



A.S.(MD) Nos.138 & 225 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2025

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THE HON'BLE MR.JUSTICE P.VELMURUGAN

and

THE HON'BLE MR.JUSTICE JUSTICE K.K.RAMAKRISHNAN

A.S.(MD) Nos.138 & 225 of 2015 and
CMP(MD)Nos.1 & 1 of 2015

A.S.(MD) No.138 of 2015

1.K.R.S.Kaladevi
2.K.R.Selvakumar
3.K.R.Vanmathi Devi
4.K.R.Chitra

... Appellants

Vs.

1.M.Mayandi Servai
2.A.Alagu Servai
3.M.Mathalai Servai
4.A.Sivagnanam
[For themselves and as representatives of
Panaiyur Rajakula Agamudiyar Community and as
Worshipers of Arulmigu Angala Parameswari
Sonaiyaswami Temple, Arapalayam, Madurai]

5.M.Neelamegam Servai
6.M.Rajendran Servai
7.P.Chandran Servai

... Respondents



A.S.(MD) Nos.138 & 225 of 2015

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the Judgment and Decree dated 30.04.2015 passed in O.S.No.48 of 2010 on the file of the IV Additional District Judge, Madurai.

For Appellants : Mr.M.Vallinayagam
Senior Counsel for
Mr.D.Nallathambi

For Respondents : Mr.S.Meenakshi Sundaram
Senior Counsel for
Mr.S.Manohar (for R1 to R4)

Mr.G.Prabhu Rajadurai for
Mr.M.Ponniah (for R5 to R7)

A.S.(MD) No.225 of 2015

1.M.Neelamegam Servai
2.M.Rajendran Servai
3.P.Chandran Servai

... Appellants

Vs.

1.M.Mayandi Servai
2.A.Alagu Servai
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4.A.Sivagnanam



A.S.(MD) Nos.138 & 225 of 2015

[For themselves and as representatives of
Panaiyur Rajakula Agamudiyar Community and
Worshipers of Arulmigu Angala Parameswari
Sonaiyaswami Temple, Arapalayam, Madurai]

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Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the Judgment and Decree dated 30.04.2015 passed in O.S.No.48 of 2010 on the file of the IV Additional District Judge, Madurai.

For Appellants : Mr.G.Prabhurajadurai for
Mr.M.Ponniah

For Respondents : Mr.S.Meenakshi Sundaram
Senior Counsel for
Mr.S.Manohar (for R1 to R4)

Mr.M.Vallinayagam
Senior Counsel for
Mr.V.Meenakshi Sundaram
(for R5 to R8)



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COMMON JUDGMENT

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P.VELMURUGAN, J.

The respondents 1 to 4 in both the appeals filed the suit in O.S.No. 48 of 2015 on the file of the IV Additional District Judge, Madurai, for declaration and permanent injunction restraining the defendants 4 to 7 in the suit, who are the appellants in A.S(MD)No.138 of 2015, from in any way alienating, encumbering and putting up constructions in the suit property and for costs. The Trial Court, after considering the oral and documentary evidence, decreed the suit. Aggrieved over the same, the defendants 1 to 3 in the suit filed the appeal in A.S.No.225 of 2015 and the defendants 4 to 7 in the suit filed the appeal in A.S.No.138 of 2015. Since both the appeals arise out of the same judgment and decree, both are heard together and disposed of by this common Judgment. For the purpose of clarity, the parties are referred to as per their rank before the Trial Court.



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2 (i) The case of the plaintiffs in brief as per the plaint is that the suit property originally belongs to one Muthu Thevar and the same was purchased by one Ammayappan Poosari, who was then the Trustee and Poojari of the Angala Parameswari Sonaiya Swami Temple, Arappalayam, Madurai, and the said Poojari Ammayappan purchased the suit property in the name of the temple under registered sale deed, dated 07.07.1951, from the original owner Muthu Thevar. From the date of purchase, the property belongs to the said Angala Parameswari Sonaiya Swami Temple. Except the temple, no others have any right and title whatsoever to deal with the property. The Town Survey Register also stands only in the name of the temple represented by its Trustee and the Register given by Madurai Corporation also shows that the property stands in the name of the temple. The said Angala Parameswari Sonaiya Swami Temple belongs to about 600 families of Panaiyur Rajakula Agamudiyar Community, who are settled at Panaiyur, Malaipatti, Sakkimangalam, Nagamalai Pudukkottai, Kattamankottai, Thenoor etc. They have been worshipping and administering the temple and the properties belonging to



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the temple. The plaintiffs belong to the said community and they were members of the temple committee. The temple at present in the administration of the defendants 1 to 3 and they have only right to administer and manage the temple and the properties and they do not have any right to alienate or in any way deal with the properties of the temple. The plaintiffs themselves had held various posts in the temple committee and Tiruppani committee.

(ii) The suit property was leased out to one K.Rajendran, the father of the 5th defendant in or about 1986 for running a school and the said K.Rajendran passed away in 2007. The 7th defendant became the Secretary of the School and there were various litigations between the defendants 1 to 3 as temple committee and the 7th defendant. The plaintiffs had filed the suit in O.S.No.900 of 2008 on the file of the Additional District Munsif, Madurai against the defendants 1 to 3 for permanent injunction not to alienate the suit property belongs to the temple. The defendants 1 to 3 being the President, Secretary and Treasurer of the temple have only right to administer and manage the temple and they have no right to alienate or encumber the suit property.



