(2011) 12 MAD CK 0288

In the Madras High Court

Case No : Civil Revision Petition (NPD) No''s. 3067 of 2007 and 1840 of 2008 and M.P. No. 2 of 2007 in CRP (NPD) No. 3067 of 2007 and M.P. No. 1 of 2008 in CRP (NPD) No. 1840 of 2008

Shantha, Sasikala and Rajalakshmi — APPELLANT

Vs

Amachur Poothuraja Temple Trust
The Assistant Commissioner, Hindu Religious and Charitable Endowment Department, Thiruvannamalai, Thiruvannamalai District Vs Sankara Naidu, Murali, Narasimhan, The above trustees are represented by their Power of Attorney S. Velu and Thennarasu, (R4 was impleaded as party respondent vide order of this Court dated 4.11.2011 made in M.P. No. 1 of 2011) — RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Madras Hindu Religious Endowments Act, 1926 — Section 84, 9(5)
Trusts Act, 1882 — Section 34

Citation : (2012) 1 LW 387

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : S. Parthasarathy, for Mr. D. Ashok Kumar for CRP NPD No. 3067 of 2007, Mr. M. Venugopal for CRP NPD No. 1840 of 2008, for the Appellant; G. Rajan, for R1 and R2, Mr. M. Venugopal, for R3 to R5 for CRP (NPD) No. 3067 of 2007, Mr. G. Rajan, for R1 to R3 and Mr. H. Mohamed Ismail for R4 for CRP (NPD) No. 1840 of 2008, for the Respondent

Judgement

Honourable Mr. Justice R. Sudhakar

1. One Shantha, wife of late Venkatarama Naidu; one Sasikala, wife of Thiru Venkatesan and daughter of late Venkatarama Naidu; and one Rajalakshmi, wife of Thiru Srinivasan and daughter of late Venkatarama Naidu have filed CRP No.3067 of 2007 challenging the order dated 30.7.2003 passed by the learned District Judge, Tiruvannamalai in Trust O.P.No.1 of 2003.

2. The Assistant Commissioner, Hindu Religious and Charitable Endowment

Department, Tiruvannamalai has filed CRP No.1840 of 2008 challenging the very same order dated 30.7.2003 passed by the learned District Judge, Tiruvannamalai in Trust O.P.No.1 of 2003.

3. The relief sought for in both the civil revision petitions is one and the same. Hence, by consent, both the Civil Revision Petitions are taken up for disposal together.

4. Thiru V.Murali and Thiru V.Narasimhan, the respondents 1 and 2 in CRP No.3067 of 2007 and respondents 2 and 3 in CRP No.1840 of 2008 are the sons of Tmt.Shantha, the first revision petitioner in CRP No.3067 of 2007 and brothers of Tmt.Sasikala and Tmt.Rajalakshmi, the revision petitioners 2 and 3.

5. The first respondent in CRP No.1840 of 2008, namely, Thiru Sankara Naidu (died pending proceedings), son of late Murahari Naidu, is the brother of late Venkatarama Naidu. Thiruvalargal Sankara Naidu, Murali and Narasimhan, through their power of attorney filed Trust O.P.No.1 of 2003 claiming to be the trustees of Amachur Poothuraja Temple Trust, Tiruvannamalai praying for permission to sell the property in issue. They claim that the temple is a family temple situated at Tiruvannamalai. The temple was founded and built by their forefathers. One Mr.Murahari Naidu has been holding the post of hereditary trustee since 1941 and maintaining the temple out of income from the lands in Survey No.34, Patta No.1446, Ward No.IV, Block No.10, situated at Tiruvannamalai Taluk. It is stated that the said Murahari Naidu died on 1.4.1952. After his death, his sons, Sankara Naidu, the first petitioner in Trust O.P.No.1 of 2003 and his brother Venkatarama Naidu, the father of the petitioners 2 and 3 in the Trust O.P.No.1 of 2003 became the trustees and were maintaining the Temple, the Trust and its properties. It is stated that Venkatarama Naidu died in the year 1993. After the death of Venkatarama Naidu, his sons Murali and Narasimhan are administering and maintaining the temple and the trust along with their uncle Sankara Naidu. The petitioners in O.P.No.1 of 2003 state that in order to conduct the poojas and festivals of the temple they do not have sufficient income from the properties of the temple and therefore, in order to make appropriate monetary provision for performing of poojas and festivals, they filed an application u/s 34 of Indian Trust Act, 1982 for permission to sell the land based on a resolution passed by the trustees. The said petition was filed by the power of attorney dated S.Velu based on the deed dated 11.11.2002 executed by the trustees in favour of the said Velu, for sale of the temple property. The agreement for sale dated 14.3.2003 was also marked as document in the petition. Except these documents, no other document was marked.

