



S.A(MD)No.48 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.48 of 2016

1.PalaniSthanika Miras,
Thirumanjanam Pandarams Sangam,
Through its Secretary

2.R.Ganesan

...Appellants

-Vs-

1.The Executive Officer/Joint Commissioner,
Arulmighu Dhandayuthapani Swami Temple,
Palani,
Having Office at Palani
Dindigul District.

2.State of Tamilnadu,
Through its Secretary Commercial Taxes
and Religious Endowments Department,
having Office at Fort St.George,
Chennai.

3.P.Ashok Ranjani Mohandi

4.K.Chellappan (died)

5.Sagunthala

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6.C.Sivakumar

7.C.Sivabalan

8.C.Shivasankari

9.C.Sivasakthi

... Respondents

(Respondents 5 to 9 are brought on record as LR's of the deceased 4th respondent vide Court order dated 26.08.2022 made in C.M.P(MD) Nos.4843, 6980 and 6982 of 2022)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.19 of 2008 passed by the Principal District Judge, Dindigul, Dindigul District, dated 13.09.2011 confirming the judgment and decree in O.S.No.95 of 1996 passed by the Sub Court, Palani, Dindigul District, dated 18.06.2007.

For Appellants : Mr.G.Gomathi Sankar

For R1 : Mr.R.Murali
for Mr.K.Govindarajan

For R2 : Mr.P.Subbaraj
Special Government Pleader

For R5 to R9 : Mr.N.Dilipkumar



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JUDGMENT

The plaintiffs in the suit are the appellants. The plaintiffs filed a suit seeking direction to the defendants to pay damages and for injunction restraining the first defendant from interfering with the rights of first plaintiff Sangam to take *Nerisam Vel* during Soorasamharam festival in the first defendant temple. The suit was dismissed by the trial Court and the first appeal filed by the plaintiffs was also dismissed. Aggrieved by the concurrent findings, the appellants/ plaintiffs are before this Court.

2.According to the plaintiffs, the first plaintiff Sangam was formed by 64 Miras Thirumanjana Pandarams Sangam having certain rights in the first defendant temple. The first plaintiff Sangam used to nominate two representatives from Ayan Mirasu Pandarams and Upaya Mirasu Pandarams to receive *Nerisam Vel* during the Soorasamharam festival. In the year 1940, there were disputes among the members of the aforesaid families. Therefore, a civil suit was filed in O.S.No.58 of 1940 on the file of District Munsif Court, Palani. The said suit was ended with a compromise decree, which is marked as Ex.A2. As per the terms of the compromise decree, the first plaintiff therein was declared to be entitled to



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carry *Nerisam Vel* during Soorasamharam festival during his life time and after his death, the representative elected by Ayan Mirasu Pandarams shall be conferred with the right. Likewise, one representative from Upaya Mirasu Pandarams is also entitled to carry *Vel* during the festival. The plaintiffs further claimed that in the year 1954, Ayan Miras Pandaram and Upaya Miras Pandaram families decided to form a single Sangam called Palani Sthanika Miras 64 Thirumanjana Pandarams and registered the same. It was further claimed that except four families, majority of the Ayan Miras Pandarams and Upaya Miras Pandarams joined the Sangam. It was also claimed that from the year 1954 onwards, the first plaintiff sangam has been nominating two persons, one from Ayan Miras Pandaram and another from Upaya Miras Pandaram to take *Nerisam Vel* and the said right has been recognized by the various orders passed by the first respondent. Later on, the fourth defendant claiming himself as member of Upaya Miras Pandaram class claimed right to carry *Nerisam Vel* and the first defendant directed the first plaintiff sangam to establish its right by initiating appropriate proceedings. In these circumstances, the plaintiff was constrained to file a suit seeking the aforesaid relief.



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3.The contesting first defendant filed a written statement denying the right of first plaintiff sangam to select two persons from the families of Ayan and Upaya Miras Pandarams and nominate them for carrying the *Vel* in the temple festival. It was specifically averred by the first defendant that the decree in O.S.No.58 of 1940 considered the right and honor of the representatives of two classes of Pandarams and not the right of the first plaintiff sangam. The first defendant can only recognize the person unanimously elected by respective class of Pandarams recognized in the decree and the persons selected and nominated by the Sangam cannot be treated as true representatives of the class of Pandarams recognized under the decree. Therefore, the first defendant sought for dismissal of the suit.

4.The second defendant also filed a written statement taking similar stand.

5.Before the trial Court, four witnesses were examined on behalf of the plaintiffs including the third plaintiff as P.W.1 to P.W.4 and 43 documents were marked as Ex.A1 to Ex.A43. On behalf of the defendants, three witnesses were examined as D.W.1 to D.W.3 and seven documents were marked as Ex.B1 to Ex.B7.



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6.The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs failed to establish their right to select and nominate two persons for carrying *Vel* in the temple festival and dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.19 of 2008 on the file of the Principal District Court, Dindigul. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiffs is before this Court.

7.The learned counsel for the appellants submitted that the right of first plaintiff Sangam to nominate two persons every year to carry *Vel* in the Soorasamharam festival has been recognized in a compromise decree entered in the earlier civil litigation which is marked as Ex.A2. The Courts below without taking into consideration the effect of Ex.A2, on an erroneous view, came to the conclusion that that the first plaintiff Sangam failed to establish their right to select and nominate two persons. The learned counsel by taking this Court to Ex.A3 to Ex.A6 submitted that subsequent to formation of first plaintiff Sangam it has been nominating two persons every year for carrying *Vel* in the temple festival and the said right of the first plaintiff Sangam has been recognized by the



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first respondent continuously for several years. The material exhibits marked by the plaintiffs in this regard, have been overlooked by the Courts below.

