

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.164 of 2007

Chennai Kumara Kottam

Sree Siva Subramaniaswami
Sevarthigal Sangam,
Rep. by its Secretary,
No.105, NSC Bose Road,
Chennai - 600 079.

... Appellant/Plaintiff

Versus

1.Arulmigu Kumara Kottam

Sri Siva Subramaniaswami Temple,
Rep. by its Executive Officer,
No.105, NSC Bose Road,
Chennai - 600 709.

2.The Deputy Commissioner,

HR & CE (Administration) Dept.,
Nungambakkam High Road,
Madras - 600 034.

3.The Commissioner,

HR & CE (Administration) Dept.,
Nungambakkam,
Madras - 600 034.

... Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 04.05.2006 made in A.S.No.485 of 2004 passed by the Additional District Judge, Fast Track V, Chennai, reversing the well considered judgment and decree passed by the trial Court made in O.S.No.4091 of 1996, on the file of V Assistant Judge, City Civil Court, Chennai, dated 20.04.2004.

For Appellant : Mr.R.Thiagarajan

For Respondents: Mr.G.Sugumaran for R1

Mr.N.Manikandan

Government Advocate (CS) for R2 & R3

JUDGMENT

This appeal is directed against the judgment and decree of the Additional District Judge, Fast Track Court V, Chennai, passed in A.S.No.485 of 2004, reversing the judgment and decree of the V Assistant Judge, City Civil Court made in O.S.No.4091 of 1996.

2. The plaintiff in O.S.No.4091 of 1996 is the appellant herein. The said suit was filed for declaration declaring that the property viz., Chennai Kumarakottam Sri Sivasubramania Swami Kalyana Mandapam built on the terrace of the Vakana Godown and the office premises of Arulmigu Kumara Kottam Sri Sivasubramania Swami Temple and the kitchen in the Ground Floor belongs to the plaintiff and for consequential permanent injunction restraining the first defendant, his men and servants from interfering with the plaintiff's peaceful possession and enjoyment of the said Kalyana Mandapam.

3. The plaintiff would claim that Arulmigu Kumarakottam Sri Sivasubramania Swami Temple situated at No.105, N.S.C.Bose Road, Madras is a denominational temple established and owned by the Vaniga Vysia Community of Madras. The administration of the Temple was governed by a Scheme framed by the High Court in C.S.No.397 of 1919. The Scheme was modified in C.S.No.9 of 1944 and by the City Civil Court, Chennai in O.P.Nos.162 of 1954 and 248 of 1954. Subsequently, the Deputy Commissioner, HR & CE (Admin) Department, Madras framed fresh scheme in his proceedings, dated 18.04.1966 in O.A.No.69 of 1963.

4. The plaintiff has further stated that with an object of conducting and performing various Tiruppanis and Upanayams in the said Temple, and for other objects, a Society was formed in the name of "Chennai Kumarakottam Sree Sivasubramania Swami Sevarthigal Sangam" on 26.07.1968. In the meeting, a committee, consisting of 5 members, was formed to carry out the object. A decision was taken to build a Kalyana Mandapam over the office premises of the Temple and Vagana Kidangu. It is the case of the plaintiff that the members of the Sangam stipulated that the Kalyana Mandapam so put up would belong to the Sangam and not to the Temple, it was not intended to be a gift to the Temple and the possession and management of the Kalyana Mandapam would always be with the Sangam to which, the Trustees of the Temple and the Executive Officer have agreed. Pursuant to the said

agreement, collections were made from its members and the members of the community, a Kalyana Mandapam was constructed. A few other devotees have also come forward to contribute their mite and the Sangam accepted such voluntary donations and the construction was completed in the year 1973 and was formerly opened on 11.07.1973.

5. It is further stated that the Sangam was registered as Society under the Societies Registration Act on 19.06.1974. Since then, the property became the property of the plaintiff's Society and the Society is the owner of the Kalyana Mandapam and is in possession and management of the same on its own right. The plaintiff is paying the property tax, since 1974-75 and maintaining proper accounts for income and expenditure in respect of the Kalyana Mandapam. While so, the Deputy Commissioner (HR & CE), Madras in M.P.No.1 of 1978, initiated proceedings to hand over the Kalyana Mandapam to the Temple on the ground that the said Kalyana Mandapam was the specific endowment within the meaning of Section 6 (19) of the Hindu Religious and Charitable Endowments Department (in short "the Act"). A certificate was issued to hand over possession, by his proceedings, dated 27.04.1984. The order was challenged by the plaintiff in R.P.No.40 of 1984 before the Commissioner, HR & CE (Admin), Madras and the same was dismissed on 31.12.1984. In pursuance of the same, a summon was issued by the VIIIth Metropolitan Magistrate, G.T. Chennai, in M.P.No.436 of 1985, directing the petitioner to appear for enquiry.

