

(2002) 08 MAD CK 0005
In the Madras High Court
Case No : L.P.A. No. 199 of 1996

N.T. Shanmugham, N.S. Bala Thandayuthapani, M. APPELLANT
Mangalambikai, Sakkubai, L. Seshammal and S. Selvi

Vs

Kondalavannan, Raghurajan, Karthikeyan, Thirumalaiswamy, RESPONDENT
Jagadeesan, Thayammal, The Commissioner, HR and CE.,
Administration Department, S. Govindaswami and N.S.
Dharmalingam

Date of Decision : 30-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1963 — Section 15(2)

Citation : (2003) 1 LW 171 : (2003) 1 MLJ 134

Hon'ble Judges : K. Gnanaprakasam, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : T.L. Rammohan, for J. Anandavalli, for the Appellant; S. Thangavel,
for RR. 1 to 5, 8, 9 and M.C. Swamy, Special Government Pleader, for the
Respondent

Final Decision : Dismissed

Judgement

A.S. Venkatachalamoorthy, J.—The Appellants (who are the legal representatives of the sole plaintiff) having lost before the trial Court as

well as before the learned single Judge of this Court, has preferred the above appeal. The plaintiff laid a suit in O.S.706 of 1977 on the file of the

learned Subordinate Judge, Coimbatore against the respondents 1 to 7 and the father of the respondents 8 and 9 herein praying the Court to grant

a decree in her favour as well as 7th defendant (who is 6th respondent in this appeal) setting aside the order of the Commissioner, HR & CE i.e.,

8th defendant (who is 7th respondent in this appeal) in A.P.104 of 1975 and further declaring that the plaintiff and the 7th defendant are entitled to

hold office as the hereditary trustees of the temples or in the alternative, the defendants 1 to 6 are entitled to hold office as hereditary trustees of the

above temples and then declare that the plaintiff and the 7th defendant are entitled to hold office as the hereditary trustees along with the

defendants 1 to 6 as per the turns to which they are entitled to under law.

2. The genealogical tree given hereunder would disclose the relationship between the parties.

Kondaswamy Nadar

|

|

Ramaswamy Nadar

|

|

| | |

Rangaswamy Nadar Kondaswamy Nadar Thiruvengkataswami Nadar

| | |

| | |

| | |

Govindaswamy Nadar Ramaswamy Nadar Selvanambi Nadar

| | |

| | |

Srinivasamurthy (D-1) | | |

| Adilakshmi Thayammal

| (Plaintiff) (D-7)

| | | | |

Kondalvannan Reghuraj Karthikeyan Thirumalai- Jagadeesan

(D-2) (D-3) (D-4) swamy(D-5) (D-6)

3. The averments in the plaint are to the following effect.

Plaintiff's father Selvanambi Nadar and his grandfather Kondaswami Nadar constructed the temples of Badrakaliamman, Pandurangan and Selva

Vijayakar temple at Nanjundapuram. Till death, Kondaswami Nadar was acting as

trustee and thereafter his only son Ramaswamy Nadar succeeded to the trusteeship and was so acting. When Ramaswamy Nadar died, his three sons Rengasamy Nadar, Kondaswami Nadar, Thiruvengadaswami Nadar succeeded to the trusteeship. The plaintiff's father died when he was comparatively young, leaving his only son Selvanambi Nadar. After some time, that was in 1973, Selvanambi Nadar died and thereafter Rengaswamy Nadar died leaving his only son Govindaswamy. The first defendant Srinivasamurthi was the only son of Govindasamy Nadar. Kondaswamy Nadar, the other son of Ramaswamy Nadar died leaving his only son Ramaswamy Nadar. The said Ramaswamy also died leaving his five sons, who are defendants 2 to 6 herein. A partition took place on 30.10.1914 between Ramaswamy Nadar, Kondaswamy Nadar and Selvanambi Nadar and the properties in Ramanathapuram village bearing survey No.126/2, 127/2, 210 and 551 were endowed to the above temples. The Trust was created by means of the said partition deed and a provision was also made for the management of the above said three temples and according to which Ramaswamy Nadar to be in management of the temples and their properties till his death and thereafter, each branch of his three sons should be in management of the above said temples and their properties for one year each by turn. However, the said arrangement mentioned in the deed was not given effect to. When Ramaswamy Nadar died, Selvanambi Nadar assumed management of the temples and their properties till his death in the year 1973. The branches of Rengaswamy Nadar and Kondaswamy Nadar did not claim any right. Govindaswamy Nadar son of Rengaswamy Nadar and Ramaswamy Nadar son of Kondaswamy Nadar were never in the management of the above temples and properties. In fact, Selvanambi Nadar was in management of the above said temple and their properties till his death in the year 1973 in spite of the fact that several proceedings were instituted to dislodge the Selvanambi Nadar. The frustrated defendants 1 to 6 in the year 1967 filed an application for framing of a scheme for the above temples and the same was dismissed. Again, the defendants 1 to 6 filed an application in O.A.88 of 1970 on the file of the Deputy Commissioner for framing of a scheme providing for the management of the above temples by the three branches in turns of one year each. This

