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OSA.No.12 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

O.S.A.No.12 of 2015

and

M.P.No.1 of 2015

1.Meera Bai

2.Gnanasundari (died)

3.B.Rajalakshmi

4.Suresh Kumar

5.Manjula

6.Chandra

7.Viruthambal

8.E.Vatchala

...Appellants

Vs.

1.Sri Kandasamy Temple and
Sri Muthukumarasamy Devasthanam,
Rep. by Balasubramaniam
Managing Trustee,
at Rasappa Chetty Street,
Park Town, Chennai - 600 007.



2.G.D.Sivasankar

3.N.Rani

4.M.Vijayalakshmi

5.V.Jayalakshmi

6.Rajeswari

...Respondents

(R6 brought on record as LR of the deceased A2 i.e. (Gnanasundari) vide Order of Court dated 11.10.2023 made in CMP.212172, 12173, 12184 of 2023 in OSA.No.12 of 2015 (RSMJ & KGTJ)

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules, r/w. Clause 15 of the Letters Patent, against the judgment and decree dated 30.07.2014 made in O.P.No.651 of 2000.

For Appellants : Mr.V.Srikanth

For Respondents : Mr.R.Bharanitharan for R1
R2 to R6 - No Appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in this Original Side Appeal is to the order of the learned Single Judge made in O.P.No.651 of 2000 and Application No.1257 of 2014. The said Original Petition was filed purportedly under Section 34



of the Indian Trust Act seeking permission to sell the property. The petitioners would claim that under a registered settlement deed dated 30.09.1935 executed by one Palaverkadu Rajagopala Chettiar, the property was settled on his grandson, T.K.Balasubramania Chettiar with a direction to pay the debts due to one Ramachandra Tarwadi and perform the Kathiri Utsavam annually for Sri Kandasamy in Sri Muthukumarasamy Temple Devasthanam, Rasappa Chetty Street, George Town, Chennai. Claiming that the property should be sold and at the same time undertaking to deposit the portion of the sale proceeds to any Nationalized Bank in order to perform to Kathiri Utsavam out of the interest that the deposit earns, the appellants sought for permission for sale of the property.

2.This was resisted by the Temple contending that the endowment being absolute, sale cannot be permitted. A plea was also taken that if at all the sale could be permitted that could be done only under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowment Act by the Commissioner and not by this Court under Section 34 of the Indian Trust Act.



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3.The learned Single Judge held that the application under Section 34 is not maintainable. The learned counsel for the appellant does not have any grievance with the said conclusion of the learned Single Judge. He is only aggrieved by the fact that the learned Single Judge has chosen to examine the matter further and conclude that the endowment said to have been created by the Palaverkadu Rajagopala Chettiar under the settlement deed dated 31.03.1935 is a specific endowment within the meaning of Section 6 (19) of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959. This according to the learned counsel, is without jurisdiction and calls for interference at our hands.

4.Upon notice, Mr.R.Bharanitharan, learned counsel appears for the 1st respondent. Mr.V.Srikanth, learned counsel appearing for the appellants would take us through the provisions of the Tamil Nadu Hindu Religious and Charitable Endowment Act,1959 in support of his submission. The learned counsel would submit that Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 provides for a complete machinery for determination of certain disputes, which includes the determination as to whether a particular endowment is a religious endowment or a specific endowment. Section 63 reads as follows:-



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"63. Joint Commissioner or Deputy Commissioner to decide certain disputes and matters:- Subject to the rights of suit or appeal hereinafter provided, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall have power to inquire into and decide the following disputes and matters:-

- (a) whether an institution is a religious institution;
- (b) whether a trustee holds or held office as a hereditary trustee;
- (c) whether any property or money is a religious endowment;
- (d) whether any property or money is a specific endowment;
- (e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter;
- (f) whether any institution or endowment is wholly or partly of a religious or secular character, and whether any property or money has been given wholly or partly for religious or secular uses ; and
- (g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the



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performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses."

5. Section 63 (c) invests power in the Joint Commissioner or Deputy Commissioner as the case may be to decide as to whether an endowment is a religious endowment or not. Section 63 (d) invests similar power to decide as to whether an endowment is a specific endowment or otherwise. Section 69 provides for an appeal to the Commissioner as against the orders of the Joint Commissioner or the Assistant Commissioner passed under Section 63 and a remedy by way of a suit is also available to a person, aggrieved by the orders of the Commissioner under Section 69 under Section 70 of the Tamilnadu Hindu Religious and Charitable Endowments Act 1959. Therefore, according to Mr. Srikanth, learned Single Judge ought not to have pronounced upon that question, that too, after concluding that an application under Section 34 of the Indian Trust Act is not maintainable.



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6.Mr.R.Bharanitharan is in un-enviable position as he is unable to support the orders of the learned Single Judge. It is settled law that once the Court finds that an application is not entertainable or is not maintainable, it shall not proceed further to adjudicate upon the dispute on merits, more so, when a machinery to decide such dispute provided under a special enactment, in this case, the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959.

7.In view of the above settled position of law, we do not think that we can sustain that part of the order of the learned Single Judge that where he went into the question whether the endowment is a specific endowment or not and pronounced upon it. If at all, any dispute regarding the nature of the endowment, it has to be decided only under the provisions of the Tamilnadu Hindu Religious and Charitable Endowment Act, 1959 namely, Section 63 to 70 which form a self-contained Court in providing a machinery for determination of certain disputes. Therefore, this Court in an application under Section 34 of the Indian Trust Act cannot go into the question as to whether an endowment is a specific endowment or not.



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8.We make it clear that we are not going into the merits of the issues and we are not pronouncing upon the character of the endowment. We are therefore, forced to interfere and tinker with the order of the learned Single Judge. This Original Side Appeal is **partly allowed**, while sustaining the dismissal of the application under Section 34 of the Trsut Act, we make it clear that all the findings of the learned Judge regarding the character of the endowment will stand vacated. Considering the nature of the dispute, we direct the parties to bear their own costs. Consqeuntly, connected miscellaneous petition is closed.

(R.S.M., J.) (N.S., J.)
20.11.2023

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