BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.12.2024

PRONOUNCED ON:19.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.193 of 2023
and
C.M.P.(MD)No.11028 of 2023

P.Subramanian(died)

S.Balasubramanian :Appellant/2nd Defendant

Vs.

1. Idol of the Arulmighu Kalyana
Pasupatheeswaraswamy,
Arulmighu Kalyana Pasupatheeswaraswamy
Devasthanam, Karur,
represented by its Executive Officer,
Karur. : 1st Respondents/Plaintiff

2.Kala
3.Padma
4.Deivanai : Respondents 2 to 4/
Defendants 3 to 5

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree passed in O.S.No.77 of 2016, dated 14.03.2022, on the file of the District Judge, Karur.

For Appellant : Mr.K.Suresh

For Respondents : Mr.P.Athimoola Pandian
for R.1
: No Appearance for R.2
: Respondents 3 and 4 - Exparte

JUDGMENT

The Appeal Suit is directed against the judgment and decree made in O.S.No.77 of 2016, dated 14.03.2022, on the file of the District Court, Karur.

2. The first respondent, as plaintiff, has filed the above suit to declare that the plaintiff idol is the absolute owner of the suit property and for consequential relief of recovery of possession, directing the defendants to deliver the actual possession of the suit property after removing the superstructure if any over the suit property and for mesne profits.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the original suit.

4. The case of the plaintiff in short is as follows:

(a) The suit property is the property of the plaintiff idol. The old survey number for the suit property as on the year 1863 is paimash No.34 and the survey number as on the year 1899 is 762 and the new T.S.NO.is 924. The title stands in the name of the plaintiff idol and the T.D.No. Is 1290. The suit property is a Devadayam Paditharam Inam, vested with the plaintiff idol originally, which was granted for the benefit of the temple for day to day administration and the same has been vested with the trustees of the plaintiff temple.

(b) The plaintiff came to know that one Kulandaivel Pillai and other have obtained patta under the The Tamil Nadu Minor Inams (Abolotion and Conversion into Ryotwari) Act. The said Kulandaivel Pillai was the adopted son of one Muthukaruppa Pillai, who was the Village Karnam of Inam Karur Village and was also a trustee of the temple from 1884 and a member of the Devasthanam Committee and Executive Member of the said committee till his death. The said Muthukaruppa Pillai had taken possession of the property in the capacity of trustee of the plaintiff temple and as such, he cannot claim any individual, exclusive or private rights. At the time of demise of the said

Muthukaruppa Pillai, his adopted son Kulandaivel Pillai was a minor. The natural father of the said Minor Kulandaivel Pillai is T.S.Muthukumarasamy Pillai, who was holding a very important position in the temple and in that capacity, he was assuming possession from Muthukaruppa Pillai till his natural son had grown up. The said Muthukaruppa Pillai had sold the suit property in the capacity of guardian and natural father of Kulandaivel Pillai to the ancestor of the defendants' predecessors-in-title. The defendants or their predecessors in title have some how or other managed to get patta under the Act 33 of 1963;

(c) The plaintiff is an Institution governed under the Tamil Nadu H.R.&C.E., Act and as the property is the trust property in favour of the plaintiff idol, nobody is entitled to prescribe any title by adverse possession. When the Tamil Nadu Minor Inam Abolition and Convertion into Ryotwari Act (Act 30/1963) came into force, the Government has taken over the above properties. The Settlement Tahsildar has issued a notice to the temple authorities, for which, the temple authorities have given their objections for giving patta to the public. The Settlement Tahsildar, Trichirappalli, in his order dated 09.10.1967 has given patta to various persons under Sections 13 and 8(1) of the Act. The defendants or their predecessors have been given patta under Section 13 relating the superstructure alone and as such, the defendants are entitled to the superstructure in the suit property. The plaintiff temple has obtained patta for the ground in Patta No.21 and the plaintiff has been paying kists to the suit site to the revenue authorities.

(d) The plaintiff Idol issued a notice to the defendants on 04.08.1989 calling upon him to pay ground rent to the suit property, for which, the defendants have issued a reply stating that they have purchased the property from one Murugan vide sale deed dated 07.06.1989 and 21.03.1985 and thereby denied the title of the plaintiff and created cloud over the suit property.

