

(1987) 02 MAD CK 0022
In the Madras High Court

The Commissioner for Hindu Religious and Charitable
Endowments

APPELLANT

Vs

G. Veluchamy and Others

RESPONDENT

Date of Decision : 18-02-1987

Acts Referred:

Citation : (1988) 1 LW 292 : (1987) 2 MLJ 403

Hon'ble Judges : S. Swamikkannu, J;S. Swamikkannu, J

Bench : Division Bench

Judgement

S. Swamikkannu, J.—This is an appeal preferred by the sixth defendant - Commissioner for Hindu Religious and Charitable Endowments,

Madras, against the judgment " and decree dated 12-11-1975 in O.S.No. 309 of 1973 on the file of the Court of the learned Subordinate Judge,

Dindigul, decreeing the suit, as prayed for with costs, filed by the first respondent herein - Shri. S. Krishnaswami Swamikal, claiming himself to be

the Hereditary Trustee, for cancellation of the order of the appellant herein passed in A.P. No. 35 of 1973 in which it was held that the suit

institution is a "public temple" and not a private Samadhi as claimed by the first respondent herein, for declaration that this institution is a private

Samadhi with the first respondent herein as its head and hereditary trustee, for a permanent injunction restraining the appellant herein and

respondents 2 to 6 herein from interfering with the first respondent's peaceful enjoyment of the said institution viz., Guruswamy Samathi,

Kottakadu, Odukkam, Adiyanoothu Village, Dindigul Taluk, and its properties.

2. The case, as set out in the plaint instituted by the first respondent herein, is briefly as follows:

3. The institution is called ""Guruswami Samadhi"", Kottakadu, Odukkam, Adiyanoothu village, Dindigul Taluk, is a Private Samadhi. The property over which the Samadhi exists was originally granted by the Karnatie King, several centuries ago. The said grant was confirmed by the subsequent Rulers. Daily pooja and annual guru pooja are performed to the Samadhi. So his Samadhi is called "Guru samy Samadhi . After Gurusamy Paradeshi, his "Sishya" Arunachala Parades! became its head, and after him, his "Sishya" Dandayuthapani Parades! became the head of the institution and he was also a trustee. Likewise the successive Sishyas, Vallinayaka Paradesi, Arumugaswamy Paradesi and Madhava Desika Swamigal became the heads of the suit institution, and after the attainment of "Mukthi" by Madhava Desikaswamigai, which was in the year 1968, his "Sishya" the present plaintiff - first respondent herein became the hereditary trustee and head of this institution, and since then he had been functioning as such. The Samadhi is situated in Survey No. 585 which is a Government poramboke. The Samadhi has been treated as such all through, and it can, in no event, be called a "Temple" much less a "Public temple" as it does not bear all or any of the characteristics of a "Public temple". While so, the Deputy Commissioner, Hindu Religious and Charitable Endowments, Madurai, instituted proceedings for appointment of trustees and the first respondent's attempts to prevent his action became of no avail. The defendants No. 1 to 5 of respondents 2 to 6 herein were appointed as trustees of this institution by the said authority, who had no right to do so, and the first respondent's appeal to the appellant herein also proved futile. Taking advantage of the confirmation order passed by 6th defendant - appellant herein, the so-called respondent's peaceful possession and management of the suit institution is denied and so the present suit has been" filed by the first respondent herein before the lower Court u/s 70 of the Hindu Religious and Charitable Endowment Act (Madras Act 22 of 1959), hereinafter called the "Act", challenging the validity of the order of the appellant herein.

4. The first defendant/second respondent herein in his written statement which has been adopted by defendants 2 to 5, namely, respondents 3 to 6 herein, would contend, inter alia, that the suit institution is a "Public" temple and not a "Samadhi" pure and simple, that all the Hindu community

people in Adiyanoothu village used to congregate in this place on several auspicious occasions and offer religious worship to the idols there openly

and as of right without any let or hindrance. The head of this institution used to be appointed by the villagers of Adiyanoothu in a congregation, and

so the claim of hereditaryship by the first respondent herein is false. After the death of Madhava Desiga Swamigal, the first respondent herein, had

trespassed upon this institution by stating that after doing the necessary religious ceremonies to the said Swamigal he would hand over the key and"

other things pertaining to this institution to the villagers. But he did not do so. Therefore the first respondent herein is only a trespasser and has no

right to be in possession and management of the suit institution. Inasmuch as the institution is not a "Samadhi" but it is only a ""place of public

religious worship"", trustees were appointed by the competent authority to this institution, and therefore, the order of the appellant herein in

confirming the order of the Deputy Commissioner in appointing defendants 1" to 5 i.e., respondents 2 to 6 as trustees is valid and unassailable.

5. The appellant herein who is the 6th defendant in the suit, in his separate written statement, maintained the same contentions as have been put

forth by the first defendant/second respondent herein in his written statement, and added that his order is valid and the first respondent herein is not

entitled to question the same.

6. On the above pleadings, the following issues were framed by the lower Court:

1. Whether the plaintiff institution is a Samadhi as contended by the plaintiff or a temple within the definition of the term in ""The Madras Hindu

Religious and Charitable Endowments Act"" as contended by the defendants?

2. Whether the custom pleaded by the plaintiff in regard to the succession of trusteeship for the suit institution is true?

3. Whether the plaintiff is a trustee of the plaintiff's institution?

4. Whether the order of the Commissioner of the Hindu Religious and Charitable Endowments given in A.P.No35 of 1973 on 9-7-1973 is liable

to be set aside?

5. Whether the plaintiff is entitled to the injunction prayed for?

6. To what relief is the plaintiff entitled?

7. In the lower court on behalf of the plaintiff/first respondent herein the plaintiff

- Krishnaswami Swamigal examined himself as P.W. 1. P.W. 2

Mani, Karnam was also examined on the side of the plaintiff/first respondent herein. Ex. A No. 1 copy of the order of the Commissioner, Hindu

Religious and Charitable Endowments (Administration) Department, Madras in A.P.No. 35 of 1973 dated 9-7 - 1973 ; Ex. A2 Certified copy of

annexure to the order under Ex. A.1; Ex. A.3 photo with negative; Ex. A.4 copy of ""A"" register for S.Nos.835.857/1,857/3 and 583 of

Adiyanoothu village in Dindigul Taluk; Ex. A.5 "B" memo dated 13-4-1955 issued by the Assistant Collector, Dindigul to Madhava Desiga

Swamiyar of Adiyanoothu for S. No. 585; Ex. A6 kist receipt dated 28-4-1963 in the name of Madhava Desiga Swamigal for Fasli 1372; Ex.

A.7 to Ex. A.14 kist receipts in the name of Madhava Desiga Swamigal for Faslis 1375 and 1376 respectively dated 17-2-1966, 22-2 - 1966, 1-

4-1966, 11-4-1966, 1-2-1967, 1-5-1967 and 1-5-1967; Ex. A.15 kist receipt dated 18-3-1968 in the name of the plaintiff for fasli 1377; Ex.

A.16 kist receipt dated 1-2-1969 in the name of Odukkam Gurusami for Fasli 1378; Ex. A.17 to Ex. A.30 kist receipts in the name of the plaintiff

for Faslis 1378,1379, 1380 and 1381 respectively dated 19-2 - 1969, 14-5-1969, 14-5-1969, 19-4-1970, 27-6-1970, 27-6-1970, 1-2-1971,

8-5-1971, 20-5-1971, 22-5-1971, 22-5-1971, 28-5-1971, 28-5-1971 and 1-2-1972; Ex. A.31 ""A"" register for Adiyanoothu village in Dindigul

Taluk; Ex. A.32 certified copy of order in W.P. No. 532 of 1970 dated 28-4-1971 on the file of the High Court, Madras; and Ex. A. 33 Patta

T.D.I 70 in the name of Odukkam Gurusamy Samadhi were filed before the lower Court on the side of the plaintiff/respondent herein.

8. On the side of the defendants, D.W. 1 Veilimalai Pillai, D.W. 1, Perumal, D.W. 3 Verabadra Chettiar, D.W. 4 Gurumoorthy Iyer (third

defendant), D.W. 5 Pichai (fourth defendant), and D.W. 6 Chelliah were examined. Ex. B.1 copy of plaint in O.S. No. 21 of 1970 on the file of

the lower court; Ex. B.2 book pamphlet showing the history of plaintiff Madam; Ex. B.3 photo; Ex. B.4 negative for Ex. B.3 Ex. B.5 photo Ex.

B.6 negative for Ex. B.5, Ex. B.7 photo Ex. B.8 negative for Ex. B.7; Ex. B.9 photo; Ex. B.10 negative for Ex. B.9; Ex. B.11 marriage invitation by

Pichai alias Perumal and N. Maruthai; Ex. B.12 marriage invitation by Mahalinga Mudaliar and M.Raju Mudaliar; Ex. B.13 marriage invitation of

V. Sivapandara Mudaliar and V. Veerabadra Mudaliar; Es.B.14 marriage invitation by Shanmugam Chettiar and Veerabadra Chettiar; Ex. B. 15

copy extract from the Registrar of Inams in the village of Adiyanoothu village in Dindigul Taluk; Ex. B.16 Registered settlement deed dated 20-2-

1943 executed by Irudappan Chetti in favour of Janakiammal and 3 others, Ex. B.17 printed notice issued by the executive committee of Odukkam

Guruswami Madam; Ex. B.18 printed notice by the village of Adiyanoothu village; Ex. B.19 copy of Extract from the register of Inams in the

village Adiyanoothu village; and Ex. B.20 copy of extract from the Adangal register for Adiyanoothu village for S.Nos.-835, 851/1 and 857/3

were filed before the lower court on the side of the defendants.

9. On a consideration of the above evidence, both oral and documentary, the lower court on issues 1 and 4 came to the conclusion that the suit

institution was and is a Samadhi, and not a place of public religious worship within the meaning of the Act, and consequently the orders passed by

the 6th defendant appellant herein under Ex. A.1 and Ex. A.2 are liable to be set aside. Under issues 2 and 3, the lower court came to the

conclusion that there is absolutely no documentary evidence to prove that the persons described as ""Sishyas"" were chosen by the public to manage

the institution, and accepting the plaintiff's case, the lower Court further held that the plaintiff ""first respondent herein is the hereditary trustee of the

suit institution. Under issue No. 5, the lower court held that the plaintiff/first respondent herein is the hereditary trustee of the suit institution. Under

issue No. 5, the lower court held that the plaintiff/first respondent's peaceful possession and administration of the institution are being interfered

with by the defendants 2 to 5 i.e. respondents 2 to 6 herein and the sixth defendant/appellant herein, and consequently, the plaintiff first respondent

herein is entitled to the injunction prayed for. In the result, the lower court decreed the suit as prayed for with costs.

