

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2019

Delivered on : 06.08.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD)No.4128 of 2017

&

C.M.P.No.19357 of 2017

1.Natesan Poosari

2.N.Nallappan

3.Sengottaiyan

4.S.Krishnamoorthy

5.N.Shanmugam Poosari

...Petitioners

Vs

1.K.M.Sundaramoorthy

2.P.Venkatesh

3.K.P.Thangaraj

4.P.Arunachalam

5.R.Murugan

6.The Commissioner,
Hindu Religious and Charitable Endowments Board,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600034.

- 7.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Namakkal.
 - 8.The Inspector,
Hindu Religious and Charitable Endowments Board,
Rasipuram.
 - 9.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Salem.
 - 10.The Tahsildar,
Thiruchengode,
Namakkal District.
 - 11.The Inspector of Police,
Elachipalayam Police Station,
Thiruchengode Taluk,
Namakkal District.
 - 12.The Secretary,
Paruthipalli Primary Agricultural Co-operative Society,
Paruthipalli,
Thiruchengode Taluk,
Namakkal District.
- ...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 16.08.2017 made in I.A.No.38 of 2016 in O.S.No.164 of 2015 on the file of the learned Additional District Court, Namakkal.

For Petitioners : Mr.V.Srikanth
For Respondents 1 & 2 : Mr.Jothi,
for Mr.M.C.Govindan
For Respondents 3 to 5 : Mr.N.Manokaran

ORDER

The above Civil Revision Petition is filed challenging the dismissal of the application in I.A.No.38 of 2016 filed by the revision petitioners who are defendants 1 to 5 in the suit O.S.No.164 of 2015 on the file of the Additional District Court, Namakkal to declare that the Civil Court did not have the jurisdiction to hear the suit and consequently return the same (வழக்கினை திருப்புமாறு). The brief narration of the facts, particularly the details given in the plaint, is necessary for disposing of the above Civil Revision Petition. The suit O.S.No.164 of 2015 has been instituted by the respondents 1 to 5 herein against the revision petitioners and respondents 6 to 12 herein for the following reliefs:

a)To declare the Paruthipalliar Sri Annamar Swami Thirukovil is a Religious Denomination Temple exclusively under the Administration and Management of "Kongu Nadar Kullam of Paruthipalliar Vagayara situate at a place called Paruthipalli and Ramapuram Village, Thiruchengode Taluk, Namakkal District.

b)To declare the order made by the Deputy Commissioner, HR & CE at Coimbatore, is without jurisdiction null and void in as much as the same is obtained by fraud and collusion.

c)To declare defendants 1 to 5 are not the Hereditary Trustees or Hereditary Poojaris of Paruthipalliar Sri Annamar Swami Thirukovil, Namakkal.

d)To declare only the Kongu Nadar Kullam of Paruthipalliar Vagayara are entitled to administer and maintain the Kuladeivam Temple as a Religious Denomination Temple within the meaning of Article 26 of the Constitution of India.

e)Permanent injunction restraining the defendants 1 to 5 from in any manner exercising any claim or right over the said Temple.

The subject matter of the suit is the following property:

2. The Temples of Annamar, Chinnanan, Periannan @ Ponnar Sankar, Mayavar, Periakandi Amman, Vinayakar, Masuriannan, Vettaimar Swami Koil, Muthumuniappan Swami, Kanniamar etc situate in S.No.31/1 and 2 of Paruthipalli Village, and Ramapuram Village, Thiruchengode Talluk, Namakkal District and their properties movable and immovable.

Particulars of the suit:

3. The suit is filed in a representative capacity to safeguard the rights of worship and the Management and Administration of their Kuladeivam Temple (Family Deity), situate at Thiruchengode, Namakkal. The respondents 1 to 5 herein would

contend that the Temple in question is a Religious Denomination Temple meant exclusively for 1,500 families belonging to the Kongu Nadar Paruthipallaiyar Vagayara at Thiruchengode. The chief Deity is Sri Annamar Swamy.

