



S.A.(MD) No.207 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) No.207 of 2009

and

M.P.(MD) No.1 of 2009

1.Perumalpuram Hindu Nadar

Samuthaya Esakkiamman Temple Trust,

Perumalpuram,

Aralvoimozhi Village,

Thovalai Taluk,

Kanyakumari District,

Rep., by its Trustees,

... Appellant/1st Respondent in

A.S.Nos.34 & 45 1993/1st Plaintiff

2.P.Thavasi Nadar

... Appellant/4th Respondent in

A.S.Nos.34 & 45 1993/4th Plaintiff

3.Balachandran

4.Pon. Pandian

5.Thirulogachandran

6.Murugesan

... Appellants/RR 6 to 9 in

A.S.No.34 of 1993 &

RR7 to 10 in A.S.No. 45 1993/Nil



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Vs

1. Assistant Commissioner,
HR & CE (Administration) Department,
Nagercoil, Agaseeswaram Taluk,
Kanyakumari District.

2. The Commissioner,
HR & CE (Administration) Department,
Chennai.

3. E. Madaswamy,
Executive Officer,
Asariyal, Veeravanangai Ammal Koil,
Azhakiapandiapuram, Thovalai Taluk,
Kanyakumari District.

... Respondents/Appellants 1 &
2 & R5 in A.S.No.34/1993
RR5 & 6 and appellant in
A.S.No.45/1993/D1 to D3

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 03.02.2009 made in A.S.No.34 of 1993 and A.S.No.45 of 1993 on the file of the District Court, Kanyakumari at Nagercoil, reversing the judgment and decree dated 29.01.1993 made in O.S.No.28 of 1989 on the file of the Sub Court, Nagercoil.



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For 1st Appellant : Mr.H.Lakshmi Shankar
For Appellants 2 to 6 : No appearance
For RR1 & 2 : Mr.R.Ragavendran
Government Advocate
For R3 : Mr.S.Raja Sekaran

J U D G M E N T

1.1. The appellants herein filed a suit seeking declaration that Esakkiamman Temple situated in Aralvoimozhi Village, Thovalai Taluk, Kanyakumari District, was a religious denominational institution belonging to the Hindu Nadar Samudayam, Perumalpuram and consequently, entitled to protection under Article 26 of the Constitution of India. They have also sought for a direction that the respondents/officials shall not interfere with the affairs of management of the temple. The suit was decreed by the trial Court. Aggrieved by the same, respondents 1 and 2 and the 3rd respondent filed two appeals in A.S.Nos.34 and 45 and 1993 respectively. The first appellate Court reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the appellants are before this Court.



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1.2. According to the appellants, the temple called Esakkiamman Temple situated in S.No.533/C of Aralvoimozhi Village was originally founded by one Chinna Nadachi of Perumalpuram. The site of the temple originally stood in the name of Chinna Nadachi and later on, it was registered in the name of Perumalpuram Hindu Nadars, who were her own relatives and descendants. It was also averred that the Hindu Nadars of Perumalpuram were Hindus, who follow Saivite form of persuasion. They worship goddess Esakki, a manifestation of Siva, which means action or Sakthi. It was also averred in the plaint that the Perumalpuram Nadars have their own religious practices and observances peculiar to them and hence, they constitute a separate denomination. It was further averred that in an earlier suit contested between two groups of Perumalpuram Nadars, the Court found that the Temple belonged to Nadars of Perumalpuram. It was also pleaded that the Hindu Nadars of Perumalpuram constitute a recognised and distinct Samudayam or a group of individual and they have a common and distinct characteristic, peculiar customs and manners which are



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inextricably and closely connected with their religious beliefs. It was also pleaded that they were not recognised as Hindus and were treated as untouchables till 1936. It was also pleaded that worship of the deity was only by the members of the plaintiff-Samudayam. Others, who want to worship in the temple, can do so with leave and licence of the Trustees of the temple. On these pleadings, the appellants sought for declaration as stated above.

