

(2008) 02 MAD CK 0173
In the Madras High Court
Case No : A.S. No. 372 of 1991

Arulmighu Kallalagar Thirukoil

APPELLANT

Vs

S.S. Rajaram and 9 others

RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109
Evidence Act, 1872 — Section 114(e)

Citation : (2008) 02 MAD CK 0173

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : R. Sridharan, for the Appellant;

Judgement

G. Rajasuria, J.—This appeal has been filed as against the judgment and decree dated 16.11.1990 in O.S.No.267 of 1989 on the file of the II Additional Subordinate Judge, Madurai. The parties, for convenience sake, are referred to hereunder according to their litigative status before the trial Court.

2. Heard the learned Counsel for the plaintiff. Despite printing the name of the respondents, no one appeared.

3. Niggard and bereft of details, the case of the plaintiff could be set out thus:

The suit property described in the schedule of the plaint an immovable property measuring 30 cents, is situated in Madurai. As per Ex.A.1, the copy of the fair Inam Register dated 21.03.1989, it is " found evidenced that the suit property was dedicated by the then Collector of the Madurai District to one Subbaraya Mudali, the father of Saravana Mudali for the support of a water pandal and Thirukkan to Kallaghar. The suit land was ordered to be registered under the head "Inam". The said Inam was called as water pandal maniam for providing water to the public during the festival of Lord Kallalagar visiting Madurai. On enquiry, the Inam Commissioner in the year 1985, treated one Saravana Mudali as a trustee in possession of Inam lands which included the suit property.

Subsequently, as per Act 30 of 1963, namely the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1963, all minor inams were abolished and the lands concerned came to be vested with the Government u/s 3 of the said Act. The Settlement Officer conducted enquiry and during such enquiry, patta was issued in the name of the plaintiff temple vide order in S.R.No.923/M.I.Act/MDU/66 dated 16.05.1967. The plaintiff temple has been become the absolute owner of the suit property. The defendants without any manner of right trespassed into the suit property and they are in occupation of it, which necessitated the plaintiff to file the suit for recovery of possession.

4. Per contra, denying and disputing the allegations/averments in the plaint, the second defendant filed the written statement; which was adopted by the other defendants; the gist and kernel of it, would run thus:

(i) The plaintiff is not the owner of the suit property and the averments/allegations in the plaint relating to the conferment of patta on the plaintiff by the Government are all false. The defendants and their predecessors in interest alone have been in exclusive possession from time immemorial. No notice was given by the authorities concerned under the Act 30 of 1963 to the defendants or their predecessors in interest. Even if there is any Ryotwari patta granted in favour of the plaintiff, yet preceding such conferment of patta, the defendants and their predecessors in interest had been in possession of the suit property and thereby they acquired absolute title over it. As such, the defendants have been occupying the suit property on their own right. The defendants also have objected before the authority relating to the conferment of such patta and that the proceedings are pending.

(ii) The suit property was formerly known as "Palmirah Thope" belonging to the family of Chetty Chockam Chettiar, and thereafter Venkatarayalu Chettiar and his family came in possession of it and this suit property, was one among the properties referred to in the partition deed dated 23.12.1869 and it is found stated therein that the suit property was purchased by them from one Saravana Mudaliar; the extent of it is mentioned as one measuring 4 1/2 kuzhies along with its boundaries which co-relates to the suit property. Under the said document, there was a direction to perform water pandal during the visit of Lord Kallalagar to Madurai during Chitra festival.

(iii) The defendants and their predecessors in interest have been in possession of it for over 120 years and it was not dedicated to the deity or to the plaintiff Devasthanam. A portion of the income derived from the suit property is utilised for the performance of Mandagapadi and water pandal and the present plaintiff, namely the Devasthanam itself has received money from the defendants and their predecessors in interest for the performance of Thirukkan at the suit property every year, without any demur. The defendants have been paying the property tax to the Corporation and it is their absolute property and the plaintiff temple is having no right. Accordingly, they prayed for the dismissal of the suit.

