
(1997) 02 MAD CK 0023
In the Madras High Court

Palanisami Pillai

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 27-02-1997

Acts Referred:

Citation : (1997) 1 LW 704 : (1998) 3 MLJ 50

Hon'ble Judges : AR. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—This appeal is directed against the judgment and decree dated 6.11.1992 of Bellie, J., made in A.S.No. 555 of 1982

on the file of this Court, preferred against the judgment and decree dated 6.7.1981 made in O.S.No. 408 of 1976 on the file of the III Additional

Subordinate Judge, Madurai.

2. The appellant filed O.S.No. 408 of 1976 to set aside the Order of the Commissioner, H.R. & C.E. (Administration Department), Madras i.e.,

the first respondent herein, passed in A.P.No. 35 of 1974 dated 1.11.1975, confirming the order of the Deputy Commissioner, H.R. & C.E.,

(Administration Department), Madurai i.e., the 2nd respondent herein made in O.A.No. 57 of 1967 dated 21.1.1912 and as consequential relief

of a permanent injunction restraining the Department from interfering with the management, administration and control of Sonaichamy Koil, which

according to the appellant, is a private temple situated at Melaveli Street, Madurai Town. The case of the appellant as per the plaint allegations is

that the properties described in the suit schedule are the private family trust properties of the appellant, that item No. 1 of the property described in

the plaint schedule which is situated in West Veli Street, Madurai Town belonged to the private family trust of the appellant and his ancestors,

formerly in the West Veli Street, Madurai Town, there were 21 peedams, which were Worshipped only by the family of the appellant and his

pangalis, that they were retaining all the articles of the peedam in a box and kept it in a room in item No. 1 of the suit premises on the northern

portion and the said portion of the suit property in which the articles and the peedams used to kept is called as ""Angalaparameswari Koil Veedu"" ,

that there is an idol in the said room, that the trust was being managed by the plaintiff's ancestors from time immemorial. It is the case of the

appellant that they were not aware of the fact that the site over which there were 21 peedams was acquired by the Government in 1918, and that

in the year 1966, the Government with a view to locating the State Bus Stand sought to remove the peedams. So the appellant and the other two

trustees filed a suit against the Government in O.S.No. 98 of 1966 on the file of the Sub-Court, Madurai praying for a decree for permanent

injunction. The Government in its written statement pointed out that the site had already been acquired in the year 1918 for extension of the

hospital and compensation had been paid to the then trustee Vellaisami Kothanar and that the suit was compromised between the trustees and the

Government and so it was allowed to be dismissed by the plaintiff and the other two trustees. Thereafter, the Government removed all the

peedams. There were only 3 idols out of the former twenty-one peedams. They were taken by the plaintiff and the other two trustees. The three

idols were installed over a peedam immediately to the east of the State Bus Stand. The plaintiff has put up R.C. terrace over the peedam and has

provided a collapsible gate and the idols installed in the road margin is being worshipped only by the appellant/plaintiff and his pangalis. No other

person has been worshipping the deity as of right. Solaimalai Pillai, to whom the property had been leased out as per lease deeds dated

25.10.1962 and 23.10.1964 appears to have sub-leased two adjacent tenements out of the suit item No. 1 to one Nachimuthu Pillai. The latter

did not pay the arrears to Solaimalai Pillai, who is a lessee of the plaintiff and his co-trustees. So an application for eviction was filed by Solaimalai

Pillai along with the appellant/plaintiff and his co-trustees. Subsequently, as Nachimuthu Pillai demolished the intervening wall between the two

tenaments, the plaintiff and others filed a suit in O.S.No. 573 of 1966 on the file of District Munsif, Madurai Town against Nachimuthu Pillai for the reliefs detailed in the suit. Aggrieved by this Nachimuthu Pillai moved the Assistant Commissioner, H.R. & C.E. (Administration Department), Madurai alleging that the suit property was a public temple and that he may be appointed as the trustee of the temple. The Assistant Commissioner, without issuing any notice and without holding any enquiry, appears to have appointed Nachimuthu Pillai as the sole trustee after holding that the suit trust was a public temple. There upon, the appellant/plaintiff filed O.A.No. 57 of 1967 before the Deputy Commissioner, H.R. & C.E., Madurai the 2nd respondent herein contending that Sonaichami koil was only a private trust and not a public temple and that, therefore the provisions of the H.R. & C.E., Act did not apply. Nachimuthu Pillai who was appointed as a trustee was also added as a respondent to the said application. The original application was filed for a declaration that the trust was a private trust and the provisions of the Act did not apply. The Deputy Commissioner by his order dated 21.1.1972 held that the suit temple was a public temple and dismissed the application filed by the appellant and the other trustees. Subsequently, the appellant and the other trustees jointly preferred an appeal in A.P.No. 35 of 1974. The Commissioner, H.R. & C.E., Madras, who is the first respondent herein by his order dated 1.11.1975 dismissed the appeal. One of the trustees Sundaram Pillai also died by then. The Deputy Commissioner as well as the Commissioner of H.R. & C.E., i.e., the 2nd and the 1st respondent herein had not considered the various documents which were exhibited before them for consideration. According to the appellant, all the documents filed before the authorities would show that the suit trust is a private trust and that the public have nothing to do with the trust and no member of the public had ever worshipped the Sonaichami Peedam which is called Sonaichami Koil, and that Sonaichami Peedam is now situate south of Madurai State Bus stand near the entrance gate. The Commissioner, H.R. & C.E. by his order dated 1.11.1975 dismissed the appeal which was communicated to the appellant's advocate on 1.5.1976. This suit has been filed thereupon for the reliefs mentioned above. The appellant has laid the statutory suit as the sole surviving trustee. He prayed for setting aside the order of the respondents 1 and 2 dated 1.11.1975

and 21.1.1972 respectively.

3. The first defendant filed a written statement which is adopted by the 2nd defendant. The claim of the appellant that the Sonaichami temple is a private trust belonging to the appellant and his pangalis is untenable as the temple is a religious endowments as defined u/s 6(17) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The appellant's application in O.A.No. 57 of 1967 and the further appeal in A.P.No. 35 of 1974 were dismissed after due enquiry. Sonaichami temple is a public temple wherein the general public offer worship as a right. It is not a private temple, as claimed by the appellant. The suit as framed, is not maintainable in law. From the year 1949, an attempt was made to claim the temple as private temple or a private trust. The various deeds viz., registered lease deed dated 8.3.1979, registered othi deed dated 7.1.1920, lease deeds dated 19.3.1932, 24.2.1934 and 10.6.1946 and also the legal proceedings including the land acquisition proceedings in 1919 relied upon by the appellant/plaintiff are untenable. In all the documents and the legal proceedings the H.R. & C.E. Department was not a party and so they will not bind the defendant/department in any manner. An additional written statement was also filed by the first defendant stating that the suit is bad for want of notice u/s 80, C.P.C.

