

O.A.No.483 of 2019
in
C.S.No.303 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 25.07.2019

ORDER PRONOUNCED ON : 07 .08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

O.A.No.483 of 2019

in

C.S.No.303 of 2019

Sri Muthu Kumaraswamy Devasthanam
Popularly known as Kandakottam
Represented by its Executive Officer,
No.44, Rasappa Chetty Street,
Park Town, Chennai - 600 003.

... Applicant/ Plaintiff

Vs.

- 1.E.Samundeeswari
- 2.E.Sankar
- 3.E.Murugadoss
- 4.E.Thirunavukkarasu
- 5.E.Babu

... Respondents/ Defendants

PRAYER:- This Original Application has been filed seeking to grant an order of interim injunction restraining the respondents/ defendants from creating any encumbrance or alienation in respect of the suit schedule mentioned properties pending disposal of the above suit.

For Applicant : Mr.S.Parthasarathy, Senior Counsel
for Mr.R.Karthikeyan
For Respondents : Mr.A.Amal Raj

ORDER

1. This application has been filed by the plaintiff in C.S.No.303 of 2019 seeking an order of interim injunction restraining the respondents/ defendants from creating any encumbrance or alienation in respect of the suit schedule mentioned properties pending disposal of the suit.

2. The suit in C.S.No.303 of 2019 has been filed by the plaintiff temple seeking a declaration that the suit properties are dedicated in favour of the plaintiff temple and therefore the plaintiff temple is the owner of the suit property and consequently to direct the defendants to surrender possession of the suit schedule property to the plaintiff temple.

3. According to the plaintiff temple, the suit properties were dedicated

as a specific endowment in favour of the temple in the year 1857 by one Seevaram Veerasamy Chettiar and his wife Deivani Ammal for the performance of “Thiru Natchathra Dharma Kaingkariam and Daily Desanthari Thaligai” in the plaintiff temple. The said dedication is evidenced by a stone inscription (Silasasanam) of the year 1857 found in the suit schedule properties.

4. It is the further case of the plaintiff temple that the charities were performed by one S.Govindaraju Chetty who was residing in the said endowed property. It is avered that the said S.Govindaraju Chetty had executed a deed of settlement on 05.06.1935 bearing Document No.711 of 1935 in favour of his wife S.Kamala Ammal to be enjoyed by her with a direction to perform the charities to the plaintiff temple. The said S.Kamala Ammal by a deed of settlement dated 25.02.1948 settled the properties in favour of one Elumalai Chetty son of Arumuga Chetty. The said settlement deed also contained a recital that the settlee shall enjoy the property and perform the religious service that is being performed in the plaintiff temple from and out of the income from the said properties.

5. It is claimed that the defendants who are the heirs of the said S.Elumalai Chetty were in possession of the suit schedule properties and were performing the charities until January 2007. Thereafter, the performance of the charities were stopped by the defendants in view of certain differences between themselves and the then Trustees who were administering the temple.

6. It is also claimed that the then Trustees of the plaintiff temple had inadvertently filed a suit in O.S.No.7518 of 2008 on the file of the VI Assistant City Civil Judge, Chennai seeking to evict the defendants claiming that they are the tenants in the temple. The said suit came to be dismissed on 16.12.2010 holding that the defendants were not the tenants under the temple and they were enjoying the property by leasing out the same to various tenants. The said judgment was appealed against in A.S.No.328 of 2011 before the II Additional City Civil Judge, City Civil Court, Chennai, which also came to be dismissed on 04.01.2013. There was no further appeal.

7. Since the elections were not conducted for the post of Trustees after

the year 2013, the Tamil Nadu Hindu Religious and Charitable Endorsements Department appointed a fit person in the place of the Trustees and an Executive Officer was appointed to administer the temple by the Department on 29.05.2017.

8. According to the plaintiff, the dedication made by the Authors viz., Seevaram Veerasamy Chetty and his wife Deivani Ammal amounted to absolute dedication of the property in favour of the temple and thereby, it becomes a Specific Endowment/ Religious Institution. Therefore, according to the plaintiff the suit property is the absolute property of the plaintiff and the defendants have no right to be in possession as they have stopped performing the charities also.

