

(2017) 06 MAD CK 0061

In the Madras High Court

Case No : 743 and 746 of 2017 and CMP(MD)Nos 3406, 3435, 3742 and 3743 of 2017

The Executive Officer, A/m. Pandimuneeswar Thirukovil

APPELLANT

Vs

P.Seethalakshmi

RESPONDENT

Date of Decision : 01-06-2017

Acts Referred:

Constitution of India, Article 227 -
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, Section 45(1),
Section 108, Section 53, Section 55, Section 46(3), Section 63(e)

Citation : (2017) 06 MAD CK 0061

Hon'ble Judges : G.Jayachandran

Bench : SINGLE BENCH

Advocate : G.Jayachandran

Final Decision : Allowed

Judgement

1. These two revision petitions are filed by the defendant in the suit namely, the Executive Officer, Arulmigu Pandimuneeswarar Thirukovil, Melamada, Madurai.

2. The facts leading to the present revisions are as under:- Arulmigu Pandimuneeswarar Thirukovil, Melamada at Madurai is a public temple as declared by the decree in A.S.No.1 of 1925 on the file of the 1st Additional Sub Court, Madurai. The temple has been administered by the members of a particular family as trustees cum poojaries. The right of trusteeship has been succeeded hereditarily. The temple has been notified by the Government under Section 46(iii) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as ""the Act""). As early as 1939, the Commissioner of HR & CE has issued directions to the then trustees to maintain proper accounts and submit the same periodically for scrutiny of the Board and has also recognised the hereditary trusteeship of the members belonging to the family of one Valliammal. In due course, after some litigation between the members of the trustees' family, it has been agreed by them that the hereditary

trustees shall perform poojas on weekly turn basis. Accordingly, compromise decree has also been passed in O.S.No.383/1973 on the file of the Principal District Munsif, Madurai Town.

3. On 21.03.2015, a show cause notice was issued to the hereditary trustees why action should not be taken against them for the alleged irregularities and defects in the administration of the temple. At that point of time, there were 8 hereditary trustees. This was challenged by one of the hereditary trustees by name, Saravana Pandian by way of writ petition and the same was allowed pointing out the procedural lapse in the show cause notice. Thereafter, a fresh show cause notice under Section 53 of the Act, framing 12 charges was issued on 02.03.2016 and consequently, the hereditary trustees were placed under suspension pending enquiry and a fit person was appointed to administer the affairs of the temple. This was challenged by some of the suspended trustees.

4. The charge against these suspended trustees includes alienation of the temple property without authority, misappropriation of donations and failure to perform the duty as poojaris of the temple contrarily creating financial loss to the temple for their personal gain. The fit person appointed to administer the affairs of the temple submitted a report to the Joint Commissioner of HR & CE Department, Madurai, who recommended appointment of Executive Officer for the temple. Based on his recommendation, on 12.05.2016, the HR & CE Department passed an order appointing Executive Officer for the said temple under Section 45(1) of the Act. The enquiry conducted against the suspended hereditary trustees concluded with the finding of guilty leading to removal of all the hereditary trustees from the office in exercise of the power under Section 53 of the Act.

5. The suspension of the hereditary trustees, appointment of fit person and appointment of Executive Officer for Arulmigu Pandimuneeswarar Temple were the subject matter of W.A(MD)Nos. 1133/2016 etc., batch. The Division Bench of this Court heard all the matters and considering the legal and factual issues involved in the matter, has passed a common judgment on 28.03.2017. Some of the findings in the said judgment which are relevant to these revisions are as under:-

""79.In W.P.(MD)No.11679 of 2016 the prime objection that was raised by the writ petitioner is that he is entitled to a share in the income that may be derived by the temple administration by introducing ticket system and that the temple administration has no right under Section 57 of the Act to introduce such ticket system without even deciding the share of the income that should be given to the poojaris. The representation of the writ petitioner was rejected by the Executive Officer by order dated 20.06.2016. In the order, the Executive Officer referred to the pendency of A.S.No.801 of 2002 before this Court which was in relation to 50% share that is being given to the poojaris on the hundial collections. Since the matter regarding the entitlement of poojari is pending before this Court in the first appeal, the Executive Officer rejected the representation of the writ petitioner on the ground that the petitioner's request

to get share in the ticket collections will be decided after the judgment in the pending first appeal in A.S.No.801 of 2002. Section 57 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, reads as follows:

""57. Power to fix fees for services, etc., and to determine their appointment.- Notwithstanding anything contained in any scheme settled or deemed to have been settled under this Act, or any decree or usage to the contrary, the trustee of a religious institution shall have power, subject to such conditions as [the Commissioner] may, by general or special order, direct, to fix fees for the performance of any service, ritual or ceremony in such religious institution and determine what portion, if any, of such fees shall be paid to the archakas or other office-holders or servants of such religious institution.""

