

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 19.09.2017
DELIVERED ON : 26.10.2017

Coram

The Honourable Mr. Justice RAJIV SHAKDHER
and
The Honourable Mr. Justice ABDUL QUDDHOSE

Original Side Appeal No.272 of 2011
and M.P.No.1 of 2011

Sri Siddaraja Manicka Prabhu Temple,
Represented by its Guru Prabhu,
Manicka Nagar, Huminabad,
Gulbarga District. .. Appellant / defendant

Vs.

The Idol of Arulmighu Kamakala Kameshwarar Temple,
Represented by its Fit Person,
Executive Officer of
Arulmighu Kamakala Kameshwarar Thirukoil,
Triplicane, Chennai - 600 005. ... Respondent / plaintiff

Prayer : Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent, against the Judgement and Decree dated 26.04.2011 in C.S.No.921 of 1999 on the file of this Court.

CS.No.921 of 1999: Civil Suit filed under order 4 rule 1 of OS Rules read with order 7 Rule 1 of CPC for declaring the plaintiff as the absolute owner of the plaint scheduled mentioned property and for direction to the defendant to deliver possession of the suit property.

For appellant/defendant : Mr.AR.L.Sundaresan,
SC for Mr.Akshay Ringe
For respondent / plaintiff : Mr.V.Lakshminarayanan
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RAJIV SHAKDHER, J.

Prefatory facts :

1. This is an appeal preferred against the judgement and decree of the learned Single Judge dated 26.04.2011.

1.1. The appellant before us, is the original defendant in the suit. The appellant / defendant claims to be the spiritual head of Guru Manicka Prabhu Temple (hereafter referred to as 'Manicka Prabhu Temple').

1.2. The impugned judgement and decree was passed in a suit filed by the respondent/plaintiff, (i.e., the Idol of Arulmighu Kamakala Kameshwarar Temple) which stands dedicated to the Kamakala Kameshwarar Temple (hereafter referred to as the "Plaintiff Temple").

1.3. The suit was filed for seeking a relief of declaration, to the effect that the immovable property, which is adjacent to the Plaintiff Temple, vested, absolutely, in the respondent/plaintiff. A consequential relief was also sought, which was that the possession of the said immovable property be delivered to the respondent/plaintiff. The immovable property, qua which, reliefs, referred to above, were sought, is a vacant piece of land situate at 28, Hanumantha Lala Street, Triplicane, Chennai, [more fully described in the schedule appended to the plaint; hereafter referred to as the 'suit property'].

2. Before we proceed further, in order to adjudicate upon the appeal, the following broad facts are required to be noticed qua which, largely, there is no dispute, as, they emanate from documents put on record by the parties herein :

2.1. The Plaintiff Temple was founded by late Rai Raja Eswardoss Diawanth Bahadur. After the demise of Rai Raja Eswardoss Diawanth Bahadur, his son, one, Mr.T.Lakshmidoss and his grandson Mr.T.Venkataprasad, became owners of the Plaintiff Temple. An insolvency petition being: I.P.No.120 of 1914 was filed in this Court, to declare Mr.T.Lakshmidoss and Mr.T.Venkataprasad as insolvents.

2.2. By an order dated 27.04.1914, Mr.T.Lakshmidoss and Mr.T.Venkataprasad were declared insolvents, and accordingly, their estate, including the suit property, came to vest in the Official Assignee (hereafter referred to as "the OA").

2.3. Mr.T.Lakshmidoss and Mr.T.Venkataprasad entered into a scheme of arrangement and composition with their creditors with the view to obtain annulment of the adjudication order passed against them, whereby, they had been declared insolvents. Consequently, a decree to that effect dated 31.12.1915, was passed in C.S.No.89 of 1914. The decree provided that, after payment of the amounts due in respect of the annulment, the OA would divide the estate between Mr.T.Lakshmidoss and Mr.T.Venkataprasad in the proportion of $\frac{3}{4}$ and $\frac{1}{4}$ respectively.

2.4. Since, in and about October, 1916, payment of a sum of Rs.50,000/- was found necessary to be made to effectuate the composition that Mr.T.Lakshmidoss and Mr.T.Venkataprasad had arrived at with their creditors, they agreed to sell immovable properties, which formed part of their estate to, one, Mr.W.Ramakrishna Lala for a sum of Rs.1,10,000/-. This decision was taken in and about 15.10.1916.

2.5. Furthermore, Mr.T.Lakshmidoss and Mr.T.Venkataprasad also decided to receive the remaining value of their estate in cash. It was agreed in terms of the decree dated 31.12.1915, that the sum of Rs.1,10,000/- should be received by the OA - who, after deducting the amounts due under the insolvency would divide the balance amount between Mr.T.Lakshmidoss and Mr.T.Venkataprasad in terms of the decree, i.e., in the proportion of $\frac{3}{4}$ and $\frac{1}{4}$ respectively. As agreed, the unsold properties belonging to Mr.T.Lakshmidoss and Mr.T.Venkataprasad were conveyed by the OA in favour of Mr.W.Ramakrishna Lala vide two indentures of sale of even date, i.e., 23.03.1917.

2.6. On 12.12.1917, the said Mr.Ramakrishna Lala executed a deed of trust, whereby, he appointed the following persons as the trustees : (i) Mr.M.S.Anantha Ram Lala, (ii) Mr.A.S.Subba Rao, and (iii) Mr.C.Ranganadhan Nayudu of Dowden & Co.

2.7. The said trustees were required to sell all the properties purchased by Mr.W.Ramakrishna Lala, other than the family house, i.e., the suit property. The net sale proceeds were required to be appropriated in the manner mentioned in the trust deed and the balance, if any left, was required to be invested by them in the purchase or mortgage of the immovable properties, which were to be held in trust for Mr.T.Lakshmidoss and Mr.T.Venkataprasad during their lifetime. The income from the properties was required to be divided between Mr.T.Lakshmidoss and Mr.T.Venkataprasad in the ratio of 3:1, during their lives. In case, Mr.T.Lakshmidoss was to pre-decease Mr.T.Venkataprasad, the entire income was to be paid to Mr.T.Venkataprasad during his lifetime and after his death to his legal heirs, provided he was unmarried and, if, married without a legal heir from such lawful marriage. It was also provided that should Mr.T.Lakshmidoss have a wife or a lawful heir other than Mr.T.Venkataprasad his $\frac{1}{4}$ share should be conveyed to them. It was, clearly, stipulated, though, that the family house situate at No.1, 2 & 3 Raja Hanumantha Lala Street, Triplicane, Madras (now, Chennai), should not be sold, unless it was necessary to pay off the debts of W.Ramakrishna Lala.

