



S.A.(MD)No.1194 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved On	Judgment Pronounced On
30.10.2024	19.12.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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1.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Kumbakonam.

2.The Deputy Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Mayiladuthurai.

3.The Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Chennai-34.

...Appellants

--Vs--

1.K.Balakrishnan Jettiar,
Managing Trustee,
Arulmigu Santhana Gopala Krishnaswamy Temple,
Residing at Malluga Jetty Street,
Kumbakonam Town and Munsif.

2.Devumul Jettiar

(For themselves and on behalf of Malluga Jettiyar
community people of the locality in and around
Malluga Jetty Street, Darasuram border Kumbakonam)

... Respondents



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed in A.S.No.44 of 2003, dated 21.01.2004, on the file of the Principal Sub Court, Kumbakonam, reversing the Judgement and Decree of the 1st Additional District Munsif Court, Kumbakonam, dated 30.11.1999, in O.S.No.769 of 1993.

For Appellants : Mr.V.Om Prakash
Government Advocate
R1 and R2 : Mr.Jerin Mathew
For Mr.A.Azhagesan

JUDGMENT

The second appeal is preferred by the defendants in the suit against the Judgment and Decree passed in A.S.No.44 of 2003, dated 21.01.2004, on the file of the Principal Sub Court, Kumbakonam, reversing the Judgement and Decree of the 1st Additional District Munsif Court, Kumbakonam, dated 30.11.1999, in O.S.No.769 of 1993.

2. The plaintiffs in the suit are the respondents herein and the defendants in the suit are the appellants herein. For the sake of convenience, the parties are referred as plaintiffs and defendants, as per the ranking in the original suit.



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3. The prayer in the suit is to permit the plaintiffs to sue in representative capacity and for declaration that Arulmigu Santhana Gopala Krishnasamy Temple situated in Malluga Jetty Street, Kumbakonam, is a denomination temple and is outside the purview of HR and CE Act and Board and consequential permanent injunction restraining the defendants from appointing any trustees other than their community and from interfering with the management and administration of temple and its affairs.

4.(i) The brief facts as stated in the plaint are that the 1st plaintiff Arulmigu Santhana Gopala Krishnasamy Temple located at Malluga Jetty Street, (Darasuram Border) Kumbakonam is a denominational temple belonging to Malluga Jettiar community who are having residents in and around the locality of Malluga Jetty Street adjacent too from time immemorial. The said temple was founded by and constructed more than 100 years ago by the predecessors-in-title of the plaintiffs' by Malluga Jettiyar Community people with the sole object and purpose for getting spiritual salvation and uplift of their community. The said temple was constructed from the plaintiffs' community own funds alone and deity was also installed. The said temple possess all the characteristics and ingredients of a temple, including praharam. There is a Uthsavamoorthy made up of Aiympon metal which was donated by their community people, the same would be taken to



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Moolasthanam also, then it would be kept under lock and key by the community people only. Likewise, pooja vessels and vahanams were donated by the community people. Daily poojas and Neivedhyams besides festival, functions and yearly uthsavams too were being performed by the community people through their appointees like gurukal etc, and the properties were owned by the said community people. The temple was managed by the said community people alone, formerly by duly elected Nattamais amongst them and now, by duly elected trustees. Thus, the Mallagu Jetti community residence represented it as a denominational temple. This was acquiesced by the general public and HR&CE Board also. Hence the Board is estopped by the conduct and doctrine of silence and acquittance from asserting contra.

4.(ii) The HR&CE Board had purported to bring the temple under their control in 1987. A peculiar and salient feature is that the trustees are elected by the community in their meeting among themselves, then the said proposal would be send for formal approval to HR&CE Board were alone recognized and that is how the trustees are appointed. This community people alone used to be claimed to have nominated as trustees by the Board itself. Neither outsider nor stranger were allowed to be intruded and allowed to interfere in the management and administration of the temple and its affairs and entire community felt its / this



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temple's denominational character. Section 51 of Act 22 of 1959 too fortified this and Article 26 of Constitution too provides for protection of such denominations from HR&CE. Further, the temple is governed by the scheme decree framed and passed by the Sub Court, Kumbakonam, who is also a scheme judge in O.S.No.4 of 1916, dated 27.08.1917. Paragraph No. 5 of the said decree states the denominational character of the temple, as to who should be elected as trustees, to be in management and administration of the temple and the scheme decree ought to be read and treated as part and parcel of the plaint. Any deviation can be done only by the Scheme Court and the Board has no right to change the same.

4.(iii) On 13.12.1987, in the minutes of the meeting, the members were elected from the said community and orders of the Deputy Commissioner dated 05.02.1982, would clearly show that the appointment is by the community people and the same is recognized by the Board. The minutes book also clearly shows how election of trustees was within the community people. While that being so, the printed publication calling for application for trusteeship from outsiders and non-community people, dated 03.12.1987 was issued by the Board and the plaintiffs had submitted objection to the said publication. The plaintiff has also produced the minutes of the document, dated 12.06.1993, the paper publication issued by the department, dated 20.07.1993, again notice calling for application



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for trusteeship, dated 21.07.1993 and further publication, dated 20.09.1993.

