(1995) 11 MAD CK 0013

In the Madras High Court

A. Semalai Gounder and Others APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable Endowments and Another RESPONDENT

Date of Decision : 24-11-1995

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63(c)

Citation : (1996) 2 LW 139 : (1996) 1 MLJ 245

Hon'ble Judges : Govardhan, J

Bench : Division Bench

Judgement

Govardhan, J.—Plaintiffs are the appellants.

2. The averments in the plaint are briefly as follows: One Semmanda Gounder who had obtained super powers at the grace of Sri

Subramaniyaswami by his devotion and pious religious life, was leading a life of ''Sanyasi''. He is called as ''Soorikattu Ayyan'' by his descendants

in reverence. His mortal remains were buried in the patta land. The descendants of Soorikattu Ayyan have been performing pooja at the Samadhi.

They used to take kavadi to the Samadhi on thaipoosam day and later on to the hill temple at SivanmalaiOn the next day of thaipoosam, the.

descendants of the said Semmanda Gounder alias Soori Kattu Ayyan used to perform annadhanam in private places, a little away from the foot of

the Sivanmalai temple hill. The present plaintiffs are now doing the said charity. The annadhanam is done to all without discrimination of caste or

creed. The pilgrims who used to come to the hill temple to offer their prayers on thaipoosam day, used to take part in the annadhanam conducted

by the plaintiff and made voluntary donation at the place of feeding. There is no compulsion or demand for the pilgrims taking food at the annadhanam conducted by the plaintiffs. From out of the voluntary contribution made in cash and kind by throwing them on the cloth spread there

and called as ""Mathu"", the plaintiffs have purchased the suit properties. They have also been contributing their own funds to make good the

deficiency for the purpose of carrying on family tradition. The trustees of the hill temple have not conducted annadhanam Charity at any time. The

Hindu Religious and Charitable Endowment Department who had taken over the office and management also has not done the charity. They have

not interfered with the annadhanam Charity conducted by the plaintiff. They have also not made any claim in the said charity carried on by the

plaintiffs. One of the lined descendants of ''Soorikattu Ayyan'' viz., Kandasami Gounder picked up quarrel with the others in the year 1973 and

instigated the second defendant to file a suit. The second defendant filed O.S. No. 23 of 1973 on the file of the Sub Court, Erode, claiming rights

over the contribution of ''Kavadi Kuzhu'' made at the place of annadhanam. After contest, the suit was dismissed. There was no appeal. The said

judgment is binding on the second defendant. While so, the second defendant filed a petition u/s 63(c) of the Hindu Religious and Charitable

Endowments Act (hereinafter called as ''the Act'') in O.A. No. 59 of 1974 before the Deputy Commissioner. The Deputy Commissioner has held

that the annadhanam charity conducted by the descendants of Semmanda Gounder is a religious charity and a public charity associated with a

hindu festival. He has held that the suit properties have been held by the plaintiffs from out of the collections made in the annadhanam charity. The

plaintiffs preferred an appeal to the first defendant. The first defendant dismissed the appeal holding that the properties endowed by Semmanda

Gounder constituted a specific endowment within the meaning of the Act. The properties are not specific endowments attached to Sivanmalai or

Subramaniyaswmi temple as defined in Section 6(19) of the Act. The finding of the first defendant that the properties are owned by Semmanda

Gounder and they constitute a specific endowment is erroneous. The defendant cannot claim any right over the properties. The defendants are not

entitled to demand account for the plaintiffs. Hence, the suit for setting aside the order passed by the Commissioner.

