



S.A.No.224 of 2001

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.224 of 2001

Arulmigu Parvatheeswaraswami Thirukkoil,
Injikudi, rep. By its Executive Officer.

...Appellant

Vs.

1.Sundaram Gurukkal

2.Parvatheeswaran

3.Krishnamurthi

4.Abirami Ammal

...Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 18.09.1998 passed by the Principal Judge, Nagapattinam in A.S.No.146 of 1997, confirming the judgment and decree dated 28.07.1997 passed by the District Munsif, Nannilam in O.S.No.70 of 1996.

For Appellant : Mr.N.Sivaprakash

For Respondents : Mr.Srinath Sridevan, Senior Counsel for
Mr.Suresh Viswanathan for R1
R2 to R4-served



S.A.No.224 of 2001

J U D G M E N T

The present Second Appeal arises against the judgment and decree in O.S.No.70 of 1996 dated 28.07.1997 on the file of the District Munsif Court, Nannilam as confirmed by the judgment and decree in A.S.No.146 of 1997 dated 18.09.1998 on the file of the Principal Sub-ordinate Judge, Nagapattinam.

2.Heard Mr.N.Sivaprakash, learned counsel appearing for the appellant and Mr.Srinath Sridevan, learned Senior Counsel for Mr.Suresh Viswanathan, learned counsel for the 1st respondent.

3.The Courts below had dismissed the suit primarily on the ground that Survey No.218/18 belongs to the appellant. The learned counsel appearing for the appellant would vehemently contend that the temple property register, which has been filed as Ex.A1, would show that the subject matter of the suit belongs to the Temple. Several contentions were raised by the learned counsel appearing for the appellant and the respondents.

4.However, in view of the order that I seek to pass, I am not going



S.A.No.224 of 2001

into the merits of the matter. I framed a question of law at the time of hearing as to whether a suit is maintainable at the instance of Executive Officer of the Temple and especially, when there is no scheme or order by the Commissioner permitting Executive Officer to lay the plaint.

5.In this regard, a Division Bench of this Court in **Sri Arthanareeswarar of Tiruchengode by its present Executive Officer Vs. T.M.Muthuswamy Padayathi and Others** reported in **2003 (1) LW 386** had held as follows:-

“19. Maintainability of the suits :

The Executive Officer's suit is filed by the then Executive Officer. The case of the Executive Officer is that after his appointment in the year 1970, he came to know, after enquiry, that the suit property is a trust property and that the various registered documents obtained are colourable and not binding on the temple. Though the question as to the competency of the Executive Officer to file the suit was not raised in the written statements, the question was raised in the course of argument that under the H.R. & C.E. Act, the Board of Trustees alone have been empowered to sue and be sued and that before filing the suit, enquiries have been made by the



*authorities of the H.R. & C.E. Department and it was found that there was no Nandavanam in the suit property. Rejecting the objection of the plaintiffs, the trial court proceeded to consider the question of maintainability as the question of law and found that the Executive Officer had no authority to file the suit and that he cannot invoke [Article 96](#) of the [Limitation Act](#). The Supreme Court, in *STATE OF RAJASTHAN VS. RAO RAJA KALYAN SINGH* , has held that the plea of maintainability of a suit is essentially a legal plea. If the suit, on the face of it, is not maintainable, the fact that no specific plea was taken or no precise issues were framed is of little consequence. Therefore, it is open to the parties to raise the plea of maintainability of the suit as a legal plea without there being a specific plea in the written statement or the issues.*

20. Insofar as the Executive Officer's suit is concerned, it is seen that 'Executive Officer' has been defined under Section 6(2) of the H.R. & C.E. Act. According to this definition, Executive Officer is a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under the Act or the Rules framed thereunder. 'Trustee' has been defined under [Section 6\(22\)](#) of the Act as any person or body in whom the administration of a religious institution is vested. [Section 45](#) of the Act deals with the



appointment and the duties of an Executive Officer. Sub-section (2) to [Section 45](#) says that the Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner. The proviso says that only such powers and duties as appertaining to the administration of the properties of the religious institution shall be assigned to the Executive Officer. The powers and duties of the Executive Officer shall be defined by the Commissioner. [Section 28](#) of the Act empowers the trustee of every religious institution to administer its affairs and to apply the funds and properties of the institution. He shall be entitled to exercise all powers incidental to the provident and beneficial administration of the religious institution.

21....From the above, it is clear that the Executive Officer is not the authority competent to initiate legal proceedings and that he had not been assigned with the power of filing a suit. It is only the Board of Trustees in existence at that time which was competent to initiate the legal proceedings. The trustees are not made parties to the suit and therefore, the finding insofar as the Executive Officer's suit is concerned, that it is filed without authority has to be upheld.”



S.A.No.224 of 2001

6.In the light of the clear and categorical verdict of the Division

Bench, I hold that the suit is not maintainable at the instance of the Executive Officer. Therefore, the Second Appeal is dismissed. However, it is open to the Temple, when appropriately represented to file a suit, if so advised. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

03.04.2023

kkn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

Nuetral Citation : Yes/No



S.A.No.224 of 2001

To:-
WEB COPY

- 1.The Principal District Court,
Nagapattinam.
- 2.The District Munsif Court,
Nannilam.



WEB COPY



S.A.No.224 of 2001

V.LAKSHMINARAYANAN, J.

KKN

S.A.No.224 of 2001

03.04.2023