IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2019

PRONOUNCED ON : 23.05.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.647 of 2013
and M.P.No. 1 of 2013

Treasurer-cum-Secretary,
Tiruppani Committee and
Administrative Officer of
Pariyur Kondathu Kaliamman
Temple by its Executive Officer,
Appointed by the HR & CE
Department, having office at Kondathu Kaliamman Temple,
Pariyur, Gobichettipalayam,
Erode District. ... Appellant/Plaintiff

Vs.

Aries Nandhakumar,
Pudukhadu Mariamman Koil Veethi,
Pudhupalayam and partner,
Nandhi Transports and Elite of Gobi
Living Pudupalayam,
Gobichettipalayam. .. Respondent/Defendant

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 29.11.2012 made in A.S.No.50 of 2012 on the file of the First Additional District Court, Erode, confirming the judgment and decree dated 29.02.2012 made in counter claim in O.S.No.110 of 2004 on the file of the Sub Court, Gobichettipalayam.

For Appellant : Mr. N. Manokaran
For Respondent : Mr.S. Silambannan,
Senior Counsel
for M/s.Profexs Associates



JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the First Additional District Judge, Erode, in A.S.No.50 of 2012 dated 29.11.2012 confirming the judgment and decree passed by the Sub-Judge, Gobichettipalayam in O.S.No.110 of 2004 dated 29.02.2012.

2. The appellant herein had filed a suit in O.S.No.110 of 2004 on the file of the Sub-Judge, Gobichettipalayam for recovery of Rs.1,10,000/- with interest at the rate of 6% per annum from the date of suit till the date of realisation. The respondent/defendant had filed a counter claim to direct the plaintiff to pay a sum of Rs.2,33,320/- with future interest @ 12% p.a., The learned Sub-Judge, Gobichettipalayam by the judgment dated 29.02.2012 had dismissed the suit without costs. She allowed the counter claim directing the plaintiff to pay a sum of Rs.2,33,320/- with future interest @ 6% p.a., from the date of decree till the date of realisation. Aggrieved by the allowing of the counter claim, the plaintiff had filed an appeal in A.S.No.50 of 2012 on the file of the First Additional District Judge, Erode. The learned First Additional District Judge, Erode by the judgment dated 29.11.2012 had dismissed the said appeal with exemplary costs of Rs.10,000/- Feeling aggrieved, the plaintiff has filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are in brief as follows: The plaintiff temple is the Kondathu Kaliamman temple situated at Pariyur, Gobichettipalayam. Kundam festival is a very popular one. Nearly about 5 lakhs of people will assemble for worshiping the Goddess in the tamil month of 'Thai'. Authorised and sponsored by the Government of Tamilnadu, a renovation committee was formed and the elite of the area are made members and President in honorary capacity to collect huge donations. Tickets were printed in ten numbers. One ticket with a counter foil is taken as two tickets. The honorary members who received ticket books are bound to pay. For example, a ticket book with 10 tickets, they have to pay the value bearing Rs.50x2x10=1000. Whether the member sells or not, he has to return the unsold tickets with money collected. On any account, he cannot keep the book with tickets and he has to pay the entire amount with interest @ 6%. The defendant received the ticket book with 10 tickets each ticket worth Rs.5000/- and she promised to remit Rs.1,00,000/- but he has not paid the said amount. Hence, the plaintiff had sent a notice demanding the defendant to pay the amount of Rs.1,00,000/- and damages but the defendant has sent a reply stating that he has donated lakhs of Rupees to the Goddess and he is like a founder. A donor have nothing to do with the sale of tickets which is covered on the contractual basis. So, the defendant is bound to pay the costs of the tickets. Hence, the plaintiff was constrained to file the above suit for recovery of Rs.1,10,000/- with interest @ 6% p.a., from the date of suit till the date of realisation.

