

**(2006) 01 AP CK 0003**

**Andhra Pradesh High Court**

**Case No:** CM.P. No. 8725 of 2002 in A.S. (SR) . No. 89853 of 2001

Karumuri Prakash

APPELLANT

Vs

Arya Vysya Sangham and Others

RESPONDENT

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**Date of Decision:** Jan. 24, 2006

**Acts Referred:**

- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 - Section 15, 15(3), 17, 6, 76
- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8, 11, 151, 96
- Constitution of India, 1950 - Article 25, 26

**Citation:** (2006) 2 ALD 387 : (2006) 1 ALT 733

**Hon'ble Judges:** G. Chandraiah, J

**Bench:** Single Bench

**Advocate:** M. Sudheer Kumar, for the Appellant; D. Sudhakar Rao, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

G. Chandraiah, J.

1. Heard both the counsel.

2. This petition is filed seeking for grant of leave to the petitioner to file an appeal against the judgment and decree dated 13-8-2001 passed by the court of Senior Civil Judge, Bapatla in O.S.No. 66/1995.

3. The petitioner is a third party to the suit. The case of the petitioner in the affidavit filed in support of the leave petition is that the respondents 1 to 3 herein filed the suit in O.S.No. 66/1995 on the file of Senior Civil Judge, Bapatla against the Commissioner of Endowments Department and other trustees for declaration that the institution Sri Vasavi Kanyaka Parameswari Temple complex situate at Ponnur,

as a religious denomination under Article 26 of the Constitution of India, (ii) for the consequential relief of directing the defendants to handover the management of the institution along with its properties to 1st plaintiff, and (iii) for consequential relief of permanent injunction restraining defendants 1 to 3 from ever interfering with the right of the 1st plaintiff to administer the properties of the said institution and its management by not appointing any trust board to the institution or in any manner whatsoever; or in the alternative for the consequential relief of directing defendants 1 to 3 to appoint the Trust Board exclusively from out of the members of the 1st plaintiff society and approved by the 1st plaintiff and for the casts of the suit. The court below decreed the suit on 13-8-2001 and declared the 1st plaintiff as a religious denomination as defined under Article 26 of the Constitution of India and further declared that the plaintiffs have right to nominate its members as trustees for Sri Kanyaka Parameswari Devasthanam, Ponnur. The further case of the petitioner is that though he is not a party to the suit, still he is interested and affected by the judgment and decree of the court below. He stated that the 1st respondent filed W.P. No. 21663/00 to declare Arya Vysya Community as a Hindu Religious Denomination and that they have right to establish and maintain the religious institution with full financial and administrative autonomy. The petitioner by filing W.P.M.P. No. 24874/2001 got impleaded in the said writ petition and others also filed similar writ petitions. During the pendency of the above writ petition, he came to know through his counsel that the 1st respondent filed suit and the same was decreed and therefore, he was constrained to file the appeal by way of seeking leave. His case is that the 1st respondent is not entitled to the relief as prayed for, so long as the institution in question continues to be registered under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for brevity "the Act"). But the official respondents failed to bring this legal position to the court below and it resulted in passing of an erroneous decree. He stated that the judgment and decree has got the effect on the entire Arya Vysya Community and he being the person belonging to that particular community, has come forward to question the said judgment and decree. He also prayed this court to read the affidavit filed by him in WPMP. No. 24874/2001 in W.P.No. 21663/00, along with the present affidavit, to show the nature of his interest, wherein he stated that he belongs to Arya Vysya Community; that himself and his forefathers are the devotees of the goddess Kanyakaparameshwari and the Arya Vysya Community with the offerings of the community people constructed temple and acquired properties and the Managing Committee is abusing the power and treating the properties of the Sangham as the properties of its members. He also made allegations against the Trust Board with regard to abuse of power. He stated that as the tenure of the Trust Board had expired on 8-5-1995, the Deputy Commissioner of Endowments issued notification inviting applications, as prescribed under the Act and at that stage, members of the Trust Board filed O.S.No. 66/1995 and obtained injunction restraining the Endowments Department from appointing any new Trust Board for Sri Vasavi Kanyaka Parameshwari Ammavari Temple, Ponnur, on the ground that

Arya Vysya Community being a Hindu religious denomination entitled for protection under Article 26 of the Constitution of India. He finally stated inter alia that as he is affected by the judgment and decree of the trial court and as there is abuse of the power by the Trust Board and the decree is contrary to the provisions of the Act, he sought the leave of this court to file the appeal.

