



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.09.2016

Delivered on: 22.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

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Second Appeal (MD) No.524 of 2011
M.P.(MD) Nos.1 and 2 of 2011 and 1 of 2013

1.Chinna Ovu Reddiar
2.Subramanian
3.Kasi Viswanathan ...Appellants/Respondents/Defendants

-Vs-

Sankarankoil Taluk,
Mesiapuram Village Pillaiyar Koil,
Through its Thakkar,
Mesiapuram Village,
Sankarankovil Taluk,
Tirunelveli District. ... Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to set aside the Judgment and Decree dated 09.07.2010 passed in A.S.No.20 of 2009 and Cross Objection on the file of the Sub Court, Sankarankoil, modifying the judgment and decree dated 21.01.2009 passed in O.S.No.95 of 2007 and Counter Claim on the file of Principal District Munsif Court, Sankarankovil.

For Appellants : Mr.V.Meenakshi Sundaram
for Mr.D.Nalla Thambi

For Respondent : Mr.S.Meenakshi Sundaram

JUDGMENT

The defendants in the suit in O.S.No.95 of 2007 on the file of the Principal District Munsif Court, Sankarankovil, are the appellants in this second appeal.

2.The plaintiff / respondent in this second appeal is a temple known as Sankarankovil Mesiapuram Village Pillaiyarkovil represented by its Thakkar.

3.The plaintiff / respondent temple filed a suit for permanent injunction restraining the defendants / appellants from interfering with the peaceful possession and enjoyment of the plaintiff temple. The suit property is an extent of 16 ares in



Survey No.743/9 in Vannikonenthal Village, Mesiapuram Majara, Sankarankovil Taluk.

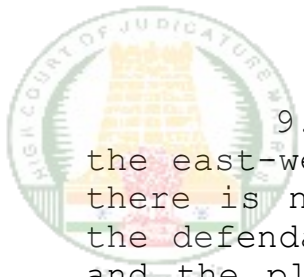
4.The case of the plaintiff / respondent is that the suit property belongs to plaintiff temple and the plaintiff temple is in enjoyment of the suit property by getting patta and paying kist. The electricity service connection is also stated to be obtained in the name of the temple.

5. It is the further case of the plaintiff temple that on the immediate north of the suit property, a pathway in Survey No.743/6 is in existence and the defendants / appellants have their houses only on the further north of the said pathway. Though the extent of pathway is only 11 ¼ feet x 201 feet, the defendants / appellants are trying to interfere with the enjoyment of the plaintiff temple under the pretext that the said pathway is also running through the suit property, on the northern side and further, the defendants / appellants also claimed that there is another north south pathway running across the suit property. It is because of the attempt made by the defendants / appellants to interfere with the enjoyment of the suit property by plaintiff temple, it is stated in the plaint that the suit came to be filed.

6.The defendants / appellants filed written statement denying the title of the plaintiff temple in respect of the suit property. The defendants / appellants also took a stand that there is no one as Thakkar for the plaintiff temple and that the suit filed by a person called Thakkar is not maintainable. It is also the case of the defendants / appellants that there is no pathway in Survey No.743/6 even though the pathway is shown in the revenue records. The defendants / appellants contended that the land in Survey No.743/6 belonged to them and that the revenue department has wrongly classified this land as a pathway even though the actual pathway on ground is situated in suit survey number namely Survey No.743/9 and that it is only the pathway in Survey No.763/9 is enjoyed by the defendants / appellants and others. The defendants / appellants have also claimed right of easement by prescription stating that they are enjoying the pathway in Survey No.743/9 for a period of more than 100 years.

7.The defendants / appellants also preferred counter claim seeking declaration and consequential injunction of their easementary right over the pathway on the northern side of the suit property in Survey No.743/9 specifying the east west measurement as 116 feet and north south measurement as 16 ½ feet.