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The defendants 1 to 3 themselves had filed the suit for ejectment in O.S.No.294 of 2005 on the file of the Additional District Munsif, Madurai. In the said suit itself, they have admitted that the suit property is inalienable and it is adjacent to the temple and the plaint schedule property belongs to the religious institution and various enactments are not applicable to the suit property.

(iii) While so, the defendants 1 to 3 have alienated the suit property to the defendants 4 and 5, who happen to be the daughter and son of K.Rajendran, who was tenant under the temple and who happen to be sister and brother of the 6th defendant. The defendants 1 to 3 through the 6th defendant sold the property under registered sale deed, dated 17.11.2008, pending suit in O.S.No.900 of 2008 on the file of the Additional District Munsif, Madurai. Based on the power of attorney said to have been executed by the defendants 1 to 3 in favour of the 6th defendant, who is the sister of the 5th defendant, the property has been sold. The defendants 1 to 3 have no right to execute the power of attorney in favour of the 6th defendant. The 6th defendant was a public servant and she cannot act as power of attorney. The property sold



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without even permission from the Court or the Commissioner of H.R and C.E Department, which is invalid and illegal. The plaintiffs being the worshippers of the temple and past members of the temple committee want to recover possession of the property in favour of the temple. The sale deed executed in favour of the defendants 4 and 5 by the 6th defendant as power of attorney, is not valid under eye of law, as the suit property is inalienable and there is no permission either from the Court or from the H.R and C.E Department. The temple property cannot be sold by a power of attorney as the deity is beneficiary and the execution of power deed itself is illegal and not *bona fide*. The 6th defendant was working as a Teacher in the Government Higher Secondary School, Mahaboopalayam, Madurai. As per the Government Servants Conduct Rules, a Government servant cannot act as a power agent during the period of service. Hence, the sale deed, dated 17.11.2008, executed by the 6th defendant is illegal, null and invalid.



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(iv) The suit property is the adjacent to the temple itself and it is essential for the use of the temple. The previous Trustees and administrators of the temple never intended to sell the suit property and the property was leased out to K.Rajendran subject to various conditions and there is no necessity for sale of the suit property as the temple is not in need of any funds for its administration and management of the temple and the defendants 1 to 3 have acted totally against the welfare of the temple. The defendants 1 to 3 have withdrawn the suit in O.S.No.294 of 2005 filed for eviction against the school administration. After withdrawing the same, in spite of protest by the community, they sold the property. Hence, the suit is filed under representative capacity on behalf of the plaintiffs' community. The defendants 4 to 7 are closely related to each other and in order to grab the temple property, they colluded. Therefore, the sale is not valid and the defendants 1 to 3 acted against the interest and welfare of the temple and hence, the plaintiffs were constrained to file the suit for declaration and permanent injunction as sought for in the plaint.



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WEB COPY 3 (i) The brief facts regarding the defendants 1 to 3 are that

admittedly the suit property originally as a vacant site and the same was purchased by one Ammayappan Poosari from one Muthu Thevar under the registered sale deed, dated 07.06.1951, for valuable consideration in the name of the Angala Parameswari Sonaiya Swami Temple. The said temple belongs to Panaiyur Rajakula Agamudaiyar Community, who have settled in several places as stated in the plaint. The married male member of the family would become the member of the temple committee. The President, Secretary, Treasurer and Executive Committee Members would be elected among them once in 5 years. The duly elected President and Secretary have to act and proceed and administer all the affairs of the temple. The first plaintiff Mayandi @ Samikkannu Servai was the Ex-President of the temple committee during the period of 1996 to 2001. The second plaintiff Alagu Servai was the Ex-Vice-President of the temple committee during the year 1997-2001 and he was the Secretary of the temple during the year 2001-2002. After that, Alagu Servai resigned his secretary post for the reason that he was unable to serve the temple. The Mayandi Servai was a member of the Advisory committee of the

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temple Thiruppani during 2001-2007. The suit property was leased out to one Rajendran as a vacant site for running a school even as early as in 1957. The said lease was periodically renewed from time to time for a long period. The lessee Rajendran put up constructions with the consent of the lessors. Even after his death, the lease was continued.

(ii) The suit in O.S.No.556 of 2000 on the file of the III Additional Sub Court, Madurai was in fact filed at the instance of the present plaintiffs and it was transferred to Additional District Munsif Court, Madurai and re-numbered as O.S.No.296 of 2005 and the same was withdrawn at the instance of the present plaintiffs. The plaintiffs are neither helping the community by representing them nor regular worshippers having any interest in the community or the temple. The plaintiffs have suppressed several material facts. The relief claimed in the suit in O.S.No.900 of 2008 is identical and similar with that of the present suit. Hence, the present suit should be stayed under Section 10 of C.P.C. While so, the applicability of either Act 22 of 1959 or the Indian Trust Act cannot be made applicable. The right is protected under Article 26 of the Constitution of India. There is no bar in Act 22 of 1959. When there



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is express bar, the said Act cannot be applied on the institution. While so, the prior permission is not required, the transaction is *bona fide* transaction, as an institution is only private denominational institution and the application of Act 22 of 1959 or Act 2 of 1882 cannot be made on the institution. The entire community has consented for the sale of the property and the plaintiffs being trouble shooters and do not have interest in the welfare of the community, have filed the present suit.

