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A.S.No.284 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.284 of 2018

1.Lakshminarasaiiah

2.Ramamurthy

3.Suresh

4.Theagaraj

.. Appellants

Vs.

S.Lakshmana Murthy (Deceased)

K.Pattabhiraman (Deceased)

1.K.Narasimaiah

2.The Commissioner,
Hindu Religious and Charitable Endowment
(Admn) Department,
Uthamar Gandhi Road, Nungambakkam,
Chennai-600 034.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
(Admn) Department, Salem.

4.The Executive Officer/Fit Person,
Hindu Religious and Charitable Endowment,
(Admn) Department, Hosur.

.. Respondents



Prayer: Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the judgement and decree dated 22.09.2017 passed in O.S.No.11 of 2009 by the Hon'ble Sub-Judge, Hosur, Krishnagiri District.

For Appellants	: Mr.U.Gowrishankar
For Respondents	:
(for R1)	: Mr.M.S.Subramanian for Mr.T.Panchatsaram
(for R2 & R3)	: Mr.K.Karthikeyan, Government Advocate (HR & CE)
(for R4)	: Mr.P.Rajendiran

J U D G M E N T

The Appeal Suit has been instituted against the Judgment and Decree dated 22.09.2017, passed in O.S.No.11 of 2009. The appellants are the defendants 4 to 7 in the suit and the respondents 1 to 3 instituted a suit to cancel the order passed by the Commissioner of HR & CE Department in A.P.No.33 of 2008, dated 19.12.2008, and to declare Arulmighu Narasimhaswami Temple, situated in Narasapuram Village, Hosur Taluk, Krishnagiri District, as a public temple within the meaning of the Section 6(20) of the HR & CE Act.



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2.The plaintiff had stated that there is a public temple dedicated to the worship of “Sri Bhargavi Narasimha Swamy” situated in Narasapuram Village, Hosur Taluk, Krishnagiri District. The temple is a public temple within the meaning of Section 6(20) of the Hindu Religious and Charitable Endowment Act. The temple being a public temple in character, is managed and maintained by a committee of the villagers, consisting of persons belonging to Narasapuram Village and its surroundings, and the temple is being worshipped by the public at large. It is an ancient temple. Originally, the temple was located in a forest at the banks of Bhargavi River and the entire area consist of persons belonging to several communities who all are the devotees of the said deity. The Lord Bhargavi Devi Narsimha Swamy Temple story has been described as “Ugram Manifestation”

3.The plaintiffs have stated that the temple was improved from time to time and a Gopuram was constructed to the old temple and a separate Lakshmi Shrine was constructed adjacent to the main temple. A big compound wall was also constructed by the plaintiffs. Pooja services are being conducted in the temple by two Archaka families appointed by the Villagers every year to perform pooja to the deity. The two families are :



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(1)Sathyanarayana Family and (2)Lakshmi Narasimhaiah family, by way of mutual understanding and through Muchillika, which was executed in the year 1983 in the presence of the elders of the village. The temple trustees were appointed by the villagers. The plaintiffs have stated that in the year 2005, the first defendant/respondent based on the preliminary report dated 20.07.2005, appointed an Executive Officer as fit person for the temple in proceeding dated 10.01.2006. The plaintiff states that without the knowledge of the trustees and without giving any information to them, the action was taken to appoint the fit person.

4.The plaintiffs came to know that the appellants/ defendants 4 to 7 filed OA.No.13 of 2003 and the Joint Commissioner of HR & CE Department passed an order on 20.10.2006. Thus, the plaintiffs have chosen to institute the suit to cancel the order passed by the Commissioner in the appeal filed by the plaintiffs. The Commissioner of HR & CE Departments passed an order confirming the order of the Joint Commissioner in A.P.No.33 of 2008, dated 19.12.2008, which was also preferred by the appellants/respondents 4 to 7.



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5.The defendants in the suit filed a written statement denying the plaintiff averments. Defendants 4 to 7, in their written statement, had stated that the written statement filed by the defendants 4 to 7 states that the plaintiff averments are false. They denied the plaintiff averments by stating that the defendants 4 to 7 are the hereditary trustees-cum-poojaris, which is permissible under the provisions of the Act. The defendants have stated that a fit person was appointed and subsequently, the Joint Commissioner passed an order in OA.No.13 of 2003. The said order cannot be termed as an ex-parte order. However, an appeal was filed by the plaintiffs against the said order and the Commissioner in A.P.No.33 of 2008, dated 19.12.2008, confirmed the order passed by the Joint Commissioner on 26.10.2006. Defendants 4 to 7 denied all other plaintiff averments as false.

