

(1996) 03 MAD CK 0025
In the Madras High Court

K. Nagaraja Odayar

APPELLANT

Vs

The Commissioner, H.R. and C.E. (Administration)
Department and Another

RESPONDENT

Date of Decision : 21-03-1996

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 114,
70(2)

Citation : (1998) 1 LW 803 : (1996) 1 MLJ 635

Hon'ble Judges : Govardhan, J

Bench : Division Bench

Judgement

Govardhan, J.—Second plaintiff is the appellant. The plaintiff's case is as follows.

Dharmaraja temple known as Drowpathi Amman temple in Swamimalai was constructed and consecrated by the ancestors of the first plaintiff s

husband Narayanaswamy Odayar, from about twenty years ago, he was managing the affairs of the temple till his death in March, 1960. Prior to

him, his father Duraisamy Odayar and prior to Duraisamy Odayar, his father Krishnasamy Odayar was managing the affairs of the temple. On the

death of Narayanaswamy Odayar, the first plaintiff was recognised as hereditary Trustee as per order in O.A. No. 24 of 1976 dated 8.1. J977

passed by the Deputy Commissioner, H.R. & C.E. Narayanaswamy Odayar had left a will appointing the second plaintiff as the Trustee. The H.R.

& C.E. Board has accepted that the income from the property owned by the temple is only Rs. 210 per annum. But the Deputy Commissioner

passed an order stating the certain properties have not been shown as temple properties and directed the Trustee to pay contribution at Rs.

733.35 per annum. A demand for a sum of Rs. 4,358.95 was also made by the

defendants as arrears of contribution. The said order is liable to be set aside and hence the suit.

2. The defendants in their written statement contends briefly as follows:

Orders have been passed under Sections 92(1) and 92(2) of the Act. If the plaintiffs are aggrieved, their remedy is to prefer a revision to the

Government u/s 114 of the Act and they cannot file a suit u/s 70 of the Act. The suit is not maintainable. The temple owns 15 acres and 94 cents of

wet lands and 2 acres and 17 cents of dry lands in Velukudi Village and 25 cents of dry lands in Swamimalai Village. The hereditary trustee who

has remitted the contribution and audit fee omitted the actual extent of land owned and therefore a revised claim notice was issued. The Trustee

filed objections, which was overruled. The properties owned by the temple is 15.94 acres and 60 cents. The suit is therefore liable to be

dismissed.

3. On the above pleadings, the trial court after trial has held that a suit u/s 70(2) against the order passed by the Commissioner u/s 94(2) is not

maintainable and dismissed the suit. Aggrieved over the same, the plaintiff has come forward with this appeal.

4. The plaintiff has filed the suit for setting aside the order dated 11.10.1980 passed by the Commissioner, Hindu Religious and Charitable

Endowment Board, directing the plaintiff trustee of Dharmaraja temple alias Drowpathi Amman temple in Swamimalai to pay a contribution at Rs.

733.35 per annum and arrears of a sum of Rs. 4,358.95 contending that the said order is beyond the powers of the Commissioner as contribution

was levied on income derived by the appellant from his personal properties and not the properties of the temple in his capacity as the hereditary

trustee of the temple. The learned Subordinate Judge has held that since the order passed under Ex. A-2 is one passed u/s 94(2) of the Hindu

Religious and Charitable Endowments Act (hereinafter referred to as "the Act") the plaintiff is not entitled to file the suit and such a suit is not even

maintainable. The learned Subordinate Judge has held that as against the order passed u/s 94(2) of the Act, it cannot be said that Section 70(2) of

the Act envisages a suit against the said order. Before coming to the conclusion, the learned Subordinate Judge has observed that Section 70(2) of