3. The first defendant in his written statement contends as follows: Arulmigu Subramaniaswami temple built on the top of Sivanmalai Hill is an

ancient temple which is maintained and administered by the Executive Officer appointed under the Act. The plaintiffs have to prove that they are

the lineal descendants of Semmanda Gounder and they own the properties. The Deputy Commissioner held that the properties constitute a

religious charity and consequently specific endowment attached to the hill temple. The respondent before the Deputy Commissioner has preferred

an appeal to the Commissioner and the Commissioner has dismissed the appeal holding that the properties constitute a religious charity and

therefore it is a specific endowment, annadhanam, offering sacred ash and collection of funds by spreading Mathu during thaipoosam festival is a

religious charity. The properties purchased from that funds are the properties of the charities. The people who collect this money by spreading

Mathu were feeding to the people and made them to believe that the offering was being collected for the benefit of Sivanmalai Andavan. There is

no representation to the plaintiff that contributions were being collected in the name of Soorikattu Ayyan. It is denied that the plaintiffs used to

invoke the blessings of Soorikattu Ayyan by giving viboothi and then feed the people. The devotees who consecrated during thaipoosam festival

believe that they would receive the blessings of Arulmigu Subramaniaswami and have made offerings. The origin of annadhanam is last in antiquity.

Separate kavadies are taken at the time of juvathi festival and it stops at Ettapalayam and does not come to Sivanmalai. The practice of taking

kavadi of Sivanmalai has come into vogue after the demise of Semmanda Gounder. The claim of the plaintiffs that they are the hereditary trustees

and the defendants cannot interfere with their possession is not true. The suit is therefore liable to be dismissed.

4. The second defendant in his separate statement contends as follows: The averments regarding the individual known as Soorikattu Ayyan are not

admitted by the second defendant. The samadhi of Soorikattu Ayyan is at a distance of 35 kilometres from the suit temple. The kavadies are

brought by groups of people to Sivanmalai temple on the thaipoosam day, fetching with theertham from river kaveri at Kodumudi. Abisheham is

performed to Sri Subramaniaswami at Sivanmalai from this Kaveri water. The alleged descendants of Semmanda Gounder get viboothi prasatham

in the temple and get down and do annadhanam. The devotees since feel that they are bound to pay their kanikkais or contribution to

Subramaniaswami, were putting funds in the Mathu spread at the place of annadhanam. The properties have been purchased by the plaintiffs from

out of the surplus funds they got by mathu panam of the donation made by the devotees. The finding of the Deputy Commissioner is correct. The

order passed by the Commissioner in the appeal is also correct, annadhanam charity was not done by the management of the temple. The

annadhanam is a religious charitable endowment. When it is mismanaged, the department is bound to take action and demand accounts. The

Deputy Commissioner has only ordered that the management of the suit endowment should be properly done and through the department and it is

in accordance with the provisions of the Act. The second defendant is therefore entitled to support the order of the Deputy Commissioner which is

confirmed by the Commissioner. The suit is therefore liable to be dismissed.

5. On the above pleadings, the trial court has held that the suit properties are the private properties endowed for the performance of annadhanam,

and the plaintiffs and their descendants should perform the endowment correctly and the second defendant is entitled to inspect the accounts

maintained by the plaintiff and audit the income and expenses incurred by the plaintiff for realising the amount in Mathu, and granted a decree for

declaration to that effect.

6. Aggrieved over the same, the plaintiffs have come forward with this appeal.

7. The case of the plaintiffs which is not in dispute may be stated as follows: One Semmanda Gounder a resident of Ellapalayam, about 500 years

ago. had four sons. He was a devotee of Arulmigu Subramaniaswami of Sivanmalai. He has been blessed with some super powers at the grace of

Arulmigu Subramaniaswami, on account of his devotion and pious religious life. He was leading a life of sanniyasi. On his death, his mortal remains

were buried in the same village. He was called as Soorikattu Ayyan by his descendants. The descendants of the said Semmanda Gounder go to

the river Kaveri at Kodumudi, get Kaveri water and bring kavadi to the samadhi of Soorikattu Ayyan on thaipoosam day and do annadhanam on

that date. Later in the night, they take kavadi to the Sivanmalai temple and worship Lord Subramaniaswami in the morning, come down and in the

patta lands adjacent to the foot of the hill, conduct annadhanam to all those who come there without any discrimination of caste or creed. The pilgrims who used to come to the hill temple on thaipoosam day take part in the annadhanam conducted by the descendants of Soorikattu Ayyan

and make voluntary donations by cash as well as kind by putting it in the cloth spread there and called as ""Mathu"". The descendants of Soorikattu

Ayyan conduct the annadhanam by contributing their funds to meet the deficiency. The descendants have purchased the suit schedule properties.

