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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	31.03.2021
Pronounced on	07.04.2021

CORAM

THE HON'BLE Ms.JUSTICE R.N.MANJULA

S.A.No.408 of 2010
and
MP.No.1 of 2010

1. Assistant Commissioner,
Hindu Religious & Charitable Endowments Dept.,
Erode.
 2. The Fit person,
Shandiga Devi Amman Thirukkivil,
Palayakottai, Kangeyam Taluk and who is
the Executive Officer of Arulmighu
Subramaniaswami Thirukkivil,
Sivanmalai.
- ... Appellants/Defendants

..Vs..

Rajkumar Manradiyar ... Respondent/Plaintiff

PRAYER :

The Second Appeal filed under Section 100 of C.P.C., against the Judgement and Decree dated 23.05.2008 made in A.S.No.18 of 2006 on the file of the Fast Track Court No.3, Dharapuram (Additional District and Sessions Court) insofar as confirming the Judgement and Decree dated 22.09.2004 made in O.S.No.97 of 2003 on the file of the District Munsif Court at Kangeyam and praying to set aside the same.

For Appellants : Mr.N.Manikandan
Government Advocate

For Respondent : Mr.Sai Prasad
for M/s.Sai Raaj Associates



JUDGEMENT

(Heard through Video Conferencing)

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This Second Appeal has been filed against the Judgement and Decree dated 23.05.2008 passed in A.S.No.18 of 2006 on the file of the Fast Track Court No.3, Dharapuram (Additional District and Sessions Court) insofar as confirming the Judgement and Decree dated 22.09.2004 passed in O.S.No.97 of 2003 on the file of the District Munsif Court at Kangeyam and praying to set aside the same.

2. The Appellants are the defendants.

3. The plaintiff and his forefathers have been worshiping Shandiga Devi Amman idol kept inside a small room of their palace. It is the favorite deity of the plaintiff and his forefathers. For more than 200 years, the idol is kept inside a room in the palace. It is for the sole darshan and worship of the family members of Sarkarai Mandaradiar and no outsider had access to the said room where the idol is kept. There is no temple for the said idol. Even the place where the idol is kept is called as a temple, that is only for the sole benefit and darshan of Mandaradiar's family. There is no Pragaram, Hundiyaal and it has no properties. So it does not come under the control of Endowment Department or under the purview of the provisions of Madras Hindu Religious and Charitable Endowment Act, 22 of 1959. The plaintiff's family and their forefathers are well reputed and respectable in Tamil Nadu. All of a sudden, the plaintiff received the suit proceedings in Na.Ka.No.2987/99/A6 dated 03.04.2003 from the first defendant. It is stated in the proceedings that the Executive Officer of Arulmigu Subramania Swami Thirukkivil, Sivanmalai has been appointed as the fit person for Shandiga Devi Amman Thirukkivil and the plaintiff has been directed to handover charge to the fit person. The authorities exercising jurisdiction under the said Act, have no authority to interfere with the alleged temple and its worship and management by the plaintiff. The first defendant has no jurisdiction to appoint any fit person. It seems that there are some malafide intention on the part of the defendants and it was issued due to political pressure. Notice under Section 80 C.P.C. is not necessary since the suit is against the Endowment Board. The plaintiff filed a suit to declare that the order of appointment of 1st defendant in his proceedings in Na.Ka.No.2987/99/A6 dated 03.04.2003 appointing the 2nd defendant as the fit person of the suit temple is null and void and for permanent injunction.



The written statement

4. The suit is barred under Section 108 of HR&CE Act. The suit temple is a public temple and only because of that, an extent of 20.93 Acres was as Inam in the name of the temple. The idol is not a private temple of the plaintiff and it is a public temple. The plaintiff's ancestor by name Sarkarai Mandaradiar, has applied patta for 20.93 Acres and the settlement Tahsildar has granted patta on 04.10.1967 in favour of the temple. So the plaintiff is estopped from claiming any private right in the temple. So the temple is a village public temple. The plaintiff ought to have filed an application before the Hindu Endowment Authorities as per Sections 63A and 69 of HR&CE Act. The lands belonged to temple has been shown as excess lands under the Urban Land Ceiling Act by making use of the political influence of the plaintiff and the Hindu Religious Endowment has objected the same on 25.05.1999. The defendants have the right to take hold of the temple in order to ensure proper pujas and other management of the temple. There is no cause of action. Hence the suit has to be dismissed.

