

(2002) 08 MAD CK 0029
In the Madras High Court
Case No : A.S. No. 990 of 1982

A. Subramanian Asari (Died), K. Easwara Pillai, S. Krishnan
Asari, L. Susila, L. Kasthuribai, L. Shanthakumari, L. Vatsala
and L. Indira APPELLANT

Vs

Thirunayanarkurichy Desivinayagam Pillayar Devasthanam
Temple, A. Ramaswamy Pillai, The Assistant Commissioner,
Hindu Religious and Charitable Endowments, Nagercoil, K.
Ganapathiar Pillai, A. Thankamma, T. Meenakchy, P.
Ponnuswamy, K. Ramaswamy and G. Ayyappan RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment and Special Provisions) Act, 1976 — Section 11, 49, 63
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 34(1)

Citation : (2002) 08 MAD CK 0029

Hon'ble Judges : P. Shanmugam, J;K. Sampath, J

Bench : Division Bench

Advocate : K. Ravichandra Babu, for the Appellant; R. Chandrasudan, for P. Ananthakrishnan Nair, for the Respondent

Final Decision : Dismissed

Judgement

P.Shanmugam, J.—Defendants 1 and 2 are the appellants. Thirunayanarkurichy Desivinayagam Pillayar Devasthanam Temple (hereinafter

referred to as ""the Temple"") and its trustees have filed the suit in O.S.No.18 of 1982 for declaration of title in reference the suit property of an

extent of 2.12 acres in Sy.No.5392 (R.S.No.242/3) of Kadiyapattnam Village, Kanyakumari District and for a permanent injunction to restrain the

first defendant from executing the decree in O.S.No.210 of 1980 in reference to the suit property. The suit was decreed by the learned

Subordinate Judge, Padmanabhapuram. Aggrieved by the judgement and decree,

defendants 1 and 2 have preferred the above appeal.

2. The facts are as follows:-

The temple is a public temple. The suit property of an extent of 2.12 acres originally belonged to the ancestor of the second defendant, who

dedicated it to the temple, and the same was under the management of the kariasthan of the temple. The case of the plaintiffs is that in the year

1040 Malayala Era (1865), the then administrators of the temple and its property executed an otti and Kuzhikkanam in favour of a stranger and his

heirs were in possession of the suit property as mortgagees. The second defendant was managing the affairs of the temple and its property as a

trustee for some period prior to 1964. The temple was brought under the control of the Tamil Nadu Hindu Religious and Charitable Endowments

Department and the second defendant was appointed as trustee of the temple. He was removed from the trusteeship and one K. Padmanabhan

Nadar was appointed as fit person with effect from 04.06.1976, who took over the administration of the temple and its property from the second

defendant on 10.08.1976. Thereafter, the second defendant appears to have executed a sale deed in respect of the suit property in favour of the

first defendant on 04.09.1978. Thereafter, the first defendant, on the basis of that sale deed, filed a suit in O.S.No.210 of 1980 before the District

Munsif's Court, Padmanabhapuram against the fourth defendant-mortgagee and obtained a decree dated 22.06.1981 and was taking steps to

recover possession of the suit property from the mortgagee. On coming to know of this decree, the above suit in O.S.No.18 of 1982 came to be

filed. According to the plaintiffs, 84 cents of the plaint schedule property was in possession of the Receiver appointed in O.S.No.250 of 1975 and

the fourth defendant got possession from the Receiver on 26.11.1982 after surrendering possession of 42 cents of paddy field and the second

plaintiff has filed a suit in O.S.No.199 of 1985 in respect of the same.

3. The case of the temple is that the second defendant, having been removed from the trusteeship in the year 1976, has no authority to transfer the

property of the temple, and the sale was brought into existence by fraud and collusion and therefore, it is void ab initio. The further case of the

plaintiffs is that defendants 1 and 2 in collusion with the fourth defendant, have obtained a fraudulent decree without impleading the real owner,

namely, the temple, for redemption of mortgage and recovery of the property. The said decree is not binding the plaintiffs.

4. The case of defendants 1 and 2 is that the temple is a private temple and the family of the second defendant has got a title over the property and

as absolute owner and in his individual capacity, the second defendant had executed the mortgage and a purakadam to the fourth defendant.

