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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.10.2024

PRONOUNCED ON: 23.01.2025

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

S.A.Nos.1045 and 1046 of 2011

S.A.No.1045 of 2011:-

1.G.Rajendri
2.G.Gopal
3.G.Raman
4.G.Ashok
5.G.Babu

... Appellants

-VS.-

1.Fit Person/Executive Officer,
Arulmighu Katchaleeswari Temple,
No.77, Armenian Street, Chennai – 600 001.

2.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam High Road,
Chennai – 600 034.

3.Ramananda Achari
4.Krishnamoorthy

Page 1 of 50



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- 5.Murugan
- 6.Mohanasundaram
- 7.Sivakumar
- 8.Ekambaram
- 9.Rajabathar Chettiar
- 10.Sundaram Pillai
- 11.Nataraja Chettiar
- 12.Senthamarai Ammal
- 13.Devaki Ammal

...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 09.03.2010 in A.S.No.424 of 2005 on the file of the V Additional Judge, City Civil Court at Chennai reversing the judgment and decree of the trial Court dated 21.04.2005 in O.S.No.12292 of 1996 on the file of the V Assistant City Civil Court, Chennai.

For Appellants	:Ms.Karthikaa Ashok
For R2	:Mr.D.R.Sivakumar
For R3	:Mr.N.R.R.Arun Natarajan
	Special Government Pleader
R5 and R13	:Left

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-VS.-

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5.Ramananda Achari

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7.Murugan

8.Mohanasundaram

9.Sivakumar

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11.Rajabathar Chettiar

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...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 09.03.2010 in A.S.No.554 of 2005 on the file of the V Additional Judge, City Civil Court at Chennai reversing the judgment and decree of the trial Court dated 21.04.2005 in O.S.No.12292 of 1996 on the file of the V Assistant City Civil Court, Chennai.



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For Appellants :Ms.Karthikaa Ashok
For R2 and R5 :Left
For R3 :Mr.N.R.R.Arun Natarajan
Special Government Pleader

COMMON JUDGMENT

The unsuccessful defendants before the trial Court and the first appellate Court had preferred the above Second Appeals.

2.For the sake of convenience, the status of the plaintiff and the defendants will be referred as the status in their suits.

3.Both the appeals are arising out of a common judgment in A.S.Nos.424 and 554 of 2005 before the V Additional Judge, City Civil Court at Chennai as against the judgment made in O.S.No.12292 of 1996.

4.The appeal suit in A.S.No.424 of 2005 was filed by the Fit



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Person/Executive Officer of Arulmighu Katchaleeswari Temple, Armenian Street, Chennai, who was arrayed as second defendant in the suit, as against the judgment made in O.S.No.12292 of 1996. Challenging said judgment, the 13th to 15th defendants had filed A.S.No.554 of 2005.

5.The suit in O.S.No.12292 of 1996 was filed by one C.G.Gajapathy, the plaintiff, with the following prayers:

i)to declare that the plaintiff is the absolute owner of the premises in No.12, Amman Koil Street, Park Town, Madras-3 and to direct the defendants to hand over the possession of the schedule mentioned property;

ii)an injunction restraining the second defendant or his servants or agents or anybody on his behalf from interfering in any way of the plaintiff's possession and enjoyment of the premises No.12, Amman Koil Street, Park Town, Madras -3;

iii)for appointment of a receiver to take possession of the suit property in No.12, Amman Koil Street, Park Town, Madras-3 pending disposal of the suit;

iv)to direct the first defendant to pay a sum of Rs.21,660/- being the rent collected by him from the tenants of by way of damages;



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v)to direct the defendants to pay the cost of the suit; and

vi)to pass such further or other orders as this Hon'ble Court may deem fit and proper.

6.In the plaint, the plaintiff had contended that the suit property originally belonged to one C.Subbaraya Naicker and vide order of the District Collector, dated 24.04.1885, the suit property in S.No.909, had been allotted in his favour. After the demise of C.Subbaraya Naicker, his legal heirs, Thanikachala Naicker and Loganadha Naicker have conveyed the suit property in favour of one Raju Chettiar by way of a sale deed, dated 01.12.1906. Subsequently, the suit property had been allotted to Raju Chettiar's daughter, Pachayammal and patta also stood in her favour. After the death of Pachayammal, her only son, T.P.Krishnan Chettiar succeeded to her estate and T.P.Krishnan Chettiar died leaving behind his wife Sakunthala Ammal and his two daughters, Tirupurasundari Ammal and Chamundeeswari Ammal and both of them have conveyed the suit property in favour of the plaintiff by way of a registered sale deed, dated 24.01.1980.



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7. The plaintiff further contended that he had issued notices to the tenants calling upon them to vacate the premises for the purpose of demolition and for reconstruction. Since the 3rd to 15th defendants have contended that they were not the tenants under the plaintiff and that the premises belongs to a Temple and denied the title of the plaintiff, the plaintiff was constrained to file eviction petitions against the tenants.

8. It is the further contention of the plaintiff that there are 15 tenants in the premises. One of the rooms measuring 6x6” facing the street was being used as a pooja room and an Amman Deity has been installed in it. The plaintiff has been in exclusive possession of the said room, which is the part of the suit property and that it was never dedicated or intended for public worship. It is further contended that the plaintiff had kept the room under lock and key and apart from the Deity, there were pooja articles, which absolutely belong to the plaintiff.

9. The plaintiff further contended that the tenants and other defendants have made some representations to the first defendant to appoint him as Fit Person.



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Thereafter, the second defendant trespassed into the suit premises and installed a hundial in front of the pooja room and has also broke open the lock and removed all the articles including the jewels. The plaintiff contended that the property never belonged to any Temple and in fact, there is no Temple in the premises and in any event, the private pooja room cannot be dedicated to public. The first defendant has no authority to interfere with the possession of the plaintiff over the suit property.

10.The plaintiff further contended that even if it is assumed that the particular portion of the premises as shown in the plan Doc.No.6, where, the Deity is housed, is a public Temple, by no stretch of imagination, it can be said that the entire property belongs to the alleged public Temple. Further, the first defendant, while appointing the second defendant as Fit Person for the Temple, has not given any specific finding that the property, as such, belongs to the Temple. Further, there is no order declaring that the property belongs to the alleged Temple.



