



S.A(MD)No.665 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON	15.12.2023
PRONOUNCED ON	22.12.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)No.665 of 2023
and
C.M.P(MD)No.15794 of 2023

Arulmigu Soundararaja Perumal Thadicombu
Chitra Pournami Mandakapadi and its Public
Choultry, Dindigul Taluk, Dindigul, Dindigul District.
(S.V.Balchamy Chettiar Charitable Choultry),
Represented by its present Manager,
S.P.Ramamoorthy ... Appellant/Respondent/ 1st defendant

vs.

1.Arulmigu Soundaraja Perumal Thirukoil,
Thadicombu, Dindigul Taluk, Dindigul District,
represented by its Executive Officer,
(Through the ultimate beneficiary of Arulmigu
Soundaraja Perumal Thirukoil Chitra Pournami
Mandakapadi and Balsamy, Chettiar Choultry)

... 1st Respondent/ 1st Respondent/ Plaintiff

2.The Sub-Registrar No.2,
Dindigul Taluk Office,
Dindigul Town.

3.The District Registrar,
Scheme Road, Dindigul Town,
Presently having office next to
Superintendent of Police Bungalow,
Round Road, Dindigul.

... Respondents 2 & 3/Respondents 2 & 3/
2 & 3 Defendants



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PRAYER:- Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 29.06.2010 in A.S.No.224 of 2005 on the file of the Additional Sub-Judge, Dindigul, confirming the judgment and decree, dated 23.06.2005 in O.S.No.769 of 2004 on the file of the I Additional District Munsif Court, Dindigul.

For Appellant :Mr.A.Sathasivam

For R-1 :Mr.J.Barathan for
Mr.P.Athimoolapandian

JUDGMENT

Challenge is made to the concurrent judgments in A.S.No.224 of 2005 on the file of the Additional Sub-Judge, Dindigul, dated 29.06.2010, confirming the judgment and decree, dated 23.06.2005 in O.S.No.769 of 2004 on the file of the I Additional District Munsif Court, Dindigul.

2. The first respondent/plaintiff filed a suit in O.S.No.769 of 2004 for the relief of permanent injunction that the first respondent should be restrained from selling and encumbering the suit properties belong to the plaintiff temple; that the second and third defendants should be restrained from registering any deed intending to encumber the suit properties; and for costs.



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3. The case of the plaintiff/first respondent in brief is that the suit properties belonged to (1)Sa.Ve.Palsamy Chettiar, (2) Sa.Ve.Krishnasamy Chettiar, (3) Sa.ve.Padmanathan Chettiar (4) Sa.Ve.Umapathy Chettiar, who are the sons of one Saaranga Venkatachalam Chettiar. They have executed a settlement deed(trust deed) on 21st January, 1905, for the purpose of performing the religious obligations during Chitra Pournami Mandakapadi of the plaintiff temple. The suit properties were dedicated for the purpose of performing religious obligations. The object of the trust is to perform the religious obligations during Chitra Pournami festival at plaintiff temple by using the revenue from the properties dedicated to the trust. The trust is to be maintained by the male heirs. They are entitled for temple honours. In their absence, the female heirs and then, the properties to vest with the plaintiff temple. There was also supplementary settlement deed on 01.08.1923. In both the deeds, it is specifically mentioned that the trustees and their heirs are to perform only the religious obligations from the income of the trust and they do not have any powers of alienation/encroachment in respect of the trust properties. In the said circumstances, the first defendant is trying to sell the suit properties to the third parties. First defendant has no right to sell or encumber the suit properties. He is also trying to interfere with the enjoyment of the suit properties by the temple. Thus, the suit is filed.



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4. The first defendant filed a written statement stating that as per the obligations in the settlement deed(trust deed), the religious ceremonies are being performed till date. In the absence of male heirs, female heirs are entitled to perform the religious obligations. Till date, there are male legal heirs and they are performing the trust obligations. The allegation that the first defendant is trying to sell the suit property is not correct. The suit properties are not vested with the temple. Only the income from the suit properties is to be used for performing religious obligations. It is decided in W.P.No.19908 of 1999 that there was no proof that the suit properties belong to the temple. The cause of action pleaded in the plaint is not correct. Thus, the first defendant prayed for dismissal of the suit.

5. On the basis of the pleadings, the following issues were framed for trial:

“(i)Whether the plaintiff is entitled for the relief of permanent injunction prayed for, against the first defendant?;

(ii)Whether the plaintiff is entitled for the relief of permanent injunction prayed for against defendants 2 and 3?; and

(iii)To what relief the plaintiff is entitled for?”



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6. During the trial before the trial Court, on the side of the plaintiff, P.W.1 was examined and Ex.A1 to A4 were marked. On the side of the defendants, D.W.1 was examined and no document was marked.

7. On the basis of oral and documentary evidence, the learned trial Judge found that as per Exs.A1 & A2 documents, the trustees or their legal heirs, have no right to sell or encumber the suit properties. In this view of the matter, the learned trial Judge decreed the suit as prayed for.

8. In appeal filed by the first defendant/appellant, the learned First Appellate Judge concurred with the judgment of the trial Court and dismissed the appeal. Thus, this second appeal is filed by the first defendant/appellant.

9. In this appeal, the appellant raised the following substantial questions of law and additional substantial questions of law:

Substantial questions of law:

“(1) Whether a beneficiary of income arising from properties ordained for religious purpose, is entitled to maintain a suit for permanent injunction against alienation of the same



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by the Manager/Trustees, when its right is only that of a “charge holder” and when the plaintiff has only a contingent right of management that may or may not accrue at a future date?