4. The respondents 1 to 5 herein would contend that this Temple was established nearly 1,000 years ago and the property was purchased by the said 1,500 families through community contributions. The patta in respect of the property stood in the name of the Temple and Kist receipts were issued in the name of one Rama Nadar and electricity connection was taken in the name of his son Veeramani. The Administration of the Temple was being carried on by a Temple Paribalana Committee. They would go on to state that the Temple is specific to their family as there were several unique and distinctive features with reference to the customs surrounding the Temple. Some of the customs have also been recorded in writing and all these details would go to show that the said Temple was a Denomination Temple within

the meaning of Article 26 (a) to (d) of the Constitution of India.

5. They would contend that though originally the Temple was the abode of one deity, viz; Sri Annamar Swamy, by efflux of time many other deities had been added along with the main deity. The Festivals, Utsavams and Poojas were unique to the Temple and the day to day Poojas were conducted by Temple Paribalana Committee and at no point of time the Temple was under the Control of the Hindu Religious & Charitable Endowments Board, hereinafter called the Board.

6. The committees which were taking care of the activities of the Temple was chosen by 1,500 families at their annual congregations and 55 members of the Kaniyachikarargal were elected by the families who in inturn would elect the Temple Paribalana Committee consisting of 15 executives. The Executive committee consists of the following persons:

- a)President
- b)Vice President
- c)General Secretary
- d)Secretary
- e)Joint Secretary
- f)Treasurer; and other
- g)Administrative Committee Members.

7. The 1,500 families are spread all over India and are no longer restricted to Thiruchengode where the Temple is situate. The respondents 1 to 5 would emphatically state that the provisions of Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959 (hereinafter called as the Act), would not be applicable to the Temple, since the Temple neither undergoes departmental assessment nor are contributions to the auditors being made. In this background they came to learn that revision petitioners were setting up a claim of Hereditary Trustee ship and Hereditary Poojari rights, in terms of Section 63 (b) of the Act

and had proclaimed that the Deputy Commissioner HR & CE, Coimbatore, had declared them as the Hereditary Trustees and Hereditary Poojaris by his order in O.A.No.43 of 1974 dated 27.01.1976.

8. It is the case of the respondents 1 to 5 that none of the members of the 1,500 families were made parties and the order has been obtained surreptitiously behind their back. The very entertainment of the application of the revision petitioners by the Deputy Commissioner, HR & CE Department, Coimbatore, was without Jurisdiction and the order was obtained fraudulently. The respondents 1 to 5 would further contend that the 1st revision petitioner, Natesan Poosari had swindled a lot of money during the festival periods and he and his members cannot claim to be a Poojaris.

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9. The respondents 1 to 5 herein had taken a clear stand that the suit was not barred under the provisions of the Act and

further as per the provisions of Section 70 of the Act, the filing of the suit was very much in order. That apart respondents 1 to 5 were not aware about the order passed by the Deputy Commissioner, HR & CE Department, Coimbatore as the same had neither been communicated to them nor were they impleaded by the revision petitioners. It was only when disputes arose between the revision petitioners and respondents 1 to 5 and the other members that they have come into knowledge about this fact and the search was conducted and details culled out under the Right to Information Act, 2005. The respondents 1 to 5 would therefore contend that in view of this rival claim to the Administration and Management of the temple, they had been compelled to approach the Civil Court.

Application for return of plaint in I.A.No.38 of 2016:

10. On entering appearance in the above suit the revision petitioners herein, at the outset took out the application I.A.No.38 of 2016, to return the plaint. In the affidavit filed in

support of the said petition the revision petitioners would contend that the Temple is under the control and administration of the Board for several years and comes within the purview of a definition of Temple as per Section 1(3) of the Act. They would contend that they had filed O.A.No.43 of 1974 along with six others to declare themselves as Hereditary trustees and in keeping with the rules, people of the locality were informed about the said application by beat of tom-tom, affixture in the VAO's office as well as the Panchayat Board, etc.,

11. Thereafter a detailed enquiry was conducted on the application moved by the revision petitioners and orders passed. The revision petitioners would deny the fact that the respondents were unaware about the said proceedings. They would contend that as per the provisions of Section 9 of the Code of Civil Procedure, the Civil Court has the jurisdiction to entertain the suits of all nature except those that are specifically barred under the various Acts and the present suit filed before the Additional

District Court, Namakkal was without jurisdiction and barred as per Section 108 and 111 of the Act.

