BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	15.04.2025
Pronounced on	18.08.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1166 of 2002 &
C.M.P.No.9610 of 2002
--

1. S.P.Thangappan (died)
2. Srikrishnan
3. Durairaj (died)
4. D.P.Krishna

(Death of the 1st appellant is recorded and the third appellant is permitted to prosecute the appeal, vide Court order dated 17.04.2013 made in M.P.(MD).No.4 of 2012 in S.A.No.1166 of 2002)

(Death of the third appellant is recorded, and 4th appellant is permitted to prosecute the appeal, vide Court order dated 08.12.2021 made in C.M.P.(MD).No.10532 of 2021 in S.A.No.1166 of 2002)

.. Appellants

Vs.

1. Velladicbi Vilai Hindu
Nadar Oor Vagai Trust,
Rep. by D.Durai, President

2. S.Manoharan

3. S.Rathinam

4. Isakimuthu Nadar
5. P.Thangam .. Respondents

Second Appeal filed under Section 100 CPC against the judgment and decree dated 10.12.1998 in O.S.No.296 of 1996 on the file of the 2nd Additional District Munsif Court, Nagercoil, as confirmed by judgment and decree dated 21.12.2001 in A.S.No.113 of 2000 on the file of Ist Additional Subordinate Court, Nagercoil.

For appellant : Mr.R.Subramanian
For respondent: Mr.D.Nallathambi for RR-1 to 3
Mr.P.Thiagarajan for R-5

JUDGMENT

The Second Appeal is filed under Section 100 CPC challenging the judgment and decree dated 21.12.2001 in A.S.No.113 of 2000 on the file of Ist Additional Subordinate Court, Nagercoil, confirming the judgment and decree dated 10.12.1998 in O.S.No.296 of 1996 on the file of the 2nd Additional District Munsif Court, Nagercoil.

2. The averments made in O.S.No.296 of 1996 are as follows:

(a) The plaintiff-Velladichivilai Hindu Nadar Oor Vakai Trust is a denominational trust, exclusively owned, managed, and administered by the Hindu Nadar community people of Velladichivilai Oor. Lala Villai forms part of Velladichivilai.

(b) The administration and management of the said Trust, are being carried out by the elected Trustees of the Trust and Committee members periodically elected from the Nadar Community people. The Trust has a President, Secretary or Muthalpidi, Treasurer and Kanakkar. These officer-bearers will be assisted by two Committee members. The elected Trustees are to submit the accounts of the Income and Expenditure before the yearly General Body Meeting of the Members of the Trust. The General Body used to discuss the amount and either approve or disapprove the same.

(c) Velladichivilai, Hindu Nadar Oor Vakai Trust owns two Temples. Sree Pathrakali Amman Temple is the ancient Temple. The Principal Deity is Pathirakali Amman and it is worshipped in the form of "Soolayutham". The Deities of Sudalaimedan, Perumal Swamy, Periyamman. Kalaswamy and Guru Poojai Kali Amman are available within the Pathirakali Amman Temple premises. It is an ancient Temple, worshipped by all the villagers. Special Pooja will be performed on all Tuesdays and Fridays. There will be annual Kodai festival in the Temple.

(d) On 29.09.1972, General Body of the Trust was convened to elect the new office-bearers. The election meeting was presided over by the then President one S.Ponniah Nadar. The Election was conducted and one V.Vaigunda Nadar was elected as its President. The first defendant was elected as the Secretary (Mudalpidi) of the Trust and one E.Thangaraj was elected as a

Treasurer. The Committee members were one Thangavel and one Ramaiah (plaintiff). This team of Office-bearers continued for three terms of nine years.

(e) During this period, the Poojari of the Pathirakali Amman Temple expired and the Secretary (Mudalipidi), the first defendant took charge as Poojari also. After his assumption as Poojari, he became irregular in the performance of Poojas and was accused of misappropriating the funds and mis-managing the Trust affairs. Correct and proper accounts were not rendered to the Trust members. The Trust has not approved during the period of these office bearers.

(f) On 08.04.1992, the General Body Meeting was conducted and proper accounts were not submitted to the General Body. The members questioned the Madalpidi/Secretary. He was removed from the post of Secretary and election was conducted for all office-bearers including the post of Secretary. Enraged by the decision of the General Body, the Secretary/1st defendant had left the meeting abruptly, taking the minute book and other records with him. The 1st defendant was not allowed to go with the records. So there was some pull and push between the members and the Minutes file was torn into pieces. The 1st defendant left the meeting. Thereafter, election was conducted and one Mr.S.Thangavel was elected as the President and Mr.M.Thangaraj was elected as the "Mudalpidi (Secretary) and Mr.M.Rathinam was elected as a Treasurer. The Committee members were one Thangavel and one Ramaiah, the first plaintiff. This team of office-bearers continued for three terms of nine years.