6. The plaintiff further stated that in O.S.No.7839 of 1984, a declaration of the right of the plaintiff was sought for. The said suit was dismissed on 29.08.1986 by the 17th Assistant city Civil Judge, Chennai. The plaintiff preferred an appeal in A.S.No.365 of 1986, but during the pendency of the appeal, the suit in O.S.No.7839 of 1984 was permitted to be withdrawn with liberty to file fresh suit on the same cause of action on 22.04.1987. It is the case of the plaintiff that the Kalyana Mandapam was constructed by the plaintiff's Sangam out of the contributions made by its members of Vaniga Vysia Community only with the consent and leave and license granted by the then Trustees and Executive Officer of the Temple. The plaintiff is in possession, control and management of the same in its own right and the Executive Officer of the Temple has no right to interfere with the possession and right of the management of the Kalyana Mandapam.

7. The suit was resisted by the first defendant by filing a written statement denying and disputing the case of the plaintiff. It is stated that in view of the orders passed by the Deputy Commissioner (HR & CE), Madras in M.P.No.1 of 1978, dated

27.04.1984 and the Commissioner, (HR & CE), in R.P.No.40 of 1984, the suit is not maintainable. The order passed in R.P.No.40 of 1984 can be revised only by the Government of Tamil Nadu in terms of Section 114 of the Act. Since a specific remedy has been provided under the Act, the plaintiff cannot invoke the jurisdiction of the civil Court. The suit is barred under Section 108 of the Act. It is further stated that the Kalyana Mandapam is part of the Temple and if the plaintiff claims the same to be not a specific endowment or a property of the Temple, the only remedy open to the plaintiff is to file an application under Section 63(d) of the Act. On those grounds, the first defendant prayed for dismissal of the suit.

8. The third defendant filed a detailed written statement on the same lines of the written statement filed by the first defendant.

9. On the above pleadings, the trial Court framed necessary issues. On the side of the plaintiff, one Durai Chettiar was examined as P.W.1 and Ashok was examined as P.W.2 and Exs.A1 to A22 were marked. On the side of the defendants, one Mohan Kumar, the Executive Officer of the first defendant-Temple was examined as D.W.1 and Exs.B1 & B2 have been marked.

10. The trial Court, after analyzing the oral and documentary evidence, held that the plaintiff is entitled for the decree sought for in the suit. Aggrieved over the judgment and decree, the matter was taken up by the Temple before the Additional District & Sessions Judge, Fast Track Court-V, Chennai in A.S.No.485 of 2004. The appellate Judge, allowed the appeal. Challenging the decision of the appellate Court, the present appeal has been filed.

11. Mr.R.Thiagarajan, learned counsel appearing for the appellant would urge that the suit in O.S.No.4091 of 1996 was filed for declaration and for permanent injunction. The trial Court framed necessary issues and after considering the oral and documentary evidence adduced by the parties, decreed the suit. It is the submission of the learned counsel that additional issues were framed and decided by the first appellate Court without providing opportunity to the appellant. He further added that the appellate Court came to a wrong conclusion that the present suit filed by the appellant is barred by resjudicata. According to the learned counsel, the previous suit in O.S.No.7839 of 1984 was permitted to be withdrawn by the appellate Court in C.M.P.No.861 of 1987 with liberty. The proceedings in O.S.No.7839 of 1984 were mentioned in the plaint, but it was not disputed by the defendants in their written statement and hence, the finding that the suit is barred by resjudicata is factually incorrect.

12. The learned counsel for the appellant further argued that the bar contained in Section 108 of the Act is not applicable to the suit and the payment of property tax receipts in the name of the plaintiff and the tax paid thereupon would show that the plaintiff is the owner of the Kalyana Mandapam. The income from Kalyana Mandapam is utilized only for pooja and other expenses. Since the appellate Court did not afford opportunity to the parties to lead evidence on additional issues, the learned counsel submitted that the matter has to be remitted back to the appellate Court. The following decisions are relied upon in support of his contentions:-

(i) Lakshminarasimhachari vs. Sri Agastheeswaraswamivaru [AIR 1960 SC 622]

(ii) Palanivelayutham Pillai & Others Vs. Ramachandran & Others [2001 (1) TNLJ (SC) 57]

(iii) Subramaniam Chettiar Vs. S.A.Kattalai [1965 (1) MLJ 354]

(iv) Kashiram Yadav V. Oriental Fire & General Insurance Co., [AIR 1989 SC 2002]

(v) Himayam Engineers and Builders Vs. S.Ravichandran [2014 (4) CTC 862]

13. Per contra Mr.G.Sugumaran, learned counsel for the first respondent would argue that the suit has been filed to declare the Kalyana Mandapam as the property of the plaintiff-Society. The trial Court, on misreading of evidence, decreed the suit and in the grounds of appeal, the first respondent framed grounds raising questions of law with regard to maintainability of the suit in view of the bar contained in Section 108 of the Act and the order passed under 101 of the Act. He would add that the averments made in the plaint would show that this is the case of specific endowment under definition Section 6(19) of the Act and the dispute over the character that the Kalyana Mandapam, whether it is the property of the Society or the Temple can be decided only by the Authorities under Section 63(c) and (d) of the Act.