2.1. Respondents 1 and 2 filed a written statement, wherein they denied the allegation in the plaint that Hindu Nadars of Perumalpuram had distinct form of worship or faith. It was also denied by respondents 1 and 2 that Hindus of Perumalpuram village had religious practices and observances peculiar to them. It was further averred in the written statement that the suit temple was a public temple and the deity in the suit temple was worshipped by general public belonging to different communities from different places. It was also stated that general public used to make offerings to the temple and therefore, it could not be stated



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that the temple belonged to Perumalpuram Hindu Nadars to the exclusion of other members of Hindu community. Respondents 1 and 2 in their written statement also referred to the judgment passed by this High Court in an earlier suit filed by the plaintiffs, wherein it was held that the suit temple was a public temple. It was also contended that in view of the finding by the High Court in the earlier suit that the suit temple was a public temple, the present suit for declaration was not at all maintainable.

2.2. The 3rd respondent herein filed a separate written statement, wherein he referred to the judgment passed by this Court in the earlier litigation between the parties and claimed that the suit temple was a public temple. It was also stated that the public belonging to all the communities from various places used to offer their worship in the temple out of their own right without any leave or licence from the plaintiffs. It was also contended that after judgment by this Court declaring that the plaintiff-Temple is a public temple, the present suit is not at all maintainable.



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3. Before the trial Court, the deceased second plaintiff Veerasura Pandian was examined as P.W.1. The Inspector, HR & CE Department and the Fit Person appointed by the Department for the suit temple were examined as D.W.1 and D.W.2. Six documents were marked on behalf of the appellants as Ex.A.1 to Ex.A.6 and the judgment and decree passed by the High Court in the earlier litigation were marked as Ex.B.1 and Ex.B.2 on behalf of the respondents.

4. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the appellants entitled to declaration as prayed for and decreed the suit. Aggrieved by the same, respondents 1 and 2 and the 3rd respondent filed two separate appeals in A.S.Nos.34 and 45 of 1993 respectively on the file of the District Court, Kanniyakumari at Nagercoil and the same were allowed. Aggrieved by the same, the plaintiffs are before this Court.



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5.1. When the second appeal was taken up for hearing, the learned counsel, who filed vakalat for appellants 2 to 6, submitted that she had handed over the papers to the parties. There is no representation for appellants 2 to 6. However, Mr.H.Lakshmi Shankar, learned counsel who filed vakalat for the first appellant, argued the case on behalf of the first appellant-Trust.

5.2. Heard the arguments of the learned counsel appearing for the first appellant and that of the learned Government Advocate for respondents 1 and 2 and the learned counsel for the 3rd respondent.

6. This Court, at the time of admission of the second appeal, formulated the following substantial questions of law:

“(i) Whether the suit temple can be classified a denomination temple of Perumalpuram Hindu Nadars under Article 26 of the Constitution of India?

(ii) Whether the suit itself is barred under Section 11 of



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the Code of Civil Procedure in view of the judgment and decree in O.S.No.65 of 1976 and A.S.No.1186 of 1980?”

7.1. The learned counsel for the first appellant, elaborating the substantial questions of law formulated at the time of admission, submitted that in the earlier suit filed by the plaintiffs, the denominational character of the plaintiff-temple was not at all in issue. The issue involved in the said suit was with regard to the question whether the temple was a private temple or not. This Court came to a conclusion that the plaintiff-temple was a public temple. However, the question whether the plaintiff-temple is a denominational temple was not at all considered by this Court in the earlier litigation. Therefore, it is the contention of the learned counsel for the first appellant that the judgment and decree passed by this Court in A.S.No.1186 of 1988, which were marked as Ex.B.1 and Ex.B.2 would not bar maintainability of the present suit seeking declaration that the appellant-temple is a denominational temple.



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7.2. The learned counsel further submitted that even a caste as a whole can be treated as a denomination. In the present case, the Nadars of Perumalpuram village as a group shall be treated as a denominational group and in support of the said contention, he relied on the judgment in *Tamarkulam Vellala Samudhayam, Arya Kulasekhara Nangai Amman Temple Trustee, Subramania Pillai Vs. State of Tamil Nadu* reported in *1980-2-MLJ 385*. He further submitted that merely because general public are allowed to worship in a denominational temple, it will not lose the character of denominational temple. In support of the said contention, he relied on the judgment in *V.Balakrishnan and others Vs. Assistant Commissioner, HR & CE (Admn) Department, Tirunelveli and others* reported in *1978 TNLJ 35*. The learned counsel also relied on the judgment in *N.K.S.Sankarakumara Nadar and others Vs. Assistant Commissioner for Hindu Religious and Charitable Endowments, Tirunelveli* reported in *1975 1 MLJ 2*, wherein a temple managed by Hindu Nadars, Sivagurunathapuram was held to be a denominational temple. The learned



