

(2006) 09 MAD CK 0282
In the Madras High Court
Case No : S.A. No. 420 of 1995

Kuzhithurai Peruntheru Vellalar Samudayam Sreerooba
Narayanapillayar Devasthanam and 6 others

APPELLANT

Vs

The Commissioner, H.R and C.E (Admn) Department,
Madras-600006 and The Inspector, H.R. and C.E. (Admn)
Department, Kuzhithurai Range, Kanyakumari District

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 26

Citation : (2006) 09 MAD CK 0282

Hon'ble Judges : J.A.K. Sampathkumar, J

Bench : Single Bench

**Advocate : Anandavalli for P. Ananthakrishna Nair, for the Appellant;
Vijayakumar, AGP (CS) for R1 and R2, for the Respondent**

Final Decision : Dismissed

Judgement

J.A.K. Sampathkumar, J.—This second appeal is filed against the reversal finding of the judgment dated 23.08.1994 in A.S. No. 59 of 1993 on the file of the Sub Court, Kuzhithurai in and by which the learned Sub Judge allowed the appeal reversing the judgment dated 20.04.1991 in O.S. No. 462 of 1985 on the file of the Additional District Munsif Court, Kuzhithurai, setting aside the decree and dismissed the suit. For convenience, the parties are referred as arrayed in the suit.

The brief facts of the case are as follows:

2. Sreerooba Narayanapillayar temple is situated at Kuzhithurai Peruntheru, Kurumathur Taluk, Vilavancode Village, Amman Temple is situated north and south of this temple. This temple belongs to exclusively Hindu Vellalar Community residing at Peruntheru, Kuzhithurai. The said temple was founded and administered by this community as per the agreement of the year 1923. This

temple is being managed and administered by the said community. Later on, the agreement was in oral and subsequent to 07.02.1957, it was reduced into writing. Therefore, the said temple is a religious denomination temple as it has a distinctive characteristics and qualities recognised by the said Vellalar community. The said community people have rest house and the peculiar customs in the day to day life. The properties of the temple were dedicated by this community people only. No other people have dedicated any property to the temple. The temple is being managed only by the persons appointed by the said community. If death is occurred in anyone of the family of the said community, the temple is being closed. The temple will be opened after the completion of the rites which are followed according to their custom. Similarly, if marriage or other auspicious function is celebrated, the family members used to donate to the temple. Apart from that, they performed three days Kodaivizha of the temple. During that festival, chief dancer of the said community performed "Komarathadi" dance. During that time, they forget all their feelings and anyone asked about their future life, the chief dancer replied for the same in respect of the happenings of good or bad in the future life. Apart from that, they performed Chithirai visu, Avani Sirappu and Aippasi visu, according to their customs.

3. During the year 1957, according to the desire of the said community, Kolappa Pillai. Chinnu Pillai and Parameswaran Pillai were elected as President, Treasurer and Secretary respectively. Thereafter, Mahadevan Pillai, P.M. Neelakanda Pillai, S. Muthiah Pillai, Kuttralam Pillai and K.M. Subbiah Pillai became trustees.

4. During the year 1971, since one of the trustees namely, K.M. Subbiah Pillai became the writer of a daily paper, the first defendant with bad intention took possession of the temple administration and administered the temple up to 1984 by appointing the trustees belonged to the said community. After the death of K.M. Subbiah Pillai in the year 1984, his wife and brothers became the trustees of the said temple appointed by the first defendant. The first defendant declared the said temple as a public temple and by administering the same by appointing the trustees. On 21.07.1985 according to the minutes of the first defendant, the defendants 2 to 4 were appointed as trustees of the temple whereas one trustee belongs to Pandara Community and another belongs to one Harijan Community. Such appointment is illegal and without jurisdiction. The first defendant has no jurisdiction to appoint the trustees as the temple is a denomination temple. Such appointment is against the article 26 of the Indian Constitution. Denomination temple is protected under Article 26 of the Indian Constitution. Such appointment is void-ab-initio. Hence, the suit.

5. The written statement of the first defendant adopted by the fifth defendant reads as follows:

6. The contention of the plaintiff that the suit temple a denomination temple is not true. The suit property stands in the name of temple but patta also stands in the name of the temple. It is not correct to say that the temple was being administered only by the trustees appointed by the said community people. As

per order dated 27.12.1965, u/s 49 of the Tamil Nadu Act 22/1959, K.M. Subbiah Pillai, P. Pitchandi Pillai and V. Krishnan Pillai were appointed as trustees of the temple and they were administered the same. This appointment of the said trustees by the first defendant was in pursuance of the representation dated 22.06.1964 made by the public including the third and fourth plaintiffs. The Vellalar Community is a section of Hindu religion. Therefore, the vellalar community cannot ask for religious denomination in respect of the said temple. As per section 6 (20) of the Tamil Nadu Act 22 of 1959, the suit temple is a public temple. It is under the control of the first defendant from 22.01.1966 onwards.

7. The fifth defendant is appointed as a fit person for the temple. In fact, the entire documents pertained to the temple have been obtained from the wife of K.M. Subbiah Pillai and handed over to the fifth defendant, the fit person to administer the temple. There is no special feature in the temple festival. The defendants 2 to 4 were not the hereditary trustees. They have been appointed only by the first defendant as such the plaintiffs have no *locus standi* to question the rights of the defendants 2 to 4. Suit notice u/s 80 C.P.C. was not given before filing the suit. Therefore, the suit is liable to be dismissed in limine as the mandatory direction as per the Apex Court decision not followed. Therefore, the suit is liable to be dismissed.

8. Third plaintiff, one Kolappa Pillai was examined as P.W.1. One, Neelakanda Pillai was examined as P.W.2. Exs.A.1 to A.29 were marked on the side of the plaintiffs. One, Selvanayagam was examined as D.W.1. Exs.B.1 to B.31 were marked on the side of the defendants.

9. The lower Court after analysing the evidence in depth, found that the plaintiffs are entitled to suit claim and accordingly, decreed the suit.

10. Against which the first defendant filed appeal in A.S. No. 59 of 1993 and the same was allowed on 23.08.1994, setting aside the judgment of the Additional District Munsif Court, Kuzhithurai in O.S. No. 462 of 1985, dated 30.04.1991 and ultimately dismissed the suit.

11. The present second appeal is filed by the plaintiffs.

12. Heard Ms. Anandavalli for P. Ananthakrishna Nair, learned Counsel for the appellants and Mr. Vijayakumar, AGP(CS), learned Counsel for the respondents 1 and 2.

13. This second appeal is admitted on the following substantial questions of law:

i) Whether the lower appellate Court has gone wrong in finding that the suit was not maintainable for want of notice u/s 80 of C.P.C. in spite of being dispensed with by the Court?

14. After hearing the rival contentions, the points for consideration in this second appeal are as follows:

- (a) Whether the suit temple is founded and administered by the members of the Vellalar community of Kuzhithurai and denominational in character?
- (b) Whether the appointment of trustees namely, D2 to D4 and fit person D5 for the said temple appointed by the first defendant is without jurisdiction, illegal and inoperative?
- (c) Whether the order of the first defendant in appointing D2 to D4 as trustees and D5 as fit person, is in order?
- (d) Whether the defendant has to be restrained from interfering with the affairs of the suit temples by the plaintiffs?
- (e) Whether the suit is liable to be dismissed since, the plaintiffs have not issued the suit notice u/s 80 C.P.C. before filing the suit?

Points: (a) to (e)

15. First of all, we have to find out the character of the temple to find out whether the institution is a denominational one or not. In AIR 1952, Madras 613, the scope of Article 26 of the Constitution came to be considered. After referring to the dictionary meaning of the word "denomination" as "sect writ large", a Bench of this Court pointed out thus:

Even taking it in the sense as only a "sect writ large" the division of the members of the Hindu religion based upon a system of philosophy which is adopted by a group of members may be treated as a denomination or sect and any section of that denomination, and a division made either on territorial or sectional basis, may be treated as a section thereof. The contention that the denomination contemplated by Article 26 is not identical with a religious sect or members of a religious persuasion but it must be a closed body like a Corporation cannot be accepted. It is rather difficult to dissociate the religious affairs of an institution from the property or its secular affairs. The secular affairs are only directed for the purpose of better management of the religious affairs for which alone the institution exists. They are inextricably mixed up.

Article 26 is concerned with religious institutions and the consideration of the question whether there is any beneficial ownership in the properties of the institution by the members of the denominational is irrelevant as it is solely concerned with the institution which exists for spiritual and not for material benefit.

16. The learned Counsel for the appellant also relied on the decision reported in *A. Palaniandi Pillai v. Commissioner, H.R. and C.E., Madras* (Vol. 93 L.N. 12) and *Commissioner, H.R. and C.E. Madras and others v. E.K. Sethuramalingam Pillai* (1989 [2] L.W. 282) and contended that the suit temple is a denomination in nature and as such the plaintiffs are entitled to suit claim.

17. The learned Government Advocate contended that vellalar community is not a religious denomination and it is only a caste of the Hindu religion and that this

community has nothing to do with a special character of the suit temple, which is a public temple as defined u/s 6(20) of Tamil Nadu H.R. and C.E. Act, 1969 and as such, the contention of the learned Counsel for the appellant is bereft of merit. On facts, it is proved that the suit properties are dedicated to the temple. There is nothing on record to show that the said Vellalar Samuthayam of Peruntheru of Kuzhithurai have endowed the suit property to the temple. It is worthy to note that as per Ex.B.1, dated 22.06.1964, on the petition given by the public including the plaintiffs 3 and 4, the first defendant has taken over the suit temple and administering the same by appointing trustees for administration after giving public notice.

18. If the suit temple is being administered only by the Vellalar community people, there is no necessity for the public to present the petition to the first defendant to take over the administration of the temple due to some mismanagement. In that memorandum, the plaintiffs 3 and 4 have also signed.

19. Even according to the plaintiff, the public have no right at all to interfere with the affairs of the denomination of the temple. If that being the case, the said community ought to have objected the presentation of the application filed by the public and resisted the first defendant from taking over the administration of the temple by appointing trustees between 1964 till now. If the contention of the plaintiffs is really true that the temple is a denomination of temple owned by Vallalar community, there was no necessity for the plaintiffs 3 and 4 being the member of the said community, in joining hands with the public and requested the first defendant to take over the administration of the suit temple.

20. Having been a party to the suit memorandum dated 22.06.1964 along with the general public by the plaintiffs 3 and 4, now they are estopped from contending that the first defendant erroneously taken over the administration of the denomination temple of the Vellalar Community, violative to the fundamental rights of the said community under Article 26 of the Indian Constitution. It is worthy to note that the first defendant is appointing, not only the members of the Vellalar community, but also other community people, as trustees of the suit temple. The first defendant is doing so, ever since 1964 which was not objected by the defendants hitherto. It is for the first time, the plaintiff is objecting and resisting the appointment of D2 to D5 as temple administrators as some of them not belonged to Vellalar Community. Documents filed on the side of the defendant would show that the trustees were appointed after giving notice to the public. Only after getting objection if any, the trustees were appointed. In between 1964 till now, apart from the defendants 2 to 5, others, namely K.M. Subbiah Pillai, P. Pitchandi Pillai and V. Krishnan Pillai, Muthu Nadar, A.V. Ramanujam, Dharmarajan, Madhava Pillai, Kollappa Pillai, Selva Nayagam, Smt. Leela Bai, etc., were appointed by the first defendant as temple administrators. The documents would further reveal that outgoing temple administrators used to hand over the charge to the incoming temple administrators. For more than 35 years, the temple is being administered by the trustees appointed by the first

defendant after giving public notice. The documents filed in this case would show that the first defendant has not taken over the administration of the suit temple of his own accord or by virtue of any Act, but under the compelling circumstances only, at the instance of the third and fourth plaintiffs along with the general public, the temple is being administered by the first defendant by appointing trustees.

21. At this juncture, the learned Counsel for the appellant brought to my notice the decision rendered in *Nallasivam Pillai v. The Commissioner*, H.R. and C.E., Madras reported in (2005) 3 M.L.J. 518=2006-1-L.W. 459 and contended that merely because the Government has appointed the trustees for the temple, they cannot be the sole basis to determine its character. But, the decision rendered in the said ruling is not applicable to the facts on hand in view of the fact that, only at the instance of the general public including representation of the plaintiffs 3 and 4, the first defendant had taken over the administration of the suit temple and as such the suit temple cannot be determined as a denomination temple. Further, the first defendant has not taken over the administration by any special enactment. So much so, the first defendant has not taken over the administration by wrongful assumption. Worshipping of Vinayagar is common to all members of the Hindu religion.

