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A.S.(MD)NO.192 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R.POORNIMA

A.S.(MD)No.192 of 2022

and

C.M.P.(MD)No.8263 of 2022

1. N.Perumal

2. N.Venkatachalam

3. Thangammal

4. K.Nandagopal

5. Govindammal

... Appellants / Plaintiffs

Vs.

1. V.Poongothai

2. V.Vadamalai

3. J.Srijayanthi

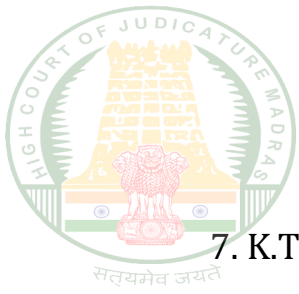
4. S.Thangalakshmi

T.Govindammal(died)

5. T.Srinivasan

6. T.Devarajan

1/25



7. K.Thiruvenkadam

8. K.Srinivasa Perumal

9. K.Balasubramanian

10.G.Renganayagi

11.M.Yasodhai

12.N.Dhanalakshmi

13.M.Poornavalli

14.K.Dhanalakshmi

15.K.Srinivasan

16.K.Krishnamoorthy

17.K.Jeevarathinam

18.A.Shakul Hameed

... Respondents / Defendants

Prayer: Appeal suit filed under Section 96 r/w.41 Rule1 and 2 CPC, to set aside the decree and judgment dated 25.10.2021 made in O.S.No.121 of 2015 on the file of the II Additional District Judge, Tiruchirappalli and allow the appeal suit.

For Appellant : Mr.H.Lakshmi Shankar

For Respondents : Mr.S.Sarvagan Prabhu
for R-1 to R-4, R-7 to R-10, R-12 to R-17.

Mr.Raguvaran Gopalan for R-18.

R-5, R-6 & R-11 - No appearance.

* * *



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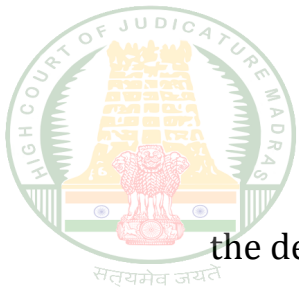
JUDGMENT

(By G.R.SWAMINATHAN, J.)

The unsuccessful plaintiffs in O.S.No.121 of 2015 on the file of II Additional District Judge, Tiruchirappalli are the appellants herein. The suit was filed for the relief of declaration, permanent injunction and other reliefs. Vide judgment and decree dated 25.10.2021, the suit was dismissed. Aggrieved by the same, this appeal has been filed.

2. The case of the appellants / plaintiffs is as follows:-

The plaintiffs along with defendants 1 to 18 are the descendants of one Vada Venkada Konar. A partition deed was executed among the parents as well as the sons of Vada Venkada Konar on 18.04.1960. The suit property was shown as shown as “M” schedule in the said deed of partition and allotted for religious charities. While so, the parties herein filed O.S.No.382 of 2002 on the file of the Principal Sub Court, Trichy and obtained permission for sale of the same. However, the defendants 1 to 18 herein, without adhering to the terms of the direction given by the Principal Sub Court, sold the suit property in favour of the 19th defendant for a sum of Rs.25,20,588/-. When the plaintiffs came to know the same, they issued notice on 11.07.2015 for cancelling the said sale deed. Since



the defendants did not comply with the said demand, the present suit came to be instituted.

3.The 19th defendant filed written statement claiming that he was a *bona fide* purchaser for valuable consideration. He pointed out that the auction sale was conducted pursuant to the permission granted by the Principal Sub-Court and that he had gone by the instructions given by the auctioneer / Advocate. Since the auction-sale had taken place in the year 2010 and the sale deed was executed on 28.06.2010, this suit instituted in 2013 was time-barred. The 19th defendant further contended that his vendors had put him in possession of the suit property. The suit itself was not maintainable since there is no prayer for recovery of possession. Various other defences were also taken. The defendants 1 to 18 supported the stand of the 19th defendant. They also filed written statement to that effect.

