

(2009) 12 MAD CK 0200

Madras High Court

Case No: A.S. No. 581 of 1996

The Assistant Commissioner and
The Deputy Commissioner, H.R.
and C.E. Admn. Department

APPELLANT

Vs

K.V. Ramanjuam President of
Kulithmalai Naidu Mahajanana
Sangam and The Executive
Officer

RESPONDENT

Date of Decision: Dec. 16, 2009

Acts Referred:

- Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 - Section 108, 6(17), 63, 69, 70(1)

Citation: (2010) 2 LW 456

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: S.C. Herold Singh, Addl. Government Pleader, for the Appellant; K. Govindarajan, for Sarvabhavana Associates, for the Respondent

Final Decision: Allowed

Judgement

R.S. Ramanathan, J.
Heard both sides.

2. The Defendants 1 and 2 in O.S. No. 453 of 1988, on the file of the District Munsif Court, Kulithalai, are the Appellants herein.

3. The first Respondent herein, the Plaintiff in O.S. No. 453 of 1988, filed a suit for declaration that the right to manage and administrate the affairs of Sri Venugopalswamy Bajanaimadam and its shops vested with the Plaintiff and consequently, for injunction restraining the Defendants viz., Appellants herein, from interfering with the Plaintiff's management of the suit property.

4. The case of the Plaintiff as stated in the plaint is that the suit properties originally belonged to the family of Govindarajan, son of Venkataraman, who dedicated the property to Sri. Venugopalswamy Bajanaimadam and for the benefit of the entire Naidu community and for the beneficial upliftment of Naidu community people, he dedicated the Bajanaimadam to the General Naidu community of Kulithalai town. He became the founder, proprietor and manager of Sri Venugopalswamy Madalayam and the Naidu Mahajanasangam, Kulithalai, was started on 22.07.1945 with the aim of unity among Naidu Community and for improving education and the association is managed by 11 Executive Members elected among the Naidu community people and Mr. R. Venkatarama Naidu was the 1st President. Sarangapani, son of Govindaraja was the founder trustee of Sri Venugopalswamy Bajanaimadam, after his father's death and submitted his resignation to the Plaintiff's Naidu Mahajanasangam and by the resolution, dated 22.03.1950, his resignation was accepted and in his place, the Naidu Mahajanasangam appointed, Sri. G.N. Naidu, known as G. Narayanasamy and G.N. Naidu did not belong to the family of the Sarangapani. The Municipal authorities recognized the Mahajanasangam as owner of the Bajanaimadam and house taxes are assessed in the name of Mahajanasangam. While so, the first Defendant/first Appellant sent a communication, dated 10.06.1988, appointing the Executive Officer of Arulmigu Neelamega Perumal, Kulithalai, as a fit person in respect of the property of the Bajanaimadam and directing the people, in-charge to hand-over the properties to the Executive Officer and hence, the suit for declaration and injunction as stated supra.

5. According to the Plaintiff, the Defendants are not entitled to take over the suit property and the management of the Bajanaimadam has been looked after by the Naidu community people from and out of the income from the shops and also from contribution among the members of the Naidu community and hence, the Government cannot interfere with the management of the Bajanaimadam. In that suit, the property mentioned in the schedule is the Bajanaimadam building and the shop in that building is bearing No. 31A/2.

6. The Defendants in the written statement, disputed various allegations made in the plaint and also disputed that the Bajanaimadam belongs exclusively to the Naidu Ma-hajanasangam, the Plaintiff herein and contended that all communities belonging to Hindu Religion are worshipping in the temple as of right and the temple does not belong exclusively to the Naidu community people and the Plaintiff filed O.A. No. 10 of 1963 before the Deputy Commissioner, H.R. & C.E., Trichy, u/s 63(a) of the H.R. & C.E. Act, to declare that the Bajanaimadam is not a religious institution and that was dismissed for non-prosecution and the President of the Naidu Mahajanasangam, G. Narayanasamy, gave a statement before the H.R. & C.E., Department, requesting him to be appointed as trustee and after him, no-body came forward and therefore, the Executive Officer of Arulmigu Neelamega Perumal temple was appointed, as a fit person, in respect of the temple and the court has no

jurisdiction to entertain the suit and praying for the relief of setting aside the order of the 3rd Defendant as fit person, is not maintainable.