9. On the above pleadings the plaintiff sought for a declaration that the suit properties are absolutely dedicated to the temple and the temple being the owner of the property is entitled to recover possession from the defendants. Along with the suit, the above Application in O.A.No.483 of 2019 has been filed seeking an order of interim injunction restraining the

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defendants from alienating the suit properties.

10. Upon notice, the defendants/ respondents have filed a counter contending that the suit is an abuse of process of court. According to the defendants, there was no absolute dedication of the property in favour of the temple. As per the Silasasanam relied upon by the plaintiff, a charge has been created over the property for performance of certain kattalais in the temple. The plaintiff temple has only got the right to enforce the performance of the kattalais and it cannot seek a declaration that it is the absolute owner of the properties.

11. It is the further contention of the defendants that in view of the findings in O.S.No.7518 of 2008, the plaintiff is barred from contending that there was a absolute dedication of the property in favour of the plaintiff. It is the further contention of the defendants that the defendants have been letting out the property to various tenants and have been enjoying the income therefrom and they were also performing the charities as required.

12. In fact the defendants have filed eviction proceedings against the tenants in R.C.O.P.No.1458 of 2003, wherein, the tenants projected the same defence that the property belongs to the temple and that there was an absolute dedication of the property in favour of the temple. The said plea was negated by the Rent Controller and eviction was ordered. The tenants have gone on an appeal in R.C.A.No.119 of 2007, wherein, the judgment of the Rent Controller was confirmed. There was a further revision in this court in C.R.P.No.1462 of 2008 which was also dismissed and the said dismissal was confirmed by the Hon'ble Supreme Court in S.L.P.No.15508 of 2011.

13. Therefore, according to the defendants the issue as to whether the suit property is absolutely dedicated to the plaintiff temple was already decided in the suit filed by the plaintiff temple against them and therefore the present suit seeking a declaration that there was an absolute dedication of the property in favour of the plaintiff temple and as such the plaintiff temple is the owner of the property is not maintainable.

14. I have heard Mr.S.Parthasarathy, learned Senior Counsel appearing for Mr.R.Karthikeyan, learned counsel for the appellant/ plaintiff and Mr.A.Amal Raj, learned counsel appearing for the respondents/ defendants.

15. Mr.S.Parthasarathy, learned Senior Counsel appearing for the plaintiff would strenuously contend that the findings in O.S.No.7518 of 2008 cannot bar the present suit. According to him, the question as to whether a dedication amounted to a specific endowment within the meaning of Section 6(19) of the Tamil Nadu Hindu Religious and Charitable Endowments Act will have to be decided by the Authorities constituted under the Act in view of Section 63(d) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

16. To that extent, according to Mr.S.Parthasarathy, the jurisdiction of a civil court is barred and therefore the judgment in O.S.No.7518 of 2008 which was confirmed in A.S.No.328 of 2011 is a nullity. Therefore, according to Mr.S.Parthasarathy, learned Senior Counsel, the suit is maintainable and as such the respondents should be prevented by an order of injunction from

alienating the property in order to protect the interest of the temple.

17. The plaintiff temple itself has produced the judgments in O.S.No.7518 of 2008 and A.S.No.328 of 2011. A perusal of the said judgments show that a specific plea was taken by the defendants that the suit property belongs to them and there was no absolute dedication in favour of the temple. It was specifically contended that there was a direction to the heirs of Seevaram Veerasamy Chettiar and his wife Deivani Ammal to continue the performance of the charities.

18. Though no issue was framed regarding the character of the property while deciding the first issue in the suit which reads as follows:-

1. பிரதிவாதிகள் மாதம் ரூ.500/- விகிதம் வாதிக்கு கட்டளை செலுத்தி வருவதாகவும், வாடகை செலுத்தவில்லை என்று கூறுவது சரியா?

the Civil Court went into the question whether the Silasasanam of the year 1857 amounted to an absolute dedication of the property in favour of the temple or it was only a charge created over the property for performance of

certain kattalais in the temple.

19. The Civil Court after extracting the contents of Silasasanam and after considering the evidence on record concluded that the property was not absolutely dedicated in favour of the temple and the defendants are only liable to perform the charities from and out of the income from the suit property. It was also concluded that the defendants were not the tenants under the temple. The said findings of the trial Court were confirmed in appeal also in A.S.No.328 of 2011. The said judgment have become final.

