



S.A(MD)No.1041 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

WEB COPY

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**S.A(MD)No.1041 of 2005
and C.M.P(MD)No.6915 of 2005**

Arulmighu Sri Subramaniaswamy Thirukovil,
Thirupparamkundram,
Madurai South Taluk,
Madurai District,
By its Executive Officer. ... Appellant/Respondent/Defendant

Vs.

Thai Karthigai Mandagapadi Kattalai,
Thirupparamkundram by its Managing Trustee,
Having Office at No.3/209,
Surveyor Colony,
V.O.C. Street,
Madurai. ... Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 17.12.2004 made in A.S.No.68 of 2001 on the file of the I Additional Sub Court, Madurai, reversing the judgment and decree dated 17.01.2001 made in O.S.No.184 of 1991 on the file of the District Munsif Court, Thirumangalam.

For Appellant : Mr.S.Manohar

For Respondent : Mr.P.Ganapathi Subramanian



WEB COPY

S.A(MD)No.1041 of 20



JUDGMENT

This Second Appeal has been directed against the Judgment and decree, dated 17.12.2004 made in A.S.No.68 of 2001 on the file of the I Additional Sub Court, Madurai, wherein, the Judgment and decree, dated 17.01.2001 made in O.S.No.184 of 1991 on the file of the District Munsif Court, Thirumangalam, are reversed.

2.For the sake of convenience, the parties are referred to, as described before the trial Court.

3.Brief averments in the plaint are as follows:-

3.1.According to the plaintiff, the plaintiff is the hereditary Managing Trustee of Thaikarthigai Mandagapadi Kattalai, Tirupparankundram, attached to Sri Subramaniasamy Temple of Thirupparankundram. The present Managing Trustee of the plaintiff Mandagapadi is one Subramanian. There was one Ilayanatha Mudaliar who was the founder of the plaintiff's Mandagapadi. The said Ilayanatha Mudaliar had three sons. The said three sons had executed



a settlement deed on 01.09.1900 whereby certain charities were decided to be performed by them from and out of the income of the properties found in the said settlement deed. It is a specific endowment, and the properties belong to the plaintiff Mandagapadi. As already stated, the Endowment is a specific and private one and the public has no interest. As per the settlement deed, Dharmam were conducted from and out of the properties endowed for the purpose. Daily poojas were conducted for the Vinayagar Temple in item No.1 mentioned in the schedule hereunder. A copy of the said registered settlement deed dated 01.09.1900 is produced herewith as Document No.1. The plaintiff states that on account of some dissension between the sons of the eldest branch Subramania Mudaliar, a suit was filed in O.S.No.144 of 1943 on the file of the District Munsif Court, Madurai Taluk, Madurai. The said suit was compromised ultimately on 19.08.1944 whereby the parties to the suit gave up their contentions and re-dedicated themselves to perform Dharmas in a particular way.

3.2.While so, the Board of Commissioner, Hindu Religious Endowment, Madras took action in O.A.No.278 of 1948 under section 57 (1) of the Endowment Act. But on the objections made by the plaintiff's people, the matter was dropped. Again the Board of Commissioner, Hindu Religious Endowment, Madras initiated



proceedings under Section 57 of the Hindu Religious and Endowment Act once again in O.A.No.32 of 1950 and after enquiry and after issuance of notice to the plaintiff's family, the Commissioner finally passed a draft scheme in the said O.A.No.32 of 1950 on 27.06.1950. In pursuance of the Draft Scheme, notices were issued to the plaintiff's people to hand over the properties to the Managing Trustee, who was the Executive Officer of Sri Subramaniaswamy Temple. This order was passed by the Commissioner, vide order No.1172, dated 08.03.1951. The Board of Commissioners was vested with the power to nominate the trustee hereditary or non-hereditary as the Managing Trustee. In exercise of the powers vested in Clause-3 of the Scheme, the Board of Commissioner appointed the Executive Officer of Sri Meenakshi Sundareswar Temple, Madurai as the Managing Trustee of the specific Endowment for a period of two years vide order, dated 21.07.1951. The plaintiff's people, who were opposite and aggrieved over the unilateral action taken by the Board of Commissioner Hindu Religious Endowment, Madras, filed a suit in O.S.No.9 of 1952 before the District Court, Madurai to set aside the Scheme passed by the Board of Commissioner, Hindu Religious Endowment, Madras and for other reliefs. The plaintiff's people are aggrieved by the order passed by the Board of Commissioner because their wish was the Executive Officer



shall not be the Managing Trustee. A decree was passed in the suit in O.S.No.9 of 1952 on the file of the District Court, Madurai on 23.08.1954 with certain modifications in the draft scheme passed by the Board of Commissioner, Madras. Though the order dated 16.07.1951 was set aside, still the plaintiff was not satisfied with the modifications of the scheme, because the Executive Officer was sought to be substituted as the Managing Trustee. Aggrieved by the order, the plaintiff's people filed an appeal on the file of this Court in A.S.No.52 of 1955. In the abovesaid appeal, this Court has given a clear finding that the Board has the power to frame a scheme, but it has also held that the entire administration of the Trust may safely be left in the hands of the hereditary trustees themselves. The reason for this finding was that the Endowment was founded by certain individuals out of their family properties constituting themselves as hereditary trustees. So the Scheme was modified by this Court whereby the Executive officer was deleted as the Managing Trustee.