5. During the trial, on the side of the plaintiff, 2 witnesses were examined as P.W.1 & P.W.2 and Exs.A1 to A5 were marked. On the side of the defendants, one witness was examined as D.W.1 and Exs.B1 to B3 were marked. The Commissioner's report and plan were marked as Exs.C1 & C2.

6. At the conclusion of the trial, the Trial Judge has decreed the suit as prayed for. Aggrieved over that, the defendants have filed the first appeal and the First Appellate Court has also confirmed the Judgment of the Trial Court by dismissing the first appeal. Aggrieved over that, this second appeal has been filed and the second appeal has been admitted on the following substantial question of law:-

1. Whether the Courts below have committed an error in holding that the suit is not barred by Section 108 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959 wherein provisions have been made in Section 63 for the resolution of the question 'whether the Institution is a religious institution or not?'

7. The learned Government Pleader appearing for the respondents submitted that the suit is barred under Section 108 of the H.R.&C.E. Act and the question whether the suit temple is a religious institution or not has to be decided only by the Appropriate Authority as per Section 63 of the Act. And that



the respondent/plaintiff has also filed an application under Section 63 of the Act for the same prayer, but the Courts below did not make any discussion on that. In the name of the idol, an extent of 20.93 Acres has been already settled and a patta was also given and hence the deity is a public temple and the plaintiff has no right to claim this as a private temple and so the suit proceedings issued under Section 49 of the Act, is valid. On the side of the appellants, the judgments reported in the following citations were relied upon:-

S.No.	Name of the parties	Citation particulars
1.	The Commissioner, H.R&C.E and ors Vs. Sri.Viswanathaswamy Idol & Ors	2012-1-L.W. 483
2.	Inspector/Fit Person, H.R&C.E Vs. Amirthammal & Ors.	2003-1-LW 681 = 2003(1) MLJ 435
3.	The Executive Officer Vs. Srivan Satagopa & Ors.	1989-1-LW 361 = 1989(2) MLJ 54
4.	Yogendra Nath Naskar Vs. Commissioner of Income Tax	1969(1) SCC 555
5.	Union of India (UOI) & Ors. Vs. Vasavi Co-op Housing Society Ltd. & Ors.	2014(2) SCC 269
6.	Lakhana Nayak & Ors. Vs. Basudev Swamy & Ors.	AIR 1991 Ori 33

8. The learned counsel for the respondent submitted that the idol is very small and kept in one of the rooms of the palace of the respondent/plaintiff and it is for the worship for the family members and that the public never had any access or darshan. The said property measuring 20.93 Acres was the ancestral property of the plaintiff's family and it was settled in the name of the deity and later it was surrendered when the urban land ceiling Act came into force. The Authorities under the HR&CE Act has no authority to appoint a fit person for the deity worshiped by the respondents family privately and the HR&CE Act cannot be applied and hence the findings of the Court below are correct and sustainable.

9. This suit has been filed by the respondent/plaintiff, in view of the action taken by 1st appellant/1st defendant by appointing 2nd appellant/2nd defendant as a fit person for an alleged temple by name Shandiga Devi Amman Thirukkivil by issuing Ex.A1 (proceeding) dated 03.04.2003. It is claimed by the plaintiff that there is no temple called Shandiga Devi Amman temple. And all that they have at their place is a small idol



for their own worship. It is claimed by the appellants that as per Section 63 of the HR&CE Act, any dispute and matters with regard to whether an Institution is a religious institution or not has to be decided by the appropriate authority under the said Act and not by a Civil Court. For the sake of convenience, the definition of religious institution and temple as defined under Sections 6(18) and 6(20) have been extracted hereunder:-

"6[(18) "religious institution" means a math, temple or specific endowment] and includes,-

- (i) a samadhi or brindhavan; or
- (ii) any other institution established or maintained for a religious purpose.