(e) Earlier the plaintiff Idol filed a suit in O.S.No.5 of 1990, on the file of the Subordinate Court, Karur for declaration and recovery of possession against the defendants and one Hari Rao. Since the defendants disputed the title of the plaintiff, the Court directed the plaintiff to pay the Court fee on the market value and due to financial crunch, the plaintiff Idol could not pay the large amount as Court fee and hence the suit was dismissed and subsequently the Home Department has issued a Government Order, dated 05.04.2010 reducing the Court fee payable by the temple to a maximum of Rupees One Hundred. The suit property is situated very close to Jawahar Bazaar in Karur Town, which is a busy area. The prevailing rate of rent in the said area is not less than Rs.1/- per square feet per month and as such, the defendants are liable to pay Rs.23,086/- per month.

(f) After the filing of the suit, the plaintiff came to know that the first defendant had died leaving behind his son - the second defendant and the daughters- the defendants 3 to 5 as his legal heirs. In order to avoid technical objections and multiplicity of proceedings, they were added as party defendants. Hence, the above suit for seeking the reliefs of declaration and possession.

5. The defence of the second defendant is as follows:

(a) The plaint allegations are all false, frivolous, vexatious and highly speculative. The suit property was originally mortgaged to Hari Rao's father on 25.04.1927. The suit property was sold to Hari Rao on 24.02.1963 and since then, he had been in possession and enjoyment of the property. Subsequently, Hari Rao sold the suit property to one

Murugesan, who in turn sold the same to one Mohammed Sultan, who in turn sold the property to the defendants 1 and 2. Under the Inam Abolotion Act, the kudivaram rights are given to individuals and not to the temple. After the sale in favour of the defendants 1 and 2, they have been in possession and enjoyment of the property as absolute owners by paying the property taxes and that they have perfected their title by adverse possession and prescription. The defendants 1 and 2 and their predecessors-in-title have perfected their title by adverse possession and prescription.

(b) Under the Inam Abolotion Act, patta has been given to the defendants 1 and 2's predecessors-in-title. There is no Mel Varam and Kudivaram and the temple never enjoyed both varams. As the Inam was abolished under Act 30 of 1963 and the same has reached finality, the plaintiff's remedy if any is only before the Inam Tribunal and not before the civil Court and as such, the Court has got no jurisdiction and the suit is barred under Section 9 of C.P.C. The defendants are not liable to pay Rs.23,086/- p.m., as rent. The plaintiff filed a suit in O.S.No.5 of 1990, on the file of the Subordinate Court, Karur against the defendants and one Hari Rao on the same set of facts. The suit was not rejected under

Order 7 Rule 11 of C.P.C., but was dismissed for non-payment of necessary Court fees. The suit is bad for non-joinder of necessary parties ie., the heirs of the first defendant. There is no cause of action for the suit and the one alleged is denied as false and frivolous. Hence, the suit is liable to be dismissed.

6. The learned trial Judge, upon considering the pleadings of both parties, has framed the following issued:

(1) Whether the plaintiff is the owner of the suit property?

(2) If so, whether the plaintiff is entitled to recover the possession of the suit property from the defendant?

(3) Whether the plaintiff is entitled to mesne profits?

(4) To what relief the plaintiff is entitled?

7. During trial, the petitioner Temple's Executive Officer Thiru.Sankar has been examined as P.W.1 and one Kumaresan as P.W.2 and 15 documents came to be exhibited as Exs.A.1 to A.15. On the side of the defendants, the second defendant has entered witness box as D.W.1 and exhibited 7 documents as Exs.B.1 to B.7. The defendants 3 to 5 had remained exparte. The learned trial Judge, upon considering the

pleadings and evidence both oral and documentary and on hearing the argumens of both sides, has passed the impugned judgment dated 14.03.2022, decreeing the suit as prayed for with costs, granting two months time for delivery of possession and relegating the future mesne profits under Section 20, Rule 12 of C.P.C., in a separate proceedings. Aggrieved by the impugned judgment and decree, the present appeal came to be filed.

8. Heard the learned Counsel appearing for both sides and perused the materials available on record.

9. The points for consideration are as follows:

(1) Whether the suit filed by the Executive Officer is maintainable, without obtaining prior sanction from the Commissioner of H.R.&C.E.,?

(2) Whether the defendants have perfected their title by adverse possession?

(3) Whether the suit is barred by limitation?

(4) Whether the trial Court erred in decreeing the suit granting the reliefs of declaration and possession as prayed for?

(5) Whether the judgment and decree of the learned trial Judge are liable to be interfered with?

(6) To what other reliefs, the parties are entitled to?