4. On the above pleadings, the following issues were framed for trial:

1. Whether the suit temple is a private trust belonging to the plaintiff and his Pangalis?
2. Whether the suit temple is a public temple and a religious endowment as defined in Section 6 (17) of the Tamil Nadu Hindu Religious and Charitable Endowments Act?
3. Whether the order of the 2nd defendant in O.A.No. 57 of 1967 confirmed by the 1st defendant in A.P.No. 35 of 1974 is liable to be set aside?
4. Whether the plaintiff is entitled to the permanent injunction as prayed for?
5. To what relief is the plaintiff entitled?

Additional issue (framed on 24.8.1978)

1. Whether the suit is bad for want of notice u/s 89 of the Code of Civil Procedure?
5. The appellant examined himself as P.W.1 and marked Exs.A-1 to A-33. Three

witnesses were examined on the side of the defendants and

Exs.B-1 to B-6 were marked on their side.

6. Learned 3rd Additional Sub-Judge, Madurai answered the additional issue framed on 24.8.1978 against the defendants/respondents. In relation

to this issue, it was contended on behalf of the Department that in the absence of Section 80, C.P.C. notice, the suit is not maintainable. The

contention of the appellant/plaintiff is that a notice u/s 80, C.P.C. is not necessary, in as much as the suit has been filed by the appellant under the

provisions of Section 70 of the Act XXII of 1959 and Section 70 of the said Act does not provide for any notice preceding the suit, and where the

statute itself provides for a suit as remedy against certain order passed by the departmental authorities, the need for a notice u/s 80, C.P.C. could

not arise. Such notice is required so as to give the public officer an opportunity to reconsider his legal position and to make amends or settle the

claim if so advised, without litigation. This requirement would be impossible of compliance by a public officer in a case like present one even if a

notice u/s 80, C.P.C. was given, because the public officer viz., the Commissioner of the H.R. & C.E. has not been conferred with any power to

review his own order on the basis of notice u/s 80, C.P.C. when the statute itself requires filing of a civil suit for setting aside the order passed by

the Commissioner, the provisions of Section 80, C.P.C. have no scope for application. The question is also answered upholding that the nature of

the jurisdiction u/s 70 is such that it cannot be equated to a suit against a public officer with reference to which notice u/s 80, C.P.C. is

contemplated.

7. Relating to the nature of the temple, the learned Sub-Judge after considering the Exhibits A1, A2, A4, A5, A7 to A14, A16 to A18, and A21

to A30, and the oral evidence tendered and on a very detailed consideration with reference to the pleading, documents and evidence held in para-

21 of its judgment as under:

In the present case, documents have been filed on the side of the plaintiff showing the nature and origin of the endowment and it is clear that

Sonaichami deity was installed purely as a family deity and the dedication was made only for a group of individuals connected with the family of the

founders of the deity. Properties belonging to the founders family alone were

dedicated for the maintenance of the temple and the deity. There is nothing to show that contribution was called for from the members of the public or that there was any stipulation for taking offerings from the members of the public to worship in the temple. There was also no provision for framing any scheme by associating the members of the public or consulting them. There is equally no recital in any of the documents relied upon by the plaintiff to show that the members of the public were entitled to worship the deity as of right. All these show that Sonaichami temple was of private nature.

The court also on a consideration of the evidence placed on the side of Department held that the oral evidence of D.W.1 and D.W.2 is not at all

helpful to the defendants to establish that Sonaichami Koil is a public temple or that the suit properties are public trust properties. On the other

hand, the acceptable evidence of the plaintiff as P.W.1 coupled with the documentary evidence would clinchingly go to show that Sonaichamy

temple is a private temple and that the trust is a private trust and not a public trust. Again, in para 26, the learned Sub-Judge held as follows:

It is in evidence that Sonaichamy Koil consisted of 24 peedams and after land acquisition proceedings most of them had been removed. The deity

alone appears to have been allowed to remain and it is installed on the platform in the road margin. Merely because the site on which Sonaichamy

temple is situate in a poramboke, it cannot in the instant case, be construed as sufficient evidence to hold that it is a public temple. The evidence

adduced on the side of the plaintiff clearly shows that the beneficial interest vested absolutely in the family and the donors and consequently it is a

private trust. There is nothing to show that the trust was created for public charity or for general public good. There is admittedly no "Utsavar" for

the temple. So, I hold that the Sonaichami Koil at Melaveli Street, Madurai Town is a private trust belonging to the plaintiff and his pangalis and

not a public trust. Issue No. 1 is answered in favour of the plaintiff, while issue No. 2 is answered against the defendants.

8. In view of his findings on Issue Nos. 1 and 2, the Sub-Court held that the order of the Deputy Commissioner passed in O.A.No. 57 of 1967

confirmed " by the Commissioner, H.R. & C.E., in A.P.No. 35 of 1974 is liable to be set aside. Therefore, the court answered Issue No. 3 in the

affirmative. In view of the finding on issue No. 3, the court held that the respondents/defendants have no right to interfere with the possession and management of Sonaichami temple and the suit properties which are private trust properties, and therefore, the appellant herein is entitled to the permanent injunction as prayed for. Issue No. 4 was answered in favour of the appellant. In the result, the suit was decreed as prayed for with costs.

9. Aggrieved by the judgment and decree of the learned Sub-Judge, Madurai, the defendants/respondents filed A.S.No. 555 of 1982 u/s 70 (2) of

H.R. & C.E. Act., in this Court. It is contended that the public offer worship as a matter of right without any hindrance but the lower court has

failed to consider this aspect. It is also contended that the suit temple is situated in the poramboke land i.e., on the platform of West Veli Street and

that the suit is bad for want of notice u/s 80, C.P.C. Learned single Judge held in his judgment as follows:

If the real question that has arisen for consideration in the petition before the Deputy Commissioner and now in the suit is whether Sonaichamy Koil

is a private temple or public temple then on a consideration of the pleadings and the evidence in the case I come to the conclusion that Sonaichamy

temple is a religious institution within the meaning of the Act. The temple is situate on the road margin which is poramboke (Government land). It is

just opposite to State Bus Stand, It is in Mela Veli Veedhi which is a busy thoroughfare (see P.W.1 plaintiff). Exs.B-3 and B-4 photographs of the

temple show that it is a well constructed pukka temple though small. The plaintiff is not living anywhere near it but living far away in Sholavandan.