5. The trial Court framed the relevant issues.

6. During trial, P.W.1 was examined and Exs.A.1 to A.17 were marked on the side of the plaintiff and D.W.1 was examined and Exs.B.1 to B.205 were marked on the side of the defendants.

7. The trial Court, ultimately dismissed the suit.

8. Being aggrieved by and dissatisfied with, the judgment and decree of the trial Court, this appeal is focussed on the following grounds inter alia thus:

The judgment and decree of the trial Court is not in accordance with law. The trial Court failed to take into account that the Government under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1963, took away the suit property and various other lands with effect from 15.02.1965. The Government alone is deemed to be the owner of the suit property. The plaintiff temple is claiming right only in acknowledgement of the right of the Government over the suit property. As per Ex.A.1, the grant referred to in the plaint, one Saravana Mudaliar was acting as a trustee for performing or rendering service to the temple and Saravana Mudaliar and his predecessors were acting only as trustees. No document has been placed before the Court in support of the contention of the defendants. The trial Court ought to have noted that in Exs.A.1 and B.1, the said charity is found mentioned. The evidence of D.W.1 was not properly appreciated by the learned trial Judge, but simply dismissed the case of the plaintiff.

9. The points for consideration are:

(i) Whether the suit property is a charitable endowment and if so, whether the plaintiff has got right over the suit property?

(ii) Whether the defendants have acquired any right over the suit property?

(iii) Whether there is any infirmity in the judgment and decree of the trial Court?

The Point:

10. Are "sume" of facts absolutely necessary and germane for the disposal of this appeal would run thus:

Indubitably and indisputably, the plaintiff could not produce any document of title precisely showing as to how the charitable endowment was created other than producing Ex.A.1, the copy of the fair Inam extract. Similarly, the defendants also could not produce any document to prove that the suit property belongs to the defendants or their predecessors in interest absolutely.

11. The perusal of the pleadings would convey the idea that both sides would agree that the religious element is involved in this case, so to say, the suit property is meant for doing some religious Dharmam to the public at the time of Lord Kallalagar visiting Madurai.

12. On the one hand, the temple would claim absolute right over the suit property for the purpose of conducting water pandal and Thirukkan to Lord Kallalagar. Whereas the defendants would contend that their predecessors in interest treated the suit property as their exclusive property and they have been doing that Dharmam at the time of said festival. However, according to the defendants, the property is their absolute property.

13. The learned Counsel for the plaintiff correctly placing reliance on Ex.A.1, would develop his argument to the effect that even though document of title could not be produced other than Ex.A.1, yet it is an authenticative document having evidentiary value.

14. In this connection, the decision of this Court in Pachaiaammal v. Sarangapaniswami Devasthanam, Kumbakonam reported in 1986 (1) M.L.J 101 = (1986) 99 L.W.689. An excerpt from it, would run thus:

"10. The only other consideration is whether items 1 and 4 in Schedule B in Ex.A-1 are charities exclusively for the benefit of Hindus or for the benefit of general public irrespective of the religious faith to which they belong. In the first place, it has to be noticed that the maker is a staunch Hindu. He was very particular that even items 1 and 4 shall be performed on Panguni Uthiram day. For a festival connected with a Hindu temple it is reasonable to presume that all sections of Hindus would congregate. What therefore the maker meant by the expression in item 1 and in item 4 is to make sure that the benefit should go to all sections of Hindu society. It is significant to note that there are cases where there are Hindu charitable endowments to benefit a particular section of Hindus. If so I have no doubt that in item 1 and in item 4 was to emphasise that the charity is for the benefit of all sections of Hindus. Further I must add that the items should be read conjunctively but not disjunctively. Such a reading of items 1 to 4 in Schedule E will clearly point out that the maker was providing these charities exclusively for Hindus. I am, therefore, unable to agree with the learned Counsel for the appellants that the said two expressions in Ex.A.1 would mean to entire public irrespective of the religious faith to which they belong. In my view therefore, the charitable endowment created under Ex.A.1 is only a Hindu Charitable Endowment within the meaning of section 3 of the Tamil Nadu Act XXII of 1959."