5. The averments made in the written statement and counter claim are in brief as follows:-

a) The collections were made by the members of the Renovation Committee from the public. The defendant contributed large sums from his personal accounts and through his family trust by name "Pariyur Arulmigu Kondathu Kaliamman Iraipani Arakkattalai, Gobichettipalayam" from 1994 onwards and served the temple in co-operation with members of Narambukatti Gounder Community, though the defendant belongs to the Sendhalai Gounder Community also known as Vellala Gounder Community. The defendant had worked in cooperation with the members of the Narambukatti Gounder Community. The defendant and his brother and their family Trust contributed a sum of Rs.6,00,000/- to the temple in the construction of seven tier Rajagopuram. The defendant purchased and installed temporarily stone cutting machinery generator, etc., and other tools and implements in the temple for a sum of Rs.5,84,194/-. Apart from this, he had also spent amounts for the said construction of seven tier Rajagopuram and total amounting to Rs.13,19,259/-. These expenditures and endowments and service rendered by the defendant were acknowledged by three Executive Officers of the temple. On 12.10.2000, the defendants paid a sum of Rs.5000/-towards Brahmotsavam of Perumal temple. Apart from these monetary contribution, the defendant and his brother Radhakrishnan spent most of their time in supervising construction and renovation works. The said monetary and physical contribution by the defendants were gratefully acknowledged by the Renovation Committee through its resolution passed perhaps on 23.10.2000 which also requests the defendant to continue the works done by him on behalf of the committee and temple as before. This defendant continued all the renovation works as requested by the Renovation Committee. The defendant's brother M.Radhakrishnan was a member of the Renovation Committee. On 13.10.2001, through a General Order of the Government many Renovation Committees such as the plaintiff were wound up and thereafter the defendant was not included in the new Renovation Committee. The entire supervision of construction of Rajagopuram was done only by this defendant and his brother. The defendant usually paid wages to the sculptors and masons as advance, every week and the E.O of the plaintiff temple will pay the said amount on a monthly basis through cheque to them. When the Renovation Committee was wound up, the said amount would come to Rs.2,33,320/- and the said amount was not reimbursed to the defendant. The defendant has sent letters dated 17.01.2002, 11.04.2002, 13.05.2002 and 05.06.2002 to the Joint Commissioner of HR & CE Department claiming the aforesaid amount by marking copy to the plaintiff. But without responding to the said letters, the plaintiff has filed the above suit with a view to damage the reputation of the defendant among the devotees and general public. Though the defendant was removed from the membership of the Renovation Committee, even thereafter the plaintiff entrusted the work to the defendant. The defendant also offered to complete the construction of the seven tier Rajagopuram. The construction of Rajagopuram came to stand still after the defendant was sent out of the Renovation Committee. The plaintiff and some of the members of the Renovation Committee had nurtured grouse and grudge against the defendant and filed the above suit. One donation book for the face value of 10 tickets of Rs.5000/- each totalling for Rs.50,000/- issued to the defendant. There is no oral contract that the defendant has to sell the tickets for double the amount. The suit has been purposely filed to create a bad opinion on him in the HR & CE Department. The defendant had sold 6 tickets out of 10 in the book and collected Rs.30,000/- from March to November, 2001 but spent Rs.2,33,320/- to sculptors and masons as advance for the construction of the 7 tier Rajagopuram during the said period. After deducting Rs.30,000/-, the plaintiff is liable to pay Rs.2,03,320/- Hence, the defendant has filed a counter claim for recovery of the aforesaid amount with future interest @ 12 % p.a.,

b) After filing of the written statement, a settlement was arrived between the plaintiff and the defendant in September, 2006, in which it was agreed that the plaintiff will pay a sum of Rs.2,33,000/- to the defendant, if the defendant pays a sum of Rs.30,000/- to the plaintiff, the amounts received by him by selling 6 donation tickets. As such the defendant agreed to waive an amount of Rs.320/- in the amount of Rs.2,33,320/-, interest accrued from the date of counter claim and costs thereon. As per the settlement, the defendant has paid Rs.30,000/- to the plaintiff and handed over the donation book with 4 unsold tickets on 27.09.2006. A receipt was issued by the plaintiff towards the said payment and an endorsement was also made at the back side of the receipts. On 26.09.2006 itself, the defendant gave a letter to the plaintiff asking him to pay a sum of Rs.2,33,000/- but there was no response. Hence on 02.01.2007, the plaintiff issued a notice to the plaintiff under the Right to Information Act regarding the steps taken on his letter dated 27.09.2006. On 15.01.2007, the plaintiff issued a reply notice with no information about payment but directed the defendant to contact the "General Information Officer" attached to the Office of the Joint Commissioner of HR & CE Department at Coimbatore. Even in the said office at Coimbatore, the defendant was informed that the Joint Commissioner had recommended to the Commissioner that he should be paid with the amount of Rs.2,33,000/- as agreed to by the plaintiff. But subsequently, the plaintiff has not fulfilled his promise and hence, the defendant filed an application seeking to amend the counter claim/written statement and it appears that the said application was dismissed by the trial court as against which, the defendant had filed a revision in CRP(PD) No.774 of 2009 before this court and the same was allowed on 21.10.2009 and in pursuance of the said order, the defendant had amended the written statement as aforesaid.