(g) During this period, the Poojari of the Arulmighu Pathirakali Amman Temple expired and the Secretary (Madalipidi), the first defendant again took charge as Poojari. After his assumption as Poojari, he became irregular in the performance of Poojas and misappropriated the funds and mis-managed the Trust affairs. Correct and proper accounts were not rendered to the Trust members. The Trust had not approved during the period of these office-bearers.

(h) The Members have resolved that the first defendant should hand over all the records to the new Trustee and permitted him to continue as "Poojari" for the Padrakali Amman Temple. Only after removal of the first defendant from the post of Secretary, the Trust has flourished and improved. The plaintiffs 1 to 3 are the present office-bearers and the Committee Members are one Mr.J.Pushparaj and Mr.S.Manoharan.

(i) The Trust had constructed a building in the year 1989 and using the same as library and reading room for promotion of the educational standard of the Community people. The library is called as Sri Selva Vinayagar library.

(j) The Trust has re-construced the shed for mid-day meal scheme during the year 1990 for the benefit of the children of the Trust members.

(k) Some of the members of the Trust requested the Trust to construct a Temple for Vinayagar. So, the Trust is constructing a Vinayagar Temple in the said Village.

(l) The Trust owns paddy field, coconut garden and a Samathi Thattu (Grave-yard). Most of the members felt that the Samathi Thattu area and it is now occupied and so the Trust should purchase another property for the same purpose. Moreover, the Trust has passed a Resolution requesting its members to cremate the bodies instead of burying the same. The Trust has purchased a cremation ground also on 25.07.1984.

(m) Being the Poojari of the Temple, the key of the Arulmighu Padrakali Amman Temple is available with the first defendant. He had been irregularly performing the Poojas. Now, from the year 1990 onwards, the first defendant is not at all performing the Poojas in time. He is not co-operating with the Management and he is acting against the spirit and interest of the Trust and its members. A part of the Temple building has already fallen down and the re-construction work is in the half way. He is not handing over the key to the Trustees. So, the plaintiffs are unable to do repair works and other works. Because of the hostile attitude of the Poojari, the Trust is unable to perform the Poojas in the Padra Kali Amman Temple.

(n) The plaint schedule properties are in exclusive possession and enjoyment of the Trust and its members. The Patta for the plaint schedule properties are standing in the name of Pathira Kali Amman, but for the collection of tax, the old Trustees' names are also included in the Pattadhar name as "Badra Kali Amman Vagaikkaga Vendi Mugara". In this column, the first defendant's ancestors' names are finding place. For the third and fourth item of the plaint schedule property, the Patta is wrongly given in the name of the Shanmuga Perumal Nadar. No person is now available and the plaintiffs are already given for changing the Patta in the name of the Trust represented by the Trustees.

(o) Now, the defendants are propagating against the Trust and claiming the Padra Kali Amman Temple as their ancestral Asset. The second and third defendants are close relatives and are helping the first defendant. Their claim right over the Temple as per the Patta which stands in the name of their ancestors as Trustees of the Padra Kali Amman Temple. The defendants cannot take shelter under the Pattas, because, their ancestors had been performing the duties of the Trustees of the plaintiff-Trust as per the authority given by the members of the Trust. But now, they dis-own the authority and claim rival Trusteeship.

(p) On 11.12.1992, the Trust meeting was held and it was decided to take action through Court of Law for getting the key. Moreover, it was resolved to appoint somebody else to conduct the Poojas. On 20.01.1993, an Advocate notice was sent to the defendant demanding the key of the Temple. The defendants have received the notice and sent a reply with untenable contentions.

(q) Now, the defendants are trying to encumber, alienate and to create interest over the Trust properties in favour of the third parties in order to prejudice the rights of the plaintiffs. If the defendants are not restrained by an order of injunction, restraining the defendants from interfering in the Trust functions and its properties, the plaintiff will be put into irreparable loss and injury. Plaintiff's earnest efforts to have harmonial relationship with the defendants had not yielded fruits. Hence, the present suit has been filed.

3. The defendants 1 to 3 have filed written statement stating as follows:

(a) The allegation that "Velladichivilai Hindu Nadar Oorvakai Trust" is a denominational Trust exclusively owned and administered by the Hindu Nadaras of Veladichivilai are denied. The allegations that Lalavilai is a part of Velladichivilai is denied. Lala Vilai is an independent hamlet of Nagercoil Municipality.

