

(2015) 07 MAD CK 0347

In the Madras High Court

Case No : Second Appeal (MD) No. 880 of 2014

The Commissioner, Hindu Religious and Charitable
Endowment Department and Others

APPELLANT

Vs

Arulmigu Sri Pethanadeshwarar and Pethanayagiammal
Thirukovil Vasudevanallur and Others

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 9
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 108, 57,
6(18), 6(20), 61

Citation : (2015) 4 LW 117 : (2015) 6 MLJ 331

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

**Advocate : V.R. Shanmuganathan, Special Government Pleader, for the
Appellant; S.S. Sundar for M.P. Senthil, Advocates for the Respondent**

Final Decision : Partly Allowed

Judgement

P.R. Shivakumar, J—The officials of the Hindu Religious and Charitable Endowments Department and the Secretary to Tamil Nadu Government, Tamil Development and Religious Trust Department and Information are the appellants in the Second Appeal. The respondents herein filed the suit O.S. No. 245/2010 on the file of the Court of the learned District Munsif cum Judicial Magistrate, Sivagiri against the appellants herein arraying them as defendants 1 to 5 and praying for a declaration that the suit temple is a private temple belonging to the family of the respondents herein/plaintiffs, for a consequential injunction not to interfere with their management of the said temple by appointing any person as Fit Person or in any other capacity and for costs.

2. The learned trial judge decreed the suit granting the reliefs sought for by the respondents herein/plaintiffs without cost by a judgment and decree dated 05.02.2013. The appellants herein preferred an appeal before the lower Appellate Court, namely the Sub Court, Sankarankoil in A.S. No. 8/2013. The

learned lower Appellate Judge, on a re-appreciation of evidence by a judgment and decree dated 27.01.2014 concurred with the findings of the trial Court and dismissed the appeal without cost confirming the decree passed by the trial Court. It is as against the said decree of the lower Appellate Court dated 27.01.2014, the present Second Appeal has been filed.

3. The second appeal was admitted on 24.06.2015 identifying the following questions to be the substantial questions of law involved in the Second Appeal:

"Substantial Questions of Law:

1. Whether the suit for declaration that the suit temple is a private temple is maintainable in the Civil Court?

2. Whether the Courts below have committed an error in law in granting the relief of declaration disregarding the bar provided under Section 108 of the Hindu Religious and Charitable Endowments Act, 1959?

3. Can the question whether the suit temple is a private temple be incidentally gone into in considering the prayer for injunction?

4. Whether the Courts below have committed an error in law in granting the relief of perpetual injunction?"

4. The arguments advanced by Mr. V.R. Shanmuganathan, learned Special Government Pleader (HR&CE) representing the appellants and by Mr. S.S. Sundar, learned counsel for the respondents were heard. The judgments and decrees of the Courts below and the materials available on record sent for from the Courts below were also perused.

5. The respondents herein/plaintiffs filed the suit for declaration and injunction on the basis of their contention that the suit temple is a private temple belonging to their family in which the plaintiffs and the members of their families alone are entitled to offer worship and that at no point of time the same was dedicated to the public and the public are also not permitted to offer worship in the said temple. The following are their other contentions: The suit temple was in fact a samadhi founded by one Chockalingam Pillai, the great grandfather of the respondents herein/plaintiffs. Over the samadhi, the statues of his parents, viz. Sellathammal and Palanikumar Pillai were installed and the same were named by the respondents herein/plaintiffs as Pethanadheswarar and Pethanayagiammal. It was intended for the benefit of the founder's legal heirs. On 12.12.1898 Chockalingam Pillai executed a Deed of Endowment and the same would give an idea about the character of the temple. The earlier suit, namely O.S. No. 97/2005 filed on the file of Sub Court, Sankarankoil was preferred by the heirs of the founder and the same ended in a compromise. The respondents herein/plaintiffs alone were entitled and competent to manage the affairs of the suit temple. However the appellants/defendants made an attempt to bring the suit temple under their control and the same forced the respondents herein/plaintiffs to approach the trial Court for the above said reliefs.

6. The suit was resisted by the appellants herein/defendants on the basis of the averments made in the written statement of the third defendant - Assistant Commissioner, HR&CE Department, Tirunelveli. According to the said statement, the suit temple is a public temple and the Civil Court does not have the jurisdiction to decide the character of the temple. The appellants herein/defendants have also denied the contention that the suit temple is a samadhi, which was not constructed as a temple in accordance with the agama rules. However, the appellants herein/defendants proclaimed that they would be taking over the management of the temple through a Fit Person to be appointed.