3.3.Clause-3 of the Scheme was substituted that 'the hereditary Trustee shall every year nominate one of themselves as the Managing Trustee as far as possible giving each of the 3 branches a turn in the management and in all other respects, clauses 4 to 15 except for the fact that the Executive Officer as Managing Trustee is



deleted, will stand good. Hence, as per the modifications made in the Scheme, the plaintiff's people have been nominating one of the persons from the three branches as the Managing Trustee and administering the Mandagapadi. It is needless to point out that as per Clause-5 of the Scheme, the Managing Trustee alone shall have the power to effect repairs, etc., in the suit properties. As per Clause-11 of the Draft Scheme, the Managing Trustee is the person to sue or to be sued on behalf of the specific Endowment. The plaintiff's people have been clearly following the terms of this order. The defendant herein was previously attached to Madurai Meenakshi Sundareswarar Koil Devasthanam. The defendant who is a party in all the previous court proceedings, is bound to honour the decree and he is not expected to bye-pass the decree. The defendant is not expected to do any repairs to any of the suit items or other items of the specific Endowment. The plaintiff's Managing Trustee alone has the power to do all the repairs in the properties of the specific Endowment.

3.4.While facts being so, the defendant herein called for tenders in his Roc. No. 7/91/A4 dated 01.03.1991 for doing pavement to the suit first item. A copy of the tender was also communicated to the plaintiff. This is the first time the defendant has embarked upon this type of illegal call for tenderers. By issuing the notice, the



defendant is going against the terms of this Court's order. The notice issued by the defendant is absolutely illegal and void. Immediately the plaintiff sent objections to the defendant in calling for tenders in respect of the suit properties. But inspite of this objection, again the defendant sent a reply on 27.03.1991. To the shock and surprise of the plaintiff, in the reply also the defendant reiterates without any respect for this Court's order, that the suit property belongs to the temple. In the said communication, the defendant also directed the plaintiff to produce the documents on 23.04.1991. The plaintiff had sent another objection to the defendant on 29.03.1991. The plaintiff also produced the documents to the defendant, but the defendant was not in a position to appreciate the claim made by the plaintiff. Though tenders have been called for, after receiving the tenders, the defendant has not opened the tender scenting legal action on the part of the plaintiff. The defendant is giving out that with the help of police, they will carry out all the repairs like putting pavement to the suit first item. There is absolutely illegal and high-handed on the part of the defendant. The defendant cannot throw into the air the rights of the plaintiff confirmed by this Court's order. The plaintiff alone has got the right to carry out the repairs in respect of the suit properties and other properties of the Specific Endowment. The plaintiff alone is in control and management



of the suit properties. The defendant has no possession over the suit properties. The defendant is also giving out that he is going to auction the right of selling the Salt, Jaggery, Pepper, Campher and Viboothi in the suit properties. It is needless to point out that the defendant has no right to lease out these rights. If such rights are leased out, then the lessees will completely dump their articles in the suit properties and that will infringe the right of the plaintiff in the suit properties. Therefore the plaintiff has filed the present suit to declare that the notice issued by the defendant in his Roc.No.7/91/A4 dated 01.03.1991 as illegal and null and void and consequently, for permanent injunction, restraining the defendant, their men and servant a from in any way interfering with the plaintiff's right and management in the suit properties in terms of the order passed in A.S.No.52 of 1955 of the file of this Court. Hence, the plaintiff has filed the said suit for the abovestated relief.

4.Brief averments in the written statement are as follows:

4.1.The defendant had filed a written statement stating that the suit is not maintainable either in law or on facts. This suit is liable to be dismissed in limine as the statutory notice under Section 80



C.P.C. was not at all issued to the concerned authorities more particularly to the Commissioner, Hindu Religious and Charitable Endowment Department, Tamil Nadu Government when particularly the plaintiff has categorically asserted that the suit mentioned tender notice was called for on the directions of the Commissioner, H.R & C.E Department, Tamil Nadu Government. The suit mentioned properties do not belong to the plaintiff's trust or to Ilayanatha Mudaliar or to his three sons. The plaintiff has no right, title, claim, interest or possession over the suit-mentioned properties. The suit mentioned properties are absolutely belonging to the defendant Thirukoil. The defendant stated that the counter affidavit filed in the injunction petition in I.A.No.516 of 1991 in the above suit and the documents marked on the side of the defendant Thirukoil in the said petition as part and parcel of this written statement for full and complete particulars of the defendant's case against the plaintiff. The allegation that on account of some dissensions between the sons of the eldest branch Subramania Mudaliar, a suit was filed in O.S.No.144 of 1943 on the file of the District Munsif Court, Madurai Taluk, Madurai and the said suit was compromised ultimately on 19.08.1944 whereby the parties to the suit gave up their contentions and re-dedicated themselves to perform Dharmas in a particular way is untenable and the same will not in any



way and in any manner binding on the defendant. The allegation that while the Board of Commissioner, Hindu Religious Endowment, Madras took action in O.A.No.278 of 1948 under section 57(1) of the Endowment Act, and on the objections made by the plaintiff's people, the matter was dropped is incorrect. The allegation that the Board of Commissioner, Hindu Religious Endowment, Madras initiated proceedings under Section 57 of the Hindu Religious and Endowment Act once again in O.A.No.32 of 1950 and after enquiry and after issuance of notice to the plaintiff's family, the Commissioner finally passed a draft scheme in the said O.A.No.32 of 1950 on 27.06.1950 will show clearly that this suit is not maintainable either in law or on facts.

4.2.The allegation that in pursuance of the draft scheme, notices were issued to the plaintiff's people to hand over the properties to the Managing Trustee, who was the Executive Officer of Sri. Subramaniaswamy Temple by order No.1172 dated 08.03.1951 also will clearly show that the suit claim is not maintainable either in law or on facts. The allegation that the plaintiff's people who were opposite and aggrieved over the unilateral action taken by the Board of Commissioner, Hindu Religious Endowment, Madras, by orders dated 08.03.1951 and 21.07.1951, have filed a suit O.S.No.9 of 1952 before