6. There is no respondent in the Trust O.P.No.1 of 2003. The learned District Judge, Tiruvannamalai, examined Thiru S.Velu, the power of attorney of the Trustees as P.W.1 and through him Ex.P-1 dated 11.11.2002, General Power of Attorney executed by the so-called trustees in favour of the petitioner S.Velu and Ex.P-2 dated 14.3.2003 the Sale Agreement entered into with one Pooniyamoorthy in respect of the property in issue were marked as exhibits.

7. Based on the evidence of P.W.1 and the Exs.P-1 and P-2 the District Court, Tiruvannamalai passed the following order on 30.7.2003:

ORDER

1) Petition filed by the petitioner u/s 34 of Indian Trust Act, 1982 to grant permission to the petitioner for sale of schedule property and also further grant permission to deposit the sale amount of Rs.5,10,000/-in Fixed Deposit of a Nationalised Bank, and also to receive the interest accrued in the above deposit from the said bank by the petitioner to perform the Daily Pooja and annual festivals of the Temples.

2) Petitioner present and examined as PW1. Ex.P1 & P2 marked. Bonafide of the claim proved. Petition is allowed. Petitioner is permitted to sell the schedule property and to deposit the sale amount of Rs.5,10,000/-in a Nationalised Bank, Tiruvannamalai, and accrued interest to be used for the purpose of performing the Daily Pooja and Amachur Poothuraja Temple Annual Festivals.

Pronounced by me in open Court, on this, the 30th day of July, 2003

Consequent to the above order, the District Court passed the decreetal order as follows:

Trust O.P.No.1/2003

(in the matter of Amachur Poothuraja TempleTrust)

Amachur Poothuraja Temple Trust represented by its Trustees,

1) Sankara Naidu, aged 70, s/o Murahari Naidu,

2) Murali, aged 30, s/o Venkarama Naidu,

3) Narasimhan, aged 28, s/o Venkatarama Naidu,

all are residing at Pothur Temple Street, Tiruvannamalai. The above Trustees are represented by their Power of Attorney S.Velu, aged 60, s/o Srinivasan, residing at No.TA-18, Tamilnadu Housing Board Colony, Bangalur, Hosur Town.

... Petitioner

-versus

-Nil-

... Respondent.

Petition filed by the petitioner u/s 34 of Indian Trust Act, 1982 to grant permission to the petitioner for sale of schedule property and also further grant permission to deposit the sale amount of Rs.5,10,000/-in Fixed Deposit of a Nationalised Bank, and also to receive the interest accrued in the above deposit from the said bank by the petitioner to perform the Daily Pooja and annual festivals of the Temple.

Petition presented on : 28.03.2003 & 9.4.2003.

Petition filed on : 09.04.2003.

This petition is coming for hearing before me in the presence of Thiruvalargal G.Ranganathan, R.Thangadurai, & P.Anbalagan, Advocates for the petitioners, and Respondent''s side-Nil, Paper Publication & General Publication effected, petitioner examined as P.W.1, as such this Court doth ordered and directed,

1) that the petition be and the same is hereby allowed.