4. The respondents 1 to 3 filed counter affidavit denying the allegations of the leave petitioner. It is stated that there are as many as eleven defendants, including the Endowments Department and all defendants have accepted the judgment and decree dated 13-8-2001 and the limitation to file the appeal was over in the year 2001 itself and therefore, it is final. It is stated that if any third party wants to file appeal, it should obtain leave to file appeal, before the judgment and decree becomes final against the real defendants or that if any real defendants prefer appeal, the third party may get impleaded. As the real defendants did not take any steps either by filing appeal in time or getting delay condoned, a third party cannot file any appeal. It is stated that defendants 1 to 3 (respondents 4 to 6 herein) who have accepted the judgment and decree must be heard first in the petition, for granting the leave. It is further contended that the trial court passed injunction orders in the suit and the petitioner who claims to be interested and affected by the judgment and decree, is a resident of Ponnur town and who alleges to be respected person belonging to Arya Vysya Community, cannot be believed that he came to know about the judgment and decree only in the year 2001. It is contended that the appeal and the petition for leave are hopelessly barred by limitation. It is submitted that the judgment and decree in O.S. No. 66/1995 are matters benefiting or affecting the whole community and are in the nature of matters "in rem" and if the petitioner is allowed to say that he has come to know only when he chose to act, it will be saying that every member of the community who are in thousands in Ponnur town can question the judgment and decree any time in future for years and for ever and that each person can say that he got the knowledge just then. Therefore, it is contended that the appeal and the petition for leave to file appeal, must be held to be frivolous and mischievous. The respondents contended that the grounds taken by the leave petitioner in the memorandum of appeal are also not tenable. With these contentions, the respondents sought for dismissal of the leave petition.

5. One Mr. Grandhi Ramachandra Rao, who was the then member of the Trust Board of Arya Vysya Sangham, Ponnur also filed counter affidavit reiterating the above contentions stated in the counter affidavit filed on behalf of respondents 1 to 3 and sought for dismissal of the leave petition.

6. The learned Counsel appearing for the leave petitioner Sri M. Sudheer Kumar contended that the judgment and decree of the trial court are contrary to law. He contended that the trial court on the one hand declared that Sri Vasavi Kanyaka Parameswari Temple Complex situate at Ponnur as a religious denomination under Article 26 of the Constitution of India and on the other hand decreed that the

plaintiffs -committee has right to nominate its members as trustees. He contended that these two reliefs cannot be granted. He submitted that if the said institution is recognized as religious denomination under Article 26 of the Constitution of India, then for appointment of Board of Trustees, the procedure prescribed under Sections 15 and 17 of the Act, which contemplates issuance of notification to the general public calling for applications for appointment of trustees, has to be followed. He stated that the leave petitioner belongs to Arya Vysya Community of Ponnur town and by the judgment and decree of the trial court, his statutory right to apply for trusteeship is affected and therefore, he contended that the petitioner may be granted leave to challenge the judgment and decree. In support of his contention, he relied on the judgment of the Full Bench of this Court in Pullayya v. Nagabhushanam 1961 An.W.R. 204 : AIR 1962 A.P. 140 . He contended that though the leave petitioner is not a party to the suit, since he is affected by the decree, he has right to file the appeal. In support of his contention, he relied on the judgments of the Bombay High Court and Apex Court in [Fakir Mohamed Abdul Razak Vs. The Charity Commissioner, Bombay and Others, .](#) and [Smt. Jatan Kumar Golcha Vs. Golcha Properties \(P\) Ltd., .](#) He contended that even if the institution is declared as religious denomination under Article 26 of the Constitution of India, it is bound by law. In support of this contention, he relied on the judgment of the Apex Court in [Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others, .](#) With regard to merits of the appeal, he also relied on [Sri Kanyaka Parameswari Anna Satram Committee and Others Vs. Commissioner, Hindu religiousCharitable and endowments and Others,](#) Hindu Religious Charitable and Endowments. He submitted that earlier the plaintiffs filed W.P. No. 21663/2000 and in the said writ petition, the leave petitioner got impleaded by filing WPMP. No. 24874/2001 and some others also filed batch of writ petitions for similar relief and during the pendency of the writ petitions, the suit filed by the plaintiff was decreed and as soon as he came to know of the decree, he filed the appeal in the year 2001 and for grant of leave, he filed the present petition and there is no question of any bar of limitation. With these submissions, the learned Counsel for the petitioner sought the leave of this court to file the appeal.

