

(2017) 05 MAD CK 0010
In the Madras High Court
Case No : 196 of 2006

R.Manoharan, & Ors.

APPELLANT

Vs

The Deputy Commissioner, HR&CE, Madurai, & Anr.

RESPONDENT

Date of Decision : 18-05-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 96](#) -
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, Section 70(1),
Section 70(a), Section 63A, Section 63B -
Madras Hindu Religious and Char

Citation : (2017) 05 MAD CK 0010

Hon'ble Judges : C.V.Karthikeyan

Bench : SINGLE BENCH

Advocate : C.V.Karthikeyan

Final Decision : Allowed

Judgement

1. The Plaintiffs in OS.No.46 of 1993, aggrieved by the judgement and decree dated 25.2.2005, passed by the Principal Sub Court, Dindigul,

have filed this appeal under Section 96 of CPC read with Section 70(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act,

1959, as amended.

2. The suit in OS.No.46 of 1993 was originally filed by V.Ramasamy Pillai. He died during the litigation and consequently, his legal heirs were

brought on record as the Plaintiffs 2 to 6 and they are the Appellants herein.

3. V.Ramasamy Pillai had filed the suit under Section 70(a) of the Hindu Religious and Charitable Endowment Act, seeking to set aside the order

of the 1st Defendant, who was the Commissioner of Hindu Religious and Charitable Endowment Board, Chennai in AP.No.57 of 1988, wherein

by order dated 28.4.1992, the said appeal had been dismissed. A further relief, seeking to declare that the suit property was not a religious

institution was also sought.

4. In the plaint, it had been stated that the suit property was actually a Samadhi. The suit property was at Adianoothu Village, Dindigul in

S.Nos.812, 813, 814/2 and 816, measuring in all 4 acres 33 cents. However, the relief in the suit as well as in the present appeal has been limited

to S.No.813 alone, which is a Samadhi, measuring around 6 ft. in length and about 3 or 4 ft. in breadth. It had been stated in the plaint that

Parameswara Gnaniar, the great grand father of the original Plaintiff V.Ramasamy Pillai, was buried in the said Samadhi in S.No.813 and his

descendants/the family members conducted poojas out of their own income. It was strictly a family related private pooja. The said Samadhi was

built up by the Plaintiff's grand father Sivagurunatha Pillai. The said Samadhi was called Parameswara Gnaniar Pandara Math at Nagal Nagar,

Dindigul. Dharmadayam Inam had been granted with respect to the entire area of 4 acres and 33 cents in S.Nos. 812, 813, 814/2 and 816 in

Adianoothu Village by the then Rajas and the income from the property was used for the maintenance of the said Samadhi. This Inam grant was

confirmed by the Inam Commissioner in TD.No.40. The general public were also attracted to the Samadhi and they also offered poojas.

However, the ownership and management vested with the family of the Plaintiffs.

5. It had been further stated that Guru Pooja was also conducted. After the death of Sivagurunatha Pillai, the father of the Plaintiff Valaya Pillai and

later, the original Plaintiff V.Ramasamy Pillai were in control of the Samadhi. The appurtenant lands in S.Nos.812, 814 and 816 had been sold as

they were private properties inherited through Inam grant. In 1948, the Hindu Religious and Charitable Endowment Board took suo moto

proceedings in OA.No.134 of 1948 and thereafter realising that the Samadhi would not come under its purview, the proceedings were dropped.

Subsequently, fresh proceedings were initiated in OA.No.277 of 1948 and the Samadhi was declared as a Math. It is the case of the Plaintiffs that

the said order was not binding on them.

