



A.S(MD)No.270 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

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1)P.Mayandi Asari(Died)

2)Jothi

3)Pandi Selvi

4)Nagarathinam

5)Karthigai Selvi

6)Muthukumar

7)Nandhini

... Appellants

(Appellants 2 to 7 are brought on record as LR's of the deceased sole appellant vide order dated 08.03.2022 in CMP(MD)No.7620/22)

vs.

1)The Joint Director,
Hindu Religious and Charitable Endowment, Madurai,
No.1, West Chithirai Street,
Madurai-625 001.

2)The Commissioner,
Hindu Religious and Charitable Endowment,
Nungampakkam High Road,
Chennai.

Marimuthu Asari (Died)

3)Rakkammal

4)Maniammal

5)Bathma



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6)Mamundi Asari

7)Executive Officer,
Arulmigu Jeya Veera Anjaneya Swamy Temple,
Simmakkal, Madurai and
The Fit Person, Arulmigu Salavai Karuppanasamy Temple,
Yanaikkal, Madurai. ... Respondents

Appeal Suit filed under Section 70(2) of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, against the judgment and decree dated 30.09.2009 passed in O.S.No.894 of 1989 on the file of the 1st Additional Subordinate Judge, Madurai.

For Appellants : Mr.N.Tamilmani
For R1 & R2 : Mr.P.T.Thiraviam

JUDGMENT

The plaintiff filed O.S.No.894 of 1989 on the file of the 1st Additional Subordinate Judge, Madurai, against the respondents/defendants for setting aside the order of the 2nd respondent/ 2nd defendant passed in A.P.12/1986 dated 29.07.1989 confirming the *suo motu* proceedings of the 1st respondent/1st defendant made in O.A.No.48/1981 dated 27.05.1985 and consequently to declare the suit temple as private temple belonging to the appellant/plaintiff and it is not a religious institution. After



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trial, the trial Court dismissed the suit. Challenging the said judgment and decree, the plaintiff has filed this appeal.

For convenience, the parties are referred to as per their rank in the suit.

2. Brief facts in the plaint are as follows:-

According to the plaintiff, the suit temple is a private temple and the Deputy Commissioner, HR & CE, Thanjavur, declared the suit temple as private temple in O.A.No.133/1957, dated 23.10.1958 under Section 57(B) of the Hindu Religious and Charitable Endowments Act, XIX of 1951. According to the plaintiff, the said decision will bind all the officers of HR & CE Department. However, the 1st defendant/Joint Commissioner, HR& CE, Madurai, *suo motu* initiated the proceedings in O.A.No.48/1981 and issued a notice to the plaintiff calling for objection as to the declaration of the suit temple as religious institution under the HR & CE Act. The plaintiff contested the proceedings, in which, the 1st defendant relying upon a report of the Inspector of HR & CE, wherein, the suit temple was stated as a public temple, declared the suit temple as public temple by order dated 27.05.1985, against which, the plaintiff filed appeal



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in A.P.No.12/1986 before the 2nd defendant/Commissioner, HR& CE, Madurai, who by setting aside the order passed by the Deputy Commissioner, HR & CE, Thanjavur, in O.A.No.133/1957, dated 23.10.1958, confirmed the order passed by the 1st defendant. Hence, the suit.

3. Brief facts in the written statement are as follows:-

The defendants 1 and 2 submit that only on the petition received from the public that the plaintiff did not manage the temple properly, the Inspector of HR & CE concerned was directed to conduct an enquiry and the Inspector has recorded evidence of two witnesses and before the Inspector of HR & CE, the plaintiff himself stated that public will come and worship in the suit temple and there is no prohibition for the public to visit the suit temple and therefore, the order passed by the 1st defendant as confirmed by the 2nd defendant that the suit temple is a public temple is correct and the suit is liable to be dismissed. The defendants 3 and 8 filed separate written statements stating that based on the complaints received from the public that the plaintiff was residing inside the temple campus and was utilising the amount received from the suit temple



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for himself, the defendants 1 and 2 rightly declared the suit temple as public temple and therefore, the suit is liable to be dismissed.

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

i) Whether the order dated 29.07.1989 passed by the 2nd defendant could be set aside and whether the suit temple can be declared as private temple?

ii) Whether the plaintiff has a case?

