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S.A.No.999 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Received on :18.12.2023

Pronounced on : 07.02.2024

CORAM :

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.999 of 2006

and

C.M.P.No.3 of 2006 and C.M.P.No.836 of 2020

Subbarayan(Died)

...first Defendants/1st
Appellant

1.S.Ravichandran

2.Mrs.R.Kaveri

3.Mrs.E.Uma Maheswari

4.Ms.Vasantha

5.S.Soundarrajan(Died)

(Appellants 1 to 4 are recorded as Lrs
of the deceased R5 vide Court order
dated 17.07.2019)

...Proposed Appellants 1to5

Vs.

1.Arulmighu Arunachalasewarar
Devasthanam rep. by Executive
Officer(Temporary)/
Assistant Commissioner,
Thiruvannamalai.

...Plaintiff/1st Respondent/
Respondent

2.Krishnan

...2nd Defendant/2nd
Defendant/Respondent



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3.Durai

...5th Defendant/3rd

Respondent/Respondent

...3rd Defendant/2nd Appellant

4.Narasimhan

...6th Defendant/3rd Appellant/
Respondent

5.Rajeswari(Died)

...Legal Hairs of deceased

6.Manimala

...2nd Appellant

7.Kalaivani

...4,5,6 Appellants/
Respondents

8.S.Rajasekar

...Legal Heirs of deceased
Subbarayan

9.S.Manohar

...1st Appellant/Respondent

(R6 and R7 are recorded as Lrs of the
deceased R5 vide Court order dated
13.08.2019)

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 27.10.2005 made in A.S.No.3 of 1993 on the file of the District Court, Thiruvannamalai, in confirming the judgment and decree, dated 23.11.1990 made in O.S.No.16 of 1993 on the file of the Sub-Court, Thiruvannamalai.

For Appellants	: M/s.G.Masilamani, Sr.Advocate for Mr.T.Sathiyamoorthy
For R1	: M/s.A.K.Sriram, Sr.Advocate for M/s.A.S.Kailasam & Associates
For R5	: Died
For R2, 3,4,8&9	: No appearance
For R6 & R7	: Mrs.R.Abirami for Mrs.V.Srimathi



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JUDGMENT

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The instant second appeal has been filed at the instance of the first defendant. The first respondent herein is the plaintiff before the trial Court and the respondents 2 to 6 are the defendants 2 to 6 before the trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

3. The brief facts which give rise to the instant Second Appeal are as follows:

The plaintiff is a renowned ancient temple which is the abode of Lord Arulmigu Arunachaleswarar. According to the plaintiff, the suit property was endowed to the plaintiff temple for the service of lighting of lamp on the pillar standing in front of Arunachaleswarar Sannathi. The said endowment was made by one Chekkadi Muthiah. The first defendant is one of the descendant of Chekkadi Muthiah Naicker. According to the plaintiff, the endowment was made through the partition deed, dated 13.07.1901. By virtue of absolute dedication, the suit property became the absolute property of the temple.



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However, the first defendant obtained Municipal assessment in his favour and has also leased out a portion of the property to the second defendant and he has been enjoying other portion through his sons. Similarly, the third defendant has also transferred the Municipal assessment in his name and he has been enjoying the suit property as his absolute property, which is contrary to law. He further submits that the suit is not barred by limitation, by virtue of Section 10 of the Limitation Act and also by virtue of Section 109 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as HR&CE Act). Therefore, the plaintiff submits that the defendants cannot perfect title by way of adverse possession. It is the further submission of the plaintiff that since the present trustees have failed to perform the services to the temple, the plaintiff was constrained to come forward to file a suit with the relief of declaration and for recovery of possession. However, the relief sought in respect of the declaration was given up subsequently.

4. The said suit was resisted by the first defendant by contending that, the first defendant's ancestors lit the lights on the stone pillars which was situated in front of 16 pillars mandapam till the removal of the said stone



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pillars. Further, with the advent of electricity and sophisticated illuminations, the practice of lighting lamps has become redundant. It is the specific case of the first defendant that the endowment made in the partition deed is only a private family trust and there was no dedication to the Devasthanam. It was further contended that the property never be a trust property and even if there was a trust, it was extinguished. Since the defendants were not permitted to light lamp, the question of existence of Trust will not arise. It was further contended that the suit is barred by limitation, and that they also perfected the title to the suit property by adverse possession.

