



S.A.No.765 and 766 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal Nos. 765 and 766 of 2014

and

M.P.No.2 of 2014

1. P. Govindan
2. V. Govindarajan
3. C. Kaveriappan
4. S. Ayyemperumal
5. M. Sundaram

.. Appellants

Versus

- 1.T. Thangadurai
2. K. Viswanathan
3. K. Madhappan
4. G. Palanisamy
5. G. Thangam
6. The District Collector
Salem District
Salem - 636 001.
7. The Revenue Divisional Officer,
Mettur, Mettur Dam,
Salem District.

.. Respondents

Second Appeal No. 765 of 2014:- Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 25.03.2011 passed in A.S. No. 7 of 2011 on the file of Subordinate Judge, Mettur confirming the judgment and decree dated 30.08.2010 passed in O.S. No. 2 of 2006 on the file of the District Munsif, Mettur.



S.A.No.765 and 766 of 2014

Second Appeal No. 766 of 2014:- Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 25.03.2011 passed in A.S. No. 7 of 2011 on the file of Subordinate Judge, Mettur modifying the judgment and decree dated 30.08.2010 passed in O.S. No. 2 of 2006 on the file of the District Munsif, Mettur.

For Appellants : Mr. B. Gopalakrishnan
in both the appeals

For R1, R4 and R5 : Mr. P. Mathivanan
in both the appeals

R2 and R3 : Died

R6 and R7 : Not ready in Notice

COMMON JUDGMENT

Second Appeal No. 765 of 2014 is filed against the judgment and decree dated 25.03.2011 passed in A.S. No. 7 of 2011 on the file of the learned Subordinate Judge, Mettur, confirming the judgment and decree dated 30.08.2010 passed in O.S. No. 2 of 2006 on the file of the learned District Munsif, Mettur.

2. The other appeal in Second Appeal No. 766 of 2014 was filed questioning the correctness and validity of the Judgment and decree dated 25.03.2011 passed in A.S. No.7 of 2011 on the file of the learned Subordinate Judge, Mettur, modifying the judgment and decree in O.S. No. 2 of 2006 dated 30.08.2010 on the file of the learned District Munsif, Mettur.



S.A.No.765 and 766 of 2014

WEB COPY

3. The Defendants 1 to 5 in O.S. No. 2 of 2006 on the file of the District Munsif Court, Mettur are the Appellants in these Appeals.

4. The suit in O.S. No. 2 of 2006 was filed by the Respondents 1 to 5 herein, as Plaintiffs, for a declaration to declare that they are having exclusive and absolute right in the affairs and management of Arulmighu Kaliamman Temple and for a consequential injunction restraining the Defendants from in any manner obstructing the Plaintiff from doing the repair work of the temple and from establishing an Ambedkar Library. Originally, the suit was filed against the Appellants/Defendants 1 to 5 herein. Subsequently, the District Collector and Revenue Divisional Officer were brought on record as Defendants 6 and 7 in the suit.

5. In the plaint in O.S. No. 2 of 2006, the Plaintiffs would contend that Arulmighu Kaliamman Temple situated in Parapatty Village is a private temple belonging to Adi Dravidar community in the Village. According to the Plaintiffs, they are in exclusive Management and Administration of temple. It is stated by the Plaintiffs that the Members of the Gounder Community in the Village do not have any right of administration in the Temple. It is also stated



S.A.No.765 and 766 of 2014

that the Defendants 1 to 5 have no right of administration in the temple, but they will be permitted at all times to worship the temple. However, the Defendants 1 to 5 claimed an absolute right over the temple and its administration. The Defendants 1 to 5 in collusion with the *poosari* of the temple taken away the receipts, counterfoil book and other records from the Plaintiff temple whereby they are preventing the Plaintiffs from putting up a Manimandapam near the temple as well as an Ambedkar library. When a police complaint was given, the Defendants 1 to 5, during enquiry, admitted the right of the Plaintiffs and assured to co-operate with the Plaintiffs in putting up the construction. However, on 23.11.2005, the Defendants 1 to 5 stopped the repair work and therefore, the Plaintiffs have filed the suit.

