

(1918) 04 MAD CK 0049
In the Madras High Court

Yegnarama Dikshadar and Others

APPELLANT

Vs

Gopala Pattar and Others

RESPONDENT

Date of Decision : 23-04-1918

Acts Referred:

Citation : 47 Ind. Cas. 548 : (1918) 8 LW 357

Hon'ble Judges : John Wallis, C.J.; Spencer, J.; Sadasiva Aiyar, J

Bench : Full Bench

Judgement

John Wallis, C.J.—The ease made in the plaint was that the villagers, including the plaintiffs and defendants, are the owners and Uraliars or managers of the suit temple situated in their village, that is to say, that it was a private endowment; and this was not contested on the other? side. Dealing with, the ease on this footing we agree with the lower Courts , and the learned Judges, in holding that the villagers, acting by a majority, were entitled to make the reference to arbitration, Exhibit A, for the purpose of settling a scheme of management and that the award made by the arbitrators, Exhibit B, was afterwards properly filed u/s 526 of the Code of Civil Procedure, the 116 Urallars who joined in the petition being entered as plaintiffs and the 46 counter-petitioners being entered as defendants, and thereupon became enforceable as a decree. The order, Exhibit C, recites that some of the counter-petitioners had withdrawn their objections and that some had been removed from the record so that the petition was not. opposed.

2. Assuming that this is to be treated as a consent decree by virtue of the original agreement to refer to arbitration, the next question, as to which the learned Judges have differed, is whether the villagers, acting by a- majority, validly set aside the provisions of the award as regards the management of the temple. Mr. Ramachandra Aiyar contended that they could not, relying on the decision of the Privy Council in Ramanathan Chetii v. Murugappa Chetti 10 C.W.N. 825 : 16 M.L.J. 265, which does not appear to have been cited before the learned Judges. It was held in that case that an agreement between several

branches of a family as to the management by the various branches of "a private endowment belonging to the family must hold good until altered by the Court or superseded by a new scheme effected with the concurrence of all parties interested. In this case there is the further objection that the award has acquired the force of a decree. The scheme of the management sanctioned by the decree does not provide for any alterations being made by the majority of the villagers, and I do not think that any such provision can be read into it. It is now well settled that a consent decree cannot be set aside by the consent of the parties. In *The Bellcairn* (1885) 10 P.D. 161: 34 W.R. 65 Lord Esher, M.R. observed: "When, at a trial, the Court gives judgment by consent of the parties, it is a binding judgment of the Court and cannot be set aside by a subsequent agreement between the solicitors, or the parties even though it be planned in the form of an order by consent on a summons and taken to a Registrar or Master and by him made as a matter of course. It is only the Court, with full knowledge of all the facts on which it is called on to act, which can set aside the first judgment." And in *Huddersfield Banking Company v. Lister* (1895) 2 Ch. 273 : 72 L.T. 703, in which the grounds on which the Court would set aside a consent decree or order were considered, Lindley, L.J., observed: A consent order, I agree, is an order and, so long as it stands, it must be, treated as such, and so long as it stands ...it is as good an estoppel as any other order. I have not the slightest doubt on it". In the present case the respondents, if they wished to modify the scheme in the award, should have filed a suit for that purpose, I, therefore, would allow the appeal and remand the case to the lower Court for disposal according to law. Costs to abide.

3. I have already said that it is not the case of any of the parties to the suit that this is a public endowment. In *Appu Pattar v. Kurumba Bhagavati* 11 Ind. Cas. 633, where such a case was not raised in the pleadings or issues, but the lower Courts went into it and the lower Appellate Court found that the endowment was a public one, this Court set aside the finding as at variance with the case disclosed by the plaint. I think this was the proper course to take, and that we should not be justified in raising such an issue now. The public are in no way represented in this suit, there is no one on the record to assert their rights, and those rights cannot be in any way affected by the decision in this case.

Sadasiva Aiyar, J.

4. I agree with my Lord. I was, at first, inclined to hold that, on the pleadings themselves, the temple in question might be held to be a public religious trust and hence the old decree settling a scheme on the award passed on a private reference was a nullity and that the plaintiffs, who rely upon that decree, ought to be non-suited on that ground. It is significant that neither side would unhesitatingly assert that it is not a public temple. In *Muthia Chetti v. Periannan Chetti* 34 Ind. Cas. 551 my Lord the Chief Justice says (see pages 232 and 233 Pages of L.W.--Ed.): "it maybe that a caste or a section of a caste can own a temple as if has been held in *Pragji Kalan v. Govind Gopal* 11 Ind. Jur.

464, that they can own vessels for cooking and dining, but in *Thackersey Dewraj v. Hurbhum Nursey* 4 Ind. Dec. 664...it was held that a temple which was managed by a certain caste was the subject of a public charitable trust and that a scheme could be framed for it u/s 539 of the old Civil Procedure Code.... Even if it had been shown that the temple was founded for the use of the particular section of the caste (Ilayathakudi Kovil Nagarathar Sub-section of the Nagarathar caste), which consists of several families not shown to be otherwise than very distantly related to one another, we should, as at present advised, be inclined to hold that they are a section of the public and that Section 92 is applicable. Serious inconveniences would arise from holding that a temple of this kind was the private property of such a large body of persons as the Ilayathakudi Kovil Nagarathars, and we think that such private ownership should be strictly proved." To hold that a temple alleged to belong to the fluctuating residents of four large streets is a private temple is rather extraordinary, even though it is not expressly admitted by either side that other Hindu worshippers have been worshipping in the temple. However, as the case seems to have been argued all along on the footing that the old decree was a valid decree and as my Lord bas, in his judgment, sufficiently indicated that the interests of , those members of the public who would be. interested in the temple, if it was a public temple, would not be jeopardised by the decision in this suit, I concur with my Lord in the decision in this suit just now pronounced by him in favour of the plaintiffs.

Spencer, J.

5. I am satisfied, on the pleadings, that no case has been put forward as to this being a public charitable trust and that no such plea should be allowed to be raised now. I also feel no doubt that a scheme for the management of a private endowment, such as the village temple or Devaswom which has been the subject of an award and has further become embodied in a decree, cannot be altered merely by the will of the majority of the persons interested, unless in the scheme itself there is a provision for such alteration. Against those defendants among the villagers who " were themselves parties to the decree, the decree would operate as *res judicata* in subsequent proceedings, except where one of the issues before the Court raised the question whether the scheme owing to a change of circumstances or for other good reasons needed to" be altered by the Court. One of the learned Judges, who heard the second appeal (Abdur Rahim, J.), considered it reasonable to treat the award as intended to be only a temporary arrangement. There is nothing in the award, so far as I have been able to discover, to limit the duration of the scheme and, therefore, it must be treated as remaining in force until set aside or altered by a competent authority, that is, by a Court having jurisdiction in the matter.

6. I agree that the appeal should be allowed, that the plaintiffs should be given a decree declaring the proceedings of September 25th, 1910, invalid so far as they purported to contravene the decree in Original Suit No. 292 of 1898.

7. I think the suit must be remanded to the Subordinate Judge for deciding what

reliefs the plaintiffs are entitled to out of those claimed in the plaint upon our decision on this point of law.