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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

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THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.Nos.1446 & 1447 of 2008

and

M.P.Nos.1 & 1 of 2008 and CMP No.5418 of 2021

S.A.No.1446 of 2008

1. K.G. Kuppusamy
2. Devarajan
3. Murugesan
4. Raja
5. Kanthamani

...Appellants

Vs.

Ramakrishnan

... Respondent

S.A.No.1447 of 2008

1. K.G. Kuppusamy
2. Devarajan
3. Murugesan
4. Raja
5. Kanthamani

...Appellants

Vs.

1. R.Ramakrishnan
2. The Executive Officer
A/m. Kottaimariamman Kovil
Omalur Taluk
Salem District.
3. Sarojini
4. Haribaskar
5. Gayathri

... Respondents

Prayer in S.A. No.1446 of 2008: Second Appeal filed under Section 100 of CPC, against the decree and judgment dated 26.02.2007 passed in A.S. No.52 of 2006, on the file of the Sub Court, Mettur, upholding the decree and judgment dated 31.01.2005 passed in O.S. No.22 of 1996, on the file of the District Munsif cum Judicial Magistrate, Omalur (O.S. No.310 of 1988 of District Munsif Court, Mettur).

Prayer in S.A. No.1447 of 2008: Second Appeal filed under Section 100 of CPC, against the decree and judgment dated 26.02.2007 passed in A.S. No.53 of 2006, on the file of the Sub Court, Mettur, upholding the decree and judgment dated 31.01.2005 passed in O.S. No.13 of 1996, on the file of the District Munsif cum Judicial Magistrate, Omalur.



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In S.A. No.1446 of 2008

For A1 : Mr. Sudarshan

For Respondent : Mr. V. Sekar

In S.A. No.1447 of 2008

For A1 : Mr. Sudarshan

For R1, R3 to R5 : Mr. V. Sekar

COMMON JUDGMENT

The unsuccessful plaintiffs before both the courts below have filed the present second appeals.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and in appropriate places, their ranking in the present appeals would also be indicated.

3. The plaintiffs filed two suits, one in O.S. No.22 of 1996 on the file of District Munsif cum Judicial Magistrate, Omalur, for a declaration that the notice dated 07.04.1988 issued by the defendant in the said suit is illegal and null and void and for a consequential relief of Permanent Injunction restraining the defendant from taking any action in respect of the said notice and another suit in O.S.No.13 of 1996 on the file of the District Munsif cum Judicial Magistrate, Omalur, for the relief of declaration that they have right over the administration of Arulmigu Kottai Mariamman temple and Pidariamman temple, situate at Omalur and Neikarapatty village respectively in their capacity as hereditary archakas and for a relief of permanent injunction restraining the defendants from interfering with the plaintiffs' right to administer and perform poojas in the said temples.

4. The brief averments of the plaint in both the suits are as follows:

The plaintiffs are the hereditary archakas of the suit temples and are also managing the affairs of the same. The plaintiffs' ancestors were the hereditary trustees of the suit temples and certain lands were given to them as inam lands for the maintenance of the temples. According to the plaintiffs, the defendants 1,2 and 4 to 6, without any right over the suit temples, are attempting to interfere with the administration of the temples, claiming themselves to be the



hereditary trustees. It is the further contention of the plaintiffs that the father of the defendants 1 and 2 fraudulently obtained an order from the third defendant, namely, the Executive Officer, Arulmigu Kottai Mariamman Koil, Omalur, Salem District, as hereditary trustee of the suit temples, based on which, the defendant in O.S.No.13/96 had issued a notice dated 07.04.1988 to the plaintiffs seeking for their explanation for certain actions and inactions in the administration of the temples. According to the plaintiffs, the said show-cause notice is illegal and null and void.