10. Aggrieved by the above decision of the lower court, the sixth defendant - the Commissioner for Hindu Religious and Charitable Endowments,

Madras, has come forward with this appeal, inter alia, contending that the lower court is wrong in not giving a finding regarding issue No. 1, and it is

not justified in relying on the casual observation in the arguments advanced by the learned Counsel for defendants 1 to 5. It is further contended on

behalf of the appellant that the lower court has not properly appreciated the contents of Ex. B.18, Ex. B.19 and Ex. B.20 and wrongly relied on

Ex. A.4 and Ex. A.5 for the purpose of holding that the suit institution was a "Samadhi". It is also pointed out that the lower court failed to note

that under Ex. B.5 the inam was granted for the support of Odukkam Gurusamy "pagoda" and it is also mentioned therein that it was being

worshipped once a day. It is stressed on behalf of the appellant that "Pagoda" was not a Samadhi, and the word denotes only a "Temple". It is

also contended that assuming that there was originally a Samadhi, the worshippers used to visit the place as it assumed the character of a temple.

There are several idols in and around the institution, and poojas are performed, and "Pongals" offered to the deities. It is also contended that the

contents of Exs. B11 to B14 and Exs. B16 to B18 were not properly appreciated inasmuch as the stand of the appellant herein is that marriages

were performed in the suit institution and the properties were endowed for the support of the institution which only points out that the suit institution

is only a temple and not a mere Samadhi. According to the appellant, Ex. B.1 ought not to have been ignored since it discloses the admission of the

first respondent herein that the Head of the institution was appointed, or chosen only by the villagers. On the basis of the contents of Ex. B. 1, it is

contended on behalf of the appellant that the lower court failed to note that the first respondent herein is estopped from contending now that he

was a Hereditary trustee after admitting in Ex. B.1 that the villagers used to approve the appointment, In short, the contention of the appellant

herein is that the lower court without any basis or record whatsoever is entirely wrong in finding that the first respondent herein was a Hereditary

Trustee. According to the appellant herein, no satisfactory reason has been given by the lower court so as to reject the evidence of D.W. 1 to

D.W. 6 against whom nothing was suggested by the first respondent herein to reject their testimony.

11. On behalf of respondents 2 to 6 herein, it is contended that the lower court went wrong in finding the institution as a Samadhi, pure and simple,

whereas the institution has all the characteristics of a "temple".

12. Under the circumstances, the points that arise for determination in this appeal are:

1. Is the plaintiff institution/first respondent herein a "Samadhi" as contended by the plaintiff/first respondent herein or a temple, within the definition

of the term in the Madras Hindu Religious and Charitable Endowments Act as contended by the defendants who are respectively appellant and

respondents 2 to 6 herein?

2. Is the custom pleaded by the plaintiff first respondent herein in regard to the succession of trusteeship for the suit institution true?

3. Is the plaintiff/first respondent herein a trustee of the plaintiff/first respondent's institution?

4. Is the order of the Commissioner of Hindu Religious and Charitable Endowments given in A.P. No. 36 of 1973 on 9.7.1973 (who is the

appellant herein) liable to be set aside? and

5. Is the plaintiff/first respondent herein entitled to the injunction prayed for?

Points Nos.(1) to (5):

13. S. Krishnaswami Swamigal - the plaintiff/first respondent herein who examined himself as P.W. 1 has deposed that the suit institution, namely

Guruswami Samadi Odukkum, Adiyanoothu village, Dindigul Taluk, is a ""Samadhi"" pure and simple, and not a "temple" much less a "public"

temple. Defendants 1 to 5 who are respondents 2 to 6 herein, and the sixth defendant/appellant herein in their written statements had taken up a

stand that it is only a public temple and not a Samadhi. However, defendants 1 to 5 who are respondents 2 to 6 herein would concede to the

position that the suit institution originated as ""Samadhi"", but, later on, it assumed the characteristics of a "Public temple. The ground for their

contention is that the people belonging to Hindu community of Adiyanoothu village used to congregate in the said place on several festive occasions

and offer religious worship, and thus the suit institution subsequently became a public temple, and as such, the order of the 6th defendant/appellant

herein in confirming the order of the Deputy Commissioner in appointing defendants "1 to 5 who are respondents 2 to 6 herein as trustees to the suit

institution cannot be assailed of and further, the plaintiff/- first respondent herein being an intruder can have no right to challenge the said order.

They also disputed the fact that the plaintiff/first respondent herein is a "hereditary trustee" within the meaning of Hindu Religious and Charitable

Endowments Act, 1969. (Tamil Nadu Act No. 22 of 1959).

14. Before actually dealing with the respective contentions of both parties to the suit and the appeal herein in the light of the evidence available on record, both oral and documentary, let us first deal with the preliminary objection taken under Order 41 - Rule 22 of the Code of Civil Procedure; and Order 9 - Rule 13 of the CPC in this case wherein one of the defendants contended that the "institution" is not a place of worship. In this regard the decision in Pannalal Vs. State Bombay and Others, , is referred to, and in that case the appellant brought three suits claiming full payment with interest in respect of three hospitals constructed by him in execution of three separate contracts between him and the Deputy Commissioner. The trial Judge decreed the suit for part of his claim against the State of Madhya Pradesh and held that other defendants were not liable, and accordingly dismissed the suits against them. On appeals preferred by the State of Madhya Pradesh, the High Court set aside the decree against the State Government and allowed the appeals with costs. The plaintiff at that stage prayed for leave. of the High Court to file a cross-objection and also for decrees to be passed against the Deputy Commissioner under Order 41, Rule 33 of the Code of Civil Procedure, which was rejected and all the suits were dismissed. It was. urged that (1) the State Government was liable in respect of all of these contracts and (2) the High Court"" ought to have granted relief against such of the other defendants as it thought fit under Order 41, Rule 33 of the Code of Civil Procedure. It was held in that case that the State Government was not liable in respect of any of these contracts. It was further held that the wide wording of Order 41, Rule 33 empowers the appellate court to make whatever order it thinks fit, not only, as between the appellant and the respondent but also as between a respondent and a respondent. It could not be said that if a party who could have filed a cross-objection under Order 41, Rule 33 did not do so, the appeal court could under no circumstances give him relief under the provision of Order 41, Rule 33. Order 41, R.33 permits as a general rule, a respondent to prefer an, objection directed only against the appellant and it is only in exceptional case that an objection, under Order 41, Rule 22 can be directed against the other respondents. On the facts of these cases the High Court refused to exercise its powers under Order 41, Rule 33 on an incorrect view of the law and so the appeal must be remanded to the High Court for decision what relief

should be granted to plaintiff under Order 41, Rule 33.

15. It is pointed out on behalf of the respondents herein that the Hindu. Religious and Charitable Endowments Board is duty bound to prove that

the institution viz, "Samadhi" has got the characteristics of a "public institution" especially when originally it was a "Samadhi". It is further pointed out

that no one was examined on behalf of the Hindu. Religious; and Charitable. Endowments Department.. The decision in Hari Bhanu Maharaj of

Baroda Vs. Charity Commissioner, Ahmedabad, is relied on for the following proposition:

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 been a dedication of the institution for the use of the public, the private character of the institution will

not get effaced." The burden of proving that the Math is public trust is on the Department.

There are preponderant circumstances and overwhelming material to accept the case of the appellant that Laxman Maharaj Math, also called

Ramji Mandir is the private property of his family and the Department has failed to prove that it is a public trust.

Whenever a dispute arises as to whether a Mandir is a public or private temple the following features should be taken into consideration:

1. In the absence of evidence to show that the persons whose bodies have been entombed under the Samadhis were renowned Sanyasis or

religious heads or that they had a following of disciples, it has to be necessarily taken that the Samadhis and the Mandir had been built by the

member of the family for showing their reverence to their ancestors and for their worship in the Mandir built near the samadhis.

2. Even if at some subsequent point of time, the owners of the private 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.

3. The location of the Mandir with reference to, the residence of the persons claiming rights of private ownership is also important, whether the

temple has been constructed within the precincts of residential quarters or in a separate building? In this case the Mandir is within the precincts of

the residential quarters of the appellant.

4. The size of the construction and its proportion to the entire extent of the property is also an important factor. In the present "case, - the Math

occupies only a small area in the total extent of the property. The other extent of the property is being enjoyed and has always been enjoyed by the

appellant and his ancestors for their private use and occupation. This "would not be the case if the Math or Mandir was a public institution. The

construction and the size of the Sabha Mandap is not suggestive of the public character of the institution inasmuch as the Sabha; Mandap did not

form part of the original construction made in the year 1835 A.D.

5. Since there is no evidence that Laxman Maharaj and Haribhat Maharaj for whom the Samadhis have been built were religious leaders revered

by the public, the provision of the collection boxes near their Samadhis would have been" only for deposit of offerings by the members of the

families on Guru Purnima day or in "fulfilment of vows taken by them. Moreover, the meagre quantum" of grains and amount of cash found in the

collection, boxes themselves disprove the assumption that they have been ""kept there to enable the members of the public to make offerings in cash

or grain during their visit to the Mandir.

6. The nature of the grants made by the rulers to the Math is another considering ""factor"". Having regard to the fact that the cash grants had been

varied from ruler to ruler and the purposes for which the grants had been made in the present case, it appears that the payments, should have

been made by the rulers on account of their personal reverence to the Samadhis and the Mandir and" not in recognition of the public character of

the temple.

7. Who is the owner of the property, has also to be considered. In the present case the property was ancestral property of the appellant. The

observations of the Surveyor that the Mandir seemed to be a public temple ought not to carry any weight because the Surveyor of land is not a

competent authority to determine whether a temple is a public or private one and secondly he had only given expression to -his surmise and that

too in a very guarded manner.

16. Section 6(13); Section 6(18) and Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act

22 of 1959) read as follows:

Section 6. In this Act, unless the context otherwise requires.-

(13) ""math"" means a Hindu religious institution with properties attached thereto and presided over, by a person, the succession to whose office

devolves in accordance with the direction of the founder of the institution or is regulated by usage and-

i. Whose duty it is to engage himself in imparting "religious instruction" or rendering spiritual service; or

ii. Who exercises or claims to exercise spiritual headship over a body of disciples;

and includes places of religious worship or instruction which are appurtenant to the institution;

Explanation. - Where the headquarters of a math are outside the State but the math has properties situated within the State, control shall be

exercised over the math in accordance with the provisions of this Act, in so far as the properties of the math situated within the state are

concerned;

Section 6(17) ""Religious endowment"" or ""endowment"" means 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 of property made as personal gifts to the archaka,

service-holder or other employee of a religious institution; Explanation (1) - Any inam granted to an archaka, service-holder or other employee of

a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal

gift to the archaks, service-holder or employee but shall be deemed to be a religious endowment. Explanation (2) - All property which belonged

to or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity

of a public nature connected therewith or of any other ""religious endowment"" or ""endowment"" within the meaning of this definition, notwithstanding

that, before or after the date of the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of

religious worship or instruction or the service or charity has ceased to be

performed.

