

(2013) 04 MAD CK 0238

In the Madras High Court

Case No : S.A. No. 702 of 2000 and C.M.P. No. 641 of 2009

Neelamega Bhattacharya

APPELLANT

Vs

Arulmighu Devanatha Swamy Temple Thiruvendhipuram

RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 16, Order 39 Rule 2, Order 41 Rule 27, 100, 11

Citation : (2013) 4 MLJ 549

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : T.V. Ramanujam, for Mr. Velayutham Pichaya, for the Appellant;
Chitra Sampath, for Mr. T.S. Baskaran, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This second appeal is focussed by the plaintiff, animadverting upon the judgment and decree dated 20.09.1999 passed by the learned Subordinate Judge, Vridhachalam in A.S. No. 4 of 1999 in confirming the judgment and decree dated 28.10.1997 passed by the learned Principal District Munsif, Cuddalore in O.S. No. 205 of 1996. The parties are referred to here under according to their litigative status and ranking before the trial Court.

2. Compendiously and concisely, the germane facts absolutely necessary for the disposal of this Second Appeal would run thus:

(a) The appellant/plaintiff by name Neelamega Bhattacharyar filed the suit as against the respondent/Defendant-Arulmighu Devanatha Swamy Temple, Thiruvendhipuram represented by its Executive Officer seeking the following:

To pass a decree in favour of the plaintiff:

- declaring plaintiff's exclusive right to receive and appropriate all cash offerings offered to the deity/besides cash offerings to the Archaka himself except cash offerings made for particular purpose offer general purpose stipulated in that

form (that is, the purpose for which it is offered is specifically mentioned);

- and for consequently restraining the defendant from placing any hundial within the temple precincts of the suit temple to receive cash offerings.
- directing the defendant to remove the hundial placed in that suit temple precincts by a decree of mandatory injunction;
- passing a preliminary decree directing the defendant to render accounts for the income received by the defendant in the said hundial for the last 3 years prior to the suit.
- directing the defendant to pay plaintiff the amount collected by the defendant in the said hundial for the last 3 years prior to the suit as determined by separate proceedings under Order 20 Rule 16 of the CPC and pass a final decree thereon;
- directing the defendant to pay plaintiff the costs of this suit, (extracted as such)

(b) The gist and kernel of the averments in the plaint would run thus:

(i) The Arulmighu Devanatha Swamy Temple is a Vaishnavite Divya Shetram, which is ancient in nature. Ever since the inception of the said temple, the forefathers of this plaintiff were officiating in the temple as Archaka cum Sthanika. The plaintiff is the present Archaka cum Sthanika following his forefathers. As such, the plaintiff as Archaka cum Sthanika is entitled to receive and appropriate cash offerings made to the deity in addition to the offerings made to the Archaka himself. Except the cash offered for a particular purpose or for general purpose stipulated in that form, will go to the plaintiff exclusively. Only offerings in kind and cash offerings for particular purpose and cash offerings specifically mentioned to be for general purpose of the temple will go to the temple and all other cash offerings either to the deity or to the Archaka would go only to the Archaka because the Archaka is not paid any salary by the temple.

(ii) Several Sannathi, viz., Thayar Sannathi, Desigar Sannathi, Hayagriva Sannathi etc. are there in the said temple. In all the Sannathis poojas and Aradhanas are being performed simultaneously. The plaintiff is the only Archaka cum Sthanika responsible for performing of the rituals in the temple. Wherefore, he employed several persons to do poojas and Aradhana to the several deities in the said temple and also to attend to the Sevarthis; to give the holy water (theertham) and thulasi and to bless them with Sadari; the plaintiff have been paying the emoluments for those who were engaged by him for performing the aforesaid acts. As such, the practice has been in vogue from time immemorial. If any Hundial is installed in the temple, interested devotees would put the cash offerings only in the Hundial and thereby the Archaka will be deprived of his money, which he is legally entitled to.

(iii) During the year 1896, when Hundial was sought to be installed in the temple, a suit was filed in O.S. No. 868 of 1896 in the District Munsif Court, Cuddalore to remove the Hundial and also for permanent injunction to restrain

anyone from installing Hundial. The suit was decreed on 28.05.1898 directing the trustees to remove the Hundial and also injuncting them from placing any Hundial in the temple.

(iv) Krishnamurthy Bhattacharyar, the adoptive father of the present plaintiff filed the suit in O.S. No. 666 of 1933 on the file of the District Munsif Court, Cuddalore; whereupon it was declared by the court that the plaintiff was entitled in his capacity as Archaka cum Sthanika to receive in cups and plates but not in receptacles the offerings whether made to the deity or to the Archaka and the trustee has got no right to interfere with such right. Subsequently, a Scheme was framed in O.S. No. 88 of 1951 on the file of the Sub Court, Cuddalore, which was modified by the High Court of Madras in LPA No. 124 of 1959 vide order dated 31.01.1962.

