

(1933) 05 MAD CK 0020
In the Madras High Court

Vemuri Subramanyam Garu and Others	APPELLANT
Vs	
Avanigedda Subbayi and Others	RESPONDENT

Date of Decision : 01-05-1933

Acts Referred:

Madras Hindu Religious Endowments Act, 1923 — Section 78

Citation : AIR 1934 Mad 143 : 150 Ind. Cas. 384

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—This is a revision petition against the order of the District Judge of Kistna refusing to pass an order u/s 78, Madras Hindu

Religious Endowments Act. The facts are that in the village of Avanigedda, there is an idol called Lankamma and a temple dedicated to the idol,

and according to the petitioners before me certain lands form the endowment of this temple. An application was filed before the Hindu Religious

Endowments Board and the Board found that these lands are not service inam lands of the respondents but endowments of the temple, They then

proceeded to frame a scheme for the management of the temple and its properties. The proceedings of the Board were passed on 15th September

1927. In para. 4 of the District Judge's order he remarked:

There is nothing on record to show whether or not a scheme has been framed under the Act in respect of the temple lands and whether the

hereditary trustee has been removed, and if so under what circumstances.

2. Apparently, the scheme was not filed before the learned District Judge and hence these remarks, showing that he was in the dark about the

facts. But it is conceded by both sides-and the order of the Board has been

produced before me that a scheme was framed and the scheme relates to temple lands in general and it does not relate to the lands in dispute; and it appoints the present petitioners as trustees. The contention before the Board was that the respondents were doing duties as Archakas and it also appears that a title deed was issued to them as representing the temple by the inam Commissioner. I understand that there was no hereditary trustee at all but that the Archakas, that is, the respondents, were discharging not only the duties of the Archakas and were practically also de facto trustees. On the Board's appointment there are fresh trustees. It may be that the respondents' position as trustees has ceased; but certainly they continue as Archakas or priests. But the important point of difference between the parties is that whereas the respondents claim the suit lands as their service inam lands, the petitioners claim that they are temple lands. On this point it is true that the Board expressed an opinion and there is nothing in the Act making their opinion the last word on the subject. When the petitioners applied for delivery of the lands before the District Judge, the respondents raised their contention again. It is true that there was some difference between their case before the District Judge and the case before the Board, but I have nothing to do with it.

3. The question is whether the District Judge is bound to go into the question of title when an application is made u/s 78. My brother Krishnan

Pandalai, J., in *Katamreddi Ramireddi Vs. (Paderala) Sreeramulu Reddi and Others*, , seems to think that the District Judge has a discretion in

such a matter. He may inquire into the question of title but if it is a difficult one he may refer the parties to a civil suit. In *Guruvammal Vs. Arumuga*

Padayachi and Others, , the District Judge made an order of delivery ex parte, that is, behind the back of the persons, in possession. Afterwards

on their complaint he responded the matter and posted it for further inquiry. On revision in the High Court, *Curgenvin, J.*, held that the order was

right. This implies that the District Court has jurisdiction to inquire into the matter. It seems to me that Section 78 was intended to apply only to the

admitted endowment and it is not intended that the District Court should enter into questions of title. Even assuming my view is erroneous and

assuming that the District Court is expected to form an opinion, it would surely be prima facie opinion subject to further consideration in the regular

Courts of the land. The District Court's opinion on a question of title in a summary petition u/s 78 could not have been intended to be final opinion

on the question of title. That being so, one must hold that the District Court would have discretion to refuse to go into the question and in a case

where the District Court has not gone into the question, it is unnecessary to send the case back. The learned advocate for the petitioner relied on a

decision of my Lord the Chief Justice in S. Narayana Iyengar, Trustee of Sri Santhanagopalaswami Ranganathaswami Temple Vs. K.V. Desika

Chariar, . It does not appear in that case that there was any question of title involved. In that case the District Judge having passed an order u/s 78

refused to execute such an order. Their Lordships held that the order was erroneous and that Section 78 which confers on the District Court a,

power to pass an order probably implies a similar power to execute its own order. It seems to me that that decision does not help the petitioners in

this case.

3. Lastly the decision in (Bava C.) Vythilinga Mudaliar Vs. G. Ramanja Mudaliar, was referred to. There Devadoss, J., appears incidentally to give

an expression of opinion. It does not appear that there was any dispute between the parties about the title to properties. It seems to me that even

the order of the District Court referring the petitioner to a suit u/s 73 is not correct. However I do not express any final opinion on the matter. It is

argued that Section 57 shows that after the expression of opinion of the Board it is the duty of the respondent to file a suit within six months. But

Section 73 and the reference to the filing of suit within six months refer only to a scheme. The question of title is not part of the scheme, in this

particular case. The conclusion has not been so embodied. I do not think therefore that Section 57 is helpful. The petition is dismissed. In the

circumstances of the case I do not pass any order as to costs.