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counsel by taking this Court to the judgments submitted that in the case on hand, the evidence of P.W.1 proves the claim made by the appellants/plaintiffs and therefore, the first appellate Court ought not to have reversed the well considered findings of the trial Court. Apart from the decisions referred above, the learned counsel also relied on the following two decisions in support of the contention that the suit temple should be treated as a denominational temple:

- (i) ***Gurpur Guni Venkataraya Narashima Prabhu and others Vs. B.G.Achia and others*** reported in ***AIR 1977 SC 1192***; and
- (ii) ***State of Tamil Nadu and others Vs. P.S.R. Senbagamurthy Nadar and others*** reported in ***AIR 1997 Madras 96***.

8. Per contra, the learned Government Advocate for respondents 1 and 2, by taking this Court to the evidence of D.W.1 and D.W.2, submitted that the suit temple is a public temple and the members of the public are allowed to have worship in the temple as a matter of right without any leave or licence from the appellants and hence, the contention of the learned



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counsel for the first appellant as if the suit temple is a denominational temple cannot be accepted.

9. The learned counsel for the 3rd respondent, by taking this Court to Ex.B.1 and Ex.B.2, judgment and decree passed by this Court in the earlier litigation between the parties, submitted that when in an earlier litigation, this Court had come to a conclusion that the suit temple was a public temple, the present suit for declaration that the suit temple is a denominational temple is not at all maintainable in law. The learned counsel also supported the contentions of the learned Government Advocate for respondents 1 and 2 by taking this Court to the evidence of D.W.1 and D.W.2 to show that general public used to offer worship in the temple as a matter of right.

10.1. The expression "religious denomination" came up for consideration before the Hon'ble Apex Court in *S.P.Mittal Vs. Union of India (UOI) and others reported in AIR 1983 SC 1 equivalent to*



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Manu/SC/0532/1982, wherein, the Hon'ble Apex Court, after referring to famous *Sri Shirur Mutt case (AIR 1954 SC 282)* held as follows:

77-78 . These terms have also been judicially considered in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt MANU/SC/0136/1954 : (1954) SCR 1005 : AIR 1954 SC 282 wherein the following proposition of law have been laid down:

(1) Religion means "a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being".

(2) A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well.

(3) Religion need not be theistic.

(4) "Religious denomination" means a religious sect or body having a common faith and organisation and designated by a distinctive name.

(5) A law which takes away the rights of administration from the hands of a religious denomination altogether and vests in another authority would amount to violation of the right guaranteed under Clause (d) of Article 26,"

79. The aforesaid propositions have been consistently followed in later cases including Durgah Committee, Ajmer v.



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Syed Hussain Ali MANU/SC/0063/1961 : (1962) 1 SCR 383 at pp. 410-11 : AIR 1961 SC 1402 at p. 1415. and can be regarded as well settled.

80. The words "religious denomination" in Article 26 of the Constitution must take their colour from the word 'religion' and if this be so, the expression "religious denomination" must also satisfy three conditions:

- (1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;*
- (2) common organisation; and*
- (3) designation by a distinctive name*

10.2. When the question whether Hindu Nadar Uravin Murai of Vilampatti can be treated as "religious denomination" came up for consideration before this Court, in *State of Tamil Nadu Vs. Vilampatti Nadar Uravinmuraikku Pathiayapatta A.V.M. Marimuthu Nadar Melnilaipalliyin Managing Committee and others* reported in 1991 1 LW 382, equivalent to Manu/TN/0713/1990, this Court after considering the



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evidence available on record observed as follows:

In my opinion, neither the oral evidence of P.Ws. 1 to 5 referred to above nor the documentary evidence produced by the plaintiffs would be sufficient to prove that the three conditions laid down by the Supreme Court in S.P. Mittal's case : [1983]1SCR729 in order to make a particular community a religious denomination are satisfied in the present case. The contention of the learned Counsel for the plaintiffs that the common faith peculiar to Vilampatti Hindu Nadar community is evident from the fact that the members of Vilampatti Hindu Nadar community are worshipping the idols Kaliamman and Karuppasami cannot be countenanced, because, I do not find any peculiarity in worshipping the idols Kaliamman and Karuppasami, which are deities for several sections of the Hindu Community. The infirmity in the judgment of the lower appellate court is that in coming to the conclusion that Vilampatti Hindu Nadar Community is a religious denomination, it has not considered the issue in the proper perspective in the light of the principles laid down by the Supreme Court in Shirur Mutt case, S.P. Mittal v. Union of India etc. The lower appellate Court also failed to see that the evidence of



