

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2016

PRONOUNCED ON : 17.11.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.954 of 1998

1.S.Shanmughavel
2.K.Balakrishna Reddiar (deceased)
3.T.B.Srinivasan
4.K.Jayapal
5.S.Chandra Babu
(Death of 2nd Appellant is recorded
vide order dated 20.8.2014 made ...Appellants/
in memo dated 21.7.2014) Appellants 1 to 4 & 6
Plaintiffs

Vs

1.Sri Kasi Viswanathaswamy Temple,
Eswaran Koil Street,
West Mambalam,
Madras - 600 033.
Rep. By its Fit person
having his office at
Sri Kothandaramaswamy Temple,
K.R.Koil Street,
West Mambalam,
Madras - 600 033.

2.The Commissioner,
Hindu Religious and
Charitable Endowments,
Nungambakkam
Madras - 600 034.

3.The commissioner,
Corporation of Madras,
Madras - 600 003.
4.The Revenue Officer,
Corporation of Madras,
Madras - 600 033.

5.The Area Engineer,
MMWS & SB,
Area VIII,
(previously Area III),
Muthukrishnan Street,
T.Nagar,
Madras - 600 017

6.Arokiasamy (Deceased)

7.Anbazhagan

...Respondents/ Respondents/ Defendants

8.Thai Nimary

9.Panneerselvam

10.Simiyonraja

11.Arokiaselvi

12.Jayamary

...Respondents 8 to 12 brought on record as
legal representatives of the deceased 6th
respondent vide order of this court dated
29.1.2010 made in M.P. 648 of 2009)
.... Respondents

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 18.06.1998 made in A.S.No.179/1997 on the file of the learned IV Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 30.04.1997 made in O.S.No.257/1989 on the file of the XII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.M.S.Subramanian

For R.1 : Mr.R.Asokan

For R.2 : Mr.Jayaramanraj, GA HR& CE

For RR3,4 &5 : No Appearance

For R.6 : Died

For R.7 : Mr.P.B.Thirupathi Kumar

For RR8 to 12 : Mr.J.R.K.Bhavananthan

JUDGMENT

Plaintiffs who are six in numbers, filed the suit in O.S 257 of 1989 alleging that the suit property which is admittedly owned by the first defendant Temple namely "Sri Kasi Viswanathaswamy Temple", Mambalam, Chennai has been set apart as a 'market place'. The open space was let out to vegetable vendors, on daily license basis, collecting vending fee. The plaintiffs and others in the locality have been beneficiaries of this market all along. The first defendant Temple who is the owner of the property cannot put the land to any other use except for market purpose. While so, the first defendant Temple has allowed the sixth defendant to put up a superstructure in a

portion of the suit property. The sixth defendant has encroached upon two vegetable stalls obstructing entry to the market through Kuppaiah Street. He has recently put up a bathroom and lavatory in the encroached portion. Whereas, the seventh defendant is claiming a portion of the suit property under a lease in his favour. Due to the high handedness of the sixth defendant, the procession (வீதி உலா) of the Temple deity has become impossible. The plaintiffs and other public are deprived of their right to worship. Hence, the suit for declaration that the entirety of the suit property belonging to the first defendant Temple is set apart for running of the market, for permanent injunction restraining the first defendant or anyone claiming under the first defendant from in any way encroaching on the suit property or in any way altering the physical features of the same and for mandatory injunction directing the first defendant to remove the encroachments.

2.The first defendant in its written statement has questioned the locus standi of the plaintiffs to file the suit. It is contented that they are neither persons interested in the Temple nor beneficiaries of the Temple. They have no right to interfere in the internal administration of the first defendant Temple. They cannot dictate the Temple how to manage their property. The plaintiffs who are few in numbers have laid the suit in representative capacity without following the procedure laid down under law. Denying the averment that the suit property should be put to use as market exclusively, the first defendant has denied the further allegation that it has permitted the sixth defendant to encroach upon the suit land to put up superstructure. It is contented by the first defendant that action has been taken by the Temple to evict the sixth defendant from the suit premises and suits in O.S.Nos.4983 and 4984 of 1980 are pending. In so far as the seventh defendant is concerned, being a lessee under the Temple, he has filed the suit in O.S 5639 of 1989 against the Temple and has obtained interim injunction for evicting him without following due process of law. The seventh defendant is a lawful lessee under the Temple. He has evicted all the encroachers through legal process initiated by him in O.S.No.5443 of 1984 and O.S. 5446/84. It is contented that the first defendant is a religious Endowment Trust governed by the statute. The properties of the Temple are properly administered through fit persons or Executive Officers appointed for that purpose. The plaintiffs are no way concern with the activities of the Temple. They are not entitle for the reliefs sought.

