



S.A.No.1254 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.02.2023

PRONOUNCED ON : 27.04.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.1254 of 2003

1.K.K.C.S.Thiruvazhi
Annanswamy Thottachariarwamy

2.K.K.C.S.Embavannan
Thottachariarswamy

3.S.K.K.E.Kannanswamy

4.T.A.S.Ramaswamy

5.R.Parthasarathy ... Appellants

Vs

Sriman H.H.Pedda Jeeyangar
Swamivaru, representing Sri
Pedda Jeeyangar mutt,
Tirupati, No.248, Sri Govindaraja
Swamy North Mada Street,
Tirupati

... Respondent



S.A.No.1254 of 2003

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgement and decree of the District and Sessions Judge, Virudhunagar District at Srivilliputtur in A.S.No.13 of 2001 dated 31.07.2002 confirming the judgment and decree of the Subordinate Judge, Srivilliputtur in O.S.No.164 of 1999 dated 19.10.2001.

For Appellants : Mr.V.Raghavachari
for Mr.S.Ramesh

For Respondent : Mr.R.Subramanian

J U D G M E N T

The defendants in the suit are the appellants. The respondent herein filed a suit seeking direction to the appellants 1 to 3 herein to hand over possession of the suit property to respondent and also to render true accounts. The suit was decreed by the Trial Court as prayed for. Aggrieved by the same, the appellants filed an appeal and the same was dismissed by the First Appellate Court. Hence, the appellants are before this Court.



S.A.No.1254 of 2003

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2. According to the respondent, the suit property was purchased by the previous pontiff of the respondent mutt for the benefit of mutt out of mutt funds. Even during reign of previous pontiff in order to perform certain religious services to Sri Periyahvar during Brahmotsavam in the Tamil Month of Ani, a sum of Rs.10,000/- was deposited by mutt in bank of Tanjore at Srivilliputtur vide Receipt No.149381 dated 09.01.1975 with specific direction to appellants to draw the interest and perform religious services as decided by the previous pontiff. He also executed a document dated 30.12.1974 under Ex.B1 by directing the appellants to perform religious charity out of interest income derived from fixed deposit made by him. The appellants were appointed as hereditary trustees of the religious endowments. It was also recited in the document that all religious activities mentioned therein for which the endowment was created should be performed in the suit property which belonged to the respondent mutt. It was also averred that the appellants failed to perform, the religious services as directed by Ex.B1 document and hence, after issuing pre-suit notice, the respondent was constrained to file a suit for aforesaid relief.



S.A.No.1254 of 2003

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3. The appellants herein filed a written statement and resisted the suit on the ground that under document dated 30.12.1974 previous trustee created a trust by dedicating the suit property to the trust and appointed the appellants as hereditary trustees. It was also stated by the appellants that the respondent is not entitled to revoke the trust and seek possession of the suit property. It was also stated by the appellants in the written statement that the property was purchased by the previous pontiff in his individual capacity and the property had never acquired the character of mutt property. The appellants also claimed that they were performing religious endowments as per the directions in the document creating trust.

4. The Trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the suit property belonged to the respondent mutt and the appellants herein failed to perform their obligation as per directions in Ex.B1 and consequently, decreed the suit for possession and rendition of accounts as prayed for. Aggrieved by the same, the appellants preferred first appeal in A.S.No.13 of 2001 on the file of the



S.A.No.1254 of 2003

Additional District Court-cum-Chief Judicial Magistrate, Virudhunagar at Srivilliputhur. The First Appellate Court dismissed the appeal by confirming the findings of the Trial Court. Aggrieved by the same, the appellants are before this Court.

5. At the time of admission, this Court formulated the following substantial question of law:-

“1. Whether the findings of the Courts below that the purchase of the property under Ex.A1 was for the plaintiff's Mutt is erroneous?

2. The Courts below having held that Ex.B1, Deed of Trust has been executed by the person who purchased the property under Ex.A1 and that the Trust has been validly created, are right in holding that the execution of Ex.B1 Trust is not valid?

3. The lower Appellate Court having held that the property cannot be treated as Trust property and the suit for recovery of possession must be valued under Section 30 of the court Fees Act, is right in holding that the suit is not barred by



S.A.No.1254 of 2003

limitation, applying Section 10 of the Trust Act?