Hence, lawyer notice dated 20.09.1993, was issued expressing their objection and the same was acknowledged on 29.07.1993, but the department has not replied to the said notice. The contention of the plaintiffs is that the Board has no right / power to interfere or intermeddle in the administration and also the Board has no jurisdiction or possess any right or power to control the denominational temples. The age long usage and immemorial custom and practice prevailed over had been sought to be jeopardized by unwanted, highhanded, non-jurisdictional peeping in by the Board over the temple and the Board attempts to interfere in the administration and management. Their fundamental right of the plaintiff is being interfered with. Hence, the suit is filed for declaration and injunction.

5. The defendants had filed written statement denying the allegations stated in the plaint and submitted the plaintiff had suppressed several facts. The plaintiff K.Balakrishnan Jettiar being a government servant is prohibited and disqualified to be a managing trustee under G.O.Ms.No.3562, dated 21.12.1963. Further, there was a suit in O.S.No.4 of 1916 on the file of the Sub Court, Kumbakonam, between the Jettiar Community people by a scheme, dated 17.07.1917. Under the HR&CE Act, any scheme prior to the Act will be implemented by the Department. The 1st defendant Assistant Commissioner has called for applications for



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appointment of trusteeship from the Jetti community alone, since their community people are eligible for appointment, as per the scheme decree passed in O.S.No.4 of 1916. Hence, the scheme is not violated and the Department had not appointed any other community people except for Malluga Jettiar community as trustees. On 11.10.1993, under the direction of the District Committee, the appointment was made on the applications received from the said Community people alone. Of the applicants, N.Ramachandran son of Narayanaswamy Jettiar, No.25 Malluga Jetty Street, Kumbakonam, (2) S.Krishnasamy son of P.Subbaian Jettiar, No.4, Malluga Jetty Street, Kumbakonam, (3) K.Raja son of Krishnamoorthy Jettiar, No.44, Malluga Jetty Street, Kumbakonam, were appointed as trustees. The election for the post of managing trustee was held. The Jetti community people had presented a Mahazar along with a voters list to conduct election. On 13.12.1987, the community people including the plaintiffs applied to the Assistant Commissioner to nominate them as trustees instead of election and accordingly, they were nominated as trustees. Now the very same persons state that HR&CE Board has no power and the HR&CE Board is trying to interfere and appoint non Jetti community people. Only their community people are appointed as trustees, after perusing the applications and considering the disqualifications. Further stated one K Balakrishnan had applied for nomination as trustee by an application, dated 06.11.1981, after perusal of solvency, his application was upheld for that period.



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The Indian Post and Telegraph Department had accorded sanction to accept the post of Honorary Trustee. Subsequently, no such sanction is accorded and it is open for the HR& Department to appoint a trustee who is a non-government employee, as per the G.O., referred above. On 29.03.1982, the said Balakrishnan has informed of taking the charge. The objection from Alagirisamy, dated 03.04.1982, to the Assistant Commissioner was received by the Assistant Commissioner. On 19.06.1983, the said Balakrishnan has handed over charge, sent through HR&CE Inspector and has informed the same to the Assistant Commissioner, by letter, dated 19.06.1983. Prior to this, right from the year 1963, the Department was enforcing its rights by calling for applications from Malluga Jetty community people. Based on these facts, it is clear that the HR&CE Department is having right for calling for application from Malluga Jetty community and the plaintiffs are such trustees appointed on applications. Hence, they are estopped from questioning the right of HR&CE Department and the procedure followed by the Board. Since the appointment of trustees has been made in accordance with the scheme provision, the plaintiffs have no right to file the suit and the defendants prayed to dismiss the suit.

6. The plaintiffs have marked the exhibits Ex.A1 to Ex.A29, the 2nd plaintiff was examined as PW1 and the defendants have not filed any documents but one



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Muthian was examined. After considering the pleadings and exhibits Trial Court dismissed the suit without cost. Aggrieved over the same, the plaintiffs have preferred the Appeal Suit and the same was allowed with cost by setting aside the judgment and decree of the Trial Court. Aggrieved over the same, the present second appeal is preferred by the defendants in the suit.

7. Heard Mr. Om Prakash, the Learned Government Advocate appearing for the defendants / appellants. The Learned Counsel Mr.V.K.Vijayaraghavan who had filed vakalat for the respondents have filed a memo stated that both the respondents died and reported no instructions and has filed a memo to this effect. The said memo is recorded. The Learned Counsel Mr.Jerin Mathew appeared for Mr.A.Azhagesan submitted that he had filed vakalat for respondents 1 and 2. The Learned Counsel had reiterated the arguments submitted before the Court below.

8. The appellant had raised the following substantial questions of law and the same is heard:

“1. Whether the Courts below are right in law in deciding the case framing the issue as to whether the suit temple is a denominational one without applying the tests laid down by the Hon'ble Court reported in 100 Law Weekly page 240.?”