80. One of the contentions of the writ petitioner in the present writ petition is that Section 57 does not authorise the Executive Officer or the Fit Person to fix the fees as he is not the trustee. In this case, appointment of the Executive Officer has been upheld by this Court in this judgment. The Fit Person appointed earlier has issued the impugned notification wherein he has only advertised the proposal to introduce the ticket system for the services and rituals that are offered to the deities in the temple on behalf of devotees. On the basis of the objection if any received from the public or by the persons interested, the Executive Officer may subject to the condition, the Commissioner may impose or specify, will implement the ticket system in the temple. It is not open to the poojari of the temple to raise an objection without getting his right established either under Section 63(e) or in terms of Section 57 by approaching the authorities. The order rejecting the objection of the writ petitioner is perfectly in order and the petitioner cannot have any grievance in the light of the reasons that are stated in the order of the Executive Officer dated 20.06.2016.""

6. Regarding suspension of trustees pending enquiry, there was division among the learned Judges. While the Hon"ble Mr.Justice S.S.Sundar has held that suspension pending enquiry is valid, the Hon"ble Mr.Justice Nooty Ramamohana Rao in his separate judgment has observed that even for suspension pending enquiry, the trustees should have been put on notice and held that the order suspending the trustees vide G.O.Ms.No.41, Tourism, Cultural and Endowments Department, dated 02.03.2016 is not sustainable in law. However, both the learned Judges have agreed in all other aspects. Insofar as the status of the hereditary trustees is concerned, both the learned Judges unanimously held as under:-

""82. In the result, C.M.A.(MD)Nos.583, 669, 670 and 819 of 2016 are allowed and the order of Government passed in exercise of power under Section 53 of the Act removing the hereditary trustees of the temple from office vide G.O.Ms.No.158, Tourism, Culture and Endowments Department, dated 13.05.2016, is set aside and the matter is remitted to the Government to pass an appropriate order after holding enquiry by exercising the power prescribed in Holding of Inquiries Rules framed by the Government under Section 116 of the

Act. The appellants and other trustees are permitted to avail the opportunity of examination of the witness on their behalf or for marking of document and for letting in evidence both oral and documentary, as contemplated under the rules. The Government is directed to complete the enquiry and pass orders afresh in accordance with law and in the light of the observations made earlier within a maximum period of six months from the date of receipt of a copy of this order. Having regard to the fact that the charges framed against the trustees are serious, the order temporarily suspending the trustees during the pendency of the enquiry shall continue to be in force till the final order is passed by the first respondent, subject of course to their rights of performing poojas in the temple. The appellants as well as the trustees are directed to cooperate with the enquiry and for passing of final order within the time frame. In case of difficulty, it is also open to the Government to seek extension of time from this Court, if it is required, either in the interest of justice or for any other valid reason."''

7. In the abovesaid background, one P.Seethalakshmi who is the plaintiff in O.S.No.83/2017 has filed a suit for declaration and permanent injunction on the premise that she is one of the hereditary trustees of Arulmigu Pandimuneeswarar Temple. Her husband P.Pandian Poosari was the Chief Managing Trustee of the temple for a particular period and was performing pooja service till his death on 12.11.2003. After the demise of her husband, the Joint Commissioner, HR & CE Department, appointed her to perform pooja for the week turn of P.Pandian Poosari by his order dated 04.12.2003 which was challenged by one Maruthu Pandi. The issue was finally given quietus by the High Court in W.A(MD)Nos.1590 and 1995 of 2011 on 24.06.2013, wherein, her right of succession was affirmed and as per the said judgment, she is performing pooja service without anybody's interference and receiving offerings which she is entitled. While so, an official memorandum in Na.Ka.No.12/2017/B1, dated 16.03.2017, signed by the fit person/Deputy Commissioner of the temple, has been issued stating that all the plate collections which are given by the devotees are to be accounted to the temple.

