



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 18.03.2021
PRONOUNCED ON : 31.03.2021
CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.129 of 2005

and

C.M.P.(MD)Nos.7196 of 2005 and 424 of 2021

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1.Vignesh Paramaguru
2.S.Senthil Paramaguru (died) ...Appellants / defendants 2 & 3
Vs.

1.Arulmigu Paripoorana Vinayagar Kovil,
Rep. by its Trustee, Ganapathi Aasari,
Sri P.V.Koil Avenue, Near Government
Transport Corporation Workshop,
Tirunelveli Road, Melapuliyur,
Tenkasi, Tirunelveli District. ..Respondent No.1/Plaintiff

2.Murugesan .. Respondent No.2/1st Respondent

3.Jamuna Rani ..Respondent No.3
(R3 is brought on record as legal heirs of the deceased second
appellant vide order dated 05.02.2021 made in CMP(MD) Nos.420, 423/2021 and
6871/2020 in AS(MD)No.129/2005).

PRAYER: This Appeal Suit is filed under Section 96 of the Civil
Procedure Code, against the decree and judgment dated 29.10.2004
made in O.S.No.20 of 2004 on the file of the Additional District
Judge (Fast Track Court-I), Tirunelveli.

For Appellants: Mr.K.V.Subramanian
Senior Counsel
for Mr.P.Thirumahilmaran
For R1 : Mr.T.S.R.Venkatramana
For R2 & R3 : No Appearance

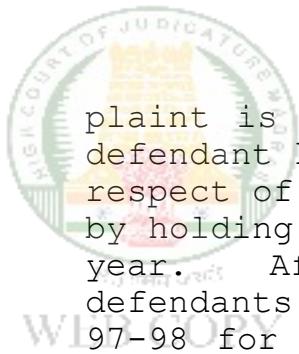
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Aggrieved over the decree and the judgment of the trial Court
decreeing the suit for recovery of possession, the present appeal is
filed.

2. For the sake of convenience, the parties are referred to
herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Appeal Suit,
are as follows:-

The suit property belonged to Vishwakarma Community and the
same was managed by the trustees appointed by the Community. There
are now six trustees and they are now managing the properties. The



plaint is filed by the Managing Trustee. The father of the first defendant became a lessee by a registered deed, dated 21.06.1961 in respect of the first item of property. He was continuing as a tenant by holding over. The rent was enhanced at the rate of Rs.3,000/- per year. After the death of the first defendant's father, the defendants have not paid the rent for the years 95-96, 96-97, and 97-98 for more than three years. Since the Community intended to construct a Marriage Hall, the plaintiff requires the property. But the defendants did not hand over the property. Hence, the suit.

4. The first defendant admitting that his father was inducted as a tenant, contended that the temple did not belong to the Vishwakarma Community. The first item of the property belong to the temple and it is a public temple and there is no hereditary trustee. He further contended that the father of the first defendant was in possession of the property as a tenant from the year 1961 and there is no connection between the Vishwakarma community and the first item of the suit property. Thereafter, the father of the first defendant constructed a building in the first item of the property and he was enjoying the same as a tenant. During his life time, the father of the first defendant has executed a Will in respect of the tenancy right in favour of his grandsons. After the death of Esakki Devar/father of the first defendant, the defendants 2 and 3/grandsons of Esakki Devar are enjoying the property.

5. The defendants 2 and 3, who are the sons of the first defendant admitting the tenancy of the grandfather from the year 1961, took a defense that the property does not belong to the Community. Further, it is the contention that one Sankaravadivammal had endowed the property for charitable purposes and appointed trustees on 25.06.1929 to manage the property. The grandfather of the second and third defendants become tenant under legal heirs of some of the trustees in the year 1961 and rent was never increased at any point of time. The plaintiff's community cannot seek possession for the purpose of constructing a Marriage Hall. After the death of the grandfather of the second and third defendants, the tenancy right has been transferred to the second and third defendants by virtue of the Will executed by their grandfather on 09.09.1994. Hence, prayed for dismissal of the suit.

