IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20 / 09 / 2024

JUDGMENT PRONOUNCED ON : 05 / 11 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.98 OF 2020
AND
CMP NOS.2077 AND 2078 OF 2020

Sri Arulmigu Thirumuruganathasamy Kovil
Represented by its Executive Officer
Thirumuruganpoondi,
Rakkiyapalayam Village,
Avinashi Taluk. ... Appellant / Appellant / Defendant

Vs.

Smt. Banumathi ... Respondent / Respondent / Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated August 20, 2019, made by the Subordinate Court, Avinashi in A.S.No.47 of 2017, confirming the Judgment and Decree dated July 6, 2015, made by the District Munsif Court, Avinashi in O.S.No.303 of 2007.

For Appellant : Mr.K.Ashok Kumar
For Respondent : Mr.D.Krishna Pradeep
for M/s.N.Damodaran

J U D G M E N T

This Second Appeal is directed by the unsuccessful defendant–Temple. Challenge is to the Judgment and Decree dated August 20, 2019, made by the 'Subordinate Court, Avinashi' ['First Appellate Court' for short] in A.S.No.47 of 2017, wherein and whereby the Judgment and Decree dated July 6, 2015, made by the 'District Munsif Court, Avinashi' ['Trial Court' for short] in O.S.No.303 of 2007 was confirmed.

2. The appellant herein is the defendant while the respondent herein is the plaintiff in the Original Suit. Hereinafter, the parties will be referred to as per their array in the Original Suit.

Plaintiff's Case in Brief:

3. The Suit Property is a vacant site which forms a portion of Survey Nos.493/1 and 494/1 purchased by the plaintiff vide registered Sale Deed dated July 3, 1995 from P. Vadivel who had purchased it vide Sale Deed dated November 10, 1978. Ever since the date of purchase, the plaintiff has been in possession and enjoyment of Suit Property. Revenue Records, Land Tax Receipt, Patta, Possession Certificate are all in favour of the plaintiff. Thus, it is clear that the plaintiff is the absolute owner of the Suit Property. Except the plaintiff nobody else has got any title, rights, or interest over the Suit Property.

3.1. The defendant - Temple is a third party no way connected with Suit Property, trying to trespass into the Suit Property for constructing building for its devotees. The defendant is trying to unlawfully interfere with the plaintiff’s peaceful possession and enjoyment of the Suit Property. On September 18, 2007, the defendant attempted to encroach into the Suit Property for construction, but the plaintiff prevented it. The plaintiff apprehends that the defendant may encroach the Suit Property at any time in the near future. Hence the Suit for declaration and permanent injunction against the defendant.

Defendant’s Case in Brief:

4. The defendant filed Written Statements, wherein it is averred that neither the plaintiff nor her vendor ever had any title, interest or right over the Suit Property. They were never in possession and enjoyment of the Suit Property. Sale Deed dated July 3, 1995 is false and the revenue records and certificate obtained based on that false Sale Deed is invalid.

4.1. The Suit Property absolutely belongs to this defendant - Temple as per the Inam Settlement Deed executed by Venkatachalam Chettiar, son of Muruganatha Chettiar of Karukkampalayam, on November 9, 1935. The settlement was accepted and acted upon. The revenue records were also mutated to the name of this defendant. The Suit Property is in actual physical possession and control of this defendant alone. Without any right, by collusively creating false documents, the plaintiff is making illegal claim over the Suit Property. As the absolute owner in possession of the Suit Property, the defendant has no need to trespass into its own property. The alleged incident of trespass by the defendant on September 18, 2007 is false. The Suit is bad for non-joinder of necessary party *viz.,* 'Tamil Nadu Hindu Religious and Charitable Endowments Department' ['HR & CE Department' for brevity]. Court Fee paid is incorrect. The Suit is barred by limitation. Hence, the Suit is liable to be dismissed.

Trial Court:

5. The Trial Court framed the following issues:

"***(i)*** *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*

(ii) *To what other reliefs?*

(iii) *Whether the plaintiff is entitled for the relief* *of declaration?*

(iv) *Whether the Suit is bad for non-joinder of necessary parties?"*

5.2. At Trial, on the side of the plaintiff, the plaintiff's husband was examined as P.W.1 and Ex-A.1 to Ex-A.8 were marked; and one Kadirvel was examined as P.W.2. On the side of the defendant, the Executive Officer of the defendant - Temple was examined as D.W.1 and Ex-B.1 to Ex-B.3 were marked; and one Meenakshi Sundaram was examined as D.W.2.

