

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2018

PRONOUNCED ON : 22.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.1340 of 2001

Rudraiah Achari

... Appellant

Vs.

1. The Commissioner,
Hindu Religious and Charitable
Endowments, Department
Madras -34.

2. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments, Department
Cuddalore.

... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree of the Principal Sub-Judge, Villupuram in A.S.361 of 1994 dated 28.09.2000 confirming the judgment and decree of the District Munsif, Tirukoilur in O.S.No.24 of 1987 dated 11.02.1994.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.S.Jaganathan,
Government Advocate(Civil Side)

JUDGMENT

This appeal has been filed by the second plaintiff against the judgment and decree passed by the Principal Sub-Judge, Villupuram in A.S.No.361 of 1994 dated 28.09.2000 confirming the judgment and decree passed by the District Munsif, Tirukoilur in O.S.No.24 of 1987 dated 11.02.1994.

2. One Shanmuga Achari had filed a suit in O.S.No.24 of 1987 on the file of the District Munsif, Tirukoilur to declare that Sri Vellai Vinayagar and Balasubramaniswami temples are denominational temples exclusively belonging to Viswakarma Community of Thirukovilur and to restrain the defendants by way

of permanent injunction from interfering with the right of administration and management of the said temples and their properties by the plaintiff as a trustee of the temples on behalf of the members of Viswakarma Community of Thirukovilur. The learned District Munsif, Thirukovilur by the judgment dated 11.02.1994 had dismissed the said suit. Aggrieved by the same, the said Shanmuga Achari had filed an appeal in A.S.No.361 of 1994 on the file of the Principal Sub-Judge, Villupuram. During pendency of the said appeal, the said Shanmuga Achari died and hence, the appellant herein was impleaded as second appellant. The learned Principal Sub-Judge, Villupuram, by the Judgment dated 28.09.2000, had dismissed the said appeal, confirming the judgment and decree passed by the trial Court. Feeling aggrieved, the second plaintiff has filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial Court.

3. The averments made in the plaint are in brief as follows:

(a) Sri Vellai Vinayagar Temple at Keelalaiyur Village, is an ancient temple built by the ancestors of Viswakarma community more than 90 years ago for the benefit and worship of the said community. Subsequently, the members of the said community have also built another temple nearby namely, Balasubramaniswami temple. Both the temples were founded by the said community and properties were also endowed for the idols by the members of the community only and they were being managed and administered by the representatives of the community who were elected periodically from among the members of the community. The trustees for the temples were elected or nominated by the community only and all the functions and festivals of the temples were also performed by them or their nominees only and no other community had authority or power in the administration or management of the temples and their properties. The properties of the said temples were leased out only by the trustees and the incomes were utilised for the maintenance of the temples only. The priests of the temples were also appointed by the community only. Both the temples are denominational temples founded, managed and administered by the denomination community called Viswakarma community.

(b) The plaintiff has been elected as the trustee of the temples along with one Rathinavel Achary at the community meeting held on 17.05.1977 and subsequently empowered to look after the management of the temples and their accounts and Court affairs solely at a community meeting held on 23.04.1982. While so, the second defendant had issued two notices dated 27.03.1986 and 20.10.1986 calling upon the plaintiff to show cause against appointment of trustees for Sri Vellaivinayagar temple and then actually calling for application for appointment of trustees

under Section 49 of H.R & C.E Act. The said notices are not valid and the assumption of any power is contrary to the specific provision of Section 107 of the said Act. The authorities under the said Act have no power to assume or usurp any power which is not vested with them under the said Act. Hence, the plaintiff has sent reply dated 15.12.1986 calling upon the defendants to cancel the notices sent by them and also restrain from appointing any trustees to the temples. The second defendant sent a reply dated 19.12.1986 requiring the plaintiff to establish the denomination character of the temple in question within 30 days from the date of receipt of the notice failing which non hereditary trustees will be appointed. Hence, the plaintiff was constrained to file the above suit for the aforesaid relief.

4. The averments made in the written statement filed by the second defendant are in brief as follows:

(a) The plaintiff does not really and fully represent the Viswakarma Community and the suit is not filed in a representative capacity. In any event, the provisions of Order 1 Rule 8 of CPC had not been complied with by filing the suit in a representative capacity and hence, the suit is not maintainable. The plaintiff is not sure as to who actually founded the institution and who were all in management of the suit institution from the date of founding the institution. In the absence of any such proof, the contentions of the plaintiff that the said temples are exclusively belongs to Viswakarma Community cannot be admitted. Balasubramaniswami temple also included along with Vellai Vinayagar temple which has been brought under the control of the Department.