Provided that this Explanation shall not be deemed to apply in respect of any property which vested in any person before the 30th September

1951, by the operation of the law of limitation;

Section 6 (18) ""religious institution"" means a math, temple or specified endowment;

Section 6(20). - ""temple"" means a place by" whatever designation known, used as a place of public religious worship, and dedicated to, or for the

benefit of, or used as of right by, Hindu community or any section thereof, as a place of public religious worship; Explanation - Where a temple

situated outside the State has properties situated within the State, control shall be exercised over the temple in accordance with the provisions of

this Act, in so far as properties of the temple situated within the State are concerned.

17. The decision in Nagu v. Banu (1978) 2 S.C.C. 591 : AIR 1978 S.C.1174, is relied on for the following proposition:

A trust deed of 1885 executed by five persons in respect of certain charities provided that the settlors had allotted certain lands in the schedule

absolutely for being utilised for the charities mentioned and that the settlors had no right whatever in respect of those properties. One of the

charities mentioned was "Sachidhananda matam and the sandhikoil (tomb) attached to it. The relevant schedule B giving description of properties

allotted to this Charity provided that the income from the properties mentioned in the schedule be spent for feeding the Agathies and paradesies

and for conducting puja in the Samadhi attached to the Matam. In a suit u/s 92, Civil P.C., for removal of the first defendant from the trusteeship

and for framing a scheme, ""the question for determination was as to the nature of the endowment as regards B schedule properties and as to how

far it could be held to be valid.

Held: (1) that the Samadhi was ta tomb of ancestors of the settlors of the trust and as such "" the settlement in favour of the tomb is not valid in law;

(2) that the properties were absolutely endowed in favour of the charities, that the settlors specifically relinquished all their rights in the endowed

properties and that the properties described in the schedule referred to as the properties allotted to Sachidananda Swami Matam vested in the

Matam with a charge that a part of the income should be spent on the puja to be performed in the Samadhi;

(3) that the High Court was wrong in its conclusion that the properties were endowed for the Matam and the Samadhi and that as the purposes of

the charities were distinct and separate they could be separated. The High court was also wrong with the allotment of half the B schedule

properties for the charities concerned with the Matam. The direction that the other half of B schedule properties should go to the first defendant

cannot be sustained in law, for even "" on the finding of the High Court, the properties would have to revert back to the settlors and their

descendants:

(4) that the vesting of B Schedule properties was in favour of the Matam alone will not fail but the direction to meet expenses for the puja at the

Samadhi is unsustainable in law;

What are purely religious purposes and what religious purpose will be charitable must be entirely decided according to Hindu law and Hindu

notions. The English Law relating to settlement on tombs does not apply to Hindu religious endowments. The Court in India have adopted the

technical meaning of charitable trusts -and charitable purposes which the courts in England, have placed upon the term ""Charity"" But, in addition

under the head of. advancement of religion, there are other charitable objects. in Hindu law which will not be charitable according to English law,

for that law forbids bequests for what are termed superstitious uses.

The rule that a provision for the purpose of puja over the tomb of the remains of a person is invalid is subject to certain exceptions. The raising of a

tomb over the remains of an ancestor, an ordinary person, is not recognised as religious to nature. The burden is on the person setting up a case of

religious practice in the community to prove it. This prohibition may not apply when an ancestor is cremated and a memorial raised for performing

shraddha ceremonies and conducting periodical worship for this practice may not offend the Hindu sentiment which does not. ordinarily recognise

entombing the remains of the dead. A place of worship will not cease to be religious because of its being in the memory of a person.

18. In *Sriraghavendra Swami Mutt v. Board Of Commrs.* (1957) 1 An.W.R. 152 : AIR 1957 A.P.150, a question arose as to whether a particular

institution is a Mutt or a " tomb, and " it was held therein that Mutts are established for inculcating particular, religious doctrines and instructions in

the tenets and observances of a particular " system of philosophy are ""imparted to the disciples. They are centres of the logical learning. A Mutt is

presided over by an ascetic who exercises or claims to exercise head-ship over a body of disciples, and a spiritual fraternity would eventually grow

up. So the presence of a preceptor who preaches the tenets of, a particular cult to his disciples is essential for the existence of the Mutt. If an

institution answers the description of a Mutt or a temple it does not lose its character as such merely because it owes its origin to a tomb of great

saint. Merely because an institution was connected with a tomb, it cannot fall outside the definition of a Mutt. The circumstances of the instant case

clearly indicate that the institution conforms to all the indicia of a Mutt.

19. In *Bhaskar Shripal Deobhajta Vs. Shankar Ganesh Modak and Another*, it was held that as per the provisions of Sections 2(13) and 2(17) of

the Bombay public Trusts Act (29 of 1950), "Temple" in Section 2(17), contemplates that ""Samadhi"" which is considered for generations as a

place of public religious worship as a right can be said to have evolved into a temple. Samadhi and Sabhamandap, Dharmashala and Math built in

precincts thereof used as of right as a place of public religious worship by Hindu community for over a century, in the circumstances, were held to

come within the definition of "Temple" in Section 2(17) as also within the definition of "Public trust" in Section 2(13) of the Bombay public Trusts

Act (29 of 1950).

20. In the instant case, the main contention raised on behalf of the appellant is that the lower Court failed to note that the plaintiff-first respondent is

only a trespasser who had assumed the control of the institution in question after the death of the previous Swamiyar. According to the appellant,

there is no evidence on the side of the plaintiff-first respondent to prove that he is the hereditary trustee. It is vehemently contended that there is

absolutely no ground whatever for rejecting the evidence adduced through D.Ws. 1 to 6. D.W. 1 Vellimalai Filial, the local panchayat President,

states in his evidence that he had gone to Guruswami Odukkam and that there is a temple in the said premises. During the month of Thai when the

Nattanmai Accountant came for the change of ledger he had gone for attending

the same. He had also gone to the Guruswami Odukkam premises in connection with the marriages celebrated at that place. Since D.W. 1 is a President, for all the marriages he would receive invitations. The marriages used to be celebrated in the temple attached to the Guruswami Odukkam. D.W. 1 attended the marriages, the invitations for which have been produced and marked as Exhibits B-11, B-12 and B-13. The devotees used to congregate on the day of the full moon in "the month of Chithrai and also the new moon day in the month of Adi and on every Siva-rathri day in every month and cook the food at the premises, take the same and also chant bhajans. They used to cook pongal and eat the same. There were big trees in the premises in the shades of which people who visited the premises used to remain and perform the poojas. The said trees have now been cut and removed. D.W. 1 has seen Madhava Desika Swamigal. All the persons residing in the village used to consult and appoint a Swamiyar. D.W. 1 has specifically stated in his evidence that it is not correct to state that one Swamiyar appoints another or his successor. Soon after the death of Madhava Desika Swamigal the villagers asked the person in charge of the premises to hand over the keys, to which the first respondent had said that he would give his reply after completing forty days". Puja. All the persons belonging to the eighteen villages asked the first respondent to hand over the keys to the Nattanmai Accountant; whether there was a meeting convened for the purpose or not D.W. 1 is ignorant. He did not know as to whether the keys were handed over or not. The premises mentioned in Exhibit B-3 is a Vinayakar temple. Exhibit B-7 shows the place where the Swamiyar used to reside. Exhibit B-9 shows the existence of Lord Muruga's shrine. All these shrines are available in the Odukkam. In his cross-examination D.W. 1 has stated that he is ignorant as to whether there is a flag-staff in the premises. He is definite that there is no urchavam (annual festival) for the premises. The offerings were dropped in the Thambalam (tray metal). The disciple of the Swamiyar used to light the camphor and offer pooja. At that time the persons assembled there used to give money as offering. According to D.W. 1, every year there used to be a GurU-puja celebration for the samadhi in the premises and during that time, the poor people used to be offered Annadanam.

21. D.W. 2 Perumal, aged about 62 years at the time of his deposition, states in

his evidence that he is residing in Nallampatti situate about one furlong from the Odukkam in which the Guruswami Koil is situate. According to him, there is the Guruswami temple in the Odukkam. There are also an Amman temple, a Subrahmanya temple, and Ayyanar temple and a Vinayakar temple. There are also the "pathinettam-padi" and similar other shrines there. D.W. 2 used to go to the said premises. He knew the persons in office from the time of Arumuga Swami. After Arumuga Swami it was Madhava Swami who had taken up the administration of the premises. Madhava Swami had been appointed by the villagers by convening a meeting and discussing about the appointment and after they arrived at a decision. During that time, the Revenue Inspector and the Village Munsif and others were present. It is in the month of Thai there used to be the Guru-puja. Durijig the full-moon day in the month of Chithrai, the new-moon day in the month of Adi as well as on the 18th of Adi and during the month of Margazhi Pujas used to be conducted in the premises. In the meanwhile, persons residing in the village used to go and prepare pongal at the premises and offer the same to the deity. This fact is known to all. There were a number of trees in the premises under the shade of which marriages used to be celebrated. There are buildings for the temples in the premises. The trees were cut and this fact is known to the first respondent. Madhavaswami was occupying the seat of trustee for some time. In the middle he left and came back and was against attending to the function of the premises. D.W. 2 had not gone for the ceremonies performed on account of the death of Madhava Swami. D.W. 2 had not also attended the interning of Madhava Swami. In the cross-examination D.W. 2 stated that he was acquainted with Madhava Swami for the past forty years. According to D.W. 2, there has been no procession arranged for taking the deity. There is no dhawaja sthambha (flag-staff) in the premises, but there is a hundial. Person's who used to visit the premises for worship used to place their Kanikkai (offerings) in the hundial. It is only after the death of: Madhava Swami D.W. 2 had gone to the premises. It was two to two and a quarter years before D.W. 2 gave evidence in the trial court that Madhava Swami died. It was at a corner of the premises that the dead body of Madhava Swami was buried. During the time of office of Madhava Swami D.W. 2 had gone and attended

the" marriage at that place. Marriages used to be celebrated under the presidentship of Madhava Swami. Feasts also used to be conducted at the place soon after the celebration of the marriages.

22. D.W. 3 Veerabhadra Chettiar, who was aged about 57 years at the time of giving evidence in the trial court, has stated in his evidence that he

is residing in Kannumapatti village which is situate about five to six furlongs from the Odukkam and that he has necessarily to pass through the

Odukkam. According to him, there was the Guruswami temple in the Odukkam. There were also certain deities installed at that place. There used

to be celebration of marriages at that place. He had also gone to the premises and attended the marriage at the place. His daughter Angay am

trial"s marriage with one Doraiswami Chettiar was celebrated at that place. Ex. B.14 is the marriage invitation. The said marriage was celebrated in

Guruswami Koil. There were many marriages celebrated at that place. In his cross-examination, D.W. 3 has stated that there is a P.W. 11 ay ar

temple in Kannumpatti and no marriages used to be celebrated at that place. He has not seen Guruswami Swami. Madhava Swami koil is about

50 ft.from the said temple. There is a lingam installed inside the Guruswami temple. He is acquainted with Krishnaswami Swami for the past five or

six years. The marriage was celebrated under the presidentship of Madhava Swami who was incharge of the entire responsibility.

