(2011) 04 MAD CK 0352

Madras High Court

Case No: Review Application (MD) No''s. 6 of 2011 in A.S (MD) No''s. 230 of 2005 and 1 of 2006

The Commissioner, Joint Commissioner and Assistant Commissioner Hindu Religious and Charitable Endowments		APPELLANT
	Vs	
Murugappan and Others		RESPONDENT

Date of Decision: April 29, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 114
- Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 - Section 6(18)

Hon'ble Judges: P.R. Shivakumar, J

Bench: Single Bench

Advocate: V. Chellammal, A.A.G, for the Appellant; M. Vallinayagam, for R1, A.R.L. Sundaresan and V. Natarajan for R3, 5, 6 and 7, for the Respondent

Final Decision: Dismissed

Judgement

P.R. Shivakumar, J.

These review applications have been filed by the applicants 1 to 3 to review the common judgment in A.S(MD) No. 230 of 2005 and A.S (MD). No. 1 of 2006 on the file of this Court, which was dismissed without cost by another Hon''ble Judge of this Court, namely Thiru. Justice G.M. Akbar Ali, by a common judgment dated 30.04.2010.

2. The applicants/Appellants in the appeals are the Commissioner, Joint Commissioner and Assistant Commissioner of HR & CE Department. The above said appeals were filed against the judgment and decrees passed in O.S. No. 433 of 2003 and O.S. No. 435 of 2003 on the file of the learned Principal Subordinate Judge, Tirunelveli.

3. The brief facts leading to the filing of the present review petitions are as follows:

An institution named after Arunachala Mudaliar and called "Arunachaleswarar Samathi", situated in Vijayaragava Mudaliyar Chathiram called V.M. Chathiram village, was sought to be brought under the control of the Hindu Religious and Charitable Endowments Department, claiming the said institution to be a temple coming under the definition of a religious institution found in Section 6(18) of the Tamil Nadu Hindu Religious and Endowments Act, 1959. When the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Tirunelveli issued a notification in R.C. No. 18122/80 dated 28.11.1985 calling for applications from third parties for appointment as non-hereditary trustees of the said institution, a notice came to be issued by Late Ayaa Subramaniya Mudaliar objecting the said notification and on receipt of such notification, the Assistant Commissioner directed Iyaa Subramaniya Mudaliar, the father of the Plaintiff, to seek remedy u/s 63(a) of Tamil Nadu Hindu Religious and Endowments Act and refrained from taking any further action, pursuant to the said notification for about 15 years. Subsequently, in the year 2001 again a proceeding was issued by the Assistant Commissioner in his reference Na. Ka.7773/2001 dated 23.08.2001 directing the Inspector, Hindu Religious and Charitable Endowments Department, Palayamkottai to submit a report. The Inspector, Hindu Religious and Charitable Endowments Department, Palayamkottai in turn sent a notice to the Respondent herein/Plaintiff, who is in management of the institution, pursuant to which, an enquiry was conducted. As the Respondent/Plaintiff was advised to seek a declaration u/s 63(a) of the Hindu Religious and Charitable Endowments Act, he filed O.A. No. 2 of 2002 before the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Tirunelveli seeking a declaration that the institution is only a "Samadhi" simple and pure and not a religious institution or temple defined under Sections 6(18) and 6(20) of the Hindu Religious and Charitable Endowments Act and for other reliefs. The Joint Commissioner, Hindu Religious and Charitable Endowments Department, Tirunelveli, who figures as the second Petitioner (the second Defendant in the suit), after enquiry, sustained the contention of the Plaintiff K.M. Murugappan and granted the declaration regarding the nature of the institution holding it to be not a religious institution as defined in the Act. The other relief, namely injunction was negatived holding that such a relief could not be granted by the Joint Commissioner.

4. The First applicant herein / the first Defendant, namely the Commissioner, Hindu Religious and Charitable Endowments Department, Nungambakkam, Chennai initiated a Suo motu revision proceedings u/s 69(2) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in his Suo Motu Revision No. 5 of 2003 and by an order dated 30.09.2003, set aside the order of the Joint Commissioner declaring the suit institution to be outside the scope of Section 6(20) of the Act.