7. On the basis of the above pleadings, the trial court framed the following issues:

1. Whether the civil court has jurisdiction to entertain the suit?
2. Whether the Plaintiff's Bajanaimadam belongs exclusively to the Naidu community?
3. Whether the Bajanaimadam was under the management and control of the Plaintiff's Sangam?
4. Whether the Plaintiff is entitled to the relief of declaration and injunction?
5. To what relief, the Plaintiff is entitled to?

and an Additional issue was framed whether the Plaintiff's Sangam is entitled to maintain the suit?

8. On the side of the Plaintiff, 3 witnesses were examined and 78 documents were marked and on the side of the Defendants, the Inspector of the temples was examined as D.W.1 and 8 documents were marked.

9. The trial court considered the Issue Nos. 2 to 4 and additional issue together and held that the Bajanaimadam belongs to the Naidu community only and it is under the control and management of the Naidu community and the Plaintiff's Sangam is entitled to the relief as prayed for and the Plaintiff is entitled to maintain the suit and answered all the issues in favour of the Plaintiff.

10. In respect of Issue No. 1, whether the court has got jurisdiction to decide the case, the lower court relied upon the judgment reported, in Vol. in the case of Nagarcoil E.S.A.A.M.N. Trust v. Natarajan Asari, 1973 86 LW 575 held that the suit is maintainable and decreed the suit as prayed for. As against the judgment and decree, the Defendants 1 and 2 filed the present appeal.

11. The points for consideration in this appeal are:

1. Whether the suit is maintainable before the civil court and not bared u/s 108 of the H.R. & C.E. Act?
2. Whether the Bajanaimadam is a religious institution coming under the definition of Section 6(17) of the H.R. & C.E. Act?
3. Whether the suit filed by the Plaintiff without a prayer for setting aside the order of the first Defendant, appointing the fit person is maintainable?

12. Point No. 1: It is contended by Mr. S.C. Herold Singh, the learned Additional Government Pleader, appearing for the Appellants that the Bajanaimadam is a religious institution as defined u/s 6(17) of the H.R. & C.E., Act and hence, without

getting a declaration that it is not a religious institution as per the said definition, the Plaintiff's are not entitled to maintain the suit.

13. Mr. S.C. Herold Singh, the learned Additional Government Pleader, appearing for the Appellants further submitted that though the prayer in the suit was for declaration and injunction, the Plaintiff proceeded on the basis that Bajanaimadam is a religious institution and therefore, without getting a declaration that it is not a religious institution by making necessary application u/s 63(a) of the H.R. & C.E. Act or to declare that the Plaintiff's are entitled to be appointed as hereditary trustees for the Bajanaimadam, by filling necessary application u/s 63(b) of the H.R. & C.E. Act, the suit filed for declaration is not maintainable.

14. He would further submit that by astute pleadings and couching the prayer in such a manner, the Plaintiff is not entitled to declaration when the declaration cannot be given without the finding whether the Bajanaimadam is a religious institution or not and that finding can be given only by H.R. & C.E. Department, in an application by filing u/s 63(a) of the H.R. & C.E. Act and therefore, the suit is not maintainable.

15. He also drew the attention of the court to the filing of O.A. No. 10 of 1983, Ex.B5, by the Plaintiff, for declaring the Bajanaimadam is not a religious institution and that was dismissed for non- prosecution, which would prove that the Plaintiff's were aware that they have to get declaration from the authorities and they have also submitted to the jurisdiction of the H.R. & C.E. Department, by making such application. He also relied upon Ex.B2, the statement given by the then President of the Sangam, G. Narayanasamy Naidu and Ex.B3, the resolution copy of the Naidu Mahajanasangam, requesting the authorities to consider the appointment of President of the Sangam as hereditary trustee, which would prove that the Plaintiff's accepted that the Department has got authority to appoint the trustees for the temple and hence, the suit is not maintainable.

16. On the other-hand, Mr. K. Govindarajan, the learned Counsel appearing for the Plaintiff/1st Respondent submitted that the documents filed on the side of the Plaintiff's would prove that the Bajanaimadam is being managed by the Sangam since 1945, as evidenced by Ex.A2, the Panchayat Board recognized the Sangam as the owner of the Bajanaimadam and assessed the taxes in the name of the Plaintiff, in respect of the properties of the Bajanaimadam, the property taxes are paid by the Plaintiff and all those documents would prove that the Bajanaimadam is under the control and the management of the Plaintiff's sangam and therefore, the suit is maintainable.