4. The facts in brief as per the case of the defendants 4 to 7 are that the suit is not maintainable as the said suit was not properly framed. The defendants 1 to 3 do not have legal right to alienate or in any way deal with the property of the temple as they are office bearers of the community and also temple committee and the plaintiffs themselves have held various posts in the temple committee, Thirupani committee, are all false. The suit property was originally leased out to the father of the 5th defendant for running a school as early as 1957. The said lease was periodically renewed from time to time for long period. The father of the fifth defendant put up constructions in the vacant site with the consent of lessor, then temple committee, in the year 1957. After his death, the lease

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was continued by the legal representatives. The plaintiffs are never helping the community by representing them nor regular worshippers having any interest in the community or temple. The suit in O.S.No.900 of 2008 on the file of the Additional District Munsif, Madurai is not filed against the present defendants. There is no order in the said suit preventing this defendants from purchasing the property. The suit in O.S.No.900 of 2008 is not binding on the defendants. The suit property is not a trust property or under the control of H.R & C.E Department. The plaintiffs have not produced any document to show the character of the temple, as such the main suit is not maintainable. The entire community has consented for the sale of the property to that effect a resolution was passed by the Managing Committee on 19.05.2008 and on the basis of the resolution, the defendants 1 to 3 had executed a registered power of attorney in favour of the 6th defendant. The 6th defendant as power of attorney executed a registered sale deed in favour of the defendants 4 and 5. Pursuant to the said sale deed, the defendants 4 and 5 are the absolute owners of the property and all the revenue records like patta and kist receipts are in the name of the defendants 4 and 5. Since the defendants 4 and 5 are the *bona fide* purchasers and absolute owners by valuable



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consideration, they cannot be prevented from alienation by putting up construction in the suit property. The suit property is a non-listed temple under H.R & C.E Department and suit property is not a trust property, as such the Indian Trust Act will not apply. The plaintiffs have filed the suit with *mala fide* intention to defeat the right of the defendants and for wrongful gain.

5. Based on the pleadings and the documents produced by either parties, the Trial Court framed the following issues:

“(1) Whether the present suit is hit under Section 10 of C.P.C in view of O.S.No.900 of 2008 pending in the Additional District Court, Madurai?

(2) Whether the defendants 1 to 3 have legal right to alienate the property?

(3) Whether the consent of entire community obtained and whether it is enough for the sale of the property?

(4) Whether the suit is properly valued and proper Court fee paid?

(5) Whether the Power of Attorney deed dated 23.05.2008 executed by the defendants 1 to 3 in favour



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the 6th defendant has to be declared as illegal, null and void?

(6) Whether the defendants are disqualified from holding the office of President, Secretary and Treasurer of Arulmigu Angala Parameswari Soniyaswamy Temple, Arappalayam, Madurai?

(7) Whether the defendants 4 to 7 to hand over the vacant possession to the plaintiffs after removing superstructure?

(8) Whether the plaintiff is entitled for permanent injunction restraining the defendants 4 to 7 from in anyway alienating or encumbering and putting up any construction?

(9) To what relief the plaintiffs are entitled?"

6. During trial, on the side of the plaintiffs, two witnesses were examined as P.W.1 and P.W.2 and 6 documents were marked as Ex.A1 to Ex.A6. On the side of the defendants, 4 witnesses were examined as D.W.1 to D.W.4 and 23 documents were marked as Ex.B1 to Ex.B23.



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7. Mr.G.Prabhu Rajadurai, learned counsel for the defendants 1 to 3

submitted that the plaintiffs did not administer or manage the temple and the suit property, at the time of filing of the suit. Therefore, the suit filed by them was without any *locus standi* and it is not maintainable either in law or on facts. The present suit is hit by Section 10 of C.P.C. Admittedly, the pending suit in O.S.No.900 of 2008 on the file of the Additional District Munsif Court, Madurai has been considered and hence, the present suit is hit by Section 10 of C.P.C. Therefore, the judgment and decree passed by the Trial Court in the suit is liable to be set aside. The temple was not a party in the suit, while the plaintiffs alleged to have claimed that the suit property is belonging to the temple and owned by the deity of the temple. Hence, the suit is bad for non-joinder of necessary party i.e., deity. No trust was in-charge of the temple and the suit property is not a trust property. Hence, the finding of the Trial Court that the suit property is belonging to the private trust and no permission was obtained by the appellants from the Court, are all unsustainable in law. Neither the deity nor the trust was arrayed as a party to whom the property was alleged to have belonged and in such case, the impugned judgment and decree of the Trial Court are liable to be



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set aside. The suit property is not absolutely inalienable and that the appellants/defendants 1 to 3 alienated the suit property only after the consent given by the large members of the committee, who permitted the defendants 1 to 3 to alienate the same. Hence, there was no illegality in the alienation. The plaintiffs did not challenge the said sale deed and hence, the said sale deed dated 17.11.2008 is valid and still holds good. The suit framed as such is not valid and maintainable. Either the suit property or the temple not belongs to the private trust. The Trial Court is erred in allowing the suit, while admitting the fact that the suit property is not belong to the public trust and it does not come under the purview of the H.R and C.E Act. In such circumstances, the permission given by the committee, which is headed by the defendants 1 to 3, is legally holds good at the said alienation over the said property. In the absence of a public trust or private trust and the suit property not comes under the provision of the H.R and C.E Act, the committee headed by the defendants 1 to 3 is legally entitled to alienate the suit property and hence, there was no illegality in the alienation. Therefore, the trial Court erroneously directed the defendants 4 to 7 to handover the vacant possession of the suit property to the plaintiffs when they do not have any



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locus standi. In the absence of the said temple as a party to the proceedings and the plaintiffs were not legally elected members of the said committee of the said temple, they did not have any manner of right to get the possession of the suit property. Hence, the question of handing over the possession of the suit property to them will not arise at all.