Explanation.- For the purpose of this clause-

(1)"samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as place of public religious worship,

(2)"brindhavan" means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious worship, but does not include samadhi;]

(20) "temple" means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship;

Explanation.- Where a temple situated outside the State has properties situated within the State, control shall be exercised over the temple in accordance with the provisions of this Act, in so far as the properties of the temple situated within the State are concerned;"

10. It is claimed by the plaintiff that Shandiga Devi idol under their custody is not a temple and it was never open to any public worship or public view. In this case, a Commissioner was appointed in order to visit the disputed idol and to note the physical features of the suit property where the idol is kept and submit a report. The plaintiff belongs to a royal family for whom there is a palace and other properties. It is claimed by the plaintiff that the idol has been enjoyed by the plaintiff's forefathers from generation to generation. There is no dispute as to the family status of the plaintiff. The Commissioner who has been appointed in this case has visited the



suit property stated in his report that the palace of the plaintiff has about 100 rooms and in which the images of the plaintiff's ancestors and other Godly images have been kept. It is observed that suit idol was found in one room and it was measuring just $\frac{1}{2}$ ft height. The features of that room as observed by the Commissioner resembles the puja room of a Hindu family. He has further observed that there was no features of temple seen in the alleged room where the small suit idol was kept. Though this features would show that there was no structure of temple and the idol was not open to public worship, it is claimed by 1st appellant/1st defendant that these questions cannot be dealt by the Civil Courts and those enquiries should be made under Section 63 of the HR&CE Act by the Appropriate Authority.

11. No doubt, under Section 63, it is the Joint Commissioner or Deputy Commissioner who has to decide any dispute as to whether an institution is a religious institution or not. Even before deciding whether an institution is a religious institution or not, it has to be understood what is an institution. The submissions and features as noted by the Commissioner would show that the idol which has the name Shandiga Devi, is the divine object of 6 inches height and that has been kept in the palace which has been maintained by the plaintiff. It cannot be the claim of 1st appellant/1st defendant that wherever a divine idol is kept it is an institution or temple and it should be governed by HR&CE. If it is so, any idol kept in anyone's puja room would assume the character of an institution or temple and the authorities of HR&CE would assume their jurisdiction in everyone's private house. It is to be noted that the Court Commissioner has made a specific observation that the features surrounding the small idol is similar to that of a puja room of any Hindu family. If these features are claimed as institution or temple by HR&CE then each Hindu family which has a puja room should stand before the Appropriate Authority of HR&CE to disprove that the divine idol under their possession was not an institution or temple.

12. The suit proceedings which have been challenged in this suit has been issued under Section 49 of HR&CE Act. According to Section 49, if any religious institution is not included in the list published under Section 46, or not notified or deem to have notified under chapter 6 of the Act, the Assistant Commissioner shall have the power to appoint trustees including fit persons and constitute board of trustees etc. So before taking any action under Section 49, it should have been ascertained whether something is an institution and if so whether it is a religious institution. It is immaterial whether



the said religious institution is a listed or a notified institution. But it is sufficient if it is a religious institution. So the language of Section 49 would show that there is a pre-requisite that something should be a religious institution. That means any action under Section 49 should follow only after a decision under Section 63 has been taken. Section 63 is applicable only where there is an institution and there is a dispute about the religious nature of the institution. So before assuming jurisdiction on any place or idol, there should be a prima facie proof to show that something is an institution.

13. The plaintiff claimed that the Shandiga Devi idol which is in their custody, was never an institution and it was never open to public worship and it does not have the characteristics of a temple. Had the HR&CE issued a notice for an enquiry under Section 63 of the HR&CE Act to the plaintiff before issuing Section 49 proceedings and conducted an enquiry and taken the decision taken under Section 63 by complying due process of law, that would have been a document to show that the assumption of jurisdiction with regard to the suit property by the Assistant Commissioner under Section 49 is correct and fair.

