BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)No.230 of 2009

1. The Commissioner,
   H.R & C.E Admn. Department,
   Madras-34.

2. The Deputy Commissioner,
   H.R & C.E Admn. Department,
   Madras-34. ... Appellants

vs.

1. K.Ramanathan (Died)
2. Tmt.Vinoja
3. Manikandan
4. Ravikumar
5. Tamilselvan
6. Tmt.Manjula ... Respondents

(The respondents 2 to 6 are brought on record as legal heirs of the deceased sole respondent vide order dated 06.12.2019 made in CMP(MD)Nos.3255 to 3257/2018)

Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 31.07.1995 made in O.S.No.283 of 1993 on the file of the Subordinate Judge, Pudukottai.

For Appellants : Mr.P.T.Thiraviam
Additional Government Pleader
For R2 to R6 : No appearance

JUDGMENT

The 1st respondent as a plaintiff filed a suit in O.S.No.283 of 1993 on the file of the Subordinate Judge, Pudukottai, for a declaration that the temple of Sri Mariamman at Adampur Village is not a temple as per the provisions of the Hindu Religious and Charitable Endowments Act and to declare that the office of trusteeship to the temple of Sri Mariamman at Adampur Village is hereditary in nature and for a consequential decree setting aside the orders and judgment of the Commissioner, HR & CE, Madras in A.P.No.29/90 dated 09.11.1992. After trial, the trial Court decreed the suit, by judgment and decree dated 31.07.1995. Aggrieved by the said judgment and decree, the defendants in the suit as appellants, have filed this appeal. Pending appeal, the 1st respondent/plaintiff died and his legal representatives were impleaded as respondents 2 to 6.

2. Brief averments stated in the plaint are as follows:-

The temple of Sri.Mariamman was founded by the plaintiff's grandfather one Lakshmana Servai in his patta land at his cost. It was intended for family worship and no public was ever permitted to worship the deity. Neither for constructing the temple nor for maintaining its affairs, donations were collected from the public. In fact, under a registered deed dated 05.12.1959, about 19 acres of nanja lands were set apart to meet out the expenses connected with the temple. Since its inception, the temple had been in the exclusive management of the founder and later on his descendants. The founder died in 1920 leaving behind his two sons namely, Arunachalam and Kuppusamy. They succeeded to the management of the temple. Arunachalam died in the year 1940 without any issues. Kuppusamy died in the year 1953 leaving behind his two sons namely, the plaintiff and one Lakshmanan. The temple management is thus carried on exclusively by the founder and his decendants till date. The income from the lands are utilised for the poojas and maintenance of the temple. As the public are not permitted to have worship in the temple, it cannot be termed as a temple as per the provisions of the HR & CE Act and no outsider has ever interfered in the administration of the temple. Hence, the temple should be declared as a private temple. In case, it is found that the temple is a public temple, then the plaintiff is entitled to have a declaration regarding the hereditary nature of the trusteeship to the temple. The Deputy Commissioner HR & CE, Trichy, who has been impleaded as the second defendant, has enquired into the matter and dismissed the claim in O.A. 42/84 by orders dated 12.08.1989. Against the said order, the plaintiff filed an appeal under Section 69(1) of the HR & CE Act, before the Commissioner HR & CE, Madras in A.P.No.29/90. The learned Commissioner dismissed the appeal, confirming the orders of the Deputy Commissioner. Hence the suit.

3. Brief averments in the written statement is as follows:-

The defendants would submit that since the plaintiff did not produce any materials to prove that Sri Mariamman Temple is a religious institution founded by the petitioner's grand father one Lakshmana Servai in his patta land and at his cost, the defendants dismissed the application and appeal of the plaintiff. Further, the present suit was not filed within 90 days from the date of receipt of the order passed under section 69(1) of the Act, as per Section 70(1)(ii) of the Act. Hence, the suit is barred by limitation. It is further submitted that by making the alternative prayer claiming that the office of the trusteeship is hereditary one, the plaintiff admits that Sri Mariamman Temple is a religious institution, as defined under Section 6(18) and 6(20) of the Act, and therefore, the provisions of the Act, will certainly apply to it. As per the Revenue records, the temple is located only in the Natham Poramboke land and not in the patta land of the said Lakshmana Servai. Hence, the contention of the plaintiff that the temple was intended for the family worship and no public was ever permitted to worship the deity, is denied as false. The further contention that neither for constructing the temple nor for maintaining the affairs of the temple, donations were collected from the public, is also denied as false. Hence, the suit is liable to be dismissed.