The get-up of the temple and the place where it is situate would speak that the public cannot but worship there. But the plaintiff (P.W.1) would say

that excepting himself and his pangalis no one would worship in the temple. He has not mentioned who are his pangalis either in the pleadings or in

his evidence. Even in the cross examination he has not satisfactorily identified his pangalis.

Again, the learned single Judge held in his judgment as:

Admittedly there is daily pooja. As seen above the plaintiff is away in Sholavandan. He would have us believe that he would daily come in bus to

perform poojas. He would himself say that this temple is there for about 200

years. He would admit that there is no record whatsoever to show that the temple belongs to his family or himself and his pangalis. He would say that only from 1949 he came to know about the affairs of the temple. Therefore he is not competent to say about the origin of the temple. May be one or two ancestors of his had been trustees of the temple and the properties belonging to the temple. But that does not mean that the temple and the properties belonged to the plaintiff or the members of his family. He would say that in 1949 himself and two others were elected trustees by his pangalis, and himself and the said two pangalis have executed a trust deed and that is Ex.A-11. But a perusal of this document would show that they have described themselves as the trustees of Sonaichamy temple at Dindigul Road and not Sonaichamy Koil at Mela Veli Veedhi. The circumstances would belie the plaintiff's contention that he is a trustee of Sonaichamy temple in question. This would indeed show that he has nothing to do with Sonaichamy koil.

Learned single Judge referred to the evidence of D.W.1 who is the Executive Officer of Madurai Madanagopalasami temple and who has been appointed as fit person of the Sonaichamy temple. He deposed that the public worship in the temple and therefore it is a public temple. The learned single Judge also referred to the evidence of D.W.2 Inspector in the H.R. & C.E. Board who has deposed that the temple is a public temple and there is public worship. It is his evidence that since the temple is in front of the Bus Stand all sorts of people worship there. Further he has stated that he does not know whether the temple is a public temple or a private temple. For all these reasons, the learned single Judge held that

Sonaichamy Temple is a public temple and it is a religious institution within the meaning of Hindu Religious and Charitable Endowments Act.

10. Coming to the question of the defence contention that the suit is bad for want of notice u/s 80, C.P.C., the learned single Judge has referred to

the decision reported in *The Executive Officer, Arulmigu Ranganathaswami Devasthanam, Srirangam v. His Holiness Srivan Satagopa Sri*

Vedantha Desika Yathindra Mahadesigan and Ors. (1998) 1 L.W. 361. in which Sathiadev, J., and Bellie, J., were parties, wherein it was held

that the Commissioner and Deputy Commissioner, H.R. & C.E., are Public Officers, and in a suit u/s 70 of the Act, notice u/s 80, C.P.C. is

necessary and for want of such notice the suit would be bad and in the instant case, no notice u/s 80, C.P.C. has been issued to the defendants

viz., Commissioner and Deputy Commissioner of H.R. & C.E. Board, the suit is bad as contended by the defendants for non-issuance of notice

u/s 80, C.P.C. to the defendants. Thus, the learned single Judge allowed the appeal in toto including the issue of notice u/s 80, C.P.C. against the appellant herein.

11. We have carefully gone through the judgment rendered by the learned single Judge. The learned single Judge except referring to the evidence

of D.W.1 and D.W.2 and a portion of P.W-1's evidence and Ex.A-11 has not considered the voluminous documentary evidence filed by the

appellant/plaintiff and marked as Exs.A-1 to A-33. The defendants except filing the order of the Deputy Commissioner in O.A.No. 57 of 1967

and the annexure to the said order and a few photographs marked as Exs.B-3 to B-6, have not adduced any documentary evidence or any

acceptable oral evidence to establish that the suit temple is not a private temple of the appellant/ plaintiff and his pangalis.

12. The object of Order 41, Rule 31, C.P.C., in making it incumbent upon the appellate court to raise the points for determination and to state reasons

for the decision is to clear up the pleadings and focus the attention of the court and of the parties on the specific and rival contentions which arise

for determination as also to offer the litigant parties an opportunity of knowing and understanding the grounds upon which the decision proceeds

with a view to enable them to exercise, if they see fit, and are so advised, the right of second appeal conferred by Section 100, C.P.C. On a

perusal of the judgment of the learned single Judge, it appears to us that the reasons for his findings would not satisfy Order 41, C.P.C., This Court

being the first appellate court, and being the final court of facts, it is incumbent on it to consider all the evidence adduced by the parties in the case.

Learned single Judge has not even turned to the side of the plaintiffs who filed voluminous documents marked as Exs.A-1 to A-33. The parties to

the suit or appeal, in our opinion, have a right to know the reasons that have led the Judge to his conclusions. The learned single Judge (Bellie, J.)

has not considered any facts and circumstances and the evidence adduced both oral and documentary by both sides, but merely recorded a finding

by accepting the evidence of D.Ws.1 and 2 without himself bestowing any consideration thereon, it can surely be said that this is not a judgment in the eye of law. In the instant case, the judgment of the learned Subordinate Judge is exhaustive and well reasoned. The learned single Judge when he reversed the judgment, there should be enough material to show that the Court of Appeal has considered it fully and formed its own opinion. In the present judgment, there is no discussion at all about the documentary evidence filed and marked as Exs.A-1 to A-33. The Law imposes upon the Court of Appeal the imperative duty and obligation of giving an adequate and satisfactory judgment such as is required by law and it is the duty to explain its reasons for so doing more especially when the court of first instance has gone so fully into the facts and the reasons for the conclusions arrived at. Since the learned single Judge has not considered the voluminous exhibits filed by the appellant, the aggrieved party is entitled to a consideration of the points raised and considered by the lower court, in this Letters Patent appeal. Therefore, without remitting the matter, we ourselves have decided to go through the evidence and then arrive at a conclusion.