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2. *Are not the judgment rendered by the Lower Appellate Court correct in law in granting permanent injunction against the Defendants-Department when the Defendants-Department has been sanctioned with the power to supervise, appoint trustees, thereby interfere with the administration of the temple, to ensure its proper administration and management of the suit temple and its properties under the provisions of the H.R.&C.E. Act?*

3. *Have not the Lower Appellate Court erred in law in granting the decree declaring the temple as Denominational temple in favour of the plaintiffs herein, without appreciating the principles laid down by this Hon'ble Court to decide such issue?*

4. *Are not the Lower Appellate Court right in law in decreeing the suit holding that the denominational temple is private temple contrary to the decision of this Hon'ble Court reported in S.A.No.1858 of 1984 reported in 1992 M.L.J. page 530 and confirmed by the Hon'ble Apex Court reported in 2001 6 S.C.C.652.? ”*

9. The first substantial question of law raised by the defendant is that whether the temple in question can be declared as denominational temple without applying the tests stated in the case of Assistant Commissioner, Hindu Religious and Charitable Endowment, Salem etc., Vs. Nattanai K.S.Ellappa, etc., reported in 100 Law Weekly page 240. In the aforesaid judgment the question for consideration is whether Senguntha Mudaliars of Tharamangalam form a religious denomination within the meaning of Article 26 of the Constitution and the



Learned Single had held the same is not a religious denomination. The relevant portion of the judgment is extracted hereunder:

“22. I will now proceed to consider the question whether Senguntha Mudaliars of Tharamangalam form a religious denomination within the meaning of Article 26 of the Constitution. Before referring to the evidence available on record with reference to this question, I am obliged to point out that very often the real question which arises for consideration is not understood or considered by the subordinate judiciary or the persons who conduct the cases before the subordinate Courts. In most of the cases, it is taken for granted that if a temple is owned and administered by a community the latter could be treated as a religious denomination automatically and the only question with reference to which evidence is let in by the parties is whether the community established and maintained the temple concerned. And if that question is answered in the affirmative, the Court comes to the conclusion that such temple is a denominational temple. It must also be noted that a denominational temple is confused with a private temple and the tests which are laid down for deciding the character of the temple as private or public are applied while determining the denominational character thereof. The fact that a temple would become a denominational temple only if it is established and maintained by a religious denomination or any section thereof is forgotten in many of the cases. That has led to some wrong decisions which create an impression in the minds of litigants that once the ownership and administration of a temple are proved to be resting with a particular community or a section thereof, that would be sufficient to declare it to be a denominational temple. In fact, the Trial Court has in Para 26 of its judgment framed the



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following question which proves that the real controversy has not been understood by it:

"The question, therefore, is whether it is a private temple, that too a denominational temple or a public temple. If it is latter as argued by the defendants, the Act is applicable. In the instant case that "position of whether it is a public temple at all is the main question."

The above extract from the judgment of the trial court illustrates the misconception prevailing among many of the members of the subordinate judiciary.

23. The lower appellate Court framed point No. 2 for determination as follows:

"Whether the suit temple is a denominational temple exclusively belonging to Senguntha Mudaliar community of Tharamangalam?"

Here again, the two independent questions whether Senguntha Mudaliar Community of Tharamangalam is a religious denomination and whether the suit temple belongs exclusively to that community have been telescoped into one which proves that even the learned Second Additional District Judge, Salem did not have a correct idea of the legal position. It is seen in Para 16 of his judgment that he refers to the argument of learned counsel for the plaintiffs to the effect that they had never disputed the fact that the temple was a religious temple, but that their grievance was that it was managed and administered by the Senguntha Mudaliars of Tharamangalam for several decades and therefore, the authorities of



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Hindu Religious and Charitable Endowments had no right to interfere with the administration of the temple by the community. This again shows that the counsel for the plaintiffs who appeared before the learned Additional District Judge was under the impression that the only basic relevant factor to be taken into account was the ownership of the temple by the community. It is no doubt true that an argument had been advanced before the learned Additional District Judge that the community of Senguntha Mudaliars of Tharamangalarn are worshipping a peculiar idol known by the peculiar name Kannanoor Mariamman which was a clear indication to show that they had common faith in the said idol. In spite of the fact that the learned Additional District Judge refers to the definition of 'religious denomination' found in the decision of the Supreme Court in the Sirur Mutt case (The Commissioner of Hindu Religious Endowments, Madras, v. Sri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt reported in 1954 1 SCC 412), the learned Judge did not consider the issue in the proper perspective. Of course, he cannot be blamed, therefore, when it is seen that some reported decisions of this Court create an impression that proof of establishment and maintenance of temples by a community or a section thereof would be sufficient to support a finding that such temples are denominational temples.

