
(1997) 12 MAD CK 0005
In the Madras High Court

Tenkasi Senkunda Mudaliar Samudayam and Others	APPELLANT
Vs	
N. Kuttralinga Mudaliar and Others	RESPONDENT

Date of Decision : 12-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 26
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 108, 163(a)

Citation : (1998) 1 MLJ 658

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Division Bench

Judgement

S.M. Abdul Wahab, J.—Defendants 2 and 3 are the appellants.

2. The suit was filed for declaration that the suit property belonged to the plaintiffs Samudayam and for injunction restraining the defendants from interfering with the joint possession of the suit properties by the plaintiffs and to frame a scheme to administer the suit properties and for removal of the defendants from the post of trustees.

3. The case of the plaintiffs is as follows: The properties belonged to Senkunda Mudaliar Samudayam at Tenkasi and the surrounding 56 villages.

Since the suit properties are situate at Courtallam and Senguntha Mudaliar residing at Tenkasi nearer to it, were managing the properties. The

Copper Plate inscription of the year 887 shows that the Senguntha Madam belongs to. Sengunthar community living in Tenkasi and 56 villages.

Donations are collected from the community living in 56 villages for the improvement of the suit properties. The Tenkasi Senguntha Mudaliars

added the word ""Thenkasi"" to the words ""Sengunthar Madam"" and it was

objected to by Keezha Pavor Sengunthar Mudaliar Samudayam on

12.8.1977. Though the plaintiff sent a notice on 29.1.1985 to defendants, there was no reply.

4. The first defendant filed a written statement supporting the claim of the plaintiffs.

5. The defendants 2 and 3 filed a written statement opposing the claim of the plaintiffs. The suit properties belong absolutely to Thenkasi

Sengunthar community only. The first defendant failed to render accounts, hence the second defendant was elected as President and the third

defendant was elected as Secretary. They are in management of the Madam and its properties. The plaintiffs have no right in Thenkasi Sengunthar

Samudhaya Madam.

6. The fourth defendant also filed a separate written statement. He supported the contention of the defendants 2 and 3.

7. The trial court framed eight issues and the main issue is: Whether the properties belong to the Sengunthar Samudayam as a whole or to Thenkasi

Sengunthar Samudayam alone? After finding that the suit properties belonged to the entire Sengunthar community of Tamil Nadu, the trial Court

decreed the suit granting the relief of declaration and removal of the defendants 1 to 3 from the trusteeship. It directed that the framing of the

scheme should be agitated in a separate proceeding.

8. The defendants 2 and 3 preferred the appeal to the Additional. District Judge, Tirunelveli. The lower appellate Court also concurred with the

finding of the trial Court and dismissed the appeal. Hence, the second appeal in this Court.

9. The learned Counsel for the appellants Mr. K. Chandrasekaran, contended that the suit properties belonged to Thenkasi Sengunthar community

alone and not to the entire Sengunthar community living in Tamil Nadu. Secondly, he contended that the suit is not maintainable in view of Sections

63 and 108 of the Hindu Religious and Charitable Endowments Act, 1959. He further contended that since the case relates to the administration of

religious institution, including the framing of a scheme, the suit is not maintainable, since no sanction was obtained from the Advocate General as

contemplated by Section 92 of Civil Procedure Code.

10. On the other hand, the learned Counsel for the respondents Thiru Peppin

Fernando, contended that the Courts below have concurrently found that it is a Madam belonging to the entire Sengunthar community of Tamil Nadu and this Court cannot interfere with the judgment and decrees of the Courts below. He further contended that the properties are not belonging to any religious institution but only to a Madam. Therefore, neither the provisions of CPC nor the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 will apply to this case. Therefore, the appeal should be dismissed.

11. In view of the fact that the courts below have found that the Madam and its properties belong to Sengunthar community people living in the entire Tamil Nadu and not to the Sengunthar community living in Thenkasi, the learned Counsel for the respondents contended that the said question need not be gone into again by this Court as no question of law is involved. But the learned Counsel for the appellants contended that the finding has been arrived at on the interpretation of the Thamira Pattayam, Exs. A-1 and B-1 to B-3. Since, the courts below have committed serious errors in the interpretation of the document, this Court can go into the said fact. In substance, the question is one of the interpretation of a vital document and to find whether the Madam belongs to the entire community of Sengunthar people living in Tamil Nadu or only to the Sengunthar community people living in Thenkasi as per the Thamira Pattayam-Exs. A-1 and B-1 to B-3.