(2) Is the plaintiff temple entitled for a decree of permanent injunction against alienation, despite its own admission that the 1st defendant is performing and supporting all the religious and charitable activities as ordained in the basic documents creating benefit in favour of the temple, without fail?

(3) Whether the Courts below are right and justified in decreeing the suit when there is no cause of action for the plaintiff temple and the plaintiff temple has no clear right to sue?

(4) Whether the Courts below are correct and justified in granting a decree for injunction against defendants 2 and 3 who are independent authorities under the Registration Act, 1908 with quasi-judicial powers, as the same is barred under Section 41(h) of the the Specific Relief Act, when the charge holder can enforce the charge?”

Additional substantial questions of law:

(1) Is not the Court below wrong in decreeing the suit when the executive officer of the plaintiff temple is not



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authorized by letter of appointment to institute the suit proceedings and in the light of the ratio laid down by this Court reported in 2003(1) LW 86?

(2) Whether the Court below has jurisdiction to entertain the suit with regard to the administration of the trust when the said subject matter exclusively falls under the purview and ambit of Section 92 of the Civil Procedure Code and only the District Court have got jurisdiction to decide any such dispute?

(3) Is not the Court in granting the relief prayed for in the suit which falls within the jurisdiction of the District Court under Section 92 of the Civil Procedure Code?

10. The learned counsel for the appellant submitted that the right of management of trust properties would come to the hands of the plaintiff temple only if there are no legal heirs in the family of the settlors. When there are legal heirs, there is no vested or immediate right available to the plaintiff, to file the suit. There is no permanent or absolute dedication of the suit properties by the settlors in favour of the plaintiff temple. Only some “kattalais” are to be performed and offerings to be made, out of the income of the suit properties. The Courts below have come to the conclusion on the misconception that the suit properties belonged to the plaintiff temple.



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11. The learned counsel for the appellant further submitted that there is no case made out either with regard to the non-performance of obligations by the trustees of the first defendant or there is any case of mismanagement of trust properties reported. The Courts below have failed to consider that the trust properties can be sold in case of legal necessity and when it is non-remuneratory. There cannot be a permanent injunction restraining the alienation of the properties, more so when the plaintiff has no title or vested right over the trust properties.

12. Further, there is no positive evidence on the side of the plaintiff to show that the suit properties are the properties of the plaintiff temple or under the control of HR & CE Department. No declaratory relief is sought for in respect of the title. The settlement deed(trust deed) shows that it is only a private trust. The Executive Officer has no right to file the suit. There is no agricultural operation being carried out in the suit properties and there are encroachers. If the property is sold and invested or certain revenue earning properties are purchased, it would help the management of the trust and trust properties. In the absence of the sufficient income, the trustees have to use their personal funds to meet out the trust obligations. Plaintiff has failed to prove that there are no legal heirs to carry on the trust obligations. Without considering all these aspects, the Courts below have wrongly decreed the suit.



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13. The learned counsel for the appellant relied on the judgment of this Court in the case of **Sri Arthanareeswarar v. T.M.Muthusamy Padayachi, decided on 15th August, 2002**, for the proposition that the Executive Officer is not the competent authority to initiate the legal proceedings, wherein it is held as follows:

“21..... From the above it is clear that the Executive Officer is not the authority competent to initiate legal proceedings and that he had not been assigned with the power of filing a suit. It is only the Board of Trustees in existence at that time which was competent to initiate the legal proceedings. The trustees are not made parties to the suit and therefore, the finding insofar as the Executive Officer's suit is concerned, that it is filed without authority has to be upheld.”

Thus, he submitted and prayed that the judgment of the Courts below are to be set aside and the suit is to be dismissed.

14. In reply to the submissions, the learned counsel for the first respondent/plaintiff submitted that the suit is filed for the limited prayer for permanent injunction restraining the first defendant from alienating or encumbering the suit properties and restraining the second and third defendants not to register any alienation or the encumbrance made by the



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first defendant. The plaintiff reliably learnt that the first defendant has taken hectic efforts to sell the suit properties. The plaintiff and the public in general are the beneficiaries under the settlement deed(trust deed). If the suit properties are permitted to be sold or alienated, the object of the trust would be rendered nugatory. The recitals made in the settlement deed made it clear that the object of the trust is for public purpose. That is to benefit the public at large during the performance of trust obligations.

15. The learned counsel for the first respondent further submitted that it is seen from the evidence of P.W.1 that some portion of the trust properties were already sold. The Rules framed under the Indian Trusts Acts, 1882, permits initiation of the suit and defence of the suit by the Executive Officer to safeguard the trust property. Not only that, the plaintiff filed the suit in its capacity as beneficiary as well. Any beneficiary under the trust can maintain the suit. When the cause-title of the plaint shows that the suit is filed by the Executive Officer as a beneficiary, the first defendant should have specifically denied that the plaintiff is not a beneficiary. There is no specific denial in the plaint. There is no such ground taken in the appeal and in the second appeal. Therefore, it is not open to the appellant now to contend that the plaintiff cannot maintain the suit.



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16. He produced the judgment of the Hon'ble Supreme Court in

Idol of Sri Renganathaswamy represented by its Executive Officer, Joint Commissioner reported in **(2020) 17 SCC 96**, to bring it to the notice of this Court the distinction between the public trust and the private trust.