24. It is needless to point out that the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, or any of its predecessors did not use or define the term 'denominational temple' as such. Section 6(20) of the Act of 1959 defines a 'temple' as a place by whatever designation known used as a place of public religious worship and dedicated to or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of public religious worship. Section 107 provides that "Nothing



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contained in this Act shall, save as otherwise provided in S.106 and in cl. (2) of Art. 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Art.26 of the Constitution". Section 106 provides for removal of discrimination in the distribution of prasadams and theerthams in any religious institution on grounds only of caste, sex, place of birth or any of them. Section 51 of the Act provides that "in making appointments of trustees under S.47 or S.49, the Commissioner or the Area Committee, as the case may be, shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the institution concerned is chiefly intended or maintained." It is seen that S.107 deals with the rights of any religious denomination or any section thereof as conferred by Art. 26 of the Constitution which means that the section relates to religious institutions established and maintained by a religious denomination or any section thereof. But, S.51 of the Act would apply even to cases where the religious institutions were not established or maintained by the religious denomination or section thereof but to such religious institutions which are intended or maintained for the benefit of persons belonging to any religious denomination. Apart from Ss. 51 and 107 there is no reference in the Act to a religious denomination. If the members of a religious denomination claim that the religious institution in question has been established and maintained by them, their rights are governed by Art.26 of the Constitution and the same are left untouched by the Tamil Nadu Hindu Religious and Charitable Endowments Act on account of S.107 thereof. Hence, the first question to be considered invariably in every case in which a temple is claimed to be a denominational temple is whether that community is a religious denomination or any section thereof. Though there is no definition of the



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term 'religious denomination' either in the Act or in the Constitution, it has been judicially interpreted in unmistakable terms by the Supreme Court of India in the famous Sirur Mutt case (The Commissioner of Hindu Religious Endowments, Madras, v. Sri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt), . Mukherjea, J observed as follows : -

"As, regards Art. 26, the first question is, what is the precise meaning or connotation of the expression "religious denomination" and whether a Math could come within this expression. The word "denomination" has been defined in the Oxford Dictionary to mean "a collection of individuals classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name". It is well known that the practice of setting up Maths as centres of theological teaching was started by Shri Sankaracharya and was followed by various teachers since then. After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day.

Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name, in many cases it is the name of the founder and has it common faith and common spiritual organization. The followers of Ramanuja, who are known by the name of Shri Vaishnavas, undoubtedly constitute a religious denomination; and so do the followers of Madhwacharya and other religious teachers. It is a fact well established by tradition that the Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of these Maths profess to be followers of that teacher. The High Court has found that the Math in question is in charge of the Sivalli Brahmins who



constitute a section of the followers of Madhwacharya. As Art. 26 contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of this Article."

25. While the decision referred to above was rendered with reference to a Mutt, the question arose before the Supreme Court with reference to a temple in Venkataramana Devaru v. State of Mysore, . Venkatarama Aiyar, J. dealing with the question whether the temple dedicated to Sri Venkataramana in the village of Mannampady, was a denominational temple, referred to the relevant aspects of the evidence which would help the Court to conclude that the temple in question is a denominational one in Para 15 of the judgment, which reads thus : -

"The next question is whether the suit temple is a denominational institution. But the Courts below have concurrently held that at the inception the temple was founded for the benefit of Gowda Saraswath Brahmins, but the Subordinate Judge held that as in course of time public endowments came to be made to the temple and all classes of Hindus were taking part freely in worship therein it might be presumed that they did so as a matter of right, and that, therefore, the temple must be held to have become dedicated to the Hindu public generally. The learned Judges of the High Court, however, came to a different conclusion. They followed the decision in Davaraja Shenoy v. State of Madras, , and held that the temple was a denominational one. The learned Solicitor-General attacks the correctness of this finding on two grounds. He firstly contends that even though the temple might have been dedicated to the Gowda Saraswath Brahmins, that would make it only a communal and not a denominational



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institution, unless it was established that there were religious tenets and practices special to the community, and that that had not been done. Now, the facts found are that the members of this community migrated from Gowda Dess first to the Goa region and then to the south, that they carried with them their idols, and that when they were first settled in Moolky, a temple was founded and these idols were installed therein. We are therefore concerned with the Gowda Saraswath Brahmins not as a section of community but as a sect associated with the foundation and maintenance of the Sri Venkataramana Temple, in other words, not as a mere denomination, but as a religious denomination. From the evidence of P.W. 1, it appears that the Gowda Saraswath Brahmins have three Gurus, that these in Moolky Petah are followers of the head of the Kashi Mutt, and that is he that performs some of the important ceremonies in the temple. Ex. A is a document of the year 182627. That shows that the head of the Kashi Mutt settled the disputes among the Archakas, and that they agree to do the puja tinder his orders. The uncontradicted evidence of P.W. 1 also shows that during certain religious ceremonies, persons other than Gowda Saraswath Brahmins have been wholly excluded. This evidence leads irresistibly to the conclusion that the temple is a denominational one, as contended for by the appellant."

