

(1926) 12 MAD CK 0049
In the Madras High Court

Venkatachala Mudaliar

APPELLANT

Vs

Sambasiva Mudaliar and Others

RESPONDENT

Date of Decision : 17-12-1926

Acts Referred:

Citation : AIR 1927 Mad 465 : (1927) 25 LW 377 : (1927) 52 MLJ 288

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—This appeal raises a novel and interesting question. The plaintiff's suit is for a permanent injunction restraining the defendants

and other villagers of Parniputtur from pulling down an old temple in the place and removing the image from the present premises. Both the Lower

Courts have dismissed the plaintiff's suit on the ground that almost the whole village was for the removal of the temple and the image to a site more

sanitary and more acceptable to the inhabitants. The plaintiff has preferred this second appeal. As the point is one of some importance and as there

is no direct authority on the point, I asked Mr. N. Rajagopalachari, High Court Vakil, to appear as amicus curiae for the idol.

2. The plaintiff's case is that there is an old temple dedicated to Vinayagar, that there is now a consecrated image in it, that the defendants and

other inhabitants of the village are now attempting to pull down the temple and remove the stone image from the consecrated Moolasthanam to a

new temple to be built on a site selected by them and that it will be an act of sacrilege to remove a consecrated image from the place where it has

been installed to a new place and such act if permitted would bring untold misery to the inhabitants. The defendants' plea is that the temple was in

a dilapidated condition, that the site became insanitary, that all the villagers agreed at a meeting that a new temple on a more suitable site should be

built, that a site was acquired, that they are building a new temple and that the plaintiff is a creature of one Namasivaya Mudali, an old Dhar-

makartha of the temple, who, though a party to the arrangement of building a new temple, has, in order to spite the villagers, set up the plaintiff to

bring this vexatious suit. Both the Lower Courts have found that a very large majority of the villagers are for building a new temple and installing the

idol in it. The learned District Judge has recorded a distinct finding that

the removal of the temple was decided upon at a general meeting of the villagers duly convened, and further the decision was unanimous and that

Namasivaya Mudali was himself a party to the resolution and the plaintiff who is only a substitute cannot question it.

3. This finding is supported by the evidence on record, and it is binding upon this Court. The only question therefore is whether the whole body of

the villagers who worship in a temple can build another temple and remove the idol from the old temple to the new temple. It is admitted that the

site of the old temple has become insanitary as water collects all round it and it is very near the roadway.

4. Before considering the question of the Hindu Law on the point, I may point out here that the injunction asked for is only a discretionary remedy

and in the circumstances I do not think the Court would be justified in granting it as the old temple has ceased to exist and a new temple has been

built. A photograph of the new temple has been produced by the respondents' vakil and it is clear that the new temple is a spacious one and is

built on a site which is far better than the site on which the old temple was situated. Seeing that the old temple has ceased to exist, and the idol has

been removed, even if the injunction not to remove the idol is granted, the remedy would be practically of no use unless another temple is built on

the old site. I do not think the Court would be justified in asking the defendants to build a new temple on the old site when a new temple has

already been built.

5. As this point is not covered by any decided case, I allowed both parties to refer to the Agamas which lay down rules for guidance in such

matters as the building of a temple, the consecration of an idol and the building

of a new temple. The learned Advocate-General relied upon certain passages in Kamika Agama and contended that an idol once consecrated cannot be removed to another place except in certain circumstances.

6. The passages are:

If out of proportion, make it (the idol) with proper proportion, whether well placed or ill placed, Sivalinga should not be removed." - Stanza 20.

Idols installed by, Asuras, Rishis, Devas and knowers of truth should not be removed from their places even though they are mutilated or broken

even after performing Mantras, according to the prescribed rules."--Stanzas 21 and 22.

If owing to kings, robbers, fire, water, the idols are removed or they are dragged by floods or get submerged, the Linga is not defective. It is

purified by 50,000 Japams. The idol may be installed in its original place or elsewhere with its face as before."--Stanza 23.

7. The contention for the appellant is that it is only in cases where the idol itself is lost owing to foreign invasion or the act of robbers or by fire or

water that a new idol may be installed; otherwise if the old idol is recovered it should be purified by japas and reinstalled in its place. Here all the

worshippers of the temple, who are in management of it, have decided to build a new temple as the old one was in ruins and as the, site on which it

stood became insanitary and inconvenient for worshippers. Where the whole body of worshippers want to improve the temple, unless there is clear

prohibition against their demolishing the old temple and building a new temple, I do not think any one is entitled to prevent the whole body from

doing what it thinks proper in the circumstances. Mr. Rajagopalachari referred to a number of passages in Pradishta Mayukha by Nilakanta, Purva

Karana Agamam and Nirnaya Sindhu. It is unnecessary to Consider them. In Purva Thanthiram by Bhrigu, the following passage occurs:

Then I recount the mode of Hari's reinstallation, after removal to a new place, as also that of Sridevi, Bhudevi, Andal and other Bhaktas (Alwars

and Acharyas). Where a temple is situated near a river-bank, or in the East, or in a lonely forest, or outside the village, or when it gets inauspicious,

or its edifice gets ruined or when the site is found inconvenient as surrounded by outcastes, or as being exposed to thefts or when near a cremation

ground or when its throne or its pedestal gets out of order, or when not

worshipped though fit to be worshipped, the idol should be removed from there to another place, pure and pleasant, preferably in the middle of the village, and desired by the village-headman and installed and worshipped in a temple erected to the west of the village. Such an act will conduce to the prosperity of the village-headman and the villagers. This is the mode laid down by great sages for removal and reinstallation.

