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**(1999) 01 MAD CK 0024**

**In the Madras High Court**

**Case No :** Second Appeal No. 721 of 1987 and C.M.P. No. 9641 of 1987

Ramasami Mudaliar and Others

APPELLANT

Vs

Commissioner, H.R. and C.E. Admn. Deptt. and Others

RESPONDENT

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**Date of Decision :** 06-01-1999

**Acts Referred:**

Constitution of India, 1950 — Article 26

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 107

**Citation :** AIR 1999 Mad 393

**Hon'ble Judges :** A. Subbulakshmy, J

**Bench :** Single Bench

**Advocate :** W.C. Thiruvengadam, for the Appellant; B. Mani, Government Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

A. Subbulakshmy, J.—Plaintiffs who succeeded in the trial Court and lost their case in the first appellate Court are the appellants.

2. The case of the plaintiffs is as follows :--

The plaintiff filed the suit for declaration that the suit temple is a denominational temple. The suit temple is an ancient temple situated at

Iyengarpalayam in Kancheepuram and it is called as Manikandeaswarar and also as Panamaneaswarar. In the concerned Village, there were 23

families ancestrally and this suit temple was established only for exclusive worship of these families belonging to Senkuntha Mudaliar community

people and only that community people were managing that temple. So, the suit temple possesses denominational character and it is protected

under Article 26 of the Constitution. Now, the said 23 families have got reduced to 12 families and the plaintiffs have been appointed as trustees

only by that 12 family members and the plaintiffs are managing this temple as hereditary trustees. The defendant board has no right to appoint any trustee for this temple.

3. The defendant-board filed written" statement contending as follows :--

The suit temple is not a denominational temple. It is managed by all the villagers and the festivals in the temple had been conducted from the

collection in the temple and this defendant has taken the administration and trustees also have been appointed by the defendant. The members of

Senkuntha Mudaliar community filed objection claiming right as hereditary trustee before the Deputy Commissioner and that was dismissed and

appeal preferred on that order was also dismissed and O.S. 126/69 filed with regard to that was also dismissed and appeal filed against that order

in the High Court was also dismissed. The suit temple does not possesses denominational character and the plaintiffs are not entitled to be

declaration and injunction asked for.

4. The trial Court decreed the suit. On appeal, the first appellate Court set aside the judgment and decree of the trial Court dismissing the suit.

5. Aggrieved against that the plaintiffs 2, 3, 5, 9, 12, 13 and LR's of plaintiffs 4 & 8 have preferred the present second appeal.

6. The substantial questions of law that were framed at the time of admission of the second appeal are :--

i) Whether the characteristic of a denominational temple had been properly understood by the Courts below and the principles applied so as to

ascertain the nature of it in the light of the provisions of Article 26 of the Constitution of India? And

ii) Whether Ex. B3 series constitute res judicata or not?

7. The plaintiffs claim this temple as a denominational temple exclusively belonging to Senkuntha Mudaliar community. Even in the plaint, the

plaintiffs have stated that no document is available to prove its characteristic as it is an ancient temple. The plaintiffs relied upon the document Ex.

A1 which is the judgment in O.S. 214/63 based on the compromise entered between the plaintiffs community people and Chettiar community

people. In Ex. A1 it is stated that Makaliyamman temple should be administered by the Chettiar community people and Senkuntha Mudaliar

community people in the alternative years. Basing upon Ex. A1, the plaintiffs

contend that the temple belongs exclusively to them. On a perusal of

Ex. A1 it is seen that some dispute arose between Chettiar community people and the Sekuntha Mudaliar community people and only for that, the

suit was filed and a compromise was entered in between them and only on that compromise, the suit was decreed and no other document is filed.

The plaintiffs who claim exclusive right in respect of the temple as denominational temple must establish that the temple belongs exclusively to their community people and it is being managed by them. But, to substantiate their contention, no satisfactory evidence has been produced. The

documents filed by the plaintiffs, viz., account books and the notices are not helpful to come to the conclusion that only the plaintiff community

people were managing the suit temple. There is also no proof with regard to its origin. Or it was established by the plaintiff community people. Ex.

A1 is not helpful to come to the conclusion that the temple belongs exclusively to the plaintiff community people. The documents filed do not

establish that the temple possesses denominational characteristics. To claim the declaration as denominational temple, it must be proved, by the

persons who claim as such that the suit temple has been established and maintained by them.