3.The second defendant who is the Commissioner of Hindu Religious & Charitable Endowment Department adopting the written statement of the first defendant has further submitted that, he is not a necessary party to the suit. Under Section 45 (1) of

the HR & CE Act, an Executive Officer has been appointed to administer the Temple as per the proceedings in R.C.25910/90-2/L, 4 dated 20/06/1990. The plaintiffs have not impleaded the Executive Officer who is a necessary party to the suit. Hence, the suit is bad for non-joinder of necessary party.

4.The third defendant who is Commissioner of Corporation, in his written statement has alleged that the sixth defendant has constructed a bath room with AC sheet roofings without obtaining sanctioned plan from the Corporation of Chennai for which action under section 236 of the Madras City Municipal Corporation, Act, 1919 was taken on 17.9.1988 and prosecution is pending against the sixth defendant for the said violation. The third defendant has positively averred that the sixth defendant has not put up any superstructure on the suit land. The fifth defendant who is the area Revenue Officer has placed on record that the request of the sixth defendant to give sewage connection is under process, based on the no objection given by the Executive Officer of the first defendant Temple.

5.The sixth defendant's case is that, he has put up the superstructure on the Temple land and enjoying it for more than 26 years paying ground rent to the Temple. He has also taken recourse to Section 9 of City Tenant Protection Act by filing petition in O.S.4983/1980 and O.S 4984 / 1980 pending on the file of city civil court , Chennai. The plaintiffs have no locus to file the suit. Due to personal animosity the first plaintiff has filed the suit with the trappings of representative suit but without following the procedure contemplated for filing a representative suit.

6.The seventh defendant in his written statement has contented that the plaintiffs who are individuals and not a body of persons representing the people of the locality, cannot maintain the suit. The first defendant being a religious Endowment Trust before filing the suit, proper sanction ought to have been obtained under law, which the plaintiffs have failed to get. Therefore, the plaintiffs who are outsiders are not entitled to interfere in the maintenance and administration of the Temple.

7.Corroborating the version of the first defendant about the fact, the seventh defendant had explained how, he came into possession of the portion of the suit property by way of lease and his efforts taken to evict the encroachers by filing suits. Further, the seventh defendant apart from alleging animosity against the first plaintiff, in line with other defendants, claims that the suit property which is admittedly owned by the Sri Kasi Viswanathaswamy Temple , Mambalam, not used as market as claimed by the plaintiffs. The first defendant Temple to augment its income has lawfully leased out the land to him. He being the lawful lessee under the first defendant, his possession cannot be disturbed by way of injunction, as prayed by the plaintiffs.

8.The plaintiffs on receipt of the written statements of the respective defendants, had filed a reply statement stating that, as beneficiaries and worshipers of the Temple, the plaintiffs could maintain the suit as such and it is not a representative suit.

9.The trial Court on the basis of the rival contentions raised in the pleadings, framed 6 main issues and 3 additional issues. The first plaintiff who mounted the witness box was examined as PW-1. 30 documents were marked on plaintiffs side as exhibits. On behalf of the defendants totally 5 witnesses and 53 documents were marked.

10.On appreciation of evidence, the learned trial judge has held that the suit property is owned by the first defendant Temple. Exs.A.14 to A-17 would go to show that it is 'Devasthanam maaniyam' (grant). The Temple which is administered by the fit person/ Executive Officer, under the supervision of the Commissioner of HR & CE who is the second defendant. Therefore, the plaintiffs who are third party individuals cannot compel the Temple Authorities to put use the suit property only for daily market. It is the discretion of the defendants 1 and 2 to decide. There is no evidence to show that the first and second defendants are acting fraudulently against the interest of the Temple. The defendants 6 and 7 have been inducted into the property under a lease and they are not trespassers and they can be evicted only by following due process of law. The trial Court has rejected the plea of the plaintiffs that the property let out on lease to the 6th and 7th defendants is different from the suit property. On scrutiny of related documents; based on the admission of first plaintiff in the cross examination; ocular evidence of DW-1, DW-3 and DW- 4, the trial Court has concluded that the first defendant has only one property which is the suit property and the property leased to 6th and 7th defendants falls in the suit property.