13. It is the case of the appellant that the temple in question is a private temple and the suit property is private trust property and that the others have nothing to do with the trust. In order to establish that the properties are the private properties and that the temple is a private temple, the appellant relied upon a number of documents, the earliest of which is of the year 1894 which is marked as Ex.A-1. It is a registration copy of the othi deed executed by Mayandi Kothanar in favour of Chidhambaram Asari. The property covered under this deed is one half of the suit property described in the plaint schedule. As already stated, Mayandi Kothanar is an ancestor of the appellant and this property belonged to him. Even in the recitals in Ex.A-1, he had stated that this property belonged to him ancesterly. Ex.A-2 is the registration copy of othi deed dated 6.12.1895 executed by Mayandi Kothanar in favour of one Ramayee Ammal in respect of the other half of the property. The other half of the property covered under Ex. A-2 is that of the property mentioned in Ex.A-1. Mayandi Kothanar's descendant Muthiah Konar executed a lease deed and the registration copy of which is Ex.A-3 dated 7.11.1918 in favour of one Allavudin Sahib. In this document also, the properties covered under

Exs.A-1 and A-2 are described as ancestral properties. Ex.A-4 is the registration copy of the release deed dated 8.3.1919 executed by Allavudin

Sahib in favour of Vellaichamy Kothanar is described as the trustee of Sonaichami Trust. Ex.A-5 is the registration copy of the othi deed executed

by Karuppana Mooppan and others in favour of Vellaichamy Kothanar. Above documents would go to show that Vellaichami Kothanar was the

trustee of the Sonaichami Temple and the trust was run from out of the income from the property of Sonaichami temple. Ex.A-6 is the extract from

the suit register relating to O.S.No. 253 of 1931 on the file of the District Munsif Court, Madurai Town. That document shows that even in the

year 1931 the appellant/plaintiff and his pangalis had dealt with this property as well as the temple as their private property. Ex.A-7 is the verified

copy of the lease deed dated 13.2.1931 entered into between Muthiah Kothanar, Karunathiri Maniakarar and Pandian Servai as the trustees of

Sonaichami Temple. Ex.A-8 is the registration copy of the sale deed dated 22.5.1942 executed by Shanmughavei Mudaliar in favour of Muthiah

Konar for Rs. 3,500. The property so purchased under Ex.A-8 is items 2 and 3 of the property described in the plaint schedule. These properties

have been purchased by Muthiah Kothanar in his capacity as trustee of Sonaichami Temple. Ex.A-9 is the registration copy of the lease deed

dated 10.6.1946 entered into between Muthiah Kothanar as trustee of the Sonaichami Temple and Karunathiri Maniakarar. The property covered

under Ex.A-9 is item-1 of the plaint schedule property, that is to say the properties covered under Exs.A-1 and A-2. Ex.A-10 dated 15.2.1949

shows that the appellant and his pangalis were appointed as trustees of the Sonaichamy Temple. After the said election of the trustees, the three

trustees executed trust deed dated 2.7.1949 under Ex.A-11 in which all the necessary details are mentioned. The recitals in this document, in our

opinion would go to show that these properties are the private family trust properties and the Sonaichami Temple is their private temple. It appears

that a suit was filed by the appellant and others on behalf of the temple in question in O.S.No. 72 of 1950 on the file of the District Munsif Court,

Madurai Town describing it as a private trust. Ex.A-12 is the certified copy of decree in O.S.No. 72 of 1950 and Ex.A-13 is the certified copy of

the decree in A.S.No. 135 of 1951 on the file of the Prl.Sub-Court, Madurai. Ex.A-14 is the registration copy of the rent deed dated 23.11.1964

executed by one Solaimalai Pillai in favour of the Sonaichami Temple, represented by three trustees. The property covered under Ex.A-14 is item

No. 1 of the suit property. Item No. 2 of the property had been dealt with by the appellant and other trustees by executing a mortgage deed in

favour of one Ayyanan Ambalam as found in Ex.A-15. There is an endorsement in Ex.A-15 to the effect that this mortgage was disbursed on

30.4.1980. Ex.A-16 is the registration copy of the mortgage deed executed by Nagasundaram Pillai and S. Palanisamy Pillai (appellant/plaintiff) in

favour of one Murugayee Ammal on 7.1.1974. A petition for eviction, of the tenants in R.C.O.P.No. 32 of 1973 was filed by the appellant and the

other trustee wherein the appellant has been described as trustee of Sonaisamy Koil. Ex.A-17 is the certified copy of the executable order in

R.C.O.P.No. 32 of 1973 and Ex.A-18 is the certified copy of executable order in C.M.A.No. 467 of 1973 which was preferred against the said

R.C.O.P. Challenging the acquisition of the temple property for the purpose of extension of the Government Hospital, in the year 1956, a suit was

filed by Sonaichami Temple trust against the District Collector, Madurai for a mandatory injunction restraining them from removing the 21 peedams

from the site which was sought to be acquired. It is seen from Ex.A-24 which is the certified copy of the decree in the said suit O.S.No. 98 of

1967 on the file of the District Munsif Court, Madurai, dated 31.1.1967 that the said suit was withdrawn by the plaintiff with liberty to file a fresh

suit. Exs.A-20, 21, 22 and 23 are certified copies of Exs.B-2, B-3, B-4 and B-8 in the said suit O.S.No. 98 of 1967 on the file of the District

Munsif Court, Madurai. In Exs.A-21 to 23, the Sonaichami Temple is described as "Peedam". Ex.A-23 is a letter from the Tahsildar, Madurai to

the R.D.O Madurai, wherein the Tahsildar has stated that the temple in Section 19 of Ponmeni measures 2 1/4 cents is said to be Sonaiswamy

Koil worshipped by Mayandi servai and others of Sholavandan on Mahasivarathiri days i.e., once a year, that the temple had been in existence for

the past 20 years and that the same need not be acquired. Ex.A-23 has been filed to show the existence of the temple and the land acquisition

proceedings. Exs.A-25 and 26 are the suit register extracts in regard to R.C.O.P.Nos. 876 and 877 of 1966 on the file of the Rent Controller,

Madurai. They were filed against one Nachimuthu Pillai for eviction from item No. 1 of the property on the ground of wilful default in payment of

rent. Ex.A-27 is again court proceedings in O.S.No. 573 of 1966. Ex.A-28 is the certified copy of the plaint in O.S.No. 729 of 1969 on the file of

the District Munsif Court, Madurai and the said suit was initiated by the trustees of Sonaishwamy Temple viz., the appellant/plaintiff and one

