



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 23.02.2017
Delivered on: 13.06.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

A.S. (MD) No.109 of 2016
and
C.M.P. (MD) No.7061 of 2016

Durai.Natarajan

.. Appellant/Plaintiff

Vs.

1. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam, Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Madurai.
3. The Executive Officer for Thethupatty,
Arulmighu Kalakastheeswarar Thirukovil,
Dindigul.
(*Claiming to be a Fit person
for Thethupatty Rajakaliyamman
Thirukovil.*)

.. Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of C.P.C., to set aside the Judgment and Decree, dated 15.03.2016 passed in O.S.No.751 of 1994 on the file of the learned Additional Subordinate Judge, Dindigul and allow the present Appeal.

For Appellant : Mr.R.Nandakumar

For R-1 & R-2 : Mr.S.Kumar,
Additional Government Pleader.

For R-3 : Mr.Muthugeethaiyan
for Mr.A.K.Bhaskarapandian

JUDGMENT

<https://hcservices.ecourts.gov.in/Hcservices/>
This Appeal Suit has been filed to set aside the Judgment and Decree, dated 15.03.2016 passed in O.S.No.751 of 1994 on the file of the learned Additional Subordinate Judge, Dindigul, and to allow the



present Appeal.

2. Heard the learned counsel appearing for the appellant and the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.

3. The plaintiff in the suit in O.S.No.751 of 1994 on the file of the Additional Subordinate Court, Dindigul, is the appellant in the first Appeal. The dispute in this Appeal is relating to temple known as Arulmighu Rajakaliamman Temple, Thethupatty, Dindigul, and the issue is whether the said temple is a public temple or a private temple.

4. *The brief facts that are necessary for the purpose of disposal of the Appeal are as follows:-*

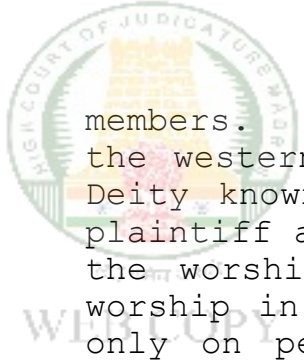
The plaintiff originally filed an application in O.A.No.1 of 1989 before the Deputy Commissioner, Hindu Religious and Charitable Endowment Administration Department, Madurai, under Section 63(a) of the Hindu Religious and Charitable Endowment Act, 1959, to declare that the temple, namely, "Arulmighu Rajakaliamman" Temple, Thethupatty, Dindigul Taluk, Dindigul, is not a religious institution, as defined under Hindu Religious and Charitable Endowments Act. The petition filed by the plaintiff was dismissed by the second defendant, by order, dated 14.06.1991. Challenging the said order, the plaintiff preferred an Appeal before the Commissioner of Hindu Religious and Charitable Endowments Board, Chennai, namely, the first defendant, in A.P.No.46 of 1991. The said Appeal also was dismissed by an order, dated 08.02.1994.

5. Thereafter, the present suit in O.S.No.751 of 1994 came to be filed as a Statutory Suit under Section 70(1) of Tamil Nadu Hindu Religious and Charitable Endowments Act. The suit was therefore to set aside the order of the first defendant, dated 08.02.1994, in A.P.No.46 of 1991 and consequently, to declare the temple as a private temple belonging to the family of the plaintiff.

6. *The case of the plaintiff in the plaint are as follows:-*

"Arulmighu Rajakaliamman" Temple, Thethupatty, is a private temple of the plaintiff and the same is situated in the land in Survey No.431/6A and 431/6B, in Thethupatty Village, Dindigul Taluk. Originally the land in which the temple is located belonged to one R.M.Sivasundaram and the same was purchased by the plaintiff's wife by a Registered Sale Deed, dated 24.12.1975.

