



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

W.A(MD)No.841 of 2019

The Tirunelveli Tamil (Strict) Baptist Trust Society,
Rep by its Secretary,
E.Benjamin Franklin,
No.2, Manthithoppu Road,
Kovilpatti Town,
Thoothukudi District.

... Appellant

.Vs.

- 1.The District Collector,
Thoothukudi,
Thoothukudi District.
- 2.The District Revenue Officer,
District Collectorate Campus,
Thoothukudi,
Thoothukudi District.
- 3.The Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.



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4.The Special Thasildar (Town Survey and Settlement)

Kovilpatti,
Thoothukudi District.

5.Tamil Baptist Mission Church Trust,
Rep. by its Secretary,
S.Asir Thambiraj,
No.97, Tamil Baptist Mission Church,
New Road,
Kovilpatti, Thoothukudi District.

6.The Municipal Commissioner,
Kovilpatti Municipality,
Kovilpatti,
Thoothukudi District.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to set aside the order passed by this Court in W.P.(MD)No.19687 of 2018, dated 10.12.2018.

For Appellants	: Mr.M.Ajmal Khan Senior Advocate for M/S.Ajmal Associates
For Respondents	: Mr.D.Sachikumar Additional Government Pleader for R1 to R4
	: Mr.P.Srinivas for R6
	: Mr.V.Vijay Shankar for R5



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JUDGMENT

(Order of the Court was made by **K.K.RAMAKRISHNAN,J**)

The appellant society is called as Tirunelveli Tamil (Strict) Baptist Trust Society, Tuticorin and the same is registered under the society registration Act. It has its own bylaws and also have number of properties. The said society was administrated by the governing body selected as per the by law. The said society is the original society (herein after called as “original society”). The 5th respondent herein made a rival claim in the name of Tamil Baptist Mission Trust represented through his secretary S.Asir Thambiraj (herein after called as “rival society”). The said S.Asir Thambiraj's father is J.N.Stephen Ambrose. He and other persons acted as members of the governing body members of the said original society. They committed some illegalities affecting the function of the original society. Therefore, they were removed from the society. Thereafter, they filed suit in O.S.No.79 of 1976 on the file of the Learned District Munsif, Kovilpatti seeking relief of permanent injunction restraining some of the members of the original society from interfering in management of the original society and its property both movable and immovable as a governing body of the



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said society. The suit was dismissed declining their relief by order dated 30.09.1981. Thereafter, they were in illegal occupation of the society's property. Therefore, the ejectment suit in O.S.No.155 of 1985 had been filed by the appellant society against the said Stephen Ambrose on the file of the Learned Principal District Munsif, Kovilpatti. In the said suit Stephen Ambrose disputed the title of the society. The learned trial judge framed the specific issue “*whether the property belongs to the appellant society*” along with other issues. After detailed discussion on the basis of the documents Ex.A1 to Ex.A24 and Ex.B1 to Ex.B9 and the evidence of the said Stephen Ambrose, decreed the suit with direction to hand over the possession of the property with decree of measne profit. The said decree was confirmed in A.S.No.6 of 1989 and also confirmed by this Hon’ble Court in S.A.No.1133 of 1993. In the second appeal this court granted 9 months time to vacate the property. Challenging the same, appeal also was filed before the Hon’ble Supreme Court in SLP Civil. No.20698 of 2012 and the Hon’ble Supreme Court dismissed the same giving further time of one year to vacate the premises. In the meantime, the said Stephen Ambrose submitted the application to the revenue authorities to change the revenue records in the name of “*rival society*” “*Tamil Baptist Mission Trust*” without any right. Therefore, the



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original society filed the writ petition before the principal bench in W.P.No.9512 of 2003. This court passed the following order:

4.Now, the question for consideration is having regard to the fact that the District Revenue Officer has expressed his opinion on the question of title whether the order under question should be interefered with. It may be pointed here that in a petition under Article 226 of the Constitution of India. The question of title regarding immovable property cannot properly be gone into, because a mass of evidence may be required for adjudicating the question of title. Even if we are to interfere with the order under appeal. It is the other party, who has to go to a civil Court and establish title. As far the exercise of jurisdiction under Article 226 of the Constitution is concerned it does not matter to it whether 'A' party goes to a Civil Court or B party. Therefore, we are of the view that the question of title has to be decided by the Civil Court, without reference to the order under question. Hence, we decline to interfere with the order challenged in the writ petition. However, we make it clear that in the event a suit for declaration of title and for appropriate consequential relief is filed, the Civil Court shall decide such a suit, without reference to them findings recorded by respondent Nos.1 an 2 in the impugned order, but only, on the basis of the pleading of the parties and evidence adduced by them before it.