6. The Defendants 1 to 5 filed a written statement disputing the averments in the Plaint. The case of the Defendants 1 to 5 is that the Temple was constructed by the ancestors of one Rathinasamy and it is the private Temple. The family members of the said Rathinasamy are the Trustees of the temple, which was constructed three decades ago. The Defendants 1 to 5 are the office bearers of the temple. The Plaintiffs never held any post in the suit temple or they never formed Thirupani Kuzhu. During the year 1985, it was decided to construct a tower by collecting donations. The Defendants, out of



S.A.No.765 and 766 of 2014

their hard work, constructed the tower and other constructions with the financial assistance of Rs.25,000/- given by the Government. The Defendants 1 to 5 are maintaining proper and regular accounts of the funds of the temple and the records are being maintained properly. Therefore, it was contended by the Defendants 1 to 5 that the Plaintiffs have no manner or right to administer the temple. Accordingly, the Defendants 1 to 5 prayed for dismissal of the suit.

7. After impleaded in the suit, the seventh Defendant filed a written statement by stating that the temple is a private temple to which one Rathinasamy and his family are the Trustees and managing the same. The Defendants 1 to 5 are office bearers of the temple. However, the seventh Defendant did not know about the collection of funds from the public and maintenance of the records. It is also not correct to state that the Defendants 1 to 5 only have right to worship and have no right of administration of the temple. Arulmighu Mariamman Temple and Kalamman Temple are joint temples administered by the family of Rathinasamy for several years. The Plaintiffs have no manner of right over the affairs of the temple. From the enquiry it was found that the Defendants 1 to 5 have started construction of tower in the year 1998 with funds collected from the Villagers. The



S.A.No.765 and 766 of 2014

construction work is completed and Mahakumbabishegam has been postponed. Hence, the seventh Defendant prayed for dismissal of the suit.

8. The written statement filed by the seventh Defendant was adopted by the sixth Defendant-District Collector.

9. Before the trial Court, the first Plaintiff Thangadurai, one Andi and Sathasivam have been examined as P.W-1 to P.W-3 and Ex.A-1 to Ex.A-24 have been filed. On behalf of the Defendants 1 to 5, the first Defendant Govindan examined himself as D.W-1 and five other witnesses were examined as D.W-2 to D.W-6 and Ex. B-1 to B-19 have been filed.

10. The trial Court, on appreciation of oral and documentary evidence, concluded that the Plaintiffs claim themselves to be the hereditary Trustees of the temple. However, such dispute cannot be resolved by the Civil Court and it has to be resolved only by the HR & CE Department in exercise of power under Section 53 (b) of the HR & CE Act. The trial Court therefore held that it has no jurisdiction to decide the issue. The trial Court also held that the suit temple is not a private temple but public temple and therefore, the declaratory relief sought for by the Plaintiffs cannot be granted. Further,



S.A.No.765 and 766 of 2014

when the Plaintiffs are not in exclusive management of the temple, the relief of permanent injunction to restrain the Defendants 1 to 5 cannot be granted.

Accordingly, the trial Court dismissed the suit.

11. Assailing the decree and Judgment dated 30.08.2010 in O.S. No. 2 of 2006, the Plaintiffs as well as Defendants have filed Appeal. The Plaintiffs have filed A.S. No. 20 of 2010 questioning the correctness of the judgment of dismissal passed by the trial Court. On the other hand, the Defendants have filed A.S. No. 7 of 2011 questioning the findings of the trial Court that the suit temple is a private temple. The first Appellate Court, on appreciation of the rival contentions, held that the suit temple is not a private temple and the contentions of the Plaintiffs was rejected to that effect. As regards the right of administration, it was held that both the Plaintiffs and the Defendants 1 to 5 are equally entitled to right of administration, including conduct of temple festival. The Plaintiffs cannot claim that they alone are entitled to right of administration of the temple. Accordingly, the decree and judgment of the trial court was modified by the Appellate Court.

12. At the time when the above appeals were taken up for hearing, on 01.09.2014, the following substantial questions of law have been framed for



S.A.No.765 and 766 of 2014

consideration and they are:-

WEB COPY

(i) When the suit has been filed for a declaration that the Plaintiffs are having the exclusive and absolute right in the temple affairs and management of Arulmighu Kaliamman Temple, Parapatty, Mettur Taluk, including the right to conduct festival as their private temple of Adi-dravidar community of the Village along with the grant of permanent injunction restraining the Defendants from in any obstructing the plaintiffs doing the repairing works of the temple, including the conduct of the “Maasi Maham” festival and also from putting up “Ambedkar Noolagam” for the benefit of Adi Dravidar community, whether the Trial Court has no jurisdiction to entertain the suit in view of Section 108 of The Hindu Religious and Charitable Endowments Act, more particularly when the issue has to be decided only by the Deputy Commissioner of Hindu Religious and Charitable Endowments Department under Section 63 of The Hindu Religious and Charitable Endowments Act?