22. It is further stated that the chief dancer while performing "komarathadi" dance, during Kodai festival forget all feelings and any one asked about their future life, the chief dancer replied for the same in respect of the happenings of good or bad in their future life. This proposition is not common to the chief dancer of Vellalar Community alone. In other community also, while performing the pooja according to their customary rites, the chief persons performed the similar features. It is further stated that if death is occurred in anyone of the family of the said community, the temple is being closed till the completion of the customary rites. It is also alleged that during marriages, puberty ceremonies of the girls, importing education for children, etc., the community members donate to the temple according to their capacity and the temple authorities are not collecting in a similar way from other communities. These are the special feature and distinct character being followed in the temple administrations by Vellalar community. These special feature and distinct character would have existed before 1964. After 1964, the first defendant is administering the suit temple through the trustees appointed by them. If that being the case, the special features referred by the plaintiff in the complaint would not have been followed for more than 35 years. It implies that even if characteristic of denomination temple exists as per plaintiffs before 1964, it lost its character by efflux of time due to their own conduct by allowing the first defendant to administer the suit temple for more than 35 years. Having allowed the first defendant to administer the temple for more than 35 years, it is not opened to the plaintiffs now to contend that the first defendant is administering the temple against the interest of the Vellalar Community which is a violative to the Article 26 of the Indian Constitution. So, the said ruling is not in any way helpful to the plaintiffs.

23. The learned Counsel for the appellants relied on the decision reported in *Ramasamy and others v. Appavu and others* reported in ILR 12 Mad 9 and contended that in the earlier proceeding, a finding has been rendered declaring the suit temple as denomination temple and as such the said finding is binding of the defendants also. It is admitted by the learned Counsel for the appellants that the defendants are not the parties to the said proceedings. The said document is marked as Ex.A.5. On a perusal of the document, I find that it is a suit between the members of the said community. The said order was passed on 20.06.1969. The said application was filed in the year 1964. Only during the said proceedings, since there was a mismanagement, at the instance of public including the plaintiffs 3 and 4, the temple administration was taken over by the first defendant, Therefore, the finding rendered in the said case will not bind the defendant herein. Therefore, the said ruling is not applicable to the facts on hand.

24. The learned Counsel for the appellants relied on the decision in *Aaralvaimozhi Sri Nainar Kulasekara Vinayagar Vellala Samudaya Temple, Vadakoot v. Palavesam Pillai* reported in (2003) 3 M.L.J. 1 and contended that the evidence on record shows that the said temple is a religious denomination of the plaintiffs community and as such the first defendant is not entitled to interfere with the management and administration of the suit temple. But, the facts on hand is not similar to the facts concerned in the said case. Here is a case where the first defendant has not taken over the administration of the suit temple of its own accord nor the first defendant has taken the administration of the suit temple by virtue of any enactment but, due to mismanagement, on the representation of the plaintiffs 3 and 4 along with the general public, the said suit temple is being taken over and administered by the first defendant for the past 35 years. So, I am of the view that the contention of the learned counsel for the appellants is bereft of merit.

25. The learned Government Advocate contended that pre-suit notice was not given by the plaintiffs u/s 80 C.P.C. and that no urgency was shown and therefore, the present suit is barred u/s 80 C.P.C.

26. The learned Counsel for the appellants relied on the decision in *Commissioner for H.R. and C.E. v. Kanniappa Naicker* reported in 1989 (2) L.W. 238 and contended that the contention of the learned Government Advocate is bereft of any merit in view of the fact that the suit was entertained by the Courts below after giving exemption from giving notice u/s 80 C.P.C. to the first defendant. It is proved that the courts below entertained die suit, after giving exemption to the plaintiffs in giving notice u/s 80 C.P.C. to the first defendant. So, I am of the considered view that the contention of the learned Government Advocate is bereft of merit.

27. From the narration of the events, I am satisfied that the suit temple is not a denomination temple as contended by the appellants. The lower appellate Court has also taken note of these facts and rightly held that the plaintiffs are not entitled to suit claim and accordingly dismissed the suit. I do not find any error

or illegality in the finding of the lower appellate Court and the finding of the lower appellate Court is in order does not require any interference. Hence, this second appeal is dismissed.