20. In order to get over the findings of the Civil Court in O.S.No.7518 of 2008, Mr.S.Parthasarathy, learned Senior Counsel appearing for the plaintiff would seek the assistance of Section 108 of the Tamil Nadu Hindu Religious and Charitable Endorsements Act and invoke the bar created by the said provision.

21. He would also rely upon Section 63(d) of the said Act which provides that the question as to whether any property or money is a specific endowment has to be decided by the Join Commissioner or Deputy

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Commissioner under the said section. Therefore, according to Mr.S.Parthasarathy, learned Senior Counsel in view of the bar created under Section 108, the judgment of the civil Court in O.S.No.7818 of 2008 is a nullity.

22. He would invite my attention to the judgment of the Hon'ble Supreme Court in *Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and others* reported in **2007 (2) SCC 355**, wherein the Hon'ble Supreme Court had held that any order passed by a person lacking jurisdiction would be a nullity.

23. He would also draw my attention to the judgments of Division Benches of this Court in *Thiruvengada Varadachariar alias R.Varadachari Vs. Srinivasa Iyengar* reported in **1973 (86) LW 116** and *Inspector/ Fit Person H.R.& C.E., Arulmighu Sundaresa Gnanian Koil Cholakadai Street Dharapuram Vs. Amirthammal and others* reported in **2003 (1) LW 681** in support of his contention that the suit in O.S.No.7518 of 2008 was itself not maintainable and therefore any judgment rendered therein would be a nullity.

24. Per contra, Mr.A.Amal Raj, learned counsel appearing for the

respondents would submit that the bar under Section 108 is not an absolute bar. According to him, Section 108 only bars suits in respect of administration or management of religious institutions or any other matter or dispute for determining or deciding which a provision made in the Act shall be instituted in any Court of Law.

25. Therefore, according to Mr.A.Amal Raj, the decree for possession of the property cannot be granted by the Authorities. Therefore, be it a temple or a person claiming against the temple will have to necessarily institute a suit in the Civil Court seeking recovery of possession. If such a question as to whether the property has been absolutely dedicated in favour of the temple or it is a specific endowment raised, the Civil Court will have to necessarily answer the said question before proceeding to pass a decree for possession in the suit.

26. Pointing out that the suit in O.S.No.7518 of 2008 is a suit for ejectment by the temple contending that the defendants therein are the tenants under the temple and in the said suit a defence was raised disputing

the very title of the temple to the property and it was contended that what was created under the Silasasanam of the year 1857 is not a specific endowment, but it was only a partial dedication of the income from the property for performance of certain kattalais in the temple. The Civil Court had to necessarily go into the question and decide the question before granting or refusing a decree for possession/ ejection.

27. Mr.A.Amal Raj would also invite my attention to the language of Section 108 of the Hindu Religious and Charitable Endowments Act which reads as follows:

“Bar of suits in respect of administration or management of religious institutions, etc.

No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act.”

28. A bare perusal of the provisions of Section 108 would show that what is barred is a suit relating to administration or management of a religious institution or any other matter or dispute for determining or deciding which provision made in this Act shall be instituted in any Court of Law, except in conformity with the provisions of the Act.

29. If a question as to whether there was an absolute dedication of the property or that a certain money or property is a specific endowment is raised before a civil court in a suit for injunction or possession, undoubtedly, the civil court has to decide the said question before granting the decree.

30. This position of law is well settled. While considering the similar provision under Tamil Nadu Agricultural Land Record of Tenancy Rights Act (Act 10 of 1969), a Full Bench of this Court in ***Periathambi Gounder Vs. The District Revenue Officer, Coimbatore*** reported in ***1980 (2) MLJ 89*** concluded that a provision of law imposing a bar on the jurisdiction of civil court has to be construed strictly.

31. The Hon'ble Full Bench also concluded that if incidental questions arise in the course of the proceedings before a civil court with reference to any of the matters which are within the exclusive jurisdiction of the authorities, the civil court cannot be said to be barred from going into the said questions. While doing so the Hon'ble Full Bench had extracted the following observations of Justice Ramanujam in ***Palanisami Vs. Ramaswami Gounder*** (S.A.No.1496 of 1976 dated 05.01.1977:

