BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.07.2022

DELIVERED ON : 22.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD)No.31 of 2010

Sankaralayam Trust,
Located at Sankaralayam,
Aruljyothi Street, Adivaram, Palani,
through its Managing Trustee,
T.S.Sahasranamam ... Appellant / Plaintiff

-Vs-

The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Madras-600 034. ... Respondent / Defendant

PRAYER: Appeal Suit is filed under Section 70(2) of the Tamil Nadu Hindu Religious & Charitable Endowments Act, to set aside the decree and Judgment dated 22.12.2003 made in O.S.No.15 of 1996, on the file of the learned Subordinate Judge, Palani.

For Appellant : Mr.S.Anand Chandrasekar,
For M/s.Sarvabhauman Associates.

For Respondent : Mr.M.Lingadurai,
Special Government Pleader.

JUDGMENT

The appellant / plaintiff has filed O.S.No.15 of 1996 on the file of the learned Subordinate Judge, Palani, for cancelling or modifying the order of the defendant in A.P.No.34 of 1990, dated 05.11.1990.

2.The brief facts of the plaint are as follows:-

(i)The Deputy Commissioner of HR & CE Department (Administration), Madras has issued a demand notice under Section 92 of Tamil Nadu Hindu Religious & Charitable Endowments Act, 22 of 1959, (hereinafter referred to as 'the Act') dated 15.04.1987, claiming contribution of Rs.1,426.29/- from the plaintiff. On receipt of the same, the plaintiff had given an objection on 17.04.1987 to the Deputy Commissioner and the defendant. Even on earlier occasion, when such a demand notice was issued, though the plaintiff sent an objection, he paid the contribution demanded by the defendant, believing that the objection of the plaintiff would be considered; the demand would be cancelled and the amount would be refunded, as the plaintiff trust does not come under the purview of the Act. Still no action had been taken, the plaintiff had filed an objection under Section 63(a) of the Act, which was taken on file as O.A.No.18 of 1988. After enquiry and recording the evidence, the same was dismissed on 14.12.1989. Aggrieved by the same, the plaintiff filed an appeal before the defendant in Appeal Petition No.34 of 1990, wherein an order has been passed. Though the plaintiff had applied for the copy of the order on 11.01.1991, the same was furnished to the plaintiff on 20.05.1991. This suit is filed within the stipulated time, after receipt of the order.

(ii)Originally, the Brahmins of Palani formed a registered Society under the name and style of Sri Jagatguru Sankara Bharathia Brahmana Sangam and late Sri K.R.Sundarraj Iyer, Sri.P.Sundaram Iyer and Sri S.A.Sesha Iyer (all are leading Advocates of Palani at that time) worked for the formation of the Sabha. The property in T.S.No.841/1 of Palani Adivaram was purchased as a vacant site by the Society under sale deeds dated 23.10.1960, 24.10.1960, 07.08.1961 and 25.09.1961. Later, a well was sunk in the open site and compound wall was put up enclosing the site. Two buildings were put up from the donations given by Sri.S.A.Sesha Iyer, Sri.T.V.Ramasamy Iyer, Viswamitra and Rama Nivas. Then a Kalyana Mandapam and attached buildings were put up for the use of Brahmins, who are visiting Palani for performance of marriages and Upanayanams from Calicut and other places in Kerala. Donations were offered for making improvements and buildings by the community people. Thereafter, the society was converted into a trust as per the wishes of all members of the General Body and the plaintiff was entrusted with the management of the Sanakaralayam Trust as Managing Trustee. Whatever income by way of donations that the trust gets from well wishers, is used for improvement of the trust and not for any temple, since there is no temple existing anywhere there. The various functions held in the premises are neither connected with religious worship nor charitable purposes. Therefore, it will be seen that the trust properties and premises do not come within the purview of the Act by any computation or on any view of the matter.

(iii)The trust is bound to its own jurisdiction and they are not liable to contribute as per the provisions of the Act. A scheme decree has been framed in

O.S.No.99 of 1989 and as per the decree, only the trustee could manage the trust and the terms of the decree would clearly proves that the premises are only social institution and will not come within the ambit of the Act. Without considering the same, the defendant in the appeal filed by the plaintiff, had wrongly held that the plaintiff trust is a place for religious purpose. Therefore, the department is not entitled to collect contribution. Hence, the order in A.P.No.34 of 1990 has to be cancelled or modified.

