IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2022

PRONOUNCED ON : 02.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.2037 of 2022
and
C.M.P.No.10460 of 2022

Arulmigu Akkaraipatti Ponkaliamman
Arulmigu Akkaraipatti Muthusamy and
Arulmigu Molipili Annamar Swami Deities
Represented by the Executive Officer,
Arulmigu Varadharaja Perumal Vagaiyara
Thirukkoil Devasthanam
Vengumbur Village,
Erode Taluk. ... Petitioner

Vs.

1.R.Periasamy
2.R.Sivasubramaniyan
3.G.Guhan
4.Mrs.Hemalatha Mutukumar
5.Arulmigu Bhaghavathiamman Deity
Represented by Dharmakartha K.S.Shanmugam,
Kalvettuppalayam, Vengumbur Post,
Unjalur Via, Erode Tk., ... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Fair order and Decreetal order dated 11.11.2021 passed in I.A.No.2 of 2021 in O.S.No.156 of 2014 by the Hon'ble 1st Additional District Court, Erode.

For Petitioner : Mr.N.R.R.Arun Natarajan
Special Government Pleader
(HR & CE)

For R1 : Mrs.Chitra sampath
Senior Counsel
For Mr.T.S.Baskaran

For R2 : Mr.C.K.Chandrasekkar

ORDER

The Civil Revision Petition has been filed to set aside the Fair order and Decreetal order dated 11.11.2021 passed in I.A.No.2 of 2021 in O.S.No.156 of 2014 by the Hon'ble 1st Additional District Court, Erode.

2. The 5th defendant in the suit is the revision petitioner. The first respondent herein is the plaintiff and instituted a suit for Partition and Separate Possession of the suit properties. The plaintiff filed an Interlocutory Application under Order 6 Rule 17 and Section 151 of Civil Procedure Code, seeking to amend the plaint. The trial adjudicated the issues and allowed the Interlocutory Application filed to amend the plaint.

3. The revision petitioner / 5th respondent is Arulmigu Akkaraipatti Ponkaliamman Arulmigu Akkaraipatti Muthusamy and Arulmigu Molipili Annamar Swami Deities, represented by the Executive Officer.

4. The learned Special Government Pleader appearing on behalf of the revision petitioner mainly contended that the trial Court has committed an error in not considering the vital ground raised by the revision petitioner that notice under Section 80 of C.P.C., was not at all issued by the plaintiff to the revision petitioner/Temple, which is administered by the "State" and the Executive Officer is a public servant.

5. In respect of the said ground raised by the revision petitioner, the trial Court, in the impugned order passed in the Interlocutory Application has made a finding as follows:

> *"The learned fifth respondent's counsel through his written arguments also argued that, a portion of the suit property already has been dedicated to the fifth respondent Deity by the first respondent and so the petitioner also has filed this suit for partition of Government Properties, but notice under Section 80 of Civil Procedure Code was not at all issued by the petitioner before filing of the suit and so this suit itself is not maintainable. This court considering the above contention of the learned fifth respondent's counsel determines that, no Government Department is impleaded as a party in this suit and also in this petition and so notice under section 80 of Civil Procedure Code was not at all necessary before filing of this suit and so the above said contention of the*

learned fifth respondent's counsel is not at all acceptable, sustainable and tenable and so as a consequence this court rejects the above contention of the learned fifth respondent's counsel."

6. The learned Special Government Pleader appearing on behalf of the revision petitioner contended that notice under Section 80 of C.P.C. is mandatory since the Executive Officer is a Government servant and Temple is falling under the administrative control of the Government and thus, the plaint is to be rejected. To reject the plaint, the petitioner herein filed C.R.P.No.2036 of 2022 under Article 227 of the Constitution of India.

7. In respect of the present Civil Revision Petition, the order passed in the Interlocutory Application in I.A.No.2 of 2021 dated 11.11.2021 is under challenge, since the trial Court arrived a conclusion that notice under Section 80 of C.P.C. is not required and further, the revision petitioner is not a Government Department and the Executive Officer is not a public servant. The contentions raised by the revision petitioner in this regard was rejected by the trial Court as not acceptable, sustainable and tenable. Thus, the revision petitioner has filed the present revision petition.