2) that the petitioner is hereby permitted to sell the schedule property and to deposit the sale amount of Rs.5,10,000/-in a Nationalised Bank, Tiruvannamalai, and accrued interest to be used for the purpose of performing the Daily Pooja and Amachur Poothuraja Temple Annual Festivals.

(emphasis supplied)

Challenging the said order, the two revision petitions have been filed as above.

8. Mr.S.Parthasarathy, learned senior counsel appearing for the revision petitioners in CRP No.3067 of 2007 contended as follows:-

(1) The respondents 1 and 2 in CRP No.3067 of 2007, viz., Thiruvalargal V.Murali and V.Narasimhan, in collusion with one Velu, indulged in foul play to sell the temple manyam lands, as if they are the trustees and entitled to sell the land for the benefit of the temple. Their claim is based on no relevant document or record.

(2) Thedocuments Exs.P-1 and P-2 filed in support of the Trust Original Petition are self serving documents created only for the purpose of alienating the temple property by playing fraud on all concerned.

(3) The alleged Trust deed has not been marked and the so-called resolution of the trustees has not been marked. There is no trust or a trust deed and the alleged resolution of trustees is a false statement made in the petition so as to get an order from Court and to sell away the land belonging to the temple and the deity. The so-called trustees have no power of alienation. The fiction of trust and trustee is a fraud play by the three persons of the family to enrich themselves by selling away the temple land and swallow the money in the name of temple maintenance.

(4) The other members of the family have not been included or shown as respondents in the Trust O.P.No.1 of 2003 and the petition has been filed with an ulterior motive of alienating the temple property without adding proper parties. The said persons indulged in suppression of facts for personal gain.

(5) Theapplication filed u/s 34 of the Indian Trust Act is not maintainable in law and is misconceived. It is a fraud played upon the court in collusion with the power of attorney Mr.Velu and the buyer.

(6) The two brothers knowing fully well that the temple manyam lands cannot be

alienated, as the temple is a public temple, have filed a false petition through the power agent suppressing material facts. The valuable property has been sold for a pittance and the temple has lost a valuable property thereby. The three persons have unduly enriched themselves in the name of trustees.

On the above and other legal pleas, the CRP No.3067 of 2007 is canvassed.

9. Thiru M.Venugopal, learned Additional Government Pleader appearing for the Assistant Commissioner, Hindu Religious and Charitable Endowment Department, the revision petitioner in CRP No.1840 of 2008 relied upon the following documents to establish the Department''s plea that the order passed by the District Judge, Tiruvannamalai, is totally against law and not maintainable and it has been obtained by playing fraud upon court suppressing material facts:

(i) TheInam Title Deed dated 25.1.1862 in favour of Poothuraja Temple, Tiruvannamalai executed by the Inam Commissioner, Madras.

(ii) Inam Register copy dated 29.3.1941.

(iii) The Application O.A.No.94 of 1941 filed by Thiru Murahari Naidu, Goverdhana Naidu, Rajagopal Naidu and one Pothi Ammal as trustees of Potharaja Temple, Tiruvannamalai before the Hindu Religious Endowments Board, Madras u/s 84 of the Madras Hindu Religious Endowments Act 1926 (Madras Act II of 1927) to cancel the appointment of Pachaiappa Chettiar as trustee of the temple and to declare that the temple is an excepted temple. In that application, an order was passed on 1.10.1941 in Order No.4100.

(iv) The Board''s Order No.4100 dated 1.10.1941 passed in O.A.No.94 of 1941 is relating to the subject temple.

The Department officials produced the originals so as to enable the court to verify the bona fides of the Department''s plea that fraud has been played on court and the order has been obtained by suppression of facts.

