
(1989) 07 MAD CK 0021
In the Madras High Court

The Commissioner, Hindu Religious and Charitable
Endowments and Another

APPELLANT

Vs

E.K. Sethuramalingam Pillai

RESPONDENT

Date of Decision : 10-07-1989

Acts Referred:

Citation : (1989) 2 LW 282 : (1989) 2 MLJ 202

Hon'ble Judges : K.M. Natarajan, J

Bench : Division Bench

Judgement

K.M. Natarajan, J.—The unsuccessful defendants before the lower appellate court have preferred this second appeal.

2. The facts which are necessary for the disposal of this second appeal are briefly as follows: The respondent-plaintiff filed a suit for declaration that Arulmigu Kanni Sidhi Vinayagar Temple in Kanni Vinayagar Street, Melapalayam, is a denominational temple belonging to the Saiva Vellalas of Melapalayam and also for a consequential relief of permanent injunction restraining the defendants and their men from interfering in any manner with the plaintiff's management of administration of the temple and for costs.

3. The case of the respondent-plaintiff is that the suit temple is a denominational temple belonging to Saiva Vellalas residing at Melapalayam. The members of the above-said community have established the temple long time back and have been maintaining the said temple all these years by spending huge amount for the improvement of the said temple. It is further stated that the Saiva Vellalas form a distinct denomination and that the said temple belongs to the said distinct denomination and hence it is denominational in nature. It is further stated that the management of the temple has been in the said community and that it has not been vested in any other community who have no right in the temple or its management. The plaintiff is the hereditary trustee of the said temple and before him, his father Kandasami Pillai was the hereditary trustee. It is only during the tenure of office of the said temple by Kandasami Pillai, he effected improvements

to the said temple in 1934 by spending about Rs. 10,000 and also performed Kumbabishekam of the temple. After him his eldest son the plaintiff is acting as trustee and that the trusteeship has always been in the family of the plaintiff for the past 50 years. The defendants have no legal authority to take over the management of the temple by way of appointing a fit person or trustee. According to the plaintiff, he has also prescribed title to the office of the trusteeship of the temple and that he cannot be removed. The first defendant in his communication dated 3-2-1978 directed the second defendant to appoint a fit person of the temple and also asked him to maintain property register etc. The plaintiff who received the communication has objected to the same and submitted his objections on 2.4.1978. It is further stated that there is no hundial or utsava idol or Kodimaram. The temple gets only 11 kottahs of paddy per year from the nanja land of an extent of 91 cents in S. No. 87/1 in Melanatham Village belonging to the temple and it has no other property either movable or immovable. The plaintiff is regularly keeping accounts and is very regular in the performance of pooj as. Though the notice u/s 80, Civil Procedure Code, sent to the first defendant was received, no reply has been sent. But the defendants are pursuing their action to appoint a trustee or fit person to the said temple. Hence the suit.

4. The said suit was resisted by the defendants and in the written statement filed by the second defendant adopted by the first defendant it is contended that the suit itself is not maintainable in law and on facts. Arulmigu Kanni Sidhi Vinayagar Temple in question is not a temple belonging to Saiva Vellalas. It is denied that the above said community established the temple long time back and they are exclusively maintaining the same and affecting improvements. Saiva Vellalas do not form a distinct denomination. No particular form of worship or distinct faith is attached to the said community people. The plaintiff or his father is not the hereditary trustee of the said temple. It is specifically denied that Kandasami Pillai, father of the plaintiff, effected improvements in the temple in the year 1934 to the tune of Rs. 10,000. The plaintiff in this case is only the community and the question of hereditary trusteeship claimed by the plaintiff has to be decided only in the forum contemplated under the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. The defendants have got a right to appoint a fit person to the temple. There is no strict proof that the temple belongs to a particular religious denomination much less to the plaintiff community. It is further stated that the temple has got other properties that the defendants have got right to do certain functions or duties even with regard to the management of a denominational temple and that the plaintiff who appears to set up in the plaint that the temple is his private temple can move the concerned Deputy Commissioner for making a declaration to that effect u/s 63(a) of the Act and that the right to manage a temple by a denomination is not recognised or referred to by a denomination is not recognised or referred to by Act 22 of 1959. On the other hand, the temple in question is one belonging to all the members of the Hindu Community without reference to any individual sect, such as, Saiva

Vellala community and the suit is liable to be dismissed.

