

(1974) 01 MAD CK 0017
In the Madras High Court

V.K. Somasundaram Chetty

APPELLANT

Vs

Ganga Bai Ammal and Others

RESPONDENT

Date of Decision : 08-01-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Constitution of India, 1950 — Article 226

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63

Citation : (1978) 87 LW 712 : (1974) 87 LW 712 : (1975) 1 MLJ 152

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The petitioner in this writ petition prays for the issue of a writ of mandamus or any other appropriate writ directing the third

respondent herein, namely, the Deputy Commissioner (Judicial), Hindu Religious and Charitable Endowments (Administration) Department

Madras-34, to dismiss O.A. No. 104 of 1969 filed by the first respondent and pending on his file. The said O.A. was filed by the first respondent

herein under Sections 63 (a) and (b) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (Tamil Nadu Act XXII of 1959)

(hereinafter referred to as the Act) to declare Sri Paripoorna Chakra Vinayakar Temple situate at No. 1, Veeraswami Pillai Street, Periamet,

Madras-3, as a public temple and to declare the first respondent as the continuing hereditary trustee. The petitioner herein filed I.A. No. 127 of

1972 requesting the third respondent herein to consider and decide whether the said O.A. is maintainable at all as a preliminary issue. His

contention was that one Kamalammal filed O.A. No. 150 of 1955 u/s 57 (a) of the Madras Hindu Religious and Charitable Endowments Act,

1951 (Tamil Nadu Act XIX of 1951) for a declaration that the said temple was not a temple falling within the scope of the Act and that a

declaration was granted by the Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras, by his

order, dated 22nd August, 1958, that that order, therefore, has become final and that in view of the finality of that order, the present O.A. No.

104 of 1969 preferred by the first respondent herein was not maintainable. The said I.A. No 127 of 1972 was dismissed by the Deputy

Commissioner (Judicial), Hindu Religious and Charitable Endowments (Administration), namely, the third respondent, on 4th December, 1972

holding that the decision in O.A. No. 150 of 1965 does not operate a res judicata so as to bar the present O.A. No. 104 of 1969. Against this

order of the Deputy Commissioner, the petitioner herein preferred an appeal to the Commissioner, Hindu Religious and Charitable Endowments

(Administration) Department, namely, the second respondent herein, u/s 69(1) of the Act, and the second respondent, on 14th March, 1973,

dismissed the appeal. It is thereafter the present writ petition has been filed.

2. Mr. Thiruvengadam, the learned Counsel for the first respondent, raised two preliminary objections to the maintainability of the writ petition

itself. One objection is that the petitioner herein having preferred on appeal to the second respondent against the order of the third respondent u/s

69(1) of the Act, the only remedy available to the petitioner is now to file a suit in a civil Court as contemplated by Section 70 (1) of the Act, and

without resorting to that remedy, the petitioner cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. His

second objection is that the petitioner having preferred I.A. No. 127 of 1972 inviting the third respondent to decide the question of maintainability

of O.A. No. 104 of 1969 as a preliminary issue and an adverse decision having been rendered by the third respondent against the petitioner which

was confirmed by the second respondent on appeal, the petitioner cannot pray for the issue of a writ of mandamus to forbear the third respondent

from proceeding with O.A. No. 104 of 1969 without praying for quashing the orders passed by the third and second respondents herein. I am of

the opinion that the preliminary objections raised on behalf of the first respondent are well-founded. If, according to the petitioner, the order of the

Deputy Commissioner passed in I.A. No. 127 of 1972 is one which can be appealed against to the Commissioner u/s 69(1) of the Act certainly,

the only remedy then available to the petitioner is to institute a suit in a civil Court to set aside or modify the order of the Commissioner as provided

for u/s 70 of the Act, and that being the express statutory remedy made available to a person like the petitioner, he cannot ignore that remedy and

approach this Court under Article 226 of the Constitution of India. Equally, the petitioner having invited the third respondent and the second

respondent herein to adjudicate on the merits of his contention that O.A. No. 104 of 1969 is not maintainable, it is not open to him to ignore the

orders passed by the third and second respondents and to pray for the issue of a writ of mandamus straightaway without having taken steps to

have those orders set aside or quashed. Therefore, both the preliminary objections raised by the learned Counsel for the first respondent are well-

founded, and on that ground itself, the writ petition is liable to be dismissed.

3. Mr. Raghaviah strenuously contended before me that the decision of the Deputy Commissioner on the earlier occasion in allowing O.A. No.

