

S.A.No.1859 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 15.04.2025

PRONOUNCED ON : 16.06.2025

CORAM

THE HONOURABLE MR JUSTICE P.VELMURUGAN

S.A.No.1859 of 2003

1.Thiruvadi Narayanan (Died)
(for himself and his reps. of Hindu Yadavar Community
Thatchanallur) ...Appellant/2nd Respondent/2nd Plaintiff

2.K.Arumugam
(for himself and his representative of Hindu Yadavar Community
Thatchanallur)
*(2nd Appellant is impleaded vide Court order dated 16.10.2020,
made in CMP(MD)No.4907 of 2020 in S.A.No.1859 of 2003)*
...Appellant

Vs

1.The District Collector,
Tirunelveli District,
Kokkirakulam, Tirunelveli District.

2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Road,
Chennai - 34.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Tirunelveli. ...1 to 3 Respondents/Appellants/Defendants

4.P.T.Sakkrayutha Narayana Konar
...4th Respondent/1st Respondent/1st Plaintiff
*(The 4th Respondent is not prepared to give as Appellant
hence he is added as respondent. Hence given up)*



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Prayer : Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree in A.S.No.199 of 2002, on the file of the Principal Sub Judge, Tirunelveli, dated 17.07.2003, reversing the Judgment and Decree in O.S.No.34 of 1992, on the file of the II Additional District Munsif Court, Tirunelveli, dated 31.10.2001.

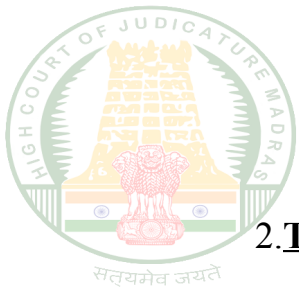
For Appellants : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.M.Senguvijay

For Respondents : Mr.A.Kannan
Additional Government Pleader
for R1 to R3

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J U D G M E N T

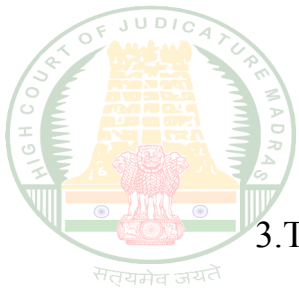
The appellant herein has filed a suit for declaration and permanent injunction in O.S.No.34 of 1992, on the file of the Second Additional District Munsif, Tirunelveli. After trial, the Second Additional District Munsif, Tirunelveli, decreed the suit. Aggrieved over the same, the respondents have filed an appeal in A.S.No.199 of 2002, on the file of the Principal Sub Court, Tirunelveli. The Principal Sub Court, Tirunelveli, after hearing the arguments on either side allowed the appeal, setting aside the judgment and decree passed by the trial Court. Aggrieved over the judgment and decree passed by the first appellate Court, the plaintiff has filed the present Second Appeal.



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2. The brief facts of the case as per the plaint are as follows:-

The suit temple is a denominational temple of Hindu Yadavar community. The appellant is in physical possession, Management, Administration and enjoyment of the suit temple. Originally, the suit temple was established by Hari Krishna Konar, Shanmuga Konar, Sankaralinga Konar and Iyyanar Konar and subsequently, Hindu Yadava community of Thachanallur, has developed the suit temple gradually and the present plaintiff has maintained the temple one by one. Lastly, the third plaintiff is the managing trustee of the temple. Except the Hindu Yadava community of Thachanallur, no other persons have rights in the suit temple and they are performing the pooja as per their customs. The suit temple is only a denominational temple and the respondents have interfered with the Management and Administration of the suit temple. The plaintiff has filed a suit for declaration that the suit temple is a denominational temple of Hindu Yadava community of Thachanallur and for consequential injunction restraining the defendants from interfering with the physical possession and enjoyment of the said temple by the said community.



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3.The brief facts of the written statement are that the suit temple is a public temple and all the community people of Thachanallur are worshipping the temple and public are offering contribution through the Hundial. The temple is administered by the respondents from the Hundial collection and the temple is under the control of the Hindu Religious and Charitable Endowments Department. Even prior to filing of the suit, the Government has appointed a trustee and the suit temple was under the control of the Government. Subsequently, a fit person was also appointed. Therefore, the suit for declaration and injunction is not maintainable.