17. He further submitted that as per the provisions of the H.R. & C.E. Act, when a relief is sought for u/s 63(a) or (b) to declare that the Bajanaimadam is a religious institution or not and the Sangam is to be recognized as hereditary trustee of the Bajanaimadam and in both the cases it has to be agitated before the authorities

under the H.R. & C.E. Act, but in the suit, the Plaintiff having sought for the declaration that the Plaintiff is entitled to manage the Bajanaimadam and hence, the suit is not barred u/s 108 of the H.R. & C.E. Act.

18. He further contended that Ex.B2 alleged to have been written by the then President of the Sangam, G.N. Naidu, is a forged one and it can be seen from Ex.B3 that the signature found in Ex.B3 was not that of Narayanasamy Naidu and the Bajanaimadam is the exclusive property of the Naidu community and the public have no right to worship in that and the public never come and worship in the Bajanaimadam.

19. Therefore, we will have to find out, whether the suit is maintainable in civil court and it is not barred u/s 108 of the H.R. & C.E. Act.

20. It is admitted by P.W.1 that in the Bajanaimadam there is an idol of Krishna made by clay and it is a place of worship and public are not allowed. Admittedly, to prove the origin of Bajanaimadam, no document was produced. The documents produced by the Plaintiff viz., Ex.A1, is the rental agreement executed by one Thangamuthu Pillai in favour of the founder, proprietor and the manager of Sri Venugopalswamy Bajanaimadam viz., Govindarajan.

21. It is also admitted by the Plaintiff that the said Govindarajan established the Bajanaimadam and he was managing affairs of the Bajanimadam.

22. It is further admitted that after him, his son was acting as President of Bajanaimadam, the Plaintiff Sangam was founded only on 22.07.1945 and the Bajanaimadam was in existence even prior to that and it is admitted by the Plaintiff, as found from Exs.A2 and 3 that the Bajanaimadam was referred to as Sri Venugopalswamy temple under Exs.A2 and 3. It has been specifically mentioned that the meeting, dated 24.04.1949, was held in the Venugopalswamy temple and in that meeting, election was held for electing the office-bearers of the Sangam and in the meeting held on 22.03.1950, the resignation of Govindarajan as President was accepted and G.N. Naidu was given authority to administer the temple. Though in the plaint, it was stated that the Bajanaimadam belonged to Naidu community of the Kulithalai town and the founder Govindarajan, dedicated the Bajanaimadam for the beneficial interest of the entire Naidu community and for the benefit and the upliftment of the Naidu community, no proof was produced to that effect by the Plaintiff and the documents Exs.A2 and A3 filed by the Plaintiff to substantiate their claim do not support the case of the Plaintiff. Therefore, it cannot be stated that the Venugopalswamy temple also known as Bajanaimadam was established for the benefit of Naidu community. The fact that it was established by an individual and after him, his son became the trustee of that temple would prove that the temple could not have been established exclusively for the Naidu community people. No doubt, it is seen from Exs.A2 and A3, and the other exhibits viz., the municipal tax receipts, that from 1950 the administration of the temple was taken over by the

Sangam, but that does not mean that the Sangam became the owner of the temple and the temple was established for the benefit of the Naidu community people. As stated supra in Exs.A1 to A3, it was mentioned that the suit property is Sri Vennugopalswamy Bajanaimadam temple. Assuming that the temple was established by Govindarajan, in the absence of any document to show that it was established exclusively for the Naidu community, it cannot be presumed that it is a private temple. Even assuming that it is a private temple, without getting a declaration by applying u/s 63(a) that it is not a religious institution, the Plaintiff cannot question the action of the Defendants in appointing the fit person for the temple.

23. It has been held in various judgments of our High Court that without getting declaration that the institution is not a religious institution as defined under the H.R. & C.E. Act, the suit is not maintainable.

24. It has been held in, in the case of [Sri Vallaba Ganesar Devasthanam and Others Vs. A. Anandavadivelu Mudaliar and Others](#), which was discussed in in the case of R.M. Sundaram @ Meenakshisundaram v. Sri Kayarohanasamy and Anr. 2008 (3) LW 553, that "The principle on which the jurisdiction of the Civil court is excluded u/s 108 of the Act are now well-settled. The dispute raised in the suit relates to the administration or management of a religious institution or any other matter or the determination of which a provision has been made in the Act the bar u/s 108 of the Act will be attracted. On the other hand if the question arising for adjudication falls outside the scope and ambit of Section 108 of the Act, then the Civil court will have jurisdiction to entertain the suit and the bar of exclusion of jurisdiction provided for u/s 108 cannot be invoked.

