



S.A.No.1840 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 12.06.2023

Delivered on : 19.06.2023

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

S.A.No.1840 of 2003

and

C.M.P(MD)No.11824 of 2022

T.Anaikutty @ Ravichandran

... Appellant/Appellant/Plaintiff

-vs-

M.P.R. Malaiandi @ Ashok

... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree dated 07.04.2003 made in A.S.No.199 of 2001 on the file of the II Additional District Court, Madurai confirming the Judgment and decree dated 13.07.2001 made in O.S.No.804 of 2000 on the file of the III Additional Sub Court, Madurai.

For Appellant ... Mr.V.Ramakrishnan

For Respondent ... Mr.S.Parthasarathy
Senior Counsel for
Mr.K.Rajasekaran



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JUDGMENT

WEB COPY The appellant is the plaintiff in O.S.No.804 of 2000 on the file of the III Additional Sub Court, Madurai. The appellant filed the suit for removal of Trustees and for framing a scheme by appointing him as a Trustee for administration of the Trust and to hand over the possession of the Trust properties. The said suit was dismissed by the trial Court. Challenging the said Judgment and Decree passed by the trial Court, the appellant/plaintiff filed the appeal before the II Additional District Judge, Madurai in A.S.No.199 of 2001. The first appellate Judge, after hearing the appeal, dismissed the same and confirmed the Judgment and Decree passed by the trial Court, against which, the appellant/plaintiff has filed the present second appeal before this Court, raising the following substantial questions of law:

“1.Whether the Courts below are right in holding that the appellant should file application under Section 92 C.P.C when the very right to manage the Trust is questioned by the appellant?

2.Whether the Courts below are right in rejecting the suit on mere ground of non-application under Section 92 C.P.C, when the case is for Samathi Dharmam, which is not coming within the scope of Hindu Religious and Charitable Endowments Act?



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2(i) The case of the appellant/plaintiff, as per the plaint, is that

the suit properties originally belonged to one M.R.Malaiandi Ambalakarar. During his life time, he constructed and consecrated a Pillaiyar Temple in the 1st item of B schedule in the suit properties and he was conducting regular pooja every day, by appointing an Archagar for the purpose of doing three times poojas and celebrating elaborately Vinayagar Chathurthi and Pongal festival in a grand manner in the above said Temple and distributing prasadam and feeding poor from and out of the income of the suit properties. The further case of the appellant/plaintiff is that the said M.R.Malaiandi Ambalakarar and his first wife Andammal had conducted Annadhana Dharmam. Even after the death of M.R.Malaiandi Ambalakarar, Annadhanam was continued and after the death of M.R.M.Andammal also, they continued Gurupooja and Annadhanam Dharmam feeding poor people in and around the village of the suit properties with 1001 measures of rice of food and also they gave the feeding to poor with 100 measures of rice on the death Anniversary of Andammal. Even after her life time, the same was continued regularly. The suit properties were fetching larger income and surplus income after doing the Vinayagar temple pooja and Gurupooja as stated above.



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2(ii) It is the further case of the appellant/plaintiff that after the death of Malaiyandi Ambalakarar, his body was buried opposite to the said Vinayakar Temple and Andammal was conducting Gurupooja of Vinayagar temple charities regularly. After the death of Andammal, her body was also buried for Samathi adjacent to Malaiyandi Ambalakarar's Samathi and a statue of 5½ feet of Malaiyandi Ambalakarar was also installed over the Samathi. The said Malaiyandi Ambalakarar was having three wives, by name, Andammal, Puliammal and Andichiammal. Andammal had only one daughter, by name, Aayee Ammal whose son, by name, Thavamani alias Muthuveeran is the father of the plaintiff/appellant herein. The third wife Andichi Ammal, who died in the year 1994, had only one daughter, by name, Mahamayee Ammal, who died in the year 1984, leaving two sons and five daughters. The respondent/defendant is the son of Rajalakshmi Ammal, who is the eldest daughter of Mahamayee Ammal. The respondent/defendant was born to Rajalakshmi and one Ramasamy Ambalam. The said Ramasamy Ambalam married three wives, by name, Iyammal, Karuppayee Ammal and Lakshmi Ammal. Ramasamy Ambalam kept Rajalakshmi as his mistress without marrying her. The respondent/defendant is not born to his parents out of any lawful wedlock. Therefore, the