10. The contention on behalf of the Government is that the Inam Title Deed dated 25.1.1862 in favour the temple clearly establishes that the temple and the deity is the owner of the land in question. This is confirmed by the Inam Register Copy dated 29.3.1941. The so-called trustees or anybody else for that matter will have no right to sell the property in question without the previous consent of the Hindu Religious and Charitable Endowments Department. As to the right of the so-called Trustees, respondents 2 and 3 and their uncle since deceased to deal with the property of the temple, it has to be noticed that the application O.A.No.94 of 1941 filed by the ancestors and the order dated 1.10.1941 passed by the Hindu Religious Endowments Board, Madras would clearly reveal that respondents 2 and 3 have a hereditary right to administer and maintain the temple but they did not have the power to sell away the property, since the temple in question is a public temple. The temple and the properties are under the control of the Hindu Religious and Charitable Endowments Department only. The right to manage the affairs of the temple by the hereditary trustee does not

give any right to respondents 2 and 3 to sell away the property in the manner that has been done in the present case. There is no trust to manage the temple lands. Therefore, the application filed under the Indian Trust Act 1982 is without authority of law and misconceived. Suppressing all the above documents, the alleged trustees, with ulterior motive of alienating the temple property, have entered into an agreement with the third party and in order to execute the sale, they have executed a power of attorney in favour of one Velu. The respondents herein, namely, Thiruvalargal Sankara Naidu, Murali and Narasimhan are not entitled to deal with the property of the temple without obtaining the permission/ consent of the Hindu Religious and Charitable Endowments Department and in any event the sale without the permission of the Hindu Religious and Charitable Endowment Department is bad. The alleged trust claimed by these persons is a farce and the resolution of the alleged trust is not filed. Having admitted in the petition that they are hereditary trustees, the Hindu Religious and Charitable Endowments Department should have been made as a party respondent in the petition. But they did not do so deliberately and with mala fide intention. No permission as required by law has been obtained from the Hindu Religious and Charitable Endowments Department to sell the property of the public temple. Hence, the proceedings in Trust O.P.No.1 of 2003 is bad for non joinder of necessary party. This has been done deliberately and with a mala fide intention to sell away the temple''s land without authority of law and enrich themselves unlawfully as the entire Trust Original proceedings appears to be sham and collusive.

11. Heard Mr.G.Rajan, learned counsel appearing for the respondents 1 to 3 in CRP No.1840 of 2008, viz., Thiruvalargal Sankara Naidu, Murali and Narasimhan and Mr.Mohamed Ismail, learned counsel appearing for the alleged subsequent purchaser of the property, namely, the fourth respondent Thennarasu.

12. Mr.G.Rajan, learned counsel for the respondents 1 to 3 in CRP 1840 of 2008 contended that the respondents 1 to 3 filed Trust O.P.No.1 of 2003 on the premise that they are maintaining the temple and the property all along and they were not aware of the Inam Title Deed dated 25.1.1862 granted in favour of the temple. The petitioners in the Trust O.P.No.1 of 2003 have clearly stated that they are hereditary trustees in succession and therefore, they have a right to alienate the property for the benefit of the temple. The property is managed privately by a family trust and therefore, the application filed u/s 34 of the Indian Trust Act is maintainable. There is no need to add or implead the Hindu Religious and Charitable Endowments Department as party respondent. There is no need to approach the said department for any relief whatsoever. He prayed for dismissing the petitions with exemplary costs.

13. Thiru Mohamed Ismail, learned counsel appearing for the fourth respondent in CRP No.1840 of 2008, the third party purchaser, stated that based on the order of the District Court and on a bona fide belief the fourth respondent Thiru Thennarasu purchased the property from Thiru S.Velu, the power of attorney of

the trustees. Since his purchase is based on the order of the Court, his right cannot be denied merely because of alleged error in the proceedings. The Department or the individual revision petitioners can proceed against the trustee as per law.