the District Court, Madurai and the said suit was decreed with certain modifications, in the draft scheme passed by the Board of Commissioner, Madras and the further allegation that aggrieved by this decree also, the plaintiff's people filed a second appeal before this Court in A.S.No.52 of 1955 and this Court have given a clear finding that the Board has got a power to frame a scheme, but it has also held that the entire administration of the trust may be left in the hands of hereditary trustees themselves will also prove that this suit is not maintainable in law as well as on facts and liable to be dismissed in limine with costs. The hereditary trustee shall every year nominate one of themselves as the Managing Trustee as far as possible giving each of the three branches a turn in the management and in all other respects, will show clearly that the person who has signed the plaint as the Managing Trustee has not at all pleaded that he is such a duly elected person as a Managing Trustee and consequently is competent to file and prosecute this case and hence on that ground also this suit is liable to be dismissed with costs. The defendant submits that it is the defendant Thirukoil who is Managing the suit properties effecting repairs and keeping it in good condition and is in possession and enjoyment of the same without any interruption whatsoever as the absolute owner of the same to the knowledge of the plaintiff, their



ancestors and to the knowledge of the entire world continuously, openly and peacefully all these years. The defendant has put up an electric connection in the suit properties and is paying the electric charges. The plaintiff nor his predecessors or anyone representing the plaintiff have ever effected repairs in the suit properties.

4.3.The defendant submits that the suit properties are the absolute properties of the defendant Thirukkcoil and as such it alone has got the legal right to do the necessary repairs. The defendant submits that the suit two items are properly maintained and are kept in good repair by the defendant Thirukkcoil till this date to the knowledge of the plaintiff trust and the persons who claimed to be in management of the said trust throughout all these years. The defendant submits that neither the person who has signed this plaint or any of his relations or predecessors have ever raised any objections for the management of the suit properties by the defendant and effecting repairs to the same and as such the plaintiff's trust is estopped from questioning the above said right of the defendant in any manner whatsoever. The allegation that while facts being so, the defendant herein called for tenders in his Roc.No.7/91/A4 dated 01.03.1991 for doing pavement to the suit first item and this is the first time the defendant has embarked upon this type of illegal calling for tenderers is mischievous, misleading, besides



being false, fraudulent and untenable. The allegation that the notice issued by the defendant is absolutely illegal and void is false. The allegation that immediately the plaintiff sent objections to the defendant on 13.03.1991 challenging the right of the defendant in calling for tenders in respect of the suit properties but inspite of this objection, again the defendant sent a reply on 27.03.1991 stating that the suit property belongs to the temple without any respect for the Court's order is meaningless and false. The allegation that in the said communication, the defendant also directed the plaintiff to produce the documents on 23.04.1991 and the plaintiff had sent another objection to the defendant on 29.03.1991 and the plaintiff also produced the documents to the defendant, but the defendant was not in a position to appreciate the claim made by the plaintiff is false and misleading. The plaintiff has not at all complied with the above said defendant's directions and has not met the defendant Thirukkoil Executive Officer or any of the defendant Thirukkoil employees and has also not produced any documents to substantiate the plaintiff's contentions till date. The said facts will disclose that the plaintiff has no right whatsoever to claim the relief made in this suit against the defendant.



4.4.The defendant submits that the defendant Thirukkoil is a public religious and charitable managed by the Board of Trustees and the defendant Thirukkoil Executive officer has to carry out the resolution passed by the Board of Trustees subject to the approval of the Deputy Commissioner and Commissioner of the Hindu Religious and Charitable Endowment Department, Tamilnadu Government and has to act as per the rules and regulations and provisions of the Hindu Religious and Charitable Endowment Act and the defendant Thirukkoil is acting properly, legally, and correctly as stated above and hence the allegations to the contrary stated in the plaint are false, misleading and untenable. The allegation that the defendant is also giving out that he is going to auction the right of selling the salt, pepper, jaggery, camphor and Vibuthi in the suit properties is also a continuation of the ingenuous, evil, cunning scheme set up by the plaintiff to grab the defendant Thirukkoil property by any means. The defendant submits that it has been auctioning the said right for more than four decades and enjoying the said rights and while it is so the plaintiff without any regard for Truth and respect for law has made such false and misleading allegations knowing fully well that the same are false and as such the suit is liable to be dismissed in limine with exemplary costs. The defendant submits that the main relief claimed by the plaintiff is



for declaring that the notices issued by the defendant in Roc.No. 7/91/A4 dated 01.03.1991 calling for tenders for effecting repairs in the floor of Lakshmi Theertham Mandapam as illegal, null and void and consequently for passing a permanent injunction, restraining the defendant, their men and servants from in any way interfering with the plaintiff's right and management in the suit properties in terms of the order passed in A.S.No.52 of 1955 on the file of this Court. The defendant submits that the relief claimed in the injunction petition as well as the consequential relief of permanent injunction claimed in the above suit can be claimed only when the plaintiff prays for a relief of declaration that the suit properties are absolutely belonging to the plaintiff. The defendant submits that in the absence of such a declaratory relief that the plaintiff is the owner of Lakshmi Theertham Mandapam and the entire area near it as well as Thirukkulam as described in the suit schedule of properties 1 and 2, the relief of permanent injunction claimed in the suit and the relief of temporary injunction regarding the two items of suit properties cannot be granted at all in law as well as on facts.

4.5.The defendant submits that the plaintiff who is conscious of the fact that the plaintiff has no right, title, claim, possession or interest over the suit properties has not claimed the



declaratory relief in the above suit, even though the defendant in its registered reply notice dated 02.04.1988 to the plaintiff's registered suit notice dated 25.05.1985 has categorically stated that the plaintiff and three others have no right whatsoever over their 25.05.1985 notice mentioned property namely the Mandapam in which the Vinayagar Idol is installed in their notice. The defendant submits that the plaintiff is fully aware that if he properly and correctly files this false and vexatious suit to suit his false case, then he has to pray for the relief of declaration of title to the suit properties to claim the vexatious relief of permanent injunction against the defendant regarding the two items of suit properties has deliberately not done so since if he made such a prayer in the above suit for declaration of title to the suit properties then the above suit cannot be filed on the file of this Court since the value of the suit properties which are worth more than three crores of rupees and the same will be exceeding over and above the Court's pecuniary jurisdiction. The defendant submits that in the circumstances the plaintiff ingenuously has prayed for a declaration that the notice issued by the defendant in Roc. No. 7/91/A4 dated 01.03.1991 as illegal, null and void that is for declaring that the notice issued by the defendant calling for tenders to effect repairs in the flooring of Lakshmi Theertham Mandapam which is situated north of



the Mandapam wherein the Vinayagar Idol is installed. The defendant submits that when the plaintiff has no right, title, claim, interest or possession over the said Lakshmi Theertham Mandapam, the plaintiff cannot claim the said relief of permanent injunction against the defendant Thirukkcoil. The defendant submits that even for praying for a declaration that the said notice relating to Lakshmi Theertham Mandapam as illegal, null and void, the plaintiff should first claim the relief that the plaintiff is the absolute owner having title over the same.

