

(1919) 08 MAD CK 0014
In the Madras High Court

Venkatasubban Patter and Others

APPELLANT

Vs

Ayyathurai alias Ranganatha Sastrigal and Others

RESPONDENT

Date of Decision : 19-08-1919

Acts Referred:

Citation : (1919) 37 MLJ 554

Judgement

1. Plaintiffs and the defendants are members of Kuzhalmannam, a Brahmin village in the Palghat Taluk. The suit was brought for a perpetual injunction restraining Defendants 1 to 45 from consecrating a lingam in the Siva temple in the village which, belongs in common to plaintiffs and the defendants without the consent of the community as a whole. It appears that for many years past the village has been divided into two factions, known as the Eastern and the Western factions. Plaintiffs and defendants 45 to 51 belong to the Western faction, Defendants 1 to 44 belong to the Eastern faction and are in a numerical majority. It seems that the Siva lingam was stolen in 1888, and the members of 1st defendant's faction wanted to have it replaced by another. The proposal was opposed by the plaintiff's faction and litigation ensued, and the plaintiff's faction succeeded in obtaining an injunction restraining the defendants from consecrating the particular Lingam in dispute. Plaintiff's case as put forward in the plaint shortly was that in January 1916 some members of the 1st defendant's party sent a notice stating that a meeting of the members of the community should be convened to decide the question of consecrating a new lingam, that a meeting was held but had to be postponed as the leading members of the 1st defendant's faction stayed away, and no definite decision was arrived at, that the lingam which was proposed to be

consecrated was not fit to be consecrated, and that they were entitled to a perpetual injunction restraining the defendants' party from performing the linga prathista without consulting the plaintiff's party. The answer of the contesting defendants was that plaintiffs purposely abstained from attending the meeting on January 28th 1916 at which it was resolved that the Kalasom should be performed. The principal issues in the suit were whether there was a valid consultation in regard to the performance Of the linga prathista among the villagers as alleged by defendants 1, 3 and 4 and whether the defendants were entitled to consecrate the lingam without the express consent of the plaintiff's faction in writing according to the custom of the village of the parties. The District Munsif found that the defendants had not proved that there was any consultation among the villagers, and that plaintiffs were entitled to the injunction asked for. On appeal the District Judge in a brief and unsatisfactory judgment without going into the facts or recording findings, on the questions at issue between the parties, viz., whether there had been any consultation among the villagers in regard to the consecration of the lingam, and whether the defendants were entitled to fix the lingam without the consent of the plaintiffs, disposed of the case on the broad ground ""that the plaintiffs, were entitled to an injunction restraining the defendants from doing anything in the temple to which they objected unless the defendants could prove that they had constitutional authority for their action."" The District Judge refused to accept the defendants contention that the temple should be governed by the will of the majority of the house-holders, and observed that the defendants' only remedy was to apply for a scheme of management. Before dealing with the questions argued before us in the appeal we may mention that the defendants did not object that the plaintiffs were not entitled to bring the suit, and we proceed on the assumption that the suit is maintainable. Mr. Ananthakrishna Aiyar for the appellants contended that, as the temple is admittedly a village temple belonging to the Brahmin village of Kuzhalmannara the lower Court ought to have held that the majority of the householders have the right to resolve upon any act of management relating to the temple and to enforce the same, that the consecration of a new lingam in the temple is a proper and necessary act, and that the plaintiffs' contention that without the consent of the minority there can be no valid acts of management is unsustainable. Mr.

Ananthakrishna Aiyar strongly relied upon the decision in *Yegnarama Dikshitar v. Gopala Pattar and Ors.* 41 IND.CAS. 738 which was affirmed by the Full Bench in (1918) M.W.N.595. In that case the facts were that the inhabitants of a certain village owned a temple in common and the temple owned moveable and Immovable properties. Disputes as to the management of the temple properties were referred to arbitrators who passed an award on which a decree was passed entrusting the management of the temple and its properties to the persons selected by the residents of particular streets. The plaintiffs in the suit who were some of the villagers interested in the communal properties sued to have it declared that a resolution passed by a majority of the villagers at a certain meeting in regard to the future management of the village Devaswom was valid and binding. It was held that the relationship of the inhabitants of a village in respect of a temple and its properties owned and managed by them in common partakes more of the character of a corporation than that which exists among the members of a club or of trustees, public or private and the law regulating the latter does not apply to them. It was further held that when a corporation consists of an indefinite number, the major portion of the members present at a meeting is competent to bind the minority, but where the body is definite there must be a major part of the whole number, and that the rule applies to India which recognises fluctuating communities as legal personae owning property, as for instance the caste and the village, and in matters relating to the management of caste property and the administration of its affairs, the majority of the caste has authority to control the minority.

2. We think that the principle of this decision applies to the present case, although it is true that the act complained of viz., the proposed consecration of a lingam in the temple is of a religious nature and not strictly speaking a matter relating to the administration of the affairs of the temple. The right to establish a lingam in the temple is an incident of the management of the temple by its owners. The plaint states that the temple belongs in common to both the factions of Kuzhalmannam village. 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) 8 Eq. 249. In *Cooper v. Gordon* (1869) 8 Eq. 249 it was laid down that so far as the administration of the

affairs of a church was concerned, the appointment of a minister by the majority bound the minority. As observed by Mr. Justice Abdur Rahim in

Yegnarama Dikshitar v. Gopala Paltar 41 Ind.Cas. 738 with reference to village and caste owning property, ""If such an indefinite and fluctuating

body had not the inherent powers to provide for the management of their property by means of resolutions which had the approval of the majority

and passed at a meeting properly and regularly convened, the business of such communities could not be conducted at all."" In this connection we

may refer to the pertinent observations of Mr. Justice Farran in *Lalji Shamji v. Walji Wardhman* ILR (1895) Bom. 507: ""It is clear upon the

authorities that in matters relating to management of caste property and the administration of its affairs, the majority of the caste has authority to

control the minority."" The learned Judge further observes that in the absence of a written or proved customary constitution, the affairs of a caste

could not be administered if the decision of a majority duly arrived at and notified were not binding on the minority. We are altogether unable to

agree with the view taken by the District Judge that ""it would be unsafe to allow any self-constituted body (whatever that may mean) to do acts

which other worshippers profess to find offensive to their scruples and the proper course would be for the defendants to apply for a scheme of

management.

