



S.A(MD)No.1131 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 22.09.2023

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A(MD)No.1131 of 2008

1.Fit Person,
Incorporated and Unincorporated
Devaswoms, Suchindrum,
Suchindrum Village,
Agasteeswaram Taluk,
Kanyakumari District.

2.Superintendent of Devaswom,
Nagercoil Group of Suchindrum,
Suchindrum Village,
Agasteeswaram Taluk,
Kanyakumari District.

3.Manager,
Suchindrum Devaswom,
Suchindrum Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Appellants

-VS-

N.Parameswara Sarma (died)

2.Dr.P.Shiva Parasath
(R2 is impleaded as a party/respondent vide
Court order dated 31.07.2023 made in
CMP(MD)No.3442 of 2022)

... Respondents



S.A(MD)No.1131 of 2008

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure against the Judgment and Decree dated 20.12.2004 made in A.S.No.152 of 2003 on the file of the II Additional Subordinate Judge, Nagercoil confirming the Judgment and Decree dated 17.10.2003 made in O.S.No.291 of 1996 on the file of the file of the Principal District Munsif, Nagercoil.

For Appellants ... Mr.H.Thayumanasamy for
Mr.D.Hari

For Respondent ... Mr.C.Dhanaseelan for R2

JUDGMENT

The deceased first respondent, as the plaintiff, has filed the suit in O.S.No.291 of 1996 on the file of the Principal District Munsif, Nagercoil, seeking a direction to the first appellant/first defendant to receive the keys of the outer and inner strong rooms, wherein jewels and other valuables belonging to the Suchindrum Devaswom and other Devaswoms are kept, from the deceased first respondent/plaintiff. After full-fledged trial, the trial Court granted the decree in favour of the deceased first respondent/plaintiff. Challenging the said Judgment and Decree, the appellants/defendants filed the appeal in A.S.No.152 of 2003 on the file of the II Additional Subordinate Judge, Nagercoil. After hearing, the first appellate Court has dismissed the appeal and confirmed the Judgment and Decree passed by the trial Court.



S.A(MD)No.1131 of 2008

Aggrieved over the same, the appellants/defendants have filed the present second appeal before this Court.

2(i). The case of the deceased first respondent/plaintiff before the trial Court is that he is the member of the Vattapalli family of Suchindrum. The senior male member in the family has to function as Sree Koviludaya Vattapalli Sthanikar and Tantri in Suchindrum Thanumalayar Temple. He directly regulates all the affairs of daily routine in the temple. The deceased first respondent/plaintiff's father is the senior most member in the family. He because of old age, resigned. The deceased first respondent/plaintiff is the eldest son. As he is the senior most male member in the family, he was nominated as the next Sthanikar which was approved by the Department. He functions as the Sthanikar from 26.11.1983. The deceased first respondent/plaintiff is the medical practitioner and he was a graduate in Ayurvedic Medicine. According to the original practice and customs, the Vattapalli is authorised to preserve the keys of all the shrines in his custody. Vattapalli also has in his custody the key of Vaganapura and a set of the keys of the two strong rooms, one outer and one inner. In the inner room, the temple jewels and other valuables are kept. In the outer room, in various boxes, jewels and things pertaining to other Devaswoms are kept. The lock holes are sealed



S.A(MD)No.1131 of 2008

by the appellants 2 and 3/defendants 2 and 3 respectively. Inner room is sealed

with the seals of the third appellant/third defendant and the outer room with that

of the 2nd appellant/2nd defendant. During Colonel Monroc's time in the year

1802, all the public temples in Travancore came under the direct control of the

Government of Travancore. For a long time, the Revenue Department

administered all the temples. Barring a few temples, separate accounts were not

maintained in the temples. Immovable properties belonging to temple had been

brought under Pandaravaka. Thereafter, by proclamation, dated 12.04.1922

corresponding to 30.08.1997 M.E Devaswom fund was created and separate

Devaswom Department was brought into existence. The Government was to

contribute 40% of the land revenues to the Devaswoms. Subsequently,

Travancore and Cochin Hindu Religious Institutions Act, 15 of 1950 came to be

passed. On 01.11.1956, the State Re-organisation Act came into force. By virtue

of that, Kanyakumari District comprising the Taluks of Thovalai,

Agasteeswaram, Kalkulam and Vilavancode came into existence and became

part of the then Madras State. The Travancore Cochin Act, 15 of 1950 was

repealed by Tamil Nadu Act 30 of 1959. This Act continued to be force till

1974 when the third Amendment Act of Hindu Religious and Charitable

Endowment Act 22 of 1959 was passed. By Amendment Act, T.N. Act 30 of

1959 was repealed.