was objected to by Selvanambi Nadar on the ground that the defendants 1 to 6 and their predecessors never exercised the right of management

and that Selvanambi Nadar had perfected his right to the management of the temples and its properties by adverse possession. The said

application was allowed erroneously by the Deputy Commissioner. In the meantime Selvanambi Nadar died and the plaintiff as legal representative

of the late Selvanambi Nadar, filed an appeal in A.P.104 of 1975 on the file of Commissioner, H.R. & C.E. Board against the order of the Deputy

Commissioner framing a draft scheme in O.A.88 of 1970. However, the same was dismissed. Aggrieved by that, plaintiff filed a suit in O.S.706 of

1977 on the file of Sub Court, Coimbatore u/s 70 of the H.R. & C.E. Act, mainly contending that the Commissioner ought to have considered the

objections raised and disposed of the matter only on merits. The view taken by the Commissioner that the appeal had become in fructuous is not

sustainable in law. According to the plaintiff, when the draft scheme itself is challenged, there is no question of the appeal becoming in fructuous.

According to the plaintiff, she has overwhelming documentary evidence which would show that the defendants 1 to 6 have no manner of right of

management of the temple and their properties. The plaintiff also contended that if for any reason Court comes to the conclusion that the

defendants 1 to 6 are entitled to participate in the management then in any event the plaintiff and the 7th defendant should also be declared as

entitled to exercise their right of management of the above temples and its properties along with the defendants 1 to 6 inspite of the fact they

belonged to female sex as per the turn. The order of the Commissioner, which is dated 16.10.1976 was served on the counsel for the appellant on

1.2.1977. Notice u/s 80 of CPC was also given to the Commissioner and that period has to be deducted from the period of limitation prescribed

u/s 70 of Act 22 of 1959.

4. The defendants 1 to 6 filed a common written statement resisting various claims made by the plaintiff. According to these defendants, the suit

temples were built by Kondaswamy Nadar and their father in the year 1866 as evident from the stone inscriptions found in the temple premises.

After the death of Kondaswamy Nadar, his son Ramaswamy Nadar was managing the temple as its trustee. The claim that after the death of

Ramaswamy Nadar, Selvanambi Nadar succeeded to the trusteeship is a falsehood. Thiruvenkataswamy Nadar predeceased his father

Ramaswamy Nadar and at that time Selvanambi Nadar was a minor and that being so, he could not have managed the temples as trustee as

alleged. Further the two elder sons of Ramaswamy Nadar, Rengaswamy and Kondaswamy Nadar, who were then alive at his death were

managing the temple properties by turns as its trustees. At the time of partition, Badrakaliamman temple and its appurtenant Nandavanam, which

were situated in the entire S.F.No.584 in the village Nanjundapuram comprising 0.81 acres, were also endowed to the said temples. In the

document it is specifically mentioned that Ramaswamy Nadar should be the trustee of the said temples and their properties till his death and

thereafter three branches of his three sons should manage the three temples by turns for one year as Managing Trustees and the other two

branches as trustees should supervise the temple accounts and affairs. The allegation that the recitals in the documents were not given effect to is