23. Gurumurthy Iyer (D.W. 4) aged about 60 years, belongs to the Sowrashtra caste and he has stated in his evidence that he is a Treasurer of the

Sowrashtra Sangam, that he is also a trustee of the Dindigul Nagal Nagar Varadaraja Perumal temple, that he is a Municipal Councillor and that he

is doing business in handloom cloth. In the present suit he is the third defendant. He is acquainted with the odukkam. There is a Guraswami temple

there. There are also Amman temple, Subrahmanya temple and a Bhai-ravar temple at that place. The middle temp"le shown in Exhibit B-3 is

Vinayakar temple. Guruswami temple is on the southern side of the temple. The Amman temple is on the western side of the said temple. The

Murugan temple is on the northern side of the Vinayakar temple, and the Bhairavar temple is situate further north. For these temples, people

belonging to the Sowrashtra community used to go on special occasions and stay there for some time and used to perform puja with naivedyam.

According to this witness, the Tamilians used to celebrate marriages during Adi Amavasi, Chitra Pournami, Thai Pournami and other special

occasions. The maternal uncle of this witness has also dug a well which caters to the needs of the people in that place for drinking water. There is

also an inscription on stone at that place. His junior paternal uncle has installed a Naga prathishtai opposite the Vinayakar temple since he had no

issue. This witness has stated that his uncle thereafter begot a child. Ex. B.7 shows the situation of the Madam. It is in that place, people used to

take their food during winter season. The temple in Ex. B9 is Murugan temple. Ex. B5 shows that the verandah belongs to the Madam. According

to, this witness, no one is now allowed to go inside the temple to worship. He is ignorant regarding any person having endowed property to the

Odukkam. Ex. B15 is the copy of the Inam register extract.

24. In his cross-examination D.W. 4 has stated that during the Chitra pournami there used to be celebration of Guru puja at the place and the same

is for the Guruswami. He is not acquainted with Arunugam Swami, but is acquainted with Madhava Swami. The Samadhi of Madhava Swami is

adjacent to the Madam. There is no lingam in the Guruswami temple and there is also no hundial. The deity is not taken outside the temple as part

of festival. Till the life-time of Madhava Swami he attended to the management of the premises. Thereafter Krishnaswami is attending to the same.

There is no dhawaja sthambham in the premises. Madhava Swami used to prepare medicine. Madhava Swami and his Sishya (disciple) used to light

camphor as a part of the worship. D.W. 4 had gone to that place about twenty years prior to his giving evidence in the trial court.

25. D.W. 5 Pichai belongs to Servai community. He has stated, in his evidence that he had gone to the Odukkam and that he had gone there for

the purpose of worshipping the deity. They used to go there for worship. On the Adi Amavasi day, Chitra pournami day as well as during the

month of Margazhi there used to be bhajans. persons who used to go to the premises for worship bring with them coconuts and fruits and offer the

same to the deity and worship the same. Ex. B.11 is the invitation for the marriage of D.W. 5's daughter which was celebrated at the place. In his

cross - examination, D.W. 5 has stated that he is a resident of Perumalpatti which is about two furlongs away from the temple. Madhava Swami's

samadhi is situate adjacent to the temple. After Madhava Swami it is Krishnaswami who is looking after the administration of the place. The Guru

puja for Madhava Swami used to be celebrated in the month of Thai. During that time there used to be feeding to the worshippers and the

expenditure used to be met from the income from the Madam as well as from the contributions given by the agriculturists. Coconuts used to be

offered and broken before the deity, but the deity is not taken outside in procession. There was a big bell hung near the Pillayar temple. It has been

now removed from that place. D.W. 5 has stated that he had not taken any loan from anyone.

26. D.W. 6 Chellaiah, aged about 43 years, belongs to the Chettiar community. He has stated in his evidence that he is living in Kanarpatti which is

adjacent to the Odukkam. In the Odukkam, according to him, there is a Vinayakar temple. There are also Guruswami temple, Amman temple,

Murugan temple and Bhairavar temple. In the Ayyanar temple there is". In the Peetam situate at the place there used to be celebration of

marriages. During the time of Sivarathri there used to be Guru Puja. During the time of Vaikunta Ekadasi also there used to be puja. On Chitra-

Pournima day the Guruswami used to perform the puja and persons including D.W. 6 used to attend the said function. The grand-father of D.W. 6

had left his property in favour of D.W. 6 and had directed the income of rent derived from the said property to be utilised for the performance of

puja in the Guruswami temple on the Ch'ithra Pournami day-.Ex. B.16 is the said document. Bagya-thamrnal is the aunt of D.W. 6. Janaki Ammal

alias Angammal is related to him as his grand-mother. The celebrations are being performed as per the terms in Exhibit B.16 Exhibit B-17 and B-

18 are the notices regarding the convening of the meetings. The Agni-chatti (fire-pot) used to be lighted at the Odukkam and taken to the place

where D.W. 6 was residing. In his cross-examination D.W. 6 has stated that Exhibits B-17 and B-18 were published when there was a dispute.

The properties mentioned in Exhibit B-16 are in the personal occupation of D.W. 6. He had not attended "the funeral of Muthuswarni. The

Samadhi of Guruswami is not known to D.W. 6. He is not also acquainted with the samadhi of other disciples in the premises. In Exhibit B-16

there is the statement of account of the income from the trust properties. The income derived from the properties mentioned in Ex. B.16 is enjoyed

by D.W. 6 and others. These properties were not endowed to the deity.

27. As against the evidence thus adduced on behalf of the defendants, through D.Ws.1 to 6, the plaintiff, who claims himself to be the hereditary

trustee has examined himself as P.W. 1 and also examined the karnam of the village as P.W. 2. P.W. 1 the plaintiff-first respondent, was aged

about 54 years at the time of the trial and he belongs to the Naidu Community and is a doctor (Vaidyan) by profession. He has stated in his

evidence that in the capacity as hereditary trustee of the samadhi he has filed the suit. According to him, the said samadhi is that of one Guruswami

Swamigal. He has also stated that camphor and fragrant smoke of frankincense (Sambrani) used to be offered daily. Camphor is of which if

lighted, gives jothi. Sambrani is a material which, when powdered and put in fire-particles, will give rise to fumes of good odour. According to

P.W. 1, both these were offered every day to the Samadhi by himself attending to the same. Guru puja used to be conducted on the

Rathasapthami day in the month of Thai. According to P.W. 1, he filed a document before the Deputy Commissioner, H.R.& C.E, to show that

the institution is a samadhi. The property in question is situate in Survey No. 585. After Guruswami Swamigal one Arunachala Paradesi. One

Dhandapani Paradesi, Vallinayagam, Arumugaswami "Paradesi and Madhava Desika Swmigal occupied the position of the office of trustee.

Madhava Desikan died in the year 1968, in other words, attained mukthi. According to P.W. 1 he had been a sishya (disciple) of the said

Madhava Desikan. P.W. 1 had been undergoing medical education. The dead body of Madhava Desikan also was buried in that place P.W. 1

Originally belonged to Ilaya Arasanadal in Tirunelveli district. Before coming to the fold of the Swamigal, he was undergoing training and getting

instructions in Ayurveda branch of medicine at Siddhasramam in Kerala. According to him, none from the public used to come to the samadhi -

This institution does not also belong to any particular caste. In the daily offering of camphor lighting, no one from the public used to participate.

During the time of Guru puja, food was served to the poor and to sanyasins (mendicants). There is no vigraha aradhanai (idol worship). There are

no festivals or taking any deity in procession. On the outer premises of samadhi there are idols of Vinayaka, Dhandapani and Bhairavar. There is

no tower for the institution. There is no dhwaja-sthamabha (flag-staff) for the premises. There is neither bell nor drum for the premises. No one from the member of the public had endowed any property in favour of the institution.

From time immemorial, the sanyasins themselves used to take the responsibility of performing the above duties. Therefore, according to P.W. 1, there is no right for the H.R. and C.E.Board to take over the institution into their fold. According to him, it is a private samadhi. The land bearing S.No. 585 belongs to the samadhi. It is about 4 acres 4 cents in extent. This land does not belong to any temple. The Commissioner has appointed the defendants 1 to 5 as trustees. This is not valid. It is to cancel the said order, this suit has been instituted. Exhibits A-1 and A-2 are the orders challenged by the plaintiff in the suit.

28. In his cross-examination P.W. 1 has stated that he has not been given a certificate for himself having undergone training in siddha medicine. (It is relevant to note here itself that in his examination in chief P.W. 1 had stated that he had undergone training in Ayurvedic medicine in the Siddhasramam in Kerala, whereas, now, even at the commencement of cross - examination, he has stated that he has not been given a certificate for his having undergone training in siddha medicine. It is relevant to note that siddha medicine is entirely different from Ayurvedic medicine, though both of them are of Indian origin. According to /P.W. 1, in the Asramam in which he had undergone training in medicine, no certificate used to be given to the trainees. According to P.W. 1, there is no document to show that he had served as a Sishya disciple under Madhava Desika Swamigal. He had come to the place in the year 1963. Prior to that, he was in Kerala. He had not known personally about the Swami who was in charge of the premises prior to Madhava Swamigal. It is only from the documents he came to know of it. He has filed those documents before the Deputy Commissioner, H.R. and C.E.Board. There was an idol of Ganesa in front of the Samadhi of Guiswami. He pleaded ignorance as to whether there was a platform of 20 "x 20" on which the idol of Lord Ganesa was installed. P.W. 1 admitted that there were two or three serpent statues (Naga silaikal) installed, adjacent to the idol of Lord Vinayaka. They were not installed by them-

He denied the suggestion that they were installed by the villagers and that they perform puja for them. On the western side of Guruswami's samadhi

there is an idol of Kali Amman. There is a well on the eastern side of Guruswami's samadhi. P.W. 1 is ignorant about the time when the said well

was dug. On the northern side of Guruswami's Samadhi there is a platform with 18 steps and there is an Iluppa tree standing there. It is not

correct, according to him, to state that puja is being performed at that place. On the north-eastern side of Guruswami's Samadhi there is an idol of

Dhandapani in a corner. Around Guruswami's Samadhi, Kali Amman idol and Dhandapani idol, there are only partitions, and there has been no

roof at any point of time. On the northern side of Dhandapani idol there is an idol of Bhairavar. There is no mandapam on the west of the idol of

Dhandapani. There is no idol of a peacock made of stone installed opposite the Dhandapani idol. It is not correct to state, according to P.W. 1,

that the persons belonging to the Saurashtra community who reside at Nagal Nagar, come there and perform puja.