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respondent/defendant is not entitled to any heirship of the said

M.R.Malayandi Ambalakarar. Since he is not direct dependent, he has no right. Mahamayee Ammal died in the year 1984 and Rajalakshmi Ammal died on 21.02.2023. Before that, both were conducting the Trust and maintaining the temple and also doing Annathanam charities. The appellant and other members were also attending all Gurupoojas and temple charities. After the death of the appellant's father, the appellant and his brothers were given first honour for all the Poojas and Gurupooras. Mahamayee Ammal and Rajalakshmi Ammal were also paying the share of the appellant from the income of the suit properties, after spending all the charities.

2(iii) It is further stated that after the death of Rajalakshmi Ammal, the respondent/defendant did not perform the Poojas and temple charities. Therefore, the appellant/plaintiff questioned the same and sent a notice and the respondent/defendant sent a false reply. Since the appellant/plaintiff is an interested person in the Trust and the respondent/defendant has not performed the charity and conducted Pooja, he filed the suit for removal of the Trusteeship of both the suit Vinayagar Temple Trust and Gurupooja and Annadhana Dharmam Trust,



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by means of mandatory injunction and also for framing a proper scheme by appointing the appellant/plaintiff as one of the Trustees along with other necessary Trustees for proper conduct and administration of the above said two Trusts and the Trust properties and also directing the respondent to hand over the possession of the suit Trust properties.

3. The case of the respondent/defendant, as per the written statement, is that the appellant/plaintiff suppressed all the facts. Though the Vinayagar Temple Trust is a private Trust, the Annathanam Trust is a public Trust. The respondent/defendant is the descendent of the deceased Malayandi Ambalakarar. Since Malayandi Ambalakarar had no male heir, the mother of the respondent/defendant was performing pooja and also she conducted Annadhanam Trust. The appellant/plaintiff has no right and interest over the same. Since it is a public Trust, the suit has to be filed with an application under Section 92 C.P.C, and the Trusts are not added as parties Without impleading the Trusts and without filing the application under Section 92 C.P.C, the suit is not maintainable. When the appellant/plaintiff sent a notice, the respondent/defendant suitably replied through his counsel. Hence, the suit is not maintainable.



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4. Based on the said pleadings, the trial Court had framed the following issues:

“1. Whether the suit Trust is a public Trust?

2. Whether the suit is barred under Section 92 C.P.C?”

5. In order to substantiate his case, the appellant/plaintiff was examined as P.W.1 and 3 documents were marked as Exs.A1 to A3. On the side of the respondent/defendant, no one was examined and no document was marked. After trial, the trial Court, considering the materials, had dismissed the suit by observing that the Vinayagar Temple Trust is a private Trust, the Annadhanam Trust is a public Trust and since the suit is not filed under Section 92 C.P.C, the suit is not maintainable. Challenging the same, the appellant/plaintiff filed the appeal before the first appellate Court and the same was dismissed. Therefore, the present Second Appeal is filed.

6. While admitting this second appeal, this Court, considering the facts and circumstances of the case, has formulated the following substantial questions of law:



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“1. Whether the Courts below are right in holding that the appellant should have filed application under Section 92 C.P.C when the very right to manage the Trust is questioned by the appellant?

2. Whether the Courts below are right in rejecting the suit on mere ground of non application under Section 92 C.P.C when the case is for Samathi Dharmam, which is not coming within the scope of Hindu Religious and Charitable Endowments Act?