“Dealing with the contention regarding the jurisdiction of the Civil Court to entertain this suit as framed, the lower appellate court has expressed the view that the relief sought for in the suit does not in any way, infringe the functions of the Record Officer, and that, therefore, the first respondent can invoke the jurisdiction of the Civil Court if his possession is sought to be disturbed by the appellant and respondents 2 and 3, and that S.16-A will not, therefore, stand in the way of the first respondent maintaining this suit. I am of the view that though S. 16-A excludes the jurisdiction of the Civil Court to determine a question which the authorities constituted under the Tamil Nadu Act X

of 1969 had to decide, the present suit, which is one for mere injunction, can be maintained in the Civil Court. It is true that for the purpose of granting the relief of injunction claimed in the suit, the court has to incidentally go into the question as to who is in possession of the property and in what capacity. The fact that the court has to consider an incidental question for the purpose of granting the main relief claimed in the suit will not make the suit incompetent in a Civil Court. In Rama - Papiiah V. Ellapa Gounder, 1960 2 MLJ SN 26, Ramachandra Iyer J. as her then was, had held that an injunction, which is preventive remedy, can be grant-only by the civil court, that there is no inherent power in any tribunal to grant an injunction and that, therefore, the tenant has always got his remedy to approach the Civil Court for the relief by way of injunction whenever his possession is interfered with. In Ramachandra Sastrigal V.Kuppusami Vanniar 1961-1 Mad LJ 335 while dealing with the scope of S.6-A of the Tamil Nadu Act XXV of 1955, a Division Bench had expressed the view that in a simple suit for an injunction laid in a Civil Court for

restraining the defendant, from interfering with the plaintiffs possession, the defendant, even if he were to be a cultivating tenant entitled to the benefits of the Act, cannot gain anything by merely having the forum of adjudication being shifted from the Civil Court to the Revenue court as it is obvious that a Revenue Court cannot grant any injunction. In Sri Venkataramanaswamy Deity V. Vadugammal 1975-1 Mad LJ 431, a Division Bench of this Court, while construing the scope of S.93 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, held that a relief which cannot be granted by the Deputy Commissioner under S.57 can be asked for in a Civil Court and that the Civil Court, while deciding whether the plaintiff is entitled to the relief asked for, can go into and decide incidental questions which may fall within S. 57. The Bench has observed - 'Therefore, the preponderance of authority of our court is that a civil suit is not barred in respect of a relief which cannot be anted by the Deputy Commissioner and at in such a suit, the Civil Court has jurisdiction to decide incidental issues which are within the

jurisdiction of the Deputy Commissioner'.

On the pleadings in the case, there are three possibilities. Firstly, the plaintiff in the suit might have been in possession. Of the suit lands on the date of suit and he may be a cultivating tenant entitled to the benefits of the Tamil Nadu Act XXV of 1955. If this is the real position, an injunction must issue in favour of the plaintiff. Have secondly, the plaintiff might been in possession of the suit lands on the date of suit but he might not be a cultivating tenant entitled to the benefits of the Act. Even in such a case the plaintiff is entitled to an injunction by virtue of his having been in possession of the suit property on the date of suit, as he is entitled to continue in possession until duly evicted by the true owner. The third possibility is the plaintiff might not have been in possession of the suit lands on the date of suit. In such a case whether he is a cultivating tenant entitled, to the benefits of the Act or not, the suit must fail. Therefore, if the plaintiff is in a position to get an order of injunction even without establishing his

status as a cultivating tenant, the suit cannot be thrown out merely because it raises an incidental question as to whether the plaintiff is a cultivating tenant or not. I am, therefore, of the view that the Civil Court's jurisdiction to entertain this suit for injunction cannot be said to have been taken away under S. 16-A of the Tamil Nadu Act X of 1969”.

32. The Hon'ble Full Bench further observed as follows:-

“ We are of the, opinion that the above decision correctly represents the scope and effect of Section 16-A. ”

33. In **Vallaba Ganesar Devasthanma Vs. Anandavadivelu** reported in **1980 (1) MLJ 140**, a Hon'ble Judge of this court held that if in a suit any matter in respect of which the provision is made under the Act, had to be incidentally decided, the jurisdiction of the civil court will not be excluded.

