

(2006) 11 MAD CK 0006

In the Madras High Court

Case No : Second Appeal No. 182 of 2005 and C.M.P. No. 2574 of 2005

The Periyar Nagar Christian Association

APPELLANT

Vs

Periyar Nagar CSI Church Diocese of Madras and The Church
of South India Trust Association (C.S.I.T.A.)

RESPONDENT

Date of Decision : 24-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Tamil Nadu Societies Registration Act, 1975 — Section 16
Tamil Nadu Societies Registration Rules, 1978 — Rule 22

Citation : (2007) 2 LW 837 : (2007) 1 MLJ 266

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : S.W. Kanagaraj, for the Appellant; T.V. Ramanujam for R.
Sankarappan and C. Raghunatha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—This second appeal has been filed by the Plaintiff/ appellant against the decree and judgment dated 30.12.2004 made

in A.S. No. 406 of 2003 on the file of Fast Track Court No. III (District and Sessions Judge), Chennai confirming the decree and judgment dated

30.09.2003 made in O.S. No. 8936 of 1995 on the file of IV Assistant City Civil Court, Chennai.

2. The Plaintiff averments are as follows:

The Appellant Association originally was an unregistered one. Later the same was registered on 23.12.1991 under the Tamil Nadu Societies

Registration Act, 1975 in S. No. 309/199, having its registered Office at Door No. C274, Periyar Nagar, Chennai-82. The object of the

Appellant Association is to serve for welfare and promote education, culture and

social services to the needy people of the locality. There were about 100 Christian allottees, who approached the Registrar of Cooperative Societies, Madras for allotment of place through their agent viz. Periyar Nagar Government Servant's Cooperative House Site Distribution Society Limited for the purpose of construction of a Church, a School and a medical centre. The request of the Appellant Association was considered and land to an extent of 8 grounds and 125 sq.ft. was allotted. The Appellant Association took possession of the same in 1983 and commenced development activities. The members of the Appellant Association contributed for construction of the Church. The Appellant Association sought assistance of the 2nd respondent/The Church of South India (CSI), Diocese of Madras as one of the Institutions to provide pastoral care. The 2nd respondent Church did not come forward for any substantial financial assistance to the Appellant Association. Later, the attitude of the 2nd respondent turned differently and the plaintiff association decided to act independently without the help of the 2nd respondent. The Appellant Association resolved to take up the construction work of the church by themselves in the General Body Meeting, which was communicated to the 2nd respondent on 3.9.1985. The 2nd respondent Church expressed their desire to transfer the land allotted to the Appellant Association in their favour i.e. the 3rd respondent, which was not agreed upon by the Appellant Association. During 1991, the 2nd respondent Church attempted to convert the property of the Appellant Association into their own property, which was resisted by their reply dated 15.5.1991. Later the 2nd respondent Church withdrawn their pastoral care services extended to the Appellant Association with effect from 1.8.1991. One Rev.Wesly Brown, who was the then Secretary of the 2nd respondent indulged in creating unhealthy atmosphere by instigating its men to trespass into the appellant Church premises on 8.12.1991. The Appellant Association preferred a complaint to the local police and also filed a suit in OS.No.8854/1991 against the said Rev. Wesly Brown on 10.12.1991 for permanent injunction. The appellant church is affiliated to Anglican Church of India. The 1st respondent's men trespassed into the appellant Church's premises on 13.2.1994 and caused mischief. The Appellant Association on the same day filed a suit in OS.No.1134/1994 for restraining

the 1st Defendant herein from interfering with the affairs of the Church. The said OS.1134/94 was dismissed as not pressed later. The Appellant

Association alone has been in possession and enjoyment of the property and discharging duties and performing daily, weekly, monthly regular

services. The frequent interference of the 1st respondent made the Appellant Association to file the present suit for declaration that the Appellant

Association is the lawful person entitled to hold, administer all the functions of St. Peter's Church situated at schedule mentioned property and

permanent injunction restraining the 1st respondent and its men from interfering with the functions and services of the St. Peter's Church, Periyar

Nagar, contending that for any grievance, the respondents can invoke only the remedy available u/s 92 of the CPC, but without doing so, they

attempted to interfere in the right of the Appellant Association in administering the church.