Balakrishna Kothanar. Ex.A-29 is the certified copy of the decree in the said O.S.No. 729 of 1969. Ex.A-30 is the registration copy of the

release deed dated 5.2.1976 executed by Sakkarai Pillai in favour of Sonaichamy Koil trustee S. Palanichamy Pillai (Plaintiff/appellant herein). The

recitals in all the above documents referred to in this para of the order described the Sonaichamy temple and the properties described in the plaint

schedule as private trust properties. On a consideration of the documents above referred to, we are able to gather particulars with regard to origin

of the temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, and the rights exercised, by the devotees in

regard to worship therein. A private temple is generally meant for a private individual or an ascertainable group, whereas a public temple is for the

benefit of the public at large. We have already perused Ex.A-11 which is a registration copy of the trust deed dated 2.7.1949 wherein it is stated

that the temple as well as the properties endowed for the management of the temple and the like had been entrusted only to the family members of

the donors. On the side of the Department, D.W-1 was appointed as fit person for administering the affairs of the temple. D.W-2, is the Inspector

attached to the H.R. & C.E. Department. In the course of cross examination D.W.2 has deposed that he did not know whether the general public

worship this temple as of right, that he did not know when the temple came into existence and that he did not know who performed pooja and who

was spending money. He also stated that he did not know anything regarding Kumbabishekam. The evidence of D.W-1 is that because the temple

is near a bus stand the general public are worshipping the temple and that he did not know who was doing pooja daily for the temple and who was

attending to the lighting by the side of the deity. This oral evidence, in our opinion, would not be of any assistance to the department to come to the

conclusion that Sonaichami temple is a public temple and the properties belonging to the said public trust. Whereas the evidence adduced on the

side of the plaintiff/appellant both oral and documentary would clearly show that the beneficial interest absolutely vested in the family and the

donors and consequently, it is a private trust. There is nothing to show that the trust was created for public charity or for general public good.

Therefore, on a consideration of the entire materials placed before this Court, we hold that the Sonaichamy Temple at Melaveli Street, Madurai

Town is a private trust belonging to the plaintiff and his pangalis and not a public trust.

14. While considering the contention of the department that the suit is bad for want of Section 80, C.P.C. notice the learned single Judge relied

upon the Division Bench judgment of this Court made in the case of *The Executive Officer, Arulmighu Ranganathswami Devasthanam, Srirangam*

v. *His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan and Ors.* (1989) 1 L.W. 361 (to which *Bellie, J.*, was a party) held

that the suit is bad as contended by the defendants for non-issue of notice u/s 80, C.P.C, The said view of the learned single Judge, in our opinion,

in view of the subsequent judgments, is no longer correct. The following are our reasons for our conclusion.

15. Section 80, C.P.C. reads thus:

80 Notice: Save as otherwise provided in Sub-section (2), no suit shall be instituted against the Government (including the Government of the State

of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the

expiration of two months next after notice in writing has been delivered to, or left at the office of

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to the Government or any other officer

authorized by the Government in this behalf;

(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the District; and, in the case of a

public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the

relief which he claims; and the plaint shall contain a statement that such notice

has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any

public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the court

without serving any notice as required by Sub-section (1); but the court shall not grant relief in the suit, whether interim or otherwise, except after

giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the

suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint

for presentation to it after complying with the requirements of Sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his

official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in Sub-section (1), if in such notice

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to

identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in Sub-sections

(1) and (b) the cause of action and relief claimed by the plaintiff had been substantially indicated.

16. The object of the notice u/s 80, C.P.C., is to give the Government or the public servant, an opportunity to reconsider its or his legal position

and if that course is justified to make amends or settle the claim out of court. This can be done if the notice furnishes sufficient information as to the

nature of the suit proposed to be filed and the facts on which the claim is founded and the precise relief asked for. The legislative intention behind

this section is that public money and time should not be wasted on unnecessary litigation and the Government and the public officer should be given

a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigations. In other words, the object of

the notice is to give the defendant an opportunity for settling the claim, if so advised, without litigation. The nature, object and the scope of Section

80, C.P.C., has been considered by the Supreme Court in number of its rulings.

17. In the case of *The State of Madras Vs. C.P. Agencies and Another*, , the Supreme Court has held as follows:

Section 80 is express, explicit and mandatory and admits of no implications or exceptions. The object of the section is manifestly to give the

Government or the public officer sufficient notice of the case which is proposed to be brought against it or him so that it or he may consider the

position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted. In order to enable the Government or the

public officer to arrive at a decision it is necessary to arrive at a decision it is necessary that it or he should be informed of the nature of the suit

proposed to be filed against it or him and the facts on which the claim is founded and the precise reliefs asked for.

Though the terms of this section are to be strictly complied with, that does not mean that the terms of the notice should be scrutinized in a pedantic

manner or in a manner completely divorced from common sense. *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, , Rel. on.

Held on facts that the cause of action was clearly stated in the notice so as to enable the first defendant, the State Government, to know what the

plaintiff's claim was about and whether the claims should be conceded or resisted.

18. In the decision reported in *Raghunath Das Vs. Union of India (UOI) and Another*, . the Apex Court has held as under:

The object of the notice contemplated by Section 80, C.P.C. is to give to the concerned Governments and Public Officers opportunity to

reconsider the legal position and to make amends or settle the claim, if so advised, without litigation. The legislative intention behind that section is

that the public money and time should not be wasted on unnecessary litigation and the Government and the Public Officers should be given a

reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigations. The purpose of law is

advancement of justice. The provisions in Section 80 are not intended to be used as boobytraps against ignorant and illiterate persons.

19. In the decision reported in *State of Punjab Vs. Geeta Iron and Brass Works Ltd.*, . the Supreme Court has held as follows:

A statutory notice of the proposed action u/s 80, C.P.C., is intended to alert the State to negotiate a just settlement or at least have the courtesy to

tell the potential outsider why the claim is being resisted. A litigative policy for the State involves settlement of governmental disputes with citizens in

a sense of conciliation rather than in a fighting mood. In deed, it should be a directive on the part of the State to empower its law officer to take

steps to compose disputes rather than continue them in court.

20. In the decision reported in Ghanshyam Dass and Others Vs. Dominion of India and Others, , the Supreme Court has held as follows:

The question as to whether a notice u/s 80 of C.P.C. is valid or not is a question of judicial construction. The Privy Council and the Supreme Court

have applied the rule of strict compliance in dealing with the question of identity of the person who issues the notice with the person who brings the

suit. The Supreme Court has however adopted the rule of substantial compliance in dealing with the requirement that there must be identity

between the cause of action and the reliefs claimed in the notice as well as in the plaint. The court has held that notice under this section should be

held to be sufficient if it substantially fulfils its object of informing the parties concerned of the nature of the suit to be filed. On this principle, it has

been held that though the terms of the section have to be strictly complied with, that does not mean that the notice should be scrutinised in a

pedantic manner divorced from common sense. The point to be considered is whether the notice gives sufficient information as to the nature of the

claim such as would enable the recipient to avert the litigation.

