
(1973) 06 MAD CK 0010
In the Madras High Court

T.K. Santhanagopa'a Chettiar and Others APPELLANT
Vs
Thimmi M. Seetharama Chettiar and Others
Thimmi M. RESPONDENT
Seetharama Chettiar and Ans. Vs T.K. Santhanagopa'a
Chettiar and Others

Date of Decision : 27-06-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 26
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63

Citation : (1974) ILR (Mad) 222 : (1978) 87 LW 182 : (1974) 1 MLJ 215

Hon'ble Judges : N. S. Ramaswami, J

Bench : Division Bench

Judgement

N. S. Ramaswami, J.—The two Letters Patent Appeals are against the Judgment of Ismail, J. disposing of A.A.O. No. 338 of 1965. The appellants in L.P.A. No. 31 of 1969 are the plaintiffs in O.S. No. 359 of 1963 on the file of the Court of the District Munsif of Kumbakonam. The suit is for a declaration that the suit temple belonged to the members of Pattusaluvar community exclusively and that they alone own the temple and worship the deity of the temple and that nobody else had any right in the properties acquired for the said temple. There was also the prayer for accounting by defendants 1 and 2 who had been appointed as trustees for the temple by the Area Committee and approved by the Commissioner, Hindu Religious and Charitable Endowments Department. On the whole, there were six defendants in the suit. Defendants 1 to 3 were the trustees appointed for the temple. The fourth defendant is a lessee of the temple properties. The fifth defendant is the Area Committee and the sixth defendant is the Commissioner himself. One of the contentions raised by the defendants is that the suit is not maintainable in the civil Court inasmuch as the main question that falls for determination is within the exclusive jurisdiction of the Deputy Commissioner u/s 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act LII of 1959) (hereinafter referred to as the Act). This contention was upheld by the trial Court and the suit was dismissed. On appeal by the

plaintiffs, the learned Subordinate Judge of Kumbakonam held that the question that arises in the suit is whether the temple is a denominational temple or not, that that question is not one coming u/s 63 of the Act, that therefore the jurisdiction of the civil Court is not ousted and that the trial Court should decide the suit on merits. The learned Subordinate Judge remanded the suit for trial on other issues. The contesting defendants filed A.A.O. No. 338 of 1965 against the abovesaid remand order and Ismail, J., reversed the decision of the learned Subordinate Judge holding that the question relating to the nature of the institution is one coming u/s 63 of the Act and that the civil Court has no jurisdiction to go into that question. He therefore held that the learned Subordinate Judge ought not to have remanded the suit for trial on other issues. However, the learned Judge further held that there is no bar for the civil Court to go into the claim of accounting that is prayed for in the suit. The learned Judge upheld the order of remand, by the learned Subordinate Judge to the extent of the claim relating to accounting. L.P.A. No. 31 of 1969 has been filed by the plaintiffs challenging the decision of the learned Judge regarding the question of maintainability of the suit in the civil Court. The contesting defendants have filed L.P.A. No. 58 of 1968 challenging the further finding of the learned Judge that the civil Court can decide the question of accounting by defendants 1 and 2.

2. It is not disputed before us that if the substantial question to be decided in the suit is as to whether the temple is a denominational one or not, the jurisdiction of the civil Court could not be ousted under the provisions of the Act. u/s 63 of the Act though the Deputy Commissioner is given the exclusive jurisdiction to decide as to whether any institution is a religious institution or not, the question whether a temple is a denominational temple coming under Article 26 of the Constitution is certainly not within his jurisdiction. That is a question which has necessarily to be decided by the civil Court. It has been so held in *Rao Saheb Dr. Ananda Baliga Vs. Srimat Ananteswar Temple, Manjeswar and Others*, . The learned Judge who disposed of C. M. A. No. 338 of 1965 also recognises this position. His judgment is reported in *T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others*, . , the learned Judge observes thus:

Whether the respondents 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.

The learned Judge has proceeded on the footing that in the present suit the

prayer is not for a declaration that the temple is a denominational one. It is no doubt true that in the prayer it has not been made clear that the plaintiffs wanted a declaration that the temple is a denominational one. But a reading of the entire plaint makes it abundantly clear that what the plaintiffs want is a declaration that the temple is a denominational one. At any rate, the main question that falls for determination in the suit is as to whether the temple is one founded by Pattusaluvar community managed and administered by them and whether the temple belongs to them. Unfortunately the prayer in the plaint is not couched in proper words. Prayer (a) in the plaint is as follows:

To pass a decree in favour of the plaintiffs declaring that Sri Rajagopalaswami Temple set out in Schedule "A" and its properties set out in Schedules "B" and "C" exclusively belong to Pattusaluvar community residents of Solamalingai village and directing the defendants 1 to 3 to put the plaintiffs in possession of the same.

Nowhere in the plaint is there any allegation that the temple is not a religious institution as defined under the Act. The very averments in the plaint go to show that it is a temple as defined in the Act and it is conceded that the members of the particular community had a right of worship in the temple. The learned Judge seems to have understood the pleadings in the plaint as saying that the temple in question was a private temple. But there is nothing in the plaint to show that the plaintiffs claimed the temple as a private temple not coming under the definition of the terms "religious institution" or "temple" under the Act. If the question really is as to whether the temple is a religious institution as defined under the Act or not, naturally it would be a question exclusively within the jurisdiction of the Deputy Commissioner as per the provisions of Section 63 of the Act. But as a matter of fact that is not the question to be decided in the suit because from the very averments it is clear that the plaintiffs concede that it is a religious institution as defined under the Act. All that they claim is that it is a denominational temple entitled to the protection contained in Article 26 of the Constitution, though it is not so specifically stated in so many words. Under these circumstances, we are of the view that the civil Court has jurisdiction to entertain the suit regarding the main prayer also.

3. There is yet another point which arises in these appeals. As we said earlier, the fifth defendant is the Area Committee and the sixth defendant is the Commissioner. The learned Judge has held that notice u/s 80 of the Code of Civil Procedure, is necessary to claim any relief as against defendants 5 and 6, and because no such notice has been given by the plaintiffs before instituting the suit, the suit should necessarily fail as against those two defendants. This finding of the learned Judge is not being challenged by the learned Counsel for the plaintiffs who are the appellants in L.P.A. No. 31 of 1969. That means, the said two defendants, namely, defendants 5 and 6 shall stand struck off from the plaint and the suit shall proceed on other issues only as against defendants 1 to 4.

4. From what we said earlier, it follows that L.P.A. No. 58 of 1968 should be

dismissed. Accordingly, L.P.A. No. 31 of 1969 is allowed to the extent indicated above. L.P.A. No. 58 of 1968 is dismissed. The parties will bear their respective costs in this Court.