totally false. The various proceedings including O.A.558 of 1939 would completely falsify the claim of plaintiff. The claim that Selvanambi Nadar

perfected his right as trusteeship as against the defendant is false and in fact he was not enjoying the said right openly, peacefully and without

interruption as will be evident from the several proceedings that were taken by the defendants and their predecessors-in-title. He was only in

permissive right and possession on account of the close relationship between the parties. Further Selvanambi Nadar was removed from the

management of the temples and its properties as trustee by a Statutory Body viz., H.R. & C.E. Board, after due notice and enquiry on the ground

of gross mismanagement and misappropriation of funds. That being so, plaintiff as his heir, cannot question the same, unless she takes up the

responsibility of liability. The plaintiff having completely ignored 1914 partition deed in which the trust regarding administration of temple was

created, cannot contend that the recitals therein did not come into force. She is stopped from stating that the order of the Deputy Commissioner in

the framed scheme that the senior male member of each branch will be entitled to manage the temple omitting female members, as unconstitutional

and void. That apart, suit is also barred by limitation and there is no requirement under law to give notice u/s 80 of the CPC before filing of the suit.

Plaintiff has filed the suit on 8.8.1977, whereas she ought to have filed the same on or before 27.5.1977. The suit is totally a frivolous one and has

been filed only to drag on the evil day of her delivering possession of the temple lands to the trustees so that she may enjoy the incomes therefrom

as long as possible.

5. The Commissioner, H.R. & C.E., filed a separate written statement. In the partition deed there are recitals as to how succession has to take

place and the temples and its properties should be managed. The claim of the plaintiff for exclusive management on the basis that she is the sole

hereditary trustee is false. In fact as early as in 1955, proceedings in respect of suit institution were initiated and it was considered that framing of a

scheme alone would be a suitable remedy for the proper administration of the temples and its properties. The plaintiff's husband was acting against

the interests of the temple by utilising the income from the lands for his own ends and even went to the extent of getting patta for the endowed

properties in his own name. The Deputy Commissioner, after detailed enquiry allowed the petition and framed a draft scheme by an order dated

13.10.1972. After calling for objections, the draft scheme was finalised by the order dated 7.9.1973 by the Deputy Commissioner. After the death

of plaintiff's husband, an appeal was preferred in A.P.104 of 1975 before the Commissioner against the draft scheme, when in fact, Deputy

Commissioner has passed final orders long prior to that, that was on 7.9.1973. The appeal was rightly dismissed as infructuous. The claim that the

plaintiff should be considered as hereditary trustee and that declaration to that effect also to be granted is incorrect. The claim of the plaintiff that

the provision in the will is illegal and void is unsustainable. In fact, the reliefs claimed in the plaint are self-contradictory. The suit is hopelessly

barred by limitation.

6. At the trial, plaintiff got herself examined as PW-1 and two more witnesses were examined as PW-2 and PW-3 and documents Exs.A-1 to A-8

were filed. On the defendants' side, first defendant, father of the respondents 8 and 9 herein was examined as DW-1 and Exs.B-1 to B-22 were

marked.

7. At the trial, learned Subordinate Judge framed as many as eight issues for consideration. The learned Subordinate Judge after elaborately

considering oral and documentary evidence, came to the conclusion that the materials available on record would clearly show that defendants 1 to

6 and their predecessors were in enjoyment of the suit temples and its properties and they are entitled to hold office as trustees and they have not

lost their right to manage the temples and it cannot be said that the plaintiff's father was in the exclusive possession of the temples for a statutory

period to acquire prescriptive title. The Court also ruled that since the plaintiff has not filed any appeal against the final order passed by the Deputy

Commissioner, H.R. & C.E., the Commissioner has rightly dismissed the appeal as infructuous. On the question of limitation, the trial Court ruled

that since the said issue was considered by his predecessor even at the earliest stage and a finding rendered that the suit is well within the time, the

issue does not really arise for consideration since the matter has already been decided earlier. Since the plaintiff as PW-1 categorically admitted

that the male members have the right over the trust as per the partition deed 1914, the plaintiff and the 7th defendant are not entitled to represent

the trusteeship along with defendants 1 to 6.