21. In T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others, , Ismail, J., (as he then was) has taken the view

that notice u/s 80, C.P.C., is necessary, since according to the learned Judge when the Commissioner (H.R. & C.E.) is functioning in relation to

matters under the Act, he is a judicial officer and consequently no notice to him is necessary u/s 80, C.P.C., is untenable. u/s 110 of the Act, when

the Commissioner or the Deputy Commissioner makes an enquiry, he is deemed to be a person judicially acting, only for the purpose of the

Judicial Officer's Protection Act, 1850 and even this protection is available to the Commissioner or the Deputy Commissioner only when he is

conducting an enquiry or hearing an appeal under Chapter V or Chapter VI of the

Act. Ismail, J., while reversing the decision of the Subordinate

Judge held that the question relating to the nature of the institution is one coming u/s 63 of the Act and civil court has no jurisdiction to go into that

question. He therefore, held that the Sub-Court ought not to have remanded the suit for trial on other issues. However, the learned Judge further

held that there is no power for the civil court to go into the claim of accounting that is prayed for in the suit. The learned Judge upheld the order of

remand by the learned Subordinate Judge to the extent of the claim relating to the accounting. Aggrieved by the order of Ismail, J., L.P.A.No. 31

of 1969 has been filed by the plaintiffs challenging the decision of the learned Judge regarding the question of maintainability of the suit in the civil

court. The contesting defendants have filed L.P.A.No. 58 of 1968 challenging the further finding of the learned Judge that the civil court can decide

the question of accounting by defendants 1 and 2. Both the said L.P.As. were disposed of by a Division Bench of this Court consisting of P.S.

Kailasam and N.S. Ramaswami, JJ. The Division Bench was of the view that the Civil Court has jurisdiction to entertain the suit regarding the main

prayer also. We have already noticed that the learned Single Judge (Ismail, J.) has held (in C.M.A.No. 338 of 1965 vide T.K. Santhanagopala

Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others, that notice u/s 80, C.P.C. is necessary to claim any relief as against

defendants 5 and 6 and because no such notice has been given by the plaintiff before instituting the suit, the suit should necessarily fail as against

those two defendants. This finding of the learned single Judge (Ismail, J.) was not challenged by the counsel for the appellant in L.P.A.No. 31 of

1969. Therefore, the Division Bench directed that the suit shall proceed on other issues only as against defendants 1 to 4 and since two defendants

viz., defendants 5 and 6 were struck off from the plaint.

22. In the decision reported in Chenchuramaiah v. Deputy Commissioner. H.R. & C.E. AIR 1968 A.P. 123. Manohar Pershan, J., a learned

single Judge of the Andhra Pradesh High Court has held as follows:

Section 80, C.P.C., does not apply to a suit u/s 62 of the Hindu Religious and Charitable Endowments Act. Orders passed by the Deputy

Commissioner u/s 68 of the Act and by the Commissioner u/s 61 of the Act are judicial orders and the right of suit is provided u/s 62 to set aside

the judicial orders passed by the Commissioner. The Commissioner is not sued in his capacity as a public officer but only as a statutory body. In

such a case a notice u/s 80, C.P.C., is not necessary. ILR 1962 A.P. 865

23. In the decision reported in Lakshmana Shah v. Commissioner for H.R. & C.E. 84 L.W. 828. a Division Bench (consisting of Sadasivam and

V. Ramaswami, JJ.) of this Court held that no notice u/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 Madras H.R. & C.E. 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 latter suit should be complied with.

24. In the decision reported in Commissioner, H.R. & C.E. v. Kacherichamy @ Karuppanna Thevar 94 L.W. 555. Suryamurthy, J., was held as

follows:

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

plaintiffs were not bound to issue a notice to the defendant. As a notice u/s 80, C.P.C. was not necessary, the plaintiffs cannot rely on Section 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 u/s 80, C.P.C. This

suit ought to have been filed within 2 months of the receipt of the order of the commissioner. Therefore, the suit is barred by limitation.

There, the learned Judge has followed Chinna Kandar v. Commissioner, H.R. and C.E., Madras ILR (1980) 2 Mad. 213 (Sethuraman, J.,) and

Lakshmana Shah v. Commissioner of H.R. and C.E. ILR (1971) 3 Mad. 704 : 84 L.W. 828 (D.B.).

25. In the decision reported in Chinna Kandar v. Commissioner, H.R. & C.E., Madras ILR (1980) 2 Mad. 213. Sethuraman, J., has held that the

absence of a notice u/s 80, C.P.C., is not fatal to the maintainability of a suit u/s 70 of the Act. The learned Judge has observed that:

It may be seen that Section 70 itself does not provide for any notice preceding the suit. I considered this question in App.No. 207 of 1974-P.

Kaliyana Sundara and Ors. v. Commissioner, H.R. & C.E., (Admn) Madras and Ors., dated 20th January, 1978 and after discussing the cases

cited it was held that the non-issue of notice u/s 80, C.P.C., was not fatal to the

maintainability of the suit. In coming to this conclusion, a decision of a Bench of this Court in *Lakshmanan Shah v. Commissioner of H.R. & C.E.* ILR (1971) 3 Mad. 704 : 84 L.W. 828 was followed. In that case, there was an application u/s 57 (b) of Madras Act XVI of 1951. The Deputy Commissioner held that the office of the trustee of the suit temple was not hereditary and that the appellants in that case were not hereditary trustees. They, thereafter, filed an appeal to the Commissioner, but without success. They then filed a suit in the City Civil Court, Madras, for cancelling the order of the Commissioner and for being recognised as hereditary trustees of the temple. The suit was dismissed on the ground that no notice u/s 80, C.P.C. had been given prior to the institution of the suit. When the matter came before Sadasivam and V. Ramaswami, JJ, they pointed out that "No notice u/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.

26. In the decision reported in *Munuswami Chetty and 9 Ors. v. Commissioner, H.R. & C.E.* (1992) 1 L.W. 510. Abdul Hadi, J., after referring to all the earlier decisions, rejected the contention that the suit is not maintainable due to want of notice u/s 80, C.P.C.,

27. In the case reported in *H.H. Srivan Satagopa Sri Vedanta Desika Yathindra Mahadeskan etc., v. The Executive Officer, etc.* (1991) 2 L.W.