7(i) The learned counsel for the appellant/plaintiff would submit that both the Trusts are private Trusts and it is not a public Trust. The suit is not filed by any beneficiaries of the Trust or a public, who accepted the Trust as a public one. Contrary to this, the suit was filed by a claimant for Trusteeship on a Trust property either private to be made public. He would further submit that the suit properties were dedicated for Vinayagar Temple in view of performing the Dharmam (Charity) on the date of the death of the original owner of Mayandi Ambalam and his legally wedded wife Andammal. Such a dedication would amount to dedication for Samathi Dharmam, which would not fall under any of the provisions of Hindu Religious and Charitable Endowment Act and



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governed only by usage and customs. When the dedication of the suit property is for Samathi Dharmam, the mortal remains of Mayandi Ambalam and his wife Andammal were put just opposite to the Vinayagar Temple and statues of both of them have been erected and their Samathis would show that the Samathi Dharmam is not public Trust. When there is no legal sanction for establishment of Samathi Dharman, the only course open to the Courts below is to consider as to who among the contesting parties to perform the Trust and having possession over the property in view of dedication by the elders. The appellant/plaintiff is the only male issue clearly having right for performing the Dharmam and the contesting defendant is only a grandson of granddaughter of Mayandi Ambalam, who has no connection at all in the paternity of the family. In such a case for dispute and title for performance of the Trust, an application under Section 92 C.P.C need not be filed. Therefore, the finding of the both the Courts below are unsustainable and the same is perverse.

7(ii) The learned counsel would further submit that a private person, who had individual rights under Trust, could bring suit to enforce such individual right by an ordinary suit without being obliged to bring a



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suit of a representative nature. Therefore, in order to establish the individual right, the appellant has filed the suit against the person who has not fulfilled the object of the Trust. Therefore, if any suit is filed for the relief mentioned in Section 92 C.P.C, it can only be in accordance with the provisions of that Section. Then, both the Courts below failed to appreciate the pleadings and oral and documentary evidence and erroneously, held the findings. He would further submit that the respondent/defendant has admitted that the Vinayagar Temple Trust is a private Trust. Since the respondent/defendant himself admitted that the Vinayagar Temple Trust is the private Trust, the relief sought for in the private Trust need not file the application under Section 92 C.P.C. Therefore, the Judgment of the trial Court is perverse. Even though the second appeal is arising out concurrent judgment, however, both the Courts below failed to appreciate the legal positions, particularly, when the respondent/defendant admitted that the Vinayagar Temple Trust is a private Trust. Further, the Annadhanam Trust is also a private Trust. Both the Trusts are not covered under the public Trust and therefore, filing application/suit under Section 92 C.P.C is not necessary. In support of his submissions, the learned counsel for the appellant/plaintiff has placed reliance on the following Judgments:



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“(i) *1960 0 Supreme (Cal) 32 [Sarat K.Mitra vs. Hem Ch. Dey]*

(ii) *1937-46-L.W.426 [N.Shanmukham Chetty vs. M.Govinda Chetty]* and

(iii) *1943(1) MLJ 388 [The Tirumalai Tirupati Devasthanams Committee, by its Commissioner vs. Udaivar Krishnayya Shanbhaga and others]”*

8. The learned Senior Counsel appearing for the respondent/defendant would submit that both the Trusts are public Trusts. The appellant/plaintiff should have filed the suit under Section 92 C.P.C and there is no infringement of the private rights. The Trust indicates feeding to poor about 1001 persons and also 100 persons. These are unidentified persons, who are the public. Therefore, if there is any charity to the public or unidentified persons, those Dharmams are public charity and therefore, it is a public Trust. He would further submit that the appellant/plaintiff has not impleaded the Trusts and without impleading the Trusts and without filing the suit under Section 92 C.P.C, the suit itself is not maintainable. The appellant/plaintiff has not proved that the suit Trusts are the private Trusts and the relief sought for by the appellant/plaintiff is not maintainable. Hence, the trial Court rightly dismissed the suit and the first appellate Court also rightly confirmed the