6. Based on the pleadings, the following issues were framed by the trial Court:-

- 1) ***Whether the plaintiff is entitled for recovery of possession?***
- 2) ***Whether the plaintiff is entitled for a sum of Rs.9,000/- as rent?***
- 3) ***Whether the plaintiff is entitled for medium term income?***
- 4) ***Whether the suit is bad for non-joinder of necessary party?***



5) To what other reliefs the plaintiff is entitled?

7. Issue No.4 was given up by the plaintiff as the second and third defendants were impleaded as party respondents in the suit.

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8. Before the trial Court, on the side of the plaintiff P.W.1 was examined and Exs.A1 to A21 were marked and on the side of the defendants D.W.1 to D.W.3 were examined and Exs.B1 to B11 were marked.

9. The trial Court, based on the evidence and materials, has granted decree in favour of the plaintiff and against the second and third defendants. Challenging the same, the present appeal suit is filed.

10. During the pendency of the appeal, the second appellant died and the same was recorded and his legal heir was also impleaded as third respondent in the present appeal.

11. The learned counsel appearing for the appellants, vehemently contended that the Temple has filed the suit represented by the so called managing trustee. It is the contention that the property originally dedicated for the charity purpose by one Sankaravadivammal, who appointed seven trustees to manage the properties belonged to her. The plaint has been filed by only one person as trustee and there is no resolution by other trustees for filing a suit in the name of the one of the trustees. It is the further contention that notice of termination of lease ought to have been issued by all the trustees not by one trustee. There is no evidence to show that the present plaintiff was appointed as managing trustee at any point of time. Since the trustee is not a legal person, the suit is not maintainable.

12. Similarly, the suit ought to have been filed in the representative capacity of the Community. But the same has not been done in this case. The plaint indicates that the suit property is required for constructing a building, namely Marriage Hall for the Community. The fact that the property belongs to a particular community has not been established. It is the further contention that Ex.B4, clearly shows that the suit property is declared as a public temple. Therefore, only the authorities under the Hindu Religious and Charitable Endowment Department (hereinafter referred as 'the Department') will have control over the suit property. As such, the suit is barred under Section 108 of the Hindu Religious and Charitable Endowments Act (hereinafter referred as 'the Act'). It is the further contention that the appointment of the so called trustee by the villagers is not recognized by the trial Court in its judgment. Therefore, the present suit filed by one of the so called managing trustees is not maintainable and the suit is liable to be



dismissed.

13. It is the further contention of the learned counsel for the appellants that the alleged increase of rent is also not established. As per the registered lease deed executed in favour of the grandfather of the second and third defendants, Rs.60 was the annual rent and when the rent was fixed by way of a registered document, subsequent increase or alteration in the rent should be done only by a document. But absolutely, there is no evidence to show that the rent has been periodically increased. This itself clearly indicates that the suit itself is nothing but an attempt to take over the property. Hence, prayed for allowing the appeal.

14. In respect of his submissions, he has relied upon the following judgments:-

- 1) *Chandrakant Shankarrao Machale vs. Parubai Bhairu Mohite (dead) through legal heirs* [(2008) 6 SCC 745]
- 2) *Atmaram Ranchhodbhai vs. Gulamhusein Gulam Mohiyaddin and another* [AIR 1973 Gujarat 113 (V 60 C 17)]
3. *The Churthof Christ Charitable Trust and Educational Charitable Society vs. Ponniammam Educational Trsut* [2012 (4) CTC 308]
4. *Sunil Kumar Roy vs. Bhowra Kankanee Collierieds Ltd and others* [ARI 1971 SC 751 (V 58 C 149)]
5. *State of Madhya Pradesh vs. Nomi Singh and another* [2016-1-L.W.235]
- 6.The *Assistant Commissioner vs. Nattamai K.S.Ellappa Mudaliar and others* [1987 0 AIR (Mad) 187]
- 7.*Bishop of Thanjavur Diocese Secretary vs. Savari Nayagam and another* [2014 0 Supreme (Mad) 1056]
- 8.*Selvaraj and others vs. Uthirapathy and othres* [2017 0 Supreme (Mad) 159]

