

(2013) 04 MAD CK 0312

In the Madras High Court

Case No : C.M.A. No. 1442 of 2008 and M.P. No. 1 of 2008

Andavan

APPELLANT

Vs

Subramaniam

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Citation : (2013) 2 MadWN(Civil) 793

Hon'ble Judges : C.T. Selvam, J.

Bench : Single Bench

Advocate : N. Manokaran, Advocate, for the Appellant; P. Valliappan, Advocate, for the Respondent Nos. 1 to 3 & 5

Final Decision : Disposed Off

Judgement

C.T. Selvam, J.—This Civil Miscellaneous Appeal arises against the judgment or the Principal District Court, Salem, passed in A.S. No. 38 of 2007 on 22.10.2007.

2. The Defendants in O.A. No. 20 of 2005 are the Appellants herein and the Plaintiffs therein are the Respondents herein. The Plaintiffs moved O.A. No. 20 of 2005 before the Sub-Court, Sankari, seeking a declaration that the suit schedule temple was a public temple and a direction that the Defendants be restrained from interfering with the peaceful worship of deity, performing pooja, annual celebrations or pongal and kundam festival and other poojas therein. The Defendants, both in the Written Statement as also by way of I.A. No. 62 of 2006 sought rejection of the Plaint contending that the Suit was not maintainable and barred under Section 63 r/w Section 108 of the Tamil Nadu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "Act"). The Trial Court allowed such Application and under its judgment and decree dated 23.3.2006 rejected the Plaint. There against, the Plaintiffs moved A.S. No. 38 of 2007 before the Principal District Court, Salem. The Lower Appellate Court under judgment and decree dated 22.10.2007 set aside the finding of the Trial Court restored the Suit to file. Aggrieved by such finding, the Defendants have

preferred this Appeal.

3. Heard learned Counsel for the Appellants and learned Counsel for the Respondents 1 to 3 & 5.

4. By the order under challenge, the Lower Appellate Court found that while the stand of the Defendants was that the temple was a private temple, that of the Plaintiffs was that it was a public one. Holding that both parties were in agreement that the temple did not fall within the control and administration of the Hindu Religious and Charitable Endowments Department and that the rival contentions call for a decision on the nature and enjoyment of the rights there regards, that no reliefs concerning the Hindu Religious and Charitable Endowments Department had been sought and the other reliefs sought would be incidental to the finding on the nature and rights of enjoyment of the temple, the Lower Appellate Court held that issues raised in the Suit did not attract the bar under Section 106 of the Act.

5. The decision of this Court in Ammanpalayam Sree Mariamman Devasthanam Trust v. Arulmigu Sree Mariamman Thirukoil, Ammanpalayam and others, 2012 (2) CTC 531, informs that where the entire pleadings and the relief sought reveal that the dispute is only one between two private parties, neither of them could be driven to agitate the matter before the authorities mentioned in the Act. Touching upon Section 9 of Civil Procedure Code, it has been informed that a litigant having a grievance of a Civil nature has a right to institute a Suit in a Civil Court unless it is barred either expressly or impliedly. In such decision, it has also been explained that under Section 63 of the Act, the authorities mentioned therein can only decide as to the status of the office of trusteeship, viz., whether it is hereditary or not. The authority was not competent to go into the further question as to which of the competing Claimants is a hereditary trustee or whether both are joint hereditary trustees. Useful reference also stands made to judgment of Division Bench of this Court in Sri Venkataramaswamy Deity v. Vadugmmal, 1974 (1) MLJ 431. Paragraph No. 4 of such judgment reads as follows :

"4. The expression "except under, and in conformity with, the provisions of this Act" has been construed by the Supreme Court in V.L.N.S. Temple v. I. Pattabhiram, as meaning that Section 93 will apply only to matters for which provision has been made in the Act. It does not bar Suits under the general law which did not fall within the scope of any of the Sections of the Act."

6. The only ground raised in support of the rejection of the Suit was that the Suit was barred by operation of Section 63 of this Act. There is no dispute on the question of the temple not being under the control and administration of the Hindu Religious and Charitable Endowments Department. The issues raised in the Suit are not such as could be determined under Section 63 of the Act. Therefore there is no dispute on the question of the temple not being under the control and administration of the Hindu Religious and Charitable Endowments Department.

The issues raised in the Suit are not such as could be determined under Section 63 of the Act. Therefore, the order of the Lower Appellate Court is to be upheld. The present Appeal fails.

7. In the result, this Civil Miscellaneous Appeal stands dismissed. The judgment under challenge is confirmed. As the Suit is of the year 2005, this Court directs the Trial Court to dispose of the same as expeditiously as possible, preferably, within three months from the date of receipt of a copy of this judgment. No costs. Consequently, the connected Miscellaneous Petition is closed.