17. He relied on the judgment in **A.A.Gopalakrishnan v. Cochin Devaswom Board and Others** reported in **(2007) 7 Supreme Court Cases 482**, for the proposition that it is the duty of the Courts to protect and safeguard the properties of religious and charitable trust from wrongful claim and misappropriation.

18. The judgment of this Court in **Durgai Lakshmi Kalyana Mandapam, a Specific Endowment to Arulmigu Siddhi Ganesar Nataraj Perumal Durgaiamman Group Temples, represented by K.Jeevanandham & another vs. Idols of Arulmigu Siddhi Ganesar Nataraja Perumal Durgaiamman Group Temples, Rep. by its Executive Officer & Others** reported in **2023-3-LW. 801**, is pressed into service wherein it is observed that in **A.N.Kumar vs. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai, rep. by its Executive Officer (Asst. Commissioner), Thiruvannamalai and Others** reported in **(2011-2-L.W.1)**, this Court held that it is the duty of the



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Executive Officer to file the suit to protect the property of the temple. The aforesaid judgment is relied by the learned Single Judge of this Court in the judgment reported in **2023-3-LW. 801**. Therefore, the learned counsel for the first respondent prayed for confirming the judgment of the Courts below and for dismissal of this appeal.

19. In reply to the submissions, the learned counsel for the appellant submitted that the HR & CE Rules permit the Executive Officer to file a suit after obtaining permissions from the competent authority. No such permission was granted to the first respondent/plaintiff. Therefore, the suit filed by the first respondent/plaintiff is not maintainable. Question of law can be taken even without pleadings. If the trust is a public trust as claimed by the first respondent, then Section 92 of C.P.C., will come into play. As per Section 92 of C.P.C., the suit should have been filed only by the Advocate General or two or more persons who are having interest in the trust and having obtained leave of the Court and not otherwise.

20. In response to this submissions, the learned counsel for the first respondent submitted that scope of Section 92 of C.P.C., is different from the nature of the suit filed. The suit is filed only to prevent, the first defendant by prohibitory injunction, from alienating or encumbering the



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suit properties. Therefore, the suit is not barred.

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21. I have considered the rival submissions and perused the records.

22. From the pleadings, evidence, submissions and judgments of the Courts below, it is not in dispute that the suit properties originally belonged to (1)Sa.Ve.Palsamy Chettiar, (2) Sa.Ve.Krishnasamy Chettiar, (3) Sa.ve.Padmanathan Chettiar (4) Sa.Ve.Umapathy Chettiar, and they executed Ex.A1 and Ex.A2 settlement deeds(trust deeds). To understand the nature of the trust, it is useful to extract certain portions of these documents . It is recited in Ex.A1 as follows:

1905 வருஷம் ஜனவரி மாதம் 21ம் தேதி திண்டுக்கல் டவுன் குழந்தைவேலன் தெருவிலிருக்கும் சாரங்க வெங்கிடாசலம் செட்டியார் குமாரர்கள் சௌவந்திர ஜாதி விவசாய விவசாய ஜீவனம் சா.வெ.பால்சாமி செட்டியார் 1. சா.வெ.கிருஷ்ண சாமி செட்டியார் 2.சா.வெ.புத்தமுநாயன் செட்டியார் 3.சா.வெ.உமாபதி செட்டியார் 4. பேர்களும் எழுதிக் கொண்ட செட்டில்மெண்ட் புத்திரம் நாம் சுயார்ஜிதமாய் கிரயங்கள் வாங்கியதும் தர்மசத்திரம் வகையறா கட்டியும் கிணறுகள் வெட்டியும் தோப்பு நந்தவனங்கள் வைத்தும் இன்னும் மற்ற விதமாயும் அனுபவித்து வருகிற பால திருப்பதி என்று பெயர் வழங்கிய இடத்தினுள்ள அடியில் கண்ட எல்லா சொத்துக்களிலும் 3 லக்க சத்திரத்தில் நாம் வழக்கமாய் நடத்தி வருகிற தாழக் கோம்பு ஸ்ரீமத் சௌந்தராஜப் பெருமாள் சித்திர	1905 வருஷம் ஜனவரி மாதம் 25ம் தேதி மாலை 2 மணிக்கு திண்டுக்கல் சப்ரிஜிஸ்தாராபிசில் தாக்கல் செய்தது சா.வெ.கிருஷ்ண சாமி எழுதிக் கொடுத்ததாக ஒப்புக் கொண்டது. சா.பால்சாமி சாரங்க வெங்கிடாசலம் செட்டியார் குமாரர் சௌவந்திர விவசாயம் நூல் வியாபாரம் திண்டுக்கல் குழந்தை வேலன் சந்து சா.வெ.கிருஷ்ணசாமி ஹை ஹை ஹை சா.வெ.புத்தமுநாயன் ஹை ஹை ஹை சா.வெ.உமாபதி ஹை ஹை ஹை இவர்களை சப்ரிஜிஸ்தாரர் நேரில் அரிவார் 1905 வருஷம் ஜனவரி 25 உ மி எஸ் ராமராவ் சப்ரிஜிஸ்தார் 1வது புஸ்தகம் 229 வது வால்டும் 482 முதல் 486 வரை பக்கங்களில் 251 வது நம்பராக ரிஜிஸ்தார் செய்யப்பட்டது 405 வருஷம் ஜனவரி மாதம் 26ம் தேதி செனுத்திய கட்டணம் ரூ.9.00 மி எஸ் ராமராஜ சப்ரிஜிஸ்தார் முத்திரை.
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பெள்ளணி உற்சவ மண்டகப்படி வகையறா தர்மங்களையும் ஹை தர்ம பரிபாலனத்துக்காக ஏற்பட்டிருக்கிற 1, 2 லக்க சொத்துக்கள் வகையறாவையும்



