

(1969) 03 MAD CK 0002

Madras High Court

Case No: Appeal No. 283 of 1963

V. Srinivasachariar

APPELLANT

Vs

Thatha Desika Thathachariar and
Others

RESPONDENT

Date of Decision: March 24, 1969

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Criminal Procedure Code, 1898 (CrPC) - Section 144
- Evidence Act, 1872 - Section 32, 32(4)
- Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 - Section 57, 6(6), 61, 62

Citation: (1970) ILR (Mad) 146

Hon'ble Judges: Ramamurti, J; Palaniswamy, J

Bench: Division Bench

Advocate: R. Gopalaswami Ayyangar, for the Appellant; V.N. Venkata Varadachariar, for the Respondent

Final Decision: Dismissed

Judgement

Palaniswamy, J.

The Appellant, the Plaintiff in O.S. No. 30 of 1956, on the file of the Subordinate Judge, Chingleput, a Vadakalai

Vaishnavite Brahmin of Kancheepuram, having been unsuccessful in the lower Court in establishing his case with regard to a particular usage and

custom which he pleaded as obtaining on a particular day of worship in the temple of Sri Varadarajaswami, Kaneheepuram, has come up with this

appeal to this Court. For a comprehensive picture and clear appreciation of the main questions arising for decision in this case, it will be useful to

refer briefly to certain non-controversial practices obtaining generally in Vaishnavite temples and also to certain decided cases that arose between

the two sects of Vaishnavites, Vadakalais and Then kalais, with regard to one or the other form of worship or ritual in the temple of Sri

Varadarajaswami Kaneheepuram, also called as Kanchi, is one of the celebrated and foremost cities of ancient and mediaeval India and is

hallowed as the birth-place of many renowned saints, philosophers and savants. It is also a city of temples, the presiding deity being Sri

Varadarajaswami. There are several sub-temples. In all the Vaishnavite temples in the city worship and services are being conducted in conformity

with Vaishnavite agamams and samprathayams and regulated by long immemorial user. The sacred literature of the Vaiehnnavites, which is often

referred as upayavethantha, includes Sanskrit sthothrams and Tamil prabhandhams. Nalayira prabhandham is the compilation of devotional songs

in Tamil sung by Alwars. Ramanuja, who lived between 1017 and 1137 A.D. is considered as the greatest preceptor of the Vaishnavite doctrine

and is the chief exponent of the Visishtathvaiddha school of Vedantha philosophy. Sri Vedantha Desikan and Sri Manavala Mahamuni were

illustrious followers of Bamanuja. The latter, who was born in 1370 A.D. and lived up to 1446 A.D., was the author of several works.

2. Sri Vedantha Desikan was born in Thooppul, a suburb of Kancheepuram, on Sravanam day in the month of purattasi, in the Tamil year

Vibhava, corresponding to September 1268 A.D. He lived up to 1370 A.D., and wrote many works in Sanskrit and Tamil including a

commentary on Sri Bhashyam. His Tamil works collected together go by the name of Desika Prabhandham. He is considered to be a great

thinker, philosopher and savant and to have rendered great service to the cause of Visishtathvaitha philosophy. Sri Vedantha Desikan is deified at

Vilakkoli temple at Kanchi.

3. At about the 14th century, differences arose between the followers of Sri Vedantha Desikan and those of Sri Manavala Mahamuni. The

followers of Sri Vedantha Desikan specialised in the study and exposition of the Sanskrit Vedas and regarded the Alwars and their Prabhandhams

as entitled to less reverence. These followers came to be known as Vadakalais, or followers of the northern cult. The followers of Sri Manavala

Mahamuni specialised in the study and exposition of the Tamil Prabhandhams of the Alvars and came to be known as Thenkalais, or followers of

the southern cult. The differences between these two sects are even manifested in the thilak mark or namam. The Thenkalais wear the namam in

"Y" shape whereas the Vadakalais wear the namam in "U" shape.

4. In Vaishnavite temples, there is a service called Prabhandha Seva Kalam, which is performed by a congregation of Vaishnavite worshippers.

The service ordinarily consists of the recitation of portions of Nalayira Prabhandham, mostly Thiruvoymozhi. Such a recitation was made an

essential part of the Vaishnavite temple worship by the famous Acharya Nathamuni. Those that are charged with the duty of reciting Prabhandham

are called Adhyapakas and emoluments and perquisites are attached to Adhyapaka mirasi. Sthothra Patam service pertains to recitation of

Sanskrit Slogams and there is also a mirasi office known as Adhyapaka office. Prabhandha Seva Kalam service is performed on certain well

recognised lines. Firstly, the leader, the high priest, calls the congregation to prayer by saying (please begin). Then follows the invocation of the

patron saint of the respective cult consisting of five stanzas known as the Manthram or Pathram. According to the Then-kalais, the opening verse

of the Manthram is an invocation of Sri Manavala Mahamuni. The first stanza, according to the Thenkalai cult, begins with the words Sreesailesa

Dayapathram. According to the Vadakalai cult, the first stanza begins with the words Bamanuja Dayapathram and it is an invocation of the

Vadakalai guru Sri Vedantha Desikan Then follows the recitation of four Sanskrit slokas which are common to both the sects. After the manthram

or invocation comes the recitation of select passages from the Prabhandhams appointed for the day, each prefaced with the laudatory verse in

praise of its author, such laudatory verse being called Thaniyan. The Prabhandhams are common to both the sects. At the conclusion of the

recitation of the Prabhandhams benedictory verses called Vazhi Thirunamam are recited. They consist of nine stanzas of which the first four are

common to both the sects, while the remaining five verses differ. The important point of difference is in the last line of the respective Vazhi

Thirunamam. The Thenkalai Vazhi Thirunamam ends with the words which means Manavala Mamuni, may you live for another hundred years. The

Vadakalai Vazhi Thirunamam ends with the expression which means Vedanta Desika may you live for another hundred years. The Prabanda Seva

Kalam comes to an end with the recitation of Vazhi Thirunamam.

