



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.03.2021

PRONOUNCED ON : 31.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD) Nos.251 and 438 of 2012

and

C.M.P. (MD) Nos.6830 of 2019

and

M.P. (MD) Nos.1 of 2014 and 1 and 2 of 2012

Kulalar Peravai,
Registered Society (R.No.2/92)
Represented by its Secretary having
Its office in Venkateshwara Lodge,
1/18, Scheme Road, Dindigul ..Appellant/Appellant/Plaintiff
(in S.A. (MD) No.251 of 2012)

1.K.Mani
2.Chandrasekaran
3.Maheswari
4.Balasambamurthy
5.Lalitha ..Appellants/Respondents 9 &
11-14/Defendants 9 & 11-14
6.K.M.Sudarsan
7.R.Lavanya ..Appellants/Lrs. of 10th
Respondent/L.Rs. of 10th Respondent
(in S.A. (MD) No.438 of 2012)

Vs.

1.A.S.S.Nataraj
2.A.S.S.Mohan Raj
3.Venugopal
4.Arumugam Pillai
5.Radhika
6.K.Mani
Jeyasree (died)
7.Chandrasekaran
8.Maheswari
9.K.Balasambamoorthy
10.Lalitha
11.Jothy
12.S.Madavan
13.D.Bojarajan
14.D.Venkatraman
15.Renuga Devi
16.L.Sujitha Kasiraj ... Respondents 11 to 16/Respondents 15-20/
LRS of 1st, 5, 6 defendants



17.M.Sudharsan

18.Lavanya

..Respondents 17 and 18/LR of 10th Defendant
(in S.A. (MD) No.251 of 2012)

1.Kulalar Peravai Dindigul,
Registered Society (No.2/92)
representd by its
Secretary,
8 Scheme Road,
Venkateswara Lodge,
Dindigul-1.

...Respondent/Appellant/Plaintiff

2.A.S.S.Nataraj (died)

3.A.S.S.Mohanraj

4.Venugopal

Loganathan (died)

5.Arumugam Pillai

6.Radhika

7.Jothi

8.S.Madhavan

9.D.Bojaraj

10.D.Venkataraman

11.Renuka Devi

12.L.Sujitkasiraj

...Respondents/Respondents/Defendants

2,3,4,7,8 & 15-20

(in S.A. (MD) No.438 of 2012)

COMMON PRAYER: These Second Appeals are filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 24.09.2010 in A.S.No.4 of 2006 on the file of the Fast Track Court, Dindigul modifying and partially confirming the judgment and decree dated 27.12.2005 in O.S.No.348 of 1993 on the file of the Principal Subordinate Court, Dindigul.

For Appellant : Mr.H.Lakshmi Shankar

For RR6 to 10, 17

and 18

: Mrs.J.Ananthavalli

For RR1, 3 & 5 : No Appearance

For Rr2, 4 & 11-16: Given up

(in S.A. (MD) No.251 of 2012)

For Appellants : Mrs.J.Anandhavalli

For R1 : Mr.H.Lakshmi Shankar

For R4 : No Appearance

For RR3 & 5-12 : Dispensed with

R2 : Died

(in S.A. (MD) No.438 of 2012)



COMMON JUDGMENT

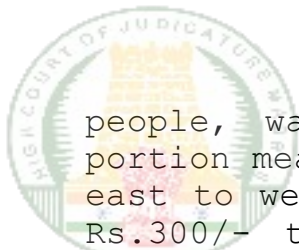
Aggrieved over the concurrent findings of the Courts below dismissing the suit for declaration and granting permanent injunction for a certain period S.A.(MD)No.251 of 2012 has been filed by the plaintiff. S.A.(MD)No.438 of 2012 is filed by the purchaser /defendants in the suit, of the property as against the decree and judgment of the appellate Court granting permanent injunction for three days to conduct charitable purpose in the suit property.

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:-

(i) The plaintiff is the registered Society by name Kulalar Peravai, Dindigul. The plaintiff Association is the welfare association for the Kulalar Community (Telugu Saliar Vahana Vamsam). The object of the plaintiff Society is for looking after all the properties commonly owned by the Community, especially the private trust properties. The Kulalar Community people, for the purpose of conducting Mandagapadi for the Soundararaja Perumal Temple of Thadikombu at Dindigul during the deity sojourn, have decided to purchase a property at Dindigul to do the Mandagapadi on permanent basis in their own property. The suit property was purchased for this purpose on 17.05.1907 in the name of A.Subban Chettiar for the benefit of Kulalar Community. The said Subban Chettiar collected donation and had purchased the suit property and the southern side portion, from one Subbiah Pillai and his brothers. Thereafter, the said A.Subban Chettiar as an agent and manager of Kulalar Community collected funds from various members of the Kulalar Community and put up Mandapam in the schedule mentioned property. Every year, the deity used to be alighted in the Mandapam and the festival used to be conducted during Chitra Pournami day by all the Kulalar Community. Subsequently, a Well had been sunk and madappalli had been built up and a guest house also been put up to enable the Kulalar Community people to stay during the time of festival etc., and also for stay on other days. The said A.Subban Chettiar was managing the temple to the satisfaction of the Kulalar Community people. Since the said A.Subban Chettiar was the permanent resident of Bodinayakanur, he had appointed one R.K.M.S.Kuppalagar Chetty and Kannappadi as his agents and he had also caused publication about the donation received from various Kulalar Community people.