(v) Clause (2) (c) of the Scheme was modified by the High Court as under:

The Archaka shall be generally entitled to take all offerings in cash made within the temple precincts in open cups and plates. But he shall not be also entitled to appropriate for his own use such cash offerings as are made by worshippers for some other specific or general purpose stipulated in that form.

(emphasis supplied)

(vi) For the purpose of renovating the temple, i.e., to do Thirupani, a Hundial was installed naming it as Thirupani Hundial. A suit was filed to remove it; however the court held that since the Hundial was installed for the specific purpose of receiving cash offerings, which was legal and by that it cannot be construed that the temple authorities can install any Hundial.

(vii) That the temple authorities attempted to install the Hundial at Hayagriva Temple. A suit was filed in O.S. No. 1068 of 1988 on the file of the District Munsif Court, Cuddalore so as to restrain them from installing such Hundial. The suit was decreed by the court.

(viii) The defendant preferred appeal in A.S. No. 187 of 1990 on the file of the Sub Court, Cuddalore. The appeal was allowed on technical ground; that the suit was bad for want of a notice u/s 80 (1) of the Code of Civil Procedure. However, the High Court reversed the judgment of the first appellate court and upheld the judgment of the trial court to the effect that the temple authorities were not entitled to install any Hundial.

(ix) Inasmuch as there is no proposal of renovation (Thirupani), as of now, the Thirupani Hundial has to be removed. Under the guise of Thirupani Hundial the temple authorities are taking away the plaintiff's money. On earlier occasion, it has been clarified in a proceeding that offerings are different from donations; for receiving donations, the temple has got receipt book. The cash offerings of the devotees cannot be taken away by the temple as per the Scheme. The defendant also placed a notice as under:

VERNACULAR (TAMIL) PORTION DELETED

The plaintiff sent the objection dated 12.12.1994 to the defendant, for which the defendant sent a belated reply on 10.01.1995. There is no such thing that the offerings to the deity should go to the temple as per the scheme and that would be a wrong interpretation of the clauses in the scheme. The temple is not entitled to place the Hundial for general collection of cash.

(x) As per the scheme, the temple has no authority to install any Hundial in the temple. The defendant is liable to render accounts for the collection in the Hundial to the plaintiff and pay the same to the plaintiff. Hence the suit.

3. Per contra, the defendant filed the written statement, the warp and woof of the same would run thus:

(i) The hereditary office of the Archakaship was abolished by the Tamil Nadu Act 2 of 1971 and the validity of the Act was upheld by the Hon'ble Apex Court.

(ii) The plaintiff cannot assume to himself any special powers and privileges, save as those that are contemplated as per the Hindu Religious and Endowments Act and the Scheme decree approved by this court in O.P. No. 88 of 1951 and modified by the High Court in LPA No. 124 of 1959.

(iii) The office of Archaka cum Sthanika of the temple has got no peculiar status and privileges.

(iv) It is false to state that Archaka was not paid any salary by the trustee or by the defendant. The defendant is always ready to appoint Archakas for various Sannathi and disburse salary to them; but only the plaintiff assumes the role of paying salaries on the apprehension that if he does not do so, the Archakas will come out of his camp and go to the Executive Officer of the defendant temple in carrying out the official functions.

(v) The offering to the Archaka will go to the Archaka and any offerings to the deity in particular or in general, specifically stipulated as such, shall go to the temple. Installation of Hundial can be for a particular purpose or for general purpose so as to enable the devotees to contribute the same.

(vi) There is no prohibition in the scheme or the Act to deny the right of installation of Hundial. The references to the earlier two suits O.S. No. 868 of 1896 and O.S. No. 666 of 1933 is nothing but an attempt to side track the issue.

(vii) There is suppression of material facts in the plaint as there is no reference to the orders passed earlier by the courts approving and recognizing the installation of Hundial within the temple premises.

(viii) The Hundial, which was placed in the year 1965 as per the order of the court dated 24.09.1965 still continues and there is no necessity to remove the Hundial.

(ix) The earlier injunction petition filed by the plaintiff's predecessor under Order

39 Rule 2 in O.P. No. 88 of 1951 was dismissed. CMA No. 82 of 1961 filed as against such dismissal order was also dismissed.

(x) Krishnamurthy Bhattacharyar the plaintiff's predecessor, filed E.A. No. 1588 of 1966 in O.S. No. 666 of 1933 for contempt relating to installation of Hundial, was dismissed by the court holding that in view of the decision in CMA No. 82 of 1961, such EA would not be tenable as it was barred by res judicata.

(xi) The suit filed by the plaintiff's predecessor in O.S. No. 512 of 1969 before the District Munsif Court, Cuddalore so as to restrain the defendant from installing the Hundial, was dismissed. The appeal in A.S. No. 173 of 1974 filed before the Sub Court also was dismissed.