4.6.The defendant submits that when a false claim made under the registered notice dated 25.05.1985 was categorically rejected by the defendant and categorically stated to the plaintiff and 3 others that the defendant Thirukkcoil alone has absolute right over the said notice dated 25.05.1985 mentioned properties, without a prayer for declaration of title over the suit properties this suit is liable to be dismissed with exemplary costs. The defendant submits that the relief of permanent injunction claimed by the plaintiff in the above suit is having for wider in nature and character than the relief of declaration itself and as such the injunction relief claimed is not maintainable either in law or on facts. The plaintiff has to properly claim the relief of declaration of title to the suit properties to get this nature of temporary injunction itself against the defendant's Thirukkcoil even according to



the false case of the plaintiff. The defendant submits that the plaintiff has nowhere averred whether he was elected as a Managing Trustee of the Thai Karthigai Mandagapadi Kattalai, Thirupparankundram attached to the defendant Thirukkoil and when he was so elected and the period for which is so placed etc. in the plaint and whether he is competent to file the above suit as Managing Trustee against the defendant Thirukkoil and hence the suit is liable to be dismissed on that ground also. The plaintiff has not submitted the genealogy particulars in the plaint to show how he became entitled to be the Managing Trustee for the Thai Karthigai Mandagapadi Kattalai etc., and whether the trusteeship is claimed by the plaintiff and other persons as per the provisions of the scheme and whether he has duly informed the H.R.& C.E., Department as specifically provided under the said scheme. The defendant submits that in furtherance of their cunning, evil ingenuous scheme the plaintiff to grab the defendant Thirukkoil properties has come forward with the suit without any basis whatsoever against the defendant Thirukkoil. The defendant submits that document No.2 dated 30.09.1950 the order passed in O.A.No.32 of 1950 does not disclose that the suit properties belong to the plaintiff. The defendant submits that the document dated 23.08.1954 regarding O.S.No.9 of 1952 does not disclose that the suit properties belong to the plaintiff and likewise,



the document dated 09.08.1957 the certified copy of the judgment and decree passed in A.S.No.52 of 1955 on the file of this Court also does not disclose that the suit properties belong to the plaintiff.

4.7.The defendant submits that the suit document Nos.3 and 4 also do not disclose that the suit properties belong to the plaintiff. The defendant submits that in the circumstances only the plaintiff has filed the suit without praying for a declaration of title that the plaintiff is the absolute owner of the suit properties and hence consequently the defendant Thirukkoil has no authority at all to call for the tender to repair the Lakshmi Theertham Mandapam situate on the west of the defendant Thirukkoil Thirukkulam popularly known as Lakshmi Theertham Mandapam which is incorrectly described in item No.2 in the schedule of properties in the plaint. The defendant submits that the plaintiff has no right, title, claim or interest whatsoever over the suit items and hence when the plaintiff has no right whatsoever to claim the relief of declaration that the notice issued by the defendant calling from tenders to repair the flooring in the Lakshmi Theerthan Mandapan is illegal, null and void. The purpose of the endowment is set out in the Appendix to the scheme framed by the Board such Mandagapadi Puja, Naivadhyam, Abishegam etc., in the Mandapam attached to Sri. Subramanianwamy Thirupparankundram on the



Krithigai Day, daily neivedhyam to the Vinayagar installed in the above Mandapam etc. Hence the relief of declaration and injunction against the defendant Thirukkoil in terms of the order passed in A.S.No.52 of 1955 on the file of this Court is meaningless, false and untenable. The defendant submits that the above said facts will disclose that the Mandapam in which the Vinayagar Idol is installed itself belongs to the defendant Thirukkoil While it is so the plaintiff with ulterior motives had attempted to lay a false claim by issuing a registered notice dated 25.05.1985 sent through their Advocate by issuing the notice in the name of the plaintiff and 3 others claiming that they are thereby requested to pass necessary orders to the temple authorities not to interfere with his client alleged false possession and enjoyment of the notice mentioned property. In the suit notice, the plaintiff and the said others have falsely claimed that they are proposing to put up a Kalyana Mandapam on the southern side of the said notice mentioned property. They further falsely claimed that the northern side of the said notice mentioned property remaining vacant and it is Mandapam. The defendant submits that the above said facts will disclose the evil design of the plaintiff and his men to completely block the way from the defendant Thirukkoil to Lakshmi Theertham Mandapam by any means if possible. The defendant submits that from time immemorial the



devotees coming to the defendant Thirukkoil have the only way of access to Lakshmi Theertham from the defendant Thirukkoil Thiruvatchi Mandapam is by going through the pathway of the Thirukkoil through the Thirukkoil Lakshmi Theertham Mandapam which is now falsely claimed by the plaintiff as their own.