4. Based on the above pleadings, the trial Court framed the following issues:-

(i) Whether the suit temple can be declared to be a temple not coming under the provisions of the Hindu Religious and Charitable

Endowments Act?

(ii) Otherwise, whether the plaintiff could be declared as a hereditary trustee of the temple?

(iii) To what other reliefs, the plaintiff is entitled to?

5. In order to substantiate the case, on the side of the plaintiff, two witnesses were examined as PW1 and PW2 and four documents were marked as Exs.A1 to A4. On the side of the defendants, no witness was examined and no document was marked.

6. The trial Court considering the pleadings, oral and documentary evidence, decreed the suit by judgment and decree dated 31.07.1995. Challenging by the said judgment and decree, the defendants in the suit have filed this appeal.

7. The learned counsel for the appellants would submit that the suit temple is a public temple within the meaning of Sections 6(18) and (20) of the HR & CE Act. The registered deed dated 05.12.1959 shows that the income from the said property is not absolutely dedicated to the

suit temple for performing poojas and other expenses. The 1st respondent/plaintiff has not proved that his ancestors only constructed the suit temple as their family temple. During cross examination, PW1 deposed that there is no record to show that his ancestors only constructed, administered and maintained the temple and there are no accounts for the same. Further, PW2 also has stated in his cross examination that the villagers used to offer money or things as donation. Since the 1st respondent/plaintiff is a powerful person in the village, nobody can question him. Despite the above deposition, the trial Court failed to appreciate the evidence of PW1 and PW2 in proper perspective and erroneously decreed the suit and set aside the order passed by the Commissioner, HR & CE/first appellant. Thus, the judgment and decree passed by the trial Court is liable to be set aside and the order passed by the first appellant has to be confirmed. In support of his contentions, learned counsel for the appellants relied on a judgment of the Hon'ble Supreme Court reported in **(2003) 10 SCC 712, Nallor Marthandam Vellalar and others vs. Commissioner, Hindu Religious and Charitable Endowments and others**.

8. The case of the respondents 2 to 6 is that the suit temple is a family temple exclusively belongs to the 1st respondent and his ancestors founded the said temple for the family worship of the respondents. The possession of the temple, its administration and maintenance was in the hands of the 1st respondent and his ancestors from the date of its inception and no general public were allowed to worship in the suit temple without the permission of the respondents. Further, the 1st respondent and his ancestors were only the hereditary trustees of the suit temple and therefore, the 1st respondent approached the 2nd appellant to declare him as hereditary trustee under Section 63 of the HR & CE Act, by filing O.A.No.42/84 which was dismissed by order dated 12.08.1989, against which, he filed an appeal under Section 69(1) of the HR & CE Act in A.P.No.29/90 before the Commissioner, HR & CE. The Commissioner also, by order dated 09.11.1992, dismissed the appeal, confirming the order passed by the Deputy Commissioner, HR & CE. Therefore, aggrieved by the said order, the 1st respondent filed the present statutory suit under Section 70(1)(ii) of the HR & CE Act, before the Sub Court, Pudukkottai. The further contention of the respondents 2 to 6 is that no public are allowed to worship in the suit temple and no

character of public temple is existing and the appellants have not established their defence that the suit temple is a public temple. The trial Court rightly appreciated the evidence and materials and allowed the suit and set aside the order passed by the Commissioner. There is no merit in the appeal and hence, it is liable to be dismissed.

9. Heard the learned counsel for the appellants and perused the records.

10. According to the respondents, the suit temple was founded by their ancestors as their family temple and it is under the control of the respondents and their ancestors from its inception. By a registered deed dated 05.12.1959, there was absolute dedication of the properties in favour of the deity and the income derived from the said properties is utilised for the administration and maintenance of the temple. The respondents and their ancestors administered the temple in the capacity of hereditary trustees. Though the 1st respondent made an application in O.A.No.43/84 before the Deputy Commissioner, HR & CE/2nd appellant, the said authority failed to accept the contention of the 1st respondent and therefore, he preferred an appeal under Section 69(1) of the HR &

CE Act, before the Commissioner, HR & CE/1st appellant who also dismissed the appeal without considering the facts and circumstances of the case. Therefore, the 1st respondent filed a statutory suit under Section 70(1)(ii) of the HR & CE Act and the trial Court rightly appreciating the evidence, decreed the suit.