(xii) As such, the present reliefs claimed by the plaintiff in the suit, are barred by res judicata.

(xiii) The plaintiff's collected cash from devotees directly by demanding for the same O.S. No. 1068 of 1988 was the suit focussed as against the installation of Hundial at Hayagriva Sannathi atop the Hillock.

(xiv) Performance of Thirupani is not a one day affair. It is an ongoing process and as such, there is no necessity to remove the Thirupani Hundial. In the written statement, details are found furnished about the constructions, renovations and various activities undertaken by the temple authorities by spending huge amounts.

(xv) The suit was barred by limitation. The installation of Thirupani Hundial was not in violation of any scheme decree. The prayers in the plaint are all untenable as per law.

Accordingly, the defendant prayed for the dismissal of the suit.

4. The trial court framed the relevant issues.

5. Up went the trial, during which, the plaintiff examined himself as PW1 along with PW2 and marked Exs. A1 to A9. On the defendant's side, D.Ws. 1 to 3 were examined and Exs. B1 to B50 were marked and the court document Ex. C1 was also marked.

6. Ultimately, the trial court dismissed the suit. As against which, the appeal was filed by the plaintiff; whereupon the first appellate court by making certain observations confirmed the ultimate dismissal of the suit.

7. Challenging and impugning the judgments and decrees of both the fora below this second appeal has been focussed by the plaintiff suggesting various substantial questions of law.

8. My learned predecessor formulated the following substantial questions of law:

1. Have not the courts below committed a serious error of law in giving a finding in respect of the nature of right of "Archakas" whether hereditary or non-

hereditary, which is beyond the scope of the suit?

2. Have not the courts below erred in ignoring and overlooking the scheme decree which was confirmed by the Hon''ble High Court in LPA No. 124/59 in holding that the cash offerings of the temple in plates and kinnams should go only to the Archakas?

(extracted as such)

9. The learned senior counsel for the appellant/plaintiff would pyramid his argument, which could succinctly and precisely be set out thus:

(i) Both the courts below failed to take note of the account the real purport of the scheme decree.

(ii) In fact, pending this second appeal, the Hon''ble Apex Court vide order dated 03.09.2001 in Civil Appeal No. 3321 of 1997 decided the civil appeal, which was focussed as against the judgment dated 16.12.1996 of this court in S.A. No. 698 of 1991. As such, in order to bring it to the knowledge of this court the view of the Hon''ble Apex Court in connection with this matter the following documents were filed by the appellant/plaintiff in C.M.P. No. 641 of 2009 under Order 41 Rule 27 of the Code of Civil Procedure:

1. Certified copy of the Decree in O.P. No. 88 of 1951 passed by the learned subordinate Judge, Cuddalore dated 13.04.1955.

2. Certified copy of the judgment in Civil Appeal No. 3321 of 1997 passed by the Hon''ble Apex Court dated 03.09.2001.

(iii) A cumulative reading of all these would indicate and exemplify that the status of the plaintiff as that of Archaka cum Sthanika, is having a special status unlike ordinary Archaka. The plaintiff cannot be treated as a servant of the Executive Authorities contemplated under the Hindu Religious and Charitable Endowments Act.

(iv) The scheme recognizes the special status of the plaintiff. The plaintiff is entitled to receive all cash offerings either intended to him personally or to the deity. Only the cash, which was given in a particular form intended to be given to the deity should be handed over by him to the temple trustee.

(v) Hayagriva Temple is not a separate temple; but it is part of the defendant temple and there is no dispute over it. When the temple authorities attempted to install Hundial at the Hayagriva Temple, which is situated atop the hill very near to the temple, the plaintiff resisted the same and ultimately the Hon''ble Apex court upheld the contention of the plaintiff and accordingly, no Hundial was kept at Hayagriva Temple.

(vi) When that be the position, the same logic is applicable to the main temple also, i.e., Devanatha swamy temple, which is yonder the hillock. As such, based on the Hon''ble Apex Court''s judgment, the judgments and decrees of both the

courts can be set aside and the second appeal can be allowed.

(vii) The very nomenclature assigned to the Hundial called "Thirupani Hundial" would connote and denote that it may not be kept for ever. After the renovation work was over, it ought to have been removed but they perpetually keeping it, and by that they are indirectly compelling the devotees to contribute all cash offerings only in the Hundial instead of giving cash offerings to the plaintiff, who is customarily, traditionally and religiously entitled to receive it as found recognized in the scheme decree.

(viii) In fact, the temple authorities collected the cash, which are to be given to the plaintiff and hence, the temple authorities are bound to return those collections made by them to the plaintiff as prayed in the plaint.

(ix) The scheme decree as modified by the High Court in LPA 124 of 1959 would clearly indicate and exemplify that the temple authorities are having no right either directly or indirectly to collect any cash from the devotees.

