



S.A.(MD)No.635 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.635 of 2007

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Madurai – 625 001.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Madurai – 625 020.

...Appellants

-Vs-

1.M.Muthirulan
2.M.Krishnamoorthy

Managing Trustees of
Arulmigu Mahaganapathy Temple,
Ganapathy Nagar, New Vilangudi,
Madurai – 625 018.

... Respondents

(Managing Trustees of Arulmigu Mahaganapathy Temple were substituted vide order of this Court, dated 24.06.2024 in C.M.P.(MD)No.7923 of 2024.)



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the Subordinate Court, Madurai, in A.S.No.100 of 2003, dated 26.04.2006 confirming the judgment and decree of the District Munsif Court, Madurai Taluk, Madurai in O.S.No. 340 of 2002, dated 20.02.2003.

For Appellants :Mr.P.Subbaraj
Special Government Pleader
For Respondents :Mr.S.Manohar

JUDGMENT

The defendants in the suit are the appellants. The respondents herein filed a suit for injunction restraining the defendants/HR & CE officials from interfering with the administration and management of the suit Temple. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the same, the defendants have come by way of this Second Appeal.

2.According to the respondents/plaintiffs, the suit Temple has been constructed and consecrated by the members of Baktha Jana Sabha, which runs the Temple. The Temple is located in the property purchased by the



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persons administrating Temple and the Baktha Jana Sabha, which administers the Temple, consists of residents of the locality. It was also claimed that the entire administration and management of the Temple till date is in the hands of the Baktha Jana Sabha and the electricity service also stands in the name of the Temple. It was also claimed that the defendants/HR & CE officials never interfered in the administration and management of the Temple earlier. Suddenly, on 09.06.2002, the officials of HR & CE visited the suit Temple and directed the Baktha Jana Sabha to hand over the management of the Temple to the Department. Therefore, the plaintiffs were constrained to file a suit for bare injunction.

3.The appellants/defendants filed their written statement and contested the suit by denying the averments made in the plaint, as if the suit Temple was founded and constructed by the plaintiffs. It was contended by the defendants that the Department got a complaint about the management and administration of the Temple by the plaintiffs. Hence, the jurisdictional Inspector of the HR & CE Department was directed to enquire into the allegations made in the complaint and submit a report. Aggrieved by the



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local enquiry made by the Inspector, the plaintiffs have come by way of this suit. It was also stated in the written statement that under Sections 63 and 64 of the HR & CE Act, the first defendant had got power to enquire the dispute relating to the religious institution and without exhausting the said remedy, the plaintiffs were not entitled to maintain a suit. It was also claimed that the suit was barred under Section 108 of the HR & CE Act. On these pleadings, the defendants sought for dismissal of the suit.

4.Before the trial Court, the plaintiffs examined three witnesses as PW-1 to PW-3 and 15 documents were marked as Ex-A1 to Ex-A15. On behalf of the defendants, one witness was examined as DW-1 and two documents were marked as Ex-B1 and Ex-B2.

5.The trial Court, on consideration of oral and documentary evidence available on record, came to the conclusion that the suit Temple was a private Temple and hence, the defendants could not interfere with the administration of the same and decreed the suit. Aggrieved by the same, the Department had preferred an appeal in A.S.No.100 of 2003 on the file of the



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Principal Subordinate Court, Madurai. The first appellate Court affirmed the findings the trial Court and dismissed the appeal. Challenging the concurrent findings, the defendants have come by way of this Second Appeal.

6. When the matter was taken for hearing on 01.07.2024, this Court had formulated the following substantial question of law for consideration :

“Whether the suit is maintainable in the light of Section 108 r/w Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959?”

7. The learned Counsel for the respondents was heard on the above substantial question of law.

8. The learned Special Government Pleader appearing for the appellants submitted that whether a Temple is a private Temple or a public Temple is a matter to be decided by the HR & CE Department under Section 63 of the HR & CE Act and the civil Court has no jurisdiction to decide the



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character of the Temple and therefore, the judgments passed by the Courts below on a finding that the suit Temple is a private Temple is liable to be set aside. It is also submitted that by virtue of Section 108 of HR & CE Act, the suit filed by the plaintiffs is barred.

9.The learned Counsel appearing for the respondents submitted that the plaintiffs filed a suit only for bare injunction and the relief sought for by the plaintiffs cannot be granted by the statutory authorities and therefore, the civil Court can very well entertain the suit.

10.The plaintiffs filed a suit seeking injunction restraining the defendants from interfering with the administration of the Temple on the ground that the management and administration of the Temple was not at all interfered with by the HR & CE Department earlier. Though the plaintiffs have not claimed in their plaint averment that the suit Temple was a private Temple, both the Courts below on appreciation of evidence let in by the plaintiffs came to the conclusion that the suit Temple was a Private Temple and therefore, HR & CE Department was not entitled to interfere with the



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11. Whether a Temple is a private Temple or a public Temple is a matter falls within the domain of the statutory authorities under HR & CE Act. This position was categorically laid down by the Hon'ble Division Bench of this Court in the case of ***Inspector/Fit Person, HR & CE., vs Amirthammal and others***, reported in ***2003 I LW 684 : 2003 1 CTC 484***.

The relevant observation of the Division Bench reads as follows:

“12. In the present case though there is a reference in the plaint to the suit property being a 'samadhi' the relief asked is for a declaration that the property is not a public temple. This is a dispute that falls under Section 63(a) of the H.R. & C.E. Act. It is not an incidental question that is asked to be decided in the suit, but the only question. Therefore, this dispute ought to have been adjudicated by the authority under the Act and as pointed out by the learned Special Government Pleader, the Act also provides for a detailed enquiry.”

12. Therefore, whether the suit Temple is a private Temple or a public Temple is a matter to be decided by the statutory authorities constituted under the HR & CE Act. In the case on hand, the plaintiffs claim that the suit



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Temple is managed by a Baktha Jana Sabha consisting the residents living around the Temple premises. There is no dispute that the suit Temple will come within the definition of “*religious institution*”, as per the HR & CE Act. When it is clear that the suit Temple is a religious institution, it is always open to the HR & CE Department to conduct enquiry on a complaint received from the general public with regard to the affairs of the religious institution. If the plaintiffs claim that the suit Temple is a private Temple and it will not come within the purview of the HR & CE Department, the same (character of Temple, whether public or private) has to be decided in an enquiry by the competent authority constituted under the Act. Without establishing the character of the Temple, as a private Temple, the plaintiffs are not entitled to a blanket injunction restraining the defendants from interfering with its management. Therefore, before granting an injunction, the Court necessarily has to decide the character of the religious institution. Without deciding the same, the relief sought for in the suit cannot be granted. In such circumstances, the main issue to be decided in the case is with regard to the character of the religious institution, whether it is a private religious institution or a public religious institution. In view of the same, the bar



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under Section 108 of the HR & CE Act is clearly attracted. Therefore, the suit filed by the plaintiffs before civil Court is not maintainable. However, it is always open to the plaintiffs to file appropriate application before the statutory authority for redressal of their grievance in the manner known to law.

13.With these observations, the Second Appeal stands allowed by answering the question of law in favour of the appellants. No costs.

04.07.2024

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

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To

- 1.The Subordinate Judge, Madurai.
- 2.The District Munsif, Madurai Taluk, Madurai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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S.SOUNTHAR, J.

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