(b) The plaint allegations do not make it clear whether the entire members of the Hindu community other than the plaintiff community are prohibited from worshipping the deity in the suit institution. If a religious institution founded by a religious denomination becomes a place of public religious worship by the Hindu Community or any section thereof, then it comes within the purview of Hindu Religious & Charitable Endowments Act. The Hindu general public are offering worship to the suit temples without any let or hindrance. The said Act itself makes valid provision for regulating the administration for such institutions. If the plaintiffs claim the temple as a private temple and not as place of public religious worship, the remedy lies before the Deputy Commissioner, Hindu Religious and Charitable Endowments Act in terms of Section 63(a) of the Tamil Nadu Hindu Religious & Charitable Endowments Act 22 of 1959 and the suit is barred in view of the provisions of Section 108 of the said Act. If on the other hand, the suit is intended to protect the interests of the religious denominations, the plaintiff could invoke the provisions of Section 51 of the Hindu Religious & Charitable Endowments Act, to safeguard their

interest if any. They can also invoke Section 64(1) of the Act by moving the Deputy Commissioner for framing a suitable scheme with a provision to safeguard the right if any. The suit temple is one falling under the purview of the Tamil Nadu Hindu Religious & Charitable Endowments Act 1959 in the absence of any valid declaration from the appropriate forum that the temple exempted from the operation of the Hindu Religious and Charitable Endowments Act. The action of the second defendant in issuing notice calling for applications for appointment of trustees cannot be said to be illegal and the suit is not maintainable in view of the specific provision under Section 67 (ii) of the Hindu Religious & Charitable Endowments Act and hence, the civil Court has no jurisdiction to try this suit.

5. Based on the aforesaid pleadings, the learned District Munsif, Thirukkoyilur, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and he has marked Exs.A1 to Ex.A13 as exhibits. On the side of the defendants, one witness was examined as DW1. However, no exhibits were marked on the side of the defendants.

6. The learned District Munsif, Thirukkoyilur, after considering the materials placed before him found that the suit has not been filed in a representative capacity on behalf of Viswakarma Community. He further found that civil Court has no jurisdiction to entertain the suit. He further found that the Authorities under the Hindu Religious and Charitable Endowments Act, are empowered to appoint trustees for administration of the suit temples. Accordingly, he dismissed the suit. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.361 of 1994 on the file of the Principal Sub-Judge, Villupuram.

7. The learned Principal Sub Judge, Villupuram had dismissed the said appeal confirming the judgment and decree passed by the trial Court. Since during the pendency of the first appeal, the original plaintiff/appellant died, the second appellant was impleaded. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

8. This Court, at the time of admitting the second appeal, has formulated the following substantial questions of law:-

"1.Whether the lower Appellate Court is right in dismissing the suit after having concluded that the suit temple is a

denominational temple belonging to
Viswakarmas?

2. Whether the Hindu Religious and
Charitable Endowments Board have any
jurisdiction to appoint trustees in respect
of a denominational temple?"

9. Heard, Mr.V.Raghavachari, the learned counsel for the
appellant and Mr.S.Jagadeesan, learned Government Advocate (CS)
for the respondents.

10. Substantial questions of law 1 and 2:

The learned counsel for the appellant has submitted that
the first appellate Court having concluded that the suit temples
are denominational temple belonging to Viswakarma Community, it
ought not to have dismissed the suit. He further submitted that
the Courts below failed to consider that the members of the
appellant community alone have a right in and over the temple
and they have a right to choose the trustee of the temple. He
further submitted that the Courts below failed to consider that
the defendants have no right to interfere with the
administration of the suit temples. He further submitted that
absolutely there is no evidence that any complaints received by
the defendants against the plaintiff in respect of the
administration of the suit temples. He further submitted that
the oral and documentary evidence adduced by the plaintiff would
clearly shows that the suit temples are denominational temples
exclusively belonging to Viswakarma Community and hence, he
prayed to allow the second appeal and set aside the judgment and
decree passed by the Courts below and decreed the suit as prayed
for.