8. Section 107 deals with the rights of any religious denomination or any section thereof as conferred by Article 26 of the Constitution which means

that the Section relates to religious institution established and maintained by a religious denomination or any section thereof. But, Section 51 of the

Act would apply even to cause where the religious institutions are not established and maintained by the religious denomination or section thereof

but to such religious institutions which are intended or maintained for the benefit of persons belonging to any religious denomination. In The

Assistant Commissioner, Hindu Religious and Charitable Endowment, Salem and Others Vs. Nattainai K.S. Ellappa Mudaliar and Others, , it has

been by this Court that (paras 24, 30 and 33 of AIR) :

If the members of religious denomination claim that the religious institution in question has been established and maintained by them, their rights are

governed by Article 26 of the Constitution of India and the same are left untouched by the Tamil Nadu Hindu Religious and Charitable

Endowments Act on account of Section 107 thereof. Hence, the first question to

be considered invariably in every case in which a temple is claimed to be a denominational temple is whether that community is a religious denomination or any section thereof though there is no definition of the term "religious denomination" either in the Act or in the Constitution of India, it has been judicially interpreted in unmistakable terms by the Supreme Court of India. As seen from the decision of the Supreme Court, the words "religious denomination" must take their colour from the word, "Religion". It is, therefore, clear that the common faith of the community should be based on religion. It is essential that they should have common religious tenets. The basic chord which connects them should be religion and not anything else. If the aforesaid tests are applied in the present case, it will be seen that the Senguntha Mudaliar community of Tharamangalam cannot claim to be a religious denomination. There is absolutely no evidence on record to prove that the member of the community have common religious tenets peculiar to themselves, other than those which are common to the entire Hindu Community.

In the absence of any evidence that there are religious tenets and practices special to the community, the plaintiff cannot succeed in proving that the community of Senguntha Mudaliars of Tharamangalam is a religious denomination. There is also no evidence to show that the members of other communities have been excluded during certain religious ceremonies performed by Senguntha Mudaliar.

For the purpose of invoking Article 26 of the Constitution of India the plaintiffs have got to prove two facts : (1) that they established the temple,

and (2) they maintain the temple. In *S. Azeez Basha and Another Vs. Union of India (UOI)*, , the Supreme Court has held that the words

establish and maintain"" in Article 26(a) of the Constitution of India must be read conjunctively and it is only those institutions which a religious

denomination establishes which it can claim to maintain and that the right under Clause (a) of Article 26 will only arise where the institution is

established by a religious denomination. In view of the same, the burden is on the plaintiffs to prove that the temple in question was established by a

religious community of Senguntha Mudaliars of Tharamangalam and it is not sufficient if it is proved that the temple was being maintained by the

community. I am of the opinion that the entire evidence let in by the plaintiffs in

the present case will only go to the extent of proving that the temple in question was being maintained by the members of Senguntha Mudaliars of Tharamangalam community and it will not prove that the temple established by them.

9. The principle underlying the decision of the Supreme Court is that in the case of denominational character, there must be common faith of the community based on religion and it must be established that the members of the community have common religious tenets peculiar to themselves, other than those which are common to the entire Hindu community. In the instant case, no document is filed to prove that the suit temple is being maintained by Senguntha Mudaliar community people and there was common faith of that community in respect of this temple. The account books and other documents are not helpful to come to the conclusion that the very ancient temple is being managed by Senguntha Mudaliar community people. Absolutely there is no evidence to substantiate the case of the plaintiffs.

10. The plaintiffs have filed petition 94/63 before the Deputy Commissioner for appointment of trustees from their community people and that petition was dismissed under Ex. B5. Appeal preferred on that was also dismissed under Ex. B1. Aggrieved by that order, O.S. 126/69 was filed by them was also dismissed under Ex. A9. Appeal preferred on that was also dismissed under Ex. B8. So, even in the previous proceedings viz., O.S. 126/69 and A. S. 1/72, the same subject-matter has already been decided and it operates as res judicata for this suit.

11. The first appellate Court has considered all these aspects and has correctly found that the plaintiffs are not entitled to the declaration and the previous proceedings also operates as res judicata and the suit is barred by res judicata. The reasoning and conclusion arrived by the first appellate Court are being sound and based on legal principles, I find no interference of this Court is warranted.

In the result, the second appeal fails and is dismissed. No costs. CWP 8641/87 is closed.