Point No.1:

10. The learned Counsel appearing for the second defendant would contend that the suit filed by the Executive Officer is procedurally defective and unsustainable under Section 45 of the Hindu Religious and Charitable Endowments Act, 1959, that the above said Section clearly mandates prior approval from the Commissioner before instituting any suit concerning temple properties, that the statutory safeguard ensures that only authorized and well considered actions are taken without any bias or personal motive, that as per the Rule 4(b)(iii) of the conditions of Appointment of Executive Officer Rules, 2015, which had been framed in exercise of powers under Section 45 of the said Act, prior approval to sue is mandatory and the Executive Officer can sue and be sued only with the prior approval of the Commissioner, that the Executive Officer filed the present suit without obtaining the requisite prior permission from the Commissioner and such a lapse is not a minor technicality, but a fundamental defect that strikes at the root of the suit.

11. The learned Counsel would rely on the decision of the Hon'ble Division Bench of this Court in ***Padmavathi and others Vs. the Idol of Sri Renganathaswami, Srirangam, represented by its Joint Commissioner / Executive Officer and others*** passed in A.S.(MD)Nos. 143 and 193 of 2014, dated 02.08.2024. He would further submit that the Division Bench has relied on the earlier Division Bench Judgment in ***Sri Arthanareeswarar of Tiruchendgode by its present Executive Officer Vs. T.M.Muthuswamy Padayachi, etc, and others*** reported in ***2003-1-L.W.386.*** It is necessary to refer the relevant passages in ***Padmavathi's case*** above referred:

> *"11.1 First to the non-compliance of the requirements of Sec. 45(2) of the H.R. & C.E.Act. In Sri Arthanareeswarar of Tiruchendgode by its present Executive Officer Vs T.M.Muthuswamy Padayachi. etc., & Others [2003-1-L.W. 386], a Division bench of this Court has held that as per the scheme of the H.R. & C.E. Act, the Executive Officer is not enjoined with the duty to initiate a legal action, and that this power is vested only with the Board of trustees. This ratio is holding the fort in this aspect and it is followed in a quite a few subsequent judgements of this court including B.S.Manian & Others Vs Arulmigu Yoganarasimhaswami Thirucoil [2019 SCC online mad 36241] and Arulmigu Parvatheeswaraswami Thirucoil y its E.O. Vs Sundaram*

Gurukkal & Others [S.A.No.224 of 2001, dated 03.04.2023]. Plainly the present suit cannot be maintained as it was laid by the Executive Officer. 11.2 However, the respondent/plaintiff has placed reliance on the dictum of a learned single Judge of this Court in Idol of A/m.Sri Kalyana Venkataramanaswamy, Thanthonimalai, represented by its Executive Officer/The Assistant Commissioner Vs M.Palanivel and Others [A.S(MD)No.118 of 2020 dated 19.06.2023]. But the said judgement indicates that the court has relied on sec.34A and 34 B of the H.R. & C.E. Act and these provisions specifically deal with leases of the temple properties. Here, the suit is one based on title on the allegation that the plaintiff is the owner of the suit properties and that they have been specifically endowed under Ext.A2. On facts the factual context of Kalayana Venktaramanaswamy Tirucoil case is far distanced from the facts of the present case, and this Court therefore, opts to follow the earlier dictum of the Division Bench in Sri Arthanareeswarar of Tiruchendgode by its present Executive Officer Vs T.M.Muthuswamy Padayachi. etc., & Others [2003-1-L.W. 386]. This Court is now left with very little option than to hold that the suit is not maintainable."

12. The learned Counsel for the plaintiff Temple would submit that the present plea with regard to the maintainability of the suit was neither

pleaded nor raised in the written statement before the trial Court as well as before this Court, that the general denial of facts alleged by the plaintiff is not sufficient and when nothing is specifically pleaded in the written statement as against the averments in the plaint, the second defendant is not entitled to lead any evidence on those issue, that the second defendant never raised any issue with regard to the maintainability of the suit and as such, the same cannot be raised before first appellate Court.

13. At the outset, I find no merit in the said contention. It is settled law that the maintainability of a suit, being a question of law, can be raised at any time. Therefore, the second defendant's plea regarding the suit's maintainability cannot be rejected at the threshold solely on the ground that it was not raised earlier.