6. Based on the aforesaid pleadings, the learned Sub-Judge, Gobichettipalayam had framed necessary issues and tried the suit. Duirng trial on the side of the plaintiff, Executive Officer of the plaintiff temple was examined as PW1 and A1 and A2 were marked as Exhibits. On the side of the defendant, the defendant examined himself as DW1 and he also examined one more witness as DW2. He had marked Exs.B1 to B39 as exhibits.

7. The learned Sub-Judge, Gobichettipalayam, after considering the materials placed before her found that the defendant was entrusted with a donation book containing 10 tickets of face value to Rs.5000/- each. She also found that the defendant had sold only six tickets for Rs.30,000/- and during pendency of the suit, the defendant had paid the said amount of Rs.30,000/- to the plaintiff and he had also returned the unsold tickets. She also found that the plaintiff failed to prove that there was no oral contract for payment of interest for delayed amount. She also found that the defendant had spent Rs.2,33,320/- towards the payment of wages to the sculptors and masons and hence the plaintiff is liable to reimburse the said amount to the defendant. Accordingly, she dismissed the suit without costs and allowed the counter claim without costs and directed the plaintiff to pay a sum of Rs.2,33,320/- to the defendant with interest @ 6% p.a., from the date of the decree till the date of realisation. Aggrieved by the allowing of the said counter claim, the plaintiff had filed an appeal in A.S.No.50 of 2012 on the file of the First Additional District Judge, Erode. The plaintiff had also filed an application in I.A.No.727 of 2012 in A.S.No.50 of 2012 under Order 41 Rule 27 CPC to permit it to adduce additional documentary evidence. The learned First Additional District Judge, Erode, by the order dated 29.11.2012 had allowed the said application and marked Exs.A3 to A7 on the side of the appellant/plaintiff and thereafter by the judgment dated 29.11.2012 had dismissed the appeal with exemplary costs of Rs.10,000/- Feeling aggrieved, the plaintiff had filed the present second appeal.

8. This court at the time of admitting the second appeal had formulated the following substantial questions of law:

"a) Whether the courts below were justified in decreeing the counter claim based on the lis pendens communications dated 21.06.2007 and 04.10.2006, in deciding the lis?

b) Whether the claim of the appellant is barred by limitation?

c) Whether the counter claim is tenable, in view of the embargo as contained under Section 108 of the Hindu Religious and Charitable Endowments Act, in view of the remedy available under Section 63 (g) of the Act?"

9. This second appeal has been filed by the plaintiff against the allowing of the counter claim. In the reply statement filed by the plaintiff, it has taken a plea that the counter claim is barred by limitation. Therefore, the substantial questions of law (b) should be whether the claim of the respondent is barred by limitation. Accordingly, the substantial question of law (b) is re-formulated as follows:

b) Whether the claim of the respondent is barred by limitation ?