14. The first plea that the temple properties are managed privately by a family trust and therefore, the Trust O.P.No.1 of 2003 is maintainable, is misconceived. The Board''s order dated 1.10.1941 in O.A.No.94 of 1941 filed by the ancestors clearly holds that the Pootharaja temple, Tiruvannamalai Town is a public and excepted temple as defined u/s 9(5) of the Madras Hindu Religious Endowments Act 1926 (Madras Act II of 1927). The Assistant Commissioner has placed on record the Title Deed, Inam Register, copy of the Board''s Order wherein it has been clearly held that the temple is a public temple. The properties in question have been granted by way of the Title Deed by the Inam Commissioner as early as 25.1.1862 and that is to the name of the temple and not to any particular trust. In this case no trust deed has been placed for consideration. The so-called resolution of the trustees has not been filed before the court below. The originals have been brought to this court by the Hindu Religious and Charitable Endowments Department and copies filed to show the false nature of the claim in the original petition.

15. Thiruvalargal Murali and Narasimhan have to prove that the property is owned by a private family trust. The trust deed has not been marked before the District Court, Tiruvannamalai. The revision petitioners have prima facie established before this Court that there is some material to show that the temple is not a private temple, but public one and the so-called trustees Thiruvalargal Murali and Narasimhan can function only as an hereditary trustees in terms of the Board''s order. If it is a public temple, then, the provisions of the Hindu Religious and Charitable Endowments Act will get attracted and therefore, they will become necessary parties if alienation of property of a public temple is contemplated. It is for the so-called trustees to prove that the documents shown by the Department is wrong or inapplicable to them.

16. The issue as to whether the temple is a private temple and managed by a private family trust as claimed has to be proved by the respondents who claim to be trustees based on records. The documents relied upon by the department has to be marked by letting in evidence before the court below to counter the claim of respondents 2 and 3. This crucial aspect of the case has to be decided by the Court below before an order could be passed on merits in the Trust O.P.No.1 of 2003 filed u/s 34 of the Indian Trust Act. The said Sankara Naidu, Murali and Narasimhan have failed to add the Hindu Religious and Charitable Endowments Department as party respondent in the proceedings after having accepted hereditary trusteeship and that has resulted in passing of the order behind the back of the Department. The so-called trustees did not even add the other revision petitioners, who claim right of management of the temple as family members, as respondents in the Trust Original Petition. If the Hindu Religious

and Charitable Endowments Department was a party respondent, it would give them an opportunity to place all relevant documents before the Court below and contest the application on merits. The non-joinder of necessary party has caused miscarriage of justice. The various legal issues raised in the two revision petitions have to be considered by the District Court while considering the Trust Original Petition. At this stage the said legal plea and the documents relied upon by the department is taken as prima facie material to set aside the order under challenge and to remand the matter for proper consideration of the issue after hearing all concerned. The merits of rival contention will have to be gone into by the District Court.

17. The fact that the respondents Thiruvalargal Sankara Naidu, Murali and Narasimhan have pleaded that they are hereditary trustees without marking the trust deed, should have been considered by the Court below and directed the respondents 2 and 3 to implead the Hindu Religious and Charitable Endowments Department. This assumes importance in view of the suppression of the Board''s order. In terms of the Board''s Order only the right to administer the temple falls upon the said Murali and Narasimhan as hereditary trustees and therefore, the omission to add the Hindu Religious and Charitable Endowments Department is not bona fide. The Court below could not consider the said issue, since the so-called trustees failed to add the Department as party respondent. In this case the so-called trustees have conveniently given the power of attorney to an agent to get an order from the Court to sell the property. They did not choose to appear before the court and let in evidence as trustees, which they claim. The name of the bank where the money will be deposited has also not been mentioned by the so-called trustees. The District Court''s order appears to be a mere formality as respondents 2 and 3 and the other trustees have prefixed the sale and have approached the court with an agreement to sell which is marked before the court below as Ex.P-2 and the court below readily accepted it without further verification. Why the trustees were not examined before the Court below is also not explained. Where the money is now and in which bank it was deposited has not been stated. There are several unexplained issues that can be considered by the court below if it is properly pleaded and agitated by either parties. The suppression of material facts prima facie renders the order under challenge bad.

