

(2011) 12 MAD CK 0105
Madras High Court (Madurai Bench)
Case No: Appeal Suit No. 407 of 1997

The Commissioner, H.R. and C.E.
Admn. Department,
Nungambakkam High Road,
Madras - 34, The Assistant
Commissioner, H.R. and C.E.
Admn. Department, Pudukottai
and The Inspector, H.R. and C.E.
Admn. Department, Kulithalai

APPELLANT

Vs

Sri. Viswanathaswamy Idol, Sri.
Viswanathaswamy Koil and The
Executive Officer, Arulmigu
Kadambavaneswarar swamy
Temple, Kadambarkoil

RESPONDENT

Date of Decision: Dec. 9, 2011

Acts Referred:

- Constitution of India, 1950 - Article 227
- Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 - Section 6(7), 63, 70

Hon'ble Judges: Rajasuria, J

Bench: Single Bench

Advocate: S. Kumar, Additional Government Pleader, for the Appellant;
Renganandakumar, For 1st Respondents, No Appearance, For 2nd Respondent, for the Respondent

Judgement

Honourable Mr. Justice G. Rajasuria

1. This Appeal Suit is focussed by the original defendants 1, 2 and 4 animadverting upon the judgment and decree dated 21.09.1995, passed in O.S.No.471 of 1988 by the learned District Munsif, Kulithalai.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. A summation and summarisation of the relevant facts absolutely necessary and germane for the disposal of this Appeal Suit would run thus:

The plaintiff filed the suit, seeking the following reliefs -"(a) declaring that the plaintiff temple - viz. the Idol of Sri Viswanathaswamy temple at Manathattai Village, Kulithalai, is a private temple belonging to 4 families namely Vembu Iyer and others and consequentially granting permanent injunction restraining the defendants, their men, servants and subordinates and other officials from interfering with the administration of plaintiff by way of bringing the suit coconut trees in public auction on 27.10.88 or in any other date, or in any other manner whatsoever;

(b) awarding costs of the suit to the plaintiff;

(c) and granting such other further reliefs as this Hon"ble Court may deem fit and proper in the circumstances of the case and thus render justice." on the ground that Sri. Viswanathaswamy Temple referred to in the plaint is a private temple and the property described in the plaint schedule is the property of the temple. According to the plaintiff, the H.R. & C.E. authorities are unnecessarily trying to interfere with the administration of the temple as well as with the suit property.

4. Per contra, the second defendant filed the written statement resisting the suit on the main ground that the suit itself was not maintainable in view of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959). The Assistant Commissioner of H.R. & C.E. passed Ex.B.3, dated 10.06.1988, appointing the third defendant as the fit person and as such, as on date, the so called private trustee has no right to deal with the plaintiff temple and the said temple is a public one. Accordingly, he prayed for the dismissal of the suit.

5. Whereupon, the relevant issues were framed. During the trial on the side of the plaintiff, P.W.1 was examined and Exs.A.1 to A.3 were marked and on the side the defendants D.W.1 was examined and Exs.B.1 to B.3 were marked.

6. Ultimately, the trial Court decreed the suit, as against which the present Appeal Suit has been filed on various grounds, virtually reiterating the grounds as found set out in the written statement filed before the trial Court.

7. The points for consideration are:

(i) Whether the suit filed before the Munsif Court by the plaintiff was tenable, in view of Sections 6(7), 63 and 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959?

(ii) Whether the plaintiff was justified in approaching the Civil Court without exhausting the remedies contemplated under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959?"

8. The aforesaid points are taken up together for discussion as they are inter-linked and interwoven, entwined and intertwined with each other.

9. The gist and kernel, the pith and marrow of the arguments, as put forth by the learned Additional Government Pleader would run thus:

The provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 would pellucidly and palpably make the point clear that the plaintiff, who is the self styled trustee had no right to approach the Civil Court without exhausting the remedy contemplated under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Already, the Assistant Commissioner of H.R. & C.E. appointed a fit person to take charge of the administration of the temple, but in the meanwhile such an untenable suit was filed and consequently a decree was obtained, which is liable to be set aside.

10. In a bid to mince meat and shoot down, and also to torpedo and pulverise the arguments as put forth and set forth on the side of the defendants 1, 2 and 4, the learned Counsel for the plaintiff/first respondent would pilot his arguments, inviting the attention of this Court to various portions of the pleadings and documents and submit that the authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 had no right to interfere with the private temple, namely Sri. Viswanathaswamy Koil, and without adhering to the legal procedures, appointed a fit person, who at no point of time took charge of the administration and the private trustees are in charge of the administration of the temple which is only a private one.

