BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/03/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.341 of 2007
and
CMP(MD)No.1 of 2007

Mariamman Temple,
Through by the Executive Officer
of Pasupatheeswarar Kovil,
Having its office
at Avoor Village. : Appellant/Appellant/ Defendant

Vs.

Ramamoorthy : Respondent/Respondent/ Plaintiff

PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed by the Principal Subordinate Judge, Kumbakonam in AS No.69 of 2005, dated 04/11/2006 confirming the judgment and decree of the District Munsif, Valangaiman, Kumbakonam in OS No.113 of 1999, dated 19/01/2005.

For Appellant : Mr.G.Gomathi Shankar

For Respondent : Mr.S.Kumar

JUDGMENT

This second appeal is preferred against the judgment and decree passed by the Principal Subordinate Judge, Kumbakonam in AS No.69 of 2005, dated 04/11/2006 confirming the judgment and decree of the District Munsif, Valangaiman, Kumbakonam in OS No.113 of 1999, dated 19/01/2005.

2.**The plaint:-** Arulmighu Mariamman Temple was constructed by the plaintiff's ancestors, continuously performing pooja for the past twenty years. Now the plaintiff is the hereditary trustee, apart from Parambarai hereditary pooja. Being the elder in the family, the plaintiff is holding the office, after the death of is father in 1987. The properties of the temple are under the cultivation of the plaintiff. He filed O.A.No.71 of 1998 before the Joint Commissioner, HR & CE Department, Thanjavur to declare him as hereditary trustee. On the date of the suit, it was pending. The defendant has no right over the temple, called 'Arulmighu Mariamman Temple, Avoor, except the power to release the fund under the Government Scheme for the purpose of performing one time pooja to the income-less temples. Since there was no sufficient income for the temple, the plaintiff deposited Rs.2,500/-. The deposit amount and the interest accrued is released through the defendant for performing pooja. The defendant is not paying the salary to the plaintiff. He issued suspension memo. That memo is *per se* illegal, since the defendant has no right over the temple, regarding the administration, management, etc. So, the suit is filed seeking the relief of declaration that the order passed by the defendant, dated 28/05/1999 is null and void and consequential permanent injunction restraining the defendant from implementing the order, costs.

3.**The statement**:-It is denied that the temple is a private temple belongs to the plaintiff, predecessors, etc. It is denied that it is constructed by his ancestors out of their own funds. The custom pleaded in the affidavit that the elder will hold the office of the hereditary trustee is not true. The defendant is the Executive Officer of the temple and they are duty bound to the administrate the temple as per law. No order was passed in OA No.7 of 1998 as on date. The plaintiff is not doing pooja in the temple. Actually, one Subramanian is doing the pooja. Information was received that the plaintiff indulged in unlawful activities against the temple properties. He obtained Kudi Iruppu patta in the temple property and put up a pucca construction. He installed hundi and started collecting money from the public without prior permission from the officials. There was no proper accounts. So, action was taken against the plaintiff and he was relieved from the duties. He surrendered the same on 01/05/1999. Monthly salary was paid to the plaintiff through Bank. The suit is also barred under section 108 of the H.R & C.E. Act. The order of suspension was passed by following proper procedure. The patta granted in favour of the plaintiff was cancelled in the appeal filed by the authorities and prayed for dismissal of the suit.

4.On the basis of the pleadings of both sides, the trial court has formulated the following issues:-

> *(1)Whether the plaintiff is entitled to declaration as prayed for?*
>
> *(2)Whether the plaintiff is entitled to permanent injunction as prayed for?*
>
> *(3)Whether the suit is barred under section 108 of HR & CE Act?*
>
> *(4)Whether the civil court has jurisdiction to entertain the suit?*

(5)Whether the suit property is properly valued?

(6)Whether the suit has become infructuous?

(7)Whether the plaintiff is the hereditary trustee to the defendant' temple?

(8)Whether it is true that the plaintiff has lost all rights and interest after 31/05/1999?

(9)To what relief, the plaintiff is entitled to?

5.On the side of the plaintiff, 2 witnesses were examined and 19 documents marked. On the side of the defendant, one witness was examined and 3 documents were marked.

6.At the conclusion of the trial process, the trial court decreed the suit without any cost. Against which, appeal was preferred before the Principal Sub Judge, Kumbakonam in As No. 69 of 2005. By judgment and decree, dated 04/11/2006, it confirmed the judgment and decree passed by the trial court.

7.Against which, this second appeal is preferred.

8.At the time of admission, the following questions of law were formulated for consideration:-

> **(1)Whether the courts below ought to have held that the suit was barred under Sections 55 and 108 of the Hindu Religious and Charitable Endowments Act?**
>
> **(2)Whether the hereditary rights in a temple can be claimed only under Section 63 of the Hindu Religious and Charitable Endowments Act and cannot be granted by the Civil Court?**
>
> **(3)Whether the Courts below ought to have held that the plaintiff cannot claim hereditary poojari rights under Section 55 of the Hindu Religious and Charitable Endowments Act?**

9.Heard both sides.