6.The Trial Court, based on the pleadings between the parties framed the following issues.

(1)Whether the plaintiff is entitled for the relief to cancel the order passed by the Commissioner of HR & CE Department in A.P. No.33 of 2008, dated 19.12.2008 or not?

(2)whether the defendants 4 to 7 are the hereditary trustees or not?



(3) whether the plaint averment, that Muchillika was executed in the year 1983 as stated by the defendants 4 to 7 is correct or not?

(4) whether the defendants 4 to 7 are the Pujaries and administrating temple from the year 1897 or not?

(5) for what relief the plaintiffs are entitled?

7. On the side of the plaintiff, Exhibit A1 to A19 documents are marked and PW-1 to PW-8 are examined. On the side of the defendant, DW-1 was examined and Exhibit B-1 to B-33 documents were marked. With reference to issues 1 to 4, the Trial Court analysed the documents and evidence submitted by the respective parties to the lis. The Trial Court categorically made a finding that both the plaintiffs and the defendants 4 to 7 could not able to file any document to establish that either of the group were appointed as hereditary trustees of the subject temple. The plaintiff could not file any document to form an opinion that they were holding the post of trustees at any point of time under law. The defendants 1 and 2 /competent authorities of the HR & CE Department also considered those aspects and found that there are no documents available on record to establish that the plaintiffs were properly appointed as trustees under law.



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However, the Joint Commissioner and the Commissioner held that defendants 4 to 7 are the hereditary trustees, but the Trial Court, while re-examining the issues with reference to the documents and evidence, found that defendants 4 to 7 were also not appointed as hereditary trustees in accordance with law and they could not able to prove the same.

8.The Trial Court has further held that under Section 63(A) of the Act, the Joint Commissioner is empowered to decide whether a temple is a public temple or not. In this regard, the Trial Court made a finding that the said decision cannot be considered by the Civil Court. However, in respect of the subject temple, it was already considered as a public temple by the competent authorities and it is under the administrative control of defendants 1 to 3. Thus, the Trial Court made finding that it is not necessary to decide whether the subject temple is a public temple or not, as claimed by the plaintiffs. In this regard, the Trial Court arrived at a conclusion that the temple was already declared as a public temple by the defendants 1 to 3 under the provisions of the HR & CE Act and thus, no further consideration is required in this regard.



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9. With reference to the issue, whether the plaintiffs are the hereditary trustees or not, the Trial Court found that the plaintiffs have failed to prove the same with any acceptable documents. Thus, the Trial Court arrived at a conclusion that the plaintiffs are not entitled for the said relief and further made a finding that the defendants 4 to 7 are also not the hereditary trustees of the temple. Finally, the Trial Court formed an opinion that both the plaintiffs and the defendants 4 to 7 are not the hereditary trustees of the temple and more so, the defendants 1 to 3 have already declared the temple as public temple and thus, the plaintiffs are not entitled for any relief of declaration of the plaintiffs as hereditary trustees. The Trial Court declared that the order passed by the Commissioner in proceeding dated 19.12.2008, is untenable and accordingly, set aside the order. The relief was partly granted to that extent.

10. The learned Government Advocate appearing on behalf of the respondents 1 to 3 contended that the subject temple was declared as a public temple by the Commissioner in his proceeding dated 20.07.2005 itself. The fit person was appointed thereafter and pursuant to the interim order granted in the present appeal suit, the fit person is unable to take



charge and administer the temple. Meanwhile, the competent authorities of the Department have received many complaints against the appellants and disciplinary actions were initiated against the appellants which is pending. More so, a Police Complaint was registered which also is under investigation.

11. This Court is of the considered opinion that the Trial Court has considered the issues raised between the parties and found that the plaintiffs and the defendants 4 to 7 are not hereditary trustees of the temple and thus, the appointment of the Executive Officer/fit person becomes valid and consequently, the fit person is directed to take charge of the administration of the temple and its priorities, and accordingly, act in accordance with the provisions of the Act and rules. The fit person appointed by the competent authorities of the HR & CE Department shall seek assistance of the jurisdictional police for taking charge of the administration of the subject temple and the jurisdictional police is directed to provide adequate protection for the purpose of taking charge of the temple administration and its properties.



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S.M.SUBRAMANIAM, J.

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12. Accordingly, the Judgment and Decree dated 22.09.2017, passed in O.S.No.11 of 2009 stands confirmed. Consequently, the Appeal Suit in A.S.No.284 of 2018 stands **dismissed**. However, there shall be no order as to costs.

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Index : Yes

Speaking order

Neutral Citation : Yes

To

The Sub-Judge, Hosur, Krishnagiri District.

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