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P.Ws.1 to 5 relates only to certain secular practices of the Hindu Nadar Community of Vilampatti and the evidence in this case does not show that the members of the Hindu Nadar Community of Vilampatti have a common faith peculiar to themselves. In the absence of evidence in this case to show that the Hindu Nadar Community of Vilampatti have a common faith, that is to say, a system of beliefs or doctrines or religious tenets peculiar to that community, the lower appellate court is not correct in coming to the conclusion that the Hindu Nadars of Vilampatti is a religious denomination.

10.3. The present suit has been filed by the appellants seeking a declaration that the suit temple is a religious denominational institution belonging to Hindu Nadars of Perumalpuram and also for a direction to the respondents/officials not to interfere with the right of the plaintiffs to manage the affairs of the temple. In order to succeed, the appellants/plaintiffs should establish that Nadars of Perumalpuram village are a distinct denominational group and the temple was founded and



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administered by them. In the case on hand, the first appellate Court has given a finding that though the appellants succeeded in proving that the temple was administered by them, there was no evidence available on record to show that the temple was founded by the Nadars of Perumalpuram. The first appellate Court also non-suited the appellants by holding that the appellants failed to prove that Nadars of Perumalpuram village constitute a distinct religious denomination. In order to prove that the Nadars of Perumalpuram village constitute a religious denomination, the deceased second plaintiff was examined as P.W.1.

10.4. I have gone through the evidence of P.W.1. Nowhere in his evidence he had stated anything regarding the denominational character of the Nadars of Perumalpuram village. In the plaint averment, though the appellants claim that Nadars of Perumalpuram village have their own religious practices and observances peculiar to them, there is no evidence to support the said averment. P.W.1 talks about the administration of the temple by Perumalpuram Nadars. However, he has not whispered anything



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about the denominational characters of the Nadars of Perumalpuram village.

When it is not proved that Nadars of Perumalpuram village constitute a separate religious denomination by any acceptable evidence, the appellants are not entitled to succeed in the suit. The appellants failed to examine any other independent witnesses in support of their contention that Nadars of Perumalpuram village as a group constitute separate religious denomination. Even the evidence of the only witness examined by the appellants is not useful to the appellants to prove their claim that Nadars of Perumalpuram village constitute a distinct religious denomination. Therefore, the finding of fact arrived at by the first appellate Court that the appellants failed to prove that Nadars of Perumalpuram village constitute separate religious denomination calls for no interference by this Court. Accordingly, the first substantial question of law is answered against the appellants.

10.5. As far as the second substantial question of law is concerned, a perusal of Ex.B.1 and Ex.B.2, judgment and decree passed by this Court in the earlier litigation between the parties would make it clear that the



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question whether Nadars of Perumalpuram village constitute a separate religious denomination did not arise for consideration in that case. In the earlier litigation, based on the evidences available on record, this Court came to a conclusion that the suit temple was a public temple and it was not a private temple belonging to Perumalpuram Hindu Nadars. However, whether they constitute a separate religious denomination was not at all considered in that case. Therefore, the judgment and decree passed by this Court in A.S.No.1186 of 1980 would not operate as *res judicata* against the present suit. Therefore, the second substantial question of law is answered in favour of the appellants.

10.6. In view of the conclusion reached by this Court in the first substantial question of law, this Second Appeal is dismissed by confirming the judgment and decree passed by the first appellate Court.



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11. In fine,

(i) this Second Appeal is dismissed by confirming the judgment and decree passed by the first appellate Court;

(ii) in the facts and circumstances of the case, there would be no order as to costs; and

(iii) M.P.(MD) No.1 of 2009 is closed.

23.02.2023

NCC: Yed
Index: Yes
Internet: Yes

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To

- 1.The District Judge,
Kanyakumari.
- 2.The Sub Judge,
Nagercoil.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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