3. The case of the 1st respondent is that:

The 1st respondent is entitled to hold, administer all its functions in respect of St. Peter's Church. The Periyar Nagar Christian Members who are

the beneficiaries of the house sites allotted by the Periyar Nagar Government Servant's Cooperative House Site Distribution Society Limited

applied to the Society on 15.12.1981 and on 1.12.1982 for allotment of land for the construction of the church. By letter dated 5.3.1983, the

Registrar of Cooperative Societies (Housing) confirmed the allotment of 7 grounds and 320 sq. ft., which was later increased to 8 grounds and 125

sq. ft. for the construction of the Church to the Periyar Nagar Christians and gave direction to the Special Officer of the Society to obtain MMDA

permission to construct the Church. The Periyar Nagar Christian Association was formed in the year 1983 by the above said beneficiaries of the

house sites allotted by the Periyar Nagar Government Servant's Cooperative House Site Distribution Society Limited for the purpose of taking

possession of the land and for construction of the Church on it. One, Frank Moses was elected as the President of that Association. All the 56

members are the members of the 1st respondent Church and also the Appellant Association. The land was allotted by the Government to the

unregistered Christian Association, which is different from the Appellant Association. The construction of the church and other activities could not

be proceeded without the help of the 2nd respondent, Diocese of Madras, Church of South India. The members of the Appellant Association requested the Periyar Nagar Government Servant's Cooperative House Site Distribution Society Limited to hand over the land to the 3rd respondent. The President of the Appellant Association Frank Moses wrote a letter on 21.6.1983 to the Periyar Nagar Government Servant's Cooperative House Site Distribution Society Limited to hand over the land allotted for the Christian Members of Periyar Nagar along with the documents to the 3rd respondent herein. Accordingly, the same was handed over to the 3rd respondent, which is a constituent of the 2nd respondent and the Appellant Association submitted itself to the 2nd respondent's administrative control and the 2nd respondent was running the affairs of the Periyar Nagar CSI Church with the Advisory Committee appointed by it and deputing a Presbyterian to take the pastoral care of the Church. The Administrative Control of the Periyar Nagar CSI Church is vested only with the 2nd respondent. The Appellant Association has not marked the list of members nor by-laws of the Association nor even stated in the pleading or evidence. The accounts were filed by the Appellant Association to the Registrar of Cooperative Societies u/s 16 of the said Act and Rule 22 of the said Act. The suit property is not the property of the Appellant Association, since it is vested with the 3rd respondent through the 2nd respondent. The land was not allotted to the Appellant Association nor the church was built up by it. There is no church by name St. Peter's Church in the land allotted by the Society to the Appellant Association. The Church constructed therein was named as Periyar Nagar CSI Church and the administration of the said Church was carried on by the Advisory Committee appointed by the 2nd respondent. In the first Advisory Committee, PW.2 was the treasurer and the committee was dissolved on 4.10.1991 and a second Advisory Committee of the 1st respondent Church was appointed in which PW.2 was excluded. Revolting against his expulsion with the help of Frank Moses, who was the president of the Appellant Association, which existed before 23.12.1991 formed an Association with one or two members and filed a suit in OS.No.8854/1991 on 11.02.1991 for injunction against the said Rev. Wesley Brown and got injunction, restraining the said Rev. Wesley Brown, Secretary of 2nd respondent and his men from entering into the Church. The injunction

was not extended beyond 22.12.1992. During the pendency of the suit, the Appellant Association with the connivance of Frank Moses, the name

of Periyar Nagar CSI Church was changed as St. Peter's Church and Anglican Church, etc. The change of name of St. Peter's Church is of no

consequence in the suit and will not entitle the Appellant Association for seeking administration of the Church. The suit schedule is an imaginary

one. The only church, which is in existence in the address mentioned in the suit schedule, is the Periyar Nagar CSI Church. The second suit in O.S.

