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S.A.No.1219 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.No.1219 of 2006

Mark.P.Venkatesan

...Appellant

Vs.

Sri Arulmighu Valampuri Selva Vinayagar Koil
and Sri Aulmighu Baktha Anjaneyar Koil,
Represented by its Managing Committee,
President, G.Sugavanam,
Substituted the respondent vide
order of Court dated 28.01.2020 made in
C.M.P.No.1363 of 2020 in S.A.No.1219 of 2006

... Respondent

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 20.02.2006 in A.S.No.142 of 2005 on the file of the Additional Subordinate Judge, Salem reversing the judgment and decree dated 01.06.2005 in O.S.No.2264 of 2004 on the file of the I Additional District Munsif, Salem.

For Appellant : Mr.S.Kalyanaraman

For Respondent : Mr.T.Murugamanickam, Senior Counsel
for M/s.Zeenath Begum



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J U D G M E N T

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The defendant is the appellant before this Court challenging the judgment and decree in A.S.No.142 of 2005 on the file of the learned Additional Subordinate Judge, Salem in and by which, the learned Judge has set aside the judgment and decree passed by the learned I Additional District Munsif, Salem in O.S.No.2264 of 2004.

2. The facts in brief which are necessary for disposing of the above second appeal are herein below set out and the parties are referred to in the same array as before the Trial Court.

(i) The plaintiff-Temple had filed the above suit contending that the suit temple had been put up by a group of persons in the year 1982 out of their own funds and the temple was constructed on the lands belonging to the Salem Municipal Corporation. Another temple in the name and style of “Sri Arulmighu Baktha Anjaneyar Koil” was also constructed by them in the year 1998, once again in the land belonging to the Corporation. The said temples are very small temples. Poojas are performed by the founders from and out of their own money and they have, amongst themselves, formed a committee for managing and



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maintaining the temple. Except for the Committee, no other person has a right over the administration of the temple. One of the founder members, Radhakrishnan passed away and his son, Yuvaraj had replaced his father in the administration. Similarly, Chinnasamy Chettiar had been replaced by his son C.Shanmugam on his death. The temple does not contain a Hundi and the priests are appointed by the Managing Committee. The festivals like Vinayagar Chathurthi, Ramanavami and Hanuman Jayanthi etc., are all conducted by the Managing Committee and some of the events conducted during these festivals, which include competitions for school children are all conducted from and out of the funds of the Managing Committee.

(ii) The defendant who is doing business close to the temple was in the habit of parking his 2 wheeler right in front of the temple causing a great deal of hindrance to the worshipers. He was requested not to park in front of the temple. Since the temple is very small, people were not permitted to enter into the sanctum sanctorum and poojas were performed only at the entrance. Therefore, the parking of the vehicle right in front of the temple was causing considerable hardship



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to the people as the street in question is a very narrow lane. This act caused a great deal of misunderstanding between the Managing Committee and the defendant.

(iii) On 30.09.2004, the defendant had unlawfully removed the steel pipes which has been put by the Committee, for which a police complaint had been lodged. The defendant therefore with an intention to interfere with the administration and maintenance of the temple started to run a parallel administration and started to collect money from the public by misusing the name of the temple. A paper publication was issued by the plaintiff warning the general public that the defendant has nothing to do with the plaintiff-temple and he has not been authorised to collect money on behalf of the temple. Therefore, the suit came to be filed.

3. The defendant had resisted the above suit *inter-alia* contending that he and his close associates on 30.11.2004 had performed special pooja at the temple and distributed prasatham to the public and at this juncture, one Saravanan and Venkatakrishnan who are closely associated to the temple had locked the temple and taken away the pooja



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materials. The general public were upset by this act and a complaint came to be lodged before the Shevapet Police Station by one Vasu, S/o.Mani and the said Saravanan and Venkatak Krishnan were directed by the police not to lock the temple. It is their contention that one Balagopala Chettiar, the owner of the defendant's building had put up a small mound for installing the statue of Shri Kamarajar about 15 years ago. On account of the political differences, the proposal had to be shelved and the said mound was kept vacant for over 2 to 3 years. Later, the defendant along with his friends had installed the idol of Vinayagar and started worshipping. Thereafter, they had also installed the idol of Sri “Arulmighu Baktha Anchaneyar” just 2 years prior to the filing of the suit and the entire installation and construction was done by collecting money from the public. The said Vasu along with his friends including the defendant had put up a name board on 20.09.2004 at the entrance of the temple and the temple was completely renovated on 20.09.2004 with the help of public funds. The defendant had denied the case of the plaintiff that they are in management of the property and they sought to have the suit dismissed.



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4. The learned I Additional District Munsif, Salem had framed the following issues:

- (i) Whether the plaintiff is entitled to a permanent injunction as prayed for?
- (ii) To what other reliefs?

Thereafter, an additional issue was framed on 30.03.2005:

Whether the suit is maintainable before the Civil Court?

5. On the side of the plaintiff, the plaintiff was examined as P.W1 and to substantiate their case, they had marked Exs.A1 to 53. On the side of the defendant, the defendant had examined himself as D.W1 and Exs.B1 to B13 were marked.