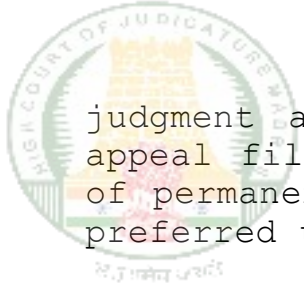
8.The plaintiff temple also filed a written statement to the counter claim and the details of the counter claim are not necessary and not to be elaborated having regard to the scope of the present appeal.



9. The trial Court framed necessary issues and found that the east-west pathway is existing only in Survey No.743/6 and that there is no east-west pathway in Survey No.743/9 as contended by the defendants / appellants. Hence, the counter claim was rejected and the plaintiff's case was accepted. However, the trial Court has found that the plaintiff has no locus standi to file the suit as Thakkar of the plaintiff temple and that the plaintiff is not entitled to file the suit representing the plaintiff temple. Peculiarly, the trial Court observed that by granting a decree in favour of the plaintiff temple, the plaintiff under the guise of injunction may even prevent the defendants / appellants from exercising their rights in the suit temple. Since the defendants / appellants also have equal rights in the plaintiff temple, the representative in interest of the plaintiff temple who has not produced any document to show that he is the Thakkar of the temple, cannot file a suit. Hence, the trial Court dismissed the suit. The counter claim of appellants was also rejected by trial Court.

10. Aggrieved by the judgment and decree of the trial Court in O.S.No.95 of 2007 on the file of the Principal District Munsif Court, Sankarankovil, the plaintiff temple preferred an appeal in A.S.No.20/2009 before the Sub Court, Sankarankovil. The appellants also preferred a cross objection which was also disposed of by a common judgment dated 09.07.2010. The appellate Court, apart from accepting the case of the plaintiff that the plaintiff temple is the absolute owner of the suit property and that the pathway of the plaintiff temple is in existence only in Survey No.743/6 and not in the suit property in Survey No.743/9, found that the suit filed by the present trustee of the plaintiff temple is maintainable. The appellate Court accepted the position that the temple is not under the control of the Hindu Religious and Charitable Endowments Department and that, therefore, there was no Fit Person or the Executive Officer for the temple appointed under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act. The Thakkar of the temple has given evidence as P.W.1 and has clearly stated about the administration of the temple by his father and his grand father as Thakkar and poojari of the temple. Though the defendants / appellants denied the fact that P.W.1 is the Thakkar of the temple, they do not let in any evidence to prove as to the administration of the temple by any other person. The revenue records filed by P.W.1 also would support the case of the plaintiff temple that the institution is managed by the family of P.W.1.

11. Considering all the evidence both oral and documentary, the lower appellate Court, reversed the findings of the trial Court with regard to the maintainability of the suit and concurred with the findings of the trial Court as regards the existence of the pathway in Survey No.743/9. Aggrieved by the



judgment and decree of the lower appellate Court, allowing the appeal filed by the plaintiff / respondent and granting a decree of permanent injunction in O.S.No.95 of 2007, the defendants have preferred the above appeal.

12.The defendants / appellants though filed a cross objection as against the rejection of the counter claim preferred by them in the suit in O.S.No.95 of 2002 on the file of the Principle District Munsic Court, Sankarankovil, they have not filed an independent Second Appeal against the rejection of Cross Objection.

13.The learned counsel for the defendants / appellants, having regard to the concurrent finding of the Courts below as to the existence of the pathway only in Survey No.743/6 and the non-existence of any pathway or any easementary right and the disentitlement of any easrmentary right for the defendants / appellants in the suit property namely Survey No.743/9 conceded that he has not raised any substantial question of law on the factual issues on the merits of the case. However, the learned counsel for the defendants / appellants raised the following substantial questions of law and the second appeal was also admitted on the questions of law raised by the appellants in this Second Appeal:

“(a) When Mesiapuram Village Pillayarkoil is shown as a plaintiff, whether the lower Appellate Court is correct in decreeing the suit, since temple is not a juridical person and hence not suit relating to the temple property can be instituted in the name of temple under law and as such whether the lower Appellate Court ought to have dismissed the suit on the ground that there is no plaintiff before the Court in the eye of law?