No. 1134 of 1994 was filed on 14.02.1994 against Wesley Brown, Secretary of second respondent for injunction. The schedules of the

properties in OS.No.1134/94 was changed on three occasions. The suit in O.S. No. 8854 of 1991 was dismissed on 30.11.1998 and O.S. No.

1134 of 1994 was dismissed on 29.11.1995. The Appellant Association is not entitled to hold, administer all the functions of St. Peter's Church.

The Appellant Association cannot be declared as the lawful person. Hence, the Appellant Association is not entitled to the relief of declaration and

injunction.

4. The case of the respondents 2 and 3 is that:

The lands allotted to the Christian Association were handed over to the respondents 2 and 3 in the year 1985 and contributions from the public

were collected in the name of CSI Church. The contributors parted with their donations only to CSI and the building was raised with such funds.

Therefore, the Appellant Association cannot claim either over the land or the building or whatsoever. Section 92 of CPC has no application to the

suit.

5. Before the trial Court, the appellant/Plaintiff marked Exs. A1 to A51 and Frank Moses and Navamani were examined as PW1 and PW2

respectively. On behalf of the Defendants, Exs. B1 to B10 and also Exs. X1 to X8 were marked, Dws 1 to 10 were examined, however, based

on a memo filed before the trial Court, the evidence of Dws 4 to 10 were excluded from consideration.

6. The trial court dismissed the suit on the ground that prior to registration of the appellant association, the land of the Church was allotted to

Periyar Nagar Christians, under Ex.A2 dated 05.03.1983; that permission to construct a church was given to the second defendant vide Ex.X4

dated 23.06.1983; that the church was constructed with the help of the funds provided by the second respondent, the pastoral services to the said

Church was also rendered by the second respondent; that the foundation stone for construction of the church was laid by Rev. Sunder Clarks,

representative of the second respondent, which is supported by Ex.B9. The trial court, pointing out the above said facts concluded that the

administration of the church was carried out by the second respondent and even for a short period when the pastoral services were suspended due

to certain misunderstanding, the same continued on the representation made by the first respondent herein, Ex.A13, hence, the change in the name

of the church as St. Peter's church instead of CSI Church cannot be accepted; that there is no evidence to show that the suit property was allotted

in the name of the appellant association.

7. The first appellate Court, on consideration of the oral and documentary evidence confirmed the decree and judgment passed by the trial court

on the ground that the appellant herein has not established his title and possession.

8. This second appeal has been admitted on the following substantial questions of Law:

1. Whether the Judgments and Decrees of the Courts below are vitiated for total non application of mind to the material in particular the scope of

the suit, clinching Exhibits, and the decisions in particular those of the Apex Court, the Full Bench of Kerala High Court and Division Bench of the

Honourable High Court?

2. Whether the Plaintiff Association which is admittedly in administration of the Trust property can be removed without resorting to the procedure

set out in Sec. 92 of CPC?

3. Whether the findings in C.M.P. No. 1973/03 in A.S. No. 406/03 are conclusive the same having been confirmed in CRP operates as res

judicata?