11. The specific case of the appellants is that the land in which, the suit temple is constructed, is a Natham poramboke land and there is no evidence to show that only the ancestors of the respondents constructed and managed the temple as hereditary trustees and that the temple was exclusively for the family worship of the respondents. The order passed by the 1st appellant clearly shows that there is no evidence to prove that there is absolute dedication of the properties in favour of the deity and income derived therefrom is utilised for the poojas and maintainance of the temple. The general public are allowed to worship and the respondents also collected donations from the public. Though the respondents stated that the registered deed dated 05.12.1959 clearly shows that the income from the properties, is utilised for the poojas and festival expenses as specified therein, the 1st respondent himself in his

evidence, has stated that no accounts relating to management of the temple was maintained either by himself or by his forefathers. He also admitted during cross examination that since the appellants were taking steps for possession of the temple, since it comes under the control of the HR & CE Department, he filed an application before the Deputy Commissioner, HR & CE, which was dismissed and against the dismissal of the application, he filed an appeal before the Commissioner, HR & CE, but the same was dismissed without considering the contentions of the 1st respondent.

12. A careful perusal of the entire materials shows that since in the proceedings under Section 63(a) of the HR & CE Act, evidence was recorded and based on the evidence, the second appellant passed an order which was confirmed by the first appellant on appeal, they have not examined the witnesses independently in the suit. The 1st respondent was examined as PW1. He has clearly deposed that he has no evidence that his grandfather constructed the suit temple and that there is also no evidence to prove that the 1st respondent is managing the temple. He has also deposed that there is no notice board in the

temple that public are not allowed into the suit temple and during Aadi month festival in the suit temple, visvakarma community people from Karaikudi will come and participate with the permission of the 1st respondent and that he has also no evidence to show that he is the hereditary trustee of the temple. Whereas, PW2 during cross examination has stated that general public will come and worship in the suit temple and they will give offerings in the form of money or things to the suit temple and that the plaintiff is a powerful person and he cannot be questioned.

13. The above evidence of PW1 and PW2, amply proves that general public were allowed to worship in the suit temple and they used to offer donations for performing the festivals and that there was no record to show that the temple was constructed and managed by the 1st respondent's forefathers and that no accounts was maintained and further, there is no record for trusteeship. Thus, in the absence of the same, the claim of the 1st respondent that the suit temple is his family temple, cannot be accepted and that the respondents cannot be treated as hereditary trustees. Once the public are allowed to worship in the suit

temple, it can be treated as a public temple. Though the Commissioner, HR & CE, has stated that the suit temple is in Natham poramboke land which is not vested with the Government, but however, the respondents have not proved that their forefathers only constructed the temple in their patta lands. Now, the lands are in the name of the temple. The judgment relied on by the learned counsel for the appellants reported in (2003) 10 SCC 712, Nallor Marthandam Vellalar and others vs. Commissioner, Hindu Religious and Charitable Endowments and others, relates to the question of denominational temple which is not applicable to the circumstances of the present case.

14. The appellate Court being a fact finding Court, it has to re-appreciate the entire pleadings, oral and documentary evidence. On a careful perusal of the entire pleadings, oral and documentary evidence and also the judgment of the trial Court, this Court finds that the trial Court failed to appreciate the oral and documentary evidence and erroneously decreed the suit. Hence, the judgment and decree dated 31.07.1995 made in O.S.No.283 of 1993 on the file of the Subordinate Judge, Pudukottai, is set aside and the suit is dismissed and the order

passed by the Commissioner, HR & CE, Madras in A.P.No.29/90 dated 09.11.1992, is confirmed.

15. In view of the above, the Appeal Suit is allowed. The parties are directed to bear their own costs.

bala **08.08.2022**

Index : Yes / No
Internet : Yes

To

The Subordinate Judge,
Pudukottai.

P.VELMURUGAN, J.

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