the Act enables a person to file a suit if he is aggrieved by an order passed by

the Commissioner u/s 69(1) and (2) of the Act, and an order passed under Sections 63, 64 or Section 67 of the Act. The learned Counsel appearing for the plaintiff would argue that the finding of the learned Sub Judge, that no suit or other legal proceedings in respect of the administration or management of the religious institution shall be instituted in any court is based u/s 108 of the Act; but, it is erroneous, since Section 108 of the Act applies only for the disputes for determining the matters for which provision is made under the Act and Section 92 of the Act provides for payment of annual contribution to the Government and yet, it cannot be stated that the suit is barred u/s 108. According to the learned Counsel, the effect of Section 108 has not been considered by the trial court. According to the learned Advocate for the Government, since the order passed by the Commissioner is one u/s 92, if at all the plaintiff is aggrieved over the same, the remedy open to the plaintiff is to apply to the Government for cancelling the same. We have therefore to see what is the remedy for the plaintiff, if the plaintiff is aggrieved over the order passed by the Commissioner.

5. Before proceeding to decide the same, it is expedient to recollect the proposition of law laid down by the Supreme Court as well as our High

Court with regard to the bar of suits regarding the disputes on the order passed by the Commissioner. In the decision reported in Sri Vedagiri

Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy, the Apex Court has held as follows:

(ii) Section 93 is not a bar to the maintainability of the suit. (292A) The section only imposes a restriction on suits or other legal proceedings in

respect of matters for which a provision has been made in the Act. The legislative history of the section shows that even in regard to suits or other

legal proceedings relating to administration or management of religious institutions, restriction is imposed only in respect of matters for which a

provision is made in the Act. It does not bar suits under the general law which do not fall within the scope of any of the sections of the Act.

In the decision reported in Sri Vallaba Ganesar Devasthanam and Others Vs. A. Anandavadivelu Mudaliar and Others, , it has been held as

follows:

The principle on which the jurisdiction of the civil court is excluded u/s 108 of

Tamil Nadu Act XXII of 1959 are now well settled. If the dispute raised in the suit relates to the administration or management of a religious institution or any other matter for 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.

In the above decision, the learned Judge has referred to a decision of the Supreme Court in Sri Vedagiri Lakshmi Narasimha Swami Temple Vs.

Induru Pattabhirami Reddy, . It is held in the above decision as follows:

Under Section 9 of the Code of Civil Procedure, the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their

cognizance is either expressly or impliedly barred. It is a well-settled principle that a party seeking to oust jurisdiction of an ordinary civil court shall

establish the right to do so. Section 93 of the Act does not impose a total bar on the maintainability of a suit in a civil court. It states that a suit of

the nature mentioned therein can be instituted only in the conformity with the provisions of the Act, that is to say, a suit or other legal proceeding in

respect of matters not covered by the section can be instituted in the ordinary way. It therefore imposes certain statutory restrictions on suits or

other legal proceedings relating to matters mentioned therein. Now, what are those matters? They are: (1) administration or management of

religious institutions; and (2) any other matter or dispute for determining or deciding which provision is made in the Act.

6. The order passed by the Commissioner is one u/s 92. According to the Advocate for the Government, the remedy open to the plaintiff is to

prefer a revision to the Government u/s 114 of the Act which provides for the powers of Government to call for records and pass orders. As per

Clause (3) of the Act, no application to the Government for the exercise of their power under the above section shall be made in respect of any

matter unless an application had already been made in respect of the same matter to the Commissioner u/s 21 and had been disposed of by him.

Section 21 in its turn, gives powers to the Government to call for records and pass orders. In the present case the impugned order has been

passed by the Commissioner himself. Therefore the question of applying to the Commissioner for setting aside the said order does not arise. The

plaintiff therefore cannot file any application u/s 21 to the Commissioner. When the plaintiff cannot file an application before the commissioner, the

plaintiff cannot file an application to the Government also, since Section 114(3) of the Act is mandatory in that, no application to the Government

for exercise of their power under the said section shall be made in respect of any matter, unless an application had already been made in respect of

the same matter to the Commissioner u/s 21 and had been disposed of by him. When we consider the provisions of Section 92, Section 114 and

Section 21, we are led to the inference that the plaintiff cannot seek any remedy if the plaintiff is aggrieved over the order passed by the

Commissioner fixing contribution. It is at this stage, the Rulings reported in Sri Vallaba Ganesar Devasthanam and Others Vs. A. Anandavadivelu

Mudaliar and Others, and the Rulings reported in Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy, , assumes

importance. They go to show that the bar u/s 108 of the Act, cannot be considered as an absolute one preventing or prohibiting the plaintiff from

filing a suit. Therefore, the judgment passed by the learned Sub-Judge dismissing the suit on the ground that u/s 70 (2) of the Act, the plaintiff is not

entitled to file the suit cannot be sustained.