As such, the aforesaid excerpt would clearly highlight that Ex.A.1 contemplates a Hindu Charitable Endowment only.

15. The learned Counsel for the plaintiff cited the following decisions:

(i) Periaswami Goundar v. Sundaresa Ayyar reported in 1965 M.L.J. 119. An excerpt from it, would run thus:

"In the latest decision of the Judicial Committee reported in Sankaranarayana Pillaiyan's case [(1947) 2 M.L.J 315 P.C. : ILR (1948) Mad. 585, 605-606 : L.R. 74 I.A.230.], it reiterated the same position when it said:

"The question arose in a recent case before this Board with reference to a Madras inam (See AIR 1948 25 (Privy Council) , where it was held that the title deeds and the entries in the Inam Register are evidence of the true intent and effect of the transaction and of the character of the right which was being recognised and continued. The entries in the Inam Register and the description of the inamdar therein were accepted as indications of the nature and quantum of the right and the interest created in the land."

This view of the Judicial Committee has been accepted and applied by the Madras High Court in many decisions when it was called upon to decide on the conflicting claims of a trustee and an archaka to the properties dealt with in the Inam Registers."

(ii) Gopal Naidu and Executive Officer Kallalagar Devasthanam Vs. The Special Tahsildar for Land Acquisition, Neighbourhood Project and Others, An excerpt from it, would run thus:

"The Court below failed to consider the contention urged on behalf of the Devasthanam that the grant being personal for the performance of Paricharakam service in the temple, it was inalienable and that the alienee does not get any title."

16. The learned Counsel for the plaintiff would argue that Ex.A.1 can never be taken as a personal grant" in favour of the said Subbaraya Mudaliar, father of Saravana Mudaliar for the reason that it was not granted for any personal service to be rendered by him or for him, to enjoy hereditarily. In support of such proposition, he relied on the decision in Jamia Masjid Mosque v. S.A.B. Sahib reported in AIR 1971 Madras 481. An excerpt from it, would run thus:

3. ...Normally when inams are granted they are generally classified as Dharmadayam or Devadayam or Brahmadayam or on similar expressions which indicate whether it is a grant to an institution or a personal grant. If it were a personal grant, as we are inclined to think Dharmadayam will not be the proper expression. Also it seems to us that if it is a personal grant, it would have been mentioned so in column 8, but instead the expression used in the entry is "kazi inam".

If it is a personal grant and it is hereditary under column 10 that word would have been used, but instead the entry is "permanent". It is also significant that the grantee has not been mentioned and in fact the entry shows that it was not known. The inam was confirmed free so long as the kazi service was rendered. This entry would have been different, in our view, if it was a personal grant burdened with service."

17. The learned Counsel for the plaintiff would draw the attention of this Court to the deposition of D.W.1 (D.2) during cross-examination and highlighted that D.W.1 (D.2) himself clearly and categorically, explicitly and pellucidly admitted that he had not produced any document in support of his contention that the said

Saravana Mudaliar sold the property during his life time; he was not aware as to whether there is any sale deed at all; he was not aware as under what capacity, the defendants are occupying the suit property. To the specific question put to the second defendant during cross-examination, he replied that the defendants' possession could be understood even as though they are enjoying a trust property. Hence, the defendants' contention itself is that the suit property may be a trust property. The same D.W.1 would also state that the defendants are doing Dharmam so to say, water pandal and Thirukkan, as such, they admit that the suit property is a trust property and it attracts the definition of Hindu Charitable Endowment.