3. Mr. Ganapathy Aiyar for the respondent endeavoured to support the decision of the lower Appellate Court on the ground that this is a case of a

private trust, and contended that the act of the majority of trustees cannot bind a dissenting minority nor the trust estate, and that in order to bind

the trust estate there must be the act of all the trustees. The learned vakil cited the following cases. *Luke v. South Kensington Hote Company*

(1879) 11 Ch. D. 121 and *Ashtbury v. Ashtbury* (1898) 2 Ch. 111. These decisions do not appear to have any bearing on the questions raised by

the appeal. No such case was raised on the pleadings or issues. It was never suggested that this was a case of a private trust, and that the plaintiffs

and the defendants are trustees. A question of this kind not raised on the pleadings cannot be gone into in second appeal.

4. Next it is contended, on behalf of the respondents that the suit is barred as res judicata by reason of the judgment and decree in second appeal

No. 1811 of 1897. A suit O.S. No. 148 of 1895 was brought in Temmalprom Munsif's Court by certain members of the Kuzhalmannam village

community for a perpetual injunction to restrain the defendants who were members of the same community from establishing a Bana lingam in the

plaint temple. It was alleged in the plaint that the Bana lingam was uggra (horrible) and that if established in the temple it would "" bring misery and

wretchedness to the villagers."" The relief asked for was a perpetual injunction restraining the defendants from establishing the said lingam. The

issues framed were, (2) ""Is the Bana lingam the defendants have and referred to in the plaint a good one ? Will the establishment of the said lingam

be detrimental to the interests and welfare of plaintiffs and other members of Kuzhalmannam Brahmin village? (3) Are plaintiffs entitled to the reliefs

claimed? ""The District Munsif found on the 2nd issue that the Bana lingam which the defendants desired to establish had bad properties and should

be rejected as unfit to be established in the temple, and that establishing it in the Siva temple would be against the interests of the villagers, and

passed a decree restraining the defendants from establishing the Bana lingam in the Kuzhalmannam temple. On appeal the Subordinate Judge held

that the plaintiffs were entitled to the injunction on the ground that they (the defendants) had not shown that in acting as they did they had obtained

the consent of plaintiffs' faction, and they were bound not to consecrate the disputed lingam unless and until the same was sanctioned by the entire

community. The decree of the District Munsif was, however, varied by adding the words ""unless and until they obtain the sanction of the village

community as a whole after giving every member a reasonable opportunity of expressing his own opinion and influencing the opinion of the rest in

the matter."" In Second Appeal No. 1811 of 1897 the learned Judges (Davies and Boddam, JJ.,) observed that the District Munsif had exceeded

his jurisdiction in raising and deciding the second issue, and that, if the introduction of an idol was objected to by members of the community to

which the temple belonged, the Court would interfere to prevent that being done by granting an injunction. In the result the decree of the

Subordinate Judge was modified by striking out that part of the decree which qualified the injunction granted, otherwise the decree was confirmed.

To constitute a matter res judicata the matter directly and substantially in issue in the subsequent suit must be the matter which was directly and

substantially in issue either actually or constructively, in the former suit. Whether a matter has been dealt with and adjudicated on is to be

determined by a reference to the plaint, the written statement, the issues and the judgment. An issue of law may be res judicata if the cause of

action in the subsequent suit is the same as that in the former suit. The operation of a decree as res judicata so far at any rate as the object matter

of a direct adjudication contained in the decree is concerned, can in no way be affected, in the absence of fraud or collusion, by the fact that the

suit was the result of a mistake of law or that the decree proceeded on such mistake. As between the parties thereto it must be held to be binding

and to operate as res judicata. Kaveri Ammal v. Sastri Ramier ILR (1902) M. 104 . On a reference to the pleadings and judgments in the suits it is

clear, we think, that the subject-matter of the former suit was entirely different from the subject-matter of the present one, and that the same

questions were not directly and substantially in issue in the two suits. The grievance of the plaintiffs in O.S. No. 198 of 1895 was that Bana lingam

which the defendants wanted to establish in the temple was "uggra", and that if established would bring disaster on the villagers. The District Munsif

addressed himself to this particular question as his finding on the second issue shows, and his decree refers to ""the Bana lingam."" The Subordinate

Judge also held that the defendants were not entitled to establish the disputed lingam until it had been sanctioned by the entire community. The

effect of the judgment of the High Court was to restore the decree of the District Munsif. The substantial question in issue in the present is the right

of the defendants to perform linga prathista without consulting and obtaining the assent of the plaintiffs' faction. We must therefore hold that the

judgment and decree in the former suits do not operate as res judicata.

5. In the result we reverse the decrees of the Lower Courts and allow the appeal. We observe that para 11 of the plaint states that the lingam

which was proposed to be consecrated was not fit to be consecrated, and, if established, would bring misfortune on the villagers. This is a question

of fact which has not been decided by the lower Court but is covered by the 7th additional issue. The case is remanded to the lower Appellate

Court for disposal in the light of the above observations on the evidence on record. Costs will abide the result.