7. The disputed temple situates in the middle of Survey Nos. 13 and 14 having a total extent of 3.74 acres at Vasudevanallur village, Sivagiri Taluk and the temple occupies an extent of 0.40 acre. The suit temple is called Arulmigu Sri Pethanadheswarar and Pethanayagiammal Samadhi temple. Claiming that the suit temple is not a religious institution, in other words claiming that it is not a public temple as defined under Sections 6(18) read with 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and contending that it is only a samadhi of Sellathammal and Palanikumar Pillai over which their statues were installed by their son Chockalingam Pillai; that the same were named as Arulmigu Pethanadheswarar and Pethanayagiammal deifying them, by their son and that in fact it was actually worshiped by the founder Chockalingam Pillai and his successors, the respondents herein/plaintiffs claim that the said suit samadhi temple is a private temple of the respondents herein/plaintiffs and the members of their family. It is also contended by them that the suit temple does not possess the characteristics of a public temple insofar as it has not been constructed on a poramboke land and no hundi is provided in it for the public to make their offerings; that the temple has not been dedicated to the public for worship; that the temple has not been thrown open for the public to come and offer worship by way of right; that it has got no sanctum sanctorum or central idol and that there is no vimanam. It is also contended that the temple was not consecrated by conducting Kumbabhishekam after completion of construction or thereafter periodically; that a private way connecting the temple and the residence of the respondents herein/plaintiffs have also been provided and that no one except the members of the families of the respondents herein/plaintiffs shall have a right to offer worship. It is also contended that as per agama rules a samadhi cannot be converted into a temple; that not only the mortal remains of the parents of the founder but also the mortal remains of the founder Chockalongam Pillai was also interned therein and over his samadhi also a stone statue was installed and it was named by his son Palanikumar as Chockalingasamy; that the above said aspects would show that only the place used as samadhi of the parents of the founder and the founder himself are being worshiped by the members of the family after installation of their stone statues over the samadhis and that hence the suit temple is not a religious institution as defined under Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

8. It is also contended that only in respect of public temples, the authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 can exercise their powers conferred on them by the said Act and that a private temple shall have the characteristics of the private property of the persons owning it and in fact, it would be equated to a pooja room in one's own house in respect of which authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 shall have no power. Contending further that the appellants herein/defendants made an attempt to interfere with the maintenance and administration of the suit temple by issuance of a notice dated 30.08.2010 which is marked as Ex. A4, calling for objections within 15 days from the receipt thereof, as to why a Fit Person should not be appointed; that even after the submission of a reply, the appellants herein/defendants were openly proclaiming that they would be taking over the management of the temple through a Fit Person to be appointed and that hence the respondents herein/plaintiffs were forced to file the suit for the relief of declaration declaring the suit temple to be a private temple and for an injunction against the appellants herein/defendants not to interfere with the management of the temple by appointing a Fit Person or otherwise.

9. The claim of the respondents herein/plaintiffs is resisted by the appellants herein/defendants contending that the suit for declaration of the nature sought for by the respondents herein/plaintiffs cannot be straight away filed in a Civil Court otherwise than in accordance with the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and that hence the suit should be dismissed as not maintainable in view of the bar provided under Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. It is the further contention of the appellants herein/defendants that the respondents herein/plaintiffs cannot sustain their claim that the suit temple is a private temple on facts also and that they have made an attempt to get a relief by projecting a temple as a samadhi or samadhi temple.

10. Based on the above said pleadings, the learned trial Judge initially framed seven issues and it was later on re-cast into six, which read as follows:

"1. Whether the suit temple is a private samadhi temple or a private temple?

2. Whether this Court has jurisdiction to decide the suit?

3. What is the sanctity of the orders passed in O.A. No. 31/1970 on the file of the Deputy Commissioner, HR&CE, Madurai?

4. Whether the suit is bad for non-joinder of necessary parties?

5. Whether notice under Section 80 CPC is necessary before instituting the suit?

6. To what relief the parties are entitled?"

11. One witness was examined as PW1 and 12 documents were marked as Exs. A1 to A12 on the side of the respondents herein/plaintiffs. One witness was

examined as DW1 and 14 documents were marked as Exs. B1 to B14 on the side of the appellants herein/defendants.

12. The Second Appeal has arisen out of the decree granted by the trial Court declaring the suit temple to be a private samadhi belonging to the respondents herein/plaintiff and a consequential injunction against the appellants herein/defendants restraining them from interfering with the management and affairs of the temple by appointing a Fit Person or otherwise, which was confirmed on appeal by the lower Appellate Court.

13. The respondents herein/plaintiffs have chosen to seek the relief of declaration that the suit temple is a private samadhi temple belonging to the respondents herein/plaintiffs and their family members. In short what the respondents/plaintiffs chose to contend by filing the suit was that Sri Arulmigh Pethanadheswarar and Pethanayagiammal temple is not a temple and it is only a samadhi named as temple. The second limb of the claim of the respondents herein/plaintiffs is that the suit temple is not a public temple and it is only a private temple in respect of which the authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 do not have any authority. Besides seeking such a declaration, the respondents herein/plaintiffs have also sought for an injunction against the appellants herein/defendants not to interfere with their management and the affairs of the suit temple either by appointing a fit person or otherwise.