(ii) A.Subban Chettiar also filed a suit in O.S.No.60 of 1925 along with the community people against the tenants. The said A.Subban Chettiar had never exercised any individual rights over the suit property. After the death of A.Subban Chettiar, his son, namely A.S.Subban Chettiar, with the consent of all Kulalar Community



people, was conducting mandagapadi trust. He has sold a small portion measured to an extent of 1 ½ feet north to south and 95 feet east to west with the consent of the community people for a sum of Rs.300/- to one Sabthagiri Dhesigachari. Even in the partition entered between the members of the A.Subban Chettiar, the suit property has not been included, since the same was dedicated to the Community. After the death of A.Subban Chettiar, as the family is in rich and influential position out of due respect for them, the Kulalar Community allowed the suit property be maintained by the defendants 1 to 3 and other sons of late.A.Subban Chettiar as trustees. The mandagapadi trust is being performed now by the defendants 1 to 6 as trustees/managers. Mandagapadi festival has been conducted by the donations received from the community people and the rent received from the tenants in the suit property.

(iii) The defendants 1 to 6 during the pendency of the suit sold the portions of the suit properties to the defendants 9 to 14. The defendants 1 to 6 have no independent right or interest or title over the suit property as the suit property is the trust property. Despite this fact, the defendants 1 to 6 have alienated the suit property during the pendency of the suit and sold the same to the defendants 9 to 14. The defendants 7 and 9 to 14 have pulled down the buildings in the suit property on 21.06.2003. Hence, the suit to declare that the suit property is a private trust property belonging to the Kulalar Community people and to direct the defendants 1 to 6 to hand over the management of the suit properties to the plaintiff and permanent injunction restraining the defendants 1 to 6, their men and servants from preventing the Kulalar Community people from participating and worshiping and performing Mandagapadi in the suit property.

4. Denying the entire allegations in the plaint, it is the contention of the second defendant that the suit property was purchased by A.Subban Chettiar out of his own funds for the exclusive benefit of his family. He was a religious man with charitable mind. He wanted to extend the spiritual benefits to some of his close relatives in the community apart from his family members. The recital in the sale deed in favour of A.Subban Chettiar only means the intention of the purchaser. Hence, the generosity of the grandfather of this defendant expressed in the recitals of the sale deed is given a misinterpretation by the plaintiff and his associates to grab the property in the name of the community by saying that the property was purchased only out of the funds collected by way of donations from the community to the benefit of the entire community people. The suit property has been treated and enjoyed only as the private property by A.Subban Chettiar and his family members and the assessment of the property in the name of the father of the defendants, namely A.Subban Chettiar. The property tax was also paid only by the family members of the defendants. The property was leased out by these defendants and the income had never been used for the community or the trust.



5. The deity of Sri Soundaraja Perumal is brought to the Mandapam in the property on the Chitra Pournami day every year and the mandagapadi has been performed only by their family members. This mandagapadi has been held exclusively by the family of A.Subban Chettiar. No other persons are entitled to perform the same and participate in the mandagapadi. The property had never been enjoyed by any other Kulalar Community people and no other persons either as agent or Manager of Kulalar Community has so far dealt with the property and performed the mandagapadi. Hence, it is the contention that the mandagapadi receipt issued by the temple also shows that the mandagapadi is known only as A.S.Subban Chettiar Thirukkan Mandagappadi and not as Kulalar community mandagapadi.

6. The defendants 1 to 6 are in lawful possession of the property, which is meant for religious purpose left to be maintained by the family members hereditarily. Therefore, it was not divided in the family partition of the defendants. The suit is not filed in the representative capacity. Therefore, the suit is not maintainable. The plaintiff society also did not represent the entire community. Hence, prayed for dismissal of the suit.

7. The ninth defendant had filed a written statement, which was adopted by the defendants 10 to 14, stating that description of the property in the plaint is incorrect and that does not fit with the property purchased by the defendants. It is also denied that the property was purchased for the benefit of the community. It is purchased by A.Subban Chettiar in his individual capacity for the benefit of his own family. Therefore, the property is the private property of A.Subban Chettiar and his family members and the same had never been used for the Kulalar Community or the trust at any point of time. The plaintiff allowed the suit be dismissed for default on 31.08.1999. After the dismissal of the suit, the defendants 9 to 14 have purchased the portions of the suit properties under six separate sale deeds from different defendants after making thorough enquiry. The plaintiff has no right in any manner in the suit property. The suit is a vexatious litigation with a view to grab a most valuable property in the heart of the town.

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

1.1. Whether the plaintiff was acting as representative of the Kulalar Community?

2. Whether the suit property was purchased by A.Subban Chettiar for the benefit of his family out of his income?

3. Whether the suit property was purchased in the name of of A.Subban Chettiar for the benefit of the community for charitable service?