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34. While doing so, this court had observed as follows:-

“To be more specific if any other question, in respect of which the power is conferred on the Deputy Commissioner to decide under Section 63 of the Act, arises incidentally for consideration in a suit, the jurisdiction of the civil court will not be excluded. Notwithstanding Section 108 of the Act, where the dispute relating to a temple is only between two private parties and the Board is not directly concerned, the civil court has jurisdiction to try the suit. ”

35. In **Sayarakshai Kattalai and Arthajama Kattalai attached to Arulmighu Kayaroganaswamy and Neelayadakshi Amman Thirukoil, Nagapattinam vs. R. Radhakrishnan and another** reported in **2001 (3) MLJ 73**, this court had held that it is a settled position of law that a civil suit is not barred in respect of the relief which cannot be granted by the Deputy Commissioner and in fact in such a suit, the civil court has jurisdiction to decide all incidental issues which are within the jurisdiction of the Deputy Commissioner. While doing so, this court had observed as follows:-

“21. It is also equally well-settled so far as the present suit is concerned, the suit claim as to title of a religious endowments has not been excluded nor it is vested with any other authority so as to limit the jurisdiction of Civil Court to decide the question of title and declare any conveyance void and therefore it is obvious that the Civil Court has the jurisdiction to decide such issues.

22. The preponderance of judicial authority is that a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner and that in such a suit the Civil Court has jurisdiction to decide all incidental issues which are within the jurisdiction of the Deputy Commissioner as has been held by a Division Bench of this Court in Sri Venkataramana Swamy Deity v. Vadugammal . The Division Bench in the said pronouncement held thus:

19. In effect, the aim of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 is not to exclude the jurisdiction of the Civil Court, but to facilitate proper administration of

religious institutions by following the procedure prescribed to pursue the remedy before the Deputy commissioner and the Commissioner before filing a suit, under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (XXVI of 1948), in proceedings relating to the grant of patta under Sections 12 to 14, Section 15 provides that the decision of the tribunal regarding claims under Sections 12, 13 and 14 by the landholder is final and not liable to be questioned in any Court of law. The provision excluding the jurisdiction of the Civil Court is more specific. Though Section 64(c) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, provides that any order passed by the Government or any of the authorities under the Act shall, subject only to any appeal or revision provided by or under Act, be final, it had been held that the finality is only in respect of the matters to be determined for the purpose of this Act and that there is no machinery in the Act to determine whether a land in the estate is a ryoti land or a communal land and a decision as to the question of title by the statutory authorities is only an

incidental matter which would not preclude a Civil Court independently enquiring into title in a properly constituted suit. Thus in the special enactments, the jurisdiction of the Special Tribunals under the Act is confined only to the purposes of the Acts. As already pointed out, the procedure prescribed under the Act regarding the matters specified in Section 57 should be followed before the Deputy Commissioner and in the appeal or revision before the Commissioner, before a suit is filed. A relief which cannot be granted by the Deputy Commissioner can be asked for in a Civil Court. If, in deciding whether the plaintiff is entitled to the relief asked for, the Civil Court also has to decide certain issues which may fall within Section 57 of the Act, the Civil Court's jurisdiction is not barred. There is no provision for reference by the Civil Court of a particular issue which is within the scope of Section 57 to the Deputy Commissioner for determination. Equally, the plaintiff who seeks relief from a Civil Court cannot be asked to get adjudication of an incidental question from the

Deputy Commissioner before he filed a suit. Therefore, the preponderance of authority of our Court is that a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner and that in such a suit, the Civil Court has jurisdiction to decide incidental issues which are within the jurisdiction of the Deputy Commissioner. “

36. From the above decisions it is clear that though the question as to whether a particular property or money constituted a specific endowment as defined under Section 6(19) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, when the said question arises in a suit for possession or injunction, a civil court will have the power and jurisdiction to decide the said question dehors the bar created under Section 108 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

37. Adverting to the decisions relied upon by Mr.S.Parthasarathy, learned Senior Counsel appearing for the applicant, the decision of the Hon'ble Supreme Court in ***Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and***

others only lays down the broad proposition of law to the effect that an order passed by a court when the jurisdiction would be *coram non judice* being nullity, the same ordinarily cannot be given effect to. There is no dispute regarding the broad proposition of law stated therein. The Hon'ble Supreme Court however did not consider the question of bar enacted under the particular enactment and the effect of such bar. The jurisdiction of civil court to incidentally decided matters which may be within the exclusive jurisdiction of the authorities constituted under the enactment was not gone into by the Hon'ble Supreme Court. I therefore do not think that the said decision can be relied upon as a precedent to conclude that the judgment of the civil court in case on hand in O.S.No.7518 of 2008 is a nullity.

