

A. Munisawmi Chetty and ors. Vs. A. Murugappa Chetty and ors.

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Court : Chennai

Decided On : Apr-15-1909

Reported in : 5Ind.Cas.515

Judge : Wallis, J.

Appellant : A. Munisawmi Chetty and ors.

Respondent : A. Murugappa Chetty and ors.

Judgement :

Wallis, J.

1. This is a suit brought by the two original plaintiffs who described themselves as members of the Beri Chetti caste of the Vaisya community and followers and disciples of Sri Abhimana Dharma Siva Chariar and worshippers of the temple of Sri Muthukumarasawmy against defendants Nos. 1 to 3 of whom the first is one of the Dharmakartas of the Temple and the 2nd and 3rd are alleged by the plaintiffs to have been duly elected as Dharmakartas. The plaintiffs alleged that they were interested in the said temple, in the worship therein conducted, in its appurtenances and in the management and administration of its property and purported to sue on behalf of themselves and all the other members of the said Beri Chetti caste being followers or disciples of the said Abhimana Dharma Siva Chariar besides people of all other Hindu communities--these last words having been added by way of amendment. The plaintiffs obtained the Acting Advocate

General's leave to sue under Section 539, Civil Procedure Code, so far as the suit relates to matters within the purview of that section. They also obtained leave from this Court to sue under Section 30 on behalf of themselves and all others the members of the Beri Chotti caste being disciples of Sri Abhimana Dharma Siva Chariar and other Hindu worshippers at the temple of Sri Muthukumaraswami. The two original plaintiffs having died, four additional plaintiffs were substituted by order of this Court, and by another order defendants Nos. 4 to 13 who are described as worshippers at the time were added as additional defendants. The prayers in the plaint, as first framed, were for,

(1) leave to sue under Section 30(2) the settlement of a scheme for the management of the temple,

(3) for the removal of the 1st defendant,

(4) for a declaration that the 3rd defendant has been duly and validly elected Dharmakarta,

(5) for a receiver,

(6) for a temporary injunction pending suit,

(7) for an account against the 1st and 2nd defendants and

(8) the usual prayer for costs and further and other reliefs. At the settlement of issues the prayers for the removal of the 1st defendant and for an account against the 1st and 2nd defendants were withdrawn thus making the suit one for the settlement of a scheme and the declaration of the 3rd defendant's right to the position of Dharmakarta. This alteration, however, did not meet the defendants' objections to the frame of the suit which are embodied in the following three issues:

(1) Are the plaintiffs entitled to maintain the suit under Section 30, Civil Procedure Code?

(2) Are the plaintiffs entitled to sue for a declaration of the 3rd defendant's rights? and

(3) Is the suit bad for misjoinder? At the hearing the prayer for the settlement of a scheme was not opposed; but the objections raised in the issues were pressed as regards the other part of the suit and at the request of the defendants which was not opposed by the plaintiffs, I decided to take those issues first. Before dealing with the various contentions, I may say that it appears to me that on the principles enunciated in the Colonial. Refining Co. Ltd., v. Irving (1905) A.C. 369 the case must be governed by the provisions of Section 539 of the old Code and not by the corresponding but modified provisions of Section 92 of the new Code as these provisions cannot be considered as dealing merely with procedure but affect the right of suit. Now the main objection taken by the defendants to the present suit was that it is an attempt on the part of the plaintiffs to fight the 3rd defendant's battles and that such a suit will not lie at all or in any case as at present framed, either under Section 30 or under Section 539 and the plaintiffs certainly failed to call my attention to any case in which such a suit has been maintained by third parties either under Section 30 or under Section

539. To see whether this objection is well founded, the provisions of the sections must be considered, but, in my opinion, these provisions should not be strained so as to enable one set of people to fight another's battles. Now as regards the 3rd defendant's right, the relief sought whether under Section 30 or Section 539, is purely declaratory and it is contended for the other defendants that such declaratory relief cannot be granted by having regard to the terms of Section 42, Specific Relief Act, which must apply to suits under Section 30, in the same way as to any other suits. With reference to the terms of this section it is said that the plaintiffs and all the other members of the Beri Chetti caste, being disciples of Sri Abhimana and other Hindu worshippers cannot be said to be entitled to any legal character or to any right to any property which the defendants have denied or are interested in denying within the meaning of Section 42 so as to give the Court jurisdiction to pass a purely declaratory decree. Now following the terms of the order giving leave to sue and taking the class represented by the plaintiffs to be not merely the particular members of the Beri Chetti caste in whom the right of electing the Dharmakartas of the temple is said to be vested, but the larger class which includes other Hindu worshippers at the temple as well, it appears to me that this objection is well founded, but it is unnecessary to rest my decision on this