6. In 1973, the 1st Defendant, who was the Assistant Commissioner, HR&CE, Madurai attempted to appoint a non hereditary trustee. A revision

petition in RP.No.257 of 1973 was filed before the 2nd Defendant, the Commissioner, HR&CE, Chennai and the proceedings of the 1st

Defendant was set aside. In 1974, the Plaintiff's filed a petition under Section 63B of the Hindu Religious and Charitable Endowment Act to

declare him as a hereditary trustee, but owing to legal advise, withdrew the same. Therefore, he filed OA.No.16 of 1984 before the Assistant

Commissioner, HR&CE, Madurai, who was the 1st Defendant under Section 63A of the said Act. This was dismissed on 27.11.1987. An appeal

was filed in AP.No.57 of 1988. This was also dismissed by the 2nd Defendant on 28.4.1992. Consequently, the suit was filed, seeking to cancel

the order in AP.No.57 of 1988 and to declare that the Samadhi was not a religious institution as defined under the said Act.

7. During the hearing in this case, it was also brought to the notice of this court that a Writ Petition was also filed and a direction was given by this

court to decide the issues on merits and consequently, a ground was also raised that the decision had been rendered by the 2nd Defendant,

Commissioner, HR&CE without following the directions of this court in the Writ Petition.

8. In the written statement, it had been stated that the lands comprised in S.Nos.812, 813, 814/2 and 816 of Adianoothu Village, Dindigul were

granted for performance of pooja by Inam grant in TD.No.40. It had been stated that OA.No.134 of 1948 had been dropped only for the present

at that time. It had been stated that the said place was a Math as defined under Section 9(7) of the Madras Hindu Religious and Charitable

Endowment Act, 1926. It was also found to be a Math in OA.No.277 of 1948 by order dated 22.10.1948. It had been claimed that the said

order had attained finality. It had been further stated that at the time of the suit, the Writ Petition preferred by the Plaintiffs in WP.No.10170 of

1984 was pending. It had been stated that petitions had been received that the appurtenant lands had been sold as if they were private properties.

It had been stated that both the Defendants had passed orders on merits, declaring that the property was not a Samadhi and was actually a

religious institution.

9. On consideration of the rival pleadings, the court below had framed the following issues for trial:-

1. Whether the order dated 22.10.1948 in OA.No.277 of 1948 has attained finality and is binding on the Plaintiffs?
2. Whether the suit property is a Samadhi of Parameswara Gnaniar and whether there is Dharmadayam Inam in respect of the said property?
3. Whether the suit property is a Math as claimed by the Defendants?
4. Whether the suit property is a religious institution?
5. Whether the order in AP.No.57 of 1988 dated 28.4.1992 of the 2nd Defendant has to be set aside?
6. To what other reliefs the Plaintiff are entitled to?

10. During the trial, on the side of the Plaintiffs, two witnesses, namely, the 2nd Plaintiff and an independent witness Chokku Pillai, were examined as PW.1 and PW.2. On the side of the Defendants, R.Venkatachalapathy was examined as DW.1. The Plaintiffs marked Ex.A1 to Ex.A7. These documents included the Inam patta as Ex.A1, the order dated 22.10.1948 as Ex.A2, the order of the Principal District Munsif, Thanjavur in OA.No.1806 of 1981 dated 8.7.1982 as Ex.A4, the order of the 1st Defendant dated 9.11.1983 as Ex.A5, the order of the High Court of Madras in WP.No.10170 of 1984 dated 19.10.1984 as Ex.A6 and the order of the 2nd Defendant, Commissioner, HR&CE dated 28.4.1992 as Ex.A7. The Defendants marked Ex.B1 to Ex.B5. These included the notice of the Inspector, HR&CE, Madurai dated 24.9.1948 as Ex.B1, the order in OA.No.134 of 1948 as Ex.B2, the invitation for Nagal Nagar Parameswara Pandara Sannathigal Maha Gurupooja dated 29.7.1947 as Ex.B3, the report of the Inspector, HR&CE dated 3.5.1984 as Ex.B4 and the receipt paid by the 1st Plaintiff to HR&CE dated 24.4.1978 as Ex.B5.

