



A.S.No.264 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

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1. The Commissioner,
Hindu Religious and Charitable
Endowment (Admin), Department,
Chennai – 34.
 2. The Deputy Commissioner,
Hindu Religious and Charitable
Endowment (Admin), Department,
Chennai.
 3. The Fit Person of
A/M. Kamatchiamman Mouna Gurusamy Madam,
Thirumalaikeni Village,
Sengurichi Village and
Executive Officer of
A/m. Malaikeni Subramaniaswamy
Swamy Thirukkoil,
Sengurichi Post,
Dindigul.
- ... Appellants/Defendants

-VS-

1. T.M.V.S.T.Sundaravadivelraja
2. D.Selvaraj
3. K.K.Murugesan

1/25



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5. T.B.A. Alangaram Chettiar

6. R.Soundararajan

7. S.Murugesan

8. Muthu Gopala Krishna Swamigal (died)

... Respondents/Plaintiffs 1 to 4,
8, 9 and 12

(R-8 deceased Memo recorded vide order of this Court dated 19.01.2011 made in A.S.No.264 of 2003 in Memo USR No.105 of 2011 dated 10.01.2011)

PRAYER: Appeal Suit is filed under Section 70 (2) of the H.R. & C.E Act 22 of 1959, against the judgment and decree passed in O.S.No.327 of 1995, dated 27.06.2002 on the file of the learned Principal Subordinate Judge, Dindigul.

For Appellants : Mr.M.Ramesh
Government Advocate (Criminal side)

For Respondents : Mr.M.R.Sreenivasan
for R1, R2 and R7
: Died – R3 to R6 and R8



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J U D G M E N T

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This appeal has been filed by the appellants as against the judgment and decree passed in O.S.No.327 of 1995, dated 27.06.2002 on the file of the learned Principal Subordinate Judge, Dindigul, wherein, the respondents herein have filed a suit to set aside the order passed by the first defendant in A.P.No.8 of 1993, dated 15.12.1994, and for a declaration that Arulmigu Kamatchi Mounagurusamy Madam is not coming under the religious institution and the trial Court has decreed the suit.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the trial Court.

3. The brief averments made in the plaint are as follows:

The suit property viz., Arulmugu Kamatchi Mounagurusamy Madam, Thirumalaikeni, Sengurichi Village, comes under the jurisdiction of this Court. One Kamatchi was married to one Sevarammal and had a son through her. Kamatchi came to Thirumalaikeni to find out the truth and attained salvation and started doing penance there. He had some Siddha powers and



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he became popular in Thirumalaikeni and he became to be known as “Mouna Gurusamy”. He continued to live at the foot of Thirumalaikeni, Murugan Temple and arranged several functions and the most important of the same is “Thaipoozaam” festival and “Annadhanam” for the poor people. He had several disciples and the chief of them was Kulandaisamy. He and his followers were carrying on good works in Thirumalaikeni. Mouna Gurusamy attained Jeevasamathi on the 17th day of Aadi in the Tamil Year “Pingala”, 1917. He was buried in Thirumalaikeni as per his wish. The place of burial was on the southern side of two springs known as “Jeeva Oothu” and a Shivalingam was placed over the Samathi. It became to be known as Mounagurusamy Madam and his disciples and followers visited the place and offered respects to their Guru. Mounagurusamy Madam has nothing to do with Murugan Temple, which is situated nearby. For the Management of the Madam and for performing “Annathanam”, one Muthukrishna Muniammal had endowed certain properties on 21.09.1927. The document provided that Kulandaisamy would perform the objects of the Trust. Kulandaisamy for the purpose of continuing the good work of his Guru, he also purchased some properties for maintenance of the Madam under documents dated 26.04.1944 and 26.10.1950. The income from the properties have been utilized only for



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doing “Guru Pooja” and “Annathanam”. Kulandaisamy's Chief Disciple was one Muthugopala Krishnaswamy (12th plaintiff since dead). Kulandaisamy executed a Will on 09.06.1970 for the administration of the Samathi and his properties. After his death, Kulandaisamy's mortal remains were buried near the Samathi of his Guru. The plaintiffs as executors have been managing the Madam by performing Guru Pooja and Annathanam.