Accordingly, the learned senior counsel for the plaintiff would pray for setting aside the judgments and decrees of both the courts below and for decreeing the original suit in toto.

10. Per contra, in a bid to slap down and pulverise, challenge and impugn the arguments as put forth on the side of the appellant/plaintiff, the learned senior counsel for the respondent/defendant would advance her argument, which could pithily and precisely be set out thus:

(i) The history, which constitutes a prelude to the filing of the present suit, is of paramount importance and on behalf of the defendant, the dates and events papers have been furnished to this court, after marking a copy to the other side and that would evince and evidence, as to how the plaintiff after meeting with his Waterloo repeatedly in his attempt to prevent the authorities from installing Hundial and also his attempt to prevent the authorities from exercising effective control over the temple, has chosen to file the present suit.

(ii) Both the courts below appropriately and appositely, legally and correctly, understanding the true intention of the plaintiff dismissed the entire suit.

(iii) The judgment of the Hon''ble Apex court in no way suggest that the defendant is precluded from installing any hundial.

(iv) In fact, the true spirit of the Hon''ble Apex Court judgment would exemplify and demonstrate that installation of Hundial is not antithetical to the clauses in the scheme decree. When such is the position, the plaintiff was not entitled to file the present suit with such prayers.

(v) On the previous occasion as found set out in the evidence, the plaintiff attempted to prevent the authorities from installing Hundial and even initiated contempt proceedings. But all those proceedings went against him and as such the decisions rendered in those proceedings will constitute res judicata.

(vi) The installation, safe-guarding and accounting of Hundials Rules 1975 would exemplify and demonstrate that the authorities have got power to install Hundial and there is no embargo as against it. The scheme decree, even for argument's sake, is taken that it stipulates certain conditions antithetical to the express provisions of the Hindu Religious and Charitable Endowments Act then the Act alone would prevail and not the scheme.

(vii) Section 108 of the Hindu Religious and Charitable Endowments Act and also the various other provisions of it would speak in this regard.

(viii) Sections 57 and 58 of the Act amply enable the authorities to administer all public temples including the defendant temple, which is axiomatically and obviously a public temple. The present plaintiff cannot carve out an exception in his favour from the definition of servant or office holders as found defined in Section 55 of the Act.

11. The learned Senior Advocates on both sides in unison would submit before me certain facts, which are worthy of being narrated here under for effective disposal of this case without any ambiguity.

(i) Pendente lite, steps have been taken by the Joint Commissioner to remove the plaintiff from his office as Archaka because he had already crossed the age of 60 as per the Service Rules. As against which, writ petition was filed and it was dismissed; Challenging the same, a writ appeal has been filed and it is pending before the Hon"ble First Bench of this court.

(ii) A suo motu action was taken by the Joint Commissioner of HR & CE for modifying the said scheme governing the defendant temple and as against that also a writ petition has been filed and an interim order has been passed and that also is pending.

As such, by their joint submission, what I could understand is that, now on the authorities' side they have taken suo motu action relating to removal of the plaintiff and also relating to modifying of the scheme itself; relating to which on the writ side, petitions are pending.

12. The two documents, which are sought to be filed as per C.M.P. No. 641 of 2009 are nothing but the certified copies of the court proceedings, which could be entertained and marked as Exs. Nos. A10 and All respectively. Accordingly, the said CMP is allowed.

13. Be that as it may, now this court is enjoined to decide the substantial questions of law involved in this second appeal. In re the history pertaining to this case:

14. For clarity sake, I would like to narrate here under as to what were all the litigations, which erupted previously in connection with the defendant's temple.

(a) As per Ex. A2, the certified copy of the decree in O.S. No. 666 of 1933 emerged between Krishnamoorthy Bhattachariar [the plaintiff's adoptive father]

and the Executive Officer and other Trustees, the trial court held that the said Krishnamoorthy Bhattachariar in his capacity as Archaka cum Sthanika, had the following exclusive rights.

? Plaintiff in his capacity as Archaka and Sthanika exclusively entitled to the custody of the jewels, gold and silver vessels retained in the temple for the use of the deities subject to the control of the trustees.

? that he is exclusively entitled to receive in cups and plates all offerings made to the deities by the devotees in the presence of the deity in any form without reference to the trustee of the temple and without their interference.

? and that all cash offerings made by the devotees to vest in the plaintiff absolutely and that the trustees had no right to divert the same.

? Trustees were injuncted from interfering with the rights and privileges declared in plaintiff's favour.

(b) Inveighing and challenging the judgment and decree in O.S. No. 666 of 1933, both sides preferred appeal in A.S. Nos. 18 and 21 of 1938 in Sub Court Cuddalore and the appellate court held as under:

? that the plaintiff as the hereditary Archaka and Sthanika had the right to receive in open cups and plates all cash and jewel offerings made to the deities by the devotees without reference to the trustees.