8. Being aggrieved by the judgment and decree of the learned Subordinate Judge, plaintiff preferred an appeal in A.S.811 of 1976.

9. The learned counsel for the appellant broadly speaking, made three fold submissions. Firstly he contended that the appeal before the

Commissioner in A.P.104 of 1975 filed against the draft scheme framed on 13.10.1972 would not become infructuous since no independent

appeal was filed against the final scheme dated 7.9.1973 and the Courts have held in several cases that the appeal can be considered on merits

and amendments can be made in the final scheme. Secondly, the learned counsel submitted that for a suit of this nature, a notice u/s 80 of the Code

is necessary. The learned counsel further contended that even assuming that notice u/s 80 of the CPC is necessary before filing the suit, the legal

position at that time was not clear as to whether a notice u/s 80 of the Code is necessary or not. Or in other words, there were conflicting views

taken by the Courts and in those circumstances, the litigant cannot be thrown out of the Court for this reason. Finally the learned counsel

contended that a woman is entitled to Shebaitsham and that Courts have ruled exclusion of women is contrary to the provisions of the H.R. & C.E.

Act.

10. The learned counsel appearing for the respondents inter alia contended that the appeal A.S.104 of 1975 on the file of the Commissioner, H.R.

& C.E. was filed not by the Selvanambi Nadar and only by his daughter. Selvanambi Nadar died within a few months after the final scheme

(order) and after a long period of one year, that was on 28.1.1975 the appeal was filed, that too only against the draft scheme. According to the

learned counsel, the appellate authority rightly dismissed the appeal as in fruituous. With regard to the second contention as to whether notice u/s

80 of the CPC is necessary or not, the learned counsel submitted that this being a statutory suit no notice u/s 80 of CPC is necessary and the legal

position was clear even way back in the year 1971. The third point of the appellant has been answered by the counsel for the respondent

contending that exclusion of women is bad in law only when the Court frames a scheme. But here, the Trust was created under partition deed of

the year 1914 and it is the wish of the parties that the male members alone to be in the management of the temples, etc.

11. That there was a partition deed dated 30.10.1914 executed between Ramaswami Nadar, Rangaswamy Nadar, Kondaswamy Nadar and

Selvanambi Nadar and some properties were endowed for the temples viz., Goddess Badrakaliamman, Lord Pandurangan and Lord Selva

Vinayagar at Nanjundapuram in Coimbatore District is not in dispute. At the relevant point of time i.e., when O.A.88 of 1970 came to be filed,

Selvanambi Nadar was in permissive possession as Trustee for few years on account of close relationship between the parties. The respondents 1

to 5 and one Srinivasamoorthy viz., father of respondents 8 and 9, filed an application u/s 64 of the H.R. & C.E. Act in O.A.88 of 1970 for

removing Selvanambi Nadar from the trusteeship on the grounds of mismanagement and misappropriation and for framing a scheme for the

administration of the institution and endowments therefore in accordance with the partition deed dated 30.10.1914. This application was opposed

by Selvanambi Nadar. The Deputy Commissioner, H.R. & C.E. held an enquiry as contemplated under the Act and after considering the oral and

documentary evidence, came to the conclusion and by an order dated 13.10.1972, removed the Selvanambi Nadar from the Trusteeship and

issued a draft scheme in accordance with the partition deed dated 30.10.1914. On 22.1.1973, notice was issued calling for objection or

suggestion, if any from the public, for the said draft scheme. It is relevant to note, while respondents 1 to 5 and Srinivasamoorthy filed objections,

Selvanambi Nadar did not file any objection and his counsel also reported no instructions during the enquiry. After due consideration of the

objections, Deputy Commissioner, H.R. & C.E. passed final orders on 7.9.1973 confirming the draft scheme. No appeal was filed by Selvanambi

Nadar against the draft scheme or against the final scheme dated 7.9.1973 till he died on 15.12.1973. Long thereafter, the appellant, who is the

daughter of Selvanambi Nadar filed an appeal on 28.1.1975 u/s 69(1) of the Act in A.P.104 of 1975 before the Commissioner, H.R. & C.E.

against the draft scheme (order dated 13.10.1972), passed by the Deputy Commissioner. Or in other words, no appeal was filed by the

appellant/plaintiff against the final scheme (order dated 7.9.1973).

