
(1997) 04 MAD CK 0071
In the Madras High Court
Case No : L.P.A. No. 37 of 1993

M.V.P.B. Nammalwar

APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable
Endowments (Admn.) Department, Madras

RESPONDENT

Date of Decision : 17-04-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 70
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(13)
Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961
— Section 62

Citation : AIR 1997 Mad 287 : (1997) 2 LW 477 : (1997) 2 MLJ 191

Hon'ble Judges : AR. Lakshmanan, J;A. Raman, J

Bench : Division Bench

Advocate : B. Kumar, for the Appellant; A. Arumugham, Government Advocate,
for the Respondent

Judgement

AR. Lakshmanan, J.—The plaintiff who succeeded before the Sub-Court, Tirunelveli and unsuccessful before the learned single Judge of

this Court, is the appellant in this Letters Patent Appeal.

2. The short facts of the case are as follows : The appellant filed O.S. 130/80 on the file of the Sub-Court, Tirunelveli u/s 70 of the Hindu Religious

and Charitable Endowments Act, 1959 (hereinafter referred to as the Act) for setting aside the order passed by the Commissioner, H.R. & C.E. in

A.P. No. 191 of 1976 which arose out of a petition filed by him before the Deputy Commissioner in O.A. No. 21/1976 for declaration that the

Dakshinamoorthy Madam is not a math within the meaning of the Act. The Deputy Commissioner dismissed the said O.A. No. 21/76 and on

appeal, the Commissioner confirmed the same. Therefore, to set aside the order of the commissioner and to declare that the said Dakshinamoorthy

Madam is not a Math, the suit has been filed.

3. According to the appellant, the suit property is described as Dakshinamoorthy Madam and in the suit property, there is a samathi of Michael

Siddar who is admittedly a Christian whom Vedanayagam Sami, the testator of the will Ex. A1 dated 19-2-1957 considered as his Guru. Ex. A1

will directs performance of Abishegam, Alankaram, Maha Neivedyam and Guru Pooja at the tomb of K.R. Michael Siddhar in the month of

Marghazhi every year and on the month of his Nakshtram. Vedanayagasami Samadhi is also in the Mutt. There is also a Samadhi for Kamal Sami

a Christian for which also some poojas were directed to be done. Therefore, the appellant contends that it is not a Mutt, but only a Samadhi and

hence, it does not come within the purview of the Act. The further case of the appellant is that in A.S. No. 2/63 (Ex. A6) before a Division Bench

of this Court which arose out of O.S. 61/61 on the file of the Sub-Court, Tirunelveli, in which the present defendant/commissioner was the 7th

defendant, in its judgment dated 20-2-1969 : (reported in D. Meenakshisundaram Pillai and Others Vs. P. Nammalwar and Others,) this Court

has held that the said Dakshinamoorthy Madam is only a Samadhi where some charities mentioned in schedule II to Ex. A1 are performed.

Therefore, the appellant contends that the order of the Commissioner in A.P. No. 191/76 declaring that Dakshinamoorthy Madam as a Madam,

has to be set aside.

4. AS against this, the respondent/com-missioner contends that the subject-matter of the suit has been rightly held as a Mutt and not a Samadhi as

pleaded and that a reading of the will under Ex. A1 executed by Vedanayagasami would Only show that the subject-matter of the suit is only a

Mutt. It is also contended that the decision of this Court in A.S. No. 2/63 will not bind the respondent. The High Court in its earlier judgment in

AAO No. 472/51 (Ex. A10) dated 5-7-54 has declared the subject-matter of the as only a Madam, which decision was not brought to the notice

of the Judges who decided A.S. 2 of 1963 under Ex. A6. Therefore, Dakshinamoorthy Madam comes within the purview of the Act, 22/59.

5. Before the Sub-Court, Exs. A1 to A13 were marked on the side of the

appellant and Fxs. B1 and B2 were marked on the side of the respondent. The appellant/plaintiff, was examined as P.W. 1 and none was examined on the side of the respondent/defendant. On the above pleadings, the Sub-Court framed 7 issues and on a consideration of the evidence placed on record, took the view that the judgment in A.S. No. 2/63 (Ex. A6) which has held that the subject-matter of the suit is a Samadhi, has to be followed. Therefore, the trial Court held that the subject-matter of the is a Samadhi and decreed the suit of the appellant as prayed for. The Sub-Court also held that the order passed by the Commissioner in appeal No. 191/76 dated 28-1-1980 is liable to be set aside.