According to them, the second defendant was the hereditary trustee of the temple and he had been administering the temple and its property. The

suit property had been sold to the first defendant for valid consideration and necessity. The fourth defendant had executed sub-mortgages to

defendants 2 to 9 in O.S.No.210 of 1980. The second defendant is entitled to file a suit and the decree is valid and enforceable.

5. On the above pleadings, the learned Subordinate Judge framed nine issues and permitted the plaintiffs to mark Exs.A.1 to A.13, and Exs.B.1 to

B.12 were marked by the defendants. The second plaintiff examined himself as P.W.1 and the second defendant examined himself as D.W.1.

6. The learned Subordinate Judge, on analysis of the oral and documentary evidence, found that the plaint schedule property is the property of the

temple and the second plaintiff is the trustee and that the temple is a public temple. It was further found by the learned Subordinate Judge that the

decree and execution proceedings in O.S.No.210 of 1980 will not bind the temple and that the sale deed dated 04.09.1978 is not valid and

binding the temple. The learned Judge also held that the plaintiffs are entitled to recover possession from the defendants on payment of

Rs.13,500/-, and decreed the suit declaring the title of the temple and granting permanent injunction against the defendants.

7. Mr. K. Ravichandra Babu, learned Counsel appearing on behalf of the appellants submits that the second defendant was the hereditary trustee

and he continued to be so on the date of the sale deed executed in favour of the first defendant and that the fourth defendant had obtained a valid

and enforceable decree for redemption of mortgage and therefore, there is no cause of action for the suit. The learned Counsel further submits that

the appointment of fit person is unilateral and the Department has no right to interfere with the administration of the temple.

8. On behalf of the first respondent-temple and the third respondent-Assistant Commissioner, H.R.& C.E., it is submitted that the fact that the

temple is a public temple, has been established long time back, that the take over of the temple by the Department and the appointment of fit

person to administer the temple and its property, have become final and that the sale deed executed by the second defendant in favour of the first

defendant is void and the decree obtained by the fourth defendant is a fraudulent decree and is invalid.

9. We have heard the Counsel on both the sides and considered the matter carefully. From Exs.B.6 and B.7, it is seen that the patta stands in the

name of the temple, and the name of neither the second defendant nor his ancestor has been entered in the settlement register and in the patta.

Ex.B.1 is the otti deed executed by the second defendant in favour of the fourth defendant, followed by Ex.B.2 dated 01.09.1960. Ex.B.1 shows

that the property is outstanding on an earlier mortgage of the year 1043 M.E. and the mortgagees are in possession of the suit property. It further

shows that the earlier mortgage was executed by the ancestor of the second defendant in the year 1063 M.E. and in a partition in the family of the

mortgagees, the mortgage right was allotted to one Kumaraswamy, who executed a sub-mortgage in favour of one Kutty in the year 1073 M.E.

Kutty is said to have obtained patta in his favour. However, from Ex.B.7, it is seen that an application was moved by Kumaraswamy, who got the

mortgage right, for issue of patta in his name or in the name of a proper person who represented the plaint temple. Patta was ultimately granted in

favour of the plaint temple represented by its kariasthan. It is significant to note that the patta was not issued in favour of the ancestor of the second

defendant. It was further clear from Exs.B.5 to B.7 that the temple was represented by elder members of the Thirunayanarkurichy Village, which

shows that the temple was managed by the elders of the Village. From Ex.B.3 and B.8, it is seen that Kumarapillai Easwara Pillai and Kolappa

Pillai Ganapathia Pillai as plaintiffs filed a suit for redemption claiming that the temple belongs to the family of the first plaintiff and it is under their

management. It was found by the learned II Additional District Munisif, Padmanabhapuram that there is sufficient evidence on record to show that

originally the plaint property belonged to the Desiyavinayaga Pillayar Temple at Thirunayinarkurichi and that the defendants in that suit came into

possession of the plaint property as mortgagees under a person who himself had obtained a mortgage from the then mortgagers of the said Pillayar

temple. It was found that it is abundantly clear from Exs.A.4 and A.5 that originally the plaint property belonged to the Pillayar temple and that the defendants are in possession and enjoyment of the property only as mortgagees and not as owners. It was found that the plaintiffs in that suit, namely, Kumara Pillai Easwara Pillai and Kolappa Pillai Ganapathia Pillai, were entitled to redeem the plaint property. Since the first plaintiff in that suit has been managing the affairs of the Pillayar temple, the said judgement was confirmed in first appeal in A.S.Nos.385 of 1958 and 432 of 1958. On second appeal, in S.A.No.434 of 1964 (Ex.B.8), Justice Alagiriswami, as he then was, held that the property belonged to the Pillayar temple, that the property was mortgaged and the mortgagees sub-mortgaged the same in favour of the defendants in that suit and that mortgage subsisted to enable defendants to file the suit to redeem and it is not barred by limitation.