11. In support of the aforesaid contentions, the learned
counsel for the appellant has relied upon the following
decisions:-

1. N.K.S. Sankarakumara Nadar and others Vs. The
Assistant Commissioner for Hindu Religious and Charitable
Endowments, Tirunelveli, (1975) 1 MLJ 12.

2. Sri Kanyaka Parameswari Annasatram Committee and others
Vs. Commissioner, Hindu Religious & Charitable Endowments
Department and others, (1999) 7 SCC 666.

12. Per contra, Mr.S.Jaganathan, learned Government
Advocate (Civil Side) for the respondents submitted that the

Viswakarma Community is part of Hindu faith and religion and to make it a separate denomination of their own, they should plead and prove of a system of belief or doctrine which is exclusive to their Community. He further submitted that lord Vinayagar is a common deity for all the people of Hindu religion, lord Murugan temple is also the diety of Hindu religion and as such, the claim of the plaintiff that his Community exclusively having the deities of Vinayagar and Murugan as special deities cannot be accepted and therefore, he prayed to dismiss the Second Appeal.

13. In support of the aforesaid contentions, the learned Government Advocate (CS) has relied upon the following decisions:-

1. Muthaiah Mudaliar and another Vs. State of Tamil Nadu, through District Collector, Tirunelveli and two others, 2002 (2) CTC 427.

2. Assistant Commissioner, HR & CE, Salem etc., Vs. Nattamai K.S.Ellappa etc., 100 L.W. 240.

14. The suit temples are Sri Vellai Vinayagar and Sri Bala Subramani Swami temples and they are situated at Keelaiyur Village, Thirukkoyilur, Taluk. According to the plaintiff, Sri Vellaivinayagar Temple is an ancient temple built by the ancestors of Viswakarma Community about 90 years ago for the benefit and worship of the said Community. His further case is that subsequently the members of Viswakarma Community had also built another temple nearby namely, Sri Balasubramani Swami Temple and properties were endowed for the idols by the members of the Viswakarma Community and the said temples were being managed and administered by the representatives of the said Community who were elected periodically from among the members of the Community. His further case is that he has been elected as trustee and hence, he filed the said suit to protect the interest of the said temple.

15. The plaintiff while examining himself as PW1 has deposed that Sri Vellai Vinayagar Temple is in existence for more than 100 years and Sri Balasubramani Swami Temple is in existence for more than 50 years and both the temples are being managed and administered by Viswakarma Community. He further stated that he has been elected as trustee and he is managing the said temples. He further stated that the said temples are having the property and those properties have been endowed by

the members of his Community and the said Community has been maintaining them. He also produced the minute book from the year 1945 to 1956 and marked as Ex.A1, minute book for the period from 1962 to 1979 and marked as Ex.A2 and minute book for the period between 1981 and 1987 and marked as Ex.A3. He further deposed that one Pappaya Achari had executed a Will on 28.08.1909 and thereby he bequeathed the property in favour of Sri Balasubramani Temple and he had marked a registration copy of the said Will as Ex.A4.

16. A perusal of Ex.A4 would show that on 28.08.1909 one Pappaya Achari son of Gangadhara Achari had executed a registered Will. In the said Will, he had stated that the Temples namely, Sri Vellai Vinayagar Temple and Sri Balasubramani Temple which are situated in Keelaiyur Village, Thirukkoyilur Taluk were created by his father Gangadhara Achari and after his death, he has been in management and administration of the said temple as a trustee and after his death, his brother's sons Ekambara Achari had to administrator the said temple as a trustee. Further under the said Will, he had endowed certain immovable properties also.

17. PW1 has further deposed that on 20.05.1922 one Govinda Achari, as trustee, had purchased certain properties for the said Sri Vellai Vinayagar Temple. He had produced the original sale deed dated 20.05.1922 and marked as Ex.A5. In the said document it is clearly stated that one Govinda Achari had purchased certain immovable properties as a trustee of Sri Vellai Vinayagar Temple of Keelaiyur, Village. Further Ex.A6 and A7 would show that the trustees of the said temple had leased out the properties of the said temples to the third parties in the year 1955 and 1961 respectively. Ex.A8 would show that one Manicka Achari and three others had filed a suit in O.S.No.44 /1996 on the file of the District Munsif, Thirukkoyilur against one Kathirvel Achari and 10 others in respect of certain properties for declaration and injunction or alternatively for possession and mesne profits.