26. The Supreme Court had occasion to reiterate its view on the interpretation of the words "religious denomination" in Acharya Jagdiswaranand Avadhuta v. Commissioner of Police, Calcutta. The question which arose for consideration in that case was whether Ananda Marga could be accepted as a religious denomination. While answering the question in the affirmative, the Court made a reference to the test laid



down by Mukherjea, J. In the Sirur Mutt case referred to earlier and observed as follows :-

"This test has been followed in the Durgah Committee, Ajmer v. Syed Hussain Ali. In the majority judgment in S.P.Mittal v. Union of India, reference to this aspect has also been made and it has been stated :"

"The words 'religious denomination' in Art.26 of the Constitution must take their colour from the word 'religion' and if this be so, the expression 'Religious denomination' must also satisfy three conditions :

- 1. It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;*
- 2. Common organisation; and*
- 3. Designation by a distinctive name."*

27. In view of the clear pronouncement made by the Supreme Court in the aforesaid case laying down three conditions to be satisfied by a community to fall within the expression 'religious denomination', it is unnecessary for me to deal with the various decisions of this Court cited by learned counsel for the respondents. It is enough if I give a reference to the citations. They are : -

- 1. Muthia Asari v. Madasami Asari, (1965) 78 Mad LW 288,*
- 2. [R. China Boyan v. Commr. for Hindu Religious and Charitable Endowments, Madras, \(1975\) 2 Mad LJ 294,](#)*
- 3. V. Balakrishnan v. Asst. Comnr., H.R. and C.E., (Admn.) Department, Tirunelveli, 1978 TLNJ 359,*



4. *Madurai Sourashtra Sabha v. Commr., H.R. and C.E. (Admn. Department) Nungambakkam, Madras, (1971) 84 Mad LW 86 and*

5. [A. Palaniandi Pillai v. Commr., Hindu Religious and Charitable Endowments, Madras](#)

28. *Learned counsel for the respondents submits that if the three conditions laid down by the Supreme Court in S.P.Mittal's case and reiterated in Jagdishwaranand's case are to be satisfied strictly, then some of the communities referred to in the decisions of this Court cited by him would not be religious denominations, but they have been held to be so by this Court. It is the contention of the learned counsel for the respondents that the scope of the definition of 'religious denomination' has been widened by the decisions of this Court cited by him and the Senguntha Mudaliar community of Tharamangalam would, therefore, be a religious denomination as per the definition culled out from the decision of this Court. In other words, learned counsel submits that if the communities involved in the aforesaid decisions of this Court can be said to be religious denominations, then Senguntha Mudaliar Community of Tharamangalam should automatically be treated as a religious denomination. I am unable to agree with this contention of learned counsel for the respondents. As far as I am able to see the decisions of this Court cited by him turned on the facts of those cases and in every case there is a finding of fact that the community involved therein was proved to be a religious denomination. It is not within my province to probe further and find out whether the conditions laid down by the Supreme Court were satisfied by the evidence in each of those cases.*



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29. *There are two decisions of this Court not referred to by either of the learned counsel, but in which the relevant test has been correctly pointed out and applied. In K. V. Vaidyanatha Sastrigal v. K. S. Ramaswami Iyer, 1972 TLNJ 404, Sadasivam, J. observed as follows : -*

"When the question arises as to whether or not a temple has been dedicated to a particular sect, the performance of the worship of the idol in accordance with the rites of the sect for whose benefit it was held might be treated as evidence of dedication. There was no evidence to show that the Chozhia Brahmins of Kadayanallur worshipped Neelamaninathar as their family Deity, or that the suit temple was originally installed to propagate the tenets of their religion." (underlining mine) Again in Kuppuswami Chetty v. Commr. of H.R. & C.E., 1972 TLNJ 443, Ramaprasada Rao, J. held that the sect called the Beri Chetty community was a religious denomination inasmuch as the members of the community were followers of Sri Abhinava Dharma Sivacharya Math which had peculiar concepts in the matters of religion. In any event, the position is made clear by the latest pronouncements of the Supreme Court in S.P.Mittal v. Union of India and Acharya Jagdiswaranand Avadhuta v. Commissioner of Police, Calcutta.

30. *As seen from the decision of the Supreme Court, the words 'religious denomination' must take their colour from the word 'Religion'. It is, therefore, clear that the common faith of the community should be based on religion. It is essential that they should have common religious tenets. The basic cord which connects them should be religion and not anything else. If the aforesaid tests are applied in the present case, it will be seen that Senguntha Mudaliar community of Tharamangalam cannot claim to be a religious denomination. There is absolutely no evidence on record to*



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prove that the members of the community have common religious tenets peculiar to themselves other than those which are common to the entire Hindu community. The only witness examined on the side of the plaintiffs is the first plaintiff who speaks repeatedly about the temple being owned by the community and administered by the two sections called Chinna Katchi and Periya Katchi. Though he asserts in the cross examination that there is no person in Tharamangalam who does not belong either to Chinna Katchi or Periya Katchi, there was no such averment in the plaint to that effect. He is not able to explain the absence of such an averment in the plaint. One significant fact is brought out in the admission of P.W. 1 that the person who performs the pujas in the temple is a Gounder and not a Senguntha Mudaliar. Though the pujari is said to be a paid employee of the community, it is a matter of admission that before the present pujari his father was doing pujas. P.W. 1 pleads ignorance as to who was doing puja prior to 1966. Though he states that accounts are available for the periods both prior to and after 1966, no such accounts have been produced. He admits that there is a street in Tharamangalam for Karkatha Vallalars. Obviously, his assertion that there is nobody in the village who does not belong either to Chinna Katchi or Periya Katchi is false. In another place, P.W. 1 admits that 90% of the Mudaliars of Tharamangalam belong to Chinna Katchi and Periya Katchi. That proves that there are other Mudaliars not belonging to either Chinna Katchi or Periya Katchi. D.W. 1, who was appointed as a trustee by the Department, also belongs to Senguntha Mudaliar Community. According to him, the persons who carried the deity in procession are Padayachi Gounders and Karkatha Vellalars. According to him, members of all communities will take part in festivals and will do "fire walking". According to him, Gounders were doing pujas in the temple for 30 or 40 years, and that contributions for