14. The Courts below have observed that the HR&CE has not taken action under Section 49 by adhering to the principles of natural justice. The bar to entertain suits under Section 108 of HR&CE Act has one exception where an action has been taken under the Act in violation of the principles of natural justice. If any proceedings have been issued by violating the principles of natural justice, the aggrieved has got no other remedy except to invoke the jurisdiction of the Civil Court. While dealing with such suits, it would be incidental and inevitable for the Courts to look into the prima facie materials for claiming whether something is a religious institution or not.

15. In this case, Section 49 proceedings have been issued before initiating an enquiry under Section 63. Hence the plaintiff was compelled to approach the Civil Court to declare the proceedings under sec. 49 is null and void. The Courts below have undertaken only such an exercise and during that course, it has incidentally gone into the nature and circumstances of the idol which was alleged as a religious institution.

16. It was submitted by the learned Government Advocate for the appellants that during the pendency of the proceedings, the



plaintiff has filed an Original Application under Section 63 and the proceedings in O.A.No.6/2007 and it was pending before the Joint Commissioner and in which the plaintiff has sought the same prayer that has been prayed by him in the suit. This fact would confirm that sec.49 proceedings has been issued before arriving at a finding as to the 'religious institution' of the subject matter.

17. It is further submitted that the Civil Courts did not discuss about this Original Application which was pending before the Joint Commissioner. It has to be noted that the application filed by the Appellants/Defendants in I.A.No.12/2018 for receiving additional document was dismissed. This might be probably to receive the copy of the application in O.A.No.6/2007 as an additional document. In such circumstances, the Civil Courts cannot be expected to deal with the said document. It is further submitted by the learned counsel for the respondent that the said O.A.No.6/2007 was dismissed by 1st appellant. When a civil suit is filed to declare the proceedings issued under sec.49 is null and void, the first appellant ought to have kept the proceedings pending until the disposal of the suit or the appeals which are continuation of the suits. It was the appellants/defendants who have filed this appeal questioning the jurisdiction of the Civil Court and hence it is within their knowledge that if the verdict of this Court upholds the jurisdiction of the Civil Court, in the given circumstances of this suit, any order passed in O.A.No.6/2007 can be of no consequence.

18. One main reason for alleging the divine object placed at the premises of the respondent/plaintiff as a religious institution is that an extent of 20.93 Acres have been given as Inam in the name of the Shandiga Devi idol and in the year 1967 the Settlement Tahsildar has given patta in the name of the said goddess. After the Urban Land Ceiling Act came into force, these lands have been surrendered and given to the Government and the same is divided in order to give patta in the names of 16 persons. This fact was admitted by D.W.1 in his evidence. But the allegation of the appellants is that the plaintiff's family retained their own lands, but managed to surrender the Inam lands allotted to the idol as the excess lands under the Urban Land Ceiling Act. It is claimed by 1st appellant that during the year 1999 itself, the Department has objected such an action before the concerned Revenue Authorities. The respondent/plaintiff submitted that the said 20.93 Acres were his own ancestral property which was subsequently given in the name of the goddess and later it was surrendered under the Urban Land Ceiling Act. Whatever may be the contentions of the rival



parties with regard to the above 20.93 Acres, it is a matter to be decided by the respective Revenue Authorities, who are the Appropriate Authorities. The orders passed by the Appropriate Authorities on the objection raised by the appellants is not produced before the Court in order to have a better understanding about the 20.93 Acres. As of now, there is no property vested in the name of the goddess Shandiga Devi Amman. And the divine object by name Shandiga Devi Amman, measuring 6 inches height is kept in the premises of the respondent/plaintiff for their personal worship. And there is enough materials available on record to show that the said divine object is not open for public worship and the place where the same is kept also does not have the features of a temple.