8. Aggrieved by the said memo, the said Seethalaxmi has filed O.S.No.83/2017 seeking the relief of declaration to declare the official memo in Na.Ka.No.12/2017/B1, dated 16.03.2017, issued by the Executive Officer, Arulmigu Pandimuneeswarar Temple, Madurai, as null and void and inoperative and not binding on the plaintiff. Permanent injunction restraining the defendant, their men, agent, servant anybody claiming through them from interfering with the plaintiff's peaceful performance of pooja service and entitlement of plate collection was also sought for. Along with the said suit, the plaintiff has also taken out I.A.No.613/17 seeking temporary injunction restraining the respondent/defendant, their men, agent, servant anybody claiming through them from interfering with the peaceful performance of her pooja service and entitlement of plate collection till the disposal of the suit and in meantime, grant ad-interim injunction till the disposal of that application.

9. The Trial Court has granted ad-interim injunction on 05.04.2017 restraining the revision petitioner herein from interfering with the peaceful performance of poojas and entitlement of plate collection. Aggrieved by the said order, the Executive Officer, HR & CE Department, who is the defendant in O.S.No.83/17 and respondent in I.A.No.613/17 has preferred the present revision petitions.

10. The grounds raised in the revision petitions are as under:-

(i)The suit is not maintainable or sustainable both on law and facts and the plaint deserves to be struck off since by order of the Division Bench dated 28.03.2017, the appointment of Executive Officer has been upheld and the removal of hereditary trustees has been set aside for fresh consideration.

(ii)Though there was divergent opinion regarding suspension of trustees pending enquiry, since the matter has been remitted back to the Government for fresh consideration and the Court has allowed the poojaries to perform poojas in the temple till the disposal of the enquiry, the respondent/plaintiff who claims to be one of the poojaries has no locus to sustain the suit touching upon the administration of the temple and claim right in the plate collection referring customary practice.

(iii)When there is a specific bar to entertain the suit under Section 108 of the Act, the learned District Munsif ought not to have entertained the suit. Furthermore, the Court ought not to have granted ex parte injunction thereby paved way to the plaintiff/petitioner to make unjust enrichment of taking away the plate collection offered by the devotees.

(iv)A poojari is servant of the temple and falls within the meaning of Section 55 of the Act. If any servant of the temple is aggrieved by the administrative decision, the appropriate remedy is provided under the Act. When there is a provision made under the Act to determine or decide a dispute, the suit shall not be maintained.

(v)Suppressing the judgment of the Division Bench delivered on 28.03.2017, the respondent herein has instituted the suit and obtained ex parte interim order. Since the interim order obtained by fraud and suppression, it is not sustainable.

11. On the basis of the grounds of revisions raised in both the revision petitions and considering the prima facie materials placed before this Court, this Court on 07.04.2017 passed the following interim order:-

""The revision petitioner is the defendant in O.S. No.83 of 2017. The brief facts leading to this revision is as one Arulmigu Pandi Muneeswarar Kovil is a temple administered by the hereditary trustee cum poojaries. The temple is supervised and overall administered by the Hindu Religious and Charitable Endowments Department. When the Department found that there was some mal-administration of the temple, it superseded the hereditary trustees and appointed fit person/Executive Officer which has been challenged by the aggrieved poojaries. The dispute has reached the finality, after few rounds of

litigations, by the Division Bench in W.A.(MD).No.1133 and 1143 of 2016 and related batch of Civil Miscellaneous Appeals and the Writ Petitions by a common order dated 28.03.2017.

2. The Division Bench of this Court has categorically observed that the removal of hereditary trustees has not been done in accordance with the procedure established under law and therefore a fresh proceedings should be initiated by the department if necessary and so far as the plate collection is concerned, which was the subject matter of the Writ petition in W.P. (MD) No.9887 of 2016 filed by one of the poojaries, similarly placed to the present respondent in the revision petition in O.S.No.83 of 2017, this Court has negated the claim of the poojari his right on the plate collection and directed him to approach the Commissioner, Hindu Religious and Charitable Endowments Department under Section 63 (e) of Hindu Religious and Charitable Endowments Act.