7. In the land in Survey No.431/6A, the plaintiff installed a "Thirisulam" representing "Rajakaliamman", the family deity of the plaintiff for the worship of his family members, in the year 1977. In the year 1981, the plaintiff replaced the "Thirisulam" by Deity made of Athi tree and the Deity was known as "Athi Rajakaliamman". The Deity was worshiped only by the plaintiff and his family



members. In the year 1984, the plaintiff built a temple just on the western side of the "Athi Rajakaliamman" and installed a stone Deity known as "Rajakaliamman". The temple was constructed by the plaintiff and his family members. Since the plaintiff did not object the worship by other people, third parties were also allowed to worship in this temple. However, the entry for third parties was only on permission and they were not allowed to worship in the temple as of right. Since the temple is a private temple, there is no "Hundi", "Urtchava Vigraham", "vahanam" and "Kodimaram" which are the special and distinct features found in public temples. The plaintiff was paying salary to the employees and there was no collection of Archana ticket. Any way the temple is not a religious institution as defined under Section 6(2) of Hindu Religious and Charitable Endowments Act. Voluntarily to protect the interest of the plaintiff and his family members, the plaintiff filed an application in O.A.No.1 of 1989 before the second defendant. Since the second defendant dismissed the application, and the order of the second defendant was confirmed by the first defendant, it is stated that the plaintiff was constrained to file the Statutory Suit to set aside the order of the first defendant.

8. *The suit was contested by the defendants 1 and 2 in the following lines:-*

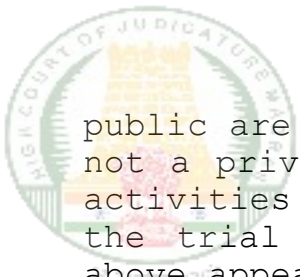
a) The suit temple is located in Survey No.431/6A and Survey No.431/6B in Thethupatty Village. Survey No.631/6A stands in the name of one R.M.Sivasundaram, and Survey No.431/6B measuring about 0.20.0 acres was registered as "Anatheenam Puramboke" in village accounts. Hence, the contention that the plaintiff has put up the suit temple in the private land of the plaintiff is incorrect.

b) The allegation is that the suit temple was built and maintained by the plaintiff and his family members are specifically denied and contribution from the public was collected for the construction of the temple.

c) Though there was no "Dwajasthambam" or "Vahanam" or "Urtchava idol" or "Hundial", daily poojas and other activities were done inside the temple only to attract the public at large to come and worship as of right and perform their vow as desired by them, without any let or hindrance.

9. Since the temple was re-cognised and the plaintiff himself has admitted the character of the temple in a statement filed by him on 21.12.1989, the defendants have passed orders dismissing the application filed by the plaintiff to declare the temple as one which is not a religious institution.

10. The trial Court framed necessary issues. The trial Court though found that the property in which the temple is located belonged to the plaintiff's family and the plaintiff, however observed that the temple cannot be declared as a private temple, merely, because the same is located in the Patta land of private parties. After taking note of the fact that the temple, Deity came into existence only from the year 1977 and the fact that the



public are worshiping the temple as of right held that the temple is not a private temple. After taking note of the name boards and the activities of the temple for the benefit of the public's worship, the trial Court dismissed the suit. Aggrieved by the same, the above appeal has been filed.

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11. The learned counsel for the appellant submitted that the land in which the temple was constructed, belonged to the plaintiff and his forefathers. The plaintiff installed "Thirisulam" in the year 1977 and in the year 1981, an Athi Tree was planted representing Idol. In the year 1984, a stone idol was installed by the plaintiff. This fact is proved beyond doubt and the defendants have not examined anyone to contradict the fact that the temple was constructed by the plaintiff. However, the trial Court did not accept the case of the plaintiff on the only ground that there are other idols in the temple and that the plaintiff has indirectly dedicated the temple to the public. The trial Court went further and by referring to the activities inside the temple and the existence of a Sidha Hospital, "Bogar Beedam", etc., in the suit property, erroneously found that the entry to the public is not prohibited. The trial Court further by referring the physical features of the temple and the writings on the walls inside the temple, has wrongly held that the temple is indirectly dedicated to the public, as the public are worshiping the temple as of right, without any hindrance. After referring to some of the Judgments of this Court and the Judgment of the Hon'ble Supreme Court, the learned counsel for the appellant stressed the following aspects:-

i) There is no "Dwajasthambam", "Urtchavamoorthy" and no "Hundial", as defined in the Commissioner's report and admitted in the written statement.

ii) There is no endowment by public to the temple.

iii) The temple was built by the plaintiff in his property and the same was managed by the plaintiff.

iv) There is no dedication to the public.