5.3. Upon hearing both sides and considering the oral and documentary evidence, the Trial Court concluded that the Suit has been filed against the defendant – Temple represented by its Executive Officer who is working under the HR & CE Department and hence, the Suit is not bad for non-joinder of necessary party. Further held that, in view of the admissions made by the Executive Officer, who was examined as D.W.1, as well as on the strength on Ex-A.1 to Ex-A.8, the plaintiff is entitled to the relief of declaration and permanent injunction. Accordingly, decreed the Suit with cost.

First Appellate Court:

6. Aggrieved by the dismissal Decree, the defendant - Temple approached the First Appellate Court by way of an appeal under Section 96 of the 'Code of Civil Procedure, 1908' ['CPC' for short]. The First Appellate Court upon hearing both sides and analysing the oral and documentary evidence, concurred with the findings of the Trial Court, and dismissed the appeal.

Substantial Questions of Law:

7. Aggrieved defendant – Temple preferred this Second Appeal and the same was admitted on February 3, 2020 on the following Substantial Questions of Law:

> *"a) Whether the suit is liable to be dismissed as barred by law of limitation since the prayer for seeking declaration of title was sought for at the later stage, after a period of three years from the date of such alleged disturbance of the possession and denial of alleged title of the suit property according to the plaint averment?*

b) Whether the Trial Court can entertain a suit for declaration of title of the property based upon the subsequent documents without challenging the earlier document in the name of another party pertaining to the very same property?

c) Is it correct for the Trial Court to entertain the application for seeking amendment of the plaint after commencement of the Trial of the main suit in the absence of fulfillment of such conditions imposed on the proviso to Order VI Rule 17 of CPC?"

8. On September 9, 2024, this Court framed the following additional Substantial Question of Law:

"d) Whether the findings of the Trial Court and the First Appellate Court that the suit is not bad for non-joinder of necessary parties are sustainable?"

Discussion and Decision

Substantial Question of Law "*a*"

9. Mr.K.Ashok Kumar, learned Counsel for the appellant / defendant would argue that the defendant – Temple acquired title over the Suit Property under Ex-B.1 - Registered Sale Deed in the year 1935. The Suit was originally filed on September 21, 2007 seeking the relief of permanent injunction alone, and later amended on September 7, 2011 to include the prayer for relief of declaration also. Further would argue that, as per the Plaint averments, the alleged cause of action arose on July 3, 1995 when the plaintiff purchased the Suit Property. Hence, he would contend that the relief of declaration is barred by the limitation.

10. In response, Mr.Krishna Pradeep, arguing Counsel, for Mr.N.Damodharan, learned Counsel on record for the respondent / plaintiff would argue that the plaintiff derives title to the Suit Property vide Ex-A.1 – registered Sale Deed dated July 3, 1995. The Suit was filed on September 21, 2007 in response to the defendant's attempt to trespass. Since the defendant in its Written Statement filed on June 3, 2009 denied the title of the plaintiff, the Plaint prayer was amended to include the relief of declaration through a petition filed on April 12, 2011. The relief of declaration has been sought within 3 years from the date when the defendant denied the plaintiff's title. Hence, the Suit is well within the period of limitation.

11. Heard on either side. This Court has perused the Plaint, Written Statement, the amended Plaint and other evidence available on record. According to the Plaint averments, the Suit Property was originally owned by P.S.M.Chidambara Chettiar who executed a registered Sale Deed dated July 17, 1978 (Ex-A.8) in favour of one Balasubramaniam, who thereafter remained in possession and enjoyment of the Suit Property. Then the said Balasubramaniam in turn executed Ex-A.2 – registered Sale Deed dated November 10, 1978 in favour of one Vadivel, who then got into possession and enjoyment of the Suit Property. Revenue records were mutated to Vadivel's name. Thereafter, in turn, Vadivel executed Ex-A.1 – registered Sale Deed dated July 3, 1995 in favour of the plaintiff, who remains in possession and enjoyment of the Suit Property by erecting fence and by paying land tax. Joint Patta relating to Suit Survey No.494/1 stands in the names of the plaintiff and the plaintiff's vendor. Since the Executive Officer of the defendant – Temple attempted to trespass into the Suit

Property on September 18, 2007, the plaintiff filed the present Suit. The cause of action arose on September 18, 2007. These are the Plaint averments.

