

S.A.(MD)No.267 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.06.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.267 of 2018

S.P.Vellaisamy(Died)

1.S.V.Vellaisamy Ambalam

2.S.M.Subramanian

.. Appellants/Plaintiffs

-VS-

1.V.Karuppaiah

2.K.Karuppaiah

3.The Executive Officer,
Pudukkottai Devasthanam,
Pudukkottai District.

..Respondents/Defendants

[2nd appellant is substituted in the place of
the deceased first appellant vide court
order dated 25.06.2025 made in
CMP(MD)No.4556 of 2025]

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree dated 06.02.2017 made in A.S.No.6 of 2016 on the file of the Principal District Judge, Pudukkottai District confirming the Judgment and decree dated 31.03.2016 made in O.S.No.245 of 1993 on the file of the Subordinate Judge, Pudukkottai.



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For Appellant : Mr.A.Rajasekaran
for Mr.K.Mahalingam

For Respondents : Mr.G.Prabhu Rajadurai
for Mr.K.Saburkhan
for R1 & R2

: Mr.G.Mathavan
Standing Counsel
for R3

JUDGMENT

The plaintiffs are the appellant in the appeal.

2.The second appeal is preferred as against the judgment and decree dated 06.02.2017 in A.S.No.6 of 2016 on the file of the learned Principal District Judge, Pudukkottai confirming the judgment and decree dated 31.03.2016 made in O.S.No.245 of 1993 on the file of the Subordinate Judge, Pudukkottai.

3. The parties are referred to as per their litigative status before the trial Court.

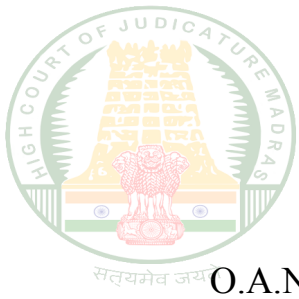


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4. According to the plaintiffs, the suit Arulmigu Sethu Vinayagar Temple is situated in Kummangudi Village, Thirumayam Taluk, Pudukkottai District. The said temple is a public temple. It is under the control and management of the third defendant Pudukkottai Devasthanam.

5. The plaintiffs have filed the suit as a representatives of all the villagers of Kummangudi village. The defendants 1 & 2 had also been arrayed in the suit as representatives of Meenikonendal villagers. According to the plaintiffs the suit temple is in existence of time immemorial and the villagers are worshipping the presiding deity. Further customarily the plaintiffs and the villagers were also worshipping in the suit temple in the month of Chithirai every year on two consecutive days. On the first day, there will be a Santhanakapptu worship and on the second day, rice will be cooked in front of the suit temple and after neivedhyam, the same will be distributed among the public who assembled in the temple. It is a case of the plaintiffs that there is a long term enmity between the plaintiffs-villagers and the defendants 1&2-villagers. To ascertain the rights, the plaintiffs filed an application before the Deputy Commissioner, HR&CE Department, Trichy in



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O.A.No.2 of 1986 under Section 63(e) of the HR&CE Act to restrain the defendants 1&2 from obstructing the plaintiffs to carrying the pooja and worship. The petition came to be dismissed holding that he has no jurisdiction. The further appeal filed before the Commissioner, HR&CE Department in A.P.No.30 of 1992 also came to be rejected. In view of the same, the plaintiffs have come up with the above suit to claim their customary right to perform the Santhanakappu and the offering of rice on the first Monday and Tuesday in every month of Chithirai. Hence, the suit was filed for a declaration to declare the right of the plaintiffs to perform the poojas on the first Monday of every Chithirai in Tamil year and for a permanent injunction or in the alternative to allow for performance of the poojas on any other day.

6.The defendants 1&2 resisted the suit by questioning the jurisdiction of the Court to try the suit since the subject matter was within the jurisdiction of the HR&CE Department. The defendants have contended that the plaintiffs do not have any right and less a customary right in performing the poojas as claimed by them. The defendants also specifically contended that the suit temple is situated in Meenikonendal village in Tirumayam Taluk which is a separate Revenue village, the



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defendants 1 &2 have also denied that the suit temple is the public temple and under the control of the third defendant and they claim that they had been in management and administration of the temple from the time immemorial. According to the defendants 1&2 Meenikonendal village is Inam village as per the publication issued by the Pudukkottai Darbar Gazette supplement part-I dated 17.02.1937. The defendants 1&2 further contended that when the plaintiffs have already filed an application before the joint Commissioner, HR&CE Department which came to be rejected and the same was also confirmed in the appeal. The same issue cannot be re-agitated. Therefore the suit is barred under the principle of *res judicata*.