12. They had further contended that against the order passed in O.A.No.43 of 1974, which is one under Section 63 (b) of the Act, there is an appellate remedy in the form of an appeal to the Commissioner HR & CE under Section 69 (1) and (2). It is only against the order passed under Section 69 (1) and (2) that the suit under Section 70 (1) would lie. They would further contend that the suit filed was clearly barred by the provisions of Sections 108 and 111 of the Act. The revision petitioners would contend that the entire suit is based on false contentions and the respondents 1 to 5 herein were attempting to divert the attention of the Court. Therefore the above application had been filed and the revision petitioners had sought for the return of the suit.

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Counter to the application in I.A.No.38 of 2016:

13. Countering the above application respondents 1 to 5 herein had contended that they had made very exhaustive pleading in the plaint giving the factual and legal reasons for seeking the reliefs. They would further contend that the suit is not expressly or impliedly barred and the provisions of Section 69, 70 and 111 of the Act will not prohibit the filing of the suit. They have stated that there was no provisions available under the Act, relating to the post of Hereditary Poojaris and therefore no order can be passed under the Act. The Temple in question was a Denomination Temple and these Temples come within the purview of Article 26 of the Constitution of India and consequently excludes the Jurisdiction of the Act to such Denomination Temples. The Act does not in entirety apply to a Denomination Temple. The provisions of the Act were never made applicable to the suit Temple.

14. They would further reiterate the fact that allegations of criminal activities have been made against the revision petitioners, not only for the theft of jewellery but also for theft of Temple Idols and therefore they cannot be permitted to continue with their criminal activities in the guise of entering the Temple to administer and manage it. The order of the Deputy Commissioner, HR & CE Department, Coimbatore, has been made behind the back of the respondents 1 to 5 herein and without hearing any of the affected parties. Therefore, it is their contention that this order is not binding upon them. Further, the respondents 1 to 5 would submit that their pre-suit notice dated 06.05.2015 was not responded to by the revision petitioners or any other defendants even after the filing of the suit.

15. Their further contention is that the Act cannot be automatically made applicable to all the Religious Institutions and that certain formalities have to be undergone before bringing the Temple within the purview of the Act. The provisions of Section

107 clearly illustrates that the Act will not affect the right under Article 26 of the Constitution of India. The respondents 1 to 5 therefore sought for dismissal of the application.

16. After the filing of this interlocutory application the defendants had filed a written statement. The defendants have taken a defense that the suit Temple is a public Temple and for several years it has been under the Administrative Control of the Hindu Religious and Charitable Endowments Board (HR & CE Board). The 7th defendant, viz; the Assistant Commissioner, HR & CE Board had also filed their written statement supporting the stand of the revision petitioners. The 7th defendant, besides taking other defenses has also taken a stand that the suit Temple is not a Denomination Temple but is a public Temple.

17. The learned Additional District Judge, Namakkal after hearing the both parties and on perusing the records proceeded to dismiss the application to return the plaint. Challenging the

said order the petitioners are before this Court.

Submissions:

18. Though exhaustive arguments were made on either side they had however submitted their arguments in writing by filing written arguments. The revision petitioners seek to have the plaint returned. The application is not one that has been filed either under the provisions of Order VI Rule 16 or under Order VII Rule 10 or 11 of the Code of Civil Procedure but is filed invoking the provisions of Section 151 of the Code of Civil Procedure and Section 108 and 111 of the Act. It has been time and again held that quoting a wrong provision of law does not render a petition invalid or disentitle the petitioners of their relief and the Court has to consider the relief sought for and the substantive claim made. A reading of the affidavit filed in support of the petition would clearly indicate that the impugned petition is filed seeking return of the plaint O.S.No.164 of 2015 on the file of the Additional District Court, Namakkal on the

following grounds, which were also argued orally by Mr.V.Srikanth appearing for the revision petitioners:

a) Prayers B and C of the suit relate to the orders of the Deputy Commissioner, HR & CE in O.A.No.43 of 1974 declaring the revision petitioners as Hereditary Trustees and Hereditary Poojaris and this order can only be challenged as per the provisions of the Act. The order has been in currency for over 40 years.

b) The suit temple is a Public Religious institution amenable to audit by the HR & CE Board.

c) Section 108 of the Act specifically bars any suit relating to the administration of the religious institution.

d) The prayers B and C are not incidental to prayers A and D.

e) The cause of action for filing the suit is the order obtained by the revision petitioners and the only purpose of the suit is to defeat the right that has accrued to the revision

petitioners.

f) Members of the community had submitted themselves to the jurisdiction of the HR & CE Board by filing an appeal under Section 69 (1) of the Act against the order of the Deputy Commissioner declaring the revision petitioners as Hereditary Trustees and Hereditary Poojaris though the appeal was later withdrawn. The suit in question is filed much later.