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same. In support of his submissions, the learned Senior Counsel has placed reliance on the following Judgments:

(i) *AIR 1969 SC 884 [Sugra Bibi vs. Haji Kummu]*

and

(ii) *2017-1-L.W.740 [Shevapet Sowrashtra Vidhyalaya Sabai Trust vs. Sri Panduranganadhaswami Devasthanam]*

9. Heard the learned counsel appearing on either side and perused the materials available on record.

Question No.1:-

10(i) A perusal of the pleadings and evidence would show that the appellant/plaintiff has admitted that one of the fulfilments of the object of the Trust feeding to poor about 1001 persons on the Death Anniversary of Malayandi Ambalamkarar and also feeding to the 100 poor during the Death Anniversary of Andammal and also from and out of the income of the suit properties, they have performed the pooja and they have given prasatham and the festival also has to be conducted in a grand manner during the time of Vinayagar Sathurthi and Pongal and



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they have to give prasatham. Therefore, considering the pleadings and documents, it is very clear that Annadhanam feeding to poor is for the public and they are unidentified persons. It is not a particular person or not a particular community. Therefore, the Dharman Trust is a public Trust.

10(ii) The appellant/plaintiff has admitted in the plaint that the Vinayagar Temple Trust is the private Trust and hence, the counsel for the appellant/plaintiff has submitted that the trial Court could have granted the decree at least for Vinayagar Temple Trust. A reading of the entire plaint would show that the appellant/plaintiff has stated that the performance of the pooja in the Vinayagar Temple and also giving the Annadhanam from and out of the income from the suit properties and also they have fulfilled feeding to the poor about 1001 persons and 100 persons. Hence, it falls under the public Trust. The appellant/plaintiff has filed the suit for common cause of action. Since the respondent/defendant admitted that the Vinayagar temple Trust is a private Trust, the Court cannot segregate and grant the decree, when the appellant/plaintiff asked the Court to frame the scheme and hand over the same. Therefore, once it is a charity created for the public purposes



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without identifying by a particular person or community, it is only a public Trust.

10(iii) Further, as contended by the learned Senior Counsel appearing for the respondent/defendant, the appellant/plaintiff has not impleaded the Trusts as a party and without impleading the Trust, he has filed the suit against the respondent/defendant, as if private Trust. Therefore, under these circumstances, this Court finds that since it is a public Trust, application under Section 92 C.P.C is mandatory.

Question No.2:-

11(i) As far as the second substantial question of law is concerned, though the appellant/plaintiff has stated that it is a private Trust, the respondent/defendant has stated in his written statement that Vinayagar Temple Trust is private Trust. When the appellant/plaintiff has filed the suit and sought relief jointly, the trial Court found that the Vinayagar Temple Trust is a private Trust and since the appellant/plaintiff has not impleaded the Vinayagar Temple as Trust and simply, he filed the ordinary civil suit even without impleading the Trusts.



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11(ii) A reading of the pleadings and the evidence would show that the charity is a public charity and it means for only feeding to the poor in the public without indicating any specific names or communities. It is only a public Trust and therefore, without filing the application under Section 92 C.P.C against the individual, the suit is not maintainable. Therefore, without filing the application and obtaining permission under Section 92 C.P.C, neither the Trusts, nor the Trustees made as parties, the suit is hit by non-joinder of necessary parties. Since it is the concurrent Judgment, unless any substantial question of law is involved in the case, normally, in the second appeal, the appellate Court would not interfere with the finding, which are based on the materials and on appreciation of evidence. Therefore, this substantial question of law is answered accordingly in favour of the respondent/defendant and against the appellant/plaintiff. There is no merit in this second appeal.

12. In the result, this Second Appeal fails and the same is **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes
skn



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To:

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- 1.The II Additional District Judge,
Madurai.
- 2.The II Additional Sub Judge,
Madurai.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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Judgment in

**S.A.No.1840 of 2003
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