8. In the Kamika Agama there is the following passage:

Out of or away from danger by water, the Linga may be reinstalled at a distance of 100 Dandas or a 1000 Karmukhas.

9. Where a temple gets surrounded by water the idol may be removed to a place at a distance of 100 Dandas. It is not clear what a Danda

measures; but here the new temple is not more than 100 feet from the site of the old temple.

10. In Siddhanta Sekhara the following passage occurs:

Reinstallation should be made when the image comes in contact with thieves, outcastes, fallen men, dog or gets water-logged or loses its auspiciousness.

In Hayasirsha Pancharatra there is the following passage:

When the habitation gets cracked or broken, or burnt, and the worship there is attended with danger the image should be removed by man from there, as per the rites aforesaid.

11. According to the passage in Purva Thanthiram where the compartment or the room in which the idol is installed becomes ruined the idol could

be removed and installed in a proper place. Some of the passages go to the length of saying that where an idol is desecrated the divine element

which resides in it leaves it and the compartment or the room in which it is has no sanctity apart from the sanctity of the idol. Therefore, it is not

necessary that a new idol should be installed in the compartment in which an old idol was. In this case the old temple became dilapidated and

therefore there was a justification for the villagers deciding to build a new temple and to install, the consecrated idol in the new temple. In the

passages quoted before me the word used is "Lingam," whether the word "Lingam" applies only to Sivalingam is not quite clear; but in the case of

minor deities like Vinayagar and Subramaniam, the injunction against the removal

of a consecrated image cannot be taken literally. It is a well-known fact that the image of Vinayagar is to be found under banyan trees and ficus religiosa trees and on tank bunds, road-sides and in places where no one would expect an idol to be placed. It would be mere pedantry to hold that the villagers who worship an image of Vinayagar which, let us say, is on the road-side or on a tank-bund, cannot build a decent stone temple and instal it in it instead of being exposed to the weather without any protection.

12. Sarkar in his book on Hindu Law (5th Edition) observes at page 712:

When an image has once been consecrated with proper ceremony it must be worshipped and it cannot be replaced by another image unless it has become unfit for worship by reason of any of the grounds stated in the text."--No. 7.

13. If an image is cracked, or mutilated, or lost, it may be substituted by a new one duly consecrated; but the removal of the idol from an old

dilapidated temple to a newly built temple has been held not to be within the powers of the trustee when a large number of worshippers are against

the removal. The only authority referred to by Mr. Sarkar and quoted by the learned Advocate-General against the removal of a consecrated idol

is in Hari Raghunath v. Antaji Bhikaji ILR (1919) B 466. There it was held that the Manager of a public temple has no right to remove the image from the old temple and instal it in another new building, especially when the removal is objected to by a majority of the worshippers.

14. The contention in that case was that the trustee could remove the image from the old temple to the new one. Shah, J., observes at page 471:

The defendant claims the right to instal it in the new, building permanently, and I do not think that as a manager he could do so, partial cularly when

he is not supported by all the worshippers of the temple in taking that step.

15. This case is not an authority for the position that the whole body of villagers cannot build a few temple and instil the image which was in a

dilapidated temple in the new one. In Bijoy Chand Mahatab v. Kalipada Chatterjee ILR (1913) C 57 it was held that

an endowment of land, the income of which is meant to be applied for the purposes of the service of an image of Shiva is not affected by the

destruction or mutilation of the image, and that the religious purpose survives the destruction or mutilation.

16. That case is an authority for holding that an endowment in favour of a temple or for the support of a temple does not cease to be an

endowment for the purpose by reason of the destruction of the image or the temple. If the old temple is destroyed, a new temple could be built and

a new image could be installed in it. It would be different if the land which was endowed for the temple ceases to exist by reason of erosion or by

seismic disturbances. In *Doorya Prashad Dass v. Sheo Proshad Pandah* (1880) 7 CLR 278 it was held that a person who was not entitled to the

custody of the idol is not entitled to the land, the income of which is dedicated to the idol. The villagers as a whole body were in possession of the

old temple and as such were in possession of the idol, and they are entitled to instal it in any proper place; and the plaintiff who is not entitled to be

in possession of the idol cannot resist the action of the villagers which ostensibly is for the benefit of the whole body of them. In *Venkatasubban*

Patter and Others Vs. Ayyathurai alias Ranganatha Sastrigal and Others, it was held that in the case of a village temple owned in common by the

villagers the right of management of the temple and its properties vest in the inhabitants of the village as a corporation and that the decision of the

majority of the villagers at a meeting duly convened binds the minority in all matters connected with the management of the temple. In that case

there were two factions and what the majority wanted to do the minority objected to. The learned Judges observed at page 558:

We think that the proper view to take is that the relationship of the Brahmin householders, an indefinite number of persons, in respect of the plaint

temple and its property is analogous to the case of a corporation which owns properties and that a majority of the members are competent to bind

the minority and that the principle which governs the case is that laid down in *Cooper v. Gordon* (1869) LR 8 Eq. 249.

17. It is but reasonable that in communal matters the majority should have the final say. In this case it is not a respectable minority that objects to

what the majority is doing; but only one person, who agreed to the resolution that a new temple should be built as the old temple had become

dilapidated, has out of spite chosen to challenge the action of the villagers. I hold that, where in the interests of the general body of worshippers a

very large majority is for the removal of the old temple to a new site, the Court should not interfere with their discretion as what they do is

according to their notions beneficial to the whole community.

18. The second appeal fails and is dismissed with costs.

19. I am indebted to Mr. N. Rajagopalachari for the very valuable assistance he rendered me in this case.