18. The decision of the Honourable Apex Court in *Roman Catholic Mission v. State of Madras* reported in 1967 (1) M.L.J 119. An excerpt from it, would run thus:

"The evidence thus clearly show that the inam in the instant case was always considered as remuneration for archaka service of the temple and on its alienation is liable to be resumed (and was rightly resumed in the present case) u/s 44-B of the Madras Hindu Religious Endowments Act(II of 1927)."

As such, the said decision could be relied on to the limited extent highlighting that the charitable endowment could be recovered by the authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act.

19. The learned Counsel for the plaintiff would expatiate that such Ex A.1 came to be prepared after conducting due enquiry by the Public Official and in such a case, even the presumption u/s 114(e) of the Indian Evidence Act would be attracted. It is therefore crystal clear that the suit property was dedicated for performing water pandal and Thirukkan at the time of Kallalagar visiting Madurai once in a year.

20. The learned Counsel for the plaintiff would convincingly argue that there is nothing to indicate that Saravana Mudaliar was given with that property for his personal use and that he had to spend a part of the income for performing water pandal and Thirukkan; but on the other hand, he was only shown as a trustee to perform such Dharmam and for that purpose, he should be in-charge of the suit property- There is a chasm between the two types of the legal devices referred to supra. If Saravana Mudaliar was given with grant absolutely as his property attaching some responsibility to perform such Dharmam, the matter would have been different. But., on the other hand, the perusal of Ex.A.1 would clearly indicate that the suit property itself was dedicated for the purpose of performing the said. Dharmam and necessarily, that should be performed by human agency and hence Saravana Mudaliar was appointed as a trustee. I am of the considered opinion that the interpretation as suggested by the learned Counsel for the plaintiff based on Ex.A.1 is convincing and I am. having no reason to disagree with it.

21. The learned Counsel for the plaintiff also highlighted that the trial Court

misdirected itself in expecting that the plaintiff should have proved that anterior to Ex.A.1, the plaintiff had title to it. I am at a loss to understand as to how the trial Court could take such a view. The wrong ratiocination of the trial Court requires interference. Ex.A.1 demonstrates that it is the Collector who gave that property to Saravana Mudaliar and there is no question of the plaintiff proving preexisting right and it is not the case of the plaintiff that the plaintiff had pre-existing right by any grant in favour of it. Hence, the approach of the trial Court is not convincing.

22. There were lot of discussions before the trial Court on either side relating to patta issued and the finality of the patta proceedings undertaken under the Act 30 of 1963. By way of giving a quietus to all these controversies, the decision of the Full Bench of this Court, in Srinivasan and 6 others v. Sri Madhyarjuneswaraswami, Pattavaithalai, Thiruchirappalli District by its Executive Officer at Pattavaithalai Devas-thanam and 5 others reported in 1998 (II) M.L.] Page 722 could fruitfully be cited. An excerpt from it, would run thus:

"15. Further, the mere fact that the orders passed or decisions rendered under these Acts were given finality for the purposes of those Acts or that the issues, which they are obliged or required to be decided, when so decided are ordained to bind the parties to the proceedings or their privies and successors-in-interest applying the principles of resjudicata does not have the effect of ousting the jurisdiction of the Civil Court once and for all. It is by now well settled that even in cases where finality is accorded to any decision or order, there are certain well settled exceptions and proved the existence of such exceptional factors, the Civil Court is entitled to nullify any or all such decisions. Similarly, even in cases where the principles of res judicata are rendered applicable, the jurisdiction of the competent Civil Court to go into the question and find out whether the necessary ingredients to apply the principles of res judicata exist in a given case or not cannot be denied to the Civil Court and from the mere fact of according finality to the orders or decisions rendered under the Act or the application of the principles of res judicata a total or complete bar or ouster of the jurisdiction of the Civil Courts for all and any purpose cannot be automatically inferred or implied. Before a plea of res judicata can be given effect to, it must be sufficiently pleaded and established that the litigating parties must be the same, that the subject matter of the suit and the other proceedings also are identical, that the questions arising in the suit and the other proceedings were directly and substantially in issue and the same was finally decided and that too by an authority or court of competent jurisdiction.