7. On the other hand, the learned Counsel appearing for the respondents D. Sudhakar Rao, reiterating the counter averments, further submitted that the present leave petition is filed u/s 151 of C.P.C. to grant leave of the court to file the appeal. He contended that when there are substantive rights of preferring the appeal, inherent powers u/s 151 of C.P.C. cannot be invoked. In support of this contention, he relied on the judgment of the Supreme court in [Padam Sen and Another Vs. The State of Uttar Pradesh, .](#) He contended that the judgment and decree sought to be questioned is dated 13-8-2001 and the right to file appeal is over in the year 2001 and the present petition and appeal are barred by limitation. He further contended that just because a person is remotely affected by the judgment and decree, that cannot be a ground to grant leave to file appeal. In

support of his contention, he also relied on the judgment of the Full Bench of this court in D. Pullayya's case (1 supra). He stated that the population of Arya Vysya community will be thousands in Ponnur town and if each member is permitted to question the decree, there will not be any finality and this becomes a blackmailing weapon and the same cannot be permitted. In support of his contention, he relied on the judgment of the Division Bench of Rajasthan High Court in [Heersingh and Others Vs. Veerka and Another,](#) . With these contentions, the learned Counsel for the respondents sought for dismissal of the leave petition.

8. In view of the above rival contentions, the points that arise for my consideration are:

(1). Whether the leave petitioner, is prima facie prejudicially affected by the judgment and decree of the trial court?

(2) Whether he is bound by the judgment and decree of the trial court and if so, can he be granted leave to file appeal? and

(3) Whether filing of the present petition and appeal are barred by limitation?

9. From the narration of above facts it could be seen that Arya Vysya Sangham filed the suit against the endowments department and members of the Trust Board for the relief of declaration that Sri Vasavi Kanyaka Parameswari Temple Complex situate at Ponnur town as a religious denomination as defined under Article 26 of the Constitution of India; for the consequential relief of directing the defendants to handover the management of institution along with its properties to 1st plaintiff; for permanent injunction restraining the defendants from ever interfering with the right of the 1st plaintiff to administrate the properties of institution and its management by appointing any trust board to the institution or in the alternative to direct the defendants to appoint the trust board exclusively from out of the members of the 1st plaintiff society and approved by the 1st plaintiff and for costs and such other reliefs. The trial court decreed the suit by declaring that Sri Vasavi Kanyaka Parameswari Temple Complex situate at Ponnur as a religious denomination as defined under Article 26 of the Constitution of India and that the first plaintiff has right to nominate its members as trustees for the said institution and other reliefs have been rejected. Here it is to be noted that on the one hand, the trial court declared the institution as religious denomination under Article 26 of the Constitution and on the other hand, oblivious of the provisions under Sections 15 and 17 of the Act, which deal with appointment of Board of trustees, permitted the 1st plaintiff to appoint trustees from out of its members. The settled legal position from catena of judgments of Apex Court and this court is that there is clear distinction from religious functions and secular functions and secular functions are those functions, which are administrative in nature. When an institution is declared as religious denomination under Article 26 of the Constitution of India, the religious functions cannot be interfered with. But while coming to management of such

temple or institution, which is indubitably a secular function, the relevant law and the procedure prescribed there under has to be invariably followed. However, whether a function is secular or religious is a question of fact, which has to be decided based on the evidence and other material on record. A three judge bench of the Apex Court in *Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P.* (4 supra) held a denomination or any section thereof under Article 26 of the Constitution of India, is equally bound by the constitutional goal and relevant law. The Apex Court further held that management of a temple is a secular function and must abide by the relevant regulations. The relevant portion of the judgment is extracted as under for better appreciation:

27. The right to establish and maintain institutions for religious and charitable purposes or to administer property of such institutions in accordance with law was protected only in respect of such religious denomination or any section thereof which appears to extend help equally to all and religious practice peculiar to such small or specified group or section thereof as part of the main religion from which they got separated. The denominational sect is also bound by the constitutional goals and they too are required to abide by law: they are not above law. Law aims at removal of the social ills and evils for social peace, order, stability and progress in an egalitarian society....