10.The prayer in the plaint reads that the order dated 28.05.1999 passed by the defendant is not valid under law and cannot be put into execution and for permanent injunction from enforcing the order. The order is produced as Ex.A18, issued by the Executive

Officer/Thakkar of Arulmigu Mariamman Thirukovil, Avoor, Valangaiman Taluk, reference is made to the complaint sent by the public on 26.03.1999, wherein, it has been stated that after the death of his father the plaintiff performed pooja for about 15 years; indulged in activities against the interest of the temple; Enquiry was conducted on the complaint sent by the public and inspection made by the Executive Officer; Pending the enquiry he was placed under suspension. 5 charges were framed against him. He was directed to submit his explanation within 15 days from that date.

11.Without sending any explanation, he resorted to the suit, filed the same on 03.06.1999, i.e., within a short period. This was admitted by the plaintiff that he did not send any reply or explanation to the charges.

12.Now we will see the ground of attack. In the plaint he has stated that the appellant herein has no right over the temple except releasing the fund for the purpose of daily pooja, since the temple administration was not taken over by the appellant, the very issue of the charge memo and suspension are *per se* illegal.

13.Now we will go to the statement filed by the defendant in response to the illegality of the order. In the statement the character and right of the plaintiff to perform pooja as well as to act as hereditary trustee was disputed. To whom the temple belongs. Whether it was constructed by the plaintiff's ancestors is beyond the scope of the suit as well as the present second appeal. So I am not touching upon that point.

14.It is stated in the statement that the appellant is the lawful Executive Officer of the temple and got every right to manage its affairs. The petition filed by the plaintiff for declaring him as hereditary trustee of the temple in O.A.No.71 of 1998 before the Joint Commissioner, H.R.& C.E., Thanjavur was stated to be pending.

15.Even before this Court, further development was not informed. When the plaintiff invoked the jurisdiction of the competent authority to declare him as the hereditary trustee we can leave that matter as it is without entering into that issue of whether the plaintiff's ancestors are the founder of the temple.

16.The learned counsel for the appellant would submit that as on date the petition filed by the respondent is pending before the Deputy Commissioner, H.R. & C.E., Thanjavur, for consideration. He would submit that the suit itself is barred under Section 108 of H.R.& C.E. Act. So the trial Court ought not to have entered into the issue of validity of the charge memo issued by the Executive Officer.

17.He would further submit that action was initiated against the plaintiff for acting against the interest of the temple. Byy suppressing the true facts, he obtained kudiruppu patta in the land of the temple, cut and removed standing trees, put up hundial in front of the temple without the permission of the department. Those misbehaviours were properly enquired by the competent authorities in the preliminary enquiry and finding a prima facie truth in the allegations, he was placed under suspension. Charges were framed. Without facing the charges legally, now he resorting the suit.

18.Per contra, the learned counsel for the respondent would submit that the plaintiff was recognized as a trustee even as per the documents of the department under Exs.A3, A5 to A7. So the appellant cannot now disput the character of the plaintiff. The temple is not a listed temple under the provisions of Section 53 of

H.R. & C.E. Act. So the Executive Officer has no right to exercise the power and jurisdiction of the Assistant Commissioner to suspend the plaintiff. The allegations mentioned in the charge memo are not true. So according to him, since the order of suspension was not passed by the Competent authority, it was rightly declared to be invalid by the trial Court and affirmed by the appellate Court, which requires no interference.

19.As mentioned above, I am not going into the issue of hereditary trusteeship of the plaintiff, so also the founder of the temple. The second appeal will be concentrated only upon the jurisdiction of the Executive Officer to initiate action.

20.It is admitted that the temple is not a listed one. Section 53 of the H.R. & C.E. Act reads as under:-

> "**53.Power to suspend, remove or dismiss trustees.**— (1) In this section, the expression, "appropriate authority" shall, unless the context otherwise requires, means—
>
> (a)in respect of any trustee of any religious institution included in the list published under clause (iii) of section 46, 3[the Government] ;
>
> (b)in respect of any trustee of

any religious institution included in the list published under clause (ii) of section 46; the Commissioner];

(c)in respect of any trustee of any religious institution included in the list published under clause (i) of section 46 and in respect of any hereditary trustee of any religious institution not included in the list published under the said section 46, [the Joint / Deputy Commissioner].

(d)in respect of any non-hereditary trustee of any religious institution not included in the list published under section 46 [the Assistant Commissioner].

[(1-A)Notwithstanding anything contained in sub-section (1) for the purpose of this section, the Government shall also by the appropriated authority in respect of any trustee of any religious institution.]

