



A.S.(MD)No.1 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.1 of 2015
and
M.P.(MD)No.1 of 2015

Arulmighu Subramania Swamy Deity,
Through its Joint Commissioner/Executive Officer,
Having office at Tiruchendur.

... Appellant / Plaintiff

-Vs-

1.Eraniyal Chekala Community,
Neyoor Post,
Kanyakumari District,
Through its President,
Subramanian @ Mani,
S/o.Ramiah,
No.29/23, South Sekala Street,
Eraniyal.

2.Palani

3.K.Veerabahu Subramanian

... Respondents/Defendants

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code to set aside the judgment and decree dated 28.02.2014 passed in O.S.No.36 of 2012 on the file of the II Additional District Judge, Tuticorin.

For Appellant : Mr.M.Muthugeethayan
For R1 : Mr.N.Pandiyarajan



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For R2 : Mr.Lakshmi Gopinath
for M/s.Polax Legal Solutions
For R3 : No Appearance

JUDGMENT

Aggrieved over the dismissal of the suit filed seeking declaration and recovery of possession and mandatory injunction not to construct any further construction in the suit property, in O.S.No.36 of 2012 on the file of the learned II Additional District Court, Tuticorin, dated 28.02.2014, the present appeal is filed by the plaintiff.

2.For the sake of convenience, the parties are arrayed as per their rank before the trial Court.

3.The brief facts leading to the filing of the Suit are as follows:

(i) Arulmigu Subramania Swamy Temple, Tiruchendur is the plaintiff in the suit. Originally the suit properties are endowed to the temple for the purpose of doing certain charities, viz., Viswarupa Neivathiyam and Archanai vide partition deed, dated 02.01.1905 executed among one Kandasamy Pillai and Muthiah Pillai. In the said deed, the suit properties were earmarked for doing certain charities. Once the properties have been endowed to the temple for



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performing charity and service, the said properties are the absolute properties of the Temple and same cannot be alienated. However, the third respondent, the legal heir of Muthiah Pillai sold a portion of the suit properties to the first respondent under Ex.A2, dated 10.09.1976. Similarly, the father of the third defendant sold a portion of the suit properties in favour of the grandfather of the second defendant under Ex.A3, dated 25.11.1960. After coming to know about the sale made in respect of the suit properties, the plaintiff issued a notice to the third defendant on 12.06.2003 under Ex.A5 and the same was not replied. In the meantime, the first defendant demolished the old building located in the suit property and made an attempt to put up a new construction. In this regard, notice was also issued to the first defendant under Ex.A6. Further, the second defendant also made an attempt to demolish an another building situated in the suit property. Hence, the suit had been filed by the plaintiff seeking declaration, recovery of possession and permanent injunction.

4.It is the contention of the first defendant that the suit properties were originally belonged to the family of the third defendant. The third defendant obtained release deed from the other legal heirs and became an absolute owner of the suit properties and he executed a sale deed in favour of the first defendant.



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The first defendant is regularly doing Neivaithiyam and Archanai to the plaintiff Temple. As the properties belong to the Chekala Community, the said community is doing all the works and worships to the plaintiff Temple. The community is maintaining the properties by putting boundaries and making valuable improvements in the suit properties. The plaintiff has no right over the suit properties. The first defendant is doing all charities to the Temple.

5.The second defendant has filed a written statement to the effect that the second defendant is the owner of the suit second schedule property. He contended that the suit second schedule property is originally belonged to his grandfather, namely, Essakkiyapillai, who purchased the said property under sale deed, dated 25.11.1960. There is no recital in the partition deed with regard to the performance of any religious rites or charities in the second schedule property. Therefore, the second defendant contended that the plaintiff Temple has no right over the second schedule property and the second defendant has right to demolish or construct any building in the suit second schedule property.

6.Based on the above pleadings, the trial Court had framed the following issues:



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“1. Whether the plaintiff Temple is entitled for declaration that the schedule properties were given to the Temple as endowment properties to perform certain religious rites and charity in the Temple or not?