15. The learned counsel appearing for the respondent/plaintiff, contended that the suit has been filed for recovery of the first item of property. According to the learned counsel, Ex.A4 dated 25.06.1920 executed by one Sankaravadivammal, makes it very clear that the trustees were appointed from a particular community namely, Vishwakarma Community to manage the temple in the suit property at the relevant point of time. Latter, tomb (சமாதி மடம்) was also built up and the tomb is also in existence. What was leased out to the grandfather of the appellant is the first item of the property namely tomb. Therefore, his contention is that in the previous suit in O.S.No.189 of 1962, the judgment of which is marked as as Ex.B4, the trial Court did not take into consideration of the tomb, whereas the suit has been filed in respect of the temple. Only in respect of the temple, the Court has held that the temple is a public temple. However, there is no evidence to show that the temple was under the control of the Government authorities.



16. Be that as it may, it is the further contention of the learned counsel for the plaintiff that the first item of the property, tomb is all along managed by the Community people. Hence, Ex.A4, itself clearly shows that all the trustees were appointed at the relevant point from the Vishwakarma community. Ex.A4, does not restrict the enjoyment of the property only by the trustees or the legal heirs of the trustees. It was within the community. The first item of the property being tomb, the grandfather came into possession as tenant by a registered document. The appellants or their father are estopped from denying the very title of the landlord. The first defendant has cleverly remained as exparte, despite filing a written statement. The defendants 2 and 3, who claim to be the tenants on the basis of Ex.B7, Will dated 09.09.1994, has not proved the said will before the trial Court. Once the grandfather of the appellants was inducted into possession as tenant in the property under the management of the trustees, the appellants have no right to deny the title of the temple. Hence, it is contended that merely because the idol has filed the suit, it cannot be a ground to non-suit the plaintiff.

17. The property is all along under the control of the Vishwakarma community. It has been clearly established by the documents filed on the side of the plaintiff, particularly, Ex.A5, inscription. Thereafter, subsequent consecration conducted by the Community people and invitations for the said consecration under Exs.B8 to B15, make it very clear that only the trustees elected by the community were in management of the property. Hence, it is the contention that there is no bar under law to evict the tenant by one of the trustees. When the other trustees had neither raised any objection nor disputed the right of one of the trustees, it can be presumed that all the trustees have consented to recover the properties. Ex.A19, makes it very clear that the suit filed by the temple in an earlier occasion against the grandfather of the appellants not to put up any construction in O.S.No.45 of 1984, was decreed in favour of the plaintiffs therein holding that defendant therein has no right to put up any construction in the property belonging to the temple. Hence, it is the contention that the judgment of the trial Court is well balanced and does not require any interference and prayed for dismissal of this appeal.

18. In support of his submission, he has relied upon the following judgments:-

1. *Nagercoil Asarimar vs. Natarajan Asari and others*
[1973 (2) MLJ 306]

2. *A.N.Ramaswami Iyer and others vs. The Commissioner*
[(1975) 2 MLJ 178]

3. *Gurpur Guni Venkataraya Narashima Prabhu and others vs. B.C. Achia, Assistant Commissioner and another* [AIR 1977 SC 1192]



4. A.Palaniandi Pillai Vs. Commissioner, HR & CE [AIR 1980 Madras 166]

5. Gurunatha Pandithan vs. The Commissioner [(1991) 2 MLJ 409]

6.R.Padmanaban, A. Ramachar vs. Sri Vidhya Vakeesa Theerthar [(2002) 3 MLJ 398]

7. M/s.Atma Ram Properties (P) Ltd., vs. M/s.Federal Motors Pvt. Ltd [2005 SAR (Civil) 93]

8. Assistant Commissioner cum Land Acquisition Officer vs. Sri.S.T. Pompanna Setty [2005 SAR (Civil) 100]

19. In the light of the above submission, now points arise for consideration in this appeal are:-

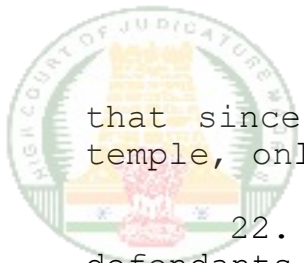
1) Whether the suit filed by the temple is not maintainable?