29. P.W. 2, Mani, aged about 33 years, is the karnam of Adiyanothi village. He has stated in his evidence that he is residing at Nagal Nagar in

Dindigul and that he is the karnam of the village from 1968. He succeeded his grand-father Thiruganasambandham as karnam. He produced the

Register of the village. In the said register, as against Survey No. 585, it is mentioned as "Guruswami Samadhi Odukkam". It is marked as

Exhibit A-31. It was prepared in the year 1923. In his cross-examination P.W. 2 has stated that there is no sub-division for the said survey

number. He had gone to that place. There is an idol of Lord Vinayakar at that place and there are also idols of Lord Dhandapani and Lord

Bhairavar. There is a granite stone construction on the roof of the place, where those idols are installed. Exhibit B-3 shows the original plate where

the odukkam samadhi was there-Ex. B3

According to him, now it is not there. It was kept there prior to 1968. Exhibit B-4 is the relevant negative. Exhibit B-5 shows the place where the

Swamiyar was staying. Exhibit B-6 is the corresponding negative. In the Samadhi there is an image of the shape of Lingam. It is not correct to state

that Exhibit B-9 shows the place where Dhandapani Koil is situated. As seen from these photographs, there is a ceiling for all these idols. P.W. 2

pleads ignorance about the residents of the village coming for worship at that place. He is also ignorant about any marriage having been celebrated

at that place. P.W. 2 has denied the suggestion that he is supporting the Swamiyar, i.e. the plaintiff, in creating records and that he is deposing

falsely.

30. In *A. Draviasundaram Pillai Vs. N. Subramania Pillai*, it was held by this Court that the building of a samadhi or tomb over the mortal remains

of a saintly person is not a charitable purpose according to Hindu law. Where, therefore, a founder directed a temple to be erected only as an

adjunct to a tomb or Samadhi of a holy person and provided for the performance of Guru Puja at the Samadhi, it was held that it did not constitute

a valid charitable gift. Vide also *Veluswami Goundan Vs. Dandapani* by next friend and mother *Govindammal and Others*, .

31. The question whether a settlement of property for the worship of and at a tomb or samadhi is valid according to Hindu law, came to be

decided before the Supreme Court in *Saraswathi Ammal and Another Vs. Rajagopal Ammal*, it was held that Hindu law did not recognise

worship at a tomb as a religious purpose, and that, therefore, any dedication of property for that purpose was not valid. It was held in *Committee*

of Management of Institution known as *Bodendraswami Mutt Vs. President of Board of Commrs. for Hindu Religious endowments*, that where

the primary institution is a tomb, the mere presence of some idols around the samadhi and the observance of festivities with reference to them

were" held not to impress it with the character of a public temple so as to give jurisdiction to the Board under the Madras Hindu Religious

Endowments Act, 1927. But, where the institution was founded as a temple and the founder and the succeeding trustees described themselves as

trustees of the temple, and proceedings were taken u/s 92 of the CPC on the footing that it was a "public temple, within challenge to the

jurisdiction of the court, the fact that when the temple was built a tomb was also constructed therein for a sacred person did not alter its character

as a public temple as defined in the Madras Hindu Religious Endowments Act. It was so held in *Ratnavelu Mudaliar v. Commissioner For Hindu*

Religious And Charitable Endowments ILR (1955) Mad. 241. It has also been held in *Raghavendra Swami Mutt v. Board Of Commissioners*,

Hindu Religious Endowments (1957) 1 An.W.R. 152 : AIR 1957 A.P.I 50, that if an institution answers the description of a Mutt or temple, it

does not lose its character as such merely because it owes its origin to the tomb of a great saint. Where a building was constructed in memory of a

Guru, who was regarded as an incarnation of God, and his image was installed in it and regularly worshipped, it was held that the institution was a

religious endowment of the same character as a temple, and was a juristic person, and its manager was in the same position as a shebait. It should

be noted in that case there was no question of worship of tomb, but worship of a saint defined as God. It was so held in *Gajanan v. Ramrao*, ILR

(1954) Nag.302.

32. In *Ramanasramam by its secretary G. Sambasiva Rao and Others Vs. The Commissioner for Hindu Religious and Charitable Endowments*,

Madras, , the question was whether the shrine called Mathru Bhuteswar temple was a Hindu religious endowment as defined in Section 6(17) of

the Madras Act 19 of 1951. It was held that the temple in question was only a samadhi and could not be recognised as a temple, and that it was

only an adjunct to the Ramanashramam which was a public religious trust of cosmopolitan character and not a Hindu religious endowment falling

within the Madras Act 19 of 1951.

33. In this regard, we have to remember that Mutts are different from samadhis. Mutts are generally centres of theological learning, the object of

which is to provide a line of competent teachers for the propagation of particular tenets of the Hindu Religion. In addition to religious instructions

certain other charitable purposes are also served by these Mutts. It is a recognised form of piety under the Hindu law to dedicate property for

establishment or maintenance of Mutt.

34. Under the Hindu Law, an idol, as symbol of certain religious purposes, is capable of being endowed with property and it is a worship of an

idol. Vide : *Mullick v. Mullick*, Knapp. 215, *Juggut Mohiny v. Sokhimany* (1870) 14 M Ind App289 and *Shagabutty v. Guruprosanna* ILR

(1898) Cal. 112. That the idol is a household or family idol and is not meant for worship by the public does not make it the less a valid object of

charitable trust. It was held by Sargent, C.J., in *Rupa Jagseth v. krishna* ILR 9 Bom. 169, that the distinction which obtains in English law with

respect to public and private charities is not to be found in the Hindu text, "The idol itself," observed the Chief Justice, "as is explained in West and

Buhler's Hindu Law, is looked upon as a kind of human entity, the religious services of which are allowed by the Hindu law to be provided for in perpetuity".

35. Trusts are generally created by Hindus for the establishment of a temple and setting up a particular deity therein, and it is regarded as quite

proper to make provision for the celebration of pujas of such deities like Durga and Lakshmi who are worshipped periodically and of whom no

permanent images are kept, (vide : Profulla Chandra v. Jogendra Nath 9 C.W.N. 528 . The building of a temple is itself a religious purpose, and so

is the completion of a building left unfinished by the testator or founder. It was so held in Mohar Singh v. Het Singh I.L.R.(1910) All. 337, and in

Khub Lal v. Ajodhya Misir, I.L.R.(1926) Cal. 574. According to Hindu concepts, it is not a condition of a valid religious endowment that the deity

should be worshipped at all times of the year. Endowments for the purpose of annual pujas of images of deities which are consecrated temporarily

once a year for worship and then consigned to water, or for the casual performance of Doliatra, Rasajatra and the like, are recognised by Hindu

law, and endowments for such worship are valid. It was so held in Brojobala Dassi Vs. Shebait of Sri Sri Saradiya Durgamata Thakurani, .

36. The Hindu religious system is encyclopaedic in its character; it is not one particular form of faith but a commonwealth of faiths and in it are

found the different grades of strata of religious thought and culture beginning from idolatry and ending with the highest form of philosophical

monism. It was so observed by B.K.Mukherjea in his Hindu law of Religious and Charitable Trust (Tagore Law Lectures), Fifth Edition at page

76. In the case of (1899) L.R. 26 I.A. 71 (Privy Council) , the counsel for the respondent (Mr.Jardine, Q.C.), while arguing his case before the

Judicial Committee, invited attention to the fact that even providing milk for cobras in a temple was regarded as a religious act by the Hindus. I do

not think that any court in India will uphold a religious trust the object and purpose of which are to provide milk for reptiles. These practices do not

form part of the Hindu religion which is founded on the Vedas, and are mostly in the nature of an excrescence due to the contact of the Aryans with

the aboriginal races of India. B.K. Mukherjea, in his Tagore Law Lectures, observes that what is sinful or immoral on the face of it cannot certainly

be countenanced by any court of law, but save and except practices like those referred to above, the efficacy of religious rites and ceremonies

must be determined in accordance with the ideas and beliefs that are entertained by traditional orthodox Hindus on the subject.

37. The mere fact that members of the public were allowed to worship in a temple is no ground to hold it to be a public temple. For it is not in

consonance with Hindu sentiment to exclude worshippers from a temple even when it is private.

38. In the instant case, much stress is laid on behalf of the appellant / 6th defendant that since members of the public do visit and worship the divine

idols around "Samadhi", the suit institution which originated as a "Samadhi" later on, assumed the characteristics of a "public" temple. It is further

submitted on behalf of the appellant that Hindu Community people of Adiyanothu Village used to congregate in the suit institution and thus this

institution had subsequently become a public temple and as such, the order of the appellant herein in confirming the order of the Deputy

Commissioner in appointing defendants 1 to 5 respondents 2 to 6 herein as trustees to this institution cannot be assailed of, and further the plaintiff

first respondent herein being an intruder, can have no right to challenge the said order.

39. It is relevant to note that worship which has grown up round the tomb of a human being does not fall within the category of religious worship.

The building of a samadhi of a tomb over the remains of a person and the making of the provision for the purpose of Gurupooja and other

ceremonies in connection with the same cannot be recognised as a charitable or religious purpose according to Hindu Law. In *Saraswathi Ammal*

and *Another Vs. Rajagopal Ammal*, , it was held that perpetual dedication of property for worship at a tomb is not valid amongst Hindus.

40. In support of the contention that the suit institution had subsequently assumed the characteristics of a "public temple", the following

circumstances were relied on by the defendants who are respondents 2 to 6 and the appellant herein, namely, that in and around the suit institution

there are Hindu deities such as Amman deity, Vinayagar idol, Danadayuthapani idol, Naga idols, Ayyanar idol and a peedam with 13 steps; that

there is also a Guruswamy temple in which Sivalinga is there (according to the plaintiff/first respondent herein, this is the Guruswamy Samadhi and although there is a Sivalinga it does not lose its efficacy as Samadhi and for this alone the annual Guru Pooja and daily pooja are being done); that on festive occasions such as Chitra Pournami, Adi Amavasai, Maha Sivarathiri etc., people used to congregate in this place, do bhajanas, prepare pongals and offer the same to the deities that marriages are used to be held in this place presided over by Madhava Desiga Swamigal; that the head of this institution was to be chosen or appointed only by the villagers in a congregation and the person chosen would look after this institution; that there were endowments to this institution by several persons; that there was a big bell but this was secreted by the present plaintiff/first respondent herein; that there used to be daily poojas and people would go there and offer worship and they also put "Kanikkai" on the place even though there, is no "hundial"; that some people have "also dug a well for drinking purposes and there was also a stone inscription there, praying redress of their grievances and if their grievances were redressed, they would come and do some thing to the deities; and that Guru pooja used to be conducted even at the expenses of the people and the people would partake in this.

41. In other words, it is contended on behalf of defendants 1 to 5 respondents 2 to 6 and 6th defendant/appellant herein that the institution although originated as a Samadhi had subsequently become a public temple by virtue of the treatment of this institution by the Hindu Community people.