7. Having found that the suit is maintainable, let us see whether the prayer of the plaintiff for setting aside the order of the Commissioner can be

ordered. The temple was contributing a contribution of Rs. 4.20 p. per annum on the basis that the income from the property of the temple is Rs.

210 per annum. In the order, the Commissioner has revised the same and fixed at Rs. 733.35 on the ground that even though the plaintiff who is

the hereditary trustee was submitting accounts and making contributions, the plaintiff has suppressed the rest of the properties endowed in favour

of the temple and the income from the rest of the properties which are more than 16 acres in extent. Whether the conclusion of the Commissioner

that the temple owned 6 acres and the income therefrom has been suppressed by the plaintiff is therefore to be considered.

8. The plaintiff s predecessor Narayanasami Udayar had executed a will in respect of his properties on 6.3.1960 and in that will, he has provided

that the 16 Mas. 62 kuzhis of nanja land in Layam village and 2 Mas. and 74 kuzhis of punja land in the same village has to be enjoyed by

Meenakshi Ammal during her life time and thereafter, the income from those properties are to be performed by his brother-in-law Nagaraja

Udayar as the sole trustee. In the same will, he has also stated that even though he has provided for performance of the pooja and Neivedhyam in

the suit temple, from out of the income from the properties by Nagaraja Udayar, Nagaraja Udayar should get the properties and enjoy the same

absolutely. The endowment made under the will Ex. A-44 is thus very clear, in that the temple is entitled to the pooja and Neivedhyam being

performed from out of the income from the properties which are given to Nagaraja Udayar absolutely and Nagaraja Udayar should perform the

above endowment as the sole trustee of the suit temple. In order to hold that the endowment is in favour of the temple, it must be specific that the

properties described in the same are endowed in favour of the temple. But the will under Ex. A-44 is not specific in stating that the properties from

out of the income from which the pooja and Neivedhyam is to be done in the suit temple, is endowed absolutely in favour of the temple. As per

Section 6(19) of the Act, only if the property is endowed for the performance of any specific service or charity in a math or temple, or for the

performance of any other religious charity, it can be termed as specific endowment. In the present case, the will under Ex. A-44 does not show

that the properties were endowed in favour of the temple for the performance of certain services by Nagaraja Udayar. The properties have been

bequeathed in favour of Nagaraja Udayar who was appointed as the sole trustee of the temple and a direction has been given to Nagaraja Udayar

to perform the endowments mentioned in the said will, from out of the income from the properties. The impugned order of the Commissioner has

been passed under the impression that the properties have been endowed in favour of the temple and the plaintiff has suppressed the income from

the properties and was making a very meagre contribution of Rs. 4 and odd and he has to contribute more than Rs. 880 for fasli 1387. In this

connection, I also wish to refer to the finding of the trial court wherein the trial court has come to the conclusion, after analysing the evidence of

D.W.I the Inspector and the documents under Exs. .B-2 to B-5, that D.W.I had not conducted the enquiry properly with all seriousness and his

report cannot be said that the report is based on correct facts. The trial court has also observed that consequently, it can be said that the impugned

order Ex. A-2 based on Exs. B-3 and B-4 reports consequently suffer with the same defect. This order of the Commissioner naturally would

cause grievance to the plaintiff and the plaintiff's remedy to set right the same by filing a suit cannot be denied on the ground that the plaintiff has to

seek revision of the order by the Government which is not possible as per Section 21 and 114 of the Act, considering all these aspects, I am of

opinion that the judgment and decree of the trial court cannot be sustained and are liable to be set aside and the plaintiff is entitled to a decree.

9. In the result, the appeal is allowed setting aside the judgment and decree of the trial court decreeing the suit as prayed for with costs throughout.