12. The learned counsel for the appellant contended that inasmuch as the Deputy Commissioner has passed final order only confirming the draft

scheme, the failure on the part of the appellant to file an independent appeal against the final order dated 7.9.1973 would not stand in the way of

Commissioner considering the appeal in A.P.104 of 1975 on merits and he is well within his powers while considering the same to amend or

modify the final scheme. Elaborating the submissions, the learned counsel submitted that the scheme is in the nature of preliminary decree and that

there can be any number of preliminary decrees as ruled by this court in several cases. That apart, according to the learned counsel there are

instances, where the High Court amended the final scheme while considering the appeal filed against the draft scheme.

13. The learned counsel first placed reliance on the ruling reported in Kasi alias Alagappa Chettiar and Others Vs. Rm.A.RM.V. Ramanathan

Chettiar alias Srinivasan Chettiar through his next Friend, AV.Pl.Ct. Ramanathan Chettiar and Another, in support of his contention that there is

nothing in the Code which can be construed as a prohibition against the Court in passing more than one preliminary decree. We are of the view

that the said ruling will not advance the case of the appellant. In that case, the plaintiff filed a suit for taking a partnership accounts. All that has been

held in that ruling is,

It will thus be seen that decisions of the several Courts which had occasion to consider the question are by no means uniform, and we do not feel

pressed by any current of authority to hold that the Court, in a proper case, has no power to make more than one preliminary decree and one final

decree, at any rate in those classes of suits in which the Code expressly provides for the passing of a preliminary decree.

We are at a loss to find as to how this ruling will advance the case of the appellant.

The next ruling that is referred to is the one reported in L.S. Mariappan, 205 Dindigul Road, Madurai-1 Vs. Kuppamuthu and 6 others, . The

learned counsel for the appellant directly referred to paragraph 27 of the said Judgment, in particular to the following passage,

Be that as it may, one other question that arises for consideration at this juncture is as to when the draft scheme as approved by the learned single

Judge has already been put into operation and the same is said to have been successfully being worked out as submitted by the learned counsel for

the appellants in L.P.A.61 and 62 of 1991 as well as in L.P.A.128 of 1981: would it be advisable to tinker with the working of the said scheme, at

this stage which would be like putting spokes in the wheels and disturb successful working of the scheme. We are not inclined to interfere with the

scheme formulated under the final decree proceedings. However having regard to our conclusion that the will dated 25.5.1962 executed by the

late L.P. Lakshmana Chettiar bequeathing it is turn of his eight months period of Poojariship and trusteeship of the suit temple in favour of his

younger son Chellam alias Subbaiah was legally valid and after the demise of the said Chellam alias Subbaiah, his only son L.S. Mariappan the

appellant herein is legally entitled to inherit the said period of trusteeship of his late grandfather L.P.Lakshmana Chettiar, the said L.S. Mariappan,

the appellant herein will be entitled for eight more months of trusteeship and poojariship of the suit temple. Therefore to that extent clause (iv) of the

scheme decree is modified to the following extent:-

the second defendant i.e. second branch shall have the right of the management of the suit temple and exercise poojariship and trusteeship for a

period of two years. After expiration of the period of management by the second

defendant, the third defendant (fifth respondent) shall take over and exercise the right of management for sixteen months and after the expiry of the said sixteen months, the plaintiffs shall take over and be in management for a period of eight months and after completion of said eight months, the second defendant shall get into management and that the scheme of turn management shall be on the above rotation.""

The above ruling will not help the appellants for the reasons,

(a) that was not a case where an appeal was filed only against the draft scheme and in that appeal the High Court modified the final scheme.

(b) in fact the Court made it clear that it is not interfering with the scheme formulated under final decree proceedings.

(c) in that case court considered about the validity of a bequeath made and when found valid and legal, modified the final scheme accordingly

which is only consequential and absolutely necessary.