11. On consideration of the oral and documentary evidence, the court below dismissed the suit and held that the suit property in S.No.813 was a Math and consequently, a religious institution as defined under Section 6(18)(1) of the HR&CE Act and also refused to set aside the order of the 2nd Defendant in AP.No.57 of 1988 dated 28.4.1992. In effect, the suit was dismissed without costs. Hence, the Plaintiffs are in appeal against the said judgement.

12. Before this court, the learned counsel for the Plaintiffs stated that the dispute was with respect to S.No.813, which was a very small area,

measuring about 6 ft. in length and about 3 or 4 ft. in breadth, which was a Samadhi of great grand father of the original Plaintiff P.Ramasamy Pillai.

The said great grand father was called Parameswara Gnaniar. It had been stated that on his death, a Samadhi was built by his son Sivagurunatha

Pillai. Guru poojas were being done and since the said Parameswara Gnaniar was a person who was much respected in the local area, the people

from the surrounding area also attended the guru pooja. However, guru pooja was done only with the funds from the family. Public donations were

not collected. In fact, there was also no hundi. It had also been pointed out by the learned counsel that the entire area of 4 acres and 33 cents in

S.Nos.812, 813, 814/2 and 816 of Adianoothu Village, Dindigul was granted by a Dharmadayam Inam by the then Rajas for the specific purpose

of maintenance of the Samadhi. It had been further stated that maintenance, management and ownership was in exclusive control of one family. It

was originally by Sivagurunatha Pillai and subsequently, by his son Valaya Pillai and thereafter, by the original Plaintiff V.Ramasamy Pillai, who

died pending proceedings and the other Plaintiffs had been brought on record as legal representatives. The learned counsel stated that the HR&CE

Board had actually initiated action and had dropped the same and subsequently, revived the proceedings and declared the Samadhi as a Math.

This, according to the learned counsel, was erroneous and in fact, the learned counsel also stated that in a parallel proceedings in WP.No.10170

of 1984, this court had directed that the issues should be settled after hearing all the parties concerned and orders had been passed without

following the said directions. The learned counsel stated that the order under appeal suffers from infirmity and should be set aside.

13. On the other hand, the learned Government Advocate supported the impugned judgement and stated that guru poojas were being done in the

said Samadhi and the Samadhi had been declared as a Math in 1948 and had subsequently not been challenged. The learned Government

Advocate also stated that the order had become final. It was also pointed out that there was a Vinayagar Temple near the Samadhi and the general

public also worshipped in the said place. It had been stated that a fit person had been appointed on 11.4.1984.

14. I have carefully considered the arguments advanced by the learned counsel on either side.

15. Under the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, which had undergone many amendments, Section 6(18) gives

definition of "religious institution", which is as follows:-

18. "Religious Institution" means a math, temple or specific endowment and includes,

i. a samadhi or brindhavan; or

ii. an other institution established or maintained for a religious purpose.

Explanation:- For the purpose of this clause-

(1) "samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious

worship;

(2) "brindhavan" means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious

worship, but does not include samadhi;

This provision as stated above had undergone several amendments and originally a "religious institution" meant only a math, temple or specific

endowments. It was only thereafter that a samadhi was also included as a religious institution. However, to qualify as a religious institution, there

had been several factors, which are necessary as determined by several judgements, which are binding on this court. Among them, are the

presence of a hundi, conduct of religious rights, worship by public as a matter of right.

16. In the present case, the property had been assigned to the family of the Plaintiffs by a Dharmadayam Inam. This has also been admitted by the

Respondents, who in their written statement stated that Inam under TD.No.40 had been granted to the family of the Plaintiffs for the Smadhi of

Parameswara Gnaniar. Inam was granted by the then Rajas. It is also to be mentioned that the Inam was for an total area of 4 acres 33 cents in

which the Samadhi was situated to an extent of 6 ft. in length and 3 or 4 ft. in breadth. The entire area of 4.33 acres was situated in S.Nos.812,

813, 814/2 and 816. However, the appeal and the suit had been restricted only to the relief with respect to S.No.813 in which the Samadhi is

situated. It is also not in dispute that the Samadhi was built not by a public, but by the son of Parameswara Gnaniar by name Sivagurunatha Pillai.

