



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2020

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THE HONOURABLE **MR. JUSTICE G.R. SWAMINATHAN**

S.A. (MD) No.1086 of 2006

and

M.P. (MD) No.1 of 2013 and C.M.P. (MD) No.8533 of 2019

Sri Saranga Desikendra Swamigal Mutt,
Rep.by Sri La Sri Neelakanta Saranga Desikendra Swamigal,
Head Post Office Road,
Kumbakonam.

... Appellant/Appellant/Defendant

Vs.

The Commissioner,
Hindu Religious and Charitable
Endowment (Administration Department)
Nungambakkam, Chennai - 600 034.

... Respondent

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the Judgement and Decree of the learned Additional Subordinate Judge, Kumbakonam dated 13.02.2006 in A.S.No.103 of 2005 confirming the Judgment and Decree of the learned Principal District Munsif, Kumbakonam, dated 30.06.2005 in O.S.No.580 of 2004 and to dismiss the said suit.

For Appellant	:	Mr.V.Meenakshi Sundaram for Mr.T.M.Hariharan
For Respondent	:	Mr.K.Chellapandiyan, Additional Advocate General, Assisted by Mr.Lakshmi Prasanna, Government Advocate

For proposed Impleading Respondents : Mr.V.Jeyaprakash
for K.Joseph Xavier Raj



JUDGMENT

Heard the learned counsel appearing for the Appellant and the learned Additional Advocate General assisted by the learned Government Advocate, appearing for the respondent. I also heard learned counsel appearing for the proposed impleading respondents.

2.Sri Saranga Desikendra Swamigal Math is a Math as defined under Section 6(13) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The administration of the Math is governed by a scheme decree. Alleging that the Head of the Math had indulged in irregularities by alienating the Math properties, the Commissioner of Hindu Religious and Charitable Endowment Department, Chennai filed a suit in O.S. No.114 of 1992 on the file of the Sub Court, Kumbakonam for removing the defendant from the Headship of the Math. The said suit was filed in 1991. During the relevant time, Sri Santha Deva Saranga Desikendra Swamigal was the Head of the Math. It appears that an ex-parte decree was passed by the Sub Court on 21.12.1999. The suit had a chequered history. The suit was transferred to the file of Principal District Munsif, Kumbakonam and re-numbered as O.S.No.580 of 2004. In the meantime, the earlier Head of the Math passed away and Sri-La-Sri Neelakanda Saranga Desikendra Swamigal came on record in his place. The suit came to be decreed as prayed for on 30.06.2005. Questioning the same, the defendant Math represented by Sri-La-Sri Neelakanda Saranga Desikendra Swamigal filed A.S.No.103 of 2005 before the Court of Additional Sub Court, Kumbakonam. By judgment and decree dated 13.02.2006, the first appeal came to be dismissed. Challenging the same, this second appeal was filed.

3.The second appeal was admitted on 30.08.2007 and the following substantial questions of law were framed:-

1.Whether the suit as framed without impleading the Peetathipathi as a party to the suit is maintainable?

2.Whether the suit is maintainable after the previous Peetathipathi against whom charges were levelled has attained Siddhi and whether the present Peethapathi can be sought to be removed on the strength of the allegations against the former Peetathipathi?

3.Whether the appellant has not established that it is a denominational Institution and whether the respondent can seek to exercise control over the administration and management of the appellant?

4.Whether the suit tried and disposed of by the learned District Munsif is sustainable in lieu of Section



6(7)(ii) r/w Section 59 of the Hindu Religious and Charitable Endowments Act?

4. When the matter was taken up for final disposal, I felt that this second appeal can be disposed of by answering the fourth substantial question of law framed at the time of admission.

5. It cannot be disputed that the Commissioner of the Hindu Religious and Charitable Endowment Department has right to file a statutory suit for removal of the Head of the Math under Section 59 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. Section 59 states that the Commissioner may institute a suit in the Court to obtain a decree for removing the trustee of the Math on certain grounds. Now, the question arises as regards the meaning of the expression "Court". Section 6(7) of the Act defines that "Court" means in relation to a Math situated outside Chennai, the Sub Court having jurisdiction over the area, in which the Math is situated or if there is no such Court, the District Court having such jurisdiction.

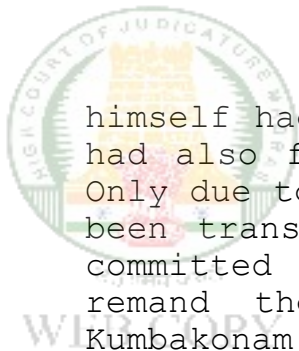
6. In the case on hand, the Commissioner had rightly instituted the suit before the Sub Court, Kumbakonam. But then, I fail to understand as to how it got transferred to District Munsif Court, Kumbakonam. Of course, the learned Additional Advocate General appearing for the respondents would point out that the defendant having taken part in the proceedings without any demur cannot raise this contention in this second appeal.

7. I cannot accept the aforesaid argument. It is well settled that consent of the parties cannot confer jurisdiction on the Court. The Statute very clearly states that Sub Court will have the jurisdiction to try the suit. If there is no Sub Court, the District Court will assume jurisdiction. By no stretch of imagination the Court of District Munsif could have arrogated to itself the power to try the instant suit. Therefore, the judgement and decree passed by the trial Court is patently null and void.

8. The First Appellate Court should have intervened at that stage itself and remanded the matter. But then, because of the failure of the First Appellate Court to notice the relevant statutory provisions, the matter has been kept pending all these years.

9. I answer the aforesaid fourth substantial question of law in favour of the appellant. In this view of the matter, judgment and decree passed by the Court below stands set aside and the second appeal is allowed.

10. In the normal course of events, I could have left it at that, but the case on hand pertains to integrity of land holdings of



himself had alienated the properties in question. The Commissioner had also filed the suit only before the jurisdictional Sub Court. Only due to mistake on the part of the Court concerned, the suit had been transferred to the Court of District Munsif. For the fault committed by the Court, the parties cannot suffer. Therefore, I remand the matter to the file of the Principal Sub Court, Kumbakonam.

11.I notice that the cause title had been improperly drafted. The prayer is for removing the pontiff from the Headship of the Math. But the pontiff has not been impleaded as a defendant. Not only the Math, but the concerned pontiff should be specifically arrayed as defendant.

12.Since the suit was filed way-back in the year 1991 and we are now in 2020, further developments might have taken place. Therefore, the respondent/plaintiff is at liberty to file an amendment petition also. I make it clear that the impleaded defendant would be at liberty to file an independent written statement raising all the defences open to him.

13.Since following the remand, though a new number will be assigned, the fact remains that it is a 30 years old suit. Therefore, the Trial Court will definitely bestow its attention to expedite the disposal of the suit. The second appeal is allowed, accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

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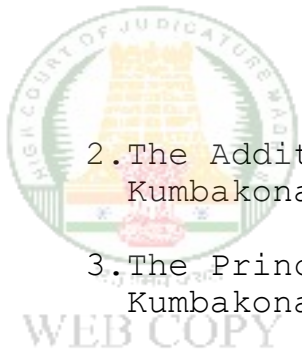
Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Sub Judge, Kumbakonam.



2.The Additional Subordinate Judge,
Kumbakonam, Thanjavur District.

3.The Principal District Munsif,
Kumbakonam, Thanjavur District.

4.The Commissioner,
Hindu Religious and Charitable Endowment
(Administration Department)
Nungambakkam, Chennai - 600 034.

5.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1cc to M/s.G.Cenil, Advocate sr.17645

S.A. (MD)No.1086 of 2006

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NR (15/10/2020) 5P : 8C