2.8. Evidently, Mr.T.Lakshmidoss and Mr.T.Venkataprasad were, once again, declared insolvent via an order 07.02.1924, passed in I.P.No.50 of 1924. Consequently, their estate, again,

vested in the OA.

2.9. In and about 1926, plaintiffs described as Devakinandan Dubey and sons filed a suit bearing No.C.S.545 of 1926 for specific performance based on a deed of agreement dated 15.09.1925. Via the said suit, among other things, a declaration was sought that the family house and the adjacent ground described as 1, 2 & 3, Hanumantha Lala Street, Triplicane, was charged towards repayment of amounts due to them, and therefore, they were entitled to the same, as against the OA. Accordingly, the aforementioned plaintiffs sought specific performance of the agreement dated 15.09.1925. In the suit, i.e., C.S.No.545 of 1926, Mr.T.Lakshmidoss, Mr.T.Venkataprasad, the OA, Mr.Ramakrishna Lala and the three trustees, i.e., Mr.M.S.Anantha Ram Lala, Mr.A.S.Subba Rao and Mr.C.Ranganadhan Nayudu of Dowden & Co., were arrayed as defendants.

3. Evidently, the parties to the suit (i.e., C.S.No.545 of 1926), entered into a razinama, i.e., a compromise. Based on the razinama/compromise, a decree dated 26.11.1929, was passed. The said compromise decree dated 26.11.1929, provided for the following:

(i) That the provisions of the said trust deed dated 12.12.1917, shall attach only to house No.1 and 2, Hanumantha Lala Street, Triplicane, Madras and even in respect of the said properties, i.e., house No.1 and 2, Raja Hanumantha Lala Street, Tirplicane, Madras, the trust deed shall stand modified to the extent indicated hereafter:

(a) The two items of property i.e., property No.1 and 2, Raja Hanumantha Lala Street, Triplicane, Madras, shall, immediately, vest in Sri Guru Marthanda Manicka Prabhu, the head of Manicka Prabhu Temple and his successors in office, subject to the conditions set out below:

(a.1) the net monthly income from the said properties ascertained after the defrayment of repairs and taxes (as and when they accrue) would be applied and utilised by Sri Guru Marthanda Manicka Prabhu for maintenance of the insolvents, i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendants 7 and 8 in the suit) and the survivors of them during their lifetime.

(a.2) After the death of the survivor of the insolvents, i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendant No.7 and 8 in C.S.No.545 of 1926), the head of Manicka Prabhu Temple, "for the time being", shall pay, one, Parvathi Bai, the sister of defendant No.8, Mr.T.Venkataprasad, during her natural life from and out of the said income a sum of Rs.40/- per mensem and the balance sum available be utilised for the purpose of the

"said temple".

(a.3) After the death of Parvathi Bai, the said properties, i.e., House No.1 and 2, Raja Hanumantha Lala Street, Triplicane, and the income thereof, shall absolutely vest in the Guru of the Manicka Prabhu Temple, "for the time being", and be utilised for maintenance and upkeep of Manicka Prabhu Temple, (i.e., the seat) and the Plaintiff Temple founded by late Raja Ewardoss Diawanth Bahadur/the father of defendant No.7.

(a.4) The remaining properties included in the trust deed dated 12.12.1917, shall be "exonerated" from the trust and shall be declared to be the absolute properties of the insolvents, i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendant No.7 and 8) and vest in defendant No.2/the OA.

(a.5) That the accounts maintained and the management decisions taken by the trustees, namely, defendant No.3 to 6, were accepted as correct, and that the net balance in their hands be paid to defendant No.2 / the OA.

(a.6) That the trustees, that is, defendant No.3 to 6, would not be entitled to any commission or remuneration under the deed of trust other than such amounts as already drawn by them as shown in the accounts.

(a.7) For the purposes of giving effect to paragraph 1 of the aforementioned decree, defendant No.2 / the OA and the creator of the trust, defendant No.3 / Mr.W.Ramakrishna Lala, would execute in favour of the spiritual head of the Manicka Prabhu Temple a conveyance qua the properties set out in the Schedule "A" i.e. the suit property. Furthermore, the said spiritual head of the said temple would execute in favour of the erstwhile trustee, Mr.Rangandhan Nayadu, a power of attorney, empowering him to manage the properties set out in Schedule "A" during the life of the insolvents, [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendant No.7 and 8 in the suit)], and the survivor of them and the said Parvathi Bai for the purpose of making the payments to them. During these periods, the said power of attorney would hold possession of the said property.

(a.8) That defendant No.2/ the OA and the insolvents, [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendant No.7 and 8 in the suit)], would execute a conveyance qua the Plaintiff Temple, alluded to in Schedule "C" to the compromise.

(a.9) The application of the monthly income from the properties set out in the Schedule "A" (suit property) in the manner indicated above shall be in the nature of a provision for maintenance and the said income shall not be liable to be alienated or anticipated by the insolvents, [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendant No.7 and 8 in

the suit)], or the said Parvathi Bai to be attached or proceeded against by the creditors of the insolvents and the said Pravathi Bai.

3.1. Accordingly, in consonance with the compromise decree dated 26.11.1929, defendant No.2/the OA, along with the insolvents, [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendant No.7 and 8 in the suit)], executed a deed of transfer (Document No.1114 of 1931) dated 28.08.1931, in favour of Guru Marthanda Manicka Prabhu in respect of the Plaintiff Temple.

3.2. Apart from the said transfer deed, an indenture dated 28.08.1931 (Document No.1113 of 1931), was also executed by the OA of the estate of the insolvents, [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendants No.7 and 8 in the suit)] and Mr.Ramakrishna Lala in favour of Guru Marthanda Manicka Prabhu in respect of the suit property with the following conditions:

(i) that the monthly income from the suit property ascertained after paying charges for repair, taxes and quit rent as and when the same accrued be applied and utilized by Guru Marthanda Manicka Prabhu or his duly authorized agent for the maintenance of the said insolvents, [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendant No.7 and 8 in the suit)], and of the survivors for them during their life time that after the death of the survivors of the insolvents, [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendant No.7 and 8 in the suit)].

(ii) That the head Guru, for the time being, of the said Guru Manicka Prabhu Temple or his duly authorized agent shall pay to Parvathi Bai, sister of Mr.T.Venkataprasad, during the terms of her natural life from and out of the said income Rs.40/- per mensem and the balance of the income, if any, shall be utilized by him or by his duly authorized agent for the purpose of the said temple.