? that the cash offerings made by the devotees but not solely to the plaintiff for his personal use and the offerings in kind would vesting the deity but were to be in the plaintiff's custody subject to the direction and control of the trustees.

? that the plaintiff would also be entitled to be in possession of the jewels, gold and silver articles and brass vessels of the temple subject to the direction of the trustees.

(c) Ultimately, S.A. No. 997 of 1940 was filed before the High Court, whereby the High Court confirmed the appellate court's decree. However, the High court held that there was no need to grant injunction.

(d) Subsequently, O.P. No. 126 of 1950 was filed by the Commissioner HR & CE for modifying the scheme in O.A. No. 5726 of 1929 on the file of the District Court, Cuddalore for appointing Executive Officer of the temple.

The said OP No. 126 of 1950 was renumbered as OP No. 88 of 1951; ultimately AS No. 265 of 1955 was filed by the plaintiff and the court held as under:

? that the archaka shall have the exclusive right to receive the offerings in kind, that is the shape of gold and silver offered in the said temple in open cups and plates and he shall then account for the same to the trustees.

? that he shall no right whatever in the said offerings in kind in the shape of jewels or ornaments intended for the deity and that he shall be entitled only to

the offerings particularly intended for him for doing archaka or Aradhana or whatever form of assistance he may render in the conduct of worshipper that is intended for the benefit of the devotees.

(e) M.P. No. 598 of 1961 was filed by the Archaka on the file of the District Munsif court, Cuddalore for injunction restraining the trustees from receiving any cash or offerings in kind and that the trustees had kept a box and directed the Sevarthi to put the cash and the offerings in kind in the box. Injunction was granted insofar as the cash offerings intended for the archaka alone and not intended for the deity. The archaka was held not entitled to receive the offerings in kind intended for the deities.

(f) As against which, CMA No. 82 of 1961 was filed on the file of Sub Court Cuddalore and it was disposed of in the light of the judgment of the High Court in LPA No. 124 of 1959 dated 31.1.1962.

(g) Ex. A3 would reveal that the High Court on 31.01.1962 in its judgment in LPA No. 124 of 1959 stated thus:

On the contrary, the prior decrees make it uniformly clear that while the appellant cannot appropriate offerings in kind, offerings in cash may be taken by him and should not be made into a hundial at all. They should only be made in open cups and plates, and should be appropriated by the appellant. Even as regards offerings in kind, they should be in open cups and plates, presumably to prevent misappropriation of those offerings, since it is not in dispute that the appellant could not take them.

2 (c) that the appellant shall be generally entitled to take all the offerings in cash made within the precincts, in open cups and plates, but that he shall not be so entitled to appropriate for his own use such cash offerings as are made by worshippers for some other specific or general purpose, stipulated in that form.

(h) The said Krishnamoorthy Bhattachariar filed E.A. No. 1588 of 1966 in O.S. No. 666 of 1933 for punishing the authorities concerned for allegedly violating the order of injunction granted by the Sub Court in CMA No. 82 of 1961 as they placed a Thirupani Hundial and started collecting cash from the devotees near Dwajasthambam at the entrance of the temple.

(i) Ultimately, the court held that there was no contempt as collection of cash in Hundial was not an offering but a donation. Accordingly, EA was dismissed as against which, as revealed by Exs. B5 and B6, CMA No. 38 of 1967 was filed by the Archaka and that CMA also was dismissed confirming the order in EA.

In re the application of the principle of res judicata:

15. At this juncture, I would like to point out that the learned senior counsel for the defendant correctly and appositely submitted that the findings in those contempt proceedings relating to installation of Hundial attained finality, which operate as res judicata.

16. I also would like to re-collect and call-up the following maxims:

(i) *res judicata pro veritate accipitur*-A matter adjudged is taken for truth. A matter decided or passed upon by a court of competent jurisdiction is received as evidence of truth and

(ii) *Nemo debet bis vexari pro una et eadem causa*-[No man ought to be twice troubled or harassed (if it appear to the Court that it is) for one and the same cause. No man can be sued a second time for the same cause of action, if once judgment has been rendered. No man can be held to bail a second time at the suit of the same plaintiff for the same cause of action]

Accordingly, if viewed, once a competent court decided a particular point then automatically whether in stricto sensu Section 11 of CPC is applicable or not; the principle of *res judicata* as found enshrined in jurisprudence, is certainly applicable. Notwithstanding the order emanated in the EA proceedings, the concept *res judicata* would certainly be applicable and both the courts below adhering to the aforesaid principle correctly decided the lis on that ground.

17. Ex. B7 dated 24.01.1974 would reveal that the Archaka-Krishnamoorthi Bhattachariar filed a separate suit in O.S. No. 512 of 1969 seeking declaration that the plaintiff was entitled to obtain account from the Hundial collection installed on 24.06.1965 in the main temple and for injunction also.