2) Whether the suit property is not under the management of Vishwakarma Community or it is a public temple.

3) To what other reliefs?

20. It is the specific case of the plaintiff that the suit property belongs to the temple and the same was under management of Vishwakarma community and this management was by the trustees elected by the community. The father of the first defendant one Esakkimuthu Devar became a tenant on 21.06.1961, in respect of the first item of property at the rate of Rs.60/- per year. Thereafter, the rent has been increased at the rate of Rs.3,000/- per year. The said Esakkimkuthu Devar has paid the rent till 1995. Thereafter, the rents were not paid by the first defendant or his sons. Besides, the property was also required for constructing a Marriage Hall for the community.

21. Admitting the tenancy in respect of the first item of property, the defense taken by the first defendant is that the property is a public temple and not belonged to the Vishwakarma community. The rent is also not varied from the very inception and the original tenant has constructed a building and running a shop selling cement. Thereafter, the second and third defendants acquired the right by way of a Will said to have been executed by the original tenant, i.e., tenancy right. Though the suit has been resisted on the ground that the property do not belong to the Vishwakarma community as held in the earlier suit, judgment of which is marked as Ex.B4, perusal of Ex.B4 makes it very clear that the temple has filed a suit for declaration that legal heirs of the trustees, namely, the defendants 1 and 2 therein are not the trustees of the plaintiff temple and also for recovery of the property. The defendants 10 to 15 in the above case stated that they were also appointed as trustees by the community. The above suit was dismissed non-suited the plaintiff therein on the ground

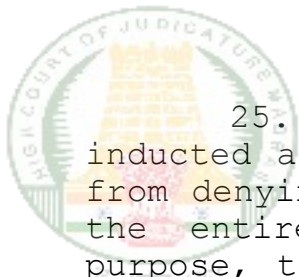


that since the witnesses have admitted that the suit is a public temple, only Madras Act 22 of 1959 will apply.

22. Much reliance was placed on the above judgment by the defendants in this case contending that the suit property is a public temple and it is under the Department. It is to be noted that the above suit was filed for removing certain others as trustees and recovery of the temple properties. The defendants had not filed any pleadings in the above suit to find out whether tomb, which is the first item of property herein, was included therein. Only temple had filed the suit with regard to the rights of the trustees. The trial Court has infact held that the temple is a public temple mainly on the basis of the admission and not by any other materials.

23. Be that as it may, admittedly, the present suit was filed for recovery of the property, in which the tomb was erected. The defendants have also admitted that they have been inducted into possession as tenant in the year 1961 only in respect of the Samathi. In the written statement filed by the defendants 2 and 3, it is clearly admitted that not only on behalf of the temple but also on behalf of the tomb, the defendants' grandfather became tenant in the year 1961. Tenancy agreement is also marked as Ex.A1. Recitals therein makes it very clear that the lease deed was executed by the trustees of the temple. The lease was executed in favour of Esakkimuthu Devar, father of the first defendant and grandfather of the second and third defendants on a yearly rent of Rs.60/-. The lease deed was executed by the legal heirs of the original trustees, who are appointed in the year 1929 under Ex.A4, which makes it very clear that the property was dedicated for charitable purpose. Originally, temple alone was in existence in the suit property. At later point of time, it appears that tomb has been put up within the camps, which is described as first schedule property. Under Ex.A1, not only by trustees of the temple but also the trustees of the Samathi, the first item of property was leased out in favour of Esakkimuthu Devar. This has also been admitted in the written statement. There is no dispute with regard to the identity of the property in respect which, lease was granted. It has to be concluded that lease is only in respect tomb, the remaining temple properties.