3.It is now stated by the counsel for the revision petitioner that an application has already been filed by one of the poojaries and it is pending adjudication. When the facts stood thus, the respondent herein who is the plaintiff in O.S.No.83 of 2017 has filed a suit before the District Munsif Court, Melur, to declare the official memo dated 16.03.2017 issued by the revision petitioner herein as null and void, and sought for permanent injunction restraining the respondent herein from intervening with peaceful performance of pooja services and her entitlement of plate collection.

4.Along with the said suit the respondent herein has also filed I.A.No.613 of 2017 under order 39 Rule 1 and 2 of C.P.C seeking for temporary injunction restraining the respondent/defendant (revision petitioner herein) from intervening with the peaceful performance of the pooja service and entitlement of plate collection till the disposal of the suit and in the mean time, seeks for Ad-Interim injunction till the disposal of the I.A. No. 613 of 2017.

5.The learned Munisiff has granted interim exparte injunction on 05.04.2017 till 13.04.2017. Aggrieved by this exparte interim injunction, the defendant/respondent in the suit has now preferred in the present revision petition.

6.Heard the learned counsel for the revision petitioner and also learned counsel appearing for the respondent.

7.On the face of the record, it appears that the poojaries entitlement of the plate collection is now the subject matter of proceedings under Section 63 (e) of Hindu Religious and Charitable Endowments Act pending before the Commissioner, Hindu Religious and Charitable Endowments Department. This proceedings is the aftermath of the direction given by this Court in the batch of cases referred above. While so, before any adjudication on the right of the poojaries to have exclusive claim over the plate collection, it is not legally correct to multiple the proceedings by way of initiating civil cases by similarly placed persons, that too in the light of Section 108 of Hindu Religious and Charitable Endowments Act which bars, suits or other legal proceedings in respect of administration or

management of religious institutions, when there is an alternate provision available under the Hindu Religious and Charitable Endowments Act.

8. Since, this issue pertains to the collection of money from the devotees, this Court is constrained to stay all the proceedings pending before the Civil Court in O.S.No.83 of 2017. The interim order passed by the Civil Court in I.A. No. 613 of 2017, dated 05.04.2017 is also stayed on the following conditions:-

"The revision petitioner herein shall have a separate account for the daily plate collections and keep it separately till the disposal of this revision petition. The said accounting shall either be done by the revision petitioner or any person authorised by him in the presence of the poojari of that particular day. The money so deposited shall not be utilized for any purpose and the entitlement of plaintiff and similarly placed poojaries shall be decided while disposing the revision petition."

9. Post the matter on 13.04.2017."

12. On consent of both the parties, the matter was taken up for final disposal in the voluntary sitting during summer vacation.

13. Heard the learned counsel for the respective parties.

14. The learned counsel appearing for the revision petitioner submitted that the suit as framed is not maintainable in the light of Section 108 of the Act and the respondent/plaintiff has no locus to maintain the present suit and question the administrative action of the Executive Officer whose appointment is upheld by the Division Bench.

15. Per contra, the learned counsel appearing for the respondent submitted that the respondent is not a party to the proceedings which is the subject matter of the judgment rendered by the Division Bench in W.A(MD)Nos.1133/16 etc., batch dated 28.03.2017. Insofar as the respondent is concerned, her right to perform pooja and to stake claim in the plate collection and other offerings are untouched and well protected by the judgment passed in W.A(MD)Nos.1590 and 1995 of 2011 dated 24.06.2013. The memo purported to have been issued by the fit person/Deputy Commissioner is without any authority and such order passed without authority is amenable to Civil Court jurisdiction and there is no bar under Section 108 of the Act.

16. Regarding the locus standi of the respondent, the learned counsel for the respondent submitted that her right of poojariship was recognised as early as 04.12.2003 by the proceedings of the Joint Commissioner and the same was confirmed by the Commissioner vide his order dated 06.05.2004. When that was challenged by way of writ petition by her rival claimant Maruthu Pandi, the learned single Judge ordered to share the offerings equally between herself(Seethalakshmi) and her rival claimant Maruthupandi till the life time of Seethalakshmi and thereafter, the hereditary trustees shall fall on her rival claimant Maruthu Pandi. This order was challenged by both the respondent

herein and Maruthu Pandi in W.A(MD)Nos.1590 and 1995 of 2011 respectively, wherein, the Division Bench of this Court has set aside the order of the single Judge passed in W.P.No.14288 of 2004, dated 28.07.2011. In the said judgment, the Division Bench has held that hereditary trusteeship has to be decided only after letting in evidence and therefore, the matter has to be necessarily decided by the competent civil Court and this Court at this stage cannot express any opinion on those pleas till the matter is decided by the competent Civil Court, till then, the orders passed by respondents 2 and 3/HR & CE Department shall continue.