4. Whether the courts below erred in decreeing the suit in the absence of any particulars or findings that the Trust created under Ex.B1 is not being carried out in accordance with the terms of the Trust for the past 25 years?"

6. This Court after hearing the arguments of both the learned counsel for the parties, formulated yet another question of law, which is as follows:-

"5. Whether a trustee of a religious institution is entitled to dedicate property of religious institution in favour of another trust without sanction by Commissioner under Section 34 of HR & CE Act?"

7. The learned counsel appearing for the appellants mainly contended that under Ex.A1, the suit property was purchased by the previous Madathipathi in his individual capacity and hence, the respondent is not entitled to maintain the suit treating the property as that of the mutt. The learned counsel further submitted that under Ex.B1, previous Madathipathi,



S.A.No.1254 of 2003

who purchased the property dedicated the same to a trust created under Ex.B1 and appointed appellants as it's trustees. In case, according to the respondent, appellants failed to perform their duties as a trustee, it is open to the respondent to explore other remedies available under the Act and it is not open to the respondent to revoke the trust and seek possession of trust properties. In nutshell, it is the contention of the learned counsel for the appellants that once trust is created, the respondent lose it's title, if any, over the suit property and hence, the suit for possession is not at all maintainable.

8. The learned counsel appearing for the respondent by taking this Court to the evidence of PW.1, Sreekariyam of the respondent mutt and Ex.A2 and A3 translated version of account book of mutt submitted that the property was purchased by the previous pontiff of the mutt by utilising mutt funds and therefore, the suit property should be treated as property of the respondent mutt. He further submitted that under Ex.B1 property was not at all dedicated to the trust and property remained as the property of the respondent mutt. In nutshell, it is the contention of the learned counsel for



S.A.No.1254 of 2003

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the respondent that when there is no dedication of the property in favour of the trust under Ex.B1, the respondent is not divested of it's title over the suit property and consequently, it is permissible for the respondent to maintain the suit for possession and rendition of accounts from the appellants.

9. A perusal of Ex.A1-Registered Sale Deed would make it clear that the suit property was purchased by previous pontiff of the respondent mutt. The perusal of Ex.A2 translated version of respondent's account would make it clear that consideration of Rs.40,000/- for purchasing the suit property under Ex.A1 was paid out of respondent mutt's funds. Likewise, the property which was purchased under Ex.A1 viz., the suit property was included in the property register of respondent in Serial No.16. Therefore, there is no doubt that the previous head of mutt purchased the suit property out of mutt funds for the benefit of mutt.

10. It is settled law that in case of death of a Sanniyasi, who renounced world and entered a religious order, the succession to his estate,



S.A.No.1254 of 2003

if any, would not be governed by his personal law but the property, if any, owned by him would be succeeded by his successor in the religious order. In the case on hand, as evidenced by Ex.A2 and A3, suit property was purchased out of mutt funds and entered in the property register of mutt and consequently, it should be treated as a property of mutt. Even assuming the property was purchased by previous pontiff in his own name, on his death, the property will become mutt property and his successor in religious order namely succeeding pontiff, is entitled to have domain over the same. Therefore, I hold the suit property shall be treated as a property of the respondent mutt and consequently, the respondent is entitled to maintain a suit.

11. As far as the contention of the learned counsel for the appellants that the suit property was dedicated to the trust created under Ex.B1 is concerned, the dedication of the property to the trust or otherwise shall be determined based on the appreciation of the document as a whole. A perusal of Ex.B1 document relied on by the appellants would make it clear that the



S.A.No.1254 of 2003

appellants were appointed as a hereditary trustees to perform certain religious services out of interest accrued from the fixed deposit made by the previous pontiff of the respondent. It is not stated in Ex.B1 that the religious services or performance of which the trust was created, shall be done out of income from suit properties.

12. As directed by Ex.B1, the said religious services shall be performed in the suit property. However, even for regular maintenance of super structure of the suit property like white washing, repairing etc., the appellants have to get permission from the respondent and render proper account's for expenses incurred for maintenance. When appellants were directed to get permission from the respondent for performing white washing and regular repairing, it cannot be said the suit property was dedicated in favour of trust created under Ex.B1. The appellants were simply directed to perform certain religious services out of interest from the fixed deposit made by the respondent. In such circumstances, I hold the suit property was not dedicated in favour of trust created under Ex.B1.