12. Suit has been filed on September 21, 2007. The defendant filed Written Statement on June 3, 2009 whereby the defendant *inter alia* denied the title of the plaintiff. Hence, the plaintiff amended the prayer to include the relief of declaration by way of filing a petition under Order VI Rule 17 of CPC in I.A.No.677 of 2011 on April 12, 2011 and the same was allowed on August 25, 2011.

13. To decide the question of limitation in this case, this Court has to decide whether Article 58 or Article 113 of the Limitation Act, 1963 would be applicable. In other words, the question is, whether Article 58 is applicable only in case of declaration simpliciter or in a Suit for declaration and injunction too. If not Article 58, the Suit would come under the purview of Article 113. It is pertinent to cite a three Judge Bench decision of the Hon'ble Supreme Court in ***C. Mohd. Yunus -vs- Syed Unnissa***, reported in ***1961 SCC OnLine SC 135***, wherein it was held that a Suit seeking declaration of a right, along with an injunction to prevent the other side from obstructing the exercise of that right, falls under the purview of Article 120 of the Limitation Act, 1908. Article 120 of the Limitation Act, 1908 corresponds to Article 113 of the Limitation Act, 1963. Further, a learned Single Judge of this Court, in ***Hemanakumar -vs- D. Melvinkumar & Others*** reported in ***(2018) 4 LW 775***, while referring to ***Mohd. Yunus's Case (supra)*** and a decision of division bench of Hon'ble Kerala High Court in ***K.J. Abraham & Others -vs- Mariamma Itty & Others***, reported in ***2016 (3) ILR(Ker) 98***, has held that Article 58 is for declaration simpliciter and in a Suit for declaration and injunction, Article 113 of the Limitation Act, 1963 applies. Thus, it is pellucid that Article 113 of the Limitation Act, 1963 governs the instant case.

14. In terms of Article 113, time begins to run when the right sue accrues. In this case, the right to sue accrued when the defendant denied the title of the plaintiff in his Written Statement filed on June 3, 2009. Hence, the amendment petition ought to have been filed on or before June 3, 2012 *i.e.,*3 years from the date of filing Written Statement. The plaintiff has filed the petition on April 12, 2011, well within the period of limitation. Therefore, this Court is of the view that, the declaratory relief sought for is not barred by limitation. Substantial Question of Law "*a*" is answered accordingly in favour of the plaintiff.

Substantial Question of Law "*b*"

15. Learned Counsel for the defendant would argue that the defendant – Temple acquired title vide Ex-B.1 – registered Sale Deed dated November 9, 1935. P.S.M.Chidambara Chettiar supressed Ex-B.1 and executed Ex-A.8 - Sale Deed, based on which Ex-A.2 - Sale Deed was executed in favour of the plaintiff's vendor - Vadivel. From Vadivel, the plaintiff allegedly purchased the Suit Property vide Ex-A.1. The vendors of the plaintiff have no legitimate title or right over the Suit Property. In these circumstances, in view of Ex-B.1 – Sale Deed, the plaintiff's Suit based on Ex-A.1 and prior Sale Deeds is not maintainable.

16. In response, learned Counsel for the plaintiff would argue that P.S.M.Chidambara Chettiar owned an extent of 3 ½ Cents in Survey No.493/1 within specific 4 boundaries as well as an extent of 8 ½ Cents in Survey No.494 within specific 4 boundaries, totalling to 12 Cents in both Survey numbers. He executed Ex-A.8 – Sale Deed in respect of 11 Cents & 209 ½ *Sq.ft.* approximately out of the said 12 Cents in favour of

Balasubramanian who in turn sold the same property in favour of Vadivel vide Ex-A.2 - Sale Deed, who again in turn sold the same property to the plaintiff vide Ex-A.1 - Sale Deed. Further, he would refer to Ex-A.3 – Patta, Ex-A.4 – Patta, Ex-A.5 – Kist Receipts, and the evidence of D.W.1 and argue that the plaintiff's vendor and thereafter the plaintiff has been in possession and enjoyment of the Suit Property. Further would argue that the defendant's case is that he acquired title vide Ex-B.1 – Sale Deed. But actually in Ex-B.1, the defendant acquired an extent of 10 Cents out of the 55 Cents, without any specific four boundaries, in Survey No.494. Further would argue that perusal of Ex-B.3 would show that the Suit Survey No.494/1 was not let out, and the same is contrary to the recitals in Ex-B.1. Accordingly, he would submit that the said 10 Cents could be anywhere in Survey No.494 and it is not related to the Suit Property. Since the defendant creates cloud over the plaintiff's title to the Suit Property, the plaintiff filed this Suit for declaration and permanent injunction which is perfectly maintainable.

