

K. Subbaroya Mudali and anr. Vs. K. Velappa Mudali and ors.

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Court : Chennai

Decided On : Jul-25-1958

Reported in : (1958)2MLJ591

Appellant : K. Subbaroya Mudali and anr.

Respondent : K. Velappa Mudali and ors.

Judgement :

Ramaswami, J.

1. This is an appeal preferred against the Decree and Judgment of the learned Subordinate Judge of Chingleput in A.S. No. 4 of 1955, confirming the Decree and Judgment of the learned District Munsif of Kancheepuram in O.S. No. 275 of 1951.
2. The dispute in this case relates to the Kumbabishekam ceremony of the renovated Selvavinayagar temple in Vilakadi Koil Thope Street.
3. Both the Courts have found that the plaintiffs and the defendants who are Sengunthar residents of Vilakadi Koil Street, Velikkaipattarari Street and Vilakadi Koil Thope Street, and to whom Selvavinayagar seems to be the tutelar deity, are the joint owners of this temple. This is a village community temple, though situated in a suburb which is naturally growing and taking in villages around Kancheepuram. The residents of these three streets have been making collections, renovated the Selvavinayagar Temple and were making arrangements

for the Kumbabishekam or the renovation ceremony. The Kumbabishekam ceremony, I need not point out, is at the end of the renovation of the temple and intended to give 4 new lease of life. It was at this juncture that the residents of the three streets have fallen out, forming themselves into two factions, namely, -the plaintiffs and others on one-side and defendants and others on the other.

4. The plaintiffs came to Court, stating that the defendants and others were attempting to celebrate the Kumbabishekam without any reference to them anti exclusively, that this was an invasion of their private rights and that they should be protested by means of an injunction.

5. The case for the defendants was that they were entitled exclusively to perform the Kumbabishekam ceremony and that the plaintiffs had no grievance.

6. Both the Courts below have, as I just mentioned, come to the conclusion that the parties are the joint owners of this temple. This concurrent finding of fact is binding on me.

7. On that foot, the next point for consideration is whether the suit is barred under Section 93, corresponding to old Section 73, of the Madras Hindu Religious Endowments Act. The term 'Administration of Management' has been construed by Ramesam, Offg. G.J., in Vythilinga Pandara Sannadhi v. Ranganaiha Mudaliar (1933) M.L.J. 98 : I.L.R. Mad. 362. He points out at page 375 that the term ' administration or management' of a religious institution can be construed in two ways, namely, in a strict sense and in a loose sense. The term construed strictly means nothing more than that the suits should be confined to obtaining a reform or change in the administration or management of a religious endowment. In a wider sense, it would take in all the powers which have been given to the Board or the Commissioners to enquire into matters exclusively and which will now be found narrated in Section 57.

8. Section 57 lays down:

Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into and decide the following disputes

and matters:

- (a) Whether the institution is a religious institution;
- (b) Whether a trustee holds or held office as a hereditary trustee;
- (c) Whether any property or, money is a religious endowment;
- (d) Whether any property or money is a specific endowment;
- (e) Whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other property.

9. In this case, either interpreted by the wider connotation or the narrower connotation, this claim by the plaintiffs to participate along with the defendants in the Kumbabishekam ceremony would not be for the administration of management. In the 'stricter sense, this claim by the plaintiffs would nowhere be near the definition laid down by the Officiating Chief Justice. Turning to the wider connotation, this claim would not fall within Clauses (a) to (e). In fact, a faint attempt was made before me to bring it within Clause (e). But this participation in Kumbabishekam ceremony is not the honour, emolument or perquisite contemplated by that clause, and certainly it would not fall within the established usage of a religious institution in regard to any other matter contemplated in the latter part of that clause.

10. In other words, if the respondents are now directed to go before the Hindu Religious Endowment Commissioner on the ground that this is not a matter cognisable by a Civil Court, the Deputy Commissioner will turn round and ask the respondents under what provision they seek to have this matter enquired into and adjudicated by him. Therefore if they follow the advice given by the learned advocate for the appellants they would have taken upon themselves a wholly supererogatory task of going to a Commissioner who would feel himself absolutely incompetent to give the relief asked for. Therefore, beyond merely driving the plaintiffs from pillar to post, I do not see any legality, propriety or utility in; asking them to go to the Deputy Commissioner.

11. On the other hand, it is a well-settled principle of construction that a provision of law should receive strict interpretation when the jurisdiction is sought to be ousted from a civil Court. In fact, all civil disputes have to be taken cognisance of by civil Courts unless the jurisdiction of the Court has been taken away expressly or by necessary intendment. In this case, the jurisdiction of the civil Court to enquire into this matter is neither expressly nor impliedly barred.

12. The conclusion, therefore, of both the Courts below that they have jurisdiction to enquire into the matter is perfectly correct. I affirm the Decrees and Judgments of both the Courts below and dismiss this appeal with costs.

13. Before parting with this case, I wish to point out that the injunction granted could not in any way operate against the performance of the Kumbabishekam. On the other hand, all that the injunction envisages is that, in accordance with established practice and the rights of parties, all the Sengunthar people of the three streets should participate in the Kumbabishekam ceremony of Selvavinayagar temple. It is to be hoped that, after going through three Courts, better wisdom would dawn upon the parties and they would co-operate in celebrating the Kumbabishekam and obtain the grace of Sri Selvavinayagar.