4.Based on the pleadings, the trial Court has framed the following issues:-

“i)whether the suit temple was originally established by Hari Krishna Konar, Shanmuga Konar, Sankaralinga Konar and Iyyanar Konar;

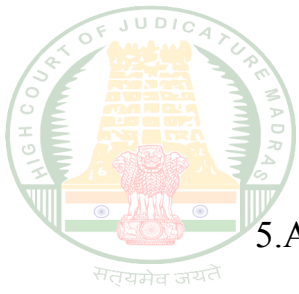
ii)whether the plaintiff is entitled to get a decree of declaration and permanent injunction;

iii)whether the suit temple belongs to all the community people of the Thachanallur;

iv)whether the plaintiffs are having cause of action;

v)whether the correct Court fee is paid; and

vi)whether other reliefs the plaintiff are entitled to?.”



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5. After framing of issues, during trial, on the side of the plaintiffs, 5 witnesses were examined as P.W.1 to P.W.5 and 4 documents were marked as Ex.A1 to Ex.A4. On the side of the defendants, one witness was examined as D.W.1 and 10 documents were marked as Ex.B.1 to Ex.B.10. After trial, the trial Court decreed the suit. As against the judgment and decree passed by the trial Court, the defendants in the suit filed the appeal in A.S.No.199 of 2002, on the file of the Principal Sub Court, Tirunelveli. The Principal Sub Court, Tirunelveli, after hearing the arguments on either side, reversed the judgment and decree passed by the trial Court, setting aside the judgment and decree, and allowed the appeal. Aggrieved over the said reversal judgment and decree of the Principal Sub Court, Tirunelveli, the plaintiff has filed the present Second Appeal.

6. Pending appeal, some of the parties died and the legal heirs were impleaded. During the pendency of the appeal, the appellants have filed an Interlocutory Application to amend the relief for permanent injunction and recovery of possession in C.M.P.(MD)No.3182 of 2021. After hearing the appellants and the respondents, this Court allowed the said application on 14.06.2023. Therefore, now the relief sought for by the appellants is that the suit for declaration declaring the suit temple as exclusively belongs to Hindu



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Yadavar community of Thachanallur and for recovery of possession. Since the respondents have stated that even prior to filing of the suit, the Government has appointed the trustee and subsequently, a fit person was also appointed and the said temple was under the control of the Government and therefore, the present relief, as on date, is for declaration and recovery of possession from the administration of the temple from the respondents.

7.While admitting the second appeal, this Court has formulated the following substantial question of law:-

“whether the Lower Appellate Court was correct in holding that the suit temple is not denominational temple of Hindu Yadavar Community temple of Thatchanallur”.

8.The learned Senior Counsel appearing for the appellants would submit that originally, the suit temple was established by the Hindu Yadavar Community and an inscription was also established. Subsequently, the people of Yadava Community of Thatchanallur have gradually developed the temple and have been maintaining the temple. Except the appellants community people, no other community people are worshipping the temple, even otherwise, the suit temple is not a public temple. Merely, because the other community people are



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worshipping the temple, it will not convert the denominational nature of the temple as a public temple. The religious rights used in the temple is only a religious rights of the Hindu Yadavar community of Thachanallur and the first appellate Court failed to consider the pleadings, oral and documentary evidence that only the Hindu Yadavar community of Thachanallur has established the temple and has been maintaining the temple. Therefore, it is only a denominational temple of Hindu Yadavar community of Thachanallur. Except the appellants, no other community people are entitled to any rights and moreover, the respondents are not having any rights either to appoint a trustee or a fit person and the respondents have nothing to do with the establishment, development and maintenance of the temple. Merely because the public are allowed to worship in the temple, that does not mean that the suit temple is a public temple and will not lose the character of the denominational temple. The appellants side witnesses have clearly stated about the establishment and maintenance of the temple and the first appellate Court failed to consider the evidence of P.W.2, P.W.3 and P.W.5. Since the appellants have established their rights, the trial Court has rightly appreciated the oral and documentary evidence and decreed the suit. The first appellate Court has failed to consider the materials placed before the Court and erroneously held that the suit temple is a public temple and not a denominational temple of Hindu Yadavar



community of Thachanallur. The suit temple never comes under the control of management of the respondents. Even otherwise, mere appointment of a trustee or a fit person by the respondents will not take away the characteristics of the denominational temple of the particular community. Therefore, the judgment and decree passed by the first appellate Court is liable to be set aside and the Second Appeal is liable to be allowed.