10. Substantial questions of law a to c:-

The learned counsel for the appellant/plaintiff has submitted that the courts below failed to note that the defendant had spent the amount which was collected by him by way of donations. He further submitted that the courts below failed to note that the amount of Rs.2,33,320/- allegedly paid between 01.05.2013 and 13.10.2013 was sought to be recovered by way of counter claim dated 19.10.2004 as such the suit is barred by limitation. He further submitted that the written statement / counter claim has been amended only as per the order passed by this court in CRP(PD) No.774 of 2009 dated 21.10.2009 and on that ground also, the counter claim is barred by limitation. He further submitted that the defendant laid his claim relying upon Exs.B34, B36 and B39 and the said documents came into existence during the pendency of the suit and as such, no reliance can be placed upon the said documents. He further submitted that the courts below failed to note that the amount said to have been spent by the defendant was towards the charitable purpose and as such, the defendant is not entitled to ask for reimbursement of the said amount. He further submitted that after allowing of I.A.No.729 of 2012, the first appellate court neither exhibited the said documents nor discussed in the judgment. He further submitted that the counter claim is barred under Section 108 of the HR & CE Act. He further submitted that the first appellate court has not given any reason for awarding exemplary costs of Rs.10,000/- and therefore he prayed to allow the second appeal and set aside the judgments and decrees passed by the courts below.

11. The learned counsel for the appellant/plaintiff in support of the aforesaid contentions, relied upon the following decisions:

1) Mahendra Kumar and another Vs. State of Madhya Pradesh and Others (1987) 3 SCC 265

2) Bollepanda P. Poonacha and another Vs. K.M.Madapa (2008) 13 SCC 179.

3) R.M.Sundaram @ Meenakshisundaram Vs. Sri Kayarohanasamy and Neeladhakshiamman Temple, Nagapattinam, rep. By its Executive Officer 2008-3-L.W. 553

4) Inspector/Fit Person, HR & CE Arulmigu Sundaresan Gnaniar Koil Cholakadai Street Dharapuram Vs. Amirthammal and 3 others 2003 (1) CTC 484

5) Sivasubramaniya Gurukul Vs. The Executive Officer, Sree Subraminayswamy Temple, Marudamalai and others 2006 (5) CTC 515

6) The Home Missionary Society of India, rep. By its Secretary, No.15, Swamiar Garden, Ponniamman Medu, Chennai-600 110 & another Vs. Vepery Auxiliary of the Home Missionary Society of India rep. By its Secretary Mrs.Rose Fernandes, No.12A, Ritherdon Road, Vepery, Chennai 600 007. 2015-1-LW- 382

7) Board as Trustees of Kandla Vs. Hargovind Jasraj and another (2013) 3 SCC 182

12. Per contra, learned senior counsel for the respondent/defendant has submitted that in Ex.B36, the Joint Commissioner of HR & CE, Coimbatore, has clearly admitted that the defendant and his brother had spent Rs.2,33,320/- towards payment of wages to sculptors and masons. He further submitted that in Ex.B39, the Executive Officer has categorically admitted that the defendant had spent Rs.2,33,320/- towards wages to the sculptors and masons who were engaged in the construction of seven tier Rajagopuram and hence the said amount may be paid to the defendant. He further submitted that though the aforesaid documents came into existence during pendency of the suit, since in the said documents, the Joint Commissioner and Executive Officer of the HR & CE Department have categorically admitted that the plaintiff temple is liable to pay a sum of Rs.2,33,320/- to the defendant, the courts below have rightly

allowed the counter claim and the same has been confirmed by the first appellate court. He further submitted that though the plaintiff had issued the donation book containing 10 tickets of the face value of Rs.5000/- each, the plaintiff has filed a suit claiming Rs.1,10,000/- and taking into consideration of the aforesaid facts, the first appellate court found that the claim is a vexatious one and hence it has dismissed the appeal with exemplary costs of Rs.10,000/-. He further submitted that since the plaintiff had approached the civil court claiming that the defendant has not paid the amount which has been claimed by him by way of selling the donation tickets, the defendant has set up counter claim and therefore, the plaintiff is estopped from taking a plea that the counter claim is barred under Section 108 of the HR & CE Act. He further submitted that since the plaintiff has admitted its liability under Exs.B36 and B39, the counter claim is not barred by limitation. He further submitted that in the original written statement itself, the defendant has set up the counter claim and only by way of amendment, he has waived Rs.332/- and therefore at any event, counter claim is not barred by limitation. He further submitted that taking into consideration of all the aforesaid facts, the trial court has rightly allowed the counter claim and the same has been confirmed by the first appellate court and in the said factual concurrent findings, this court cannot interfere. Therefore, he prayed to dismiss the second appeal and confirm the judgments and decrees passed by the courts below.