These facts are not in dispute.

8. According to the plaintiff, the annadhanam charity performed by them has not been interfered with by the temple authorities in Sivanmalai and

the H.R. & C.E. Board has also not asked them to account for the collections made. While so, in the year 1973, one Kandasami Gounder who is

one of the descendants of Soorikattu Ayyan has picked up a quarrel with the others and has instigated the second defendant viz., the Executive

Officer of Sivanmalai Subramaniaswami temple to make a claim for the contribution made by the pilgrims to Sivanmalai temple on the thaipoosam

day in the annadhanam conducted by the descendants of Soorikattu Ayyan and the suit O.S. No. 22 of 1973 filed by the second defendant for

that purpose was dismissed, after contest and it has become final also. The plaintiffs further contend that the second defendant has filed an

application u/s 63(C) of the Act in O.A. No. 59 of 1974 before the Deputy Commissioner and the Deputy Commissioner who has conducted an

enquiry, has held that the annadhanam charity conducted by the descendants of Soorikattu Ayyan is a religious charity and a public charity

associated with the hindu festival and the properties held by the plaintiffs were the properties purchased from out of the collections made during the

performance of the said charity and the appeal preferred by them to the Commissioner was also dismissed and therefore, they have filed the suit to

set aside the order of the Commissioner.

9. According to the defendants, the descendants of Semmanda Gounder, who have been performing the annadhanam charity during the

thaipoosam festival of Sivanmalai temple have purchased the suit properties out of the collections realised by them during the performance of the

said charity and therefore, the charity conducted by them has been rightly held as a religious charity by the Deputy Commissioner and has been

rightly confirmed by the Commissioner and the properties are also properties belonging to the religious endowments and therefore, the second

defendant is entitled to demand accounts for the income of the property and the suit is therefore misconceived.

10. The application filed by the plaintiffs before the Deputy Commissioner being one to decide the question whether the properties or money

realised by the descendants of Soorikattu Ayyan is a religious endowment, we have to see what is meant by religious endowments. Section 6(17)

of the Act defines ""religious endowment"" as follows:

Religious endowment"" or ""endowment"" means all property belonging to or given or endowed for the support of maths or temples, or given or

endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the

institution concerned and also the premises thereof; but does not include gifts of property made as personal gifts to the archakas, service-holders

or other employees of a religious institution.

Section 6(16) of the Act defines ""religious charity"" as a public charity associated with a Hindu festival or observance of a religious character,

whether it be connected with a math or temple or not. ""Religious institution"" is defined in Section 6(18) as a math, temple or specific endowment.

The learned Counsel appearing for the appellants would argue that in so far as the charities conducted in private places and in which there has been

no dedication, it will not come within the definition of the words ""religious charity"" as defined in Section 6(16) of the Act and in such cases, the

character of a trust is only a private one and it cannot be displaced in the absence of strong and cogent evidence to the contrary. Relying upon the

decision reported in Gomathi Ammal v. Madasamy (1985) 1 M.L.J. 360, the learned Counsel would argue that the annadhanam is performed in

patta land of third parties and it is done without any discrimination of caste or creed to all those who come to Sivanmalai and it cannot be stated

that it is a religious charity on account of the fact that this charity is performed by them during thaipoosam festival. The learned Counsel refers to

the observation in the decision reported in (1985) 1 M.L.J. 360 wherein it has been held that, ""merely because of Arunachalapuranam being read

and feeding of those assembling in the chavady being done on a particular day it will not acquire the character of a public charity and would contend that in the present case, there is no act by the plaintiffs to make the charity as a public charity except the fact that it was conducted on

thaipoosam day. The learned Counsel would stress, that to make a charitable trust, a religious trust as well, it must be shown that the object of the

trust had somefiexus or connection with the temple or its affairs or the worship or the conduct of the festivals therein, and would argue that the