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

5. In order to substantiate the case, on the side of the plaintiff, the plaintiff examined himself as PW1 and 20 documents were marked as Exs.A1 to A20. On the side of the defendants, three witnesses were examined as DW1 to DW3 and 25 documents were marked as Exs.B1 to B25.

6. The learned counsel for the appellant would submit that the suit temple is a private temple belonged to the plaintiff's family and at no point of time, public were allowed to worship in the temple



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and even in the year of 1957, the Deputy Commissioner, HR & CE, Thanjavur, had declared the suit temple as a private temple in O.A.No.133/1957 dated 23.10.1958 under Section 57(B) of the Hindu Religious and Charitable Endowments Act, XIX of 1951, on the application made by one Bodaguru Asari, father of the plaintiff. The said order was passed even three decades ago and now the 1st defendant has initiated *suo motu* proceedings in O.A.No.48/1981 and called for objections from the plaintiff against declaring the suit temple as a religious institution as defined under the HR & CE Act. In the said proceedings, the 3rd defendant in the suit himself got impleaded as a party at the instigation of the 1st defendant. Based on the report of the Inspector of HR & CE, the 1st defendant declared the suit temple as private temple. The 2nd defendant also simply dismissed the appeal without even considering the submissions of the plaintiff.

7. He would further submit that the order of the 1st defendant reveals that though the Inspector of HR & CE examined two witnesses namely, Subbaiah Pillai aged 63 years and the deceased plaintiff, Ex.B3-order passed by the 1st defendant in



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O.A.No.48/1981 shows that Subbaiah Pillai was not examined in the said proceedings and further, the plaintiff was examined and he deposed that the suit temple is a private temple. Though Ex.B3 shows that Subbaiah Pillai stated that the suit temple is visited by all people without any permission and festivals are conducted in Chitra Povernami, Adi Povernami, Pongal Maha Sivarathiri and even the deceased plaintiff also gave a statement before the Inspector of HR & CE that public are worshipping in the suit temple and he never obstructed them and special poojas are done in all Fridays and Tuesdays and Chithra Povernami day, neither the said Subbaiah Pillai nor the Inspector of HR & CE, was examined to substantiate the same. Even in the proceedings O.A.No.48/1981, the plaintiff denied that he had not given any such statement before the Inspector of HR & CE. Therefore, when the public have not been examined and when the plaintiff denied that he had not given any such statement before the Inspector of HR & CE, the trial Court ought not to have dismissed the suit. Further, on the side of the defendants, three witnesses were examined and even DW1 has clearly stated that he never entered into the suit temple and DW2 and DW3 are interested witnesses and no public was examined or



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otherwise, the person who said to have given complaint has not been examined. Absolutely, there are no materials to show that public are allowed to worship. No doubt, in change of circumstances, the private temple may lose its character and it can be stated as public temple, whereas, in this case, absolutely, there are no materials to prove that the suit temple lost its character of private temple and now it has become the public temple. Therefore, the orders passed by the defendants 1 and 2 and the judgment and decree passed by the trial Court are liable to be set aside. In support of his contentions, the learned counsel for the appellant placed reliance upon a decision of this Court in **S.Narayana Pillai vs. The Commissioner, Hindu Religious and Charitable Endowments Administration Department, Madras and C.Nalla Sivan Pillai (LPA.Nos.11, 12, 78 and 79 of 2002, decided on 21.07.2005)**, wherein, it has been held as follows:-

"14. In order to determine the nature of religious institution as a place of public religious worship, a Division Bench of this Court in a decision in R. Mayaperumal and another v. Azhagappan Nadar (died) and others (1984 (2) MLJ 422) has approved the views of the Hon'ble Mr. Justice Ramaprasada Rao in an another case which reads as



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follows:-

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(a) The existence of Moolasthanam, Mahamandapam, idols of chief and other deities, utsavamurthis, daily poojas, special poojas and procession during festive occasions, worship by the local public belonging to different communities without any let or hindrance, are all factors which give the impression that the temple is a public one.

(b) If the temple is being used as a place of public religious worship, if there is no dedication of the temple to and for the benefit of the Hindu community or any section thereof, if it is not used generally by the Hindu community as of right as a place of public religious worship, if there is no hundial and no collections are made from the public for the performance of any festival connected with the temple or for its maintenance and no member of the public has come forward to say that he has contributed any amount for the maintenance or any of the related poojas to the deity therein, the temple will not be a public temple, but a private one.