(b) There is no such Trust as "Velladichivilai Hindu Nadar Oor Vagai Trust". The alleged plaintiff -Trust is a deliberately created and it is a fictitious one. The alleged existence of the Trust and its office-bearers are fraudulently created with a mala-fide intention and ulterior object. The plaintiffs are not the office-bearers as alleged for the so-called "Velladichivilai Hindu Nadar Oor Vagai Trust". The Sree Pathra Kali Amman Temple is situated in item No.2 of the schedule property, is nothing to do with the plaintiffs. The third defendant's family coconut Thope and the second defendant family paddy fields are situated on the Southern and Western side of the schedule Item No.2. The alleged Trust named Velladichivilai Hindu Nadar Oor Vagai Trust is denied as false and mischievous. The plaintiff's Ramiah, Rathinam and Padmanabhan and others are residing at Velladichivilai and Anna Nagar Colony and established 'Selva Vinayagar Trust' for which the Trustees of the Selva Vinayagar Trust purchased a cremation ground as per the registered sale deed, dated 25.07.1984.

(c) Plaintiffs and their men, forged a Minute book to establish the alleged Velladichivilai Hindu Nadar Oor Vagai Trust, whereas in reality, no such Trust exists.

(d) The allegation that "Velidichivilai Hindu Nadar Oor Vahai Trust" owns two Temples as on today, is denied. The plaintiffs and their men have established "Selva Vinayagar Trust" as early as 1984 and have a Selva Vinayagar Temple. The said Temple has been constructed deliberately on a public land in order to obstruct the free flow of water to the adjoining paddy fields. The allegation that Sree Pathira Kali Amman Temple is an ancient Temple is not correct. The temple is a private Temple of the defendants' family. Pathira Kali Amman Temple and its assets were created by the defendants' ancestor

Late.Shanmugaperumal Nadar. Late Shanmugaperumal Nadar was the founder-Hereditary Trustee for the Sree Pathira Kali Amman Temple. It is admitted that few other Deities are also available in the Sree Pathira Kali Amman Temple. The allegation that, "it is an ancient Temple worshipped by all the villagers" is denied. Poojas and annual festivals are conducted by the defendants' family alone. The plaintiffs or the public have no right and interest over this Sree Pathira Kali Amman Temple.

(e) The alleged General Body dated 29.09.1972 and the allegation of Mudaloadi (Secretary), Treasurer and Committee Members are denied. The Sree Pathira Kali Amman Temple being the private family Trust of the defendants, and hence the pubic have no right to interfere with the rights and interest of the defendants. The allegation that the alleged team of office-bearers continue for three terms of nine years, is baseless and denied.

(f) The first defendant is acting as Trustee and performing Poojas in their private family Sree Pathira Kali Amman Temple in their private family Sree Pathira Kali Amman Temple, since it is being a small Temple. The allegation that misappropriation of funds and mis-management are baseless and the questions will not arise, since the Temple being the defendants' private family Temple.

(g) The alleged General Body, dated 09.04.1980 is baseless and imaginary, since the alleged Trust of Velladichivilai Oor Vahai Hindu Nadar Trust is fictitious. The allegations of meeting, removal of Mudalpadi (Secretary) and fresh election and elected Committee are denied. The allegation that the first defendant was prevented from taking records, so there was some pull and push resulting in the minute file being torn into pieces is false and imaginary.

(h) The plaintiffs and their men have established Selva Vinayagar Trust and constructed library for Vinayagar Temple and purchased a cremation ground for the plaintiffs and their follower.

(i) The alleged plaintiff-Trust has nothing to do with the defendant's private family Trust "Sri Pathira Kali Amman Temple" and its immovable and moveable assets. The alleged Resolution is denied and even if any Resolution was passed in their "Selva Vinayagar Trust", it is not binding on the defendants.

(j) The plaint-schedule-properties do not belong to the Velladichivilai Hindu Nadar Oor Vanai Trust. The plaintiffs are not the elected Trustees. The plaintiff is not in exclusive possession and enjoyment of the plaint-schedule-properties. The defendants' grand-father Shanmugaperumal Nadar was the founder - hereditary Trustee for his life-time. His heirs being the defendants' grand-father Sreekrishnaperumal Nadar, had succeeded by hereditary Trusteeship and he was in possession and enjoyment of the Pathra Kali Amman Temple and also its assets. After the demise of Sreekrishna Perumal Nadar, his decendants Shanmughaperumal Nadar, Vaikundamari Nadar and Ponniah

Nadar, had acted as hereditary Trustees for their life-time. The genealogical tree of the three generations, is as follows:

Shanmuga Perumal Nadar

|

Sri Krishna Permal Nadar

Shanmuga Perumal Nadar	Vaihundarai Nadar	Ponniah Nadar

(k) The defendants' forefather or ancestors had been enjoying the office of the hereditary Trusteeship in relation to Sree Pathra Kali Amman Temple, and the same belongs to the defendants' private family Trust property, which had been held by the defendants' ancestors for three generations, without any break. Now, the first and third defendants are acting as hereditary Trustees and the first defendant is functioning in a dual capacity, namely Poojari-cum-hereditary Trustee. The defendants and their family members have conducted the Kodai festival in their private family Sree Pathra Kali Amman Temle from 14.05.1993 to 16.05.1993. The defendants used to conduct the annual Kodai festival for their family Sri Pathira Kali Amman Private Temple, with their own expenses. Patta for item No.1 stands in the name of Vaikundamari Nadar as a Trustee to the Pathira Kali Ammana Temple. In the year 1969, the Settlement

Authorities issued the Patta in the name of Pathira Kali Amman, which was obtained by the then hereditary Trustee Vaikundamari Nadar. The second defendant Sree Krishnan is the son of Vikundamari Nadar. For the last more than 30 years, Vaikundamari Nadar family members are paying the tax to the Government. Thus, item No.1 is the defendants' private family Trust property.

(l) The plaintiffs have given wrong boundaries for item No.2. As per the plaint-boundaries, there is no existence of any properties on the Southern side of these defendants' family Pathra Kali Amman Temple where the third defendant's father Ponniah Nadar's coconut 'thoppu' is situated. On the Western side of the defendants' family Pathira Kali Amman Temple and the second defendant's father Vaikundamari properties is situated. As per the Patta, item No.2 stands in the name of Shanmugaperumal Nadar, which is the first defendant's father. The defendants and their family are in exclusive possession and enjoyment of the Sree Pathira Kali Amman Temple and site, as their private family Trust properties. The first defendant's father Shanmugaperumal second defendant's father Vaikundamari Nadar, third defendant's father Ponniah Nadar are brothers who are jointly conducting the Pooja and festivals in Item No.2 as hereditary Trustees. The other Hindu Nadar of the village either in Lala Villai or Velladichivilai are not having any management or possession over the plaint-schedule-properties. Plait item No.3 was purchased in the name of Sree Krishna Perumal, who is the grand-father of the defendants.

(m) The plaintiffs failed to produce any Revenue Records or sale deeds to show that the plaint-schedule-properties belonging to the so-called Valladichivilai Hindu Nadar Oor Vagai Trust. Either the plaintiffs or the other members or other Nadars in the Velladichi Vilai never paid any tax or electric bills in respect of the plaint-schedule-properties. In the Pathira Kali Amman Koil electricity meter is in existence and defendants are paying the electric charges.

(n) The defendants' ancestors were the native of Lalavilai for many decades and they have founded the Sree Pathira Kali Amman Temple before three generations for the welfare and the benefit of their family alone. The defendants' ancestors were the hereditary Trustees and they were acted as Poojaris for their private family Sree Pathira Kali Amman Temple. The plaintiffs and the other ancestors came from the other villages and settled at Velladichivilai on various reasons. Most of the people have no Patta land for their own residence and a few years back, some of them have trespassed into the Chetti Street Pillaiyar Temple Trust paddy field and put up huts. Now, most of the people and two plaintiffs are residing therein and created a new Anna Nagar Colony. On behalf of the Chetti Street Pillaiyar Temple Trust, the lessee filed a Civil Suit before the Nagercoil Munsif Court against the encroachers and obtained a decree for eviction. The plaintiffs' group indulged, abetted and foisted a criminal case in C.C.No.111 of 1980 against the hereditary Trustee late Ponniah Nadar and three others, due to enmity. The case ended in acquittal.

The plaintiffs and the encroachers of Anna Nagar Colony and their group have enmity against the defendants' family, since they have not extended their support for the illegal encroachments. The original citizens of Velladichivilai have not come as plaintiffs in the vexatious and frivolous suit and claims.

(o) The allegation being Poojari of the Temple, the key of the Padra Kali Amman Temple is available with the first defendant, is not correct. The key of the Sree Pathira Kali Amman Temple is with the defendants' family. The allegation that from the year 1990 onwards, the first defendant is not at all performing Poojas in time, is denied. The allegation that the part of the Temple building has already fallen down and the re-construction work, is in the half way, is denied. As a matter of fact, the defendants are maintaining their family Temple and regularly conducting Pooja and Kodai festival, for the welfare of the family of the defendants.

(p) The allegation that the plaint-schedule-properties are in exclusive possession and enjoyment of the Trust and its members, is denied. The plaint-schedule-properties are in possession and enjoyment of the defendants and their family members, since it is being their private family Trust properties. The allegation with reference to Patta is not correct. The Patta of the plaint-schedule-properties are standing in the name of the defendants' private family Trust Temple, Sri Pathira Kali Amman Temple and the hereditary Trustees Shanmuga Perumal Nadar and Vaikunda Mari Nadar. The allegation that the third and fourth items of the schedule properties, the Patta is wrongly given in the name of Shanmuga Perumal Nadar, is denied. The plaintiffs have no right to change the Patta of the schedule properties, in the name of their alleged Trustee in the name of their alleged fictitious Trust. The hereditary Trustee of the defendants' family have paid the Revenue Tax to the Government and the Electricity Bill to the Electricity Board.