3.The brief facts of the written statement filed by the defendant are as follows:-

(i)The trust was brought under the control of the department in the year 1982. The assessment report for faslis 1393 to 1395 had been submitted to the defendant and the Inspector of the department had collected the amount raised in the demand notice issued by the defendant. The purpose pointed out in the trust deed indicates that the trust building can be permitted to use for religious and Vaidik purpose and the trust has to supply milk for morning abishegam to Lord Dhandayuthapani Swamy daily. The orders passed by the Deputy Commissioner in O.A.No.18 of 1988 and the Commissioner in A.P.No.34 of 1990 are correct as per the Act. The Kalyana Mandapam, Cottage and Rooms had been constructed out of Charitable Contributions of one Section of Hindu Public for the religious and Vaidik purposes as mentioned in the trust deed dated 12.06.1970 executed by Sri.S.A.Sesha Iyer. The said trust deed also asserts the character that it is not a communal organization but will function as one for the upliftment of all man kind in spiritual way. The inference can be drawn from the above circumstances that the trust is not a private one but public in nature. That is evident from the sale deed dated 24.10.1960 and other sale deeds mentioned in the plaint. Though the society had been registered in the year 1959, the plaintiff trust had not chosen to file the documents such as bye-laws, minutes as the General Body Meetings etc., to prove the character of the plaintiff trust.

(ii)The budget had been approved for fasli 1395 and the proposal for fasli 1396 had been submitted to the Assistant Commissioner, HR & CE Administration Department. The plaintiff trust has been under the effective control of this defendant and assessed for contribution and audit fees from fasli 1393 onwards. It is not admitted that only a Vinayagar idol was installed in the open space. It is only a temple with one kalam pooja daily as per Scheme approved by the defendant. Even in the objection made by the plaintiff against the demand notice, the plaintiff had admitted that the trust consists of one Kalyana Mandapam along with some cottages constructed out of donations. Further, in the judgment in O.S.No.99 of 1989, the defendant is not a party. Therefore, the said judgment is not binding on the defendant. The suit is not maintainable for want of notice under Section 80 of C.P.C.

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

> *"1.Whether the order in A.P.No.34 of 1990 is liable to be cancelled or modified?;*
>
> *2.Whether the suit is maintainable for want of notice under Section 80 of C.P.C.?;*
>
> *3.To what relief the plaintiff is entitled?.*

5.In order to substantiate the case, during the trial on the side of the plaintiff, the Managing Trustee was examined as P.W.1 and 2 documents were marked as Exs.A.1 and A.2. On the side of the defendant, one witness was examined as D.W.1 and 26 documents were marked as Exs.B.1 to B.26 besides two other documents were marked as Exs.X.1 and X.2.

6.On conclusion of the trial, after hearing the arguments advanced on either side, the trial Court dismissed the suit, by its judgment and decree dated 22.12.2003.

7.Challenging the same, the plaintiff has filed the present Appeal Suit before this Court.

8.The learned counsel for the appellant would submit that the respondent in his written statement has stated that mainly on the basis of the Vinayagar idol located in the trust building, the appellant trust is construed as a temple, consequently, held as religious institution. The documentary evidence submitted by the respondent also substantiated that the institution was classified only as a temple not as an endowment. Only at the time of cross-examination for the first time, D.W.1 has stated that the appellant trust was treated as a religious institution on the basis of it being a specific endowment. The said testimony is not supported by any pleadings and documentary evidence submitted by the respondent. Without any specific plea as to classification, the respondent is not entitled to take different stands. D.W.1 in his cross-examination has stated that they classified the appellant trust as a specific endowment based on the recitals contained in the trust deed, which is marked as Ex.B.25. D.W.1 relied on the recitals relating to supply of milk daily for the abishekam to the temple. The appellant trust does not come into the definition of Section 6(18) of the Act. In Ex.B.25, there is no divesting of property or it is absolute dedication for a specific purpose, which is *sina quo non* for a specific endowment. The trial Court has also not properly considered the decisions referred to by the learned counsel for the plaintiff before the trial Court reported in ***2001 (2) CTC 351***. The finding of the trial Judge that the property has been dedicated for the purpose of particular charity and hence, the plaintiff institution is to be classified as a religious institution, is not supported by any material evidence and lack of particulars.