5. The trial District Munsif on the basis of the oral and documentary evidence adduced before him came to the conclusion that the plaintiff has not established that is a denominational temple and on the other hand, it only a public temple belonging the general public Hindu Community as district from a smaller sect thereof. Consequently he dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal before the Subordinate Judge, Tirunelveli in A.S. No. 298 of 1979. The lower appellate judge allowed the appeal and decreed the suit as prayed for. Aggrieved by the same, this second appeal is filed by the defendants. It is admitted on the following substantial questions of law:

1. Whether the lower appellate court is right in holding that the suit temple is a denominational one, in the absence of any dedication totally for the welfare of Sajva Vellala Community, (a) in the absence of Production of account looks showing the control over the temple (b) in the absence of evidence to prove that succession of trustees was controlled by the community, (c) in the absence of any document showing that the suit temple belonged to the Saiva Vellala Community, and (d) when people belonging to all community offered contribution for the temple?

2. Whether the lower appellate court is right in casting the onus on the appellants/defendants to prove people belonging to other communities were also in the management, and will not the casting of the onus on wrong party vitiate the judgment in view of the judgment of the Supreme Court in *Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd. and Others*, and *Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others*, .

3. Whether the lower appellate Court is right in not following the judgments in A.S. Nos. 985 of 1974 and 815 of 1975 merely because the said judgments are not reported in the Law Journal.

4. Whether the lower appellate court is right in granting the injunction in absolute form in view of the following decisions, A.S.Nos. 985 of 1974 and 815 of 1975, S.A. No. 2239 of 1976, *Palaniandi v. Commissioner, Hindu Religious and Charitable Endowments* ILR (1980) 2 Mad. 32, *V.Balakrishnan v. The Assistant Commissioner H.R & C.E(Admn.) Department, Tirunelveli* and Ors. 1978 T.L.N.J. 359 and *T. Vellala Samudayam v. State of Tamil Nadu* 93 L.W.643.

6. Substantial question 1 to 3: - The learned Government Advocate mainly submitted that the three requirements which are necessary for declaring a particular institution a denominatal institution as laid down in *S.P. Mittal v. Union of India* : [1983]1SCR729 have not been satisfied in the instant case and on that ground alone, this appeal is to be allowed. The three conditions are:

1. It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;

2. Common organisation; and

3. Designation by a distinctive name.

It is also pointed by the learned Government Advocate that in *The Assistant Commissioner, Hindu Religious and Charitable Endowment and Others Vs. Nattanmai K.S. Ellappa Mudaliar and Others*, it has been observed in para 30 as follows:

As seen from the decision of the Supreme Court, the words "religious denomination" must take their colour from the word "Religion". It is, therefore, clear that the common faith of the community should be based on religion. It is essential that they should have common religious tenets. The basic chord which connects them should be religion and not anything else.

It was also held in the above decision:

For the purpose of invoking Article 26 of the Constitution of India, the plaintiffs have got to prove two facts: (1) that they established the temple, and (2) they maintain the temple. *S. Azeez Basha and Another Vs. Union of India (UOI)*, the Supreme Court has held that the words "establish and maintain" in Article 26(a) of the Constitution of India must be read conjunctively and it is "only those institutions which a religious denomination establishes which it can claim to maintain and that the right under Clause (a) of Article 26 will only arise where the institution is established by a religious denomination.

In view of the same the burden is on the plaintiff to prove that the temple in question was established and was being maintained by the community. "The learned Counsel for the respondent would submit that all those conditions were satisfied and that the well-considered judgment of the lower appellate court (though it was a reversing judgment) ought not to be interfered with. It is the case of the respondent plaintiff that the Saiva Vellalas of Melapalayam form a distinct denomination or a sect of Hindu community and have originally established the suit temple, that the temple building was improved and re-constructed at a huge cost by the members of the said community and that it was the said community and no member of other communities ever exercised the power of management or administration. As regards the first condition, the learned Counsel for the respondent drew the attention of this court to the evidence of P.W.1 wherein he had categorically stated that Saiva Vellalas of Melapalayam form a distinct denomination, that they are followers of Saiva Sidhandham and that they have got their own distinct religious tenets. The said evidence of P.W.I has not been challenged in cross examination and it stands un rebutted. His evidence has also been corroborated by the other witnesses examined on the side of the respondent. It is clear from their evidence that they form a common organization and that they have got a designation by a distinctive name as Saiva Vellalars of Melapalayam and that they follow a system of beliefs or doctrines, namely Saiva Sithantham, which they regard as conducive to their spiritual well-being and to their common faith. It has been established by