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நம்முடைய வம்ஸபாரம்பரியமாயும் சாஸ்வதாமாயும் யாதொரு குறைவன்னியிலும் நடத்தி வர வேண்டிய விஷயங்களுக்கான ஏற்பாடுகள் செய்து வைக்க வேண்டியது அவசியாயிருக்கிறபடியால் நாம் எல்லோரும் ஏகோபித்து மனப்பூர்வமாய் அடியில் கண்ட நிபந்தனைகள் ஏற்படுத்தியிருக்கிறோம்.

....

ஹை மண்டகப்படி நடத்த வேண்டியது முதலிய தர்மத்துக்காகவும் ஹை சத்திரம் மாரமத்து செலவுகளுக்காகவும் அடியில் கண்ட 1,2,3 லக்க சொத்துக்களை நாம் இதற்கு முந்தியே விட்டு வைத்திருக்கிறபடியால் இப்போது நம்மில் ஜேஷ்டராகிய ஹை சா.வெ.பால்சாமி செட்டியார்வர்கள் ஹை சொத்துக்களிடையவும் மாணேஜ்மெண்ட் வகித்து பார்த்து வர வேண்டியது அவருக்கு மிந்து நம் நாலு குடும்பங்களிலும் அந்தந்த காலத்தில் வயதுக்கு முப்பாயிருக்கிறவர் ஒருவருக்கு பின் ஒருவராக ஹை மேனேஜ்மெண்ட் ஒப்புக் கொண்டு நடத்தி வர வேண்டியது.

...

ஹை மண்டகப்படி தர்மம் சத்திரம் மாரமத்து முதலிய செலவுகளுக்கு போதாமலிருந்தால் அதிகம் வேண்டிய தொகையை நம்முடைய நாலு குடும்பத்தார்கள் அந்தந்த காலத்தில் இருக்கிறபடி சம்பாக்கமாக அவரவர் ஈவுப்பிரகாரம் அப்போதைய மாணேஜரிடம் செலுத்தி ரசீது பெற்றுக் கொள்ளவேண்டியது.

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ஹை தர்ம சொத்துக்களின் வரும்படியிலிருந்து ஹை செலவு போக மீதம் ஏற்பட்டால் அதற்கு தக்கபடி ஹை மாணேஜர் மாத்திரமுள்ள ஏழைகளுக்கு ஜாதி வித்தியாசமனனியில் அன்னதானம் செய்து வரவேண்டியது மாணேஜர் ஹை 1 2 லக்க சொத்துக்களினுடையவும் மிந்தி ஏற்படுகிற சொத்துக்களினுடையவும் வரும்படிக்கும் ஹை மண்டகப்படி தர்மம் மாரமத்து வகையறா சகல செலவுகளுக்கும் சரியான கணக்கு வைத்த ஒவ்வொரு வருஷமும் சித்ரா பெளர்ணமி உற்சவ முடிந்த ஒரு வாரத்துக்குள் நம்முடைய குடும்பங்கள் ஒவ்வொன்றிலும் அப்போது தலைமை யாயிருப்பவரிடம் காண்பிவித்து விபரம் சொல்லி ஒப்புவித்து அவர்களில் மெஜாரிட்டி தொகை யாருடைய கையெழுத்துகள் வாங்கி வைக்க வேண்டியது மத்திய காலங்களில் மேல் கண்ட மெஜாரிட்டி யார் கணக்கை காண்பிக்கும் படி கேட்டால் மாணேஜர் அதை மூன்று நாளைக்குள் கொடுக்க வேண்டியது ஹை உற்சவ நாள் தவிர மற்ற காலங்களில் ஹை சத்திரத்தில் இடம் இருக்கிறவரையில் ஒரு வாரத்திற்கு மேற்படாமல் பிரயாணிகள் அப்போதைக்கப்போது தங்கியிருக்க மாணே



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ஐர் இடங்கொடுக்க வேண்டியது.

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இதில் கண்ட எல்லா சொத்துக்களிலும் 1,2 லக்க சொத்துக்களின் வரும்படியிலும் ஹை தர்மசம்மந்தமாய் இதே மேல் ஏற்படுகிற சொத்துக்களிலும் அவைகளின் வரும்படிகளிலும் நமக்கும் நம்முடைய வாரிசுகளுக்கும் ஹை தர்ம சம்மந்தமான பாத்தியத்தை தவிர வேறே எவ்விதமான சொந்த விஷயங்களுக்கும் யாதொரு பாத்தியமும் இல்லை. மேலே சொல்லப்பட்டிருக்கிற விஷயங்கள் எல்லாம் நம் குடும்பத்தில் எதிலாவது ஆண் வாரிசு இருக்கிற வரையில் அவர்களுக்கே மாத்திரமும் அவர்களுக்கு மித்தி பெண் வாரிசுகளுக்கும் அவர்களுக்கு மின்பு ஹை தாமாக் கோம்பு ஸ்ரீமத் சௌந்தராஜ் பெருமாள் தேவஸ்தானத்துக்கும் இதன் நிபந்தனைகளுக்குட்பட்டு பாத்தியப்பட வேண்டியது ஹை எல்லா சொத்துக்களிலும் இனிமேல் இது விஷயமாய் ஏற்படகிற சொத்துக்களிலும் இதன் மூலமாய் அவரவர்களுக்கு ஏற்பட்டிருக்கிற மானேஜ்மெண்ட் பரிவட்டம் வகையறா மரியாதைகளை முதலிய இன்னும் மற்ற பாத்தியங்களிலும் எதையும் யாரும் எந்தக்காரணத்தை யிடும் எவ்வித பராதீனமும் மாறுதலும் செய்யக்கூடாது.