4.8.The defendant has sent a registered reply notice dated 02.04.1986 through its Advocate to the plaintiff and three others categorically stating that the plaintiff and three other persons mentioned in the said notice have no right whatsoever over the said notice mentioned property and the defendant Thirukkoil is in possession and enjoyment of the said notice mentioned properly openly, peacefully, continuously well over the statutory period and thus the defendant has perfected its right over the said notice mentioned property by adverse possession and prescription also. The defendant had also stated that the plaintiff and the said three persons objections to the defendant Thirukkoil auctioning the right of selling salt and pepper in the said notice mentioned property as absolutely illegal and false and that the above said persons will stop to any level to make an unlawful gain at the expense of the defendant Thirukkoil besides the same is inconsistent and mutually contradictory with the other allegations in the notice and since for more than four decades the



defendant Thirukkcoil is by open wide advertised public auction legally gives the right to sell jaggery, salt, pepper, camphor, holy ash and fried rice in a portion in the Lakshmi Theertham Mandapam in the said notice mentioned property and realising the income from it and the lessees are in possession and enjoyment of the said right. The defendant submits that on receiving the said registered reply notice dated 02.04.1986 the plaintiff and the above three persons kept quiet. The defendant submits that the plaintiff herein has sent a petition dated 13.03.1991 to the defendant with a copy to the Deputy Commissioner, H.R.& C.E., Department, Madurai stating that the defendant has called for a tender for repairing the stone floor in Lakshmi Theertham Mandapam and the defendant has no right to do so by falsely claiming that since the plaintiff has got absolute right over the same as the said Mandapam also belongs to Thai Karthigai Mandagapadi Kattalai. The plaintiff has also claimed that they alone have right over the same and for management and for keeping them in good condition by effecting necessary repairs. The plaintiff in the said petition has stated that the above said tender may be cancelled.

4.9.The defendant in its letter dated 27.03.1991 Na.Ka.No. 4933/85/AC has stated categorically that the above said Mandapam mentioned by the plaintiff belongs to the defendant Thirukkcoil and



requested the plaintiff to come to the Thirukkoil Office on 23.04.1991 with all the documents in support of his claim failing which the plaintiff's above said request will be rejected and then the plaintiff had kept quiet. The defendant submits that in the circumstances the plaintiff has come forward with the suit with ulterior motives to cause loss and irreparable injuries to the defendant as well as to the General Public more particularly the devotees of "Lord Muruga". The defendant submits that the declaration relief claimed in the above suit has nothing to do with the suit item No.2 that is, the defendant Thirukkoil's Thirukkulam which is called Lakshmi Theertham. The defendant submits that the above said facts will disclose that with ulterior motives the plaintiff has ingenuously without any basis whatsoever included suit item No.2 even in the above false, vexatious suit under the guise of getting a relief for declaration which even according to the plaintiff's claim relates only to a portion of suit item No.1. The defendant submits that the above said facts will disclose that the plaintiff's attempt to lay a false claim over the defendant Thirukkoil properties and to get some other if possible by suppressing the material facts and suggesting the false facts in this Court which are even according to the plaintiff's documents are baseless, false and untenable. The allegation that the plaintiff has filed the above suit for declaration and permanent



injunction against the defendant in respect of the suit properties and craves leave of the Court to treat the contents of the plaint as part and parcel of his affidavit filed in the injunction petition is a deliberate falsehood. The defendant submits that the plaintiff has not prayed the relief for declaration of the plaintiff's title over the suit properties at all as stated above in detail.

4.10.The allegation that the materials which were placed before the Court along with the plaint will clearly disclose that the plaintiff's claim of absolute right, title as well as possession over the suit properties is false, misleading and untenable. The defendant submits that the documents produced by the plaintiff do not disclose anywhere, that the plaintiff has got absolute right, title as well as possession over the suit properties but on the contrary the said documents disclose that it is the defendant Thirukkoil who has got right, title, absolute possession over the properties. The defendant submits that the action of the defendant Thirukkoil calling for tenders for repairing the flooring of Lakshmi Theertham i.e. Lakshmi Theertham Mandapam at the cost of Rs.10,700/- will not in any way and in any manner affect anybody. The defendant submits that the relief of temporary injunction or status quo is granted only when the suit property is in danger of being wasted, damaged or alienated by



any party to the suit or wrongfully sold in an execution of decree etc.

The defendant submits that so the repairing of the flooring in a Mandapam in the suit property does not in any way give any right to the plaintiff whatsoever even assuming without admitting that the plaintiff has got any semblance of right even according to his false allegations itself. The defendant has also produced the judgment and decree and plan in O.S.No.4 of 1920 on 25.08.1923 by the 1st Additional Subordinate Judge Court of Madurai in the suit filed by Madurai Thirupparankundram and Devasthanam through Receiver - Muthu, K.R.V.Alagappa Chettiar against the Secretary of State for India in Council through the Collector of Madura, The President, Taluq Board Madras, and 11 others for declaration, injunction and recovery of possession to substantiate the defendant's Thirukkoil case against the plaintiff.

4.11.The defendant has submitted the photographs showing the Thirukkoil function conducted in the said Lakshmi Theertham Mandapam and also the photographs showing the said Mandapam where in the Thirukkoil lessees are selling salt, pepper, jaggery, fried rice, and Vibuthi and camphor to substantiate the defendant's Thirukkoil case. The defendant has submitted that the Thirukkoil records would show the repair works done by the defendant



Thirukkoil in Thirukkulam suit item No.2 like removing silts in Thirukkulam and also the repairs done on all four side walls of the said Thirukkulam to substantiate the defendant Thirukkoil case. The plaintiff has no cause of action to file the suit against the defendant. The causes of action mentioned in the suit are imaginary, false and untenable. The plaintiff has not properly valued the suit and has also not paid the proper Court Fee for the same. The defendant submits that if the suit is properly valued as claimed by the plaintiff for the two suit items then the suit valuation will be more than three crores of rupees which will result in this suit is not maintainable in the Court since it will exceed the pecuniary Jurisdiction of the Court.

5.Before the trial Court, on the side of the plaintiff, one Subramanian was examined as P.W.1 and Exs.A1 to A97 were marked. On the side of the defendant, one Sankaralingam was examined as D.W.1 and Exs.B.1 to B.46 were marked.