5. The suit was resisted by the defendants 1,2,4,5 and 6 on the following grounds.

- 1) The forefathers of the defendants 1,2,4,5 and 6 were the hereditary trustees of the suit temples and the first defendant's father Rajagopala Iyer was appointed as a hereditary trustee on 18.01.1955 in O.A.No.189/54 on the file of the Deputy Commissioner, H.R. & C.E Department, Coimbatore.
- 2) Subsequently, the defendants 1,2,4,5 & 6 were appointed as hereditary trustees by the Assistant Commissioner, H.R & C.E Department, Salem, in Ne.Mu. 7445/82 dated 13.07.1982 after the death of the said Rajagopala Iyer, the father of the first and the second defendant, and thus the first defendant and the defendants 4 to 6 are presently the trustees of the suit temples, who alone have the right to manage the affairs of the suit temples.
- 3) The plaintiffs are not the hereditary trustees or archakas as claimed by them and the genealogical list appended with the plaint is not true.
- 4) The plaintiffs have no right to seek the relief of declaration and injunction as prayed for by them in both the suits.
- 5) The Civil court has no jurisdiction to decide the matter in issue in view of the express bar contained in Section 108 of the H.R. & C.E Act 22 of 1959.

The defendants, therefore, prayed for dismissal of the suit. No separate written statement was filed by the Executive Officer, Arulmigu Kottai Mariamman Kovil, though they were represented by a counsel before both the courts below.

6. In the written statement filed in O.S. No.22/96, the following contentions were raised by the defendant (first defendant in O.S.No.13 of 1996)

- 1) During the pendency of O.S. No.624/86 (transferred to District Munsif cum Judicial Magistrate Court, Omalur, and renumbered as



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O.S. No.13/1996), the plaintiffs filed an application for a temporary injunction in I.A. No.1427/86 and the said petition was allowed by the trial court. Subsequently, the defendant and his brother (second defendant in O.S. No.624/86), filed an application before the subordinate Judge, Sankari, in C.M.A. No.45/87 and the said petition was allowed, vacating the order of injunction passed in I.A. No.1427/86 on 25.02.1988. The revision filed by the plaintiffs before the High Court, Madras, was also dismissed.

- 2) The defendant conducted several festivals after passing of the order in CMA No.45/87 during the month of March 1988 i.e. between 02.03.1988 and 12.03.1988 with the permission of the Deputy Commissioner, H.R. & C.E Department, Salem and also with the assistance of the Special Festival Officer deputed by the Deputy Commissioner of H.R. & C.E Department, Salem, and therefore, it is false to contend that the plaintiffs are performing poojas and conducting other festivals of the temples since February 1988.
- 3) It is not true that notice dated 07.04.1988 to the plaintiffs contained baseless and imaginary charges. On the contrary, 9 charges contained in the notice were all backed by documentary evidence.
- 4) The poojaries are the servants under the control of the hereditary trustee, the first defendant, and he has got every jurisdiction under the provisions of Section 56 of the H.R. & C.E Act 22 of 1959 to control and take disciplinary action against the erring servants.
- 5) On account of the illegal acts committed by the plaintiffs, the defendant was constrained to issue the show cause notice dated 07.04.1988.
- 6) The plaintiffs also admitted that one of the idols in the temple was lost on account of their carelessness and negligence.
- 7) All the charges leveled against the plaintiffs were submitted to the Deputy Commissioner, H.R. & C.E Department, Salem for taking further action and hence the suit is liable to be dismissed.

7. On the basis of the above pleadings, the trial court framed the following issues in O.S. No.22/96..

- 1) Whether the notice dated 07.04.1988 issued by the defendant is valid and binding on the plaintiffs?



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- 2) Whether the plaintiffs 3 to 7 can maintain the suit?
- 3) Whether the trial court has got the jurisdiction to maintain the suit?
- 4) Whether the plaintiffs are entitled to the reliefs as prayed for?
- 5) To what relief the plaintiffs are entitled?

The following are the issues framed in O.S. No.13/96.