18. In the said suit, the said Manicka Achari described himself as the present trustee of Sri Vellai Vinayagar Temple at Keelaiyur. The said suit was decreed for declaration; for delivery of possession and damages with costs. Ex.A9 would show that the said Manicka Achari had taken possession of the properties covered under O.S.No.66/72 on behalf of the Sri Vellai Vinayagar Temple. All the aforesaid documents would show that the aforesaid temples were founded, managed and administered by the members of Viswakarma Community of Keelaiyur

Village, Tirukkoyilur Taluk.

19. DW1 has deposed that he is working as Inspector in the Hindu Religious and Charitable Endowments Department at Tirukkoyilur. He further stated that if the plaintiff claims that the said temples are their private temple, they should have obtained necessary orders from the Commissioner of Hindu Religious and Charitable Endowments. He has admitted in his cross examination that the previous Inspector of Hindu Religious and Charitable Endowments Department has stated in his report that these two temples are under the management and administration of the plaintiff namely, Shanmuga Achari. He further admitted that no one made any complaint with regard to the management and administration of the aforesaid temples. Taking into consideration of all the aforesaid facts, the first Appellate Court held that the aforesaid temples are private temples of Viswakarma Community.

20. In Muthaiah Mudaliar and another Vs. State of Tamil Nadu, through District Collector, Tirunelveli and two others, (cited supra), this Court taking into consideration in Ex.A8, it has been stated that the temple under dispute belongs not only to the Senaikulathavar community, but also to the Mudaliar as well as the Senaithalaivar communities and also the fact that the plaintiff in that case failed to prove that their community had a separate system of belief or doctrine and accordingly held that the said temple cannot be declared as a denominational temple. Whereas in this case, the plaintiff has pleaded and proved that the aforesaid temples were established and maintained by the members of the Viswakarma Community.

21. Further, Ex.A14 would show that the Joint Commissioner of Hindu Religious & Charitable Endowments Department, Mayiladurai, had passed an order dated 20.05.1997 stating that he is satisfied that a scheme of Administration is necessary to Arulmighu Vellai Vinayagar and Subramaniaswamy Temples, Hospital Road, Thirukkoyilur Town and Taluk. Further he has prepared a Draft Scheme wherein he has stated that the above temple and its properties shall be administered by a Board of Trustees consisting of not more than five trustee and not less than three trustees appointed by the appropriate authority from among the panel of persons to be selected by the members of Viswakarma Community residing at Thirukkoyilur Town and Taluk.

22. It appears that the Joint Commissioner of Hindu Religious and Charitable Endowments Department while preparing the Draft Scheme has followed the sub Section(2) of Section 64

of the Hindu Religious and Charitable Endowments Act, which reads thus:-

“(2) A scheme settled under sub-Section(1) for an institution may contain provision for-

(a) removing any existing trustee, whether hereditary or non-hereditary:

Provided that where provision is made in the scheme for the removal of a hereditary trustee, provision shall also be made therein for the appointment as trustee of the person next in succession who is qualified;

(b) appointing a new trustee or trustees in the place of, or in addition to, any existing trustee or trustees;

(c) defining the powers and duties of the trustee or trustees:

Provided that in making any provision of the nature specified in clause (b) due regard shall be had to the claims of persons belonging to the religious denomination for whose benefit the institution is chiefly intended or maintained.”

23. A plain reading of the aforesaid provision would show that while making any provision for appointing a new trustee or trustees in the place of, or in addition to any existing trustee or trustees; due regard shall be had to the claims of persons belonging to the religious denomination for whose benefit the institution is chiefly intended or maintained. So, it is clear that the Joint Commissioner of Hindu Religious and Charitable Endowments Department by following the aforesaid provision, had prepared a Draft Scheme and the trustees shall be appointed from among the panel of persons to be selected by the members of Viswakarma Community residing at Thirukkoilur Town and Taluk. So it is clear that the Joint Commissioner of Hindu Religious and Charitable Endowments Department, Mayiladurai himself has admitted that the aforesaid temples are denomination temples. Therefore, this Court is of the view that the aforesaid decision

will not apply to the facts of the case.