13. Appellant/plaintiff had filed the suit for recovery of Rs.1,10,000/- with interest @ 6% p.a., from the date of the suit till the date of realisation alleging that the defendant had received a ticket book containing 10 tickets, each ticket worth Rs.5000/- but as per the oral agreement, the defendant has to sell each ticket for Rs.10,000/- totally for Rs.1,00,000/- It is the further case of the plaintiff that the defendant has to pay the said amount with interest totally Rs.1,10,000/-, but the defendant did not pay the said amount. The case of the defendant is that he had received a ticket book containing 10 tickets each ticket worth Rs.5,000/- and he sold only 6 tickets and hence he is liable to pay Rs.30,000/-. His further case is that during pendency of the suit, a compromise was arrived at and in pursuance of the said compromise, he paid Rs.30,000/- to the plaintiff and also returned the unsold tickets to the plaintiff. Taking into consideration of the said facts, the trial court had dismissed the plaintiff's suit without costs. The defendant apart from denying the plaintiff's claim, claimed Rs.2,33,320/- from the plaintiff by way of counter claim. The trial court had allowed the counter claim with costs. The plaintiff had filed an appeal against the allowing of the

counter claim alone. It has not filed any appeal challenging the dismissal of the suit.

14. According to the defendant, he was one of the members of the Renovation Committee and in the said capacity, he had spent a sum of Rs.7,00,000/- towards construction work of Rajagopuram and after deducting the amount which was paid by the plaintiff, a sum of Rs.2,33,320/- was due. His further case is that the said amount was paid by him to the sculptors and masons between the period from 01.05.2001 to 13.10.2001. His further case is that for claiming the said amount, he sent the letters Ex.B7 to B15, letters to the Executive Officer, Joint Commissioner and other authorities.

15. Ex.B6 is the xerox copy of the register showing payment of wages to the sculptors and masons. In Ex.B36, the Joint Commissioner of HR & CE Department, Coimbatore dated 04.06.2007 has categorically admitted that the defendant had spent Rs.7 lakhs towards construction work. Further since there was paucity of funds in the Renovation Committee, the defendant had spent a sum of Rs.2,33,320/- towards payment of wages to the sculptors and masons in the period between 01.05.2001 to 13.10.2001 and the said amount has to be paid to the defendant and hence he made recommendation to pay the said amount to the defendant. In Ex.B.39, the Inspector of HR & CE Department, Gobichettipalayam dated 04.10.2006 had enclosed the letter sent by the Executive Officer to the Joint Commissioner dated 03.10.2006 and made a request to consider the request of the defendant to pay a sum of Rs.2,33,320/-. Therefore, it is clear that the plaintiff had admitted its liability. Under the said circumstances, the plaintiff cannot take a plea that the counter claim is barred by limitation.

16. When the plaintiff filed a suit accepting the civil courts jurisdiction, it cannot take a plea that the counter claim made by the defendant is barred under Section 108 of HR & CE Act. Section 108 deals with bar of suits in respect of the Administration and Management of institutions, whereas the counter claim set up by the defendant is not relating to administration or management of religious institutions. Therefore the contention of the plaintiff that the counter claim is barred under Section 108 of the HR & CE Act cannot be accepted.

17. In Mahendra Kumar and another Vs. State of Madhya Pradesh and Others (cited supra), the Hon'ble Supreme Court in paragraph No.15 has observed as follows:

"The next point that remains to be

considered is whether Rule 6A(1) of Order VIII of the Code of CivilProcedure bars the filing of a counter-claim after the filing of a written statement. This point neednot detain us long, for Rule 6A(1) does not, on the face of it, bar the filing of a counter-claim by the defendant after he had filed the written statement. What is laid down under Rule 6A(1) is that acounter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had delivered his defence or before the time limited for delivering his defence has expired, whether such counterclaim is in the nature of a claim for damages or not. The High Court,in our opinion, has misread and misunderstood the provision of Rule 6A(1) in holding that as the appellants had filed the coun- ter-claim after the filing, of the written statement, the counter-claimwas not maintainable. The finding of the High Court does not get any support from Rule 6A (1) of theCode of Civil Procedure. As the cause of action for the counter-claim had arisen before the filing ofthe written statement, the counter-claim was, therefore, quite maintainable. Under Article 113 of the Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no period of limitation is provided elsewhere in theSchedule. It is not disputed that a counter-claim, which is treated as a suit under section 3(2) (b) ofthe Limitation Act has been filed by the appellants within three years from the date of accrual tothem of the fight to sue. The learned District Judge and the High Court were wrong in dismissing the counter-claim.''