- 1) Whether the genealogy table filed by the plaintiff is true and correct?
- 2) Whether the plaintiffs are hereditary trustees and managing the suit temple and performing poojas as hereditary archakas?
- 3) Whether the defendants 1,2 and defendants 4 to 6 are the hereditary trustees as per order in O.A. No.189/59 dated 17.02.82 by the Joint Commissioner H.R. & C.E. Department and the order in Ne.Mu.No.7445/82 B1 dated 17.07.82 of the Assistant Commissioner H.R. & C.E.?
- 4) Whether the plaintiffs are prevented from seeking the relief after the order in M.P. No.8/83 issued by the Joint Commissioner H.R. & C.E. Department, Coimbatore?
- 5) Whether the trial court has got jurisdiction to decide the suit in view of the order passed by the Deputy Commissioner in O.A.189/59 dated 17.2.82 and the order in Ne.Mu.No.7445/82 dated 17.7.82 by the Assistant Commissioner H.R. & C.E., Salem?
- 6) Whether the suit is maintainable in the trial court in view of the H.R. & C.E. Act?
- 7) Whether the plaintiffs are entitled to the relief as claimed?
- 8) To what relief the plaintiffs are entitled to?

Both O.S. No.13/96 and 22/96 were tried simultaneously and the documents marked in O.S. No.13/96 were also marked in O.S. No.22/96 by substituting the certified copies of the same. After full contest, the learned District Munsif cum Judicial Magistrate, Omalur, dismissed both the suits and the first appellate court also upheld the findings of the learned District Munsif cum Judicial Magistrate, Omalur.

8. Aggrieved over the decree and judgment of the courts below, these Second Appeals are filed by the appellants/plaintiffs.

9. Notice of motion was ordered to the respondents and after several adjournments, both the second appeals were taken up today for final hearing. In the present appeals the following substantial questions of law are mentioned in the memorandum of appeals.



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- 1) Whether the courts below are right in dismissing the suit when the appellants' rights have been recognised under Ex.A1 and A2?
- 2) Whether the courts below are right in holding that the alleged admission in Ex.B27 would estop the appellants from claiming hereditary trusteeship?
- 3) Whether the courts below are right in rejecting the claim of the appellants on the basis of Ex.B28 when the same has not decided any rights of other parties?
- 4) Whether the courts below are right in declaring the show cause notice dated 07.04.1988 as legal and valid in considering the oral evidence of D.W.1 alone?

10. Heard Mr. Sudarshan, learned counsel appearing for the appellants and Mr.V.Sekar, learned counsel appearing for the respondents 1 and 3 to 5.

11. The specific contention of the plaintiffs is that they are the hereditary trustees of Arulmigu Kottai Mariamman temple and Pidariamman temple, situate at Omalur and Neikarapatty village. In order to establish the same, the plaintiffs mainly rely on the certified copy of the inam register Ex.A1, which shows that the lands in Survey Nos. 17, 24 and 63 of Omalur village were allotted in favour of one Devanna Gounder, Mohamburi Pandaram, Kuppa Gounder and Venkatraman. The plaintiffs contend that the aforementioned persons in Ex.A1 are their forefathers and that they had been clearly mentioned as archakas of Arulmigu Kottai Mariamman and Pedariamman temples in Omalur and Neikarapatti and hence, they have got every right to administer the temples as hereditary trustees.

12. Both the courts below had concurrently held that the plaintiffs did not adduce acceptable evidence to show that the persons mentioned in Ex.A1 are their forefathers or that they are the hereditary trustees of the suit temples.

13. Both the courts below had further held that one Marappan and Kuppusamy (father of the first plaintiff and father of the second plaintiff respectively) filed a petition before the Deputy Commissioner, H.R. & C.E Department, praying to remove the first defendant and his father Rajagopala Iyer as hereditary trustees of the suit temples and that the said petition in M.P. No.8/83 was dismissed on 30.06.1987 after enquiry as is seen from Ex.B33. Therefore, it is clear that the father of the first plaintiff and father of the second plaintiff had admitted that the first defendant and his father late Rajagopala Iyer were the hereditary trustees of the temples. It is also seen from Hundial Registers Ex.B1 and Ex.B2 that the defendants 1 and 2 and their father were