28...All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matter of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State.

32... Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism. By the very nature of things it would be extremely difficult, if not impossible, to define the expression "religion" or "matters of religion"

or "religious beliefs or practice". Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practice rituals and right to manage in matters of religion are protected under these articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are an integral part of religion are protected. It is well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation.

(Emphasis added)

10. From the above it is clear that management of the temple is a secular function, which has to be governed by relevant legislation. For management of temple, a trust board has to be appointed. The Act is the relevant legislation for management of religious endowment. The grievance of the petitioner is that due to the declaration of the court below that the trustees have to be appointed from out of the members of 1st plaintiff- society, the petitioner lost his right to be considered for the appointment as a trustee as envisaged under Sections 15 and 17 of the Act. For better appreciation, the said provisions are extracted as under:

Section 15. Appointment of Board of Trustees:

(1) In respect of a charitable or religious institution or endowment included in the list published under Clause (a) of Section 6-

(a) whose annual income exceeds rupees ten lakhs, the government shall constitute a Board of Trustees consisting of nine persons appointed by them;

(b) whose annual income does not exceed rupees ten lakhs, the Commissioner shall constitute a Board of Trustees consisting of seven persons appointed by him.

(2) In respect of a charitable or religious institution or endowment included in the list published under Clause (b) of Section 6, the Deputy Commissioner having jurisdiction shall constitute a Board or Trustees consisting of seven persons appointed by him.

(3) In the case of any charitable or religious institution or endowment included in the list published under Clause (c) of Section 6, the Assistant Commissioner having jurisdiction shall constitute a Board of Trustees consisting of five persons appointed by him.

Provided that the Assistant Commissioner may either in the interest of the institution or endowment or for any other sufficient cause or for any reasons to be recorded in writing appoint a single trustee instead of a Board of Trustees. Section

17. Procedure for making appointments of trustees and their term:

(1) In making the appointment of trustees u/s 15, the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall have due regard to the religious denomination or any such section thereof to which the institution belongs or the endowment is made and the wishes of the founder:

Provided that one of the trustees shall be from the family of the founder, is qualified.

(2) Every trustee appointed u/s 15 shall hold office for a term of two years from the date of taking oath of office and secrecy.

Explanation:- Where the oath of office and secrecy are administered on different dates, the period of two years shall be reckoned from the earlier of those dates for the purpose of this subsection.

(3) The procedure for calling for application for appointment of trustees, verification of antecedents and other matters shall be such as may be prescribed.

(4) No person shall be a trustee in more than one Board of Trustees.

(5) In every Board of Trustees, there shall be at least one woman member and one member belonging to the Scheduled Castes or the Scheduled Tribes whose population is larger in the concerned village and one member belonging to Backward Classes:

Provided that it shall be necessary to appoint-

(a) a woman member where any person appointed to represent the Scheduled Castes or the Scheduled Tribes or the Backward Classes is a woman;

(b) a member of the Scheduled Castes or the Scheduled Tribes where any woman member appointed belongs to the Scheduled Castes or the Scheduled Tribes;

(c) a member of the Backward Classes where any woman member appointed belongs to the Backward Classes.

(6) All properties belonging to a charitable or religious institution or endowment, which on the date of commencement of this Act, are in the possession or under the superintendence of the Government. Zilla Praja Parishad, Municipality or other local authority or any company, society, organization, institution or other person or any committee, superintendent or manager appointed by the Government, shall, on the date on which a Board of Trustees is or is deemed to have been constituted or trustee is or is deemed to have been appointed under this section, stand transferred to such Board of Trustees or trustee thereof, as the case may be, and all assets vesting in the Government, local authority or person aforesaid and all liabilities subsisting against such Government, local authority or person on the said date



shall, devolve on the institution or endowment, as the case may be.

11. From the counter filed by the Endowments Department to the suit it is clear that the present Devasthanam was recognized u/s 6 (c) of the Act and was included for preparation and publication of the list of Charitable and Religious Institutions and Endowments u/s 6 of the Act. Therefore, as per Section 15(3) of the Act, the Assistant Commissioner is having jurisdiction to constitute a Board of Trustees consisting of five persons appointed by him. In the interest of the institution or any sufficient cause or for any reasons, the Assistant Commissioner by recording the reasons in writing, is empowered to appoint a single trustee. The procedure for making appointment of trustees viz., calling for applications, verification of antecedents, their tenure, etc, is stipulated u/s 17 of the Act. A reading of these two provisions, makes it clear that trustees have to be appointed as per the procedure prescribed there under and there is no specific Clause that trustees have to be appointed only from out of the members of the religious denomination. Therefore, I am of the view that in the judgment and decree of the court below, there appears to be some deviation from the procedure prescribed under Sections 15 and 17 of the Act, which has to be considered in the appeal.