9.The learned Senior Counsel appearing for the appellants has relied upon the following judgments:-

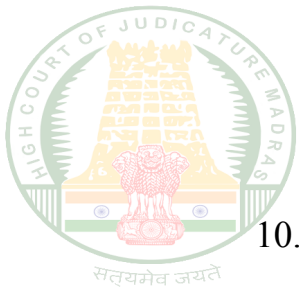
i)Dr. Subramanian Swamy Vs. State of Tamil Nadu & Ors. reported in AIR 2015 SC 460;

ii)Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt reported in 1954 SCR 1005;

iii)Commissioner of Police and Others Vs. Acharya Jagadishwarananda Avadhuta and Another reported in 2004 (2) CTC 690;

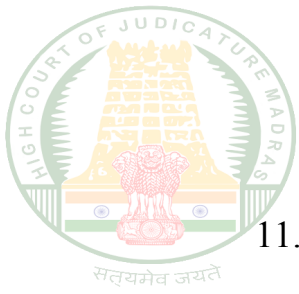
iv)The Commissioner of H.R. & C.E., Administration Department, Nungambakkam, Madras - 34 Vs. V.Perumal Mudaliar and 6 others reported in 2001 3 LW 669;

v)The Commissioner of H.R. & C.E., Admn. Department, Nungambakkam High Road, Chennai -34 and others Vs. Sri Visalakshi Sametha Sri Viswanathaswamy Koil reported in 2008 (2) CTC 614.



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10.The learned Additional Government Pleader appearing for the respondents would submit that the temple is situated in the Government land and no materials are produced to show that only the members of Hindu Yadavar community of Thachanallur have established the suit temple. It is further submitted that the contributions were collected from all the community people for maintaining the temple and the Poojari also belongs to Vellalar community. The contributions are received not only from the Hindu Yadavar community of Thachanallur but also from all the community people and out of the funds raised from all the community people, the suit temple is maintained. Even the evidence of P.W.2, P.W.3 and P.W.5 clearly shows that all the community people are contributing some offerings through Hundial which is maintained by the respondents and in the presence of officials of the respondents, the collection in the Hundial is counted and the temple are maintained from the funds collected from all the community people and the salary of the temple servants including Poojari are paid from the common funds and not as if, the appellants community, alone are maintaining the temple and paying the salary and meeting the other expenses.



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11.The learned Additional Government Pleader appearing for the respondents would further submit that even prior to filing of the suit, the respondents appointed a trustee for maintaining the temple and a fit person was also appointed. Even one of the appellants was appointed as a trustee by the respondents and after completing their turn, the respondents appointed a Special Officer and subsequently, a fit person and the temple is only a public temple, not a denominational temple of Hindu Yadavar community of Thachanallur. Moreover, one reason is that first of all, the suit temple is situated in the Government land and there is no material to show that only the ancestors of the appellants established the temple and no material to show that they only established and they are continuously improving and maintaining the temple and even the evidence of P.W.2, P.W.3 and P.W.5, would clearly state that all the communities of Thachanallur, are worshipping the deity and they are also offering their contributions for the temple festival and other maintenance and the temple is being maintained by the collection of the Hundial maintained in the temple and all the community people are offering some contributions through Hundial and therefore, the suit temple is a denominational temple, not a public temple. Though the trial Court failed to consider the pleadings, oral and documentary evidence, decreed the suit, the first appellate Court has rightly re-appreciated both oral and documentary evidence and set aside the judgment



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and decree passed by the trial Court and allowed an appeal and there is no merit in the Second Appeal and the same is liable to be dismissed.

12.The learned Additional Government Pleader appearing for the respondents has relied upon the Judgment of the Hon'ble Supreme Court in ***Civil Appeal No.5043 of 2009 in Shri Ram Mandir Indore Vs. State of Madhya Pradesh and others.***

13.Heard both sides and perused the materials available on record.

14.As far as substantial question of law is concerned, a reading of the plaint averments shows that the case of the appellants is that originally, one of the ancestors established the deity who belonged to Hindu Yadavar community of Thachanallur for the benefit of the Hindu Yadavar community of Thachanallur and subsequently, the members of the Yadava community developed the temple and the same has been under the control and administration of the Hindu Yadavar community of Thachanallur alone and the same temple is a denominational temple of the Hindu Yadavar community of Thachanallur and no other community people of Thachanallur are entitled any rights whatsoever. The respondents have nothing to do with the establishment



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and administration of the temple. Though the temple is situated in the Government poramboke land, the temple has existed since time immemorial which is under establishment and control only by the Hindu Yadavar community of Thachanallur and therefore, it is a denominational temple of Hindu Yadavar community of Thachanallur.