6.On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.

7.Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff herein as appellant, had filed an Appeal Suit in A.S.No.68 of 2001 on the file of the first Appellate Court.

8.The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, has allowed the appeal and set aside the Judgment and decree passed by the trial Court.

9.Challenging the said Judgment and decree passed by the Appellate Court, the present Second Appeal has been preferred at the instance of the defendant as appellant.



10. At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

'(i) In view of the law laid down by the Division Bench of this Court reported in 2004(3) Law Weekly 529 by holding that the trustees alone can represent the deity, whether the suit filed against the Executive Officer of the Temple is maintainable?

(ii) Whether the learned Judge is right in granting a relief in favour of the plaintiff/respondent, when admittedly, the respondent-Kattalai is a Specific Endowment within the meaning of Section 6(19) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 22 of 1959 which is a Religious Institution under Section 6(18) of the TN HR & CE Act, in view of the provisions of Section 108 of the Act, the civil Court has no jurisdiction to adjudicate the claim made in the suit?

(iii) In any event, whether the learned Judge is right in not taking into account of the stone inscription mentioned in Ex.B.2 which was referred to as early as in 773 A.D to show that Thirukuulam was dedicated to the appellant-Temple?'



WEB COPY

S.A(MD)No.1041 of 20



11.The learned counsel appearing for the appellant/defendant would submit that the learned Judge ought to have noted that the notice impugned under challenge in the suit has been issued only by the Trustees of the Appellant-Temple. In any event, even on merits, the learned Judge ought to have noted that when the title of the respondent/plaintiff has been denied by the Appellant-Temple, without seeking any declaratory relief, the consequential relief of injunction prayed for in the suit is not maintainable and even the ancillary relief prayed for in the suit is beyond the scope of the main relief. The learned Judge erred in allowing the Appeal of the Respondent-Kattalai, forgetting the fact that admittedly, the Respondent-Kattalai being is a Specific Endowment termed as a Religious Institution within the meaning of Section 6(18) of the T.N. H.R & CE. Act. While so, the Civil Court has no jurisdiction, in view of the provisions of Section 108 of the T.N. H.R. & C.E Act. The learned Judge failed to note that under Section 108 of the T.N. H.R. & C.E. Act, no suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any court of law except under and in



conformity with the provisions of this Act. The learned Judge erred in holding that Respondent/Plaintiff is entitled to manage the suit properties on the basis of the scheme framed for the Respondent-Specific Endowment. The learned Judge ought to have noted that in the earlier proceedings which culminated in A.S.No.52 of 1955 on the file of this Court, the Plaint Schedule Properties viz., Thirukulam and Mandapam were not the subject matter and in any event, the earlier scheme was modified only in respect of the management of the Specific Endowment. The learned Judge ought to have noted that the Mandapam situated within the temple premises is being used for the performance of Mandagapadi in the Appellant-Temple during festive occasions. The learned Judge ought to have noted that excepting the performance of Mandagapadi in the suit Mandapam attached to the Appellant-Temple, the Respondent/Plaintiff has no other right or claim in the Mandapam attached to the Appellant-Temple. The learned Judge ought to have noted that in any event, the property endowed for the performance of Kattalai cannot be held to be transferred in trust to the trustee. But it vests in the deity itself. While so, the trustees of the Respondent-Kattalai cannot maintain a suit for Permanent Injunction against the deity itself. The learned Judge ought to have noted that admittedly, the Plaint Schedule Properties viz., Thirukulam and



Mandapam were dedicated to the Appellant-Temple and consequently, the Respondent-Kattakai cannot claim as owner for the purpose of seeking Injunction against the Religious Institution and prayed for allowing the Second Appeal.

12.The learned counsel appearing for the respondent/plaintiff would submit that the first Appellate Court has rightly allowed the appeal and prayed for dismissal of the Second Appeal.

13.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and also perused the records carefully.

14.According to the plaintiff, the plaintiff is the hereditary Managing Trustee of Thaikarthigai Mandagapadi Kattalai, Thirupparankundram attached to Subramaniasamy Temple. The present Managing Trustee of the plaintiff Mandagapi is one 'Subramanian'. One Ilayanatha Mudaliar had three sons and the said



three sons executed a settlement deed on 01.09.1900, whereby certain charities were decided to be performed by them from and out of the income of the properties found in the said settlement deed. It is a specific endowment. Daily poojas were conducted for the Vinayagar Temple in item No.1 mentioned in the suit schedule properties. Due to some dispute between the sons of the eldest branch Subramania Mudaliar, a suit was filed in O.S.No.144 of 1943 on the file of the District Munsif Court, Madurai and the said suit was compromised. While so, the Board of Commissioner, Hindu Religious Endowment, Madras, took action in O.A.No.278 of 1948 under Section 57(1) of the Endowment Act, but on the objection made by the plaintiff, the matter was dropped. Again the Board of Commissioner, Hindu Religious Endowment, Madras, initiated proceedings in O.A.No.32 of 1950 and in the said application, the Commissioner finally passed a draft scheme, dated 27.06.1950. In pursuance of the draft scheme, notices were issued to the plaintiff to hand over the properties to the Managing Trustee, who was the Executive Officer of Sri Subramaniaswamy Temple, which was passed by the Commissioner, vide order dated 08.03.1951. In exercise of the powers vested in Clause-3 of the Scheme, the Board of Commissioner appointed the Executive Officer of Sri Meenakshi Sundareswar Temple, Madurai as the Managing Trustee