12. In the judgment of the Apex Court relied on by the counsel for the petitioner in *Jatan Kanwar v. Golchana Properties* (3 supra): it was held at paragraph No. 3 as under:

...It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate Court and such leave should be granted if he would be prejudicially affected by the judgment.

13. In the judgment of the Bombay High Court relied on by the counsel for the petitioner in *F. Mohd. Abdul Razak v. Charity Commr.* (2 supra) it was held at paragraph No. 20 as under:

...We find nothing in Section 96 of the CPC which is applicable to the proceedings under the Bombay Public Trusts Act in view of Section 76 of the Act which lays down that it is only a party to the suit who can file an appeal. The well-settled position in law appears to be that normally any party to the suit adversely affected by the decree or a transferee of the interest of such party, or even an auction purchaser may appeal.

14. From the above discussion, it is clear that as the petitioner made out a prima facie case that he lost statutory right for considering his case for appointment as a trustee of the temple, I am of the view that he is prejudicially affected by the judgment and decree of the trial court. Therefore, in view of the above judgments, it is clear that he should be granted leave to file appeal.

15. The case can also be looked from other perspective. It is to be seen that admittedly the petitioner belongs to Arya Vysya Community and resident of Ponnur

town and the plaintiff which is the Arya Vysya Sangham has filed the suit for the above said reliefs, which has implication on the entire community. Even according to the respondents herein the judgment by the court below is a judgment in rem. Therefore, it is clear that the petitioner is bound by the judgment and decree and if he is aggrieved of the same, he should be entitled to file appeal, otherwise in view of Explanation VI to Section 11 of C.P.C., he will be barred from filing a separate suit for the very same relief. A Full Bench of this Court in the decision reported in Pullayya v. Nagabhushanam (1 supra) considering various judgments of the Apex Court and other High Courts held as under:

What emerges from the above discussion is that if a person is deemed to be party under order 1, Rule 8, Civil Procedure Code, and for purposes of Section 11, Explanation VI, Civil Procedure Code, leave to appeal could be granted to him by the appellate Court in an appropriate case, if the decision rendered in those proceedings would adversely affect him. It is not in every case where a person may be remotely or indirectly affected that leave should be granted but it should be granted to persons who though not eo nomine parties would be bound by the decree or judgment in the proceeding and who could not by reason of Explanation VI to Section 11, Civil Procedure Code, agitate the same question in a separate proceedings. It is needless to say that it would be illogical to hold that while a person is deemed to be a party to a proceeding and would be bound by a judgment rendered against him in a representative capacity, he would not be permitted to file an appeal against the decree if the person who is actually a party to the proceedings does not choose to carry the matter in appeal against that decree or order. We hold that there is no obstacle created either by the provisions of the CPC or by any practice obtaining either in India or in England in the way of granting leave to file an appeal to persons who are not eo nomine parties to the proceeding but who at the same time would be bound by the judgement or decree of the Court granted in such proceeding.

16. Therefore, even accordingly to the above judgment it is clear that the petitioner has to be granted leave to file appeal.

17. It is further to be noted that the petitioner in the affidavit filed in support of the petition stated that so long as the institution in question continues to be registered under the Act, it is not entitled to any relief in the suit. From the material on record and from the affidavit filed in support of the petition, it is clear that O.S.No. 66/1995 has been filed for declaration of the above said institution as a religious denomination under Article 26 of the Constitution of India. For the same relief writ petitions were also filed. A Division Bench of this court in W.P.Nos. 18050/1999 and batch dated 28-12-2001 held that as long as the order of registering the institutions with the endowments authorities are in force, the relief sought for by the petitioners cannot be given in these writ petitions. The brief order of the Division Bench is extracted as under for better appreciation:

In the batch of writ petitions, the petitioners are seeking declaration that the religious and charitable institutions established by a person belonging to a particular denomination are entitled for the benefit enshrined under Article 26 of the Constitution of India and the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act hereinafter called as "Act" cannot be applied to these institutions.