8. The short question to be decided in the present Civil Revision Petition is that, whether revision petitioner/Arulmigu Akkaraipatti Ponkaliamman Arulmigu Akkaraipatti Muthusamy and Arulmigu Molipili Annamar Swami Deities, represented by the Executive Officer is a Government Temple/the 'State' within Article 12 of the Constitution of India, and the Executive Officer is a public servant or not. In this context, the learned Special Government Pleader relied on Rule 9 of Conditions For Appointment of Executive Officers Rules, 2015, which reads as under:

> *"9. The salary, allowances and other conditions of service of the Executive Officers shall be governed by the rules framed by the Government under Article 309 of the Constitution of India and other rules and orders applicable to Government servants, as may be modified, from time to time. His salary, allowances, pension and remuneration, shall, at the first instance, be paid out of the Consolidated Fund of the State. The Commissioner shall, out of the Tamil Nadu Hindu Religious and Charitable Endowments Administration Fund, repay to the Government such sums paid by the Government."*

9. The above rule unambiguously enumerates that the services of the Executive Officer shall be governed by the rules framed by the Government

under Article 309 of the Constitution of India and other rules and orders applicable to Government servants. Thus, the Executive Officer is a public servant appointed by the Government under the provisions of the rules and therefore, notice under Section 80 of C.P.C. becomes mandatory and the findings in this regard by the trial Court is in violation of the provisions of the Rules.

10. The learned Special Government Pleader appearing on behalf of the revision petitioner further drew the attention of this Court with reference to Section 12 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (in short, 'HR & CE Act') wherein, it is contemplated Commissioner, etc., to be servants of Government, which reads as under:

> *"**12. Commissioner, etc., to be servants of Government.**—(1) [The Commissioner, [Additional Commissioner, Joint Commissioners], Deputy Commissioners, Assistant Commissioners and other officers and servants including Executive Officers of religious institutions employed for the purposes of this Act shall be servants of the Government and their salaries, allowances, pensions and other remuneration shall be paid in the first instance out of the Consolidated Fund of the State. The 4[. .*

.] cost of auditing the accounts of religious institutions shall also be paid in the first instance out of the Consolidated Fund of the State.

(2) (a) The Commissioner shall, out of the [Tamil Nadu Hindu Religious and Charitable Endowments Administration Fund], repay to the Government the sums paid by the Government under sub-section (1).

(b) [Omitted by Section 2 of Hindu Religious and Charitable Endowments Act, 2006 (Tamil Nadu Act 1 of 2006)]

(c) (i) For the purpose of pension or other remuneration payable to any Executive Officer serving immediately before the date of the commencement of this Act and retiring on or after that date, the Government may take into account the service of such officer before that date, subject to such conditions as may be prescribed ;

(ii) The Commissioner may recover from the religious institution concerned also the portion of the pension or other remuneration attributable to the service of such executive officer as is mentioned in sub-clause (i) before the date of the commencement of this Act.

The provisions of section 12 of the Act clearly indicate that the Commissioner, while functioning under the provisions of the Act, functions only as public officer or Government servant and as such, the provisions contained in section 80 of the Code of Civil Procedure, 1908 will apply to *him. [S.Govinda Menon v. Union of India, AIR 1967 SC 1274; 1968 (2) MLJ 41].”*

11. Chapter III of the Act provides Religious institutions, General Provisions. Section 23 stipulates “Powers and duties of the Commissioner in respect of temples and religious endowments”, which reads as under:

> *“**23. Powers and duties of the Commissioner in respect of temples and religious endowments** – Subject to the provisions of this Act, the administration of all temples (including specific endowments attached thereto) and all religious endowments shall be subject to the general superintendence and control of the Commissioner; and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such temples and endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist:*
>
> *Provided that the Commissioner shall not pass any other prejudicial to any temple or endowment unless the trustees concerned have had a reasonable opportunity of making their representations.”*

12. In the context of the above provisions of the HR & CE Act and the appointment of the Executive Officers Rules, the learned Special

Government Pleader appearing on behalf of the revision petitioner drew the attention of this Court with reference to the Gift Deed executed by Mr.R.Sivasubramaniyan and Mr.S.Hariram. The said Gift Deed, which confers right on the revision petitioner / Temple, reveals that the deed was executed in favour of the Commissioner, Hindu Religious and Charitable Endowments Department and the Joint Commissioner, Coimbatore. The said Mr.R.Sivasubramaniyan and Mr.S.Hariram executed this Gift Deed in favour of the Temple and therefore, the revision petitioner/Temple derives right on the property and thus, the revision petitioner is entitled to defend the suit filed between the family members of the plaintiff and the other defendants.