(iii) That after the death of Parvathi Bai, the said house and ground intended to be hereby transferred and more particularly, described in the schedule hereto and the income thereof shall absolutely vest in the Guru Marthanda Manicka Prabhu, for the time being, of the said temple as the Head of the temple and they shall be utilized for the maintenance and upkeep of the Manicka Prabhu Temple and the Kamakala Kameshwar Temple founded by the late Raja Eshwardoss Diawanth Bahadur the father of the said T.Lakshmidoss and situated in Raja Hanumantha Lala Street, Triplicane, Madras, that until the death of the survivor of the said insolvents, i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad (defendant No.7 and 8 in the suit), and Parvathi Bai.

(iv) Ranganadhan Nayudu of Dowden & Co., defendant No.6 in

the said suit, i.e., C.S.No.545 of 1926, shall understand by virtue of a General Power of Attorney to be executed by the said Guru Manicka Prabhu in his favour hold possession of the said properties and carry out the provisions of the above recited trust.

3.3. It appears that the plaintiffs in C.S.No.545 of 1926, i.e., Devakinandan Dubey and sons filed an application in the said suit being : A.No.2494 of 1948 for appointment of a fit and proper person as Receiver of Schedule "A" (i.e. the suit property) property referred to in the said application and for directions to the Receiver to carry out the terms of compromise decree dated 26.11.1929.

3.4. This application came up for hearing before the learned Master. The learned Master vide order dated 02.11.1948, dismissed the application on the ground that the decree qua the applicant / plaintiff had been fully satisfied qua, upon being paid Rs.9,000/- in full satisfaction of all claims against defendant No.7 and 8/Mr.T.Lakshmidoss and Mr.T.Venkataprasad. The learned Master, while holding so, inter alia, made the following observations :

"..... It is true that a Receiver was appointed at the instance of the 8th defendant in application No.1668/45 but the 8th defendant was one of the persons for whose benefit the decree was passed directing the income to be paid over to him but he does not support the present application. If the 2nd defendant respondent 8th defendant feels at any time that the objects of the decree so far as he is concerned are not being properly worked out, he may be perhaps at liberty to file an application at any time. If there is any person who is representing the temple or its worshippers who wants to have a proper trustee appointed or a scheme of management approved, he has other remedies open for the carrying out of the provisions of the decree so far as the trust are concerned, but I do not think that the plaintiff who is a mere creditor who got a decree and whose decree has been satisfied is entitled to maintain an application for the appointment of a Receiver of the properties in A schedule to the decree. Mr.Ramachendran for the appointment applicant is not able to say whether the present application is one in execution or new such an application made 19 years after decree is maintainable. The application is dismissed with costs of respondent."

(emphasis is ours)

3.5. On 06.10.1954, the appellant/defendant herein filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowment (hereafter referred to as "HR & CE"), to establish his right to the hereditary trusteeship in the Plaintiff Temple. Pertinently, at that point in time, the appellant / defendant was a minor. This application was numbered as : O.A.No.76 of 1954. This application was allowed by the Deputy Commissioner. The appellant/defendant was declared as a hereditary trustee of the Plaintiff Temple.

3.6. In an appeal preferred against the said order of the Deputy Commissioner, HR & CE, the same was reversed. The appeal was allowed vide order dated 31.12.1954.

3.7. Being aggrieved, the appellant/defendant, filed a suit (O.S.No.557 of 1955) in the City Civil Court, Madras, (now Chennai) for setting aside the order of the Deputy Commissioner. This suit was dismissed. Aggrieved by the dismissal of the suit, an appeal was preferred to this Court being : A.S.No.14 of 1960. Upon attaining majority, the appellant/defendant moved an application being : C.M.P.No.5404 of 1962 for withdrawal of the suit on the ground that the claim made in the suit that he was a hereditary trustee was a mistake, and that, the Plaintiff Temple was his private temple.

3.8. Consequent thereto, on 21.04.1962, the appellant/defendant filed O.A.No.38 of 1962 with the Deputy Commissioner, HR & CE, claiming therein that the Plaintiff Temple was a private temple. The said application O.A.No.38 of 1962, was dismissed by the Deputy Commissioner, HR & CE, vide order dated 04.10.1963.

3.9. Being dissatisfied, an appeal was preferred against the order dated 04.10.1963, which was numbered as : A.P.15 of 1964. The said appeal was, however dismissed.

4. The appellant/defendant, thereafter, filed a civil suit (O.S.No.547 of 1965) to set aside the aforementioned order passed in O.A.No.38 of 1962 and A.P.No.15 of 1964 and to seek a declaration that the Plaintiff Temple was a private temple. This suit was decreed on 10.02.1965.

4.1. The matter was carried in appeal, which was numbered as A.S.No.739 of 1977. The appeal, however, was dismissed on 14.02.1983.

4.2. Against the judgement and order dated 14.02.1983, an appeal was preferred to the Division Bench of this Court, which was numbered as L.P.A.No.119 of 1983. The Division Bench

allowed the appeal and consequently, dismissed the suit.

4.3. Against the decision of the Division Bench, the appellant / defendant carried the matter to the Supreme Court by way of a Special Leave Petition (SLP) being : S.L.P.No.(Civil) 326 of 1991. The SLP was however, dismissed vide order dated 07.10.1991.

4.4. Upon receipt of an authorisation from the Commissioner, HR & CE, on 26.07.1999, the instant suit was instituted by the respondent/plaintiff, on 12.09.1999. The appellant/defendant filed his written statement in the suit on 05.04.2000, wherein, he claimed that the suit property, which was transferred to him in 1931 was his private property. The learned Single Judge framed the following issues in the suit:

"(i) Whether the suit property is dedicated to temple ?

(ii) Whether the judgement of the Courts in earlier proceedings would not operate as estoppel as against the defendant denying them of any claim over the property ?

(iii) Whether the judgement in previous proceedings would not operate as res-judicata precluding the defendant from asserting any right over the suit property?

(iv) Whether the suit claim is barred by limitation ?

(v) To what relief the plaintiffs are entitled to ?"

4.5. The learned Single Judge found issue No.(i) in favour of the respondent/plaintiff and against the appellant/defendant. In so far issue No.(ii) and (iii) are concerned, the said issues were answered in the negative. In so far as issue No.(iv) was concerned, the learned Single Judge held that the suit was not barred by limitation. The issue was, accordingly, answered in the negative.

4.6. Issue No.(v), which essentially, dealt with the kind of reliefs that the respondent / plaintiff had to be granted. The Court held, based its understanding and interpretation of Ex.P.1, P8 and D1, that the appellant/defendant was only given the right to manage the suit property, and that, no absolute right qua the same was vested in him.

4.7. The learned Single Judge went on to hold that the appellant/defendant ceased to be the trustee of the suit property, as he had made himself incompetent to hold the office of the trustee, since, he had misappropriated the income of the trust property for his own purpose. Based on this conclusion,

the learned Single Judge directed the appellant/defendant to deliver possession of the suit property to the respondent/plaintiff. For this purpose, the appellant/defendant was given three (3) months time. In sum, the suit was decreed in favour of the respondent/plaintiff.