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festivals are made by members of all communities. Even if it can be urged that the evidence of D. W. 1 having been rejected by the learned appellate Judge as thoroughly unsatisfactory and that I should not place any reliance thereon, I do not find any necessity to rely upon the oral evidence of D.W. 1 in the present case. In my opinion, neither the oral evidence of P.W. 1 nor the documentary evidence produced by the plaintiffs would be sufficient to prove that the three conditions laid down by the Supreme Court are satisfied in the present case. In fact, there is no iota of evidence to sustain the claim that the members of Senguntha Mudaliar Community have a common religious faith. The ingenious argument advanced by learned counsel for the plaintiffs before the lower appellate Court is that the common faith peculiar to Senguntha Mudaliars of Tharamangalam is evident from their worshipping a peculiar idol known by the peculiar name Kannanoor Mariamman. I do not find any peculiarity in worshipping the idol of Mariamman which is a common deity to several sections of the Hindu Community. There is no evidence on record as to how the idol got the name Karmanoor Mariamman. In all probability the idol might have been brought from a place called Kannanoor or the deity of Mariamman in Kannanoor is so famous that the people in Tharamangalam named the idol which they worshipped after that deity. It is very common in these days to see the idols of Sabarimalai Ayyappan being installed in every city, town and village in this country. In the absence of any evidence that there are religious tenets and practices special to the community, the plaintiff cannot succeed in proving that the community of Senguntha Mudaliars of Tharamangalarn is a religious denomination. There is also no evidence to show that the members of other communities have been excluded during certain religious ceremonies performed by Senguntha Mudaliars. On the other hand, there is an admission on the part of P.W. 1 that the idol of



Kannanoor Mariamman is worshipped by members of other communities also, though he adds that they would do so with the permission of the plaintiffs.

31. It is well-known that communities were formed in this country on account of various reasons under several circumstances. It is not as if religion is the only common bond for the members of the communities found in this country. Instances are not wanting where communities were formed on the basis of profession or business or calling. It is seen from the Tamil Lexicon published by University of Madras that "Sengunthars" were persons of Kaikkola caste, the spearmen of ancient times. The word "Senguntham" means "a red spear" that is a spear,, which became red on account of the blood of the enemies. History reveals that Kaikkolars were able warriors serving as personal body-guards of ancient Chola Kings. The Tamil Lexicon describes "Kaikkolars" as members of a caste, now mostly weavers found in all Tamil Districts. As regards the term "Mudalier" it is described as a caste title to a sect of Vellalars, i.e., Sengunthars and a sect of Jains in Tanjore. The Tamil word "Mudali" is defined as "Head" or "chief". It is a matter of common knowledge that in the present days Senguntha Mudaliars have adopted weaving as their calling. It is quite probable that the ancient warrior community chose to settle in different places pursuing different professions when they could not find any use for their proficiency in martial arts. It is unnecessary for me to consider as to why the plaintiff's community came to be called as Senguntha Mudaliar community. Suffice it to say that the evidence on record does not make out that the plaintiffs belong to a religious denomination or that the Senguntha Mudaliar community of



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Tharamangalam is a religious denomination, in order to get the benefits of Art. 26 of the Constitution.

32. *The last question that remains to be considered is whether the suit temple has been proved to be established and maintained by the Senguntha Mudaliar community of Tharamangalam. The earliest document filed in support of the claim of the plaintiffs is Ex. A-21 which is an unregistered agreement between Chinna Katchi and Periya Katchi dt. 9th Aug., 1933. The agreement provides for turn management in the alternate years by the two factions. Significantly, the agreement does not state that the temple was established by the community. The agreement relates to two temples, Matam, a Nandhavanam and a tamarind those. The rights of the two factions flowing under the agreement were upheld in a litigation in the year 1958. When the members of the Periya Katchi contended that the two Katchis had sunk their differences and ceased to exist after 1957, the Court rejected the same and upheld the claim of the Chinna Katchi that the agreement of 1933 governed the right of the management of the institutions mentioned therein. That decision was upheld by this Court in S.A. No. 877 of 1960 as evident from Ex. A-3. Apart from the civil proceedings referred to above and the agreement of 1933, the plaintiffs have produced some electricity bills ranging from 1960 to 1983 to show that they have been continuously in management of the temple. The case of the plaintiffs that they have been continuously in management of the temple from 1933 onwards has been proved beyond doubt. But, there is no acceptable evidence to prove that the temple was founded by the members of the community. Learned counsel for the respondents invites this Court to draw an inference that the temple was established by the members of the community from the fact that the management and administration have*



been continuously with the members of the community for over 50 years.