17. Considered both sides' submissions. Ex-B.1 – Sale Deed was executed by Venkatachalam, son of Muruganatha Chettiar, in favour of the defendant – Temple represented by its then *Dharmakartas*. To be noted, though the nomenclature used is Sale Deed, Ex-B.1 is actually in the nature of Gift Settlement Deed. Only 10 Cents out of the total 55 Cents without specific four boundaries in Survey No.494 was gifted to defendant – Temple. The object behind the gift was to erect buildings and use the income arising therefrom for the benefit of the defendant – Temple. Ex-B.3 which is a List of immovable properties belonging to the defendant, would show that no property was constructed in the said 10 Cents purchased from Venkatachalam. Further, the defendant has failed to identify the said 10 Cents with the help of four boundaries. Ex-A.4 = Ex-B.2 is a Joint Patta in Patta No.435 relating to Suit Survey No.494/1 measuring 12 *Ares* (29.64 Cents) which stands in the names of 9 joint owners including the plaintiff, the plaintiff's vendor and the defendant. Ex-A.5 – Kist Receipts for the Fasli years 1407, 1410, 1411 and 1412 show that the plaintiff paid Kist for Patta No.435 (which relates to Suit Survey No.494/1). On the other hand, Ex-A.3 relating to Survey No.493/1H [Patta No.516] stands in the names of the plaintiff and three others. The plaintiff has not filed 'Field Measurement Book' Records [in short 'FMB'] relating to Suit Survey Nos.493 and 494. In the absence of FMBs, this Court is unable to appreciate Ex-A.3 properly. From the evidence available on record, this Court is of the view that Ex-A.3 relates to some other property and not the

Suit Property. It is unfortunate that the defendant – Temple represented by its Executive Officer neither raised any question with regard to Ex-A.3 nor filed the FMBs for the Suit Survey Nos. 493 and 494. From the available evidence, it is not possible to arrive at a concrete conclusion. The answer to the questions of whether the vendor of Ex-B.1 and the original vendor of Ex-A.8 belong to the same family, and whether they are brothers or not, are unclear. The only similarity is that the father's name of both, the vendors of Ex-B.1 and Ex-A.8, is Muruganatha Chettiar, but there is nothing more available on record. Nor is it clear as to whether the vendor of Ex-B.1 had only 10 Cents or more. In these circumstances, considering the materials available on record, there is no reason not to entertain the plaintiff's Suit. Substantial Question of Law "*b*" is answered accordingly in favour of the plaintiff.

<u>Substantial Question of Law "*c*"</u>

18. The Suit was filed on September 21, 2007. Written Statement was filed on June 3, 2009. Issues were framed on July 7, 2009 after which the matter was posted for trial. However, a petition under Order VI Rule 17 of CPC was filed in I.A.No.677 of 2011, praying to amend the Plaint to include the prayer for relief of declaration, on April 12, 2011 before the actual commencement of trial. The amendment petition was allowed on August 25, 2011 and the amendment was carried out on September 7, 2011. Additional Written Statement was filed on December 15, 2011 along with Order VIII Rule 9 Petition, which was allowed on April 18, 2012. Pursuantly, additional issues were framed on the same day *viz.,* April 18, 2012. From the above, it is clear that the petition to amend the Plaint was filed before the actual commencement of trial. Further, under Order VI Rule 17 of CPC, there is no absolute bar against allowing amendments in Plaint even post trial. The Trial Court, considering the facts and circumstances of this case, exercised its discretion rightly and allowed the Plaint amendment petition. There is no illegality or irregularity with the same. Accordingly, the Substantial Question of Law "*c*" is answered in favour of the plaintiff.

<u>Substantial Question of Law "*d*"</u>

19. Learned Counsel for the defendant would vehemently contend that the defendant - Temple is a listed temple and that Hereditary Trustees were holding office till 2011 and thereafter Fit Person was appointed by the HR & CE Department. Hence, either the Commissioner of HR & CE Department or the Trust Board, if any functioning, ought to have been impleaded as a necessary party and their non-joinder is fatal to the plaintiff's Suit.