5. It is in this context that the instant appeal was preferred in July, 2011.

Submissions of counsels :

6. The arguments in the matter, on behalf of appellant/defendant, were advanced by Mr.AR.L.Sundaresan, Senior Advocate, instructed by Mr.Akshay Ringe, while, on behalf of the respondent/plaintiff, submissions were made by Mr.V.Lakshminarayanan.

7. The submissions of Mr.Sunderasan can, briefly, be paraphrased as follows:

(i) That the suit property was a private property of the appellant/defendant and not a trust property. For this purpose, reference was made to paragraph 8 of the plaint to demonstrate that the respondent/plaintiff had, clearly, averred that the suit property vested absolutely in the spiritual head of Manicka Prabhu Temple. Furthermore, in this behalf, reliance was placed on the cross examination of P.W.1, which according to the learned counsel, took a similar stance.

(ii) The suit property was transferred in favour of the predecessor of the appellant/defendant via a registered conveyance deed dated 28.08.1931 (Document No.1113 of 1931) [Ex.D1] in pursuance of the decree passed by this court in C.S.No.545 of 1926.

(iii) The said conveyance deed was executed in favour of the predecessor of the appellant/defendant by the OA of the estate of Mr.T.Lakshmidoss and Mr.T.Venkataprasad, that is, the erstwhile owners of the suit property. In the conveyance deed, the predecessor of the appellant/defendant is referred to as, "the transferee". The learned Single Judge ignored these vital aspects and/or misinterpreted the provisions of the conveyance deed, and thereby, came to an erroneous conclusion both in law and on facts.

(iv) In sum, according to the learned counsel, the predecessor of the appellant/defendant was not a trustee of the suit property. For this purpose, learned counsel also sought to place reliance on the preamble of the transfer deed dated 28.08.1931 (Document No.1113 of 1931) [Ex.D.1]. Based on the preamble, it was sought to be contended that under the deed of

trust dated 12.12.1917, which was executed by Mr.W.Ramakrishna Lala, only three (3) persons were appointed as trustees. In other words, the appellant/defendant's predecessor was not appointed as the trustee of the suit property. The suit property was, in fact, conveyed to him, thereby, vesting upon him absolute right, title and interest in the said property.

(v) The trust deed dated 12.12.1917, was not executed for the benefit of the Plaintiff Temple. The trust was created for the benefit of Mr.T.Lakshmidoss and Mr.T.Venkataprasad and Parvathi Bai, the descendants of Raja Eshwardoss Diawanth Bahadur. It is for this reason, that a condition was incorporated in the aforementioned conveyance deed that the appellant/defendant's predecessor, i.e., Guru Marthanda Manicka Prabhu should execute a general power of attorney in favour of Mr.C.Ranganathan Nayadu of Dowden and Co. which would remain efficacious till the life time of Mr.T.Lakshmidoss and Mr.T.Venkataprasad and Parvathy Bai. It was stressed that Mr.C.Ranganathan Nayadu of Dowdon and Co. was one of the trustees appointed under the trust deed dated 12.12.1917. It was, thus, submitted that it was for this reason that Mr.C.Ranganathan Nayadu was required to hold and possess the suit property till the life time of defendant No.7 and 8 in C.S.No.545 of 1926, i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad, and survivor of them. This, according to the counsel proved, conclusively, that the trust created on 12.12.1917, would cease to exist, upon the death of Parvathi Bai. In other words, thereafter, the right to hold and manage the property would vest, absolutely, in the predecessor of the appellant/defendant, i.e., Guru Marthanda Manicka Prabhu, as the head of Manicka Prabhu Temple.

(vi) The trust created on 12.12.1917, was not for the benefit of the Plaintiff Temple. In Document No.1114 of 1931, (Ex.P.8), the predecessor of the appellant/defendant Guru Marthanda Manicka Prabhu was not described, as a trustee, but was described as a spiritual head of Manicka Prabhu Temple. The Plaintiff Temple was conveyed to the appellant/defendant's predecessor absolutely.

(vii) The learned Single Judge failed to notice that in the rent control proceedings initiated by the appellant/defendant against tenants occupying the suit property, this Court, while passing the judgement dated 13.04.1997, (C.R.P.No.2429 of 1996) made the following observations:

"If it is a public temple and taken over by the HR & CE Board, the landlord need not spend any amount towards its upkeep and maintenance."

(vii)(a) Therefore, there was no justification for the learned Single Judge to come to the conclusion that the appellant/defendant and his predecessor had failed to maintain the Plaintiff Temple out of the proceeds of the suit property. Furthermore, the respondent/plaintiff's own witness, during the cross examination, admitted that they did not need money from the appellant/defendant for maintenance of the Plaintiff Temple. There were inconsistencies in the judgement of the learned Single Judge, in as much as in paragraph 11, it was held that the suit property was dedicated to Manicka Prabhu Temple and the Plaintiff Temple, whereas, in paragraph 26, it was held that the suit property was dedicated only to the Plaintiff Temple.

(viii) The proceedings in L.P.A.No.119 of 1983, pertained to the issue as to whether the Plaintiff Temple was a public temple as against a private temple and that, with the passing of the judgement dated 07.10.1991, in SLP (Civil) No.326 of 1991, finality had been attained only qua this aspect. In other words the contention was to extrapolate the said decision and to go on to contend by virtue of the fact that the Plaintiff Temple had been declared as a public temple, the suit property had also acquired a hue of a public property would be erroneous.

(ix) The learned Single Judge had held that the suit property to be a trust property, albeit, erroneously, based on the reasoning that the suit property was a public property dedicated to the Plaintiff Temple.

(x) The learned Single Judge failed to take into account that the Plaintiff Temple and the suit property were considered to be separate and distinct, and therefore, two separate conveyance deeds were executed vis-a-vis each of them. The only commonality between the Plaintiff Temple and the suit property was that the appellant/defendant was to provide for the maintenance of both the Plaintiff Temple and the Manicka Prabhu Temple from the proceeds of the suit property, albeit, at his sole discretion. This aspect alone cannot be the basis for ousting the appellant/defendant from the suit property and declaring it a trust property.

(xi) The learned Single Judge committed an error in holding that the vesting of the property in the appellant/defendant's predecessor was a temporary measure. The expression "for the time being" contained in Ex.D.1, referred to the then spiritual head and, did not mean, as concluded by the learned Single Judge that the vesting of the suit property in him was a temporary measure. The learned Single Judge, wrongly, decided the issue (ii) and (iii). These issues arose in the context of earlier proceedings and sought application of principles of res judicata and estoppel. The learned Single Judge, erroneously, did not

refer to the past litigation between the parties herein.