11.Referring the admission of PW-1 in the cross examination, the trial Court has observed that due to occupation of the 6th and 7th defendants, in a portion of the suit property, there is no hindrance to the procession of the Temple idol. The trial Court while holding that the suit is not barred for want of leave under Order 1 Rule 8 of C.P.C., has held that declaration relief sought for in this suit cannot be granted to the plaintiffs who are neither the owners of the land nor the daily vendors who were allegedly utilizing the land, on paying fee to the Temple.

12.Regarding the application of Sections 78 and 80 of the HR and CE Act, which deals with the procedure to evict unauthorised occupants of Temple land and lease holder under the

Temple, the trial Court has held that Section 108 of the HR & CE Act, bars the Civil Courts to entertain the suits.

13.The First Appellate Court dismissed the appeal and confirmed the decree of the trial court. While dismissing the appeal, on independent appreciation of evidence and the law governing the points raised by the rival parties, it has arrived at the conclusion that the suit property was used as market only till the year 1980. The documents and pleadings in the earlier proceedings pertaining to the suit properties and the Corporation records identified the suit property as vacant land and not as market.

14.The plaintiffs have sought a relief against the Temple Authorities, by way of injunction regarding the maintenance of their land. It touches upon the administration of the religious institution therefore, in the light of Section 108 of HR & CE Act, the suit before the Civil Court is barred. Further, the relief sought is admittedly, on behalf of the plaintiffs and for the general public. The pleadings and reliefs sought falls under the category of representative suits, hence, for want of permission under Order 1 Rule 8 of C.P.C., the suit is not maintainable.

15.Aggrieved by the dismissal of their suit by both the Courts below, the plaintiffs have preferred this second appeal, canvassing the following question of law:-

"1) Whether the suit property, which is a market, as per the register kept under section 29 of the HR & CE Act and has found by the Advocate commissioner in 1992 could be held to be not a market ?

2) Whether the relief claimed in the suit is one for which the provision is made under the Tamil Nadu HR & CE Act and therefore barred by section 108 of the said Act ?

3) Whether the plaintiffs as worshipers -beneficiaries are not entitled to maintain the suit as permission not obtained under Or 1 Rule 8 of CPC ?"

16.The Learned Counsel for the appellants/plaintiffs made his submission on three folds:-

i) In the light of the admission made by the Executive Officer of the Temple (DW-1) that the suit land was used as market till the year 1980, the Courts below ought not to have given much credence to Exs.B-4, B- 5, B-10, B-11, B-14, B-23 and B-28 to B-53, which are all documents subsequent to the filing of suit to hold that the suit property is not put to use as

daily market. The Courts below erred by ignoring the Commissioner Report who has categorically recorded in his report - Ex C-1, the tell tale evidence for the existence of market.

ii) While the trial Court has rightly held that the plaintiffs are individuals, they sought relief for themselves and they are not representing any community, there is no bar under Order 1 Rule 8 of C.P.C. The First Appellate Court has wrongly reversed this finding by wrong application of the the decisions reported in AIR 1987 Mad 187 and AIR 1990 SC 397.

iii) When the substantial relief sought is not in respect of administration and management of the Temple but, for the observation of the suit property as a market and for consequential injunction from putting the suit property to a different use, the First Appellate Court ought not to have held that the Civil Court jurisdiction is ousted by virtue of Section 108 of the HR & CE Act.

17. It is an admitted fact by all the parties concerned that the suit property is the property of the first defendant Temple. It is also an admitted fact by the first plaintiff that only upto the year 1980, the suit property was used for conducting daily market. Though there is reference about rotten vegetables and broken furnitures, sign boards and weighing machines, in the Commissioner report of the year 1992, it is not a conclusive proof for the existence of market and will no way help the case of the appellants/plaintiffs that the disputed land is used as 'daily market' and it should be used as a market for ever.