(b) Whether finding of the lower Appellate Court that Somasundaram is a fit person of the suit temple on the basis of Ex.A-2 recitals in the kist receipt is erroneous and perverse, since Ex.A-2 can be taken for evidencing the payment of kist alone and the same cannot be relied upon to establish the status of the fit person under law?

(c) Whether the lower Appellate Court is correct in holding that P.W.1 Somasundaram is the 'Thakkar' of the suit temple on the basis of Ex.A-2, when there is no such pleading in the plaint and when the above said Somasundaram as P.W.1 did not depose that he is relying upon Ex.A-2 to establish that he is the 'Thakkar' of the temple?

(d) Whether the finding of the Courts below regarding the counter claim of the appellants /



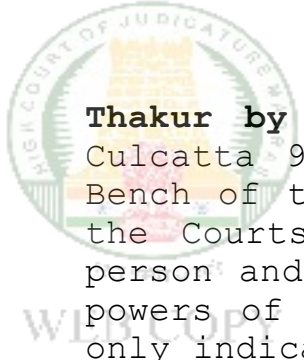
defendants, since the evaluation of the evidence by the Courts below on that aspect has been made without considering Ex.B1 to B7?

14.The learned counsel for the defendants / appellants relied upon a judgment of Lahore High Court in the case of **Thakardwara (Pheru Mal of Amritsar) v. Ishar Das and others** reported in **AIR 1928 Lahore 375** wherein it has been held as follows:

"In appeal before us it has been contended that the Thakardwara is a juridical persona and can sue. It support of this it has been urged that the Thakardwara must be taken as equivalent to a Matt and, therefore, is a juridical person as is also shown by the fact that the property dedicated was dedicated to the Thakardwara itself and not to the idol. In the alternative it was contended that the Thakardwara must be considered as equivalent to the idol and, therefore, a juridical person. The case that the Thakardwara is juridical person under either of these contentions has not, in our opinion, been at all made out. It seems to us that the rulings are clear that an idol is a juridical person by reason of the judicial recognition of Hindu religion and custom on this point. Similarly a Matt is a juridical person; but to extend this doctrine to include the building, in which the idol is deposited, as in some way itself becoming a religious institution is to our mind a most unwarranted extension of this doctrine and would result in two juridical persons coexisting in the same institution. We, therefore, repel this contention.

It is contended next that in any event the suit should not be dismissed as this is only a misdescription of the plaintiff. Order 1, Rule 9, has been cited in support of this contention, but it clearly does not apply as it presupposes that there are certain parties properly before the Court and certain other necessary parties are not before the Court. It has, therefore, no application to a case where there is no party on the one side present in Court at all."

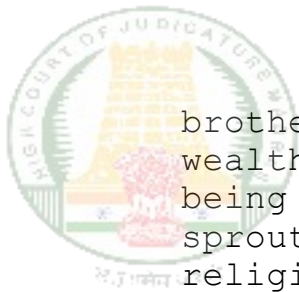
15.In the said case, it has also been held that an idol can still sue but not the building in which the idol is deposited. Further, relying on the said judgment, the learned counsel for the defendants / appellants submitted that in the present case the temple has been shown as the plaintiff, according to him, the temple is only a building and it cannot represent the deity. The learned counsel for the defendants / appellants then relied upon another judgment of Calcutta High Court in the case of **Tarit Bhusan Rai and others v. Sri Sri Iswar Sridhar Salagram Shila**