14. Admittedly the suit temple has been constructed in the middle of an extent of 3.74 acres comprised in Survey Nos. 13 and 14 in Vasudevanallur village. The temple was founded by one Chockalingam Pillai son of Palanikumar Pillai. Besides putting up the temple he executed a Deed of Endowment dated 12.12.1898 registered as document No. 215/1898 on the file of Sub Registrar, Sivagiri. In the said document, he refers to the suit temple as the temple constructed and consecrated by him. The deities of the temple have been named as Pethanadheswarar and Pethanayagiammal. The Endowment Deed, a copy of which has been marked as Ex. A1 created in favour of the deities in respect of an extent of 2.56 acres comprised in Survey No. 204, 3.65 acres in Survey No. 157 and 1.39 acres comprised in Survey No. 163/B, totally measuring about 7.60 acres of wetlands, dry land measuring 1.74 acres comprised in Survey No. 13, 1.24 acres of dry land comprised in Survey No. 14 and 0.62 acre of dry land comprised in Survey No. 14B in which the temple had been constructed by him. The said endowment was provided for doing regular poojas, abishekam and feeding brahmis etc. In the Endowment Deed Palanikumar, S/o. Chockalingam Pillai was made the Akdhar (Trustee) of the temple. Succession to position of Akdhar has also been provided in the Endowment Deed to the effect that after Palanikumar, his eldest male issue shall be the Akdhar (Trustee). Thereafter in 1921, by a document dated 17.01.1921 registered as Document No. 137/1929 at Puliyangudi Sub Registrar Office, the first Akdhar (Trustee) appointed by the founder of the temple dedicated certain other properties for doing poojas and

neivethiyam and for the upkeep of samadhi of his father (founder of the temple) put up in the temple with a Maha Mandapam. For the said specific endowment of his Palanikumar's sons and thereafter their eldest male members were made Trustees under the Deed of Endowment dated 17.01.1921.

15. Thereafter, there arose a dispute regarding the succession to the Akdharship (Trusteeship) which resulted in a suit being filed as O.S. No. 31/1953 on the file of the District Munsif Court, Tenkasi. In the said suit filed by Palanikumar, two questions were raised which are as follows: 1)Whether the endowments was invalid as it was not made in favour of the deity and it was made in favour of a samadhi? and 2)Whether the encumbrance created in respect of and alienation of the property is binding on the trust? The Court held that there was no proof of presence of any samadhi in the temple and that it was nothing but a temple. So far as the creation of an encumbrance in respect of the property endowed was concerned, the trial Court held that the encumbrance was not valid as neither the trustee nor his successors were authorised by the trust deeds for encumbering the property even for the benefit of the temple. Accordingly, the Court in the said former suit held that the mortgage created in favour of one of the defendants therein, namely Malayammal was invalid and she was bound to hand over possession and pay mesne profits. Though a finding was rendered in the said suit that no samadhi was proved to be found in the suit temple, the Court did not render any finding as to the character of the temple - whether private or public, probably because of the bar provided under the previous enactment, namely Hindu Religious and Charitable Endowments Act, 1951. Subsequently, the Assistant Commissioner, HR&CE directed B.S. Palanikumar Pillai, who claimed the suit temple to be property a private temple, to apply before the Deputy Commissioner (Judicial), HR&CE Act, 1959 (Act 22 of 1959) to get the character of the institution declared.

16. It was contended therein that the suit temple, namely Sri Pethanadheswarar and Sri Pethanayagiammal temple in Vasudevanallur was not a religious institution as defined under Sections 6(18) read with 6(20) of the Act. The same was taken on file as O.A. No. 31 of 1970 (MDU). The Deputy Commissioner (Judicial), HR&CE, after enquiry, passed an order dated 25.02.1972 holding that the suit temple was a temple as defined under Sections 6(18) read with 6(20) and hence a religious institution. The said finding was based on the recitals found in the second deed of endowment dated 07.01.1921, which provides for feeding brahmins on two occasions in a year in the suit temple. B.S. Palanikumar Pillai filed an appeal before the Commissioner, HR&CE, Chennai in A.P. No. 64/1973. The Commissioner, HR&CE, Chennai set aside the order of the Deputy Commissioner, HR&CE dated 25.02.1972 and remitted the matter back to the Deputy Commissioner for fresh disposal. Thereafter O.A. No. 31 of 1970 came to be transferred to the file of Deputy Commissioner, HR&CE (Administration) Department, Madurai, who after hearing passed an order on 04.12.1974 allowing the said Original Application and declaring that the suit institution was not a religious institution as defined under the provisions of the Tamil Nadu Hindu

Religious and Charitable Endowments Act, 1959. As against the said order of the Deputy Commissioner, the Department did not file any appeal as contemplated under Section 69 of the Act. The temple administration was enjoyed by the respondents herein/plaintiffs till an attempt was made in the year 2010 by the third appellant by issuing a notice dated 30.08.2010 calling for objection as to why the temple administration should not be taken over by the Department. The respondents herein/plaintiffs got extension of time for filing objections and they submitted a reply on 19.09.2010 which was received by the third appellant herein/third defendant on 21.09.2010. Even thereafter the third appellant herein/third defendant did not drop the proposal to appoint a fit person and at the same time when a Deed of Exchange was sought to be executed, the appellants herein/defendants had filed an objection with the Registering Authority. Hence the respondents herein/plaintiffs chose to file the suit for the above said reliefs.

17. The suit filed by the respondents herein/plaintiffs came to be resisted by the appellants herein/defendants mainly on the ground that the suit is barred by Section 108 of the Tamil Nadu Hindu Religious and Endowments Act, 1959 (Tamil Nadu Act 22 of 1959). For better appreciation, Section 108 of the Tamil Nadu Hindu Religious and Endowments Act, 1959 is reproduced hereunder.