S.A(MD)No.1131 of 2008

WEB COPY

2(ii). The further case of the deceased first respondent/plaintiff is that now there is no separate Act for the administration of the incorporated and unincorporated Devaswoms in Kanyakumari District and Shenkottah Taluk of Tirunelveli District. Over the year, the power and position of the Vattapalli Sthanikar custodian of the keys of the strong rooms and Vahanapura became nominal. The secular management was originally under the Travancore Revenue Department, then under the Devaswom Department of Travancore and then under the Devaswoms Department of Travancore and then under the Devaswom Board and its officers. Keeping an act of the keys of the strong room became a matter of more honour alone.

2(iii). The further case of the deceased first respondent/plaintiff is that Suchindrum Devaswom is the most important of all the Devaswoms in Kanyakumari District. There is no Board of trustees functioning. It is only Deputy Commissioner, H.R and C.E., functioning at Suchindram who is acting as a Fit person doing the functions of the Board of trustees in the management of the incorporated and unincorporated Devaswoms. The Fit Person is made the first defendant in the case as representing the incorporated and unincorporated Devaswoms. The Superintendent of Devaswoms, Nagercoil Group at



S.A(MD)No.1131 of 2008

Suchindrum and Manager of the Suchindrum Devaswoms were impleaded as the 2nd and 3rd defendants. During the month of June 1992, there was verification done for the jewels and other articles supposed to be in the strong room outer and inner in Suchindrum temple and interim report was filed after the verification and according to the interim report, items 201 and 203 weighing 10 grams and 107 grams of gold respectively were missing. In adding item 67, two pieces of silver having a total weight of 4075 grams were missing. The estimated value is given at Rs.35,100/- and Rs.30,562/- respectively, making a total of Rs.65,662/-. In this regard, a complaint was made to the Suchindrum Police Station on 29.06.1992. In such circumstances, the deceased first respondent/plaintiff does not want to continue in possession of the keys of the strong rooms. It is for the first appellant/first defendant, who performs the functions of the Board of Trustees of the incorporated and unincorporated Devaswoms including Suchindrum Devasom to have the possession of the keys. The deceased first respondent/plaintiff is entitled to have a direction from this Court for the first appellant/first defendant to receive the keys of the strong room from the first respondent/plaintiff. Hence, he filed the suit for the above said relief.

3(i). The case of the appellants/defendants before the trial Court is that



S.A(MD)No.1131 of 2008

the suit is not maintainable and the Vattapalli Sthanikar has to act as Tantri only for Chithirai and Markazhi festivals. For the other festivals, some other Namboothiri Tantries from Irungalakuda, Kerala used to act as Tantri. The fact that the Vattapalli Sthanikar directly regulates all the affairs of daily routine in the temple is not correct. The Sthanikar has to perform only the duties attached to that. It is admitted fact that the deceased first respondent/plaintiff's father was the Sthanikar and after his resignation, the plaintiff is acting as the Sthanikar of the temple. The other allegations that the family of the first respondent/plaintiff is very much attached in the temple etc., are not quite correct. The Sthanikar has to do the duties attached to that office. The Sthanikar is paid by the Devaswom for the services or duties rendered by him. The allegations stated in the plaint are not fully correct and are not complete also. The allegations that the Vattapalli is authorised to preserve the keys of all the shrines in his custody is not fully correct.

