or set aside such decision;

(3) From every order of a District Judge, on an application under sub-section (2) an appeal shall lie to the High Court within three months from the

date of the order;

(4) Subject to the result of an application under sub-section (2) or of an appeal under sub-section (3), the decision of the Board shall be final.

6. Mr. Srinivasa Iyer, appearing for the appellants, contended that the present dispute is one in which the Hindu Religious and Charitable

Endowment Board is not interested, that this dispute is purely between private individuals and that, therefore, the dispute is not one that falls within

the scope of Section 63 of the 1959 Act. His submission was that consequently Section 108 was not a bar. In support of this contention he relied

on a decision of Bench of this court is Thayoth Puthiyapurayil Ayisomma Vs. Choolat Puthiyapurayil Kunhali and Others, . That was a Letters

Patent Appeal against the decision of Rajammannar, C. J., in S. A. No. 1396 of 1948 (Mad). The facts as gathered from the second appeal are

that the appeal arose out of a suit filed for redemption of certain properties which originally belonged to a Devaswom. The properties had been

demised to be a tarwad who had sub-mortgaged the same to one Ayyammad in about 1923. Ayyammad in 1930 executed a consolidated kanom

deed. The Devaswom conveyed the properties in the year 1943, to the plaintiff who instituted the suit which gave rise to the second appeal for

redemption of the sub-mortgage of the year 1928. One of the defenses was that the plaintiff had no title to redeem, the contention being that the

Devaswom was a "temple" within the meaning of the Madras Hindu Religious and Endowments Act, 1927, and that the sale of the properties of

the temple to the plaintiff by the trustees without the sanction of the Endowments Board was void. The learned Chief Justice held that the question

as to whether the Devaswom is a temple or not was only incidental in the suit relating to redemption and that, as such, there was no bar for the

maintainability of the suit. This decision was affirmed in appeal in *Thayoth Puthiyapurayil Ayisomma Vs. Choolat Puthiyapurayil Kunhali and*

Others, . The ratio of the Bench is found in the following passage at p. 5 itself:

We agree with the learned Chief Justice that a Civil Court has jurisdiction to decide whether a particular institution is a public temple or not when

such a question arises incidental to other disputes in the case before the Court.

As would be seen from the facts stated above, that suit was one for redemption. The question as to whether the Devaswom was a temple or not

did not directly arise for consideration. But, in dealing with the question as to whether the suit is maintainable or not, the learned Chief Justice, in

the course of his discussion on the scope of Section 84 of the 1927 Act, observed--

Apart from any consideration of practical difficulty, I am clearly of opinion that on a reasonable construction of Section 84 the contention of the

respondent is untenable. I think that the dispute referred to in Section 84 is a dispute between the trustees of an institution, on the one hand and the

Board on the other. In such a case, the Act specially provides that the dispute shall be decided by the Board in the first instance and it is only

thereafter that the District Judge is given the right to set aside or modify or confirm such decision.

Mr. Srinivasa Iyer placed considerable reliance upon the foregoing passage and contended that, in the instant case, the Board is not a party, that

the dispute is only between private individuals and that, therefore, Sec. 108 is

not a bar. We may observe in this connection that the Bench in *Thayoth Puthiyapurayil Ayisomma Vs. Choolat Puthiyapurayil Kunhali and Others*, has not affirmed the correctness of the aforesaid observation that the dispute should be a dispute between trustees and the Board. The Bench did not make any comment upon that observations. As we have already pointed out, the only ratio of the decision was that the Civil Court has jurisdiction to decide whether a particular institution is a public temple or not when such a question arises incidental to other disputes in the case before the Court.

7. Mr. Srinivasa Iyer drew our attention to the decision of Venkataraman, J., in *Ponniah Nadar and Others Vs. Chellian Nadar and Others*, , in

which the learned Judge has no doubt rested conclusion with regard to the maintainability of the suit only upon the view that the bar would operate

only when the Endowments Board itself is interested in the dispute. That was suit for declaration that a certain temple and its properties constituted

a public trust and for recovery of possession of the same from the defendants. In the proceedings u/s 145, Criminal Procedure Code, it was found

that the defendants in that case were in possession. The plaintiffs wanted to get rid of that order and alleged that the same was also a reason for

saying that the Civil Court had jurisdiction. The trial Court held that Civil Court had no jurisdiction. The District Judge took a different view and

remanded the suit to the trial Court for fresh disposal. It was against that order of remand that A. A. O. No. 384 of 1967 was filed in this court.

