

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.09.2018

Delivered on : 20.12.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.392 of 2008

The Executive Officer,
Arulmighu Kottai Mariamman Temple,
Salem - 1.

... Appellant

Vs

1.S.V.Manoharan

2.M.Dhanasekaran

3.A.Srinivasan

4.M.Somasundaram

5.M.Kandaswamy Chettiar

6.A.Chinnathambi Chettiar

7.G.Rathinam

8.The Commissioner,
H.R & C.E.,
Nungambakkam High Road,
Chennai – 600 034.

9.The Deputy Commissioner,
H.R & C.E.,
Arulmighu Kottai Mariamman
Koil Compound,
Salem – 1.

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.156 of 2005 dated 22.02.2006 on the file of the learned Additional Subordinate Judge, Salem, partly reversing the Judgment and Decree passed in O.S.No.78 of 2005 dated 13.07.2005 on the file of the learned I Additional District Munsif, Salem.

For Appellant : Mr.K.Ashok Kumar

For Respondents 1 to 7 : Mr.M.Vaidyanathan
for R1 to R7

No Appearance
for R8 and R9

JUDGMENT

The above Second Appeal is filed by the 3rd defendant in the Suit O.S.No.78 of 2005 on the file of the learned I Additional District Munsif, Salem. The Second Appeal arises against the Judgment and Decree of the learned Additional Subordinate Judge, Salem, in A.S.No.156 of 2005 in and by which the learned Judge had modified the Decree passed by the learned I Additional District Munsif, Salem in O.S.No.78 of 2005.

2.The parties are referred to in the same array as in the suit.

3.The plaintiffs had originally filed the suit O.S.No.325 of 1996 on the file of the learned Subordinate Judge, Salem, for declaring the suit Temple as Denominational Temple exclusively belonging to and managed by the Kulalar Community of

Ponnammapet, Salem, and to restrain the defendants from interfering with the management of the Temple by the community either by appointing Trustees or in any other manner. This suit, on the pecuniary jurisdiction being enhanced, was transferred to the learned I Additional District Munsif, Salem and renumbered as O.S.No.78 of 2005.

4.Plaintiffs' Case:

4.1.It is the case of the plaintiffs that the suit Temple belongs to the Kulalar Community and is a religious denominational temple. All expenses for running of the Temple was met by the community. Community people have purchased the properties, built shops and school to augment the income of the suit Temple and the same was utilised for the benefit of the community. The Temple was also situated in the patta land belonging to the community people.

4.2.While things stood so, the H.R.& C.E. Department appointed a Trustee from amongst the community members. Apprehending that H.R.& C.E. would bring in more trustees and that too from other communities, the plaintiffs 4 and 5 herein and three other persons moved the 2nd defendant for framing a Scheme for appointing all trustees in O.A.No.75 of 1982 under Section 65 of the Hindu Religious and Charitable Endowments Act (hereinafter referred to as the Act). The plaintiffs would submit that on 16.04.1983, the petition was allowed holding that it was the community that had founded the Temple and who were in exclusive management of the same. The 2nd respondent framed a Scheme for the appointing of trustees.

4.3.While so, on 04.07.1996, the 2nd defendant appointed the 3rd defendant as the Fit Person for the suit Temple. The plaintiffs would contend that mere filing of a petition to frame a scheme would not confer jurisdiction upon the H.R.& C.E. to take

charge of the Temple. Aggrieved by this application, the plaintiffs have come forward with the suit for the reliefs narrated supra.

5. Written Statement of the 2nd defendant:

The 2nd defendant had filed a Written Statement which is adopted by the 1st and 3rd defendants. The 2nd defendant has denied that the suit Temple is a denominational temple and has gone on to contend that the plaintiffs' community was only a section of the Hindu society. The 2nd defendant would contend that the scheme which was framed by the H.R.&C.E. was for appointment of non-hereditary trustees from amongst the members of the community under the Act and after framing of this Scheme, the plaintiffs cannot claim exclusive right over the suit Temple. The 3rd defendant would further contend that plaintiffs 1 to 3 had submitted applications for appointment as hereditary trustees under the scheme for a period of three years from the date of election of the Chairman, Board of Trustees.

This election had taken place on 05.12.1992. The 2nd respondent would further contend that the temple has been included in the list published under Section 64 (1) of the Act. In the light of the above, the defendants were well within their rights to appoint Fit Persons. The scheme of the H.R.&C.E. has been made applicable to the suit temple and the Kullalar community of Ponnammampet, Salem are not a religious denomination, but a section of Hindus.