6. Aggrieved by the judgment and decree of the trial Court made on 22-2-1982, the Commissioner preferred A.S. 749/82 on the file of this Court and in this Court, the Commissioner contended before the learned single Judge that the trial Court is in error in stating that in A.S. 2/63, the High Court has held that the subject-matter of the suit is only a Samadhi and therefore, the decision in A.S. 2/63 has to be followed. Because that is against the earlier decision of the High Court in ASO No. 472/51.

7. Before the learned single Judge, it was argued by Mr. B. Kumar, learned counsel for the appellants herein that the said judgment was rendered under the provisions of the Act 2 of 1927 and in the present matter, a decision has to be given as per the later Act, i.e., Act 22 of 1959, and therefore the finding in that judgment cannot be relied upon. In this connection, the learned counsel has cited a decision of the Supreme Court in State of Madras Vs. Kunnakudi Melamatam and Another, , wherein it was held as follows:

The decision of the Board dated February 12, 1932 was given under Act II of 1927 and was final for purposes of that Act, but it is not final for purposes of Act XIX of 1951.

Discountenancing the contention of Mr. B. Kumar, the learned single Judge observed as follows :

May be this is correct. But if the definition of "math" in the earlier Act is substantially the same as the definition in the later Act, and there is no significant change, then it would be quite justified to follow the decision of the High Court rendered under the earlier Act. For this purpose it would be better to extract the definition under the two Acts. As per Act 2 of 1927, the

definition of "math" is as follows :

"math" means an institution for the promotion of the Hindu Religion, presided over by a person whose duty is to engage himself in spiritual service

or who exercises or claims to exercise spiritual headship over a body of disciples and succession to whose office devolves in accordance with the

direction of the founder of the institution or is regulated by usage; and includes places of religious worship -- other than a temple or places or

religious instruction, which are appurtenant to such institution.

In the present Act 22 of 1959, the "math" has been defined as follows :

"Math" means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office

devolves in accordance with the direction of the founder of the institution or is regulated by usage and--

(i) whose duty it is to engage himself in imparting religious instruction or rendering spiritual service; or

(ii) who exercises or claims to exercise spiritual headship over a body of disciples;

and includes places of religious worship or instruction which are appurtenant to the institution;

Explanation : Where the headquarters of a math are outside the State but the math has properties situated within the State, control shall be

exercised over the math in accordance with the provisions of this Act, in so far as the properties of the math situated within the State are

concerned,

A close scrutiny of these two definitions would show that the only difference is that while as per the later definition properties shall be attached to

the institution in question, in the earlier definition there is no such thing. In all other respects, the definitions are similar. Hence, if there are properties

attached to "Dakshinamurthy math" then there is no difficulty in relying on the finding given in the earlier judgment of the High Court i.e., Ex. A10 to

hold that the institution is a "math" or not. In the plaint itself it is mentioned that "Dakshinamurthy math" has its own properties.

While rejecting the contention of the appellant, in para 9, the learned single Judge has held as follows :

Now, a perusal of Ex. A9 judgment of the trial Court in O.P. No. 85 of 1949 shows that the learned trial Judge has considered all the aspects of

the definition of math one by one as conditions 1 to 4 and held that all the conditions have been satisfied and therefore the "Dakshinamurthi math"

is a "math" as per the Act. The High Court in the appeal, as seen from Ex. A10. has complimented the learned District Judge slating that after a

very exhaustive and careful summary of the entire evidence let in before him he has come to the conclusion that it is such an institution. Then the

High Court itself considering the arguments advanced before it against the Order of the trial Court has held that, we are satisfied that the institution

is one which comes within the purview of the definition." I do not think that in the present appeal it is necessary to once again consider whether it is

a "math" or not. The very fact that the institution is indisputably called "Dakshinamurthy math" militates against the contention that it is not a math

but only a "Samadhi",

8. In the result, the learned single Judge allowed the appeal filed by the Commissioner and dismissed the suit.

9. Aggrieved against the dismissal of the suit, the plaintiff has filed the present L.P. A. We have heard the arguments of Mr. 11. Kumar, learned

counsel on the side of the appellant and Mr. Arumugham, Govt.. Advocate on the side of the respondent. Mr. Kumar made the following

submission :

a) The decision in State of Madras Vs. Kunnakudi Melamatam and Another, , would apply in ail force to the facts of the present case. In this

regard, the learned single Judge is not correct in coming to the conclusion that the definition of the Mutt in the earlier Act is substantially same as

the definition in the latter Act and that there is no significant change.

