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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

SECOND APPEAL(MD)No.10 of 2013

and

M.P(MD)Nos.1, 2 and 3 of 2013

Virudhunagar Javuli Saravana Nadar
Pangaligal Anaivarukkum Pathiyapatti
Sivanoorani Selva Vinayagar Kovil and
Sivanoorani Periyasamy Kaalasamy Easwari
Amman Koil through its Hereditary Trustee,
C.Rajasekaran

... Appellant/Appellant/Plaintiff

Vs.

1.P.Sermakani

2.D.Selvanayagam

.. Respondents/Respondents/Defendants

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and decree dated 19.08.2011 passed in Appeal Suit No.5 of 2011 by the Sub Court, Virudhunagar, confirming the Judgment and decree dated 19.07.2010 passed in Original Suit No.32 of 2004 by the District Munsif Court, Virudhunagar.

For Appellant : Ms.N.Krishna Veni
For Respondents : Mr.N.Dilip Kumar

JUDGMENT

The plaintiff in the Original Suit in O.S.No.32 of 2004 is the appellant in the Second Appeal. The suit was filed praying for the relief of perpetual injunction against the respondents restraining them from interfering with the conduct of Sivarathiri festival in the suit Temples, namely, Selva Vinayagar Temple and Periyasamy Kaalasamy Easwari Amman Temple at Sivanoorani, based on their plea that the suit Temples were the private Temples belonging to the appellant herein and their Pangalis. A counter claim was made by the defendants claiming that such a right exclusively belonged to them.

2. The trial Court decreed the suit filed by the appellant herein/plaintiff and dismissed the counter claim made by the respondents herein/defendants. However, the trial Court granted



an alternative relief permitting the defendants to do the Poojas on Friday, Saturday and Sunday following Sivarathiri. As against the dismissal of the counter claim, the respondents herein/defendants did not file any appeal. As against the grant of the alternative relief in favour of the respondents herein/defendants, the appellant herein/plaintiff filed an appeal before the lower Appellate Court. The lower Appellate Court holding that the respondents herein/defendants were entitled to such an order, dismissed the said appeal. As against the said decree passed by the Appellate Court, the present Second Appeal has been preferred.

3. During the course of arguments, this Court put a pertinent question as to whether any declaration under Section 63(a) had been obtained to the effect that the suit Temples are not public religious institutions coming under the purview of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

4. This Court also drew the attention of Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which provides as follows:-

"No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under and in conformity with, the provisions of this Act."

5. The attention of the learned counsel for the appellant was also drawn to Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which confers powers on the Joint Commissioner or Deputy Commissioner, as the case may be, to decide the character of an institution as to whether it is a public religious institution or not as defined under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. This Court also posed a question to the learned counsel for the appellant as to whether the suit for injunction on the basis of the claim that the suit Temples are private Temples and hence not coming under the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 shall be maintainable, without a decision by the authority competent under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959?

6. The learned counsel for the appellant, who took time for getting instructions from the party, today submits that she has got instructions to withdraw the Second Appeal with liberty to



approach the competent authority under Section 63 for a declaration under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and endorsement to that effect has also been made.

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7. The endorsement is recorded and the Second Appeal is dismissed as withdrawn. Liberty sought for is granted. Consequently, the connected Miscellaneous Petitions are also dismissed. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Virudhunagar.

2.The District Munsif,
Virudhunagar.

+1cc to Mr.N.Dilip Kumar, Advocate Sr.No.22045
ps
AA/08.05.2015/3p -4c/

**S.A(MD)No.10 of 2013
24.04.2015**