Thakur by Krishna Chandra Chandra reported in A.I.R. (29) 1942 Calcutta 99, for advancing a similar proposition. The Division Bench of the Calcutta High Court in the said judgment found that the Courts of law have recognised a Hindu Idol as a juridical person and the right of the idol to hold the properties with the powers of suing or being sued. A reading of the whole judgment only indicate that the juridical personality of Hindu Idol and its power are explained in the said judgment and not about the maintainability of the suit by a religious institution represented by its Manager or Thakkar or Trustee. In the said judgment, however, it has been stated that only a shebait of the Hindu idol who is the Manager has the capacity to represent the idol and that the worshippers of the idol cannot maintain a suit regarding the properties of the idol in the sense that they have no right to exercise the idol's power of suing. Even this finding was rendered only in the context of holding that the decision in an earlier suit filed by a worshipper representing the idol is not binding on the idol in another suit where the idol is properly represented by a Shebait (Manager).

16. In the present case, as against the legal submissions of the learned counsel for the defendants / appellants, Mr.S.Meenakshisundaram, learned counsel appearing for the plaintiff / respondent relied upon a judgment of the Hon'ble Supreme Court in the case of **Shiromani Gurdwara Prabandhak Committee, Amritsar v. Som Nath Dass and others** reported in (2000) 4 SCC 146 wherein the Hon'ble Supreme Court has held as follows:

"27. The aforesaid conspectus visualises how Juristic Person was coined to subserve to the needs of the society. With the passage of time and the changes in the socio-political scenario, collective working instead of individualised working became inevitable for the growth of the organised society. This gave manifestation to the concept of Juristic Person as an unit in various forms and for various purposes and this is now a well recognised phenomena. This collective working, for a greater thrust and unity gave birth to cooperative societies, for the success and implementation of public endowment it gave rise to public trusts and for purpose of commercial enterprises the juristic person of companies were created, so on and so forth. Such creations and many others were either statutory or through recognition by the courts. Different religions of the world have different nuclei and different institutionalised places for adoration, with varying conceptual beliefs and faith but all with the same end. Each may have differences in the perceptive conceptual recognition of god but each religion highlights love, tolerance, sacrifice as a hallmark for attaining divinity. When one reaches this divine empire, he is beholden, through a feeling of universal



brotherhood and love which impels him to sacrifice his wealth and belongings, both for his own bliss and for its being useful to a large section of the society. This sprouts charity, for public endowment. It is really the religious faith that leads to the installation of an idol in a temple. Once installed, it is recognised as a juristic person. The idol may be revered in homes but its juristic personality is only when it is installed in a public temple.

28. Faith and belief cannot be judged through any judicial scrutiny. It is a fact accomplished and accepted by its followers. This faith necessitated the creation of a unit to be recognised as a Juristic Person. All this shows that a Juristic Person is not roped in any defined circle. With the changing thoughts, changing needs of the society, fresh juristic personalities were created from time to time.

17. In the same judgment, it has been held that Gurdwara where 'Guru Granth Sahib' is installed can be recognised as a juristic person. Paragraphs 37 and 38 are relevant and hence, they are extracted as below:

37. The further difficulty the learned Judges of the High Court felt was that there could not be two Juristic Persons in the same building. This they considered would lead to two juristic persons in one place viz., gurudwara and Guru Granth Sahib. This again, in our opinion, is a misconceived notion. They are no two Juristic Persons at all. In fact both are so interwoven that they cannot be separated as pointed by Tiwana, J. in his separate judgment. The installation of Guru Granth Sahib is the nucleus or nectar of any gurudwara. If there is no Guru Granth Sahib in a Gurdwara it cannot be termed as gurudwara. When one refers a building to be a gurudwara, he refers it so only because Guru Granth Sahib is installed therein. Even if one holds a Gurdwara to be a juristic person, it is because it holds the Guru Granth Sahib. So, there do not exist two separate juristic persons, they are one integrated whole. Even otherwise in Ram Jankijee Deities and Ors. Vs. State of Bihar and Ors., 1999 [5] SCC 50, this Court while considering two separate deities, of Ram Jankijee and Thakur Raja they were held to be separate Juristic Persons. So, in the same precincts, as a matter of law, existence of two separate juristic persons were held to be valid.