"108. Bar of suits in respect of administration or management of religious institutions, etc., No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act. "

18. It provides a bar on the jurisdiction of the Civil Court in respect of matters for the decision of which provisions have been made elsewhere in the Act. Such a prohibition/bar is not in absolute terms. The prohibition is as against entertainment of suits in respect of such matters otherwise than in accordance with the scheme of the Act itself. The question that arose for consideration in the suit before the trial Court was whether the suit temple was a public temple namely, the religious institution as defined under Sections 6(18) and 6(20) of the Act. Section 63(a) of the Act provides that when such a question arises, it shall be decided by the Deputy Commissioner or the Joint Commissioner, HR & CE. As against such a decision made by the Joint Commissioner or Deputy Commissioner as the case may be, a right of appeal is provided under Section 69 of the Act. Such appeal shall lie to the Commissioner, HR & CE. The decision in such an appeal to be made by the Commissioner also has not been made final. Section 70 of the Act provides that the party aggrieved by the order of the Commissioner shall have a right to file a suit within ninety days in the Court to set aside the order of the Commissioner. The decree passed by the Court in such a statutory suit filed under Section 70(1) of the Act is made appealable and the appeal shall lie to the High Court under Section 70(2) of the Act.

19. A comprehensive procedure has been provided in the Act itself for the

determination of the question-whether an institution is a public religious institution, in other words a public temple or not? Power has been conferred firstly on the Deputy Commissioner/Joint Commissioner, exercising original jurisdiction under Section 63(a); secondly on the Commissioner exercising appellate jurisdiction under Section 69; thirdly on the Court in entertaining a statutory suit for setting aside the order of the Commissioner under Section 70(1) and fourthly on the High Court in the power of appeal under Section 70(2) from the decree passed in the statutory suit. Hence, as rightly contended by the learned Special Government Pleader the suit in respect of the prayer for declaration appears to be barred by Section 108 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. However, learned counsel respondents/plaintiffs contended that the character of the temple - whether it is a public temple or private temples had already been decided by the competent authority namely, the Deputy Commissioner, H.R. & CE, Madurai in O.A. No. 31 of 1970 holding that the suit temple is not a public religious institution and it was only a private temple; that since the question had already been decided by the competent authority under the Act the bar provided under Section 108 of the Act, cannot be expanded to cover a suit for getting a declaration regarding character of the institution in the event of the authorities of the HR & CE Department making a claim that the suit institution is a public institution much against and disregarding the order passed by the Deputy Commissioner in O.A. No. 31 of 1970 dated 04.12.1972 and that in such an event, the Civil Court's jurisdiction to grant a declaration could not be said to be barred.

20. This Court is not in a position accept the above said contention of the learned counsel for the respondents herein/plaintiffs for the following reasons:

"When the character of the institution was already decided by the competent authority under the Act, it would have become conclusive, subject to the appeal and the statutory suit provided under the Act. Since in this case, no appeal was filed, the order passed by the Deputy Commissioner, HR & CE, Madurai on 04.12.1974 in O.A. No. 31 of 1970, has become final. When such a finality has been attached to a decision rendered by the quasi judicial authority, the parties to the said proceedings cannot be allowed to make an attempt to freeze the issue by fortifying the order of the competent authority with a decree of the Civil Court on the premise that the finding of the competent authority is binding on the Civil Court. Of course, it is true that the finding rendered by the quasi judicial authority, namely the Deputy Commissioner, HR & CE in O.A. No. 31 of 1970 is binding on the Civil Court, when the finding of the Deputy Commissioner is not challenged in accordance with the provisions contain in Sections 69 and 70 of the Act. But that does not mean that the order of the Deputy Commissioner can be converted into a decree of the Civil Court by seeking a declaration in tune with the order of the Deputy Commissioner. The provision referred to above confer a right on the affected party alone to file an appeal before the Commissioner and a right to file a statutory suit under Section 70(1) of the HR & CE Act, 1959 on the party affected by the order of the Commissioner in the appeal. The provisions do

not contemplate the party emerging successful before the Deputy Commissioner/Joint Commissioner or the party emerging successful before the Commissioner in the appeal, to approach the Civil Court for getting a decree in line with the order passed by the Deputy Commissioner/Joint Commissioner or the Commissioner as the case may be and thereby convert the order of the quash judicial authority into one of a decree of the Civil Court. The fact that an institution is declared to be a private temple by the competent authority will not rule out the possibility of such a private temple being converted into a public temple by its dedication to the public by throwing open the same to the public to come and offer worship by way of right rather than with the permission of the owners of the private temple. When such a conversion is claimed, it cannot be contended that the power of the quasi judicial authorities constituted under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 can be pre-empted by approaching the Court to get a declaration in line with the earlier order of the quasi judicial authority and thereafter contend before the said authority that it is a closed issue which cannot be reopened. Therefore, the contention of the learned counsel for the respondents herein/plaintiffs that since the appellants herein/defendants were acting against the order of the Deputy Commissioner, HR & CE, Madurai, dated 04.12.1974 in O.A. No. 31 of 1970, the respondents herein/plaintiffs were entitled to approach the Civil Court for declaration regarding the character of the temple has got to be discountenanced as untenable."