The learned counsel for the appellant also relied on the ruling reported in A.K. Gupta and Sons Vs. Damodar Valley Corporation, and draw our

attention to paragraph 27 of the Judgment, which reads as under,

It is now well settled that the Court has power to allow amendments in connection with claims which had become time-barred, if special

circumstances exist and it be in the interests of justice. This is not disputed for the respondent. The real dispute between the parties is whether the

circumstances of the case come within the principle laid down in the various cases. This necessarily leads to a consideration of the circumstances

and the amendments sought in those cases.

and contended that in this case special circumstances do exist and the interest of justice calls for an interference. Here again, we are not able to

accept the submission. Even assuming for a moment the Court can interfere, inasmuch as no special circumstance has been pointed out, we have

no hesitation to reject the submission made by the learned counsel for the appellant.

Reliance is also placed by the learned counsel for the appellant in the ruling reported in Ram Kumar Agrawal and Another Vs. Thawar Das (Dead)

Through Lrs., . The learned counsel straight away pointed out a particular sentence in paragraph 10 of the said Judgment, which reads thus,

... Merely because the decree under appeal has been executed for want of stay order from the superior Court the right of the judgment debtor to prosecute the appeal is not lost without there being something to show that the judgment debtor had waived or consciously given up his right of prosecuting the appeal.

That was a case in which a suit for specific performance was filed. The Court decreed the suit and pursuant to the decree, sale deed was also executed. The aggrieved party preferred an appeal before the Apex Court and one of the contention raised was that inasmuch as the decree under the appeal passed by the High Court has been put to execution and sale deed in terms of the decree has been executed, the appeals do not deserve to be allowed. Only in that context the Supreme Court observed as above. We are clearly of the view that this ruling also would not in any way advance the case of the appellant.

14. There are certain aspects/facts and circumstances which this Court is inclined to point out. The Deputy Commissioner in O.A.88 of 1970

removed Selvanambi Nadar from the Trusteeship, obviously because he was not found to be a fit and proper person to be so and that was done

after due enquiry and considering the objections of Selvanambi Nadar. A draft scheme was prepared and notices were issued, but Selvanambi

Nadar did not file any objection. Finally on 7.9.1973, the Final Scheme was passed. Selvanambi Nadar died on 15.12.1973 and till his death, he

did not take any steps to file any appeal. The appeal A.P.104 of 1975 was filed on 28.1.1975 by the appellant/plaintiff. What is to be noted is, on

the date when A.P.104 of 1975 was filed, the final scheme (order) was already passed. The contention of the learned counsel for the appellant that

inasmuch as the final scheme confirmed only the draft scheme, the Commissioner is well within his powers to consider the appeal A.P.104 of 1975

and amend the final scheme. It is not known under what provision of law or supported by which ruling the learned counsel for the appellant is

putting forth such a submission. The final scheme order is a separate order, which came to be passed on 7.9.1973. Unless an appeal is filed against

that order and validity of the same is challenged or some amendment is sought for, Commissioner, H.R. & C.E. has no power to amend, modify or

vary the final scheme, or in other words, he has no authority or jurisdiction to

modify the scheme while considering the appeal filed against the draft

scheme. That being so, rightly the Commissioner dismissed the appeal A.P.104 of 1975 as having become in fructuous.

15. The next question that arises for consideration is whether before filing the suit, a notice u/s 80 of CPC has to be issued and in which case, that

period has to be excluded in calculating the period of limitation by virtue of Section 15(2) of the Indian Limitation Act.

16. A.P.104 of 1975 was dismissed by the Commissioner of H.R. & C.E. on 16.10.1976. The order copy was received by the counsel for the

appellant on 1.2.1977. The annexure to the order was issued on 26.2.1977. On 31.3.1977 notice u/s 80 of CPC was issued by the counsel for

the appellant and the suit was filed on 13.6.1977.