In this case also, the cause of action for the counter claim had accrued to the defendant before filing of the written statement and hence the counter claim is maintainable. Therefore, the aforesaid decision does not support the case of the appellant/plaintiff. On the contrary, it supports the case of the respondent/defendant.

18. In Bollepanda P. Poonacha and another Vs. K.M.Madapa (cited supra), the Hon'ble Supreme Court in paragraph Nos.10 and 11 has observed as follows:

''10. Order VI Rule 17 of the Code provides for amendment of pleadings. Subject of course to the applicability of the proviso appended thereto (which is not applicable in the instant case), such applications ordinarily are required to be considered liberally. It is also not much in doubt or dispute that amendment of written statement deserves more liberal consideration than an application for amendment of plaint. Order VIII Rule 9 again, subject to the statutory interdict enables a defendant to file additional pleadings.

11. The provision of Order VIII Rule 6A must be considered having regard to the aforementioned provisions. A right to file counter claim is an additional right. It may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence. Respondent in his application for amendment of written statement categorically raised the plea that the appellants had tresspassed on the lands, in question, in the summer of 1998. Cause of action for filing the counter claim inter alia was said to have arisen at that time. It was so explicitly stated in the said application. The said application, in our opinion, was, thus, clearly not maintainable. The decision of Sri Ryaz Ahmed (supra) is based on the decision of this Court in Baldev Singh and Others Vs. Manohar Singh and Another [(2006) 6 SCC 498]''

In this case, the defendant has set up a counter claim in the original written statement itself which was filed on 19.10.2004 itself claiming Rs.2,03,320/-. Subsequently, the counter claim has been amended on 21.10.2009 as per the order passed by this court in CRP (PD)No.774 of 2009 wherein the defendant claimed Rs.2,33,000/- According to the defendant, after filing of the written statement, a settlement was arrived between the plaintiff and the defendant in September, 2006, in which it was agreed that the plaintiff will pay Rs.2,33,000/- to the defendant, if the defendant pays to the plaintiff Rs.30,000/-, the amount due by selling of the six donation tickets. Accordingly, the defendant had paid Rs.30,000/- to the plaintiff and handedover the unsold four tickets to the plaintiff on 27.09.2006 and to that effect, a receipt also has been issued by the plaintiff and thereafter, the plaintiff did not keep up its promise and hence the defendant was constrained to amend the counter claim to include the amount of Rs.30,000/- which was paid by him to the plaintiff. Therefore, it cannot be said that only by way of amendment, the defendant for the first time has set up a counter claim. Further the said amendment was made only as per the order passed by this court in CRP (PD) No.774 of 2009 and that being so, the plaintiff cannot contend that the counter claim has not been filed before the defendant has delivered his defence or before the time limit for delivering his defence has expired. Therefore, the aforesaid decision also will not help the plaintiff.

19. In R.M.Sundaram @ Meenakshisundaram Vs. Sri Kayarohanasamy and Neeladhakshiamman Temple, Nagapattinam, rep. By its Executive Officer, (cited supra), the dispute was with regard to the gift of jewels to the temple. Hence, this court has held that Section 63 of HR & CE Act confers on the Deputy Commissioner, power to enquire and decide the question whether any institution or endowment is wholly or partially of a religious or secular character; and whether any property or money was given wholly or partly for religious or secular uses and hence the Deputy Commissioner was the competent authority to enquire and decide the question whether the kudavarai was not in the control of the temple and the question of dedication of jewels to the temple and held that since the said issue is covered under Section 63 of HR & CE Act whereas in this case, the plaintiff filed a suit for recovery of amount from the defendant claiming that he has sold donation tickets and collected money from the public but he did not account for the same. The defendant while defending the said suit had set up counter claim stating that when he was a member of the Renovation Committee of the temple, he paid a sum of Rs.,233,320/- towards wages for sculptors and masons and the said amount has to be reimbursed by the plaintiff temple. Therefore, the said question will not be covered either under Section 63 or under Section 108 of the HR & CE Act. Hence, the aforesaid decision will not help the plaintiff.

