
(1993) 02 MAD CK 0023
In the Madras High Court

The Commissioner, H.R. and C.E. (Admn.) Dept.	APPELLANT
Vs	
M.V.P.B. Nammalwar	RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 70

Citation : (1993) 1 LW 707 : (1993) 2 MLJ 21

Hon'ble Judges : Bellie, J

Bench : Division Bench

Judgement

Bellie, J.—The only question for decision in the appeal is whether the subject matter of the suit which is popularly known as

Dhakshinamoorthy Math is really a math or a Samadhi.

2. The plaintiff M.V.P.B. Nammalwar filed the suit u/s 70 of the Hindu Religious and Charitable Endowments Act, 1959 for setting aside the order

passed by the Commissioner in A.P. No. 191 of 1976 which arose out of a petition filed by him before the Deputy Commissioner in O.A. No. 21

of 1975 for declaration that the Dhakshinamoorthy Math, is not a math within the meaning of the Hindu Religious and Charitable Endowments Act,

hereinafter referred to as the Act. The Deputy Commissioner dismissed the petition and on appeal the Commissioner confirmed it. To set aside that

order of the Commissioner, and to declare that the Dhakshinamoorthy Math is not a math the suit has been filed.

3. According to the plaintiff, Dhakshinamoorthy math, though it is called as math or Ashram, is only a Samadhi. The founder of the said

Dhakshinamoorthy math viz., Vedanayagam Sami did not intend it to be a math or Ashram. As per the will executed by him Abishegam,

Alangaram, Maha Neivedhyam and Gurupooja are to be conducted to the Samadhi of his Guru Michael, a Christian. There is a Samadhi of Kamel

Sami. Similarly it is also stated in the will that Abishegam, Alangaram and Gurupooja shall be conducted to the Samadhi of Vedanayagam Swami

also there. Therefore it is not a math but only a Samadhi and hence it does not come within the purview of the Hindu Religious and Charitable

Endowments Act. The further case of the plaintiff is that in A.S. No. 2 of 1963 which arose, out of O.S. No. 61 of 1961 on the file of the

Subordinate Judge, Tirunelveli, in which the present defendant was the seventh defendant the High Court of Madras has held that

Dhakshinamoorthy Ashram is only a Samadhi. Therefore the order of the Commissioner in A.P. No. 191 of 1976 declaring that the

Dhakshinamoorthy Math is a math has to be set aside.

4. As against this defendant-Commissioner Hindu Religious and Charitable Endowments Department contended that the subject-matter of the suit

has been rightly held as an Ashram or math and not a Samadhi as pleaded, and that a reading of the will executed by Vedanayagam Swami would

only show that the subject-matter of the suit is only a math. The decision of the High Court in A.S. No. 2 of 1963 will not bind this defendant. The

High Court in the earlier Judgment in A.A.O. No. 472 of 1951 had declared the subject matter of the suit as only a math. This decision might not

have been brought to the notice of the Judges who decided A.S. No. 2 of 1963. Therefore Dhakshinamoorthy Math comes within the purview of

the Hindu Religious and. Charitable Endowments Act 22 of 1959.

5. The trial court took the view that in A.S. No. 2 of 1963, a Divisional Bench of the High Court has held that the subject-matter of the suit is a

Samadhi, and in this judgment the earlier judgment of a Division Bench in A.A.O. No. 472 of 1951 holding that the subject matter of the suit is a

math has been referred to, and therefore the finding in the judgment in A.S. No. 2 of 1963 has to be followed. Therefore, the trial Court held that

the subject-matter of the suit is a Samadhi and decreed the suit as prayed for.

6. Now in the appeal by the defendant-Commissioner, H.R. & C.E., it is contended that the trial court is in error in stating that in A.S. No. 2 of

1963 the High Court has held that the subject-matter of the suit is only a Samadhi and that as against the earlier decision of the High Court in

A.A.O. No. 472 of 1951 the decision in A.S. No. 2 of 1963 has to be followed. It appears this argument has much force.

7. The earlier judgment of the High Court in A.A.O. No. 472 of 1951 has been filed Ex.10 and the lower Court Order from which that appeal

arose has been filed as Ex.A-9 which has been rendered in O.P. No. 85 of 1949, and the later decision of the High Court in A.S. No. 2 of 1963

has been filed as Ex.A-6 and the Judgment of the lower court out of which that appeal arose has been filed as Ex.A-5. A perusal of Ex.A-5 shows

that the suit in that matter has been filed by four plain tills in a representative capacity for the Seerkudi Vellala community of Tirunelveli District

against the plaintiff herein as the first defendant and others, the defendant herein being the seventh defendant therein, for declaration that the first

defendant is not the duly appointed trustee of the math and for framing a scheme for administration of the math and for accounts from the first

defendant.