(q) The alleged Trust meeting, dated 11.12.1992 was conducted, is denied. For the plaintiffs' notice, dated 20.01.1993, the defendants have sent a reply dated 02.03.1993 and an additional reply, dated 01.04.1993. The allegation with reference to the encumbrance of the schedule properties, are denied.

(r) The alleged cause of action, dated 11.12.1992 is denied. The alleged date 11.12.1992, is invented for the filing of the mischievous suit. The defendants' private family Trust Sri Pathira Kali Amman Temple, is originated from the life-time of the defendants' great grand-father Shanmuga Perumal Nadar. The defendants' family is in possession and enjoyment of the Sri Pathira Kali Amman Temple and its assets as their private family Trust for more than 3 decades. In the year 1983 also, the plaintiffs have attacked the family of the defendants and foisted a criminal case in C.C.No.111 of 1983, against the hereditary Trustee Late Ponniah Nadar and three others. The suit is not maintainable on facts and law. Hence, for all the above reasons, the defendants 1 to 3 pray to dismiss the suit.

4. The fourth and fifth defendant have filed written statement stating as follows:

(i) The plaintiffs 1 to 3 have no right or locus-standi to represent the Velladichivilai Oor Hindu Nadar Samudayam. They do not belong to Velladichivillai Hindu Nadar Samudayam. They are not the office-bearers. They are not competent to represent the Velladichivilai Hindu Nadar Samudayam. The claim made by plaintiffs 1 to 3 are false and motivated.

(ii) The fourth defendant is the President of the Velladichivilai Hindu Nadar Samudayam and the fifth defendant is the Secretary-cum-Treasurer. The nomenclature is Velladichivilai Oor Hindu Nadar Samudayam and there is no Trust as Velladichivalli Hindu Nadar Oor Vagai Trust. The said Hindu Nadar Samudayam is not at all administered by the plaintiffs 1 to 3. There is a Temple -- Sudalaimadasway Temple, established and administered by the Velladichivilai Oor Hindu Nadar Samudayam.

(iii) The plaintiffs 1 to 3 are not members of Velladichivilai Oor Hindu Nadar Samudayam. They belong to Anna Nagar Colony, a newly formed colony. Many people from different places, have settled at Anna Nagar Colony. The Anna Nagar Colony people have formed a Trust known as Selva Vinayagar Temple and had established a Temple known as Selva Vinayagar Temple. They have acquired properties for the said Trust and the plaintiffs 1 to 3 or other members of Anna Nagar colony has no manner of right or interest over Velladichivi Oor Hindu Nadar Samudayam or the Sudalaimadaswamy Temple and Malai Arasan Temple.

(iv) The Pathira Kali Amman Temple Trust is a private Trust belonging to a private family consisting of defendants 1 to 3 and the Velladichivilai Oor Hindu Nadar Samudayam has nothing to do with the said Trust or Selvavinayagar Trust. The families which manage the Pathira Kali Trust are residing at Lalavilai and adjacent hamlet. The first defendant being one of the family members, is the Poojai in the Pathira Kali Amman Temple.

(v) The allegations do not pertain to the Velladichivilai Oor Hindu Nadar Samudayam or the management or administration of the Sudalainadaswamy Temple. There was no General Body or election as alleged with regard to the Velladichivilai Oor Hindu Nadar Samudayam. The alleged records, etc., are cooked up for the purpose of the case by the plaintiffs 1 to 3. In Sudalainadaswamy Temple Poojas are conducted by one Raja and he is being paid by the Samudayam.

(vi) The Selva Vinayagar Temple, Library, etc., are situated within Anna Nagar Colony. The said constructions were made by the Selva Vinayagar Trust Anna Nagar Colony in the property of Chetti Theru Desiga Vinayagar Trust. The alleged General Body Meeting on 09.04.1982, election, etc., are denied. No such

General Body or meeting was conducted as far as Velladichivilai Oor Hindu Nadar Samudayam is concerned. It is a strange story regarding the Trustee and distruction of the documents.

(vii) The Sudalaimadaswamy and Malai Arasan Temple do not own any other properties. The said Temples were managed by the said Samudayam for the past many generations.

(viii) The plaintiffs have no cause of action against the defendants. The plaintiffs have no right to include the Vidchivilai Oor Hindu Nadar Samudayam in the suit. They have no right to file the suit representing the same. The plaintiffs are acting with some ulterior motive.

