
(1972) 10 MAD CK 0012

In the Madras High Court

Case No : Second Appeal No. 324 of 1972

V. Raghavachari and Others

APPELLANT

Vs

Narayana Iyengar

RESPONDENT

Date of Decision : 31-10-1972

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 67

Citation : AIR 1973 Mad 323 : (1973) 86 LW 232 : (1973) 1 MLJ 252

Hon'ble Judges : Venkataraman, J

Bench : Single Bench

Judgement

1. The second appeal is by the plaintiffs. In Ulandai village in North Arcot, Dt., there was an ancient temple called Sri Kariamanicka Perumal

temple. It fell into ruins. The daily worship was not performed. It appears that, when His Holiness Sri Sankaracharya of Kamakoti Peetam visited

the village before 1960, he suggested that the temple had fallen on evil days because it was situated behind the row of houses forming the

Agraharam and that it would be better to build a temple in front of the Agraharam. Accordingly public subscriptions were raised and a new temple

was built facing the Agraharam. The Kumbhabhishekam was performed in 1963 as per the invitation, Ext. A-3. The Moolavar (deity) at the site of

the old temple could not be traced, but the Utsavar (who comes out) was available and the Utsavar was installed in the new temple. Some stones

of the old temple were utilized for the construction of the new temple. Some copper plates were also utilized.

2. At the time of the formation of the new temple a Thengalai namam was put on the forehead of the Utsavar. It was not there before. This seems

to have annoyed some of the Vadagalai people. Whether on this account or for some other reason, many of the inhabitants of the village decided in

1966 to renovate the old temple at its site. Accordingly a general subscription List E.B. 1, dated 2-5-1966, was opened. Narayana Iyengar, the

defendant in the suit, was mainly authorized to make the collections and renovate the old temple. Actually his father has endowed the income of a

small property in 1910 under a registered deed, Ex. A-1, for the support of the old temple.

3. In accordance with the wishes of the villagers the defendant began renovating the old temple. Thereupon the six plaintiffs, holding out that they

were the trustees of Sri Kariamanicka Perumal temple, brought the suit, O. S. No. 262 of 1967, out of which this appeal arises, for an injunction

restraining the defendant from proceeding with the construction. The contention of the plaintiffs is that the deity which presided at the old site has

been installed at the site of the new temple and that the site of the old temple belongs to the deity which has now been installed in the new temple.

4. The learned District Munsif, who tried the suit, decreed it. On appeal, however, the decision has been reversed by the learned Subordinate

Judge, and hence this second appeal by the plaintiffs.

5. The first reason given by the learned Subordinate Judge is that, because the Moolavar of the old temple has not yet been traced, that deity still

exists there and hence it cannot be said that the villagers cannot renovate the old temple and that it cannot be said either that the old site belongs to

the deity installed in the new temple. The reason is thus stated in paragraph 7 of his judgment-

The fact remains that the Moolavar of the old temple that was in existence in the suit was not found. In other words the Moolavar of the old

temple that was in existence in the suit site was not the idol installed in the newly built temple. It appears that because of the fact that the Utsavar

idol found in debris of the old temple in the suit site had been installed in the newly built temple, the respondents seek to claim that the newly built

temple is entitled to claim the suit site. Merely because such an idol was installed in the newly built temple and some materials of the old temple had

been made use of putting up the new temple, it cannot be said that the suit site has become the property of the newly built temple.

6. Secondly, the learned Subordinate Judge finds that the plaintiffs have not established the fact that they are the duly constituted or nominated trustees of Sri Kariamanicka Perumal Temple. Thirdly, on the evidence of the plaintiffs' witnesses themselves, the learned Subordinate Judge finds that at least a year before the institution of the suit, the defendant had, with the help of the villagers and public donations, started the renovation work of the old temple, that he could not be said to be a bare trespasser and that, under the circumstances of the case, an injunction could not be granted.

7. The primary point argued before me by Sri P. C. Parthasarathi Iyengar, the learned counsel for the appellants, is that the deity which presided at the old site has been shifted and consecrated at the new premises, that there is no longer any deity at the old temple, and that, consequently, the site of the old temple belongs to the deity installed in the new temple. The learned counsel relied on some passages in the leading textbooks of Ganapathi Iyer and Mukherjee. In my opinion, those decisions and passages do not solve the present problem. The crucial question is whether, under the circumstances of the case, it could be said that the deity has disappeared from the old temple in the sense that the villagers are not entitled to renovate it. This is a narrow question and, on the facts of this case, it seems to me that the learned Subordinate Judge is right. Nobody suggests for a moment that there is no efficacy or sacredness in the deity installed in the new temple. The point at issue is something different and has already been stated, namely, whether in view of the installation of Sri Kariamanicka Perumal in the newly built temple, the old site has lost its sanctity altogether in the sense that no attempt can lawfully be made to renovate the temple there. The important point which in my opinion, answers this question is the fact that the Moolavar is apparently still embedded in the site of the old temple and the existence of the Moolavar is enough to justify the attempt of the villagers to try to renovate the old temple at the same site. Once it is borne in mind that this is the narrow question involved in the suit, there will be no difficulty in distinguishing the decisions and passages relied on by Sri Parthasarathi Iyengar.