6.The parties had gone to trial and on the side of the plaintiffs, four witnesses were examined and Ex.A.1 to Ex.A.13 were marked. On the side of the defendants, the official of the 1st respondent was examined as D.W.1 and Ex.B.1 to Ex.B3 were marked.

7.The trial Court had framed ten issues and one additional issue. After an elaborate consideration of the oral and documentary evidence, the learned I Additional District Munsif, Salem, held that the suit Temple is a religious denominational

Temple exclusively belonging to the Kulalar Community and exclusively administered by persons belonging to the said community.

8.The learned Judge also held that the defendants had nothing to do with the administration of the Temple. The Court also observed that just because the Board had framed the Scheme in O.A.No.75 of 1982, the same would bind the suit Temple and would not clothe the defendants with a right to interfere with the administration of the suit Temple. Therefore, the learned Judge has answered Issue Nos.1 to 8 in favour of the plaintiffs. However, with reference to Issue No.9 regarding the relief of permanent injunction, the learned Judge held that since the appointment of the 3rd defendant as a fit person was in pursuance of Ordinance No.3/96, the Civil Court could not injunct the appointment. Therefore, the learned Judge has dismissed the suit in *toto*.

9.This Judgment and Decree was taken on appeal by the plaintiffs in A.S.No.156 of 2005 before the learned Additional Sub Judge, Salem. The learned Judge modified the Judgment and Decree of the trial Court by decree the prayer for declaration however with reference to the relief of injunction, the learned Judge had confirmed the Judgment and Decree of the trial Court. The learned Judge declared that the suit Temple is a denominational Temple belonging to the appellants/Kulalar Community of Ponnammampet, Salem. Challenging the said Judgment and Decree, the defendants are before this Court.

10.At the time of admission of the Second Appeal, the following Substantial Questions of Law had been framed:

"(1)Whether a caste/community in the Hindu Religion can claim to be a "Religious Denomination" within the meaning of Article 26 of the Constitution of India?.

(2)Whether a Temple merely because it is founded by a particular community be excluded from the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1958?”

11.Heard Mr.K.Ashok Kumar, learned counsel for the appellant. He would contend that the plaintiffs have themselves recognised the authority of the defendants 1 and 2 over the suit Temple by filing the application under Section 64 of the Hindu Religious and Charitable Endowments Act for framing a Scheme for appointment of Trustees and having done so, the plaintiffs cannot contend that it is a private Temple. The learned counsel would also argue that the Temple in question is a listed Temple under Section 46(1) of the Act and therefore, they would come within the control and administration of the defendant/Department. The learned counsel would also rely upon the Judgment of the Hon'ble Supreme Court reported in **(2003) 10 Supreme Court Cases 712 [Nallor Marthandam**

Vellalar and others v. Commissioner, Hindu Religious and Charitable Endowments and others), wherein the Hon'ble Supreme Court has held that in order to be termed a "religious denomination", three requirements had to be satisfied.

(a) it must be a collection of individuals who have the system of belief or doctrine which they regard as conducive to their spiritual well-being i.e., a common faith.

(b) a common organisation and

(c) designation of a distinctive name.

12. It was his argument that in case, the plaintiffs were able to establish the above, they could claim to be a religious denomination. However, in the instant case, the plaintiffs are only a Section of the Hindu religion and they do not have any custom which are unique their community. He would therefore argue that in the absence of the above, the Courts below were

wrong in observing that the plaintiffs were a religious denomination.

13.Mr.M.Vaidyanathan, who appeared on behalf of the respondents 1 to 7 would contend that both the Courts below, taking into account the various unique practices and customs of the community, had come to the conclusion that the Temple was a religious denomination. He would argue that the trial Court has opined that the title documents and the other documents would probalilise the contention that the Temple was founded by the Kulalar Community. He would also argue that this point has been considered extensively by both the Courts below and the Courts below have concurrently held that the suit Temple is a religious denomination. He would rely upon the Judgment reported in ***AIR 1997 Supreme Court 3760 [Ram Prakash v. Smt.Charan Kaur and another]*** and ***1962 AIR 338 [Badri Narayan Singh v. Kamdeo Prasad Singh and another]***, in support of his arugments that the suit is hit by a principles of *res*

judicata. The defendants having not challenged the finding of the trial Court that the suit is a religious denomination, cannot in a Second Appeal question the said finding. He would rely upon the Judgment of the Hon'ble Supreme Court reported in **2014 (1) CTC 763 [Dr.Subramanian Swamy and another v. State of Tamil Nadu and others)**, wherein the Hon'ble Supreme Court had also considered the phrase "*res judicata*" as well as the right of Podhu Dikshitars to administer the Sri Sabhanayakar Temple at Chidambaram without interference of the Department. The Hon'ble Supreme Court had struck down the appointment of the Execution Officer belonging to the H.R. & C.E..

14.The learned counsel had also raised an issue that the appeal has been filed by the Executive Officer of Arulmigu Kottai Mariamman Temple, who was appointed as a fit person and whose appointment was the subject matter of challenge in the suit. The learned counsel would rely on the Judgment of this Court **2003-1-L.W. 386 (Sri Arthanareeswarar of**

Tiruchengode by its present Executive Officer, Sri Sabapathy v. T.M.Muthuswamy Padayachi, etc.,], wherein this Court has held that the Executive Officer can do only those acts that has been assigned by him and in the absence of such assignment, the appeal filed by him was not maintainable.

15. Heard the learned counsel appearing on either side and perused the papers.

16. It is seen that both the Courts below have held that the plaintiffs is a religious denomination. The trial Court had dismissed the suit *in toto*. However, the appellate authority had reversed the relief of the suit only with reference to declaration since the appellate authority had also concurred with the finding of the trial Court that the suit Temple is a religious denominational Temple. Both the Courts below have considered the evidence let in by the plaintiffs to come to this conclusion. This Court sitting in appeal under Section 100 of the Code of Civil

Procedure cannot re-appreciate the evidence unless it is shown that the said finding is perverse or not supported by evidence. In the instant case, the findings by the Courts below are on the basis of the documentary evidence placed for its consideration and the defendants/appellants have not been able to show this Court that the finding is so perverse that it has to be set aside.

17. The only issue on which the plaintiffs has been non suited is with reference to the second relief on the ground that in view of the Ordinance.3/96, the hands of the Courts are tied. It is seen that the Division Bench of this Court in the Judgment reported in **1997 (2) MLJ 151 [M.R. Subramanian and Others v. State of Tamil Nadu represented by its Secretary to Government, Commercial Taxes and Hindu Religious and Charitable Endowments Department, Madras and others]** had struck down Section 2 of Act 23/96 which had

repealed Ordinance.3/96 as unconstitutional and *ultra vires*. The repealed Section 2 of Act 23/96 reads as follows:

"2.Non-hereditary trustees to cease to hold office. – (1)Notwithstanding anything contained in the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) (hereinafter referred to in this Act as the 1959 Act), 1970 non-hereditary trustee of every religious institution appointed under any of the provisions of the (1959 Act and holding office as such on the 26th day of June 1996 shall cease to hold such office on such date.

(2)On and from the 26th day of June 1996, the functions of the Board of Trustees or of the trustees, as the case may be, of any religious institution shall, until the vacancy is

filled up in accordance with the provisions of the 1959 Act, be performed-

(a) If there is no hereditary trustee of such institution, by the executive officer or if the Government so direct, by a fit person, who shall be an officer of the Hindu Religious and Charitable Endowments Administration Department, not below the rank of Inspector, appointed by the Commissioner or by any officer not below the rank of Assistant Commissioner, authorised by the Commissioner in this behalf."

18. The Courts below had not granted the second relief for injunction only based upon the Ordinance.3/96. However, the respondents have not challenged this order. Taking into consideration the Judgment of the Division Bench of this Court and the findings of the Courts below that the respondent's Temple is a denominational Temple, this Court deems it fit to

dismiss the above Second Appeal. Since both the Courts below have found certain unique practices and customs of the plaintiffs Community and applying the principles of the Judgment of the Hon'ble Supreme Court reported in **(2003) 10 Supreme Court Cases 712 [Nallor Marthandam Vellalar and others v. Commissioner, Hindu Religious and Charitable Endowments and others)**, this Court confirms the findings of both the Courts below that the plaintiffs/Temple is a religious denomination and founded by the particular community. Therefore, both the Substantial Questions of Law are answered against the appellant.

In the result, this Second Appeal is dismissed. However, there shall be no order as to costs.

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Index : Yes/No
Speaking order/non-speaking order
mps

To

1.The Additional Subordinate Judge,
Salem.

2.The I Additional District Munsif,
Salem.



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P.T. ASHA, J,

mps



Pre-delivery Judgment in
S.A.No.392 of 2008

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