at the helm of affairs of the temples as hereditary trustees. Apart from this, one Ponnaiya Gounder had filed a suit in O.S. No.50/39 before the District Munsif, Sankari, against the grand father of the first defendant. A copy of the plaint in O.S. No.50/39 had been marked as Ex.B16. In Ex.B16, the first defendant's grand father was mentioned as a hereditary trustee of the suit temples. Ex.B18 is a copy of the decree and judgment passed in the said suit. Apart from the abovesaid documents, the defendants filed Ex.B5 to Ex.B14, which are various lease deeds of the years 1942 to 1971, executed by the forefathers of the first defendant in their capacity as hereditary trustees of the temples. Furthermore, the Assistant Commissioner H.R. & C.E Department, vide his order dated 25.06.1973 (Ex.B34), had given a right to late Rajagopala Iyer to auction temple lands and on the basis of the said orders, late Rajagopala Iyer had executed a sale deed dated 20.10.1973 in favour of one Chinnappa Gounder. A copy of the said sale deed is marked as Ex.B35. Thereafter, the first defendant had executed lease deeds Ex.B40 to Ex.B42 to various persons in his capacity as a hereditary trustee of the suit temples. The first defendant had also sent a reply for the audit report Ex.B45 to the authorities concerned. It is further seen from the order dated 12.08.1991 of the Deputy Commissioner, H.R. & C.E Department, Salem (Ex.B52), that the first defendant is the hereditary trustee of the temples. The plaintiffs who have filed the suit for a declaration and permanent injunction have not proved their case by adducing acceptable evidence to show that they are the hereditary trustees of the temples and on the contrary, the overwhelming evidence adduced on the side of the respondents would go to show that the forefathers of the first respondent were the hereditary trustees of the suit temples and the first respondent is presently the hereditary trustee of the temple. The H.R. & C.E department did not dispute the documents adduced on the side of the respondents.

14. Mr.Sudarshan, learned counsel appearing for the appellants contended that the plaintiffs were not aware of the various orders passed by the H.R. & C.E. Department. He would further contend that both the courts below had failed to advert their attention to Ex.B28, which does not decide the rights of the parties. He would also contend that mere admission made by the father of the first plaintiff and the father of the second plaintiff that the first defendant and his father late Rajagopala Iyer were the hereditary trustees of the suit temples would not take away the rights of the plaintiffs. He placed reliance upon the decision in A.Krishnaswami Raja vs.Krishna Raja reported in 1966 79 LW 672 and contended that the jurisdiction of the Deputy Commissioner under Section 57(b) is confined to a decision whether a trustee holds or held office as a hereditary trustee and that he is not competent to go into the further question as to which of the competing claimants is a hereditary trustee or



whether both are joint hereditary trustees. His further contention is that the matter in issue in the present suit was not covered by Section 57 of the Act and has to be decided only by a separate suit. Reliance is also placed upon the decision in the Commissioner, H.R. and C.E. (Admn.) Department, Nungambakkam, Madras v. Senthamarai Kannan (Died) and Others reported in 2002 2 LW 695, wherein in paragraph 13(1), it has been held thus:

"13.1. In Babu Gurukkal v. Commissioner for H.R. & C.E. Board, (1964)1 MLJ. 384, wherein Hon'ble Justice K.Veerarawami, as he then was, held as under:

"Small temples in South India often have only poojaris who by long custom or usage look after the affairs of the temples where they serve as gurukkals; they function in a dual capacity, namely Poojari cum Trustee. Such a combination of offices is not necessarily opposed to public policy or contrary to law. In the case of such small temples, there is a presumption that the Poojari himself is the hereditary Trustee and there is nothing illegal in the hereditary Trusteeship and Poojariship being combined in the same person in such small temples. When the documentary evidence including the Inam Register shows that for more than three generations the poojariship cum Trusteeship in a temple was in the same family and descended from father to son and there is no evidence to show that this was not so or could not be so, the presumption is all the greater, and it must be held that the members of the family are hereditary Trustees of the temple."

His specific contention is that the plaintiffs are the poojaris by long custom or usage and they are looking after the affairs of the temples.

15. Per contra Mr.V.Sekar, learned counsel appearing for the respondents 1 and 3 to 5 relied on the following decisions

- 1) The Principal Secretary, H.R. & C.E Department, Chennai & others vs. G. Paramasivam & others reported in CDJ 2015 MHC 7366
- 2) The Executive Officer, Arulmigu Pandimuneeswar Thirukovil, Madurai vs. P. Seethalakshmi reported in CDJ 2017 MHC 3536

and contended that

- a) In view of the bar provided under Section 108 of the H.R. & C.E. Act, the Civil suit is not maintainable.
- b) If at all the plaintiffs have any right to claim the administration or management of the suit temples, the same can be done only by



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approaching the competent authority under the Act.