(xii) The learned Single Judge failed to appreciate that the suit was barred by limitation, and that, the suit property had been held by the appellant/defendant and his predecessor for over eighty years.

8. On the other hand, Mr.Lakshminarayanan, who appeared for the respondent/plaintiff, submitted that the suit property was a trust property, and not the private property of the appellant/defendant. This submission was sought to be buttressed by placing reliance on O.A.No.76 of 1954. It was emphasised that this application was filed by the predecessor of the appellant/defendant with the sole purpose of being declared a hereditary trustee of the Plaintiff Temple. Learned counsel also adverted to the fact that, though, the said application was allowed, the order passed was set aside in an appeal preferred against it. Our attention was drawn to the fact that the order-in-appeal was passed on 31.12.1954.

8.1. It was also pointed out that the appellant/defendant being aggrieved, had filed a suit (O.S.No.557 of 1955) to set aside the order passed by the Deputy Commissioner, which was dismissed, qua which an appeal (A.S.No.14 of 1960) was preferred to this Court.

8.2. The learned counsel highlighted the fact that the appellant/defendant, being aggrieved, filed an application (CMP 5404 of 1962), to withdraw the suit on the ground that hereditary trusteeship had been, wrongly, claimed by him and in fact the Plaintiff Temple was his private temple.

8.3. Mr.Lakshminarayanan further contended that the judgement and decree dated 26.11.1929, passed by Mr.Justice Waller (as he then was), which was based on a compromise, clearly, stated that the provisions of the trust deed 12.12.1917, shall apply to the property referred to in Schedule "A" (i.e., the suit property), and only, "exonerated" from the trust, those properties, which were set out in schedule B. For this purpose, our attention was drawn to schedule A appended to the decree dated 26.11.1929. Furthermore, stress was also laid on the contents of paragraph 13, which required defendant No.2, 7 and 8 (i.e., the OA, Mr.T.Lakshmidoss and Mr.T.Venkataprasad), to execute in favour of the spiritual head of the Plaintiff Temple, a conveyance of the building comprising the said temple and the land, on which the same was situate. For this purpose, our attention was drawn to schedule C appended to the said decree.

8.4. The learned counsel went on to contend that if, paragraph No.1 to 4 and 11 of the decree dated 26.11.1929, are

read together, one can only come to the conclusion that the suit property was a trust property, and that, the income derived from the same, after the death of Parvathi Bai, sister of defendant No.8/Mr.T.Venkataprasad, had to be utilised for the maintenance and upkeep of both Manicka Prabhu Temple and the Plaintiff Temple. The learned counsel emphasised the fact that the two conveyance deeds of even date, i.e., 28.08.1931 [Document No.1114 of 1931 (Ex.P.8) and Document No.1113 of 1931 - (Ex.D.1)], would have to be read in conjunction with the decree dated 26.11.1929.

8.5. Learned counsel further submitted that based on the evidence on record, it was quite clear that after 1945, the appellant/defendant's predecessor had not spent any income derived from the suit property on the maintenance and upkeep of the Plaintiff Temple. Our attention was also drawn to Ex.D.4 to emphasise the fact that between second half year of 1996-97 and 2009-2010, no property tax was paid qua the suit property.

8.6. Learned counsel also contended that mere reliance on documents, such as tax receipts (Ex.D.5), urban land tax proceedings (Ex.D.6), wealth tax assessment (Ex.D.7), extract of permanent land register (Ex.D.3) and/or demolition approval plan (Ex.D.8) would not lend credence to the assertion of the appellant/defendant that the suit property was a private property.

8.7. Learned counsel also highlighted the fact that D.W.1 was unable to throw light on the fact as to whether or not any consideration was paid for the purchase of the suit property.

8.8. The other submission of Mr.Lakshminarayanan, was that the issue with regard to the status of the suit property stood concluded, in view of the judgement of the Division Bench of this Court dated 04.04.1990, passed in L.P.A.No.119 of 1983, which was affirmed with the dismissal of SLP (Civil) No.326 of 1991, on 07.10.1991. In other words, the argument advanced was that the principles of res judicata will come into play.

9. On the aspect of limitation, learned counsel submitted that, since, the suit property was always a trust property, neither the appellant/defendant nor his predecessor could have put the property to their own use. It was further submitted that the appellant/defendant's predecessors had never put it to the respondent/plaintiff, that, according to them, the suit property was a private property. For this purpose, our attention was drawn to the testimony of D.W.1, given in cross-examination on 16.06.2010.

9.1. As regards the issue, which cropped up during arguments that there was an obligation to maintain the Manicka Prabhu

Temple, as well, out of the income derived from the suit property, the learned counsel submitted that upon the appellant/defendant taking recourse to the provisions of the Hindu Religious and Charitable Endowments Act, 1951, (1951 Act), an order to that effect could always be passed.

Reasons :

10. We heard the learned counsel for the parties and perused the record.

11. In our view, the following core aspects/points arise for determination :

(i) Whether the suit property was a trust property or a private property, as claimed by the appellant/defendant ?

(ii) Whether the judgement and decree of the Division Bench dated 04.04.1990, passed in L.P.No.119 of 1983, as affirmed by the Supreme Court in S.L.P.(Civil) No.326 of 1991, would operate as res judicata or estop the appellant/defendant from raising the issue in the instant proceedings ?

(iii) Whether the suit was barred by limitation?

Point No.(i) :-

12. Before we proceed further, one would have to take into account the events, which took place prior to the passing of judgement and decree dated 26.11.1929, and those, which took place after the said date, based on the record/material placed before us.

(i). Clearly, the record shows that the Plaintiff Temple and the properties attached to it, which included the suit property, was owned by a person by the name Late Raja Eshwardoss Diawanth Bahadur.

(ii) Mr.T.Lakshmidoss and Mr.T.Venkataprasad, were the son and grandson of late Raja Eshwardoss Diawanth Bahadur. Upon his death, the Plaintiff Temple came to be owned by Mr.T.Lakshmidoss and Mr.T.Venakataprasad.

(iii) Mr.T.Lakshmidoss and Mr.T.Venakataprasad, were adjudicated as insolvents, for the first time, on 27.04.1914, when orders to that effect was passed in I.P.No.120 of 1914.

(iv) Mr.T.Lakshmidoss and Mr.T.Venkataprasad and their creditors arrived at an arrangement to annul their adjudication as insolvents. The arrangement received the Court's imprimatur vide decree dated 31.12.1915, passed in C.S.No.89 of 1914. This decree required the OA to divide the estate between Mr.T.Lakshimidoss and Mr.T.Venkataprasad in the proportion of 3/4th and 1/4th respectively, though, after amounts due in respect of the annulment had been paid.