3.1. While so, the 2nd defendant in the suit sent a notice to the respondents dated 14.12.1989 as to why Mounagurusamy Madam should not be declared as a religious institution under H.R and C.E Act. The plaintiffs have sent a reply and also filed O.A.No.6 of 1991 before the Deputy Commissioner, HR & CE that the Madam is not a religious institution and the same was dismissed by the second respondent on 22.09.1992. Thereafter, the plaintiffs have filed an appeal in A.P.No.8 of 1993 before the first defendant and the same was also dismissed on 15.12.1994. The order of the first defendant is illegal. The properties of Arulmigu Kamatchi Mounagurusamy Madam and Thirumalaikeni temple are different. The devotees who come to Math are only paying respect to the Samathi of the Mounagurusamy. Though there are Lingam and other idols, it cannot be said that it is a religious



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institution. None of the properties were handed over to the temple. In the suit property, in the main place, except Samathis there is nothing available to hold that it is Religious Institution. Without considering the objections made by the plaintiffs, defendants 1 and 2 have passed the orders. Therefore, the order passed by the first respondent in A.P.No.8 of 1993, dated 15.12.1994, is liable to be set aside and the Mounagurasamy Madam has to be declared as non-religious institution.

4. The brief averments of the written statement filed by the first defendant and adopted by the second defendant are as follows:

The Shri Kamatchi Mounagurusamy, who was a priest, chose Thirumalaikeni Temple for having Poojas and he has performed Mouna Viratham under the naval tree and he has also performed Poojas in the Temple. In the year 1917, he attained Jeevasamathi and in the Memorial of said Mounagurusamy, his followers used to provide Annadhanam / free meals to the devotees in Thirumalaikeni Temple during Thai Poosam and after the demise of Shri Kamatchi Mounagurusamy, Mounagurusamy Madam was constructed by the contribution of public. The Math was constructed by the followers of the Mounagurusamy. Thereafter, Muthugopala Krishnaswami



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donated some properties to the Math. Therefore, the above said facts prove that the Math was treated as a religious institution. Though the said Math was called as Madam, it will not come under the purview of Section 6(13) HR & CE Act. Even before Mounagurusamy choose the place, the temple was in existence in the said property. There is no compound bifurcating the Temple and Math. All the properties in the Math are dedicated to the Temple. Patta, Chitta and Adangal are in the name of the Temple Trust. The order passed by the defendants 1 and 2 are in order. Therefore, the suit is liable to be dismissed.

5. The averments of the written statement filed by the third defendant are as follows:

The suit is not maintainable. Even as per the plaint averments Kamatchi Swamigal entered into Arulmighu Thirumalaikeni Murugan Temple as a devotee. For the Math founded by him, he gifted certain properties and in the gift deed it is stated that the properties have been gifted for purpose of poojas to the Lingam and Thandapani Swamigal and for providing Annathanam. Therefore, the Math is a religious institution. The offerings of the devotees are also accepted by the math. Therefore, all the activities of the Math are



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conducted by the offerings of the public. The 12th defendant mentioned his address as Kariyapatti, Aruppukottai Taluk, Virudhu Nagar District and if so how could he be appointed as office bearer has to be explained by the Math. The defendants 1 and 2 have passed orders only after enquiry and thereby the suit is liable to be dismissed.

6. Based on the above said pleadings, before the trial Court the following issues have been framed:

1. Whether the suit property is not a religious institution?
2. Whether the order passed by the Deputy Commissioner in O.A.No.6 of 1991 as confirmed by the Commissioner, HR & CE is to be set aside?
3. Whether the plaintiffs are entitled to declaration as prayed for in the plaint?
4. To what reliefs the plaintiffs are entitled?

