



S.A.No.143 of 2021  
and Cross Obj.No.80 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                      |                   |
|----------------------|-------------------|
| <b>Reserved on</b>   | <b>11.11.2025</b> |
| <b>Pronounced on</b> | <b>10.02.2026</b> |

CORAM

**THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI**

**S.A.No.143 of 2021**  
**and Cross Obj.No.80 of 2023**  
**and C.M.P.No.3001 of 2021**

**S.A.No.143 of 2021**

Selvarasu,  
S/o. Seenivasan  
544, North street, Mudapalli post,  
Pullavankuppam, Panruti Taluk,  
Virasingakuppam,  
Present representative  
for himself and on behalf of other  
villagers of Pulvankupam Village.  
[\*Sole appellant is substituted vide  
Court order dated 18.12.2023 made  
in C.M.P.No.28134 of 2023 in  
S.A.No.143 of 2021 (PTAJ)]

...Appellant

Vs.



S.A.No.143 of 2021  
and Cross Obj.No.80 of 2023

1. Elavathadi Arulmighu Ayyanar Temple,  
Situate in the Banks of Andarkulam  
by its Managing Trustee Audiappan  
S/o. Munusamy,  
Elavathadi Village,  
Mudapalli Post, Panruti Taluk

2.Kuppusamy

3.Sigamani

...Respondents

**Prayer:** Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 08.09.2020 in A.S. No.23 of 2018 on the file of Subordinate Judge, Panruti, confirming the judgment and decree dated 26.03.2018 passed in O.S. No.177 of 2003 on the file of the learned District Munsif, Panruti, Cuddalore District.

For Appellant : Mr.K.Balamurali

for M/s.Shivakumar and Suresh

For Respondents: Ms.Hema Sampath, Senior Advocate

Ms.R.Meenal for R1 to R3

**Cross Obj.No.80 of 2023**

1. Elavathadi Arulmighu Ayyanar Temple,  
Situate in the Banks of Andarkulam  
by its Managing Trustee Audiappan  
S/o. Munusamy,  
Elavathadi Village,  
Mudapalli Post, Panruti Taluk

2.Kuppusamy

3.Sigamani

...Cross Objectors



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-VS-

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Selvarasu,  
S/o. Seenivasan,  
544, North street, Mudapalli post,  
Pullavankuppam, Panruti Taluk,  
Virasingakuppam,  
Present representative  
for himself and on behalf of other  
villagers of Pulvankupam Village.  
[\*Sole respondent is substituted vide  
Court order dated 18.12.2023 made  
in C.M.P.No.28134 of 2023 in  
S.A.No.143 of 2021 (PTAJ)]

...Respondent

**Prayer:** Cross objection filed under Order 41 Rule 22 of C.P.C, to set aside the decree and judgment dated 08.09.2020 in A.S. No.23 of 2018 on the file of Subordinate Judge, Panruti, confirming the judgment and decree dated 26.03.2018 passed in O.S. No.177 of 2003 on the file of the learned District Munsif, Panruti, Cuddalore District.

For Cross Objectors : Ms.Hema Sampath, Senior Advocate  
Ms.R.Meenal for R1 to R3

For Respondents : Mr.K.Balamurali  
for M/s.Shivakumar and Suresh



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### **COMMON JUDGMENT**

The present Second Appeal is preferred against the judgment and decree dated 08.09.2020 in A.S. No.23 of 2018 on the file of Subordinate Judge, Panruti, confirming the judgment and decree dated 26.03.2018 passed in O.S. No.177 of 2003 on the file of the learned District Munsif, Panruti, Cuddalore District.

The present cross objection is preferred against the decree and judgement in A.S.No.23 of 2018 dated 08.09.2020 on the file of the Subordinate Judge, Panruti, Cuddalore District, confirming the judgment and decree dated 26.03.2012 passed in O.S. No.177 of 2003 on the file of the learned District Munsif, Panruti, Cuddalore District.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

3.The defendant has preferred the above second appeal and the plaintiffs have preferred the cross objection.