14. It is further submitted that the plaintiff, after giving specific undertaking to the first defendant under Ex.B1 to hand over possession to the Temple after construction, now they are estopped to take a stand that the Kalyana Mandapam belongs to the Society. According to the learned counsel, no additional issues were framed by the first appellate Court and a decision has been given on the points raised in the grounds of appeal and hence, the judgment cited by the learned counsel for the appellant has no relevance to the facts of the present case and prayed for dismissal of the appeal.

15. Mr.N.Manikandan, learned Government Advocate (CS) appearing for the respondents 2 and 3 made submissions in support of the judgment of the appellate Court.

16. I have heard the rival submissions and perused the materials available on record.

17. In the instant case, the appellant had approached the civil Court by filing the present suit on the specific plea that in the meeting convened on 26.07.1968, the committee consisting of 5 members had taken a decision to construct the Kalyana Mandapam and it was not intended to be gifted in favour of the Temple and the Management of the Kalyana Mandapam would always be with the appellant-Sangam. According to the respondents, only after giving an undertaking that the appellant-Sangam would hand over possession of the Kalyana Mandapam to the Temple, the appellant-Sangam was permitted to construct the Kalyana Mandapam. On the side of the appellant, no documentary evidence was produced to substantiate the said contention. On the other hand, Ex.B1 produced by the respondents would categorically establish that only with a specific undertaking that the possession of the Kalyana Mandapam would be handed over to the Temple, the appellant got permission to construct the Kalyana Mandapam. It is not the case of the appellant that Ex.B1 is a forged document. So, it is an endowment given to the Temple. It is to be further noted that admittedly the Kalyana Mandapam has been constructed on the terrace of Temple, so it is a part of the Temple. But, it is unfortunate that the suit came to be instituted claiming title to the property. It has been established that the appellant / plaintiff has not approached the Court with clean hands. In my considered opinion, on this sole ground, the plaintiff has to be non-suited.

18. It is relevant to note that the appellant has filed the suit, seeking declaration to declare that the Kalyana Mandapam is the property of the appellant and sought for consequential permanent injunction. It is not disputed that the Deputy Commissioner (HR & CE), Madras, by an order dated 27.04.1984 issued a certificate in favour of the Temple to recover the said Kalyana Mandapam under Section 101 of the Act and the same was confirmed by the Commissioner (HR & CE), in R.P.No.40 of 1984. The proceedings were initiated treating it as specific endowment defined under Section 6(19) of the Act. It is the case of the respondents that if the appellant is aggrieved by the order of the Commissioner (HR & CE), it has to prefer a revision before the Government under Section 114 of the Act.

19. It is next argued that in the case of dispute over the endowment, those issues have to be adjudicated by the competent authorities under the provisions of HR & CE Act and in view of the specific bar contained in under Section 108 of the Act, the present suit is not maintainable.

20. Sections 6 (17), 6 (19), 63 (c) & (d) and 108 of the Act are extracted hereunder for ready reference:-

(ii) Section 6 (17) :-

"Religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution;"

(ii) Section 6 (19) :-

"specific endowment" means any property or money endowed for the performance of any specific service or charity in a math or temple or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to clause (17);"

(iii) Section 63 [Joint Commissioner or Deputy Commissioner] to decide certain disputes and matters.

" Subject to the rights of suit or appeal hereinafter provided, [the Joint Commissioner or the Deputy Commissioner, as the case may be], shall have power to inquire into and decide the following disputes and matters:-

....

(c) whether any property or money is a religious endowment;

(d) whether any property or money is a specific endowment ;

...."

(iv) 69. Appeal to the Commissioner.-

"(1) Any person aggrieved by any order passed by 1 [the Joint Commissioner or the Deputy Commissioner, as the case may be], under any of the foregoing sections of this chapter, may within sixty days from the date of the publication of the order or of the receipt thereof by him as the case may be, appeal to the

Commissioner and the Commissioner may pass such order thereon as he thinks fit.

(2) Any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings as to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be]. Any such order passed by the Commissioner in respect of an order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-section (1).

(3) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding section or in which no suit has been instituted in the Court within the time specified in sub-section (1) of section 70 may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in section 66."

(v) Section 108 - 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."