17. Relying upon the said observation, the learned counsel for the respondent submitted that the suit as instituted is maintainable both on law and facts and the respondent herein is entitled to file the said suit and there is no deficiency in locus to sustain the suit.

18. The learned counsel for the revision petitioner in support of his submission that the suit is not maintainable and the respondent/plaintiff has no locus to seek a prayer to share the offerings, relied upon the celebrated judgment of the Hon'ble Supreme Court in Sri Jagannath Temple Puri Management Committee rep through its Administrator and another vs. Chintamani Khuntia and others reported in AIR 1997 SC 3839, wherein, the Apex Court has held as under:-

""47.A review of all these judgments goes to show that the consistent view of this Court has been that although the State cannot interfere with freedom of a person to profess, practice and propagate his religion, the State, however, can control the secular matters connected with religion. All the activities in or connected with a temple are not religious activities. The management of a temple or maintenance of discipline and order inside the temple can be controlled by the State. If any law is passed for taking over the management of a temple it cannot be struck down as violative of Article 25 or Article 26 of the Constitution. The management of the temple is a secular act. The temple authority may also control the activities of various servants of the temple. The disciplinary power over the servants of the temple, including the priests, may be given to the Temple Committee appointed by the State. The Temple Committee can decide the quantum and manner of payment of remuneration to the servants. Merely because a system of payment is prevalent for a number of years, is no ground for holding that such system must continue for all times. The payment of remuneration to the temple servants was not a religious act but was of purely secular nature.

48.In view of these principles laid down in the aforesaid cases and having regard to the facts of this case, we are of the view that the installation of the Hundis for collection of offerings made by the devotees inside the Jagannath Temple at Puri did not violate the religious rights of the Sevaks of the Temple in any manner even though the Sevaks were denied any share out of the offerings made in the Hundis. Section 28-B of the Act cannot be struck down as violative of religious or property rights of the Sevaks.

49. We are also of the view that it was open to the State to set up the Foundation Fund out of donations exceeding five hundred rupees made to the temple. The Sevaks could not claim any share out of the donations or contributions made to the Foundation Fund as of right. Sub-section (9) of Section 28-C was validly enacted.'"

19. Per contra, the learned counsel for the respondent submitted that the abovesaid judgment has no bearing to the facts of the case in view of the provisions of the Hindu Religious and Charitable Endowments Act, 1959, which is different from the provisions of Shri Jagannath Temple Act (11 of 1955) and also in view of the judgments rendered by the Hon'ble High Court in similar set of facts. In support of the said submission, the learned counsel for the respondent relied upon the judgment in Sri Vallabna Ganesar Devasthanam Sannadhi Street, Tiruvannamalai, represented by Kailasa Mudaliar and others vs A. Anandavadivelu Mudaliar and others, reported in 1980 The Madras Law Journal Reports 140, wherein, it has been held as under:-

"11. The principle on which the jurisdiction of the Civil Court is excluded under section 108 of the Act are now well-settled.

If the dispute raised in the suit relates to the administration or management of a religious institution or any other matter for the determination of which a provision has been made in the Act the bar under section 108 of the Act will be attracted. On the other hand if the question arising for adjudication falls outside the scope and ambit of section 108 of the Act, then the civil Court will have jurisdiction to entertain the suit and the bar of exclusion of jurisdiction provided for under section 108 cannot be invoked. 12. It is equally settled that if in a suit any matter in respect of which a provision is made under the Act had to be incidentally decided, the jurisdiction of the civil Court will not be excluded. To be more specific if any other question in respect of which the power is conferred on the Deputy Commissioner to decide under section 63 of the Act, arises incidentally for consideration in a suit, the jurisdiction of the civil Court will not be excluded.

Notwithstanding section 108 of the Act, where the dispute relating to a temple is only between two private parties and the Board is not directly concerned, the Civil Court has jurisdiction to try the suit.'"