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4. According to the plaintiffs, the suit temple and the tank is situate in Elavathadi village dedicated to the deity Ayyanar. The temple was built by the said villagers. One Arumuga Padaiyachi settled some property to the deity on 27.12.1957, represented by its then trustees. The festivals are conducted by the villagers of Elavathadi village. The electricity service connection stands in the name of the present trustee namely Audiyappan. The reclamation work in the suit tank is carried out only by the villagers of Elavathadi village. While so, the defendants belonging to the neighbour village namely, Pulavankuppam are causing obstruction in the management of the temple and the tank by the villagers of Elavathadi village. Hence, the suit.

5. The claim of the plaintiffs was resisted on the side of the defendants stating that, the suit temple is situate on the bank of Andal Kulam tank which belong to Pulavankuppam Village. The temple was constructed by the fore father's of the 1<sup>st</sup> defendant and villagers of Pulavankuppam about 200 years ago. The property gifted under the deed dated 27.10.1957 is in respect of the temple situate in survey No.73 and not for the suit temple. The suit temple is situate in R.S.No.34/1. Both the Elavathadi villagers and the Pulavankuppam villagers have right to worship the deity in the temple. The plaintiff's cannot claim exclusive right over the suit temple and the tank . Hence, prayed for dismissal of the suit.



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6.The trial Court dismissed the suit against which, the appeal suit in A.S.No.23 of 2018 was preferred by the plaintiff. The first appellate Court partly allowed the appeal in respect of the suit temple and dismissed the appeal in respect of the suit tank, by holding that the villages of Elavathadi are entitled to manage the suit temple and that they are not entitled for the suit tank. Aggrieved by this, both the plaintiffs and the defendants have preferred the second appeal and cross objection.

7. This second appeal is admitted on the following substantial questions of law:

*(a) Whether the suit filed by the respondents to manage the suit temple is maintainable in view of specific bar under Section 108 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959?*

*(b) Whether a prayer for declaration can be granted even though the plaintiffs have failed to establish the land title over the temple?*

*(c) Whether the right to manage a temple can be conferred to the plaintiffs even though they did not establish*



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*that it is private temple and the first plaintiff is the trustee of the temple?"*

8.The cross objection is admitted on the following substantial questions of law:

*“a. Whether in law the Courts below are right in misreading the oral and documentary evidence to come to a perverse conclusion with respect to the temple tank while decreeing the suit with respect to the temple alone?”*

9.Mr.K.Balamurali, the learned counsel for the appellant in the second appeal would contend that, there is a specific bar under Section 108 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and therefore, the suit filed by the plaintiffs to manage the suit temple is not maintainable. The plaintiffs failed to establish their land title over the temple and therefore, they are not entitled for the declaratory relief. Hence, the right to manage the suit temple cannot be conferred to the plaintiffs, since they have not established that it is a private temple and that the 1<sup>st</sup> plaintiff is the trustee of the temple. The learned counsel would further submit that, when there is lack of material pleadings in a suit for declaration of title over the suit property and permanent injunction as in the present suit, the plaintiffs cannot be granted the relief of



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declaration in respect of the suit temple. The learned counsel would further contend that if the suit on the face of it is not maintainable, the fact that no specific plea was taken or no precise issues were framed is of little consequence. To support his contention, the learned counsel has relied upon the following judgments:

***1.2011 (1) CTC 55***

***2.2017 (9) SCC 5793.***

10.On the other hand, Ms.Hema Sampath, the learned Senior counsel for the respondent/plaintiff/cross objector would submit that, the Courts below had no jurisdiction to decide the question whether the suit temple was a public temple or a private temple. Hence, the First Appellate Court was right in granting a declaratory decree in favour of the plaintiff in respect of the suit temple. She would further submit that, however, the first Appellate Court erred in not granting the declaratory relief in respect of the temple tank, despite the fact that there was no contra evidence on the side of the defendants to dislodge the case of the plaintiffs / cross objectors. The learned counsel further contented that the Courts below have misread the oral and documentary evidence on record and came to a perverse conclusion with respect to the temple tank, which warrants interference by this Court.



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11.Heard on both sides and records perused.