4. Whether the defendants 1 to 6 have any independent right over the suit property?



5. Whether the defendants 1 to 6 have right to sell the property?

6. Whether the sale in favour of the defendants 9 to 14 is valid in the eye of law and whether they have any right in the suit property?

7. Whether the sale in favour of the defendants 9 to 14 was barred by *lis pendence*?

8. Whether the eight defendant has right in the suit property?

9. Whether the plaintiff has no right to file the suit?

10. Whether the plaintiff is entitled to the relief of declaration and injunction as prayed for?

11. Whether the defendants 1 to 6 are liable to render accounts to the plaintiff?

12. To what other reliefs, the plaintiff is entitled?

9. Before the trial Court, on the side of the plaintiff P.W.1 to P.W.3 were examined and Exs.A1 to A23 were marked and on the side of the defendants D.W.1 and D.W.2 were examined and Exs.B1 to B17 were marked.

10. The trial Court after analyzing the oral and documentary evidence dismissed the suit for declaration and granted decree directing the defendants 1 to 6 to leave an extent of 30 ft., vacant place shown as 'A' in the Commissioner's report for the purpose of conducting the services, besides granted injunction restraining the defendants 1 to 6 and 9 to 14 from interfering with the conduct of mandagapadi in the suit property. Aggrieved over the same an appeal was filed by the plaintiff and cross objection was also filed by the defendants. The First Appellate Court had modified the decree of the trial Court granting permanent injunction restraining the defendants from interfering with the conduct of mandagapadi festival for a period of three days and dismissed the cross appeal filed by the defendants. Aggrieved over the same, the plaintiff has filed an appeal in S.A.(MD)No.251 of 2012 and the purchasers of the suit property, namely defendants 9 to 14 filed an appeal in S.A.(MD) No.438 of 2012.

11. While admitting these second appeals, the following substantial questions of law have been framed:-

in S.A.(MD)No.251 of 2012:-

1) *Whether the conclusion of the Courts below that the defendants 1 to 6 as legal heirs of Subban Chettiar are entitled to sell the suit property, is sustainable in law especially in view of the character and contents of the documents in Exs.A2, A4, A7, A8, A9, A19, A20 and A22 which separately and cumulatively show that the suit property was dedicated for the benefit of Kulalar Community people for celebrating the religious functions?*



2. Whether the findings of the Courts below ignoring Exs.A7, A8, A19 and A20 sustainable in law when those documents are certified copies of proceedings obtained from Civil Court?

3. Are the Courts below justified in ignoring Exs.A5, A10, A11 and A12 which are printed documents and more than 70 years old only on the ground that no person connected with the document was examined?

in S.A. (MD) No.438 of 2012:-

(i) Whether the finding of the Courts below that on recitals in Ex.A2 can be said to be constituted a dedication to perform Mandagapadi on behalf of Kulalar Community in the suit property is sustainable?

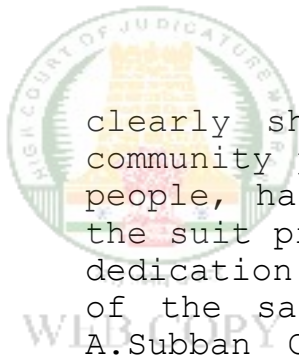
(ii) Whether the suit proceedings hit for having failed to comply with the requirement set out in Order 1 Rule 8 CPC?

(iii) Whether the judgment of the lower appellate Court is vitiated for having failed to note that the boundaries will prevail over and erroneous mentioning of survey number will not affect the passing of title?

(iv) When the appellants herein have absolute title over the suit property, was the lower appellate Court is justified in restraining their right to alienate?

12. The learned counsel appearing for the plaintiff / appellant in S.A.No.251 of 2012 submitted that the suit has been filed to preserve the property, which was dedicated for the benefit of the community known as Kulalar Community. The Courts below have not considered the documents properly. Now, the second appeal in S.A. (MD) No.438 of 2012 has been filed only by the subsequent purchasers of the suit property. The defendants 1 to 6, against whom the original suit has been filed, have not challenged the decree and judgment of the Courts below. The defendants 9 to 14, who are the purchasers of the suit property, when the suit was dismissed for default on 31.08.1999 and before the suit got restored, purchased the properties under six sale deeds between 20.09.1999 and 16.02.2000. Hence, it is the contention that when an application for restoration of the suit is pending, sales were. Therefore, the defendants 9 to 14 are not the *bona fide* purchasers and they have no connection with the Community of the plaintiff or the society. Only after the purchase of the property, the defendants 9 to 14 were impleaded in the suit.

13. It is the contention that the very suit property itself was purchased in the year 1907 under Ex.A2 for the purpose of conducting charitable activities for the benefit of the community. Ex.A3, also clearly fortified the same. The entries in that documents clearly show that the properties have been purchased in the name of A.Subban Chettiar and it was dedicated for the benefit of the community. The documents filed on the side of the plaintiff



clearly show that there were several contributions made by the community people. A.Subban Chettiar, as an agent of the community people, has filed a suit for eviction of the tenants in respect of the suit property. That itself clearly shows that there was a total dedication of the property for charitable purpose. Similarly, one of the sale deeds, Ex.A4 executed by the son of the so called A.Subban Chettiar also proves the fact that there was a total dedication in favour of the Community for charitable purpose. When there is a total dedication in favour of the temple, the property is absolutely belongs to the community. This aspect has not been considered by the Courts below.