The temple is claimed to be 200 years old by the plaintiffs. The first plaintiff is only 56 years old and no other elderly person has been examined to speak about any fact relating to a prior period. It is not, possible to draw an inference of the establishment of the temple by the community from the fact that the members of the community have been managing the temple for about, 50 years.

*33. For the purpose of invoking Art. 26 of the Constitution the plaintiffs have got to prove two facts, (1) that they established the temple and (2) they maintain the temple. In fact, learned counsel for the respondents himself referred to the decision of the Supreme Court in *Azeez Basha v. Union of India*, where the Supreme Court held that the word "establish and maintain" in Art. 26(a) of the Constitution 'must be read conjunctively and it is only those institutions which a religious denomination establishes which it can claim to maintain and that the right under Cl. (a) of Art. 26 will only arise where the institution is established by a religious denomination. In view of the same, the burden is on the plaintiffs to prove that the temple in question was established by the community of Senguntha Mudaliars of Tharamangalam and it is not sufficient if it is proved that the temple was being maintained by the community. I am of the opinion that the entire evidence let in by the plaintiffs in the present case will only go to the extent of proving that the temple in question was being maintained by the members of Senguntha Mudaliars of Tharamangalani community and it will not prove that the temple was established by them.*

34. In the result, the second appeals are allowed and the judgment and decree of the learned Second Additional District Judge of Salem are set



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aside. The suit O. S. No. 19 of 1984 on the file of the District Munsif, Salem is dismissed. However, in the circumstances of the case, there will be no order as to costs."

10. The aforesaid judgment had elaborately considered the issue of "religious denomination temple". The religious denomination institution is stated in Article 26 of the Constitution of India and the said Article 26 is extracted hereunder:

"26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

- (a) to establish and maintain institutions for religious and charitable purposes;*
- (b) to manage its own affairs in matters of religion;*
- (c) to own and acquire movable and immovable property; and*
- (d) to administer such property in accordance with law."*

The ingredients in the Article 26 are as under:

- a. every religious denomination
- b. or any section there of
- c. shall have right
- d. to establish and maintain institutions for religious
- e. and charitable purpose
- f. shall manage its own affair in the matter of religion
- g. to own and acquire movable and immovable property
- h. to administer such property in accordance with law



11. The Article 26 gives protection if the “entire community” together forms the institution and also protects if a “section of community” forms an institution. And the purpose of the institution is for religious and for charity. In other words, the Article 26 is not stating the entire community should form an institution, even if section of the community forms an institution then the same would be protected under the Article 26. Further the Article states that the institution shall manage its own affair in the matter of religion, its property and to administer its property.

12. It is an admitted fact that the phrase “religious denomination” was not defined anywhere in the Act or the Constitution. Hence the Courts have taken the definition from oxford dictionary wherein it has defined as under:

“a collection of individuals classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name”.

Hence the expression 'religious denomination' must satisfy three conditions :

1. It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;
2. Common organisation; and
3. Designated by a distinctive name."



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13. The phrase “common organisation” needs no further explanation or interpretation, since the claim would be the temple was constructed or managed by the common organisation or trust. The phrase “designated by a distinctive name” also needs no further explanation or interpretation, since the organisation / trust would be having distinctive name. But the phrase “collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith” is the crucial one, which needs discussion. Infact the Courts have elaborately discussed it. In the aforesaid judgment in the case of Nattamai K.S.Ellappa Mudaliar’s case the Court have held that,

*“30. As seen from the decision of the Supreme Court, the words 'religious denomination' must take their colour from the word 'Religion'. It is, therefore, clear that the common faith of the community should be based on religion. It is essential that they should have common religious tenets. The basic cord which connects them should be religion and not anything else. If the aforesaid tests are applied in the present case, it will be seen that Senguntha Mudaliar community of Tharamangalam cannot claim to be a religious denomination. **There is absolutely no evidence on record to prove that the members of the community have common religious tenets peculiar to themselves other than those which are common to the entire Hindu community...**”*



On reading of the above observation it is clear that the Court had stretched beyond the definition and mixed up with the phrases of the definition. Especially the observation that Senguntha Mudaliar community of Tharamangalam has no common religious tenets **“peculiar to themselves”**. In other words the Court had held that the people claiming religious denomination ought to prove that there is **“peculiar religious tenets to themselves”**. But the definition only states “that collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith”. The definition can be split into the following ingredients:

- a. collection of individuals
- b. who have a system of beliefs
- c. or doctrines
- d. which they regard as conducive to their spiritual well-being,
- e. that is, a common faith

The above ingredients would clearly states that there should be collection of individuals. In the present case the Mallagu Jetti Community living in and around the temple is collection of individuals. Then there should be a system of beliefs or doctrines. In the present case the plaintiffs believes that the deity Arulmigu Santhana Gopala Krishna would bring spiritual well-being, which is a common faith. Therefore the said phrase is applicable to the present case.