12. The learned Counsel for the appellants cited the following decisions in support of his contention:

(1) Nedunuri Kameswaramma Vs. Sampati Subba Rao, .

(2) Jadu Gopal Chakravarty (Dead) by his Lrs. Vs. Pannalal Bhowmick and Others, .

13. In Kameswaramma v. S. Subba Rao AIR 1963 S.C. 844 : (1963) 2 S.C.J. 113, the Apex Court has held that if the interpretation of a

document relates to the title, then such an interpretation tantamounts to a substantial question of law. At page 116, the learned Judges of the Apex

Court have held as follows:

A construction of documents (unless they are documents of title) produced by the parties to prove a question of fact does not involve an issue of

law, unless it can be shown that the material evidence contained in them was

misunderstood by the Court of fact. The documents in this case, which have been the subject of three separate considerations, were the Land Registers, the Amarkam, and Bhooband Accounts and the Adangal Registers, together with certain documents derived from the Zamindari records. None of these documents can be correctly described as a document of title, whatever its evidentiary value otherwise. We do not however, wish to rest our decision on this narrow ground even if right, because the legal inference from the proved facts may still raise a question of law. "" 14. *Jadu Gopal Chakravarty (Dead) by his Lrs. Vs. Pannalal*

Bhowmick and Others, the Apex Court has held as follows:

The existence of non-existence of both these primary facts depends on a construction of the basic documents: Deed of Trust (Ex. 1). Deeds Ex. 3

and Ex. 2. Construction of these basic documents which go to the root of the matter, is a question of law and could be gone into in second appeal.

Our only regret is that the High Court did not go into the question far enough. "" From the aforesaid two decisions, it is very clear that if an

interpretation of documents involve title, the High Court can go into the said question in detail. Therefore, I agree with the contention of the learned

Counsel for the appellants.

15. Ex. A-1 is the copy of Copper Plate inscription. Ex. B-1 is the Copper Plate inscription. Ex. B-2 is the photo copy of Ex. B-1. Ex. B-3 is the

typed copy of Ex. B-1. Exs. B-1 to B-3 are one and the same. The relevant portion in Tamil is extracted below:

A reading of the Copper Plate inscription shows that the following three arrangements were made for the performance of ceremonies in the Mutt.

(1) The resident Thenkasi native Mudaliars and the natives in other places decreed in the Copper Plate inscription, contribution of five Panams per

loom and in addition to this five Panams, other contributions for Maheswara Pooja, Siva Pooja during Arpisi month from the first special day to

tenth special day, during Margazhi from the special. Thirumanjana day to the tenth day viewing of Chidambareswarar, during Chithirai from the first

special day to tenth day, monthly special days, and Ammavasai and as it was not sufficient, (2) For the smooth functioning, dance function and the

local special functions to the mutt, the Senguntha Mudaliars residing in 56 countries congregated and decreed the contributions of one measure of

rice per head, 1/2 measure of rice per worker, contribution per each loom in every village to be collected and sent during Arpisi month of every

year. But as our village management found the collection of the rice from other places, time and distance consuming, (3) As our village decreed

under the Copper Plate inscription, the contribution of five Panams for big village and three Panams for small village and for the annual functions

one Panman and those who annually without stoppage contribute as per the decree in the Copper Plate inscription given by our village community

managers, live and flourish like banyan tree, deep rooted like Arugu and without bends like Bamboo and will with blessings of Lord Siva reach

Kailasa. 16. These are the three decrees or commands for contribution found in the inscription of the Copper Plate. The first decree for

contributions is by the Mudaliar natives of Thenkasi residing at Thenkasi and natives residing in other places was not sufficient. Hence, in the

second decree, the Mudaliars residing in fifty six countries congregated and decreed the contribution. It was difficult to be collected by the native

management by going to other places and spending time. The villagers of Thenkasi finally decreed and ordered the contribution of five Panams for

big villages and three Panams for small villages and one Panam for the annual marriage function. The last decree has been made by the residents of

Thenkasi. It is also stated that it was given by our community management in the village.

