T. D. Gopalan

Vs

The Commissioner of Hindu Religious and Charitable Endowments, Madras

Civil Appeal No. 742(N) of 1967

(K. S. Hegde, A. N. Grover JJ)

04.05.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by certificate from a judgment of the Madras High Court.

2. The appellant's predecessor in office T. G. Kuppuswamy Iyer filed on April 14, 1950, a suit in the District Court, Madurai, under Section 84(2) of the Madras Hindu Religious Endowments Act (Act II of 1927) against the respondent and two other persons who are not parties to the appeal for a declaration that the suit Mandapam was a private Mandapam, i.e., family property of Thoguluva Thirumalier and was not a temple covered by the provisions of the aforesaid Act. This suit had to be instituted because the authorities appointed under the Madras Act II of 1927 had held that the premises No. 29 South Masi Street, Madurai wherein the idol of Sri Srinivasaparumal and certain other idols where located was a temple within the meaning of the said Act. The District Judge decreed the suit in favour of the appellant but the High Court, on appeal, reversed that judgment and passed a decree holding that the premises constituted a temple. The appellant thereupon filed a petition for leave to appeal to this Court but the High Court refused to grant the certificate. The matter was brought to this Court. By a judgment which is reported in T.D. Gopalan v. Commissioner of Hindu Religious and Charitable Endowments, Madras (1966 Supp SCR 154 : AIR 1966 SC 1935 : (1966) 2 SCJ 794.), this Court directed that the subject-matter of the dispute should be ascertained with reference to the claim made by the plaintiff in his plaint. Consequently the valuation of the property should have been done according to the claim made in the plaint, namely, that the property was private property of the family capable of alienation. Thereafter the High Court granted a certificate on determination of the value of the suit property.

3. The only question which had to be decided by the District Court and the High Court was whether the property in dispute was a private Mandapam and not a public temple. The District Judge appointed a Commissioner to submit a report the physical features of the property. The Commissioner reported that the suit premises was a temple and in front of it there was a Garbha Graha on either side. There were two stone idols called Dwarabalakas. The implements necessary for offering puja were also found by the Commissioner. But there was no Dwajashtamba, Balipeeda Gopuram.

4. There is no dispute that the premises where the temple is situate originally belonged to one Kuppiyan. A decree was obtained by Tirumalaiyyan against Kuppiyan and in execution of that decree the property by Tirumalaiyyan against Kuppiyan and in execution of that decree the property was put to sale by public auction. It was purchased by Tirumalaiyyan in 1885 (vide Ex. B-1 - extract

from the suit register, dated January 14, 1885). The title to the property thus vested in Tirumalaiyyan and the members of the family who later on came to be known as Thoguluva family.

5. The case laid in the plaint was that the Mandapam came to be constructed on the suit property by the members of that family which belonged to what is known as the Saurashtra community in Madurai town. It was a private Mandapam which was in the exclusive and absolute control of the said family and worship was performed there for the spiritual benefit of the members of the Thoguluva Tirumalaiyyam, family. It is common ground that at all times the management and control over the Mandapam was with some or other members of the Thoguluva family. In 1932 or 1933 some shops in the eastern and western side of the Mandapam were constructed for which the Municipality levied a tax which had been paid by the members of the Thoguluva family which was in the management of the temple.

6. The learned District Judge's approach to the appreciation of the evidence, oral as well as documentary, was on the principle that once the private character of the temple was established more strong proof was necessary to hold that the temple was subsequently dedicated to the public; (Babu Bhagwan Din and Others v. Gir Har Saroop and Others) (67 IA 1.). He considered the evidence produced by the parties and, in particular, carefully analysed the evidence led on behalf of the defendants according to whom the Mandapam was a public temple. While discussing the evidence of each of the witnesses the learned judge gave detailed reasons for accepting of rejecting the evidence of a particular witness. Before him the defendant had sought to establish the dedication of the temple to the public by producing evidence on the following points -

(1) Subscriptions were collected by G. Rama Ayyangar and his descendants from the public because the members of the Thoguluva family stopped giving any financial help of the temple.

(2) Shops in the front Mandapam were constructed with public donations and even for the Kumbabishekan public funds were collected.