2. Whether the plaintiff Temple is entitled to recovery of possession of the schedule properties from the defendants?

3. Whether the plaintiff Temple is entitled to get permanent injunction restraining the defendants from putting up any constructions in the schedule properties?

4. To what other reliefs?”

7. In order to prove the case, on the side of the plaintiff, P.W.1 was examined and Ex.A1 to Ex.A7 were marked and on the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B1 to Ex.B7 were marked.

8. Based on the evidence and materials, the trial Court dismissed the suit mainly on the ground that the plaintiff Temple has not proved the title over the suit properties by producing documents.

9. Challenging the said decree and judgment, the present Appeal Suit has been filed by the plaintiff.



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10.The learned counsel for the plaintiff/appellant vehemently contended that the suit properties are originally endowed to the plaintiff Temple for performing certain religious activities. It has been clearly captured in Ex.A1, partition deed, dated 10.09.1976 executed among Muthiah Pillai and his brothers that the suit properties were endowed to perform certain charity by a Will of the year 1893. The suit properties were allotted to Muthiah Pillai. When the very document proves the endowment and earmarking of the property for doing religious charity, now merely on the basis of some recitals in Ex.A1, it cannot be contended that the temple has no title over the suit properties. Even the second defendant in his written statement had admitted Ex.A1. Therefore, once Ex.A1 is admitted and not disputed, the question of proving the same by way of other documents does not arise at all. Further, the trial Court has not appreciated the entire recitals in Ex.A1, instead the trial Court had chosen to consider few sentences, which were in favour of the defendants. Hence, the intention of the parties was clearly established and the same cannot be defeated.

11.It is the further contention of the learned counsel for the plaintiff that the trial Court had failed to go into the entire recitals in Ex.A1. When the



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properties have been dedicated and when the said dedication is completed for the purpose of doing charity, it could be held only as a complete dedication in favour of the temple. Even in the written statement, all the defendants have taken a stand that they are continuing to do certain charity in the suit properties. That itself clearly indicates that the suit properties have been originally endowed for religious purposes. The entire reading of Ex.A1 proves the intention of the original owners to do the religious charity in the suit properties. Further, Ex.A1 indicates that the properties were endowed not only to do service to the plaintiff temple, but also to do service to other temples. Such being the position, the trial Court non-suited the plaintiff Temple merely on the ground that no document is filed to prove the title of the plaintiff Temple. The said decree and judgment has to be set aside and the suit has to be decreed.

12.In support of his contention, he relied upon the following judgments:-

(1)A.A.Gopalakrishnan vs. Cochin Devaswom Board and others
reported in ***(2007) 7 SCC 482***;

(2) Kulalar Peravai rep. by its Secretary vs. A.S.S.Nataraj and others
reported in 2022 (1) CTC 207; and



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(3) *Idol of Sri Renganathaswamy rep by its Executive Officer, vs.*

***P.K.Thoppulan Chettiar and others* reported in (2020) 17 SCC 96.**

13.The learned counsel for the respondents submitted that Ex.A1, clearly shows that the suit properties have been allotted to the respective sharers with absolute right even to convey the property. Therefore, merely because some service is earmarked in the suit properties, the same cannot be treated as a complete dedication. At the most, it can be taken as only a charity to do certain services. The services contemplated under Ex.A1 is Archana and Neiveidhyam. For which, complete dedication is not at all required. The intention expressed in the partition deed under Ex.A1, clearly shows that absolute right has been created in favour of the sharers. Further, it is the contention that Ex.A1 does not state that charity should be performed without any interruption. The appellant traces the title to the property only on the basis of the Will, of the year 1893. But, the said Will has not been produced before this Court. The recital in the document that a sum of Rs.150/- is retained for the purpose of services clearly indicates that the suit properties are only meant for charity and not a complete dedication. Hence, if any charity or service is not performed, action could be initiated only under Section 38 of the Tamil Nadu Hindu Religious and Charitable Endowments Act.