21. Sub Sections 17 and 19 of Section 6 define "religious endowment" and "specific endowment". Under Section 63 (c) and (d) of the Act, all the disputes with regard to the character, whether it is a religious endowment or specific endowment would come within the purview of the Deputy Commissioner or Joint Commissioner. Any person aggrieved by the order of the Deputy Commissioner may prefer an appeal before the Commissioner under Section 69 of the Act. The appellant, without exhausting the alternative remedies provided under the Act, has instituted the suit and in view of the bar contained under Section 108 of the Act, the appellant has no locus standi to maintain the suit.

Therefore, I find force in the contention of the learned counsel for the first respondent.

22. The Hon'ble Supreme Court in the case of Union of India Vs. Vasavi Co-operative Housing Society Ltd., [(2014) 2 SCC 269], has held that in a suit for declaration of title, burden is on the plaintiff to establish its case, irrespective of whether the defendants prove their case or not. It has been further held that in the absence of establishment of its own title, the plaintiff must be non-suited even if title set up by defendants is found against them. The weakness of the case set up by the defendants cannot be a ground to grant relief to the plaintiff.

23. It is true that the appellant has marked Exs.A7 to A17 such as property tax receipts, water and sewage tax payment receipts, electricity card, records and receipts for booking of Kalyana Mandapam to prove their administration and management of the Kalyana Mandapam. However, those documents would not establish the title of the plaintiff. It is seen from the records that the trial Court on misreading of facts and law, granted decree in favour of the appellant. In the considered opinion of this Court, the plaintiff has not discharged the burden of proof and the appellate Court has rightly reversed the judgment of the trial Court.

24. Insofar as framing of additional issues by the appellate Court, on perusal of the written statement and the grounds of appeal, it is evident that from the inception, the respondents have resisted the suit on the ground of maintainability, contending that there is a specific bar under Section 108 of the Act and the orders passed by the Deputy Commissioner and the Commissioner are binding on the parties. Since the parties have understood the issues and gave evidence in support of their case, I find no merit in the contention of the learned counsel for the appellant. Further, the decisions cited by the learned counsel for the appellant are factually distinguishable and have no application to the case on hand.

25. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Judge, Fast Track V,
Chennai.

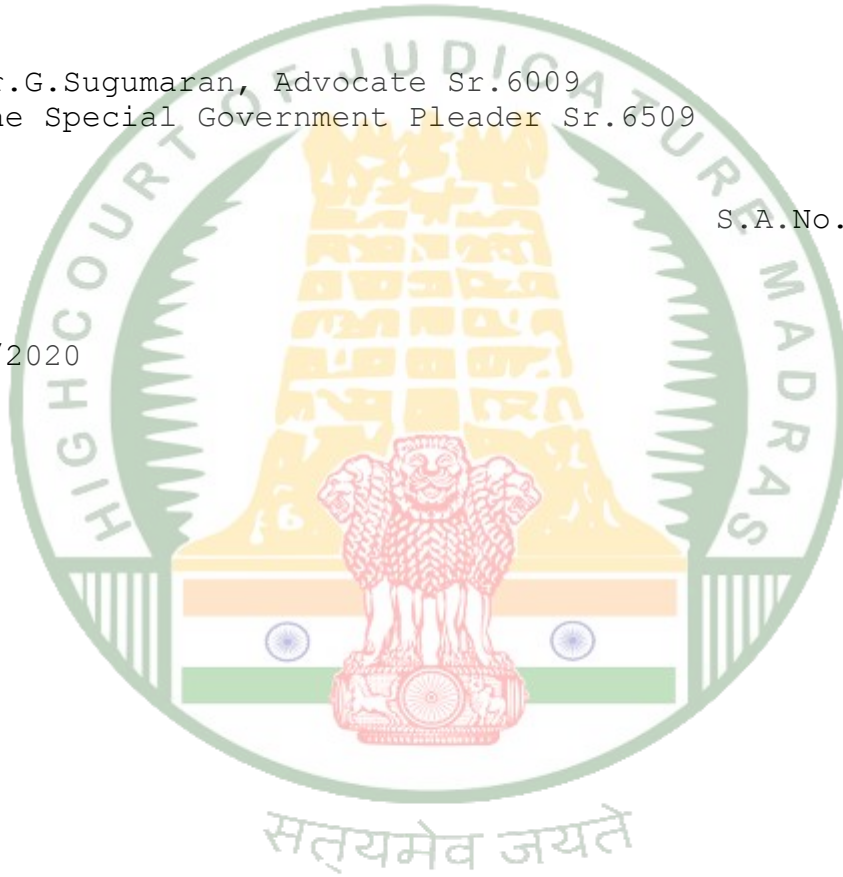
2.The V Assistant Judge, City Civil Court,
Chennai.

3.The Section Officer,
VR Section, High Court of Madras.

+1cc to Mr.G.Sugumaran, Advocate Sr.6009
+1cc to the Special Government Pleader Sr.6509

S.A.No.164 of 2007

srg 17/09/2020



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