8. The learned counsel would further submit that the father of the defendants 4 to 7 namely, one K.Rajendran took the vacant site of the suit property on lease and constructed the building thereon to run his school under the name and style of Mukkulathoor Middle School. This is aimed to provide education to the economically weaker section of the people of that locality. The defendants 4 to 7 are in possession and enjoyment of the suit property even prior to the execution of the sale deed and that they are in lawful possession of the suit property. Hence, their possession cannot be interfered on the whims and fancies of the plaintiffs. The Trial Court holds that the said suit temple is administered by the Sangam. In such circumstances, the question of private trust or trusteeship will not arise at all and that the finding of the Trial Court in respect of the procedures alleged to be followed was also not legally correct. In the



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absence of a private or a public trust and in the absence of applicability of the provisions of the H.R and C.E Act, there is no necessity arose to the appellants to obtain prior permission from the Court. Hence, the said sale deed executed in favour of the defendants 4 and 5 is legally valid. In the absence of a declaratory relief in respect of the sale deed, the suit is not maintainable and the same is liable to be dismissed and the appeal is to be allowed.

9. The learned counsel would further submit that the plaintiffs failed to follow the procedure under Order 1 Rule 8 C.P.C. Hence, the suit is hit by Order 1 Rule 8 C.P.C. The Court fee paid by the plaintiffs is not correct. The plaintiffs did not file the suit on behalf of the temple or religious trust and that the temple is also not a party in the suit. Hence, in the absence of the temple or a religious trust as a party to the proceedings, the plaintiffs are not entitled to get the relief as sought for. The plaintiffs are not legally entitled to seek benefits of the Government Order in G.O(Ms)No.1574 dated 12.06.1972 which is applicable in respect of the suit filed by the religious trust to recover the possession of immovable

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property. Admittedly, there is no religious trust in existence and that the plaintiffs were not at all religious trust as defined in the Act. Therefore, the said G.O is not applicable to the plaintiffs and hence, the suit is not maintainable. The public charitable trust ought to have filed the suit under Section 92 of C.P.C, however, they have not filed the suit under Section 92 of C.P.C and also they have not obtained permission from the Court or the H.R and C.E Department and therefore, on these grounds, the suit is not maintainable.

10. Mr.M.Vallinayagam, learned Senior Counsel appearing for the defendants 4 to 7 submitted that the provisions made under Order 1 Rule 8 C.P.C are mandatory in nature and in the present suit, the said provisions were not followed in a proper manner. The plaintiffs have to stand on their own legs and they cannot take advantage of the loopholes left by the defendants. The father of the 5th defendant took the suit property on lease in the year 1957 itself and with the consent of the then Trustee, he put up huge constructions at his own expenses and running a Government Aided School in the suit property and the said lease was periodically renewed. Even prior to getting the sale deeds, the defendants



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entered into a compromise with the Trustees and surrendered a portion of the suit property with building to the Trustees. The Trial Court is totally wrong in coming to the conclusion that prior sanction had to be obtained, before sale is effect, either from the H.R and C.E Department or from the Court. The finding of the Trial Court that the suit temple is a denomination temple and hence, the law applicable to the denomination temple is applicable to the present suit and therefore, permission from the Court or from the H.R and C.E Department ought to have been obtained, is due to misconstruction of law. Under the Indian Trust Act, the Court is entitled to give only opinion with respect of a Trust property and not permission for sale of a property. The plaintiffs are not entitled to blow hot and cold by saying that at one place the Indian Trust Act is applicable and in another place that the said Act is not applicable. The suit property is not absolutely inalienable and for the necessity and also welfare of the temple, it can be sold. As per the pleadings of the plaintiffs and the prayer in the suit, Section 92 of C.P.C is applicable and the plaintiffs have not filed the suit under Section 92 of C.P.C and also the cases of this nature, the provision of Order 1 Rule 8 C.P.C and Section 92 of C.P.C are mandatory and none of the procedures have been followed by the

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plaintiffs. The Trial Court failed to consider the said fact and just passed it off by saying that the objections are all only technical objections and not as a valid and sustainable objections, which is against the settled provisions of law. Both the procedures are mandatory. Prior to the filing of the suit, the plaintiffs have to obtain permission from the Court and after getting the permission, they have to follow the procedures, which are mandatory. In support of his contention, the learned senior counsel reliance on the Judgment of the Honourable Supreme Court reported in **(1991)1 SCC 48 [R.M.Narayana Chettiar vs. Lakshmanan Chettiar]** and the Judgment of the learned Single Judge of this Court reported in **AIR 1987 Mad 187 [Assistant Commissioner, H.R and C.E Salem vs. N.K.S.E Mudaliar]**.

11. Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing for the plaintiffs would submit that since the property purchased in the name of the deity, the trustees or the committees are only entitled to manage the temple and the property and they do not have any right to sale or encumber the property. Since the temple is the private temple and the purchaser of the property in the name of the temple itself shown as a

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trustee, only the Indian Trust Act is applicable and therefore, they ought to have obtained permission from the Court. The temple is under the worship of the larger public and therefore, they have to obtain permission from the Deputy Commissioner of H.R and C.E Department. He would further submit that the suit property belongs to deity, which is inalienable. Further, there was no necessity to sell the property. In earlier occasion, after the lease period come into end in the year 1997, the lessee was asked to surrender the property. Since he failed to surrender, notice was issued and thereafter, the suit for eviction was filed in O.S.No.296 of 2005. Further, since the defendants 1 to 3 tried to alienate the property, the then temple committee filed the suit in O.S.No.900 of 2008 for permanent injunction restraining the defendants 1 to 3 to sell the property to the other defendants. Pending suit, the defendants 1 to 3 sold the property through the 6th defendant as power of attorney to the defendants 4 and 5. Since the prayer sought for in O.S.No.900 of 2008 is only for permanent injunction not to sell and however subsequently, the property was sold, the present suit for declaration and consequential relief of permanent injunction has been filed. Both are not for same or identical relief. Therefore, Section 10 of C.P.C would not applicable.