5. The first defendant has also filed an additional written statement wherein he has specifically pleaded that the right of the plaintiff has been ousted, and that the very filing of the suit by the Executive Officer is not maintainable, as he has no *locus standi* to file this suit. He further submitted that the property was not vested with the plaintiff Temple, and there is no such recital in the partition deed. Hence, the first defendant prays to dismiss the suit.



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Evidence and Documents:

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6. Before the trial Court, on the side of the plaintiff, 10 documents were marked as Ex.A.1 to Ex.A.10 and two witnesses were examined as P.W.1 and P.W.2. On the side of the defendants, 44 documents were marked as Ex.B.1 to Ex.B.44 and one witness was examined as D.W.1.

Finding of both the Courts below

7. The trial Court, after having considered the oral and documentary evidence, has arrived at a conclusion that, by virtue of the recital in the partition deed, to the effect that no one has any right to alienate or encumber the suit property, and that the income of the suit property has to be spent for the service of lighting lamp on the pillar standing in front of the mandapam of Temple, the suit property becomes the property of the plaintiff Temple. Aggrieved by the above finding, the first, second and sixth defendants have filed an appeal before the first appellate Court. On re-appreciation of evidence, the first appellate Court has concurred with the finding recorded by the trial Court and dismissed the appeal. Aggrieved with the same, the first defendant has preferred the instant second appeal.



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Substantial question of law:

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8. This Court, on 14.09.2006, has formulated the following substantial questions of law:

(1)Whether the Courts below are right in holding that the suit property is a trust property, when especially in the absence of any document as contemplated under Section 5 of the Indian Trust Act, 1882?

(2)Whether the Courts below are right in holding that the temple is the trustee in the light of Section 6 of the Indian Trust Act and the recital found in Ex.A.1, the partition deed?

(3)Whether the Courts below are right in holding that the purpose for which the condition imposed in the partition Deed is extinguished?”

Submissions on either side:

9. Mr.G.Masilamani, learned Senior Counsel appearing on behalf of the appellant/first defendant has contended that according to Ex.A.1-Partition Deed, there is no absolute endowment in favour of the plaintiff temple and what is mentioned in the said deed could only be termed as public charity and that such charity is not attached with any religious character. The learned Senior



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Counsel would also further contend that the suit without the prayer for declaration, is not maintainable. He would further contend that the instant suit is not maintainable in view of Section 63 of HR&CE Act. It is the further submission of the learned Senior Counsel that both the Courts below have misread Ex.A.1-Partition Deed and have arrived at a wrong conclusion. Therefore, argued that even though there is a concurrent finding of fact, when such finding is on the basis of misreading of evidence and document, this Court under Section 100 of C.P.C., is competent to interfere with the judgment of both the Courts below. Hence, he prayed to interfere with the order of both the Courts below and thereby, prayed to allow the instant second appeal.

10. Per contra, Mr.A.K.Sriram, learned Senior Counsel appearing for the first respondent/plaintiff Temple would contend that the absence of prayer for declaratory relief, is insignificant and has no impact in the result of the suit as the first defendant himself has admitted the title of the plaintiff through their pleadings of adverse possession. The learned Senior Counsel would also further contend that the relief sought for recovery of possession in the suit could not be agitated under Section 63 of the HR&CE Act. It was also further contended that



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on a harmonious reading of Ex.A.1-Partition Deed, there are stipulation as to the religious charity and the same could be effectively vindicated through the settler's intention in divesting the title of the property with himself and his legal heirs. The learned Senior Counsel would further contend that the respondent's pleading of extinguishment of trust would show the conduct and intention of the defendant to deviates from the intention of the settlor by denying religious charity. The learned Senior Counsel would also submit that even the oral dedication is permissible under law. He would further submit that both the Courts have rightly arrived at correct conclusion and that, there are no scope for interference. Hence, prayed to dismiss these second appeals.

Analysis of the submissions:

11. It is pertinent to mention here that though the learned Senior Counsel Mr.G.Masilamani appearing for the appellants would concede that the Special Officer of the plaintiff temple is competent to institute the suit, having framed the substantial question of law on the said point, the learned Senior Counsel Mr.A.K.Sriram appearing on behalf of the respondents would invite the attention of this Court to C.M.P.No.836 of 2020, an application filed under



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Order 41 Rule 27 of C.P.C., to receive an additional document viz., the proceedings of the Commissioner, H.R&C.E., dated 11.08.1961. The same sets out the powers and duties of the Executive Officer. Hence, the learned Senior Counsel of the respondent would also pray to allow the said C.M.P and prayed to receive the additional document.

