(2009) 06 MAD CK 0100

In the Madras High Court

Case No : A.S. No. 400 of 1998

M. Sankarasubramania Pillai and S. Ganesan	APPELLANT
Vs	
The Commissioner, HR and CE (Admn.)	RESPONDENT

Date of Decision : 11-06-2009

Acts Referred:
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63, 70

Citation : (2009) 6 MLJ 812

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : T.R. Rajaraman, for the Appellant; K.M. Vijayakumar, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—The plaintiff herein is the appellant. The suit has been filed u/s 70 of the Tamil Nadu Hindu Religious and Charitable

Endowments Act, 1959, seeking to set aside the order passed by the respondent in Appeal No. 7/1986, dated 14.02.1989.

2. The case of the appellant is as follows:

The Chiriya Arachalai Vinayagar Temple is situated in Neeragara Ambalathaduvar Mutt, Theroor Village, Agasteeswaram Taluk, Kanyakumari

District. The said Mutt has been established by Neeragara Ambalathaduvar. The said Ambalathaduvar is the ancestor of the plaintiff. The temple

has been built in the patta land. After passing several hands, the administration of the temple has come in the hands of the appellant. According to

the appellant, in view of the interference made by the departmental authorities, he was constrained to file an application u/s 63(b) of the Tamil

Nadu Hindu Religious Charitable and Endowments Act, 1959(hereinafter called as the ""Act""), seeking to declare himself as a hereditory trustee of

the temple. It is his further case that while making an application he reserved his right to file appropriate application u/s 63(a) of the ""Act"" to

declare the temple as a private temple. Hence, thereafter, he has filed this application. The authorities concerned have rejected the application u/s

63(a) and 69(1) of the ""Act"" and therefore, being aggrieved against the same, the suit has been filed u/s 70 of the ""Act"".

3. Pending the appeal, the plaintiff/appellant died and his son has been brought on record.

4. The case of the respondent/defendant is that it is not true that the appellant is the descendent of Neeragara Ambalathaduvar and there is no

evidence to prove the same. Similarly, it is not factually correct that the temple has been constructed by the above said person. According to the

defendant, patta for the land stands in the name of the deity and in view of the proceedings of the Assessment Settlement Officer, by which grant

has been given to the plaintiff and other persons attached to him to feed 200 persons, the temple in question is nothing but a public temple. It is

further contended that the general public has been using the temple and offering prayers without any hindrance and in any case, the appellant is

estopped from pleading and contending otherwise, after getting an order u/s 63(b) of the ""Act"" thereby declaring him as a heriditory trustee.

Therefore, it is contended that once the appellant himself got an order of hereditory trustee treating the temple in question as a public temple, he

was estopped from pleading otherwise. The trial court framed the following issues:

1. Whether the temple is a private temple or not?

2. Whether the temple has been constructed in a patta land?

3. Whether the lands belonging to the temple belongs to Neeragara Ambalathaduvar Mutt?

4. Whether the order passed by the respondent dated 14.02.1989 is liable to be set aside?

5. If not, what other relief the plaintiff is entitled to?

5. The trial court after taking into consideration of Ex.A1 to A8 relied upon by the plaintiff and Ex.B1 to Ex.B5 relied upon by the defendant as

well as the Commissioner''s Report, has dismissed the suit. Being aggrieved against the same, the plaintiff has preferred the present appeal.

6. It has been contended by the learned Counsel for the appellant that the trial court has failed to give a finding that the factors required to be

fulfilled for a public temple has not been established. He further contended that inasmuch as the rights of the plaintiff was reserved while making an

application u/s 63(b) of the ""Act"", the mere fact that he has been declared as a hereditory trustee would not prevent him from seeking the relief u/s

63(a) of the ""Act"". It is further contended that in view of the evidence produced by the plaintiff to show that he is in possession and managing the

temple, the suit ought to have been decreed.

7. Per contra, the learned Additional Government Pleader appearing for the respondent has contended that there is no evidence to show that the

temple has been constructed by Neeragara Ambalathaduvar, that he is the descendent of the above said person and in view of the fact that the

patta stands in the name of the deity, the appeal is liable to be dismissed. 8. The learned Additional Government Pleader further contended that in

view of the order passed by the Assessment Settlement Officer and the factual finding, the appeal deserves to be dismissed.