After referring to the observation of Rajamannar, C. J., the learned Judge held that inasmuch as the dispute was between two private parties, and

as the Board was not directly concerned, the Civil Court had jurisdiction. The learned Judge observed at p. 529--

Two reasons are given in support of this view,(1) that there is no provision by which the ordinary Civil Court can make reference to the Board

and compel the Board to submit a decision to the court and (2) that the Board may not be interested in deciding the dispute. In view of the

reasons, the learned Chief Justice held that Section 84 would operate as a bar only when the Board itself was interested in deciding the question. I

respectfully adopt these reasons.....

8. With great respect to the learned Judge, we are unable to agree with the

above view. As already pointed out, the question as to whether a particular institution was a public temple or not did not directly arise for consideration before the learned Chief Justice. It was only incidental to the other disputes arising in a suit for redemption. That was obviously the reason for the Bench, in the very first sentence of its judgment, to agree with the learned Chief Justice holding that the Civil Court has jurisdiction to decide whether a particular institution is a public temple or not when such a question arises and incidentally to the other disputes. The Bench has not made any reference to the casual observation of the learned Chief Justice that the bar would operate only in a case where the dispute is between the trustees of the institution on the one hand and the Board on the other.

Neither the language of Section 84 of the 1927 Act nor the language in the two corresponding sections of the 1951 Act and the 1959 Act warrants such an inference. Whatever be the policy underlying the 1927 Act, it is clear from the scheme of things adumbrated in the 1951 Act and the 1959 Act that the Legislature has conferred exclusive jurisdiction upon the Deputy Commissioner to decide the disputes and matters enumerated in the relevant sections. We have already extracted Section 63 of the 1959 Act and it would be seen therefrom that there are some matters in which the Board may not be interested. For instance, the Board may not be interested whether a particular person is entitled by custom or otherwise to any honor. The privilege as to who is entitled to an honor would arise only if rival claims are put forward by two private individuals. It is true that the Deputy commissioner cannot decide a dispute as to who among the rival claimants is entitled to succeed to an office. If a particular office of trustee is admitted to be hereditary, the question as to whether A or B is entitled to succeed is beyond the jurisdiction of the Deputy Commissioner u/s 63 of the Act. But where A asserts that an office is hereditary and claims appropriate relief on that basis and where B denies that the office is hereditary, but claims to have been appointed as a trustee by the Endowments Board, in our view such a case would fall squarely within the ambit of Section 63 of the 1959 Act, even though the Board is not impleaded as a party.

9. The Supreme Court had to consider in *State of Madras v. Kunnakudi Melmatam*, 1966 2 MLJ 13 AIR 1966 SC 1570 the maintainability of a suit instituted by the head of a Mutt. The head of the mutt claimed two different

relief"s (1) an injunction restraining the levy of contribution and audit fees under Act II of 1927 and (2) an injunction restraining the levy of contributions and audit fees under Act XIX of 1951. This court held that the institution was not a religious institution within the meaning of Act XIX of 1951. In the appeal preferred by the State of Madras, the Supreme Court has pointed out that one of the disputes in the suit is whether the institution is a religious institution within the meaning of Act XIX of 1951, that specific provision is made for determination by the specified authorities and eventually by a suit and that inasmuch as that suit was not brought under or in conformity with those provisions, the suit was not maintainable in so far as it claimed relief of injunction restraining the levy of contribution and audit fees under the Act XIX of 1951. One of us had to consider the maintainability of a suit containing several relief"s, one of which fell u/s 63 of the 1959 Act in T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others, . The suit was for a declaration that Sri Rajagopalaswami temple set out in Schedule A and its properties set out in Schedules B and C of the plaint exclusively belonged to Pattusaluvur Community, residents of a particular village and directing the defendants to put the plaintiffs in possession of the same and also directing defendants 1 and 2 to render a true and proper account of their management as trustees of the suit temple and for other relief"s. The basis of this prayer was that the temple belonged to the members of Pattusaluvur Community exclusively that they alone owned the temple and were worshipping the deities of the temple and that it was a private temple which belonged to the community residents of the village. It was held that the suit claiming the relief on the basis that the provisions of the Act did not apply to the suit temple and as such was outside the scope of the Act, was barred by Section 63(a) read with Section 108 of the Act, though the suit for rendition of accounts against the trustees of the temple appointed by the members of the community was not barred.