21. However, it is the contention of the learned counsel for the respondents herein/plaintiffs that since the appellants herein/defendants had not chosen to take a plea that subsequent to the order passed in O.A. No. 31 of 1970, there was a dedication of the temple public or its character has been changed from private temple into public temple, the claim of the respondents herein/plaintiffs for declaration in line with the order passed in O.A. No. 31 of 1970, of course, subject to the right of the appellants/defendants to contend that the institution has become a public religious institution, subsequently. The said contention also cannot be countenanced for the simple reason that a relief which cannot be sought for in a suit directly, cannot be allowed to be obtained in an indirect manner. Hence, this Court hereby comes to the conclusion that the contention of the learned Special Government Pleader that the Courts below committed an error in law in decreeing the suit for the relief of declaration declaring the suit temple to be a private samadhi temple is bound to be countenanced.

22. It is pertinent to note that the respondents herein/plaintiffs had suffered a decree in an earlier suit namely O.S. No. 31 of 1953 on the file of the District Munsif Court, Tenkasi. The said suit was not a statutory suit. The said suit came to be disposed of on 31.03.1954. The question involved therein was whether a mortgage in respect of the property of the temple was valid. The said Court held that the mortgage created by a person who was not authorised to do so was not binding on the temple and that hence, the mortgage stood redeemed, with the result that the recovery of possession of the property with mesne profit came to be decreed. In the said case, it was contended by the alienees that the

endowment in favour of the temple was invalid as it was only a samadhi. The Court rendered a decision that there no samadhi and the endowment made in favour of the temple was perfectly valid. However, there was no direct decision was rendered as to whether the suit temple was a private temple.

23. After the said judgment which was pronounced on 31.03.1954, there was no interference by the Officials of the HR & CE Department till 1970 and only when a doubt was raised as to the character of the suit temple, i.e. to whether public or private temple, the respondent herein/plaintiffs had to approach the Deputy Commissioner with O.A. No. 31 of 1970. In fact, at the first instance, the original application was dismissed by an order dated 25.02.1972 marked as Ex. B4 by the Deputy Commissioner. On appeal under Section 69 of the Act, the Commissioner set aside the order of the Deputy Commissioner and remitted the matter back to the Deputy Commissioner for fresh disposal. Thereafter, the Deputy Commissioner, HR & CE, Madurai heard the Original Application and decided the same in favour of the respondents/plaintiffs by an order dated 04.12.1974, marked as Ex. A-9. The same was not challenged by the Department. The relief of declaration sought for in the present suit is to once again reiterate their contention that the suit temple in effect is a samadhi, wherein the mortal remains of the parents of the founder had been interned and the samadhi of the founder was also put up therein. That is the reason why they have camouflaged the prayer seeking a declaration that the suit samadhi temple is a private temple belonging to them and the members of their family. A temple cannot be converted into a samadhi simply because someone's mortal remains are interned therein. If such a contention is accepted the mortal remains of someone can be buried in the temple premises and thereby claim can be made that the temple has lost its character of a temple.

24. Taking the said aspect into consideration, this Court comes to the conclusion that the prayer for declaration was made with a view to get the suit institution declared indirectly as a samadhi and not a temple, may be private. In the earlier proceedings before the competent authority, namely the Deputy Commissioner, the character of the institution as a temple was not disputed and it was claimed that it was only a private temple founded by Chockalingam Pillai and that being a private temple, it was not a public religious institution as defined under Sections 6(18) and 6(20) of the Act. Now an improvement is sought to be made by adding a qualifying word to the private temple as a temple, namely "Samadhi"- to the term temple found in the order of the Deputy Commissioner.

25. Hence, as rightly contended by the learned Special Government Pleader appearing for the appellants herein/defendants, the suit so far as the prayer for declaration is concerned, is liable to be dismissed. The learned trial Judge and the lower Appellate Judge, without properly understanding the provisions of law, erroneously held that the prayer for declaration sought in line with the decision rendered by the quasi judicial authority, namely Deputy Commissioner, HR & CE, Madurai was maintainable. This Court is not in a position to approve the above

said reasoning made by the Courts below for maintaining the suit for declaration regarding the character of the institution, despite the bar provided under Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The first and second substantial questions of law are answered accordingly in favour of the appellants herein/defendants and against the respondents herein/plaintiffs holding that the suit private samadhi temple is not maintainable in the Civil Court.

26. Apart from making the prayer for declaration, which prayer according to the above discussions regarding the first substantial question of law is not maintainable, the respondents/plaintiffs also prayed for the relief of permanent injunction not to interfere with their management of the suit temple, which has already been declared by the Deputy Commissioner, HR & CE in O.A. No. 31 of 1970 as a private temple and not a religious institution over which the officials of the HR & CE Department shall have power. In this regard, learned Special Government Pleader would contend that the prayer for declaration and the prayer for perpetual injunction are inseparable, since the prayer for injunction was sought for only as a consequential relief for the main relief of declaration. It is also his contention that when the suit for the main relief itself is not maintainable, the suit cannot be maintained for the ancillary relief which is claimed as consequential to the main relief. On the other hand, it is the contention of the learned counsel for the respondents herein/plaintiffs that the prayer for perpetual injunction restraining the officials of the HR & CE Department made on the basis of the order passed by the Deputy Commissioner holding that the suit temple to be a private temple, cannot be said to be an ancillary relief to the main relief of declaration; that in the absence of a prayer for declaration the suit for injunction based on the decision already rendered by the Deputy Commissioner, HR & CE, Madurai in O.A. No. 31 of 1970 will be perfectly maintainable since the authorities under the HR & CE Act are not clothed with the power to grant injunction and that hence, the prayers made in the suit should be split up as two separate prayers and the relief of injunction should be granted even though the suit for the relief of declaration may be held to be not maintainable on technical ground, namely barred by Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. It is his further contention that when the character of the suit temple as to whether it is a public religious institution has already been decided by the Deputy Commissioner, HR & CE, Madurai in O.A. No. 31 of 1970 long back in 04.12.1974 itself, which order remains unchallenged in the manner prescribed under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the suit filed by the respondents herein/plaintiffs for the relief of injunction against the authorities of the HR & CE Department, when they make an attempt to interfere with the management of the temple, is perfectly valid and maintainable.

