Madras High Court
Balasubramania Gurukkal vs Sankara Gurukkal And Ors. on 19 September, 1988
Equivalent citations: (1989) 2 MLJ 489
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JUDGMENT Bellie, J.

1. The plaintiff who won his suit in the trial Court but lost it in the first appellate court has preferred this second appeal.

2. The suit relates to Archaka right in a temple. According to the plaintiff his family has been doing archaka service in the Selvavinayagar Temple situate at Market St., Panrutti, from time immemorial and he himself has been doing that service for past 40 years first as an agent of his brother Muthu Gurukkal and then in his own right and he was paid a monthly salary of Rs. 18. He was also getting not less than Rs. 50 per mensem by way of kanikkais from devotees and Kattalaidars. While so the first defendant who is looking after the affairs of the temple without any reason pre vented him from doing his services by the end of Thai, 1977 and appointed the second defendant in his place. He sent a notice to the defendants on 1.3.1977 for which the first defendant sent a reply with untenable contentions. Gn these allegations the plaintiff has prayed for declaration that he has right to do service in the temple as hereditary archaka, and to injunct the first defendant from interfering with the plaintiffs performing the said right or alternatively to direct the defendants to restore the defendants to pay mesne profits to the plaintiff from the date of plaint.

3. The first defendant denies that the plaintiffs family was doing archaka service from time immemorial and the plaintiff has been doing that service for 40 years. According to him the archaka service in the suit temple is not hereditary one. The archakas were appointed by the trustees from time to time and the archakas are liable to be dismissed for service when they are found guilty. It is contended that the suit temple is a private temple belonging to the family of first defendants father-in-law Masilamani Pillai. The plaintiff was doing archaka service for various temples and because of this he was not able to do poojas in the suit temple regularly and aggrieved by this the father-in-law of the first defendant removed him. from service. As the suit temple is a private temple and as it does not come under the Hindu Religious and Charitable Endowment Board, he need not give notice to the plaintiff before terminating of service. The plaintiff being not a hereditary archaka he is not entitled for the declaration as such.

4. The second defendant filed a written statement supporting the contention of the first respondent. First defendant died during the pendency of the suit and his Legal Representatives were impleaded as defendant 3 to 5. They too filed a written statement supporting the case of the first defendant.

5. On these pleading the trial District Munsif of Cuddalore held that the plaintiff has proved that he. is a hereditary archaka and that the first defendant has no right to remove the plaintiff from service. On these findings it decreed the suit declaring that the plaintiff has right to the office as hereditary archaka in the suit temple and also decreed restraining the defendants 2 to 5 from interfering with the plaintiffs performing the archaka service in the suit temple.

6. Defendant 2 and 3 appealed and the Subordinate Judge, Cuddalore (first appellate court), did not agree with the findings of the trial Court and instead it held temple and the defendants are not bound by any rules and Regulations and the relationship between the first defendant and the plaintiff was that of master and servant and that the plaintiff has not proved that in law he has any right and as such it cannot be said that his dismissal from the archaka service is illegal, and thus finding the first appellate Court set aside the decree passed by the trial Court.

7. A cross objection filed by the plaintiff against the trial Court disallowing his claim for mesne profits was dismissed.