23. Ex.A2 reads as follows:

“மேல் கண்ட தேதியில் நாமெல்லோரும் செய்து வைத்த மேற்படி தஸ்தாவேசில் கண்ட ஹரத்துக்களின்படியே நாமும் இது காரிய நிர்வாகம் யாதொரு (டி) குறைவின்மீது மேற்படி தஸ்தாவேசுக்கு மின் கை மன்னியிரும் மேற்படி தர்மசத்திரம் அபிவிருத்தியாகி வருவதில் மேற்படி தஸ்தாவேசுகள் விரோதமன்னியில் கண்டுள்ள ஓர் நிபந்தனையை நாங்கள் அனுசரித்தும் இனியும் மேன்மேலும் ஐாஸ்தி அபிவிருத்தி செய்கிக்க வேண்டிய வழிபாட்டுக்காகவே மேல்கண்ட தேதியில் பிறந்த செட்டில்மெண்டு தஸ்தாவேசுக்கு விரோதமன்னியில் இதனடியில் கண்டுள்ள நிபந்தனைக்குட்பட்டும் மேற்படி தர்ம சத்திரத்துடனேயே எங்களால் சுயார்ஜிதமாய் சம்பாதிக்கப்பட்டது. அடியில் கண்ட சொத்துக்களையும் அதன் வரும்படிகளையும் மதுரை மில்ஸ் கம்பெனி லிமிடெட் மில்லில் எங்கள் ஹேர் முதல் துகை ரூ.940000.00 ம் மேற்படி தஸ்தாவேசில் கண்ட தர்ம சத்திரம் மண்டகப்படி வகையராவுக்கே இதன் மூலமாய் பாத்தியப்படுத்தியிருக்கிறோம். 3.மேல் கண்ட செட்டில்மெண்டு சாசனத்தில் கண்டுள்ள சொத்துக்களில் தனக்காகவும் மனைக்காகவும் சா. பால்சாமி சா.கிருஷ்ணசாமி சா.வெ.பத்மநாபன் 2. வரும்படிகளில் இருந்து தர்மத்தை நடத்தி வருவது போலவே கீழ்க்கண்ட சொத்துக்களில் வரும்படிகளிலிருந்தும் (2) வது



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பாராவில் சொல்லியிருக்கிற மதுரை மில்ஸ் கம்பெனி லிமிடெட் மில் ஹேர் முதல் தனது வரும்படிக்களைக் கொண்டும் மேல் கண்ட செட்டில்மெண்டு சாசனத்தில் கண்டபடி வருவாவருவதும் நடத்தி வர வேண்டிய தாடிக்கொம்பு சௌந்திரராஜப் பெருமாள் சித்திராபெளர்ணமி உற்சவ மண்டகப்படி சிலவுக்கும் மேற்படி தர்மசத்திரத்திலும் அடியில் கண்ட சொத்துக்களிலும் ஏற்படக் கூடிய மாரமத்து சிலவுகளுக்கும் நூதனக் கட்டிடச் செலவுகளும் மேற்படி சத்திரத்தில் அண்டகம் 9 பேருக்கு குறையாமல் அன்னதானம் செய்து வர வேண்டியதுக்கும் ஏற்பட்ட சிலவுகள் போக பாக்கியுள்ள துகையை சத்திரத்துப் பண்டுடன் சேர்த்து அபிவிருத்தி செய்ய வேண்டிய (4) மேலே கண்ட செட்டில்மெண்டின்படி எந்தெந்த காலத்தில் யார் யார் மாணேஜராகயிருந்து மேற்படி தர்ம சம்மந்தமான மாணேஜ்மெண்டைப் பார்த்து வருகிறார்களோ அவர்கள் மேல்கண்ட காரியாதிகளை மேல் பார்த்து வருவதற்காக வேண்டி வண்டி, சத்தம் இன்னும் மற்ற சில்லரைச் சிலவுகளுக்காகவும் மாதம் 1க்கு ரூ.25.00 இருபத்தைந்து வீதம் மேற்படி (5) தர்மசத்திரம் வரும்படியிலிருந்து எடுத்துக் கொள்ள வேண்டியது. 5 எங்களுக்கு சுயார்ஜிதமாய் பாத்தியப்பட்ட கீழ் கண்ட சொத்துக்களையும் 2வது பாராவில் சொல்லப்பட்டிருக்கிற மதுரைமில் முதல் துகையும் சேர்த்து மேற்படி தர்மசத்திரத்துக்கே சேர்ப்பித்த வகையில் எங்கள் குடும்பத்துக்குப் பொதுவாக சேர வேண்டிய ரூ.5000/- ஐயாயிரம் மட்டும் மேல் கண்ட சொத்துக்களின் வரும்படியில் இருந்து நாங்கள் எடுத்து குடும்ப சொத்துக்களுடன் சேர்த்துக் கொள்வதைத் தவிர மேற்படி சொத்துக்களை யாவதும் மேற்படி சொத்துக்களின் வரும்படியையாவதும் நமக்கும் நம்முடைய வாரிசுகளுக்கும் மேற்படி தர்ம சம்மந்தமான காரியாதிகள் செய்து வர வேண்டியதைத் தவிர எவ்விதமான சொந்த உபயோகங்கள் செய்து கொள்வதற்கு பாத்தியமில்லை. 6 மேல் கண்ட மதுரை மில் ஹேர் முதல் துகை ரூ.94000 ம் மேற்படி தர்மத்துக்கே விடப்பட்டிருந்த போதிலும் கூடி மேற்படி மில் சம்மந்தமாய் இன்னும் ஜாஸ்தி வரும்படி கிடைக்குமென்று தோன்றும் காலத்தில் மேற்படி மில்லின் பங்கு தனக்காகவும் மைனருக்காகவும் சா.பாஸ்சாமி சா.வ.கிருஷ்ணசாமி சா.வெ.பத்மநாபன் 3 களை குடும்பத்திலுள்ள மெஜாரிட்டிதார்களின் அபிப்பிராயப்படி பங்குகளை விற்று அந்த துகைகளைக் கொண்டு உடனே ஸ்தாவா சொத்துக்கள் கிரையத்துக்கு வாங்கி மேற்படி சத்திரத்துக்கே மாணேஜிங் விட்டு விட வேண்டியது 7 மேல் கண்டபடியாயுள்ள சகல காரியாதிகளையும் நாங்களும் எங்கள் வாரிசுகளும் அப்பால் வரும் பரம்பரையாய் ஏற்பட்டுள்ள வாரிசுகளுள்ளவரை அவர்களுக்கும் அவர்களுக்குப் பின் பெண் வாரிசுகளுக்கும் மேல் கண்ட நிபந்தனைக்குள்பட்டு நடத்தியும் அப்பால் எங்கள் வம்சத்துக்குப் பிறகு தாடிக்கொம்பு ஸ்ரீமத சௌந்திரராஜப் பெருமாள் தேவஸ்தானத்துக்கு இதன் நிபந்தனைக்குள்பட்டு