38. The Division Bench of this Court in ***Thiruvengada Varadachariar alias R.Varadachari Vs. Srinivasa Iyengar*** referred to supra had dealt with a suit filed for recovery of possession of a temple on the ground that the plaintiff and defendants 3 and 4 in the said suit were the hereditary trustees of the said temple. The right of the plaintiff and defendants 3 and 4 as hereditary trustees itself was questioned by the defendants 1 and 2. It was in that backdrop, the

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Division Bench concluded that the suit as framed is not maintainable before the civil Court.

39. In Paragraph 8 of the said judgment, the Division Bench had however held that a incidental issue as to the character of the temple can be gone into in a suit for redemption. While doing so, the Division Bench had observed as follows:-

“8. With great respect to the learned Judge, we are unable to agree with the above view. As already pointed out, the question as to whether a particular institution was a public temple or not did not directly arise for consideration before the learned Chief Justice. It was only incidental to the other disputes arising in a suit for redemption. That was obviously the reason for the Bench, in the very first sentence of its judgment, to agree with the learned Chief Justice holding that the civil court has jurisdiction to decide whether a particular institution is a public temple or not when such a question arises and incidentally to the other disputes.”

40. From the above extract, it is clear that a Division Bench had also recognized the right of the civil court to decide on the character of the institution or an endowment when the same is raised in a suit for larger relief as an incidental question.

41. Equally the Judgment of the Division Bench in *Inspector/ Fit Person H.R. & C.E., Arulmighu Sundaresa Gnaniar Koil Cholakadai Street Dharapuram Vs. Amirthammal and others*, referred to supra relied upon by Mr.S.Parthasarathy also recognized the right or the jurisdiction of the civil court to decide incidental question that may arise before a civil court. While doing so, the Division Bench after referring to *V.L.N.S. Temple Vs. I. Pattabhirami (AIR 1967 SC 781)* has observed as follows:-

“In that case, the suit was for rendition of accounts and it was held that since Chapter VII of the Act does not provide for determining or deciding that dispute, Section 93 is not a bar to such a suit. It was urged on behalf of the appellant that AIR 1967 SC 781 (Cited supra) was a judgment delivered by a two Judge Bench whereas the earlier one was

heard and decided by the three learned Judges and therefore, the earlier one would prevail. A reading of AIR 1967 SC 781 (Cited supra) would show that the learned Judges have considered in detail the effect of the bar of suit in the H.R.& C.E. Act and have held that insofar as the cases where the relief cannot be granted by the authorities constituted under the Act the bar will not operate so as to prevent anyone from approaching the Civil Court. So, this Judgment is in no way contrary to the earlier judgment."

42. As could be seen from the above discussion, even the judgments that are relied upon by the learned Senior Counsel recognise the jurisdiction of a civil court to decide on a dispute which may fall within the exclusive jurisdiction of the authorities constituted under the Hindu Religious and Charitable Endowments Act. If such issue is raised as an incidental question in a suit for a larger relief which cannot be granted by a Deputy Commissioner or Joint Commissioner as the case may be functioning under the said Act.

43. As adverted to earlier, the suit in O.S.No.7518 of 2008 was filed by

the temple itself seeking recovery of possession on the allegation that the defendants therein were the tenants under the temple. In defence, the defendants contended that there was no absolute dedication of the property in favour of the temple and the temple was never the owner of the property.

44. It was also contended that the defendants cannot be construed as tenant under the temple. While deciding the main relief viz., the relief of ejectment sought for by the plaintiff in O.S.No.7518 of 2008, the civil court had to decide as to whether there was an absolute dedication in favour of the temple and the temple was the owner of the property in question. Unless the said question is decided, the civil court could not either grant or deny the main relief in the suit viz., the relief of ejectment. It was under those circumstances, the civil court had to decide the question as to whether there was an absolute dedication of the property in favour of the temple or not as an incidental issue in the suit.

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45. Thus it is clear that the jurisdiction of a civil court to decide an issue as to whether the Silasasanam of the year 1857 constituted absolute

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dedication of the property in favour of the temple thereby making it a specific endowment as defined under Section 6(19) of the Tamil Nadu Hindu Religious and Charitable Endorsements Act or it had created a charge over the property for performance of certain kattalais in the plaintiff temple was not barred or ousted by the provisions of Section 108 of the Hindu Religious and Charitable Endowments Act.