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11. It is also contended that the plaintiff filed O.S.No.2517 of 1983 on the file of the City Civil Court, Madras for an injunction restraining the second defendant from interfering with the possession of the plaintiff over the suit property. However, the said suit was dismissed by the trial Court, as the suit was filed for a bare injunction and not for declaration of title. The plaintiff further contended that the pooja room in the suit property is his private property and it is not a public Temple. It is also contended that the first defendant, being a Public Officer, notice, as contemplated under Section 80 CPC, was issued.

12. The second defendant, namely, the Fit Person, had filed a written statement denying the contentions made in the plaint. The second defendant contended that Arulmighu Renuka Parameswari Amman Temple is situated at No.12, Amman Koil Street, Park Town, Chennai – 600 003 and the Temple is a public Temple and it is not the private property of the plaintiff. The second defendant further contended that the suit property belongs to the Temple and that the tenants, who are in possession of the suit property, have paid rents to the Fit Person. It was contended that religious functions are performed only by the



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public and not by the plaintiff, who has got nothing to do either with the Temple or with the residential house property situated behind the Temple. The street itself is named by the name of the Temple. The second defendant further contended that the religious institution coming under the provisions of the Act 22 of 1959. The second defendant also contended that the suit property and the Temple bears the same Door Number, as Door No.12 and the house and Temple are in the same structure. The Temple is situated in the front side of the property and the tenants are occupying the rear side of the same continuous structure.

13.The second defendant further contended that the general public in the locality worshiped the deity, namely, Sri Renuka Parameswari Amman and donations are being made by them. The collections from the hundial, which is situated in the property, are utilised for the performance of the kumbam festival. He further denied the averments in the plaint that the Deity has been installed in a room in the house.

14.The second defendant also denied the rent control proceedings, as they



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are not the party to the proceedings. The second defendant further contended that the rents were paid by the tenants to the Devasthanam and not to the plaintiff. The second defendant further contended that the Temple is a public Temple and that after following due procedure, the Temple was taken over by the HR & CE Department and the second defendant was appointed as Fit Person. The second defendant admitted that the plaintiff has filed O.A.No.32 of 1988 and the same is pending. The second defendant also contended that the original suit as well as the appeal suit filed by the plaintiff were dismissed by the Courts concerned. The second defendant specifically contended that the dispute is covered under Section 63 of the HR & CE Act and the present suit itself is not maintainable in view of Section 108 of the Act.

15.The first defendant who is the Commissioner, HR & CE Department has filed a memo before the trial Court adopting the written statement filed by the second defendant, who is the Fit Person/Executive Officer.

16.Similarly, a separate written statement was filed by the 15th defendant.



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The written statement filed by the 15th defendant is nothing but a verbatim of the written statement filed by the second defendant. However, in addition to that, the 15th defendant had contended that the suit property and Renuga Parameswari Amman Temple are all one and the same premises and the Temple cannot be separated from the suit property. It was further contended that the suit filed by the plaintiff in O.S.No.2517 of 1983 seeking injunction with respect to the Temple and its properties was rightly dismissed by the Court concerned and that the present suit is hit by principles of *res judicata*.

17. On considering the averments made in the plaint as well as the written statements, the trial Court had formulated the following issues and additional issues:

“1. Whether the pooja room in the premises in the private property of the plaintiff and it is not a public temple?”

2. Whether the plaintiff obtained eviction order against the tenants.

3. Whether there is no order declaring the property belonging to the temple?

4. Whether the plaintiff is entitled for declaration?



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5. Whether the plaintiff is entitled for permanent injunction against D.2?

6. Whether the first defendant can be directed to pay the sum of Rs.21,600/- being the rent collected from the tenants?

7. To what relief?

Additional Issues:

Whether the plaintiff is entitled to get possession of the schedule property from the defendants?"

18. On the side of the plaintiff, the plaintiff was examined as PW-1 and had marked Ex-A1 to Ex-A25 and on the side of the defendants, one Jeganathan was examined as DW-1 and the 13th defendant was examined as DW-2 and on the side of the defendants, Ex-B1 to Ex-B25 documents were marked. The Advocate Commissioner's report was marked as Ex-C1 and the report was marked as Ex-C2 and Ex-C3, photographs and negatives.

19. The trial Court after examining the oral and documentary evidence, observed that as seen from Ex-B1 to Ex-B10 and Ex-B21 to Ex-B25, the management and administration of the Temple is with the first and second defendants. The petition filed by the plaintiff in O.A.No.32 of 1988 is pending



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before the Deputy Commissioner, HR & CE Department. However, the plaintiff has not produced any substantial document to prove the pendency of O.A.No.32 of 1988. There is no iota of evidence to show that the rents are collected by the Committee formed by the HR & CE Department. On the other hand, the plaintiff has proved that he is the absolute owner of the entire suit property. The trial Court further observed that though the Fit Person has collected rents from the tenants, that does not create any absolute right over the suit property. The learned trial Judge further observed that as found in the evidence, the name of the street is called as Amman Koil Street, pursuant to the existence of an Amman Koil in the extremity of the street and not due to the alleged Temple in the suit property.

20.The learned trial Judge also came to the conclusion that the Idol is kept in a small room of the suit schedule property, which consisting of several rooms, which are in occupation of the tenants. Further, since the said room is facing towards the street, it could not be concluded that it is not a private property of the plaintiff. The learned trial Judge further observed that there is no endowment or dedication and no characteristic of a Temple, as an Idol is kept in a room of a



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21. The learned trial Judge also observed that the HR & CE Department in violation of rules and regulations and without following the principles of natural justice, passed an order appointing the Fit Person to have a control over the property of the plaintiff. None of the provisions of the HR & CE Act would apply to the schedule property. The learned Trial Judge also observed that the plaintiff is entitled for recovery of entire rents collected by the HR & CE Department by following due procedure. The learned trial Judge rejected the plea of the defendants 9, 13 and 15 that no relief can be sought for against them, as they are not the tenants under the plaintiff and disputing the title of the plaintiff. The learned trial Judge concluded that the pooja room in the property is the private property of the plaintiff and the plaintiff is entitled for declaration and recovery of possession. The learned Trial Judge further concluded that the plaintiff is also entitled to recover the arrears of rents from the HR & CE Department by following due process of law.