annadhanam charity conducted by the descendants of Soorikattu Ayyan had no connection with the Subramaniaswami temple at Sivanmalai or its

affairs or the worship done there or the conduct of the festival by the same temple since it is done in the patta land after the thaipoosam festival is

over, thaipoosam festival is followed by the temple car festival which takes three days for the temple car to reach its place. It is only during one of

these three days, the annadhanam is performed by the descendants of Soorikattu Ayyan. According to the learned Counsel appearing for the

appellants, that itself is not sufficient to hold that the charity is a religious charity since the charity conducted by the descendants, has no connection

with the temple management or the deity established in the hill and the feeding is done is separate premises. The learned Counsel also refers to the

decision reported in The State of Madras and Another Vs. The Urumu Seshachalam Chettiar Charities and Others, and would argue that unless

the benefit of the endowment is confined wholly to Hindus, it would not be a charitable endowment as defined in Section 6(4) of the Act and the

prefix ""Hindu"" to expression ""public charitable endowment"" in Section 3 emphasizes this feature, and that Section 3 cannot be invoked unless the

endowment is exclusively Hindu in character. According to the learned Counsel, since the endowment is not exclusively Hindu in character. The

charity performed by the descendants of Soorikattu Ayyan cannot be considered as a religious endowment as defined under the Act.

11. The learned Counsel appearing for the Government would on the other hand argue that the Supreme Court has held in the decision reported in

Commissioner, Madras Hindu Religious and Charitable Endowments Vs. Narayana Ayyangar and Others, , that according to the definition of a

religious charity, there must be a public charity, which must be associated with a Hindu festival or observance of a religious character and it is not

necessary that the charity be connected with a math or temple. He would argue that the test suggested in the decisions referred by the learned

Counsel appearing for the appellants that in order that there should be between the charity and the festival or observance such a relation that the

administration of the charity must be controlled by those who celebrate the festival or observance in a temple or math besides being inapt in the

case of general festivals and observances can only be involved if words which are not found in the definition of ""religious charity"" are added

thereto. The learned Counsel relies on the observations of the Supreme Court in the above decision reported in Commissioner, Madras Hindu

Religious and Charitable Endowments Vs. Narayana Ayyangar and Others, , in support of his argument. The Supreme Court has held that the

association with the religious festival should undoubtedly be real and not imaginary, but to constitute association does not indicate that the

administration of public charity must be controlled by the persons responsible for celebrating the religious festival in a temple or math or be an

integral part of the festival or observance. When we consider the facts of the case on hand, we have to accept the plaintiffs'' case that the

administration of the public charity has not been controlled by the persons responsible for celebrating the thaipoosam festival in the

Subramaniaswami temple in Sivanmalai and the conduct of the charity has not been an integral part of the festival. But, whether that itself will be

sufficient to hold that the charity conducted by the plaintiffs is not a religious charity is to be decided by us. The decision of Supreme Court referred

supra, in my opinion, is to be interpreted as follows: ""If there is a public charity associated with a Hindu festival or observance of a religious

character, it becomes a religious charity, even though it is not connected with the temple.

12. Now, let us consider the evidence adduced in this case. As already observed by me, the descendants of Soorikattu Ayyan performed an

annadhanam in the samadhi of Soorikattu Ayyan on the day of the thaipoosam after bringing kaveri water by kavadi from Kodumudi. It is admitted

by P.W. 1 that when they conduct annadhanam in the samadhi of Soorikattu Ayyan, they do not spread Mathu and collect any contribution from

those who gather there. It is in the evidence of P.W. 1 that about 5,000 people will take food on thaipoosam day near the samadhi. After

performing annadhanam in the Samadhi in the evening, they go to Sivanmalai. Next day, they offer prayer in Subramaniaswamy temple after performing abishegam and get the sacred ash. Then, they come down to the village and on the next day, they conduct this annadhanam. According

to D.W. 1, before starting annadhanam ""Dheebarathanai"" is shown to the food cooked and the people gathered there raise a

This version of D.W. 1 is not denied by the plaintiffs. It is only after making this the annadhanam is followed, is also not challenged by the plaintiffs.