(ix) The plaintiffs have no manner of right in claiming right over the Velladichivilai Oor Hindu Nadar Samudayam. They want to establish a right which is not in existence. The suit is not maintainable and the plaintiffs have no justifiable cause. The plaintiffs are to be estopped from putting forth any claim, as they are members of Velladichivilai Hindu Nadar Samudayam.

5. During the course of trial, P.Ws.1 and 2 were examined and Exs.P-1 to P-36 were marked. On the side of defendants, D.Ws.1 to 3 were examined and Exs.D-1 to D-56 were marked.

6. On a perusal of the oral and documentary evidence, the trial Court decreed the suit, against which, the First Appeal in A.S.No.113 of 2000 was filed by the defendants 1 to 3, which was dismissed, against which, the defendants have preferred the present Second Appeal.

7. This Court, on 27.09.2002, formulated the following substantial question of law:

> "Are not the judgments of the Courts below in holding that the plaintiff is a Trust and it has a right to manage the Temple in question is vitiated due to absence of legal material on record to establish the existence of such a trust ? "

8. Learned counsel appearing for the appellants/defendants submitted that the appellants are the defendants in O.S.No.296 of 1996, which was instituted seeking a declaration that the Velladichivillai Hindu Nadar Oor Vagai Trust is entitled to manage and administer the Shri Bathrakali Amman Temple and its properties, for recovery of possession, and for a permanent injunction. It was contended that the plaintiff-Trust claims to be a denominational Trust owned and managed by the Hindu Nadar Community people of Vellachi Vellai Oor and that it owns two temples, namely Shri Bathrakali Amman Temple and Selva Vinayagar Temple. The first defendant was elected as the Secretary of the Trust

and was also functioning as the Poojari, but when he failed to submit the accounts and misappropriated the records, the General Body questioned him, whereupon he absconded with the Minutes Book and other records. Consequently, he was removed from the office of Poojari. The key of the Temple is with the first defendant, and since the defendants attempted to encumber the properties, the suit came to be filed.

9. The learned counsel, however, submitted that the defendants have throughout denied the very existence of such a Trust and have asserted that the temple in question is their family temple founded by their predecessor Shanmuga Vel Nadar. It was contended that the properties in item No.2 of the schedule belong to the temple and have always been under the management of the defendants and their family. The property in item No.3 stands in the name of their ancestor, late Shanmugam Perumal Nadar. According to the appellants, their ancestors have been hereditary trustees of the temple, and item No.1 also stands in the name of their ancestor Vaigundam Mari Nadar, described as trustee of the Bathrakali Amman Temple. The plaintiff is, at best, managing another temple, namely Selva Ganapathy Temple. Further, the patta and electricity connection stand in the name of the defendants' family. It was contended that the trial Court wrongly held that the temple is a denominational temple and that it is managed by the plaintiff-Trust, whereas the evidence on

record clearly establishes that it is a private family temple. The learned counsel argued that the first appellate Court also failed to make an independent appreciation of evidence and mechanically confirmed the judgment and decree of the trial Court.

10. The learned counsel further submitted that the Courts below have erred in granting a declaration in favour of the plaintiff-Trust without deciding the basic issue as to the existence and validity of the Trust. When the defendants have specifically denied the very formation of the Trust, it was incumbent on the Courts to frame and decide an issue on that point. Without deciding such a foundational issue, both Courts have proceeded to recognize the Trust as owner and manager of the temple, which is unsustainable.

11. The learned counsel further pointed out that both the Courts have misdirected themselves in understanding the concept of a denominational temple. The expression “denominational temple” is not defined in the Hindu Religious and Charitable Endowments Act, but has been judicially interpreted in several decisions, reported in (i) 1987 (Vol.100) LW 240 (The Assistant Commissioner, H.R.&C.E., Salem vs. Nattamai K.S. Ellappa Mudaliar and others) and (ii) reported in 1991 (1) LW 382 (State of Tamil Nadu vs. Vilampatti Nadar and others). These decisions have elaborated the principles for determining whether a temple can be regarded as denominational. They hold

that in order to constitute a religious denomination, the following conditions must be satisfied: (i) there must be a collection of individuals having a system of beliefs or doctrines conducive to their spiritual well-being; (ii) they must have a common organisation; and (iii) they must be designated by a distinctive name.

12. The learned counsel submitted that the Courts below have overlooked these settled principles and have wrongly assumed that merely because the temple is managed by a particular community, it automatically becomes a denominational temple. He submitted that the confusion between a community-managed temple and a denominational temple has led to serious errors in the findings. The Courts below have failed to examine whether the Velladichivillai Hindu Nadar Oor Vagai Community satisfies the three conditions laid down by the Apex Court, and therefore, the findings are perverse and unsustainable in law.