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22.Finally, the trial Court had decreed the suit declaring that the plaintiff is the absolute owner of the suit schedule property and directed the defendants to hand over the possession of the entire suit schedule property within two months and directed the first defendant to pay a sum of Rs.21,600/-to the plaintiff being the rent collected from the tenants.

23.Aggrieved by the said judgment and decree, the Fit Person had filed A.S.No.44 of 2005 and similarly, the 5th to 13th defendants have also challenged the very judgment in A.S.No.554 of 2005.

24.The first appellate Court while considering the correctness of the judgment passed by the trial Court in O.S.No.19922 of 1996 had framed the following points for consideration:

“1.Whether the suit is not maintainable in view of the fact that the proceedings under Section 63 of Tamil Nadu Hindu Religious and Charitable Endowment Act is pending before the competent authority as on the date of filing of the suit?

2.Whether the suit temple is a religious institution and the same is coming under the purview of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowment Act?

3.Whether the order of appointing the appellant is ipso facto,



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25.The first appellate Court after taking into consideration the arguments advanced on both sides had observed that the Temple is a very ancient Temple and poojas are performed by the public by forming a Committee. The first appellate Court declared that the Temple is a religious institution coming under the purview of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowment Act. It was further observed that the property and the Temple bears the same door number and that the Temple is situated in the front portion and the shops are located in the rear side.

26.The first appellate Court also observed that there is a hundial in the Temple premises and the hundial collection and contributions are utilised for the purpose of kumbam festival and that after following due procedure, the Temple was taken by the HR & CE Department and the second defendant was appointed as Fit Person by order of the Assistant Commissioner, HR & CE Department, dated 08.04.1982 and thereafter, the Temple and the properties are under the control of the Fit Person.



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27.The first appellate Court also observed that the suit is not maintainable in view of Section 63 of the HR & CE Act. The first appellate Court also accepted the contentions of the defendants that the plaintiff has no valid title to claim the suit property and that the suit property is a public religious Temple by taking into consideration the provisions of Section 6(20) of the HR & CE Act.

28.The first appellate Court had also given a finding that the learned trial Judge without appreciating the legal position in proper perspective rejected the documents marked as Ex-B12 to Ex-B20, which are the documents relating to the proceedings pending before the Deputy Commissioner, HR & CE Department filed by the plaintiff and hence, in view of the bar under Section 69 or 70 or 108 of the HR & CE Act, the appellate Court rendered a finding that the suit is not maintainable.

29.The first appellate Court also observed that the plaintiff has not established the fact that the rents have been collected by him for a period of one year and that the plaintiff has not challenged the very appointment of the Fit



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Person from the year 1982 to 1991. The first appellate Court also rendered a finding that the plaintiff has failed to rebut the presumption even by way of preponderance of probability, on the other hand, the defendants have established that the Temple situated in the suit property is a public Temple and the suit properties are managed by the Fit Person.

30. For the foregoing reasons, the first appellate Court had allowed both the appeals and set aside the judgment and decree passed in O.S.No.12292 of 1996, dated 21.04.2005. Challenging the common judgment, the plaintiff had filed the above appeals. During the pendency of the appeal, the plaintiff died and his legal heirs were brought on record as appellants.

31. Ms. Karthika Ashok, learned Counsel for the appellants contended that the first respondent/Commissioner, HR & CE Department, had not filed a written statement to assert whether the plaintiff as well as his predecessor-in-title were in continuous possession for the past 150 years, as narrated in the plaint. The learned Counsel further contended that after the demise of Subbaraya Chettiar, the



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suit property has been inherited by his sons, Thanikachala Naicker and Loganadha Naicker, in turn, they have conveyed the said property in favour of one Raju Chettiar by way of a registered sale deed, dated 01.12.1906, which was marked as Ex-A3. Later, the said property was given to Pachayammal, the daughter of Raju Chettiar, in whose name, patta was also mutated on 20.06.1921.

32.The learned Counsel also stated that the said property was subsequently re-surveyed and resurvey number was given as R.S.No.9438. After the death of Pachayammal, her only son T.P.Krishnan Chettiar, inherited the same and T.P.Krishnan Chettiar died leaving behind his wife Sakunthala Ammal and his two daughters, Tirupurasundari Ammal and Chamundeeswarai Ammal, who in turn conveyed the said property in favour of the plaintiff, by way of a registered sale deed, dated 24.01.1980 as Doc.No.37/1980 before the Sub Registrar Office, Sowcarpet, which was marked as Ex-A8.

33.It is the further contention of the learned Counsel for the appellants that



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the plaintiff had established his case before the trial Court that they have been in continuous possession of the suit schedule property right from the predecessor without any interruption for a period of more than 150 years. The patta was also mutated in the name of the plaintiff, which was marked as Ex-A9, dated 23.02.1980.

34.The learned Counsel also contended that the plaintiff had filed an application before the HR & CE Department in H.R.C.No.2509/1980 and a common judgment was made in H.R.C.No.88/1981 series, which was marked as Ex-A11, dated 21.09.1991. The above proceedings had become final. However, challenging the findings rendered in H.R.A.No.1545/1981, a Civil Revision Petition was filed by the tenants in C.R.P.No.953 of 1984, and an order was passed on 20.12.1984, which was marked as Ex-A15. This Court in the above Civil Revision Petition had directed the tenants to vacate the premises and with the said observation, the Civil Revision Petition was dismissed.



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35. The learned Counsel appearing for the appellants further contended that the previous suit filed by the plaintiff in O.S.No.2517 of 1983 was for an injunction suit, which was dismissed by the trial Court. Challenging the said judgment, the plaintiff herein had preferred an appeal in A.S.No.160 of 1987 and the same was also dismissed. The learned Counsel further contended that the suit in O.S.No.2517 of 1983 is only an injunction suit, whereas, the present suit is for declaring that the plaintiff is the absolute owner in the premises in Door No.12, Amman Koil Street, Park Town, Madras-3.