(3) D.W. 6 who did not belong to the Thoguluva family was doing the Mandagapadi.

(4) There used to be a procession on Vaikunta Ekadasi day the expenses of which were met by D.W. 7.

(5) There were jewels and other articles used for worship donated by members of public which were in the custody of Srimathigal Sangam.

(6) On each of the Nawaratri days people who did not belong to the Thoguluva family did the Ubhayam.

(7) The worshipers had been making offerings during the daily pooja as of right and were participating in the daily Neivedyams.

(8) That there was a Nagara, Bell and Hundial in the suit temple.

(9) That there was utsava idol in the suit Mandapam.

7. The learned District Judge found : (i) D. Ws. 3, 4 and 8 who belonged to the Thoguluva family had played into the hands of the opposite camp; (ii) D. W. 3 was disbelieved mainly because he

claimed that he was the Manager for some time and that he had handed over all the charge papers and account books to the plaintiff at the meeting at which the plaintiff was appointed manager. But in a previous statement Ex. A-17 he had admitted that there was no record to show that he had handed over the charge to the plaintiff; (ii) The burden of proving that donations were collected from the public was on the defendants as they were seeking to establish dedication of a temple which was once private in character. There was no satisfactory evidence that donations had ever been collected from members of the public. D. Ws. 2 and 6 who claimed to have made such contribution could not produce any account books which contained any such entire although they were running trade and business; (iv) There were clear contradictions in the statements of D. Ws. 4 and 8 on some material matters and therefore their evidence could not be relied upon; (v) The evidence of P.W. 1, read with the recitals in Ex. B-5 negatived any inference of any public donation having been collected for the building of the shops or for the Kumbabishekam; (vi) The statements of D. Ws. 7 and 8 when considered in the light of the other evidence did not establish that the deity was taken out in a procession as alleged by the defendants; (vii) It had not been satisfactorily proved that any non-Thoguluva performed any of the mandagapodies on Nawaratri day or that any monies were so collected for taking the deity in procession on Vtikunta Ekadasi day; (viii) The evidence of D.Ws. 2 and 6 on the question if the expenses of the Nagara, bell and Hundial was negatived by the absence of their mention in the report of the Commissioner. There was no mention of the Hundial even in some earlier affidavits or petitions; (ix) Even Defendants 2 and 3 did not say in their written statements that there had been any use of the temple by the public as of right. They had only asserted that members of the Saurashtra public were worshipping there as of right. It was pointed out by the learned judge that a temple worshipped even by a section of the public would be a public temple but the evidence which had been produced on behalf of the defendant was to the effect that any member of the public whether a Saurashtra or a non-Saurashtra had a right to worship there. The case as laid in the pleadings and as developed in the evidence was thus inconsistent.

8. The High Court observed that the origin and history of the shrine could not be traced with any degree of continuity owing to the paucity of the evidence on the record. Reference was, however, made to the auction sale. It was not disputed before the High Court that the property formed the subject-matter of the court sale comprised the suit property. Before the High Court the plaintiff relied on Ex. B-1 for two purposes : (1) It showed that the property was private secular property and (2) the title to the property became vested in Thoguluva Tirumalaiyyam and members of this family. The observation of the High Court on these contentions was, "the document, Ex. B-1 : (a) lends considerable support to these contentions of the plaintiff". The High Court, however, proceeded to note that in the description of the property in Ex. B-1 there was a mention of Garbha Graha Prakarma and vacant site, etc. These terms were generally associated with only public temples. According to the High Court there was no evidence to show how the worship at the shrine was conducted and who provided the necessary funds and further how the property was treated by the public authorities like the Government or the municipality. It was common ground, however, that the shrine was a popular one at least among the members of the Saurashtra community and that nithyapadi pooja was being performed at the shrine just as a public temples. Particular reference was made by the High Court to the expenses of stone images which were to be installed in the suit premises in 1947 the offer of the gift having been made by persons who did not belong to the Thoguluva family. In Ex. B-4 the donors offered to make three stone images at their cost and also offered a sum of Rs. 350/- for meeting all expenses in connection with the installation of newly made idols and the various ceremonies which were to be informed in connection with the same. An invitation Ex. B-5 was issued in that connection for a Mahakumbabishekam to be celebrated on January 27, 1947. In this invitation the plaintiff styled himself as the Honorary Secretary. The