6. The learned I Additional District Munsif, Salem took up the issue of jurisdiction as a preliminary issue and returned a finding that the suit is not maintainable as the plaintiff had to invoke the provisions of Section 63 of the Hindu Religious and Charitable Endowment (H.R & C.E) Act and consequently, file their petition before the H.R & C.E.



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Department. The learned Judge observed that the grant of an injunction impliedly involved the issue of administration and the management of the temple which subject had to be dealt with only by the H.R & C.E Department. Therefore, the learned Judge observed that the Court has no jurisdiction to entertain the suit and in view of the fact that the additional issue has been answered against the plaintiff, there is no need to discuss the first issue. The suit was dismissed.

7. Aggrieved by the judgment and decree of the trial Court, the plaintiff had filed an appeal in A.S.No.142 of 2006 on the file of the Additional Subordinate Judge, Salem, who by her judgment and decree dated 20.02.2006 was pleased to allow the appeal and decreed the suit. The learned Judge had framed the following points for consideration:

- i) Whether the decree and judgment of the lower court is liable to be set aside?*
- ii) Whether the lower Court failed to consider the document and oral evidence of the plaintiff?*
- 3) Whether the lower Court has failed to consider that the suit temple is a private temple?*



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4) Whether the lower court has wrongly appreciated the defence raised by the defendants herein?

The learned Additional Subordinate Judge, Salem held that the trial Court had not considered the issue as to whether the temple is a public or a private temple, a issue which would have to be decided by the competent Civil Court. The learned Judge upon perusing the documents held that the plaintiff-temple is a private temple and managed from and out of the funds of the managing Committee. The learned Judge has also observed that the defendant by forming an independent committee was attempting to interfere in the management of the temple and therefore, allowed the appeal and set aside the judgment and decree of the trial Court. Challenging the judgment and decree, the defendant is now before this Court.

8. The second appeal has been admitted on the following substantial questions of law:

i) Whether the lower appellate Court was right In holding that it has jurisdiction to try the suit more particularly when the questions relating



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to administration and maintenance of the temples could be decided only by the authorities constituted under the Hindu Religious Charitable and Endowments Act, there and when is a specific bar for adjudication of issues relating to administration and management of religious institutions in a suit in terms of Section 1089 of the said Act.

ii) Whether the lower appellate Court misdirected itself in holding that the Managing Committee is entitled to maintain the suit in the absence of legally acceptable evidence its constitution and the right to institute and prosecute the suit on behalf of the temples?

9. Heard the learned counsel on either side and perused the materials on record.

10. The defendant would set up a case that the suit temple is a public temple and therefore amenable to the provisions of H.R. & C.E Act. However, a perusal of the written statement of the defendant himself would clearly show that the suit temple is nothing but public. In paragraph 3, the plaintiff has stated as follows:



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“The said mound was kept ideal for more than 2 to 3-years. Subsequently, the Defendant along with his friends joint together and put up the ideal of Sri Arul Migu Valampuri Selva Vinayagar. The ideal of Sri Valampuri Selva Vinayagar had been purchased by the Defendant and his friends at the Bavani 13-years ago. The Defendant's close friend namely Vasu S/o. P. Ramasamy, is the back born for the establishment of the entire Sri Arul Migu Selva Vinayagar Kovil. The said Vasu along with the Defendant and other friends had constituted a Committee namely "Sangada Hara Sadhurthi Vizha Kulu" and thereby celebrating each and every functions of Sri Arul Migu Valampuri Selva Vinayagar, the entire construction and the ideal of Sri Arul Migu Valampuri Selva Vinayagar had been put up by collecting money from the public, Further 2-years ago the ideal of Sri Arul Migu Baktha Anchineyar was also installed adjacent to the ideal of Sri Arul Migu Valampuri Selva Vinayagar Kovil.”

Therefore, the defendant has himself admitted to the fact that the suit temple is the public temple. The plaintiff has marked various invitations spreading over several years from 1982 onwards. (the date on which the Vinayagar temple is said to be consecrated) to show that they are in management of the same. In his written statement, the defendant has contended that it was only 6 months prior to filing of the suit on



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20.09.2004 that the Committee had been formed by them. It is pertinent to note here that the suit temple, particularly, the Vinayagar temple had been installed in the year 1982. The defendant is claiming a right on the basis of the formation of the Committee “Sangada Hara Chadhurthi Vizha Kulu”. The defendant has not been able to let in any evidence to show as to who was administering the temple between 1982-2004. On the very same admission of the defendant, it is clearly seen that the defendant had no right in the management of the plaintiff-temple and it is only the plaintiff, who is running the same. As rightly observed by the lower appellate Court by forming the Committee, the defendant was attempting to interfere in the management of the plaintiff-temple. The pleadings on either side would clearly show that the temple is only a private one and does not come within the purview of the H.R & C.E Board. Consequently, the substantial questions of law Nos.(i) and (ii) are answered against the defendant. Therefore, the second appeal is dismissed. No costs.

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Index :Yes/No
Internet:Yes/No
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To

1. The learned Additional Subordinate Judge, Salem
2. The learned I Additional District Munsif, Salem.
3. The Section Officer, V.R.Section, High Court, Madras



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P.T.ASHA.J,

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