of the specific endowment for a period of two years, vide order, dated 21.07.1951. Aggrieved over the same, the plaintiff filed a suit in O.S.No.9 of 1952 on the file of the District Court, Madurai to set aside the scheme passed by the Board of Commissioner, Hindu Religious Endowment, Madras. A decree was passed in the suit in O.S.No.9 of 1952 on the file of the District Court, Madurai, dated 23.08.1954 with certain modifications in the draft scheme. Aggrieved over the same, the plaintiff filed an appeal in A.S.No.52 of 1955 on the file of this Court and this Court has given a clear finding that the Board has the power to frame a scheme, but the scheme was modified, whereby the Executive Officer was deleted as the Managing Trustee. The hereditary trustee shall every year nominate one of themselves as the Managing Trustee giving each of three branches a turn in the management. While so, the defendant called for tender in Roc.No.7/91/A4, dated 01.03.1991 for doing pavement to the suit first item. A copy of the objection was sent by the plaintiff on 13.03.1991. In spite of the objection, the defendant sent a reply on 27.03.1991. The defendant also directed the plaintiff to produce the documents on 23.04.1991. The plaintiff also produced the documents to the defendant, but the defendant was not in a position to appreciate the claim made by the plaintiff. The plaintiff alone has got right to carry out the repairs in



respect of the suit properties and other properties of the specific endowment and the plaintiff alone is in control and management of the suit properties. The defendant intends to auction the right to sell the salt, jaggery, pepper, camphor and viboothi in the suit properties.

15. According to the defendant, the suit mentioned properties do not belong to the plaintiff's trust or to Ilayanatha Mudaliar or to his three sons. The plaintiff has no right, title, claim, interest or possession over the suit mentioned properties. The suit mentioned properties are absolutely belonging to the defendant Thirukoil. The allegation that the plaintiff's people who were opposite and aggrieved over the unilateral action taken by the Board of Commissioner, Hindu Religious Endowment, Madras, by orders dated 08.03.1951 and 21.07.1951, have filed a suit O.S.No.9 of 1952 before the District Court, Madurai and the said suit was decreed with certain modifications, in the draft scheme passed by the Board of Commissioner, Madras and the further allegation that aggrieved by this decree also, the plaintiff's people filed a second appeal before this Court in A.S.No.52 of 1955 and this Court have given a clear finding that the Board has got a power to frame a scheme, but it has also held that the entire administration of the trust may be left in the hands of



hereditary trustees themselves will also prove that this suit is not maintainable in law. The defendant Thirukoil who is Managing the suit properties effecting repairs and keeping it in good condition and is in possession and enjoyment of the same without any interruption. The defendant has put up an electric connection in the suit properties and is paying the electric charges. The plaintiff nor his predecessors or anyone representing the plaintiff have ever effected repairs in the suit properties. The defendant submits that in the absence of such a declaratory relief that the plaintiff is the owner of Lakshmi Theertham Mandapam and the entire area near it as well as Thirukkulam as described in the suit schedule of properties 1 and 2, the relief of permanent injunction claimed in the suit and the relief of temporary injunction regarding the two items of suit properties cannot be granted at all in law as well as on facts.

16. On going through the materials available on record, it is seen that the Appellate Court has stated that as per the order passed in A.S.No.52 of 1955, the defendant cannot issue tender on their own and if at all any repair is to be made to the Mandapam, the plaintiff has to repair the same as a Managing Trustee and stated that it is very clear that the executive officer cannot function as managing trustee of



the endowment. The defendant cannot agitate the same and accordingly, the court cannot grant or confer any right of management for the plaintiff to be set aside and accordingly, the plaintiff's are entitled to repair. Further, as per Ex.A.42, the plaintiff has sought for estimation from the defendant, which clearly shows that the plaintiff was in possession of the property till 1999 and the Judgment and Decree passed in A.S.No.52 of 1955 is final and accordingly, the Executive Officer cannot perform as a Managing Trustee. Hence, the same has to be held against the defendant. The Appellate Court further observed that the disputed schedule of property is Thirukulam and Thirukarthikai Mandapam adjacent to Subramaniaswamy Devasthanam. According to the plaintiff, the same belongs to them by way of endowment. As per Ex.A.13-the gift deed, the same was constructed by one Anaiyappa Mudaliyar prior to 1542. Hence, they are not seeking the right for declaration and seeking right to manage the said Thirukulam and Mandapam. According to the Appellate Court, the scheme to be made by the Board and administration to be done by the hereditary trustee and in view of the above, tender called for by the defendant is not appropriate and the same was set aside by the Appellate Court.



17.Further, on going through the averments in the plaint as well as earlier documents, it could be seen that the plaint schedule properties in respect of item Nos.1 & 2 are Mandapam and Thirukukam. P.W.1 in his cross-examination stated that Mandagapadi is being performed in the Mandapam attached to the appellant/defendant-Temple and Thirukulam does not belong to the respondent/plaintiff. It is also found that the Thirukulam does not belong to the plaintiff as there is a stone inscription available wherein it has been clearly stated that the renovation was made by one Aaniyappa Mudaliyar before 1542 A.D. When that being the case, the trial Court rightly held but the lower appellate Court was of the view that as if the plaint schedule property belonged to the plaintiff and a decree for permanent injunction was granted which has to be set aside. The plaintiff Kattalai is the specific endowment termed as a religious institution within the meaning of Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowment Act. The civil Court has no jurisdiction to adjudicate the claim made in the suit, which has been wrongly allowed by the Appellate Court.

18.When the title of the plaintiff has been denied by the defendant and the consequential relief of permanent injunction is



beyond the main relief has to be decided. When the stone inscription mentioned in Ex.B.2 which is referred to as 773 A.D would show that the Thirukulam was dedicated to the defendant Temple by some other person and not the plaintiff's family as alleged as if dedicated to the defendant Temple.