(v) Since, Mr.T.Lakshmidoss and Mr.T.Venkataprasad had to find cash to pay the amounts due under the composition arrived at with their creditors, on 15.10.1916, they agreed to sell some of their properties, to, one, Mr.W.Ramakrishna Lala for Rs.1,10,000/-. The properties were conveyed to Mr.W.Ramakrishna Lala vide two separate sale deeds dated 23.03.1917. Mr.W.Ramakrishna Lala executed a trust deed dated 12.12.1917, whereunder, he appointed the following persons as trustees : (i) Mr.M.S.Anantha Ram Lala, (ii) Mr.A.S.Subba Rao and (iii) Mr.C.Ranganadhan Nayadu of Dowden & Company. The trustees, so appointed, were empowered to sell all the properties, other than the family house, i.e., the suit property. The net sale proceeds were required to be appropriated, as set out in the trust deed. The balance amount was required to be invested in the purchase of mortgage of immovable properties held in trust for Mr.T.Lakshmidoss and Mr.T.Venkataprasad. The income in the properties was required to be distributed between Mr.T.Lakshmidoss and Mr.T.Venkataprasad, in the ratio of 3:1.

(vi) As luck would have it, on 07.02.1924, Mr.T.Lakshmidoss and Mr.T.Venkataprasad were, once again, adjudicated as insolvents, and their properties, thus, came to vest in the OA.

Nearly, two years later, a set of creditors referred to as Messrs Devakinandan Dubey & sons, filed a suit being : C.S.No.545 of 1926, based on an agreement dated 15.09.1925, they had executed with the insolvents, [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad]. In the said suit, as indicated hereinabove, the OA, Mr.W.Ramakrishna Lala, the three (3) trustees adverted to us the trust deed dated 12.12.1917 and the insolvents, [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad], were arrayed as defendants. In the suit, a compromise was arrived at, which translated into a decree dated 26.11.1929. The decree (Ex.P.1) has three (3) schedules appended to it. Schedule "A" comprises of the suit property. Schedule "B" refers to properties, which stand "exonerated" from the trust. Schedule "C" adverts to the Plaintiff Temple.

(vii) There are, according to us, six (6) paragraphs in the decree dated 26.11.1929, which shed a light on the nature of the suit property. For the sake of convenience, the said paragraphs, i.e., the paragraphs 1 to 4, 11 and 13, are set out hereafter :

- (1) "That the provisions of the Trust deed dated the 12th day of December 1917 shall attach only to the property described in schedule "A" hereto and even in so far as those properties shall immediately be incested (sic: vested) in Sri Guru Marthanda Manicka Guru as Head of the Guru Manicka Prabhu Temple and his

successors in office as Head of the said Temple, subject to the condition that the net worth (sic: monthly) income from the said properties ascertained after payment of repairs and taxes, as and when the same accrues be applied and utilised by the said Sri Guru Marthanda Manicka Prabhu for the maintenance of the defendants Nos.7 and 8 and of the survivor of them, during their lifetime.

(2) That after the death of the survivor of the 7th and 8th defendants the head of the said Guru Manicka Prabhu Temple for the time being do pay to Ponbati Bai (sic: Parvati Bai) the sister of the 8th defendant during the term of her natural life from and out of the said income the sum of Rupees Forty (Rs.40/-) per mensem and the balance of the said income shall be utilised by him for the purpose of the said temple.

(3) That after the death of the said Ponbati Bai (sic: Parvati Bai) the said premises and the income thereof shall absolutely vest in the Guru of the said temple for the time being and be utilised for the maintenance and upkeep of the said Manicka Prabhu Gadi and the Kamakala Kameswara Temple founded by the late Rai Raja Eswaradas Daiwanth Bahadur, the father of the 7th defendant, and situated in Raja Hanumantha Lala Street, Triplicane, Madras.

(4) That the remaining properties includes (sic: included) in the said trust deed dated the 12th day of December 1927 (sic - 1917) and (in) particular set out in schedule "B" here to be and are hereby exonerated from the said Trust and that the said properties are the absolute properties of the 7th and 8th defendants, and they have already vested in the 2nd defendant.

XXXX

(11) That for the purposes of giving effect to paragraph 1 of this decree, the 2nd and 3rd defendants shall execute in favour of the spiritual Head of the Guru Manicka Prabhu Temple a conveyance of the properties set out in schedule "A" hereto and the said spiritual Head of the said

temple shall execute in favour of the 6th defendant a power of attorney empowering him to manage the properties set out in schedule "A" hereto during the life of the 7th and 8th defendants and the survivor of them and the said Parbati Bai (sic: Parvati Bai) and for the purpose of making the payment set out in paragraphs 1 and 2 above and during such time the said 6th defendant shall hold possession of the said premise.

XXXXX

(13) That the 2nd, 7th and 8th defendants shall execute in favour of the spiritual Head of the said Kamakala Kameswara Temple a Conveyance of the building comprising the said temple and the land on which the same is situate more particularly described in schedule "C" hereto that the application of the monthly income from the properties set out in schedule "A" in the manner indicated above shall be in the nature of a provision for maintenance and the said income shall not be liable to be alienated or anticipated (sic: appropriated) by the 7th and 8th defendants or the said Parbati Bai (sic: Parvati Bai) to be attached or proceeded against by the creditors of the 7th and 8th defendants and the said Parbati Bai (sic: Parvati Bai)

(emphasis is ours)

(viii) A perusal of the paragraph 1 of the decree dated 26.11.1929, would show that the provisions of trust deed dated 12.12.1917, stood attached to the suit property, which fell in schedule A (i.e., the suit property), albeit, with certain modifications. These modifications, provided for the following :

(a) The schedule A properties would vest in the spiritual head of the Manicka Prabhu Temple, and his successors, subject to the monthly income derived from the said properties, after accounting for repairs and taxes, being applied for benefit of Mr.T.Lakshmidoss and Mr.Venkataprasad, and of the survivor of them, during their life time.

(b) After the death of the survivor of Mr.T.Lakshmidoss, the spiritual head of Guru Manicka Prabhu Temple, "for the time being", was to pay, one, Parvathi Bai, the sister of Mr.T.Venkataprasad, during her natural life, out of the said income, a sum of Rs.40/- per mensem. The balance income was to

be utilised for the purposes of the said temple.

(c) After the death of Parvathi Bai, the schedule A property, i.e., suit property, and the income derived thereof was to, absolutely, vest in the Guru of Manicka Prabhu Temple and the Plaintiff Temple for maintenance and upkeep.