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பாத்தியப்பட்ட வேண்டியதனைத் தவிர மற்றபடி நாங்களாவது எங்கள் வாரிசுகளாவது மேற்படி சொத்துக்களையும் அதன் வரும்படிகளையும் அடைய வேண்டுமென்ற எவ்வகை ஏற்பாடுகள் செய்த போதிலும் அவைகளுக்கும் இதனுட்கள் மேற்படி சொத்துக்களையும் அதன் வரும்படிகளையும் அடைய வேண்டுமென்று எவ்வகை ஏற்பாடுகள் செய்த போதிலும் அவைகளும் ஏந்தக் காரணத்தை முன்னிடும் எவ்வித பாரதீனமும் தஸ்தாவேசுக்கு மாறுதல்களாகவும் செய்வதானாலும் அவைகளும் முற்றிலும் நமது இந்துலாயில் சொல்லியபடி செல்லத்தக்கதுமில்லை என்று எங்கள் சம்மதியில் எழுதி வைத்த சப்ளிமெண்டல் செட்டில்மெண்டு டீட்.”

24. Reading of Ex.A1 shows that the properties under the deed were dedicated for the purpose of religious ceremonies during Chitra Pournami of Arulmigu Soundararaja Perumal Temple, Thadicombu. Apart from religious ceremonies, there are obligations to give “Annadhanam” to the poor public and for the stay of devotees. There is a recital that the trustees and their legal heirs can take part in the religious ceremonies, they are entitled to temple honours with adorning of “parivattam”. There is a specific recital that trustees or the legal heirs should not alienate or encumber the properties.

25. Similar recitals are made in Ex.A2 as well. The trustees are given permission for purchasing other properties in favour of the trust by selling shares and not otherwise. At best, they can take Rs.5,000/- from the properties dedicated. It is reiterated that the trustees or the legal heirs are not entitled to encumber the properties and if they do so, it will not bind the trust.



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26. In the judgment reported in **(2020) 17 Supreme Court**

Cases 96(cited supra), it is held as follows:

“18. The distinction between a public and private charity was set out by a Constitution Bench decision of this Court in Ram Saroop Dasji v S.P Sahi. 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 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....”

27. The properties are dedicated for certain religious obligations during Chitra Pournami at Arulmigu Soundararaja Perumal temple,



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Thadicombu, with a direction to offer free food (Annadhanam) to the poor public and for the stay of devotees. There is no doubt that the properties are dedicated for the benefit of public also. What is important here is that there is repeated reiteration in both Ex.A1 and A2 that the trustees or the legal heirs have no right to alienate/encumber the suit properties. If they do so, it will not bind the trust.

28. In this regard, it is pertinent to refer to the evidence of D.W.1. D.W.1 during the course of cross-examination admitted that he is a trustee from 1993. There are three trustees. The trust has 21 acres of land. They used to conduct the Mandakapadi during Chitra Pournami festival at Arulmigu Soundararaja Perumal temple, Thadicombu. He candidly admitted that out of 21 acres of land, 1 acre 60 cents were sold in 1997. It is his further evidence that this 1 acre 60 cents were plotted out and sold for the benefit of the trust. Before effecting sale, no permission was obtained from the Court.