5. In *Pedda Jiyyangarlu Varlu v. Venkatacharlu* ILR [1947] Mad. 436 which relates to a controversy between the two sects with regard to the

usage obtaining in Tirumalai-Thiru-Pati temples, the Privy Council have pointed out the basic differences between the two sects and held that

Vadakalais did not have a concurrent right to recite simultaneously at the beginning of the service their own manthram Bamanuja Dayapathram and

that the Tenkalai rituals must be exclusively observed in processions inside and outside those temples.

6. In 1877, a controversy arose between the two sects with regard to certain ceremonial worship in the temple of Sri Varadarajaswami. Some

Thenkalais asserted that Thodakkam, that is invitation to prayer appertains to their Adhyapakam Miras and that the Defendants (the

dharmakarthas of the temple and the members of the Vadakalai sect) had refused them the honours and emoluments of the Thodakamgar and had

withheld payment of the income due to them as Adhyapakam mirasidars. They instituted a suit in the Court of the District Judge, Chingleput,

praying for an injunction restraining the Defendants and other members of the Vadakalai sect from introducing their manthram and taking part in the

Seva Kalam, the Thenkalais claimed to be entitled to conduct the Prabandham both in the temples and in the processions and also prayed for a

declaration confirming them in the enjoyment of the office to which they laid claim. The District Judge rejected the plaint holding that the civil Court

had no jurisdiction. The decision of the District Judge was affirmed by this Court in July 1878. But in the appeal preferred by the Plaintiffs, the

Privy Council reversed the orders of this Court and the District Judge and remanded the suit for trial. After remand, the Defendants filed a written

statement contending inter alia that the Adhyapakam Miras belonged only to some and not to all Thenkalai Brahmins, that the office of

Thodakagars was not a part of Adhyapakam Miras and that the honours claimed by the Plaintiffs were not true. Several other defences were also

raised, to which it is not necessary to refer. The trial Court held that the Adhyapakam Miras was the common property of all the members of the

Thenkalai sect at Kancheepuram and granted some more reliefs and negated some other reliefs. Both parties preferred appeals to this Court,

which were heard by Turner C.J., and Kindersley J. The decision is reported in Krishnasami v. Krishnama ILR (1882) Mad. 313. This Court held

that the office of Thodakam and its honours and emoluments did not belong to Thenkalais, but, however, held that the Adhyapakam Miras with the

exception of Thodakam was the exclusive right of the Thenkalais and that it pertains to all the members of that sect residing at Kancheepuram. It

also declared that the Thenkalais were entitled to discharge the duties on all the occasions in which ceremonies are performed as well as at the time

of processions as at services in the temples and that the Vadakalais must be enjoined to abstain from interfering with the Thenkalais in the recital of

the Mantram and Prabhandam otherwise than as ordinary worshippers.

7. In the year 1903, there was a litigation between some Vadakalais and Thenkalais in their representative capacities with regard to certain rituals

in the temple of Sri Devarajaswami. In the year 1906 there was another litigation between the two sects. The latter one may be examined first.

That was a suit filed by some Thenkalais alleging that the only form of Adhyapakam worship in the Devarajaswami temple and in all other temples

attached thereto, whenever Prabandham was recited, was by invoking the Thenkalai saint at the commencement of the ceremonial by reciting

Sreesailesa Dayapathram. They alleged that if any other Vaishnavite whether Thenkalai or Vadakalai, wanted to recite the Prabandhams either

within the temple or in the course of the procession, he can join only the Thenkalai Mirasdars by invoking the Thenkalai saint and that the

Vadakalais were not entitled to form a separate goshti or congregation. The Defendants, Vadakalais, contended that the Thenkalai Adhyapakam

mirasdars were only servants of the temple and were bound to recite the Naalayira Prabandham in consideration of the emoluments which they received from the temple, that the Vadakalais had the right to invoke their saint by reciting Bamanuja Dayapathram before the Prabandham which was common to both the sects and that they were entitled to form separate goshties of their own for reciting Prabandham in their own way and for invoking their own saint within the temple or outside it. The trial Court found that the permanent Thenkalai residents of Kanchipuram were exclusively entitled to conduct the Athyapakam service at the time of the pooja and when the idol was taken in procession within or outside the temple and that the Vadakalais may, when they chose, join the Thenkalais in the Athyapakam service and that if they did so they must recite the same manthram, i.e., the Thenkalai manthram. The trial Court was also of the view that the Vadakalais may form a separate goshti and recite their own mantrams and prabandhams at other times than during the pooja time. As regards the processions, the trial Court found that Vadakalais were entitled to form a goshti behind the idol and before the Athyapakam goshti reciting their own mantrams and prabandhams taking care that by doing so, they did not disturb the Thenkalai Prabandham goshti in front of the deity. The trial Court, however, disallowed the claim of the Thenkalais to restrain the Defendants, Vadakalais, from reciting on some occasion their Vadakalai mantrams and prabandhams. Feeling aggrieved by this decision, the Plaintiffs, Thenkalais, preferred A.S. No. 175 of 1910, to this Court. The Vadakalais filed memorandum of cross-objections in so far as the decree was against them. Sankaran Nair and Oldfield JJ., held that the Thenkalai residents had the superior right of reciting prayers and that it was only the Thenkalai mantram of Sreesailesa Dayapathram that could be recited within the temple during any ceremonial worship or by any goshti. As for the period of the pooja, the learned Judges held that the pooja began with the ringing of the bells and ended with the distribution of Theertham and Prasadam. The right of the Thenkalais to recite Prabandhams during the pooja period was recognized and it was held that during the pooja the Vadakalais cannot repeat any prabandhams of their own, but were entitled only to join the Thenkalais as worshippers by reciting the

same prabandhams which the Thenkalais would recite. The further question was considered whether the Vadakalais were entitled to recite their