The learned counsel for the petitioners would rely on the following Judgements in support of his case:

a) **1980 (1) MLJ 140** – Sri Vallaba Ganesar Devasthanam, Sannadhi Street, Tiruvannamalai, represented by Kailasa Mudaliar and others Vs. A.Anandavadivelu Mudaliar and others.

b) **AIR 2005 SC 2544** – Church of North India Vs. Lavajibhai Ratanjibhai and others

c) **2011 (5) CTC 837** – C.Raghunatha Reddy Vs. S.Rajasekaran.

d) **(2015) 8 MLJ 738** – Principal Secretary, HR & CE Department, Chennai – 34 and others Vs. G.Paramasivam and

others.

19. Mr.N.Jothi, learned counsel arguing on behalf of Mr.C.Govindan for respondents 1 and 2 had submitted extensive oral arguments and has condensed his arguments in the form of a written arguments. His counter to the application moved by the revision petitioners are as follows:

a) The provision of law under which the application has been filed lacks clarity.

b) The impugned petition does not delve on the denominational nature of the suit schedule temple and consequently the revision petitioners have glossed over the maintainability of the suit on the grounds of Article 25 and 26 of the Constitution of India. Both these provisions deal with the rights of a denominational community or a particular sect to have their fundamental right to profess the religious practise of their choice and the manner of worship. The revision petitioners have contended that prayers B and C come within the ambit of the Act

but has however not made any reference to the prayers A, D and E which, according to the respondents 1 to 5, falls within the exclusive domain of the Civil Court.

c) The petitioners solely rely upon Section 69 (b) of the Act, ignoring the other reliefs sought for in the suit and Article 26 of the Constitution of India.

d) The suit is very much maintainable in view of the prayers which are outside the scope of the Act. In fact prayer B and C are also amenable to a Civil suit when the same is raised by a community at large. With reference to the argument regarding the Denominational character of the Temple the learned counsel had relied upon the following Judgements:

a) **AIR 1953 MADRAS 149** – Devaraja Shenoy and others Vs. State of Madras, by Secretary, Legal Department and another.

b) **AIR 1954 SC 282 (7 members Constitution Bench Judgement)** – The Commissioner Hindu Religious Endowments, Madras, Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.

c) **1974 (1) MLJ 215** – T.K.Santhanagopala Chettiar and others Vs. Thimmi M.Seetharama Chettiar and others.

20. He would contend that the plaint cannot be partially rejected and rejection can only be of the whole plaint. In support of his argument that there cannot be partial rejection of the plaint the counsel would rely on the following Judgements:

a) **(1982) 3 SCC 487** – Roop Lal Sathi Vs. Nachhattar Singh Gill.

b) **(1999) 3 SCC 267** – D.Ramachandran Vs. R.V.Janakiraman and others.

c) **2000 AIHC 2569** – Dr. Ravichander Vs. Karunakaran and others.

d) **AIR 2000 Punjab and Haryana 44** – ABN-AMRO Bank Vs. The Punjab Urban Planning and Development Authority.

e) **AIR 2009 DELHI 1** – M/s.Hyundai Motor India Ltd. Vs. M/s.Opal Metal Engineering Pvt. Ltd.

f) **2011-5-L.W.838** – The Uttar Pradesh Cricket Association rep. by its Honorary Secretary, Shri Gyanendar Singh having its Registered Office at 616, Kasmanda Apartments, Lucknow, Uttar Pradesh Vs. The Board of Control of Cricket in India rep. by its Honorary Secretary, Shri.Nirajan Shah, having its Registered Office at No.5, Victoria Hostel Road, Chepauk, Chennai – 600 005 and another.

g) **SLP (C) No.31579 of 2018** – Madhav Prasad Aggarwal and another Vs. Axis Bank Ltd and another.