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12. The learned Senior Counsel would further submit that even the plaintiffs had been the President and also the administrators of the temple for some time. During that period, they filed the suit for eviction and also permanent injunction. They were acting only in the interest and welfare of the temple and they are also worshippers and the community members. Further, they filed the suit for themselves as the plaintiffs and also on behalf of the other members, therefore, either Section 92 of C.P.C or Order 1 Rule 8 of C.P.C would not attract in the present suit. Even otherwise, they also obtained permission under Order 1 Rule 8 C.P.C, since they filed the suit for themselves and on behalf of the other community members. However, they also filed the suit for themselves. Therefore, the strict Rules of applicability of Order 1 Rule 8 would not be applicable in the present case as mandatory. The learned trial Judge also clearly relied on the Judgment of the Hon'ble Division Bench of this Court and he also considered the entire facts that the defendants have not shown any *bona fideness* and they have not obtained either permission from the competent civil Court or the Commissioner of H.R and C.E Department. Therefore, there is no merit in these appeals and these



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appeals are liable to be dismissed. In support of his contentions, the

learned counsel for the respondents have placed reliance on the following

Judgments:-

(1) (1949) 62 LW 508 [Sankaranarayana Iyer vs. Sri Poovananathaswami Temple and others; and

(2) CDJ 2017 MHC 4458 [S.Parthasarathy and others vs. The Coimbatore Periyar District Dravida Panchalai Thozhilalar Munnetra Sangam having its registered office and others.

13. We have considered the rival submissions of the learned counsel appearing on either side and perused the materials available on records.

14. The specific case of the plaintiffs is that the suit property belongs to the Angala Parameswari Sonaiya Swami Temple, Arappalayam, Madurai and the defendants 1 to 3 are only administering and managing the temple as the President, Secretary and Treasurer. The suit property belongs to the deity and the defendants cannot deal with the property except to administer and manage the temple property. The suit property is inalienable property and the property cannot be sold for the



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interest and welfare of the temple. Already they filed a suit for eviction,

in which, the committee has clearly stated that since the property is adjacent to the temple, due to the increase of the members of the community, the vacant land is required for free performance of the ceremonies and festivals and the property was only led to the father of the fifth defendant only for the specific period. Though it was extended as and when and finally in the year 1997, when the lease period was ended, the then administrative committee members made a request to surrender the vacant possession and also sent the legal notice. The father of the fifth respondent sent a false reply and subsequently he died and therefore, they filed the suit for ejectment in O.S.No.294 of 2005. Though the said suit was filed even in the year of 1999 and subsequently, it was transferred and renumbered as O.S.No.294 of 2005, in which, the committee has expressed their view of getting the property. Thereafter, the defendants 1 to 3 were selected and took the charge and they colluded with the other defendants and they entered into the power of attorney in favour of the 6th defendant. The 6th defendant was a public servant, who was not supposed to be acted as power of attorney. However, she sold the property in favour of her sister and brother, the defendants 4 and 5.



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Therefore, the alienation is not valid, which is not in the interest of the temple. Further, no permission was obtained either from the competent Court or from the H.R and C.E Department. Therefore, the alienation is not valid and the sale deeds are liable to be set aside. Hence, the plaintiffs filed the suit.

15. The case of the defendants is that the suit property though belonged to the temple, but it is only a private temple. Therefore, neither the Trust Act nor the H.R and C.E Act would be applicable to the present case and no necessity to obtain any permission either from the Court or from the H.R and C.E, Department and it is only administered by the committee selected by the community members and they passed a resolution in the meeting. Based on the resolution, they sold the property to the other defendants. Therefore, the suit itself is not maintainable. Further, neither they filed the suit under Section 92 of C.P.C nor they followed the procedure under Order 1 Rule 8 C.P.C. The plaintiffs are not interested parties and they have not actively participated in the welfare of the community. Even when the plaintiffs were the office bearers of the committee, they filed the suit for ejection and they also withdrawn the



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said suit without proceeding further and also they allowed to keep the suit as pending quite a long time. Further, when the suit in O.S.No.900 of 2008 was pending, they filed the present suit, which is not maintainable, which hit by Section 10 of C.P.C. Since the major members of the community have given consent to sell the property, the sale deed is valid. The suit filed by the plaintiffs is not maintainable and the suit is liable to dismissed. The Judgment and Decree passed by the Trial Court is perverse and therefore, the appeals are liable to be allowed.

16. From the oral and documentary evidence and the rival submissions of the learned Senior Counsel appearing on either side, the following points arise for determination:

“1. Whether the present suit in O.S.No.45 of 2010 is hit by Section 10 of C.P.C because of the pending suit filed in O.S.No.900 of 2008?

2. Whether the suit is not maintainable for not filing under Section 92 of C.P.C or not followed Order 1 Rule 8 C.P.C?



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3. Whether the sale deeds executed by the defendants 1 to 3 through the 6th defendant to and in favour of the defendants 4 and 5 are valid?