13. The learned Senior counsel appearing on behalf of the respondents objected the contention raised by the revision petitioner by stating that the suit is for Partition between the family members. Execution of Gift Deed without deriving the right in respect of the particular property becomes untenable. When the said Mr.R.Sivasubramaniyan himself does not have a right on the property since the property was not partitioned and allotted to the donor, the Gift Deed becomes invalid. The first defendant/ Mr.R.Sivasubramaniyan assumed his right in respect of the particular

property and executed a Gift Deed, which cannot provide any right for the revision petitioner/Temple. That apart, the Gift Deed was executed in favour of the minor Deity and therefore, it is not a Government and thus, the findings of the trial Court that notice under Section 80 of C.P.C. became not mandatory is in consonance with law.

14. In support of the said contention, the learned counsel for the respondents relied on the judgment of the learned Single Judge of this Court in the case of ***A/m.Vadapalani Andavar Temple Devasthanam, rep.by its Deputy Commissioner/Executive Officer Vs. The Society of St.Joseph College, Tiruchirapalli***, reported in ***2016 2 L.W 309,*** wherein the Court made the following observations:

> *"13. However, the appellant herein/first defendant has made an attempt to contend that the suit as against the appellant herein/first defendant is not maintainable, since no notice under Section 80(1) of CPC was served on the appellant herein/first defendant. Such a plea came to be raised on the ground that the appellant herein/first defendant temple is represented by its Executive Officer, who is a Government servant in the rank of Deputy Commissioner in the Tamil Nadu Hindu Religious and Charitable Endowments Department. The first respondent herein/plaintiff society has*

not sought any relief against the Executive Officer as a public servant. The deity of the appellant/first defendant temple possesses juristic personality and it can be sued and to be used in its own name. Any act done purporting to act as the Executive Officer of the temple in exercise of the right of the temple cannot be termed an act purported to be done in exercise of his official function as a public servant. The above said contentions seems to have been raised on a misconception that the Executive Officer of the appellant/first defendant temple is sued for an act done in purported exercise of his official function as public servant. The finding of the trial court in this regard that the appellant/first defendant temple is not entitled to a notice under Section 80(1) of the Code of Civil Procedure and the suit is not affected by the absence of service of notice under Section 80(1) CPC on the appellant/first defendant is well founded and this court does not find any defect or infirmity in the said finding of the trial court."

15. In the case *cited supra*, in a similar circumstances, the Court considered that the plaintiff has not sought for any relief against the Executive Officer as a public servant. The Deity of the appellant/Temple possess juristic personality and it can be sued and to be used in its own name. Any act done purporting to act as the Executive Officer of the temple

in exercise of the right of the temple cannot be termed as an act purported to be done in exercise of his official function as a public servant.

16. The learned Senior counsel appearing on behalf of the respondent is of an opinion that the respondent herein has not challenged any of the actions of the Executive Officer. In other words, the action or order if any issued by the Executive Officer is not under challenge in the suit instituted. The Executive Officer was impleaded because a Gift Deed was executed by the first defendant/Mr.R.Sivasubramaniyan, who has not derived any right in respect of the property, which was gifted in favour of the Temple. Therefore, the plaintiff has not challenged any action of the Executive Officer and more so, the suit was instituted for Partition between the family members and the Temple has no further claim on such suit and thus, notice under Section 80 of C.P.C became unnecessary.

17. This Court has to consider the juristic personality of a Temple. "Temple" has been defined under Section 6 (20) of the HR & CE Act. "Temple" means a place by whatever designation known used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of public

religious worship.

18. Chapter II of the HR & CE Act deals with the Authorities under the Act and such authorities are appointed for administering and controlling the Temple. Section 12 of the Act states Commissioner, etc., to be servants of Government and accordingly, the Executive Officers of the religious institutions employed for the purpose of the Act shall be servants of the Government and their salaries, allowances, pensions and other remunerations shall be paid in the first instance out of the Consolidated Fund of the State.