36. The learned Counsel also contended that the suit in O.S.No.2517 of 1983 and the present suit manifest the case of the appellants that they were in possession of the suit property and attempts were made by the defendants and others to interrupt the peaceful possession of the appellants herein. The learned Counsel further contended that the fact that the defendants 3 to 15, who are the tenants in the said premises and occupying a small portions, would make it clear that the tenants, without any authority, cannot have a right to scalp over the property.



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37.The learned Counsel also pointed out the HR & CE proceedings, the finding in the appeal and the order passed by this Court in C.R.P.No.953 of 1984, and contended that the findings in the above proceedings would clearly show that the tenants have lost their entire rights and all the tenants have vacated the premises. The learned Counsel for the appellants submitted that after the defendants 3 to 15 have vacated the premises, the appellants are in absolute enjoyment and occupation of the property and they are in possession of the same.

38.The learned Counsel appearing for the appellants further contended that the report of the Advocate Commissioner, which was marked as Ex-C1 and C2 would clearly show that the Deity was in a small room and the plaintiff was in possession of the suit schedule property. It is the further contention of the learned Counsel for the appellants that the first appellate Court had miserably failed to note the report of the Advocate Commissioner, who had given his detailed description about the presence of the Deity in Ex-C1 and Ex-C2. Hence, the learned Counsel submitted that the order passed by the first appellate Court needs



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39.The learned Counsel appearing for the appellants had relied upon a judgment of this Court in ***O.A.No.483 of 2019 in C.S.No.303 of 2019*** between ***Sri Muthu Kumaraswamy Devasthanam and E.Samundeeswari and others***, dated 07.08.2009, wherein, this Court has held as follows:

“35. In Sayarakshai Kattalai and Arthajama Kattalai attached to Arulmighu Kayaroganaswamy and Neelayadakshi Amman Thirukoil, Nagapattinam vs. R. Radhakrishnan and another reported in 2001 (3) MLJ 73, this court had held that it is a settled position of law that a civil suit is not barred in respect of the relief which cannot be granted by the Deputy Commissioner and in fact in such a suit, the civil court has jurisdiction to decide all incidental issues which are within the jurisdiction of the Deputy Commissioner. While doing so, this court had observed as follows:-

“21. It is also equally well-settled so far as the present suit is concerned, the suit claim as to title of a religious endowments has not been excluded nor it is vested with any other authority so as to limit the jurisdiction of Civil Court to decide the question of title and declare any conveyance void and therefore it is obvious that the Civil Court has the jurisdiction to decide such issues.

22. The preponderance of judicial authority is that a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner and that in such a suit the Civil Court has jurisdiction to decide all incidental issues which are within the jurisdiction of the Deputy Commissioner as has been held by a Division Bench of this Court in Sri Venkataramana Swamy Deity v. Vadugammal . The Division Bench in the said pronouncement held thus:



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“19. In effect, the aim of the *Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951* is not to exclude the jurisdiction of the Civil Court, but to facilitate proper administration of <http://www.judis.nic.in> in religious institutions by following the procedure prescribed to pursue the remedy before the Deputy commissioner and the Commissioner before filing a suit, under the *Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948* (XXVI of 1948), in proceedings relating to the grant of patta under *Sections 12 to 14*, *Section 15* provides that the decision of the tribunal regarding claims under *Sections 12, 13 and 14* by the landholder is final and not liable to be questioned in any Court of law. The provision excluding the jurisdiction of the Civil Court is more specific. Though *Section 64(c)* of the *Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948*, provides that any order passed by the Government or any of the authorities under the Act shall, subject only to any appeal or revision provided by or under Act, be final, it had been held that the finality is only in respect of the matters to be determined for the purpose of this Act and that there is no machinery in the Act to determine whether a land in the estate is a ryoti land or a communal land and a decision as to the question of title by the statutory authorities is only an <http://www.judis.nic.in> in incidental matter which would not preclude a Civil Court independently enquiring into title in a properly constituted suit. Thus in the special enactments, the jurisdiction of the Special Tribunals under the Act is confined only to the purposes of the Acts. As already pointed out, the procedure prescribed under the Act regarding the matters specified in *Section 57* should be followed before the Deputy Commissioner and in the appeal or revision before the Commissioner; before a suit is filed. A relief which cannot be granted by the Deputy Commissioner can be asked for in a Civil Court. If, in deciding whether the plaintiff is entitled to the relief asked for, the Civil Court also has to decide certain issues which may fall within *Section 57* of the Act, the Civil Court's jurisdiction is not barred. There is no provision for reference by the Civil Court of a particular issue which is within the scope of *Section 57* to the Deputy Commissioner for determination. Equally, the plaintiff who seeks relief from a Civil Court cannot be asked to get adjudication of an incidental



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question from the Deputy Commissioner before he filed a suit. Therefore, the preponderance of authority of our Court is that a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner and that in such a suit, the Civil Court has jurisdiction to decide incidental issues which are within the jurisdiction of the Deputy Commissioner.””

40.Relying on the above judgement, the learned Counsel appearing for the appellants submitted that in the above judgment, this Court has held that a suit is not barred in respect of the relief, which cannot be granted by the Deputy Commissioner and therefore, the jurisdiction of the Civil Court has not ousted.