12. I have given my anxious consideration on the submission made by either side.

13. Before entering into the disputed facts, this Court deems it appropriate to carve out the admitted facts. It is an admitted fact that only in Ex.A.1 partition deed of Chekkadi Muthiah Naicker's legal heirs there is a reference about lighting a lamp in the pillars opposite to the 16 pillars mandabam in Arunachaleswarar Sannathi. The learned Senior Counsel for the appellants would contend that in order to have blessings of the God for them and to their heirs and also to have a spiritual benefit perpetually such charity is made, and that, if the family members are not permitted to continue the charity by retaining the property with them, they can not have such benefit. In support



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of the appellants' case, the learned Senior Counsel has relied on so many precedents. All those precedents, are in respect of contention that there is no endowment upon the property and the endowment is only upon the income derived through the property. It was further contended that there is no absolute dedication upon the property, but there was only a dedication upon the income.

14. But even in the judgment relied upon by the appellant reported in *AIR 1915 Mad. 380 (Krishnasawmy Pillai-Vs-Kothandarama Naicken and Others)* and in *1990-2-L.W.158 (Pappa-Vs-Shanmughathammal and 4 Others)*, this Court has held as to when there could be a dedication over the property and as to when there is a dedication upon the income over the property. In *Pappa's case(cited supra)*, this Court, by referring to the judgment in *Putti Ramachar and others-Vs-P.V.Venkata Row and others*, reported in *47 L.W.764*, has held that even if no line of succession is mentioned, that is not sufficient ground to hold that there is an absolute dedication over the property. Whereas, on the other hand the learned Senior Counsel appearing on behalf of the respondents relying on the judgment of the Hon'ble Supreme Court in *Govindlalji v. State of Rajasthan*, reported in *AIR 1963 SC 1638*, and would



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contend that while reading the recital of the document if the Court is in a position to find out the intention of the parties for divesting the title from himself and with his legal heirs, then the same would be sufficient, to hold that there is absolute dedication upon the property. Therefore, in view of the above Supreme Court Judgment, and the other judgment referred infra, the line of judgment relied by the appellant has not been discussed separately as it is not relevant for arriving the decision of this case.

15.The trial Court as well as the first appellate Court have elaborately considered on these aspects and extracted the recitals in Ex.A.1-Partition deed. For ready reference, this Court also deems it appropriate to extract the same hereunder:

“வீதிக்கு வடக்கு போளூர் பாட்டைக்கு மேற்கு பாதைக்கு தெற்கு குட்டை கரைக்கு கிழக்கு இதில் கட்டப்பட்டிருக்கும் கூரைவீடு 1ல் மேல்புறம் கி.மே.க்காக அடி 18 வ.தெ.க்காக அடி 42 உள்ள வீடு 1 தோர்முட்டித் தெருவில் கீழ்புறம் வாயையில் 3வது இலக்கமிட்ட சொத்தானது மேற்படி வீதிக்கு கிழக்கு சன்னதி வீதிக்கு தெற்கு அம்மியப்பிள்ளை காலி மனைக்கு மேற்கு சோணாசல செட்டி கடைக்கு வடக்கு இதில் கட்டப்பட்டிருக்கும் தார்க தட்டோடு தாள்வாரம் குரடு உள்பட கடைகள் 3ல் வடபுறம் முனிசிபல் நெ.13 உள்ள கி.மே.க்காக அடி 33 வ.தெ.க்காக அடி 10 உள்ள கடை 1 இதற்கடுத்த வடபுறம் மேற்படி கடையைச் சேர்ந்த தாள்வாரமானது வ.தெ.க்காக அடி 5 கி.மே.க்காக அடி 33 உள்ள தட்டோடு தாள்வாரத்தில் வரும் வாடகை வருமானத்தைக்



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கொண்டு ஸ்ரீ அருணாசலீஸ்வரர் சன்னதி 16 கால் மண்டபத்துக்கெதிரில் நடந்தேறி வரும் திருவிளக்கு தர்ம கைங்கர்யத்துக்காக விடப்பட்டிருக்கிறது. அதை பராதீனப்படுத்த எங்களுக்காவது எங்கள் உள்ளிட்டிருக்காவது பாத்யமில்லை, மேற்படி தர்மத்தை எங்களில் பச்சியப்ப நாயக்கர் ஜீவதசை வரையில் அவர் மாணேஜ்மென்டின் கீழ் நடத்தி வர வேண்டியது,”