24. In Assistant Commissioner, HR & CE, Salem etc., Vs. Nattamai K.S.Ellappa etc., (cited supra), a Single Judge of this Court has held that the common faith of the Community should be based on religion and it is essential that they should have common religious tenets. He further observed that the basic chord which connects them should be religion and not anything else in para No:30 it was observed. However, in para:33 he has observed that for the purpose of invoking Article 26 of the Constitution of India, the plaintiff has to prove that they established temple and also maintained the temple.

25. In this case, as already pointed out that the plaintiff has pleaded and proved that the aforesaid temples were established by the members of the Viswakarma Community and managed by them. Further Ex.A14 would show that the Joint Commissioner of Hindu Religious and Charitable Endowments Department has decided to appoint trustees only from the Viswakarma Community and that also would show that the aforesaid temples are denomination temples.

26. In T.D.Gopalan Vs. Commissioner, H.R. And C.E. Madras, AIR 1972 SC 1716, the Hon'ble Supreme Court has held as follows:-

"13. The origin of the temple, the manner in which its affairs are managed, the nature and extent of the gifts received by it, rights exercised by devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple are facts that go to establish whether a temple is public or private."

27. In this case, the oral evidence of PW1 and Ex.A4 would clearly show that even on 28.08.1909, one of the members of Viswakarma Community namely, Pappaya Achari had executed a registered Will wherein, he had clearly stated that the aforesaid temples have been established by his forefathers and maintained by them. Further Ex.A5 also would show that certain properties were gifted to the aforesaid temples by the members of the Viswakarma Community. Ex.A5 to Ex.A9 would show that the members of the said Community alone managing the said temple. In

view of the aforesaid decision of the Hon'ble Supreme Court, the aforesaid temple would come under the category of private temple.

28. In Sri Kanyaka Parameswari AnnaSatram Committee and others Vs. Commissioner, Hindu Religious & Charitable Endowments Department and others (cited supra), the Hon'ble Supreme Court has observed that the power to appoint an Executive Officer to a religious institution has to be exercised on the relevant data and on necessary facts and material. Further it was held that it could not be exercised just offhand without there being any necessity of appointing an Executive Officer for the temple in the public action.

29. In this case, the plaintiff and 4 other members of the Viswakarma Community had approached the Joint Commissioner of Hindu Religious and Charitable Endowments Department, Mayiladurai by filing O.A.No.4 of 1995 to declare the aforesaid temple as denomination temple and in the said application, the Joint Commissioner of Hindu Religious and Charitable Endowments Department, Mayiladurai had passed an order on 20.05.1997 stating that he has satisfied that a scheme is necessary to the aforesaid temple and accordingly prepared a Draft Scheme. Further in the said Draft Scheme he has mentioned that the trustees shall be appointed from the panel of persons to be selected by the Viswakarma Community residing at Thirukkoyilur Town and Taluk. Therefore, it is clear that the plaintiff and other members of their Community have already admitted that the Joint Commissioner of Hindu Religious and Charitable Endowments Department is having power to interfere with the administration of the aforesaid temples. Therefore subject to the scheme settled by the Joint Commissioner of Hindu Religious and Charitable Endowments Department, Mayiladurai, the members of Viswakarma Community people residing Thirukkoyilur Town and Taluk can manage the aforesaid temples. Accordingly, the Substantial questions of law are answered.

30. In the result, the Second Appeal is partly allowed. No costs. The judgments and decrees passed by the Courts below are set aside. The suit in O.S.No.24 of 1987 on the file of the District Munsif, Thirukkoyilur, is partly decreed as follows:

1) that Arulmighu Vellai Vinayagar and Subramani Swami Temples situated at Keelaiyur Village, Thirukkoyilur Town and Taluk are declared as private temples of the members of Viswakarma Community people residing at Thirukkoyilur Town and Taluk;

2) that the suit with regard to the prayer for permanent injunction is dismissed;

3) It is open to the Joint Commissioner of Hindu Religious and Charitable Endowments Department, Mayiladurai, to settle the scheme as per the Draft Scheme prepared by him dated 20.05.1997.

4) Considering the facts and circumstances of case, the parties are directed to bear their respective costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

dna

To

1. The Principal Sub-Judge,
Villupuram.

2. The District Munsif, Tirukoilur

+1cc to Mr.V.Raghavachari, Advocate SR.No.27138

+1cc to Government Pleader, High Court, Madras SR.No.27697

S.A.No.1340 of 2001

VG II(CO)
GMY(09/12/2019)

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