41.The learned Counsel for the appellants had relied upon another judgment of this Court in S.A.No.880 of 2014 between ***the Commissioner of HR & CE and others vs Arulmigu Sri Pethandeshwarar and Pethanayagiammal Thirukovil and another***, in ***S.A.(MD)No.880 of 2014***, dated 10.07.2015, wherein this Court has held as follows:

“36.At the cost of repetition, it is hereby pointed out that the appellants herein/defendants are bound by the order of the Deputy Commissioner, HR & CE, Madurai dated 04.12.1974 passed in O.A.No.31 of 1970, till it is set aside or superseded by a subsequent order in the manner known to law. Hence, the prayer made by the respondents



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herein/plaintiffs for permanent injunction restraining the appellants herein/defendants from interfering with the management of the suit temple by appointing fit person or in any other manner has got to be upheld. The Courts below, in this regard have, rightly held that the respondents herein/plaintiffs are entitled to the relief of injunction. This Court does not find any valid reason to interfere with the said part of the decree of the trial Court as confirmed by the lower Appellate Court. However, it shall be made it clear that the perpetual injunction granted shall not be a bar for the appellants herein/defendants to challenge the order of the Deputy Commissioner made in O.A.No.31 of 1970 in the manner known to law, of course subject to the law of limitation. By way of clarification, it is also made clear that in case, the appellants herein/defendants are of the view that subsequent to the order passed by the Deputy Commissioner, the suit temple was thrown open to the public and acquired the character of a public temple, it shall be open to them to approach the competent authorities under the Act. But unfortunately, it is not the case of the appellants herein/defendants that after the disposal of O.A.No.31 of 1970, the temple was thrown open to the public for worship and became a public temple. On the other hand, the only contention that is raised by the appellants herein/defendants is that the order of the Deputy Commissioner dated 04.12.1974 is erroneous and they are taking steps to get the order set aside. Hence, till the said order is set aside in the manner known to law, the appellants herein/defendants are bound by the order and they cannot take any stand against such an order.”

42.Relying on the above judgement, the learned Counsel appearing for the appellants submitted that in the above judgment, this Court had categorically held that the perpetual injunction granted shall not be a bar for the appellants to challenge the order of the Deputy Commissioner and that the above judgment is squarely applicable to the facts of the present case, as there is no bar for the



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43.The learned Counsel appearing for the appellants also relied on the judgment of the Hon'ble Division Bench of this Court reported in **1992 (1) MLJ 1**, between ***the Commissioner, HR & CE, Madras and others and P.V.Subramania Ayyar and others***, wherein, this Court had held as follows:

“2..... The law on religious endowments in the State of Tamil Nadu has not vested any authority of limited jurisdiction to decide the question of title and declare any conveyance void. In that view of the matter, he has rightly confirmed the judgment of the trial court on this issue.”

44.The learned Counsel for the appellants relied upon another judgment of the Hon'ble Division Bench of this Court in W.A.(MD)Nos.1273 and 1274 of 2019, between ***Sahaja Nalvazhvu Sangam, Aanur Village vs the Commissioner, HR & CE Department and others***, dated 18.11.2019, wherein, this Court held as follows:

“7.We now move on to consider the validity of the proceedings of the third respondent/The Assistant Commissioner of HR & CE Department, Karur, dated 23.08.2018. The communication clearly



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shows that Assistant Commissioner of HR & CE Department has exceeded his jurisdiction, he has written certain things, which he was not authorised to do. Going by the communication of the Commissioner of HR & CE Department, dated 28.07.2018, the Assistant Commissioner of HR & CE Department has no jurisdiction to direct cancellation of patta granted in favour of the appellants. Therefore, the communication of the third respondent, dated 23.08.2018 is without jurisdiction. Added to these, respondents 3 and 4 have already approached the Civil Court by filing a suit in O.S.No.118 of 2018 for declaration, consequential injunction and recovery of possession. The suit is now pending before the Principal District Court, Karur. In our opinion, this is the correct remedy chosen by the respondents 4 and 5. In the interregnum, the HR & CE Department cannot tinker with the proceedings and a parallel line of enquiry cannot be commenced, which, we have already held to be without jurisdiction. Apart from that, we find that there are two civil suits filed by the appellants, namely, O.S.No.105 of 2018, pending on the file of the Principal District Munsif Court, Karur and O.S.No.322 of 2018, pending on the file of the Additional Sub Court, Karur. Thus, when the parties are before the civil court, the HR & CE Department should keep its hands off and await the result of the civil proceedings. As observed earlier certain observations made by the writ court enure in favour of the appellants. Having observed so, we are of the view that the writ court ought to have interfered with the impugned communications directed the parties to agitate their rights before the civil court. This is more so, because if the impugned communications are allowed to stand, it would affect the trial of the civil suit.”

45.*Per contra*, Mr.D.R.Sivakumar, learned Counsel appearing for the second respondent/the Fit Person contended that once the second respondent was appointed as Fit Person/Executive Officer, then the nature of the land and the classification of the land transfers straightly in the name of the HR & CE



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Department and the fact that the hundial was installed and poojas were performed on day today basis by the second respondent/Fit Person, would make it clear that the scheduled mentioned property is a Temple property as per Section 63 of the HR & CE Act.

46.The learned Counsel for the second respondent further contended that poojas and celebrations are conducted as per the Hindu rites and the kumbam festival is celebrated for a period of 18 days and the kurukkal is performing poojas on every day basis and the Temple is paying salary to the kurukkal. The learned Counsel strongly denied that installation of Deity is factually incorrect and the learned Counsel asserted that the Deity, namely, Sri Renuka Parameshwari Amman is worshipped by the entire general public in the locality and from the adjoining locality and the kumbam festival and the other festivals are performed in a large gathering.

47.The learned Counsel further contended that the huge gathering of the public apart from the poojas are being carried out by the Temple and the kumbam festival is celebrated for continuous period of 18 days would show that the



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Temple is a public Temple. It is his further contention that the plaintiff had filed an Original Application No.32 of 1983 before the Deputy Commissioner, HR & CE Department, claiming that the Temple is a private Temple and therefore, finality has not taken place with regard to the nature of the Temple, whether it is a private Temple or a public Temple.

48.The next contention of the second respondent is that the dispute, which is covered under Section 63 of the HR & CE Act, has to be resolved only by the HR & CE Department and in view of Section 108 of HR & CE Act, the initiation of suit is barred under law. The learned Counsel also contended that when once the Temple had assumed the character of the public Temple, then the entire property, where the Temple is situated, belongs to HR & CE Department. Another contention putforth by the learned Counsel for the second respondent is that the suit, which was filed by the plaintiff in O.S.No.2517 of 1983 will operate as *res judicata* and in view of the same, the present suit in O.S.No.12292 of 1996 is not maintainable and hit by *res judicata* and in view of the same, the judgment and decree passed by the first appellate Court is in accordance with law and needs



WEB CORD no interference.

