

In the Court of the II Additional District Munsif, Nagercoil

Present: Thiru.R.Sundara Kamesh Marthandan, M.L.,

II Additional District Munsif, Nagercoil.

Tuesday, on this 13th day of August 2024

I.A. Nos.2 of 2021 & 3 of 2021

Original Suit No.252 of 2021

1. Perumal Swamy Temple rep. by its
Family Member Rajabaranthaman
 2. Paramathma
- Petitioner/Plaintiffs

-vs-

1. Thangaswamy
 2. Ramaiah
- Respondents/Defendants

These Petitions came up before this Court on 22.07.2024. Mr. C. Ashok Kumar Advocate for the Petitioners/Plaintiffs and Mr. S. Mathias Advocate for the Respondents/Defendants and upon perusing the case records and having stood over for consideration, till this day, this Court delivers the following:-

COMMON ORDER

1. The Petitioner had filed I.A.No. 2 of 2021 under Order XXXIX Rule 1 & 2 Code of Civil Procedure, seeking an order of interim injunction restraining the Respondents to prevent and obstruct worship and pooja in the 1st Petitioner's temple, till the disposal of the suit.

The Petitioner had filed I.A.No. 3 of 2021 under Order XXVI Rule 9 Code of Civil Procedure seeking an order to appoint an Advocate Commissioner, to note the physical features of the 1st Plaintiff's and special pooja, to be conducted on the last Friday, of the Karthikai Month, in the presence of Advocate Commissioner.

2. In the affidavits of Rajabaranthaman, filed in support of the above Petitions, he had stated that he is the family member of the Plaintiffs as well as the Defendants. The Plaintiffs have filed the suit for declaration, permanent injunction and for framing of scheme, in respect of 1st Plaintiff's Family Temple. The 1st Petitioner is the family temple of the Petitioners and Respondents and the Petitioners and the Respondents, are family members. They have Family Temple in Re.Sy.No.1116/13 of Rajakamangalam Village. The Temple is constructed in 2 cents in that Survey number. The Temple was founded by the ancestors of the Petitioners and Respondents namely Subramonian, Chinnayan and Ramaiah Nadar. The regular poojas had been performed on every Friday and Saturday evening around 7.00 P.M by the said Subramonian, Chinnayan and Ramaiah Nadar jointly.

3. In the Temple, there is no idol. Only lighting candlewick in the lamp (Kuthuvilakku), Banana offering to the deity and decoration with flowers are done. Initially the Temple was a tiled roof shed. The Temple was founded for the beneficial interest of the above referred persons and their descendants. It

was formed for the common well being of the Petitioners and the Defendants' family members. After the lifetime of the said persons, one Sree Krishna Perumal was managing the Temple, on behalf of all the family members. Several members of the Temple are residing at faraway places. Hence the Petitioners have filed application under Order I Rule 8 Code of Civil Procedure, to represent all family members of the Petitioner.

4. The Petitioners have drawn the genealogy tree in the affidavits. The pooja and festivals were performed by the family member, jointly from the establishment of the temple. Both the Petitioners and Respondents have subsequently renovated the temple and thereby removed the tile roof and constructed concrete building for the temple. All the family members have paid contribution. On 31.08.2012 Kumbabishekam function was performed. Family Members including the petitioners and Respondents, have participated. Thereafter poojas were continued.

5. On 03.01.2020, the Respondents and their men demolished the front portion of the compound of the Temple and gave a false police complaint against some of the Petitioners' family members. At their influence police registered F.I.R on 04.01.2020 against some family members of the Petitioners. In the 2nd Defendant's complaint, he had mentioned that the Temple is a private temple. Actually it is the private family temple of both the Petitioners and Respondents and not that of the Respondents alone. The Respondents claimed

that, the patta stands in the name of the Defendants' father. Patta stands in his name, as President of Perumal Swamy and therefore the Defendants do not have any exclusive right over the temple.