24. Though originally entire property was dedicated for charitable purpose under Ex.A4, it is admitted by one of the witnesses namely, P.W.1 that the temple is a Hind Temple and the temple is under the control of the Department. It is not admitted by the plaintiff that tomb is also under the control of the Department. Admittedly first item was leased out by the predecessors in title. There is no evidence available on record in this regard to show that the first item is in control of the Department.



25. Be that as it may, the defendants' predecessor once inducted as a tenant, in respect of the tomb and they are estopped from denying the title of the temple. As already indicated, though the entire property was dedicated under Ex.A4 for charitable purpose, tomb appears to be dealt separately. That was the reason that the lease deed was also executed not only on behalf of the properties of the temple but also tomb. If really, the property was temple property exclusively, there was no need whatsoever for the trustees to refer the tomb, while executing Ex,A1. This itself makes it very clear that the tomb (Samathi) was separately dealt, though it is a part of the property originally dealt under Ex.A4. Therefore, defendants have no right to deny the title of the landlord, when the denial itself is made with a view to squat on the property. That itself is one of the ground to evict the tenant under the Tamil Nadu Lease and Rent Control Act.

26. It is also to be noted that Samathi or Brindhavan or any other institution established or maintained for a religious purpose is also brought into the ambit of the Hindu Religious and Charitable Endowments Act, 1959 (Act 26 of 2012) with effect from 27.06.2012. However, the present suit has been filed in the year 1958 by the then managing trustee. At the relevant point of time, Samathi was under the custody of the authorities.

27. Be that as it may, it is also relevant to note the definition of charitable endowment defined under the Act, which reads thus:-

(15) "person having interest" means-

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

(b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat;

(c) in the case of a specific endowment, a person who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity;

1 [(d) in case of samadhi, brindhavan or any other institution established or maintained for a religious purpose, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in such religious institution, or who is entitled to partake or in the habit of partaking in the benefit of the distribution of gifts thereat;

2[(15-A)* * *]



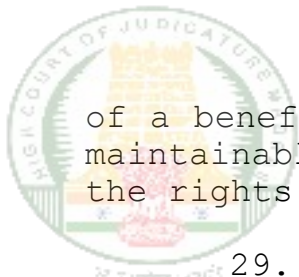
(16) "religious charity" means a public charity associated with Hindu festival or observance of a religious character, whether it be connected with a math or temple or not;

(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;

Explanation.-(1) Any inam granted to an archaka, service holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service holder or employee but shall be deemed to be a religious endowment.

Explanation.- (2) All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a "religious endowment" or endowment" within the meaning of this definition, notwithstanding that, before or after the date of the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed"

28. The above definition makes it very clear that any person, who is entitled to attend at or is in the habit of attending the performance of worship or service in such religious institution, or who is entitled to partake of is in the habit of partaking in the benefit of the distribution of gifts thereat; It is to be noted that the property itself was endowed for charitable purpose and the trustees were appointed from the community as per Ex.A4. The word 'இனமுறை' in Ex.A4, further shows that dedication is only for the purpose of particular community. Therefore, any person interested in the suit property is entitled to recover the possession of the properties. Admittedly, the plaintiff is managing the trustee the relevant point of time. In this regard, it is relevant to refer the judgment reported in AIR 1997 Punjab and Haryana 13 [Mohindar Singh and another vs. V.Pirthipal Singh and others], in which it has been held that the worshipper has right to protect the property of the temple and the community is also beneficiary of the land. Further, the suit



of a beneficiary, who to enjoy certain rights from the property, is maintainable irrespective of the fact whether he actually exercised the rights presently or not.