18. In that the court held that the installation of the said Thirupani Hundial was not at all in violation of the scheme. In fact, there was a finding to the effect that it was the plaintiff who kept the "kudam" in the garba graham for collecting money in his favour.

19. Exs. B10 and B11 the certified copies of the judgment and decree dated 24.08.1979 passed by the learned Subordinate Judge, Cuddalore would reveal that the appeal in A.S. No. 173 of 1974 filed by the Archaka was dismissed. In fact, pending those proceedings the said Krishnamoorthi Bhattachariar died and his adopted son Neelamega Bhattachariar, the plaintiff herein came into the picture. It would also reveal that O.S. No. 272 of 1974 was filed by the temple for rendition of accounts by the Archaka from 01.04.1962 till the date of suit; directing the Archaka to furnish accounts for the collections made by him in receptacles from 31.07.1970 and for a permanent injunction as against him and his deputies from collecting monies in receptacles except in open cups and plates in the garba graham. The said suit was dismissed on his undertaking that he would abide by the scheme decree.

20. Exs. B 12 and B13 dated 07.10.1980, the judgment and decree passed by the learned Additional District Judge, Cuddalore would reveal that the temple authorities filed the appeal in A.S. No. 256 of 1977 as against the dismissal of the suit in O.S. No. 272 of 1974 before the District Court, Cuddalore, which was ordered mandating the Archaka to furnish accounts and injunction was granted as against the archaka restraining him from receiving vowtive offerings except in

open cups and plates in the garba graham.

21. Ex. A4 dated 04.05.1990 the judgment passed by the learned District Munsif, Cuddalore would reveal that O.S. No. 1068 of 1988 was filed in the District Munsif Court, Cuddalore by Neelamega Bhattachariar the plaintiff herein, for a bare injunction so as to restrain the temple authorities from installing a hundial in the Hayagreeva Sannidhi atop the hill, forming part of the Arulmighu Devanatha Swamy Devasthanam.

22. Ex. A5 dated 04.02.1991, the certified copy of the judgment passed in A.S. No. 187 of 1990 would reveal that the Sub Court, Cuddalore allowed the appeal with the following findings:

- Since the defendant had not attempted to install a hundial for the improvement or thiruppani of the temple and it is without any purpose, the defendant cannot install a hundial.
- the earlier proceedings cannot be res judicata as the hundial therein was for a specific purpose.
- suit bare injunction without a prayer for declaration was not maintainable.
- suit is barred for want of notice under S. 80 CPC.

23. The appellate court's order in dismissing the original suit on the ground of want of notice u/s 80 of the CPC was set aside by this court vide judgment dated 16.12.1996 in S.A. No. 648 of 1991. As against which, only the judgment of the Hon'ble Apex Court in the aforesaid civil appeal emerged and the Hon'ble Apex Court rendered the judgment reported in Arulmighu Devanatha Swamy Temple Vs. Neelamega Bhattachariar, .

In re the impact of the Hon'ble Apex Court's judgment reported in Arulmighu Devanatha Swamy Temple Vs. Neelamega Bhattachariar,

24. What I could understand and discern from the submissions on both sides and from the records, is that still as on this date, the scheme as approved by this court vide order dated 31.01.1962 in LPA No. 124 of 1959 is in vogue and if at all the plaintiff could claim any right, it should be only under the said scheme.

25. The learned senior counsel for the plaintiff would proceed to argue that the first prayer in the plaint is relating to the civil right of the plaintiff and it could even be construed as an independent right emanated in his favour de hors the scheme decree. Whereas the learned senior counsel for the defendant would submit that such a prayer is nothing but verbatim the same as referred to in clause 2 (c) of the Scheme decree as amended in L.P.A. and in such a case, it cannot be projected by the plaintiff as though it is an independent civil right de hors the scheme decree and as a sequela, he should not have approached the civil court invoking Section 9 of the Code of Civil Procedure.

26. A mere running of the eye over clause 2 (c) of the scheme decree as

amended by this court in LPA, and the prayers in the plaint, would display and demonstrate that his alleged right is not the one, which he wanted to assert dehors the scheme. It has been amply contemplated in the scheme itself. In such a case, there is no knowing of the fact as to how he could carve out an exception relating to the first relief in the plaint, from that of the scheme decree. If at all according to the plaintiff there was any violation of the scheme decree then, as he earlier attempted to do so, he ought to have moved for contempt; but surprisingly he has chosen to file the present suit seeking such prayers.