12. The learned counsel appearing for Mr. Muthu Geethaiyan, learned counsel appearing for the third respondent and Mr. S. Kumar, learned Additional Government Pleader appearing for the respondents 1 and 2 referred to the Commissioner's report and the activities inside the temple and submitted that the trial Court is right in drawing inference about the dedication of the temple to the public, and submitted that the temple as it exist today is only for the benefit of the public and the public are exercising their right of worship or worshiping the temple as of right. The learned Additional Government Pleader further submitted that the land in which the temple is located is a Government land and that there is no proof regarding the construction of the temple by the plaintiff.

13. The only point that arises for consideration in this case is whether the temple known as "Rajakaliamman" Temple, at Thethupatty, is a public temple or private temple, constructed,



maintained and administered by the plaintiff and his family members for their worship.

14. The learned counsel for the appellant relied upon the Judgment of this Court reported in **2003 (1) CTC 65**, in the case of **the Commissioner, Hindu Religious and Charitable Endowments Board Vs. T.S.Palanichamy and 7 others**.

15. The learned counsel for the respondents also relied upon paragraph No.22 of the above Judgment. Paragraph Nos.25 and 26 is relied upon by the learned counsel for the appellant. Paragraph Nos. 22 to 26 of the above Judgment is extracted as follows:-

" 22. Each case has to be decided on the basis of the evidence placed before the Court in that case and not on the basis of any non-statutory presumption of the nature canvassed for by the State. What is crucial for the purpose of deciding as to whether the temple is a public temple or private is the dedication to the public and the right recognised in public to offer worship at the temple as of right. That question is to be decided on a consideration of the oral and documentary evidence in the case and not on the basis of any non-statutory presumptions.

23. The apex Court in the case of **Gopalan**, AIR 1972 SC 1716 has adverted to matters which are required to be considered while deciding as to whether the temple is a public temple or a private temple. The Court therein referred to the decision rendered in the case of **Goswami Shri Mahalaxmi Vahuji V.Rannchoddas Kalidas**, AIR 1970 SC 2025 wherein it has been held that the appearance of a temple though a relevant circumstance was by no means decisive, and that the circumstance the public or a section thereof had been regularly worshipping in the temple as a matter of course and they could take part in the festivals and ceremonies conducted in that temple apparently as a matter of right, was a strong piece of evidence to establish its public character and if offerings were being made by the public and the expenses were being met by public contribution, it would be safe to presume that the temple was public. "In short, the origin of the temple, the manner in which its affairs were managed, the nature and the extent of the gifts received by it, rights exercised by devotees in regard to worship therein, the consciousness of the manager and consciousness of the devotees



themselves as to the public character of the temple were factors that went to establish whether the temple was public or private."

24. At paragraph fifteen of that Judgment the Court noticed three matters which were regarded as material in the case before it decided that the temple was a private temple. Those factors are -- "The first was that the origin of the Mandapam had been proved to be private. The second was that its management had remained throughout in the members of the Thoguluva family. The third was the absence of any endowed property. There was no Gopuram or Dwajasthamba nor a Nagara bell nor Hundial in the suit temple." The finding that it is a private temple was recorded after noticing that it had been established by three persons who were outsiders in the sense that they did not belong to the Thoguluva family, used to come and worship at the temple and made offerings there. The Court observed, "But the determination of the question whether the temple was public or private did not depend on some facts or set of facts alone. The entire evidence, both documentary and oral, had to be considered as a whole keeping in view the principles already noticed by us."