29. The evidence adduced by P.W.1, Ex.A5, inscription found in the temple and Exs.A6 to A18, make it very clear that the community was in charge of the first item of the property besides the temple. Though the temple was stated to be under the control of the Department, the fact remains that the temple is meant for a particular community. The inscription in the temple is not denied by D.W.1 in the cross examination. Further, to show that the temple is not belonged to the particular community, the defendants would have easily examined the authorities from the Department. But they have not taken any steps in this regard. Therefore, having regard to the above facts, particularly once the defendants had inducted as tenant by the then trustees, they have no right to question the title of the landlords. Particularly, the identity of the property is also not in dispute. The written statement itself clearly indicates that originally the first item, Samathi property was leased out to the defendants's predecessor. Therefore, the contention of the defendants in this regard has to be rejected.

30. Much reliance has been placed on the judgment of the Gujarat High Court in the case of *Atmaram Ranchhodbhai vs. Gulamhusein gulam Mohiyaddin and another* [AIR 1973 Gujarat 113 (V 60 C 17)] to contend that the trustee cannot delegate any of his duties, functions and powers to co-trustee or to any other persons unless the instrument of trust so provides or the delegation is necessary or the beneficiary competent to contract consent to the course of business. It has been further held that the decision to determine the tenancy by giving notice to quit must be taken by all co-trustees unless, of course, the instrument of trust otherwise provides, or the beneficiaries being competent to the contract consent.

31. It is to be noted that at the time of dedication of the property, no powers have been earmarked for the trustees. It is the specific case of the plaintiff that the trustees have been elected by the community to manage the property. When no objections whatsoever have been raised by other trustees, it can be inferred that there is a deemed consent by all the trustees. Therefore, when there is no objection by any of the trustees, it has to be presumed that the present trustee is acting on behalf of the other trustees to recover of the property only for the benefit of the trust and not for his individual benefit.

32. In the case of *Ishwardas vs. Maharashtra Revenue Tribunal* [AIR 1968 SC 1364], which was filed by the managing trustee to recover the possession from the tenant. The Hon'ble Apex Court has held that the suit is maintainable. Further, it is to be noted that originally the suit was for the period of ten years under Ex.A1.



Though it is the contention of the plaintiff that original lessee was enjoying the property as a tenant by holding over till 1995, thereafter, no rents whatsoever have been paid by the defendants. This aspect was also stated in the legal notice issued by the plaintiff and the same has not been denied. This fact cannot be ignored altogether.

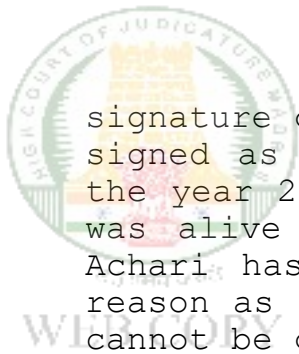
33. In the above cases, the Hon'ble Supreme Court has held that the suit filed by the community through an individual without availing leave under Order 1 Rule 8 is not maintainable for the relief of declaration. However, in the present case, the suit is not filed for declaration by the community or on behalf of the community. It is filed only for recovery of possession by the temple. The above judgments are not applicable to the facts of the present case.

34. The contention of the learned Senior Counsel for the appellant that since the rent for fixed at the rate of Rs.60/- by a registered deed, there cannot be any variants in the rent without any registered document cannot be countenanced. The rent was fixed at the rate of Rs.60/- per annum for a period of ten years from 1961-1971 as per Ex.A1. Therefore, it cannot be stated that the same rent should be continued forever. It is the common course of events to demand higher rent by passage of time. Therefore, the contention of the defendants that rents have not been increased at any point of time also cannot be countenanced.