That suit was dismissed by the trial Court and the High Court while holding that the first defendant therein, i.e., the plaintiff herein is not ineligible to

be a trustee as contended by the plaintiff therein, stated that ""the present suit math is only a Samadhi, where some charities mentioned in Schedule

2 to Ex.A-1 are performed"". It was not a point for decision in that suit whether the Dhakshinamoorthy math was a math or Samadhi. No such issue

has been framed. It was only while giving a decision whether the first defendant therein was ineligible to be the trustee of the math the High Court

has made the statement mentioned above. Therefore the said statement, as the learned Government Pleader appearing for the appellant-defendant

would submit, is only a passing comment made by the High Court and it is not a finding.

While so O.P. No. 85 of 1949 has been filed by one Paramananda Swamigal as the then trustee of the Dhakshinamoorthy Math u/s 84 (2) of the

Madras Hindu Religious Endowment Act (Act II of 1927) to set aside a decision of the Board declaring that "Dhakshinamoorthy Math" is indeed

a math as defined u/s 9(7) of that Act. The Board as the first defendant therein resisted the Original Petition contending that the finding of the

Board is correct. Therefore the issue for decision there was whether the "Dhakshinamoorthy math" was indeed a math or not.

The learned District Judge who tried the Original Petition decided that the Board's order that it is a math as per the definition of "math" in the Act

is correct and he dismissed the Original Petition. Against this an appeal was filed in A.A.O. No. 472 of 1951 and in that a Division Bench of this

High Court accepted the finding of the trial court and dismissed the appeal. Thus in the earlier Division Bench judgment of the High Court Ex.A-10

the direct question was whether "Dhakshinamoorthy Math" was a math or not and it was decided that it was a math. Therefore on the question at

issue this earlier judgment of the High Court would prevail.

8. It was however argued by Mr. B. Kumar, learned Counsel appearing for the respondent-plaintiff that the Judgment was rendered under the

provisions of the Act 2 of 1927 and in the present matter a decision has to be given as per the later Act i.e., Act 22 of 1959 and therefore the

finding in that judgment cannot be relied upon. In this connection the learned Counsel would cite a decision of the Supreme Court in State of

Madras Vs. Kunnakudi Melamatam and Another, , wherein it was held that,

The decision of the Board dated February 12, 1932 was given under Act II 1927 and was final for purposes of that Act, but it is not final for

purposes of Act XIX of 1951.

May be this is correct. But if the definition of "math" in the earlier Act is substantially the same as the definition in the later Act, and there is no

significant change, then it would be quite justified to follow the decision of the High Court rendered under the earlier Act. For this purpose it would

be better to extract the definition under the two Acts. As per Act 2 of 1927 the definition of "math" is as follows:

"math" means an institution for the promotion of the Hindu Religion, presided over by a person whose duty is to engage himself in spiritual service

or who exercises or claims to exercise spiritual headship over a body of disciples and succession to whose office devolves in accordance with the

directions of the founder of the institution or is regulated by usage; and includes places of religious worship-other than a temple or places of

religious instruction, which are appurtenant to such institution.

In the present Act 22 of 1959 the "math" has been defined as follows:

"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 a 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.

A close scrutiny of these two definitions would show that the only difference is that while as per the later definition properties shall be attached to

the institution in question, in the earlier definition there is no such thing. In all other respects the definitions are similar. Hence if there are properties

attached to "Dhakshinamoorthy math" then there is no difficulty in relying on the finding given in the earlier judgment of the High Court i.e., Ex.A-

10 to hold that the institution is a "math" or not. In the plaint itself it is mentioned that "Dhakshinamoorthy math" has its own properties.

9. Now, a perusal of Ex. A-9 judgment of the trial court in O.P. No. 85 of 1949 shows that the learned trial Judge has considered all the aspects

of the definition of math one by one as conditions 1 to 4 and held that all the conditions have been satisfied and therefore the "Dhakshinamoorthy

math" is a "math" as per the Act. The High Court in the appeal, as seen from Ex.A-10 has complimented the learned District Judge stating that

after a very exhaustive and careful summary of the entire evidence let in before him he has come to the conclusion that it is such an institution. Then

the High Court itself considering the arguments advanced before it against the order of the trial court has held that, ""we are satisfied that the

institution is one which comes within the purview of the definition,"" I do not think that in the present appeal it is necessary to once again consider

whether it is a "math" or not. The very fact that the institution is indisputably called "Dhakshinamoorthy math" militates against the contention that it

is not a math but only a "Samadhi".

10. The learned trial Judge in our case is in error when he states that the earlier Judgment Ex.A-10 of the High Court was brought to the notice of

the learned Judges who had given the later Judgment Ex.A-6. There is nothing to indicate in Ex.A-6 judgment that it was so. For all these reasons I

take the view that the Judgment of the trial court holding that "Dhakshinamoorthy math" is a "Samadhi" is incorrect, and hold that it is a "math"

coming within the purview of Act 22 of 1959.

11. In the result, therefore, the appeal is allowed; the judgment and decree of the trial court are set aside; and the suit is dismissed. Considering the circumstances there will be no order as to costs throughout.