4.Based on the rival pleadings, the court below framed the necessary issues. The plaintiffs 2 and 4 examined themselves as P.W.1 and P.W.2 respectively. Ex.A1 to Ex.A5 were marked. The 19th



defendant examined himself as D.W.1. D.W.2 was examined to show that paper publication was given with regard to auction sale. Ex.B.1 and Ex.B.18 were marked. After considering the evidence on record, the Court below dismissed the suit. Aggrieved by the same, this appeal has been filed.

5.The learned counsel appearing for the appellants reiterated all the contentions set out in the grounds of appeal and called upon this Court to set aside the impugned judgment and decree and grant relief as prayed for.

6.Per contra, the learned counsel appearing for the 19th defendant and the learned counsel appearing for the vendors strongly contended that the impugned judgment is well reasoned. They pointed out that the suit itself is not maintainable because the prayer for the recovery of possession was not made. After execution of the sale deed dated 28.06.2010, mutations were made in the revenue records (Ex.B.3 to Ex.B.9). Ex.B.9 is the patta standing in the name of the 19th defendant. 19th defendant has also been remitting kist as evidenced by Ex.B.10 to Ex.B.13. The learned counsel also took

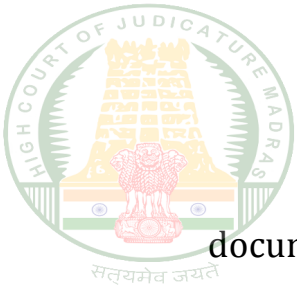


the stand that after getting sale deed in his name, the 19th defendant cleared the suit property of thorns and bushes and that there was some encroachments also. He called upon this Court to sustain the impugned judgment and decree.

7.We carefully considered the rival contentions and went through the evidence on record. The points that arise for determination are as follows:-

- i) Whether the auction-sale that concluded in favour of the 19th defendant was in conformity with law and the terms of direction given by the Principal Sub-Court in O.S No.382 of 2002 dated 16.09.2003?
- ii) Whether the suit is liable to be dismissed for not having sought the relief of recovery of possession.?
- iii) Whether the suit can be said to be barred by limitation?

8.It is not in dispute that the suit property was set apart for carrying out certain charities. Ex.A1 is the deed of partition dated 18.04.1960 executed among the five sons of Vada Venkada Konar. The suit properties have been described in “M” schedule to the said



document. The relevant extract of the partition deed in respect of the suit property reads as follows:-

(Clean Copy of Pages 11 & 12)

Ex.A1-18.04.1960(Partition Deed)

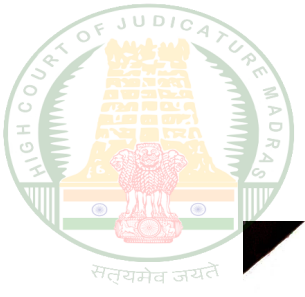
M ஷெடியூலில் கண்ட சொத்தை நம் குடும்ப பொது தர்மங்களை நடத்த ஷை ஷெடியூலிலேயே காணப்பட்டிருக்கும் தர்மங்களுக்காக நாம் ஒதுக்கி வைத்திருப்பதால் ஷை தர்மங்களை நம்மில் 1 லக்கமிட்ட வடமலைக்கோனார் நடத்தி வந்த சொத்துக்களையும் மாணேஜி செய்து வரவேண்டியது. ஷை ஷெடியூலில் கண்ட சொத்தை நாம் எவ்வித பராதீனத்திற்கும் உள்படுத்தக்கூடாது அப்படி செய்தாலும் சட்டப்படி செல்லத்தக்கதல்ல.