9.He would further submit that no property or money has been endowed for the performance of any specific religious charity in the appellant trust. The appellant trust neither falls under mutt, temple nor specific endowment. It is only a registered trust, wherein the appellant is the Managing Trustee and there is no temple in the said premises, only Kalyana Mandapam was alone constructed. They are collecting charges only for water and other amenities and there is no public contribution. Though the respondent has taken a stand as temple, he has not proved the same. Now, they say that it is a specific endowment. The respondent has not proved that the appellant trust is a religious institution. The property has not been attached to Lord Dhandayuthapani Temple, Palani and there is no specific endowment attached to that. Ex.B.25 shows that they collected funds only from the brahmin community people and also constructed kalyana mandapam and they are doing only Vaidik and upanayanams to the said community people. The appellant trust neither comes under the definition of religious institution nor under the definition of temple. When the Deputy Commissioner issued demand notice under Section 92 of the Act, dated 15.04.1987, claiming contribution of Rs.1426.29/- from the appellant, they have paid money immediately, on receipt of demand notice and gave objection on 17.04.1987 with the Deputy Commissioner and the respondent also. Both of them have acknowledged the receipts of the objection. Even on earlier occasion also, when such a demand was made, objection was sent and the contribution demanded by the department was paid, believing that the objection of the appellant would be considered. Since no action has been taken, the appellant filed an application under Section 63(a) of the Act in O.A.No.18 of 1988. After enquiry and recording evidence, the said O.A.No.18 of 1988 was dismissed on 14.12.1989 and the appeal filed before the defendant in A.P.No.34 of 1990 was also dismissed. Therefore, he filed statutory suit before the Subordinate Court Palani in O.S.No.15 of 1996. The trial Court without appreciating the legal as well as factual position dismissed the suit. Aggrieved by the same, the appellant filed an appeal before the learned Principal District Judge, Dindigul in A.S.No.71 of 2004. Subsequently, on 27.07.2005, the Court returned the appeal for want of jurisdiction. As this Court has jurisdiction to hear the appeal, this Court has taken the case on file in A.S.No.31 of 2010.

10.He would further submit that the appellant trust does not fall under any of the category of religious institution or temple and there is no specific endowment. Therefore, the order of the respondent and the judgment and decree passed by the trial Court are liable to be set aside and the appeal is to be allowed.

11.In support of his contention, he relied on the Judgments in ***The Commissioner, H.R. & C.E., (Admn) Department, Madras-34 Vs. N.A.Ramaswamy Chettiar and two others*** reported in ***2001 (2) CTC 351*** and

The Commissioner for Hindu Religious Endowments Board, Madras Vs. Sri Vinayagar Arudra Tiruppani Sabha reported in ***1951 0 Supreme (Mad) 315.***

12.The learned Special Government Pleader for the respondent would submit that a reading of Ex.B.25 trust deed itself clearly shows that out of the public contribution, the appellant trust constructed the building, hence, they cannot say that it is not a religious institution. As per Section 6(18) of the Act, it comes only under the religious institution and even as per Section 6(20) of the Act, it is a temple. In an earlier occasion, the appellant paid contribution, accepting that it is a religious institution and now, they cannot turn their stand and they estopped from raising such a different stand. The appellant trust is notified as a temple in the list of institutions published on 10.12.1996, in which the appellant trust was shown as Serial No.29 and the temples mentioned in that list have to submit their budget before the Devasthanam. As such, the appellant trust submitted their budget for two faslis and after that, now they filed the suit that the order passed by the respondent is not binding on them. Since the appellant trust falls under the category of religious institution and even under the definition of the temple, the trial Court rightly discussed all the oral and documentary evidence, hence, dismissed the suit. There is no merit in the appeal. Therefore, the appeal is liable to be dismissed.

13.Heard both sides and perused the materials available on record carefully.