19. Under such circumstances, if a fit person is appointed what will be managed by the fit person? Or what will the respondent/plaintiff can handover to the fit person except the $\frac{1}{2}$ ft divine object by name Shandiga Devi Amman? Actions which do not bring any practical consequences can never be the object for the appointment of a fit person. If the appellants/defendants thought that the lands which have been subjected to disposal under the Urban Land Ceiling Act was rightfully belonged to the divine object by name Shandiga Devi Amman and so it is a religious institution, the defendants ought to have taken appropriate proceedings to recover the same at the appropriate time. Without resorting to such actions or without proving the results of such actions (if such actions had been already taken), the cart cannot be put before the horse by way of issuing proceedings under sec. 49 of the Act for the appointment of a fit person.

20. The learned Government Advocate for the appellants has cited the decisions reported in 2012-1-L.W. 483 (The Commissioner, H.R&C.E and ors Vs. Sri.Viswanathaswamy Idol & Ors) and 2003-1-LW 681 = 2003(1) MLJ 435 (Inspector/Fit Person, H.R&C.E Vs. Amirthammal & Ors.) with regard to bar of jurisdiction of the Civil Court under Section 108 of HR&CE Act. There is no dispute that it is the appropriate authority under the HR&CE, who has to decide whether an institution is a religious institution or not. But here is a case where Section 49 proceedings have been taken even before the decision as to the aspect of 'religious institution' in respect of the divine object in the name of Shandiga Devi Amman, which is under the custody of the respondent/plaintiff.

21. The learned Government Advocate cited the decision reported in 1989-1-LW 361 = 1989(2) MLJ 54 (The Executive



Officer Vs. Srivan Satagopa & Ors.) to canvass his point that the suit is not maintainable without issuing a notice under Section 80 C.P.C notice. He further cited the decision reported in AIR 1991 Ori 33 (Lakhana Nayak & Ors. Vs. Basudev Swamy & Ors.) and submitted that the suit is bad for non-joinder of necessary parties. These points were neither the grounds raised in the second appeal nor the substantial questions of law on which the appeal has been admitted. Dealing such questions to the surprise of the respondent/plaintiff would deprive him of his right to defend effectively. Hence they cannot be taken up for consideration now.

22. The learned Government Advocate cited the decision reported in 1969(1) SCC 555 (Yogendra Nath Naskar Vs. Commissioner of Income Tax) and submitted that an idol is a juristic person and that the suit ought to have been filed on the name of the idol. The very claim of the respondent/plaintiff was that the divine object by name Shandiga Devi Amman is not a juristic person or a temple, but it is only a belonging of his family. The suit of the plaintiff has been filed in accordance with what he has pleaded.

23. The learned Government Advocate cited the decision reported in 2014(2) SCC 269 (Union of India (UOI) & Ors. Vs. Vasavi Co-op Housing Society Ltd. & Ors.) and submitted that the plaintiff has to succeed the case on his strength and not on the weakness of the defendant. The whole reading of the Judgments of the Courts below would show that the basic principles of evidence have been applied rightly by them. If the appellants/defendants failed to prove the contrary wherever necessary, that would strengthen the probabilities in favour of the plaintiff and the Courts cannot ignore to give due weightage while appreciating the same.

24. Hence I find there is no factual or legal infirmity in the Judgments of the Court below and it does not warrant any interference. Hence the substantial question of law is answered against the appellants.

In the result, the Second Appeal is dismissed. The Judgment and Decree of the First Appellate Court is upheld. No costs. Connected miscellaneous petition in M.P.No.1 of 2010 is closed.

Sd/-

Assistant Registrar(P & A)

//True Copy//

Sub Assistant Registrar

sni



To

1. The Additional District cum Sessions Court
(Fast Track Court No.3), Dharapuram.

2. The District Munsif Court,
Kangeyam.

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

+1cc to the Special Government Pleader, S.R.No.22285

S.A.No.408 of 2010

RGN(CO)
CS/29/10/2021