



S.A.Nos.72 & 73 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos.72 & 73 of 2017

Gejagatti Sri Karuvannarayor Temple
Dharmakarthha and its Administrative Committee
President G.Ramasamy
No.177, Bazaar Street, Sathy Town
Sathyamangalam Village,
Sathyamangalam Taluk.

...Appellant in both S.A.Nos.

Vs.

- 1.The Commissioner
Hindu Religious & Charitable Endowments Department
Nungambakkam High Road, Chennai Town
Chennai Taluk, Chennai District.
- 2.The Joint Commissioner
Hindu Religious & Charitable Endowments Department
Balasundaram Road, Kovai Town,
Kovai Taluk, Kovai District.
- 3.The Executive Officer
Hindu Religious & Charitable Endowments Department
Venugopalsamy Kovil, Sathyamangalam Town
Sathyamangalam Taluk.



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- 4.T.M.Ammasaiyappan (Died)
- 5.Parameshwari
- 6.N.Gomathi

(R4-died, RR5 & 6 are brought on record as Lrs of the deceased R4 vide Court order dated 01.11.2022 made in CMP.Nos.8500, 8531 & 8534/2022 in SA.No.72/2017)

...Respondents in S.A.No.72/2017

- 1.T.M.Ammasaiyappan (Died)
- 2.Parameshwari
- 3.N.Gomathi

(R1-died, RR2 & 3 are brought on record as Lrs of the deceased R1 vide Court order dated 01.11.2022 made in CMP.Nos.8511, 8527 & 8528/2022 in SA.No.73/2017)

...Respondents in S.A.No.73/2017

Common Prayer: Second Appeals filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 17.08.2016 and made in A.S.Nos.55 & 56 of 2015 on the file of the Sub Judge, Sathyamangalam, confirming the judgment and decree dated 26.02.2014 and made in OS.No.406 of 2010 & OS.No.155 of 2009 respectively, on the file of the District Munsif, Sathyamangalam.



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For Appellant in
S.A.No.72/2017

: Ms.G.Sumithra
for Mr.N.Ishtiaq Ahmed

For Respondents
in S.A.No.72/2017

: Mr.C.Sathish for R1& R2
Government Advocate (CS)

Mr.D.Gopal for R3
R4-Died
Mr.M.Roshan Atiq for R5
Mr.K.R.Samratt for R6

For Appellant in
S.A.No.73/2017

: Mr.N.Ishtiaq Ahmed
for Mr.R.T.Doraisamy

For Respondents
in S.A.No.73/2017

: R1- Died
Mr.M.Roshan Atiq for R2
Mr.K.R.Samratt for R3

COMMON JUDGMENT

The unsuccessful plaintiff in both the suits is the appellant before this Court. Second Appeal in S.A.No.72 of 2017 is arising out of suit for declaration that the suit temple is a private temple of Uppliappa Naicker Community and for injunction restraining the respondents from interfering with the right of the appellant to administer the temple. The



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suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first Appellate Court. Aggrieved by the concurrent findings, the appellant has preferred the Second Appeal in S.A.No.72 of 2017.

2. Second Appeal in S.A.No.73 of 2017 is arising out of the suit for declaration that the respondents herein is not the hereditary trustee of suit temple and for a consequential injunction restraining the respondents from interfering with the appellant's right to administer the temple. The suit was dismissed by the trial Court and findings of the trial Court were confirmed by the first Appellate Court. Aggrieved by the concurrent findings the appellant has come up with this Second Appeal.

3. These Second Appeals are admitted by this Court on the following substantial questions of law by order dated 31.01.2017:

“1. Whether the Courts below committed an error of law in dismissing the suit when the fourth defendant in para 13 of his written statement had categorically admitted that the suit temple is a community temple?