49.Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the Commissioner, HR & CE Department contended that the public in the vicinity are worshipping the Temple and the poojas are performed and any interruption of the Deity may cause a great resistance from the public.

Conclusion:-

50.Admittedly, the plaintiff was in possession of the suit schedule property from their predecessor-in-title. The appellant herein has marked Ex-A1 to Ex-A25. Ex-A1 was the copy of sale deed, dated 23.09.1886; Ex-A2 was the certificate issued by the District Collector in Certificate No.4249, dated 24.04.1895; Ex-A3 was the sale deed executed by Thanikachala Naicker and Loganadha Naicker in favour of Raju Chettiar, dated 01.02.1906; Ex-A4 was the gift deed executed by Raju Chettiar in favour of his daughter, Pachayammal, dated 27.11.1919; Ex-A5 was the settlement deed, dated 10.05.1924 and Ex-A6 was the certified copy of settlement deed executed in favour by Pachayammal in



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favour of Krishna Chetty, dated 20.03.1944; Ex-A7 was the mortgage by Thirupurasundari Ammal and Sakunthala Ammal and Chamundeeswari, dated 11.09.1968; Ex-A8 was the sale deed executed by Thirupurasundari Ammal Chamundeeswari Ammal in favour of the plaintiff, dated 24.01.1980; and Ex-A9, the patta stands in the name of the plaintiff, dated 23.02.1980. On perusal of the above documents would clearly show that the appellants and their predecessor-in-title were in continuous possession by having a valid title ever since 23.09.1886.

51.The defendants 3 to 15, who are the tenants against whom the plaintiff had sought an injunction apart from the first and second defendants, who are the Commissioner, HR & CE Department and the Fit Person appointed by the first defendant and sought for rendition of accounts and to pay a sum of Rs.21,600/- as rent, which was collected from the tenants by the first and second respondents.

52.The second defendant in the suit, namely, the Fit Person, had contended that installation of the Deity was there when the plaintiff had purchased the suit schedule property vide Ex-A8 on 24.01.1980, which demonstrates that there existed a Temple. However, it is pertinent to note that the first defendant in the



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suit, the Commissioner of HR & CE Department has not filed their written statement and had simply adopted the written statement filed by the Fit Person. The Fit Person/second defendant/second respondent was appointed by the first defendant by exercising the statutory powers conferred under the HR & CE Act. It is also to be noted that the first defendant/Commissioner HR & CE Department, has not taken a specific stand with regard to the nature of the Temple whether it is a public Temple or a private Temple, as per the HR & CE Act. In the absence of any order passed by the first respondent, namely, Commissioner, HR & CE Department and in the absence of any pleadings by way of a written statement by him to assert that the Temple in dispute is a public Temple, it could not be considered as a public Temple, just because a hundial is installed.

53. It is also seen from the records that Section 80 CPC notice was given by the plaintiff to the official respondents before instituting a suit. When Section 80 CPC notice was issued to the official respondents, namely, the first and the second defendants, the official respondents have to file a written statement and the act of first respondent/first defendant adopting the written statement filed by the



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second defendant cannot be accepted and the Fit Person nominated by the first defendant cannot step into the shoes of the first defendant. When the Commissioner has to classify the nature of the Temple, whether it is a private Temple or public Temple, the Fit Person cannot say that it is a public Temple and not a private Temple. The person competent to determine the nature of the Temple, whether it is a private temple or public Temple is the first defendant/the Commissioner HR & Ce Department. In the absence of any specific stand coupled with facts and evidences, as contemplated under the Act, the Temple cannot be construed as a public Temple.

54.This Court has a duty to look into the assertion made by the second defendant/Fit Person. The contention of the second defendant that poojas are performed, kumbam festival is conducted and large number of public are worshipping the deity alone is not sufficient, unless and until the Competent Authority, namely, the first defendant, the Commissioner of HR & CE Department, has declared the nature of Temple.

55.The first appellate Court while reversing the judgment of the trial Court



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observed that the judgments in O.S.No.2517 of 1983 which was filed by the plaintiff and the appeal in A.S.No.160 of 1997, both were dismissed, operates as *res judicata*. The first appellate Court had misconstrued the prayer in O.S.No.2517 of 1983 which is only an injunction suit and the present suit is for a declaration.

56.It is not in dispute that the second defendant/Fit Person was appointed on 08.04.1982 by the first defendant. The second defendant has taken charge only on 29.04.1984 as Fit Person. Admittedly, the plaintiff has having a continuous title for a period of 150 years as stated supra from Ex-A1 to Ex-A8 and Ex-A9. It is to be noted that the present plaintiff had purchased the property from their predecessor-in-title on 24.01.1980 under Ex-A8 and patta also stood in the name of the plaintiff.

57.However, the first appellate Court had relied on Sections 6(18) and (20) of the HR & CE Act, which read as follows:

*“6. Definitions-In this Act, unless the context otherwise requires,
(1).....*



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(18) “Religious institution” means a math, temple or specific endowment and includes, —

(i) a samadhi or brindhavan; or

(ii) any other institution established or maintained for a religious purpose.

Explanation.- For the purpose of this clause-

(1) “samadhi” means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;

(2) “brindhavan” means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious worship, but does not include the samadhi;)

.....

(20) “temple” means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship;

Explanation. —Where a temple situated outside the State has properties situated within the State, control shall be exercised over the temple in accordance with the provisions of this Act, in so far as the properties of the temple situated within the State are concerned.”

58. By relying on the above provisions of the HR & CE Act, the first appellate Court had come to the conclusion that the Temple is a public Temple, in the absence of any proof with regard to the collection of hundial amount, which was deposited with the first defendant to show that the Temple is a public Temple.

59. The petition filed by the tenants before the HR & CE Department claiming right over the property was dismissed by the HR & CE Department,



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which was marked as Ex-A11 and an appeal challenging the said order before the appellate authority under the HR & CE Act was also dismissed and challenging the same, a Civil Revision Petition was filed by the tenants and the same was also dismissed and time was given to the tenants to vacate the premises, which was marked as Ex-A14.