16.From the above recital, the learned Senior Counsel for the defendant/appellant drew the attention of this Court in respect of two instances that, (i)there was only a dedication upon income of the property and (ii)the charity which has been referred to in Ex.A.1, could at the best only be termed as Public charity. Apart from the above ground, the learned Senior Counsel for the defendant would also submit that though there is a naming of only legal heir of Pachayappa Naicker in Ex.A.1 to perform the endowment, that does not mean that thereafter the entire property should be given to the Temple. The learned Senior Counsel further contended that as held by the Division Bench in *Pappa's case (cited supra)*, the legal heirs of Pachiappa Naicker are entitled to continue such charity through his descendants and they would be bestowed a spiritual benefit while doing such charity. Though the argument of the learned Senior Counsel for the defendant appears to be seemly, the recital found in the said document Ex.A.1 divesting the title with executant and his legal heirs



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would transcend the argument and make such dedication as absolute dedication upon the property.

17.At this juncture, this Court deems it appropriate to cite the following precedents referred to by the learned Senior Counsel for the plaintiff/respondents:

(i) ***Tilkayat Shri Govindlalji Maharaj Etc.,-Vs-State of Rajasthan and Others***, reported in ***1963 SCC Online SC 52***. The relevant portion is extracted hereunder:

“67.This conduct on the part of the Tilkayat was naturally disapproved by the Committee and the heading of the list was objected to by it in a letter written on December 31, 1956. To this letter the Tilkayat gave a reply on January 7, 1957, and he sought to explain and justify the wording adopted in the heading of the list. It is thus clear that the heading of the list forwarded by the Tilkayat to the Committee must be ignored because that heading clearly shows a change of mind on the part of the Tilkayat and the question as to whether the two idols form part of the principal temple of Shrinathji must be decided in the light of what transpired on October 15, 1956. judged in



that way, there can be no doubt that the Tilkayat solemnly transferred the two idols to the principal temple and in that sense, gave up his ownership over the idols and a formal proposal made in that behalf was accepted by the Committee. In our opinion, the High Court was in error in not giving effect to this transfer on the ground that no gift or trust deed had been duly executed by the Tilkayat in that behalf. A dedication of private property to a charity need not be made by a writing: it can be made orally or even can be inferred from conduct. In the present case, there is much more than conduct in support of the State's plea that the two idols had been transferred. There is a formal report made by the Manager to the Tilkayat which was accepted by the Tilkayat ; it was followed by a formal proposal made by the Tilkayat to the Committee and the Committee at its meeting formally accepted that proposal and at the meeting when this. proposal was accepted, the Tilkayat was present. Therefore, we must hold that the two idols now form part of the principal temple and have been properly included within the definition of the word "temple" under s. 2 (viii). We should accordingly set aside the decision of the High Court and uphold the validity of s. 2(viii).”

(Emphasis supplied by this Court)

(ii) *M.R.Goda Rao Sahib-Vs-State of Madras*, reported in (1966)1



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SCR 643. which was followed in latest judgment of the ***M.J.Thulasiraman***

and Another-Vs-Commissioner, Hindu Religious and Charitable Endowment

Administration and Another, reported in **(2019)8 SCC 689**. The relevant portion of the judgment is extracted hereunder:

“22.Finally, with respect to the learned counsel for the appellants' submission regarding the absence of divestment of property for the constitution of a specific endowment, the same would have to be rejected. A three-Judge Bench of this Court, in M.R. Goda Rao Sahib v. State of Madras [M.R. Goda Rao Sahib v. State of Madras, AIR 1966 SC 653] , while holding that divestment is necessary, decided on the facts of that case that a settlement deed which provided for a charge on properties for the payment of money amounted to a divestment: (AIR p. 1966, para 4)

(Emphasise supplied by this Court)

“4.There is no dispute that in order that there may be an endowment within the meaning of the Act, the settlor must divest himself of the property endowed. To create an endowment he must give it and if he has given it, he of course has not retained it; he has then divested himself of it. Did the settlors then divest themselves of anything? We think they did. By the instrument the settlors, certainly divested themselves of the right to receive a certain part of the income derived from the properties in question. They deprived themselves of



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the right to deal with the properties free of charge as absolute owners which they previously were.”