8.Per contra, the learned counsel appearing for the first respondent submitted that under Ex.A2 the right of first plaintiff Sangam has not been recognized and it only recognized the right of body of two classes of Pandaram families to elect their representatives. Therefore, the learned counsel submitted that by proper appreciation of evidence available on record, the Courts below came to the conclusion that the first plaintiff Sangam failed to establish its right of nominate two persons every year.

9.Ex.A2 is the compromise decree entered between one Karuppannan Pandaram and another and Pechimuthu Pandaram and others in O.S.No.58 of 1940 on the file District Munsif Court, Palani. A reading of said document would suggest that the common right of pandaram community consisting of Ayan and Upaya Mirasu Pandarams to carry two *Nerisam Vel* during Soorasamharam festival, was recognized and declared by the compromise decree. The further clauses in the compromise decree make it clear that Ayan and Upaya Miras



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Pandarams shall elect their representatives every year for carrying Vel representing their respective class. The first plaintiff Sangam was not a party to the compromise decree and therefore Ex.A2 is not useful to come to the conclusion that the right of first plaintiff Sangam was recognized earlier by a civil Court decree.

10.It was further submitted by the learned counsel for the appellants that subsequent to the decree, both the classes of Pandarams formed a single Sangam namely, the first plaintiff Sangam and therefore, whatever the right given to classes of pandarams recognized under Ex.A2, will enure to the first plaintiff Sangam. The said submission made by the learned counsel for the appellants is not acceptable to this Court in view of the specific plea raised by the plaintiffs in their plaint averments. In paragraph No.12 of the plaint, it was specifically admitted by the plaintiffs that Ayan and Upaya Miras Pandarams formed Palani Sthanika Miras 64 Thirumanjana Pandarams Sangam and four families of Pandaram failed to join the Sangam. Therefore, it is clearly admitted by the plaintiffs that four of the Pandarams' families belonged to the classes of Pandarams recognized by the earlier decree, failed to join the first plaintiff



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Sangam. In such circumstances, the first plaintiff Sangam cannot claim itself as sole representative of both the classes of Pandarams recognized by the compromise decree. Therefore, the benefit of the right recognized by Ex.A2 compromise decree, is available only for two classes of Pandarams, namely, Ayan Miras Pandarams and Upaya Miras Pandarams. The said right will not exclusively enure to the first plaintiff Sangam, when all the Pandaram families failed to join and form the sangam. Even as per admitted case of plaintiffs, as found in plant averments, four pandaram families failed to join their Sangam. Therefore, the submission made by the learned counsel for the appellants based on Ex.A2 is liable to be rejected.

11.The learned counsel for the appellants also submitted that after formation of Sangam, the first plaintiff has been nominating one each from two classes of Pandarams recognized by the compromise decree to carry *Vel* in the temple festival and the said right has been recognized by the various orders passed by the first defendant under Ex.A3 to Ex.A6. If it is the case of the plaintiffs that the Sangam formed in the year 1954, by virtue of long usage, had acquired any customary right in respect of right to choose a person to carry *Vel*,



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the same has to be agitated before the competent authority constituted under Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. It would be appropriate to refer to Section 63 of the Act which reads as follows:-

63.Joint Commissioner or Deputy Commissioner to decide certain disputes and matters.—*Subject to the rights of suit or appeal hereinafter provided, [the Joint Commissioner or the Deputy Commissioner, as the casemay be], shall have power to inquire into and decide the following disputes and matters:—*

- (a) whether an institution is a religious institution ;*
- (b) whether a trustee holds or held office as a hereditary trustee ;*
- (c) whether any property or money is a religious endowment ;*
- (d) whether any property or money is a specific endowment ;*
- (e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution ; and what the established usage of a religious institution is in regard to any other matter ;*
- (f) whether any institution or endowment is wholly or partly of a religious or secular character; and whether any property or money has been given wholly or partly for religious or secular uses ; and*
- (g) where any property or money has been given for the*



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support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses.

12. A reading of the above provision would make it clear whether any person is entitled to by custom or otherwise any honour, emolument or perquisite in any religious institution, is a matter comes within the exclusive jurisdiction of Joint Commissioner constituted under the Act. Therefore, by virtue of Section 63(e) r/w Section 108 of HR &CE Act, the civil Court cannot go into the question when the said matter falls exclusively within the jurisdiction of the authority constituted under the Act. Therefore, this Court is not inclined to go into the point raised by the learned counsel for the appellants that by virtue of subsequent conduct, the first respondent recognized the right of the first plaintiff Sangam to nominate two persons. If it is so advised, the first plaintiff Sangam is entitled to approach the competent Joint Commissioner in accordance with law in this regard.



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13. In view of the discussion made earlier, I do not find any error in the final conclusion reached by the Courts below and the same is based on evidence available on record. Therefore, I do not find any substantial question of law in this second appeal to interfere with the factual findings rendered by the Courts below. Accordingly, this Second Appeal stands dismissed with liberty as stated above. No costs.

18.04.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

To

1. The Principal District Judge,
Dindigul, Dindigul District.
2. The Subordinate Judge,
Palani, Dindigul District.
3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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