

**Thanappa Goundar and ors. Vs. Sabapathy Goundar**

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**SooperKanoon Citation :** [sooperkanoon.com/816384](http://sooperkanoon.com/816384)

**Court :** Chennai

**Decided On :** May-26-1959

**Reported in :** (1959)2MLJ538

**Appellant :** Thanappa Goundar and ors.

**Respondent :** Sabapathy Goundar

**Judgement :**

ORDER

1. This is an application to quash the proceedings now pending before the Executive First Class Magistrate, Tindivanam, in M.C. No. 11 of 1959 on his file under Section 145(1), Criminal Procedure Code. The respondent filed an application before the Executive First Class Magistrate in April, 1959, alleging that he (the respondent) was in exclusive management of the affairs of a temple known as Mariamman Koil in Nallur village as its trustee and Dharmakartha, that he had to perform certain festivals in the temple, that the petitioners herein were attempting by force to lock the doors of the temple and prevent the respondent herein from performing the festivals and praying that the Sub-Inspector of Police, Bramadesam, be directed to enquire and report regarding the facts and that an order be passed directing the petitioners not to interfere with the respondent managing the temple, and its properties and affairs. On the basis of that petition, the learned Executive First Class Magistrate issued a preliminary order under Section 145(1), Criminal Procedure Code. He was of opinion that a dispute likely to lead to a breach of the peace existed relating to the possession of the

temple and its properties. The petitioners filed a statement of claim. The petitioner's case is that they and the respondent are in possession of the temple and its properties as joint trustees and that the respondent does not have a right to manage the temple and its affairs-as its sole trustee. Proceedings are now pending before the Executive First Class Magistrate.

2. The petitioners contended that the Executive First Class Magistrate does not have jurisdiction to take action under Section 145(1), Criminal Procedure Code,, regarding the subject-matter of this dispute. In support of that proposition, the-petitioner's learned counsel relies on Surendranath Banerjee v. Sashibushan Sarkar I.L.R. (1925) Cal. 959. It was held in that case that the right to perform the pooja of an idol or to have a share of the offerings made to the idol could not be said to be a right to user of any land as explained inSection 145, Criminal Procedure Code. In the case before us, the dispute does not relate to the right of performing pooja, or to any share in the offerings made to the idol but to the management of the temple and its affairs. Basic to the right of management is possession of the temple building and its properties. A person who claims to be the sole trustee, claims thereby to be in exclusive possession of the temple and of its properties. Being in such possession, he claims that nobody else should interfere with his possession of the temple and its properties or with his right to manage the affairs of the temple or his acts of management. If some-other person contests that claim and says that he and the former are joint trustees, then the claim of the person who contests is that the right to possession is vested not in the petitioner only but in the petitioner and the respondent, and that in fact both, of them are in joint possession. Contentions of that kind immediately give rise to a dispute relating to possession. In order that a dispute relating to possession might give jurisdiction to a Magistrate to take action underSection 145, Criminal Procedure Code, the dispute need not be a dispute relating to land or building claimed by a person as owner, that is to say, as a person entitled to the full beneficial enjoyment. A dispute regarding possession may be a dispute regarding possession as trustee or as guardian or in any other fiduciary capacity. So long as one person claims to be in possession to the exclusion of another and alleges that that other person seeks unlawfully and by force to interfere with the former's possession and the latter asserts that he is in joint possession and is entitled to

resist the former's claim to exclusive possession, there is a dispute relating to possession, which, if it is likely to lead to a breach of the peace would justify and may indeed necessitate, a Magistrate taking' action underSection 145, Criminal Procedure Code. I am unable to agree with the petitioners' learned counsel that the dispute in respect of which the learned Magistrate is taking action (M.C. No. 11 of 1959) is not a dispute to whichSection 145, Criminal Procedure Code, could apply.

3. The next contention urged on behalf of the petitioner is that there are proceedings pending before the Deputy Commissioner for Hindu Religious and Charitable Endowments relating to the rights of parties to trusteeship and that the pendency of those proceedings bars, underSection 93 of the Madras Hindu Religious and Charitable Endowments Act, the jurisdiction of the Executive First Class Magistrate to hold an enquiry underSection 145, Criminal Procedure Code. The Deputy Commissioner for Hindu Religious and Charitable Endowments does not have jurisdiction to pass any orders to prevent a breach of the peace. While proceedings-are taking place before him, peace should be maintained. The jurisdiction to pass, orders relating to prevention of breaches of the peace pertains exclusively to the magistracy. Therefore nothing that is pending before the officers of the Hindu Religious and Charitable Endowments Department could take away the jurisdiction of the Executive First Class Magistrate to take action underSection 145, Criminal Procedure Code, or indeed furnish any justification for him for refraining from taking such action if the dispute relating to possession is such as might lead to a breach of the peace. The pendency of proceedings before the officers of the Hindu Religious and Charitable Endowments Department does not deprive the learned Executive First Class Magistrate of his jurisdiction to proceed with the enquiry pending in M.C. No. 11 of 1959 on his file.

4. This Petition is dismissed.