16. On coming to know of the existence of an unreported decision of the Apex Court rendered by a Bench consisting of three of their Lordships, efforts were made to secure the same when the judgments in this case was under preparation and it was ascertained that in Civil Appeal No. 5141 of 1993 Sri-La-Sri Sivapradkasa Pandara Sannadme Avargal v. Smt. T. Parvathi Animal and others, (1998)2 L.W. 188, their Lordships of the Apex Court by a judgment dated

20.2.1996, not only approved the earlier decision of the Apex Court reported in *Yashomati Harsukhlal Lathia (Smt) and Others Vs. Saurashtra Kutch Stock Exchange and Others*, and set their seal of approval to the principles laid down therein, but had categorically held in unmistakable terms that the decision in (*Vatticharularu Village Panchayat v. Nori Venkatarama Deek-chithulu*, 1991 (2) S.C.C. (Supp.) 228) has no application to the provisions or in respect of claims arising under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. Their Lordships of the Apex Court in coming to such a conclusion, held as follows:

"The only question for decision relates to the jurisdiction of the Civil Court to entertain the suit which was filed by the respondent. The trial Court decreed the suit. The First appellate Court set aside the decree taking the view that the civil Court's jurisdiction was barred. In the second appeal filed by the present respondents, the High Court has restored the judgment and decree of the trial Court taking the view that the civil Court's jurisdiction was not barred.

The plea of exclusion of the Civil Court's jurisdiction to adjudicate the title of the parties in the present case is based on the provisions of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. This Court in a recent decision in *Yashomati Harsukhlal Lathia (Smt) and Others Vs. Saurashtra Kutch Stock Exchange and Others*, , has clearly held that the Civil Court's jurisdiction to adjudicate title of the parties, is not barred by virtue of the provisions of the said Act. This is a direct decision of this Court on the provisions of the Act with which we are concerned in the present case. Learned Counsel for the appellant placed reliance on the decision in *Vatticharularu Village Panchayat v. Nori Venkatarama Deekchithulu*, 1991 (2) S.C.C. (Supp.) 228. It is sufficient to observe that this decision relates to the provisions under a different Act of Andhra Pradesh. Moreover, in *R. Manicka Naicker*, this decision relating to the provisions in the Andhra Pradesh Act was considered and distinguished. In view of the direct decision of this Court in *R. Manicka Naicker*, there is no merit in this appeal. The appeal and the Contempt Petition are dismissed."

17. In view of the above unreported decision of the Supreme Court, the decision in *S. Vanathan Muthuraja Vs. Ramalingam alias Krishnamurthy Gurukkal and Others*, rendered without even referring to the earlier reported decision of the very same Court in *Yashomati Harsukhlal Lathia (Smt) and Others Vs. Saurashtra Kutch Stock Exchange and Others*, and the unreported decision of even a larger Bench directly arising under the Tamil Nadu Act 30 of 1963, cannot be said to lay down or declare the correct position of law or constitute a binding precedent.

18. For all the reasons stated above, we answer the question referred to the Full Bench in the negative by holding that the jurisdiction of the civil Court to entertain a suit for declaration of title and injunction is not barred by reason of the grant of patta under the provisions of Tamil Nadu Act 30 of 1963.

19. We direct the respective appeals to be posted before the learned single Judge

concerned for the disposal of the appeals on merits in the light of the answer given on the reference made to the Full Bench. The cost in the appeals shall abide by the result of the appeals on merits."

23. In view of the decision of Full Bench of this Court, the proceedings that might be pending before any other authority are not at all germane, as the civil Court has got the right to decide on the nature of the property and the rights of the parties concerned.

24. It is therefore clear that de hors the proceedings undertaken under the Act 30 of 1963, the Civil Court has got the right to go into all issues and both sides could refrain from harping on that issue any longer.