20. In Inspector/Fit Person, HR & CE Arulmigu Sundaresan Gnaniar Koil Cholakadai Street Dharapuram Vs. Amirthammal and 3 others, (cited supra), a suit was filed for declaration that the property is not a public temple. Under the said circumstances, a Division Bench of this court has held that the said dispute falls under Section 63 (a) of the HR & CE Act and hence the suit is barred under Section 108 of the said Act.

21. In Sivasubramaniya Gurukul Vs. The Executive Officer, Sree Subraminayswamy Temple, Marudamalai and others (cited supra), an order was passed by the authorities in and by which the puja right of the plaintiff was reduced from four days to 2 days. This court has held that the said right is only in respect of administration as well as management of religious

institutions and the same will clearly come under Section 108 of HR & CE Act.

22. In The Home Missionary Society of India, rep. By its Secretary, No.15, Swamiar Garden, Ponniamman Medu, Chennai-600 110 & another Vs. Vepery Auxiliary of the Home Missionary Society of India rep. By its Secretary Mrs.Rose Fernandes, No.12A, Ritherdon Road, Vepery, Chennai 600 007, (cited supra), a suit was filed for declaration and permanent injunction. In that suit, the plaintiff attempted to mark photocopies of certain documents as exhibits. At that time, the defendant raised an objections by filing a memo, on the gound that the said documents are photocopies, but the trial court has marked the said documents with objections. Challenging the same, the defendant filed a Civil Revision Petition before this court. This court has allowed the said civil revision on two reasons. Firstly, there is no application filed by the plaintiff under Section 65(a) of the Indian Evidence Act seeking permission to mark those documents which are admittedly photocpies, the originals of the same said to be in the custody of the other side. Secondly, the above said order also did not discuss the objections raised by the defendants through their memo. But in this case, the defendant had produced a xerox copy of the payment of wages register and marked as Ex.B6. At the time of marking the said document, the plaintiff has not raised any objection. Further, during cross examination of DW1, no questions asked on behalf of the plaintiff disputing the genuineness of Exs.B1, B2, B3 and B6. On the contrary, as already pointed out that in Exs.B36 and B39, the Joint Commissioner and Executive Officer of the plaintiff have categorically admitted that the plaintiff temple is liable to pay a sum of Rs.2,33,320/- to the defendant towards payment made by him to the sculptors and masons with regard to the construction work done by them in Rajagopuram. Therefore, the aforesaid decision also will not help the plaintiff.

23. In Board as Trustees of Kandla Vs. Hargovind Jasraj and another (cited supra), a question arose whether the suit for declaration with the termination of the lease was invalid and that the lease continued to subsist could be filed more than 17 years after the termination had taken place.The Hon'ble Supreme Court has held that the lessee ought to have filed the suit within three years from the date of dispossession. Whereas in this case, the counter claim has been admitted under Exs.B36 and B39. The Joint Commissioner of HR & CE Department, Coimbatore and Executive Officer of the plaintiff have specifically admitted that the plaintiff temple is liable to pay the sum of Rs.2,33,320/- to the defendant and recommended to Commissioner

to pass an appropriate order to pay the said amount to the defendant. Under the said circumstances, the aforesaid decision also will not help the plaintiff.

24. Since the trial court and the first appellate court have concurrently found that the plaintiff is liable to pay a sum of Rs.2,33,320/- to the defendant, in the said factual concurrent findings, this court cannot interfere.