14. The learned Counsel for the plaintiff would submit that the Executive Officer has every right to institute a suit without obtaining permission from the Commissioner of H.R.&C.E., and it is not a condition precedent to file a suit and that the Hon'ble Division Bench of this Court in Idol of Shri Renganathaswamy, Srirengam, represented by

its Joint Commissioner / Executive Officer, Devasthanam Officer, Devasthanam Office, Srirengam, Tiruchirappalli Vs. J.Sriram and others reported in (2023)2 L.W. 577 (DB) has specifically held that the suit filed by the Executive Officer is perfectly maintainable and the learned Counsel would rely on the following passages:

> *"27.1. The Executive Officer, after obtaining permission from the Commissioner, HR&CE Department under Ex.A5 dated 26.03.2011, on the basis of the compromise decree entered between the legal heirs of the Ramachandra Rayar and Narayana Rayar in O.S.No.319 of 2007, filed the present suit in O.S.No.82 of 2011 for recovery of possession and to set aside the alienation made in favour of the second and third respondents. From the perusal of the Ex.A5, it is clear that proper sanction was granted by the Commissioner, HR&CE after considering the representation sent by the first respondent to remove the suit schedule properties from the Renganathaswamy temple properties list and the request of the Deputy Commissioner. So, the sanction was granted with application of mind to the facts and circumstances of the situation and more particularly, the first respondent made a request to remove the property from the temple's properties list. So, the finding of the learned trial Judge and the submission of the learned counsel for the respondents that the said Ex.A6 did not amount to the sanction is not accepted.*

Apart from that the Executive Officer/Joint Commissioner is appointed under the Act to protect the interest of the temple and the temple properties and also duty bound to see the proper discharge of the religious charities activities. In the said circumstances, he filed a suit for recovery of possession and to set aside the alienation made by the respondent in contravention of the provision of the Act. Any person, who are interested in protecting the temple property, in the interest of the temple, always entitled to file a suit for recovery of possession. Apart from that, the Court itself is duty bound to protect the interest of the temple over the property by exercising the parens patriae jurisdiction. The said mandate is on the basic concept that idol is not a juristic person. So, the Hon'ble Supreme Court in the case of A.A.Gopalakrishnan v. Cochin Devaswom Board, reported in AIR 2007 SC 3162 held as follows:

"The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaits/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The

Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

27.7. So, in all aspect, the contention of the respondents that the suit filed by the Executive Officer without getting permission of the Commissioner, is factually and legally not correct and so, this Court finds no reason to accept the respondents' submission and held that the suit is not maintainable and hence, the suit filed by the Executive Officer is maintainable. Accordingly, Question No.6 is answered negatively."

15. The learned Counsel for the plaintiff would also rely on the judgments of the learned Single Judge of this Court in (i) ***The Idol of A/m Sri Kalyana Venkataramanaswamy, Thanthonimalai represented by its Executive Officer/The Assistant Commissioner, Thanthonimalai, Karur Taluk and District Vs. M.Palanivel and Others*** reported in ***(2023)3 LW 731***; (ii) ***Arulmigu Pathala Ponnaiamman Temple, attached to Arulmigu Gangadareswarar Temple represented by its Executive Officer, Chennai Vs. Vitta Bai*** reported in ***(2023)2 MLJ 13***;

and (iii) ***Durgai Lakshmi Kalyana Mandapam, a specific endowment to Arulmigu Siddi Ganesar Nataraj Perumal Durgaiamman Group ttemples represented by K.Jeevanandam & another Vs. Idols of Arulmigu Siddi Ganesar Nataraja Perumal Durgaiamman Group Temples represented by its Executive Officer and others*** reported in ***(2023)3 L.W., 801***, to the same legal position that the suit filed by the Executive Officer without prior permission from the Commissioner is maintainable.

16. Before proceeding further, it is necessary to refer Section 45 of the Hindu Religious and Charitable Endowment Act

"45.Appointment and duties of Executive Officers:---

(1)Notwithstanding anything contained in this Act, the Commissioner may appoint subject to such conditions as may be prescribed, an executie officer for any religious institution other than a math or a specific endowment attached to a math.

(Explanation –In this section "math" shall not inclue a temple under the controal of a math) (2)The executie officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner.

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in sub section(1) shall be assigned to the executive officer.

(3)The Commissioner may define the powers and duties which may be exercised and discharged respectively by the executive officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the Executive Officer."

17. Rule 4(b)(i) of the Conditions of Appointment of Executive Officer Rules 2015, contemplates that the Executive Officer can sue or be sued in the name of the religious institutions any of the legal proceedings with the approval of the competent authority. No doubt, in the Division Bench decision in Padmavathi's case referred by the learned Counsel for the second defendant, it has been held that the suit filed by the Executive Officer without approval of Board of Trustees is not maintainable. No doubt, both the Division Benches have referred the earlier Division Bench judgment in ***Sri Arthanareeswarar of Tiruchendgode by its present Executive Officer Vs. T.M.Muthuswamy***

Padayachi, etc, and others reported in ***2003-1-L.W.386,*** wherein it has been held that the Executive Officer as per the scheme of H.R.&C.E., is not enjoined with a duty to initiate legal action as that the power was vested only with the Board of Trustees. But in the said decision, the Executive Officer has approached the Commissioner, who in turn directed the Executive Officer to obtain the legal opinion in reference to the enforcement of a settlement deed and without considering the same, the suit came to be filed by the Executive Officer and in that fact situation, it was held that the suit was not maintainable.