11. The learned counsel for the first respondent/plaintiff himself would cite the decision of mine reported in [The Collector of Vellore District, The Commissioner H.R. and C.E. and The Assistant Commissioner H.R. and C.E. Vs. V. Nataraja Chettiar \(died\) and Others](#), . Certain excerpt from it would run thus:

16. The learned senior counsel for the plaintiff would agree to such a proposition and he would even pray that certain time limit may be granted so as to enable the plaintiff to file necessary application before the authority concerned invoking Section 63 of the Act.

17. However, the learned Additional Advocate General would submit that already a fit person was appointed to take over the administration of the temple, for which, on the plaintiff's side it was stated that in support of the suit filed by the temple, decree was granted in their favour and as against which, the fit person himself preferred an appeal and that was dismissed. According to the learned senior counsel for the plaintiff, the fit person as of now, is not holding the administration relating to such properties and no second appeal also has been filed by the fit person as against such a decree in favour of the tenants.

18. Be that as it may, at this juncture, I would like to point out that the authorities under the said Act, without strictly adhering to the procedure contemplated under the Act, cannot interfere with the temple and the properties concerned. However, I make it clear that once the authority invokes its power on the application filed by the plaintiff, then it is for the authority to pass suitable orders as it might deem fit at the appropriate stage and in appropriate manner adhering to the procedures contemplated under law untrammelled and uninfluenced by the judgment of this court and till then, the injunction order granted by the courts below, shall hold good.

12. The dictum as found enunciated in the above said decision coupled with Sections 6(7), 63 and 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 would convey and portray project and expatiate that certain set of people claiming themselves as trustees of a private temple, cannot approach the Civil Court without exhausting the remedy provided under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Surprisingly, in this case, without exhausting the remedy provided under the said Act, the plaintiff simply approached the Munsif Court, which is not a Court contemplated u/s 6(7) of the said Act, which is extracted hereunder for ready reference: "Section 6(7) "Court" means

(i) in relation to a math or temple situated in the Presidency town, the Chennai City Civil Court;

(ii) in relation to a math or temple situated elsewhere, the Subordinate Judge's Court having jurisdiction over the area in which the math or temple is situated, or if there is no such Court, the District Court having such jurisdiction;

(iii) in relation to a specific endowment attached to a math or temple, the Court which could have jurisdiction as aforesaid in relation to the math or temple;

(iv) in relation to a specific endowment attached to two or more maths or temples, any Court which would have jurisdiction as aforesaid in relation to either or any of such maths or temples;

13. The learned counsel for the plaintiff would incidentally put forth an argument that the appellate Court as against the judgment and decree passed by the Munsif Court, is only the Sub Court and not the High Court; for which, legally and acceptably, appropriately and appositely, the learned Additional Government Pleader citing Section 70(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, would submit that the High Court under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is the appellate Court in matters of this nature and hence, the defendants 1, 2 and 4 did choose to approach this Court.

14. At this juncture, I would like to point out that the plaintiff in toto was wrong in approaching the Civil Court without getting exhausted the remedies contemplated

under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Over and above that the plaintiff also committed a serious mistake in approaching the Munsif Court. This Court has got ample powers under Article 227 of the Constitution of India to see that the error committed by the lower Court is rectified. As such, the new plea sought to be projected by the plaintiff cannot be countenanced as proper.

15. Accordingly, the points are answered to the effect that the suit filed before the Munsif Court by the plaintiff was not tenable in view of Section 6(7), 63 and 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and the plaintiff was not justified in approaching the Civil Court without exhausting the remedies contemplated under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

16. On balance, the Appeal Suit is allowed and the judgment and decree of the District Munsif, Kulithalai in O.S.No.471 of 1988 dated 21.09.1995 are set aside and the original suit is hereby dismissed. However, in the circumstances of the case, there is no order as to the costs.

17. The learned counsel for the plaintiff would make an extempore submission by placing reliance on my judgment cited supra that status-quo might be ordered to be maintained till the plaintiff approaches the authority concerned under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, seeking remedy. I could see considerable force in his submissions. Accordingly, while allowing the Appeal Suit the following order is passed:

Within three months from this date, the plaintiff is at liberty to file necessary application before the authority concerned u/s 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and seek appropriate remedy and till then status-quo shall be maintained by both sides and the status-quo as transpired from the submissions of both sides is that the fit person has not yet taken charge and that shall remain as such and the plaintiff shall not encumber or modify the suit properties or the structures therein. By way of disambiguating the ambiguity, I would like to make the point clear that once the authority under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is approached by the plaintiff, the order of status-quo shall cease to have effect.