8. The first case on which he relies is the decision of Jenkin, C. J., and Mookerjee, J., in *Bijoychand Mahatab v. Kalipada Chatterjee*, ILR 41 Cal

57 AIR 1914 Cal 2000. There the Maharaja, the predecessor of the plaintiff, established an image of Lord Shiva and named it after himself as

Trilokeshwar. He endowed certain lands for the performance of the worship of the image and the lands were left with the predecessors of the

defendant. About 40 years before the commencement of the suit the site at which the temple stood was washed away by the river Bhagirathi. The

image itself was broken to pieces and the Maharaja established a new image of Shiva in a newly constructed temple in the same village. But the

defendant refused to perform the worship of the image. Quoting some texts, it was held--

This text shows that, when an image has been mutilated or destroyed, the religious purpose does not come to an end..... The religious

purpose still survives, and a new image may be established and consecrated in order that it may be worshipped as intended by the original

founder.

Since the defendant was not willing to make over the income, it was held that he was not entitled to retain possession of the lands to the plaintiff.

The case is distinguishable, because the image had been broken to pieces and no attempt was made to renovate the temple at its original site.

9. The next case relied on by the learned counsel is the decision of Seshagiri Ayyar and Moore, JJ., in Venkatasubban Pattar v. Ayyathurai, 37

MLJ 554 AIR 1920 Mad 246. There a Sivalingam was stolen. The majority of the worshippers wanted to replace it by another. A suit for

injunction restraining them was brought. It was held that the majority view must prevail. The present case is clearly distinguishable.

10. The next case relied on by the learned counsel is the decision of Devadoss, J., in Venkatachala Mudaliar Vs. Sambasiva Mudaliar and Others,

. There the site of an old Vinayagar temple had become insanitary and a large majority of the villagers decided to build a new temple somewhere

else and install the idol there. The plaintiff, as a solitary person, wanted to prevent it. It was held that he could not oppose the wishes of the

majority. Here again the facts of the present case are different.

11. The last decision cited by Sri Parthasarathi Iyengar is Pichandy Ananthakrishnan v. Chidambaram Pillai, AIR 1953 Trav-Co 442, where the

decision in Bijoychand Mahatab v. Kalipada Chatterjee, 41 Cal 57 AIR 1914 Cal

200 was followed with approval. The facts again are different.

12. The learned counsel has, there quoted passages from Mukherjee's Hindu law of Religious and Charitable Trusts, 3rd Edn. at pages

114,117,118,120,123 and 124 (pages 134,135,137,138,141,142,145 and 146 of the second edition) and page 181 of P. R. Ganapati Iyer's

Hindu and Mohammedan Endowments, 2nd edn. In my opinion, they do not solve the present problem and do not contain anything to militate

against the view I have expressed.

13. Sri Parthasarathi Iyengar then points out that the defendant himself had, in his reply notice, Ex. A-4 dated 17-7-1962, agreed to make over the

income of the properties, which had been endowed for the support of the old temple by his father under Ex. A-1 in 1910, if duly constituted

trustees were appointed for the new temple and that, in the meantime, he was prepared to make over the income of the properties to the second

plaintiff. This however, does not in any way stop the defendant from trying to renovate the temple at the old site. Actually, Ex. A.1 itself shows that

the father of the defendant was dedicating the property only to the deity at the old site and expected it to be renovated, but till then he promised to

utilize it for some other suitable religious worship. Hence, if it is possible to renovate the temple at the old site, the endowment under Ex. A.1 could

still be utilized therefor.

14. I also agree with the learned Subordinate Judge that this is not a proper case to grant an injunction, because the plaintiffs waited for nearly a

year after the construction began. I do not wish, however, to say anything on the question whether the plaintiffs are the duly constituted trustees of

Sri Kariamanicka Perum temple (new).

15. One of the defenses in the written statement is that the suit is not maintainable because of the provision of Sec. 67 of the Hindu Religious and

Charitable Endowments Act, which enacts that the Deputy Commissioner may, on being satisfied that a religious institution has ceased to exist,

hold an enquiry to ascertain its property and funds. An appeal may be filed against the decision to the Commissioner and then a suit. The learned

District Munsif held that the provisions of the Act would not be a bar. The contention was not repeated before the learned Subordinate Judge. In

my opinion, the Act does not bar a suit of the present type. The very question is

whether the deity has ceased to exist at the old site so as to incapacitate the villagers from renovating it. That question itself cannot be left for the final decision of the Deputy Commissioner.

16. On the short ground mentioned already, I dismiss the appeal, but without costs. Leave granted.

17. Appeal dismissed.