ground because, even if the suit is within the first part of Section 42, it also appears to me to come within the proviso and to fail also, because the plaintiffs do not seek any farther relief such as injunction restraining all or some of the defendants other than the 3rd from interfering with the 3rd defendant's rights to the office. This, in my opinion, disposes of the suit so far as it is a suit under Section 30, Civil Procedure Code. This objection would also be fatal to any right of the plaintiffs as individuals to maintain a suit such as the present without any leave under Section 30 or Section 539, as to which see in the case of Budree Das Muhin v. Chooni Lall Johwry 33 C.k 789 a suit in which leave had been granted under Section 30 but not under Section

539. As regards Section 539 there appears to me to be two questions

(1) Will any such suit as this lie under Section 539? and

(2) Will a suit in the present form lie? The general requisites of a suit under Section 539 are discussed by Woodroffe, J. in the case of Budree Das Mukin v. Chooni Lall Johwry 33 C.K 789, but it was unnecessary to decide the question whether such a suit as this could be maintained under the section and no leave had been obtained in that case, it is well settled that the suit contemplated under Section 539 is a suit against a trustee including under that term a person assuming to act as trustee, a trustee de son tort and so far the suit as regards the 1st defendant it may be supported. It must also lie by persons having an interest in the trust and it may be that the plaintiffs satisfy that condition. But it must also be for one of the reliefs specified in the section. The suit for the assertion of the rights of one of the trustees taken by itself is not a suit for one of the reliefs specified in Clauses (a) to (c) of the section.

2. Can it be regarded as a suit for such further or other relief as the nature of the case may require? Having regard to the strict interpretation put upon the section by the Full Bench in the case of Ranga Sami Naickan v. Varadappa Naickan 17 M.K 462 a decision which is binding on me and which holds that it does not cover a suit for the removal of a trustee, I think such a proposition cannot be maintained if the suit is to be regarded as a suit for a declaration only that the 3rd defendant has been duly appointed. It is said, however, that it is incidental to the framing of a

scheme which is one of the reliefs sought for in the suit and specified in the section. I am not satisfied that an endeavour such as this to assert the rights of an alleged trustee can be said to be incidental to a prayer for setting a scheme of management for the trust. It seems to me that a scheme can be perfectly well settled without going into the question of the 3rd defendant's right as for instance by directing a fresh appointment of trustees when the new scheme comes into force. Further the effect of entering on such matter would be to take the Court away altogether from the details of the proposed scheme and to involve it in the consideration of questions which are really questions of private right and may well be left to those who themselves claim such rights and are interested in asserting them viz., the trustee himself. It is well settled that Section 539 was neither intended to bar the assertion of private rights on the one hand nor to afford a means of asserting them on the other. Then too reading this plaint the conclusion to which I come is that the plaint as framed was primarily a suit for the removal of the 1st defendant and the assertion of the 3rd defendant's rights and that it is still primarily a suit for the latter object and that the prayer for a scheme is Really incidental to the prayer relating to the 3rd defendant and not vice versa.

3. As to the objection that this prayer is only for declaratory relief, it may be that Section 42, Specific Belief Act, does not apply at all to suits under Section 539, Civil Procedure Code, because the right of suit in that section is conferred upon persons who may not and here do not appear to satisfy the test imposed by Section 42 and it is clear that if Section 539 expressly provides for declaratory relief it cannot be cut down by the general provision of Section 42. Where, however, the case comes within the supplementary provision as to such further or other relief as the nature of the case may require, I am disposed to think the Court ought to be guided by the provisions of Section 42 and to hold that the nature of the case does not require merely declaratory relief to be given where further relief might have been sought for in addition.

4. For these reasons I answer the 1st and 2nd issues in the negative and it becomes unnecessary to decide the third. The case will be referred to Chambers for the settlement of a scheme. Costs reserved.

