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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.228 OF 2002

T.Subramanian Asari(died)

2.Govindan

3.Krishnamoorthy :Appellants/Appellants/Plaintiffs

.vs.

1.Narayanan Asari(died)

2.D.Krishnan Asari

3.D.Pandian Asari

4.D.Palani Asari

5.Arulmighu Kallagar Thirukkcoil,
represented by its Assistant Commissioner,
Executive Officer, Office at
Alagar Koil Campus,
Melur Taluk, Madurai District.

6.Thiagarajan

7.T.Rajeshwari

8.T.Suresh Murugan

9.T.Chandrasekaran

10.T.Sathya

11.T.Pandiyarajan

12.N.Vijayakumar



13.S.Geetha

14.N.Baskaran

:Respondents/Respondents/Defendants

(Appellants 2 and 3 and sixth respondent are brought on record as legal representatives of the deceased sole appellant as per order of this Court made in M.P(MD)No.1 of 2012 in S.A.No.228 of 2002, dated 8.3.2016)

(Respoondents 7 to 11 are brought on record as legal representatives of the deceased sixth respondent as per order of this Court made in C.M.P(MD)Nos.12057 and 12059 of 2023, in S.A.No.228 of 2002, dated 10.1.2024)

(Respondents 12 to 14 are brought on record as legal representatives of the deceased first respondent as per order of this Court made in C.M.P(MD)No.12055 of 2023 in S.A.No.228 of 2002, dated 10.1.2024)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.127 of 1999, dated 30.4.2001, on the file of Principal Sub Court, Madurai confirming the judgment and decree made in O.S.No.390 of 1995, dated 31.3.1999, on the file of District Munsif, Melur.

For Appellants	:Mr.M.P.Senthil
For Respondents 2 and 3	:Ms.D.Sasthya Sri
For Respondent-5	: Mr.R.Nandakumar
For Respondents 12 to 14	: Mrs.P.Jessi Jeeva Priyadharshni
For Respondents 4 and 7 to 11	: No appearance
For Respondents 1 and 6	: Died

**JUDGMENT**

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The Plaintiff is the appellant. He filed a suit for declaration that the order, dated 19.12.1995 passed by the sixth defendant, the Executive Officer of the sixth defendant temple was null and void and for consequential injunction restraining the defendants from any manner interfering with his right of doing Karna Pushanam service (Ear Boring Service) in the temple. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the appellants are before this Court by filing this Second Appeal

2. Pending the Second appeal, the sole appellant/plaintiff died and his legal representatives were brought on record as appellants 2 and 3 and sixth respondent. Likewise, the first respondent, brother of the original plaintiff also died and his legal representatives were brought on record as respondents 12 to 14. Subsequently, sixth respondent died and his legal representatives were brought on record as respondents 7 to 11.

3. According to the appellant/plaintiff, the Ear Boring Service in the sixth defendant temple was rendered by his father Duraisamy and after his death in the year 1976, the plaintiff was appointed to continue the said service on contract basis. The first



defendant in the suit was son of the plaintiff's deceased brother Ponnusamy and the defendants 2 to 5 were his younger brothers.

It was claimed by the plaintiff that except himself, no other heirs of Duraisamy namely, defendants 1 to 5 engaged in Ear Boring Ceremony. It was also claimed that rendering of the above said service is not hereditary in nature and therefore, the defendants 1 to 5 could not claim any right over the said service. It was also averred that the sixth defendant, the Executive Officer of the temple based on a petition filed by the defendants 1 to 5 claiming right over Ear Boring Ceremony, conducted an illegal enquiry and passed an order, dated 10.12.1995 restricting the service of the plaintiff to the first five days of the month. It was also claimed that the plaintiff has been rendering service on contract basis for the past twenty years and hence, the sixth defendant was not entitled to remove or restrict his service. Claiming that the order passed by the sixth defendant is without any legal basis, the present suit was filed for the above said relief.

4. In the written statement filed by the defendants 1 to 5, it was claimed by them that after the death of their father, plaintiff was permitted to continue the Ear Boring Ceremony temporarily by the order passed by the sixth defendant on 11.03.1976. After the death of their father, the plaintiff and defendants entered into a



family arrangement on 08.01.1990 in respect of family properties and also the right to Ear Boring Service in the sixth defendant temple. As per the said arrangement, Ear Boring Service in the temple shall be rendered by the plaintiff and defendants 1 to 5 on rotation basis. Each of them are entitled to render service for five days in a month.

5.The sixth defendant, in the enquiry conducted by him, had taken into consideration the family arrangement between the plaintiff and defendants and passed an order accordingly by directing the plaintiff to render Ear Boring Service in the first five days of a month. It was also averred by the defendants that the plaintiff was not appointed as permanent servant of the temple and hence, he was not entitled to the benefit of any protection available to a permanent servant. It was also claimed by the defendants that the Civil Court has no jurisdiction to entertain the suit by virtue of provisions contained in the Hindu Religious and Charitable Endowments Act.