46. It should be pointed out that the present suit is also one for declaration that the suit properties are dedicated in favour of the plaintiff temple and therefore the plaintiff temple is the owner of the suit property. If the argument of Mr.S.Parthasarathy, learned Senior Counsel appearing for the plaintiff is to be accepted, the present suit would also be barred in view of Section 108 of the Hindu Religious and Charitable Endorsements Act.

47. In view of the above settled position of law the only contention of the learned Senior Counsel for the plaintiff has to be rejected and it is accordingly rejected.

48. Adverting to the merits of the case, the suit in O.S.No.7518 of 2008 was filed by the plaintiff seeking to evict the defendants terming them as tenants under the temple. The defendants raised a defence that they were owners of the property and their only obligation was to perform the kattalais in the temple. The said defence was upheld by the civil court on the evidence available in the suit and concluded that there was no dedication of the property in favour of the temple nor that the dedication constituted a specific endowment.

49. The civil court very clearly concluded that the defendants were the owners of the property and they were only obliged to perform the kattalais in the plaintiff temple. Upon such a finding, the suit was dismissed. The plaintiff has no right to recover possession and the appeal against the said judgment also failed and the said findings have become final.

50. The above facts would definitely demonstrate that neither *prima facie* case nor balance of convenience is in favour of the plaintiff, in order to enable the plaintiff to seek and obtain an order of injunction restraining the

defendants from either encumbering or alienating the property.

51. In view of the above conclusion, this application for injunction is **dismissed**. However, in the circumstance there will be no order as to costs.

dsa

Index : Yes/ No

Internet: Yes/ No

Speaking order/ Non-Speaking order

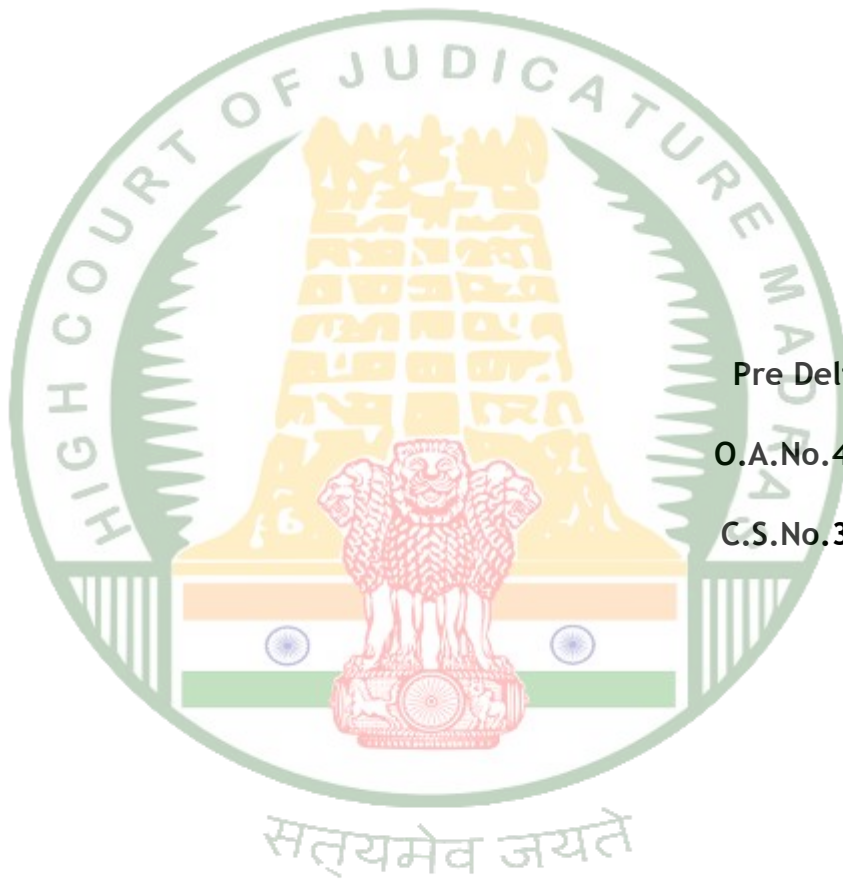
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