3(ii) The Sthanikar has to preserve the keys of two main shrines only that is Thanumalaya Shrine and Perumal shrine which are otherwise called as Vadaku Idam and Thekky Idam respectively. The keys of other shrines are kept by the concerned Santhikars of the respective shrines. The Vattapalli Sthanikar is the custodian of all the jewels, gold and silver vahanams and Bharani pathram



S.A(MD)No.1131 of 2008

articles and he is the custodian of the keys of the strong room, silver vahanapuri

and Pathirappurai as well as the sanctum of Thanumalayan Temple,

Suchindrum. The entire ornaments to be used for ecorating Ulsavar dictics

during festival seasons are kept in the inner strong room. The inner strong room

is situated inside the main strong room. At the time of taking jewels in the

festival, the Superintendent, Manager, Treasurer used to make themselves

available near the strong room. In the presence of the Sthanikar, the

Superintendent of Temple has to verify the seal and has to find out whether it is

in tact. If so, he has to open that seal. After that, the Sthanikar used to open the

main strong room with the key in his custody and will open the doors of the

main strong room. There will be another seal in the inner strong room also.

After opening the main strong room, the Manager of the Devaswom has to

verify the seal in the inner strong room door and if it is kept in tact, then he has

to remove that seal also. After that, the Sthanikar will open the inner strong

room and will take necessary ornaments and then, a mahazar will be prepared

regarding the jewels which are taken out. In that manner, the Sthanikar,

Devaswom Superintendent, Treasurer and Manager of the Devaswom and the

strong room guard used to affix their signatures. After that, the inner strong

room will be locked by the Sthanikar and the Manager of Devaswom will put up

the seal. Then, the main strong room will be locked and the Superintendent will



S.A(MD)No.1131 of 2008

put up the seal in that also. All the jewels taken out from the strong room will be kept by the Sthanikar under his exclusive custody during the entire festival period. He has to adorn the jewels for the Ulsavar during the relevant time under the supervision and responsibility of Sthanikar. Only the Ulsavar will be taken out for procession and during the procession, the Sthanikar or his men used to follow the Ulsavar. After completing the procession, the Sthanikar used to remove the jewels from the Ulsavar and he will keep the same under his exclusive custody. This procedure will be followed till the end of the festival period. After the festival is over, the Sthanikar used to replace the jewels again in the inner strong room by following the procedure stated supra and suitable entries will also be made in the mahazar. Thus, it could be seen that whether the jewels are taken out or kept inside in the strong room, they are under the custody of the Sthanikar only and the jewels never come under the custody of Devaswom employees at any time. The keys of the strong room and the jewels of the Sthanumalayan Temple will be always and in all times in the custody of the plaintiff only as he is the present Sthanikar of the temple. The allegations stated in paragraphs 6 to 12 are incorrect. It is incorrect to state that keeping of a set of keys of the strong room is a matter of more honour. Keeping in custody of the ornaments and keys is part and parcel of his duty as the Sthanikar of the Thanumalayan temple. That duty cannot be separated. The missing of valuables



S.A(MD)No.1131 of 2008

stating in the plaint is quite unwarranted. The complaint in this regard is proper on the part of the first defendant and these defendants have denied all the remaining allegations in the plaint.

3(iii). The further case of the appellants/defendants is that the plaintiff is not entitled to put forward inconsistent allegations. The jewels taken out from the strong room are used for these functions also. The other gold ornaments taken from strong room used only for Ulsavar. The Sthanikar also provide with a separate room near Sanctum Sanctoram during the festival season for his exclusive use and the Sthanikar kept jewels in temple custody in the inner strong room. When the Vahanams are taken out during festival, police protection is given and the Superintendent of Devaswom, the Manager of the Devaswom and the accountant and other deputed employees of Devaswm also used to accompany with the Ulsavar to provide proper protection. Moreover, the Sthanikar will be sitting in the Vahanam very near to Ulsavar. The Sthanikar or his deputy alone used to wear ornaments on the Ulsavar and they alone used to remove the same after Ezhunellathu is over. Insufficiency in security was never noticed when Vahanams are taken out at any time for all these years. Thus, sufficient protection and security is given by the Devaswom as well as the State Government. The Vahanams are taken out by the Pidaka people in their



S.A(MD)No.1131 of 2008

shoulders accompanied by Devaswom employees and for each Vahanam 20 to 40 persons are required for carrying the same in accordance with the size of the Vahanam and the Vahanams will be having great weight. This will be moved only in the slowly manner. The missing of jewels at this juncture is purely imaginary. Therefore, the suit is liable to be dismissed.