20. On the other hand, learned Counsel for the plaintiff would contend that the Suit is filed against the defendant – Temple represented by its Executive Officer, who functions under the control of the HR & CE Department. Relying on the Judgment of this Court dated December 14, 2022 in ***Durgai Lakshmi Kalyana Mandapam -vs- Idols of Arulmigu Siddhi Ganesar Nataraja Perumal*** [Appeal Suit No.397 of 2010] as well as the Judgment of this Court dated June 19, 2023 in ***The Idol of A/m. Sri Kalyana Venkataramanaswamy -vs- M.Palanivel and others*** [Appeal Suit (MD) No.118 of 2020], he would contend that Executive Officer can sue or be sued.

21. Heard on either side. This Court deems fit to extract Section 6 (9) of HR & CE Act which defines 'Executive Officer' as hereunder:

> *"**6. Definitions. -** In this Act, unless the context otherwise requires, -*
>
> **…** **…** **…**
>
> *(9) "Executive officer " means a person who is*

appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under this Act or the rules made thereunder or by any scheme settled or deemed to have been settled under this Act;"

22. Further, it is pertinent to extract Section 45 of HR & CE Act which deals with appointment and duties of Executive Officers, hereunder:

*"**45. Appointment and duties of Executive Officers**. –*

(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math. Explanation. —In this section " math" shall not include a temple under the control of a math.

(2) The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner. Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in sub- section (1) shall be assigned to the executed officer.

(3) The Commissioner may define the powers and duties which may be exercised and discharged respectively by the executive officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive Officer. "

23. From the above extracts, it can be seen that the Executive Officer is a statutory authority who functions under the direct supervision of the Commissioner of the HR & CE Department. In the year 2015, the government of Tamil Nadu in exercise of the rule making powers vested in it under Section 116 (2) (i) of the 'Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959' ['HR & CE Act' for brevity], framed rules called 'Conditions for Appointment of Executive Officers Rules, 2015'. Rule 4 (b) (iii) thereof makes it clear that the Executive Officer can sue or be sued on behalf of the religious institutions / temples in all legal proceedings with the approval from the competent authority. Even before the said rules, the Executive Officer functioning under the control of HR & CE Department can file Suits representing the temple for eviction of encroachers, rent defaulters, or any Suit in good faith for the welfare of the religious institution / temple, after getting due concurrence from the Commissioner of HR & CE Department. Further, in the case of ***A.A. Gopalakrishnan -vs- Cochin Devaswom Board,*** reported in ***(2007) 7 SCC 482***, Hon'ble Supreme Court has held that even a worshipper can maintain a Suit in the interest of temple at appropriate cases considering the facts and circumstances. This Court in the cases relied on by the learned Counsel for plaintiff, after elaborate discussions, has held when even a worshipper can maintain a Suit, then any Suit filed by Executive Officer in good faith in the best interests of the temple is also maintainable. Hence, there is no bar against the Executive Officer maintaining a Suit in the interest of the temple.

24. In this case, according to the plaintiff, the Executive Officer representing the temple, tried to interfere with the plaintiff's peaceful possession and enjoyment of the Suit Property, and therefore he filed a Suit against the defendant - Temple represented by the Executive Officer. Further, in this case, the Written Statement as well as the amended written statement has been filed by the Executive Officer representing the temple. Further, he has deposed on behalf of the defendant - Temple. Therefore, law presumes that the Executive Officer is representing the

Temple, only with the approval of the Commissioner of the HR & CE Department. Be that as it may, this Suit is one for declaration. Original of Ex-B.1 has not been filed. Evidence adduce is insufficient. The Suit Property has not been properly identified / decribed by the defendant as well as the plaintiff. The location of the Suit Property still remains unclear. All these things point to the ineffective contest and participation of the Executive Officer in this case. Rather than merely a power, it is a duty of the Executive Officer to contest cases filed by and filed against the temples, ensuring that the best interests of the temple are secured, however with the permission of the HR & CE Department. The HR & CE Department need not be a party to every Suit by or against temple, but in Suits of title disputes, the interests of the temple are better safeguarded with the intervention of the HR & CE Department rather than the intervention of Executive Officer solely. Suit for eviction is different from a Suit for declaration. Section 34 of the HR & CE Act clearly lays down that any alienation of immovable property without due sanction from the Commissioner of the HR & CE Department shall be null and void. While the HR & CE Department's presence may not be needed in a Suit for eviction, in Suits relating to title disputes such as the instant case, the presence of HR & CE Department is much warranted as inferable from

Section 34. In this case, the Executive Officer ought to have been proactive and filed a petition to implead the Commissioner of the HR & CE Department as a necessary party. The HR & CE Department cannot be a silent spectator in cases involving title disputes of temple properties such as the instant case. HR & CE Department cannot conveniently take different stands in different cases as to whether the Executive Officer representing the temple can sue or be sued, or not. They must maintain a consistent stand. This Court is of the view that the Commissioner of the HR & CE Department is necessary party to decide title disputes relating to religious institutions / temples. Hence, this Court concludes that the Trial Court as well as First Appellate Court erred in holding that the HR & CE Department is not a necessary party to this Suit. However, the Suit need not be dismissed solely on the ground of non-joinder of necessary parties. The plaintiff may be given one more opportunity to implead the Commissioner of HR & CE Department as a necessary party.