The Inam was also a private Inam for the specific purpose of maintaining the Samadhi. Recognising the private holding, the appurtenant lands have

been sold by the family members of the Plaintiff. Dispute relating to such sale are not germane to this appeal. However, it has to be pointed out that

the Plaintiffs have exercised title, ownership over the appurtenant lands. Even with respect to S.No.813, wherein the Samadhi of situated, it was

under the management of the grand father of the original Plaintiff. The grand father Sivagurunatha Pillai had constructed the Samadhi of his father

Parameswara Gnaniar. After Sivagurunatha Pillai, the management vested with his son Valaya Pillai and thereafter, with the original Plaintiff

V.Ramasamy Pillai. The Appellants are the legal representatives of V.Ramasamy Pillai. Consequently, it is found that the entire Samadhi has been

under the direct control and management of one single family. Any pooja done to the Samadhi of Parameswara Gnaniar is only by the said family.

17. It is also seen from the records that originally the Hindu Religious and Charitable Endowment Board initiated proceedings in OA.No.137 of

1948 to declare the Samadhi as a Math. The said proceedings was dropped. Subsequently, fresh proceedings were initiated in OA.No.277 of

1948. In the said proceedings, the Samadhi was declared as a Math. The Respondents relied on the said findings and claimed that the Appellants

herein cannot plead a different cause after the said findings have attained finality. However, the learned counsel for the Appellants had pointed out

Ex.A6, which is the interim order passed in WP.No.10170 of 1984, wherein appointment of a fit person had been stayed. In this case, the learned

counsel for the Appellants further pointed out that there is no evidence to show that the general public worshipped in the said Samadhi as a matter

of right. As stated above, Section 6(18) had undergone several amendments. Originally, a Samadhi was not defined as a religious institution.

Subsequently, it has been brought under the purview of a religious institution. In this case, Samadhi has actually been as a Math.

18. In 2015 8 MLJ 860 SC (K.S.Soundararajan and others Vs. Commissioner of HR&CE and others), in paragraph 6, the Honourable Supreme

Court had an occasion to discuss about an Inam and had held that under Section 6(17) of the Act, an Inam is not included and in paragraph 6,

held as follows:-

6. The Presiding Deity of the temple at Thirupparankundram is Subramaniaswami and the performance of Neivedyam and Pooja to

the said Swami during festival mentioned as first charity is clearly a service to be rendered to the Deity in the Temple. Supply of food

on Chitra Pournami day every year has to be done when God Kallalagar is taken in procession through the Vaigai river on way to

Vandiur, is the second charity mentioned in the Will. It is necessary to refer at this stage to some of the relevant provisions of the Act.

Religious institution has been defined in Section 6(18) as meaning a math, temple or specific endowment. Specific endowment in

Section 6(19) reads thus: any property or money endowed for the performance of any specific service or charity in a math or temple

or for the performance of any other religious charity but does not include an inam of the nature described in Explanation (1) to Clause

(17). Religious charity is defined in Section 6(16) as meaning a public charity associated with a Hindu festival or observance of a

religious character, whether it be connected with a math or temple or not. Religious endowment or endowment has been defined in

Section 6(17) to mean all property belonging to or given or endowed for the support of maths or temples, or given or endowed for

the performance of any service or charity of a public nature connected therewith or of any other religious charity, and includes the

institution concerned and also the premises thereof but does not include gifts or property made as personal gifts to the Archaka,

Service holder or other employee of a religious institution.