4. The trial Court, considering the pleadings, framed the issues. During trial, on the side of the deceased first respondent/plaintiff, he examined himself as P.W.1 and two witnesses were examined as P.W.2 and P.W.3 and 12 documents were marked as Exs.A1 to A12. On the side of the appellants/defendants, one Chidamparampillai was examined as D.W.1 and 6 documents were marked as Exs.B1 to B6.

5. Considering the above pleadings, oral and documentary evidence, the trial Court has decreed the suit. Therefore, the appellants/defendants have filed the appeal suit before the first appellate Court. The first appellate Court has also dismissed appeal.

6. Aggrieved over the same, the appellants/defendants filed the present second appeal raising the following substantial questions of law:



S.A(MD)No.1131 of 2008

“(a) Whether the plaintiff's could continue to hold the position of Sthanikar of Thanumalaya Perumal Temple Devaswom, Suchindrum after avoiding his main duty and responsibility of Sthanikar.

(b) As the lower appellate Court has given the finding that keeping the key of the strong room is one of the duties and responsibilities of the Sthanikar whether the decree for mandatory injunction granted is sustainable in law.

(c) Whether Sthanikar is entitled to change and violate the age old custom of Practice followed in Suchindrum Devaswom admittedly for more than 1000 years and as against the provisions of the Tamil Nadu H.R and C.E Act.

(d) When admitted by the position of Sthanikar itself was created for keeping the key of strong room and the same has been followed for so many years whether the plaintiff could change the same in his individual capacity as the suit has not been filed in representative capacity.

(e) If the present Sthanikar of Thanumalaya Perumal Temple finds himself disabled to perform his main duties and responsibilities whether his residency is not to give up his position of Sthanikar to the next nominee of his family as done by the previous Sthanikar or to give up the duties and responsibilities.

(f) Whether the Civil Court could grant decree of mandatory injunction as against the fit person of Devaswom in violation of the provision of Section 42 of the Tamil Nadu H.R and C.E Act and Rules framed under that Section.



WEB COPY



S.A(MD)No.1131 of 2008

(g) Whether the Civil Court could grant reliefs as against the provision of Section 108 of Tamil Nadu H.R and C.E Act.

(h) Whether the finding given by Lower Appellate Court that an present state of society it is not possible for the Sthanikar to keep custody of jewels without any acceptable evidence to that effect and misconception and also ignoring the alternative relief claimed in the plaint is sustainable in law”.

7. Though the appellants/defendants have raised the above substantial questions of law, this Court has not admitted this case, however, ordered notice and called for records.

8. The learned counsel appearing for the appellants/defendants would submit that the appellants/defendants have been following this practice that the Sthankar has to be always in custody of the property of the jewels and that practice has been followed for 870 years i.e., from 1130 A.D. onwards. Therefore, he would contend that the said practice that the continuation of the custody of the keys of the lockers cannot be removed overnight. Even after commencement of the H.R and C.E Act, the same practice has been continued. Because the jewels were missing, a complaint was given and that cannot be a ground for them to approach the civil Court and file the suit for relieving them from the position as the custodian of the keys and what they have followed in



S.A(MD)No.1131 of 2008

the customary manner. Therefore, he would submit that the first respondent/plaintiff cannot be relieved and he is going to be custody of the jewels locker keys not independently, but jointly along with the Executive Officer. The Sthanikar is having one key and the Executive Officer is having another key. When they are verifying the jewels, they found that some jewels were missing. The continuation of the possession of the keys by the Sthanikar and the responsibilities of them for a period of 870 years is also admitted during cross examination of P.W.1. Therefore, all these aspects have not been considered by both the Courts below and without considering the above fact, both the Courts below passed the Judgment and Decree in favour of the plaintiffs. Hence, the learned counsel for the appellants/defendants requested this Court to frame the substantial question of law as suggested by the appellants/defendants.