b) The nomenclature of the institution is immaterial and merely because the institution is called Math, it will not become a Mutt as defined under the

Act. But, the Court has to look into the recitals in the documents creating the institution and come to an independent conclusion whether the recitals

in the documents that constitute a Mutt or not.

c) The decision rendered in A.S. No. 2/6,3 (Ex. A6) by a Division Bench of this Court is final and conclusive. In the said decision, this Court in

clear and categorical terms after having gone through the recitals in the Will of Vedanayaga Swamy has come to the conclusion that the institution is

not a Mutt but is only a Samadhi and hence no scheme could be framed under

the Act.

d) The decision in A.A.O. No. 472/51 (Ex. A10) on the file of this Court decided on 5-7-1954 (A Division Bench consisting of Govinda Menon

and Ramaswami JJ.) would not operate as res judicata, especially under the teeth of the decision in Ex, A6.

e) The ingredients of the definition "Mutt" under the Hindu Religious and Charitable Endowments Act is not at all satisfied and in this regard, the

learned Judge has erred in not taking into account the fact that there is no propagation of any religious philosophy either contemplated under the

will of Vedanayagaswamy or practised in the suit institution.

f) There are no disciples in the Mutt for the Mutt to come within the definition.

Whereas the learned Government Advocate simply reiterated the findings of the learned single Judge.

10. After hearing both the sides, we reserved judgment on 17-1-1997. Again, the matter was listed for "Being Spoken to", at the instance of the

learned counsel for the appellant who filed a memo to the effect that certain other citations have to be made, particularly Mathura Prasad Bajoo

Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, and (1987) 100 MLW 32 and therefore, the matter may be posted for being mentioned on 17-

2-1997. Accordingly, the matter was listed before us for "Being Mentioned" on 17-2-1997 and the arguments were heard on that date and also

on 18-2-1997.

11. The only question before us now is, "Whether the Dakshinamoorhy Mutt" is a "Mutt" within the meaning of the Act?

12. The trial Court relying on a decision of this Court made in A.S. 2/63 dated 20-2-69 (by a Division Bench consisting of Srinivasan and

Sadasivam JJ.) and reported in D. Meenakshisundaram Pillai and Others Vs. P. Nammalwar and Others, , has held that the suit institution is only a

Samadhi within the meaning of the Act and this question is Res Judicata against the H.R. & C.E. Department, as it was the party second

respondent in the above case in which it has been held that it is only a Samadhi and not a mutt. In the appeal A.S. 749/82 on the file of this Court,

Bellie, J., has held that the observations in Ex. A6 have been made in passing. Only the decision earlier rendered in Ex. A10 in AAO. No. 472/51

will govern the issue and therefore, the said judgment alone will be Res Judicata

and therefore, allowed the appeal. Against the said decision, the above LPA has been filed. We have already noticed that the appellant has filed the suit in O.S. 130/80, to set aside the order of the Commissioner. H.R. & C.E., holding that the appellant institution is a Mutt. In support of his contention, the appellant marked Ex. A] dated 20-4-1920 which is the will of Vedana-yagaswamy in which he says that the trustees of the institution shall bc "Thuravi"s Ex. A9 is the judgment copy of the District Court in O.S. 85/49 in which it has been held that the suit institution is a Mutt within the meaning of Tamil Nadu Act 2/27; Ex. A10 is the judgment copy in A10. 472/51 which confirms the judgment of the District Court. The present appellant is the grand son of Vedana-yagasawmy succeeded as a trustee. This appellant is twice married. In Ex. A4 plaint copy of O.S. 61/61 persons claiming to be representatives of Sarvakudi Vellala Community, Tirunelveli District suing the appellant and others and impleading the H.R. & C.E. Department as defendant No. 7 for framing a scheme on the basis that the suit property is a mutt and that the appellant is disqualified to hold the office as a Head of the Mutt. The suit was dismissed. Ex. A5 is the judgment copy. A.S. 2/63 was filed against the same and the judgment in it is Ex. A6 D. Meenakshisundaram Pillai and Others Vs. P. Nammalwar and Others, wherein a Division Bench of this Court held that the institution is only a "Samadhi" and not a Mutt.