6.The sixth defendant also filed a written statement stating that the plaintiff was not a permanent employee of the sixth defendant temple and he was appointed temporarily for doing Ear Boring Service. The sixth defendant had also taken a defense that



the suit was barred by the provisions of the Hindu Religious and Charitable Endowments Act.

7.The plaintiff was examined as P.W.1 and yet another person was examined as P.W.2 and 16 documents were marked as Ex.A1 to Ex.A16 on the side of the plaintiff. On behalf of the defendants, defendants 3 and 2 were examined as D.W.1 and D.W.2 and three documents were marked as Ex.B1 to Ex.B3.

8.The trial Court, on consideration of oral and documentary evidence available on record, came to the conclusion that the sixth defendant was entitled to pass an order restricting the service of the plaintiff, as he was not regularly appointed in the service of the temple. The trial Court has also found that by virtue of Section 108 of the Hindu Religious and Charitable Endowments Act, the suit filed by the plaintiff was not maintainable and accordingly, dismissed the suit. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.127 of 1999. The First Appellate Court also affirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent findings of the Courts below, the plaintiff is before this Court by filing this Second Appeal.

9.The learned counsel for the appellants submitted that under



Section 56 of the Hindu Religious and Charitable Endowments Act, only the Trust Board of the temple was entitled to make appointment in the temple and the present order passed by the sixth defendant under Ex.A9 is the one without jurisdiction as he is not empowered to make appointment. Any order passed by the sixth defendant directing the plaintiff and defendants 1 to 5 to render Ear Boring Service in the temple for five days each in a month, is liable to be set aside.

10.As per the admitted case of the appellant/plaintiff, prior to 1976, the father of the plaintiff and defendants 1 to 5 one Duraisamy was rendering Ear Boring Ceremony in the sixth defendant temple. After his death, the sixth defendant, the Executive Officer of the temple temporarily permitted the plaintiff to continue the Ear Boring Service in the temple by order, dated 11.3.1976, marked as Ex.A1. A perusal of the same would suggest that the plaintiff was permitted to render Ear Boring Service in the temple and the order granting such permission also makes it clear that the plaintiff was not entitled to claim any vested right by virtue of the said order. The permission granted to the plaintiff by virtue of order marked under Ex.A9. The sixth defendant wants to restrict the permission granted to the plaintiff by directing him to do service for the first five days in a month. The order also reads



that on an enquiry conducted by the sixth defendant, the plaintiff and defendants 1 to 5 agreed to render Ear Boring Service collectively on rotation basis. Based on the consensus allegedly reached among the parties, the sixth defendant passed the present order, dated 10.12.1995 directing the plaintiff to render Ear Boring Service in the first five days of the month. Likewise, the defendants 1 to 5 were also permitted to render Ear Boring Service for five days each, in a month on turn basis. The order also reads that the same will not confer any permanent status to the plaintiff and other defendants. A reading of the order granting permission to the plaintiff and defendants 1 to 5 to do Ear Boring Service under Ex.A1 and the present order restricting the service of the plaintiff to five days in a month would make it clear that the plaintiff was only permitted to do Ear Boring Service in the sixth defendant temple and it would not amount to making an appointment in a sanctioned post. The sixth defendant, as a person in charge of the affairs and the day-to-day administration of the temple is entitled to pass orders touching day-to-day administration from time to time. If anybody aggrieved by the order passed by the sixth defendant, there are sufficient remedies available under the Hindu Religious and Charitable Endowments Act to file an appeal before the Joint Commissioner or to file a revision before the Commissioner under Section 21 of the HR and



CE Act. When the statute provides remedy for the person aggrieved by the order passed by the sixth defendant, the plaintiff is not justified in invoking the jurisdiction of the civil Court. When it is decided that the plaintiff is not appointed to any post and he was only permitted to do Ear Boring Service in the temple, the submission made by the learned counsel for the appellants by relying on Section 56 of the HR and CE Act, is not acceptable to this Court.

11. In view of the remedy available to the plaintiff to challenge the orders passed by the sixth defendant regulating the day-to-day administration, the Courts below rightly came to the conclusion that the Civil Court's jurisdiction is ousted by relying on Section 108 of the Hindu Religious and Charitable Endowments Act. I do not find any error in the conclusion arrived at by the Courts below.

12. Accordingly, the Second Appeal stands dismissed. No costs.

16.04.2024

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



To

1. The Principal Sub-Judge,
Madurai.
2. The District Munsif,
Melur.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A.NO.228 OF 2002

16.04.2024