18. It is necessary to refer another judgment of the Hon'ble Division Bench in ***A.N.Kumar Vs. Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai represented by its Executive Officer***, reported in ***(2011)2 L.W.1***, wherein it has been specifically held that the Executive officer, being an Officer appointed by a competent authority, is duty bound to protect the property of the temple and therefore, it is incumbent on him to file a suit and protect the right of the temple.

19. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs.***

Pranay Sethi and Others reported in ***AIR 2017 SC 5157*** and the relevant paragraph is extracted hereunder:

> *"30. In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra and another 34 which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in Rajesh's case was delivered on a later date, it had not apprised itself of the law stated in (2014) 16 SCC 623 Reshma Kumari (supra) but had been guided by Santosh Devi (supra). We have no hesitation that it is not a binding precedent on the co-equal Bench."*

20. It is pertinent to mention that the judgment reported in (2023)2 LW.577 by the Division Bench is the earlier decision, but the same was not brought to the notice of the Division Bench while considering the appeal in Padmavathy's case above referred and as rightly contended by the learned Counsel for the plaintiff, if that decision would have been referred, the Division Bench would have either agreed with the earlier decision or would have referred the matter to the larger Bench. The earlier Division Bench, by also considering the parens patriae jurisdiction of this Court and also the decision of the Hon'ble Supreme Court in ***A.A.Gopalakrishnan Vs. Cochin Devaswom Board and others*** reported in ***AIR 2007 SC 3162*** has come to a decision that the Executive Officer has every right to file the suit to protect the properties of the Idol.

21. As per the Constitutional Bench judgment of the Hon'ble Supreme Court, this Court is bound to follow the earlier ruling. In our legal system, an idol is often likened to a minor, with the temple's Manager or Executive Officer acting as a guardian of the idol's property. Since an idol is considered a juristic person in law, the Courts are duty-bound to exercise parens patriae jurisdiction to protect the idol's rights.

Consequently, the Executive Officer, who is tasked with protecting the idol's interests, is entitled to institute a suit.

22. Considering the above, this Court has no hesitation in holding that the suit filed by the Executive Officer, even without prior permission, is perfectly maintainable. Even if permission were necessary, the fact that the suit was filed in 2016 and neither the Commissioner nor the Board of Trustees raised any objections or directed the Executive Officer to withdraw the suit implies tacit approval or deemed ratification.

Point No.2:

23. The learned Counsel for the second defendant would submit that the plaintiff has earlier filed a suit in O.S.NO.5 of 1990 on the file of the Subordinate Court, Karur, alleging that the cause of action arose on 04.08.1989 claiming similar reliefs of declaration and recovery of possession, that the said suit, due to non-payment of requisite Court fees despite the orders of the Court, was dismissed in the year 1990, that the present suit on the basis of the same cause of action and claiming the same reliefs, filed in the year 2016 after the lapse of 27 years, is

hopelessly barred by limitation, that the defendants' predecessors had been in possession and enjoyment of the property since 1864, that adverse possession hostile to the temple interest commenced as early as in the year 1864 and as such, the period to reclaim the property expired much earlier. He would rely on the decision of the Hon'ble Supreme Court in ***Indian Evangelical Lutheran Church Trust Association vs. Sri Bala & Co.,*** reported in ***2025 INSC Page 42*** and the relevant passage is extracted hereunder:

> *"9.12 Applying the aforesaid dictum to the facts of the present case, it is observed that the respondent/plaintiff had filed the suit for specific performance of the agreement to sell dated 26.04.1991 in the year 1993 itself. The plaint in the said suit was rejected on 12.01.1998. The plaintiff could have filed the second suit on or before 12.01.2001 as it got right to file the suit on 12.01.1998 on the rejection of the plaint in the earlier suit filed by it. This is on the basis of Order VII Rule 13 of the Code. However, the limitation period expired in January, 2001 itself and the second suit was filed belatedly in the year 2007. The cause of action by then faded and paled into oblivion. The right to sue stood extinguished. The suit was barred in law as being filed beyond the prescribed period of limitation as per Article 113 to the Schedule to the Limitation Act. Hence the second suit is barred under Order VII Rule*

11(d) of the Code. We therefore have no hesitation in rejecting the plaint in O.S No.49/2007 filed by the respondent herein even in the absence of any evidence being recorded on the issue of limitation. This is on the admitted facts. Thus, on the basis of Order VII Rule 11(d) of the Code read with Article 113 of the Limitation Act by setting aside the impugned orders of the High Court and the trial court and by allowing the application filed under Order VII Rule 11(d) of the Code. Consequently, this appeal is allowed."