27. At this juncture, it is just and proper to refer to the judgment of the Hon'ble Apex court reported in Arulmighu Devanatha Swamy Temple Vs. Neelamega Bhattachariar, . In that judgment, the Hon'ble Apex Court would narrate in brief the history relating to the litigation, which erupted between the same parties herein, along with the verdict and an excerpt from it would run thus:

12. Shri. K. Ramamurthi, learned Senior Advocate appearing for the respondent submitted that the temple has hardly any income as is expressly admitted by the appellant himself in the course of written statement. No salary is paid to the respondent. However, he has to perform the poojas in accordance with the "Shastras" applicable to the temple, which involve a good deal of expenditure apart from the fact that the respondent has to sustain himself and, therefore, he needs funds which are offered by the devotees and such offerings are made within the temple and in those circumstances in the scheme suit it was made clear that he is entitled to take those offerings, if the "hundial" is installed within the temple precincts, the effect would be that instead of giving offerings to the Archaka, the offerings would be made in the "hundial" and it will not be possible to find out whether it is for any specific or general purpose such offerings have been made. It was in those circumstances, the trial court, the first appellate court and the High Court have concurrently come to the conclusion that the offerings could not have been collected in "hundial" by the appellant. Undoubtedly, as had been done on the previous occasion, "hundial" can be kept for any specific purpose as made clear in the scheme and that right is in no way affected by the decree affirmed by the High Court.

(emphasis supplied)

A plain reading of the aforesaid excerpt would display and demonstrate that the Hon'ble Apex Court interpreted the said scheme in such a manner that the scheme in no way prohibited installation of Hundial for any specific purpose.

28. The learned senior counsel for the defendant placing reliance on it would point out that the Hon'ble Apex Court in no way stated that there should not be any installation of Hundial for any other purpose and that the installation, safeguarding and accounting of Hundials Rules, 1975 amply empowers the authorities to install Hundial concerning other purposes or also for general purpose. Statutory provisions cannot be deemed to have been annulled by any scheme. As of now, what I could see is that the Hon'ble Apex Court itself did not

accept the contention put forth by the plaintiff as though there should not be any Hundial at all in the temple premises and that if kept so, that would usurp allegedly the right of the plaintiff to collect the offerings from the devotees for himself as well as for the deity.

29. No doubt, the Hon''ble Apex Court''s judgment emerged during the pendency of the second appeal and that itself would be a good answer for the plaintiff''s prayers in the plaint.

In re the significance of earlier court orders concerning installation of Hundial:

30. Undeniably and unarguably, in the plaint itself, the plaintiff pulling no punches and without mincing words, would state that on an earlier occasion, he attempted to prevent the authorities from installing Thirupani Hundial, but he failed and ultimately the court held that Thirupani Hundial can be maintained, as it was for specific purpose.

31. The plaintiff would contend that the said Hundial outlived its utility and already the renovation works were over and it should not be allowed to be kept there, for which, the learned senior counsel for the defendant would appositely and correctly, convincingly and legally argue that carrying out renovation work is not a one day affair but it is an on going process.

32. In the written statement, the defendant listed out various items of works undertaken by them.

33. The learned senior counsel for the defendant would submit that even now the repair works and renovation works are being carried out from time to time and in such a case, the question of removing the Thirupani Hundial would not arise.

34. I could see considerable force in her submission that Thirupani Hundial, which was installed and approved by the court cannot be asked to be removed by the plaintiff, who claimed to be the Archaka as he is no way connected with the Hundial. His apprehension that on seeing the Thirupani Hundial, the devotees and Sevarthis, would put all the cash only into that Hundial and nothing would be offered to him is too big a pill to swallow and that cannot be countenanced and upheld.

35. The learned senior counsel for the defendant inviting the attention of this court to the previous proceedings as well as the scheme decree, would highlight and spotlight the fact that the plaintiff on receipt of cash offerings from the devotees, should have furnished account as to how much of it should be handed over to the trustees and how much should be taken by him and accordingly, he should have handed over the cash and so far, he has not at all furnished any account and he has not parted with any cash ever since the Scheme Decree. In fact, such an imputation made by the learned senior counsel for the defendant was not factually refuted directly but on the plaintiff''s side, it was sought to be explained and expounded by pointing out that meagre amounts were collected by the plaintiff and that was not even sufficient to defray the expenses in

disbursing the salaries to the employees who were appointed by the plaintiff as his assistants for performing poojas in the sannadhis in the temple. But one fact is clear that no account was furnished by the plaintiff and no amount was handed over by him to the defendant.

36. At this juncture, the learned senior counsel for the plaintiff without fear of contradiction, placing reliance on Exs. B 12 and B13 would point-up and show-up that O.S. No. 272 of 1974 was filed by the temple authority as against the plaintiff for rendering accounts and also for recovery of amounts from him and that was dismissed; as against which appeal in A.S. No. 256 of 1977 was filed, which was decreed directing the plaintiff to account from 31.07.1970 onwards; so far he has not furnished any accounts and injunction also was granted as against the plaintiff restraining him from receiving offerings except in open cups and plates in the garba graha.