Prabandhams either at the time of the processions within the temple or at other places in the temple where the Thenkalais do not carry on the

worship. It was pointed out that there was nothing in law to prevent any Vadakalai from worshipping the deities consistently with the equal rights of

other worshippers. It was, however, held that any interference with the pooja from its commencement with the ringing of the bells, to its close with

the distribution of Theertham and Prasadam, would be a violation of the Thenkalai mirasi rights and that inasmuch as processions are part of the

worship, Vadakalais cannot form any goshti of their own and repeat any Prabandham different from the Prabandham recited by the mirasiholders.

This decision is reported in Thiruvengkatachariar v. Krishna-swami Thathachariar 1915 M.W.N. 281. The decree of the trial Court was

accordingly modified declaring the exclusive right of the Thenkalais to recite Sreesailesa Dayapathram within the temple during any ceremonial

worship or by any goshti. It was further declared that the Vadakalais were entitled only to join the Thenkalai Athyapakam goshti or worshippers

by reciting the same portion of the Prabandham that may be recited by the Athyapakam mirasidars and that the Vadakalais were restrained from

reciting their own mantrams and prabandhams during the pooja period, which the learned Judges expressly specified as the period from the

commencement of the pooja by the ringing of the bell to the close of the pooja by the distribution of Theertham and Prasadam and also during any

ceremonial worship. Exhibit B-35 is a certified copy of the decree.

8. The case that arose in 1902 has a more important bearing on the point at issue in the present litigation. That was a suit instituted by the office-

holders of sthothrapatam miras (Vadakalais-Thathachariar) in their representative capacity against some Thenkalais, holders of Athyapakam miras,

in their representative capacity. Exhibit A-6 contains a printed copy of the plaint in that suit filed before the District Judge of Chingleput. The

Plaintiffs inter alia alleged that they were entitled to the sthothrapatam office consisting of the recitation of the sthothrapatam and receive all

emoluments and honors pertaining thereto on the 12 occasions enumerated in the schedule attached to the plaint and that the Thenkalai Brahmins

were entitled only to Athyapakam miras of reciting their mantrams on some occasions during some pooja and at some places during festivals and

that the Thenkalais were not entitled to recite any Tamil Prabandham or Sanskrit sthothram or anything else in the place where and at the time

when the Sthothrapatam was being recited either in conjunction with the Vadakalai goshti or by a separate goshti. Out of the 12 occasions

enumerated in the schedule, item 12 is relevant for consideration and that reads thus:

On Desikan Sathumurai day, when Vilakolikovil Vedanta Desikar, Varadarajaswami, Thayar, Andal, Alwar, Achariar are taken for

mangalasnanam, and after coming into Devarajaswami Devasthanam, Mangalasnanam is being done, and in Alwar Sannadhi Pradakshinam to

recite the sthothrams made by the said Desikar in honour of them.

The Vadakalai Thathacliariars, the Plaintiffs, sued for a declaration of their right of reciting the Sanskrit Sthothrapatam on all the 12 occasions}

mentioned in the schedule and for a permanent injunction restraining the Thenkalais from reciting any Tamil Prabandham or Sanskrit sthothrams.

The Thenkalais, the Defendants denied the exclusive right claimed by the Vadakalais. After an elaborate trial, the District Judge, Chingleput found

that the Vadakalais were entitled to relief only in respect of nine occasions of which one was the occasion of the coming of Vilakkoli Desikar to the

temple of Sri Varadarajaswami. The printed copy of the judgment is contained in exhibit A-8. The Plaintiffs preferred an appeal to this Court in

Appeal Suit No. 51 of 1904, which was heard by Miller and Sankaran Nair JJ. The decision is reported in Bashiakar v. Thatharchariar (1910) 20

M.L.J. (530). So far as item 12 described in the plaint in that suit is concerned, this is the conclusion of the learned Judges:

There remains for consideration the 12th claim, that is, the right to recite sthothrams when Vedanta Desikar of Vilakkoli Kovil is taken in

procession to the Devaraja Swami temple on the Desikar Sathumurai day. In this case fortunately we have documentary evidence as to the

practice that prevailed. It is proved and not disputed that the Vedanta Desikar idol leaves the temple of Vilakkoli Kovil in the morning with

Thengalais chanting the prabandham in front and Vadakalais chanting the Vedas behind. The idol is brought to the four pillar mantapam. There is

conflict of evidence as to the usage that obtains during the procession after this stage is reached. The evidence of the police reports is to the effect

that the Thenkalais continue to sing prabandham even afterwards. But this is opposed to the reports of the Magistrates. It appears therefrom that

the Thenkalais stopped their prabandham and the Vadakalais Vedaparayanam after the idol reaches the four-pillar mantapam and after that they

begin to sing the Sthothrams composed by Desikar. In 1892 the Magistrate Sanjivi Naidu was present when the parties stopped Prabandham and

Vedaparayanam respectively. Before the Magistrate Subbier in 1900 the Thenkalais admitted that this was done in 1892 but only contended that

the practice was discontinued. It is difficult to believe this statement. The proceedings of Narasinga Rao shows this was the practice in 1889. The

probabilities are also in favour of this view.