18. For a moment, even if one assumes that the suit land is described as 'market' in the register maintained by the HR & CE Department, does it mean that its character will not or should not change by lapse of time ?. Can a third party force the land lord to retain the character of the land and not to alter the physical feature forever prejudicial to the land lord's financial interest ?. Unless, such a conversion will be against the larger interest of the general public and against public policy, no one can stop the landlord in using his own land, in the manner he likes.

19. Like the Courts below, this Court is also unable to understand how by putting into use of the vacant land otherwise than a market to augment better income of the first defendant Temple, is going to prejudice the plaintiffs or in alternate, how, by keeping the suit land as market, going to serve better the interest of the deity or its worshippers.

20. The first plaintiff's own admission during the cross examination and through the evidence of Mr. Selvam-DW-4, former

Trustee of the first defendant Temple, it is clearly established that the annual rituals and procession of the deity is carried on regularly and there is no report or complaint alleging that due to the occupation of the suit land by the 6th and 7th defendants and other trespassers, there is hindrance to the deity procession during festival time and the deity could not be taken out.

21.While the fact being so, the only inconvenience likely to cause for the appellants/plaintiffs and persons alike, at the most could be, they have to fetch an alternate vegetable vendor available elsewhere than in the suit property. Can a customer to a vegetable vendor, for his personal convenience, force the vendor's landlord to perpetually keep his land vacant and mandate the landlord through Court order to permit the vegetable vendors to use the space on payment of paltry fee ?. The only answer could be an emphatic no.

22.Further more, though, it is pleaded by the plaintiffs that the suit is filed by them as worshipers of the Temple, the relief sought is nothing to do with the deity or its worship. If one look into the prayer, it all relates to keep the suit land as 'market' and keep it free from encroachment and to restraining the Temple and others from utilizing the land for any other purpose other than as 'market'.

23.Likewise, the plaintiffs just because they happen to live nearby the so called 'market' or being worshiper of the deity which is the owner of the land where the market is located, no right accrue to them either on law; or on equity; or on any know principle of law, to compel the owner to retain the physical feature of the land, by way of a prohibitory order of injunction restraining the owner, (the first defendant Temple in this case), from altering the physical feature of the suit property. Thus, the plaintiffs' prayer for permanent injunction also does not carry any merit for consideration.

24.In this context, it may be relevant to refer a judgement of the Hon'ble Supreme Court in Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Ors. reported in AIR 1960 SC 100. In this case an attempt to move the idol temporarily from one place to another, since, the Temple structure found to be in dilapidated condition, was challenged. The Apex Court while answering the question, had extracted the following passage of our High Court judgment, at paragraph Nos.50 and 51 :-

" 50. The last case on the subject is Venkatachala v. Sambasiva A.I.R. 1927 Mad. 465; 52 M.L.J.288. The head note quite

clearly gives the decision, and may be quoted here :

" where all the worshipers of a Temple, who are in management of it, decide to build a new Temple, the old one being in ruins and the site on which it stood becoming insanitary and inconvenient for worshipers, then, unless there is clear prohibition against their demolishing the old Temple and building a new Temple, the Court is not entitled to prevent the whole body from removing the Temple with its image to a new site in the circumstances."

51. Devadoss, J., quoted passages from Kamika Agama, and referred to Prathista Mayukha by Nilakanta, Purva Karana Agamam and Nirnaya Sindhu. He, however, relied upon certain passages from Purva Thanthiram by Brighu, Kamika Agama, Siddhanta Sekhara and Hayasirsha Pancharatra, and came to the above conclusion. The effect of the decision is that the whole body of worshippers, if they are of one mind, can even permanently remove an idol to another habitation."

25. In the present case, the question is related to the manner in which the property of the idol is to be used. The plaintiffs had first of all not established that there is any prohibition in converting the character of the land and secondly, had failed to establish that the management of the idol or the whole body of worshipers, are interested in retaining the character of the suit land as a market and as market alone.