The following to additional issue was framed on 07.07.2000:

- 5 Whether the recitals in the gift deed dated 21.09.1927 executed by Muthukrishnamuniammal to the Math show that the same was to perform Annathanam? and whether the 3rd defendant has proved that the Math is a religious institution?.



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7. Before the trial Court, on the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.P1 to P.12 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.D1 to D.10 were marked. The trial Court, after considering the evidence adduced on either side decreed the suit in favour of the plaintiffs and set aside the order passed by the first defendant in A.P.No.8 of 1993, dated 15.12.1994 and declared that the Mounagurusamy Madam is not a religious institution coming under the Hindu Religious and Charitable Endowment Act.

8. Aggrieved by the said decree and judgment of the trial Court, the appellants/defendants have preferred the appeal on the following grounds:

1. The judgment and decree of the Court below is against law, weight of evidence and probabilities of the case.

2. The trial Court ought to have dismissed the suit as Kamatchi Madam is the religious institution within the purview of the Act and ought to have held that Muthukrishana Amani Ammal had endowed properties under gift deed dated 21.09.1929 for certain services to Madam.



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3. The fact of admission that around Madam, the existence of Gurulingam, Dhandayuthapaniswamy, Vinayagar and Navagraha idols for performing regular pooja and the people worshipping Kamatchi Madam and other hindu idols would prove that the institution in question is a religious institution.

4. The evidence of D.W.2 couples with Ex.B9 letter are clinching evidence and proved that Murugan temple would be opened for performing pooja and worshipping god also in the course of performing Gurupooja for Kamatchi Mouna Gurusamy Madam and that performing of pooja to Murugan and Madam where Samathi is erected attracts the definition of religious institution.

5. The trial judge went wrong in coming to the conclusion that pooja for Samadhi and Hindu Idols around Samathi would be different and the learned judge failed to apply that the existence of Gurulingam over the Samathi and worshipping the Gurulingam and Murugan etc. would cover the institution as such within the Act.

6. The learned judge failed to see from the evidence that poojas are performed at a time during gurupooja days and other important religious and festival days can also be the basis and factors to



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decide the character of the institution.

7. The sale deeds Ex.A2 and Ex.A3 would show that Sri Kulandaisamy the decibel of Kamatchi had purchased the property and dedicated for the purpose of carrying out Annadhanam, feeding to people at Madam and also for administration is also the determining factor regarding the character of public institution.

8. The court below having observed that Samadhi and temple are places of religious worship by the people ought to have held that the institution is religious and the Court below is wrong in holding that it is private institution.

9. The finding of the Court below that the institution is a private and has not bearing of public character is wholly unsustainable and untenable.

10. The other reasons given by the Court below in decreeing the suit are unsound and untenable.

11. The Court below ought to have dismissed the suit accepting the version of the defence that the institution is religious.

9. The learned counsel appearing for the appellants would contend that the suit properties were gifted for the purpose creating endowment for



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Madam and the Kamatchi Mouna Gurusamy Madam is nearer to the temple and the devotees who came for worshipping the temple also used to visit Mouna Gurusamy Madam and donated properties to the Madam and Poojas were conducted for the idols and thereby the suit property comes under the purview of Hindu Religious and Charitable Endowment Act. The defendants also issued show cause notice to the plaintiffs and they objected and thereafter they have filed an application before the second respondent in O.A.No.6 of 1991 and thereafter, the said petition was dismissed. Challenging the same, the appeal in A.P.No.8 of 1993 was filed and the same was also dismissed by the first defendant. As against the said order, the plaintiffs have filed O.S.No.327 of 1995 on the file of the Sub Court, Dindigul.

9.1. Before the trial Court, on the side of the plaintiffs, P.W.1 and P.W.2 were examined and marked Ex.A1 to A.12. On the side of the defendants, D.W.1 and D.W.2 were examined and marked Ex.D1 to D.10. The trial Court failed to consider that gift deeds were executed for providing free meals / Annadhanam to the devotees and the devotees of the Temple also used to go to plaintiffs Math. Therefore, the said Math comes under the HR & CE Act



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and the endowment made by the Muthukrishna Amani Ammal is a religious endowment towards Madam for maintenance and also for other purposes to carry out the object of Kamatchiguru and also failed to consider the existence of Gurulingam, Dhandayuthapaniswamy, Vinayagar and Navagraha idols for performing regular poojas and the people worshipping Kamathci Madam and other Hindu idols would prove that it is a religious institution. The trial Court has also failed to consider the fact that devotees of Lord Murugan would also go to Kamatchi Mounagurusamy Madam and thereby it comes under the religious institution under the Hindu Religious and Charitable Endowments Act. Further, the trial Court failed to consider Ex.A2, Ex.A3 and Ex.D.9 and erroneously decreed the suit. Therefore, the judgment and decree passed by the trial Court are liable to be set aside.

10. The learned counsel appearing for the respondents would contend that Mounagurusamy Samathi gifted the property to Madam and there is difference between the temple and the Samathi and on the Samathi they placed Gurulingam and only because of putting some idols in the Samathi, it cannot be brought under the HR & CE Act. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 to A.12 were marked. On the side of



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the defendants, D.W.1 and D.W.2 were examined and Exs.D1 to D.10 were marked. The plaint itself clearly shows that the property belongs to Madam and is for carrying out the object of Kamatchi Mounagurusamy. Kamatchi Mounagurusamy has donated some properties to the Math and one Muthukrishna Ammani Ammal also had endowed certain property through document dated 21.09.1927 for the Kamatchi Mounagurusamy and Kulanthaisamy purchased properties on 26.04.1944 and 26.10.1950 for the purpose of conducting poojas and Annathanam in the Madam and he conducted poojas in the Madam through the income from the above said properties. The trial Court after considering the evidence adduced on either side correctly held that only because of some idols placed in the Samathi it cannot be stated that it is a temple. Though the devotees from the temple used to come to the Madam it cannot be treated as temple. There is difference between Samathi and Temple. Therefore, the trial Court after elaborate discussion held that the property does not belong to the religious institution. Therefore, the present appeal is liable to be dismissed.

11. This Court heard both sides and perused the records. Upon hearing both sides and perusing the records, the points for determination in this first



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Appeal are as follows:

1. Whether the suit properties are religious charitable endowments?
2. Whether the order passed by the Deputy Commissioner in O.A.No.6 of 1991 as confirmed by the Commissioner, HR & CE is to be set aside?
3. Whether the plaintiffs are entitled to get the relief of declaration as prayed for in the plaint?.
4. Whether the judgment and decree passed by the trial Court is sustainable in law on in facts?.
5. Whether the appeal has to be allowed or not?

Point No.1:

12. The suit filed by the plaintiffs is to set aside the order passed by the defendants 1 and 2 in A.P.No.8 of 1993, dated 15.12.1994 and for a declaration that Mounagurusamy Madam is not a religious institution. According to the plaintiffs, the suit schedule property is a Madam and Kamatchi Mounagurusamy, who took “Sanyasam” came nearer to the Thirumalaikeni Temple and observed Mouna Viratham and he established some of the idols. In the year 1917, his followers donated some properties and one Gurusamy had administered the Samathi and the properties belonging to



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it. Thereafter, he also executed a Will and appointed the plaintiffs administrators to the said Madam. The said Madam is not a religious institution. While so, the defendants 1 and 2 issued the show cause notice as to why the said Madam should not be declared as a religious institution and cannot be taken over by the appellants/defendants 1 and 2. Thereby, the plaintiffs have filed a petition before the second respondent and the same was dismissed. Thereafter, they filed the appeal and the same was also dismissed. Thereafter, they filed the suit. According to the defendants the property situated near the Temple and the devotees who came to worship Lord Subramania Swamy also come to the Madam and properties were also donated to the Madam and thereby it is religious institution. Therefore, they issued the show cause notice and passed order considering the objections filed by the plaintiffs, the second respondent passed orders in the petition filed by the plaintiffs and the same was challenged through appeal before the first defendant, the first defendant has also dismissed the appeal.

13. According to the defendants, the Madam is performing Poojas to the idols and the plaintiff's placed idols and also conducted poojas and they also participated in the poojas conducted by the temple and thereby the



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Madam is also a religious institution. According to the plaintiffs, they only performing poojas to the Samathi by observing Viratham and that alone is not sufficient to hold that they are conducting poojas to the Temple and treated it as a religious institution.

14. The learned counsel appearing for the respondents/plaintiffs has relied upon the judgement of this Court in **(R.Padmanabhan and others vs. Sri Vidhya Vakeesa Theerthar and another)** reported in **(2002) 3 M.L.J, 398**, wherein this Court in paragraph No.24 held as follows:

“24. The learned counsel for the appellants also relied upon [section 34](#) of the HR & CE Act and stated that any exchange, sale or mortgage and any lease for a term exceeding five years shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. A bare reading of the section will indicate that it relates to the religious institution. When only the appellants are able to establish that the suit property is a religious institution, then only they can succeed in the case. The 1st defendant leased out the property to the 2nd defendant for 99 years and received a premium of Rs.one lakh. Now, the present rent received is only Rs.



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80/= per month in respect of the 7 shops and the proposed rent after reconstruction is Rs.1000/= per month. There is also a plea in the written statement about non-joinder of necessary parties. The learned counsel for the appellants contended that no issue has been framed in the trial court. But a perusal of the judgment of the lower appellate court indicates that point No.5 relates to non-joinder of necessary parties. Hence, I am of the view that there is no force in the contention of the learned counsel for the appellants. It is patently clear that most of the plaintiffs belong to other than Mathwa community and they have not filed any record to show that they were also worshipping the temple as a matter of right. On the other hand, there is much force in the contention of the respondents that these plaintiffs have been set up by the tenants, who have already been ordered to be evicted by a court of law and the matter went upto the Apex Court. There is absolutely no evidence of endowment of any property by any public. Simply because a temple is put up adjoining the Samadhi and some Guru Poojas are performed on particular days, it cannot be construed as a religious institution. The lower appellate court had correctly appreciated the contentions of the parties and the finding is based on legal evidence, no interference is called for.”



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15. On a careful perusal of the judgment it is clear that simply because a temple is put up adjoining the Samadhi and some guru poojas are performed on particular days, it cannot be construed as a religious institution.

16. Further the learned counsel appearing for the respondents/plaintiff's also relied upon the judgment of this Court in **(Srinivasan Pillai and others vs. C.Subramania Mudaliar and others)** reported in **(2001) M.L.J (Supp.) 6** wherein, the Hon'ble Division Bench of this Court in paragraph No 28 held as follows:

“28 Samadhi, overwhich, Sivalingam is constructed and there is and there is a daily pooja and offerings in that place, would not become a temple. Dedication of property to a Samadhi, would not create a Status of a Temple to the said Samadhi. Conducting Guru Pooja, and offering “Annadhanam” to a Samadhi, would not turn the Samadhi into a religious institution. Allowing people from different sections and different religions, different walks of life to pay homage to the Samadhi, will not change the character of the Samadhi and transfer the same into a temple.”



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17. On a careful perusal of the above judgment it is clear that the dedication of property to a Samadhi would not create a Status of a Temple to the said Samadhi. Conducting Guru Pooja and offering “Annadhanam” to a Samadhi would not turn the Samadhi into a religious institution. Therefore, from the above said judgment it is clear that only because of offering Annadhanam and some of the properties are dedicated to Samathi, it cannot be construed as a religious institution. In the case on hand also, according to the defendants, the properties were donated to the Samathi and some idols were placed in the Samathi and thereby it has to be construed as a religious institution. Therefore, in view of the above said judgment, the contention of the learned counsel for the appellants cannot be accepted and the properties are not created for the religious charitable endowments and the plaintiffs madam is not a religious institution. Thus, the point is answered.

Point No.2.

18. The plaintiffs sought for the relief to set aside the order passed in A.P.No.8 of 1993 dated 15.12.1994 by the first defendant. The plaintiffs have filed a petition in O.A.No.6 of 1991 before the second defendant to declare that Kamatchi Mounaguru Swamy Madam is not a religious institution and



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the same was dismissed on 22.09.1992. Thereafter, the plaintiffs have preferred an appeal in A.P.No.8 of 1993 before the first respondent and the same was dismissed on 15.12.1994 and thereby they filed a suit. This Court in the previous point after elaborate discussions decided that the plaintiffs property is not a religious institution and thereby, it is appropriate to set aside the order passed by the defendants 1 and 2 in O.A.No.6 of 1991 dated 22.09.1992 and A.P.No.8 of 1993 dated 15.12.1994. Thus, this point is answered.

Point No.3:

19. This Court in the first point decided that the suit properties are not a religious institution and the plaintiffs have also sought for the relief of declaration that Mounaguruswamy Madam is not a religious institution under the provisions of Hindu Religious and Charitable Endowments Act. Already this Court has decided the first point that the suit properties are not relates to religious institution. The defendants also admitted the availability of madam and the properties of the madam are managed and maintained by the plaintiffs and thereby, it is appropriate to grant the relief of declaration as prayed for in the plaint. Thus, the point is answered.



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Point Nos.4 and 5:

20. Before the trial Court, the plaintiffs have filed a suit to set aside the order passed in A.P.No.8 of 1993, dated 15.12.1994 by the first defendant and the decree for declaration that the Mounagurusamy Madam is not a religious institution under the provisions of Hindu Religious and Charitable Endowments Act. The trial Court framed the proper issues and before the trial Court, on the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 to A.12 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.D1 to D.10 were marked. The trial Court after considering the evidence adduced on either side decreed the suit in favour of the plaintiffs. The trial Court in the judgment held that the properties were donated by Muthukrishna Ammaniyammal to the Madam for conducting Guru Poojas in the Mounagurusamy Madam and the properties were purchased by Kulandaisamy through Exs.A.2 and A.3 for the maintenance of Mounagurusamy Madam and the Mounagurusamy Madam was created by the followers of Mounagurusamy and poojas were also conducted by the followers by performing Annadhanam through the income from the properties. The evidence of P.W.1 and D.W.1 would reveal that in the year



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1917 Kamatchi Mounaguru attained jeevasamathi and his followers constructed the Samathi on his own expenses. Further the Math and the Samathi were also constructed on private properties and not on the property belonging to the temple. There was no religious ceremony conducted in the said Math and they are only conducting poojas for the Lingam placed in the Samathi. Further, the trial Court also after considering the Judgments reported in **2001 -3 LW page 777, 1955 -1 MLJ page 60, MLJ, 2-1953 page 688, 2001-3 MLJ Page 287** and after elaborate discussions about the provisions of law held that a Samathi of a holy man and a saint cannot ordinary evolve into a temple for public religious worship as defined in Section 9 (12) of the Madras Hindu Religious Endowments Act, 1927 and that the mere fact that the general public were freely admitted to the temples could not mean that there should be a ready inference that the temples were public ones and fairly came to a conclusion that the plaintiffs are entitled to the relief as prayed for. Therefore, the decree and judgment of the trial Court are well reasoned and warrants no interference. Therefore, this Court is of the opinion that this Appeal Suit has no merit and it deserves to be dismissed.



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21. In the result, this Appeal Suit is dismissed and the judgment and decree passed in O.S.No.327 of 1995 on the file of the Principal Sub Court, Dindigul, is confirmed. There shall be no order as to costs.

22.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal Sub Court,
Dindigul.
2. The Section Officer,
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