We hold accordingly that both prabandham and vedaparayanam must be stopped at the four-pillar mantapam. Then the idol is taken to the Vahana

Mantapam which is very near the four-pillar mantapam and when the Desikar idol starts from the Vahana Mantapam the sthothrams composed by

Desikar are chanted till the idol comes back to the mantapam after going round the praharam. Then the sthothraparayanam is stopped and the idol

is removed to a palanquin and the prabandham and vedaparayanam are re-commenced.

The decree of the trial Court was modified suitably. The decree is exhibit B-27.

9. Things thereafter appear to have gone on without any trouble till about 1940. Trouble arose in 1940 between the two sects in the matter of

recitation of Prabandhams. As the dispute raised problems of law and order, the Sub-Magistrate, Kancheepuram, took action. He considered the

decisions rendered by the High Court in the prior litigations between the two sects and issued an order u/s 144 of the Code of Criminal Procedure

prohibiting the Vadakalais from forming a goshti for the purpose of reciting Prabandhams other than those recited by Athyapaka Mirasdara at non-

pooja periods in Sri Devarajaswami temple. He, however, made it dear that his order would not prevent any Vadakalais from worshipping the deities consistently with equal rights of other worshippers and from repeating any portion of the Prabandham separately as an act of personal devotion. Exhibit B-29 is a copy of the order of the Magistrate. The aggrieved Vadakalis do not appear to have taken up the matter immediately to the civil Court. The matter appears to have been allowed to lie quiet till about 1952 when the trouble again erupted. On 7th September 1953, some Thenkalais presented a petition to the Dharma-karthas of the Devaethanam stating that in the previous year the Vadakalais made an innovation by reciting Prabanthams, Tamil songs, on Vedanta Desikar Sathumurai day, that the said act of the Vadakalais was a violation of the decree passed by the High Court in Appeal Suit No. 175 of 1910, that the next Sathumurai day fell on 20th September 1953 and that an order should be issued restraining Vadakalais from repeating what they did the previous year. The Board consisted of three trustees of which two were honorary trustees belonging to Vadakalai sect, the other being the Executive Trustee, a non-vaishnavite. The honorary trustees were of the view that the decree in Appeal Suit No. 175 of 1910, related only to ceremonial and congregational worship, that the decree in the said suit did not restrain individual worship by Vadakalai and that recitation by a single Vadakalai at a time, of select pasurams composed in Tamil by Desikar during the Mangalasasanam portion of Sathumurai day, was being done for a long time and was in accordance with the custom and usage. But the Executive Trustee differed, and he was of the opinion that the practice of reciting select pasurams was obtaining only for some years and that since there was difference of opinion among the trustees regarding the right of individual worship, the matter was resolved to be referred to the Deputy Commissioner, Hindu Religious and Charitable Endowments, for decision under Rule 66(2) of the Rules framed by the Hindu Religious Endowments Board. Exhibit B-4 is a copy of the resolution of the Board of Trustees.

10. As the trustees did not agree and as there was tension between the two groups, the Executive Trustee passed an order on 20th September

1953, giving certain directions as to what should be done on the Sathumurai day. Exhibit B-5 is a copy of the order. The present Plaintiff K.

Srinivasachariar and one K.N. Kothandaraman, filed an application before the Deputy Commissioner u/s 57(e) of the Madras Hindu Religious and

Charitable Endowments Act, 1951, requesting that the Deputy Commissioner may declare that there was an established custom and usage of

reciting Tamil verses composed by Sri Vedanta Desikar at the time of Mangalasasanam in front of Sri Varada-rajawami. After enquiry, the

Deputy Commissioner held against the Petitioners and dismissed the petition, Exhibit A-5 is a certified copy of the order. Aggrieved by this

decision, the Plaintiff and the said Kothandaraman preferred an appeal to the Commissioner, who agreeing with the Deputy Commissioner,

dismissed the appeal. Exhibit A-4 is a certified copy of the order of the Commissioner. It is to set aside this order that the Plaintiff has filed this suit

u/s 62 of the Act of 1951.

11. The Plaintiff alleged that according to the tradition, when Vedanta Desikar was alive housed to worship Lord Varadarajaswami on his

birthday, that it was the established custom and usage to take the idol of Vedanta Desikar on his birthday round the various shrines of Alwars and

Acharyas and that the songs composed by Sri Desikar both in Sanskrit and Tamil would be recited in praise of the respective deities at the time of

Mangalasasanam in the same way in which he would have done if he had been alive and that according to the long established usage and custom

he and other Vadakalais were entitled to recite in Tamil compositions of Sri Vedanta Desikar at the time of Mangalasasanam in the shrine of Sri

Devarajaswami and at all other shrines.

12. Defendants 1 and 2, the honorary trustees, are Vadakalais. They support the case of the Plaintiff. The third Defendant is the Executive Trustee.

Defendants 4 and 5 are Thenkalais, and the sixth Defendant is the Commissioner of Hindu Religious Endowments. Defendants 4 and 5 denied the

custom and usage alleged by the Plaintiff and stated that on the sathumurai day only Thenkalai mantrams and Prabandhams and Vazhi Thirunamam

would be recited, that what the Plaintiff wanted to establish was contrary to the decision in Sthothrapatam case reported in Bashiakar v. Thatha

Chariar (1910) 20 M.L.J. 530 that the Plaintiff had no vested right even as a member of the Vadakalai community and that as such the suit was not maintainable. The Commissioner of the Hindu Religious Endowments supported the case of Defendants 4 and 5.