7. The third defendant contested the suit and stated that the suit temple belongs to the Government which is under the control of the third defendant and the Hindus are entitled to worship in the suit temple. It is the contention that since both the plaintiff and the defendants 1&2 are Hindus, they have every right to worship the suit temple. It is the specific contention that the suit temple is under the control and management of the Devasthanam. Neither the plaintiff nor the defendants have any right to interfere in the same and sought for dismissal of the suit.

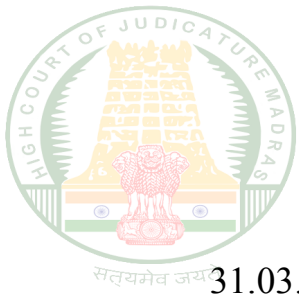


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8. It is to be noted that when the plaintiffs have come up with the suit for such a relief, the defendants 1&2 also filed a separate suit in O.S.No.155 of 2000 on the file of the learned Subordinate Judge, Pudukkottai. They have preferred the suit as against the villagers including the plaintiffs herein and sought for a permanent injunction restraining the parties from interfering in the temple construction work. It was contended by the plaintiffs therein/defendants 1&2 that they had approached the Assistant Commissioner, HR&CE Department, Pudukkottai, to renovate the damaged portion of the suit temple and based on his report, the Joint Commissioner has passed an order on 13.05.2000 giving permission for the temple thiruppani and based on the orders of the Joint Commissioner, they have also commenced the work by spending huge amount. A written statement was filed by the plaintiffs herein and the other villager and the both the suit were tried together.

9. During trial the first plaintiff examined himself as PW1 and one Subiah as PW2 and marked Ex.A1 to Ex.A15. On the side of the defendants the first defendant examined as DW1 and further examined DW2 and DW3 and marked Ex.B1 to Ex.B28. After analysing the evidences, the trial Court by a common judgment and decree dated



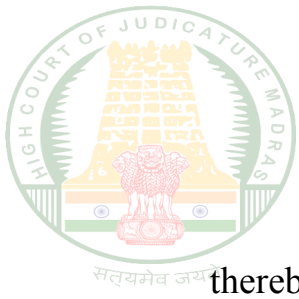
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31.03.2016 dismissed the suit filed by the plaintiffs in O.S.No.243 of 1993 and decreed the suit filed by the defendants 1&2 in O.S.No.155 of 2000 in respect of the construction of the temple. The plaintiffs filed two separate appeals in A.S.No.6 of 2016 and A.S.No.7 of 2016. The lower Appellate Court, after reappraising the evidence, by a common judgement and decree dated 06.02.2017 dismissed A.S.No.6 of 2016 and allowed A.S.No.7 of 2016.

10. The lower Appellate Court came to the conclusion that the plaintiffs was not having any customary right to perform the poojas as claimed by them and further came to categorical conclusion that the suit properties are in the administration and management of the third defendant, Pudukkottai Devasthanam under the control of the HR&CE Department.

11. The lower Appellate Court also found that the suit temple is situated in Meenikonendal village. Further, in view of the additional documents filed in the appeal, wherein it was informed that no such permission for construction was issued by the Joint Commissioner, the lower Appellate Court had allowed the appeal in A.S.No.7 of 2016



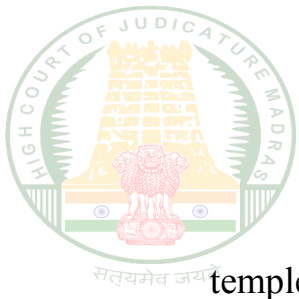
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thereby setting aside the judgment and decree. The defendants 1&2 herein have not preferred any appeal as against the judgement and decree and the same has reached finality. However, the plaintiffs alone have preferred the present appeal as against the judgment and decree of the lower Appellate Court in A.S.No.6 of 2016 confirming the judgment and decree of the trial Court in dismissing the claim of the plaintiff.

11. The appeal has not been admitted and this Court, by order dated 10.09.2018 issued notice of motion to the respondents.

12. Mr.M.Rajasekaran, learned counsel for the appellant argued that the suit temple is situated in Kummangudi village and the plaintiffs have been performing the poojas from time immemorial. It is under the HR&CE Department and since the claim came to be rejected, they came up with the suit seeking for a declaration. After making submissions on several heads, finally, the learned counsel for the appellant based on the instructions submitted that already the construction of the temple has begun and the plaintiffs have also been making contribution and they have also been entrusted in the work of construction activities. Since the third defendant Devasthanam is in control and administration of the

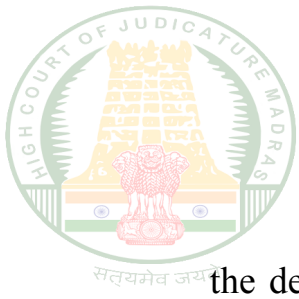


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temple, they will not have any grievance, if all the villagers, ie., 15 village hamlets coming within the Kummangudi village are given equal right to worship and participate in the poojas that are to be conducted by the third defendant Devasthanam. He further submitted that since in the judgment and decree of the lower Appellate Court, after arriving at a finding that the suit temple is under the control and administration of the Devasthanam, it has been wrongly mentioned 'as the respondents as villagers have maintained the temple' instead of mentioning that the third respondent is in the maintenance of the temple. The learned counsel further submitted that to such an extent, if the judgment and decree of the lower appellate court is clarified that the third defendant Devasthanam is in the management and administration of the temple and all the villagers including the plaintiff and the defendants 1&2 villagers will be having an equal right to participate in all the poojas performed by the Devasthanam and will have a equal right of worship, they will be contended and the second appeal would be disposed of on such terms.