13. The learned counsel next submitted that under Section 5 of the Indian Trusts Act, no trust in respect of immovable property is valid unless it is declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or created by the will of the author or trustee. Section 6 of the Act, which is subject to Section 5, requires that there must be an intention to create a trust, the purpose of the trust, the beneficiary, and

identifiable trust property. In the present case, there is no registered document or will evidencing the creation of the alleged trust, nor any pleading as to who founded it. Therefore, in the absence of statutory compliance, the finding of the Courts below that there exists a valid denominational trust is wholly erroneous.

14. The learned counsel further submitted that even the tax receipts filed by the plaintiffs bear the names of the defendants' ancestors. The patta for items 3 and 4 also stands in the name of their forefathers, particularly Shanmuga Perumal Nadar. When the documents themselves show possession, management, and enjoyment by the defendants' ancestors, the burden lay heavily on the plaintiffs to establish the contrary by cogent evidence, which they have failed to do. Both the Courts have, without any basis, presumed the existence of a trust and declared its entitlement to the temple properties. It was also submitted that in the plaint itself, it is admitted that the defendants' ancestors were performing the duties of trustees. This admission itself demonstrates that the temple was under the hereditary management of the defendants' family and not under any independent denominational trust as alleged.

15. The learned counsel further pointed out that the trial Court erred in relying upon Exhibits A-5 to A-12 to hold that the community people of Vellachi Vellai Oor were administering the temple. Those documents, according to the

learned counsel, only show that the property stood in the name of the temple and do not in any manner prove the existence or administration of any trust. Exhibit A-1, the so-called Oolaichoodi, does not prove the creation of a trust. The finding that the temple is denominational is without any supporting material.

16. The learned counsel further contended that even as per the findings of the Courts below, item No.2 belongs to the temple founded by Shanmugavel Nadar, who was the ancestor of the defendants. There is no document to show that the plaintiff-Trust was administering the temple properties. It is further admitted that item No.3 stands in the name of the defendants' ancestor, yet the Courts below have erroneously held that it is the property of the temple. Exhibits B-19 and B-20, which are pattas, clearly show that the property stands in the name of the defendants' family, while there is no reference whatsoever to the plaintiff-Trust in Exhibit A-2. It was therefore submitted that the first appellate Court had mechanically confirmed the findings of the trial Court by misreading Exhibit A-1, which was neither pleaded nor filed along with the plaint. Even according to the lower appellate Court, all the documents show that the defendants and their ancestors were paying taxes and managing the properties. Hence, the learned counsel submitted that the concurrent findings of both Courts below are vitiated by serious errors of law and fact and are liable to be set aside.

17. *Per contra, l*earned counsel for the respondents 1 to 3 submitted that the respondents 1 to 3 have proved the existence of the plaintiff-Trust through oral and documentary evidence. Only the appellants are taking advantage and were acting as Trustees and one of the appellants is acting as Poosari and the performing the Poojas and also taking advantage of the same, they are claiming that they are the hereditary trustees and the Temple is a private family Temple. They have not produced any materials to show that they are the ancestors and have constructed the Temple in the ancient period and from time immemorial, the Temple belongs to them. Both the trial Court and the first appellate Court have rightly appreciated and re-appreciated the entire materials and decreed the suit and rejected the defence taken by the appellants and the decisions referred to by the appellants are not applicable to the facts of the present case on hand. The respondents established the existence of the Trust and also that the Temple belongs to the Trust and the Temple is under the management of the Trust. The appellants are not performing the Pooja properly and therefore, the trial Court decreed the suit and the first appellate Court dismissed the appeal. There is no merit in the present Second Appeal and there is no substantial question of law and both the Courts below, as the fact finding Courts, have elaborately discussed about the oral and documentary evidence based on the pleadings and rightly decreed the suit, and therefore, the Second Appeal is liable to be dismissed.

18. Learned counsel for the fifth respondent (fifth defendant) submitted that there is no Trust known as "Velladichivilai Hindu Nadar Oor Vakai Trust" and that the plaintiffs have created a false entity only to interfere with the affairs of the Velladichivilai Oor Hindu Nadar Samudayam. The fifth respondent, who is the Secretary-cum-Treasurer of the Samudayam, and the fourth defendant, who is its President, have been managing the Sudalaimadaswamy Temple and Malai Arasan Temple for many years. The plaintiffs 1 to 3 do not belong to the Velladichivilai Hindu Nadar community but are residents of Anna Nagar Colony, a separate locality formed later, and therefore have no right or authority to represent the Samudayam. It was pointed out that the Anna Nagar residents have formed their own Selva Vinayagar Temple Trust and built a separate temple, and hence they cannot claim any right over the temples at Velladichivilai. The Pathira Kali Amman Temple Trust is a private family trust belonging to defendants 1 to 3, and it has no connection with the Samudayam or the plaintiffs. The alleged general body meeting, election, and records produced by the plaintiffs were denied as false and fabricated. It was finally submitted that the Sudalaimadaswamy Temple and Malai Arasan Temple have always been under the continuous management of the Samudayam for generations, and the plaintiffs' claim of right over them is baseless and unsustainable.