- c) A poojari is a servant of the temple and falls within the meaning of Section 55 of the H.R. & C.E. Act and if any servant of the temple is aggrieved by the administrative decision, the appropriate remedy is provided under the Act and when there is such a provision under the Act to determine or decide a dispute, a civil suit shall not be maintained.

16. At the outset, it may be observed that the plaintiffs who have filed the suit seeking for a declarative decree that they are the hereditary trustees of the suit temples should prove their case by adducing acceptable evidence. In the instant case, no evidence was adduced by the plaintiffs to show that they are the hereditary trustees. Both the courts below had analysed the evidence on record in a threadbare manner and dismissed both the suits filed by the plaintiffs. As already observed, the father of the first plaintiff and the father of the second plaintiff had admitted that the first defendant and late Rajagopala Iyer (father of the first defendant) were the hereditary trustees of the suit temples and the learned counsel for the appellants had now taken a new plea that small temples in south India often have only poojaris, who by long custom or usage look after the affairs of the temples where they serve as gurukkals. Such a plea was not specifically taken in their plaint. His contention is that the petition in Ex.B32 was dismissed by H.R. & C.E. officials only for non prosecution as is seen from Ex.B33 and therefore, the same would not confer the respondent with any right over the suit temples. The father of the first plaintiff and father of the second plaintiff admittedly did not file any appeal/revision against the orders passed by the Deputy Commissioner, H.R. & C.E. department. However, the fact remains that even the father of the first plaintiff and the father of the second plaintiff admitted that the first defendant and his father late Rajagopala Iyer were the hereditary trustees of the suit temples. Both the courts below had concurrently held, of course, based on the evidence adduced by both the parties that the plaintiffs are not the hereditary trustees of the suit temples. Cogent reasons have also been given by both the courts below for arriving at such a conclusion.

17. As far as the maintainability of the suit is concerned, while the trial court held that both the suits are barred under Section 108 of the Act, the first appellate court held that since the dispute relates to the suit temples between the two private parties and that the H.R. & C.E. department is not directly concerned in the issue, the civil court is not barred in view of the express provision contained in Section 108 of the H.R. & C.E. Act. It is appropriate to extract Section 108 of the H.R. & C.E. Act.



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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.

A reading of the above provision shows that no suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for which the provision is made under the Act, is barred under Section 108. Section 108 of H.R. & C.E. Act has two limbs. The first relates to the administration or management of a religious institution and the second relates to any other matter or dispute for the determination of which, a provision is made in the Act. Section 63 of the Act empowers the Joint Commissioner or Deputy Commissioner to decide certain disputes and matters. They are

- a) whether an institution is a religious institution;
- b) whether a trustee holds or held office as a hereditary trustee;
- c) whether any property or money is a religious endowment.
- d) whether any property or money is a specific endowment.
- e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution ; and what the established usage of a religious institution is in regard to any other matter.
- f) whether any institution or endowment is wholly or partly of a religious or secular character; and whether any property or money has been given wholly or partly for religious or secular uses ; and
- g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses.

Therefore, Section 63 of the Act empowers the Joint Commissioner or the Deputy Commissioner to enquire into and decide the dispute whether a trustee holds or held office as



a hereditary trustee.

In Dhulabhai etc., vs. State of Madhya Pradesh reported in AIR 1969 SC 78, a constitution Bench of the Supreme Court considered the question of bar of jurisdiction of Civil Courts, with reference to various statutes and laid down certain principles in paragraph 35. The relevant portion is extracted hereunder:

"35. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:-

(1) Where the statute gives a finality to the orders of the special Tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

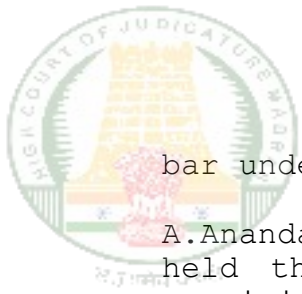
(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

.. .. .