60. The report of the Advocate Commissioner in Ex-C1 and Ex-C2 would clearly show that there existed a Deity and the said Deity is kept in a very small room, which, as stated by the plaintiff, is 6x6". When there is no material to show that the case would fall under Section 63(a) or Section 69 or Section 70 or Section 108 of the Act, which are all extracted hereunder, it cannot be construed as a public Temple:

“63. Joint Commissioner or Deputy Commissioner to decide certain disputes and matters subject to the rights of suit or appeal hereinafter provided, 4[the Joint Commissioner or the Deputy Commissioner, as the case may be], shall have power to inquire into and decide the following disputes and matters:—

(a) whether an institution is a religious institution;

.....

“69. Appeal to the Commissioner:- (1) Any person aggrieved by any order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be], under any of the foregoing sections



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of this chapter, may within sixty days from the date of the publication of the order or of the receipt thereof by him as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit.

(2) Any order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be], in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings as to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be]. Any such order passed by the Commissioner in respect of an order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be], shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-section (1).

(3) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding section or in which no suit has been instituted in the Court within the time specified in sub-section (1) of section 70 may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in section 66.

.....

70. Suits and appeals.—(1) Any party aggrieved by an order passed by the Commissioner— (i) under sub-section (1) or sub-section (2) of section 69 and relating to any of the matters specified in section 63, section 64 or section 67 ; or (ii) under section 63, section 64 or section 67 read with sub-section (1)(a), 2 or (4)(a) of section 22 or under section 65 may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order, and the Court may modify or cancel such order; but it shall have no power to stay of order of the Commissioner pending the disposal of the suit. (2) Any party aggrieved by a decree of the Court under sub-section (1), may, within ninety days from the date of the decree, appeal to the High Court.



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.....
108. Bar of suits in respect of administration or management of religious institutions, etc.—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.”

61. When it is necessary to establish whether the Temple is a public Temple, then there should be an endowment and dedication. Unless the endowment and dedication are part and parcel of the Temple, which are necessary ingredients to establish the character of the Temple, the question whether it is a public Temple or a private temple and merely installation of an Idol, which is construed as a Temple by itself, will not arise at all.

62. It is to be noted that the statement of accounts marked by the second defendant in Ex-B23 relates to the period from 01.04.1996 and 30.09.1996 and Ex-B24 for a period from 01.10.1998 to 31.03.1999. Except for this short period, neither the second defendant nor the first defendant had produced any material before the Courts below to substantiate that the Fit Person was in possession of



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the suit schedule property. It is an admitted fact that during the relevant period, the second defendant had collected rent from the respondents 3 to 15 for a sum of Rs.21,600/-.

63.The first appellate Court has given a finding that the suit is not maintainable, as there is a statutory bar under Section 108 of the HR & CE Act. However, the first appellate Court had failed to note that when the Temple itself was not classified as public Temple or private Temple and the appellant/plaintiff was having a valid uninterrupted title, which travels for a period of 150 years.

64.The first appellate Court on misconception of facts had given a finding reversing the judgment of the trial Court it is observed that O.A.No.32 of 1988 filed by the plaintiff under Section 63(a) of the HR & CE Act is pending with regard to the decision to be taken by the first defendant, the Commissioner with regard to the public or private Temple. In a Writ Petition filed by the present legal heirs of the plaintiff in W.P.No.2704 of 2022, this Court had recorded that the Original Application No.32 of 1988 pending before the HR & CE Department



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was withdrawn as early as on 08.11.1995. It is pertinent to note that in the written statement filed by the second defendant/Fit Person, it is stated that O.A.No.32 of 1988 was pending with the HR & CE Department. The second defendant had filed his written statement on 04.01.1999. The Fit Person was not aware of the disposal of O.A.No.32 of 1988, when he filed the written statement on 04.01.1999, which is after 11 years. It is sad to note that the first respondent/first defendant/Commissioner, HR & CE Department, had simply adopted the written statement filed by the Fit Person appointed by him.

65.Since the sale deeds which are in favour of the plaintiff and their predecessor-in-title for a period of 150 years and the prayer in the suit is for declaration of title, in the absence of any order passed by the HR & CE Department, namely the first defendant with regard to the character of the Temple, whether it is a public or private Temple and the plaintiff has issued Section 80 CPC to HR & CE Department, the Fit Person cannot step into the functioning of the Commissioner, HR & CE Department and the Fit Person is only a person to administrate the Temple property and he cannot step into the shoes of the



WEB COPY Commissioner, so as to say the nature of the Temple.

66.The 3rd to 15th defendants, who are only the tenants, have no say with regard to neither the title or about the possession of the plaintiff and their claim petition with regard to their tenancy was dismissed by the original authority and the appellate authority under the HR & CE Act and the Civil Revision Petition filed before this Court was also dismissed with a direction to vacate the premises, which would only show that the the private respondents, who are tenants, who are vacated the premises, had no say with regard to the title of the property.

67.The Original Application No.32 of 1988, which was filed and pending before the HR & CE Department was withdrawn as early as in the year 1995 would also clearly show that the reasons given by the first appellate Court reversing the judgment and decree passed by the trial Court is not based on facts and on law and the finding given by the first appellate Court is contrary to the evidence and absolute misconception of law.



WEB COPY 68. This Court, by order, dated 18.11.2024, had admitted the Second Appeal

on the following substantial questions of law:

“1. Whether the first appellate Court also failed to see that there was no dedication of the property at any point of time?

2. Whether the first appellate Court failed to see that mere use of a room in a private property cannot clothe it with characteristics of a temple, much less a public temple?”

69. While answering the substantial questions of law, the learned Counsel for the appellants contended that the Commissioner of HR & CE Department had not filed any written statement and had only adopted the written statement filed by the Fit Person, namely, the first defendant in the suit. The Fit Person is none other than the person, who was appointed by the Commissioner of HR & CE Department, who has no right or authority to exercise the Commissioner of HR & CE Department. In view of the same, the learned Counsel for the appellants contended that the respondents cannot claim a right over the Temple. The learned Counsel had come forward to relinquish the land, where, the Temple is situated.