12.The Civil Courts generally have limited jurisdiction over temple land disputes, as special statutory authorities (eg: HR & CE Department) often hold exclusive power over Administration and Management. Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, bars Civil Courts from entertaining suits or legal proceedings regarding the administration or management of religious institutions and related disputes. However, the bar is not absolute. To invoke the bar under Section 108 of the Act, the institution whose right of administration or management is in question, should be a religious institution within the meaning of Section 6(18) and / or a temple within the meaning of Section 6 (20). Since the definition of the expression "temple" under Section 6(20), means only a place of public religious worship, a private temple may not come within its purview. Section 108 of the Act has two limbs. The first relates to the administration or management of a religious institution. The second relates to any other matter or dispute, for the determination of which, a provision is made in the Act. The very question that arises for consideration is whether the suit temple is a public or a private one and whether it will fall within the definition of the expression "temple" under



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Section 6(20) of the Act. Section 63 of the Act, empowers the Joint Commissioner or the Deputy Commissioner to enquire into and decide the dispute whether the suit temple is a public or private temple within the meaning of Section 6 (20) of the Act. Once the question whether the suit temple is a private or public temple is decided, then the second limb of Section 108 gets attracted. Therefore, the burden lies heavily on the plaintiff claiming the temple is private and not subject to HR & CE control. If the same does not fall under the purview of the HR & CE Act, the Civil Courts jurisdiction may not be ousted. The origin of a temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, rights exercised by the devotees in regard to worship therein, are relevant factors to establish whether a temple is a public temple or a private temple. At the outset, the participation of the members of the public in the Darshan in the temple and in the daily acts of worship or in the celebrations may be a very important factor to consider in determining the character of the temple.

13.The suit is between the villagers of two villages, namely, Villagers of Elavathadi Village and villagers of Pulavankuppam village claiming right to manage the suit temple and the tank called Andarkulam situate in Elavathadi village. The prayer in the suit was for declaration that right of the plaintiffs to



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administer the suit temple and the tank and for injunction. However, the question of jurisdiction of Civil Court to try the suit was not dealt with by the Courts below, since no issue or points for consideration were framed in this regard. The plea of maintainability of the suit, as rightly pointed out by the learned counsel for the appellants is essentially a legal plea, the same can be dealt with in the second appeal, if it is found that the suit on the face of it is not maintainable.

14.The question whether a public or a private temple could be decided only by Joint/Deputy Commissioner under Section 63 (a) of the Act. The above question whether it is a public or a private temple cannot be said to be an incidental issue to the main issues involved in the suit. It does not appear to be an ancillary issue. The case pleaded by the plaintiffs and the relief sought by them, depends entirely upon the answer to the question whether it was public or a private temple, since the same goes to the root of the matter. While so, the Courts below ought to have first dealt with the maintainability of the suit and see whether the suit is barred under Section 108 of the HR & CE Act. Neither the trial Court nor the First Appellate Court framed any issue in this regard. Hence, the matter is remanded back to the First Appellate Court to formulate the point for determination with respect to the maintainability of the suit and weigh



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the evidence on the issue, which arise for adjudication and record reasons for its decision on the said point. The first Appellate Court shall hear the above civil appeal after affording sufficient opportunities to both sides for letting in oral or documentary evidence, record the same and dispose of the appeal one way or the other on this specific point without any influence of the observation made by this Court and dispose the appeal within a period of three months from the date of receipt of this order.

15.In the result, the judgment and decree passed by the first appellate Court is set aside and both the appeal and cross objection are remitted back to the first appellate Court for the reason mentioned above. No costs. Consequently, connected miscellaneous petition is closed.

**10.02.2026**

Index: Yes/No  
Internet: Yes/No  
Speaking/Non-Speaking order  
vsn

To

1. The Subordinate Judge, Panruti
2. The District Munsif, Panruti, Cuddalore District.
3. The Section Officer, VR Section, High Court, Madras.

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**K.GOVINDARAJAN THILAKAVADI,J.**  
vsn

**Pre delivery judgment in**  
**S.A.No.143 of 2021**  
**and Cross Obj.No.80 of 2023**  
**and C.M.P.No.3001 of 2021**

**10.02.2026**