13. Mr.G.Prabhu Rajadurai, learned counsel for the respondents 1&2 made elaborate submissions on various aspects, and also contended that since the suit temple is situated within the Meenikonendal village of



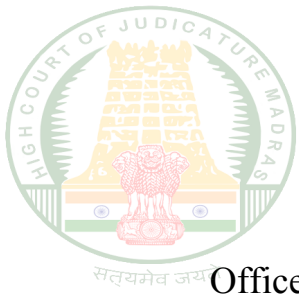
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the defendants 1&2, they have been in maintenance of the temple from time immemorial and only that has been taken note of and included by lower appellate court, which will not give any independent and separate right to the defendants 1&2 since already the temple is a public temple and under the control and administration of the Devasthanam/third defendant.

14.However, later the learned counsel, on instructions from the parties submitted that they do not have any grievance if the second appeal is disposed of by confirming the judgment and decree of the lower appellate court by only clarifying that both the plaintiffs and the defendants 1&2 villagers are entitled to worship like any other villagers and they can participate in the poojas that have to be performed by the Devasthanam and further it is made clear that the suit temple is situated in the Meenikonendal village and only to the extent that the temple is controlled and maintained by the third respondent alone, be clarified and disposed of.

15. The learned counsel appearing for the third defendant Devasthanam submitted that even in the earlier hearing, the Executive



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Officer has appeared before this Court and submitted that already the construction work of the temple is going on and also the construction work has been partly entrusted to both the plaintiff village and also the villagers of the defendants 1&2 and they have contributed to some extent for the construction of the temple and the third defendant Devasthanam under the HR&CE Department is having the control, administration and maintenance of the suit temple.

16. The learned counsel also submitted that since they are in control and management of the temple, both the plaintiff and also the defendants 1&2 and also the other villagers are entitled to worship and also participate in all the poojas that are to be performed by the HR&CE Department and the judgment and decree to that extent may be clarified that the third defendant is in management and maintenance of the temple, to avoid any further ambiguity or disputes that may arise in future.

17. Heard the rival submissions and perused the materials available on record.



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18. Admittedly Arulmigu Sethu Vinayagar Temple is a public temple and it is under the control of the third defendant Devasthanam, which comes under the HR&CE Department. It could be seen that there had been a long dispute going on between the plaintiffs and the defendants 1&2 villagers in respect of the temple. When it is the claim of the plaintiffs that the suit temple is situated in Kummangudi village, it is the contention of the defendants 1&2 that the suit temple is situated in the Meenikonendal village. In this regard, there had been several litigations between the parties by placing reliance on the notification issued under the Inam Act. Earlier rounds of litigation between the parties had reached up to the level of the second appeal. Further apart from that, the plaintiffs claimed to have a customary right of having performing the Santhanakappu and also offering of cooked rice pooja in the suit temple in the month of Chithirai of every year.

19. In this regard, some of the plaintiffs have earlier approached the Deputy Commissioner, HR&CE Department, Trichy in O.A.No.2 of 1986 under Section 63(e) of the HR&CE Act which came to be rejected and the appeal filed thereon before the Commissioner, HR&CE Department in A.P.No.30 of 1992 also came to be rejected. Thereafter



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the plaintiffs have come up with the present suit.

20. On the other hand, the defendants 1&2 who claimed administration of the temple and also had come up with the separate suit contending that based on the orders of the Joint Commissioner, they had been doing with the construction work of the temple and the plaintiffs 1&2 and other villagers are interfering the construction activities. Initially by placing reliance on the fact that the defendants 1&2 are constructing the temple based on the permission issued by the Joint Commissioner, suit came to be decreed. However, in the appeal filed before the lower Appellate Court by placing reliance of the additional documents found that no such permission has been granted by the Joint Commissioner and ultimately allowed the appeal setting aside the decree in favour of the defendants 1& 2. Admittedly, no appeal has been filed and the judgment has reached finality.