21. With reference to the arguments that Section 108 would not be a bar to the suit on hand the learned counsel had relied on the following Judgements:

a) **AIR 1967 SC 781** – Sri Vedagiri Lakshmi Narasimha Swami Vs. Induru Pattabhirami Reddi.

b) **1980 (1) MLJ 140** – Sri Vallaba Ganesar Devasthanam, Sannadhi Street, Tiruvannamalai, represented by Kailasa Mudaliar and others Vs. A.Anandavadivelu Mudaliar and others.

c) **(2001) 3 M.L.J. 73** – Sayarakshai Kattalai and Arthajama Kattalai attached to Arulmigu Kayaroganaswamy and Neelayadakshi Amman Thirukoil, Nagapattinam represented by its Executive Officer Vs. R.Radhakrishnan and another.

22. With regard to the argument that the suit filed in a representative capacity is the correct method for seeking declaration with reference to the Denominational nature of the Temple the learned counsel has relied on the following Judgements:

a) **VOL. 65 L.W. 450 (DB)** – Rao Saheb Dr. Ananda Baliga Vs. Srimat Ananteswar Temple, Mangeswar by its Executive Officer, Sri K.P.Kaurath and others

b) **VOL 88 L.W. 348 (DB)** – N.K.S.Sankarakumara Nadar and others Vs. The Assistant Commissioner for Hindu Religious and Charitable Endowments, Tirunelveli Town.

c) **AIR 1980 Madras 166** – A.Palaniandi Pillai Vs. The Commissioner Hindu Religious and Charitable and Endowments,

Madras.

d) ***VOL. 88 L.W. 825*** – R.Chinna Boyan and others Vs. The Commissioner for Hindu Religious and Charitable Endowments, Madras and another.

e) ***VOL. 93 L.W. 12 (DB)*** - A.Palaniandi Pillai Vs. The Commissioner Hindu Religious and Charitable and Endowments, Madras.

f) ***AIR 1997 Madras 96*** – The State of Tamil Nadu and another Vs. P.S.R.Senbagamurthy Nadar and others.

g) ***2008 (2) MLJ 829*** – P.K.Duraisami Vs. The Commissioner, H.R. & C.E. Administration Department, Chennai and another.

23. Countering the arguments of the revision petitioners that the only cause of action was the order of declaration given by the Deputy Commissioner, HR & CE, the learned counsel would submit that the plaint as a whole had to be taken into account. The cause of action contains the bundle of facts and the

entirety would constitute the cause of action for filing the suit. The various causes of action which are narrated in the plaint is ultimately condensed into the cause of action paragraph. This alone does not constitute the cause of action as this paragraph only contains the highlights. In support of his argument he has relied on the following Judgements:

- a) **(1985) 3 SCC 217** – State of Rajasthan and others Vs. M/s.Swaika Properties and another
- b) **(2000) 7 SCC 640** – Navinchandra N.Majithia Vs. State of Maharastra and others.
- c) **(2004) 3 SCC 277** – Kunjan Nair Sivaraman Nair Vs. Narayanan Nair and others.
- d) **(2004) 8 SCC 100** – Y.Abraham Ajith and others Vs. Inspector of Police, Chennai and another.
- e) **(2004) 3 SCC 137** – Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others.

Discussion:

24. From hearing the arguments of the counsel and on perusing the records and the plethora of the Judgements quoted on either side the following points emerge for consideration:

(a) Whether the jurisdiction of the Civil Court is ousted since the subject Temple is alleged to be a public religious institution?

(b) Whether the Civil Court continues to have jurisdiction as the suit temple is a denomination one?

(c) Whether Section 108 of the HR & CE Act is a bar to the suit?

(d) Whether there can be a partial rejection of the plaint?

25. As regards the first point for consideration, the revision petitioners would contend that the Temple is a public religious institution since all Temples within the territory of Tamilnadu are deemed to be a public religious institution **unless the contrary is proved.** On the other hand the respondents 1 to 5 would

argue that the Temple is exclusive to their community and is over 2000 years old and that they have an age old tradition in so far as the Administration and Management of the Temple is concerned. As stated by the revision petitioners the contrary has to be proved in order to establish that the temple is not a public religious institution and therefore the respondents 1 to 5/plaintiffs should be given an opportunity to let in evidence to prove their case that the temple in question belongs exclusively to their community.