M ஷெடியூல் Private தர்மங்களாவன ஏற்கனவே 1906ம் வருடம் நவம்பர் மாதம் 30ம் தேதியில் நம்முடைய தகப்பனார் வடவேங்கிடகோனாருக்கு ஷா.வ.வடமலை கோனாரால் எழுதி வைக்கப்பட்ட உயிலில் கண்டபடி ஷாதுக்களுக்கு வழக்கம்போல் கொடுத்து வரும் அரிசி தர்மம் கொடுத்து வர வேண்டியது II பிராட்டியூர் கிராமத்திலுள்ள ஸ்ரீ மாரியம்மன் கோவிலுக்கு நித்திய பூஜைக்காக மாதம் 1க்கு 43 படி கொண்ட கலத்தால் ஒரு கல வீதம் வருஷம் ஒன்றுக்கு 12 கலம் நெல் கோவில் பூஜை செய்யும் பண்டாரத்திற்கு கொடுக்க வேண்டியது (3) ஷை கிராமத்தில் ஏற்கனவே திண்டுக்கல் ரஸ்தாவில் கோடைக்காலத்தில் பங்குனி, சித்திரை, வைகாசி ஆகிய மாதங்களில் நடத்தி வந்த தண்ணீர் பந்தலை வைத்து தர்மம் நடத்தி வர வேண்டியது (4) ஷை யூர் ரெட்டமலை கோவிலுக்கு இப்போது கொடுத்து வரும் வழக்கம்போல் மாதம் ஒன்றுக்கு நித்தியபூஜைக்காக தினம் ஒன்றுக்கு 1/4 படி



அரிசி வீதம் 7 1/2 படி அரிசியும் வருஷம் பூராவுக்கும் கொடுத்து வர வேண்டியது (5) ஷை யூரில் நாம் இது பரியந்தம் நடத்தி வந்திருக்கிறபடி ஸ்ரீ மாரியம்மனுக்கு பல்லாக்கு உத்ஸவமும் திருவிழா வைபவங்களும் வழக்கப்படி குறைவன்றி நடத்தி வர வேண்டியது (6) ஷை யூரில் ஸ்ரீ காளியம்மனுக்கு கரகம் வைத்தால் வழக்கம் போல் இரண்டு கலம் நெல்லும் கொடுத்து வர வேண்டியது (7) இது பரியந்தம். நமது குடும்பத்தில் இதர தர்ம ஸ்தாபனங்களுக்கும் உத்ஸவகால அன்னதான பந்தல்களுக்கு கொடுத்து வந்திருக்கிறபடி நடைமுறை வீகிதாச்சாரப்படி நெல்லும் ரொக்க தர்மங்களும் வழக்கம்போல் கொடுத்து வரவேண்டியது மல்லியம்பத்து நாச்சிகுறிச்சி — கிராமங்கள் பஞ்சாயத்துக்கு உள்பட்டது தவிர நம் சகோதரிகள் மூவர்கள் அத்தைமார்கள் இருவர்கள் சிறிய தகப்பனார் இருவர்கள் இவர்களுக்கு நாம் பிரியத்தினால் கொஞ்சம், கொஞ்சம் சொத்து கொடுத்தோம்.

II ஷை யூர் கிராமத்திலுள்ள ஸ்ரீ மாரியம்மன் கோவிலுக்கு நித்திய பூஜைக்காக 1க்கு 43 படி கொடுக்கப்பட்ட கலத்தால் ஒரு கலம் வீதம் வருஷம் ஒன்றுக்கு 12 கலம் நெல் கோவில் பூஜை செய்யும் பண்டாரத்திற்கு கொடுக்க வேண்டியது (3) ஷை கிராமத்தில் ஏற்கனவே திண்டுக்கல் ரஸ்தாவில் கோடைக்காலத்தில் பங்குனி, சித்திரை, வைகாசி ஆகிய மாதங்களில் நடத்தி வந்த தண்ணீர் பந்தலை வைத்து தர்மம் நடத்தி வர வேண்டியது (4) ஷை யூர் ரெட்டமலை கோவிலுக்கு இப்போது கொடுத்து வரும் வழக்கம்போல் மாதம் ஒன்றுக்கு நித்தியபூஜைக்காக தினம் ஒன்றுக்கு 1/4 படி அரிசி வீதம் 7 1/2 படி அரிசியும் வருஷம் பூராவுக்கும் கொடுத்து வர வேண்டியது (5) ஷை யூரில் நாம் இது பரியந்தம் நடத்தி வந்திருக்கிறபடி ஸ்ரீ மாரியம்மனுக்கு பல்லாக்கு