8. In the second appeal, R.S.Venkatachari, learned Counsel for the plaintiff appellant, contended that it is illegal that the first defendant has prevented the plaintiff from doing archaka service to the temple stating that his service has been terminated without giving any notice or assigning any reason. He proceeds on the basis that the suit temple is a public temple. But the temple has not been notified as a public temple under the Hindu Religious & Charitable Endownments Board nor its management has been taken over by the Board thereof. Therefore the provisions of the Hindu Religious & Charitable Endownments Act do not apply to this temple. Then, in the Court below it does not appear to be the case of the plaintiff that it is a public temple. In the plaint it is not stated that the suit temple is a public temple. In the plaint it is not stated that the suit temple is a public temple. The plaintiff had earlier sent a notice Ex. A3 dated 1-3-1977 to the defendants 1 and 2 and therein he has not referred to the suit temple as a public temple. In the reply notice Exs. A4 and A5 the defendants 1 and 2 have stated in clear terms that the suit temple is a private temple and it was founded and established by one Masila-mani the father-in-law of the first defendant and during the life time of Masilamani he was himself managing the temple and after the life-time of Masilamani he is incharge of the management of the temple. Inspite of the definite averments in the reply notices by defendants that the templp is a private temple the plaintiff in his plaint would not say that it is a public temple, but he has just stated that, The allegations in the reply notice that the suit temple is the private temple of the 1st de fendant, that the plaintiffs service in the temple is not hereditary, that the plaintiff was not discharging his duty regularly are all false". Thus the plaintiff has just made a denial in one sentence, while denying in the same sentence other facts stated in the reply notice, that the suit temple is a private temple. This by ho means can be said to be specific pleading in the plaint. The plaintiffs right if any would depend on the temple being a public temple. One would expect him to state in the plaint in clear and specific terms that the suit temple is public temple, but he does not do so. This only shows that the plaintiff did not think it was a public temple. While so in the written statement of the first defendant he has stated in no uncertain terms that the suit temple was built by his father-in-law Masilamani and it is a private temple of his family and during his life-time Masilamani was managing the suit temple and after him the first defendant is managing it. The first defendant has asserted that the temple is a private temple in his written statement. In the trial Court no issue has been framed whether the suit temple is a private or a public temple. The reason may be because the trial District Munsif thought that the temple and/or the plaintiff did not want an issue to be framed in this regard. Going through the plaint as it reads it would appear to be quite natural that one would not think that there is dispute as to the nature of the temple i.e., whether it is a public or private. However the learned trial Munsif in his Judgment had stated one sentence as a passing reference that.

D.W. 2 has not established whether the suit temple is a private temple". It must be remembered that D.W.2 is the third defendant i.e. one of the Legal Representatives of the first defendant who died during the pendency of the suit. Then there is no issue as regards the nature of temple whether it is a private or public temple and evidence seems to have been let in without such an issue in mind. Such a sentence as above in the Judgment is quite unwarranted and out of place. In the first appellate Court the learned Subordinate Judge states at the outset that.

It is common ground that Sri. Selvavinayagar temple situate at the Market Street, Panrutti is a private temple belonging to Masilamani Pillai's family members.

The learned Subordinate Judge then proceeds to state at page 6 that Admittedly, the suit temple is a private temple outside the purview of Hindu Religious En-downment Board.

But of course the learned first appellate court has not stated on what basis he says that it is a common ground that the temple is a private temple and admittedly the suit temple is a private temple. However he seems to think that there is no dispute that it is a private temple as contended by the defendant in the written statements On reading the Judgment of the first appellate court one thing appears to be certain i.e., the learned Counsel who appeared for the respondent-plaintiff before the learned first appellate Court Judge, even though may not have admitted that it is a private temple, he did not argue contending that it is a public temple. That is why considering the fact that there is no issue on this point and there is no specific plea in the plaint that is a public temple and the learned Counsel in the first appellate Court has not also contended that it is a public temple, the learned Judge has unreservedly and categorically observed that the suit temple is a private temple, and it is admitted that the temple is a private temple.

9. Then coming to the second appeal only two questions have been formulated as substantial question of law at the time of admission of the appeal and they are:

(1) Whether the appellant is not entitled to perform the duties of hereditary archakas; and (2) Whether such a person can be removed from service by the trustee in office with out giving a notice and holding an enquiry?

Thus no point as substantial question of law has been formulated regarding the character of the temple. In these circumstances of the case I do not think the learned Counsel for the appellant-plain tiff can now contend a private temple. However the learned Counsel cites the following decisions:(1) Mundacheri Koman v. Thachangat Puthan Viltil Achudan Nair and Ors. 40 L.W. 428; A.I.R. 1934 P.C. 230; 67 M.L.J. 788 and (2)"Sri. Chidambareswara Sivagami Ambigai Temple by Their Managing Trustee S. V.R.A. Hal-lakaruppan Chettiar v. The Commissioner of Hindu Religious and Charitable Endownments Madras, 78 L.N. 404: (1966)1 M.L.J. 109; and points out that as observed in these two decisions in South India the presumption is; a temple is a public temple. That may be so, but in a contest as to whether a temple is a private temple or public temple such a presumption can be had but in the present case, as stated above, there is no real contest as to the character of the temple. On the other hand the defendants have asserted over and again that the, temple is a private temple and therefore the plaintiff is liable to be discharged from his services at the will of the first

defendant who is in management of the temple. in the first of the said tow cases it is stated:

In the greater part of the Madras Presidency where private temple are practically unknown, the presumption is that temples and their en downments from public charitable trust". In the second case it is stated:

it is now well settled that unlike the temple in Kerala, there is a presumption that temples in South India are public and the onus of proof is on the person ascertaining it to prove that it is a private temple.