29. Thus, from the evidence of D.W.1, it is evident that without obtaining any permission from the Court, the first defendant and other trustees have sold 1 acre 60 cents of lands of the trust property. It is seen from Exs.A1 and A2 that the object of the trust is to perform certain religious obligations when deity comes during Chitra Pournami festival.



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There must be offering of food during the religious ceremonies. If there are no male or female heirs, the properties are to be vested with the plaintiff temple. The ultimate beneficiary of the trust and trust properties are the deity, temple and general public. Trustees are entitled only for temple honours. Therefore, this Court is of the view that the judgment relied by the learned counsel for the appellant in ***Sri Arthanareeswarar of v. T.M.Muthusamy Padayachi decided on 05th August, 2002***, is not applicable to the facts and circumstances of the case. The reason is that a subsequent judgment of the Division Bench in ***2011-2-L.W.1(referred to supra)***, it was clearly held that the Executive officer, being an Officer appointed by a competent authority, is duty bound to protect the property of the temple. Therefore, it is incumbent on him to file a suit and protect the right of the temple.

30. It is pertinent to refer to paragraphs 11, 15 to 18 of the judgment in ***Durgai Lakshmi Kalyana Mandapam, represented by K.Jeevanandam & another vs. Idols of Aruligu Siddhi Ganesar Nataraja Perumal Durgaiamman Group Temples, Rep. by its Executive Officer & Others*** reported in ***2023-3-L.W.801***, as follows:

“11. This apart, he would submit that the Government of Tamil Nadu had subsequently framed rules namely, *The Conditions for Appointment of Executive Officers*



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*Rules, 2015, in and by which, the Executive Officer has been expressly authorised to represent and also file suits for and on behalf of the temple. The constitutional validity of the said rules came to be challenged in **M/s.Temple Worshippers Society Rep. by its President T.R.Ramesh Vs. Government of Tamil Nadu**³ and the Division Bench upheld the validity of the said rules. In view thereof, it cannot be contended that the suit by the Executive Officer was not maintainable. The learned Counsel also relied upon a judgment of a learned Single Judge of this Court in **Mohammed Rafiq and Ors. Vs. Arulmigu Pasupatheeswarar Swamy Koil Avoor**⁴, whereunder, the suit filed by the Executive Officer was held to be maintainable on the ground that any person interested (which includes a devotee) can set the law in motion as per the scheme of the Act.*

.....

15. It is in this context, by considering Sections 6 & 45 of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, when the powers and duties are to be defined by the Commissioner at the time of appointment of the Executive Officer, it is held that unless the Commissioner expressly authorises the filing of the suit by the Executive Officer, the suit is not maintainable.

16. It is in this context, the march of law has to be understood when the later Division Bench of this Court, in the year 2011, in **A.N.Kumar Vs. Arulmighu**



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Arunachaleswarar Devasthanam Thiruvannamali, rep. by its Executive Officer (Asst. Commissioner) Thiruvannamalai and Ors. (cited supra) while resolving the question as to whether the temple has to resort to eviction proceedings under Sections 78 and 79 of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 or whether it can file the suit, while deciding that the temple can resort to either of the proceedings, also held that it is the **duty** of the Executive Officer to file a suit. It is useful to extract paragraph No.32 of the said judgment which reads as follows:-

"**32**..... The Executive officer, being an Officer appointed by a competent authority, is **duty bound** to protect the property of the temple. Therefore, it is **incumbent** on him to file a suit and protect the right of the temple."

17. This paradigm shift from 'power' to 'duty' has to be noted. Always the march of law has to be seen with reference to the social transformation and in tune with societal concerns. It could be seen that there were times when people were donating their properties to Temples. Temple properties were not earning great income and quite often Trustees in their discretion permitted persons to occupy or cultivate the same. Many a times if they default to pay the meagre rent, still action was not taken considering their economic background or their services to the temple. Generally people had a sentiment/fear not to exploit the temple property. However, with the population growth and urbanisation, this sentiment has vanished in thin air and the properties of the temple, be it residential plots or



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commercial buildings or agricultural lands are encroached upon without any guilt and the temple is divested of the income. Thus, the 'power' to file a suit has transformed into a 'duty' to file a suit. When the law has been laid down that it is the duty of the Executive Officer to protect the property and it is incumbent upon him to file the suit, then Section 45 can no more be read as requiring an express authorisation to file a suit as the very appointment enjoins the said duty.

18. The second reason is that under Section 6 (15) of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, where under, a person having interest is defined, in which, a devotee/worshiper will also be having interest and the suit filed by them in case of mismanagement is maintainable. Even in the judgment of a Division Bench of this Court in **Sri Arthanaeeswarar** (cited supra), it is held that a suit filed by a devotee in case of mismanagement would be maintainable. It is in this context, a learned Single Judge of this Court in **Mohammed Rafiq and Ors. vs. Arulmigu Pasupatheeswarar Swamy Koil Avoor** (cited supra) held that when a devotee can set the law in motion, Executive Officer certainly will be entitled to do so. It is useful to extract paragraph No.15 of the said judgment which reads as follows:-

"15. There can be no doubt over the ownership of the suit property and the plaintiff is entitled to recover the possession from the trespasser. In the absence of proof that the temple land was taken away and assigned to



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third parties after paying due compensation to the temple. The Division Bench judgment of this Court, where the defendants have questioned the locus of the Executive Officer, who has laid the suit at the inception does not akin to the facts of the case in hand. Any person, who are interested in the temple, is entitled to initiate law into motion. Further, the Court itself as parens patriae is bound to protect the interest of idol. In this case, when no plea was taken regarding locus of the Executive Officer for filing suit for mandatory injunction and no opportunity given to Executive Officer to show that he, on authorisation from the Commissioner initiate the legal proceedings, it is to be presumed that he had been authorised by the Commissioner to initiate proceedings. "