(d) Importantly, paragraph 4, clearly, says that the remaining properties, which were part of the trust deed dated 12.12.1917, and in particular, those set out in Schedule "B", were "exonerated" from the trust.

12.1. Therefore, in our view, quite clearly, the suit property, which was the schedule A property, continued to be part of the trust, as created via trust deed dated 12.12.1917. The vesting in the spiritual head of Manicka Prabhu Temple, was only in his capacity as a trustee. Paragraph 11 of the decree in no uncertain terms states that in order to give effect to paragraph 1 of the same decree, defendant No.2 and 3, i.e., the OA and Mr.W.Ramakrishana Lala, shall execute in favour of the spiritual head, a conveyance of the property set out in schedule A, i.e., the suit property. Furthermore, it also provided that the spiritual head of the Manicka Prabhu Temple will execute in favour of defendant No.6, a power of attorney to manage Schedule "A" property, i.e., the suit property, during the lifetime of defendant No.7 and 8 [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad], and the survivor of them, as also Parvati Bai, in order to effect payments, as set out in paragraphs 1 and 2 of the decree. Defendant No.6, i.e., C.Ranganadhan Nayadu, proprietor of Dowden & Co. was required to hold, during such time, the possession of Schedule "A" property, i.e., the suit property.

13. We may also note that as per paragraph 12, defendant No.6, was to receive no remuneration for his services, but his concern Dowden & co., was to be employed by defendant No.2/the OA to bring the properties set out in schedule B (which were expressly, exonerated from the trust), to sale via public auction. A further provision was made that defendant No.6, Mr.C.Ranaganadhan Nayadu would get auctioneer's commission, in case, the sale was conducted by him. Paragraph 13 required the defendant No.2, 7 and 8, [i.e., the OA, Mr.T.Lakshmidoss and Mr.T.Venkataprasad], to execute a conveyance deed in favour of the spiritual head of the Plaintiff Temple qua the building and the land, on which it stood, as described in schedule C to the decree.

13.1. The said paragraph further provides that the monthly income derived from Schedule "A" property, i.e., the suit property, was required to be applied for maintenance of the Manicka Prabhu Temple and the Plaintiff Temple, and that, it could not be alienated or appropriated by defendant No.7 and 8 or, Parvathi Bai, or the attached and/or proceeded against by

their creditors.

13.2. It is in this background that two transfer deeds of even date i.e. 28.08.1931 (document No.1114 of 1931) [Ex.P.8], (document No.1113 of 1931) [Ex.D.1] came to be executed. The transfer deed/Ex.P.8, [document 1114 of 1931], was executed by defendant No.2/the OA, and defendant No.7 and 8, [i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad respectively], in favour of Guru Marthanda Manicka Prabhu, the spiritual head of the Plaintiff Temple. The other indenture / Ex.D1 [i.e., document No.1113 of 1931], was executed by the defendant No.2/the OA along with defendant No.3 [i.e., Mr.W.Ramakrishna Lala], in favour of Guru Marthanda Mankcika Prabhu, the then spiritual head of the Manicka Prabhu Temple. Thus, clearly, the two transfer deeds dated 28.08.1931, only effectuated the provisions of the compromise decree dated 26.11.1929.

13.3. As observed by us above, except for the Schedule "B" properties, which stood exonerated from the trust, all other properties, which were included in the trust deed dated 12.12.1917, continued to remain a part of the trust.

13.4. Therefore, the then spiritual head of Manicka Prabhu Temple, could have held the schedule A property, i.e., the suit property, only as a trustee. The argument advanced on behalf of appellant/defendant, that, once, conditions contained in paragraphs 1, 2 and 3 were fulfilled, and/or after the death of defendant No.7 and 8/[i.e., Mr.T.Lakshmidoss and Mr.T.Venkataprasad], and Parvathi Bai - the spiritual head of Manicka Prabhu Temple could claim the schedule A property, i.e., the suit property, as his private property, is untenable, as it ignores the provisions of paragraph 4 of the decree dated 26.11.1929.

13.5. The clearest indication that the decree, (Ex.P.1), and deeds of transfer, (Ex.P.8 and D.1) were construed, in this manner, is obtained from the conduct of the predecessor of the appellant/defendant in filing an application being : O.A.No.76 of 1954, with the Deputy commissioner, HR & CE, to claim hereditary trusteeship. The fact that such an attempt was made is borne out from the following extract from the testimony of D.W.1 :

".... It is false to say that we have filed O.A.No.76/1954 on the file of the Deputy Commissioner HRCE Board for declaring that the temple was a private temple. In fact, O.A.No.76/1954 was filed for the purpose of
(1) Removal of the respondents therein,
(2) Declaration that the applicant therein is the hereditary trustee and for
(3) Interim orders directing the trustees to

refrain from taking, any fresh proceedings in the matter of installation of Anjaneyaswamy....."

(emphasis is ours)

13.6. As correctly contended by Mr.Lakshiminarayanan, O.A.No.76 of 1954, was allowed; the decision, though, was, reversed in appeal, on 31.12.1954. A suit was filed, thereafter, to assail the same, which was numbered as : O.S.No.557 of 1955. The said suit was dismissed, as is borne out from the testimony of D.W.1. The appeal preferred against the same, which was numbered as A.S.No.14 of 1960, met the same fate. The appellant/defendant, thereafter, preferred an application in C.M.P.No.5404 of 1962, to withdraw the suit on the ground that the claim for hereditary trusteeship was a mistake, as the Plaintiff Temple was his private temple. This strategy was, thus, employed only in and about April, 1962, when, an application was filed with the Deputy Commissioner, HR & CE, to claim that Plaintiff Temple was a private temple.

13.7. The proceedings held on 02.11.1998, in A.No.2494 of 1948 before the learned Master, are also demonstrative of the fact that, when, an attempt was made by a creditor, whose claim had been satisfied, to have a fit and proper person appointed as Receiver, qua schedule A property (i.e., the suit property), the same was repelled. This was done based on a rationale, that a person representing the temple or its worshippers, who would want to have proper trustees appointed, or have a scheme of management approved, should approach the Court (and not a creditor whose dues had been satisfied), albeit, by taking recourse to an appropriate remedy to give effect to the provisions of the decree dated 26.11.1929. Pertinently, it requires to be noticed that even in 1948, the suit property was considered as a trust property.