19.It is to be noted that the executive officer of the defendant Temple can represent the deity and it could be seen that the defendant Temple has made its point clear that the property belongs to them and the plaintiff cannot claim any right over the property and the plaintiff has got right only for performing ritual offering of the said Mandagapadi ie., specific endowment and the Mandapam is attached to the defendant Temple and specifically endeavoured that what they have to do on that day by performing the rituals. That being the case, there cannot be anything more added by the Court below without any jurisdiction. The properties belonging to the said Anaiyappa Mudiliyar and the plaintiff's family are allowed to maintain it and from the income, they had to do the Mandagapadi pooja for the Thai karthigai festival and to do pooja for the Pillaiyar deity alone has been mentioned and further would not give any right over the Mandapam in which the said deity is situated and the Thirukulam of Temple. Further,



in Ex.A.73 ie, Thirupparamkundram Sthalapuranam, there is a reference about the stone inscription, in which, it is stated that Pandia Raja Paranthaga Nedunchezhian Senathipathi Samantha Beeman had dedicated Thirukulam to the defendant-Temple which has been reflected under Ex.B.2 even in the year 773 A.D and the plaintiff's cannot claim such right. The right given is only to the plaintiff for using the Temple premises doing performance of Mandagapadi and other said occasions. The plaintiff will have no other right to claim in the defendant Temple as per the Judgment in A.S.No.55 of 1955 and judgment in A.S.No.55 of 1955 it only talks about the rights given to the plaintiff by the modified scheme and that the right cannot be an absolute right for claiming ownership of the property. As it is seen that the plaintiff has right only as an endowment and nothing more in the suit property. The Mandapam and Lakshmi Theertham are situated inside the Temple of the defendant and the plaintiff cannot claim any right in respect of 'Temple Tank' and the settlement deed which dedicates is dated 01.09.1900. Even in the year 773 AD, the stone inscription states that the Theertham is in existence and as per Ex.B.2 they only vest with the Temple.



S.A(MD)No.1041 of 20

20.As per the settlement deed dated 18.09.1900, it is clear and it is as follows:

WEB COPY

“ மதுரை தாலுகா, திருப்பரங்குன்றம், ஸ்ரீஆண்டவர் சுப்பிரமணியசுவாமி கோவிலுக்கு அடுத்த கீழ்புரத்தில் எங்கள் முன்னோர்களில் ஒருவரான ஆணையப்ப முதலியார் அவர்களால் திருக்குளமும் அதன் மேல் கரையில் கல் மண்டபமும் கட்டி சாலிவாகன சகாப்தம் 1642-ம் வருடத்துக்கு மேல் செல்லாநின்ற சார்வரி வருடம் பங்குனி மாதம் 3ம் தேதி புதன்கிழமை உத்திர நட்சத்தன்று மேற்படி மண்டபத்தில் ஸ்ரீவிநாயகர் பிரதிஷ்டை செய்து கும்பாபிஷேகம் செய்திருக்கின்ற மேற்படி மண்டபத்தில் வருடம்தோறும் தவறாமல் நடத்தி வரும் தை கார்த்திகை உற்சவம் தேர் மண்டபம் தர்மத்தையும்“

21.On a careful reading of the settlement deed, dated 18.09.1900 would show that the plaintiff does not have any statutory right in the suit schedule properties. Actually on 27.05.1950 in O.A.No. 32 of 1950, the Executive Officer of Arulmigu Meenakshi Sundareshwarar Temple was appointed as Trustee of the Kattalai as per the draft scheme by the Commissioner and in O.S.No.9 of 1952, dated 23.08.1954, the District Court, Madurai had modified the said scheme and in A.S.No.52 of 1955, dated 08.08.1959, in Clause – 3 executive officer was alone deleted and the same was to be managed by one of the family members of the said endowment. In A.S.No.52 of 1955, the entire proceedings are for the settlement of the scheme when the HR &



CE Act and the question of ownership do not arise in respect of the suit properties and the Kattalai is a 'specific endowment' and hence it is governed under Section 6(19) of the Tamil Nadu Act 22 of 1959 and even in the 'Sthala puranam' of the defendant Temple 'Lakshmi Theertham' forms part of the Temple and the suit is barred under Section 108 of the Tamil Nadu Act 22 of 1959.

22.As the Tank belongs to the Temple and the plaintiff has no locus standi to claim right over the Tank and state that he will maintain the said Tank and other Madapadam is not accepted that the appeal has to be considered in favour of the defendant and the plaintiff claim to be rejected.

23.On going through the said document-trust deed it could be seen that all the Kattalai are to be performed under the supervision of the Devasthanam officers. If at all if there is any amount has been exceeded or reduced the same can be done with the permission of the Devasthanam officials. That being the case, the plaintiff has got no right to claim such a right as claimed and the substantial questions of law are answered accordingly.



S.A(MD)No.1041 of 20

24.At this juncture, the learned counsel appearing for the plaintiff filed a memo, dated 21.10.2024 stating that the plaintiff would abandon his claim against the defendant and appropriate orders may be passed in the appeal. As it is seen that the plaintiff has got no right over the property, the tender can be issued by the Temple authorities under the HR & CE Act. The plaintiff cannot claim right over the suit properties of the Temple and the plaintiff has got right only for doing the Mandagapadi as per the settlement deed executed in the year 1900. The plaintiff's right for performing the said Mandagapadi is upheld and shall not be disturbed by the authorities unnecessarily.

25.In the result, the Second Appeal stands allowed without costs and the Judgment and decree, dated 17.12.2004 passed in A.S.No.68 of 2001 on the file of the I Additional Sub Court, Madurai is set aside and the Judgment and decree, dated 17.01.2001 passed in O.S.No.184 of 1991 on the file of the District Munsif Court, Thirumangalam, is restored. Consequently, connected Miscellaneous Petition is closed.

23.10.2024

Index : Yes/No
Internet : Yes/No
ps

42/44



S.A(MD)No.1041 of 20

WEB COPY

To

- 1.The I Additional Sub Court,
Madurai.
- 2.The District Munsif Court,
Thirumangalam.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.1041 of 20

V.BHAVANI SUBBAROYAN, J.

ps

Judgment made in
S.A(MD)No.1041 of 2005

23.10.2024