35. The specific allegation of the plaintiff is that rents have been paid upto 1995 by the grandfather of the appellants. Thereafter, no rents whatsoever have been paid. The first defendant filed a written statement and remained *ex-parte* from the year 1998 to 2003 and the matter has been dragged by the first defendant. Thereafter, filed a petition to set aside the *ex-parte* order passed against him. However, he has not come before the Court to contend that the rents have been paid properly. It is neither case of the appellants that the tenancy has been attorned to them by the trustees nor other persons, who are in the helm of affairs have given assent to continue the tenancy. Therefore, in the absence of any evidence to such assent or receipt of any rent from the appellants, their status would be only a trespassers, since the appellants are not the original tenants, they are claiming right on the basis of the Will executed in their favour in respect of the tenancy right. The Will has not been proved before the trial Court. Therefore, when the appellants are neither the tenants by holding over nor the tenants by sufferance, their status would be nothing but a trespasser squatting on the property.

36. It is not the case of the appellants that they have paid rent to the trustees. Though an attempt was made to show that they have paid rent to one Ramasamy Achari under Exs.B5 and B6, the rent received by the said Ramasamy Achari, in Ex.B5, there is no

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signature of the said Ramasamy Achari, whereas in Ex.B6, some one is signed as Ramasamy Achari for the alleged payment towards rent in the year 2002-2003. It is to be noted that the said Ramasamy Achari was alive and he was not examined. If really the said Ramasamy Achari has received the rents from the defendants, there was no reason as to why he has not been examined. Therefore, the receipts cannot be given much credence to prove the alleged payment of rents. Further, Ex.B6, is obtained after the filing of the suit.

37. In the case of *Sunil Kumar Roy vs. M/w.Bhowra Kankanee Colieries ltd* [AIR 1971 SC 751], the Hon'ble Supreme Court has held that an agreement, which varies the essential terms of the existing registered lease, such as the amount of rent, must be registered. Similarly, in *Chandrakant Shankararao Machale vs. Parubai Bhairu Mohite (dead)* [(2008) 6 SCC 745], it is held that the terms of the registered mortgage deed can be altered or varied only by a registered document not by an unregistered document. Absolutely, there is no dispute with regard to the possession of the properties. However, in this case, the fact remains that the registered lease is expired long back and the original lessee was continuing possession as tenant by holding over. Such view of the matter, alterations and increase of the rents is more probable. Therefore, the contention that the increase of rent would be done only by way of a registered document cannot be countenanced.

38. In the case of the *Nagercoil Asarimar vs. Natarajan Asari and others* [1973 (2) MLJ 306], in paragraph No.7, this Court has held as follows:-

"It is only when a declaration is sought for or a dispute is raised that the temples are not religious institutions as defined in the Act, the matter has to go before the Deputy Commissioner under Section 63 (a). But where, as in this case, no dispute has been raised that the suit temples are not religious institutions as defined in the Act the matter cannot be agitated before the Deputy Commissioner."

39. In the case of *R.Padmanaban and another vs. Sri Vidhya Vakeesa Theerthar* [(2002) 3 MLJ 398], this Court has held that simply because a temple is put up adjoining the Samadhi and some Guru Poojas are performed on particular days, it cannot be construed as a religious institution.

40. In the case of *A.N.Ramaswami and others vs. The Commissioner* [(1975) 2 MLJ 178, this Court has held that a fluctuating body of a community can manage a temple. In AIR 1977 SC 1192 [*Gurpur Guni Venkataraya Narashima Prabhu and others vs. B.C., Achia Assistant Commissioner and another*], the Hon'ble Supreme Court has held as follows:-



".. The law is now well settled that "the mere fact of the public having been freely admitted to the temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public use as evidence of dedication depends on the circumstances which given strength to the inference that the user was as of right" We find that the circumstances disclosed in evidence in this case do not support the inference that Hindus generally used the temple as a place of worship as of right."