6. Since the Respondents claim absolute right over the Perumal Swamy Temple, the administration of the temple, worship, offering, poojas and festivals could not be conducted in a peaceful manner. Hence the Petitioners have sought for declaration that Perumal Swamy temple belongs to both the petitioners and respondents family. There is no written scheme to administrate the temple, income and expenditure the administration of the temple is not in a peaceful manner and in order to administer the temple a scheme has to be framed, every last Friday of the Tamil month Karthikai the special pooja will be conducted. Since the respondents claim the private temple there is an apprehension that the Respondents may prevent and obstruct the family members to worship and perform special pooja on the last Friday of every Karthikai Month. If such obstruction is made it will affect the valuable civil right and belief of the Petitioners over the temple. On 29.11.2021 the petitioners met the Respondents and invited the Respondents to participate in the pooja of the Karthikai Month last Friday Pooja forgetting the personal animosity. Even then the respondents claimed it was their family temple. Hence it has necessitated the petitioner to file the above suit and the above interlocutory applications seeking the above said reliefs.

7. The Respondents have filed memo adopting their written statement as counter in the above applications.

8. The Respondents have pleaded that the Petitioners have not come before this Court with clean hands. The suit is bad for non joinder of necessary parties. Subramonian Nadar was the grandfather of the Plaintiffs and Defendants. He had three sons namely Sree Krishna Perumal Nadar, Chelliah Nadar, Lekshmana Perumal Nadar. The Plaintiffs are the sons of Lekshmana Perumal Nadar and the Defendants are the sons of Sree Krishna Perumal Nadar. The sons of Late Chelliah Nadar are not made as parties in the suit. They have been purposely omitted. The deceased Lekshmanaperumal Nadar has three sons namely Paramathma, Rajabaranthaman and Jeevathma. Jeevathma. The third son of deceased Lekshmanaperumal Nadar was also not made as party in this suit.

9. The Plaintiffs have no manner of right over the alleged worshipping place, which is situated in the respondents' property. The Petitioners' claim that the property in the temple is situated in two cents of property at Resurvey No. 1116/13 of Rajakkamangalam Village is also false. No such Temple is available before the oral partition, effected between the Plaintiff's father and that of the Defendants's father. The Plaintiff's claim that the ancestors of both the Plaintiffs and Defendants established the Temple is false. The Petitioners claim that Regular Poojas were conducted by Subramonian, Chinnayan and Ramaiah is

also not correct. The same is an invented story of the Plaintiffs to usurp two cents of property, from the defendants. The entire Plaint averments are false.

10. In the southern most portion in Resurvey No.1116/13 of Rajakkamangalam Village, dilapidated and unused small shed was available. No poojas or worship was therein. Plaintiffs father Lakshmanaperumal and Defendants father Sree Krishnaperumal have entered into an oral partition, whereby the northern 11.25 cents in Resurvey No.1116/13 Neendakarai 'B' Village (presently Rajakkamangalam Village) out of 8.5 Ares equivalent to 21.25 cents of property, was allotted to Lakshmanaperumal and the Southern most 10 cents of property was allotted to Sree Krishna Perumal.

11. The Petitioner's mother Thanganadachi wife of Lekshmanaperumal Nadar had executed Settlement deed dated 10.02.2003, bearing Doc. No. 364 of 2003, in respect of 4 cents in Resurvey No.1116/13 on the northernmost of 11.25 cents. On the very same day Lekshmanaperumal Nadar's wife Thanganadachi gifted 7.25 cents out of the northern 11.25 cents to her another son Rajaparanthaman. Thus the Plaintiffs have got the 11.25 cents on the north of 21.25 cents of property. The Respondents being the sons of deceased Sreekrishna Perumal jointly got the southern 10 cents of property from their father. The dilapidated shed was available on the southernmost portion of the 10 cents of property.

12. The Respondents father Sree Krishna Perumal constructed a compound wall encircling the said 10 cents of property, demolished the old shed and constructed an Ayyapathi and worshipped their deity Ayya Vaikunder, having no idol or statue of his own. The said Pathi is the residential temple of the Krishna Perumal Nadar and his sons. The same is called as Perumal Kovil. The Petitioners claim that the same was established by the ancestors of both the Petitioners and Defendants are false. There was no such Kumbabisekham function and poojas alleged by the Plaintiffs.

13. On 02.01.2020 at 1.00 P.M., the Plaintiffs, their sons, with their musclemen, trespassed into the property of the defendant, with deadly weapons. Upon coming to know that the 2nd respondent rushed to the property and attempted to prevent the Plaintiffs and their musclemen. The Petitioners used filthy words on the 2nd Respondent, his daughter and son-in-law and threatened that they would kill them, after demolishing the Pathi. The Petitioners were particular in removing the compound wall. On 03.01.2020, the 2nd Respondent preferred complaint before Rajakkamangalam Police Station registered an F.I.R in Crime No.4 of 2020, Under Section 147, 294(b), 427 and 506(1) I.P.C was registered. The Petitioners with the object to demolish the compound wall and enter into the property of the Respondents and to disturb the peaceful possession and enjoyment of the Respondents, in the guise of conducting poojas and festivals, have come before this Court with unclean hands. Hence they are not entitled for any relief.