(iii) Yet another judgment of the Hon'ble Supreme Court mentioning in ***Idol of Sri Renganathaswamy v. P.K.Thoppulan Chettiar, Ramanuja Koodam Anandhana Trust, (2020) 17 SCC 96*** reported in ***(2020) 17 SCC 96***, held as follows:

“15. In Menakuru Dasaratharami Reddi v. Duddukuru Subba Rao [Menakuru Dasaratharami Reddi v. Duddukuru Subba Rao, AIR 1957 SC 797], a Constitution Bench of this Court dealt with the question of whether the suit properties were the subject-matter of a public charitable trust or were merely charged with the obligation to undertake specific charities. P.B. Gajendragadkar, J. (as the learned Chief Justice then was), speaking for the Court, held : (AIR p. 800, para 5)

“5. ... Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its



original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document.

In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word “trust” or “trustee” is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter.

Is the private title over the property intended to be completely extinguished? Is the title in regard to the property intended to be completely transferred to the charity? The answer to these questions can be found not by concentrating on the significance of the use of the word “trustee” or “trust” alone but by gathering the true intent of the document considered as a whole.”

16.The deed of settlement must be examined as a whole to determine the true intention of the settlor. Where the settlor seeks to divest himself of the property entirely for a religious purpose, a public religious charity is created. In the present case, the deed of settlement creates an absolute prohibition on the



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subsequent sale or mortgage of the suit property. The deed of settlement provides that, “the settlor purchased the punja land mentioned in the schedule of property... for the performance of charity work in reference to Sri Renganathanswamy sanctum”. The property outlined in the schedule of the deed of settlement is described as, “property allotted for charity work”. With respect to the legal heirs, the deed of settlement creates an obligation on the settlor's legal heirs to continue the charitable activities at the suit property out of their business incomes. The settlor had a clear intent to divest himself and his legal heirs of the property and endow it for the continuation of the charitable activities at the suit property. The purpose of the endowment was to carry on charitable work. The deed of settlement obligates the legal heirs to continue the charitable activities at the suit property.

17.Having established that the deed of settlement created an endowment for charitable purposes, we now turn to whether the endowment was a “specific endowment” as defined under Section 6(19) of the 1959 Act. As noted above, a “specific endowment” can be for either a specific charity or service associated with a particular math or temple, or alternatively, can be for the performance of “any other religious charity”. Some guidance on how to distinguish an endowment to a particular temple and a “religious charity” generally can be found in the



1959 Act itself. The term “religious charity” has been defined in Section 6(16) as follows:

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

The definition also clarifies that a “religious charity” may be distinct from a charity associated with a particular temple, and for a charity to constitute a “religious charity”, there is no requirement for the public charity to be connected with a particular temple or a math. In terms of the statutory definition, for a charity to constitute a “religious charity” under the 1959 Act, two conditions must be met. First, it must be a “public charity” and second, it must be “associated with” a Hindu festival or observance of a religious character. If these two conditions are satisfied, a charity is a “religious charity”.

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 [Ram Saroop Dasji v. S.P. Sahi, 1959 Supp (2) SCR 583 : AIR 1959 SC 951] . 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 : (AIR p. 956, para 6)



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“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....”

18. What emerges from the above precedents is as follows:

- (i) the dedication of a property can be made even orally.
- (ii) Even creating charge over the property would become absolute dedication on the property.
- (iii) The intention of the settlors can be proved from divesting the title with himself and his legal heirs
- (iv) The above ingredients can be gathered from the recitals of the



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document.

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(v) In order to have a religious charity as contemplated under Section 6(16) of Tamil Nadu HR&CE Act, firstly, the charity must be a public charity and secondly, it should be associated with Hindu festival or observance of a religious character.

(vi) In respect of the a public charity, the beneficial interest is vested in an uncertain and fluctuating body of persons. But for private trust the beneficiary are a definite in number, which can be ascertained definitely.

Therefore, while applying those principles to the facts of this case, in Ex.A.1 partition deed though there is a recital to spend money and also though there is no recital in respect of the line of succession, the divesting of title over the property with the settlers and his legal heirs is covertly and overtly manifest. Therefore, the same would prove the absolute dedication over the property in favour of plaintiff temple. Therefore, by applying the above legal principles enunciated in the above precedent, this Court has no hesitation to hold that the



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dedication through Ex.A.1 partition deed is not upon the income, but upon the property.