(c) The origin of the temple, the manner in which its affairs are managed, the nature and extent of the gifts received by it, rights exercised by devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple, are factors that go to establish whether a temple is a public or a private one and in each



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case both the documentary and oral evidence have to be considered as is whole while keeping in view the above principles.

(d) An inference whether a religious institution is a public one or a private one can be drawn from the usage and customs of the institution or from the mode in which the properties have been dealt with as also the other established circumstances.

(e) The essential sine qua non to make a temple a public temple appears to be that the public should claim the right to worship the deity installed therein as of right. If the origin of the temple is very well-known as a private temple, then the clearest possible evidence is necessary for converting that temple into a public temple. As worshippers, are naturally welcome and as the sentiment of a Hindu would not prevent another from making offerings or to turn away a worshipper and as there is an innate desire in persons in charge of private temples not to discourage popularity of the deity, the mere circumstance that the people in the locality were visiting the temple and were worshipping the deity may not take away the character of the temple from a private temple to a public temple. In all such cases worship of outsiders is referable to the leave and licence granted by the owner and cannot be indicative of any dedication to the public.



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(f) A temple will not be a public temple within the scope of the Act because in the absence of an express dedication for the benefit of the public, user by the public as of right must be established and such user as of right is far different from the trustees being willing to welcome the public to come and worship in the temple. If a temple had no garbagraham, mahamandapam and if there was no dwajasthambam, no prakaram, no hundi and if no kanikai or any collection was made by the temple and if the utsava idols were not taken in procession in the street then the temple is not a public one.

(g) If the public do not worship the idol as of right and simply because some poojas are performed in a temple and certain members of the public are allowed to participate in the pooja, the temple cannot be said to be a public temple.

15. Similarly, a Division Bench of this Court in its decision in *The Commissioner, H.R. & C.E., (Admn.) Department, Madras v. Sri Andarvillai Mutharamman Temple, Checkala Street, Eraniel, 2. S. Kunchu Pillai (Secretary of the Eraniel Chekkala Samudayam) Eraniel, etc.* (1998 2 LW 819) has observed that the presence of 'Gopuram' or 'Prakaram', 'Hundiai' or 'Moorthis' is necessary to reach the conclusion, whether the particular temple is a public temple or a private temple. Similar view is expressed by another Division Bench of this Court in its decision in *The Commissioner, Hindu Religious and Charitable Endowments*



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Board, Nungambakkam, Madras-34 and another v. T.S. Palanichamy and seven others (2003 (1) CTC 65)."

8. The learned counsel for the respondents 1 and 2 would submit that no doubt, in the year 1957, the Deputy Commissioner, HR & CE, Thanjore, in O.A.No.133/1957, has declared the suit temple as private temple under the old Act. Even otherwise, at one point of time, the suit temple was treated as a private temple, but in the course of time, public were allowed to worship unconditionally and donations were received from the public or hundial is installed to collect money or any other contribution from the public. So, in that way, the suit temple becomes the public temple. However, in the year 1981, the authorities received complaints from the public and based on that complaints, the 1st respondent initiated *suo motu* proceedings and made enquiry and deputed the Inspector of HR & CE to enquire into the matter and file a report. Based on that report, the 1st defendant has come to the conclusion that the suit temple is a public temple. Though during investigation by the Inspector of HR & CE, the plaintiff was enquired and he made a statement before him that public are allowed to worship without any



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condition, now he retracted the said statement made by him earlier.

However, other public witnesses were also examined and they categorically stated that public were allowed to worship and also in the important festival days, the temple got contribution or gifts from them. Even the plaintiff admitted that there are four shops in the suit temple that have been leased out and the plaintiff is collecting rent. Pursuant to the declaration of the suit temple as public temple, now the Executive Officer has been appointed and the temple is now under the control of the Executive Officer. Considering the same, the trial Court rightly dismissed the suit which does not warrant any interference by this Court.