4. Whether the Judgment and Decree passed by the Trial Court is liable to be interfered with?"

Point No.1

17. Admittedly, the plaintiffs 1 to 3 herein filed the suit in O.S.No.900 of 2008 as Ex-President, Ex-Secretary and Ex-Advisory Committee Member, against the defendants 1 to 3 and 7 for permanent injunction, restraining the defendants 1 to 3 therein and their men and agents from alienating the suit property in favour of the fourth defendant therein and the 7th defendant herein and for costs. The present suit has been filed for declaring the power of attorney dated 23.05.2008 as null and void and also disqualifying the defendants 1 to 3 from the President, Secretary, and Treasurer and directing the defendants 4 to 7 to hand over the vacant and peaceful possession and also the permanent injunction restraining the defendants 4 to 7 from alienating and encumbering the property. Therefore, the reliefs sought for in the suit in O.S.No.900 of 2008 and the present suit are entirely different. Therefore, the present suit



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is not hit by Section 10 of C.P.C. Further, admittedly, the suit in O.S.No.900 of 2008 has been withdrawn. Therefore, this point is answered accordingly.

Point No.2 and 3

18. Admittedly, the suit temple is a private temple and the property is belonging to the private temple, namely, deity of Arulmighu Angala Parameswari Sonaiya Swami Temple, Arappalayam, Madurai, which belongs to the Panaiyur Rajakula Agamudiyar Community, and the entire temple properties are administered by the members of the committee selected from the said community. Therefore, the suit property belongs to the deity and only the committee people can worship the temple/deity and they can administer the temple property and they can make use of the income from the property to maintain the temple and perform the poojas. The property has been purchased by the erstwhile poojari-cum-trustee only in the name of the temple and also for the purpose of the temple and therefore, the community people at the best can enjoy the property and administer the temple and they cannot alienate the property. If as long as the deity exists and as long as the property stands only in the name of the



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deity, it cannot be alienated. However, admittedly, the property was let out as vacant site for specific period and the same was extended from time to time. The property was lastly let out in the year of 1986 for 10 years and it came to end in the year of 1997. As per the lease agreement dated 01.03.1987, it is a last agreement for the period of 10 years from 01.03.1987 to 01.03.1997 and it got expired. As per the said suit, there were arrears of rent for the month of January and February 1997 and therefore, the plaintiffs therein filed the suit for and on behalf of the temple to vacate and hand over the vacant site for performing poojas and other festivals.

19. The worshippers and the members of the said community have increased in large number and they are not able to perform the festival in peace and with the goodwill. Since the tenant failed to surrender the vacant site, after lapse of lease period, the plaintiffs issued legal notice on 13.03.1997 terminating the tenancy and requested the tenant to hand over the vacant possession on or before 01.04.1997. The tenant also acknowledged the same and replied on 26.03.1997 and the plaintiffs therein sent a rejoinder notice on 16.04.1997. Even after sending the



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notice, the tenant did not surrender. Therefore, they were treated as

unauthorised occupants and therefore, the suit was filed in the year of

1999 for ejectment. The temple filed the suit for ejectment through the

President, Secretary of the temple. Subsequently, the original lessee died.

Since the change of administration of the Committee, the suit was also

pending for some time. Thereafter, the present defendants 1 to 3 executed

the power of attorney in favour of the 6th defendant, who in turn, sold the

property to the defendants 4 and 5. In the meantime, the plaintiffs 1 to 3

also filed the suit for and on behalf of the members of the community

under the representative capacity in the year 2008 and subsequently, it

was transferred and renumbered as O.S.No.900 of 2008 and the

defendants 1 to 3, who are the other defendants, have not made any

objections. However, the said suit was subsequently withdrawn. The suit

is in respect of the private temple, and it is not covered under the Indian

Trust Act. The Indian Trust Act is only applicable to the private trust and

not applicable to the public charitable trust. However, Section 6(20) of

the H.R and C.E Act defines the “temple” as follows:

“(20) “temple” means a place by whatever designation known, used as a place of public religious



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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; Clause (18) was substituted by Tamil Nadu Act 26 of 2012 which came into force on 27.06.2012. 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;

Further, Section 34 of the H.R and C.E Act reads as follows:

“Alienation of immovable trust property.—(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by 1[the Commissioner] as being necessary or beneficial to the institution.”

20. Though the temple is a private temple, however, the property is in the name of the deity. Admittedly, even in the earlier suit itself, they



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were referred 600 families in the said community and all the male members are the members of the committee and as and when they were selected, the President, Secretary, Treasurer and other managing the committee and they are maintaining the temple and the property. Therefore, it is only a public religious and it is not under the control of the H.R and C.E Department and the property is in the name of the deity. It belonged to the single community. Since the property is in the name of the deity, they cannot alienate the property. However, if at all, they want to alienate the property when necessity arises, they have to obtain permission from the Department. Even assuming that it is not covered under either the Indian Trust Act or the H.R and C.E Act and no permission is necessary, since the property stands in the name of the deity, permission has to be obtained from the majority of the committee members.

21. Admittedly, the plaintiffs are the members of the community and they also devotees that is not denied by the defendants. Though the defendants have stated that they have not acted against the interest of the temple or the community, they are keeping distance and acting against the trust. When the plaintiffs filed the suit in O.S.No.900 of 2008 under

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representative capacity, admittedly, the defendants recommended the community members not to file the objection questioning the *locus standi*. The said suit was pending till recently and subsequently, the same was withdrawn and further, the temple also filed the petition in O.S.No. 556 of 2010 and the same was subsequently renumbered as O.S.No.296 of 2005 on the file of the Additional District Munsif, Madurai for eviction. The said suit was filed in the name of the temple and represented by President and the Secretary, the first and second plaintiffs herein. The first plaintiff is the President of the said temple and that was not objected by the defendants 1 to 3 by questioning the *locus standi*.