24. The learned Counsel would further submit that the defendants and their predecessors have satisfied the conditions required to prove adverse possession, that their possession was further supported by the sale deeds dated 25.04.1927, 24.02.1963, 21.03.1985 and 07.06.1989, which remain unchallenged by the plaintiff, that the plaintiff is not entitled to claim benefit under Section 109 of H.R.&C.E., Act, which was introduced only in the year 2003 as legislative changes cannot retrospectively apply to vest his rights, that as per the unamended Section 109 of H.R.&C.E., Act, 1959, a party cannot set up a plea as against the religious institution on the ground of prescription and adverse possession, when the properties had vested in him after 30.09.1951, that unamended provision applies to the case on hand in view of the law

applicable as on the date of cause of action, ie., 04.08.1989 and that the defendants set up their title much before the cut off date ie., 30.09.1951 by relying the title deed dated 24.02.1963 under Ex.B.2 and continued to rely upon the parent deeds under Exs.B.2 to B.6. The learned Counsel would further submit that the amendment to Section 109 of the H.R.&C.E. Act cannot revive a time-barred claim or divest the second defendant and his predecessors of their vested rights, which were conferred prior to September 30, 1951 and therefore, this Court must necessarily hold that the suit is barred by limitation. He would rely on the decision of the Hon'ble Supreme Court in ***T.Kalimurthi and another Ves. Five Fori Thaikkal Wakf and others*** reported in ***(2008)9 SCC 306***, wherein the Hon'ble Apex Court has held as follows:

> *"22. Section 107 lays down that nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any Wakf or for possession of any interest in such property. Thus it can be said that this section virtually repeals the Limitation Act, 1963 so far as the Wakf properties are concerned. Therefore, it can be concluded without any hesitation in mind that there is now no bar of limitation for recovery of possession of any immovable property comprised in a Wakf or any interest*

therein. In this background, let us now see whether this section has any retrospective effect. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right. At this juncture, we may again note Section 6 of the General Clauses Act, as reproduced herein earlier. Section 6 of the General Clauses Act clearly provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect, or affects the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed.

23. From the above, it is clear that the right of action, which is barred by limitation at the time when the new act comes into force, cannot be revived by the change in the law subsequently. In Ram Murthi & Ors. Vs. Puran Singh S/o Attra Singh & Anr.[AIR 1963 Punjab 393], it has been held that Section 107 renders the Limitation Act, 1963 inapplicable to suits for possession of immovable properties comprised in any Wakf or any interest therein but the right of a person to institute such a suit which is already barred at the commencement of this Act can not revive. It was further held that his title is extinguished and a good title is acquired by the person in possession and that where the title of the true owner is extinguished in favour of the wrong doer, it is not revived by that person again getting into possession. There is no remitter to the old title."

25. The learned Counsel for the plaintiff would submit that the suit property came to be owned by the plaintiff Idol, that the trustees without having any iota of right, mortgaged the property and subsequently sold the property to a third party without permission and knowledge of the temple authorities and that therefore, the question of vesting the suit property with the defendants' predecessors in title prior to 30.09.1951

does not arise at all, that since the property was not vested with the defendants' predecessors in title, the Limitation Act 1908 will apply, that since the alleged sales in 1936 was not known to the plaintiff nor brought to its notice, the question of claiming adverse possession from 1936 does not arise, that the plea of the defendants that they derived title to the suit properties by way of adverse possession is not sustainable in view of the unamended Section 109 of H.R.&C.E., Act, that amended Section 109 of H.R.&C.E., Act contemplates that the provisions of the Limitation Act 1963 shall not apply to any religious institution for recovery of possession of immovable property and that therefore as per the amended as well the unamended provisions of Section 109 of H.R.&C.E., Act, the suit is not barred by limitation. The learned Counsel would rely on the decision of the Hon'ble Divison Bench of this Court in ***Sri Raghavendra Swami Mutt Vs. V.Panchapakesa Iyer*** reported in ***AIR 2005 Madras 129***, wherein it has been held as follows:

