

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.S.A.Nos.232 to 234 of 2015
and M.P.Nos.1 to 1 of 2015

- 1.The Correspondent,
South Indian Educational Trust College (SIET),
Bharathidasan Salai,
Teynampet, Madras.
- 2.The Secretary,
S.I.E.Trust,
Teynampet,
Chennai - 18. Appellants/Defendants

vs.

Arulmighu Karaneeswarar Temple
Mylapore, Madras-4,
Rep. By its Executive Officer,
Madhavaperumal Temple,
Mylapore, Chennai - 600 004. Respondent/Plaintiff

Appeals filed under Order XXXVI Rule 9 of O.S.Rules read with Clauses 15 of the Letters Patent against the order dated 12.01.2015 made in O.A.Nos.2773, 2774 of 2013 and 2330 of 2014 in C.S.No.380 of 1997.

For Appellants : Mr.S.Parthasarathy, Senior Counsel
for Mr.B.Senthil Nathan

For Respondent : Mr.S.Subbiah, Senior Counsel
for Mr.S.D.Ramalingam

COMMON JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. These are the appeals filed against the judgment and order dated 12.01.2015, passed by the learned Single Judge in O.A.Nos.2773 & 2774 of 2013 and O.A.No.2330 of 2014 in C.S.No.380 of 1997

2. A.No.2773 of 2013 was an application filed on behalf of the respondent to amend the prayer made in the suit from one which was initially for possession to that of declaration. The respondent, thus, sought a declaration in the suit to the effect that it was the absolute owner of the scheduled property.

2.1. Insofar as application No.2774 of 2013 is concerned, the prayer made is that amendment be made to the effect that the defendants i.e., the appellants, their men and/or agents deliver vacant possession of the scheduled property after removing of superstructures put up by them.

2.2. Insofar as the last application is concerned i.e., A.No.2330 of 2014, consequential amendments are prayed for in the plaint so that it falls in line with the declaration sought for in A.No.2773 of 2013.

3. Mr.S.Parthasarathy, learned Senior Counsel, who appears on behalf of the appellant says that principally the appellant is aggrieved by the observations made by the learned single Judge in paragraph No.21 of the impugned judgment and order. For the sake of convenience, the said paragraph is extracted hereafter:

"..... 21. The plaintiff is a temple which is governed by the provisions of the Hindu Religious and Charitable Endowments Act, 1959. Insofar as the limitation aspect is concerned, the learned counsel placed reliance on Section 109 of the Act, which reads as follows:

"109. Central Act 36 of 1963 not to apply for recovery of properties of religious institution.--- Nothing contained in the Limitation Act, 1963 (Central Act 36 of 1963) shall apply to any suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property."

The present suit being one for recovery of possession and the relief of declaration is sought for, I am of the considered view that the application of Limitation Act will not arise."

3.1. Mr.Parthasarathy, says that the learned single Judge has stated at the stage of allowing amendment that the relief of declaration as prayed for by the respondent would be within the period of limitation.

3.2. The learned Senior Counsel says that the single Judge has erroneously relied upon Section 109 of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'the 1959 Act'),

whereas what would be applicable is Article 58 of the Limitation Act, 1963.

3.3. It is the submission of the learned Senior Counsel that right to sue arose applied even when reply to the legal notice served by the respondent was given by the appellants herein.

4. Mr.Subbiah, learned Senior Counsel who appears for the respondent contends to the contrary.

5. According to us, limitation in this matter is mixed question of fact and law and therefore, in our view, the difficulty expressed on behalf of the appellants can easily be resolved with the direction that the observation made by the learned single Judge in paragraph No.21 will not come in the way of the appellants, if the defence of limitation is raised in opposition to the prayer made in the suit. The trial Court will, accordingly, try such an issue, if it is framed in the suit.

6. Insofar as the other two applications are concerned, Mr.Parthasarathy, says that the direction issued in the impugned judgment and order does not trouble the appellants, as they are really consequential to the relief granted to the respondent in the first application.

7. Having regard to the aforesaid, the appeals are disposed of in the aforementioned directions. We may also make it clear that the issue as to whether the amendment allowed by the learned single Judge will relate back to the date of institution of the suit, will also be examined by the trial Court. Consequently, the connected pending applications shall stand closed. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

vsm

To:

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to M/s.S.D.Ramalingam,Advocate sr.56799

+1cc to M/s.B.Senthil Nathan,Advocate sr.56812

O.S.A.Nos.232 to 234 of 2015

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