19. Heard the learned counsel on either side and perused the materials available on record.

20. The material facts emerging from the record reveal that the suit was filed by the first respondent-Trust seeking declaration of ownership and management rights over Sri Bathrakali Amman Temple and its assets. The defendants' primary defence is that the temple is their private family temple founded by their ancestors and that they have been its hereditary trustees. On the other hand, the first respondent asserts that the temple is a public denominational temple of the Velladichivillai Hindu Nadar Oor Vagai community, administered through the Trust with elected representatives.

21. On a reading of the plaint averments made by the respondents, it is seen that they have stated that the first respondent is the Trust and the Temple is maintained by the Trust and its properties are the Trust's properties and the Trust is mainly administering the management of the Temple and the properties. The documents produced by the respondents show that the first respondent Trust is existing and the elected office bearers are appointed through the election and the properties stand only in the name of the Temple and administered by the Trust and therefore, no one is entitled to get any right in the Temple. When the respondents have clearly stated that the Temple and its

properties are administered by the Trust and adduced oral and documentary evidence and substantiated the plaint averments, the onus is shifted to the appellants and they have to establish that the Temple is a private Temple, which belongs to their family including the properties, their ancestors have founded / established the Temple, they have purchased the property out of their own funds, constructed the Temple, purchased the properties and maintaining the temple and properties. The appellants have admitted that they are the hereditary Trustees of the temple and performing Pooja in the Temple. Though the respondents denied that the Temple belongs to the appellants, they have admitted that the appellants' ancestors were acting as Trustees of the first respondent-Trust and one of the appellants is functioning as Poosari and the elected Secretary of the Temple and since he failed to perform Pooja regularly and that there was mis-management of the properties, the respondents instituted the present suit

22. Though the appellants claim that the properties are their individual family properties and the Temple is a private Temple, they did not prove the same and from the overall evidence, the Courts below have categorically found that the appellants were acted only as trustees of the temple and that the temple is a public temple as alleged by the respondents. It is a settled proposition of law that the plaintiffs have to prove their case on their own pleadings, oral and documentary evidence and they cannot take advantage of the loop-holes left by

the defendants. In this case, the plaintiff/first respondent-Trust have pleaded through oral and documentary evidence with preponderance of probabilities that the Trust is existing and the Temple is under the management of the Trust and the office bearers are being elected through Democratic elections and one of the office bearers is acting as President of the Trust and the documents produced by the respondents also clearly establish the existence of the Trust and establishment and maintenance of the Temple and its properties are by the first respondent Trust and the properties stand only in the name of the first respondent Trust

23. In the above facts and circumstances, the respondents have proved the existence of the Trust and also the properties belong to the Trust and the same are under the management of the Trust. The trial Court, while appreciating the pleadings, oral and documentary evidence, decreed the suit. The first appellate Court as a fact-finding Court, had re-appreciated the evidence and found that the respondents are entitled to get the decree as sought for.

24. Though the appellants have referred to various decisions of the Supreme Court, there is no quarrel over the proposition of law laid down in the said decisions. However, the facts and circumstances of the decisions referred to supra are not applicable to the present case on hand, as the same are distinguishable.

25. Further, the Temple is a legal entity and filed the suit through the representative of the Trust. Accordingly, the respondents had filed the suit and established their case. This Court does not find any perversity in appreciating and re-appreciating the evidence by both the Courts below and have rightly decreed the suit.

26. The substantial question of law formulated by this Court, is answered in favour of the respondents and against the appellants.

27. In view of the foregoing discussion, the Second Appeal is dismissed. There shall be no order as to costs. The judgment and decree of the first appellate Court is confirmed. Consequently, connected miscellaneous petition is closed.

18.08.2025

Index: Yes/no
Internet: Yes
Speaking Order: Yes/no
Neutral case citation : Yes/no

cs

To

1. The Additional District Munsif, Nagaercoil.

2 The first Additional Subordinate Judge, Nagercoil

3. The Record Keeper, V.R. Section, Madurai Bench of the Madras High Court, Madurai.

P.VELMURUGAN, J

cs

Pre-delivery Judgment

in S.A.No.1166 of 2002 &
C.M.P.No.9610 of 2002

Judgment delivered
on 18.08.2025