> *"6. The first question that arises for consideration is whether the suit is barred by limitation. The deed of lease was executed on 16.2.1946. Admittedly, Sri Raghavendra Swamy Mutt is a Hindu religious institution and the properties belong to the said religious institution. Section 109 of the HR & CE Act, 1959, as it stood when the suit was*

instituted, saved from the operation of the law of limitation for a suit for the recovery of property belonging to the religious institution which did not vest in a person before 30.9.1951. In other words, section 109 of the HR & CE Act provided that it is not open to a person to claim adverse possession against the property belonging to the religious institution unless he has pleaded and proved that the property belonging to the religious institution was in his possession adverse to the claim of the said religious institution and the property also vested in him prior to 30.9.1951. The deed of lease, admittedly, was entered into on 16.2.1946 and even the present defendant or his predecessors-in-title could not have claimed adverse possession in the suit property as he was in the property for less than five years as on 30.9.1951 and the present suit is not barred by the provisions of the Limitation Act. A similar view was taken by a learned Judge of this Court in RAJANARAYANAPERUMAL TEMPLE v. RETHINAM PILLAI (1979 (1) MLJ 159) where the learned Judge held that section 109 of the HR & CE Act is a special provision regarding the law of limitation and that would prevail over the general provisions contained in the Limitation Act and by 30.9.1951 if twelve year period had not elapsed from the date of transfer of the property belonging to the religious institution and the property did not vest in the defendant, the provisions of the Limitation Act would not apply and the *religious institution is entitled to file a suit for recovery of possession of the property belonging to the said religious institution. We hold that the suit instituted by the plaintiff is not barred by limitation."*

26. Before entering into further, it is necessary to refer unamended Section 109 of H.R.&C.E., Act:

"Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person, the property or funds of any religious institution which was not vested any such person or his predecessors in title before 30.09.1951."

27. A cursory perusal of the above provision makes it clear that after 30.09.1951 nothing contained in the law of limitation shall be deemed to vest in any person, funds or property of any religious institution. Section 109 is a special provision regarding the applicability of law of limitation to religious endowments.

28. It is also necessary to refer Article 134 of the Limitation Act 1908:

Art.134: To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration	Twelve years	When the transfer becomes known to the plaintiff.

29. Article 92 of the Limitation Act 1963 corresponds to Article 134 of the Repealed Act of 1908. The above Article deals with the suit to recover possession of the immovable property conveyed or bequeathed in trust and afterwards transfer by the trustee for a valuable consideration.

30. 12 years' time prescribed by the above Article will begin to run from the date when transfer becomes known to the plaintiff. The second defendant in the written statement has specifically alleged that the suit property was originally mortgaged to Hari Rao's father on 25.04.1927, that the suit propety was sold to Haro Rao on 24.02.1936, who in turn sold the property to Murugesan, who in turn sold to Mohammed Sultan

and that the defendants 1 and 2 purchased the property from the said Mohammed Sultan. During trial, the plaintiff has taken a stand that the suit property was sold to minor Hari Rao on 24.02.1936 under Ex.B.1, that subsequently property was sold to Murugesan who in turn sold to Mohammed Sultan on 21.03.1985 under Ex.B.5, who in turn sold to the defendants 1 and 2 on 07.06.1989 under Ex.B.6.

31. It is the specific case of the plaintiffs that one Muthukarupa Pillai was the village Karnam and also trustee for the temple from 1884 and at the time of demise of Muthukaruppa Pillai, his adopted son Kolandaivel Pillai was a minor, that the minor Kolandaivel Pillai's natural father T.S.Muthukumarasamy Pillai sold the suit site in the capacity of guardian and natural father of Kolandaivel Pillai to the ancestor of the defendants' predecessors in title, that neither Muthukaruppa Pillai nor his adopted son Kolandaivel Pillai nor his natural father Muthukumarasamy Pillai are having right, title over the suit site and that since the property was owned by the plaintiff Temple, the alleged transaction made by Kolandaivel Pillai canot be sustained.

32. In the written statement, the second defendant disputed the above facts presented in the plaint. However, during cross-examination, the second defendant would admit that the suit property originally belonged to Kolandaivel Pillai, the adopted son of Muthukaruppa Pillai, that he was unaware of Muthukaruppa Pillai's role as trustee of the plaintiff temple in 1884 and that Muthukaruppa Pillai enjoyed the suit property as temple trustee. D.W.1 would specifically admit that Minor Hari Rao purchased the suit property from Kolandaivel Pillai under Ex.B.2, which described the property as Paditharam Inam and that since Kolandaivel Pillai was a minor at that time, the sale deed was executed by his natural father, T.S. Muthukumarasamy Pillai. D.W.1 would feign ignorance about various aspects, including the temple's trusteeship and the possession of the suit property by the trustees. According to the defendants, the suit property was mortgaged to Hari Rao's father on 25.04.1927, and subsequently sold to Hari Rao on 24.02.1936, by Kolandaivel Pillai, the adopted son of Muthukaruppa Pillai, who was admittedly the temple trustee. Notably, the defendants did not specifically dispute Muthukaruppa Pillai's role as temple trustee, but instead claimed ignorance about it.

