



Rev.Aplc.(MD).Nos.61 and 62 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Rev.Aplc.(MD).Nos.61 and 62 of 2022

and

C.M.P.(MD).Nos.2592 and 2594 of 2022

Rev.Aplc.(MD).No.61 of 2022

Veeramalai (died)

- 1.Sirumbayee
- 2.Ponnambalam
- 3.Shanthi
- 4.Sakthivel

... Review Petitioners

Vs.

Subramanian (died)

- 1.Maruthayee
- 2.Ponner
- 3.Periakkal

4.Idol of Arulmigu Rathinagireeswarar Temple,
represented by its Executive Officer,
Ayyarmalai,
Sivayam Village,
Kulithalai Taluk, Karur District.

5.The Commissioner,
Hindu Religious and Charitable Endowment Board,
Nungambakkam High Road,
Chennai 34.

6.The State of Tamil Nadu
represented by its Karur District Collector,
District Collector Office,
Thanthonimalai,
Karur.

... Respondents



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PRAYER: The Review Application has been filed under Order 47, Rule 1 r/w. Section 114 of C.P.C., to review the judgment and decree of this Court, dated 22.03.2021 in A.S.(MD).No.37 of 2005.

For Petitioners : M/s. J.Maria Roseline

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Veeramalai (died)

1.Sirumbayee

2.Ponnambalam

3.Shanthi

4.Sakthivel

... Review Petitioners

Vs.

Subramanian (died)

1.Ponner

2.Idol of Arulmigu Rathinagireeswarar

Arulmigu Rathinagireeswarar Swamy Devasthanam,
Sivayam,

represented by its Executive Officer,

Ayyarmalai,

Sivayam Village,

Kulithalai Taluk.

... Respondents

PRAYER: The Review Application has been filed under Order 47, Rule 1 r/w. Section 114 of C.P.C., to review the judgment and decree of this Court, dated 22.03.2021 in Tr.A.S.(MD).No.159 of 2010.

For Petitioners : M/s. J.Maria Roseline



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COMMON ORDER

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These Review Applications have been filed to review the judgment of this Court passed in A.S.(MD).No.37 of 2005 and Tr.A.S.(MD).No.159 of 2010, dated 22.03.2021.

2. Originally, the husband of the first review petitioner and the father of the review petitioners 2 to 4 filed an application under Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, to declare him as a Chief Kothan to receive a honour in respect of certain festival on behalf of other pattadars. The said application has been allowed and the same was challenged. In appeal, the Commissioner has set aside the order and directed the parties to agitate his right before the Civil Court. Subsequently, a suit in O.S.No.257 of 1995 has been filed under Section 70 of the H.R. & C.E. Act, wherein a declaration was sought only to recognise the plaintiff as the Chief Kothan till his life time and to set aside the order. In the mean while, the respondents have also filed a suit in O.S.No.18 of 1999, to declare that receiving honours only by way of election and not by way of hereditary in nature. The suit in O.S.No.257 of 1995 was decreed and the other suit in O.S.No.18 of 1999 was dismissed. Challenging the same, both the appeals came to be filed before this Court. This Court has allowed the appeals and set



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aside the judgment of the trial Court in O.S.No.257 of 1995 and O.S.No.18 of 1999 and the suit in O.S.No.18 of 1999 was decreed to the effect that 'A' schedule service to be performed only by the elected pattadar among the pattadar of 'B' schedule. The period of election and selection is to be on the discretion of the pattadars. Such elections normally to be conducted in the presence of the Executive Officer to avoid any further dispute among the pattadars.

3. Now, the Review Applications have been filed mainly on the ground that the Civil Court has no jurisdiction to decide the said issue and the said issue has to be decided only under Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. It is the further contention that there is a clear bar under Section 108 of the said Act. Therefore, in the premise of two grounds, the Review Applications have been filed to review the judgment of this Court.

4. The learned counsel appearing for the review petitioners would submit that there is a clear bar under Section 108 of the Tamil Nadu H.R. & C.E. Act and the suit in O.S.No.18 of 1999 is certainly not maintainable, seeking for declaration that the service to be performed only by the elected pattadars.



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Therefore, it is the contention that this Court also cannot decide the same.

Accordingly, the judgment of this Court sought to be reviewed.

5. In support of her submissions, the learned counsel for the petitioners relied on the judgments of this Court reported in **(2002) 2 MLJ 762 (Natesa Udayar v. Adham)** and reported in **(2003) 1 M.L.J. 435 (Inspector /Fit Person, H.R. & C.E., Arulmighu Sundaresa Gnaniar Koil, Dharapuram v. Amirthammal)**.

6. I have perused the entire materials.

7. It is relevant to note that though the suit in O.S.No.18 of 1999 was filed before the Civil Court by the respondents, the husband of the first petitioner has already filed an application under Section 63 of the Tamil Nadu H.R. & C.E. Act., for recognising him as a Chief Kothan and for receiving the honour on behalf of other pattadars. That application has been considered by the authorities under Section 63 of the said Act and passed an order, which has been challenged in the appeal. However, the Commissioner / the appellate authority has set aside the order and relegated the parties to go to the Civil Court to establish their right. Challenging the said finding, the suit in O.S.No.



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257 of 1995 has been filed under Section 70 of the H.R. & C.E. Act. Further, the respondents also filed the connected suit in O.S.No.18 of 1999 for declaration that the service to be performed only by the elected pattadars among the pattadars of 'B' schedule.

8. This Court is of the view that the husband of the first petitioner has already approached the authorities under the Tamil Nadu Hindu Religious and Endowments Act and suffered an order passed by the appellate authority and filed a statutory suit under Section 70 of the said Act. Now, the review petitioners cannot contend before this Court that the Civil Court has no jurisdiction to decide the issue. Similarly, the connected suit filed by the respondents is also relating to the same relief. It is relevant to note that both the suits were tried and common judgment has been passed. Therefore, this Court is of the view that the bar contained under Section 108 of the H.R. & C.E. Act cannot be applied in this case, since the very issue itself already decided by the authorities, relegating the parties to go to the Civil Court. Further, the parties are in fact agitating their civil right when challenging the civil right. The bar contained under Section 108 of the Act will not apply to the present case and the Civil Court can entertain such suits and maintainable. Though two judgments have been cited stating that the dispute claiming honour in the



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festival cannot be decided by the civil Court, the above judgments cannot be applicable to the present case for the simple reason that one of the suit itself is statutory suit, after exercising the remedies available under the H.R. & C.E. Act. In the case of *Inspector /Fit Person, H.R. & C.E., Arulmighu Sundaresa Gnaniar Koil, Dharapuram v. Amirthammal* 1 M.L.J. 435 reported in 2003 (1) M.L.J. 435, the Division Bench of this Court held that the question whether an institution is a religious institution can be decided only by the authority under the Act and hence, the civil suit is not maintainable. The said judgment is not applicable to the present case. Therefore, the bar contained under Section 108 of the H.R. & C.E. Act cannot be applied mechanically. This Court is of the view that for establishing the civil right, a civil suit can be filed only before the Civil Court. Accordingly, I cannot find any error on the face of the record to review the detailed judgment of this Court, dated 22.03.2021.

9. In the result, both the Review Applications are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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