the oral and documentary evidence adduced on the side of the plaintiff that Saiva Vellalars form a distinct denomination and that the management of the temple has always been in the hands of the said community and no member of any other community participated in the administration of the temple. It is seen from the evidence that Kandasami Pillai (father of the Plaintiff) was the hereditary trustee and that thereafter his younger son Lakshmana Pillai was the hereditary trustee and after him P.W.I is the hereditary trustee. That the said Kandasami Pillai during his tenure of office made improvements to the temple in 1934 by spending about Rs. 10,000 is also duly established. It is the evidence of P.W.I that the suit temple was found by Saiva Vellala Community, and reliance was placed on Ex. A-12 and A-13 which relate to the invitation for thiruppani Kumbabishekam and lyrics of the temple. Ex. A-14 and A-15 are the title deeds in respect of the properties belonging to the temple in favour of the members of the community. The account books produced on behalf of the respondent also prove that the expenses for the performance of Kumbabishekam and thiruppani were met by the said community. The lower appellate Court has given convincing reasons for holding that the persons who styled themselves with the caste suffix or title, like Chettiar or Mudaliar, have made some contributions to this temple as shown by Ex. B.1 entry relating to 1107 M.E. account book and they also belong to the said Vellala community, as the people of Vellala community have been in the habit of adopting the suffix or title like Chettiar or Mudaliar even though their most popular and general title is Pillai. Reliance was placed on the book authored by Thurston and titled "Castes and Tribes of Southern India" wherein it is recorded that Saiva Vellala people have been using the caste surnames or titles of Mudaliar or Chettiar besides their usual title "Pillai". P.W. I has also spoken to that effect. The lower appellate judge on the evidence came to the conclusion that the Saiva Vellala Community had maintained and managed this temple as of right and exclusively by not allowing the people of other Hindu Castes, and that such preservation and promotion of this temple have been done by the said community through the services of the important men of that community who zealously served for the cause of the temple and religious life attached thereto only for and on behalf of Vellala Community and for the purpose of keeping the temple in the hands of the community. There is absolutely nothing to hold that the said finding suffers from any infirmity or illegality. On the other hand, it is perfectly legal and correct and supported by acceptable evidence and convincing reasons. It is to be noted that no evidence was adduced on the side of the appellants/defendants from persons belonging to other community and no document was filed to rebut the case of the respondent-plaintiff, except marking portions in the account books, filed by the plaintiff, as Ex. B. 1 and B.2. However, the lower appellate court is thoroughly wrong in not relying on the typed copy of judgment of the Madras High Court in A.S. Nos. 985 of 1974 and 815 of 1975, On the ground that any legal principle or interpretation upheld or given or applied in a case cannot be deemed to have become law unless it has been reported in a journal of case laws as provided in the Indian Law Reports Act of the Parliament and so the case cited which has not been reported in any law

journal cannot be made use of by the court. The learned Sub Judge is thoroughly wrong in not relying on the unreported judgment of this Court and the reasoning given by him is not tenable. It is unfortunate that the Presiding Officer of the cadre of Principal Subordinate Judge has not understood the scope of the precedents laid down by the High Court. The Subordinate Judge is bound to follow the judgments of the High Court, whether they are reported or not, if they are produced, provided they are certified and authenticated typed copies. As regards the first substantial question of law, it has to be answered in favour of the respondent. As already discussed, the respondent has established the necessary ingredients for holding that it is a denominational one. There is ample evidence on the side of the respondent, both oral and documentary evidence, in respect of the administration and management of the temple by the respondent. There is absolutely nothing to show that members of other communities offered contribution to the temple. As regards substantial question No. 2, the lower appellate court has not cast the onus on the appellants-defendants to prove that people belonging to other communities were also in the management. On the other hand, the lower appellate court has considered the evidence adduced on the side of the respondent-plaintiff and came to the conclusion that he has established that the suit temple is denominational in character, and while doing so, the lower appellate court observed that the appellants-defendants had not rebutted the same in any way by adducing evidence from other community people. It does not mean that the onus is shifted to the appellants-defendants to prove that the people belonging to other communities were also in the management. It is only by way of appreciation of evidence adduced by both parties, the said observation was made. The relief was granted in favour of the respondent not on the ground that the appellants-defendants failed to discharge the onus cast on them. The decision relied on by the learned Counsel for the appellants-defendants and the reported in *Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd. and Others*, is not applicable to the facts of the case. Hence substantial question No. 2 is answered in favour of the respondent. As regards substantial question No. 3, it is answered in favour of the appellants by holding that the lower appellate court is not right in refusing to follow the judgments of this court in A.S.Nos. 985 of 1974 and 815 of 1975 merely because the said judgments were not reported in the Law Journals. Those judgments are relied on in respect of substantial question No. 4 and as such they will be dealt with while considering substantial question of law No. 4.

Substantial Question of Law No. 4.