It is equally settled that if in a suit any matter in respect of which a provision is made clear the Act had to be incidentally decided, the jurisdiction of the Civil court will not be excluded. To be more specific if any other question in respect of which the power is conferred in the Deputy Commissioner to decide u/s 63 of the Act, arises incidentally for consideration in a suit, the jurisdiction of the Civil court will not be excluded. Notwithstanding Section 108 of the Act, where the dispute relating to a temple is only between two private parties and the Board is not directly concerned, the civil Court has jurisdiction to try the suit."

25. As held in the above judgment, without deciding the issue whether the Venugopalswamy Bajanaimadam temple is a religious institution or not, the relief prayed for by the Plaintiff cannot be granted and therefore, it is not the incidental finding to be decided in this case and depending upon the finding, whether the temple is a religious institution or not, the relief sought for by the Plaintiff cannot be given and hence, finding has to be given Whether the temple is a religious institution or not and under the provision of the H.R. & C.E. Act that relief can be granted only by the Deputy Commissioner of H.R. & C.E., by application filed under 63(a) of the H.R. & C.E. Act and the civil court cannot give that finding and hence, the

suit is not maintainable.

26. In this case, the origin of the temple is not established, except the allegation that only Govindarajan, established the Sri. Venugopaswamy temple. It is also admitted by the Plaintiff that after the death of Govindarajan his son Sarangapani was the trustee of the temple and Bajanaimadam and in the year 1950, he resigned that post and that was taken over by the Plaintiff's Sangam. Therefore, it is seen from Ex.A1 that it was established by one Govindarajan and latter taken over by the Plaintiff.

27. It is further stated by the Plaintiff that from 1950 onwards the Sangam is administering the temple affairs. In that context only they filed the suit for declaration that the Plaintiff Sangam is entitled to administer and manage the temple. Though the relief is for declaration that the Plaintiff Sangam is entitled to manage and administer the temple, that relief can be given only after considering, whether the temple is a private temple or a religions institution and therefore, the main question to be decided in this case is whether the temple is a religious institution or private temple and that is the main point to be decided to grant the relief in that suit.

28. Further, the entire plaint proceeded on the basis that it is a religious institution belonging to the Naidu community and it has been established for the beneficial interest for the entire Naidu community and for the beneficial upliftment of the Naidu community. In para 4 of the plaint, it is specifically stated so. Therefore, the Plaintiff proceeded on the basis that it is a religious institution and hence, the Plaintiff is entitled to administer the temple. Hence, without deciding the character of the temple, the main relief cannot be granted and the question is whether the temple is a religious institution or private temple.

29. In a similar circumstances, in the decision reported in, in the case of Inspector/Fit Person H.R. & C.E., Arulmighu Sundaresa Gnanar Koil Cholakadai Street, Dharapuram v. Amirthammal and Ors. 2003(1) LW 681, this Court has held that one of the question to be decided in the suit is whether the temple is a private temple or public temple and that is not an incidental question and that it is the question and the suit is not maintainable.

30. Further in the reported judgment, in the case of [Sri Thirupuranthakaswamy Devasthanam Vs. V. Sundaresa Mudaliar and Others](#), it has been held "the entire plaint must be taken as a whole to find out the nature of the suit and if substantial or main relief involved therein, would not come within the ambit of power of Deputy Commissioner of H.R. & C.E., u/s 63 of the Act and only incidental issues or reliefs prayed for falls within the scope of that section, the civil court would have jurisdiction to try the suit. It is not the nature of words used in the prayer dealing with the relief prayed for in the plaint, which would determine the character of the suit, but the contents of the plain; in conjunction with the reliefs prayed for have to

be taken by the court. Therefore, having regard to the above judgments of our High court, in my opinion, the Plaintiff proceeded on the basis that it is a private temple exclusively belong to the Naidu community and therefore, the authorities have no jurisdiction to appoint the trustees and for granting the relief prayed for, the court has to decide the character of the institution whether it is a religious institution or not, as defined under the H.R. & C.E. Act and that can not be decided by the civil court and the same falls under exclusive jurisdiction of the authorities viz., Deputy Commissioner of H.R. & C.E. Hence, the suit is not maintainable and the parties have to approach the authorities under the H.R. & C.E. Act to get a declaration that it is not a religious institution as per the Act. The trial court has not appreciated this issue properly and erred in relying upon the judgments, reported in Vol. in the case of Nagarcoil E.S.A.S.M.N. Trust v. Natarajan Asari 86, 1973 LW 575, which did not lay down the correct law.