27. It is the further contention of the learned counsel for the respondents herein/plaintiffs that simply because the prayer for injunction has been asked as the second relief it cannot be construed as an ancillary relief and that the prayer of

injunction can be independently maintained on the basis of the findings already rendered by the competent authority in O.A. No. 31 of 1970. In support of his contention, learned counsel for the respondents relied on the following decisions:

"(i) Sri Venkataramanaswamy Deity at Kothur Village Vs. Vadugammal, (1978) 87 LW 481 : (1974) 1 MLJ 431 and

(ii) State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others, AIR 2000 SC 2220 : (2000) 4 JT 157 : (2000) 3 SCALE 61 : (2000) 3 SCC 689 : (2000) 2 SCR 937 : (2000) AIRSCW 2334 : (2000) 3 Supreme 66 ."

28. In the first of the judgments cited by the learned counsel for the respondents herein/plaintiffs, a Division Bench of this Court has held as follows:-

"The scheme of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 regarding the jurisdiction of the Civil Court is different from that of enactments like the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948).

....Thus in the special enactments, the jurisdiction of the special Tribunals under the Act is confined only to the purposes of the Acts. As already pointed out, the procedure prescribed under the Act regarding the matters specified in Section 57 should be followed before the Deputy Commissioner and in the appeal or revision before the Commissioner, before a suit is filed. A relief which cannot be granted by the Deputy Commissioner can be asked for in a civil Court. If, in deciding whether the plaintiff is entitled to the relief asked for, the Civil Court also has to decide certain issues which may fall within Section 57 of the Act, the Civil Court's jurisdiction is not barred. There is no provision for reference by the Civil Court of a particular issue which is within the scope of section 57 to the Deputy Commissioner for determination. Equally, the plaintiff who seeks relief from a Civil Court cannot be asked to get adjudication of an incidental question from the Deputy Commissioner before he filed a suit. Therefore, the preponderance of authority of our Court is that a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner and that in such a suit, the civil Court has jurisdiction to decide incidental issues which are within the jurisdiction of the Deputy Commissioner".

The said case was decided based on the then Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951, which was subsequently repealed and replaced by the present Act (Act 22 of 1959) Section 57 of the old Act is equivalent to Section 63 of the present Act. For better appreciation, Section 57 of the old Act and 63 of the new Act are tabulated hereunder:-

Section 69 of the new Act is equivalent to Section 61 of the Old Act providing for an appeal to the Commissioner against the order of the Deputy Commissioner. Section 108 of the new Act is equivalent to Section 93 of the old Act.

29. In 1974-I-MLJR 431, Sri Venkataramanaswamy Deity's case, the temple itself had filed the suit for recovery of possession and for past and future mesne

profits. Proceeding on the assumption that no provision was made in the Madras Hindu Religious and Charitable Endowments Act, 1951 granting power to the Deputy Commissioner to order eviction of encroachers analogous to Section 78 of the new Act and hence a suit for recovery of possession and past and future mesne profits in a Civil Court was not barred, the Division Bench proceeded to hold that when a dispute was raised in such a suit as to the title regarding the suit property sought to be recovered, the Court need not refer the question to the Deputy Commissioner or refer the parties to the Deputy Commissioner to have the question decided by the Deputy Commissioner at the first instance and then approach the Court for the relief and that on the other hand, such a question could be incidentally decided by the Civil Court in a suit for a relief which could not be granted by the Deputy Commissioner. In the case decided by the Division Bench of this Court, there was a claim for the relief of declaration of title of the plaintiff temple therein in respect of the property that was the subject matter of the suit. Hence, it was held therein that the question of title could be incidentally gone into by the Civil Court in the suit for recovery of possession and mesne profits filed by the temple. In the case on hand, the respondents herein/plaintiffs are in a better position than the plaintiffs in the case decided by the Division Bench. The title regarding the suit property in the said case had not been decided by the Deputy Commissioner, though such the authority was given to the Deputy Commissioner under Section 57(c) of the Madras Hindu Religious and Charitable Endowments Act, 1951. On the other hand, here is a case in which the dispute raised by the appellants herein/defendants is regarding the character of the temple as to whether it is a religious institution (public temple) or a private temple. The said dispute was finally resolved by the Deputy Commissioner, HR & CE, Madurai by his order dated 04.12.1974 made in O.A. No. 31 of 1970 long back, that is nearly more than four decades back. As the character of the temple had already been decided by the Deputy Commissioner, HR & CE, Madurai, the respondents herein/plaintiffs can very well maintain a suit for injunction based on such declaration made by the Deputy Commissioner. Simply because a prayer for a declaration has also been made, which shall be unnecessary and superfluous, the suit in respect of the prayer for injunction cannot be held to be not maintainable.