(2)The appropriate authority may suspend, remove or dismiss any trustee, if he—

(a)ceases to profess the Hindu religion ; or

(b)fails to discharge the duties and perform the functions of a trustee in accordance with the provisions of this Act or the rules made thereunder ; or

(c)disobeys the lawful orders

issued under the provisions of this Act or the rules made thereunder by the Government, the Commissioner, [or the Joint Commissioner or Deputy Commissioner] or the Assistant Commissioner; or

(d)continuously neglects his duty or commits any malfeasance, misfeasance or breach of trust, in respect of the trust ; or

(e)misappropriates or deals improperly with the properties of the institution ; or

(f)is of unsound mind or is suffering from other mental defect or infirmity which would render him unfit to perform the functions and discharge the duties of a trustee or is suffering from leprosy or other loathsome disease; or

(g)is sentenced by a criminal Court for an offence involving moral delinquency, such sentence not having been reversed or the offence pardoned ; or

(h)is an undischarged insolvent ; or (i) is interested in a subsisting lease of any property of, or contract made with or any work being done for, the religious institutions or endowment;

(ii)is in arrears or default of any kind due by him to the religious institution ; or endowment;

(j)acts adversely to the interests of the institution ; or

(jj)willfully fails to pay the contribution payable under sub-section (1) of section 92 or the further sum payable under sub-section (2) of section 92 within the time allowed by or under clause (b) of sub-section (2) of section 94 ; or

(k)absents himself from three consecutive meetings of the trustees"

Section 46 of the Act classifies the temple to be registered or listed on the basis of the income. Now it is admitted that the suit temple is not listed as per the provisions of Section 46, which is extracted hereunder.

"**46. Commissioner to publish list of certain institutions.**—The Commissioner shall publish, in the prescribed manner, a list of the religious institutions whose annual income, as calculated for the purposes of the levy of contribution under sub-section (1) of section 92,—

(i) is not less than ten thousand rupees but is less than two lakh rupees;

(ii) is not less than two lakh rupees but is less than ten lakh rupees ;

(iii) is not less than ten lakhs

rupees, and may, from time to time, modify such list in the prescribed manner :

Provided that the Commissioner shall not remove any institution from such list unless its annual income calculated as aforesaid has fallen below ten thousand rupees for three consecutive years:

Provided further that if the annual income of any such institution calculated as aforesaid has-

(a) exceeded the limits specified in clause (i) and (ii); or

(b) fallen below the limits specified in clause (ii) or clause (iii), for three consecutive years, the Commissioner may alter the classification assigned to such institution in the list and enter the same under the appropriate classification in the said list."

21.As per Section 53, the Joint Commissioner/Deputy Commissioner is the competent person to initiate action either for suspending, removing or dismissing the trustee. Nowhere, under Section 53 of the Act, we find that power was conferred upon the Executive Officer.

22.Moreover there is no explanation on the part of the appellant that the power was delegated to the

Executive Officers by the Joint Commissioner or Deputy Commissioner as the case may be. If at all any power was delegated to the Executive Officer it ought to have been notified and placed on record in the charge memo itself. We find no reference to any such delegation of powers.

23.In this context, we will go to the evidence of DW1. He would say during the course of evidence that the Assistant Commissioner directed him to make enquiry. But this is not the proceedings of delegation of powers by the Assistant Commissioner. The Assistant Commissioner only requested or directed the Executive Officer to make enquiry regarding cutting of trees and its safe custody. So this will not amount to delegation of powers. Moreover this documents does not authorize him to issue suspension order.

24.In response to the above said suspension order the plaintiff himself has written a letter to the Executive Officer stating that he will surrender the key and other documents in response to the suspension order. This document is marked as Ex.B3 on the side of the appellant, it is dated 31.05.1999, after filing the suit. So it is not relevant since already the civil Court has seized the issue. So when the Executive Officer invoked the power which was not conferred upon him, then it is nothing but an illegal order which cannot be enforced. So it was rightly held so by the trial Court as well as the appellate Court. So I find that absolutely there is no illegality in the findings. But, however, this judgment will not bar the competent authority to initiate fresh action against the respondent herein as per the provisions of the Act, since serious allegations are made against the respondent.

25.So with this clarification, I find that none of the substantial question of law framed arises in this matter. So I find no reason to interfere. Appeal deserves to be dismissed. Accordingly, **dismissed** without any costs, with the above said observation and liberty to the concerned authority. Consequently, connected Miscellaneous Petition is closed.

14/03/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Principal Sub Judge,
  Kumbakonam.

2.The Principal District Munsif,
  Valagaiman at Kumbakonam.

3.The Section Officer,
  VR/ER Section,
  Madurai Bench of Madras High Court,
  Madurai.

G.ILANGOVAN, J.

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<u>14/03/2024</u>