donors were described therein as the Udhyadars. On March 17, 1947, the plaintiff wrote to the donors requiring them to pay Rs. 100/- every months towards the pooja at the shrine. This demand was said to have been made on the basis of the alleged agreement on the part of the donors to furnish the necessary expenses for running the institution after the images were duly installed. The High Court felt that it was difficult to conceive of the owner of a private temple receiving gifts of images from strangers and installing them in his temple; and it was impossible to reconcile the demand for contributions with the claim that the temple was a private one.

9. The High Court next proceeded to reproduce a summary of the statement of each of the witnesses produced by the defendants. No attempt whatsoever was made to discuss the reasons which the learned District Judge had given for not accepting their evidence except for a general observation here and there that nothing had been suggested in the cross-examination of a particular witness as to why he should have made a false statement. We apprehend that the uniform practise in the matter of appreciation of evidence has been that if the Trial Court has given cogent and detailed reasons for not accepting the testimony of a witness the appellate court in all fairness to it ought to deal with those reasons before proceeding to form a contrary opinion about accepting the testimony which has been rejected by the Trial Court. We are therefore, not in a position to know on what grounds the High Court disagreed with the reasons which prevailed with the learned District Judge for not relying on the evidence of the witness produced by the defendants.

10. It seems that the approach of the High Court was also somewhat influenced by the observations of the Judicial Committee of the Privy Council in Mundancheri Koman v. Achuthan Nair and Others, that in the greater part of the Madras Presidency private temples were practically unknown and the presumption was that the temples and their endowments formed public religious trust. This was, however, not the case in Malabar where large tarwads often established private temples for their own use. Finally the High Court held that the temple was a public temple. After stating some other facts which were young, presumably after believing the evidence produced by the defendant, the High Court made two observations which may be reproduced :

> "(1) Admittedly the members of the public have been worshipping at the shrine without let or hindrance.
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> (2)..... The evidence on record shows unmistakably that this temple was being run only by contributions and by benefactions obtained from members of the public."

11. Mr. Natesan who appears for the plaintiff-appellant has assailed the whole approach of the High Court to the question of the character of the temple which, according to him, had been proved to be private in origin. It has been contended by him that the usual state of affairs to be found in Madras as per the observations of the Privy Council could not be applied to the case of Saurashtra community which migrated from the territories which now form part of the State of Gujarat centuries ago. This community, has, apart from several other individual characteristics, maintained a tradition of having private temples. Moreover if the origin of the temple had been proved to be private then according to the law laid down by the Privy Council itself in Babu Bhagwan Din's case (supra), dedication to the public was not to be readily inferred. Such an inference, if made, from the fact of user by the public was hazardous since it would not, in general, be consonant with Hindu sentiment or practice that worshipers should be turned away; and, as worship generally implied offering of some kind, it was not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity. It was further emphasized by their lordships that the value of public user as evidence of dedication depends on the circumstances which give strength to

the inference that the user was as of right. In Goswami Shri Mahalaxmi Vahuji v. Rannchhoddas Kalidas and Others ((1970) 2 SCR 275 : (1969) 2 SCC 853.), it was pointed our that the appearance though a relevant circumstance was by no means decisive. The circumstance that the public or a section thereof had been regularly worshipping in the temple as a matter of course and they could take part in the festivals and ceremonies conducted in that temple apparently as a matter of right was a strong piece of evidence to establish its public character. If votive offering were being made by the public and the expenses were being met by public contribution, it would be safe to presume that the temple was public. In short the origin of the temple the manner in which its affairs were managed, the nature and extent of the gifts received by it, rights exercised by devotees in worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple were factors that went to establish whether a temple was public or private.