4. Are the findings of fact not based on evidence, indeed contrary to evidence and therefore, perverse?

9. Mr. Kanagaraj, learned Counsel appearing for the appellant submitted as follows:

The Periyar Nagar Government Servants Co-operative House Site Distribution

Society, hereinafter referred to as "society" was established exclusively for the Government servants, hence, they have passed a resolution, Ex.A25 dated 12.12.1983 through its Special Officer to recommend to the Government to permit for construction of a church in the place earmarked as all purpose in the layout. Under Ex.A26, dated 13.01.1983 the Special Officer of the society recommended to the Government for allotment of land to the appellant. Under Ex.A2 dated 05.03.1983, the Registrar of Co-operative Society passed an order permitting the Special Officer of the Society to allot a site to the appellant. The appellant association collected donations from various persons, subscription from its members which are evident from Ex.A23 and A34, counterfoils of receipt books, Ex.A33, membership card and formed a scheme. The trial court wrongly found that the suit property was allotted to the second respondent and vested with the third respondent, though the suit property was allotted to the appellant association. The title to the suit property vested with the Government since it did not execute the document of alienation till date. The appellant association approached the first respondent for pastoral services and for congregation; that a Presbyterian was nominated by the second respondent for the purpose of congregation and service; that the respondents have withdrawn the service of Presbyterian, which is evident from Ex.A6 dated 27.07.1991. The trial court though found that the appellant association had established that they are instrumental for formation of the church, it erroneously refused to grant the relief sought for by dismissing the suit. After dismissal of the suit, the respondents have entered into the suit church and attempted to change the nomenclature, hence, immediately, the appellant has filed the first appeal and obtained an interim order in CMP No. 1973 of 2003. While granting interim order, a clear finding was given by the first appellate Court based on documents, and as against the same CRP No. 2750 of 2003 was filed by the respondents which was dismissed. The said findings made in CMP No. 1973 of 2003 were not considered by the first appellate Court at the time of dismissing the first appeal, which amounts to res judicata. In support of this contention, the learned Counsel for the appellant relied on the below mentioned decisions:

i) In Bhanu Kumar Jain Vs. Archana Kumar and Another, wherein the Honourable

Supreme Court in Para Nos. 18 and 20, it held thus:

18. It is now well settled that principles of res judicata applies in different stages of the same proceedings. (See Satyadhyam Ghosal and Others Vs.

Sm. Deorajin Debi and Another, and Prahlad Singh Vs. Col. Sukhdev Singh,

20. It was further held

31. Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these

subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however,

different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh

cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the

meanwhile, changed or has been interpreted differently by a higher forum. But that situation does not exist here. Principles of constructive res

judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order 47 of the Code (Explanation to Rule 1)

review is not permissible on the ground that the decision on a question of law on which the judgment of the Court is based has been reversed or

modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.

ii) Y.B. Patil v. Y.L. Patil AIR 1977 SC 392 wherein Para No. 4, it was held thus:

4. It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent

stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of

that proceeding....

iii) In Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another, , it was held in Para Nos. 26 and 31 as follows:

26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated

as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a

judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the

proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same

cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are ?cause of action

estoppel? and ?issue estoppel?. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot

subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined....

iv) In *Satyadhan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, the Honble Supreme Court in para No. 8 held thus:

8. The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher

court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the

same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way

and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again?

v) *Prahlad Singh Vs. Col. Sukhdev Singh*, wherein in page No. 1147, it was held thus:

...That the decision given by a court at an earlier stage of a case is binding at a later stage is well settled, though interlocutory judgments are open

for adjudication by an Appellate Authority in an appeal against the final judgment. In *Satyadhan Ghosal and Others Vs. Sm. Deorajin Debi and*

Another, this Court said:

The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher

court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same

proceedings.

It was however clarified that it did not mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way

and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again.

We are not also concerned here with orders of an interlocutory nature such as

orders granting temporary injunction, appointing receiver etc. which do not purport to decide the rights of the parties finally....

Relying on the above said decisions, the learned Counsel for the appellant submitted that the principles of res judicata can be applied not

necessarily in a separate proceedings alone but in the same proceedings also at a subsequent stage. The learned Counsel for the appellant further

argued that the society is created for charitable purpose and registration of society will not change the character of the trust. In this context, he

relied on the below mentioned decisions:

i) In *Kesava Panicker Vs. Damodara Panicker and Others*, the Full Bench of the Kerala High Court in Para No. 10 held thus:

10. ...If there was a trust created by the public for a public charitable purpose namely establishing, maintaining and running a school the fact of the

registration of a society could not change the character of the properties which had already been constituted as trust properties and impressed with

the trust and any addition of those properties must also have the same character. We have therefore no hesitation in reaching the conclusion that a

trust has been created and the High School buildings, the land, all appurtenances, furniture, equipment and all other properties are trust properties.

ii) In the decision reported in *Deoki Nandan Vs. Murlidhar*, the Honourable Supreme Court in Para Nos. 5 and 7 held thus:

5. ...The distinction between a private and a public trust is that whereas in the former the beneficiaries are specific individuals, in the latter they are

the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained or capable of being ascertained, in the

latter they constitute a body which is incapable of ascertainment.