25. The test so formulated in that case when applied to the facts before us clearly lead to the same conclusion, namely, that the temple is a private temple. The temple here was founded by the grandfather of the plaintiff. There is no endowment made to that temple by any outsider. The temple does not have Prakaram, but only has Dwajasthamba. There is no Hundial for the public offering. There is no offering of Kattalai by the members of the public. There is no evidence of monies having been expended for the improvement of the temple by any member of the public.

26. In the case of **Radhakanta Deb V. The Commissioner of Hindu Religious Endowments, Orissa**, AIR 1981 SC 798, a case similar to the one before us, the Court held that "the cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof." Thereafter, the Court observed that the mere fact that members of the public are allowed to worship by itself



would not make an endowment a public unless it is proved that the members of the public had a right to worship in the temple. At paragraph fourteen of the Judgment, the Court formulated four tests as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature. The four tests are - (1) whether the user of the temple by members of the public is of right; (2) Whether the control and management vests either in a large body of persons or within the members of the public and the founder does not retain any control over the management; (3) Whether the dedication of the properties is made by the founder who retain the control and management and whether control and management of the temple is also retained by him; and (4) where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by the members of the public to the temple, this would be an important intrinsic circumstances to indicate the private nature of the endowment."

16. The learned counsel for the appellant also relied upon the Judgment of this Court reported in **2011-1-L.W.351**, in the case of **Kuppuswamy Vs. The Commissioner, Hindu Religious and Charitable Endowments Administration Department and another**, wherein this Court has held as follows:-

" 39. It is also not in dispute that the temple is under the lock and key of the appellant/plaintiff i.e., previously with Bashyam Iyengar and after his death, with his son Kuppusamy, the appellant herein. The temple is opened according to the convenience of the residents of the teachers' colony. There is no fixed hours for opening and closing the temple. Further, there is no Dwajasthambam, Rajagopuram and Prakaram in the temple. The temple has been maintained by the contribution made the residents of the teachers' colony. All these ingredients clearly prove that the temple is meant only for the residents of the teachers' colony and not to the public as a matter of right."

17. The learned counsel for the appellant submitted that the entry of the public cannot be taken to prove that the temple is a public temple. Unless the members of the public are worshipping or performing Poojas as of right, the temple cannot be considered as a

public temple. In the absence of "Dwajasthambam", "Urtchavamoorthy", "Hundiyaal", "Pragaram" and other features which are normally seen in the public temple, the trial Court is not justified to hold that the temple is a public temple, especially when no document is produced by the defendants to show there was dedication in favour of the public. In the Judgment of the Hon'ble Supreme Court reported in **2009 (3) SCC 425**, in the case of **C.R.Jeyaraman and others Vs. M.Palaniyappan and others**, the Hon'ble Supreme Court has held that where evidence with regard to the foundation of the temple is not available, the character of the temple can be decided by formulating the question whether the public are entitled to take part in offering service and taking Dharshan in the temple as of right and whether the offerings of the public are accepted recognising their right. The above Judgment of the Hon'ble Supreme Court in the case of **Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas (1969) 2 SCC 853: AIR 1970 SC 2025 (paragraph No.12 of the above Judgment)**, some of the circumstances to which the Courts have to address themselves to find out the true character of the particular temple are enumerated and it is extracted as follows:-

*"In the decision in **Goswami Shri Mahalaxmi Vahuji V. Ranchhoddas Kalidas (1969) 2 SCC 853 : AIR 1970 SC 2025**, this Court has held as follows: (SCC p.861, para 15)*

(1) Is the temple build in such imposing manner that it may prima facie appear to be a public temple?

(2) Are the members of the public entitled to worship in that temple as of right?

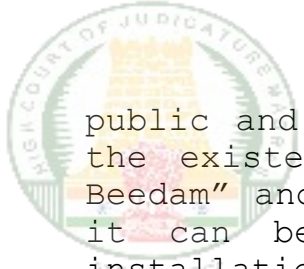
(3) Are the temple expenses met from the contributions made by the public?

(4) Whether the sevas and utsavas conducted in the temple are those usually conducted in public temples?

(5) Have the management as well as the devotees been treating that temple as a public temple?"