10. Mr. Srinivasa Iyer drew our attention to an unreported decision of a Bench of this court in S. A. No. 117 of 1959 (Mad), Agasthiappa Mudali

v. Manicka Goundan. There, the suit was filed alleging that Sri Ekambaranathaswami temple at Sethuvattu village was a village temple constructed

by the villagers out of the collections made by them that they had allowed the second defendant, who was one among the villagers, to supervise the

construction on their behalf and maintain accounts and that while so, the second defendant arrogating to himself the position of a hereditary trustee

had executed a settlement deed in favor of the first defendant transferring his right to be a trustee. The suit was laid in a representative capacity.

The substantial defense was that it was the ancestors of the second defendant that build the temple, that the trusteeship of it had all along vested in

the second defendant's family and that the first defendant, who was the only descendant of the family, was entitled to obtain the trusteeship from

the second defendant. The trial court upheld the claim of the plaintiffs and granted a decree declaring that the transfer of trusteeship by the second

defendant in favor of the first defendant was invalid. In appeal, the first appellate court took the view that the suit was not maintainable, by reason

of Section 93 of the 1951 Act, In that view, the appellate Judge returned the plaint for presentation to the Deputy Commissioner. Dealing with the

correctness of this order, Ramachandra Iyer C. J., who delivered the judgment on behalf of the Bench, observed that the suit was maintainable.

The learned Chief Justice further observed--

There can be no doubt if the only matter in dispute is whether a particular party is a hereditary trustee of a religious endowment or not, such a

dispute can be decided only in accordance with the Act by the Deputy Commissioner, in the first instance. But can it be said that in the instant case

that the sole point for decision is, whether the second defendant is the hereditary trustee or not? That question can be answered only on an

appreciation of the true basis on which the suit is rested and the nature of the contention raised in the suit. As we stated earlier the plaintiffs claimed

the suit temple as belonging to the villagers..... The dispute is one about the title to the temple and its properties. The suit is one for

possession and substantial issue is whether the contesting defendant's possession is lawful. For a consideration of that issue it matters little whether

the second defendant is a hereditary trustee or only an ordinary trustee, for even if he were the latter his possession will be lawful and the plaintiffs

cannot recover possession..... But a question which arises incidentally cannot oust the jurisdiction of the Civil Court to decide the suit,

particularly when the substantive relief of the declaration of the invalidity of title and possession can only be granted by that court. We are of

opinion that the learned District judge erred in holding that the suit is not cognizable by the Civil Court.

It would be seen from the facts that the Bench has merely reiterated the position that a civil Court has jurisdiction to decide whether a particular

institution is a public temple or not where such a question arises only incidentally to the other disputes.

11. In the instant case, as we have already pointed out, the plaintiff's claim to be hereditary trustees along with the defendants 3 and 4. According

to them, the office of hereditary trustees has devolved from generation to generation only in their family, and it is only on the basis of such assertion

of title that the relief of possession is asked for from defendants 1 and 2. It is true that they have not in so many words asked for a declaration that

they and defendants 3 and 4 are hereditary trustees. But the defense of the first defendant is that the office is not hereditary, that, on the other hand,

the office has been filled up by the Area Committee previously and subsequently by the Board and that only by virtue of such appointment, he the

first defendant is continuing in possession. The fact that the Deputy Commissioner cannot grant the relief of possession is not a ground to hold that

the suit is maintainable. The form of relief is not the sole criterion to decide the question of maintainability of the suit. By ingenious drafting of the

plaint, the necessary relief of declaration that the plaintiff and defendants 3 and 4 are hereditary trustees is omitted. But on a reading of the plaint as

a whole it irresistibly follows that only if the plaintiffs establish that they and defendants 3 and 4 are hereditary trustees, they can succeed in getting

the relief's asked for. One of the main issues that arises for consideration is whether the plaintiffs and defendants 3 and 4 are hereditary trustees.

For deciding that issue, express provision is made in Section 63 of the Act, and the trial Court rightly held that the suit is barred by Section 108 of

the Act.

12. In the result, the appeal fails and is dismissed with costs.

13. Appeal dismissed.