15.The specific case of the respondents is that it is not a denominational temple and the plaintiffs have not established that it belongs only for a particular community which is under the control and maintenance of the particular community especially the appellants herein. The appellants have admitted that the temple is situated in the Government poramboke land and not in the patta land of the individuals. P.W.2, P.W.3 and P.W.5 have also stated that the temple was constructed 100 years ago and they were not aware who constructed the temple. But all the people who walk through the temple used to worship the temple and there is a Hundial in the temple. During the festival season, Vinayaga and Amman deities are being taken procession through the street and Hundial is opened in the presence of the officials of the Hindu Religious and Charitable Endowments Department. Apart from Yadavar community people, all other community people are also used to worship and there is no prohibition for other community people to worship in the temple.



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There is no prohibition for offering contribution in the Hundial kept in the suit temple and also nowhere it is indicated that only the members of the Yadava community alone should offer the contribution in the Hundial and other people should not offer their contribution in the Hundial. Even P.W1 himself admitted that there is no document to show that the temple was originally established by whom and also there is no document to show the conduct of ceremony only on the particular day by the particular community alone. Therefore, a conjoined reading of the pleadings, oral and documentary evidence, the appellants have not established that the deity was originally established by one of the members of the Hindu Yadavar community of Thatchanallur only for the purpose of worshipping of the Hindu Yadavar community of Thachanallur alone and also the temple is situated in the Government land. In the absence of any materials to show that originally deity was established by one of the ancestors of the Hindu Yadavar community of Thachanallur only for the purpose of worshipping Hindu Yadavar community of Thachanallur alone, it cannot be stated that it is only a denominational temple of the appellants community. Moreover, the evidence of P.W.2, P.W.3 and P.W.5, do not show that originally the deity was established as stated by the appellants and also they have stated that they are not having any documents and they are also not able to sustain as pleaded in the plaint that the temple was only established only for the purpose of performing the particular



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ceremony of the particular community, whatsoever stated be the appellants in the suit.

16. Admittedly, even prior to filing of the suit, the Government appointed a trustee and the temple was under the control of the Government and subsequently, a fit person was also appointed. The appellants have also filed an Interlocutory Application during pendency of the Second Appeal. C.M.P(MD)No.3182 of 2021, for recovery of possession and therefore, now the suit temple is under the control and maintenance of the respondents. Therefore, a reading of the pleadings, oral and documentary evidence and from the evidence of the appellants, the plaintiffs have not established that the suit temple exclusively belongs to Hindu Yadavar community of Thachanallur and they alone have the right to worship and maintaining the temple.

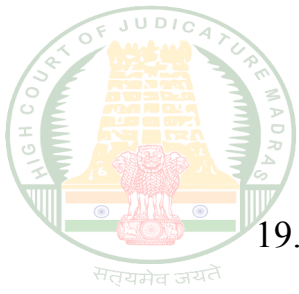
17. It is settled proposition of law that the suit for declaration that the plaintiffs have to prove their rights and title and they cannot take advantage of the loopholes left by the defendants. Therefore, even if the defendants have not established their defence, the plaintiffs are not automatically entitled for a decree sought for. Whereas, in this case, a bare perusal of the oral and documentary evidence, it is seen that the appellants have not established their



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case as pleaded in the plaint when particularly the witnesses of the appellants have categorically admitted that they do not know the suit deity originally established by whom. Further, the witnesses have clearly admitted that the temple is worshipped not only by the Hindu Yadavar community of Thachanallur, but also all other community people are maintaining the Hundial. The suit temple is situated in the Government land and Hundial is also kept in the temple and the Hundial is opened, counted and accounted in the presence of the officials respondents and the temple is being maintained from the income of the amount received from the Hundial and the contribution of all the community members. Even prior to filing of the suit, the trustee was appointed by the Government and a fit person was also appointed.

18. Therefore, under these circumstances, this Court finds that the appellants are not entitled to the decree sought for and the appellants have not established that the suit temple is a denominational temple of Hindu Yadavar community of Thachanallur. Consequently, the question of law is answered accordingly.



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19. There is no quarrel with the proposition of law laid down in the cited decisions; however, considering the facts and circumstances of the present case, those decisions are not applicable.

20. In the result, the Second Appeal stands dismissed. There shall be no order as to costs.

16.06.2025

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



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WEB COPY

- To
- 1.The learned Principal Sub Judge,
Tirunelveli.
 - 2.The learned II Additional District Munsif,
Tirunelveli.
 - 3.The District Collector,
Tirunelveli District,
Kokkirakulam,
Tirunelveli District.
 - 4.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Road,
Chennai - 34.
 - 5.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Tirunelveli.

Copy to:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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P.VELMURUGAN, J.

RJR

Pre-delivery judgment made in
S.A.No.1859 of 2003

16.06.2025