14.Admittedly, the appellant is a trust and the suit was filed by the Managing Trustee to cancel or modify the order of the respondent in A.P.No.34 of 1990, dated 05.11.1990 on the ground that since the appellant trust does not come under the purview of the Act, the appellant is not liable to pay any contribution to the HR & CE Department. When the respondent sent demand notice that the appellant trust comes under the purview of the religious institution and classified as temple, the appellant paid contribution and also submitted budget for two faslis. Subsequently, when the respondent sent a demand notice for further fasli, the appellant filed an application under Section 63(a) of the Act before the Deputy Commissioner, HR & CE Department Administration to decide as to whether the appellant trust is a religious institution or charitable trust or endowment. The Deputy Commissioner, after enquiry, had dismissed the application, by his order dated 14.12.1989. Challenging the said order, the appellant filed an appeal before the Commissioner in A.P.No.34 of 1990 under Section 69 of the Act. As the appellate authority, the Commissioner has passed an order, dismissing the appeal filed by the appellant. Challenging the said order, the appellant filed statutory suit before the learned Subordinate Judge, Palani. The trial Court, after framing the issues and also conducting trial, come to the conclusion that the appellant trust falls under religious institution and dismissed the suit. Therefore, the respondent brought the appellant trust under the Act. Challenging the same, now, the appellant has filed the present Appeal Suit.

15.It is pertinent to note that as per Ex.B.25, the trust building can be permitted to be used only for religious and Vaidik purpose. Further, they admitted that the buildings were constructed with the contribution collected from the members of brahmin community. Even the appellant himself admitted that they collected contribution from the public and also constructed building. As already contended by the respondent, the appellant trust filed budget before the respondent for faslis 1393, 1394, 1395 and also paid contribution. This fact has not been denied by the appellant trust. However, it is the contention of the learned counsel for the appellant that without knowing the consequences, they paid contribution and also submitted budget. Subsequently, they came to understand that the appellant trust is not a religious institution or math or temple and there is no specific endowment attached to the temple. Therefore, they filed an application before the Deputy Commissioner. However, without considering the fact that the appellant trust does not come under the religious institution and there is no specific endowment, on seeing the trust deed and admission made by the appellant and physical features of the trust, both the Deputy Commissioner as well as the Commissioner made an observation that the Kalyana Mandapam, cottages and rooms have been constructed out of the charitable contributions of one section of public for the religious and Vaidik purposes as mentioned in Ex.A.1, which also asserts the character that it is not a communal organization but will function as one for the upliftment of all man kind in spiritual way. Therefore, the inference was drawn from the above circumstances that the appellant trust was not a private one but public in nature. They further observed that as per Ex.C.1, there is one Vinayagar idol installed by the trust to which daily pooja is being performed with reference to the approved scheme in the approved budget. This fact has also not been denied by the appellant.

16.As already stated by the learned Special Government Pleader for the respondent, as per the publication dated 10.12.1996, the temples mentioned therein have to make contribution to the department, wherein the appellant trust was shown as Serial No.29. However, the appellant has not challenged the said publication. On perusal of the same, it clearly shows that the appellant trust is also liable to pay contribution and accordingly, they had paid contribution.

17.A reading of Ex.B.25, evidence of P.W.1 / appellant and also the orders passed by both the Deputy Commissioner as well as the Commissioner / defendant clearly shows that the appellant trust falls under Section 6(18) of the Act, as it is a religious institution. The trial Court has gone into the materials and come to the conclusion that the appellant did not prove his case that the appellant trust does not fall under the HR & CE Department. Since this Court is a fact finding Court, it has to re-appreciate the entire evidence and arrive at an independent conclusion.

18.From the recitals in Ex.B.25 and also the evidence of both parties, it is seen that the appellant trust constructed the building, out of the contribution collected from the public and also allowed the devotees to utilise the same for which they are also collecting some amenities charges. Apart from that the trust has agreed to supply milk to the Lord Dhandayuthapani Swami, Palani, every day for performing morning pooja. Therefore, considering the recitals in the trust deed and the activities carried out by the appellant, this Court also finds that the appellant trust falls under the religious institution as defined under Section 6(18) of the Act. The citations relied on by the learned counsel for the appellant are not applicable to the present case on hand on the ground that the facts and circumstances and activities being carried out by the appellant trust herein are entirely different from the facts referred to in that cases.

19.In the result, this Court finds that this appeal fails and there is no valid ground to interfere with the Judgment of the trial court. Therefore, this Appeal Suit stands dismissed and the Judgment and decree of the trial Court are confirmed. No costs.

22.07.2022

Index : Yes / No
Internet : Yes / No
Myr

P.VELMURUGAN, J.

Myr

To

1.The Subordinate Judge,
Palani.

2.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Madras-600 034.

3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
A.S.(MD)No.31 of 2010

22.07.2022