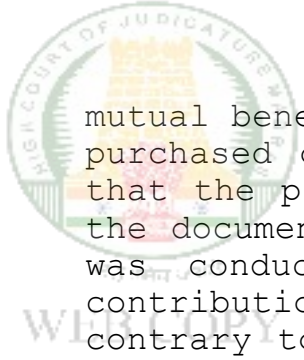
14. It is the further contention of the plaintiff that evidence of D.W.2 is totally against his pleadings. No evidence whatsoever has been filed to show that A.Subban Chettiar and his family members are under the control of the property. He further contended that when the property is notified with the specific endowment, any person interested in the property can file a suit. The Society consists of members from to the same community and the plaintiff is having right to institute a suit for recovery of property. Therefore, merely on the ground that the Society has filed the suit, the plaintiff cannot be non-suited and the benefit cannot be granted to the defendants. It is not the case of the defendants that the Society does not represent the whole community. Therefore, the suit is very well maintainable. Though an application under Order 1 Rule 8 CPC is now filed, it is the contention that such application is not required, since any interested person can file the suit to recover the property, which was dedicated for charitable service. Hence, he submitted that though the relief has been sought for recovery of possession in favour of the Society, the Court can very well mould the relief and order recovery of the property in favour of the community and hold that Society cannot claim any right over the property as its own property. Hence, prayed for allowing the appeal filed by the plaintiff.

15. In support of his contentions, he has relied upon the following judgments:-

(1) *Jagan Singh (dead) through Lrds vs. Dhanwanti and another* [(2012) 2 SCC 628]

(2) *Nilgiri District Janatha Party rep. by its Secretar vs. A.Rahim and three others* [1996-2-L.W.456]

16. The learned counsel for the defendants/Appellants in S.A. (MD) No.438 of 2012 submitted that the suit is not maintainable as the suit has been filed by the Society instead of the community. The plaintiff has not proved the contribution from the people. The society cannot represent the community, and the entire community is not before the Court. No application under Order 1 Rule 8 CPC is filed. The mandagapadi was performed by A.Subban Chettiar for the



mutual benefit of his family. Ex.A3 indicates that the property was purchased out of his own income. The contention of the plaintiff that the property is the private trust has not been established by the documents. There is no evidence to show that A.Subban Chettiar was conducting service and the property was purchased by the contribution made by the community people. The legal notice is also contrary to the pleadings. The suit property is totally different property sold under Ex.A3, which does not relate to the suit property. Ex.A7 also relates a different property. Ex.A9 series also not relate to the suit property. It is also submitted that the terms found in the document do not relate to the community. It can be read only as the community person purchased the property and not to be read as the property was purchased for the community. Hence, prayed for allowing the appeal filed by the defendants and dismissal of the appeal filed by the plaintiff.

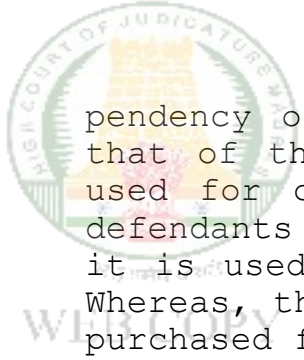
17. In support of her contentions, she has relied upon the following judgments:-

- (1) *The Assistant Commissioner and others vs. Nattamai K.s.Ellappa Mudaliar and others* [AIR 1987 MAD 187]
- (2) *Sappani Mohamed Mohideedn and another vs. R.V.Sethusubramania Pillai and others* [AIR 1974 SC 740]
- (3) *Subhash Market Association and another vs. Municipal Corporation of Delhi and others* [AIR 2005 DEL 209]
- (4) *Commissioner, HR & CE Board Madras vs. Vinayakar Arudra Tiruppani Sabha* [1952 (1) MLJ 282]

18. Heard the learned counsel appearing on either side and perused the materials placed on record.

19. The plaintiff is the registered society, namely Kulalar Peravai. This fact is not in dispute. The main contention of the plaintiff is that the suit property was purchased for the community benefit to perform mandagapadi on permanent basis in their own property. Accordingly, the suit property was purchased in the name of A.Subban Chettiar, who was rich and influential man belonging to different village, namely Bodinayakkanur. Hence, it is the contention of the plaintiff that the property has been purchased for the community and dedicated for the charitable purpose. After purchase of the property, there were donations given by the community and mandapam and a guest house in the suit property were constructed.