9. Heard both sides and perused the records.

10. It is the case of the plaintiff that the suit temple is a private temple and it is a family temple. It is the specific case of the plaintiff, even in the year 1957, the Deputy Commissioner, HR & CE, Thanjore, in O.A.No.133/1957, dated 23.10.1958, had declared the suit temple as a private temple and now the very same department cannot say that the suit temple is a public temple. The 1st defendant



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has no power to initiate *suo motu* proceedings and declare the suit temple as public temple reversing the earlier order passed in 1957.

The case of the defendants is that even though due to the circumstances prevalent during 1957, the suit temple was declared as a private temple, in the course of time, the character of the suit temple has been changed and now the public are worshipping and even in the important festivals, large number of people are allowed to worship and the plaintiff is collecting rent from the shops situated in the temple and also contributions/gifts/donations etc., from the worshippers. Therefore, when the plaintiff is collecting contribution/funds from the public and allowed the public to worship in the suit temple, it has lost its character of private temple and it has become the public temple. Only on the complaints received from the public regarding improper management of the suit temple and its properties by the plaintiff, the authorities have taken *suo motu* action and after enquiry, declared the suit temple as a public temple.

11. In the plaint, the plaintiff has stated that it is a private temple and quoted the proceedings in 1957, whereas, the



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defendants 1 and 2 have stated that though the suit temple was a private temple in 1957, now it lost its character due to change of circumstances and the plaintiff mismanaged the temple and its properties and not properly maintained the accounts and therefore, pursuant to the complaints from the public, the authorities declared the suit temple as a public temple and now the suit temple is under the control of the HR & CE Department. On the side of the plaintiff, he alone was examined and though he marked all the proceedings and also denied that he never made admission before the Inspector of HR & CE that public were allowed to worship in the suit temple and contributions/donations were received from the public, the plaintiff has not examined any other witness to support the said stand. However, on the side of the defendants, three witnesses were examined and two of them are officials. Though the 3rd defendant impleaded himself in that proceedings, clearly stated that public were allowed to worship in the suit temple and hundial was installed and contributions/donations received from the public, admittedly, in the proceedings in O.A.No.48/1981 dated 27.05.1985, the person namely, Subbaiah Pillai, said to have been examined by the Inspector of HR & CE, has not been examined as a witness.



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Even in the suit also, he was not examined and no public was examined by the HR & CE department.

12. It is a settled proposition of law that the plaintiff has to prove his case on its own merits and he cannot take advantage of the loopholes left by the defendants. Whereas, in this case, as per Ex.A1, the plaintiff already got the order from the department in 1957 that the suit temple is a private temple and now the department turn around and contend that in the course of time, the temple lost its character of private temple and now it has become the public temple. Once it is established through Ex.A1 that the suit temple was a private temple, the burden is shifted on the defendants to prove that it lost its character of private temple by establishing the subsequent developments. However, the evidence placed before this Court are not sufficient to sustain the claim of the defendants, since Ex.B3 itself is clear that the department has not examined any public and merely based on a report of the Inspector of HR & CE, the 1st defendant came to the conclusion that the suit temple is a public temple. Even the witness cited in the report of the Inspector of HR & CE namely, Subbaiah Pillai, has not been examined, but the 1st



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defendant has decided only based on the said report and not on any other materials.

13. Since the materials placed before the trial Court are not sufficient to prove the case of the defendants, the judgment and decree dated 30.09.2009 passed in O.S.No.894 of 1989 on the file of the 1st Additional Subordinate Judge, Madurai, is liable to be set aside and remitted back to the trial Court for fresh trial.

14. With the above direction, the judgment and decree dated 30.09.2009 passed in O.S.No.894 of 1989 on the file of the 1st Additional Subordinate Judge, Madurai, is set aside. The trial Court is directed to conduct a fresh trial and give an opportunity to both the parties to examine their witnesses and thereafter shall decide the suit in accordance with law, as expeditiously as possible. The defendants in the suit are at liberty to file additional written statement, if necessary and produce fresh material, if any, to prove that the suit temple is a public temple.



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15. In view of the above, the Appeal Suit is disposed of. No costs. Registry is directed to send back the original records along with the judgment and decree passed in this appeal to the trial Court forthwith.

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01.07.2022

Index : Yes / No

Internet : Yes

To

The 1st Additional Subordinate Judge,
Madurai.



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P.VELMURUGAN, J.

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JUDGMENT MADE IN
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DATED : 01.07.2022