(ii) Whether both the courts below are having powers to determine the temple as private or public, when especially there is no relief or prayer sought for by both the parties.”

13. The learned Counsel for the Appellants/Defendants 1 to 5 submitted that the District Collector had sanctioned Rs.25,000/- towards the Temple construction or renovation and it was also stated by the seventh Defendant-Revenue Divisional Officer in his written statement. The learned Counsel for the Appellants invited the attention of this Court to the written statement of the seventh Defendant stating that the Defendants 1 to 5 alone are in Management of the Temple, but this was brushed aside by both the courts below. The seventh Defendant, upon enquiry has filed the written statement



S.A.No.765 and 766 of 2014

Members and the festivals in the temple can be conducted harmoniously.

WEB COPY

14. The learned Counsel for the Appellants further submitted that the first Appellate Court interfered with the well considered observation of the trial Court that the suit is not maintainable. The first Appellate Court did not consider that the suit is not for declaring any right of hereditary ship. The first Appellate Court did not consider that the suit is for declaration to declare that the Plaintiffs are having right of maintenance of temple, meaning thereby, they claim an absolute right over the temple. In such circumstance, the Plaintiffs ought to have invoked Section 63 of the HR & CE Act and filed an application before the Joint Commissioner or Deputy Commissioner of HR & CE to ventilate their grievance. Thus, the suit is not maintainable which was erroneously misinterpreted by the first Appellate Court.

15. The learned Counsel for the Appellants further submitted that merely because general public are permitted to worship the temple, it cannot be construed as a public temple. In this case, one Rathinasamy had constructed the temple. The first Appellate Court also observed that the temple was constructed by Rathinasamy, predecessor of the Defendants 1 to 5. However, it was erroneously held that after the year 2001, evidence suggest



S.A.No.765 and 766 of 2014

that both the Plaintiffs and Defendants 1 to 5 equally participated in the affairs of the temple and therefore, the temple has to be jointly administered by the Plaintiffs as well as Defendants 1 to 5. In fact, D.W-3, Rathinasamy was examined and who has categorically deposed that it is he who had constructed the temple. The evidence of D.W-3 could not be discredited and he withstood his statement even in his cross-examination. The predecessors of Rathinasamy held the post of Trustees in the temple and thereafter, Rathinasamy continued to be the Trustee. While so, the observation of the First Appellate Court that there is no evidence to show that anyone acted as a Trustee of the Temple is contrary to evidence made available. Similarly, the observation of the first Appellate Court that the Plaintiffs and Defendants 1 to 5 are jointly celebrating the temple festivals is unfounded without any evidence. The First Appellate Court also failed to consider Ex.A-15 and Ex.A-17 complaints given against the Plaintiffs by the Defendants 1 to 5 which would show that the Defendants 1 to 5 alone are having the right to administer the temple. The first Appellate Court also failed to consider that the Plaintiffs, who have come forward with the suit, failed to establish the plaint averments. On the averments, the Defendants 1 to 5, through deposition of D.W-3, Rathinasamy has proved the origin and history of the temple and thereby effectively disproved the claim of the Plaintiffs. Even the seventh Defendant – Revenue Divisional Officer as



S.A.No.765 and 766 of 2014

well as District Collector categorically concluded that it is the Defendants 1 to 5 who are in administration of the temple. Such a statement made by the sixth and seventh Defendants was grossly ignored by the first Appellate Court. Therefore, the learned Counsel prayed for allowing the Appeals.

16. Per contra, the learned Counsel for the Respondents/Plaintiffs submitted that the finding of the first Appellate Court cannot be faulted. The learned first Appellate Court Judge had on re-assessment of the entire materials, documentary as well as the oral evidence available before the trial Court had independently arrived at a conclusion thereby granting decree by which both the Plaintiffs and the Defendants were directed to have management and administration of the temple. Such a finding rendered by the First Appellate Court had in fact put an end to the decade long dispute between the Plaintiffs and Defendants 1 to 5. However, by filing the present Second Appeals, the Defendants 1 to 5 want to have independent right of administration of the temple.