20. It is the contention of the defendants that the property has been purchased individually by A.Subban Chettiar and left for religious purpose to be conducted only by the family members not on behalf of the community at large. Hence, the defendants 1 to 6, who are the legal heirs of the original purchasers, namely A.Subban Chettiar, contended that the suit property was all along treated as individual property. Accordingly, they had right over the property. The defendants 9 to 14, who had purchased the property during the



pendency of the suit proceedings, have also taken the defence as that of their vendor. The fact that the property was originally used for charitable purpose is not disputed by both sides. The defendants contended that the property is the private property and it is used only by the family members for conducting mandagapadi. Whereas, the plaintiff contended that the entire property itself was purchased for the benefit of the community and the property has been developed with the donation given by other people in the same community.

21. It is imperative for the Courts to ascertain the true intention of the parties at the inception. Whether the suit property was meant for religious purpose and absolutely, dedicated on specific endowment created is to be gathered by fair and reasonable consideration of the documents. It is useful to refer the judgment of the Hon'ble Supreme Court in the case of *Idol Of Sri Renganathaswamy Rep By its Executive Officer vs. P.K. Thoppulan Chettiar, Ramanuja Koodam Anandhana Trust* [2020-2-L.W. 30] in this regard, in which in para 16, it has been held as follows:-

"16. The distinction between a public and private charity was set out by a Constitution Bench decision of this Court in *Mahant Ram Saroop Dasji v S P Sahi*⁶. In that case, the Court had to determine whether the Bihar Hindu Religious Trusts Act (1 of 1951) applied to both public as well as private trusts. It described the difference between public and private charities as follows:-

6. ... it is necessary to state first the distinction in Hindu law between religious endowments which are public and those which are private. To put it briefly, the essential distinction is that in a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private trust the 1959 Supp (2) SCR 583 beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust... (Emphasis supplied).

Where the beneficiaries of a trust or charity are limited to a finite group of identifiable individuals, the trust or charity is of a private character. However, where the beneficiaries are either the public at large or an amorphous and fluctuating body of persons incapable of being specifically identifiable, the trust or charity is of a public character. This test has been consistently followed by subsequent benches of this Court, most recently



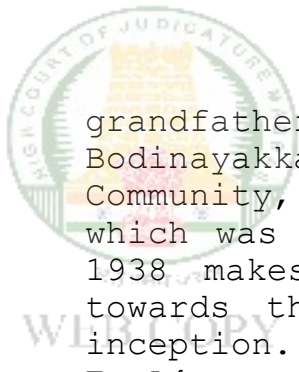
in a three judge Bench decision of this Court in *M J Thulasiraman v Hindu Religious & Charitable Endowment Admn*⁷. In the present case, the Deed of Settlement states that the charity is to be carried for the benefit of the devotees' who visit during certain Hindu religious festivals. The charity is one which benefits the public and the beneficial interest is created in an uncertain and fluctuating body of persons. The -devotees as a class of beneficiaries are not definitive and therefore, the respondent trust is a public trust."

22. From the above, it is easily stated that where the beneficiaries are either the public at large or an amorphous and fluctuating body of persons incapable of being specifically identifiable, the trust or charity is of a public character. In the light of the settled position of law in this regard, when the document, under which the property was purchased is seen i.e., EX.A2, the recitals therein makes it very clear that the purchaser namely, A.Subban Chettiar of Bodinayakkanur being a Manager belonging to Kulalar Peravai, who is also conducting charity in the name of mandagapadi for his community people, has purchased the property for a sum of Rs.400/-. The recitals however indicate that the advance of Rs.20/- has been paid by Kuppazhaga Servai and the same was also adjusted towards the sale consideration. Ex.A3, advertisement given by the community in the year 1930, clearly shows that after the purchase of the property many people belonging to the Kulalar Community had made various contributions towards the construction of mandapam.

23. D.W.2, who is the sixth defendant in the suit and none other than the grandson of A.Subban Chettiar, in his evidence, has categorically admitted that his grandfather had given Rs.400/- as donation for purchasing the property. He has also admitted Ex.A3, advertisement, wherein the names of the persons, who have contributed for construction of the mandapam, also clearly found. Ex.A3 is not seriously disputed by the legal heirs. It is further relevant to note that one of the sons of A.S.Subban Chettiar has dealt the portion of the suit property under Ex.A4, sale deed. The recitals in the above documents, read thus:-

".....சொத்தை என் தகப்பனாரால் கிரையம் வாங்கப்பட்டு எங்கள் ஜாதியார் பொதுவிற்காகவும் விடப்பட்டு என்னுடைய சுவாதினத்திலிருந்து வருவதுமான னஹ சொத்தில் தென்கடாசியில்...."

24. The above recitals itself clearly show that the property was purchased in the name of A.Subban Chettiar and left for the benefit of the community. Further, recitals in the sale deed make it very clear that the sale consideration of Ex.A4 has been shown in the general account of the community. D.W.2 also admitted in his evidence that the sale consideration shown in Ex.A4 is shown in the common account of the community. He has also admitted that his



grandfather was running a press known as Pangajam press at Bodinayakkanur. Ex.A5, ledger published by Dindigul Kulalar Community, has been printed in the Pangajam press at Bodinayakkanur, which was run by A.Subban Chettiar. The old document of the year 1938 makes it very clear that the property was purchased only towards the charitable purpose for the community from the very inception. It is also to be noted that the sale consideration in Ex.A4 was shown as income in Ex.A5, Kulalar Mandapam income. This was also admitted by D.W.2. Ex.A5 shows that one Ramalinga Chettiar and others also contributed for the conduct of Mandagapadi. Ex.A9 series are the invitations issued by the temple, which were also not disputed. Ex.A9 makes it very clear that the invitations have been issued by the temple for A.Subban Chettiar and also Ramalinga Chettiar for festival during Chitra Pournami.