25. Suffice to say that the Civil Court has to independently decide the nature of the suit property and the rights of the parties. The defendants even though relied on Ex.B.1, they could not in any way highlight that the property was purchased from Saravana Mudaliar. My discussion supra would highlight that even Saravana Mudaliar had no right to transfer his interest as the suit property was dedicated for a common cause, and a Public Hindu Charitable Endowment, as already set out above was created.

26. Ex.B.202 is only a rent deed which emerged during the year 1964. However, the learned Counsel for the plaintiff would convincingly argue that in fact, Ex.B.202 boomerangs as against the defendants as it recognised the suit property as a trust property.

27. The defendants should have produced evidence to the effect that the defendants and their predecessors in interest had title over it. The defendants could not produce any title deed in their favour.

28. To the risk of repetition, without being tautologous, I would like to highlight that the defendants could not produce any evidence that the said Saravana Mudaliar transferred his interest in favour of the defendants.

29. At this juncture, I would like to refer to Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. It is well known that the current Section 109 of the Act came to occupy the statute book by virtue of Tamil Nadu Act 28 of 2003. A question might arise as to whether Section 109 of the Act, is having retrospective effect. I am of the considered opinion that this Court need not delve deep into those facts for the simple reason that even repealed Section 109 of the act is an embargo to plead prescription. As such, Section 109 of the Act which was repealed, is reproduced hereunder for ready reference:

"109. Property of religious institution not to vest under the law of limitation after the 30th September, 1951.- Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any religious institution which had not vested in such person or his predecessor-in-title before the 30th September 1951."

30. As such, even as per the repealed Section 109 of the CPC which was in vogue as well as at the time of adjudication of the lis by the trial Court, the defendants were not entitled to raise the plea of prescription and in such a case, the trial Court was not justified in assuming and presuming that the defendants by their long possession, established their title to it. Oblivious of these provisions, the trial Court decided to lis which requires interference by this Court.

31. Even though voluminous documents filed on the side of the defendants, yet they emerged subsequent to 1951. Had they produced any document anterior to 1951 and also established that anterior to 1951, they enjoyed the property over the statutory period of prescription, then the matter would have been different. But, here there is no iota or shred of evidence to prove that anterior to 1951, the defendants have been enjoying the property as their own property. I would like to refer to the decision of the Honourable Apex Court in P.T. Munichikkanna Reddy and Others Vs. Revamma and Others, could fruitfully be referred to. Certain excerpts from it would run thus:

"34. The law in this behalf has undergone a change. In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has undergone complete change insofar as the onus is concerned: once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession. The ingredients of adverse possession have succinctly been stated by this Court in S.M. Karim v. Bibi Sakina in the following terms: (AIR p. 1256, para 5)

"Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found." (See also M. Durai Vs. Madhu and Others,

35. The aforementioned principle has been reiterated by this Court in Saroop Singh v. Banto stating: (SCC p. 340, paras 29-30)

"29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See Vasantiben Prahladji Nayak and Others Vs. Somnath Muljibhai Nayak and Others,

30. "Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Md. Mohammad Ali (Dead) by Lrs. Vs. Sri Jagadish Kalita and Others,

36. In Mohammadbhai Kasambhai Sheikh v. Abdulla Kasambhai Sheikh this Court

held: (SCC p. 386, para 4)

"But as has been held in *Mahomedally Tyebally v. Safiabai* the heirs of Mohammedans (which the parties before us are) succeed to the estate in specific shares as tenants-in-common and a suit by an heir for his/her share was governed, as regards immovable property, by Article 144 of the Limitation Act, 1908. Article 144 of the Limitation Act, 1908 has been materially re-enacted as Article 65 of the Limitation Act, 1963 and provides that the suit for possession of immovable property or any interest therein based on title must be filed within a period of 12 years from the date when the possession of the defendant becomes adverse to the plaintiff. Therefore, unless the defendant raises the defence of adverse possession to a claim for a share by an heir to ancestral property, he cannot also raise an issue relating to the limitation of the plaintiff's claim."