7. When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the

endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents

no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship

at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated

for the worship of a family idol, it is a private and not a public endowment, as

the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.

The learned Counsel for the appellant further argued that it is incorrect to say that the suit is hit by the provisions of Order II Rule 2 CPC. The

earlier two suits do not affect the present suit since, no issues relating to the said two suits were raised or evidence adduced by the respondents in

the trial court. It is further submitted by the learned Counsel for the appellant that the first suit was dismissed for default and the second suit was

dismissed as not pressed.

10. Mr. T.V. Ramanujam, learned Senior counsel appearing for the first respondent submitted as follows:

The Periyar Nagar Christian Association is the one formed in or about 1983 by the beneficiaries of the house sites allotted by the society. The

Periyar Nagar Christian Association elected PW1 Frank Moses as President, which is evident from Ex.B2, letter of Periyar Nagar Christian

Association to the 2nd respondent and Ex.X3, letter dated 21.06.1983 wrote to the society requesting to handover the land allotted for Christian

Members of Periyar Nagar. Originally, the appellant association was unregistered one. The society wrote a letter dated 13.01.1982, Ex.A26 to

the Government seeking permission to enter into the area marked for public purpose in the layout for construction of Church in the interest of

Christian members of Periyar Nagar. The Registrar of Co-operative Society, under Ex.A2, letter dated 05.03.1983 accorded permission for

construction of church and a medical care unit in the lands to an extent of 7 grounds and 380 sq.ft., which was subsequently increased to 8

grounds 125 sq.ft., earmarked for public purpose and directed the Special Officer of the Society to obtain MMDA permission to construct the

Church. The construction of Church and connected activities could not be proceeded without the help of the second respondent, hence, it was

decided by the members of Periyar Nagar Christian Association to request the society to handover the lands to the third respondent herein. The

then President Frank Moses wrote a letter dated 21.06.1983, Ex.X3 to the society

requesting to handover the allotment to the third respondent herein and accordingly it was handed over. The Secretary of Periyar Nagar Christian Association sent a letter dated 20.01.1987, Ex.A31 seeking permission from the second respondent to raise funds. The third respondent is the constituent of the second respondent, which was running the business of the first respondent with the advisory committee appointed by it and deputing a Presbyterian to take care of the pastoral services of the church. The advisory committee were not carrying out the orders of the second respondent, hence, the second respondent sent a show cause notice dated 27.07.1991, Ex.A6 informing that they have decided to withdraw the service of the Presbyterian and re-constituted the advisory committee under Ex.A14 dated 04.12.1991. The constitution of new advisory committee of the Church was the reason for split and thereafter, the plaintiff association was formed. Except Ex.A1, registration certificate dated 23.12.1991, the appellant not filed any document to show that it was carrying on its activities till 17.03.1994, the date on which the present suit was filed. The appellant not mentioned in the plaint or adduced evidence to show as to how Frank Moses was elected as President of the appellant Association, how PW2 was elected as Treasurer, how many members are there in their association and when the election took place etc., Neither the list of members nor the bye-laws of the association were filed. The appellant also not filed the yearly statement of accounts, as required u/s 16 of the Tamil Nadu Societies Registration Act and Rule 22 of the Tamil Nadu Societies Registration Rules. The suit property is not the property of appellant since it already vested with the third respondent through the second respondent from the society, which is evident from Exs. B2, letter of Periyar Nagar Christian Association to the 2nd respondent to open the school in the church premises and Ex.B3, resolution to that effect. It is admitted by PW2 in his evidence that no land was allotted after 23.12.1991 when the Plaintiff association was registered. The church was not at all built by the appellant association. No resolution was produced by the appellant to show that the President was authorised to sue, hence, the suit is not filed by the proper person. There is no Church in the name of St. Peter's Church in the suit land prior to 23.12.1991. The church constructed was named as Periyar Nagar CSI Church, which administration