26. For the aforesaid reasons, this Court holds that, on facts, the suit property has lost the character of 'market' long before filing the suit and it no more carry the character of a 'market'. Further, on law, under Section 34 of the Specific Relief Act, a person who seeks declaratory relief, should establish his entitlement to such character or any right as to the property. The plaintiffs have failed to prove either of them. Therefore, the plaintiffs are not entitled for a declaration or the consequential injunction as prayed for. Hence, the relief sought for by the plaintiffs in the suit was rightly declined by the Courts below. The first substantial question of law formulated pursuant to these reliefs is not sustainable.

27. In so far as the relief of mandatory injunction directing the first defendant to remove the encroachments from the suit property, neither the pleadings nor the evidence let in by the plaintiffs provides details of any other encroachers except 6th and 7th defendants. Contrarily, the first defendant Temple through documents, has proved that necessary action has been taken against the 6th defendant for eviction.

28. Across the Bar, during the course of the arguments, the learned counsel for the first respondent submitted that the eviction suit against the sixth defendant has reached finality, on dismissal of the second appeal preferred by the 6th defendant and the Execution Petition is pending. The learned counsel for the 6th defendant admits the same. In so far as the 7th defendant is concerned, as pointed out earlier, on obtaining lease from the first defendant Temple, he has taken out legal proceedings for evicting all the trespassers and thereafter, he is now in possession of a portion of the suit property as lessee. Thus, the third and last relief sought in the suit also fails.

29. Having held that the plaintiffs are not entitled for the reliefs sought in the suit, the question, 'Whether the plaintiffs have any locus standi to lay the suit, as framed in view of Section 108 of HR & CE Act, and Whether the suit is bad for failure to follow the procedure under Order 1 Rule 8 of C.P.C.', even if held in favour of the plaintiffs, it is not going to carry any consequence. However, for the sake of completion and for academic interest, this Court proceeds further to answer, 'Whether the suit of this nature, is barred under Section 108 of HR & CE Act, and Whether it is maintainable in the absence of leave of the court under Order 1 Rule 8 of C.P.C.'.

30. 'locus standi'.

(i) 'Temple' is abode of Idol. The "Idol" being a 'juristic body' has to be represented by a human being. The HR & CE Act, gives the responsibility of representing the idol to the Trustee/fit person/ Executive Officer, as the case may be. In an appropriate case, if any of the above persons fail to protect or act against the interest of the idol even a worshiper who is interested in the idol, can file a suit on behalf of the idol, in order to protect or promote the interest of the idol.

(ii) When the cause of the idol can be taken up even by a single worshiper, if really the plaintiffs herein had come out with acceptable cause which the Authorities failed to protect, there could be no bar to represent the Temple. In this case, even according to the plaintiffs, they are not representing the Temple and they are not representing the entire community of

worshippers. The Temple is represented by the first defendant and the second defendant. No where, the plaintiffs say that the suit is filed for the interest of the Temple. They only plead the worshippers interest is also involved. There is sea difference between the 'worshippers interest' and the 'interest of the idol'. Not at all times both, 'the worshippers interest' and 'idol's interest ' are identical. From the pleadings and evidence, this Court as well as the Courts below have found that the interest which the plaintiffs sought to protect is nothing to do with the 'interest of the idol'. In fact, by keeping the Temple land vacant and declare it as 'market' will be detrimental to the 'interest of the idol'. Exposing the vacant land is always vulnerable for encroachment. Though, the plaintiffs have pointed out by praying the relief of declaration, the general public will also be benefited, they have consciously mentioned that it is not a representative suit. They have also not examined anyone from general public to expose the worshippers cause.

(iii) On testing the intention of the plaintiffs, through the pleadings and deposition, it is obviously clear that they have consciously laid the suit for their 'personnel interest' and no 'general interest of the community', is involved. They have only pointed out incidentally, that other general public also interested in using the land vacant and to be used as 'market' but, without any basis or support from the general public. Therefore, it should be construed that, this is a suit by few individuals for their 'own interest' and no 'public interest' of the community intended to be protected.

(iv) In the light of the plaint averment read as a whole, including the relief part, it is crystal clear that the plaintiffs never intended to protect the 'interest of the community' at large. Having opted not to file a representative suit, it is not necessary for them to get leave under Order 1 Rule 8 of C.P.C. Therefore, this Court holds that, while the trial Court has properly applied the dictum of this Court laid in 1987 Mad 187, the First Appellate Court, without proper reasoning has held that the said dictum is not applicable to the facts of this case.