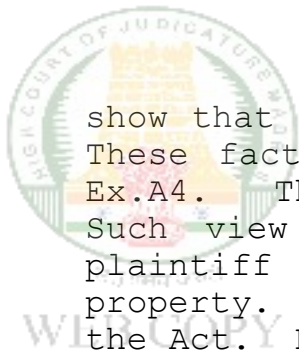
41. In the case of *Malayammal vs. Malayalam Pillai* [(1990 Tamil Nadu Law Notes Journal 42 (SC)], it has been held as follows:-

"The perpetual dedication of property for construction of a Samathi or a tomb over the mortal remains of an ordinary person and the making of provisions for its maintenance and for performing ceremonies in connection thereto however, has not been recognised as charitable or religious purpose among the Hindus. But the Samadhi of a Saint stands on a different footing. This was the consistent view taken by the Madras High Court in Several cases, namely AIR 1953 Madras 29=ILR 1958 Madras 204 ILR 1954 Madras 854 AIR 1946 Madras 485=1946 (1) MLJ 354". This Court in 1954 SCR 277 has approved those decisions of the Madras High Court Jagannatha Das J who spoke for the Court said. We see no reasons to think that the Madras decisions are erroneous in holding that perpetual dedication of property for worship at a tomb is not valid amongst Hindus."

42. In the case of the *Commissioner, Hindu Religious and Charitable Endowment Department vs. A.V.A.R. Ramanatha Chettiar* [1962 Madras Weekly Notes 173], this Court has held that the premises Kambar Samadhi is not a temple. The worship of Kambar cannot be equated to divine worship.

43. The temple is situated adjoining to the property what is sought to be recovered namely, Samathi, in respect of which lease was granted, it is also not in dispute. Though the temple is said to be in possession of the Department, there is no evidence available on record to show that the entire temple was run by the Department. Admittedly, the Samathi has been given on lease in favour of the defendants. Ex.A4 also shows that only the members of Vishwakarma Community were appointed as trustees and they were continuing to manage the property.

44. Such view of the matter when the people from the same community are in the control of the tomb and the temple certainly, they are entitled to recover possession of the property from the tenant or the trespasser. The plaintiff also filed a document to



show that the property was purchased for the benefit of the temple. These facts clearly show that they cannot go beyond the terms of Ex.A4. The word 'இனமுறை' indicates the reference to community. Such view of the matter, this Court is of the view that the plaintiff is certainly entitled to recover possession of the property. Therefore, the suit is not barred under Section 108 of the Act. Even if the temple is under the control of the Department, after the recovery of the property by any interested persons, the temple can control over the suit property. Therefore, filing of the suit by the person interested to recover the property is maintainable.

45. The present action is only to recover the property for the benefit of the temple and tomb. As held earlier, for any person interested not only in the temple but also in Samathi as per Section 5 of the Act, there is no bar under law to recover the properties for the benefit of the temple or Samathi from the trespassers. Such view of the matter, the persons, who are squatting over the property for more than 60 years without paying any rent, cannot resist the suit on technical grounds. This Court by order dated 15.12.2020, directed the appellants to deposit a sum of Rs.1,50,000/- within a period of four weeks from the date of receipt of a copy of that order. However, it appears that the said direction has not been complied. Thus, the above conduct also clearly show that the intention of the appellants to squander the property of the religious institution. The appellants are squatting over the property claiming right on the basis of Ex.B7, Will, which has also not been proved and in respect of which no arguments have been advanced before this Court. From the date of execution of Ex.A1, the properties of the temple and tomb are in possession of some third parties. Therefore, this Court is of the view that when the persons have no right whatsoever in the property, they certainly cannot resist the suit. Even the direction of this Court to deposit some amount, has not been complied. That itself indicates that the appellants are squatting over the property without paying any rent and damages. Such view of the matter, I do not find any materials in this appeal. Accordingly, the points are answered.

46. In the result, this Appeal Suit is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Additional District Judge (Fast Track Court-I),
Tirunelveli

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+2 CC to M/s.T.S.R.VENKAR RAMANA, Advocate (SR-14632[F] dated
31/03/2021)

+1 CC to M/s.P.THIRUMAHILMARAN, Advocate (SR-14938[F] dated
31/03/2021)

Judgment made in
A.S.(MD)No.129 of 2005
31.03.2021

DKS (CO)
TR(07.06.2021) 15P 7C