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Such being the position, the Temple cannot claim absolute title over the suit properties, which had not been dedicated completely in favour of the Temple. The tax receipts and Electricity receipts were in the name of the respondents. All the facts have been fairly considered by the trial Court and then the suit came to be dismissed. Hence, the learned counsel for the respondents pray for dismissal of the appeal suit.

13.In the light of the above submissions, now the points that arise for consideration in this appeal are:

“1)Whether the suit properties are endowed for the purpose of performing any service to the plaintiff Temple and if so, it is mere a charity or complete dedication?; and

2)Whether the plaintiff is entitled to the relief of declaration, recovery of possession and permanent injunction?”

14.The suit has been laid by the Temple mainly on the ground that the suit properties have been completely endowed to the Temple for the purpose of performing some services to the temple. The plaintiff traces such endowment on



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the basis of Ex.A1, partition deed dated 02.01.1905. It is relevant to note that though survey number has not been mentioned in Ex.A1 except four boundaries of the properties, identity of the properties is not disputed. The only defence taken by the defendants is that the plaintiff has not established any title and the defendants are continuously performing services as mentioned in Ex.A1.

15.Ex.A1 is the partition deed entered between one Kandasamy Pillai and Muthiah Pillai. The first schedule property was allotted to Kandasamy Pillai and the second schedule property was allotted to Muthiah Pillai. A careful perusal of the recitals shows that out of the properties allotted to two brothers, certain properties, which have been earmarked for doing certain charities or services to the temple, have to be retained to continue such charity. Such recital is as follows:

“இதன் 1வது தபசில்களில் கண்டிருக்கிறபடி சொத்துக்களில் சில சொத்தின் வரும்படியிலிருந்து சில தருமங்கள் செய்து வரும்படியாக நம்முடைய மாதாமகர் முத்தயாபிள்ளை அவர்கள் உயில் மூலமாய் ஏற்ப்பாடு செய்திருக்கிறபடியால் நாம் இருவரும் இதன் 1வது 2வது தபசில்களில் விவரித்திருக்கிறபடி அவரவர் பாகச் சொத்து சம்பந்தப்பட்ட தருமத்தை அவர்அவரே என்றென்றைக்கும் நடத்தி வரவேண்டியது.”



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16.The above said recital in Ex.A1, makes it clear that from the first and second schedule of properties, which are the subject matter of the partition in Ex.A1, certain properties alone had been earmarked for doing services forever. This makes it very clear that such endowment has been made in the year 1893 in a Will. The Will is also referred in Ex.A1. Though the recitals of the document indicate that the absolute title is also allotted to the sharers, the fact remains that except few properties, which are endowed for performing certain charity, the absolute enjoyment had been given to the sharers. Further it is also relevant to note that the properties endowed for doing certain services had been clearly mentioned in Ex.A1 in page No.14 of clear copy, which reads as follows:

“வீடும் கடையும் திருச்செந்தூர் சுப்பிரமணியசாமி விஸ்வரூப
நெய்வேத்தியமும் அர்ச்சனையும் செய்து வரவேண்டிய தர்மத்துக்கும்
பாத்தியப்பட்டிருப்பதில் மேற்படி தர்மத்தை நம்மில் முத்தையாபிள்ளை சரியாயும்
கிருமமாயும் நடத்தி வர வேண்டியது”.

17.The said recital makes it very clear that the suit properties, which have been earmarked with specific boundaries under Ex.A1, were specifically endowed for the purpose of doing certain charities to the Temple. The sentence “வீடும் கடையும் திருச்செந்தூர் சுப்பிரமணியசாமி விஸ்வரூப நெய்வேத்தியமும் அர்ச்சனையும்



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செய்து வரவேண்டிய தர்மத்துக்கும் பாத்தியப்பட்டிருப்பதில்”makes it very clear that the properties were earmarked with specific boundaries for doing certain services, namely Neiveidhiyam and Archana continuously.