599. the plaintiff temple instituted a suit in the Sub-court, Trichy u/s 70 of the Act for setting aside the order passed by the Commissioner of

Endowments raised an additional plea that the suit was bad for want of notice u/s 80, C.P.C., The trial court took up the issue as to the

maintainability of the suit for want of notice u/s 80, C.P.C., as a preliminary issue and held and answered it against the appellant/ plaintiff and the

suit was accordingly dismissed. On appeal before the High Court, learned single Judge allowed the appeal and reversed the finding of the trial

court on the preliminary issue and remitted the suit for fresh disposal on merits. Against this order, the Commissioner who had raised the plea of

want of notice u/s 80, C.P.C., did not prefer any appeal of his own. But, the Executive Officer, who had not raised this plea, alone brought up an

appeal before the Division Bench which took the view that a notice u/s 80, C.P.C., was mandatory even in such a context, that such notice could

not also be waived and accordingly reversed the order of the single Judge and restored that of the Trial Judge. The plaintiff had preferred a Civil

Appeal No. 3670 of 1991 and in that appeal, the Supreme Court in paras 5 and 6 of its judgment has held as follows:

5. The appellant's contention that having regard to the nature of the suit and the capacity and the context in which Public Officers had been impleaded Section 80, C.P.C., was not attracted, is eminently arguable. But, we think we should decline to examine that contention in this case.

Having regard to the particular facts and circumstances of this case ends of justice would be met by directing the trial court to proceed with the suit

on the merits without reference to the bar u/s 80, C.P.C.,

6. Accordingly, this appeal is allowed. Judgment of the Division Bench set aside; the operative part of the order of the learned Single Judge

restored (without a pronouncement on the merits) and the trial court directed to proceed and dispose of the suit on the basis of the findings to be

recorded on the other issues.

28. In the decision reported in *The Commissioner, H.R. & C.E., (Admn) Dept., Madras-34 v. K.S. Kalyanasundara Pillai and Ors.* 1992

T.L.N.J. 174. *Bellie, J.* took the same view in the judgment reported in *The Executive Officer, Arulmighu Ranganathaswami Devasthanam v.*

Srirangam v. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan and Ors. (1989) 1 L.W. 361 (referred to supra) and

held thus:

Next coming to the question of the defendants' contentions that the suit is bad for want of notice u/s 80, C.P.C., in a Division Bench decision in

The Executive Officer, Arulmigu Ranganathaswami Devasthanam v. H.H. Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesikan and

Ors. (1989) 1 L.W. 361. in which I was a party it has been clearly held that the Commissioner and Deputy Commissioner, H.R. & C.E. Board

are Public Officers, and in a suit u/s 70 of the Act notice u/s 80, C.P.C. is necessary and for want of such notice, the suit would be bad. In the

instant case no notice u/s 80, C.P.C. has been issued to the defendants 1 and 3 viz., Commissioner and Asst. Commissioner of H.R. & C.E.,

Department. This plea has been taken in the written statement itself. It is therefore manifest that the suit is bad as contended by the defendants for

non issuance of notice u/s 80, C.P.C. to the defendants 1 and 3.

Learned Counsel appearing for the appellant-plaintiff would however contend that the said Division Bench decision requires reconsideration and in

this connection he brought to my notice a decision of the Supreme Court in H.H. Srivan Satagopa Vendatha Desika Yathindra Mahadesikan, Sri

Rangantha Swamy Temple, Srirangam v. The Exe. Officer, Arulmigu Ranganathaswamy Devasthanam, Srirangam (1991) 2 L.W. 599. wherein the

said Division Bench decision itself was in appeal and it has been stated therein that the point regarding the question of notice u/s 80, C.P.C., is pre-

eminently an arguable one, but the Supreme Court would not decide this point in that appeal and remitted that matter to the trial court to dispose

of the case on merits de hors the issue relating to issuance of notice u/s 80, C.P.C. This decision of the Supreme Court will not help the appellant-

plaintiff since the point decided in the Division Bench of that notice u/s 80, C.P.C. is necessary has been left open. Therefore, as it stands, the said

point decided by the Division Bench governs.

29. In the case reported in Executive Officer, Sri Kallalagar Devasthanam, etc., v. Tholappa Iyengar @ Alagar Iyengar and Ors. (1992) 2 L.W.

336. Abdul Hadi, J., has held as follows:

Here, on the question before court, it is seen that a later Division Bench of this Court (which decided The Executive Officer, Arulmighu

Ranganathaswami Devasthanam, Srirangam v. His Holiness Srivan Satagopa Sri Vedantha Desika Yathindra Mahadesigan and Ors. (1989) 1

L.W. 361, thought it fit to lay down a view different from that of the earlier Division Bench though not specifically referring to it in the light of two

Supreme Court decisions). While so, I feel I cannot and should not sit in judgment with its reasoning or the view it had taken and the question of

my suggesting reference to a Full Bench does not therefore, arise. Therefore, I think, I should not only follow the decision of the later Division

Bench, viz. (1989) L.W. 361. Therefore, I hold that notice u/s 80, C.P.C., having not been given, the suit itself is not maintainable. In the result, the

appeal is allowed, the judgment and decree of the Trial Court are set aside and the suit is dismissed.

30. A recent decision of our High Court by a Division Bench is worth noticing in this context. In the decision reported in Tholappa Iyengar etc., v.

Executive Officer, Sri Kallalagar Devasthanam, etc. (1993) L.W. 537 Division Bench of Mishra and Arumugham, JJ., the Division Bench has

referred to very many earlier decisions on the very question decide by various High Court including Madras High Court, wherein it has been held

thus:

In the scheme of the law under this Act a suit for the limited purpose of modifying or cancelling the order of the Commissioner and the appeal

before the High Court against the decree of the court in a suit of this nature is a continuation and culmination of the proceeding to inquire into and

to decide the disputes and matters that are specifically mentioned in Chapter V of the Endowments Act. The Court in course of the trial of the suit

u/s 70 (1) of the Endowments Act is, of course, the Court and is accordingly required to follow the procedure applicable under the Code of Civil

Procedure, 1908 to a trial in a suit, and the High Court hearing the appeal is the High Court with its power preserved under Article 225 of the

Constitution of India and the Civil Procedure, 1908.