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

18. In a decision in S. Rangaya Gounder vs. Karuppa Naicker reported in 1971 (1) MLJ 358, it was held that when the substantial dispute between the parties is as to which of them are the persons entitled to be in management and when the dispute centres around the question as to which of the rival claimants are entitled to celebrate the annual festival, it would not fall within the ambit of Section 63 and hence the



bar under Section 108 would not apply.

In Sri Vallaba Ganesar Devasthanam vs. A.Anandavadivelu Mudaliar reported in 1980 (I) MLJ 140, it was held 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.

In Inspector/Fit Person, HR&CE, Arulmighu Sundaresa Gnanianar Koil, Dharapuram vs. Amirthammal reported in 2003 (1) MLJ 435, a Division Bench of this Court referred to two decisions of the Supreme Court in State of Madras vs. Kunnakudi Melamatam alias Annathana Matam reported AIR 1965 SC 1570 and in Sri Vedagiri Lakshmi Narasimha Swami vs. Induru Pattabhirami Reddi reported in AIR 1967 SC 78 and held that a suit for a declaration that the property is not a public temple, would fall under Section 63(a) and that it was not an incidental question and therefore, the dispute should be adjudicated only by the competent authority in the first instance.

19. In the decision in the Executive Officer, Arulmigu Pandimuneeswarar Thirukovil, Madurai, vs. P. Seethalakshmi reported in CDJ 2017 MHC 3536 relied on by the learned counsel for the respondents 1,3,4 and 5, it has been held thus

"11. The principles 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."

Therefore, the above decision makes it clear that if the dispute is one for the determination of which, a provision has been made in the Act, then the civil Court's jurisdiction is ousted. But if a question for the determination of which, a provision has been made in the Act arises only incidentally for consideration in a civil suit, then the civil court's jurisdiction is not ousted.

20. Keeping the above principles in mind, we have to look into the facts of the present second appeals. The prayer in suit No. O.S.No.13/96 is for a declaration of the right of the plaintiffs to administer the temples in their capacity as hereditary trustees and for a consequential relief of permanent injunction. Therefore, the main issue that arose for consideration in the suit was whether the plaintiffs are



the hereditary trustees of the temples and it cannot be said that the question whether the plaintiffs are the hereditary trustees of the temples arose incidentally to the main issue involved in the suit. The case pleaded by the plaintiffs and the relief sought for both depended entirely upon the answer to the question whether they are the hereditary trustees of the suit temples. Since the said question constitute the very life line of the case, the same cannot be said to be incidental or an ancillary issue. It is also clear from the pleadings, the issues framed and the evidence let in that the question whether the plaintiffs are the hereditary trustees is the substantial issue that arise for consideration and such an issue falls within the ambit of Section 63(b) of the Act. Therefore, the trial court was right in concluding that the jurisdiction of the civil court is ousted in view of the provisions of Section 108 of the H.R. & C.E. Act.

21. However, both the courts below, on merits, had held that the plaintiffs have not established their right over the suit temples as hereditary trustees. The evidence adduced on both sides have been analysed in the proper perspective and this court does not find any reason to interfere with the findings recorded by both the courts below. It is also pertinent to point out that in O.S. No.13/96, the plaintiffs have not even pleaded that they are the hereditary trustees of the suit temples. On the other hand, they have averred that they are the hereditary archakas. Archakas are the servants under the control of the hereditary trustees and therefore, the first defendant has every right to take action against the servants. It is also pertinent to point out that the plaintiffs did not produce a copy of the said notice dated 07.04.1988, though they have sought for a declaration that the said notice is null and void. Therefore, in view of the abovesaid reasons, I hold that no substantial question of law is involved in the present appeals.

22. In the result,

- 1) The second appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.
- 2) The decree and judgment passed by both the courts below are upheld with costs.

Sd/-
Deputy Registrar (CS)

//True copy//

Sub Assistant Registrar



To

1. The Sub Court, Mettur.

2. The District Munsif cum Judicial Magistrate,
Omalur.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.V. Sekar, Advocate SR.No.43992

+1cc to Mr.S.Subramanian, Advocate SR.No.43707

S.A.Nos.1446 & 1447 of 2008

VSN II (CO)
GMY (09/11/2021)