was carried on by the advisory committee appointed by the second respondent. The first advisory committee of the first respondent, for which PW2 was the Treasurer and it was disbanded on 04.10.1991 under Ex.A14 and the second advisory committee of the first respondent church was appointed in which PW2 was excluded. Revolting against his expulsion with the help of Frank Moses, who was the President of the Association which existed prior to 23.12.1991, PW2 formed an association with one or two members and filed O.S.No. 8854 of 1991 in the City Civil Court under Ex.B1 on 10.12.1991 against one Wesley Brown and got injunction restraining the said Wesley Brown and his men from entering into the Church. The said injunction was not extended beyond 22.12.1992 by the trial Court. PW2 with the connivance of PW1, during the pendency of the suit changed the name of Periyar Nagar CSI Church into St. Peter's Church and Anglican Church. PW1 in his evidence admitted that name of the Church was changed only after the injunction granted by the City Civil Court. He further admitted that Ex.A8 dated 07.09.1993, Ex.A9 dated Nil 09.1993, Ex.A10 dated 27.10.1993 and Ex.A11 dated 07.12.1993 are the connected documents with reference to the change of name. Therefore, the name of St. Peter's Church is of no consequence in this suit as it was done after getting injunction on 12.12.1991 in O.S. No. 8854 of 1991 against the CSI Christian Members. The change of name alone will not entitle the appellant to seek for administration of the Church. Exs. A8 to A11 are all procured only for the purpose of this case as an afterthought. PW2, as Treasurer of the 1st respondent church has filed O.S. No. 1134 of 1994 on 14.02.1994, Ex.B7 against the very same Wesley Brown as the injunction order granted in O.S. No. 8854 of 1991 was not extended. O.S. No. 8854 of 1991 was filed on 10.12.1991, O.S. No. 1134 of 1994 was filed on 14.02.1994 and C.S. No. 339 of 1994 was filed on 17.03.1994. In the earlier two suits, in the Schedule, St. Peter's Church was not found mentioned, but in the later suit, they included the word "St. Peter's Church" in the Schedule. It is not explained by the appellant how the name of the Church changed within a month of filing the previous two suits. In the present suit, originally, the schedule contains only movables, subsequently, it was amended including the immovable properties also. It is also not explained in the plaint or in the evidence as to how the property changed within a

month of filing the previous suits. The appellant cannot be declared as a lawful person. Neither in the pleadings nor in the deposition of PW1 and 2,

it is stated that the suit property is registered in the name of the association and vested in the committee as provided u/s 18 of the Tamil Nadu

Registration Act. After the injunction order in O.S. No. 8854 of 1991, the members of the first respondent could not enter into Periyar CSI

Church, however, after the order passed by the Division Bench of this Court in O.S.A. No. 306 of 1994, they are offering prayer in the suit

church. The appellants are not entitled to the relief of declaration, besides, the suit is barred by the provisions of Order II Rule 2 read with Order

23 Rule 1(4) of CPC since the earlier suit in O.S. No. 8854 of 1991 filed by the appellant and the subsequent suit in O.S. No. 1134 of 1994 filed

by PW2 have been dismissed. The appellant was never in possession of the suit property, hence, it is not entitled to the relief of injunction and

prayed for dismissal of the second appeal.

11. Mr. Ragunatha Reddy, learned Counsel appearing for the 2nd and 3rd respondents submitted that the appellant herein filed three suits on the

same cause cause of action. Order 23 Rule 1(4) CPC bars further suit if any previous suit is abandoned or withdrawn without leave of the Court,

hence, the present suit is not maintainable. The suit lands were allotted to the respondents 2 and 3 and the same was handed over by the society

and it took possession in the year 1985, later, the members of Periyar Nagar Christian Association sent a letter dated 25.10.1991, Ex.X8

requesting the Secretary, Government of India to issue patta in the name of the third respondent and the same was forwarded by the society by

letter dated 14.11.1991, thus, it is clear that the plaintiff cannot have any claim in the suit land. PW1 in his evidence admitted that during the

relevant period, the Church was in the name of second respondent, hence, the donations were raised in the name of second respondent. PW1

further admitted in his cross-examination that the Church was not constructed by the appellant association. Section 92 of CPC has no application

to the suit at all. Section 92 cannot be pressed into service by the appellant since it is the plaintiff. There is no trust at all the and lands have been

handed over to CSI and the buildings have been raised with the contribution collected in the name of CSI, hence, the Plaintiff cannot have any

claim whatsoever and prayed for dismissal of the second appeal.