9. I have considered the arguments of the learned Counsel for the appellant as well as the respondent.

10. In so far as the issue regarding the maintainability of the application u/s 63(a) of the ""Act"" is concerned, the learned Counsel for the appellant

contended that the factum of the appellant of hereditory trustee u/s 63(b) of the ""Act"" will not stand in the way of the subsequent application u/s

63(a) of the ""Act"". The learned Counsel for the appellant has also relied upon a judgement of the Division Bench of Principal Bench in 2005(3)

MLJ 518 reported in C. Nallasivan Pillai .vs. The Commissioner, Hindu Religious and Charitable Endowments Administration Department,

Madrasand others, in support of his contention. This Court is of the view that the Division Bench judgment relied upon by the appellant will not be

applicable to the fact of the present case. In the said case, the Government has appointed a trustee and thereafter, an application was filed u/s

63(a) of the ""Act"". In those circumstances the Division Bench was pleased to hold that inasmuch as the issue regarding the nature of temple as to

whether it is a public temple or a private temple had not been gone into earlier, the subsequent application u/s 63(a) of the ""Act"" cannot be barred.

However, in the present case, the appellant himself has filed an application u/s 63(b) of the ""Act"", seeking to declare himself as the hereditory

trustee. In other words, the said application has been filed and the order has been passed on the premise that the temple in question is a public

temple. Thereafter, the appellant cannot turn round and contend to the contrary that the temple in question is a private temple. The mere fact that

the appellant reserves his right in his application would not help the case of the appellant in view of the fact that he was the beneficiary of the order

u/s 63(b) of the Act. Therefore, having enjoyed the benefit u/s 63(b) of the ""Act"", he cannot turn round and plead to the contrary. In other words,

the said attempt of the appellant would amount to challenging the very basis on which he got the benefit u/s 63(b) of the ""Act"". Hence the

contention of the learned Counsel for the appellant deserves to be rejected and hence the same is rejected. Regarding the second contention of the

learned Counsel for the appellant that the trial court has failed to apply the factors for determining the character of the temple as to whether it is a

public temple or a private temple, this Court is of the view that the said contention is also liable to be rejected. The trial court on evidence has given

a finding that the appellant has admitted that there is no evidence from his side to show that he is the descendent of Neeragara Ambalathaduvar

and there is no evidence to show that the said person has built the said temple. The trial court has also held that the land stands in the name of

deity. It is well- settled principle of law that the admission made by the parties is the best form of evidence until and unless it is proved otherwise.

Similarly, the appellant has not been able to explain as to whether on what basis the grant was received and under what circumstances the public

was made to do their worship in the temple. Therefore, the second contention raised by the learned Counsel for the appellant also deserves to be

rejected.

11. It is well-settled principle of law that in the State of Tamil Nadu, there is a presumption that all the temples are public temples. This

presumption being of a rebuttable presumption. The onus is on the appellant to prove that the temple in question is a private temple. The appellant

has not proved the said fact. In fact, the Honourable High Court, in a judgment in 2001 (3) LW 327 reported in The Commissioner, H.R.&C.E

.vs. R. Velayutham Nair has held that the official presumption regarding a temple being a public temple must be rebutted by clinching testimony.

Therefore, in the absence of any such material produced and established by the appellant, the appeal filed by the appellant is liable to be dismissed.

12. Accordingly, the same is dismissed. The learned Counsel for the appellant submit that the appellant in the appeal has died and his son has been

brought on record. The learned Counsel for the appellant seeks liberty that the impleaded appellant may be permitted to file an application u/s

63(b) of the ""Act"" and in that case, the authorities shall not reject the same on the ground of the dismissal of the appeal. It is made clear that as and

when an application has been made by the appellant u/s 63(b) of the ""Act"", the same has to be considered by the authorities on merits and in

accordance with law without reference to the judgment and decree rendered in this appeal.

13. With this observation, the appeal is dismissed. No costs.