18. In view of the above reasons and since the Department concerned, namely, the Hindu Religious and Charitable Endowments Department which had granted the said Murali and Narasimhan through their forefathers the right of hereditary trusteeship of a public temple by an order of the Board, has not been impleaded, the order of the Court below allowing the Trust O.P.No.1 of 2003 cannot be justified. Necessary parties have not been included. The other hereditary trustees also have a right to object to the sale of the property of the Pootharaja temple, if they establish their right before the court below. The authority or the individual can place their objections before the court below as to the right of the hereditary trustees to sell the property. Other legal heirs or persons, who claim hereditary

trusteeship have a right to place their objections and their claim before the Court below. That opportunity has also been denied and hence, they have filed the revision petition No.3067 of 2007. They are entitled to justify their claim before the court below as per law and also place on record their objections to the sale if it is contrary to law.

19. For all the above reasons, the order of the District Judge, Tiruvannamalai passed in Trust O.P.No.1 of 2003 which has been passed without considering relevant materials and without hearing the necessary parties, deserves to be set aside.

20. The Hindu Religious and Charitable Endowments Department as well as the legal heirs or other hereditary trustees are entitled to make their submission and objections as to the maintainability of the O.P.No.1 of 2003 filed u/s 34 of the Indian Trust Act in view of the documents that have been filed by both the revision petitioners, to establish that the temple is a public temple. The Hindu Religious and Charitable Endowments Department is also entitled to raise the legal plea that the alienation of the property based on the orders passed by the District Court is bad. In other words, the Department is entitled to raise all the legal pleas including the plea that the application u/s 34 of the Act is not maintainable as against the public temple. They are entitled to establish that the property vest with the public temple and not with any private trust as alleged. All these legal pleas can be raised before the Court below on merits.

21. In view of the above, both the revision petitions are allowed and the order passed by the District Judge, Tiruvannamalai in O.P.No.1 of 2003 is set aside and the matter is remitted back to the court below for fresh disposal after hearing both the revision petitioners and respondents on merits. Consequently, connected miscellaneous petitions are closed. No costs.

22. All the parties, who are not parties in the O.P.No.1 of 2003, are at liberty to approach the District Court, Tiruvannamalai by filing an application to the District Court, Tiruvannamalai to implead themselves as party respondents in the Trust O.P.No.1 of 2003, if they so desire. On such applications, if there is any merit, then the District Judge shall add them as party respondents in the Trust O.P.No.1 of 2003. After adding all necessary parties, the District Judge, Tiruvannamalai shall dispose of the matter expeditiously. Till such time the main petition is decided on merits, there will be no further alienation, construction or sale or otherwise dealing with the property which is the subject matter of the main Trust O.P.No.1 of 2003 by any person.

23. Thiru Mohamed Ismail, learned counsel appearing for Thiru Thennarasu, the fourth respondent in CRP No.1840 of 2008 undertakes to file an affidavit before this Court on or before 20.12.2011 that no further construction or alienation will be done pending disposal of the Trust O.P.No.1 of 2003 before the District Court, Tiruvannamalai. The Hindu Religious and Charitable Endowments Department is also entitled to issue or put up notice indicating that the matter is sub judice

before the District Judge, Tiruvannamalai so as to avoid any further complication in the matter.

24. List this matter on 20.12.2011 for filing undertaking affidavit by the fourth respondent in CRP No.1840 of 2008.

As per the final order dated 15.12.2011, this matter is listed today for filing undertaking affidavit by the fourth respondent in CRP No.1840 of 2008. The fourth respondent in CRP No.1840 of 2008 has not filed the undertaking affidavit as directed. Hence, there shall be an order directing the fourth respondent not to alienate the property which is the subject matter of the Trust O.P.No.1 of 2003. Further construction should also not be made in the property till the disposal of the above Trust O.P., as already ordered in para 22 of the order dated 15.12.2011.