The 1st decree is stated to be by, indicate villagers in natives. Therefore, it can mean Thenkasi villagers or Thenkasi natives residing in other places.

If the authors meant Mudaliars residing in other places, they could have used the words. Therefore, the first decree inscription is by natives of

Thenkasi. However the second one is by Mudaliar from 56 countries. But that decree or order could not be implemented, since Thenkasi

Management found it time and distance consuming. The last decree inscription is by Thenkasi residents. The other important words found are ""As

our community Management in the village has given.

they mean "Village Managment". The word means regulate or control. In Bingala Nikandu the word ""Murai"" is given the following meanings:

17. A close scrutiny of this Ex. A-1 shows that for the performance of ceremonies, not only the Mudaliar residents of Thenkasi have contributed

but the Mudaliars of other places outside Thenkasi and living in about fifty six countries have also contributed. Therefore, undoubtedly, one can

come to the conclusion that the beneficiaries and the donors are not only the Mudaliars residing at Thenkasi, but all the Senguntha Mudaliars living

outside Thenkasi and spread out in fifty six countries. But when we come to management and control, it has been only in the hands of Thenkasi

Mudaliar, the Thenkasi Mudaliar natives residing in and outside Thenkasi alone have been in management or control.

18. This fact is also strengthened by the practise that prevailed all these years. There is no evidence that any outsider who is not a native of

Thenkasi, participated at any time in the management.

19. The learned Counsel for the respondent vehemently contended that the words found in the aforesaid documents, namely, apart from the words

the words

In other places. The executants of the last Pattaym i.e., Ex. A-1 etc., are the Thenkasi resident community, as we have found above. When they

say it would mean the Madam belonging to them. Further the words are also found, that would mean that Thenkasi was in Like that there were

other 55 countries as mentioned in the document itself. Therefore, the words can mean that the Madam located in that particular country, namely,

Thenkasi which is in Thennaudu.

20. We have Ex. B-4, which is useful to consider the rival claims. It is an Inam Register extract in respect of lands measuring an extent of 75 cents

said to have been given for Mandagapadi of Courtallanatha Swami for feeding the poor on the festival days. It is also stated to be in the enjoyment

of the community for a long time. The persons in the management are residents of Thenkasi belonging to the community of weavers and the Inam

has been confirmed in the names of the representatives of the community of weavers shown in Column 16. Column 16 contains four names of the

representative of the weavers community and column 17 shows their residence as Thenkasi. From this, we have to infer that the lands were

confirmed in the names of the representatives of the weavers community in Thenkasi. The learned Counsel for the respondent contended that since

the words used are ""representatives of the community of weavers"", it must be taken to mean that the grant is to the representatives of the

community of the weavers of the entire Tamil Nadu. But it is very difficult to come to such a conclusion from the words as found in the said

document Ex. B-4. Normally if any grant of properties or benefits is granted to a particular community, the presumption is that the community

means, the community of the place where the grant is made, because the grant or the benefit must be applicable to that particular community and

not for the other community living in the place. That apart, the Inam is confirmed by four persons and all the four are stated to be the residents of

Thenkasi. If the grant is meant to the community people living outside Thenkasi also atleast one person outside Thenkasi could have been shown as

the representative, but all the representatives are shown to be the residents of Thenkasi. So, on a careful consideration of the words employed in

Exs. A-1, B-1 to B-3 and B-4, I am of the view that the management of the Madam in question has been in the hands of the Senguntha Mudaliar

community of Thenkasi, either living in Thenkasi or living outside Thenkasi, but they must be natives of Thenkasi. It would therefore means that the

other members of the Sengunthar community living outside and who are not natives of Thenkasi are not entitled to any right in the management and

control of the Madam.

21. It is repeatedly contended that since Thenkasi is very near to Courtallam, the management was entrusted to the residents of Thenkasi by the

community people living outside. Even though a submission is made to that effect, there is no acceptable evidence whatsoever with reference to the

entrustment of the management in the hands of Sengunthar community in Thenkasi. After considering the entire evidence, I am of the view that the

natives of Thenkasi Sengunthar community alone are entitled to be in management of the Madam in question. The plaintiffs have no right in the

same.