20. The counsel for respondent also relied on a judgment in V.S. Lakshminarayanan Iyengar and 8 others vs. M.C. Arunachala Pillai and 8 others reported in 1999 (II) CTC 635, wherein, it has been held as under:-

"15. Following the decision of Venkataswamy, J., as he then was, there is no difficulty in holding that the present suit is maintainable and it is not barred under section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

16. Ex. B. I will not exclude or disable the plaintiffs from claiming the rights which

they seek to enforce before the Civil Court. That apart even in the earlier litigation between the plaintiffs and the defendant temple in O.S.No. 779 of 1930 and O.S.No. 153 of 1973, the hereditary right of poojari had been declared and certain rights of the plaintiffs and their predecessors have been declared in O.S.No. 779 of 1930 and O.S.No. 153 of 1973. The dismissal of O.A.No. 149 of 1981 as seen from Ex.B.2 will not disentitle the plaintiffs from agitating the suit claim before the Civil Court and this is not being challenged. It has already been declared that the plaintiffs have the hereditary right of poojari and their claim to collect Neivethiyam of padi arisi in the earlier proceedings which had not been hitherto interfered with, it is to follow that the plaintiffs are entitled to collect paid arisi and the plaintiffs are also entitled to the offerings of padi arisi made by the devotees from time to time using the season which now it is admitted is throughout the year as against the practice of seasonal in origin.'"

21. So far as the peculiar facts of the case in hand, the very right of administering the temple by the hereditary trustees is under dispute and yet to be decided. The Division Bench in W.A.(MD)No.1133/2016 etc batch., while protecting their right of performing poojas had pointed out that as far as sharing of Hundial collection is concerned, it is the subject matter of A.S.No.801/2002 which is pending for final disposal. Hence, aspects regarding fixation of fees and share in the plate collection could be decided only after the judgment in the pending A.S.No.801/2002. Further, it is pertinent to point out at this juncture that the plate collection which is the subject matter of the suit is not a practice of seasonal in origin to get umbrage under the decision cited above.

22. Further, apart from the rights of the hereditary trustees/poojaris, as a class, even as an individual, the status of the plaintiff is under dispute. However, in her plaint, she has claimed as if her hereditary trusteeship has been finally confirmed by the Court and her status as hereditary trustee has been declared by the Court which is factually not correct. Her status is now been referred to the Civil Court for adjudication. Till her status is decided, her right is restricted only to perform pooja and nothing more than that. While so, the official memorandum issued by the competent authority binds all concerned and the plaintiff cannot have an independent right more than what the other hereditary trustee enjoys.

23. The contention of the plaintiff is that her right to perform pooja service is interfered by the respondent and by way of official memo, her entitlement in the plate collection is interfered. As pointed out earlier, the very status of the plaintiff as hereditary trustee itself is yet to be decided. Therefore, any relief which the plaintiff wants on the matter touching upon the administration of the temple, she has to approach the appropriate authority under the provisions of the Act and not by way of civil suit. All the judgments which have been referred to by the learned counsel for the respondent are regarding a person who has right of trusteeship or share in the offerings and which has been deprived by an executive action. The facts of this case are entirely different from those cases.

24. If we look at the main prayer of the suit in O.S.No.83/2017, it is couched in

such a way that the memo issued by the revision petitioner is under challenge since it is issued without authority and not binding on the plaintiff. So, the plaintiff has every right to take the plate collection. If we look at the authority of the Executive Officer who has issued the impugned memo, his appointment has been upheld by the Division Bench in W.A(MD)Nos.1133/16 etc., batch dated 28.03.2017. Therefore, it is a vain attempt to question the authority of the Executive Officer issuing the memo to account the plate collection of the temple. Insofar as the other portion of the prayer that such memo will not bind the plaintiff and the plaintiff can have free hand in the plate collection is also not in consonance with the facts since the plaintiff's claim of hereditary trusteeship itself is subject matter of a separate litigation and her right to perform pooja is only an interim arrangement as per the judgment of this Court in W.A(MD)Nos.1590 and 1995 of 2011 on 24.06.2013