17. The learned Appellate Judge in the course of the discussion, on appreciation of evidence, observed that during the pendency of the Appeals, the temple Consecration was performed with the co-operation of the Plaintiffs



S.A.No.765 and 766 of 2014

and the Defendants. This has prompted the learned Appellate Judge to render a finding that both the Plaintiffs and Defendants have to jointly administer the temple by constituting a committee. Also the learned Appellate Judge had observed that in the conciliation reached between the parties before the Police Station authorities, pursuant to the complaints given against each other, it was decided to jointly perform the temple festivals and accordingly they had performed the ceremony of the temple and Idol worship jointly. Therefore, taking note of the subsequent developments of jointly performing the festivals and rituals in the temple, the first Appellate Court has rightly concluded that the Defendants 1 to 5 cannot claim exclusive right over the temple. In fact, the Plaintiffs have filed the suit claiming that they are having the right to administer the temple. Now, the Plaintiffs have relented and they are ready to jointly conduct the rituals and temple festivals with the Defendants 1 to 5.

18. The learned Counsel for the Respondents/Plaintiffs also invited the attention of this Court to the observations made by the first Appellate Court in Paragraphs 19, 20, 21, 22, 23 and also 25 on the basis of the documents under Ex.A-1 to Ex.A-24 and Ex.B-1 to Ex.B-19. The learned Appellate Judge observed that both the parties have right to administer the temple and suggested that a committee can be constituted with two persons



S.A.No.765 and 766 of 2014

from the Plaintiffs, two persons from the Defendants and one common person from the village to administer the temple. The learned Appellate Judge also observed, by appreciating the evidence that dispute arises only after reconstruction of the temple when donations were collected from the general public, which led to difference of opinion among the parties. In any event, when there is allegation of misappropriation of income of the temple, the dispute can be referred under Section 63 of the HR & CE Act but there is no such dispute arises in this case. Further, if there is any dispute regarding hereditary trustees, the matter can be referred to HR & CE Act but here, both the Plaintiffs and Defendants were directed to jointly administer the temple for which the Plaintiffs are ready. Further, it is the finding of the first Appellate Judge that out of 400 families, 200 families supported the Plaintiff and 200 families supported the Defendants as per the evidence available before the trial Court. Therefore the learned first Appellate Judge had directed both the parties to jointly administer the temple with a common person to lead the team and such a finding is proper and reasonable.

19. Further the learned Counsel for the Respondents/Plaintiffs submitted that Rathnasamy who was mentioned by both parties in the course of trial and who claims to be the Trustee of the temple filed a suit subsequently



S.A.No.765 and 766 of 2014

in O.S.NO.124 of 2011 before the learned District Munsif, Mettur. The suit was dismissed on 29.01.2020. Therefore, the learned Counsel for the Respondents-Plaintiffs would submit that the findings rendered by the First Appellate Court to jointly administer the temple need not be interfered with by this Court.

20. Heard the learned Counsel for the Appellant, the learned Counsel for the Respondents 1, 4 and 5 and perused the materials placed on record.

21. The suit was filed by the Respondents/Plaintiffs praying for a declaration to declare that they are having right to administer the Temple in question and for a consequential permanent injunction to restrain the Defendants 1 to 5 from interfering with the administration of the temple by the Plaintiffs. It is contended that they were administering the temple for years together in which the Defendants 1 to 5 were permitted to worship. However, the Defendants 1 to 5 made a rival claim for administration of the temple and therefore, the suit was filed.

22. Originally, the suit was filed as against the Defendants 1 to 5 and subsequently, the District Collector and the Revenue Divisional Officer were



S.A.No.765 and 766 of 2014

impleaded as Defendants 6 and 7.

WEB COPY

23. Opposing the suit relief, the Defendants 1 to 5/Appellants filed a written statement contending that the suit temple was administered by the predecessors of DW3/ Rathinasamy and thereafter, DW3 was administering the temple. According to the Defendants 1 to 5, the suit temple is a private temple established by the predecessors of DW3 in which the Plaintiffs have no right of maintenance.

24. The seventh Defendant-Revenue Divisional Officer has filed a written statement supporting the claim of the Defendants 1 to 5 *inter alia* stating that it is the Defendants 1 to 5, who are in administration of the temple.

25. The trial court dismissed the suit mainly on the ground that the dispute *inter se* between the parties has to be adjudicated by the The Hindu religious and Charitable Endowments Department and the Civil Court has no jurisdiction to entertain the suit. It was also observed that the temple in question is a public temple and therefore, both Plaintiffs as well as Defendants cannot have a right of maintenance.