22. It is true that the ceremonies are to be performed in the Madam and some ceremonies are performed in the Courtralanatha Swami Temple, but

we are concerned with the right and management of the Madam and the dispute is really between the members of the same community. Excepting

Senguntha Mudaliar community, no other members of any other community has any interest or right to interfere With the management of the

Madam. It is true that as per Section 63 (a) of the Hindu Religious and Charitable

Endowments Act, 1959, the Deputy Commissioner shall have power to enquire and decide the dispute and matters relating to a religious institution. Similarly, Section 108 of the Act prohibits any other legal proceedings in respect of administration or management of a religious institution. But as regards denominational temple Article 26 of the Constitution of India is attracted. Therefore, Section 107 of the Act excludes application of the provisions of the said Act to such a denominational temple or institution. The lower appellate court has considered the two Bench decisions of this Court reported in *Muthia Asari v. Madasami Asari* (1965) 2 M.L.J. 220 and *N.K.S. Sankarakumara Nadar v. Assistant Commissioner for H.R. and C.E., Tirunelveli* 88 L.W. 348.

23. In the first decision reported in *Muthia Asari v. Madasami Asari* (1965) 2 M.L.J. 220 the learned Judges have held as follows:

Thus, we may take it as established on the evidence that this religious institution, though indisputably denominational in character, does not belong merely to the Viswa Karma Brahmin community members of certain villages, or of five named villages, but to the members of that community in the district as a whole. Undoubtedly, it is this corporate body which will have the right to manage the temple and to administer the endowments, presumably, through the elected trustees; undoubtedly the rights of this body will be entitled to protection under Article 26 of the Constitution, particularly Sub-clause (d). The right of any corporate body with regard to a denominational religious institution, to have its functions preserved from invasion, under Article 26 of the Constitution, has been statutorily embodied in Section 107 of Madras Act XXII of 1959. "" The learned Judges has referred to a number of decisions on this question.

24. The other decisions is reported in *N.K.S. Sankarakumara Nadar v. Assistant Commissioner for H.R. and C.E., Tirunelveli* 88 L.W. 348 also is a bench decision and it is also to the same effect. In paragraph 6 the lordships have held as follows:

It seems to us that the argument of Mr. Ramachandran is sound and must be accepted. If we read the plaint, it is clear that it is definitely averred that the suit temple is a denominational temple belonging exclusively to the Hindu Nadars of Sivagurunathapuram village, (the word "denomination" always being used in the sense of Article 26 of the Constitution of India). The

plaintiffs" specific case is that with such an institution the defendant department tried to interfere, at any rate substantially. The decision of Satyanarayana Rao and Rajagopalan JJ. in Dr. Ananda Baliga v.

Ananteswar Temple (1952) 1 M.L.J. 678 clearly shows that such a suit would not be barred at all under the provisions of Sections 108 and 63 of the Act XXII of 1959.

The aforesaid two Bench decisions have concluded the issue. Therefore, the findings that the suit is not hit by the provisions of Sections 63 and

108 of the Hindu Religious and Charitable Endowments Act, 1959 is correct. The contention to the contra is in my view untenable.

25. The learned Counsel for the appellants further contended that Section 92 of CPC is also a bar to the maintainability of this suit. As regards this

question, as rightly pointed out by the learned Counsel for the respondents, there is no plea raised in the written statement submitted by the

defendants 2, 3 and 4 and there is no issue also in this regard. Before the lower appellate Court also I do not find any argument was advanced on

the said question. Hence, I do not think that the learned Counsel for the appellants can raise such a disputed question of fact at this stage. The

question as to whether the sanction of the Advocate General has been obtained or not or whether such a sanction is necessary or not is a mixed

question of law and when it has not been raised in the trial Court, the same cannot be raised at this stage of the second appeal. Therefore, the said

contention of the learned Counsel for the appellant is also untenable.

26. In the aforesaid circumstances, the appeal is allowed. The judgment and decrees of the courts below are reversed and the suit is dismissed

with costs. Consequently, C.M.P. No. 2415 of 1991 is dismissed.