17. The learned counsel for the appellant placing reliance on T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and

Others, and 1977 SCJ 894 (State of Maharashtra and another v. Shri Chander Kant), would contend that notice u/s 80 of CPC is required before

filing of the suit. Alternatively it is submitted that in any event, on or about the time the suit was filed, the legal position was not clear and that being

so, a litigant like the appellant should not be made to suffer. The learned counsel would submit that only in the decision rendered in (1993) 2 Mad

L W 537 (Tholappa Iyengar v. Executive Officer, Sri Kallalagar Devasthanam) the conflict was finally resolved holding that notice is not necessary

when a suit is filed against the order of the Commissioner in appeal like the instant one.

18. Let us proceed to consider the various rulings on this issue.

(a) A learned single Judge of this Court after considering various rulings including the rulings of this Court as well as Supreme Court, while deciding

S.A.364 of 1964 on 2.2.1968, ruled as under,

Learned counsel for the appellants relied also on Chenchuramaiah v. Deputy Commissioner, H.R. and C.E. (1965) 2 A.W.R. 203. This decision

again cannot help the appellants. The court in that case was dealing with judicial orders passed by the Commissioner and the Deputy

Commissioner. While holding that no notice u/s 80 of the CPC is necessary in that case, it is pointed out that the Commissioner in that case was

not sued in his capacity as a public officer, but only as a statutory body. It was

said that the orders passed by the Deputy Commissioner u/s 68 of the Act and the Commissioner u/s 61 of the Act were judicial orders and a right of suit was provided u/s 62 of the Act to set aside the judicial orders passed by the Commissioner. The present suit is not a suit provided for in the Act. It is not a statutory suit, but it is a common law suit challenging the very applicability of the Act and the vires of certain steps taken by the Commissioner under the Act, contending that the Act is not applicable to the institution in question. It is a common law suit directed against a public officer and the Courts below in my view have quite properly held that notice u/s 80 of the CPC is necessary for the institution of the suit.

The very question has been dealt with recently by my learned brother Ismail, J., in C.M.A.No.338 of 1965 on the file of this Court. After referring to the decision of the Supreme Court above referred to, the learned Judge holds that the Commissioner while functioning under the provisions of the Act functions only as public officer or Government servant and as such the provisions contained in Section 80 of the CPC will apply to him.

(b) Now a reference can be made to a Division Bench decision of this Court reported in 84 L.W. 828 (DB) (Lakshmana Shah v. Commissioner of

H. R & C.E.). The Division Bench made it clear that no notice u/s 80 of CPC is required in respect of statutory suit to set aside or cancel the order

of the Commissioner under the provisions of the Act. The relevant passage from the said Judgment is quoted hereunder,

... No notice under S.80 C.P.C. is required in respect of a statutory suit to set aside or cancel the order of the Commissioner under the provisions

of the Act. Even assuming that such a statutory suit could be combined with a suit in which the applicability of the Act to the suit temple is

challenged, the requirements of the valid institution of the later suit should be complied with. Relying on the decisions in Govinda Menon Vs. Union

of India (UOI), this court has in T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others, and in the subsequent

unreported decision in Rathnavelu Mudaliar v. Commissioner, H.R. and C.E. (S.A.364 of 1964) held that the Commissioner of the Madras Hindu

Religious and Charitable Endowments, while functioning under the provisions of Act XXII of 1959, functions only as a public officer or

Government servant, and as such the provisions contained in S.80, C.P.C. will apply to him. In view of these decisions Sri K.E.Rajagopalachari

the learned advocate for the appellants, did not question the correctness of the decision of the trial court that notice under S.80, C.P.C. is

necessary and he confined his arguments in this appeal solely to the question whether the appellants are the hereditary trustees of the suit temple.

(c) The learned counsel for the appellant, of course would place much reliance on the ruling of the Supreme Court reported in 1977 SCJ 894

(State of Maharashtra and another v. Shri Chander Kant) and would contend that at the relevant time i.e., at the time of filing of the suit, the

position was that whatever may be the relief sought for in the suit, a notice u/s 80 of the CPC is necessary. The subject matter in the said Judgment

arose under M.P. Public Trust Act. In that case, the plaintiff filed a suit against the State claiming that the order dated 1.3.1955 in revenue case

declaring Gajanan Maharaj Sansthan of Mangrul Dastagir to be a public trust be set aside. In that case, the Apex Court clarified that no distinction

can be made between the Acts done illegally and in bad faith and acts done bona fide in official capacity. Or in other words, in that case, the

Supreme Court in fact had no occasion to consider whether notice u/s 80 of CPC is necessary before filing a statutory suit.