37. It is therefore pellucidly and palpably clear from the submissions made by both sides and from the evidence that the prayer of the plaintiff under clause VI (i) of the plaint is no more *res integra*, as it has been already decided in previous litigations as well as in the scheme decree and it appears steps are taken by the authorities to modify the scheme itself, for which the plaintiff is opposing and that is a separate issue, to wit, a whole new ball game.

38. The prayer in clause VI (ii) in the plaint would be to injunct the defendant from placing Hundial within the temple premises to receive cash offerings. That prayer has been adequately answered in the Hon''ble Apex Court's judgment extracted supra, based on which I expressed my views also.

39. Regarding the prayer in clause VI (iii) to remove the Hundial so to say, the Thirupani Hundial, my above discussion would convey and indicate that he has got no *locus standi* to make such a prayer in view of, once again the Hon''ble Apex Court's judgment cited supra.

40. Regarding the prayers as contained in clauses VI (iv) and (v), I observe that in view of the ratiocination adhered to in deciding the aforesaid three prayers, that would not arise at all.

Accordingly, the prayers are answered.

41. The above narration of facts would unambiguously and unequivocally exemplify and demonstrate that, as of now, the Scheme Decree has been interpreted to the effect that there is no embargo for placing Hundial for any specific purpose.

42. The learned Senior Counsel for the plaintiff would stress upon the fact that other than the Hundial for specific purpose, no other Hundial should be installed.

43. In my considered opinion, as pointed out by the learned Senior Counsel for the defendant, the application of the Installation, safe guarding and accounting of Hundials Rules, 1975 has not been considered at all by both the Courts below

or even in the proceedings pending before the Hon''ble Apex Court, which ultimately culminated in the judgment in Civil Appeal No. 3321 of 1997. Now then both sides would state that the authorities are intending of revising the Scheme itself, in such a case, it is for them to get the rights/powers asserted and ascertained. Now the factual position is that the Hundial is in existence and the plaintiff wants to remove it, which cannot be done because of the earlier decisions emerged in this regard including the decision rendered by the Hon''ble Apex Court.

44. The learned Senior Counsel for the plaintiff inviting the attention of this Court to the trial Court's judgment under Issue No. 7, would develop his argument that the lower Court decided as though the status of Sthanika was abolished and that is not in existence. However, the first appellate Court rendered its finding on that point to the effect that for the purpose of deciding this case, the trial Court was not enjoined to decide on that point and accordingly set aside the trial court's finding in that regard.

45. Not to put too fine a point on it, a fortiori, the scope of the suit relating to the claim for collection of money by the plaintiff, does not warrant a decision as to the status of the plaintiff as it is axiomatically and obviously clear from the averments in the plaint which were laid on with a trowel. To put in single syllable word the plaintiff did not seek for declaration of his status as Archaka cum Sthanika in the plaint and wherefore, no decision need be rendered on that count.

46. The learned senior Advocates on both sides would frankly and legally leaving no room for any doubt submit that the present suit filed by the plaintiff cannot be construed in any manner as the one whereby the scheme decree itself could be modified.

47. To the risk of repetition and pleonasm, but without being tautologous, I would like to point out that as submitted by them earlier and referred to supra, the authority concerned initiated action for modifying the decree by virtue of the power vested with the authority and relating to it, the plaintiff also preferred a writ petition.

48. Hence, this court, in the light of the changed scenario as found exemplified in the Hindu Religious and Charitable Endowments Act, 1955 and the various rules passed thereunder, cannot give any finding other than the ones, which are within the scope of the suit as already highlighted supra.

49. In such a case, the substantial question of law No. 1, does not arise. Accordingly, the first substantial question of law is answered.

50. Regarding the second substantial question of law is concerned, I would like to point out that both the Courts below advertng to the earlier proceedings as well as the Scheme Decree, rendered their judgments and the Hon''ble Apex Court in its judgment also highlighted that the installation of Hundial for any specific purpose would not in any way take away the right of the "Archaka" concerned.

Wherefore, I could see no perversity or illegality in the judgment rendered by the first appellate Court.

51. I recollect and call up the recent decision of the Hon'ble Apex Court reported in Union of India (UOI) Vs. Ibrahim Uddin and Another, an excerpt from it would run thus:

59. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a second appeal does not lie on question of facts or of law. In State Bank of India and Others Vs. S.N. Goyal, this Court explained the terms "substantial question of law" and observed as under: (SCC p. 103, para 13)

13.....The word "substantial" prefixed to "question of law" does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. "Substantial questions of law" means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties.....any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law.....There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case.

(emphasis added)

Applying the aforesaid dictum as found enunciated in those decisions, the matter has been viewed and found that there is no necessity for interference in this Second Appeal. The original suit filed by the plaintiff turned out to be an ill wind that blew no one any good.

Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs.