



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMSA(MD)No.25 of 2017

and

CMP(MD)No.7623 of 2017

The Executive Officer/Joint Commissioner,
Arulmighu Meenakshi Sundareswarar
Devasthanam,
Madurai - 625 001.

... Appellant/3rd Respondent/
3rd Defendant

Vs.

1.Saisiva @ K.G.Sivasubramanian
2.P.Rajasekaran

... Respondents 1&2/Petitioners/
Plaintiffs

3.The State of Tamilnadu
rep.by its District Collector,
Office at District Collectorate,
Madurai.

4.The Tamilnadu Hindu Religious and
Charitable Endowments Department,
Office at Nungambakkam High Road,
Chennai.

... Respondents 3&4/Respondents 1&2/
Defendants 1&2

5.The Fit Person/Executive Officer,
Arulmighu Bala Dandayuthapani Temple,
Nethaji Road, Madurai.

... 5th Respondent/4th Respondent

Prayer : This Civil Miscellaneous Second Appeal is filed under Order 43 Rule 1 read with under Section 104 of the Code of Civil Procedure Code, to set aside the fair and decreetal order dated 23.11.2016 in CMA.No.11 of 2015 on the file of the learned IV Additional District Judge, Madurai confirming the fair and decreetal order dated 06.06.2015 in I.A.No.485 of 2013 in O.S.No.417 of 2013 on the file of the learned Principal Subordinate Judge, Madurai.

For Appellant : Mr.V.R.Shanmuganathan
for Mr.AL.Kannan

For Respondents : Mr.S.Madhavan

Nos.1 & 2

for Mr.Srinivasaraghavan

For Respondents : Mr.M.Karuppasamy

Nos.3 to 5

Government Advocate

**ORDER**

O.S.No.417 of 2013 was filed by the respondents 1 and 2 herein seeking declaration that the suit temple is being denominationally administered by Adhi Keezha Chitrai Veedhi Saiva Pillamar Vagayara, Madurai. The relief of permanent injunction against the Government and the HR & CE department has also been sought. I.A.No.485 of 2013 seeking temporary injunction was filed. The trial court by order dated 06.06.2015 granted the relief of injunction. Questioning the same, neither the Government nor the Hindu Religious and Charitable Endowments Department filed any Civil Miscellaneous Appeal. It was only the third defendant temple which claims that the suit temple is a part of its Devasthanam filed CMA No.11 of 2015. The first appellate court by order dated 23.11.2016 dismissed the said appeal. Challenging the same, this Civil Miscellaneous Second Appeal has been filed.

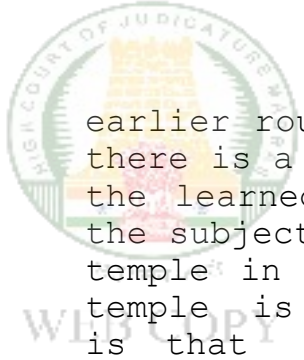
2.Heard the learned counsel on either side.

3.The learned counsel appearing for the appellant at the very outset submitted that only a Civil Revision Petition would lie against the impugned order and that therefore, filing of a Civil Miscellaneous Second Appeal was not appropriate. Be that as it may, since this Court is also having the C.R.P portfolio, it would not make much of a difference.

4.It is not in dispute that the respondents 1 and 2 herein are presently administering the temple in question. The interim order in their favour was granted as early as on 06.06.2015. More than 3 ½ years have gone by. The relief was sought primarily against the Hindu Religious and Charitable Endowments Department and the Government. The third defendant temple/Sri Meenakshi Sundareswarar Devasthanam by itself could not have acted to the prejudice of the plaintiffs. Since the HR & CE department or the Government did not choose to question the injunction granted in favour of the plaintiffs, this Court is of the view that no interference is really called for.

5.The learned counsel for the appellant pointed out that the suit itself is not maintainable. He contended that the parents of the present plaintiffs had filed O.S.No.267 of 1978 on the file of the Sub Court Madurai contending that the suit temple is a private temple. The said claim was rejected by this Court in letters patent appeal and the same was also confirmed by the Hon'ble Supreme Court in the decision reported in **(2001) 8 SCC 460 (S.Pitchai Ganapathy vs. Commissioner, HR&CE)**.

6.The specific contention of the learned counsel for the appellant is that when the appeal has already been lost in the



earlier round, the present suit proceedings will not lie. Further, there is a statutory bar set out in Section 108 of the Act. However, the learned counsel for the plaintiffs pointed out that what was the subject matter in the earlier round was only a character of the temple in question. Now, the question is not whether the suit temple is a public or private one. The relief that is now sought is that the temple should be declared as a denominational institution. Likewise it has been laid down in the decision reported in **2001 (3) L.W 669**, that the bar under Section 108 of the Act will not apply in the case of denominational institutions.

7. Since such broader issues have been raised, this Court is of the view that it would be in the fitness of things that this Court should not go into the merits of the matter at this stage. Interest of justice would be better served by directing speedy disposal of O.S.No.417 of 2013. Therefore, a direction is issued to dispose of the same within a period of six months from the date of receipt of a copy of this order. Accordingly, this Civil Miscellaneous Second Appeal stands dismissed. It is needless to add that the suit shall be disposed of entirely on its own merits and totally uninfluenced by any of the observations made in this order passed in favour of the plaintiffs and in the I.A which has been confirmed in CMA and by this Court. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The IV Additional District Judge, Madurai
2. The Principal Subordinate Judge, Madurai.
3. The District Collector,
Office at District Collectorate,
Madurai.
4. The Tamilnadu Hindu Religious and
Charitable Endowments Department,
Office at Nungambakkam High Road,
Chennai.

+ 1 CC TO Mr.S.MADAVAN, ADVOCATE IN SR No. 77764

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 77744

SKM

TE/SKN/SAR-1 : 27/09/2018 : 3P/7C