13. The Subordinate Judge held that this being a statutory suit filed u/s 62 it was maintainable. He did not accept the defence that the suit was barred by res judicata, by reason of the decision in the Sthothrapatam case reported in Bashiakar v. Thathachariar (1910) 20 M.L.J. 530. On a consideration of the evidence he found that the Plaintiff had failed to establish the usage and custom pleaded by him, and in the result dismissed the suit.

14. Arguments were advanced before us on the following two points:

(1) Whether the suit is maintainable and

(2) Whether the custom and usage pleaded by the Plaintiff are true?

15. To find out whether the suit is maintainable or not, the allegations in the plaint and the reliefs asked for should be examined. The suit has

been filed by the Plaintiff in his individual capacity. He did not apply under Order I, rule, Code of Civil Procedure, for permission to represent

Vadakalais. But in paragraph 17 of the plaint it is alleged that the Plaintiff represents Vadakalai worshippers. In paragraph 22, in which reliefs are

set out, it is prayed inter alia that a declaration may be given to the effect that the Plaintiff and other Vadakalais are entitled to recite the Tamil

compositions of Sri Vedanta Desikar at the time of his mangalasasanam. In keeping with these allegations, the Plaintiff, as P.W. 1, deposed that at

the time of mangalasasanam Vadakalais alone would recite the compositions of Sri Desikar. According to him, the Thathachariar would start the

recitation and the other Vadakalais would join. The first Defendant, who gave evidence as D.W. 1, supporting the Plaintiff, says that Thathachariar

would lead the recitation and other Vadakalais would follow the recitation along with Thathachariar. D.W. 2, another Vadakalai who claims to be

a Sthothrapatam mirasidar says that he would lead the mangalasasanam recitation and the other Vadakalais would join. Thus, evidence has been

given as if the recitation of Sri Desikar's composition in Tamil was by a congregation of Vadakalais. As this position would obviously run counter

to the decision in the sthothrapatam case reported in Bashia-kar v. Thatha Chariar (1910) 20 M.L.J. 530, Mr. Gopalaswami Ayyangar, appearing

for the Plaintiff, when asked by us, stated that the Plaintiff has sought relief only in his individual right for the purpose of reciting Desikar's

composition at the time of Mangalasanam and not on behalf of Vadakalais, i.e., the substance of the relief is that the Plaintiff is entitled to worship

at the time of mangalasanam by reciting Sri Desikar's composition in Tamil. The Plaintiff has framed his reliefs (i) to set aside the order of the

Commissioner which negative the custom pleaded by him and (ii) for a declaration that he and other Vadakalais are entitled to recite Sri Desikar's

Tamil composition at the time of his mangalasanam. Thus, the scope of the suit has to be examined from two aspects according to the above two

reliefs.

16. Section 9 of the CPC describes the nature of the suits which a civil Court has jurisdiction to entertain. It can entertain every suit of a civil nature

excepting suits of which its cognizance is either expressly or impliedly barred. As a corollary to this it follows that a Court cannot entertain a suit

which is not of a civil nature. Prima facie suits raising questions of religious rites and ceremonies only, are not maintainable in civil Courts, for, they

do not deal with the legal rights of parties. Even so, explanation to Section 9 provides that a suit in which the right to property or to an office is

contested is a suit of civil nature, notwithstanding that such right may depend entirely on the decision of a question as to religious rites or

ceremonies. Two aspects do underlie the scheme of Section 9 of the Code of Civil Procedure. The first is, that a suit asserting a right to an office is

a suit of a civil nature and the second is that it does not cease to be one of civil nature even if the said right depends entirely upon a decision of a

question as to the religious rites or ceremonies. There is a further implication that questions as to religious rites or ceremonies cannot--

independently of such a right to an office--form the subject matter of a civil suit. If the present suit were to be construed as one for a mere

declaration of the Plaintiff's right to recite--Desikar's Tamil compositions at the time of his mangalasanam--it would be clearly not

maintainable. In *Subbaraya Mudaliar v. Vedanthachariar* I.L.R (1904). Mad. 23 it has been pointed out that a right to recite sacred texts in a

temple is a matter of ritual or ceremony in a religious matter with which a civil Court has nothing to do. But where the right to worship itself is

denied, a suit to establish such an ordinary right would be a suit of civil nature--Vide *Kadirvelu Chetty v. Nanjundaiyar* (1916) 3 L.W. 512. In *M.*

Appadorai Aiyangar (deceased) and Others Vs. P.B. Annangarachariar and Others, , it is pointed out that a mere claim to a religious honour

consisting of receiving theertham and prasadam is not one of a civil nature and a suit to recognise such a bare right would not be entertainable by a

civil Court unless such honour is inseparably attached as an emolument to a religious office. In *M. Appadorai Aiyangar (deceased) and Others Vs.*

P.B. Annangarachariar and Others, , it is pointed out that civil Courts in India have no ecclesiastical jurisdiction and cannot decide questions of

ritual except in so far as the decision of such questions is necessary for the decision of civil rights and that the Court will not on a mere pretence

that a right to worship has been infringed, arrogate to itself a jurisdiction which it does not possess to prescribe forms of prayer, rights to religious

precedence and questions, of that nature. The case law on the point has been reviewed by the Supreme Court in *Sri Sinna Ramanuja Jeer and*

Others Vs. Sri Ranga Ramanuja Jeer and Another, His Lordship Subba Rao J., as he then was, held that a suit for declaration of religious honours

and privileges simpliciter will not lie in a civil Court, but a suit would be to establish one's-right to an office in a temple, and to honours and

privileges attached to the said office as its remuneration or perquisites. It is pointed out that the essential condition for the existence of an office is

that the holder of the alleged office shall be under a legal obligation to discharge the duties attached to the said office and for the non-observance of

which he may be visited with penalties. It is also pointed out that it is a question of fact to be ascertained on the evidence whether the honours are

attached to the office as part of its perquisites in the sense that they become an integral part of the ritual to be performed by the recipient as the

office-holder or whether they are only shown to him as a mark of respect on the occasion of his visit to the temple.