In this case also, Dharmadayam Inam had been given under TD.No.40 to a particular family as a personal Inam to upkeep the Samadhi of

Parameswara Gnaniar and consequently, it cannot be termed as a public endowment.

19. In 1991 2 MLJ 582 (R.Shanmuga Sundaram Vs. The Commissioner, HR&CE and others), this court had an occasion to deal with Srimath

Kumara Gurudasa Swamigal, who was an inspired baktha of Lord Muruga and had contributed the celebrated "Shanmugha Kavasam",

"Panchamirtha Vannam", "Kumarasthavam" and also had composed more than

666 compositions. Swamigal was a legend, saint and a gnani during his life. The said Swamigal left a last Will and testament and appointed a Sabha called ""Mahathejo Mandalam"" with 21 members constituting his disciples. Subsequently, mortals remained were preserved in a Samadhi on 20.5.1929 and the surrounding lands were purchased by the Mahathejo Mandala Sabha on 4.6.1929. The said Samadhi was the subject matter of dispute with the Hindu Religious and Charitable Endowment Board and this court while dealing with the issues therein held as follows:-

12. ... the Respondent Department ought not to have interfered with the management of the Sabha and more so, ought not to have altered the construction of the Samadhi of the Swamigal, as I could see from the photographs in the file. As I have already pointed out, unless the characteristics of the Institution is decided under Section 63(a) of the HR&CE Act, the Respondent Department cannot have any jurisdiction.

20. In Soundarathammal v. The Thiruchirapalli Mavattam Mahasuruli Alaya Bakthargal Madya Sangam by its President Balamuthu Servai and others (1977 1 MLJ 125), it had been held as follows:-

Before a temple or a shrine or other holy place can be accepted and recognised as a place of public religious worship there must be

evidence of dedication of the same for the benefit of the Hindu Community or a section thereof. The guidelines are that it should be a

place of public worship, there should be acceptable proof of dedication for the benefit of the Hindu Community or a section thereof

and/or the worshippers have been using as of right the religious institution as a place of public religious worship. The building of a

Vinayakar Temple on one side of the samadhi and the consecration of a Vel on the other side in the instant case can only be

considered adjuncts to the Samadhi and not factors which have the effect of elevating the samadhi to the category of a temple.

21. In 1986 4 SCC 162 (Hari Bhanu Maharaj of Baroda Vs. Charity Commissioner, Ahmedabad) the Honourable Supreme Court had held in

paragraph 10 as follows:-

10. Once materials are found to warrant a conclusion that a Math or Mandir was private in character at the time of its origin, then

unless there is clear and definite evidence to show that there had later been a dedication of the institution for the use of the public, the

private character of institution will not get effaced. Even if at some subsequent point of time, the owners of the Math had permitted

the members of the public to visit the Math and worship at the Mandir; it will only mean that the members of the public would have

visited the Mandir as invitees and nothing more.

22. In 1997 2 LW 477 (MVPB.Nammalwar Vs. The Commissioner, HR&CE, Madras) this court had to decide the status of a Samadhi of

Michael Siddar, who was a Christian whom Vedanayagam Sami is his Guru. It was called Dakshinamoorthy Madam. There was a Samadhi for

Kamal Sami, a Christian for whom also poojas were done. There was also a Vedanayagasami Samadhi. These samadhis were sought to be

declared as Maths by the HR&CE Board. This court had held as follows:-

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

defined under the Act. But, the Court has to look into the recitals in the documents creating the institution and come to an

independent conclusion whether the recitals in the documents constitute a Mutt or not.

23. In this case, as pointed out above, originally Dharmadaya Inam had been granted to a specific family of the Plaintiffs for upkeeping and

maintenance of the Samadhi of Parameswara Gnaniar, who was the great grand father of the V.Ramasamy Pillai, the original Plaintiff.

Consequently, the said grant being a private grant will not come under the purview of the Respondent Board.