5. As against the said order passed by the first applicant, namely the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, the Respondent

herein, namely K.M. Murugappan filed a statutory suit u/s 70(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 to set aside the order of the Commissioner dated 30.09.2003 made in S.M.R. No. 5 of 2003, for a declaration that the institution by name Arunachleswarar Samathi is not a religious institution or a temple as defined u/s 6 (18) and 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and on the other hand, it is only a "Samathi" pure and simple and for an injunction against the authorities of the Tamil Nadu Hindu Religious and Charitable Endowments Department not to interfere with the affairs of the institution. The State of Tamil Nadu and one K.A. Velappan were also arrayed as Defendants 4 and 5 besides the applicants, who were arrayed as Defendants 1 to 3.

6. Similarly, another set of people Arumuga Pandian, K.S. Vedapuri, K.S. Jeyavel, K.S. Rajendran and K.S. Sathyanathan filed a suit in O.S. No. 435 of 2003 on the file of the Principal Sub-ordinate Judge, Tirunelveli for the very same relief, namely cancellation of the order of the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai made in S.M.R. No. 5 of 2003 dated 30.09.2003 and for further reliefs. In the said suit K.A. Murugappan and his brother K.A. Vellappan were added as Defendants 5 and 6, besides arraying the officials of the Hindu Religious and Charitable Endowments Department and the State of Tamil Nadu as Defendants 1 to 4. The learned Principal Subordinate Judge, Tirunelveli after trial allowed both the suits by separate judgments dated 13.06.2003 and granted the reliefs sought for by the respective Plaintiffs therein. In effect, the learned trial Judge held the institution to be "Samadhi" simple and pure and not a religious institution or temple coming within the definitions found in Section 6(18) and Section 6 (20).

7. Aggrieved by the same, the applicants, namely Commissioner, Joint Commissioner and Assistant Commissioner of Tamil Nadu Hindu Religious and Charitable Endowments Department preferred separate appeals on the file of this Court as per Section 70(2) of the Act. The said appeals were numbered as A.S (MD)Nos.230 of 2005 and 1 of 2006. The first appeal A.S. No. 1 of 2006 was filed against the decree passed by the trial Court in O.S. No. 433 of 2003 and the first appeal A.S. No. 230 of 2005 was filed against the decree passed by the trial Court in O.S. No. 435 of 2003. As the subject matter of both the appeals was one and the same, another learned Single Judge of this Court jointly heard both the appeals and by a common judgment dated 30.04.2010 dismissed both the appeals without cost. The present review applications have been filed for reviewing the said common judgment.

8. Section 114 C.P.C allows a person considering himself aggrieved by a decree or order from which an appeal is allowed by the Code, but no appeal has been preferred or by a decree or order from which no appeal is allowed by the CPC Code, or by a decision on a reference form a Court of small Causes, to apply for a review of the judgment or order to the Court which passed the decree or made the order. The

Section proceeds further that on such application for review, the Court may make such order thereon as it thinks fit.

9. Order XLVII Rule 1 is the provision prescribing the grounds on which a review application can be filed. It says, if the party, considering himself to be aggrieved by the judgment or order from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, he may apply for a review of judgment to the Court which passed the decree or made the order. It is obvious from the said provision that an application for review can be entertained on the following grounds:

1)a new and important matter or evidence is discovered subsequent to the passing of the judgment or order, review of which is sought for and the party seeking review despite exercise of due diligence could not get the knowledge of the existence of such evidence or could not have produced at the time when the judgment was pronounced or the order was made;

2)a mistake or error is apparent on the face of the record; and

3)for any other sufficient reason These are the three grounds on which a review can be sought for . The applicants in the review applications relied on the second ground, namely there is error apparent on the face of the record according to them.

10. The learned Additional Advocate General has vehemently argued that there is error apparent on the face of the record insofar as, according to her submissions, the learned Judge failed to remit the matter back to the trail Court for fresh disposal in the light of the additional documents produced in the appeals; that one of the important documents, namely the Settlement Register was not considered by the learned Judge; that the failure to do so resulted in the dismissal of the appeals and that the same should be construed as an error apparent on the face of the record.

11. This Court paid its anxious considerations to the said submission made by the learned Additional Advocate General. This Court also perused the judgment sought to be reviewed.