17. Keeping the above principles in view, the right of the Plaintiff should be examined. He claims to be an ordinary worshipper. He admits in his

evidence in unambiguous terms that the recitation of Desikar's Prabandham at the time of managalasasanam is not a compellable duty of

Vadakalais, that the said recitation is not an office and that no emolument or perquisite is due to the persons reciting the verses. Thus, it is clear that

the Plaintiff does not seek to establish any right to an office. All that he seeks to establish is that on a particular occasion the worship should be

conducted in a particular form. This is purely a ritual and a suit to establish such a ritual is not competent u/s 9 of the Code of Civil Procedure.

18. But, as already pointed out, the Plaintiff's suit is not merely to obtain a declaration of his right to worship in a particular form, but is also to

set aside the order of the Commissioner threatening his right. On account of this joinder of two reliefs, the matter assumes a different complexion.

Neither in the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927) nor in any earlier enactments governing the Hindu

religious Endowments prior to the said Madras Act II of 1927, there was any provision enabling a private individual to approach the civil Court for

a relief similar to the relief prayed for by the Plaintiff in this case. Madras Act II of 1927, was replaced by the Madras Hindu Religious and

Charitable Endowments Act, 1951 (Madras Act XIX of 1951). For the first time, provision was made in Section 57 of the 1951 Act conferring

power upon the Deputy Commissioner to enquire into and decide certain disputes and matters. Section 57(e), which-alone is relevant, reads thus:

Subject to the rights of suit or appeal herein--after provided the Deputy Commissioner shall have power to enquire into and decide the following

disputes and matters:

(e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the

established usage of a religious institution is in regard to any other matter.

It is by invoking this provision that the Plaintiff approached the Deputy Commissioner who held against him as per the order exhibit A-2. Section

61 provides for appeal to the Commissioner against an order of the Deputy Commissioner. The Plaintiff Appellant availed of that provision, and his

appeal to the commissioner was also dismissed. Section 62 provides for the remedy of a suit in favour of the party who may feel aggrieved by the order of the Commissioner. That section inter alia states that the aggrieved party may institute a suit in the Court against the order of the Commissioner, and the Court is empowered to modify or cancel such order. Court is defined in Section 6(6) as meaning among other things the City Civil Court in relation to a math or temple situated in the Presidency town, or the Court of a Subordinate Judge in regard to math or temple situated elsewhere having jurisdiction over the area in which the math or temple is situated. It is by virtue of these provisions that the Plaintiff has prayed for the setting aside of the order of the Commissioner. (Similar provisions are contained in the Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act XXII of 1959) by which the Madras Act XIX of 1951, has been repealed. As this suit has been instituted under the 1951 Act, it is not necessary to refer to the relevant provisions of the 1959 Act.

19. Clause (e) of Section 57 extracted above consists of two parts. The first part enables the Deputy Commissioner to decide whether any person is entitled by custom or otherwise to any honour, emoluments or perquisite in any religious institution. The present case does not fall under this part.

Under the second part, the Deputy Commissioner is empowered to decide what the established usage of a religious institution is in regard to any

other matter. The Plaintiff seeks to bring his case under this provision. It is contended by Sri Venkatavaradachariar appearing for Defendants 4 and

5 that in view of the admission of the Plaintiff that the recitation of Desigar's Tamil composition at mangalasasanam is not a compellable duty and

that inasmuch as no perquisite or emolument is attached, the Plaintiff has no locus stand to ask for a decision as to what the established usage is.

The Legislature has Combined in Clause (e) two different aspects. The first relates to a right of a person by custom or otherwise to any honour,

emolument or perquisite in a religious institution. This involves a subjective consideration of the dispute or matter. But the second part is worded

differently. Under that provision, what the Deputy Commissioner is required to decide is what the established usage of a religious institution is in

regard to any other matter. This calls for an objective consideration in which the personal right of the person raising the dispute does not arise for decision. These two concepts appear to have been deliberately adopted by the Legislature, for there may be usages out of which no pecuniary advantage may accrue to anybody in its observance. The intention of the Legislature appears to be to enable even a person having no benefit arising out of the enjoyment or observance of the usage to seek an adjudication as to the established usage of the institution. In the absence of clear words limiting the scope of the provision the plain language should be given effect to and it would not be permissible to import into the second part of Clause (e) the notion that the dispute can be decided only if it is raised by a person having any pecuniary interest in the usage. As the language employed is general and comprehensive, it appears to us that, though the Plaintiff is not entitled to any emolument or perquisite in the enforcement of the usage, he as an ordinary worshipper is entitled to institute the statutory suit for an adjudication as to the established usage in the institution. In this view, we hold that the suit is maintainable.

20. The Plaintiff's case is that when Sri Vedanta Desikar was alive, he worshipped Sri Devarajaswami on his birthday by reciting his Tamil compositions and that according to tradition whenever the idol of Sri Vedanta Desikar was taken to the sanctum-sanctorum of Sri Varadarajaswami on his birthday his Tamil compositions would also be recited as if Sri Desikar himself was reciting. This form of worship is called mangalasasanam. According to the Plaintiff, this form of recitation has been going on from time immemorial without contest or dispute from anybody. It is, therefore, his case that there is a long established custom and usage of reciting the Tamil compositions of Sri Vedanta Desikar. Usage and custom are not synonymous. Here usage, though general, must be distinguished from custom. Usage, when it has the force of law, ripens into a custom. See *Myna Boyee v. Dataram* (1861) 8 M.I.A. 400. The dictionary meaning of the word usage is manner of using or treating; habitual or customary practice especially as creating a right or obligation or standard; habitual but not necessarily immemorial practice. Vide *Oxford Concise*

Dictionary. It would thus be seen that the usage need not necessarily be immemorial. It may even be recent. But the essentials of custom are that it should be ancient or of remote antiquity or long established, certain, invariable, uniform and continuous and reasonable and not open to objection on the ground of public policy or otherwise and not opposed to statute. The custom to be valid must also be obligatory or compulsory in the sense that it must not be in the option of any person whether he would conform to it or not--Fide paragraph 470 in Treatise on Hindu Law by P.R.