Taking these above mentioned points into consideration, the trial Court as well as the High Court proceeded to determine the nature of the aforesaid temples as to whether they were public or private in nature."

18. In the case on hand, the temple was constructed very recently only in the year 1984 and the main Deity was earlier installed by planting a "Thirisulam" in the year 1977. The temple was constructed of course by the plaintiff. However, it is not proved by the plaintiff that the entire money spent was from his pocket. The case of the defendant that the temple was constructed with funds collected from section of public is admitted by the plaintiff himself by stating that he collected funds from his pocket. However, it is true that there is no positive evidence to prove the collection of funds from the public. From the evidence available in this case, it is seen that the temple is meant for the



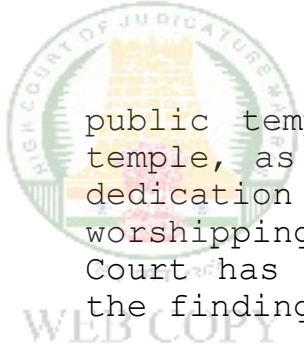
public and it is only for the exclusive use of the public. From the existence of Idols of "Navagrahas", "Anchaneyar", and "Bogar Beedam" and the installation of other idols in the temple premises, it can be inferred that the purpose and object behind such installation of other idols is to attract the public. In the temple premises, there are writings about the special features of the temple. These are informations to the public. If it is a private temple meant for the family members of the plaintiff, these special features need not be projected to attract the public. Further, the special features indicate that the public are informed about the special features so that they will convey these features to others who may be advised to visit temple. The history and the importance of the "Sthalam" are not necessary, if the plaintiff has no intention to attract the public not only from the local villagers, but also from the other parts of the State.

19. The other point referred in the Commissioner's report is about the festivals and special poojas that are conducted/performed in the temple. The public are asked to subscribe to the "Sidhar Arulatchi Kazhagam" which is referred to as the committee to administer the temple.

20. There are also writings in another wall to convey to the public about the special Poojas and other "Parigara Homams" which are performed in the temple. It is very relevant to mention that beneath the list of various religious ceremonies and special Poojas in the temple, there is a note wherein it is written like this "The worshippers can pay any cash either by kind or by donations for the purpose of their Poojas and 'Homams' and get the receipt from the office". The writings throughout within the temple would normally indicate that the temple is maintained only for the public. The public enter the temple to worship the Deity and perform Poojas and other things without any hindrance.

21. Though it is stated that the settlement executed by the plaintiff's wife was not marked, it was the specific case of the plaintiff that the settlement was in favour of the plaintiff and that therefore, the land in which the temple is located is a private land of the plaintiff.

22. The learned counsel for the respondents produced the certified copy of the Settlement Deed, dated 29.06.1981. This document would indicate that the settlement was in favour of the Deity and not in favour of the plaintiff. It is only for this reason, the plaintiff has not filed this document. Since, this document is neither produced before the trial Court nor filed before this Court as an additional evidence along with the petition, this Court is not inclined to place reliance on this document. However, there are other circumstances to indicate that the temple is only meant for public and that it was never intended to use only for the benefit of the plaintiff's family members. Merely because, the temple had no features which are normally found available in the



public temples, the temple in the present case is not a private temple, as there are sufficient evidence to indicate that there was dedication in favour of the public and that the public are worshipping and participating in religious affairs as of right. This Court has no reason or compelling circumstances to interfere with the findings of the trial Court as to the character of the temple.

23. For the reasons stated above, this Appeal deserves dismissal and hence, dismissed. However, there is no order as to costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Additional Subordinate Judge,
Dindigul.

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+ 1 CC TO Mr.R.NADAKUMAR, ADVOCATE IN SR No. 59966
+ 1 CC TO Mr.A.K.BASKARA PANDIAN, ADVOCATE IN SR No. 59965

PMU
TE/SKN/SAR-I : 03/07/2017 : 10P/5C

JUDGMENT MADE IN
A.S.(MD)No.109 of 2016 and
C.M.P.(MD)No.7061 of 2016
Dated :- 13.06.2017