13. The following question arises for determination : "Is the decision in Ex. A10 rendered in AAO. No. 472/51 under the earlier Act 2 of 1927 final and res judicata white considering the question under the present Act under Act 22 of 1959?

14. In support of his contention, Mr. B, Kumar placed very strong reliance on the decision in State of Madras Vs. Kunnakudi Melamatam and Another, , which according to him is an authority for the proposition that the decision rendered under Act 2/1927 is final and binding only for the purpose of that Act and it will not bind the department or the other persons while considering the question under Act, 1959. The basis for such argument of Mr. B. Kumar is provided in Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, . This judgment is again followed in Manjammal v. Arulmigu Nachadaithavirtbarulia Swami (1987) 100

MLJ 32. Hence, Mr. R. Kumar contended that there could be no binding nature as regards the decision in Ex. A10. In that case Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, , the appellant obtained lease of an open land for construction of buildings. After the constructions, the appellant applied for determination of Standard rent under the Bombay Elents, Hotel and Lodging House Rates Control Act, 1947. The application was rejected holding that the provisions of the Act did not apply to open land let for construction. This view was confirmed by the High Court. Sometime thereafter, in another case the High Court held that the question whether the provisions of the Act applied to any particular lease must be determined on its terms and a building lease in respect of an open plot was not excluded from the provisions of the Act solely because open land may be used from residence or educational purposes only after a structure is built thereon. Relying upon this judgment, the appellant filed a fresh application for determining the standard rent. The trial Judge rejected the application holding that the question of the applicability of the Act was res judicata since it had been finally decided by the High Court between the same parties in respect of the same land in the earlier proceeding for fixation of standard rent. The order was confirmed by first appellate Court and on further appeal by the High Court. The Supreme Court held that the judgment did not operate as res judicata in the following terms :

A question relating to the Jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the "Court holds that it has no jurisdiction, the decision will not, operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the decision will not operate as res judicata between the same parties, "whether the cause of action in the subsequent litigation is the same or otherwise.

In determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same Parties be regarded as finally decided and cannot be reopened. A mixed question

of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in S. 11, CPC means the right litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order because of the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

If the decision in the previous proceeding be regarded as conclusive it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court, in derogation of the rule declared by the Legislature.

This judgment was followed in (1987) 100 MLW 32 by a Division Bench of this Court consisting of Sathar Sayeed and Ratnam JJ. and in para 12

of the said judgment it has been held as under :

Speaking for the Bench, Ratnam, J. held;

On that conclusion, there was no further need for the Court to consider whether deceased P.K. Gurusamy Raja was a tenant entitled to the

benefits of Tamil Nadu Cultivating Tenants' Protection Act. In other words, the finding that the deceased P.K. Gurusamy Raja was entitled to the

benefits of Tamil Nadu Act 25 of 1955 was wholly unnecessary for the adjudication in O.S. No. 55/1963. Besides, even assuming that the rights of

deceased P.K. Gurusamy Raja were governed by the provisions of Tamil Nadu Act 25 of 1955 to begin with, there was a repeal of the provisions

of Tamil Nadu Act 25 of 1955 by S. 62 of Tamil Nadu Public Trusts Regulation of Administration of Agricultural Lands) Act, 57 of 1961, in so

far so public trusts are concerned. There is no dispute that the Temple is a public trust and that ordinarily the provisions of Tamil Nadu Public

Trusts Act would govern it and any person claiming tenancy rights from such a public trust. To hold that the decision in O.S. No. 55 of 1963, Sub