13.8. Thus, according to us, there is no manner of doubt that the schedule A property (i.e., the suit property), which formed part of the decree dated 26.11.1929, continued to remain a trust property under the trust deed dated 12.12.1917. Therefore, the transfer deed [i.e. document No.1113 of 1931], on which, much reliance is placed by the appellant/defendant only exemplifies this fact. The conduct of the appellant/defendant and his predecessor shows that they never asserted their right that the suit property was not a trust property. Furthermore, if, document No.1113 of 1931 constituted a conveyance of absolute right, title and interest in the suit property in favour of the predecessor of the appellant, then, there should have been an exchange of some consideration. The fact that both these aspects were missing, is demonstrable from the following extract of the testimony of D.W.1 :

"..... I have not informed either HR & CE Board or the Trustees of Kamakala Kameshwara Temple that this is not the Trust property. I have not paid any money for the purchase of this property, I do not know whether the head had paid money for the purchase of this property, I do not know whether the head had paid money for the purchase of the property. I know that accounts have to be maintained for the revenue, expenditure and capitalization. Right now, I do not remember to have paid and money for purchase of the property."

(Emphasis is ours)

13.9. Furthermore, there is no clear explanation as to why the predecessors of the appellant/defendant or the appellant/defendant failed to provide for the maintenance of the Plaintiff Temple from the income derived from the suit property. The only explanation given, which is rather feeble, is that, since, HR & CE had taken over the temple, the appellant/defendant's predecessor did not deem it necessary to provide for the upkeep and maintenance of the Plaintiff Temple, from the income derived from the suit property. Pertinently, the material on record does not show as to when the suit property was acquired by the HR & CE; a fact which the learned Single Judge also notes in the impugned judgement. This state of affairs comes through, if, one were to read the following extract from D.W.1's testimony :

"..... I had spent money from out of the income from the suit properties on the Kamakala Kamaeshwara Temple before 1946. My grandfather died in 1945 and my father was a minor then. The residents of the locality broke open the locks of the temple and then the HR & CE Board taken over the Temple. That was why, I was not able to spend on the Temple. There is an obligation to spend on the Temple. I have not endeavoured to spend money to the Temple, since the HR & CE taken over the Temple. There is no such control (sic: clause) in Ex.P.1 decree that if only the temple is in my condition (sic - possession), I have to spend on the temple. I am not under any obligation to spend on the temple, if the temple is managed by somebody else."

(emphasis is ours)

14. In support of the stand that the appellant / defendant need not spend on the upkeep and maintenance of the Plaintiff Temple, reliance was placed on the order passed in rent control proceedings, to which we have made a reference above. As

rightly held by learned Single Judge, those proceedings cannot determine the status of the suit property, more so when, the respondent / plaintiff was not a party to those proceedings.

14.1. Thus, in our opinion, given the aforesaid aspects, the only conclusion that we can arrive at is that the suit property is a trust property, contrary to what is asserted by the appellant/defendant.

Point No.(ii) :

15. In so far point No.(ii) is concerned, we are in agreement with the learned counsel for the appellant/defendant that the decision rendered by the Division Bench of this Court via the judgement and decree dated 04.04.1990, passed in L.P.A.No.119 of 1983, was concerned with the issue, as to whether the Plaintiff Temple was a private or public temple. Therefore, as correctly argued by Mr.Sundaresan, the said decision, which was confirmed by the Supreme Court, in S.L.P. (Civil) No.326 of 1991, vide order dated 07.10.1991, could not impact the issue raised in the instant proceedings.

15.1. That being said, we are of the opinion that the conclusion arrived at by the learned Single Judge that the suit property was a trust property, was a correct conclusion, given the evidence/material on record.

Point No.(iii) :

16. As regards the bar of limitation, the appellant/defendant's stand emanates from the purported position that they have been in possession of the suit property for decades. The learned Single Judge, in this behalf, has held that the suit property did not vest in the appellant/defendant, and that, it was only given for the purposes of management. Thus, according to the learned Single Judge, the bar of limitation would not arise.

16.1. We are in agreement with the learned Single Judge that, if, the possession of the suit property was only as a trustee, then, surely, as against the respondent / plaintiff, the appellant/defendant could not set up a bar of limitation, if, no contrary stand had been taken in the past.

16.2. As indicated hereinabove, D.W.1, conceded, in his testimony that neither the appellant/defendant nor their predecessors had ever conveyed to the respondent/plaintiff that the suit property was their private property.

17. Thus, for the foregoing reasons, we find no merit in the appeal. The appeal is, accordingly, dismissed. Resultantly, pending application shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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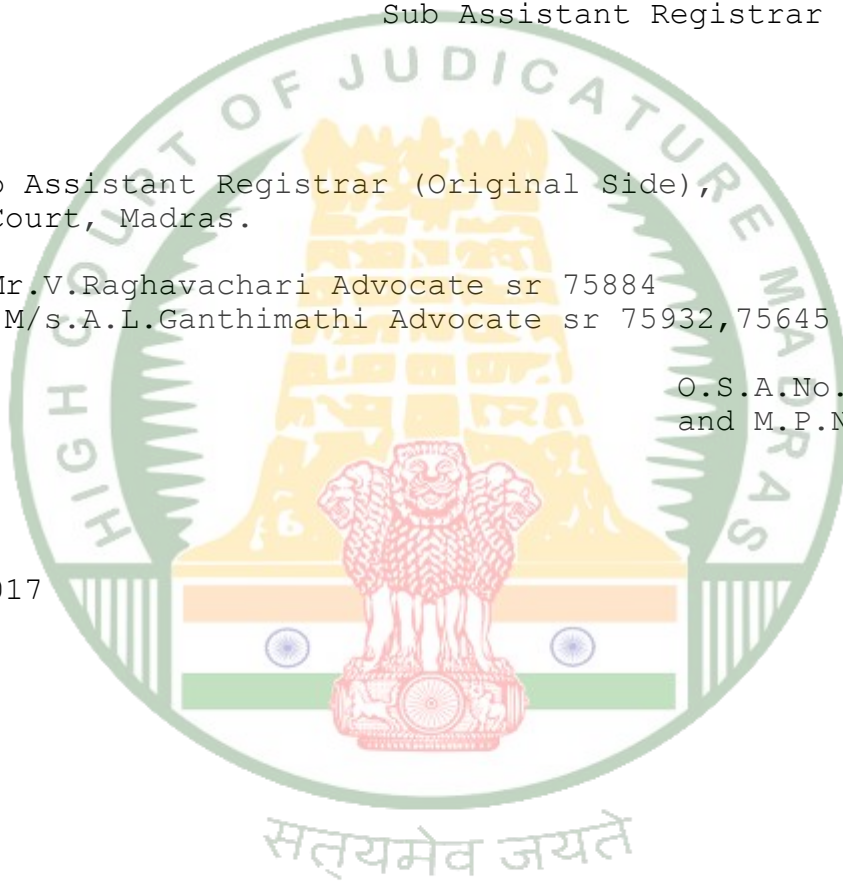
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High Court, Madras.

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O.S.A.No.272 of 2011
and M.P.No.1 of 2011

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