25. It is also relevant to note that in the year 1947, there were partition in A.Subban Chettiar's family, in which the suit property was omitted. This fact was also admitted by D.W.2 in his written statement as if since the property was left for charitable purpose by the family members, the same has not been included in the partition. These facts also clearly indicate that the property was purchased in the name of A.Subban Chettiar under Ex.A2 as manager of the Dindigul Kulalar Peravai and the same was never dealt as individual property of A.Subban Chettiar or his family at any point of time. Subsequent inclusion of the sale amount towards the community accounts also shows that the property has been dedicated for charitable purpose. Therefore, to countenance the contention of the defendants that the property was all along under their control and they are exercising the right over the property, no materials whatsoever have been filed by the defendants except their pleadings. Ex.A10 is the letter written by A.Subban Chettiar, which was admitted by D.W.2, addressed to Ramasamy Chettiar with the expenses of mandagapadi for more than 48 years. It is also relevant to note that the plaintiff Society sent a legal notice in the year 1992 under Ex.A13 to D.W.2 and others not to create any encumbrance over the property. However, D.W.2 has not issued any reply for that.

26. Ex.A6 is the patta in respect of the suit property issued in the name of the Dindigul Saliya Vahana Telungu Kulalar Community. It is also relevant to note that Ex.A7 is the suit filed by Kulalar Community and others including one of the minor son of one Kuppalaga Chettiar. If really the property is held by A.Subban Chettiar individually, there was no need whatsoever for his community people to join with him to file a suit against the tenants. Ex.A29 is the certified copy of the lease deed executed by A.Subban Chettiar in the year 1927. The recitals therein itself clearly show that he has averred that though the property was purchased in his name, the property belongs to the community and Kuppazhaga Chettiar was in the management of the property.



27. The trial Court in fact committed a manifest error in holding that the plaintiff has not proved Ex.A2. When the defendants themselves had not denied the document and the registered documents are more than 30 years old, presumption with regard to execution can be very well drawn. This was also ignored by the trial Court and the First Appellate Court.

28. The defendants 9 to 14 have also taken a stand that the property was never dedicated for charitable purpose. In Ex.A23, bylaws of the plaintiff society, one of the objects of the plaintiff society is to maintain the mandapam constructed for the community in Palani, Dindigul and Thirupparankundram. Though, there were several objects, one such object is to preserve the mandapam constructed for the community people. From the above documents, this Court has no hesitation to hold that the property is absolutely dedicated for the charitable purpose by the Kulalar Community. As already discussed, the defendants 1 to 6 had not produced any documents to show that the property was dealt as separate property.

29. D.W.1, subsequent purchaser of the property has also disputed the charitable purpose conducted in the suit property. The only contention of D.W.1 is that the conduct of mandagapadi is only by the family members. D.W.1, shows feign ignorance of the interim orders restraining the sale of the property by the defendants 1 to 6. It appears that the suit was dismissed for default on 31.08.1999. When the application for restoration is pending and before the suit got restored, the defendants 9 to 14 have purchased the property under six sale deeds. Only after the purchase, they have been impleaded as parties in the suit. The conduct of the defendants, who are permanently residing near the suit property and suddenly swung into actions and purchased the property immediately after the dismissal of the suit for default, indicates that the defendants 9 to 14 were aware of the proceedings and infact they were craving to have the suit property. Even though the suit property was dedicated for charitable purpose in the year 1907 itself, since by passage of time, the suit property has become commercial properties, the defendants ventured to purchase the same despite knowing the proceedings. Therefore, the purchase made by the defendants 9 to 14 in between time gap of restoration of the suit is not a *bona fide* one and such purchase is hit by Section 52 of the Transfer of Property Act.

30. In the case of Jagan Singh (Dead) through vs. Dhanwant and another [(2012) 2 SCC 628], the Hon'ble Supreme Court has held that even after the dismissal of the suit, the purchase is subject to *lis pendence*, if an appeal afterwards is filed. In the above case, the suit has been dismissed for default for non payment of process fee. In paragraph 34 of the judgment, it has been held as follows:-



"If such a view is not taken, it would plainly be impossible that any action or suit could be brought to a successful termination if alienations pendente lite were permitted to prevail. The explanation to this section lays down that the pendency of a suit or a proceeding shall be deemed to continue until the suit or a proceeding is disposed of by final decree or order, and complete satisfaction or discharge of such decree or order has been obtained or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

31. Having regard to the above position, in the present case since the sale was also during the pendency of the application of restoration and before the suit got restored, the purchasers cannot claim that they are the *bona fide* purchasers. Though much emphasis was made by the learned counsel for the defendants that survey number differs, such contention cannot be countenanced for the simple reason that identity of the property was never disputed by the parties.