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2. Whether the Courts below committed an error

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of law in holding that the fourth defendant is a hereditary trustee in the absence of any proceedings appointing the fourth respondent as hereditary trustee either by the respondents 1 to 3 nor any Government order had been passed to that effect? ”

4. When the Second Appeal was taken up for hearing, this Court posted a question to the learned counsel for the appellant with regard to the maintainability of the suit prayer before the Civil Court in view of Section 63 (a) r/w 108 of the Hindu Religious and Charitable Endowments Act. The learned counsel for the appellant advanced the arguments on this aspect. The issue regarding the maintainability of the Civil suit in respect of the declaration sought for in the two suits regarding the private nature of the temple and the hereditary trusteeship etc., are all the matters which have to be adjudicated before the statutory authorities namely, Joint Commissioner under Section 63(a) of the Hindu Religious and Charitable Endowments Act.

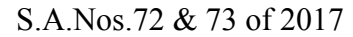


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5. In S.A.No.72 of 2017 the appellant seeks a declaration that the suit temple is a private temple belongs to a particular community. Whether the temple is a public temple or private one is a matter to be decided by the Joint Commissioner under Section 63(a) of the Hindu Religious and Charitable Endowments Act. The said position has been clearly laid down by the Hon'ble Division Bench of this Court in ***Inspector/Fit person HR & CE., Arulmighu Sundaresa Gnaniar Koil Cholakadai Street Dharapuram Vs. Amirthammal and 3 others***, reported in ***2003 (1) CTC 484***. The relevant observation of the Hon'ble Division Bench of the above mentioned case as follows:

“12. In the present case though there is a reference in the plaint to the suit property being a “Samadhi” the relief asked is for a declaration that the property is not a public temple. This is a dispute that falls under Section 63(a) of the HR & CE Act. It is not an incidental question that is asked to be decided in the suit, but the only question. Therefore, this dispute ought to have been adjudicated by the authority under the Act and as



the Act also provides for a detailed enquiry.

accordance with law..."

(a) & (b) of the Hindu Religious and Charitable Endowments Act.

temple under Section 63 (b) of the Hindu Religious and Charitable



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Endowments Act. If there is a dispute whether a person can hold the office as a hereditary trustee of the temple or not, the same shall be decided by the Joint Commissioner in an enquiry conducted under Section 63 (b) of the Hindu Religious and Charitable Endowments Act. The relevant provision of Section 63 (b) of the Hindu Religious and Charitable Endowments Act of appeal as reads thus:

“63. [Joint Commissioner or Deputy Commissioner] to decide certain disputes and matters:- *“Subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have the power to inquire into and decide the following disputes and matters;*

(b)...Whether a trustee holds or held office as a hereditary trustee.”

8. Therefore, the prayer sought for in OS.No.155 of 2009 that the respondents are not hereditary trustee of suit temple is also within the jurisdiction of the statutory authority constituted under the Act. Therefore, the present suit is barred by Section 63 (b) r/w 108 of the Hindu Religious and Charitable Endowments Act.



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9. In view of the above conclusion reached by this Court that

the suit filed by the appellant before the Civil Court is not maintainable, the Second Appeals deserve dismissal with the liberty to the appellant to move the statutory authority. Therefore, the final conclusion reached by the Courts below in dismissing the suit need not be disturbed as this Court has come to the conclusion that the suit prayer is not maintainable. When the suit itself is not maintainable, this Court is not inclined to venture into answer the substantial questions of law framed on merits of the case. Any answer to the substantial questions of law framed at the time of admission on the merits of the case would affect the rights of the parties in the proceedings before the statutory authority. Therefore, I am refraining myself from answering the substantial questions of law framed at the time of admission and the Second Appeals are dismissed with liberty to move the statutory authority.

10. In view of the same, the Second Appeals in S.A.Nos.72 & 73 of 2017 are dismissed with the liberty to the appellant to move the appropriate authority under Section 63 (a) & (b) of the Hindu Religious



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and Charitable Endowments Act.

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11. With the above liberty, both the Second Appeals are dismissed. No costs.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

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- 2.The District Munsif, Sathyamangalam.
- 3.The Commissioner
Hindu Religious & Charitable Endowments Department
Nungambakkam High Road, Chennai Town
Chennai Taluk, Chennai District.
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Hindu Religious & Charitable Endowments Department
Venugopalsamy Kovil, Sathyamangalam Town
Sathyamangalam Taluk.

S.SOUNTHAR, J.

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