*This Court is the parens patriae and is therefore has to protect the properties of the temple. Useful reference in this regard can be made to a judgment of the Hon'ble Supreme Court of India in **Joint Commissioner, HR&CE, Admn. Deptt. Vs. Jayaraman**. The Court being the parens patriae in respect of the Temple and its properties, the Executive Officer only sets the law in motion by filing the suit. Therefore, for all the reasons stated above, the suit filed by the Executive Officer is maintainable and accordingly, I answer this question.*



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31. In Paragraph No.10 of the judgment of the Hon'ble Supreme Court reported in **(2007) 7 SCC 482(referred to supra)**, it is observed as follows:

“10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/Sebais/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.”

32. It is stated in this judgment that the Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.



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33. From the evidence of D.W.1, it is evident that 1 acre 60 cents of the properties dedicated to the trust were sold. It is nothing but misappropriation of trust properties. The suit is filed by the plaintiff not only as Executive Officer but also as a beneficiary of the temple. This claim of the plaintiff is not specifically denied by the defendant.

34. Therefore, in view of the development in law as discussed above, this Court is of the view that the plaintiff is entitled to file the suit. When it is manifested by the own admission of D.W.1 that 1 acre 60 cents of trust land had been sold by the first defendant, then it is just and appropriate that the defendants should be restrained from alienating or encumbering the suit properties in favour of anybody.

35. With regard to applicability of Section 92 of C.P.C., this Court finds that Section 92 of C.P.C., has no application in this case in the light of the prayer asked in this case. Section 92 of C.P.C., applies only when, the suit is filed for,

- “(a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any



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trust property in his possession to the person entitled to the possession of such property];

d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

36. However, this case is filed only seeking prohibitory injunction restraining the first defendant from encumbering/alienating the trust properties. As found already, the first defendant had sold 1 acre 60 cents of the trust property. In the said circumstances, the suit for injunction filed before the District Munsif Court is maintainable.

37. This Court finds that the Courts below have properly analysed the evidences and rightly decreed the suit. There is no case made out for interference.

38. In view of the discussions recorded above, this Court answers that,



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(i) the plaintiff as a beneficiary under the trust is entitled to maintain a suit for permanent injunction, for substantial question of law No.1;

(ii) When there is a clear evidence to show that one of the trustees has sold a portion of the trust properties, against the terms of the trust settlement deed, despite the performance of religious and charitable obligations by the trustees, the plaintiff is entitled for the relief of permanent injunction, for substantial question of law Nos.2, 3;

(iii) When already a portion of the trust properties was sold, it is required that permanent injunction should be passed against defendants 2 and 3 not to register any document intended to create alienation or encumbrance in respect of the trust properties, for substantial question of law No.4; and

(iv) It was discussed and held that the Executive Officer has the duty to safeguard the temple property and therefore, the Executive Officer has a right to file a suit, for additional substantial question of law No.1;

(v) In view of the nature of the relief sought ie., preventive injunction and when there is evidence to show that one of the trustees has



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sold a portion of the trust properties, the suit filed on the file of the District Munsif Court, is maintainable and it is not necessary to file a suit before the District Court, for additional substantial question of law Nos.2 and 3.

39. In fine, the judgment of the Courts below are confirmed. This second appeal is dismissed with the costs of the first respondent. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

NCC:Yes/No

To,

1.The Additional Sub-Judge, Dindigul.

2.The I Additional District Munsif Court, Dindigul.

3.The Sub-Registrar No.2, Dindigul Taluk Office, Dindigul Town.

4.The District Registrar,
Scheme Road, Dindigul Town,
Presently having office next to Superintendent of Police Bungalow,
Round Road, Dindigul.

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



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The learned counsel for the petitioner submitted that the suit was filed by the 1st respondent against the appellant represented by its then Manager S.P.Venkatachalapathy. After he passed away in the year 2007, S.P.Ramamoorthy assumed office as the present Manager of the Dharma Chathiram. In the Judgment cause title, the appellant is correctly shown as represented by present Manager. But in the decree, the name of the deceased S.P.Venkatachalapathy was shown. MP (MD) No.1 of 2014 in SA (MD) No.SR45417 of 2010 was filed to accept the cause title in the memorandum of grounds stating that the then Manager S.P.Venkatachalapathy died during the pendency of A.S.No.22 of 2005. However, this petition was dismissed.

2.At the time of filing the review application in Rev.Applc (MD) No. 73 of 2021 against the dismissal of MP (MD) No.1 of 2014, applications for condonation of delay, dispense with and accepting the cause title were also filed by the appellant represented by its present Manager S.K.Ganesan. However, C.M.P.(MD) SR.11142 of 2021 filed for accepting the cause title is not placed before me. This Court allowed the review application in Rev.Applc (MD) No.73 of 2021 on 09.11.2023. Therefore, the cause title should read as



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appellant represented by its present Manager S.K.Ganesan. This has to be amended in the memorandum of appeal. The learned counsel for the appellant has also filed a memo to that effect. In view of the fact that the review application is allowed, the memo filed by the appellant is ordered, Registry is directed to carry out the necessary amendment in the cause title.

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01.03.2024

G.CHANDRASEKHARAN, J.

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