
(1995) 11 MAD CK 0073
In the Madras High Court

The Commissioner, H.R. and C.E. (A) Department

APPELLANT

Vs

P. Pauliah

RESPONDENT

Date of Decision : 16-11-1995

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63, 69(1), 70

Citation : (1996) 1 MLJ 206

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Judgement

Govardhan, J.—Defendant is the appellant.

2. The averments in the plaint are as follows: Sethupathiyoor is a small hamlet in Thengamputhoor village of Agasteeswaram taluk, Kanyakumari District. The plaintiff owns a private family temple "Sri Uchinimahali Amman temple" in that village. The houses of the members of the family to whom the temple belong are situate in one acre of land around the temple. The temple is a private temple. While so, the authorities of the Hindu Religious and Charitable Endowments Department took steps to apply the provisions of the Hindu Religious and Charitable Endowments Act (hereinafter referred to as "the Act"). The plaintiff has therefore filed an application u/s 63 of the Act the learned Deputy Commissioner negated the claim of the plaintiff. Against the said order, the plaintiff preferred an appeal to the Commissioner. The Commissioner has dismissed the appeal on the ground that it is barred by limitation. Hence, the plaintiff has filed the suit.

3. The defendant in his written statement contends as follows: The appeal u/s 69(1) of the Act is barred by limitation. The Commissioner has therefore dismissed the appeal correctly. There is no ground to interfere with the same. The suit is therefore liable to be dismissed.

4. On the basis of the above pleadings, there was a trial before the learned Sub Judge, Nagercoil. The learned Subordinate Judge has held that the suit temple is

a private temple, that the appeal before the Commissioner is not barred by limitation and therefore granted a decree in favour of the plaintiff as prayed for.

5. Aggrieved over the same, the defendant has come forward with this appeal.

6. The learned Counsel appearing for the appellant would contend that the Commissioner has decided the appeal as not maintainable only on the ground of limitation and he has not gone into the character and nature of the institution as to whether it is a private temple or not and the prayer in the suit to set aside the order of the Commissioner and the order of the Deputy Commissioner is not proper since the statutory suit u/s 70 can be filed only against the order of the Commissioner and no suit can be filed against the order of the Deputy Commissioner.

7. The learned Counsel appearing for the respondent would on the other hand contend that the only remedy open to a party aggrieved over the order of the Commissioner is to file a suit u/s 70 of the Act and since there cannot be any relief to the plaintiff, if the order of the Commissioner alone is sought to be set aside without a prayer for setting aside the order of the Deputy Commissioner and that the decision whether the suit temple is a private temple or a public temple is incidental to the relief sought for by the plaintiff and therefore, there is nothing improper or illegal in the framing of the suit. The judgment of the trial court would show that the trial court has decided that the decision of the Commissioner that the appeal filed by him is barred by limitation is not correct. The learned Counsel appearing for the appellant would contend that the Deputy Commissioner's Order is dated 30.6.1980 and it was received by the counsel for the plaintiff on 3.7.1980 and on the same date, he has also filed a copy application and again on 2.6.1981 he has filed another copy application and has filed the appeal before the Commissioner only on 18.10.1981 which is beyond 90 days and therefore, the Commissioner is correct in dismissing the appeal as barred by limitation. The judgment of the trial court would disclose that the defendant has not placed any material before the trial court to come to the conclusion that there was no necessity for a second copy application. On the other hand, the judgment would show that several reminders both oral and in writing has been made to the Deputy Commissioner and a communication was sent by the Deputy Commissioner requiring the plaintiff's counsel to renew his application by filing a fresh application and accordingly a fresh application was filed on 20.6.1981 and copy of the annexure to the order of the Deputy Commissioner was made available only in pursuance of this copy application and the plaintiff has filed the appeal after the receipt of the same. The trial court has observed that the files had not been filed by the department and he is accepting the contention of the plaintiff. When such reasons have been given by the trial court, it cannot be stated that there no necessity for filing a second copy application. Second copy application has been filed by the plaintiff's counsel only as required by the Deputy Commissioner and if there is any delay, the plaintiff cannot be made to suffer for the same. Therefore, the finding of the trial court

that there was no delay in filing the appeal before the Commissioner has to be upheld.

8. The next question that has to be considered is whether the judgment of the trial court in granting a decree setting aside the order of the Deputy Commissioner has to be upheld. As per Section 70 of the Act, any party aggrieved by an order passed by the Commissioner can file a suit to cancel or modify the same. The order passed by the Commissioner is the dismissal of the appeal on the ground that the appeal is barred by limitation. The Commissioner has not decided as to whether the institution is a private one or not. If the order of the Commissioner alone is set aside, no relief can be made available to the plaintiff since the Commissioner has not gone into the question whether the suit institution is a private one or not. It is only under the above contingency, the plaintiff has incorporated this prayer in the plaint. Therefore, it cannot be stated that the suit is not maintainable on account of this prayer. But, the trial court has gone a step further and has decided the question whether the suit temple is a private one or not. When once the decision of the Commissioner that the appeal is time barred is set aside. It is for the Commissioner to consider whether the order of the Deputy Commissioner is to be upheld or not. It is only subsequently, the plaintiff's right to file a suit u/s 70 would arise, in case the Commissioner holds that the order of the Deputy Commissioner is correct. The trial court need not take the role of the Commissioner and sit over the judgment of the Deputy Commissioner in granting the relief. It is more so, when the defendant has not stated anything about the correctness of the order passed by the Deputy Commissioner in the written statement filed by them. The judgment of the trial court has therefore to be set aside and the matter has to be remitted to the Commissioner to consider the appeal pending before him on account of his earlier order being set aside, and decide the appeal before him on merits. In that view, I am of opinion that the appeal has to be allowed and the decree and judgment of the trial court have to be set aside.

9. In the result, the appeal is allowed setting aside the decree and judgment of the trial court and remitting the matter to the Commissioner H.R. & C.E. Board with a direction to take the appeal by the plaintiff against the order of the Deputy Commissioner on file and decide the same on merits uninfluenced by any observation made by the Subordinate Judge, Namakkal in his judgment. In the circumstances, parties are directed to bear their own costs.