33. It is not the specific case of the defendants that the sale to Hari Rao in 1936 was known to the temple committee at that time itself. It is also not the specific case of the defendants that the property came to be vested with Hari Rao on the dae of Ex.B.2 and his possession adverse to the temple came to begin from that time onwards. Though the defendants have alleged that the defendants and their predecessors in title have perfected by adverse possession, title, they have not elaborated anything further. As rightly observed by the learned trial Judge, in Ex.A.13 Inam Register for Lakshminarayanasamudram Village, it has been shown that the property comprised in title deed 129 belonged to Pagoda Trustee and in Ex.A.14- Settlement Register of the year 1880, it has been shown that the property belongs to Karur Pasupatheeswaraswamy held by Pasupathi Pillai and in Ex.A.15 – Resettlement Register of the year 1912, it has been shown that the property comes under old Paimass number 761 and 762 belongs to Karur Sri Kalyana Pasupatheeswaraswamy by the present trustee Ramasamy Pillai.

34. Ex.A.3 would reveal that the Settlement Tahsildar issued notices to the plaintiff temple and other property occupants, conducted a suo motu inquiry, and granted ryotwari patta to Hari Rao and others under Section 11 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, vide order dated October 9, 1967. Notably, the Settlement Tahsildar observed that Hari Rao and others held only kudivaram rights, while the temple retained melvaram rights, as indicated in the inam particulars. The Tahsildar's order stated that the land enjoyers were entitled to the land under Sections 8(1) and 13 of the Act. However, the learned District Judge correctly pointed out that the Tahsildar should have applied Section 8(2) of the Act. Section 8(1) pertains to kudivaram rights on inam land, regardless of whether the person is an inamdar or not. Importantly, Section 8(1) is subject to Section 8(2) of the Act.

35. As rightly observed by the learned trial Judge, the Settlement Tahsildar has initiated enquiry and granted patta under Section 8(1) and 13 of the said Act, which are not in conformity with the provisions of Act 30 of 1963 and as such, the same does not bind the plaintiff. Even

otherwise, the Settlement Tahsildar, as already pointed out, has held that Hari Rao was only having kudivaram whereas the temple was having Mel Varam. As rightly contended by the learned Counsel for the plaintiff, their contention that the property was not vested with the alienee from the trustee's adopted son, came to be confirmed by the orders of the Settlement Tahsildar. Except Ex.B.2, subsequent alienations were made after passing of H.R.&C.E., Act and also the limitation Act 1963.

36. Considering the above, the contention of the defendants that the suit is barred by limitation cannot be sustained and the same is liable to be rejected.

37. As already pointed out, since the second defendant has failed to prove adverse possession for the required period as on 30.09.1951, this Court has no other option, but to say that the plaintiff continues to be the owner of the land. No doubt, as already pointed out, the plaintiff has specifically admitted that the superstructures are belonging to the defendants. It is not in dispute that the plaintiff has sent a notice to the

defendants on 04.08.1989 directing them to pay the ground rent to the suit property, but the defendants have sent a reply disputing the rights of the plaintiffs over the suit property and that since they have denited the title and refused to pay the ground rent, the plaintiff was constrained to file the above suit. Since the defendants have disputed the title of the plaintiff, as rightly pointed out by the learned trial Judge, the plaintiff Idol is entitled to get declaration and consequential relief of recovery of possession. The learned trial Judge has rightly directed the plaintiff to initiate separate proceedings under Order 20 Rule 12 C.P.c., for mesne profits.

38. Considering the above, this Court concludes that the Appeal Suit is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances and the way in which the defendants have claimed the reliefs, this Court decides that the second defendant is to be mulcted with costs.

39. In the result, the Appeal Suit is dismissed with costs. The appellant/second defendant is directed to pay costs to the first

respondent/plaintiff. Time for possession is two months. Consequently, the connected Miscellaneous Petition is dismissed.

19.03.2025

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
SSL

To

1. The District Court, Karur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.193 of 2023

19.03.2025