(d) The next ruling on this issue is the one reported in 94 L.W. 555 (Commissioner, H.R. and C.E. v. Kacherichamy alias Karuppanna Thevar). A

learned single Judge of this Court, after elaborately considering various rulings including ILR 1971 Mad 704 (Lakshmana Shah v. Commissioner

for Hindu Religious and Charitable Endowments, Madras), ruled as under,

With respect, I agree with observation of Sethuraman, J. in Chinna Kandar v. Commissioner, H.R. and C.E., Madras I.L.R.1980 Mad 213, that

a suit under S.70 of the Act cannot be equated to suit against a public officer for which a notice under S.80, C.P.C. is contemplated. Therefore,

the plaintiffs were not bound to issue a notice to the defendant. As a notice under S.80 C.P.C. was not necessary, the plaintiffs cannot rely on

S.15(2) of the Limitation Act, to exclude the period of two months during which they could not file the suit after the issue of notice under S.80,

C.P.C. This suit ought to have been filed on 20th May, 1975. Therefore, the suit is barred by limitation.

In fact, in the earlier paragraph the learned single Judge referred to the Supreme Court ruling viz., 1977 SCJ 894 (cited supra) and pointed out that

no notice need be given to the State Government in the instant case as contemplated under M.P. Public Trust Act and the facts in both the cases are different.

(e) The next ruling that can be usefully referred to is the one reported in (1993) 2 Mad LW 537 (Tholappa Iyengar v. Executive Officer, Sri

Kallalagar Devasthanam), where the Division Bench of this Court ruled that the scheme of the suit u/s 70 of the Endowments Act, in particular,

leaves no option with the Commissioner to rescind, review or recall his order. Once this is the position, it is unimaginable that a notice is necessary

to afford to the Commissioner opportunity to consider the redressal of the grievances of the person who sought relief by way of a suit u/s 70(1) of

the Endowments Act. This view of the Division Bench was later affirmed by another Division Bench of this Court in the ruling reported in M. Sethu

Vs. The Commissioner for Hindu Religious and Charitable Endowments and Others, .

19. Thus, the legal position has been clear, at least since 23.6.1971, when the Division Bench of this Court made the position clear in the ruling

reported in 84 L.W. 828 (DB) (Cited supra).

20. The next question that arises for consideration is as to whether the exclusion of women from the trusteeship in the scheme is illegal and

impermissible. In this regard, the learned counsel would place reliance on two rulings viz. Angurbala Mullick Vs. Debabrata Mullick, where it was

held that a woman is entitled for Shebaitsham and the ruling in Meyappa Velar Vs. Tamil Nadu Temple Administration Board and Others, , where

again the Division Bench of this Court held that exclusion of woman is contrary to the provisions of H.R. & C.E. Act. On the other hand, learned

counsel for the respondents would place reliance on the full bench ruling of this Court reported in AIR 1971 Mad 1 (K. Manathunainatha Desikar

v. Sundaralingam (minor) rep. by his next friend M. Swaminathan), where the Court held that the founder of a religious endowment has a right to

dispose of the Dharmakarthaship in any particular way and it is upto him to provide a special scheme of succession for the office of

Dharmakarthaship. We examined the above rulings and we are of the view that

the ruling reported in Meyappa Velar Vs. Tamil Nadu Temple

Administration Board and Others, as well as Angurbala Mullick Vs. Debabrata Mullick, would not apply since in those cases the scheme was

framed by the Court excluding the trusteeship for women and since there are no trusteeship or scheme was provided. With regard to the case on

hand, under the deed dated 30.10.1914 the Trust was created and the founder only desired this way. That being so, there is no substance in this

submission as well.

21. This Court, having decided all the three points against the appellants, the only consequential order that has to be passed is to dismiss the appeal.

22. There are no merits in the appeal and the same is dismissed. No costs.