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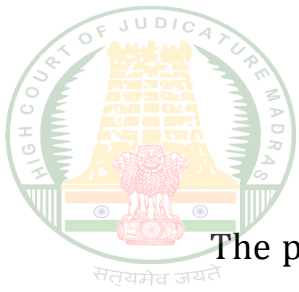
உத்ஸவமும் திருவிழா வைபவங்களும் வழக்கப்படி குறைவன்றி நடத்தி வர வேண்டியது (6) ஸ்ரீ யூரில் ஸ்ரீ காளியம்மனுக்கு கரகம் வைத்தால் வழக்கம் போல் இரண்டு கலம் நெல்லும் கொடுத்து வர வேண்டியது (7) இது பரியந்தம். நமது குடும்பத்தில் இதர தர்ம ஸ்தாபனங்களுக்கும் கொடுத்து வந்திருக்கிறபடி நடைமுறை வீதாச்சாரப்படி .. 3வது வரியில் private வரி பிளப்பு 1 வ.வடமலை கோனார் . தர்மங்களும் வழக்கம் போல் கொடுத்து வர வேண்டியது.

9.The expression “religious charity” has been defined in Section 6(16) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 as follows:-

“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 ;”

Section 6(19) of the Act reads as follows:-

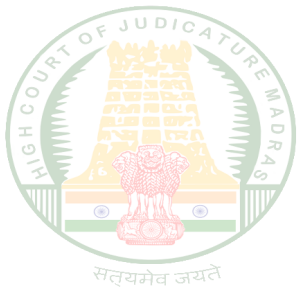
“specific endowment” means any property or money endowed for the performance of any f specific service or charity in a math or temple, or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation(1) 10 clause(17);”



The principles to determine whether the activities would attract the term “religious charity” and whether the property in question would fall within the scope of the term “specific endowment” have been delineated in detail by the Hon'ble Supreme Court in the decision reported in **(2020) 17 SCC 96 (Sri Renganathaswamy Vs. Ramanuja Koodam Anandhana Trust)**. It was held therein as follows :

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 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

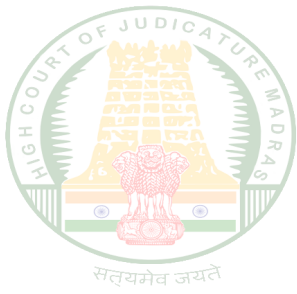


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“religious charity” under the 1959 Act, two conditions must be met. First, it must be a “public charity” and second, it must be “associated with” a Hindu festival or observance of a religious character. If these two conditions are satisfied, a charity 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) “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



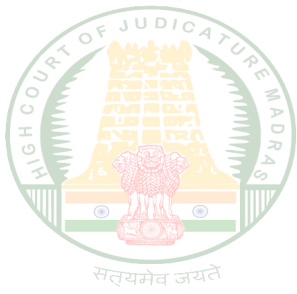
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in the matter and would not make the trust a private trust....”

19. Where the beneficiaries of a trust or charity are limited to a finite group of identifiable individuals, the trust or charity is of a private character. However, where the beneficiaries are either the public at large or an amorphous and fluctuating body of persons incapable of being specifically identifiable, the trust or charity is of a public character. This test has been consistently followed by subsequent Benches of this Court, most recently in a three-Judge Bench decision of this Court in *M.J. Thulasiraman v. Hindu Religious & Charitable Endowment Admn.* [*M.J. Thulasiraman v. Hindu Religious & Charitable Endowment Admn.*, (2019) 8 SCC 689 : (2019) 4 SCC (Civ) 420] In the present case, the deed of settlement states that the charity is to be carried for the benefit of the “devotees” who visit during certain Hindu religious festivals. The charity is one which benefits the public and the beneficial interest is created in an uncertain and fluctuating body of persons. The “devotees” as a class of beneficiaries are not definitive and therefore, the respondent trust is a public trust.

20. The next criterion that must be fulfilled for a charity to constitute a “religious charity” under Section 6(16) is that the public charity must be associated with a Hindu festival

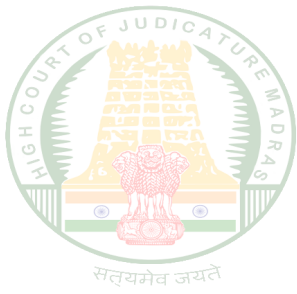


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or observance of a religious character. The term “associated with” as constitutive of the relationship between the charity and the Hindu festival has been interpreted in a three-Judge Bench decision of this Court in *Commr., Madras Hindu Religious & Charitable Endowments v. Narayana Ayyangar* [*Commr., Madras Hindu Religious & Charitable Endowments v. Narayana Ayyangar*, AIR 1965 SC 1916. Relied upon in *M.J. Thulasiraman v. Hindu Religious & Charitable Endowment Admn.*, (2019) 8 SCC 689 : (2019) 4 SCC (Civ) 420] , where a fund was set up for carrying out charity in relation to feeding Brahmins attending the Sri Prasanna Venkatachalapathiswami shrine on the occasion of Rathotsavam festival. The question before this Court was whether the fund set up for the purpose of feeding the Brahmins was a “religious charity” within the meaning of Section 6(13) of the Madras Hindu Religious and Charitable Endowments Act, 1951. J.C. Shah, J., speaking for this Court held : (AIR pp. 1918-919, paras 5 & 7)

“5. ... The expression “associated” in Section 6(13) of Act 19 of 1951 is used having regard to the history of the legislation, the scheme and objects of the Act, and *the context in which the expression occurs, as meaning “being connected with” or “in relation to”*. *The expression does not import any control by the authorities who manage or administer the festival. ...*

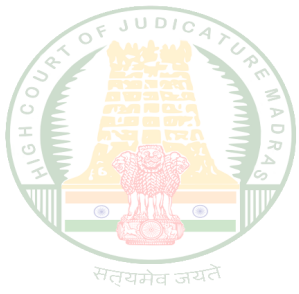


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7. On the facts found, it is clear that on the occasion of the Rathotsavam festival of Sri Prasanna Venkatachalapathiswami shrine, pilgrims from many places attend the festival and the object of the charity is to feed Brahmins attending the shrine on the occasion of this festival. It is not disputed that setting up a Fund for feeding Brahmins is a public charity. *The primary purpose of the charity is to feed Brahmin pilgrims attending the Rathotsavam. This public charity has therefore a real connection with the Rathotsavam which is a Hindu festival of a religious character, and therefore, it is a religious charity within the meaning of Section 6(13) of Madras Act 19 of 1951.*”

21. For a religious charity to be “associated” with a Hindu festival, the work of the charity must be “connected with” or “in relation to” the festival. The test is not whether the particular temple or authority administering the festival exercises any control over the activities of the charity. Where there exists a nexus between the charitable work and the occurrence of the festival, the charity is “associated with” the festival. In a two-Judge Bench decision of this Court in *K.S. Soundararajan v. Commr. of Hindu Religious & Charitable Endowments* [*K.S. Soundararajan v. Commr. of Hindu Religious & Charitable Endowments*, (2016) 15 SCC 597 : (2017) 3 SCC (Civ) 529] , this Court had to determine whether offering food to people on the occasion

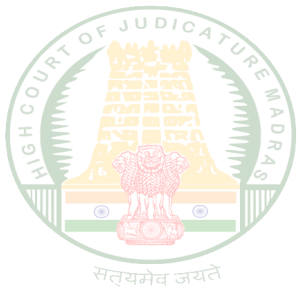


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of a deity passing through a river on a specific festival was a religious charity. This Court relied upon the decisions in *Ram Saroop Dasji* [*Ram Saroop Dasji v. S.P. Sahi*, 1959 Supp (2) SCR 583 : AIR 1959 SC 951] and *Commr., Madras Hindu Religious & Charitable Endowments* [*Commr., Madras Hindu Religious & Charitable Endowments v. Narayana Ayyangar*, AIR 1965 SC 1916] and held that the abovementioned charity was a religious charity and it was within the ambit of the High Court to pass orders regarding the framing of a scheme under Section 64 of the 1959 Act.”

A plain analysis of the recitals in the partition deed in the light of the principles laid down by the Hon'ble Supreme Court would clearly lead us to the conclusion that the suit properties had been set apart for carrying out religious charities and that the suit properties would fall within the scope of the definition “specific endowment” as statutorily defined. Once this conclusion is arrived at, the corollary is that the suit properties could not have been alienated without getting permission from the Commissioner of HR&CE under Section 34 of the HR&CE Act.



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10.Of course, it would not lie in the mouth of the appellants to canvass this contention. This was because the appellants were very much parties to O.S.No.382 of 2002 on the file of the Principal Sub-Court, Trichirappalli. Since the case involves performance of religious charities, the Court has to assume the role of *parens patriae*. We are of the view that a property set apart for public religious charities could not have been permitted to be sold by the Sub-Court I a petition filed under Section 34 of the Indian Trust Act, 1882. It is well settled that the Indian Trust Act is inapplicable to public or even private religious or charitable endowments. The Act relates only to private trusts and trustees. The case on hand pertains to a public religious charity. Section 108 of the HR&CE Act will also kick in. When the field is occupied by the provisions of the HR&CE Act, the issues will have to be adjudicated only within its four corners. The order dated 16.09.2003 made in O.S.No.382 of 2002 on the file of the Principal Sub-Court, Trichy appears to be without jurisdiction (coram non judice).

11.When the court that granted permission itself lacked jurisdiction, the sale that took place pursuant to the same would also

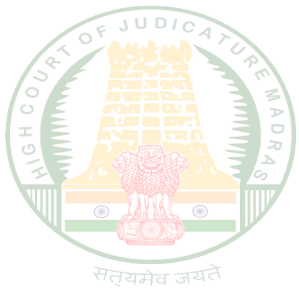


be invalid. That apart, the auction-sale that culminated in favour of the 19th defendant was not in conformity with the directions issued in the judgment dated 16.09.2003 passed by the Principal Sub Court, in O.S.No.382 of 2002. Paragraph No.8 of the said order reads as follows:-

“8. vOtpdh:-

NkYk; Fwpg;ghf ,ej jhth nrhj;Jf;fis 3tj egUf;F thjp> gpujpthjpfs; nrhj;Jf;fis tpw;gid gw;wp jFe;j mtfhrq;fs; mspj;J ,uz;L ehNsLfspy; tpsk;guk; nra;Jk;> chpa ,lk; Fwpg;gpl;Lk;> ,lk;> ehs;> Neuk; Mfpait nghWj;J Vyjhuh;fSf;F njhptpj;Jk;> mjpj;f;njhif Nfl;Fk; 3k; egUf;F tpw;f Ntz;Lnkd;Wk;> tpw;w gpd;G tpw;wjw;fhd fpiuag;gj;jpuj;jpDila efyAk;> mJ gw;wpa Fwpg;ghiziaAk; ePjpkd;wj;jpy; jhf;fy; nra;a Ntz;Lnkd;W epge;jidfis tpjpj;Jk; me;j tifapy; thjpfSf;F mDkjp toq;fpAk; ,ej vOtpdhtpw;F jPh;T fhzg;gLfpwJ.

,Wjpahf> thjp / gpujpthjpfs; tof;Fiuapy; NfhhpAs;sgb jhth nrhj;Jf;fis 3k; egUf;F tpw;gid gw;wp jFe;j mtfhrq;fs; mspj;J ,uz;L ehNsLfspy; tpsk;guk; nra;Jk;> chpa ,lk; Fwpg;gpl;Lk;> ,lk;> ehs;> Neuk; Mfpait nghWj;J Vyjhuh;fSf;F njhptpj;Jk;> mjpj;f;njhif Nfl;Fk; 3k; egUf;F tpw;f Ntz;Lnkd;Wk;> tpw;w gpd;G mjpy; fpilf;Fk; njhiffis thjp> gpujpthjpfs; xU Njrpakakhf;fg;gl;l tq;fpapy; itg;gPL nra;J mjpy;Ue;J tUk; tl;bia ... vLj;J jh;kfhhpq;fs; nra;Jnfhs;s Ntz;Lnkd;Wk; nrhj;Jf;fs; tpw;wjw;fhd fpiuag;gj;jpuq;fSila efyAk;> mJ gw;wpa Fwpg;ghiziaAk; ePjpkd;wj;jpy; jhf;fy; nra;a Ntz;Lnkd;w



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epge;jidfis tpjpj;Jk; me;j tifapy; thjpfSf;F mDkjp toq;fpAk;
jPh;g;ghiz toq;fg;gLfpwJ....”

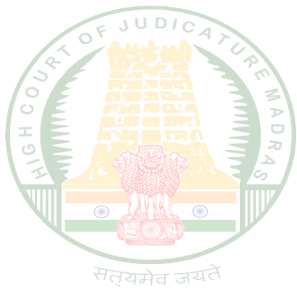
The Principal Sub-Court treated all the parties, namely, the plaintiffs and defendants 1 to 18 as trustees of the property and decreed that all of them should jointly sell the property through a transparent process of public auction. But not all of them were parties to the auction. Only four of them, namely, Defendants 15 to 18 authorized an advocate to conduct the auction-sale. We also wonder as to how the Advocate could have conducted an auction on his own. Even though the civil Court passed the order as early as on 16.09.2003, the auction process took place only in December 2007. Paper publication was made only in Dinamalar even though the civil Court had directed publication in two newspapers. The auction is said to have taken place in the suit property. The number of participants in the auction is also not known. Even though the auction notice read that the entire sale consideration must be deposited on the date of auction itself and the 19th defendant was said to be the highest bidder, the amount was received from him only in November 2009 (ie) after one year and nine months after the date of auction. In the auction notice, reserve price was not fixed. The minutes of auction



were also not drawn. We have to remark that the entire auction process was not transparent and was riddled with irregularities.

12.In his cross-examination, the 19th defendant deposed as follows:-

“When asked as to the reason why signatures of other family members was obtained in the sale deed even though patta was only in Poongothai’s name, the answer is, only as per the advice given by the lawyer of Poongothai’s Mr.K.S.Shankar Murali signature was obtained from others in Ex.B5. I do not remember whether the plaintiffs also will come under the other family members. It is correct that from the lawyer’s notice issued to me before suit I learnt that the plaintiffs were also the family members of Poongothai. Even thereafter, I did not take any steps. Only after the sale auction-sale notice with respect to the suit property, my bid and the letter of Advocate K.S.Shankar Murali who conducted the auction, I came to know about the particulars of the suit property. Only after that, I knew that the suit property is for a public purpose. I did not know about the conditions for conducting auction sale that are stipulated in the decree in



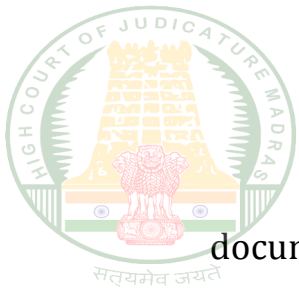
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O.S.No.382 of 2002. I do not know as to whether the auction sale was conducted in accordance with the condition stipulated in the decree or not. Since, I believed, an Advocate was conducting auction he would have conducted it in accordance with law. Whether Advocate K.S.Shankar Murali informed me to pay the sale price immediately, he only gave me Ex.B2 letter. He did not inform me either to pay the bid amount immediately or that it can be paid later. As per Ex.B3, I had paid the bid amount two years thereafter i.e., on 11.11.2009. In the meantime I did not seek for extension of time from Mr.K.S.Shankar Murali who conducted the auction to pay the bid amount. Likewise, no application was made in the court also.”

The answers given by the 19th defendant also throw considerable doubt on whether the auction itself was actually conducted. The whole thing appears to be a stage managed affair and reeks of fraud.

13.The appellants herein were not signatories to the sale deed. When the suit property belonged in common by way of a trust to the plaintiffs and the defendants 1 to 18, all of them should have joined as vendors. It is well settled that when on behalf of a trust, a



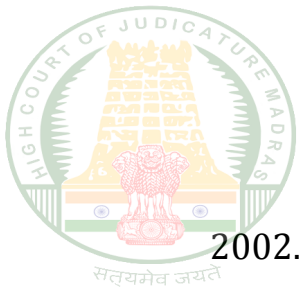
document is executed, all the trustees should join in the transaction.

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If the management is vested in more than one trustee, all the trustees should execute the sale deed, otherwise, it is invalid (vide ***Janakirama Iyer v. Nilakanta Iyer AIR 1962 SC 633***). It is not the case of the defendants that the plaintiffs had authorized them or delegated the power in their favour. Non-joining of the plaintiffs to the suit transaction renders the transaction itself as void.

14.As per Article 94 of the Limitation Act, any suit to set aside a transfer of immovable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration must be filed within 12 years from the date when the transfer becomes known to the plaintiff. The suit transaction took place in the year 2010 and the suit itself was filed in year 2015. Therefore, the suit was filed well within the limitation period.

15.The Court below has not at all adverted to the above aspects. It ought to have noted that the auction process was not conducted as directed by the Principal Sub Court in O.S.No.382 of



2002. The nature of the suit properties as that of a specific endowment within the meaning of Section 6(19) of the HR&CE Act was also not considered. We, therefore, have no hesitation to reverse the decision of the Court below in this regard. We declare that the suit sale deed dated 28.06.2010 is null and void.

16. We need to address one other major contention. The learned counsel for the 19th defendant relied on the decision of the Hon'ble Supreme Court rendered in **(2008) 4 SCC 594 (Anathula Sudhakar v. P.Buchi Reddy (Dead) by LRs. and Others)** to contend that when it has been brought out in evidence that the 19th defendant was in possession of such property, the plaintiffs could not have maintained a suit for declaration and injunction and that they ought to have prayed for the relief of recovery of possession also. This contention is no doubt attractive. The revenue record was mutated in favour of the 19th defendant. Earlier, the patta stood only in the name of Poongodhai (D1). Admittedly, Poongodhai could not have been said to be in exclusive possession of the property. She was in possession only in the capacity of a trustee along with eighteen others. Others would obviously include the plaintiffs herein.



Therefore, we cannot attach too much credence to the mere mutation of record in favour of the 19th defendant herein.

17.It is a fact that the suit property even as on date is only a piece of vacant land. It is well settled that when a property is a vacant site, possession would follow title (***Indore Development Authority vs. Manoharlal (2020) 8 SCC 129***). We have held that the impugned sale process is vitiated by fraud. Fraud unravels everything (***Vipin Kumar v. Jaydeep (2025) 6 SCC 465***). Since the 19th defendant does not have title over the suit property, he cannot be in possession thereof. On the other hand, the plaintiffs must be deemed to be in joint possession along with other trustees. Though the document was not marked either before the court below or before this Court, the revenue record at present reflects the names of the appellants also. Copy of the patta that is obtaining as on date was also produced during the hearing. Since this document was not marked, we are not in a position to refer to it. The suit cannot be said to be not-maintainable for not having sought the relief of recovery of possession. The plaintiffs are justified in restricting their claim to a mere relief of injunction.

18.In this view of the matter, the impugned judgment and



decree are set aside. This appeal suit is allowed. The suit is decreed as prayed for. The 19th defendant had paid a sum of Rs.25,20,518/- and it is said to be in bank deposit. This obviously must have earned interest. We permit the 19th defendant to withdraw the said amount together with accrued interest. No costs. Consequently, connected miscellaneous petition is closed.

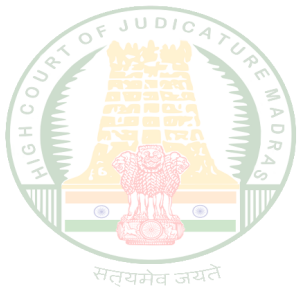
(G.R.SWAMINATHAN, J.) & (R.POORNIMA, J.)
4th June 2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PMU/skm

To:

1. The II Additional District Judge,
Tiruchirappalli.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

G.R.SWAMINATHAN, J.



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R.POORNIMA, J.

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