After annadhanam, people who have taken food there, are given sacred ash as ""prasadham"" and people who got it make their contribution in the

Mathu spread there. According to D.W. 1, the offering was made by the devotees on the belief they have the blessings of Lord Subramaniaswami

of Sivanmalai and not out of their belief with any other person or God including Soorikattu Ayyan. This version of D.W. 1 is not disputed during

cross examination. According to D.W. 1, the collection realised was roughly about Rs. 2 1/2 lakhs. P.W. 1 has stated in his evidence that about

15 years ago, nearly 5,000 people took food in the annadhanam and the Mathu funds realised at that time has Rs. 50,000. According to P.W. 1

the previous year of his examination in court, it was Rs. 80,000. When we consider this evidence of P.W. 1 and D.W. 1, we can infer that the

offerings made by the devotees in the Mathu has been increasing year after year. According to P.W. 1, the funds realized in the Mathu will be

collected and counted three days later, by ten people sitting around the Mathu and he also used to count and it will take about one hour for them to

count the offerings. It would indicate that it is not a small amount which is offered by the devotees. It is a substantial amount. P.W. 1 had stated

that the balance amount after spending for the annadhanam has been deposited in post office and it was Rs. 20,000 in the year 1971. He would

say that from the amount in the account of the representatives of the descendants, Rs. 65,000 was utilised by them for purchasing the B schedule

property. He would admit that there are no records to show the source of the funds from which they have purchased several properties.

Admittedly by P.W. 1, the funds from which the properties were purchased belong to all the 32 families viz., descendants and unitedly they have

purchased the properties. The evidence of P.W. 1 with regard to the source of money, the deposit of the surplus funds in the post office, utilising

the funds in the account for purchasing the properties all go to show that the properties were purchased from ""mathu panam"" realised by the descendants. At a later stage of cross-examination, P.W. 1 would say that people who take food in the annadhanam conducted by them come to

the Samadhi of Semmanda Gounder also. He would also say that kavadi taken by them during ""Yuhathi"" is not taken by them to Sivanmalai. This

evidence of P.W. 1 shows that the offerings made by the pepple who have taken food in the annadhanam conducted during thaipoosam festival

were made by them only on account of the belief they have in Lord Subramaniaswamy of Sivanmalai and it cannot be on account of any faith they

have in Soorikattu Ayyan. P.W. 2 would say that the contribution will be about Rs. 10,000 per annum. According to P.W. 3, he does not know

what will be the amount realised in the mathu panam put by the devotees are taken only by the descendants of Soorikattu Ayyan and this practice

was there for the past more than 20 years. He pleads ignorance as to the source of the purchase money under Exs. A-3, A-4 and A75. According

to P.W. 4, Mathu funds is increasing year by year and it was Rs. 60,000 the previous year of his examination in court. He would also say that the

amount realised in the Mathu about 40 years back was a very meager amount. As already observed by me, the evidence of the plaintiffs''

witnesses itself shows that the number of devotees who come to thaipoosam festival of Sivanmalai, has been increasing year after year and mathu

funds have also increased year after year during the annadhanam charity of the plaintiffs and the plaintiffs and their predecessors who have been

realising the funds so collected, have purchased the suit properties only from out of those funds and not from their personal funds. The annadhanam

charity conducted by the descendants of Soorikattu Ayyan has been associated with the religious festival of Sivanmalai Subramaniaswami and the

administration of the same was not controlled by the trustees of Sivanmalai temple during all these years, is seen from the evidence placed before

the Court. The decision reported in Commissioner, Madras Hindu Religious and Charitable Endowments Vs. Narayana Ayyangar and Others, will

apply on all fours to the present case and therefore, I have no hesitation to hold that the endowment with reference to which the plaintiffs have

come forward with this suit before the trial court is a religious endowment and the trial court after considering the evidence placed before it, has

rightly come to the conclusion that the department is entitled to bring it under its control and therefore, the judgment and decree of the trial court is not liable to be disturbed.

13. In the result, the appeal is dismissed. No costs.