37. The question has been considered at some length recently in *T. Anjanappa v. Somalingappa* wherein it was opined: (SCC p. 577, para 21 : 2007-3-L.W.429)

"21. The High Court has erred in holding that even if the defendants claim adverse possession, they do not have to prove who is the true owner and even if they had believed that the Government was the true owner and not the plaintiffs, the same was inconsequential. Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise. Above being the position the High Court's judgment is clearly unsustainable."

(See also *Des Raj and Others Vs. Bhagat Ram (Dead) By LRs. and Others, Govindammal Vs. R. Perumal Chettiar and Others*,

40. There is another aspect of the matter, which cannot be lost sight of. The right of property is now considered to be not only a constitutional or statutory right but also a human right.

41. Declaration of the Rights of Man and of the Citizen, 1789 enunciates right to property under Article 17:

"since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid".

42. Moreover, the Universal Declaration of Human Rights, 1948 under Sections 17(i) and 17(h) also recognises right to property:

"17. (i) Everyone has the right to own property alone as well as in association with others.

(ii) No one shall be arbitrarily deprived of his property."

32. The perusal of the aforesaid decision would clearly indicate and highlight that the plea of prescription should be proved by the party who pleads. But, here,

absolutely there is no iota or shred of evidence to establish that the defendants acquired the property anterior to 1951, or that the defendants acquired prescriptive title over it. Hence, in this view of the matter, the judgment and decree of the trial Court should be set aside.

33. The learned Counsel for the plaintiff would submit that the plaintiff being the temple is virtually the owner of the property and it should be given with possession. Regarding this prayer is concerned, I am having my own reservation in the sense that the plaintiff has not established by adducing evidence that it is the owner of the property. While agreeing with the plaintiff that a trust was created at the instance of the then Collector himself and that the property is treated as a trust property, still there is nothing to prove that the plaintiff has become the owner of it. I would like to extract herein the definition of "Charitable Endowment" as found set out u/s 6(5) thus:

"6(5).charitable endowments" means all property given or endowed for the benefit of, or used as of right by, the Hindu or the Jain community or any section thereof, for the support or maintenance of objects of utility to the said community or section, such as rest-houses, choultries, patasalas, schools and colleges, houses for feeding the poor and institutions for the advancement of education, medical relief and public health or other objects of a like nature; and includes the institution concerned;"

34. It is therefore crystal clear that the performance of water pandal and Thirukkan is for the satisfaction of the pilgrims and the public and the facility of the pilgrims and the public. No doubt, it is attached to Kallalagar festival. But, it is not performed in the temple premises or intended to be performed by the temple.

35. The pith and marrow, the nitty-gritty of the creation of the endowment is that the pilgrims and the public who are visiting at the time of festival, should be provided with some facilities and they should have the satisfaction of worshipping the Lord Kallalagar while the deity visits Madurai. It is one thing to dedicate a property to the temple for the purpose of performing the poojas to the deity regularly or performing some acts inside the temple to the deity by the temple authorities. But, here there is nothing to show that the property was dedicated to the deity or to the temple and in fact, it is dedicated for the welfare of the public and to their religious faith.

36. In such a case, I am of the considered opinion that the suit property which is a charitable endowment, within the meaning of provisions of the Tamil Nadu Hindu Religious and Charitable Endowments, the authorities under the Act should take of the suit property and accordingly, take steps to proceed as against the defendants who are nothing but trespassers as per the finding of this Court in this judgment. There are elaborate provisions enabling the authorities under the Act to proceed as against the trespassers of the Charitable Endowment and to regain the property from their clutches. I make it clear that the defendants are

not entitled to raise once again any plea that they raised in these proceedings. In the result, this appeal is disposed of with the finding that the Commissioner and/or the authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act, shall take steps as against the defendants who are mere trespassers in the suit property as the defendants have not acquired any right much less prescriptive title over the suit property.