21. However, it is informed that the defendants 1&2 after the dismissal of the first appeal had approached the authorities wherein the permission was granted to the defendants 1&2 by entrusting work to do the construction work for the temple. Aggrieved plaintiffs 1&2 have

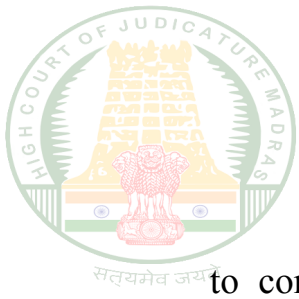


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approached this Court by way of writ petition and it is informed by all the parties before this Court that in the writ petition the HR&CE Department submitted that work will also be entrusted in favour of the plaintiffs villagers and recording the same, the writ petition came to be disposed, against which an writ appeal also came to be filed. From the above, it is clear that eventhough the defendants 1&2 claimed a right of maintenance and management, however, they have filed necessary application before the HR&CE Department seeking to permit them to put up construction and based on the submissions made in the writ petition, the work of constructing the temple had been entrusted partly with the defendants 1&2 and also with the plaintiff-villagers. In the earlier hearings, the Executive Officer of the temple had appeared before this Court and had submitted that both the plaintiffs 1&2 and the defendants 1&2 have been entrusted with the construction activities and also they have contributed to the construction work of the temple, which has been recorded.

22. It could be seen that eventhough there had been long standing dispute between the two villagers since 1952, however, now the plaintiffs-villagers and the defendants 1&2-villagers have come together



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to contribute and also for carrying out construction activities jointly under the work orders issued by the third defendant, coming under the control of the HR&CE Department.

23. The lower Appellate Court on considering the appeal on merits found that the existence of the temple in Meenikonendal village, has been substantiated through documents Ex.B6, Ex.B7, Ex.B8 and Ex.B9 and as per the settlement Register in Ex.B6, the suit temple Arulmigu Sethu Vinayagar Temple is situated in Survey No.348/3 in Meenikonendal village, which is one of the hamlet of Kummangudi Revenue village. Therefore, placing reliance on this document, the lower Appellate Court had confirmed the decree of the trial Court holding that the suit temple is not situated in Kummangudi village as claimed by the plaintiffs however it is situated in S.No.348/3 of Meenikonendal village. Further in view of the fact that already construction of the temple has been proceeded and the plaintiffs and defendants 1&2 are jointly contributing and also undertaking joint construction activities of temple which is in half way, no further deliberation is required in this regard.



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24. In view of the submissions made by the learned counsel on either side, which has been recorded in the preceding paragraphs, this Court is not going to further delve into the factual issues. As referred earlier, the parties have arrived at a consensus that when the third defendant is in the control, management and administration of the suit temple, both the plaintiff-villagers and defendants 1&2 along with other villagers could be given an equal right in worship and participating in the poojas that are to be performed by the third defendant Devasthanam.

25. The lower Appellate Court in the judgment and decree, while arriving at a finding by placing reliance on the documents filed by the plaintiffs, came to the conclusion that the plaintiffs have not established that they have any customary right to perform Santhanakappu and cooked rice poojas in the suit temple in the Tamil month of Chithirai and had dismissed the appeal confirming the judgment and decree of the trial Court. Particularly, in para 23 of the judgment, the lower Appellate Court while recording that the suit temple is a public temple of the Meenikonendal village, but all villagers are entitled to worship the temple as public, had further recorded that the suit temple is under the control of Pudukkottai Devasthanam situated in Meenikonendal village



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and maintained by the respondents. It is to be noted that though the third respondent alone is the Devasthanam, by referring it as maintained by the respondents, it goes to show as if the temple is maintained by all the respondents, ie., defendants 1&2 and the Devasthanam. The same has been carried out in the operative portion of the judgment at para.26 which also find place in the decree. The learned counsel for the plaintiffs seeks clarification in this regard, for which the learned counsel for the respondents also consented that clarification to that effect could be made so as to prevent any further confusion or disputes in this regard.

26.In view of the above deliberations, while confirming the judgment and decree of the lower Appellate Court in respect of declining the relief of declaration sought for by the plaintiffs, the operative portion in Paragraph No.26 of the judgment, dated 06.02.2017, in A.S.No.6 of 2016, is modified as follows:

“In the result, the suit temple situated in Meenikonendal Village, which is under the control of Pudukkottai Devasthanam, exclusively managed and maintained by the third defendant Devasthanam, but as public, the appellants as well as the respondents 1 & 2 are entitled



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to worship and participate in all the poojas that are to be performed by the third defendant-Devasthanam like all other villagers. Therefore, with this observation, the trial Court finding in O.S.No.245 of 1993 dated 31.03.2016 is confirmed and the appeal in A.S.No.6 of 2016 is dismissed.

27. This Second Appeal is disposed of in the above terms with the aforesaid modification. No Costs.

25.06.2025
(2/2)

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

To:

- 1.The Principal District Judge, Pudukkottai District.
- 2.The Subordinate Judge, Pudukkottai.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

PJL

Judgment made in

Second Appeal (MD)No.267 of 2018

25.06.2025