Court, Ramanatha-puram at Madurai, would operate as res judicata would be to

say that the Temple will not be governed by the provisions of Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 57 of 1961, despite the repeal of Tamil Nadu Act 25 of 1955 in relation to public trusts. That it cannot so operate as res judicata is established by the decision of the Supreme Court in Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, . In that case, the Supreme Court, considering the question as to when the decisions on a question of law would operate as res judicata, pointed out that where the decision is on a question of law, that is, Interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties, where the cause of action is the same, for, the expression "the matter in issue" in S. 11 Code of Civil Procedure, means the right litigated between the parties, that is, the facts on which the right is claimed or denied and the law applicable to the determination of that issue. It was also pointed out that by regarding the decision in the previous proceeding as conclusive, the status of a special rule of law applicable to the parties in derogation of the rule declared by the legislature cannot be given. Applying that principle here, it is seen that the cause of action for O.S. No. 55 of 1963, Sub-Court, Ramanathapuram-Madurai, was not the same as either in O.S. 54 of 1970 or in the suit, out of which this appeal has arisen. Undoubtedly, they were all different. Besides, to give effect to the decision in O.S. No. 55 of 1963 would enable the application of the provisions of Tamil Nadu Act 25 of 1955 to the temple in question when the legislature had enacted Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 57 of 1961 as the enactment which is applicable to the temple owned by the Temple, which is admittedly a public trust. Above all, the appellants are the wife and children of deceased P.K. Gurusamy Raja and the benefit of any adjudication that deceased P.K. Gurusamy Raja was a cultivating tenant or that his relationship with the temple was governed by the provisions of Tamil Nadu Act 25 of 1955, cannot be automatically availed of by the appellants. It is not in dispute that there has been as yet no determination of the status of the appellant as cultivating tenants. Under those circumstances and in view of the principles laid down in the decision of the Supreme Court referred to above, we are of the opinion that the finding of the Court below that the decision in O.S. No. 55

of 1963, sub-court, Ramana-thapuram at Madurai, or the one following that in Exhibit 85 would operate as res judicata, cannot be sustained.

While holding that the Temple, being a public trust, would be ordinarily governed by the provisions of Tamil Xadu Public Trusts (Regulations of

Administration of Agricultural Lands) Act, 57 of 1961, however, we leave open the question of the status of the appellants under Tamil Xadu

Public Trusts (Regulation of Administration of Agricultural Lands) Act, 57 of 1961, as the materials on record do not enable us to give a finding

one way or the other. We may also point out that in the course of the appeal in A.S. No. 20 of 1974 and before this Court in S.A. No. 302 of

1975, there has almost been an assumption regarding the status of the appellants. The status of the appellants depends upon their conforming to the

requirements of the status and cannot be a matter of assumption. For the foregoing reasons, we hold that the prior proceedings in O.S. No. 55 of

1963 and S.A. No. 302 of 1975 would not operate as res judicata as to enable the appellants to contend that they are entitled to the benefits of

Tamil Xadu Act 25 of 1955, despite the repeal of that Act by the provisions of Tamil Nadu Public Trusts (Regulation of Administration of

Agricultural Lands) Act, 57 of 1961. We therefore, set aside the finding of the Court below on issues Land 2 and leave open the question of the

status of the appellants under Tamil Xadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 57 of 1961.

15. In the decision in Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, , the point decided was the question of

jurisdiction decided in a prior proceedings will not be res judicata in a subsequent proceedings. The Jurisdictional issue in this case is as regards the

applicability of H.R. & C.H. Act. That issue which was decided in the prior proceedings was under Act 2 of 1927 that it is a Madam and hence

the Act is applicable is a jurisdictional question in regard to operation of an enactment under the said Act and as per the ruling in Mathura Prasad

Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, , it will not be res judicata under Act 22 of 1959. This is the ratio that is followed by

another Division Bench of our High Court in (1987) 100 MLW 32. Ratnam, J. (As he then was) while speaking for the Bench holds while

analysing the repeal of Act 25 of 1955 (Tamil Xadu Cultivating Tenants Protection Act) vis-a-vis the Public Trust by Act 57 of 1961 (Tamil Nadu

Public Trusts (Administration and Regulation) Act) that to single out a public trust and to hold that the prior decision under Act 25 of 1955 holding

a person a cultivating tenant would be say that it will not be governed by provisions of the Public Trust Act and this is not permissible. Hence, the

principle of res judicata could not be applied. The replacement of Act 25 of 1955 would definitely affect the decisions rendered under Act 25 of 1955

vis-a-vis the Public Trust and it has to be seen whether at all he is a cultivating tenant under Act 57 of 1961. While saying so, the Division Bench

followed the decision of the above Supreme Court. Drawing the same analogy, we are of the view that the jurisdictional question as regards the

applicability of H.R. & C.F. Act will only be resjudicata so far as the Old Act is concerned. The decision of this Court in Ex. A6 is binding and res