25. Admittedly, the litigation between the respondent herein/plaintiff and rival claimant Muthu Pandi is not yet over. The Division Bench of this Court in the proceedings between her and her rival claimant has only given her right what has been recognised by the HR & CE Department by the order of the Commissioner dated 06.05.2004 affirming the order of the Joint Commissioner dated 04.12.2003. A close scrutiny of these two orders only entails the plaintiff to perform pooja and nothing more and more particularly, the order of the Joint Commissioner dated 04.12.2003 is restricted only pooja for the ensuing week and not a perpetual order. The order of the Joint Commissioner dated 04.12.2003 is very clear and specific. The plaintiff herein has not furnished the legal heirship certificate to the Joint Commissioner on the date when he has passed that order. While permitting the plaintiff to perform pooja for the ensuing week alone, the Joint Commissioner has also specifically stated that the order regarding share in the plate collection will be issued separately but, till date, no order has been passed to that effect. The reason is very obvious. On the day when the plaintiff gave representation to the Joint Commissioner to appoint her as hereditary trustee on the demise of her husband on 12.11.2003, her rival claimant Maruthu Pandi has also made a claim for appointing him as poojari.

26. When the Joint Commissioner passed order in favour of the plaintiff on 04.12.2003, immediately that was challenged by Maruthu Pandi and stay was also granted. Only on 06.05.2004, the Joint Commissioner order was confirmed by the Commissioner by dismissing the appeal preferred by Maruthu Pandi. Aggrieved by that, Maruthu Pandi has filed W.P.No.14288 of 2004 and in the said writ petition, the learned single Judge vide his order dated 28.07.2011, has permitted both the Seethalakshmi and Maruthu Pandi to share the offerings till the life time of Seethalakshmi. Both the parties were aggrieved by the said order and have challenged the same before the Division Bench by way of writ appeals and in the writ appeals, parties were directed to approach the Civil Court to settle their legal heirship. In the meanwhile, the Division Bench has directed the authorities to enforce the order passed by the Joint Commissioner on 04.12.2003 as confirmed by the Commissioner on 06.05.2004. Though by way of an interim

arrangement, the plaintiff was enjoying share in the offerings, after the order passed by the Division Bench in W.A(MD)Nos.1590 and 1995 of 2011 on 24.06.2013, the plaintiff has right of performing pooja but she can have no right to claim any share in the offerings. Therefore, the prayer as made in the plaint which consists of two parts, viz., i)Authority of the Executive Officer issuing memo regarding accounting of plate collection; and ii)Binding effect of the memo on the plaintiff, both are unsustainable in view of the judgment passed in W.A(MD)Nos.1590 and 1995 of 2011 on 24.06.2013 as well as in W.A(MD)Nos.1133/16 etc., batch dated 28.03.2017.

27. As repeatedly pointed, the very status of the plaintiff itself is to be ascertained and finalised by the competent Court. When there is a rival claim regarding trusteeship and the right of performing pooja alone is permitted, claiming share in plate collection is not a matter of right. Even if the plaintiff is declared to be the poojari, it is a matter under dispute whether she like any other poojaries of the said temple will be entitled for plate collection in full or it has to be taken as offering to the deity. This issue has to be decided under Section 63(e) of the Act as per the direction of the Division Bench in para 78 of the judgement in W.A(MD)Nos.1133/2016 etc., batch dated 28.03.2017(supra). While the Division Bench of the High Court has already directed the poojaries to approach the authority under Section 63(e) of the Act regarding the share in the offerings, the plaintiff who is not even a declared hereditary trustee by the competent Court, cannot have any independent right more and above what other hereditary trustees enjoy.

28. Insofar as the maintainability of the suit is concerned, no doubt, when there is no alternative remedy for the relief sought available in any enactment, Civil Court is the competent Court for redressal. In this case, after flood of litigations before the High Court, the issues are substantially settled in the latter judgment of the Division Bench in W.A(MD)Nos.1133/16 etc., batch dated 28.03.2017, wherein, it has been categorically held that the incompetency of the hereditary trustees has to be dealt afresh after giving opportunity, till then, hereditary trustees cum poojaries are entitled to perform poojas and insofar as the their shares in the offerings, they have to approach the competent authority under Section 63(e) of the Act. In the earlier judgment in W.A(MD)Nos.1590 and 1995 of 2011 dated 24.06.2013, the Division Bench has already held that the respondent's right to claim hereditary trusteeship depends upon the outcome of the dispute between herself and her rival claimant Maruthu Pandi.