30. In the judgment of the Supreme Court in Manjeti Laxmi Kantha Rao's case cited by the learned counsel for the respondents herein/plaintiffs while considering the import of a declaration made by the Deputy Commissioner under the provision corresponding to Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 namely, Section 77 of the Andhra Pradesh Hindu Religious and Charitable Endowments Act, 1966, the Supreme Court made an emphatic pronouncement that the decision made by the Deputy Commissioner regarding the nature of the suit property holding the same to be not a public charity or endowment and it was only a private property was binding on the Civil Court, unless it was successfully challenged in the manner provided in the Act itself. The relevant portions of the judgment are extracted hereunder:

"4. Three contentions are put forth before us as was done before the High Court in the Letters Patent Appeals. Firstly, that the order under Section 77 of the Act does not affect a decision rendered in civil suit No. 11/67 inasmuch as question of title had been raised in the suit. Secondly, that both the order under Section 77 of the Act and the suit had been decided by a competent authority or court and, therefore, the proceeding under Section 77 of the Act could not operate as *res judicata*. Lastly, it was contended that to challenge an order made under Section 77 of the Act a suit was required to be filed under Section 78 of the Act, then the court could construe the suit out of which the appeal itself arises as a suit under Section 77 of the Act.

5. The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. In *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, AIR 1969 SC 78 : (1968) 3 SCR 662 : (1968) 22 STC 416 , it was noticed that where a statute gives finality to the orders of the special tribunals jurisdiction of the civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

6. The suit is prior to initiation of proceedings under Section 77 of the Act and, therefore, the said suit cannot be a suit as contemplated under Section 78 of the Act. The order under Section 77 of the Act is conclusive which determined the issue that the suit property is not subject to public charity or endowment upholding the case of the defendants Nos. 4 to 12 that the property is private property and is not an endowment. Such a question could have been decided in a proceeding under Section 77(1)(d) of the Act as to whether any property is an endowment and, if so, whether it is charitable endowment or a religious endowment. A person aggrieved could file a suit under Section 78 of the Act. Since no such suit was filed the declaration made by the Deputy Commissioner under Section 77 of the Act the order made by him concluded the issue whether or not the suit property is a charitable or religious endowment. After the Act came into force the Deputy Commissioner was competent to deal with such a question. The subject matter in G.O. 1501 which was passed on July 12, 1966; the prayer in the suit in O.S. No. 11/67 and the decision under Section 77 pertains to the same question whether or not the property was an endowed property. The Deputy Commissioner considered the very question raised in the

suit as to nature of the suit property and held that it is private property and having concluded as public charity or endowment that conclusion became final."

Thus, the Supreme Court has held in categorical terms that the order made by the authorities under the HR & CE Act in its special jurisdiction must be held to be conclusive and final.

31. In the case on hand also, the question as to whether the suit temple is a private temple or a public religious institution has been conclusively decided by the authority under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 Act in its special jurisdiction namely Section 63(a) of the Act. The same was not challenged in accordance with the provisions found in the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Since the order of the Deputy Commissioner has become final and conclusive, so long as the said order remains in force, the appellants herein/defendants cannot raise the question in a suit filed for a relief which cannot be granted by the Deputy Commissioner, namely a suit for injunction. Hence, the contention raised on behalf of the appellants herein/defendants that the order of the Deputy Commissioner is erroneous and the same is not final and that it is quite open for the appellants herein/defendants to raise the issue in the suit filed by the respondents herein/plaintiffs has got to be rejected as untenable in the light of the above said judgment of the Supreme Court reported in *State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others*, AIR 2000 SC 2220 : (2000) 4 JT 157 : (2000) 3 SCALE 61 : (2000) 3 SCC 689 : (2000) 2 SCR 937 : (2000) AIRSCW 2334 : (2000) 3 Supreme 66 .

32. A meek attempt was made by the learned Special Government Pleader to contend that the order of the Deputy Commissioner dated 04.12.1974 made is now sought to be revised by the Commissioner using his suo motu power of revision under Section 69(2) of the Act and that hence, the order of the Deputy Commissioner cannot be held to be conclusive and final. Of course, it shall be open to the Commissioner to exercise his power of suo motu revision, but it is doubtful as to whether such a power of suo motu power of revision can be exercised at this distance of time, namely after a lapse of more than four decades. Be that as it may, till the order of the Deputy Commissioner, HR & CE, Madurai dated 04.12.1974 is set aside in the manner known to law or superseded by an order of a competent authority passed in accordance with law, the said order shall be binding upon, the appellants herein/defendants. They cannot be allowed to take law in their own hands and try to interfere with the possession and management of the temple, which has been held to be a private temple, on the premise that they are proposing to seek revision of the order by invoking suo motu power of revision of the Commissioner.