Judicata on the department which was defendant-7 in the proceedings and the said decision has been rendered under Act 22 of 1959. Therefore,

we are of the view that the learned single Judge is not correct in characterizing the finding in the judgment as passing observation. On the contrary,

they form fulcrum of the judgment. In that case the question was whether the plaintiff is entitled to be a Trustee. The Court therefore has to

interpret the words in the will of Vedanayagaswami under Ex. A1 dated 20-4-1920 which had stipulated that the Trustee of the institution shall be

"Thuravi". In Ex. A6 judgment, D. Meenakshisundaram Pillai and Others Vs. P. Nammalwar and Others, , the Division Bench while considering

this question has observed as under (at p. 405 of AIR) :

In fact, it is not the case of the plaintiffs that the first defendant is not leading a proper life, or is otherwise disqualified from being a trustee of the

suit math. In the absence of a clear provision in the terms of the will Ex. A1 disentitling a person like the first defendant who has married two wives

from being appointed as a trustee, who are unable to hold that the first defendant is not competent to be a trustee of the suit math. The use of the

word thuravi by itself cannot, having regard to the facts and circumstances of the case, imply that the trustee should be a celibate in order to be a

trustee of the suit math. There can be no doubt that the word thuravi has been used in a loose sense in Exhibit A-1 and we say so having regard to

the nature of the math the duties attached to the office of trustee and several other circumstances referred to above.

Therefore, the appointment of the appellant/ plaintiff as a trustee is valid since the nature of the institution was the very aspect that has been decided

in the said ease. This structure of -the judgment and the arguments advanced before it would clearly reveal the same. But for such an interpretation,

the judgment in D. Meenakshisundaram Pillai and Others Vs. P. Nammalwar and Others, could never be understood.

16. The principle is that even assuming that the later judgment under Ex. A6 was contrary to the earlier judgment under Ex. A10 in AAO. No.

472/51, the later judgment alone has to be upheld and not the earlier judgment. This has been considered in the decision reported in

Rathinasabapathi Kounder v. Sarangapani Kounder. 1976 TLNJ 114. Natarajan, J., in the above judgment has considered the following few

judgments in this aspect :

1) Appia K.R. Rukmani Ammal and Appia Ramachari and Another Vs. Kuttuvava Narasimma Iyer and Another,

It is useful to extract para 2 of the above judgment as under :

The argument is that the settled principle of law is that if there are two judgments inter partes of a conflicting nature, the later adjudication should

be taken as superceding the earlier. In 31 MLJ 219 it was held as follows : ""We think that, on principle, in cases of judgments inter panes the later

adjudication should be taken as superceeding the earlier"". The Bench held that the same rule would apply even if one of the parties to the action

had not raised a contention which was projected for the first time in the later action. That view is found in the following words : ""The fact that the

tenants did not choose to plead the adjudication of 1993 in bar of the trial afresh of the same issue as to the rates of rent cannot make any

difference, as regards the operation of that determination as res judicata any more, than failure to let in a piece of evidence which might have

resulted in a determination other than the actual finding"". This ratio was followed in the second case 41 MLJ 54 and the Bench held as follows :

But where the rights obtained under two decrees both binding on both sides are in conflict with each other, the rights order the later decree must

prevail. This follows from general principles of jurisprudence; and I need refer only to 31 MLJ 219. To the same-effect is the Judgment of a single

Judge of the Andhra High Court in Kalisetti Subbarayudu and Others Vs. Pagadala

Balaramayya, . Having regard to the ratio in these cases there can be no doubt that the view of the Subordinate Judge that the earlier of the two judgments should prevail cannot be sustained. It must be noted that L, the decree holder was not a party to the earlier suit, whereas in the later suit she had impleaded all the concerned persons as party defendants. Having failed to contend in the later suit that the gift deed had been cancelled by compromise, it is not open to the parties to that suit or their successors in-interest to now contend that the decree in the earlier suit should prevail and the finding of the later suit should be ignored.

17. On a careful consideration of the entire materials and all the judgments referred to above, we are of the view that the judgment under Ex. A10

in AAO. No. 472/51 has no value, since the definition of a Mutt under Act 2 of 1927 and, the definition of a Mutt under Section 6(13) under Act

22 of 1959 are materially different. The definition of Mutt under Act 2 of 1927 as well under Act 22 of 1959 has already been extracted above.