19. Thus, an Executive Officer of a Temple is a Government servant and receiving salary from the consolidated fund of the State and functioning as an administrator of the temple. Section 23 deals with Powers and duties of the Commissioner in respect of temples and religious endowments. Thus, the Commissioner and the Executive Officer are exercising the powers in respect of the temple administration and religious endowments. Therefore, the Temple is falling under the administrative control of the Government Department namely the Hindu Religious and Charitable Endowments Department. The Executive Officer is also a Government servant, receiving

salary from the State fund and exercising the powers under the provisions of the HR & CE Act and the rules in force. The Gift Deed registered by the first defendant/Mr.R.Sivasubramaniyan reveals that the Gift Deed was executed in favour of the Commissioner, Hindu Religious and Charitable Endowments Department and the Joint Commissioner, Coimbatore, who is the administrator of the Arulmigu Akkaraipatti Ponkaliamman Arulmigu Akkaraipatti Muthusamy and Arulmigu Molipili Annamar Swami Deities Temple.

20. Thus, the Gift Deed was executed for the benefit of the Temple, which is represented by the Executive Officer, who is a Government servant and more so, the Commissioner, who is also the Head of the Department. Thus, for all purposes, the Gift Deed was executed in favour of the "State" under Article 12 of the Constitution of India and thus, notice under Section 80 of C.P.C. becomes mandatory.

21. The reliance placed on behalf of the respondents, with reference to the judgment of ***A/m.Vadapalani Andavar Temple (cited supra)***, the Court found that the Deity in the Temple possesses juristic personality and it can be sued and to be used in its own name. Any act done purporting to act as

the Executive Officer of the temple in exercise of the right of the temple cannot be termed an act purported to be done in exercise of his official function as a public servant.

22. The said finding is inapplicable with reference to the facts and circumstances of the present case. In the present case, the first defendant executed a Gift Deed in favour of the Temple, represented by the Commissioner and Joint Commissioner, Hindu Religious and Charitable Endowments Department. The Temple is represented by the Government servants / public servants, who all are exercising the administrative control over the Temple under the provisions of the HR & CE Act and therefore, the beneficiary from and out of the gift is a Temple, which is controlled and administered by the Government, which is a "State". Thus, notice under Section 80 of C.P.C., is mandatory and non-issuance becomes fatal to the suit. Thus, the judgment relied on by the respondent is inapplicable, more so, the scope of the HR & CE Act and the position of the Joint Commissioner and Executive Officers under the HR & CE Act were not considered by the Court in the said judgment relied on by the respondent. Thus, the said judgment is of no avail to the respondent.

23. In view of the fact that the trial Court decided the Interlocutory Application filed under Order 6 Rule 17 for amending the plaint, wherein, a finding was made that notice under Section 80 of C.P.C becomes unnecessary to the revision petitioner, this Court is of an opinion that the order of the trial Court, allowing the amendment of plaint need not be interfered with, but the findings of the trial Court in the order impugned becomes perverse.

24. Therefore, it would be sufficient, if the infirmity to the extent is rectified in the order impugned, enabling the parties to raise all other preliminary objections of maintainability of the suit separately by filing appropriate applications.

25. In view of the facts and circumstances, the following findings in the order impugned passed in I.A.No.2 of 2021 in O.S.No.156 of 2014 dated 11.11.2021 on the file of the I Additional District Court, Erode, stands set aside:

> *"The learned fifth respondent's counsel through his written arguments also argued that, a portion of the suit property already has been dedicated to the fifth respondent*

Deity by the first respondent and so the petitioner also has filed this suit for partition of Government Properties, but notice under Section 80 of Civil Procedure Code was not at all issued by the petitioner before filing of the suit and so this suit itself is not maintainable. This court considering the above contention of the learned fifth respondent's counsel determines that, no Government Department is impleaded as a party in this suit and also in this petition and so notice under section 80 of Civil Procedure Code was not at all necessary before filing of this suit and so the above said contention of the learned fifth respondent's counsel is not at all acceptable, sustainable and tenable and so as a consequence this court rejects the above contention of the learned fifth respondent's counsel."

26. The amendment of plaint as sought for by the first respondent/plaintiff stands confirmed. Consequently, the Civil Revision Petition in C.R.P.No.2037 of 2022 stands allowed in part. No costs. Connected miscellaneous petition is closed.

02.01.2023

kak
Index : Yes
Speaking order

To

The Judge,
I Additional District Court,
Erode.

S.M.SUBRAMANIAM, J.

kak

C.R.P.No.2037 of 2022

02.01.2023