18.It is relevant here to refer sub sections 16, 17 and 19 of Section 6 of the Tamil Nadu Hindu Religious and Charitable Endowments Act:

(16) “religious charity” means a public charity associated with Hindu festival or observance of a religious character, whether it be connected with a math or temple or not;

(17) “Religious endowment” or “endowment” means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution;

Explanation.—(1) Any inam granted to an archaka, service holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service holder or employee but shall be deemed to be a religious endowment.



Explanation.— (2) All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a “religious endowment” or endowment” within the meaning of this definition, notwithstanding that, before or after the date of the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed:

Provided that this Explanation shall not be deemed to apply in respect of any property which vested in any person before the 30th September 1951, by the operation of the law of limitation;

(19) “specific endowment” means any property or money endowed for the performance of any specific service or charity in a math or temple or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to clause (17);

Explanation. —(1) Two or more endowments of the nature specified in this clause, the administration of which is vested in a common trustee, or which are managed under a common scheme settled or deemed to have been settled under this Act, shall be construed as a single specific endowment for the purposes of this Act ;

Explanation.—(2) Where a specific endowment attached to a math or temple is situated partly within the State and partly outside the State, control shall be exercised in accordance with the provisions of this Act over the part of the specific endowment situated within the State;”



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19.A combined reading of the above sections makes it very clear that any property given or endowed to the temple for the purpose of any charity of public nature connected there with or of any other religious charity shall be deemed to be a 'religious endowment'. Similarly, specific endowment means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity. If the above definition is applied, Ex.A1 clearly indicates that the suit properties have been endowed specifically for the purpose of doing charity services to the plaintiff Temple. Hence, the said endowment shall be considered only as a 'religious endowment' and also 'specific endowment'. Therefore, when the donors had an intention to leave the properties for the purpose of doing certain services to the temple, the intention cannot be defeated by taking a different view.

20.Further, in the partition itself, the suit properties have been specifically endowed to perform specific services to the temple and it has been specifically mentioned about the continuance of doing charity forever. The very fact that only few properties have been identified with specific boundaries and it



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has been used only for charitable purposes, clearly proves the intention of the ancestors of the third defendant and others to endow the property to the Temple. When the intention of the parties from the inception is clear that the properties had been endowed only for the purpose of doing charity, the Court as *parens patriae* has to necessarily protect the property, which had been endowed to the plaintiff Temple.

21. Admittedly, the service is only meant for the temple. The temple is the place, where the large number of people appear and gather and the charity to the temple will benefit only the public at large or otherwise the fluctuating body of persons incapable of being specifically identifiable. Such being the position, the charity acquires the character of public in nature. The Hon'ble Apex Court in the case of ***Idol of Sri Renganathaswamy, rep by its Executive Officer vs. P.K.Thoppulan Chettiar, Ramanuja Koodam Anandhana Trust*** reported in 2020 (2) CTC 341 (SC) had clearly held as follows:

“16. The distinction between a public and private charity was set out by a Constitution Bench decision of this Court in Mahant Ram Saroop Dasji v S P Sahi⁶. In that case, the Court had to determine whether the Bihar Hindu Religious Trusts Act (1 of 1951) applied to both public as well as private trusts. It described the difference between public and private charities as follows:

“6.....it is necessary to state first the distinction in Hindu law



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between religious endowments which are public and those which are private. To put it briefly, the essential distinction is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private trust the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust.”

Where the beneficiaries of a trust or charity are limited to a finite group of identifiable individuals, the trust or charity is of a private character. However, where the beneficiaries are either the public at large or an amorphous and fluctuating body of persons incapable of being specifically identifiable, the trust or charity is of a public character. This test has been consistently followed by subsequent benches of this Court, most recently in a three judge Bench decision of this Court in M J Thulasiraman v Hindu Religious & Charitable Endowment Admn⁷. In the present case, the Deed of Settlement states that the charity is to be carried for the benefit of the ‘devotees’ who visit during certain Hindu religious festivals. The charity is one which benefits the public and the beneficial interest is created in an uncertain and fluctuating body of persons. The ‘devotees’ as a class of beneficiaries are not definitive and therefore, the respondent trust is a public trust.”