12. Mr. Natesan says that if the evidence of the witnesses produced by the defendants is not accepted as was not rightly accepted by the District Judge then there will be hardly any features or circumstances barring some of the physical features of the temple and the fact that people have been allowed to worship and take part in the festivals and ceremonies and even to make some offerings (though without their having the right to worship in the temple) which would be sufficient to make a temple which was private in origin a public temple. According to Mr. Natesan even the witness of the defendants had shown consciousness of the temple being private. He has laid a great deal of emphasis on the absence of any property attached to the temple which might be endowed. He says that admittedly only two shops were built by the family and out of the rents received from those shops together with other contributions made by the members of the family the expenses of the temple were being met. He has relied a great deal on the decision of a Divisions Bench of the Madras High Court in The Madras Hindu Religious Endowments Board v. V. N. D. Ammal ((1953) 2 MLJ 688.). There reliance had been placed on the following features : (1) that when the temple was built in 1919 Kumbabishekam was performed on a grant scale; (2) the respondent had made Utsavamurthis and built Chaprams and the deities were also taken in procession on special occasions; (3) a Gurukkal had been engaged to perform the pooja regularly and (4) the temple has got a Gopuram and other features which are usually found in a public temple. This is what Venkatarama Ayyar, J., as he then was, observed :

> "It is true that the facts that there is an utsava idol and there are processions are generally indicative of the fact that it is a public temple. But then no property has been dedicated for the upkeep of the temple. The worship is maintained and the expenses are met from out of the private funds of the respondent. In the absence Of any property being dedicated for the maintenance of worship in the temple, it is difficult to hold that the temple has been dedicated to the public."

13. At this stage the provisions of Section 9(12) of the Madras Act 2 of 1927 which defines a temple may be noticed. According to that definition it is a place by whatever designation known used as a place of public religious worship and dedicated or used as of right by the Hindu community or any section thereof as a place of public religious worship. In the Madras Hindu Religious and Charitable Endowments Act (Act 22 of 1959) the definition of "temple" is given in sub-clause (20) of Section 6. It is practically in the same terms as in the earlier Act.

14. In our judgment the High Court was in error in holding that members of the public had been worshipping at the Mandapam in dispute without let or hindrance. In arriving at the conclusion it appears to have believed the witnesses produced by the defendants. It has also relied on the principle that in the absence of any evidence to show that such user was permissive it could be presumed that

it was as of right. We have already pointed out that the High Court, while appraising the evidence of the witnesses, has not discussed the reasons and grounds given by the learned District Judge for not relying on the defendant's witnesses. Mr. A. V. Rangam who appears for the contesting respondent has endeavoured to take us through the evidence of the witnesses for demonstrating that the reasons given by the learned District Judge were neither cogent nor sufficient to discard the testimony of the defendant's witnesses. But we are unable to agree with him that the appreciation of evidence by the learned judge was open to criticism as suggested by him. Apart from this the High Court did not consider the evidence produced by the plaintiff without which many matters could not be properly appreciated or explained. The other finding of the High Court that the temple was being run by contributions and benefactions obtained from members of the public was also based mainly on the evidence produced by the defendants. In our opinion the conclusion of the learned District Judge on that point receives more support from the entire material on the record.

15. It is significant that the High Court did not attach sufficient importance to three matters which, in the present case, were of material consequence. The first that the origin of the Mandapam had been proved to be private. The second was that its management had remained throughout in the members of the Thoguluva family. The third was the absence of any endowed property. There was no Gopuram or Dwajasthamba nor a Nagara bell nor Hundial in the suit temple. The learned District Judge adverted to the evidence on all these and other relevant matters and we concur with him in his conclusions.

16. It is true that the suit temple had some physical characteristics and features which are generally to be found in a public temple. It was also established that persons who were outsiders in the sense that they did not belong to the Thoguluva family used to come and worship at the temple and made offerings there. There were also some jewels and other articles in the temple. But the determination of the question whether the temple was public or private did not depend on some facts or set of facts alone. The entire evidence, both documentary and oral, had to be considered as a whole keeping in view the principles already noticed by us. We are satisfied that the learned District Judge came to the correct conclusion that the suit temple was private in character.

17. For all the above reasons the appeal is allowed, the judgment of the High Court is set aside and that of the District Judge restored. The appellant will be entitled to costs in this Court.

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