

(1973) 07 MAD CK 0025

In the Madras High Court

Case No : Letter Patent Appeal No. 45 of 1972

V. Raghavachari and Others

APPELLANT

Vs

Narayana Iyengar

RESPONDENT

Date of Decision : 18-07-1973

Acts Referred:

Citation : AIR 1974 Mad 166 : (1973) 86 LW 747

Hon'ble Judges : K. Veeraswami, C.J;Varadarajan, J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—The plaintiffs bring this appeal under the Letters Patent on leave granted by Venkataraman, J. The learned Judge

accepted the reversing judgment of the first appellate Court and dismissed their second appeal. The question turns on whether the suit site belongs

to the temple of which the appellants claim to be de facto trustees, or to the old temple which no longer exists. In the village of Ulundai, there

existed Sri Kariamanicka Perumal Temple. Its origin is not clear, but undoubtedly it had a hoary past. The temple had a Moolavar and an Utsavar,

but, in course of time, the temple fell ruins. The appellants claim that His Holiness Sri Sankaracharya of Kanchi Kamokoti Peetam advised that the

villagers might establish a new temple at a new site, since the old site of the temple was in the backyard of residences. In view of this advice the

appellants, with the help of the villagers, constructed a temple at a new site and dedicated it to Sri Kariamanicka Perumal. The Utsavar idol in the

old temple was recovered but not the Moolavar. A new Moolavar appears to have been installed. The respondent's father and donated the old

site, and when the temple fell into ruins, about four months prior to the

institution of the suit, he started rebuilding the temple by himself donating a sizable sum. He claimed that the old site could not be regarded as belonging to the new temple. It was in such a situation the appellants brought the suit for a declaration that the suit site belonged to new temple and for an injunction restraining the respondent from entering upon it and putting up any construction therein or in any manner interfering with the possession and management of it by the appellants. The trial Court decreed the suit, but the first appellate Court took a different view and dismissed the suit, Venkataraman, J., who dealt with the second appeal, stated that the limited question he was called upon to decide was whether when the original Moolavar was still embedded in the site or the old temple, it could still be said that the site nevertheless belonged to the new temple. Having posed the question for decision in that manner, he naturally distinguished

Bijoychand Mehetab v. Kalipad Chatterjee, ILR (1914) Cal 57 = AIR 1914 Cal 200.

2. The record shows that only the Utsavar idol could be found and not the Moolavar. We find no basis for the view of Venkataraman, j., that "the

Moolavar, is still embedded in the site of the old temple." In our view, there is no basis for this statement, and the learned Judge could not go upon

the assumption. We have, therefore, to proceed on the basis that the Moolavar idol was missing. According to Hindu sages, reconstruction or

purification of an image is ordained in cases where the image is mutilated, broken, burnt, fallen down or removed from its place, or is defiled by a

beast or by the touch of an outcaste, or even when hymns appropriate to other gods are recited before it. ILR (1914) Cal 57 = AIR 1914 Cal

200 was a case in which the image itself was broken to pieces and, in such circumstances, a new image was installed in a new place. The

defendant in that case having refused to perform the worship of the image, it was held that the religious purpose still survived, since a new image

might be established and consecrated in order that it might be worshipped as intended by the original founder. On that view, the defendant was

directed to deliver possession of lands to the plaintiff in that case, Venkataraman, J., as we mentioned, distinguished this case on the ground that in

the instant case, the Moolavar idol lay still in the site. We have already stated that there is no warrant for that assumption. So, the principle of ILR

(1914) Cal 57 = AIR 1914 Cal 200 will apply to the instant case. If the above

Moolavar was not found or was missing and according to the

Sastras a new image could be installed at a new place, there is a revival of the old legal personality of the image. On that view, we consider that the

trial court's judgment is correct.

3. On the question whether the appellants were legally constituted trustees, they have claimed as de facto trustees. Venkataraman, J., left it open

and he did so rightly in the circumstances.

4. The appeal is, therefore, allowed and the decree of the trial Court is restored. But the parties will bear their costs throughout.

5. The respondent will have four months to remove the materials from the old site.

6. Appeal allowed.