18. In the 1927 Act definition all that is required is :

- a) The Institution founded for propagation of Hindu Religion.
- b) The head would do spiritual service.
- c) As a Headship over group of persons.

and in the definition under Act 22 of 1959, the following ingredients are required :

- a) It must be an institution to which the properties are attached.
- b) The Head of the Institution must propagate a tenet or a particular religious philosophy
- c) or must do spiritual service
- d) must be a head of identifiable spiritual fraternity.

19. The decision under Ex. A10 in AAO. No. 472/51 of a Division Bench of our High Court only centres around the fact that it was for

advancement of Hindu Religion but under the new definition what is important and fulcrum is that a Mutt must be a centre for theological

instruction. A Mutt must be for finding of advancement of a particular religious philosophy -- for example Saiva Siddhantam. Without this an

institution could never be described as a Mutt.

20. In the decision reported in The Board of Commissioners for the Hindu Religious Endowments Vs. P.V.R. Ratnasami Pillai and Others, , a Full

Bench of our High Court held that where law is altered, the previous decision rendered in pursuance to the old law will not operate as res judicata

or as binding estoppel. The Full Bench held as follows :

A decision by the Endowments Board in 1927 that the temple in question was an "excepted temple" within the meaning of the definition of that

expression as it stood in the H.R. & C.E. Act of 1927 does not preclude the Board from subsequently holding after the Amending Act of 1930

came into force that under the new definition of that expression in the 1930 Act, it is not an "excepted temple". There is no scope here for the

application of the rule against retrospective operation, because there is really no question of any interference, with a vested right or impairing

obligations which have come into existence under a previous state of the law, but only a grouping of temples in one manner at a particular stage of

legislation and in a different manner at a later stage of legislation. Also the finality attaching to a decision of the Board by S. 84 can only have

relation to the definition then obtaining and not to a later legislative variation of the definition.

21. Since the decision under Ex. A10 was rendered under Act 2 of 1927, and even assuming that Ex. A4 has not decided this question, the only

course open in view of the decision in State of Madras Vs. Kunnakudi Melamatam and Another, is to consider the issue afresh. In that event the

merits of the case and interpretation of Ex. A2 Will, as far as the oral evidence let in this case, have to be gone into. Therefore, we have gone into

the oral evidence tendered and the documents filed in this case and considered the arguments of the rival parties. We do not find any difficulty in

holding that it is not a religious institution at all under the Act. This is not a religious institution at all because it expressly deals with that the benefits

under that would be available to all without restriction but not to Hindus only. The evidence tendered in this case both oral and documentary will

conclusively show that there is no obligation to do any spiritual service, that there has never been any disciple or Thirukcotam and that it was a

Samadhi that too, of a Christian. We are also of the view that the nomenclature of the institution is immaterial and merely because the institution is

called Math, it will not become a Mutt as defined under the Act. We have also looked into the recitals in the documents creating the institution and

we are of the view that the recitals in the document will not constitute a Mutt. As already noticed, Ex.A6 the decision rendered in A.S.No. 2. 63 is

final and conclusive and in the said decision the Division Bench of this Court in clear and categorical terms after having gone through the recitals in

the will of Vedanayagaswamy has come to the conclusion that the Institution is not a Mutt, but it is only a Samadhi and hence no scheme could be

framed under the Act. In our opinion, the learned single Judge has failed to notice that the Division Bench of this Court in A.S.No. 2/63 (reported

in D. Meenakshisundaram Pillai and Others Vs. P. Nammalwar and Others,) had definitely had an occasion to go into the question whether the

institution is a Mutt or not and is in effect held that it is a Samadhi. The ingredients of the definition "Mutt" under the Act in the instant case is not at

all satisfied and the learned single Judge has erred in not taking into account the fact that there is no propagation of any religious philosophy either

contemplated under the will of Vedanayagaswamy or practised in the suit institution. Further, there are no disciples in the Mutt also for the Mutt to

come within the definition.

22. For all the foregoing reasons, the L.P.A. is allowed, and the order in A.S. No. 749; 1982 dated 12-2-1993 reversing the judgment of the Sub-

Court, Tirunelveli in O.S.No. 130/1980, is hereby set aside, and we hold that the Dakshinamoorthy Madam which is the subject matter of the suit

is only a "Samadhi" and not "Madam" coming within the purview of the definitions of the H.R. & C.E. Act. However, there will be no order as to

costs.

23. Appeal allowed.