32. The learned counsel for the defendants contended that the society cannot represent the community. It is to be noted that the suit has been filed by the society. It is not disputed that all the members of the society belong to Kulalar Community. Any society having objects of promoting religious charity and other objects may register itself under the Act. One of the by bylaws referred above, makes it very clear that one of the object of the society is to preserve the mandapam constructed for charitable purpose of the community people in Dindigul, Pazhani and Tirupparankundram. Therefore, any Officer of the registered society authorized bylaws may file a suit concerning of any property right or claim in respect of the suit property. Therefore, the suit as such filed cannot be non-suited merely on the ground that the Society cannot represent the community. It is to be noted that though there are several members in the society, none of the community people objected for filing the suit. Even assuming that society cannot represent the entire community. It is to be noted that the suit has been filed by the Secretary of the Society.

33. Charitable endowments as per the definition under the Act 22 of 1959 [Hindu Religious and Charitable Endowments Act] means that the property given or endowed for the benefit of, or used as of right by, the Hindu or the Jain community or any section thereof, for the support or maintenance of objects of utility to the said community or section, such as rest-houses, choultries, patasalas, schools and colleges, houses for feeding the poor and institutions for the advancement of education, medical relief and public health or other objects of a like nature; and includes the institution



concerned.

34. Sub Sections 15 to 17 of Section 6 of the Hindu Religious and Charitable Endowments Act reads as follows:-

(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;

[(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"

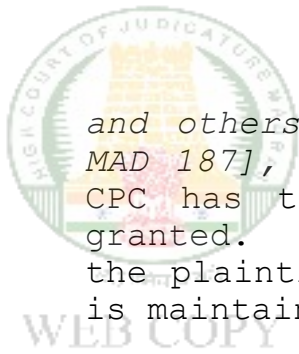
35. When the properties are held to be dedicated to the religious charity and there was a specific endowment or complete dedication, this Court is of the view that any person having interested in such property may file a suit to recover the property for the benefit of the community, for which the property was dedicated. Therefore, the contention of the learned counsel for the defendants that the Society cannot represent the community cannot be countenanced. The very object of the society itself indicates that to preserve the properties dedicated for the charitable purpose and service by their community people.

36. With regard to the other contention of the learned counsel appearing for the defendants that the leave should have been obtained under Order 1 Rule 8 CPC, though an application has been filed by the plaintiff in the second appeal stage for leave to sue in a representative capacity, this Court is of the view that such application is not at all required. Obtaining leave under Order 1 Rule 8 CPC is only a procedural illegality and this Court has power to cure the difficulty. This Court has held that "the person interested" includes secretary of the society, has right to file the suit on behalf of the society, since he is interested person in the property dedicated for charitable purposes. Accordingly, this Court in order to avoid further delay is of the view that the application under Order 1 Rule 8 CPC is not at all required.

37. M/s. Supreme General Films Exchange ltd., vs. High Highness Maharaja Sir Brijinath Singhiji Deo of Maihar and others [AIR 1975 SC 1810], the Hon'ble Supreme Court has held that declaratory relief under Section 42 of the Old Act, may be made and the courts have power to grant such a decree independently of the requirements of the section. In para 15 of this order, it has been held as follows:-

"The result is that Section 42 merely gives statutory recognition to a well-recognised type of declaratory relief and subjects it to a limitation, but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of Courts to give declarations of right in appropriate cases falling outside Section 42."

38. In the case of the Assistant Commissioner, HR & CE, Salem
<https://hcservices.ecourts.gov.in/hcservices/>



and others vs. Nattamai K.S.Ellappa Mudaliar and others [AIR 1987 MAD 187], this Court has held that procedure under Order 1 Rule 8 CPC has to be followed and without doing so, no relief can be granted. Further, the suit is also non-suited on the ground that the plaintiff in the above case has not established that the temple is maintained by Senguntha Mudaliars of Tharamangalam.

39. In the case of *Sappani Mohamed Mohideen and another vs. R.V.Sethusubramania Pillai and others* [AIR 1974 SC 740] to contend that there was no absolute dedication and when the dedication is only partial, the charge is created on the property. In such a case, the property descends and is alienable and partible in the ordinary way, the only difference being that it passes with the charge upon it. In this case from the construction of the document, the very property itself was purchased for charitable purpose, the same clearly indicate that there is absolute dedication for the charity. In the case of *Subhash Market Association and another vs. Municipal Corporation of Delhi and others* [AIR 2005 DEL 209] has been relied upon by the learned counsel appearing for the defendants to support the contention of following the procedure under Order 1 Rule 8 CPC. The judgment of this Court made in C.R.P.(PD)No.1744 of 2009 dated 23.11.2010 [*Karuppa Gounder and another vs. Appavoo and others*], has been relied upon to contend that the person cannot seek to advance the claims of a group of persons or community without adopting the procedure under Order 1 Rule 8 CPC, if the relief is prayed for only on the basis of the rights of the community as such. In that case, 28 persons have raised objection and this Court has held that they should be impleaded and procedure under Order 1 Rule 8 should be strictly followed.