10. From the above, it is clear that the property was dedicated by the ancestor of the second defendant and it was mortgaged and sub-mortgaged, and it was in management of the kariasthan of the temple. Tracing the historic documents of the temple, it is clear from Ex.A.2, the proceedings of the Assistant Commissioner, H.R.& C.E. Department that the second defendant was appointed as a trustee of the temple in the year 1964 and he was subsequently removed from the trusteeship and then K. Padmanabha Nadar was appointed as fit person in 1976 and then, the second plaintiff came to be appointed as trustee. Ex.A.2 is the certified copy of the proceedings of the Assistant Commissioner, H.R.& C.E., passed u/s 11 of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment and Special Provisions) Act, 1976 (Tamil Nadu Act XXIV of 1976).

Ex.A.3 is the certified copy of the report prepared by Padmanabha Nadar, the fit person. The second defendant had submitted a petition dated 14.06.1976, which is Ex.B.4, stating that he has no objection for the fit person taking charge, but that would be without prejudice to his right of being a hereditary trustee. The second defendant has not chosen to declare himself as hereditary trustee as per Section 63 of the Act. This being the factual position not in dispute, the second defendant had no authority or power to alienate the property of the temple, in the absence of any declaration that he continues to be the hereditary trustee to enable him to sell the property. Though the second defendant was managing the

property as a trustee appointed, once the Department removed him from that post and appointed a fit person, and when the second defendant had not chosen to question that appointment, it is not open to the defendants at this late stage to contend that the temple is a private temple and that he is a trustee of the said temple. On the contrary, the revenue records and decisions referred to above have established that the temple is a public temple under the administration of the department.

11. P.W.1, who is the second plaintiff, in his evidence, has categorically stated that the temple is a public temple, in which, public have got the right of worship. As per Ex.A.1, the second plaintiff has been appointed as trustee by the Assistant Commissioner for a period of three years u/s 49 of the Act. The patta has been issued in favour of the temple even during the re-survey proceedings. Ex.A.5 is the patta book in the name of the plaintiff temple.

12. D.W.1, who is the second defendant, has admitted in the cross examination that he has no records to show that the temple is his family property. He claims to have conducted pooja by engaging priest. But, there is no record for payment of any salary for that engagement. He had also admitted that the patta in reference to the suit property and temple is in the name of the Idol and that he never sought for transfer of the patta in his name. Though he admits to have sent Ex.B.4 letter to the Assistant Commissioner, his claim that he was not aware of the appointment of fit person and he had been conducting poojas in the temple, cannot be believed. His evidence clearly establishes that there is no documentary evidence on the side of the second defendant to show that he continued to act as hereditary trustee after the fit person was appointed. Therefore, from the documentary and oral evidence, it is clear that the suit temple is a public temple and that the second plaintiff had been appointed as fit person and continuing as such and the suit property is the property of the plaintiff temple.

13. The second defendant is said to have sold the suit property to the first defendant as per Ex.A.6. The recitals in Ex.A.6 show that the first defendant should redeem Ex.B.1 mortgage and Ex.B.2 purakkadam executed in favour of the fourth defendant. Inasmuch as the second defendant was not the hereditary trustee of the temple, he had no right to execute Ex.A.6

sale deed in favour of the first defendant and therefore, the sale deed is clearly without authority, illegal and void. The decree in O.S.No.210 of 1980 against the fourth defendant and his sub-mortgagees will not bind the plaintiffs. Section 34(1) of the Tamil Nadu H.R. & C.E. Act, 1959 states that any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. It is seen that on the date of Ex.A.6 sale deed, there was a fit person functioning for the temple and that the second defendant had no authority to transfer any interest of the immovable property belonging to the temple. In the above circumstances, the finding of the Court below that the plaintiffs are entitled to recover possession from the defendants on payment of Rs.13,500/-, is justifiable.

14. We find that the learned Subordinate Judge has considered all the issues correctly and in accordance with the law. The judgement and decree in O.S.No.18 of 1982 are therefore, confirmed. The appeal is dismissed with costs.