S.A.No.1254 of 2003

WEB COPY

13. Even if the arguments of the learned counsel for the appellants that there was dedication of the suit property in favour of trust is accepted, such dedication would become void by provisions of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (HR & CE Act). Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, reads as follows:-

*“34. **Alienation of immovable trust property.**—(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by [the Commissioner] as being necessary or beneficial to the institution :*

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by 1[the Commissioner] :

2[Provided further that the Commissioner shall not accord such sanction without the previous approval of the



S.A.No.1254 of 2003

Government].

Explanation.—Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, [the Commissioner] may impose such conditions and give such direction, as [he] may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by [the Commissioner] under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order; and any person having interest may within three months from the date of the publication of the order [appeal to the Court] to modify the order or set it aside.

(4-A) The Government may issue such directions to the



WEB COPY



S.A.No.1254 of 2003

Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.

(5) Nothing contained in this section shall apply to the imams referred to in section 41.”

14. Therefore, a trustee of religious institution is not entitled to alienate the property of the religious institution without getting sanction from the Commissioner of HR & CE as provided under the Act. Section 6 (13) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, defines the word 'mutt', which reads as follows:-

“(13) “math” means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the Founder of the institution or is regulated by usage and –

(i) whose duty it is to engage himself in imparting religious instruction or rendering spiritual service; or



S.A.No.1254 of 2003

WEB COPY

(ii) who exercises or claims to exercise spiritual headship over a body of disciples; and include places of religious worship or instruction which are appurtenant to the institution;

Explanation.— Where the headquarters of a math are outside the State but the math has properties situated within the State, control shall be exercised over the math in accordance with the provisions of this Act, in so far as the properties of the math situated within the State are concerned;”

15. In view of Section 6 (13) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, though the head quarters of respondent mutt is situated at Andhra Pradesh, the suit property is situated at Srivilliputhur within the State of Tamil Nadu, therefore, in so far as the suit property is concerned, the provisions of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is applicable. There is no evidence available on record to show that the sanction of Commissioner appointed under Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959,



S.A.No.1254 of 2003

had been obtained before executing Ex.B1.

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16. First of all, as discussed earlier, this Court has come to the conclusion that there was no dedication of the property in favour of trust created under Ex.B1. Even assuming there was dedication of the property in favour of trust created under Ex.B1, it would amount of transfer of mutt property in favour of a newly created trust which is separate entity. In such circumstances, the same would amount to alienation within the meaning of Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the necessary corollary would be such alienation shall be treated as null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.

17. In the case on hand, there is no evidence available on record to show that the sanction of the Commissioner obtained prior to execution of Ex.B1. If Ex.B1 becomes void for want of sanction under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, then



S.A.No.1254 of 2003

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property will remain as property of the respondent mutt and they are entitled to maintain a suit for possession. On this ground also, the contention made by the learned counsel for the appellants regarding the maintainability of prayer for possession cannot be accepted.

18. As far as performance of charities as per Ex.B1 is concerned, the appellants/defendants failed to examine any independent witness to prove performance of charity as directed by previous Madathipathi. Ex.A4 to A7 prove respondent/plaintiff issued notice demanding accounts from appellants. DW.1 himself admitted no accounts was submitted to appellants regarding performance of charity. In these circumstances, the allegation in the plaint that appellants failed to perform charity and render accounts stands proved.

19. In view of the discussions made earlier, all the substantial questions of law are answered in favour of the respondent and against the appellants.



S.A.No.1254 of 2003

In fine:

(a) The Second Appeal is dismissed by confirming the judgment and decree passed by the Courts below.

(b) In the facts and circumstances of the case, there will be no order as to costs.

27.04.2023

NCC: Yes

Index: Yes

dm

To

- 1.The District and Sessions Judge,
Virudhunagar District at Srivilliputtur.
- 2.The Subordinate Judge, Srivilliputtur.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.No.1254 of 2003

S.SOUNTHAR, J.

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S.A.No.1254 of 2003

27.04.2023