29. When the right of trusteeship and sharing of offerings already been sub-judiced in the earlier proceedings, the present suit suppressing those facts, with relief cleverly couched but touching upon the administration of the temple is not maintainable and barred under Section 108 of the Act. Therefore, this Court has no second opinion to hold that the plaintiff first lacks locus to maintain the suit and secondly, the suit itself is not maintainable since the relief sought is regarding the right to administer the temple for which civil suit is barred under

Section 108 of the Hindu Religious and Charitable Endowments Act.

30. The relief sought by the respondent/plaintiff is two-fold; (i) her right to perform pooja as poojari and (ii) her entitlement in the offerings. So far as her hereditary right is concerned, it is already the subject matter of the earlier proceedings which culminated in SLP wherein, the dispute regarding the hereditary trusteeship has been referred to the competent Court. By virtue of the Division Bench judgment, the plaintiff continues to perform pooja as per her turn. Her right to perform pooja is no way interfered by the defendant through the offending memo in Na.Ka.No.12/2017/B1 dated 16.03.2017. Therefore, there is no cause of action to sustain a suit for the said relief. Even according to the plaintiff, her performance of pooja as per the judgment of this Court in W.A(MD)Nos.1590 and 1995 of 2011 dated 24.06.2013 is ensured and not interfered.

31. Secondly, regarding the plea of plate collection, the Division Bench in paragraph 78 of the order in W.A(MD)Nos.1133/16 etc., batch dated 28.03.2017 which is extracted below, has already directed the poojaris to approach the appropriate authority under Section 63(e) of the Act.

""78.As contended by the first respondent in the counter affidavit, it is seen that the petitioner has no right to question the notification in his capacity as poojari. All the offerings made by the devotees whether in the form of cash or kind belong to the deity of the temple concerned and the writ petitioner as poojari has no right in any of the amount collected by way of selling the articles that were offered to the deity. It has been repeatedly pointed out by Courts that the offerings are only made to the deity and not to the poojaris or sevaks. The offerings that are made to the deities therefore cannot be the properties of the sevaks. Even if the petitioner has got any right, he can only approach the authorities to establish such right in terms of Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowment Act. Hence, the Writ Petition is wholly misconceived and liable to be dismissed.

Accordingly, this Writ Petition (MD) No.10563 of 2016 is dismissed.""

32. When issues regarding appointment of Executive Officer for administering the temple and sharing of Hundial collection and offerings have already been settled by the Division Bench of this Court, a fresh suit suppressing those facts and re-agitating in a different form is a total abuse of process of the Court and fraudulent attempt by the plaintiff to take undue monetary benefit. The Trial Court unfortunately unknowing of the facts and decisions of this Court in the connected matter has granted interim order.

33. The Hon"ble Supreme Court in K.K.Modi vs. K.N.Modi, reported in 1998 (3) SCC 573, while explaining the phrase ""abuse of process of law"", held as follows:-

""The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph

18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus:

"This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.""

34. This is one such case to interfere under Article 227 of the Constitution. Accordingly, this Court by exercising its power of superintendence conferred under Article 227 of the Constitution, strikes off the plaint since it makes a spurious claim in this suit by re-agitating the issues which are either sub-judiced or heard and decided finally by the court of law.

35. While admitting the revision petitions, this Court has passed an interim order so as to have a separate account of plate collection, so that during the final disposal of the dispute if at all the poojaries are entitled for any share, they will get their appropriate share as per their turn. After deep consideration, this Court is of the opinion that while directing the poojaries to approach the competent authority under Section 63(e) of the Act regarding the offerings and in view of the memo passed by the revision petitioner subsequent to the judgment of the Division Bench, it will be appropriate to direct the revision petitioners to continue the arrangement made as per the interim order dated 07.04.2017 of this Court, so that if any petition is filed under Section 63(e) of the Act by the poojaries, their entitlement in the offerings including plate collection can be ascertained and due share will be given to them, if they eventually succeed.

36. In the result, both the Civil Revision Petitions are allowed subject to the direction in paragraph 35 of this judgment. No costs. The impugned order dated 05.04.2017 passed in I.A.No.613 of 2017 in O.S.No.83 of 2017 on the file of the learned District Munsif, Melur, is set aside and the plaint in O.S.No.83 of 2017 is struck off. Consequently, connected miscellaneous petitions are closed.