These two authorities do not say that there are no private temples in South India, but according to them, it appears, private temples in South India are rare. The present suit temple can be one of those rare temples. The learned Counsel then points out that in Peesapati Sitaramanuja Chari and Anr. v. Kanduri Vallamma, 1959 M.W.N. 842 and Bhavanam Nagireddi and Ors. v. The Board of Commissioners for Hindu Religious Endownments, Madras, 46 L.W. 388: (1937)2 M.L.J. 485, it has been held that even though the temple is built privately when the public are freely al lowed to worship therein without permission of Dharmakartha or Trustees of the temple as in the first case, or when Kainkariyams are undertaken and Paksha Utsavam and Masa Utasavam are performed and the deity is taken in public procession as in the second case, that temple must be treated as one dedicated to the public worship and " hence it is a public temple. Certain factors as mentioned in these decisions may show that the temple is a public temple but certain other factors may show that it is a private temple. In the present case it is not in dispute that the temple was built by Masilamani, father-in-law of the first defendant, and the said Masilamani was in the management of the temple and after his death the defendant was managing it. Therefore it cannot be disputed that initially atleast the temple was a private one. The temple cannot be said to be an old one. But if it has changed into a public temple it must be the plaintiff who seeks a right to prove that it has so happened. May be the public are allowed to do poojas and perform kattalais but from this alone it cannot be said that the temple is a public one. The learned Counsel brings to the notice of the Court that admittedly the temple is in a 'Ka-daiveethi'. But it is not in evidence as to whether the temple was built on a private land or public land. It is also not clear as. to how Masilamani happened to build the temple. It is disputed by the defendants that the plaintiff father was the archaka and after him he is the archaka in the temple. But even granting that it is true could it be said that on account of this alone there is recognised hereditary archakaship? It may be so happened that father was the archaka and after his death his son did the services of his fat her. But this does not give a right to the plaintiff of any hereditary archaka-ship. Here it may be relevant to note that by the amendment of the Hindu Religious and Chari table Endownments Act, 1959 in 1970 the heredi tary archakaship has been done away with (see the decision in Seshammal and Ors. v. State of Tamil Nadu .

10. Mr. R.S. Venkatachari draws my attention to the decision in "Tiruvambala Desikar Guana Sambanda Pandra Sangadhi Avargal and Anr. v. Chinna Pandaram Alias Manikkavachaka De sikar and Ors. 4 L.W. 306: (1915)I.L.R. 40 Mad.177, and argues that in the case of dismissal of the junior Pandarasannadhi of the Dharmapu-ram Adhinam Mutt it was held that for want of notice of the charges alleged against him or an opportunity for making his defence thereto, the dismissal order was void and inoperative in law. But on going through the Judgment 1 find that the facts therein are

quiet different from the facts in our case. This difference could be seen from the observation in that Judgment at page 190 that; "The nomination and ordination of a junior Pandarsannadhi is the customary manner of providing for the line of succession in mutts of this kind and it is not shown that the Pandar sannadhi has any power of arbitrary dismissal, while on the other hand it has been held, in a previous suit relating to the instruction that he may dismiss for good cause". Then it is stated that:

When an office is held at pleasure the incumbent may be removed even on charges of misconduct without any opportunity of being heard, because he is removable at pleasure without any misconduct at all, but in all other cases, the objection for want of notice, in the language of an old case can never be got over". Therefore this decision relied on by the learned Counsel cannot be of any assistance to the appellant-plaintiff. Therefore I agree with the first appellate Court that the suit temple is a private temple and the plaintiff was doing the services of an archaka under the control of first defendant and he was liable to be removed from service at the pleasure of first defendant and therefore the plaintiff has no right for being reinstated or ask the court to direct the first defendant not to interfere when he does the archaka service.

11. In the result therefore the Second appeal is dismissed. But in the circumstances of the case, no costs.