38. Next it was the reason of the learned Judges that, if Guru Granth Sahib is a Juristic Person then every copy

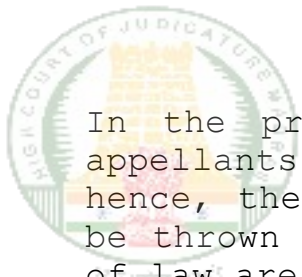


of Guru Granth Sahib would be a Juristic Person. This again in our considered opinion is based on erroneous approach. On this reasoning it could be argued that every idol at private places, or carrying it with one self each would become a Juristic Person. This is a misconception. An idol becomes a juristic person only when it is consecrated and installed at a public place for public at large. Every idol is not a juristic person. So every Guru Granth Sahib cannot be a juristic person unless it takes juristic role through its installation in a gurudwara or at such other recognised public place."

18. In the light of the judgment of the Hon'ble Supreme Court, there is no difficulty in holding that the temple represented by its trustee can be recognised as a juridical person. It is to be noted in the present case that the temple is represented by a named individual as Thakkar. The temple is only a place of religious worship. Though the temple is treated as the dwelling place of the deity, it may not have the status of a juridical person without an idol being installed. A temple where an idol is installed, can be recognised as a juristic person if it is properly represented by its Manager. In our country, every temple is called by the name of the Principal deity. The name of the temple and the idol are interchangeable for acquiring properties and for the purpose of recognising and identifying the ownership over the properties acquired either in the name of the temple or in the name of deity. The provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act also indicate that the temple is recognised as a religious institution and such institutions represented by the trustees are recognised as legal entities or juridical personalities for the purpose of suing or being sued. In such circumstances, absolutely, there is no merit in the contention of the learned counsel for the defendants / appellants. The substantial questions of law raised by the appellants are answered in the following manner.

19. In the present case, the plaintiff is Mesiapuram Village Pillaiyar Koil, represented by its Thakkar. Since the temple has been represented by a living person namely the Manager of the temple, the suit filed by the plaintiff is undoubtedly maintainable and the contention of the defendants / appellants that there is no plaintiff in the suit is on a wrong perception of law.

20. The plaintiff temple has been represented by the Thakkar who claimed to be the person in Management of the temple. The revenue records also prove the fact that the person representing the temple is also shown as a trustee for the temple. A person who is in lawful administration of the temple can be recognised as a trustee of the temple unless there is rival claim.



In the present case, it is not the case of the defendants / appellants that a different person is in office as a trustee and hence, the suit filed by a Thakkar representing the temple cannot be thrown out. Hence, the second and third substantial questions of law are answered against the appellants.

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21.Regarding the fourth question of law, no argument was advanced by the learned counsel for the defendants / appellants on the merits of the case. However, the Courts below have found on the basis of the pleading and material evidence concurrently found that the plaintiff's case is acceptable and the appellate Court has found that the plaintiff is entitled to a decree for injunction restraining the appellants from interfering with the plaintiff's peaceful enjoyment of the suit property under the pretext of claiming easementary right. Further, no independent Second Appeal has been filed against the rejection of cross objection. Hence, the appellants are precluded from challenging the findings on merits.

22.In the above said circumstances, I find no reason to interfere with the judgment and decree of the lower appellate Court in A.S.No.20 of 2009 dated 09.07.2010. The second appeal is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

- 1) The Subordinate Judge, Sankarankoil.
- 2) The Principal District Munsif, Sankarankoil.

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Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Meenakshi Sundaram, Advocate, SR.No.71613
+1cc to Mr.D.Nallathambi, Advocate, SR.No.71794

**Judgment made in
Second Appeal (MD) No.524 of 2011
22.11.2016**