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14. Of course the definition of religious denomination states that there should be “distinctive name”, but it speaks of “name” alone. In the above judgment the Court had confused with the word “name” as that of “beliefs or doctrines”, hence the Court had held that there should be **peculiar to themselves** i.e. **peculiar religious tenets to themselves**. The said confusion would clearly come within the mischief of “Casus Omissus”. Therefore, this Court is of the considered opinion that the definition of religious denomination does not mean there should be “**peculiar religious tenets to themselves**” or “**peculiar to themselves**” or “**distinctive beliefs**” as held in the case of Nattami Ellappa Mudaliar’s case.

15. This Court is bound to record that human being who comes under the animal kingdom have natural instinct to live in groups. Researches about human beings i.e. Homo Sapiens indicates that when the group is within the threshold number of 150, the group would be sailing smoothly. When the group cross the threshold of 150 things would not work and there will be natural spilt to form two groups, three groups and so on. Hence whenever groups are split into two or three groups with threshold limit of 150 members, then it is natural phenomena. The law ought to take into account the natural phenomena and understand the group phenomena, failing which there will be disruptions in the society.



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16. Based on the above discussion the present case ought to be considered. In the present case, it is seen that the 1st plaintiff is the temple itself. The deity is Arulmigu Santhana Gopala Krishnasamy Temple. The Malluga Jettiar Community in and around and nearby locality had put up construction from the funds collected from their community, had developed from the donations from the community, pooja articles were donated from their community and administration is managed by their community. Infact the it is an admitted fact that the temple was constructed by the plaintiff community and the defendant had not denied the said fact. As per the definition there is collection of individuals namely Mellagu Jetti Community, they have belief in the deity of Arulmigu Santhana Gopala Krishna that the said deity would bring spiritual well-being and the said community is having common faith. The “Mellagu Jetti Community” is a common organisation and Mellagu Jetti is the “designated by a distinctive name”. When all the ingredients are applicable to the 1st plaintiff temple, then the said temple ought to be considered as religious denomination temple. Therefore, this Court declare the plaintiff’s temple as religious denomination temple.

17. The next contention of the plaintiff is that in the present case the issue arose when the HR&CE tried to appoint a trustee who does not belong to Mallagu



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Jetti Community. If it is religious denomination temple, then the plaintiffs have right to appoint trustees from their own Malluga Jetti Community only and the same is protected under Article 16. Under clause 5 of Article 16 of Constitution gives the protection to appoint persons belonging to the particular religion and denomination. The Article 16 relevant portion is extracted hereunder:

16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

2, 3, 4, ...

5. Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

As per the above Article if the temple is denominational temple, then the trustees shall be from the same denomination alone and outside the denomination cannot be appointed. Therefore, the appointment of person other than the denomination community is against the Article 16(5).



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18. When this Court had held that the temple is “religious denomination”, then the plaintiff is entitled to the injunction. Therefore, the defendants / appellants are restrained from interfering in the temple administration. Further it is seen already scheme is framed in O.S.No.4 of 1916 on the file of the Sub Court, Kumbakonam vide scheme decree dated 27.08.1917, therefore the temple ought to be administered based on the scheme alone.

19. The contention of the defendant is that once the temple is declared as religious denomination, then the same ought to be public temple and for the same the defendant relied on the judgment rendered in M.S.V.Raja and another Vs. Seeni Thevar and others reported in 2001 (6) SCC 652. The said judgment cannot be relied on for the sole reason in the said judgment there is a finding that there are no evidence to prove that the said temple was put up by Rajus. But in the present case, there is a clear finding that the Malluga Jetti Community had put up the temple using the funds collected from the Malluga Jetti Community alone and not even a single penny was received outside the Malluga Jetti Community.

20. The aforesaid judgment further held that the land in which the temple was constructed is in porampoke, hence it is public temple. In the present case



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there is no such finding that the temple stands in porampoke land. Therefore, the aforesaid judgment is not applicable to the present case.

21. Further this Court is of the considered opinion the said finding that the temple is standing in the porampoke land, hence it is public temple may not be correct. The classification of porampoke land was made since the said land would not fetch any revenue to the government. If the land fetches revenue, then the same would be classified as Punja and Nanja lands. Hence the reasoning stated thereunder is illogical and unacceptable. For the said reasons the said judgment cannot be relied on.

22. It is pertinent to note that in Tamil Nadu most of the temples are in porampoke lands only. And the temples are standing in the said land for more than centuries. The government has not taken any steps to issue patta in the name of the deity. It is high time that patta ought to be issued in the name of the deity and protect the temple and its lands.

23. Based on the above discussions, all the substantial questions of law are answered in favour of the plaintiffs and against the defendants. Therefore, the second appeal is dismissed confirming the Judgment and Decree passed in



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A.S.No.44 of 2003, dated 21.01.2004 on the file of the Principal Sub Court, Kumbakonam and setting aside the Judgement and Decree of the 1st Additional District Munsif Court, Kumbakonam, dated 30.11.1999, in O.S.No.769 of 1993.
No Costs.

19.12.2024

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. Principal Sub Court, Kumbakonam.
2. 1st Additional District Munsif Court,
Kumbakonam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD).No.1194 of 2009

Dated:
19.12.2024