42. On the other hand, it is contended on behalf of the plaintiff/first respondent herein that as per the decided authorities, none of the characteristics of a public temple is possessed by this institution, that even as per the oral evidence tendered on the defendant's side that apart from the evidence of the plaintiff/first respondent herein as P.W. 1 and his witness Mani as P.W. 2, there is no festival, no procession of any of the deities, no Gopurams for these deities, no Dhawaja Sthambam, no hundials, no endowment of any properties to this institution nor has this institution been dedicated to the public, no urchanas but only camphor would be lit to the Guruswamy Samadhi and no consecration of any of these deities. He

also contended that the entire management is being done by the head of this institution viz; Samiyars in succession, that the annual Guru Pooja is being done exclusively at the expense of the head of this institution and that the allegation that it is being done even at the expense of the villagers is absolutely false, and further there is absolutely no evidence on the side of the defendants to show that Hindu community people of Adiyanoothu village ever offered religious worship to the deities as of right. If at all they had come and congregated and did any worship to any of the deities, it should be at the implied permission or licence of the head of this institution and, therefore, this would not clothe with any right of worship on the villagers. The learned Counsel for the plaintiff first respondent herein has also pointed out that there is absolutely no evidence on the side of the defendants to show that the head of this institution was being appointed or chosen only by the villagers in a congregation, but on the other hand, the very fact that the Samiyars were in office successively, would clearly show that the office of the head of this institution must only be hereditary within the meaning of the Act.

43. In support of his contention, the learned Counsel for the plaintiff/first respondent herein has relied on the following decisions, namely, Madras

Hindu Religious Endowments Board Vs. V.N. Deivanai Ammal by Power of Attorney agent T.V. Mahalinga Aiyar, , Ramanasramam by its

secretary G. Sambasiva Rao and Others Vs. The Commissioner for Hindu Religious and Charitable Endowments, Madras, , T.D. Gopalan v. The

Commissioner Of Hindu Religious And Charitable Endowments Madras (1973) 1 M.L.J. 43 ; Chennammal Vs. The Commissioner, for Hindu

Religious and Charitable Endowments, ; Thanumalayaperumal Mudaliar and Others Vs. The Commissioner, The Hindu Religious and Charitable

Endowments (Administration) Department and Others, : S. Kannan and Others Vs. The All India Sai Satnaj (Registered), ; and S. Ramaswamy

Naidu and Others Vs. Commissioner, Hindu Religious and Charitable Endowments and Others, .

44. In Madras Hindu Religious Endowments Board Vs. V.N. Deivanai Ammal by Power of Attorney agent T.V. Mahalinga Aiyar, it was held that

in order to constitute an institution a public temple it is essential that it should be clearly proved that the institution was dedicated to the public. In

the case of an old temple, such dedication might be presumed from long usage of the public as of right. The fact that there is an utsava idol and

there are processions are generally indicative of the fact that it is a public temple. But where no property has been dedicated for the upkeep of the

temple and the expenses are met from out of some private funds, it is difficult to hold that the temple has been dedicated to the public. The mere

fact that members of the public were allowed to worship in the temple is no ground to hold it a public temple as it is not in consonance with the

Hindu sentiment to exclude worshippers from a temple even when it is private.

45. In *Bhavanam Nagireddi and Others Vs. The Board of Commissioner for Hindu Religious Endowments*, J. Varadachariar, J., observed that the

fact of the utsava deity being taken in procession is strong evidence that the institution is a public one. But then it was found in that case that there

was a trust deed dedicating property for the use of the temple and contemplating *kaingkaryam* in the temple. Taken along with that, the fact of the

deity being taken in procession was held to be

confirmatory of the idea that the founders were anxious to give all facilities to the public to worship the deity.

In the instant case before us, there is absolutely no evidence to show that any property had been dedicated for the upkeep of the temple or for the

upkeep of any of the idols in the suit institution. Ex. B. 16, the registered settlement deed dated 20-2-1943 which has been produced by D.W. 6

Chelliah does not also show that there was a complete dedication of any property to the institution in question.

The relevant portion in Ex. B.16, Settlement Deed dated 20-2-1943 reads as follows:

On the other hand, the evidence of D.W. 6 Chelliah would show that the properties mentioned in Ex. B.16 are not in the possession of the suit

institution; but they are in his possession and that he has been appropriating the income therefrom. Therefore, Ex. B.16 will be of no avail to the

defendants. Consequently, as per the decision in *Madras Hindu Religious Endowments Board Vs. V.N. Deivanai Ammal by Power of Attorney*

agent T.V. Mahalinga Aiyar, even assuming, there has been an Utsava idol and procession in the instant case before us, in the absence of any

property being dedicated for the maintenance of the suit institution, it cannot be

held that the institution in question has become a public temple nor has it been dedicated to the public. I may also point out that even in this case admittedly there is no Utsava idol nor is there any procession of any deities. Therefore, on this ground also, the institution in question cannot be said to be a "Public Temple" within the meaning of "The Madras Religious and Charitable Endowments Act.

46. In *Ramanasramam by its secretary G. Sambasiva Rao and Others Vs. The Commissioner for Hindu Religious and Charitable Endowments,*

Madras, it was held that the Madras Act XIX of 1951 is intended to apply only to religious institutions and endowments which are exclusively

Hindu in character. The connotation of a temple as defined in the Act consists of the following two component parts, viz., it must be an exclusively

Hindu institution and it must be exclusively a place of Hindu public religious worship. A temple must conform to Agama Sastras or by immemorial

public usage must have come to be regarded as a place of public religious worship notwithstanding its non-conformance with the Agama Sastras.

The Samadhi described as Mathru-botheswarar temple is an adjunct to the Ramanasramam and is certainly not the core around which the

Asramam grew. This institution is a composite institution and in accordance with the founder's universal outlook is open to devotees of all religions.

It stands to commonsense also that no exclusively Hindu shrine would be an appendage of a cosmopolitan Ashram and where "persons of other

religion were consistently paying homage at the shrine. The building of a Samadhi or a tomb over the remains of a person and the making of the

provision for the performance of Gurupooja and other ceremonies in connection, with the same is not recognized as charitable or religious

purposes according to Hindu Law. It has become settled law that a Samadhi by itself and not treated as a fitting object of public Hindu religious

worship for over a long period does not evolve into a temple.

47. It is relevant in this connection to note that it has been repeatedly decided in the decisions of this Court that the Sivalingam is only an adjunct to

a tomb and it will not evolve the tomb into a temple.

48. Ananthanarayanan, J., (as he then was) has observed at page 133 and 134 in the decision in *Ramanasramam by its secretary G. Sambasiva*

Rao and Others Vs. The Commissioner for Hindu Religious and Charitable

Endowments, Madras, as follows.

...I think that the question whether the suit institution is a "temple" within the scope and definition of 6(17) of the Madras Hindu Religious and

Charitable Endowments Act. (XIX of 1951), which is the crucial issue before us, is one that cannot be satisfactorily determined if we are to

leave out of account, particularly when we remember that the foundation or dedication is so recent, the life and ideas of the founder, himself, and

the unique circumstances of the case, as evident in the record. As for the definition in Section 6(17) itself, I am unable to see how it can be

construed and applied apart from the entire purpose of the Legislation, or the Scheme of the Act. I am in respectful agreement with the dictum of

Balakrishna Ayyar, J., in *Seshachalam Chettiar Charities v. State Of Madras* W.P.No. 1357 of 1957, that the Act itself is intended to apply only

to religious institutions and endowments which are exclusively Hindu in character. It is with this broad perspective that we must approach the

individual question of fact. In such a view, the words "used by the Hindu community or a section thereof, as a place of public religious worship"

would be all important, in the definition. Clearly we are not concerned here with a shrine, a place of worship, or by whatever other designation of

the place is known, which transcends Hindu credal categories altogether, or is non-Hindu, in character.

When this is borne in mind, I do not think that the case-law presents any peculiar difficulties. A Samadhi over one who comes to be regarded as of

the Illuminati or even the tombs of heroes, may evolve in course of time into a shrine of Hindu public religious worship. The Board of Commissioner

for the Hindu Religious Endowments Vs. *Pidugu Narasimham and Others*, and *C. Ratnavelu Mudaliar Vs. Commr. for Hindu Religious and*

Charitable Endowments, relate to such instances. Nor is the existence or consecration of an idol, a prerequisite. See *T.R.K. Ramaswami Servai*

and *Another Vs. The Board of Commissioners of the Hindu Religious Endowments*, . But in all such cases, what must be essentially regarded, and

never lost sight of, is the character of Hindu public religious worship evinced at such shrines, whether this has grown through the decades and

attached itself to the institution, or whether it was the full-fledged purpose at the birth of the shrine. Where this is present and undeniable, it will not

matter that the origin is un-Sastraic, that the temple evolved from a Samadhi, through ordinarily this conception is not in harmony with Hindu

concepts, as emphasised in *Bodendraswami Mutt v. President H.R.E. Board*, (1955) 1 M.L.J. 60, or if the Agama Sastras had been adhered to

or not. In my view, it is with this background that we should comprehend and appreciate the dicta of Varadachariar, J., in *The Board of*

Commissioner for the Hindu Religious Endowments Vs. Pidugu Narasimham and Others, , to the effect that the test was not whether the

foundation conformed to any particular school of Agama Sastras, or of Viswanatha Sastri, J., in *T.R.K. Ramaswami Servai and Another Vs. The*

Board of Commissioners of the Hindu Religious Endowments, , that it was sufficient that the worshippers considered themselves likely to be the

recipients of the bounty or blessings of a Divine Presence, which they believed to exist at the place. Divorced from their contexts, such

observations ought not to be interpreted as supporting a theory or thesis which would be opposed to the very purpose and scheme of the Hindu

Religious and Charitable Endowments Act.

But though Hinduism is a pervasive creed, with a genius for the assimilation of protestant movement which sprang up from its own field, where such

movements still retain their individuality and character, they ought not to be confused with it. Thus, I do not think it could be seriously maintained

that a Jain or Buddhist temple is a "Hindu temple", though the founders of those creeds were Hindus, conscious perhaps of a purificatory

evangelism, but not of a mission to destroy the background of religion that gave them birth. Equally, I do not think that it could be justifiably argued

that a meditation hall of a Theosophical Society, or the Durga of a Muslim Saint with characteristic appanages (pirs) is a "Hindu temple" within the

scope of the definition, merely because the Hindus also worship in public on certain occasions. We must remember that the core of Hinduism is

tolerance of all creeds, and a tendency to bow the knee at the shrines of all faiths. Surely, the Legislature never intended that shrines or places of

congregation and prayer or meditation, essentially non-Hindu in purpose and spirit, should be assimilated to Hinduism or to Hindu of legal fiction.

That is not the purport of the Act at all.