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We also make it clear that any opinion expressed by the learned Single Judge contrary to what we have stated above, shall also stand modified accordingly. With these observations the writ appeal is dismissed. Consequently, C.M.P.No.15872 of 1994 filed along with the appeal is also dismissed.

5.Following the same, the conflicting claims relating to title and possession, this Court makes it clear have to be decided by a competent civil Court. The writ petitioner has come before this Court, claiming exclusive title against the second respondent herein. This Court will not be justified in adjudicating upon the right of claim, title or possession or other civil dispute, as to who is entitled to the property. This is the settled legal position. This Court will decline to decide the disputed question of title or possession, sitting under writ jurisdiction.

6.In such circumstances, the writ petition is dismissed, with a direction that the writ petitioner may approach the competent civil Court by way of a suit, seeking the relief of declaration or other reliefs. It is also equally open to the second respondent to approach the competent civil Court to establish its right, title or interest as the case may be. No costs.

7.Consequently, the connected W.P.M.P., is dismissed and W.V.M.P., is allowed.



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2. Thereafter a suit was filed in O.S.No. 241 of 2003 on the file of the District Munsif Court, Kovilpatti and in the said suit, the Stephen Ambrose was arrayed as a 1st defendant and the rival society was arrayed as a 2nd defendant and all other persons were also arrayed as party with specific prayer that the defendants may be restrained from interfering in the administration of the original society and also restraining from interfering with the management of the property of the original society. In the said suit the trial court framed the issues that whether the appellant society have established its title to the suit schedule property and also another question was whether the appellant society is the same society or different society on the ambiguity over the place of the registration of the society and the place of the property. Both the issues were answered against the said Stephen Ambrose and there is a specific finding on the basis of the evidence that the property situated in No.98, Puthu Road, Kovilpatti, is the absolute property of the appellant society. The contention of the said Stephen Ambrose was that the registration of the society has no impediment to claim the title. The said suit was confirmed in A.S.No. 27 of 2009 and A.S.No. 28 of 2009 on the file of the Additional District Judge, Tuticorin. In the both the courts there is a specific finding that since the possession is with the appellant society and



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there is no need to ask for declaratory relief. That being the situation, on 27.08.2018, the 4th respondent namely Special Tahsildar, Town survey and settlement passed the impugned order to change the mutation in the name of rival society namely Tamil Baptist Mission Trust rep by its secretary, S.Asir Thambiraj relating to the property of the appellant society situated in the Pudhu Road, and Manthithopu Road, Kovilpatti. Challenging the same a writ petition was filed in W.P.(MD).No.19687 of 2018 and the same was dismissed by the writ court holding that this court in W.P.(MD).No.9512 of 2003 directed the appellant to file a declaration suit and no declaration suit was filed and also the subsequent declaration suit in O.S.No.90 of 2008 renumbered as 2 of 2013 had been withdrawn. Therefore there is no ground to entertain the claim of the appellant confirming the impugned order of the 4th respondent/ Tahsildar. Challenging the same the appellant society filed the writ appeal before this court.

3. Now, the question before this court is whether the writ court is correct in dismissing the writ petition filed by the appellant to quash the impugned order of the 4th respondent dated 27.08.2018 wherein a direction was issued by the special



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Tahsildar/4th respondent to change the revenue records in the name of the 5th respondent rival society represented by the S.Asir Thambiraj, S/o. Stephen Ambrose.

4. It is undisputed fact that the property originally belonged to the Tirunelveli Tamil (Strict) Baptist Trust Society. The property situated at Kovilpatti Municipal survey No. 4, 42 to 55 is measuring an extent of 4 acre 54 cents with many constructions and also the church. The property situated at Pudhu Road, old survey No. 167/10 and new survey No. 193, 194, 195 is measuring an extent of 18.5 cents with number of buildings and the church. The 5th respondent Asir Thambiraj is the son of the Stephen Ambrose. He was terminated as the administrator of the appellant society and the same was challenged in O.S.No. 79 of 1976 and the same was dismissed on 30.09.1981. Thereafter, without vacating the said premises namely survey No.98, Puthu Road, Kovilpatti, he and other persons caused disturbance to the appellant society's management. Therefore, O.S.No. 155 of 1985 was been filed to eject him from the said premises. The said Stephen Ambrose father of the Asir Thambiraj