On the basis of the Judicial consensus thus we are in a position to say that a notice u/s 80 of the Code of Civil Procedure, 1908 is unnecessary if,

having regard to the nature of the suit and the capacity and the context in which Public Officers have been impleaded, it is found that no purpose

can be served by notice to such officers. The fact that the officer concerned has acted judicially or quasi-judicially may be one such fact which will

lead to the conclusion that the purpose of the suit is not to sue the officer for any such act done by him in his official capacity, which shall attract

Section 80 of the Code of Civil Procedure, 1908. The fact that a special procedure is created and a special jurisdiction is conferred for a certain

type of adjudication upon a public officer and in that official capacity he is required to decide a dispute or a matter and a suit is provided as a

remedy under the Special Act for the cancellation or modification of the order of such public officer shall also be a fact showing that such act done

by such public officer in his official capacity will not attract Section 80 of the Code of Civil Procedure, 1908. As the Supreme Court has said, the

provisions in Section 80, of the Code of Civil Procedure, 1908 are not intended to be used as booby traps against the ignorant illiterate persons,

but are intended to advance justice by affording on the one hand a person

intending to sue the Government or a public officer in respect of any act purporting to be done by such public officer in his official capacity opportunity to demand from the Government or such public officer redressal of his grievance within two months next after notice, and on the other hand to provide to the Government or the officer concerned opportunity to consider whether the Government or the officer should contest the claim and/or to grant the relief as asked for and thus avoid unnecessary litigation. 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. In the case of a public officer, in particular, if there is no claim made against him in person, it is obvious that he is not sued as such for any relief against him. In fact, one may be inclined to think that the officer is not a necessary party and he need not be sued and he has not been sued in his personal capacity at all in such a case, since however, the Endowments Act has on the one hand vested these officers with the power to adjudicate in certain disputes and matters, it has also made them administratively responsible for the affairs of the religious Endowments, it is only proper that they are impleaded as a party. As held in the case of Amalgamated Electricity Co. (Belgaum) Ltd. Vs. Municipal Committee, Ajmer, . stated supra, such act of the Deputy Commissioner or the Commissioner, as the case may be, should not be termed as an act purported to be done by such Public Officers for the purpose of Section 80, notice.

31. We, are therefore, unable to subscribe to the view expressed by Bellie, J., in the judgment under appeal. In our opinion, in a suit u/s 70(1) of the H.R. & C.E., Act, no notice u/s 80, C.P.C., is necessary since neither the Commissioner nor the Deputy Commissioner who were not sued in their individual capacity but as statutory authority and which can be described either as original authority empowered to decide the dispute or as the appellate authority. We are therefore, in entire agreement with the views expressed by the Division Bench in Tholappa Iyengar etc. v. Executive Officer, Sri Kallalagar Devasthanam (1993) 2 L.W. 537 which in turn accepted the

opinion expressed in *Lakshmana Shah v. Commissioner of*
H.R. and C.E. 84 L.W. 828 and 87 L.W. 182. The Division Bench Judgment in
Ahobila Mutt case (1989) 1 L.W. 361 by Sathidev and Bellie,
 JJ) which has been set aside by the Supreme Court in *H.H. Srivan Satagopa Sri*
Vedanta Desika Yathindra Mahadesikan etc., v. The Executive
Officer, etc. (1991) 2 L.W. 599 in our view, the Division Bench had not preceded
 on the correct principles involved in this behalf. The Supreme
 Court has also rendered the said judgment as nonest in *H.H. Srivan Satagopa Sri*
Vedanta Desika Yathindra Mahadesikan etc., v. The Executive
Officer, etc. (1991) 2 L.W. 599 and restored the law laid down in the judgment in
Ahobila Math case 98 L.W. 303 by Venugopal, J.

32. As rightly pointed out by Mr. T.R. Mani, learned Senior Counsel for the
 appellant, the learned single Judge has not appreciated properly the
 rival contentions of the parties on the questions of law and facts involved in the
 appeal from the correct stand-point which approach in our opinion,
 has vitiated the entire judgment. We have already held in the paragraphs supra
 that the findings of the learned single Judge that the statutory suit u/s
 70 of the Act is bad for want of notice u/s 80, C.P.C., relying on the Bench
 Decision reported in (1989) 1 L.W. 361, to which he is a party, is
 unsustainable, since that Bench decision itself has been set aside by the
 Supreme Court by the reason of the ruling reported in (1991) 2 L.W. 599.

The Apex Court has held that the contention that having regard to the nature of
 the suit and the capacity and the context in which the
 Commissioner and the Deputy Commissioner are impleaded in the statutory suit,
 Section 80, C.P.C. was not attracted, is eminently arguable and
 in fact, the requirement of notice upheld by the Bench decision was dispensed
 with by directing the trial court to proceed with the suit on the merits
 without reference to the bar u/s 80, C.P.C. In view of the fact that the judgment
 of the Bench was set aside and the appeal allowed and the order
 of the learned single Judge holding that in the statutory suit notice u/s 80, C.P.C.,
 was not necessary was restored, and the suit remitted to the trial
 court for disposal on the merits, the Bench decision which required to be
 reconsidered, was in fact, reconsidered in (1993) 2 L.W. 537. We have
 already dealt with the merits of the case in extenso. The decision of the trial
 court is based on evidence and therefore, the decision of the trial court

does not call for any interference by the learned single Judge. The assumption of the learned Judge that the petition filed u/s 63 (c) of the Act

presupposes that there was religious endowments was not sustainable and without basis. The consistent case of the plaintiff throughout that the suit

properties are the private family properties of the plaintiff, that the family temple with 21 peedams in West Veil Street continued to exist till 1966,

the land acquisition of 1919 notwithstanding and that the present Sonaichamy Temple with three idols on the road margin near the State Bus stand

is not the suit property - has not been noticed by the learned single Judge. The entire reasoning and conclusion of the learned single Judge in

holding that the Sonaichamy temple is a religious institution within the meaning of the Act have no factual or legal basis. As rightly pointed out by

the learned senior counsel for the appellant, the learned single Judge has not appreciated and considered the following significant facts and

circumstances and their cumulative effect:

(1) the present Sonaichamy Temple on the road margin near the bus-stand in Mela Veli Veethi is not one of the suit properties;

(2) Exhibits B3 to B6 photographs are not properly proved and are of no probative value and the entire discussion in this regard is misleading;

(3) the defendants have no case that the plaintiff's pangalis are not identified, and

(4) no connection is established between the suit properties and Sonaichamy temple, old or new, and there is no finding in this behalf.

Likewise, the learned single Judge has misread the description of parties in Ex.A-11 which has led to the adverse comment. In our view, Ex.B-6

photographs is of no evidentiary value and the reliance placed thereon for hundial and donation is unwarranted. In our view, the evidence of

D.Ws.1 and 2 does not support their case. But, in fact assist the appellant's case.

33. For the fore-going reasons, the judgment and decree of the learned single Judge made in A.S.No. 555 of 1982 dated 6.11.1992 is hereby set

aside and the judgment and decree of the learned Sub-Judge, Madurai in O.S.No. 408 of 1976 on the file of the 3rd Addl.Sub-Court, Madurai is

restored. The Appeal is allowed with costs.