49. In the instant case before us, over the Samadhi of Guruswamy Swamigal,

admittedly, there is a Sivalinga. As per this decision see the decision in Ramanasramam by its secretary G. Sambasiva Rao and Others Vs. The Commissioner for Hindu Religious and Charitable Endowments, Madras, , the existence of this Sivalinga without prana pratishtha is of no consequence and spiritual descent cannot be invoked at such a place and Linga installed therein can only be symbolic of a union like the cross erected over a Christian tomb.

50. In *Gopalan v. Commr. of H.R. & C.E.* (1973) 1 M.L.J. 43, it was held that the origin of the temple, the manner in which its affairs are managed, the nature and extent of the gifts received by it, rights, exercised by devotees in regard to worship therein, the consciousness of the manager and the devotees as to the public character of the temple are factors that go to establish a temple as public or private. The entire evidence, both documentary and oral, has to be considered as a whole keeping in view the above principles. It was further held that the High Court did not attach sufficient importance to three matters which in the present case, were of material consequence, namely:

1. that the origin of the temple mandapam had been proved to be private;
2. that the management had remained throughout in the members of particular family; and
3. that there was absence of any endowed property.

There was no gopuram or dwajasthambam nor a nagara, bell nor hundial in the suit temple. In view of these the High Court's conclusion that the temple is not private is not acceptable.

51. In the instant case before us, the origin of the institution in question is proved to be private, namely, a private Samadhi. The contents of Ex.

B.15 copy of extract from the register of Inams in the village of Adiyanoothu in Oindigul Taluk, Ex. A.21 kist receipt dated 27-6-1970 in the name

of the plaintiff/first respondent herein for Fasli 1379 and Ex. A.4 copy of "A" register for S.Nos.835, 857/1, 857/3 and 583 of Adiyanoothu

village in Dindigul Taluk, besides the evidence of P.W. 1 Krishnaswami Swamikal - plaintiff/first respondent herein support this view. Apart from

the same, the oral evidence tendered on the side of the defendants would also show that it was a Samadhi. Therefore, the origin of the institution in

question as a Samadhi had been proved beyond doubt. With regard to the

question of management also, there is abundant evidence on the side of the plaintiff/first respondent herein to show that the suit institution was being managed by Samiyars in succession, and how the plaintiff/first respondent herein claims to be the Sishya of his immediate Guru Madhava Desika Swamigal. In fact, the witnesses examined on the side of the defendants would, in unambiguous terms, admit that after Madhava Desika Swamigal, the present plaintiff/first respondent herein has been managing the suit institution. Therefore, the management had all along been with this religious head. There is also absolutely no documentary evidence on the side of the defendants to show that the head of this institution was appointed or chosen by the people. However, the defendants who are respondents 2 to 6 and the appellant herein in this appeal before this Court would take advantage of a stray averment made by the plaintiff/first respondent herein in his earlier suit, O.S. No. 21 of 1970, the plaint copy of which is Ex. B.I, and in paragraph 9 of Ex. B.I, It has been stated as follows.

Every time a new Hereditary Trustee became the Head of this Institution, the villagers of Adiyanoothu used to meet in a gathering and approve this.

This was done on 28-11-1928 and again on 24-3-1968 when the present incumbent became the Hereditary Trustee. The public had also brought

the same to the notice of the Tahsildar of Dindigul on 5.4.1968 and accepted by him.

The above averments do not at all show that there was any admission on the part of the plaintiff/first respondent herein that the head of the suit

institution was being appointed only by the villagers. But the above averments would indicate that the villagers would also approve of the head of

the suit institution. Therefore, the defendants cannot now be allowed to put forward a case built on this stray observation and insist on their case

that the head of the suit institution was being appointed only by the villagers in a congregation. If really the head of the suit institution was being

appointed by the people and if he was answerable to the people, then there should have been some documentary evidence on the side of the

defendants to prove this aspect of the case. For example, patta should have been only in the name of the people of Adiyanoothu village. But, on

the other hand, patta has been issued in the name of the head of the suit

institution. Kists have also been paid by these persons - vide Exhibits A.6

to A.30 and A.33. Besides this, "B" memo under Ex. A.5 had also been issued to in the name of Madhava Desiga Swamigal as the institution was

in possession of a portion of the Government poramboke. Therefore, there can be absolutely no difficulty in holding that the entire management of

the suit institution remained throughout with the head of the suit institution.

52. It is also relevant in this connection to note that there has also been no evidence to show that the suit institution has ever been dedicated to the

public. Further, there was also no gopuram or dwajasthambam or even a "hundial" in the suit institution. An attempt has been made to show that

there was a bell but the same was secreted by the plaintiff/first respondent "herein. But there is no acceptable evidence in this regard on the side of

the defendants. Admittedly, there is no hundial. Under these circumstances, as per the decision in *Gopalan v. Commr. OF H.R. & C.E.*, (1973) 1

M.L.J. 43 also it cannot be held that the suit institution is a public temple or a place of public religious worship within the meaning of the Act.

53. In *Chennammal Vs. The Commissioner, for Hindu Religious and Charitable Endowments*, , it was held that before a temple can come within

the scope of the definition in Section 6(20) in Madras Act XXII of 1959 two conditions must be cumulatively satisfied. One is it must be a place of

public religious worship. Secondly, it must have been dedicated for the benefit of the Hindu community or any section thereof. Alternatively, it must

have been used as of right as a place of public religious worship by the Hindu community or any section thereof. Unless both these conditions are

jointly satisfied, a temple will not come within the scope of the definition contained in this Act. It was further held that the law is well-settled that,

when the origin of the temple is known as a private temple, then the clearest possible evidence is necessary for converting that temple into a public

temple. The main characteristics of a public temple is that it is intended for the use of the public or a section thereof. On the other hand, private

temples are intended for the worship by the members of the family of the donor exclusively. The mere fact that outsiders are allowed to worship in

a temple cannot necessarily mean that the temple was dedicated to the public, as no Hindu will ever prohibit strangers from offering worship to the

deity enshrined in his private temple. In all such cases, worship by outsiders is

referable to the leave and licence granted by the owner and cannot be indicative of any dedication to the public. In the absence of an express dedication for the benefit of the public, user by the public as of right must be established and such user as of right is far different from the trustees being willing to welcome the public to come and worship in the temple.

54. It is relevant to note that in the instant case before us, none of the conditions mentioned in this decision is found. Even assuming for argument's sake that the public used to come and congregate in the suit institution on auspicious days and offer worship to the deities there, in the absence of any concrete evidence to show - that the public had exercised the Worship as of right it could only be held that the head of the institution might have merely welcomed the public to come and worship in the temple and nothing more.

55. In *Thanumalayaperumal Mudaliar and Others Vs. The Commissioner, The Hindu Religious and Charitable Endowments (Administration)*

Department and Others, it was held that the three guidelines which enable the Court to decide whether a particular religious institution comes

within the scope of the meaning of Section 6-(20) of the Tamil Nadu H.R. & C.E. Act 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 incidentally it should also be established that the

worshippers have been using as of right the religious institution as a place of public religious worship. The other inspiring norms to decide whether a

temple is a private or public temple are dependent upon the features of the institution.

56. It is also well-settled that if a person alleges that a particular religious institution is a public temple, it is for him to establish it. But in the instant

case before us, the defendants who have alleged that the suit institution is a public temple or a place of public religious worship, have not

substantiated the same by any acceptable or tangible evidence. On the contrary, the plaintiff/first respondent herein who claims to be a Samadhi

has fairly established the same by reasonable oral and documentary evidence.

57. On behalf of the defendants/respondents 2 to 6 and the appellant herein, it is contended that periodical congregations of the people were being

made in the suit institution, and Hindu marriages were being celebrated in the

suit institutions presided over by the head of the suit institution, that no Hindu marriage would take place in a Samadhi, and therefore, it has to be held that the suit institution is a public temple. I am unable to uphold this contention in view of the decisions in Hari Bhanu Maharaj of Baroda Vs. Charity Commissioner, Ahmedabad, : and The Bihar State Board

Religious Trust, Patna Vs. Mahant Sri Biseshwar Das, .

58. In The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseshwar Das, , it was held that the mere circumstance that the people in the locality were visiting the temple and were worshipping the deity may not take away the character of the temple from a private temple to a public temple. In all such cases worship of outsiders is referable to the leave and licence granted by the owner and cannot be indicative of any dedication to the public.

59. In the instant case before us, the periodical congregation of the people and the celebration of Hindu marriages presided over by the head of the suit institution by themselves are not conclusive to show that the generality of the public were having ingress into this Madam as of right.

60. In S. Kannan and Others Vs. The All India Sai Satnaj (Registered), , it was held that "Sai Mandir" situate at Mylapore is not a place of public worship dedicated solely to the members of the Hindu community. Hence it is not a temple as defined in Section 6(20) of the Madras Hindu

Religious and Charitable Endowments Act (XXII of 1959). "Temple" is defined in Section 6(20) of the Madras Hindu Religious and Charitable

Endowments Act as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community.

Consequently, the suit institution cannot be said to be a public temple.

61. In S. Ramaswamy Naidu and Others Vs. Commissioner, Hindu Religious and Charitable Endowments and Others, , it was held that where it is

clear that by long usage and acceptance the public were visiting a temple and performing poojas therein and participating in the processions and

daily poojas, this by itself raises a very strong presumption against the private character of the temple. It was further held that the existence of

Moofa-sthanam, Mahamandapam, Prakaram, idols of chief and other deities, uths, va - moorthis, daily poojas, special poojas and procession

during Navarathiri festival, worship by the local public belonging to different

communities are all factors which positively give the undoubted impression that the temple is a public one.

62. In the instant case before us, excepting the existence of some non-consecrated idols, the other necessary ingredients are not available.

Therefore, in any view of the matter, the suit institution cannot be said to be a public temple. But it originated as a Samadhi and continues to be so.

63. Let us now discuss the contentions raised on behalf of the appellant herein. The decision in *The Board of Commissioner for the Hindu*

Religious Endowments Vs. Pidugu Narasimham and Others, is relied on for the proposition that to determine whether a certain place is temple, the

test is not whether it conforms to any particular school of Agama Sastras. The question must be decided with reference to the view of the class of

people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship they are making themselves the object

of the bounty or some super-human power, it must be regarded as "religious worship.

64. But the facts of the instant case before us cannot be said to be similar to the facts of the case in AIR 1939 Mad. 134. In the *saMr* decision, the

structures in question were generally consistent with the institution being a temple, that there is the performance of a Nitya Neivedya Diparadhana

in the institution, that there, were Poojaries and Bajantries who were expected to do service in that connection, that there were celebrations and

festivals, that these were offerings of animal sacrifices and the distribution of those offerings amongst the assembled audience and it was, on those

facts, held that that institution must be held to be a temple within the meaning of the Act But this decision cannot be said to be applicable to the

facts of the instant case before us.