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disputed the title of the appellant society. The learned trial judge considering the entire evidence decreed the suit holding that suit property was absolute property of the appellant society and the same was confirmed by the supreme court. Before the supreme court the SLP was dismissed with a direction to vacate the premises within one year. Pending the above litigations the 5th respondent, after the death of the said Stephen Ambrose made a claim over the property as if it belonged to the Tamil Baptist Mission Church Trust and the same was accepted by the revenue authorities and hence the appellant filed W.P.No. 9512 of 2003 and the same was disposed with direction to file a declaration suit. The appellant filed the suit in O.S.No.241 of 2003 and got decree. Even though the suit was filed for injunction, the learned trial judge framed the issues and decided the issues in favour of the appellant society holding that they are the absolute owner of the property. The said finding reached the finality. Even prior to that, in the said ejectment suit, similar plea was raised and the same was dealt with specific finding that the appellant society is the absolute owner of the property. In the said circumstances, there is five finding from the competent civil court relating to the appellant's title over the suit property. In spite of that the 4th respondent / Special Thasildar passed the order to enter the mutation in the name of the 5th respondent



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which is illegal and the writ court also erroneously held that in view of the failure to file the declaration suit as per the order of the writ court in W.P.(MD).No. 9512 of 2003 and also withdrawal of the suit to declare the title by the appellant, the appellant is not entitled to relief from this court. The said finding is perverse when there was a clear admission by the father of the Asir Thambiraj namely Stephen Ambrose in O.S.No. 155 of 1985 that the property belonged to the appellant society and also the specific issue relating to the title of the society was framed both in O.S.No. 155 of 1985 and O.S.No.241 of 2003 and the same was specifically addressed and decided in favour of the appellant society and there is specific declaration that the property is absolute property of the appellant society. The said finding in O.S.No. 155 of 1985 reached its finality in SLP No. 20698 of 2012 and also finding in the O.S.No. 241 of 2003 was confirmed in A.S.No. 27 of 2009 and A.S.No.28 of 2009. When all the materials produced before the writ court, the writ court ought to have allowed the writ petition. But, the writ Court erroneously held that the appellant has not established its title solely on ground that the appellant society withdrew the suit in O.S.No. 2 of 2013. In the considered opinion of this court, the filing of the said suit itself is unwarranted one and the title was clearly declared in O.S.No. 241 of 2003 confirmed in



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A.S.No. 27 of 2009 and A.S.No.28 of 2009 and O.S.No. 155 of 1985 confirmed in SLP No. 20698 of 2012 and the writ Court ought to have appreciated the same and allowed the writ petition. In this case, the Writ Court failed to consider the documents in proper manner and hence the said finding is perverse. Therefore this court inclines to set aside the writ court order and also quash the impugned order of the Special Tashildar namely 4th respondent.

5. The other contention of the 5th respondent that the ambiguity in the name of the society has already been addressed in O.S.No. 241 of 2003 on evidence and there is no need to consider the same. In result the 4th respondent without considering the judgment in O.S.No. 155 of 1985 and O.S.No. 241 of 2003 and the order of the Hon'ble Supreme Court in SLP No. 20698 of 2012 where there is a clear direction to hand over the possession of the property to the appellant society, erroneously passed the order with direction to change the mutation in the name of the 5th respondent and the same is illegal. The 5th respondent made a fraudulent claim in spite of the specific finding that the Asir Thambiraj father of Stephen Ambrose is in illegal occupation of the appellant's property and the same



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or fraudulent transaction not only in Tamil Nadu but also over the Country. This court has taken judicial notice of some fraudulent transaction made by the administrators of every Christian communities selling the properties for the illegal purpose to enrich themselves in utter violation of the noble object of the society. The brother and sisters of the Christian institutions started the society buying huge properties with the sole purpose of uplifting the downtrodden people of society and also to give help to the needy people. More than Rs.1 lakh crore properties are subjected to illegal alienation. The intention of sisters and brothers who had started the society to serve the people would become mirage.

8. The main reason for the said illegal transaction is lack of the suitable legislation to control the management of the property of the Christian society. The union government already have wakf Act, Hindu Religious Endowment Act etc., to manage the property of the religious institutions. Union government is democratic government and its duty is to see the mismanagement of the property of the Christian Institutions also. Therefore, to check the administration of the properties of the Christian Institutions, suitable legislation with suitable provisions to manage the property of the Christian Institutions is timely



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requirement. Whenever the illegal transaction, takes place and whenever the properties of the church are maladministered by fraudulent claim made by the different groups of the same society etc., “Jesus cries for justice”. Therefore, this court suggests to the Union Government to bring suitable Act in the line of Wakf Act, Hindu religious endowments Act to control the illegal activity of the administrators of the Christian Institutions and also to bring the suitable amendment in the registration Act prohibiting the alienation of the property of the Christian Institutions without permission of Court. This court issues such direction only in the interest of protection of the property of the Christian Institutions considering the extraordinary situation which requires the said well intentioned suggestion.

[P.V.,J.] [K.K.R.K.,J.]
29.10.2024

NCS : Yes / No

Index : Yes / No

Internet : Yes / No

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Copy to

*The Union Secretary,
Ministry of Law and Justice,
New Delhi-110001*

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To

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P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

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