31. 'Ouster of Civil Court jurisdiction'

(i) Regarding 'ouster of Civil Court jurisdiction' in the light of Section 108 of the HR & CE Act, is concerned, this Court opines that, it is suffice to extract the following observation of the Hon'ble Supreme court in Raizada Topandas and Anr Vs Gorakhram Gokalchand case reported in AIR 1964 SC 1348, @ page 1552 paragraph No.7, when an identical question arose.

" In answering this question, it is perhaps necessary to refer to the general principle which admittedly governs the question of jurisdiction at the inception of suits. This general principle has been well explained in the Full Bench decision of the Allahabad High Court, *Ananti v. Chhannu* I.L.R. (1930) All. 501., (FB) and has not been disputed before us. It was observed there :

"The plaintiff chooses his forum and files his suit. If he establishes the correctness of his facts he will get his relief from the forum chosen : If (happened in Patna case quoted above) he frames his suit in a manner not warranted by the facts, and goes for his relief to a court which cannot grant him relief on the true facts, he will have his suit dismissed. Then there will be no question of returning the plaint for presentation to the proper court, for the plaint, as framed, would not justify the other kind of court to grant him the relief.....If it is found, on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendants are true, and that the case is not cognizable by the court, there will be two kinds of orders to be passed. If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper court. If, on the other hand, it is found that, having regard to the nature of the suit, it is not cognizable by the class of court to which the court belongs, the plaintiff's suit will have to be dismissed in its entirety."

(ii)As pointed out earlier, the appellants/plaintiffs have chosen the Civil Court as a forum for the redressal of their grievance. On merits of the fact, they could not make out a case in their favour. The point of 'ouster of Civil Court jurisdiction' was not worth to be considered as a preliminary issue, therefore, the trial Court has accepted the jurisdiction and taken up the trial. At the second appeal stage does it not futile to revisit it ?

(iii) In *Dhulabhai and Ors.-Vs.- The State of Madhya Pradesh and Anr*, (1969 SC 78) the Five Judges Bench of the Supreme Court after incisive analysis of section 9 of C.P.C., vis-a-vis, the provisions under the special Acts which bars the 'Civil Court jurisdiction', concluded as below:-

"54. Neither of the two cases of *Firm of Illuri Subayya* (MANU/SC/0211/1963) or *Kamla Mills* (MANU/SC/0291/1965) can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intent becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be

brought before Tribunals constituted under that Act. Even the High Court cannot go into that

question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

The above judgment, which is the bedrock decision on the point of 'ouster of Civil Court jurisdiction', makes it clear that when there is inadequacy of procedure to redress the grievance, the Civil Court which is competent to do so, cannot be ousted. In this case, though, the plaintiffs have failed to establish their right to seek declaration, injunction and the mandatory injunction, in respect of the suit property, the manner in which the pleading couched and the prayers sought saves the suit from the scope of Section 108 of the HR & CE Act. This section bars the suit only in respect of the administration or management of a religious institution simpliciter. Not a complex issues like declaration as to the character or physical feature of a land owned by a religious institution.

32.To sum up, though the substantial questions of law 2 and 3 found in favour of the appellants/plaintiffs, which are in respect of maintainability of the suit, on facts, for the reasons more fully stated above, the first substantial question of law does not go in favour of the appellants/plaintiffs. Therefore, the second appeal is liable to be dismissed.

33.In the result, except pointing out the error in the judgment of the First Appellate Court, de-suiting the plaintiffs on the score of Section 108 of HR & CE Act and under Order 1 Rule 8 of C.P.C., the judgment and decree of the First Appellate Court, dismissing the suit is confirmed. Accordingly, the Second Appeal is dismissed with costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

jbm

To

1.The XII Assistant Judge,
City Civil Court,
Chennai.

2.The V Additional Judge,
City Civil Court,
Chennai.

3. The Section Officer
VR Section,
High Court, MAdras

1 cc to Mr.J.R.K. Bhavanantham, Advocate, sr. 66831

Second Appeal No.954 of 1998

VGI (CO)
kk 9/12