It is contended by the learned Counsel for the appellants (Department) that even in respect of denominational temple, the right of superintendence is conferred by the Act on the statutory authorities. Further they have got a right to collect the contributing fees and audit fees and as such, absolute injunction cannot be granted. In this connection the learned Counsel for the appellants relied on various decisions including the above unreported decisions. In *Tamarakalam Vellata Samudhayam Arya Kulasekhara Mangai Ammal Temple v. The State of*

Tamil Nadu, District Collector, Nagercoil 93 L.W.643 it is held:

Even in respect of a denominational temple, "the authorities under Tamil Nadu Act 22 of 1959 would have jurisdiction to levy contribution and audit fee. The denominational temples are not exempted from payment of audit of fee or contribution. The contribution and audit fee are levied for the services rendered by the department in the matter of superintendence of a temple. It is in exercise of such powers of superintendence that the accounts are audited and other services are rendered to all the temples. Therefore, it is not possible to relate the services to a particular temple to examine whether fees and contribution are payable by it. The contribution and audit fee would be leviable on any public temple of which this temple is one. Even a denominational temple, so long as it is not a private only would be liable to the contribution and the audit fee.

It was further held in the said decision:

The denomination has a right to administer its temple and not mal-administer it. If there is any maladministration, the department authorities would be in a position to exercise the necessary powers under the statute.

In *V. Balakrishnan and Ors. v. The Assistant Commissioner H.R. & C.E (Admn.) Department, Timmelveli* 1978 T.L.N.J. 359 it was held at page 363:

It may, however, be pointed out that even in the case of a denominational temple, the right of superintendence of the authorities is conferred by the Act on the statutory authorities. If there are irregularities, then certainly the authorities constituted by the Act can go into the irregularities and take any remedial steps, short of actual taking over the management of the temple. This position is clear from the decision in *Muthiah Asari v. Madasami Asari* (1965)2 M.L.J. 220.

It was ultimately held in the said decision:

If there are any irregularities, then the first respondent namely, Assistant Commissioner H.R. & C.E., Department, will be in a position to go into such irregularities and take action for remedying them. Subject to the above, the plaintiffs would be entitled to a decree and the appeal is accordingly allowed.

The decision in *Palaniandi v. Commr. H.R. & C.E.* I.L.R (1980) 2 Mad. 32 does not deal with the question about the power of superintendence of the department over temple; but only deal with the question whether the suit temple is a private denominational temple or a public temple attracting the Act. Ultimately it was held that it was a private temple. In the common judgment in A.S. No. 985 of 1974 and A.S. No. 815 of 1975 a Division Bench of this Court consisting of Ismail, and Natarajan, JJ. (Both as they then were), after considering the definition of "religious institution" under Act 22 of 1959 and the relevant provisions of Sections 51 and 107 of the Act, held:

Thus it is clear that the denominational temple is not outside the purview of the Act, but only certain restrictions have been imposed on the exercise of the power

on the part of the authorities functioning under the Act having regard to the protection available such a denominational institution under Articles 25 and 26 of the Constitution. Consequently, even if it is held that the temple in question is a denominational institution it will not automatically follow that Section 47 or Section 49 or Section 49-A of the Act will not apply, and the temple in question is not liable to pay contribution under the Act.

The above view was reiterated in S.A. No. 2239 of 1976 rendered by Ratnavel Pandian, J. (as he then was). Hence, it is clear from the ratio laid down by the Division Bench of this Court and also the uniform view in the judgment rendered by Single Judges of this Court, the lower appellate court is not right in granting injunction in favour of the respondent-plaintiff in absolute form as prayed for. So, substantial question No. 4 is answered affirmatively in favour of the appellants.

7. On the foregoing discussion and the findings on the substantial questions of law, the second appeal is partly allowed, and the decree granted by the lower appellate court to the effect that the respondent-plaintiff for himself and on behalf of the members of Saiva Vellala community of Melapalayam is declared that the Arulmigu Kanni Sidhi Vinayagar Temple in Kanni Vinayagar Street, Melapalayam is a denominational temple and that it belongs to the Saiva Vellalars of Melapalayam is confirmed. The relief of permanent injunction granted in favour of the respondent plaintiff is hereby set aside. However, it is made clear that the respondent-plaintiffs temple is not exempted from payment of any audit fee or contribution and the declaration granted is subject to the right of Superintendence of the authorities of the appellant-defendant which is conferred by the Act on them and that the contribution and audit fees are levied for the services rendered by the department in the matter of superintendence of the temple. If there is any irregularity or maladministration then certainly the authorities constituted by the Act 22 of 1959 can go into the irregularity and take any remedial step short of actual taking over the management of the temple. Subject to the above restriction, the respondent-plaintiff would be entitled to the decree and the appeal is accordingly partly allowed. However, in the circumstances of the case, there will be no order as to costs.