Admittedly, all these institutions were registered u/s 38 of the old Act 1966 and continue to be registered institutions u/s 43(3) and Section 155 (2) of the new Act. As long as the order of registering the institutions with the Endowment Authorities are in force, the relief sought for by the petitioners cannot be given in these writ petitions.

Under Section 87 of the Act, the Deputy Commissioner who is having jurisdiction is empowered to decide the disputes in relation to the matters that arise under the provisions of the Act. Hence, it is open to the petitioners to approach the Deputy Commissioner seeking either rescindment of the orders of registration or to get the declaration that these institutions are meant for the benefit of particular religious denomination and they are entitled for the benefit under Article 26 of the Constitution of India. They are given four weeks time to file their representations and the Deputy Commissioner is directed to decide all the issues that are going to be raised by the petitioners in accordance with law by following the principle of *audialteram partem* within a period of 3 months from the date of filing of the petitions positively. Till the representations filed by the petitioners are disposed of, status quo, prevailing as on the date of filing W.Ps. shall be maintained. With the above directions, these writ petitions are disposed of. No costs.

18. From the above judgment of the Division Bench it is clear that unless the registration is cancelled, the petitioners' -institutions' are not entitled to the status of religious denomination under Article 26 of the Constitution of India. The order of the Division Bench is dated 28-12-2001. But even prior to the passing of this order, the suit was decreed on 13-8-2001 granting the reliefs stated above. At paragraph No. 19 of the judgment of the trial court it is observed as under:

...In the light of these judgments the controversy regarding the status of Sri Vasavi Kanyakaparameswari temple as a religious denomination protected by Art. 26 of the Indian Constitution is settled once for all. Merely because the said institution is registered u/s 26 of H.R. & C.E. Act, it does not lose its special identify as denomination institution protected under Article 26 of the Indian Constitution. Therefore, the plaintiff is entitled for the declaration as prayed for.

19. It appears that the judgment and decree of the trial court was not brought to the notice of the Division Bench. However, no opinion on this aspect can be expressed at this stage and the same has to be considered in the appeal. The contention of the counsel for the petitioner relying on the judgment of the Apex Court in Sri

Kanyaka Parameswari Anna Satram Committee's case (cited 5 supra) also cannot be considered at this stage and the same has to be decided in the appeal.

20. In view of the above discussion, the points 1 and 2 are answered in the affirmative.

21. Coming to the third issue whether the leave petition and appeal are barred by limitation, it is to be seen that the suit was filed by respondents in the year 1995 and for the very same relief writ petitions were also filed before this court and the petitioner got himself impleaded and the suit was decreed during the pendency of the writ petitions and that on 20-12-2001 he filed the appeal along with a petition to grant leave. Therefore, I do not find any laches on the part of the petitioner and the present petition and appeal are also not barred by limitation and the issue is answered in favour of the petitioner.

22. With regard to the contention that the real defendants have to be heard before granting leave and that if the real defendants prefer appeal, the petitioner can get impleaded, is concerned, it is to be seen that the petitioner has demonstrated how he was affected by the judgment and decree of the trial court and also raised a legal objection, which according to him the department ought to have raised. But for the best reasons known, no appeal is filed by the official respondents. Further as already held that the petitioner is bound by the judgment and decree of trial court. Therefore, I am of the considered view, the petitioner shall be granted leave to file the appeal.

23. The learned Counsel for the respondent relied on the judgment of the Apex Court in Padam Sen's case (6 supra) wherein it was held that when statutory right is available, Section 151 of C.P.C. cannot be invoked. This position is no doubt unexceptionable, but in the present case, the said judgment is not applicable, as the petitioner has already filed appeal and filed the present petition u/s 151 of C.P.C. for grant of leave. The other judgment of the Rajasthan High Court in Heersingh's case (7 supra) relied on by the counsel for the respondents that if the petitioner is granted leave, several others will come up with similar petitions and that there will not be any end to the litigation is concerned, the petitioner has demonstrated how his statutory right is affected and in the case relied on by the counsel for the respondents, it is an election matter and there is no specific demonstration by the petitioner therein, how he is affected. Therefore, the said judgment is not applicable to the facts of the present case.

24. For the foregoing, the petition is allowed and the petitioner is granted leave to file the appeal.

25. In the circumstances of the case, there shall be no order as to costs.