33. Subsequent to the disposal of the suit, the attempted transfer made by the respondents herein/plaintiffs of some of the properties was sought to be prevented by lodging an objection with the registering authority and the registering authority refused to register the document. Thereafter, a third party

by name Kandasamy filed W.P.(MD) No. 13573 of 2010 seeking issuance of Writ of Mandamus, forbearing the District Registrar and the Sub Registrar from registering any deed of conveyance or transfer, if presented by the first respondent herein and one Murugesan regarding the property measuring 13 feet x 29 feet out of 1.78 acres comprised in Survey No. 13 in Vasudevanallur Village. Similar writ petition was filed by the Executive Officer, Chinthamaninathasamy Temple, as W.P.(MD) No. 14162 of 2010. The first respondent herein filed W.P.(MD) No. 14286 of 2010 seeking a Writ of Certiorari to quash the proceedings of the Assistant Commissioner, HR & CE Department, Tirunelveli, the third appellant herein, in Se.Mu.Na.Ka. No. 6374/10/E1, dated 12.11.2010 appointing a fit person to the suit temple. A learned single Judge of this Court by a common order dated 03.10.2013 dismissed the writ petitions filed by Kandasamy and by the Executive Officer of Chinthamaninathasamy Temple. However. W.P.(MD) No. 14286 of 2010 filed by the first respondent herein was allowed and the order of the Assistant Commissioner, HR & CE, Tirunelveli, dated 12.11.2010 was quashed. As against the order passed in W.P. Nos. 14162 of 2010 and 14286 of 2010 W.A.(MD) Nos. 833 and 834 of 2014 came to be filed by the Executive Officer, Arulmigu Sindhamaninathaswamy Thirukovil, Vasudevanallur, Sivagiri Taluk, Tirunelveli District. W.A.(MD) No. 833 of 2014 was dismissed as infructuous. W.A.(MD) No. 834 of 2014 was dismissed with an observation that the order passed in the writ petition would be subject to the outcome of the present Second Appeal, namely S.A.(MD) No. 880 of 2014.

34. The said development has been brought to the notice of this Court across the bar by the learned counsel appearing for the contesting parties. It is an admitted fact that till date the order passed by the Deputy Commissioner, HR & CE, Madurai, dated 04.12.1974 is in force and the same has not been set aside in accordance with law. When such an order is in force, the appellants herein/defendants shall not be permitted to interfere with the administration of the temple, which has been held to be private temple, by appointing either an Executive Officer or a trustee or a fit person. Admittedly, the Assistant Commissioner, HR & CE, Tirunelveli issued proceedings dated 30.08.2010 marked as Ex. A4 calling upon objections to be submitted within 15 days as to why a fit person should not be appointed for the administration of the temple and its properties. A copy of the objection submitted to the Assistant Commissioner seeking 30 days time to file suitable objection has been produced as Ex. A.6. A notice came to be issued to the third appellant on 19.09.2010 to withdraw the said notice dated 30.08.2010. A copy of the said notice with acknowledgment has been produced as Ex. A.5. Thereafter, an objection was also submitted in writing. Hence, there is a clear case that the appellants herein/defendants have attempted to interfere with the administration and management of the suit temple and its properties, which has been declared to be a private temple. The same provides cause of action for filing the suit for injunction.

35. At the cost of repetition, it is hereby pointed out that the appellants herein/defendants are bound by the order of the Deputy Commissioner, HR & CE,

Madurai dated 04.12.1974 passed in O.A. No. 31 of 1970, till it is set aside or superseded by a subsequent order in the manner known to law. Hence, the prayer made by the respondents herein/plaintiffs for permanent injunction restraining the appellants herein/defendants from interfering with the management of the suit temple by appointing fit person or in any other manner has got to be upheld. The Courts below, in this regard have, rightly held that the respondents herein/plaintiffs are entitled to the relief of injunction. This Court does not find any valid reason to interfere with the said part of the decree of the trial Court as confirmed by the lower Appellate Court. However, it shall be made it clear that the perpetual injunction granted shall not be a bar for the appellants herein/defendants to challenge the order of the Deputy Commissioner made in O.A. No. 31 of 1970 in the manner known to law, of course subject to the law of limitation. By way of clarification, it is also made clear that in case, the appellants herein/defendants are of the view that subsequent to the order passed by the Deputy Commissioner, the suit temple was thrown open to the public and acquired the character of a public temple, it shall be open to them to approach the competent authorities under the Act. But unfortunately, it is not the case of the appellants herein/defendants that after the disposal of O.A. No. 31 of 1970, the temple was thrown open to the public for worship and became a public temple. On the other hand, the only contention that is raised by the appellants herein/defendants is that the order of the Deputy Commissioner dated 04.12.1974 is erroneous and they are taking steps to get the order set aside. Hence, till the said order is set aside in the manner known to law, the appellants herein/defendants are bound by the order and they cannot take any stand against such an order.

36. In view of the foregoing discussions, this Court comes to the conclusion that the Courts below have not committed any error in law in granting the relief of injunction and that Section 108 does not provide a bar for granting such relief. The third and fourth substantial questions of law are answered against the appellants herein/defendants and in favour of the respondents herein/plaintiffs.

37. In the result, the Second Appeal is allowed in part. The decree of the trial Court as confirmed by the lower Appellate Court is set aside insofar as the relief of declaration is concerned and the suit shall stand dismissed in respect of the prayer for declaration. The suit shall stand decreed in respect of the prayer of permanent injunction and the decree of the trial Court as confirmed by the lower Appellate Court, in respect of the relief of permanent injunction, is confirmed. The respective parties shall bear their costs through out. Consequently, M.P.(MD) No. 1 of 2014, 1 and 2 of 2015 are closed.