26. The second point regarding the denominational character of the suit temple has been the main basis on which the impugned petition has been challenged by respondents 1 to 5. A perusal of the pleadings would indicate that the suit temple has customs and traditions unique and peculiar to the said temple and further festivals are also of a distinct character. The plaint would highlight that these traditions dates back to a very long time.

27. In the Judgement reported in **AIR 1954 SC 282 (1) – The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**, the Hon'ble Supreme Court after extracting the definition of the word “denomination” from the Oxford Dictionary i.e., *“a collection of individuals classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name”* has proceeded to observe as follows:

“However, under Act 26(d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to violation of the right

guaranteed under Clause (d) of Article 26”.

This Judgement has been followed by this Court in the Judgement reported in **88 L.W. 825 – Chinna Boyan and others Vs. The Commissioner, HR & CE, Madras**. Further the 1st relief sought for in the suit is to declare the temple as a denomination temple.

28. A Division Bench of this Court in the Judgement reported in **1974 (1) MLJ 215 – T.K.Santhanagopala Chettiar and others Vs. Thimmi M.Seetharama Chettiar and others**, has observed as follows in Paragraph No.2:

"It is not disputed before us that if the substantial question to be decided in the suit is as to whether the temple is a denominational one or not, the jurisdiction of Civil Court could not be ousted under the provisions of the Act. Under Section 63 of the Act though the Deputy Commissioner is given the exclusive jurisdiction to decide as to whether any institution is a religious institution or not, the question whether a temple is a denominational temple coming

under Article 26 of the Constitution is certainly not within his jurisdiction. That is a question which has necessarily to be decided by the Civil Court."

29. In the Judgement reported in **88 L.W. 348 - N.K.S.Sankarakumara Nadar and others Vs. The Assistant Commissioner, HR & CE, Tirunelveli**, which was a suit filed in a representative capacity a Division Bench of this Court has held as follows:

"The provision corresponding to [Section 108](#) was [Section 73](#) (4), which provided:

"No suit or other legal proceeding claiming any relief provided in this Act, in respect of such administration or management shall be instituted except under and in conformity with the provisions of this Act."

There also the plaintiff proceeded on the footing that a particular temple belonged to the Gowd Saraswat Brahmin community in South Kanara. The Board contended that the suit was barred under the provisions of [Sections 84](#) and [73](#) aforesaid. This contention was upheld by the trial Court. The plaintiff preferred the appeal. The appeal was allowed on this point. The learned

Judges extracted the definition of 'temple' which Was similar to the definition in the present Act, and observed:

"The argument is, if a question arises whether a temple is owned by the Hindu community as a whole or whether it is owned only by a section of that community, the dispute would then be which can aptly be described as raising the question whether the institution is a temple or not within the meaning of [Section 84](#) (1) of the Act. In our opinion, if this section is so construed, it would be placing a strained construction upon it and we think that the language of the section does not warrant such an interpretation. The section is intended to give jurisdiction to the Board to decide a dispute, when a dispute is raised, whether a particular institution is a math or temple as defined' by the Act; and not a dispute which admits the institution to be a temple-but that the temple is owned by a particular religious denomination such as the Gowd Saraswat Brahmin community and not by the Hindu Community as a whole. [Section 84](#) (1) (a) of the Act, therefore, in our opinion, does not cover the dispute raised in : the present suit, and, therefore, the prohibition against the exercise of the jurisdiction by the civil Court under [Section 84](#) (1) does not come into-operation."

This decision has been followed' by Kailasam and N. S. Ramaswami, JJ. in Santhanagopala Chetti V. Seetharama Chetti. There also the suit was essentially for

a declaration that the temple was a denominational one, though the plaint was not happily worded, and the learned Judges held that such a suit was not hit by [Section 63](#) of the Act."

In the backdrop of the above judgements the irresistible conclusion is that the suit is prima facie maintainable.