22. In the earlier occasion, even prior to the filing of the suit, there was no allegation against the plaintiffs herein and it is not the case of the defendants that they were removed from the members of the committee or the earlier office bearers of the temple committee and therefore, there was no such allegation. However, before that, they were acting against the interest of the temple or the welfare of the temple or the community and management committee. Therefore, the management committee was selected as per the allegation within the community members. Even



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assuming that no specific law or Act or provision or G.O is applicable to the present temple, admittedly, the temple is a private temple and the property is belonging to the deity and the managing committee are being selected only for maintaining the temple and also administering the temple and property. Admittedly, there are 600 members of the community. However, on seeing the resolution, which was marked as Ex.P1, there is no reference to that out of 600 members, how many of them assembled in the meeting and how many of them have given assent. Even otherwise, out of 600, only about 120 members have signed. Even 1/3rd members have not signed it. If the decision like the selling of the property or any other important decision had been taken place, at least 2/3rd members of the association or community have to sign it and there is no such reference in the minutes (Exs.B1 and B2). Therefore, the resolution passed by the community is also not valid.

23. Further, if the suit is filed for the representative capacity for and on behalf of the entire members, Order 1 Rule 8 C.P.C has to be strictly complied with. The learned counsel for the defendants 1 to 3 vehemently contended that the Order 1 Rule 8 C.P.C is mandatory prior to the filing



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of the suit and that has to be strictly complied with. Whereas, in this case, a reading of the plaint and also proof affidavit filed by the plaintiffs show that they have clearly stated that they filed the suit for themselves and also on behalf of the other members. They have already stated in the other suits that they were acting as the President and therefore, they were Ex. President. Even in the earlier suit, they have stated that they were President and they were also members of the society. There is no material to show that they were removed from the members and the action was taken and the resolution was passed against them. Therefore, a reading of the entire materials shows that the managing committee are selected by election of the members and the plaintiffs were also elected for some time and they were also acting as the members of the managing committee and office bearers of the managing committee and also members of the advisory committee. However, there was no adverse remarks or action or resolution passed against them. The suit is filed by the plaintiffs for themselves and as representatives of community and worshippers, they have also got interest in the suit temple and suit property. Therefore, strict rules of compliance of Order 1 Rule 8 C.P.C would not be applicable to the present case on hand.

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24. The learned trial Judge also has referred to the decision of the Hon'ble Division Bench in this regard in **AIR 1987 Mad 187** (cited supra). The relevant para 9 of the said judgment is extracted hereunder:

“Order 1, Rule 8, Code of Civil Procedure enables one or more persons to sue on behalf of numerous persons having the same interest with the permission of the Court. If an individual seeks to advance the claim of it group of persons, he is enabled to do so, by virtue of the provisions of O. 1, R. 8, Civil P.C., but the procedure prescribed therein should be strictly followed. The benefit of the rule is available only to persons who fulfil the requirements thereof. It is well known that there is a clear legislative concern in the entire Code indicating the Court should make judicial orders only after hearing the persons likely to be affected by any decision in any cause. If a person is permitted to sue as a representative of another, or a group of persons, it is a matter of far reaching effect as it is likely to affect the interests of those who may not participate at the hearing of the suit. Such persons are obviously entitled to put forth their objections to the filing of the suit and to the capacity of the representative who seeks either to be the plaintiff or defendant and even to the merits of the cause.



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All that will be possible only if the party sought to be represented is given an opportunity to raise objection, if any. It is only in accordance with the said salutary principle, the procedure in O. 1, R. 8, Civil P.C. has been prescribed. The object of the rule is to avoid unnecessary tedium and expense of litigation and to give a binding force to the decision which may be ultimately passed in the suit. A person cannot seek to advance the claims of a group of persons or community without adopting the procedure under O. 1, R. 8, Civil P.C., if the relief is prayed for only on the basis of the rights of the community as such. It is no doubt true that O.1, R. 8 , Civil P.C. presupposes that each one of the numerous persons by himself has a right of suit. If a person himself has no such right to sue, he cannot be permitted to sue on behalf of toe others who have a fight. But, the distinction has to be maintained between cases where the individual puts forward a right which he , has acquired as a member of a community and cases where the right of the community is put forward in the suit. If it is the former, the individual is not "debarred from maintaining the suit in. his own right in respect of a wrong done to him even though the act complained of may also be injurious to some other persons having the same right. If it is the latter , the procedure under O. 11 R 8 Civil P.C. has to be followed and without doing so, no relief could be granted



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to the individual concerned.”

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Therefore, the plaintiffs are personally interested as the members of the community and also worshippers of the deity and also Ex. Officio of the managing committee and their interest. Therefore, the contention of the learned Senior Counsel is not acceptable. Since the plaintiffs are also members and they filed the suit for themselves, the non-compliance of Section 92(1) and Order 1 Rule 8 C.P.C is not fatal to the present case on hand. Even the first defendant sent a letter to the Educational Authorities that the 5th defendant did not obtain prior permission from the managing committee and that they are not owner of the property and they produced the false documents and obtained permission from the school authority. Further, the defendants have not shown that absolute necessity of selling the suit property.