Ganapthy Iyer, 1915, edition, at page 321. The burden of proof of usage and custom is heavy on the person setting them up. The manner of proof is indicated by the Supreme Court in *Sarasimthi Ainmal v. Jagadambal* (1953) 1 M.L.J. 697 (S.C.) where it is observed:

It is well settled that custom cannot be extended by analogy. It must be established inductively, not deductively and it cannot be established by a priori methods. Theory and custom are antitheses, custom cannot be a matter of mere theory but must always be a matter of fact and one custom cannot be deduced from another.

The Andhra Pradesh High Court has pointed out in *T.T. Venkatachariah v. T.T. Devasthanam* (1967) 1 A.L.T. 406 that the onus of proving usage and custom can be discharged only by clear and cogent evidence.

21. Keeping these principles in view, we may examine the evidence to find out whether the Plaintiff has succeeded in establishing the usage and custom pleaded by him.

(Portions in paragraphs 21 to 28 omitted.)

Exhibit A-28, dated 24th August 1955, is an affidavit sworn to by the said Narasimha Iyer. In it also he has made similar reference to his having heard recitation of Sri Desikar s Prabandham inside the sanctum sanctorum when the idol of Sri Desikar was inside. The evidence of D.W. 1 is that he was present when Narasimha Iyer swore to the affidavit exhibit B-28 and that he could not trace the whereabouts of Narasimha Iyer though summons was taken out to him. The statements of Narasimha Iyer are sought to be made use of by the Plaintiff u/s 32(4) of the Evidence

Act. Section 32 deals with the relevancy of statements made by a person, who is dead, or who cannot be found or who has become incapable of

giving evidence or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, may appear to the Court unreasonable. According to Sub-section (4) when the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen, it would be relevant. One of the essential requisites which should be satisfied under the aforesaid provision is that the statement should have been made before any controversy as to such right, custom or matter had arisen. The statements contained in exhibits B-9 and B-28 were made in 1955 long after the controversy arose. It may be remembered that the controversy as to the truth of the usage and custom pleaded by the Plaintiff arose even in 1953 and at the time when Narasimha Iyer made the statements, the controversy was pending adjudication before the Endowments Officials. In those circumstances, the statements of Narasimha Iyer, even if his whereabouts are not known are not relevant u/s 32(4) of the Evidence Act.

(Portions from paragraphs 29 and 30 omitted.)

22. What the Plaintiff attempts to establish in this litigation is clearly opposed to the adjudication in the Athyapakam miras case.

Thiruvenkatachariar v. Krishnaswami Thathachariar 1915 M.W.N. 281. In that case, the Vadakalais, who were Defendants, claimed only the right to recite their own mantras and Prabhandham at the same time and place as the Thenkalais and did not claim any separate right to recite at other places and times. In that case, the controversy as to the right of the individuals in respect of processions alone was raised, and no controversy was raised as to the rituals at the time of pooja. In that case the pooja period was clearly defined, as already pointed out in paragraph 7 supra. The learned Judges made it clear that during the pooja period, the Vadakalais were absolutely prohibited from reciting any prabhandham. The question is whether the mangalasasanam period falls within the pooja period as delimited by the learned Judges in the above case. The case of the

contesting Defendants is that the mangalasasanam period is a part of the pooja period. The first Defendant, who supports the Plaintiff, admits in unambiguous terms that Athyapakam is a portion of the pooja period and that mangalasasanam is one of the items in the worship. It is also his admission that from the time Sri Vedanta Desikar starts from Villakkoli temple to the time he goes back to it, it is ceremonial worship and that it is pooja kalam D.W. 2. makes a similar significant admission to the effect that Sri Desikar's mangalasasanam is within the pooja kalam, and that the mangalasasanam commences from the time when Sri Desikar enters the temple and ends when he leaves the temple. In view of these categorical admissions, it follows that the mangalasasanam period falls within the pooja period. The decree in Appeal Suit No. 175 of 1910, makes it clear beyond any doubt that during the pooja period the Vadakalais are entitled only to join the Thenkalais Athyapakam goshti or worshippers and recite the same portion of the prabhandham that is being recited by the Athyapakam mirasidars and that the Vadakalais are not entitled to recite their own mantrams and prabhandams during the pooja period.

23. D.W. 1 with a view to get over the effect of the aforesaid adjudication says in his evidence that the prohibition does not extend to the recitation of Sri Desikar's Tamil Prabhandam. He wants to make a distinction between Desikar's Tamil Prabhandam and Nalayiraprabhandham, in regard to the applicability of the injunction issued by this Court. There is no basis for this distinction. D.W. 1 would have it that Nalayiraprabhandham is common to both Vadakalais and Thenkalais and that independently of Thenkalais Vadakalais cannot recite Nalayiraprabhandham. By this he wants to make out that Sri Desikar's Tamil Prabhandham can be recited independently by the Vadakalais. The prohibition against Vadakalais in the matter of reciting mantram or prabhandham of their own is absolutely unqualified and there is no room for the Vadakalais to contend that the prohibition does not extend to the recitation of Sri Desikar's Tamil prabhandham.