9. On the other hand, the learned counsel for the respondents/plaintiffs would submit that after enactment of the H.R and C.E Act, the appellants are the custodian of all the jewels and keys of the properties of the Suchindrum temple. After the commencement of the Act, one key normally be handed over to the Sthanikar and another key of the jewels of the room be handed over to the Executive Officer. This aspect has been followed as practice. However, in terms



S.A(MD)No.1131 of 2008

of the provisions of the H.R and C.E., Act, entire properties would be under the custody of the Commissioner of H.R and C.E. The Commissioner of H.R and C.E., can assign the power to have custody of the property of the temple only to the Executive Officer and the Act has not mentioned anything about the fact that the custody of the property under the Sthanikar. Hence, the learned counsel would submit that in accordance with the provisions of the Act, any duties to be performed by the Sthanikar, he is ready to perform the same. As the Sthanikar, he has to perform the pooja and other aspects, then he has ready to perform the same. With regard to the custody of the keys, he does not want, as he is not inclined to take responsibility.

10. At this juncture, the learned counsel for the appellants/defendants would submit that in the event, if the first respondent/plaintiff is not inclined to take the custody of the keys, at least, the appropriate order may be passed to that extent that since the Sthanikar is sitting near deity during Ulsavar at the time of procession, all the jewels adorned by the deity. However, the learned counsel for the respondent/plaintiff would submit that if anything is handed over and the Sthanikar alone is control over the same, without showing the same, the responsibility will be passed on verifying the same. But in the present case, it is not the fact that the Sthanikar alone is receiving the jewels to wear the Ulsavar



S.A(MD)No.1131 of 2008

and also many other persons are involved. He would further submit that in the present case, the suit is filed only to receive the keys. Therefore, the prayer in the suit is restricted only to the extent of receiving the keys and the present issue appears to be the jewels which are taken out from the locker for the purpose of wearing the same to the Ulasavar. Therefore, this will be the issue to be decided by this Court while considering the scope of the present suit. However, it is left open to the Commissioner to identify and fix the responsibility in terms of the provisions of the H.R and C.E Act. The relevant provisions of Sections 42 and 45 of the H.R and C.E Act read as follows:

"42. Office-holders and servants of religious institutions not to be in possession of jewels, etc., except under conditions. —Notwithstanding anything contained in any scheme settled or deemed to have been settled under this Act or in any decree or order of a Court or any custom or usage to the contrary, no office-holder or servant of a religious institution or other person shall have the right to be in possession of the jewels or other valuable belonging to the religious institution except under such conditions and safeguards as 1[the Commissioner] may, by general or special order, direct.

45. Appointment and duties of Executive Officers.—(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may



WEB COPY



S.A(MD)No.1131 of 2008

be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math.

[Explanation.—In this section “math” shall not include a temple under the control of a math].

(2) The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner. Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in subsection

(1) shall be assigned to the executed officer.

(3) The Commissioner may define the powers and duties which may be exercised and discharged respectively by the executive officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive Officer."

11. A mere reading of Section 42 of the Act would reveal that the Commissioner is responsible for having possession of all the jewels and properties subject to any by general or special order as may be directed by him.

12. A further reading of Section 45 of the Act would emerge that the Commissioner can assign his powers and duties as appertaining to the



S.A(MD)No.1131 of 2008

administration of the properties of the religious institution to the Executive Officer. Therefore, the properties would obviously be under the control of the Executive Officer. However, nothing has been mentioned about this Sthanikar about their rights and duties. Whatever, they have been following in the customary practice, they can continue to follow and other aspects subject to the pleasure of the Sthanikar. In such view of the matter, I find no substantial question of law that would arise for deciding this second appeal.

13. With regard to the casting of responsibility on the Sthanikar in the event of missing of the jewels at the time of procession, this Court is of the view that once the jewels are handed over to the Sthanikar for the purpose of adorning the deity, no doubt that the said Sthanikar will be responsible and he has to hand over the same as per the list handed over to him and if any jewels are missing beyond his control, the same has to be enquired in accordance with law. Further, in such case, the entire responsibility should not be fixed against the Sthanikar alone, otherwise, the responsibility has to be fixed against the person, to whom the jewels are handed over and also against the persons, who are all responsible for missing of jewels.

14. In the result, his Second Appeal is dismissed. No costs.



S.A(MD)No.1131 of 2008

WEB COPY

22.09.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes

skn

To:

- 1.The II Additional Subordinate Judge,
Nagercoil.
- 2.The Principal District Munsif, Nagercoil.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.1131 of 2008

KRISHNAN RAMASAMY, J.

skn

S.A(MD)No.1131 of 2008

22.09.2023