25. A reading of the entire materials shows that the suit property belongs to the temple, especially, deity and without following the due process and even obtaining consent of the majority of the members of the community / devotees of the deity, the property was sold. Ex.B2 sent by

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the first defendant to the Tahsildar also clearly shows that the fifth defendant was acting against the interest of the temple. Ex.B6 sent against the 5th defendant. A reading of Exs.B5, B6 and B8 also clearly shows that the first defendant himself sent complaint against the fifth defendant. Further, the defendants have not clearly established before the Court the necessity of selling the property. Though the defendants 5 to 7 have stated that they are running the school in the interest of the community children, in order to promote the education, they run the aided school, however, it is informed by the plaintiffs' counsel that the defendants are running not only the aided school but also running another school, which is a private school. Even admittedly in the earlier suit, it is stated that the members of the community and worshippers of the deity are increasing day by day and if the property was sold and allowed to put a permanent structure, it will cause inconvenience and also difficulties to conduct the festival in the free manner. When the temple has got property in the name of deity, they can make use of the temple to preserve for future generation for conducting festival and ceremonies as and when during festival days. Therefore, under these circumstances, this Court does not find that since Section 92 of C.P.C and Order 1 Rule 8 C.P.C



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have not been complied with, the suit is not maintainable. As already stated, the plaintiffs have also filed the suit for themselves and also for other community members and therefore, provisions are not applicable to the present case on hand, since the suit has been filed for personal capacity of the plaintiffs also. The citations referred by the learned counsel for the plaintiffs is squarely applicable to the present case on hand.

26. As already stated, though it is a private temple and not strictly under the control of the H.R and C.E Department, however, falls the temple under the definition of Section 6(20) and Section 34 of the H.R and C.E Act and larger interest of the public. Even though the deity of the temple is belonging to the one particular sector of individual capacity, however, admittedly, there were more than 600 members even in the year of 1998 when the application for eviction was filed and that reason also has been stated in the eviction petition. Therefore, if the property is sold, permission has to be obtained from the H.R and C.E Department. Even assuming that as already stated that if it is the association or community, the resolution has to be passed with majority of the members and the

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decision like the alienation should be taken at least majority of 2/3rd members and after passing the resolution, they have to obtain permission from the H.R and C.E Department. Even the first defendant himself made certain allegations against the fifth defendant and the defendants have not established that alienation is purely in the interest of the temple. Therefore, under these circumstances, this Court is not satisfied with the act of the defendants. The property is private temple property and is in the name of the deity. Only some of the members, cannot just like that alienate the property of the community temple. Therefore, under these circumstances, the power of attorney executed by the defendants 1 to 3 in favour of the 6th defendant is not valid and subsequently, based on the power of the attorney, the 6th defendant sold the property to the 4th defendant, which is also not valid. Therefore, the defendants 4 to 7 are restrained from further alienation or encumber the property to the third party. Therefore, the power of attorney and subsequent to the power of attorney, the alienation is also not valid and the defendants 1 to 3 have no the authority to execute the power of attorney. Since the power of attorney itself is not valid, the subsequent sale deed made by the 6th defendant in favour of the other defendants also is not valid. Even a



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reading of the written statement filed by the defendants shows that they have not raised any question or challenging the suit under provision of Section 92 of C.P.C and Order 1 Rule 8 C.P.C, however, they raised the same only at the time of arguments, however, the learned Judge also dealt with the same. Therefore, no specific issue was also framed in that regard. However, during the arguments, the learned counsel for the appellants raised, however, the learned Single Judge dealt with and that also answered. Therefore, the suit was filed in individual as well as in the interest of the other members of the community and therefore, strict Rule of Section 92 of C.P.C and Order 1 Rule 8 C.P.C is not applicable to the present case on hand. There is no quarrel with the proposition of law regarding Section 92 and Order 1 Rule 8 C.P.C. However, in the present case, the same is not strictly applicable. Considering the said fact, the plaintiffs have filed the suit for themselves and also on behalf of the member of the community and as worshippers and though they are erstwhile office bearers, there was no adverse remarks or action taken against them in the earlier occasion. Therefore, under these circumstances, this points are answered accordingly in favour of the plaintiffs.



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Point No.4

27. On a reading of the plaint, it is seen that the plaintiffs were the erstwhile office bearers of the managing committee of the said community/temple and there was no action, adverse remarks against them prior to the filing of the written statement in this suit and they also filed the suit for themselves as devotee and also members of the community and erstwhile office bearer of the managing committee. Further, the earlier proceedings shows that the suit property was leased out as vacant site only for particular period and the same was extended only upto 01.03.1997. Thereafter, the temple also filed the suit for ejectment giving particular reasons. Even the first defendant made certain allegations against the school authority. Consequently, the first defendant with other defendants executed the power of attorney in favour of the 6th defendant. Further, regarding the procedural lapse, the trial Judge elaborately discussed. Admittedly, the suit property belonged to the temple and deity, by name, Angala Parameswari Sonaiya Swami Temple, Arappalayam, which belong to the Panaiyur Rajakula Agamudiyar Community, and it



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was administered by the managing committee as and when it was selected among the members by way of election. Admittedly, more than 600 members were there even in the year 1997 itself. Admittedly, the resolution - Ex.B1 does not reflect anything about it and 2/3rd members have participated and given consent and based on the consent, they also applied permission from the H.R and C.E Department and obtained permission. On a reading the entire pleadings and oral and documentary evidence and discussion made by the learned Trial Judge, this Court does not find any reason to interfere with the judgment and decree passed by the trial Court.

28. In the result, both the appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

[P.V., J.] [K.K.R.K., J.]
14.02.2025

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

skn

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WEB COPY To:

- 1.The IV Additional District Judge, Madurai.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

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14.02.2025