24. In 2002 3 MLJ 398 (R.Padmanabhan and others Vs. Sri Vidhya Vakeesa Theerthar and another) , this court had an occasion to deal with Sri

Vyasaraja Mutt. Vyasaraja was a Saint and Philosopher of Madhwa Community. Whenever such saints attained Mukthi, their mortal remains were

interned and Samadhis were constructed and guru poojas are conducted. These Samadhis were held in reverence by the devotees. Daily poojas

were also done. Abhisegams were also carried out. Lord Krishna was worshipped as their Presiding deity in the temple in the Mutt. All Hindus

joined and offered worship. The Samadhis and the temple in the branches in

Mutts have become places of public worship. While discussing the Samadhi of Vyasaraja, this court stated as follows:-

24. ... There is absolutely no evidence of endowment of any property by any public. Simply because a temple is put up adjoining the

Samadhi and some Guru Poojas are performed on particular days, it cannot be construed as a religious institution.

25. Even in this case, participation of public was only by invitation and it is the single family of the Appellants who are conducting poojas in

memory of their own great grand father Parameswara Gnaniar.

26. In 2001 2 MLJ 737 (Commissioner, HR&CE, Madras Vs. N.Sundaraswamy Gounder and another), this court had an occasion to deal with

installation of an Idol of Vinayagar called Ishta Sidhi Vinayagar by a single family and building a temple. This judgement assumes importance since

in this case, the learned Government Advocate stated that there was a Vinayagar Idol in the Samadhi of Parameswara Gnaniar as is evidenced in

the present case. It was held in paragraph 9 as follows:-

9. it is clear that the suit temple is situated within the compound of the 1st Respondent's property and that access to the temple is

through the same gate through which one enters the residential premises of the 1st Respondent. It is also clear that to enter the

temple,, one has to obtain the permission of the 1st Respondent and also obtain the keys from him. Therefore, access is only upon the

permission and pleasure of the founder and his family members. The absence of Hundi also shows that no contribution from the public

is received at the temple. Another crucial feature is that the Samadhi of the ancestor of the family lies very close to the temple. No

doubt, there is presumption that private temples are very rare in South India, but it does not mean that there cannot be any private

temple.

27. In the present case, on reappraisal of the evidence, it is seen that in S.No.813, there is a Samadhi, over which the learned Government

Advocate claims that there is also a Vinayagar Temple. The entire area is about 6 ft. in length and 3 or 4 ft. in breadth. This Samadhi is of

Parameswara Gnaniar. It was built by his son Sivagurunatha Pillai. For the maintenance of the Samadhi, the then Rajas gave a Dharmadayam Inam

of S.Nos.812, 813, 814/2 and 816, measuring in all 4 acres 33 cents. The dispute is only with respect to S.No.813. According to the Appellants,

the Samadhi has been under the exclusive control by their family members. After Sivagurunatha Pillai, his son Valaya Pillai was in control and

thereafter his son V.Ramasamy Pillai was in control. This being a Samadhi of their great grand father, I hold that the findings of the Respondents

have to be interfered with. The fact that there was an earlier order in 1948 would not directly help the case of the Respondents because there was

also earlier order in 1948 dropping the proceedings declaring the Samadhi as a Math. Consequently, on evidence, I hold that the appeal has to

succeed since it is an exclusive private Samadhi of an ancestor of the Plaintiffs and guru pooja is done only by the family members of the Plaintiffs.

It is within their private property. The general public attend the guru pooja only by invitation. There is no hundi. There is no document to show that

it is a public institution. Grant has been given to a single individual. There has been no statement obtained to show that it was a public religious

institution. For all these reasons, I hold that the appeal has to be allowed.

28. In the result, this appeal suit is allowed. The impugned judgement and decree dated 25.02.2005 made in OS.No.46 of 1993 on the file of the

Principal Sub Court, Dindigul, is set aside and the suit in OS.No.46 of 1993 is decreed as prayed for with costs.