

Pujari Lakshmana Goundan and another - - - - *Appellants*

v.

Subramania Ayyar and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 22ND NOVEMBER, 1923.

Present at the Hearing :

LORD DUNEDIN.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

SIR LAWRENCE JENKINS.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal by the defendants from an order of the High Court at Madras dated the 25th September, 1919, by which it was declared that the temple of Sri Kandaswami, otherwise known as Sri Subramanyaswami in the village of Kalipatta, situate in district of Salem, was a public religious institution, and remanding the suit to the Court of the Subordinate Judge of Salem with a direction that a scheme for the management of the temple should be framed by that Court in the light of the observations contained in the judgment delivered by the High Court. In the plaint it had been alleged that the defendants were unfit to be the pujaris or dharmakartas of the temple and it was prayed that they should be removed from office. By the order of remand that prayer was disallowed.

The plaintiffs are Hindus who worship at the temple. They are not related to the family of the defendants. The first plaintiff is a Brahmin, the other two plaintiffs and the

defendants are Sudras by caste. The first defendant has been for some years the pujari of the temple; he succeeded his father as pujari of the temple, and his father succeeded as pujari of the temple his father Lakshmana Goundan, who died in 1856 or 1857, and was the founder of the temple. The other defendant is the undivided son of the first defendant. In this judgment when a temple is mentioned without any other description it will be understood that the temple of Kandaswami in the village of Kalipatta is the temple referred to.

If the temple is not a public temple the plaintiffs have no right to maintain the suit in which this appeal has arisen; unless it is a public temple the plaintiffs are not concerned with it or with its management; their only remedy in such a case is to cease worshipping at the temple if they do not approve of the management of it. The defendants deny that the temple is a public temple. Their case is that the temple is and has always been the private property of the family to which they belong.

The temple is not an ancient temple. It was founded between 1841 and 1856 by Lakshmana Goundan, the grandfather of the first defendant, under circumstances which will later be mentioned. Unless the temple was dedicated to the public it was not a public temple, and in their Lordships' opinion a dedication of it to the public, if it was dedicated, must have been by Lakshmana Goundan, the grandfather of the first defendant. No deed or other document of dedication of the temple has been produced, and it may be taken as a fact that there never was any deed or document of dedication of the temple to the public. In 1817 the British Government assumed the control of all public endowments, Hindu and Mahomedan, in the Presidency of Madras and placed them under the charge of the Board of Revenue; that policy was continued and acted upon until Act XX of 1863 was passed, when the Government divested itself of the charge and control of such institutions and placed them under the management of their respective creeds. (See *Vidya Varuthi Thirtha v. Balusami Ayyar and others*, 48 I.A. at page 314.) The temple at Kalipatta was not taken under the control of the Board of Revenue. It may be assumed that it would have been taken under the control of the Board if it had been dedicated to the public by a deed which was made public. The question whether the temple ever was dedicated to the public must consequently depend upon inferences which can legitimately be drawn from facts not in dispute and from unambiguous evidence on the record of this suit, regard being had to the principles of Hinduism which prevail in the Presidency of Madras. It would be a legitimate inference to draw that the founder of the temple, the grandfather of the first defendant, had dedicated the temple to the public if it was found that he had held out the temple to the public as a public temple.

The suit was tried before Narayan Ayyar, then the temporary Subordinate Judge of Salem, who finding that the temple had not been dedicated to the public and was the private

property of the family of the defendants, made a decree dismissing the suit. From that decree the plaintiffs appealed to the High Court at Madras. The appeal was heard by Mr. Justice Abdul Rahim and Mr. Justice Oldfield; they differed, Mr. Justice Abdul Rahim finding that the temple is a public temple; Mr. Justice Oldfield finding that it is not a public temple and is the private property of the family of the first defendant. As these learned Judges differed a decree was duly made dismissing the appeal. From that decree the plaintiffs appealed under the Letters Patent of the Madras High Court, and their appeal was heard by Mr. Justice Sadasiva Ayyar, Mr. Justice Seshagiri Ayyar and Mr. Justice Burn. Those learned Judges delivered separate judgments finding that the temple is a public temple and made the order which is the subject of this appeal. All the judgments which were delivered in this suit were in their Lordships' opinion able and carefully considered judgments, and have been of much assistance in enabling their Lordships to arrive at their conclusion.

The facts which their Lordships find and upon which they found their conclusion are as follows:—Lakshmana Goundan, the grandfather of the first defendant, lived in a small house which belonged to him in the village of Kalipatta. He was a devout Hindu and originally a poor man. He maintained in his house an idol of the goddess Amman, which was the private idol of his family. He was also a devout worshipper at the public temple at Palni, at which there was an idol of the god Subramaniaswami, and he made yearly pilgrimages to Palni with offerings to that god. It is said, and probably with truth, that he dreamt that he should instal at his house at Kalipatta an idol of the god Subramaniaswami and that the god would come to his house and enable him to foretell events. He did instal that idol at his house, adopted the ritual which was followed at Palni, and allowed Brahmins and other Hindus of various castes to worship the idol as if it was a public idol. He acted as the pujari of the idol, and received as the pujari offerings made to the idol by worshippers and fees which he charged in respect of processions and other religious services. He obtained a great reputation as a holy man and as being enabled by the god to foretell events. The number of Hindu worshippers increased and with the offerings and fees he purchased some jewels for the idol, built for himself another house in the village to which he and his family removed, and he extended the house in which the idol was and added to it covered rooms for the accommodation of the worshippers during the ceremonies of worship. He also constructed a circular road round the place where the idol was for religious processions and he provided the car used in such processions. He also built in the village a rest house for the use of worshippers of the idol. On certain days in each week the Hindu public was admitted by him free of charge to worship in the greater part of the temple, to one part only on payment of fees, and to the inner shrine apparently not at all. With the income which he derived from offerings

and fees at the temple he efficiently maintained the temple as if it were a public temple and discharged all the expenses connected with the temple and the worship of the idol there. That may be assumed from the reputation which the temple acquired amongst Hindus. No accounts have been produced, probably he kept none, but it may be assumed that he applied the balance of the income he so obtained to the support of himself and his family and in acquiring for his own benefit and that of his family some immovable property which he possessed before he died. On those facts which their Lordships have found they can come to no other conclusion than that Lakshmana Goundan, the grandfather of the first defendant, held out and represented to the Hindu public that the temple was a public temple at which all Hindus might worship, and that the inference is that he had dedicated the temple to the public. They have come to that conclusion notwithstanding the facts that respectable local witnesses have stated that the temple was a private temple and that on three occasions since this dispute arose the tahsildars reported to the Collector of the District that the temple was not a public temple.

It may perhaps appear to be strange that the pujari of a public Hindu temple should be of a caste other than that of Brahmin, but apparently in the Presidency of Madras there are some public Hindu temples the pujaris of which are Sudras. Mr. Justice Seshagiri Ayyar in his judgment in this case stated that "there is no rule that unless a person belongs to a particular class (caste) he should not perform worship in a temple," and he referred, as an example, to a well-known public temple at Chidambaram in which he said that the priests (pujaris) are not Brahmins. The accuracy of that statement has not been questioned in this appeal.

Having come to the conclusion that the temple is a public temple their Lordships will humbly advise His Majesty that this appeal should be dismissed. Under the peculiar circumstances of the case the costs of each side in this appeal will come out of the funds of the temple.

In the Privy Council.

PJARI LAKSHMANA GOUNDAN AND
ANOTHER

vs.

SUBRAMANIA AYYAR AND OTHERS.

DELIVERED BY SIR JOHN EDGE.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.
1923.