40. There is dispute between two groups in the above case. As discussed earlier, in the present case, the very property itself is purchased for dedication towards charity of a particular community and any person interested in that charity and service is certainly entitled to file a suit to preserve the property.

41. Keeping in view of the above judgment and having regard to the nature of the facts and circumstances to the particular case, this Court is inclined to mould the relief. Accordingly, this Court holds that the judgment of the Courts below that the properties is owned by A.Subban Chettiar as individual property is nothing but perverse and non application of mind and the same is set aside.

42. Though declaration is sought to declare the property as private trust property of Kulalar Community, this Court is if the view that merely such relief is sought, that itself cannot be a ground to non-suit the relief. Recovery of the property is also sought by the plaintiff society. The Courts have ample power to mould the relief for complete justice. Such view of the matter, this Court holds that the property is absolutely dedicated to the



Kulalar Community people and the defendants 9 to 14 have no right whatsoever in the above property and the sale in their favour is also not valid in the eye of law. Therefore, they are liable to hand over the property to the plaintiff's society. On such recovery, the plaintiff society cannot claim any absolute right over the property as the property is dedicated to community people and it can be used only for the purpose of religious charity conducted by Kulalar Community. Accordingly, the suit is decreed for declaration that the property is completely dedicated to the charitable purpose by the Kulalar Community people and the defendants 9 to 14 are directed to hand over the possession of the property to the plaintiff. After recovery of the property same should be treated only for charitable purpose by the community. With regard to the other relief particularly the injunction, the defendants are restrained by way of permanent injunction not to interfere with the religious activities and charitable activities conducted by the Kulalar Community in the suit property. With regard to the accounts, since the plaintiff has not established the nature of the accounts and income and expenditure, the same is dismissed.

43. During the appeal stage, an application has been filed by the ninth defendant and six others to receive the additional evidence. In that application it has been stated that invitation prepared by the temple in the year 2011 and subsequent invitations prepared by the temple are relevant to be filed in this appeal as additional documents.

44. This Application has been opposed by the respondents on the ground that documents now filed are the documents of subsequent years and are self serving documents. The additional documents have no relevance to decide the main issue involved in these second appeal. Already invitations were filed before the trial Court and a witness was also subjected to cross examination. Therefore, the present documents cannot be received. In the affidavit filed in support the petition seeking to receive additional documents the petitioners have requested the first respondent / plaintiff to conduct mandagapadi in another property that belong to the petitioners, which lying nearby the Thaadikombu Soundararaja Perumal Temple, Dindigul. An alternative suggestion was proposed so that there would not be any problem for both the parties and the intention of A.Subban Chettiar also will be honoured.

45. The main issue involved in this appeal is whether the property was absolutely dedicated for charitable purpose by the particular community or not. The documents now sought to be filed is only a printed invitations said to have been issued by the temple, which are subsequent to the proceedings and printed during the pendency of the appeal. Therefore, merely on the basis of those documents, right of parties cannot be decided in the second appeal. If such documents are allowed to be part of record, there may not be any end to litigation. As decided earlier what has to be seen is



the original documents and construction of the documents to find out whether the properties have been absolutely dedicated or not. These additional documents are invitations said to have been printed in the year 2011. Perusal of the invitation indicates that while describing mandagapadi there is some differences. Therefore, mere some difference in the printing and giving a different name in respect of Kulalar Community, that will not make any differences. However, those documents are not at all relevant to decide the main issue i.e., to find out whether there is absolute dedication or not, therefore, the documents now sought to be filed are only after thought and cannot be received at this stage. If these types of documents are received, the litigations will be prolonged endlessly. Hence, this Court do not find any of the ground to receive the additional documents, accordingly, the miscellaneous petition filed to receive the additional documents is dismissed.

46. The community people have also filed an application to implead themselves as parties in these second appeals on behalf of the community. As this Court has held that the suit is maintainable by any member of society who is interested in charity, there is no necessity for such impleadment. 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 Gurudwara and he 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. Accordingly, these miscellaneous petitions filed seeking impleadment are dismissed.

47. In the result, the second appeal filed by the subsequent purchasers, who are the 9 to 14 defendants in the suit in S.A.(MD) No.438 of 2012 is dismissed and the appeal filed by the plaintiff/society in S.A.(MD)No.251 of 2012 is allowed and the decree and judgment of the Courts below is set aside and the suit is decreed for declaration and recovery of possession as discussed in paragraph No.42 of this judgment. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Fast Track Court, Dindigul.

2.The Principal Subordinate Court, Dindigul

Copy to:

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

+2 CCs to M/s.H.LAKSHMI SHANKAR, Advocate (SR-15056,15057[F] dated
01/04/2021)

+2 CCs to M/s.J.ANANDHAVALLI, Advocate (SR-15048,15049[F] dated
01/04/2021)

S.A. (MD) Nos.251 and 438 of 2012
31.03.2021

KK(03.06.2021) 20P 9C