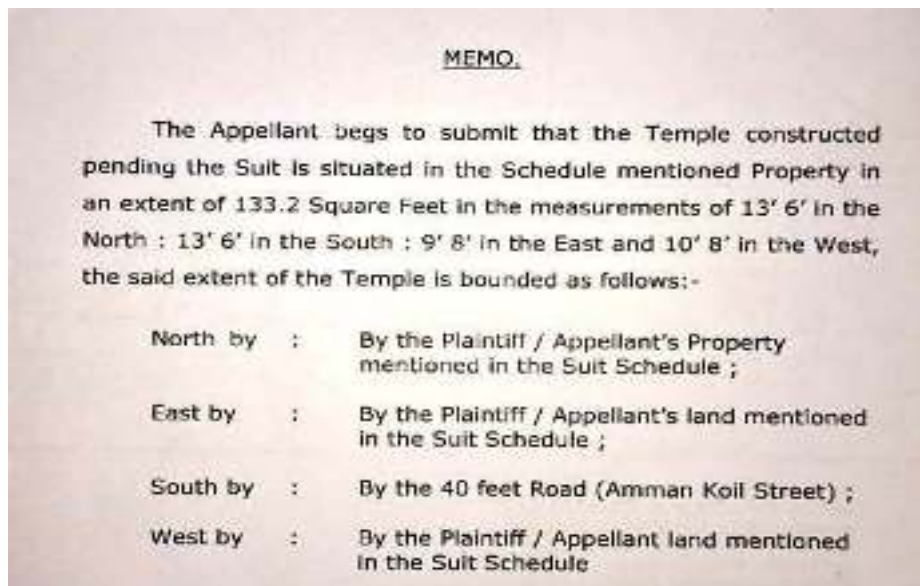
70. After elaborate arguments, the learned Counsel for the appellants, the learned Special Government Pleader and the learned Counsel for the second



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respondent contended that they will explore the possibility of an amicable settlement. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader sought that he will request the jurisdictional Tahsildar to furnish a plan enabling the Court to take a pragmatic view that the Temple which was in actual possession is in the suit scheduled property.

71.The learned Counsel for the appellants has filed a memo containing the four boundaries of the suit property along with a plan, which is scanned and reproduced as follows:





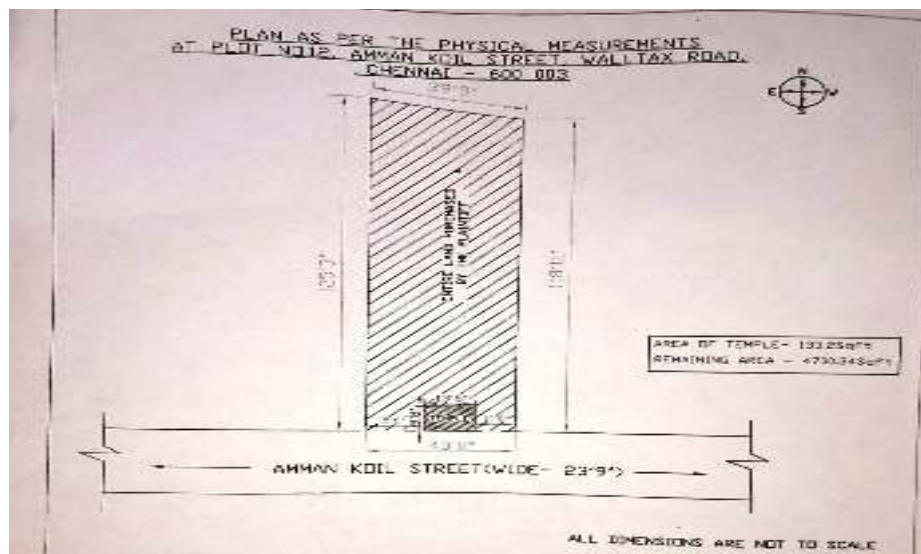
Admeasuring an extent of 133.2 Square Feet within the limits of Chennai District.

The Boundaries above is filed as per the directions of this Hon'ble Court.

The Plan showing the physical measurements is enclosed.

Dated at Chennai on this the 3rd day of January 2025.

A. Chelvi
Counsel for the Appellants.



72. Consequently, the learned Special Government Pleader filed a plan of the jurisdictional Tahsildar, dated 21.10.2024, was filed before this Court for



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sq.ft and the suit may be decreed leaving the 132 sq.ft., as earmarked and furnished by the Tahsildar vide his plan, dated 21.10.2024.

74.Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the HR & CE Department and Mr.D.R.Sivakumar, learned Counsel appearing for the second respondent also contended about the ground reality, which the Temple is in actual possession of 132 sq.ft, alone.

75.The substantial questions of law are answered in favour of the appellants, which are factual in nature is answered in favour of the plaintiff.

76.In the result,

(1)The **Second Appeals are allowed;**

(2)The judgment and decree passed by the first appellate Court is set aside and the judgment and decree of the trial Court is restored;

(3)As per the submissions made by the appellants and the learned Counsel for the official respondents, the Temple is in occupation of 132 sq.ft. as per the



WEB CUP plan submitted by the jurisdictional Tahsildar.

(4)The Temple as mentioned in the suit will remain as Temple. The suit is decreed in the above terms.

(5)As the appellants are willing to give up 132 sq.ft., of land where, the Temple is situated, the said extent of land shall be excluded while decreeing the suit in favour of the appellants.

(6)The memo containing the four boundaries of the suit property along with the plan filed by the learned Counsel for the appellants and the plan submitted by the jurisdictional Tahsildar, shall form and part of the decree.

(7)No costs.

23.01.2025

Internet :Yes/No

NCC :Yes/No

Index :Yes/No

cmr

To

1.The V Additional Judge, City Civil Court at Chennai.

2.The V Assistant City Civil Judge, Chennai.

3.The Commissioner,
Hindu Religious and Charitable



WEB COPY Endowment Department,
Nungambakkam High Road,
Chennai – 600 034.

N.SENTHILKUMAR, J.
cmr

Pre-Delivery Judgment made in
S.A.Nos.1045 and 1046 of 2011

23.01.2025