In the present case, since the very properties had been endowed to the plaintiff Temple, it has to be held that the suit properties have been specifically endowed for doing charity and services to the temple.



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22. Though recitals with regard to the charity had not been found in Ex.A3, sale deed, dated 25.11.1960, in which the father of the third defendant executed a sale in favour of the grandfather of the second defendant, it cannot be concluded that the suit properties had not been dedicated to the plaintiff Temple. It is relevant to note that the sale of the properties under Ex.A3, sale deed, dated 25.11.1960 is made only on the basis of the allotment made under Ex.A1, partition deed, dated 02.01.1905, which is the parent document. When the parent document itself clearly refers to the earlier Will, under which the suit properties had been dedicated to the plaintiff Temple, mere omission in the subsequent documents about the charity will not give any advantage to the defendants to claim absolute title over the property. Further, under Ex.A2, sale deed dated 10.09.1976, a sum of Rs.150/- had been fixed to do certain services in the temple. Allotting such particular amount itself makes it very clear that the parties, ie., seller and the purchaser are aware that the properties are specifically endowed to the Temple to do certain charity. Therefore, the subsequent recitals, which had been made by the parties, who had purchased the properties suppressing the earlier recitals in the original deed for the purpose of transferring the property, cannot be a ground to hold that it is only a charity to perform services and not a complete dedication.



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23.It is also to be noted that D.W.1 is the president of the first defendant's community. In his evidence, he had admitted that in the Ex.A2, it is referred that there should be service to the temple and Rs.150/- to be retained for such service. It is relevant to note that retaining of Rs.150/- for service had been first time introduced in Ex.A2 only during the year 1976. Whereas, the original parent deed under Ex.A1 clearly proves the absolute dedication in favour of the Temple. Further, in his evidence, he had also admitted that they are continuing service, even when the suit properties were vacant site and they also received a communication from the Temple that the suit properties are endowed to the Temple. He had also admitted that they have not obtained any permission for purchasing the property. He had also admitted in his cross examination that the suit properties are meant for service to the temple for doing Neivethyam and Archanai. It is not known whether the service is still continued and he had obtained any permission to construct a new house in the suit premises.

24.When the pleadings and the evidence about the endowment of the property in favour of the Temple to perform certain charity and services under Ex.A1 are not disputed, the question of placing the burden on the plaintiff to prove the title by producing the Will and other title deeds does not arise at all. Once the



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suit properties are completely dedicated even in the year 1893 as per the Will referred in Ex.A1, any subsequent sale with regard to the temple properties without getting sanction from the Commissioner of the Hindu Religious and Charitable Endowments Department under Section 34 of the Act is void *ab initio* and based on that subsequent documents, the defendants cannot resist the plaintiff from seeking declaratory relief and other reliefs. Once the property is held to be the charitable property and dedicated to the temple, the temple can recover the same from the persons, who are occupying the said properties. Admittedly, the suit properties are now vacant sites. Only when an attempt has been made by the defendants 1 and 2 to put up some constructions, the suit came to be filed. As the limitation is not applicable to recover the possession of the temple property under Section 109 of Act, this Court is of the view that the plaintiff Temple is certainly entitled for declaration as well as recovery of possession and also mandatory injunction restraining the defendants from making any alienation over the suit properties.

24.In the result, the appeal suit is allowed and the decree and judgment of the trial Court is set aside and the suit is decreed for declaration, recovery of possession and injunction as sought for. The respondents 1 and 2 shall hand over



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the possession of the properties to the plaintiff Temple within a period of two months from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

07.06.2023

Index : Yes/No

Internet : Yes/No

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To

1.The II Additional District Judge, Tuticorin

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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Judgment made in
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07.06.2023