25. In the interest of Justice, keeping in mind the facts and circumstances of the case, this Court is inclined to set aside the Judgment and Decree passed by the First Appellate Court, as well as the Trial Court and remit the matter back to the Trial Court for fresh adjudication after impleading the Commissioner of HR & CE Department as a necessary party to the Suit for the following reasons:

(i) Both sides have failed to adduce sufficient evidence to determine the title to the Suit Property;

(ii) In fact, even the location of the Suit Property has not been clearly established. Perusal of Plaint description of property would show that Survey No. 493 is the Suit Survey number and that Survey No. 494 lies on the northern boundary of Survey No. 493. The Plaint description of property does not seem to be true as cumulative perusal of records would reveal that on the northern side of Survey No. 493/1H is Survey No. 495 and that Survey No. 494 is far apart;

(iii) As stated *supra*, there is no sufficient evidence available on record to answer the questions of whether the vendors of Ex-A.8 and Ex-B.1 belong to the same family and whether they are brothers. Even while assuming that they belong to the same family, there is no evidence available on record to suggest the extent owned by them;

(iv) Ex-A.3 – Patta pertains to Survey No.493/1H. Available evidence shows that it does not relate to Suit Property. As stated *supra*, the defendant –

Temple represented by its Executive Officer neither raised any question with regard to Ex-A.3 nor filed the FMBs for the Suit Survey Nos. 493 and 494. It points to the defendant - Temple's ineffective contest. Needless to mention Court is duty bound to protect temple properties from misappropriation or wrongful claims [vide ***Cochin Devaswom Board's Case*** (***supra***)];

(v) There is nothing available on record to enable this Court to identify the Suit Property as well as to show whether the 10 Cents gifted to the defendant constitutes the Suit Property or not;

(vi) It is not possible to arrive at a just and right decision with the available evidence.

25.1. Hence, the matter shall be remitted to the Trial Court for *de novo* trial after impleading the HR & CE Department as a necessary party, and the Board of Trustees, if any functioning, as a proper party for effective adjudication of the matter. Substantial Question of Law "*d*" is answered accordingly.

Conclusion:

26. Resultantly, the Second Appeal is allowed in the following terms:

(a) Judgment and Decree of the First Appellate Court as well as the Trial Court are hereby set aside.

(b) The matter is remitted to the Trial Court for fresh adjudication after impleading the HR & CE Department**;**

(c) Trial Court shall re-admit the Suit under its original number in the register of Civil Suits and proceed to determine the Suit *de novo* on its own merits, untrammelled or uninfluenced by the observations made by this Court;

(d) Both parties are at liberty to canvas all their contentions before the Trial Court;

(e) Both parties are at liberty to file additional pleadings, additional documents and additional evidence, if any, before the Trial Court and conduct the case as per law;

(f) Plaintiff is at liberty to add other persons as parties if so advised and/or desired;

(g) Parties are to maintain *status quo* until and unless ordered otherwise by competent Court of law;

(h) Both parties are at liberty to pray for appointing advocate commissioner along with surveyor to identify the Suit Property;

(i) Keeping in mind the facts and circumstances of the case, there shall be no order as to costs;

(j) Appellant is entitled to get refund of Court Fee paid by it along with the memorandum of grounds of appeal, as per Section 67 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955;

(k) Registry is directed to send a copy of this Judgment to the Commissioner, HR & CE Department, Chennai for information and further course of action at their end;

(l) Consequently, connected Civil Miscellaneous petitions are closed.

05 / 11 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK
To

1.The Subordinate Court
Avinashi.

2.The District Munsif Court
Avinashi.

3.The Commissioner
Hindu Religious and Charitable Endowments Department
119, Uthamar Gandhi Road, Nungambakkam,
Chennai – 600 034.

R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.98 OF 2020

05 / 11 / 2024