14. The point for consideration is whether the above Petitions has to be allowed or not?

15. The fact that the Petitioners and the Respondents are Cousin are not in dispute. The Petitioner's claimed that the 1st Petitioner Temple was established by the common ancestors namely Subramonian Nadar, Chinnayyan Nadar and Ramaiya Nadar. The Petitioners and the Respondents are the descendants from Subramonian Nadar, as per the genealogy tree drawn in the affidavit filed in support of the above petitions. However the Respondents contented that the very Pathi was established by the Respondents father Sree Krishna Perumal Nadar, in the property allotted, to him in the oral partition between the Respondents' father Sreekrishna Perumal Nadar and Lekshmana Perumal Nadar.

16. Such Pleading of the Respondents would go to show that the larger extent of 21.25 cents land in Resurvey No.1116/13, Rajakkamangalam Village. Originally owned by common ancestor namely Subramaiaam Nadar. The Respondents have further pleaded that as per the oral partition between Lekshmana Perumal Nadar and Sreekrishna Perumal Nadar. Lekshmana Perumal Nadar's wife Thanga Nadachi had executed two settlement deed in favour of the 2nd Petitioner and herein allotting 7.25 cents and 4 cents. Wherein the factum as to the oral partition between those two namely Lekshmana Perumal Nadar and Sreekrishna Perumal Nadar also recorded.

17. In such circumstances, the Petitioners claim that the 1st Petitioner Temple was established by their common ancestor and the respondents claim of oral partition, without mentioning anything about the another son of Subramanian Nadar namely Chelliah Nadar in the oral partition, could be adjudicated, only in the Trial. The Petitioners have not pleaded anything about the compound wall, said to have been constructed by the Respondents' father encircling the 10 cents of land, allegedly allotted to him, under the oral partition. Further even according to the Petitioners, the Respondents are also the owners of the Petition Schedule Property. As such interim temporary injunction could not be granted against the true owners.

18. With regard to the issuance of Commission, the Petitioners have pleaded that in the last Friday of every Karthikai Month, Special Pooja is conducted in the Temple and that the Respondents apprehends, while performing their pooja, the Respondents will obstruct them and the Respondents by influencing the police had registered F.I.R against the Petitioner. On the other hand, the Respondents have stated that the Petitioners gathered with their muscle men and attempted to demolish the compound wall. Such being the case this Court is of the considered view that the petitioners have not made out prima facie case. Commission is required to witness the pooja, to be performed on the last Friday of Karthikai Month. The same will amount to collection of evidence. It is also not made clear, as to who is managing, administering the said

last Friday Karthikai Month Pooja. Without such particulars merely seeking Commission to witness the physical features of the special pooja, to be conducted, on the last Friday of Karthikai Month, is nothing but collection of evidence. Hence the Petitioners are not entitled for the said relief also. In view of the discussions made above, this Court is of the considered view that the Petitioners are not entitled for the Petitions' relief.

In the result, I.A.No. 2 of 2021 is dismissed. No cost.

In the result, I.A. No. 3 of 2021 is dismissed. No cost.

Dictated to the Steno typist, transcribed and typed by her, in Computer corrected and pronounced by me in Open Court this, the 13th day of August 2024.

sd/-
II Additional District Munsif
Nagercoil.

Petitioners side witnesses and documents : Nil

Respondents side witnesses and documents : Nil

sd/-
II Additional District Munsif
Nagercoil.

IIADM, Nagercoil.
I.A. Nos.2 of 2021 &
3 of 2021
in
O.S. No. 252 of 2021
Common Fair Order
Date: 13.08.2024

IIADM, Nagercoil.
I.A. No.2 of 2021
in
O.S. No. 2 of 2021
Date: 13.08.2024

Order Pronounced in Open Court

In the result, I.A.No. 2 of 2021 is
dismissed. No cost.

II ADM

IIADM, Nagercoil.
I.A. No.3 of 2021
in
O.S. No. 252 of 2021
Date: 13.08.2024

Order Pronounced in Open Court

In the result, I.A.No. 3 of 2021 is
dismissed. No cost.

II ADM.