24. It is contended for the Plaintiff that what was prohibited by this Court was goshti worship by Vadakalais during the pooja period by reciting any mantram or prabhandham of their own and that injunction cannot be extended to individual Vadakalais recite the prabhandham of Sri Desikar.

We have already pointed out the frame of the suit, the evidence let in by the Plaintiff and the relief sought for by the Plaintiff, his claim is not for

reciting the prabhandham by himself, but by himself and other Vadakalais, thereby meaning that the recitation should be by their goshti. Evidence

has also been given by the Plaintiff and D.Ws. 1 and 2 to the effect that the Thathachariar would start the recitation and that thereafter the other

Vadakalais would join the Thathachariar. In other words, what is sought to be made out is goshti worship during pooja period. This is clearly

prohibited by this decree in Appeal Suit No. 175 of 1910, by this Court. It was on account of this situation, Mr. Gopalaswami Ayyangar wanted

to take up the position that the Plaintiff wants to establish his individual right to worship during mangalasasanam period without reference to other

Vadakalais. This stand is opposed to the pleadings and the evidence.

25. What is sought to be established by the Plaintiff in this litigation is a matter opposed to what was claimed by the sthothrapatam mirasidars in the

sthothrapatam miras case. The case of the Plaintiff is that Tamil songs composed by Sri Desikar are also sthothrams or slokams and that by reason

of the adjudication in the sthothrapatam case, which recognises the right of the Vadakalais to the sthothrapatam miras office, the Plaintiff and other

Vadakalais are entitled to recite the Tamil compositions of Sri Vedanta Desikar. This appears to be a disingenuous attempt. In the sthothrapatam

case, the Thathachariar made it explicitly clear in the plaint, exhibit A-6, that the sthothrapatam mirasi office means the recitation of Sanskrit

sthothram referred to in the schedule. In item No. 12 of the schedule attached to that plaint, which is extracted at paragraph 8 supra, it is stated

that on the Desikar sathumurai. day mangalasasanam would be done by reciting sthothrams made by Sri Desikar.

It would be doing violence to the meaning of the word sthothram if one were to say that it includes Tamil composition also. D.W. 1 admits that

sthothram means only Sanskrit and sthothrapatam is also Sanskrit. The Plaintiff also admits that sthothrapatam is Sanskrit. D.W. 2 admits that

sthothrapatam is exclusively Sanskrit. In the face of those admissions, it is idle to contend that sthothrapatam would include recitations of Tamil

compositions also.

26. Mr. Gopalaswami Ayyangar appearing for the Plaintiff advanced two arguments to get over the position that arises from the decisions in the

Athyapakam mirasi case and the sthothrapatam mirasi case. He contended that in these cases what was agitated was the right of the mirasi-holders

and that the decisions referred to earlier cannot be taken to affect in any way the right of ordinary worshippers like the Plaintiff. We are not

impressed with this argument. We have already pointed out that the Plaintiff has no right of his own in the temple except as an ordinary worshipper.

Even according to him, he cannot start the recitation of a song by himself. Only the Thathachariar starts the recitation. Even the Thathachariars did

not claim in the two litigations any right to recite Tamil prabhandham in the sanctum sanctorum at the time of Desikar's mangalasasanam. The

Plaintiff cannot, therefore, stand on a better footing. It was next argued that even according to Defendants 4 and 5 nothing would be recited during

the brief period of about two or three minutes when the idol of Sri Vedantha Desikar could be placed in the sanctum sanctorum, and that there

would be nothing wrong if individual worshippers recite the Tamil composition of Sri Vedanta Desikar which would only be in keeping with the

tradition that Sri Desikar himself recited his own composition. The fallacy underlying this argument is apparent. Such a recitation would run counter

to the express and clear adjudication in Athyapakam mirasi case.

27. On a consideration of the evidence, we have no doubt in holding that the custom and usage pleaded by the Plaintiff are not true. We have also

no hesitation in holding, upon the authorities of the decisions binding upon the parties that the custom and usage pleaded by the Plaintiff go directly

counter to those decisions. We have no doubt that the attempt of the Vadakalais in this litigation is to introduce and establish an innovation

opposed to the decisions binding on them Mr. Venkatavaradachariar, appearing for Defendants 4 and 5, urged, with some amount of justification,

that this attitude of the Vadakalais in putting forward some innovation or other in one form or another from time to time has been responsible for

the series of litigations pertaining to this temple going on for the last two centuries. In Thathachariar v. Thirwvengkdtachariar 1915 M.W.N. 916

920. Sadasiva Ayyar J., had occasion to make some adverse remarks against the attitude of the Vadakalais wherein the learned Judge has pointed

out that the litigation in that case was the result of the action of a small, though influential, faction of Vadakalai sectarians residing in Kancheepuram

by introducing innovations in customary practices during the period of regular official worship in the temple. Tolerance and mutual respect are the

hall marks of Hinduism and it is a pity that these two sects of Vaishnavites who profess to be the followers of great saints and savants are so

intolerant against each other even in respect of small and unimportant rituals and ceremonies. We can only hope that the people belonging to these

two sects would realise the futility of this kind of useless and wasteful litigation and stop their acrimonious fight.

28. In conclusion we desire to say that we had the benefit of erudite and lucid arguments of Mr. Gopalaswami Ayyangar and Mr.

Venkatavaradachariar, leading Counsel, who are well conversant with the doctrines and rituals of the respective party for whom they appear, they

themselves being members of the respective sects. In the result, the appeal fails and is dismissed with costs.