150 of 1955 was final and will operate as res judicata to bar the first respondent herein in preferring O.A. No. 104 of 1969 before the Deputy

Commissioner. I am unable to accept this argument either. The record produced by the petitioner himself clearly shows that to O.A. No 150 of

1955 the petitioner had not impleaded anybody as a party and consequently the decision in that O.A. was rendered by the Deputy Commissioner

on hearing the petitioner and his aunt only. There was no scope or occasion for anybody else contesting the case of the petitioner and his aunt at

that stage. I asked Mr. Raghaviah to draw my attention to any provision in the Hindu Religious and Charitable Endowments Act, 1951 or the rules

framed thereunder providing for publication of that application by the petitioner and his aunt and calling for objections thereto so that it can be said

that a person like the first respondent and other members of the public had the opportunity of contesting the petitioner and his aunt and that as they

had not taken advantage of that opportunity, it is not open to them to subsequently complain against the decision in that O.A. Mr. Raghaviah

frankly conceded that there is no provision in the 1951 Act or the rules made thereunder for giving public notice of the application preferred by the

petitioner and his aunt and calling for objections from the public. If so, the decision rendered in O.A. No. 150 of 1955 cannot be said to be in any way final and binding.

4. The learned Counsel for the first respondent drew my attention to two significant features in this behalf. The first is, there is absolutely no provision either in the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951, or in the Act providing that the order of the Deputy Commissioner is final. The second is, both under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 as well as under the Act there is a provision for the Commissioner suo moto revising the order of the Deputy Commissioner at any time he likes (Section 61(2) of the 1951 Act and Section 69 (2) of the Act) and therefore the order of the Deputy Commissioner cannot be contended to be final. It is significant in this context to compare the provisions contained in Section 84 of the Tamil Nadu Hindu Religious Endowments Act, 1927 (Tamil Nadu Act II of 1927) with the corresponding provisions in the 1951 Act and in the Act. Section 84(1) of the Tamil Nadu Act II of 1927 provided for the settlement of disputes as to certain matters including whether an institution is a math or temple as defined in that Act by the Board. Sub-section (2) of that section provided, that any person affected by a decision under Sub-section (1) may, within six months, apply to the Court to modify or set aside such decision. Sub-section (3) stated that from every order of a District Judge, on an application under Sub-section (2), an appeal shall lie to the High Court within three months from the date of the order. According to Sub-section (4), subject to the result of an application under Sub-section (2) or of an appeal under Sub-section (3) the decision of the Board shall be final. Thus, a comparison of the relevant provisions contained in the Tamil Nadu Act II of 1927 with these contained in the 1951 Act and in the Act will clearly show that there is no express provisions giving finality to the decision of the Deputy Commissioner.

5. Apart from the above considerations, even considered as a question of general principle of res judicata, I am clearly of the opinion that the decision in O.A. No. 1150 of 1955 cannot be said to operate as res judicata so as to bar the hearing of O.A. No. 104 of 1959. In *Sri Bhavanarayanaswamivaru Temple v. Vadapalli Venkata Bhavanarayanacharyulu*

(1970) 2 S.C.W.R. 85 , the. Supreme Court pointed out:

In Arikapudi Balakotayya Vs. Yadlapalli Nagayya, while examining the effect of a decision u/s 84(2), it was observed that the doctrine of res

judicata is not confined to a decision in a suit but it applies to decisions in other proceedings as well. But how far a decision which is rendered in

other proceedings will bind the parties depends upon other considerations one of which is whether that decision determines substantial rights of

parties and the other is whether the parties are given adequate opportunities to establish the rights pleaded by them. The doctrine of res judicata is

not confined to the limits prescribed in Section 11, Civil Procedure Code. The underlying principle of that doctrine is that there should be finality in

litigation and that a person should not be vexed twice over in respect of the same matter.

6. I have already referred to the fact that in C.A. No. 150 of 1955 none was impleaded as respondents, and in the Act and in the rules relevant for

the enquiry there was no provision for giving public notice of the application preferred by the petitioner and his aunt and inviting objections thereto.

Consequently the persons interested had no opportunity of even knowing that such an application has been filed, much less contesting the

application or filing their claims or rights with reference thereto. Therefore, having regard to those features, it is not possible to invoke even the

general principle of res judicata so as to bar O.A. No. 104 of 1969 on the file of the third respondent preferred by the first respondent herein.

7. Hence, looked at from any point of view, the petitioner cannot succeed, and consequently the writ petition is dismissed with costs of the first

respondent. Counsel's fee Rs. 250.