12. It seems the review applicants harped on the varying descriptions used in different documents to denote the suit institution as Arunachleswarar temple, Arunachleswarar Samathi Koil and Arunachleswarar Koil Samathi. It is also obvious from the records that the review applicants relied on a fact that Ayya Subramania Mudaliar, the father of K.M. Murugappan, got a declaration to be a hereditary trustee in respect of some other temples by names Arulmighu Kamatchiamman Temple, Vijeswariamman temple, Kasiviswanathan Temple and Muppidathiamman Temple in the very same village, namely V.M. Chatiram. It has also been contended

by the opposite parties that the mere fact that other temples are admitted to be public temples and a declaration u/s 63(b) to the effect that Ayya Subramania Mudaliar was the hereditary trustee of the said temples, will not give raise to either a presumption or proof that the suit institution is also a temple. It is true that initially a prayer was made u/s 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act to get the above said temples declared as private temples. Subsequently, the prayer was altered and a declaration that Ayya Subramania Mudaliar was a hereditary trustee of the above said temples alone was pursued. The learned Additional Advocate General has placed very much reliance on her contentions that the entire village was inam village; that the grants in the form of inam could not have been granted in favour of a private institution like Samadhi and that the Settlement Register would show the suit institution to be nonetheless a temple coming under the purview of Hindu Religious and Charitable Endowments Act.

13. The learned Judge of this Court has meticulously considered the respective pleadings and evidence adduced on either side before the trial Court and in addition to that an entry in the Register of Fair inam. It is true that the Appellants filed a miscellaneous petition in M.P (MD) 1 of 2009 in A.S (MD) No. 1 of 2006 for reception of additional documentary evidence. By virtue of an order dated 18.12.2009 made in the said miscellaneous petition, the District Collector of Tirunelveli caused production of the original Register of fair inam in respect of Title Deed No. 269. Entry relating to the suit institution was also marked as Ex.B15. As there was no objection for marking the same as the additional documentary evidence in the appellate stage, the learned Judge seems to have proceeded with the consideration of the evidence including the said document. Considering the said material along with other materials, the learned Single Judge has pronounced the common judgment dismissing both the appeals. Order XLI Rule 28 deals with the manner in which the additional evidence is to be taken if the Court decides to grant leave to adduce additional evidence. As per Rule 28, the appellate Court itself can cause the additional evidence to be adduced before it and record the same or direct the Court from whose decree the appeal has been preferred or any other Court subordinate to the appellate Court, to take such evidence and send it to the appellate Court. In view of such clear guidelines provided in the code as to how additional evidence is to be recorded in the appellate stage, this Court is not in a position to accept the contention of the learned Additional Advocate General that on the production of additional documentary evidence in the appellate stage by virtue of the order dated 18.12.2009, the learned Single Judge ought to have remitted the case back to the trial Court for fresh consideration in the light of the said additional documentary evidence and for adducing evidence touching the said document. If the applicants were desires of adducing oral evidence touching the additional documentary evidence produced in the appeal, they could have asked the Court to take such evidence or to direct the lower Court or any other Subordinate Court to record such

evidence. But no such request was made. In fact there is no prayer in M.P.(MD) No. 1 of 2009 seeking leave to adduce oral evidence touching the document to be produced as additional documentary evidence. Suppose the opposite party raises objection for receiving the document in evidence without proof of its genuineness or without giving opportunity to the parities to give additional evidence touching the said documents, then it is for the appellate Court either to take additional oral evidence or direct such additional evidence to be taken by the trial Court or any other Subordinate Court.

14. In this case it appears the said document, being a public document and also an ancient document, was allowed to be marked without raising any objection and straight away read in evidence. Therefore, the applicants cannot air any grievance for not taking oral evidence touching the contents of the additional documents produced by them in the appellate stage. That apart, the contention that when an additional evidence is adduced in the appellate stage, the appellate Court should remand the matter to the trial Court for fresh consideration in the light of the additional evidence, cannot be sustained in law.

15. It shall be apt to refer to an observation made by the Hon''ble Supreme Court in Parsion Devi and Others Vs. Sumitri Devi and Others, .

9. Under order 47, Rule 1, CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise.

16. The learned Judge has considered not only the evidence adduced before the trial Court, but also the additional evidence adduced in the appellate stage in the appeal and upon such consideration, has recorded a finding that the suit institution is not a public religious institution or public temple and on the other hand, it is only a "Samadhi" simple and pure and based on the finding, the learned Judge chose the dismiss both the appeals. The attempt made by the learned Additional Advocate General to show that there is error apparent on the face of the record has resulted in utter failure and the projected error is not an error apparent on the face of the record, capable of being corrected in the review applications. The applicants have not made out a case for review and hence, the review applications deserve to be rejected.

17. Accordingly, both the review applications are dismissed. No costs.