31. As I have held that the suit is not maintainable in the Civil court, I am not going into the merits of the case and the Respondents are entitled to work-out their remedies under the provisions of H.R. & C.E. Act.

32. The learned Counsel appearing for the Respondents, Mr. K. Govindarajan, submitted that the appeal filed by the Appellants before this Court is not maintainable, as the suit was filed before the District Munsif Court and the first appeal against the decree and judgment of the District Munsif Court lies only before the District Court and hence, the first appeal filed before this Court is not maintainable and therefore, the matter has to be sent back to the District Court for fresh disposal. He further submitted that the Appellants ought to have filed the appeal before the District Court and in that case, the parties would have chance to agitate before this Court in Second appeal and that right is deprived to the parties.

33. Mr. S.C. Herold Singh, the Additional Government Pleader, appearing for the Appellants submitted that a suit was filed after the appointment of a fit person to the temple and hence, it was contended that the suit is bared under the provisions of H.R. & C.E. Act, but the trial court erroneously decreed the suit and hence, the appeal was filed u/s 70(2) of the H.R. & C.E. Act and no objection was raised for all these years by the Respondents about the maintainability of the appeal before this Court and at this length of time, it is not open to the Respondents to contend that the appeal filed before this Court is not maintainable.

34. It is true that the suit was filed for declaration and injunction and the suit was valued at Rs. 400/- as per Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act and court fee of Rs. 30.50/- was paid. Therefore, against the decree and judgment passed in such suit, the first appeal lies only before the District Court and only after the disposal of the first appeal before the District Court, second appeal lies to this Court. But while filing the appeal before this Court, the Appellants filed the appeal u/s 70(2) of the H.R. & C.E. Act and paid the necessary court fees. It is stated in the memorandum of grounds of the first appeal that the appeal was filed

u/s 70(2) of the H.R. & C.E. Act. Of Course, the appeal cannot be filed u/s 70(2) of the H.R. & C.E. Act as the suit was not filed against the order passed by the Commissioner as per Section 70(1)(i) and (ii) of the H.R. & C.E. Act. After the appointment of a fit person by the Assistant Commissioner without seeking a declaration that the order of appointment of a fit person is null and void or without filing an appeal before the Commissioner against that order u/s 69 of the H.R. & C.E. Act, the Respondents filed the suit for declaration that the Respondents alone are entitled to manage the affairs of the suit property as President and for consequential relief. It has been held by this Court that without getting a declaration from the competent authorities under H.R. & C.E. Act that the suit temple is not a religious institution as defined under the Act, the suit is not maintainable. Therefore, the Plaintiff's/Respondents herein, ought to have filed only an appeal before the Commissioner, against the order of the Assistant Commissioner appointing a fit person. Nevertheless, they filed a suit for declaration and injunction and that was allowed. Therefore, in normal circumstances, the Appellants ought to have filed the first appeal before the District Court challenging the decree and judgment passed by the District Munsif Court. However, having regard to the fact that the appeal was filed u/s 70(2) of the H.R. & C.E. Act and from 1996, no objection has been raised by the Respondents about the maintainability of the appeal before this Court all these years and at this point of time, I do not want to entertain the argument submitted by the learned Counsel appearing for the Respondents that the first appeal before this Court is not maintainable.

35. As stated supra, the Appellants ought to have filed the appeal before the District Court. Rightly or wrongly, this Court has taken the first appeal on file and the first appeal is pending before this Court from 1996 till date. Further, it is settled by this Court that a suit is not maintainable for getting a declaration that it is not a religious institution as per the provisions of the H.R. & C.E. Act and in this case, though no such declaration was sought for by the Respondents, the relief sought for by the Respondents cannot be given without giving a finding whether the temple is a religious institution or not and that finding cannot be given by the Civil Court. Therefore, considering all these aspects, though the first appeal filed before this Court is not maintainable in the strict sense, having regard to the fact of the case and the relief prayed for, which is dependent on the status of the temple and no objection has been raised by the Respondents all these years about the maintainability of the first appeal before this Court, I am not inclined to accept the argument of the learned Counsel appearing for the Respondents and remand the matter before District Court for fresh disposal.

36. In fine, the appeal is allowed and the judgment and decree of the lower Court is set aside. Consequently, connected Miscellaneous Petitions are closed. No costs.