S.A.No.765 and 766 of 2014

26. Assailing the judgment and decree of the trial court, the Plaintiffs as well as Defendants 1 to 5 have filed appeal. The First Appellate Court, concluded that the dispute between the parties arise only when donations were collected for and on behalf of the temple. On appreciation of the evidence, the first Appellate Court concluded that the temple has been constructed in a land which is classified as “poromboke” in the revenue records. The first Appellate Court also observed that there is nothing to show that the predecessor of D.W-3/Rathinasamy or D.W-3 held the post of Trustee of the temple inasmuch as Ex.B-1, Ex.B-5 to Ex.B-13 are documents which have come into existence after the filing of the suit. In Ex.B-3 and Ex.B-4, the Appellate Court found that there is no date. However, the First Appellate Court observed that Ex.B-1 to Ex.B-17 or Ex.P-1 to Ex.P-24 only indicates that at some point of time, both the Plaintiffs and the Defendants have exercised a common interest in the suit temple and therefore, it was suggested that a committee has to be constituted to administer the temple, jointly by the Plaintiffs and Defendants. The First Appellate Court also held that the suit temple is a Public Temple in which both the Plaintiffs and the Defendants 1 to 5 have right of administration. Accordingly, the First Appellate Court dismissed both the appeals.

27. Challenging the Judgment and Decree of the First Appellate Court



S.A.No.765 and 766 of 2014

in the appeal filed by the Plaintiffs as well as the Defendants 1 to 5, these two appeals have been filed by the Appellants.

28. The first question of law framed in tis appeal is as to whether the suit temple is a Public Temple and therefore, it will come under the administrative fold of the HR & CE Department. The first Appellate Court, at first, held that the suit temple is in a land classified as “Poromboke”. The First Appellate Court also found that there is nothing to show that predecessor of D.W-3 or D.W-3 administer the temple at the time of institution of the suit. The First Appellate Court rendered a finding that the Plaintiffs cannot have any independent right to administer the temple especially when the evidence suggest that at some point of time, both the members of the Plaintiffs community and Defendants have participated in the festival and exercised a right over the temple. Further, the first Appellate Court rendered a finding that only when donation was sought to be collected, during the year 2005, for putting up some construction in the temple land, a dispute arose and both sides have given complaint against each other. In such circumstances, this Court finds that the Judgment and Decree passed by the First Appellate Court is legally sustainable in holding that the temple in question is a public temple. In the event of any dispute with regard to hereditary Trusteeship or



S.A.No.765 and 766 of 2014

mismanagement of the funds of the temple or abusing the powers of management, the aggrieved person can approach the Deputy Commissioner or Joint Commissioner, as the case may be of the Hindu Religious and Charitable Endowments Department with necessary application under Section 63 of The Hindu Religious and Charitable Endowments Act. Accordingly the first Question of Law is answered against the Appellants.

29. The Second Question of Law is whether the courts below are having powers to determine the temple as private or public, when especially there is no relief or prayer sought for by both the parties.

30. It is no doubt true that the suit was filed by the Plaintiffs/ Respondents herein by claiming that the temple belong to their community and therefore, a declaratory decree must be granted with consequential relief of permanent injunction to restrain the Defendants 1 to 5 from interfering with the right of administration of the temple. The trial Court as well as the First Appellate Court categorically held that it cannot be said that the temple belong to a particular community and there is no evidence to substantiate the same. Of course, whether the suit is a public temple or private temple is not in dispute in the suit. There was no issue framed to that effect. Even without



S.A.No.765 and 766 of 2014

framing such an issue, the Courts below are competent to render a finding as to whether the suit is a public temple or private temple. Such an observation is ancillary to the conclusion reached by the courts below while considering the relief of declaration. In such circumstances, even in the absence of any relief sought for by the parties, given the nature of pleadings and evidence made available, the Courts below are legally competent to render a finding, which is relevant to the dispute *inter se* between the parties. Therefore, even in the absence of a pleading or relief, the Courts below can render a finding with respect to the character of the temple – whether it is a public temple or private temple. In such circumstance, the second Question of law is also answered against the Appellants.

31. In the light of the above observations, **both the Second Appeals are dismissed.** The judgment and decree dated 25.03.2011 passed in A.S. No. 7 of 2011 on the file of Subordinate Judge, Mettur is confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.07.2024

shl

Index : Yes/No

Speaking/Non-speaking order

<https://www.mhc.tn.gov.in/judis>



WEB COPY



S.A.No.765 and 766 of 2014

To

1. The District Munsif,
Mettur.
2. The Subordinate Judge,
Mettur.



WEB COPY



S.A.No.765 and 766 of 2014

SATHI KUMAR SUKUMARA KURUP, J

shl

S.A.Nos.765 & 766 of 2014

03.07.2024