65. In *C. Ratnavelu Mudaliar Vs. Commr. for Hindu Religious and Charitable Endowments*, the question involved was whether an institution

known as the Apparswami Pagoda situated in Mylapore was a temple within the meaning of the Act. The hereditary trustee of this institution

contended that it was only a Samadhi or tomb of one Apparswami and not a temple. On the facts and circumstances of that case and also the

treatment of that institution by the trustees, it was held by this Court that it was a place of public religious worship which the public was entitled to

use as a matter of right within the meaning of the Act. The circumstances that were relied upon for coming to this conclusion by this Court are:

1. that the Samadhi was not even referred to in a will left by one Chidam baraswami;
2. that in a suit in C.S. No. 480/21 the trustees of that institution and the public proceeded on the footing that it was a temple which the public had a right to use as a place of religious worship; and
3. that the reports of the concerned officers of the Hindu Religious Endowments Board had showed that the building had got all the normal features of a temple viz., that it had got Prakaram, Dwajasthambam, Balipeetam and Nandikeswara and there were shrines for Bhairavar, Kasi Visalakshi, Chandi-keswarar and other deities.

There was a 16 pillared mandapam and there were gopurams all over the shrine, in the instant case before us, we do not find any such gopurams.

The festivals were being regularly performed; the deity was taken in procession and archanas were performed by the worshippers. On these

materials it was held in the decision in 66 L.W. 944 that the institution had for a long period come to be regarded as a place of religious worship,

which the public were entitled to use as a matter of right and this being so the institution would be a temple within the meaning of the Act. But in the

instant case before us, excepting the existence of some idols, of deities in the suit institution, none of the other things, as have been enumerated

above, is present. Further, there is also no evidence to show that the public used the suit institution as a place of religious worship as a matter of

right. Thus, we find that the decisions cited above on behalf of the appellant will be of no help to the appellant herein.

66. In Logambal Ammal and Anr. v. The Commissioner For Hindu Religious And Charitable Endowments, Madras (1972) 85 L.W. 198, it was

contended that Sri Kailasanathaswami Temple in Padi village was a Samadhi or in the alternative a private temple over which the Endowments

Board cannot exercise any jurisdiction under the Tamil Nadu Act. But this contention was negatived by this Court, on the facts and circumstances

of the case viz. that in that institution, there were idols of Kailasanathar in the form of a Lingam with Avudayar, Kamatchi Amman, Vinayakar,

Bhairavar etc., and so it was a place of public worship. It is relevant to note that

apart from the existence of these" idols, there were some other factors in that case viz., that there were Gurukkals, who were doing daily poojas, that there was also an utsavar and it was being taken in procession. But in such circumstance is available in the instant case before us. Therefore, this decision cannot directly be applicable to the facts of the case before us.

67. In *S. Veeraman Servai v. Pitchai Konar And Ors.* 1975 T.L.N.J. 343, the plaintiff who claimed that the institution was a Samadhi had failed to

substantiate the same. In fact, in that case, it was found that there was no Samadhi at all. But this cannot be said in the instant case before us.

Even according to the defendants, the suit institution originated as Gurusamy Samadhi, and according to the plaintiff/- first respondent herein, it

continues to be so. Not only that, in the suit institution, the successive dead bodies of Samiyars were buried and over which Samadhis have been

built. Therefore, the suit institution consists of more Samadhis than really of any consecrated deities. Consequently, this decision also will be of no

help to the defendants.

68. In *Pichai Vs. The Commissioner for Hindu Religious and Charitable Endowments (Administration Department), Madras and Others*, , a temple

has been constructed, idols were installed, arrangements were made for the performance of daily poojas, neivedhyam, Shodasaupacharams etc.,

and properties were endowed and dedicated in favour of the idols themselves. It was held? by this Court that it is a place of public religious

worship. This decision which contained different facts altogether cannot be said to be applicable to the facts of the instant case before us because

excepting that there are some Hindu non-consecrated idols in the suit premises, no other features as found in the decision cited above are available

in the instant case before us.

69. An anxious and careful scrutiny of the evidence of D.W. 1 to D.W. 6 would show that it supports more the case of the plaintiff/first respondent

herein than that of the defendants. D.W. 1 Velli-malai Pillai in his cross-examination would admit that there is a Samadhi called Gurusamy

Samadhi. Immediately he would turn round and say that he did not see that Samadhi. But, however, he would say that people used to say that this

was the place where Guruswamy was laid to rest. He also stated in his cross-

examination that there was no hundial. When a question was put to him as to whether there was any Dwajas-thambam (Flagstaff - Q rruf.u>crth)f he said that he did not know. He has also admitted that there -was no procession. He also admitted that annual guru pooja is being done to Samadhi. Therefore, in the place t of this evidence in cross-examination, it cannot be held that the suit institution is a place of public religious worship, even assuming that people used to congregate during Chitra Pournami, Adi Amavasai, Masi Sivarathiri and engage in Bajanas in the suit premises.

70. D.W. 2 Perumal in his evidence has stated that there was no procession nor any Dwajasthambam. Curiously enough he would say that there was a hundial before, and people used to put coins there. His evidence in this regard runs counter to the evidence of D.W. 1 who stated that there was no such hundial at all. D.W. 2 would pretend by saying that he did not know whether Guruswamy Swamigal was laid to rest here. However, he would admit that Arumugaswamy was laid to rest in a portion of the suit premises. He has also admitted that after Arurnugasamy, Madhava Desika Swamigal became the head of the institution. The evidence of D.W. 2 in general would show that the suit institution premises must be a place where Swamiyars are being laid to rest and annual Guru Poojas are being done.

71. D.W. 3 Veerabadra Chettiar has stated in his cross-examination that inside Guruswamy Kovil, there is a ""Lingam"". It has already been found that this Guruswamy temple is the place where Guruswamy Swamigal was laid to rest and his Samadhi was put up thereon. There-fore, the mere presence of a ""Lingam"" in this place will not convert this "tomb" into a "temple" pure and simple, much less a "public temple". Therefore, the evidence of D.W. 2 also is in no way helpful to the defendants.

72. K.S. Gurumoorthy Iyer - the third defendant examined himself as D.W. 4 and he also admitted the fact that annual Guru Pooja is being done on Chitra Pournami and this is being done only to Guruswamy. He has stated that he knew Arurnugasamy and Madhava Desika Swamigal, and Madhava Desika Swamigal's samadhi is in the same premises. He has also admitted that there is no utsava idol, no hundial and no procession of the deities. He has also stated that there is no Dwajasthambam nor any big Jvlaha-mandapam. But it is only a Madam, and in this Swamiyars are

staying. He has also stated that the "Sishyas" would lit camphor and that is all. The evidence of D.W. 4 also would be more helpful to the

plaintiff/first respondent herein than to the defendants.

73. Pichai - fourth defendant as D.W. 5 would state even in his chief examination that he did not know whether Gurusamy was still alive or dead.

He has totally denied any Samadhi to Gurusamy. Yet he would claim that Guru Pooja is being done in the month of "Thai". Whereas the evidence

of D.W. 4 Gurumoorthy Iyer is that Guru Pooja is being done during Chitra Pournamij D.W. 5 would admit that deities aVe not being taken in

procession. The lower Court which had the benefit of seeing D.W. 5 Pichai in the box had disbelieved his evidence. Though D.W. 5 is a trustee

appointed by the appellant herein and is also a party to the suit, yet his evidence is not at all impressive and acceptable.

74. The evidence of D.W. 6 Chelliah is also not acceptable, and we have already referred to his evidence while discussing the alleged endowment

under Ex. B.16. In addition to the evidence of these witnesses, there is the evidence of the plaintiff/first respondent herein as P.W. 1, and the

concerned Karnam - Mani as P.W. 2 to the effect that the suit institution was and is a Samadhi, pure and simple. In these circumstances, we find

that the suit institution was and is a Samadhi, and not a place of public religious worship within the meaning of the Tamil Nadu Hindu Religious and

Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), and consequently, the orders passed by the 6th defendant/appellant herein

under Ex. A. 1 and Ex. A. 2 are liable to be set aside, and the decision arrived at by the lower Court in this regard is correct and it is hereby

confirmed.

75. The next question that has to be taken into consideration in this appeal is whether the plaintiff/first respondent herein is a hereditary trustee

within the meaning of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959). The answer would

be in the affirmative. There is absolutely no evidence on the side of the defendants to show that the head of the institution was being chosen or

appointed by the people in a congregation. On the contrary, even the book pamphlets issued by the plaintiff/first respondent, one such being Ex.

B.2, would show that he was a "Sishya" directly under Madhava Desika

Swamigal, and this is also quite evident from the fact that kists for the suit institution have been paid after Madhava Desika Swamigal by the plaintiff/first respondent herein himself under Ex. A. 17 to Ex. A.30. The allegation that the plaintiff/first respondent herein had trespassed upon the property after the death of Madhava Desika Swamigal cannot at all be accepted as true. Moreover, the consistent oral evidence of D.W. 3, D.W. 4 and D.W. 5 is that after Madhava Desika Swamigal, the plaintiff/first respondent herein has been managing the suit institution. The evidence of the plaintiff as P.W. 1 is that he was a "Sishya" under Madhava Desika Swamigal and even during the latter's lifetime, he was orally nominated by his Guru that he should be his Successor, and accordingly after his death, he became the head of the suit institution. His case has to be accepted as true in view of the fact that the suit institution was being headed and managed successively by "Swamiyars". As we have already indicated, there is absolutely no documentary evidence to prove that these persons were chosen by the public to manage the suit institution. Under these circumstances, we have no hesitation to uphold the case of the plaintiff/first respondent herein that the plaintiff/first respondent herein is the hereditary trustee of the suit institution.

76. The last question that remains to be considered is whether the plaintiff/first respondent herein is entitled to -he injunction prayed for. There can be absolutely no room to doubt that the peaceful possession and management of the suit institution by the plaintiff/first respondent are being interfered with by the plaintiff/trustees, defendants 1 to 5, by the orders of the 6th defendant/appellant herein. In fact, the plaintiff/first respondent herein has spent all his energy to prevent the Deputy Commissioner from appointing any trustees to the suit institution, but despite that, trustees were appointed contrary to law and the order of the Deputy Commissioner has also been confirmed without any basis by the appellant herein. The plaintiff/first respondent herein also moved the Court by way of Writ (vide Ex. A32), and in which the Deputy Commissioner was also directed to dispose of the plaintiff/first respondent's objection petition on merits. Therefore, taking all the aspects of the case in the " proper perspective and on the basis of the evidence available on record, we have no hesitation to hold that the plaintiff's peaceful possession and administration of the suit

institution are being interfered with by the defendants, and consequently, he is entitled to the injunction prayed for. The lower Court is correct in

having granted the injunction prayed for by the plaintiff/first respondent herein.

77. There is no merit in the appeal. The judgment and decree of the lower Court are confirmed. The appeal is dismissed with costs.