19.Coming to the objections raised by the defendants/appellants in respect of the maintainability of the suit by referring to Section 63 of the Tamil Nadu HR&CE Act, this Court could not find any pleading in their written statement, as well as in the grounds of objection. Section 63 of HR&CE Act deals with the powers of the Joint Commissioner or the Deputy Commissioner to decide certain disputes. The power of the Joint Commissioner or the Deputy Commissioner has been enumerated under Section 64 of the HR&CE Act. While perusing Section 64 of HR&CE Act, the Joint Commissioner or the Deputy Commissioner do not have any power to recover the possession. Therefore, as rightly contended by the learned Senior Counsel appearing for the plaintiffs/respondents, Section 63 of HR&CE Act, is not a bar to file the instant suit, as the present suit was filed for a comprehensive relief, which relief could not be obtained by invoking the provisions of Tamil Nadu HR&CE Act.

20.There was also an argument by the learned Senior Counsel appearing for the defendants/appellants that there is no prayer for declaration.



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The learned Senior Counsel would contend that when the title of the plaintiff is under serious challenge, in the absence of the prayer for declaration, the instant suit is not maintainable and also relied (*Anathula Sudhakar-Vs-P.Buchi Reddy (dead) by LRS. And Others*) reported in (2008) 4 Supreme Court Cases 594. However, the learned Senior Counsel appearing on behalf of the plaintiffs/respondents would submit that the very pleading of the defendants claiming adverse possession of the property would suffice to show the admission of the defendant in respect of the ownership of the suit property with the plaintiff. This Court is also in full agreement of the said argument. Therefore, this Court is not in a position to accept the argument advanced by the learned counsel for the defendants/appellants.

21. There was also yet another contention put forth by the learned Senior Counsel for the defendants, on the ground that the charity mentioned in Ex.A.1-Partition Deed is only a public charity, without there being any dedication towards temple. But this Court respectfully disagrees with the submission made by the learned Senior Counsel, as from the meaningful reading of Ex.A.1 partition deed, reflects the sublime surrender to Lord



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Arunachaleswarar by lighting a lamp in front of the temple. The said service is religious in character and for the temple. Therefore, the charity is attached to religious institution and the same is apparent from the abundant intention of the parties expressed in Ex.A.1 partition deed. Therefore, this Court is of the firm opinion that the endowment made in Ex.A.1-sale deed is a religious endowment and not a mere public charity.

22.Though the learned Senior Counsel appearing for the plaintiff concedes the maintainability and *locus standi* of the Special Officer to institute the suit, still to further vindicate such aspect, the respondent would like to bring to the knowledge of this Court about the proceedings of the Commissioner of HR&CE, dated 11.08.1961. On perusal of such order, Rule 11 of the said proceedings, provides the power to the Executive Officer to initiate the proceedings. Therefore, such document though not filed before the trial Court, for proper adjudication of this case and to advance the cause of justice, became essential for effective adjudication of this appeal. Hence, this Court is inclined to allow the application filed under Order 41 Rule 27 of C.P.C. Hence, the petition mentioned document is ordered to be received and marked as Ex.A.11.



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23. There is also a substantial question of law in respect of Sections 5 & 6 of the Indian Trust Act. As already discussed, this Court has arrived at a conclusion that the suit property has been endowed to religious charity. While reading Section 1 of the Indian Trust Act, a public or private religious or charitable endowment would not come within the purview of Trust Act. Therefore, this Court holds that the extinguishment or divesting of title with the settlors and his legal heirs can only be termed as the dedication upon the property. Therefore, this Court arrives at a conclusion that the finding of fact recorded by both the Courts below are based on the evidence and in accordance with law. Hence, this Court could not find any material to deviate from the said findings. Thus, in view of the above detailed discussion, the substantial questions of law are answered in favour of the respondent.

24. In the result, this Second Appeal stands dismissed and the Civil Miscellaneous Petition in C.M.P.No.836 of 2020, is allowed and C.M.P.No.3 of 2006 is closed. No costs.



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07.02.2024

NCC:Yes
Index:Yes
Internet:Yes
Ns

Note: Registry is directed to mark the additional document as Ex.P.11 and tag along with the Original Records.

To

- 1.The District Court,
Thiruvannamalai,
- 2.The Sub-Court,
Thiruvannamalai.
- 3.The Section Officer,
Vernacular Records,
Madras High Court,
Madras.



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S.A.No.999 of 2006

**C.KUMARAPPAN.,J
Ns**

**S.A.No.999 of 2006
and
C.M.P.No.3 of 2006 and C.M.P.No.836 of 2020**

07.02.2024