30. The third point for consideration is whether Section 108 is a bar to the suit. In the Judgement reported in **1980 (1) MLJ 140 – Sri Vallaba Ganesar Devasthanam, Sannadhi Street, Thiruvannamalai, represented by 1) Kailasa Mudaliar and others Vs. A. Anandavadivelu Mudaliar and others**, this Court has held as follows:

"11. The principle on which the jurisdiction of the civil Court is excluded under [Section 108](#) of the Act are now well-settled. If the dispute raised in the suit relates to the administration or management of a religious institution or any other matter for the determination of which a provision has been made in the Act the bar under [Section 108](#) of the Act will be attracted. On the other hand if the question arising for adjudication falls outside the scope

and ambit of [Section 108](#) of the Act, then the civil Court will have jurisdiction to entertain the suit and the bar of exclusion of jurisdiction provided for under [Section 108](#) cannot be invoked.

12. It is equally settled that if in a suit any matter in respect of which a provision is made under the Act had to be incidentally decided, the jurisdiction of the civil Court will not be excluded. 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."

Therefore considering the fact that the 1st relief that is sought for is to declare the suit temple as a religious denominational one the provisions of Section 108 of the Act would not operate as a bar.

31. The fourth point which has been raised is regarding the

rejection of the plaint in part. Even according to the arguments advanced by the revision petitioner they would contend that it is relief B and C that is barred by the provisions of the Act. Therefore by necessary implication the other reliefs are maintainable. The Hon'ble Supreme Court in the Judgement reported in **(1999) 3 SCC 267 – D.Ramachandran Vs. R.V.Janakiraman and others**, has observed as follows:

9. Under Order VI, Rule 16, the Court is enabled to strike out a pleading (a) which may be unnecessary, scandalous, frivolous or vexatious or (b) which may tend to prejudice embarrass or delay the fair trial of the suit; or (c) which is otherwise an abuse of the process of the Court. We have already pointed out that it is not the case of the first respondent that the pleading in the election petition is vitiated by all or any one of the aforesaid defects mentioned in the rule. Hence striking out parts of the pleading in this case was not at all justified.

10. On the other hand, Rule 11 of Order VII enjoins the Court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this rule. The application filed by the first respondent in O.A. No. 36/97 is on the

footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order VII, Rule 11 (a), learned senior counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of O.VII R.11(a) C.P.C. can not therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under O.VII R.11 (a) C.P.C., the Court can not dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the rule, there can not be a partial rejection of the plaint or petition."

32. The Delhi High Court in the Judgement reported in **AIR 2009 DELHI 1 – M/s.Hyundai Motor India Ltd. Vs. M/s.Opal Metal Engineering Pvt. Ltd**, has held as follows in Paragraph No.17:

"17.It may be emphasized that the object of the said provisions is to keep out irresponsible law suits. In a way it is to be used as a handy tool by the Courts to segregate the grain from the chaff, on a purely prima facie examination of the statements made in the plaint. Hence, the effect of Section 35 of the Stamp Act shall have to be examined after the suit is put to trial to decide if the relief sought by the plaintiff in prayer 'c' can be granted. The said plea directed against the relief sought in prayer 'c' in itself is however insufficient to oust the plaintiff at this stage, insofar as reliefs sought in prayers 'a' and 'b' are concerned, as the said reliefs cannot be held to be consequential to the relief sought in prayer 'c'. Hence, even if it is held that no relief can be granted to the plaintiff under prayer 'c' in view of the bar of Section 35 of the Stamp Act, the suit cannot be rejected for the reason that only a part of the plaint cannot be rejected and it is obligatory for the Court to reject the plaint as a whole, while examining the same under Order 7 Rule, C.P.C."

This view has been reiterated in a recent Judgement of the

Hon'ble Supreme Court in **SLP (C) No. 31579 of 2018 -**

Madhav Prasad Aggarwal and another Vs. Axis Bank Ltd and another. Therefore it is evident that there cannot be a rejection of part of the plaint.

33. From the above discussions it is therefore clear that the suit filed by the respondents 1 to 5 cannot be rejected at the threshold without going to trial where either parties have to prove the contentions raised by them. In the circumstances I do not find any infirmity in the order passed by the learned Additional District Judge, Namakkal in I.A.No.38 of 2016 in O.S.No.164 of 2015.

In the result the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is also closed.

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

P.T.ASHA, J.,

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To
The Additional District Judge,
Namakkal.



Pre-Delivery order in
C.R.P.(PD)No.4128 of 2017 &
C.M.P.No.19357 of 2017

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