25. It is to be pointed out that the first appellate court while dismissing the appeal filed by the plaintiff has held that the donation ticket book contains 10 leaves, total value of Rs.50,000/- only and in such a case, the plaintiff ought to have filed the suit before the Munsif Court, but only for the purpose of filing the suit before the Sub-Court, it has valued the suit at Rs.1,10,000/- and the said attitude of the Executive Officer agianst the defendant is highly condemnable one. It also held that a strong devotee of the temple and donor was driven out from the pillar to post from the year 2001 onwards and hence he dismissed the appeal with exemplary cost of Rs.10,000/-. The plaintiff has not filed an appeal against the dismissal of the suit. It has filed an appeal only agaisnt the allowing of the counter claim. Further, awarding of costs by the civil court is covered by Sections 35 and 35 (A) CPC.

26. At this juncture, it would be relevant to refer to the decision in Ashok Kumar Mittal Vs. Ramkumar Gupta and another (2009) 2 SCC 656 wherein the Hon'ble Supreme Court in para-6 as observed as follows:

> ''6. One view has been that the provisions of sections 35 and 35A CPC do not in any way affect the wide discretion vested in by High Court in exercise of its inherent power to award costs in the interests of justice in appropriate civil cases. The more sound view however is that though award of costs is within the discretion of the court, it is subject to such conditions and limitations as may be prescribed and subject to the provisions of any law for the time being in force; and where the issue is governed and regulated by sections 35 and 35A of the Code, there is no question of exercising inherent power contrary to the specific provisions of the Code. Further, the provisions of section 35A seems to suggest that even where a suit or litigation is vexatious, the outer limit of exemplary costs that can be awarded, in addition to regular costs, shall not exceed Rs.3000/-. It is also to be noted that huge costs of the order of Rs. Fifty thousand or

Rs.One lakh, are normally awarded only in writ proceedings and public interest litigations, and not in civil litigation to which sections 35 and 35A are applicable. The principles and practices relating to levy of costs in administrative law matters cannot be imported mechanically in relation to civil litigation governed by the Code. ''

From the aforesaid decision, it is clear that where the issue is governed and regulated by Sections 35 and 35-A of CPC, there is no question of exercising inherent power contrary to the specific provison of the CPC. It is also clear that the provisions of Sections 35-A seems to suggest that even where a suit or litigation is vexatious, the outer limit of exemplary costs that can be awarded in addition to regular costs shall not exceed Rs.3000/- Since the awarding of costs is governed and regulated by the provisions of Section 35 and 35-A of CPC, the first appellate court should not have exercised the inherent power.

27. Section 35-A of CPC reads thus:

''35-A. Compensatory costs in respect of false or vexatious claims or defences:-
(1) If any suit or otherproceedings including an execution proceeding but excluding an appeal or a revision, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against theobjector, false or vexatious to the knowledge of the party by whom it has been put forward, and ifthereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in wholeor in part, the Court if it so thinks fit, may, after recording its reasons for holding such claim or defence tobe false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding three thousand rupees or exceeding the limits of it pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of aCourt of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887) or under acorresponding law in force in any part of India to which the said Act does not extend and not being a Courtconstituted under such Act or law, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees :

Provided, further, that the High Court may limit the amount or class of Courts is empowered to award ascosts under this Section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim ordefence shall be taken into account in any subsequent suit for damages or compensation in respect of suchclaim or defence.''

A plain reading of the aforesaid provision would show that the civil court can exercise its power under Section 35-A CPC for awarding compensatory costs in any suit or other proceedings including an execution proceedings but excluding an appeal or a revision. So, it is clear that the aforesaid provision cannot be applied by the appellate court or revision court. When there is a specific bar for the appellate court, it ought not to have awarded exemplary costs. Therefore, the awarding of exemplary costs by the first appellate court is without jurisdiction and the same has to be set aside. In other aspects, the judgments of the courts below have to be confirmed. Accordingly, the substantial questions of law are answered.

28. In the result, the second appeal is partly allowed. Awarding of exemplary costs of Rs.10,000/- by the first appellate court alone is set aside. In other aspects, the judgments and decrees passed by the courts below are confirmed. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The First Additional District Judge,
Erode.

2. The Subordinate Judge,
Gobichettipalayam.

Copy to : The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.N.Manokaran,Advocate Sr.No. 44191

AKM/24.02.2020/17P-5C /

Judgment made in
S.A.No.647 of 2013
and
M.P.No. 1 of 2013