12. I have carefully considered the arguments of the counsel on either side and perused the material records.

13. For the sake of convenience, Periyar Nagar Government Servants House Site Distribution Society Limited, shall hereinafter be referred to as

"Society", the plaintiff shall be referred to as appellant and defendants 1 to 3 shall be referred as respondents 1 to 3.

14. The Christian members who were allottees of land by the society formed an association in the name and style of Periyar Nagar Christian

Association, which was not registered. The appellant claims that it is the said association owned the suit property, which was later registered under

the Societies Registration Act. The respondents stated that the appellant is not the owner of the land where the church is built or the buildings and

movables thereon.

15. Both the parties have marked number of exhibits and also let in oral evidence. The important documents that are required to be considered for

disposal of the second appeal are mentioned below:

i) Ex.X1 dated 15.12.1981, letter written by the appellant to the Special Officer of the Society for allotment of land for construction of Church.

ii) Ex.A24 = X2 letter dated 01.12.1982 of the appellant addressed to the Special Officer of the Society stating that about 100 Christians allottees

were in Periyar Nagar, but there is no church in the nearby area for their worship and requested the society to earmark a site for Church to enable

the members to worship within the Periyar Nagar area. In and by the said letter, they requested the society to allot 8 to 10 grounds.

iii) Ex.A25 dated 12.12.1982 is the resolution No. 20 passed by the appellant seeking to recommend to the Government to permit for

construction of a church in the place marked as "all purpose" in the layout.

iv) Ex.A26, letter dated 13.01.1983 from the Society addressed to the Commissioner and Secretary to Government praying to allow the appellant

to enter upon the lands marked as public purpose in the layout for construction of Church.

v) Ex.A2 is the communication dated 05.02.1983 sent by the Registrar of Society to accord permission to the Special Officer to allow the

appellant Members to construct a church and medical care unit in the lands

earmarked for public purpose in Periyar Nagar layout having an extent of 7 grounds and 320 sq.ft.,

vi) Ex.X3 letter dated 21.06.1983 issued by appellant requesting the Special Officer of the Society to handover the land to the third respondent.

vii) Ex.X4, letter dated 23.06.1983 sent by the Society to the Convenor, Property committee of the second respondent granting permission for construction of a church and medical care unit.

viii) Ex.A27 is the letter dated 26.03.1984 of the second respondent addressed to Wesley Brown, then President of the appellant association

informing that though Rs. 10,000/- was set out of Rs. 25,000/-, no work has been turned out, land is not fenced around and requested to put use

the land immediately, otherwise, the society would take away the lands.

ix) Ex.A30, letter from the appellant requesting the second respondent to release the balance amount for implementation of further work.

x) Ex.B2, letter dated 15.07.1986 addressed to the second respondent informing that the Trust is functioning but other activities not commenced,

there is every possibility of the Trust taking away the unused lands, hence, requested to open a School immediately.

xi) Ex.B8 = Ex.X6 dated 28.07.1986 letter from the society addressed to the second respondent not to start pucca construction in the land

handed over to them until further orders

xi) Ex.A31 is the letter dated 20.01.1987 of the appellant requesting the second respondent to sanction grant of Rs. 50,000/- and loan of Rs.

50,000/-

xii) Ex.X7 is the letter dated 22.04.1991 from the second respondent addressed to the Special Officer of the society to alienate the lands allotted

in their favour

xiii) Ex.A13 series are resolution dated 04.08.1991 which was sent by covering letter dated 16.08.1991 of appellant to the respondents informing

that a resolution was passed to register the suit property in favour of the second respondent.

xiv) Ex.X8 is the letter of the appellant requesting the revenue department to issue patta in favour of the third respondent.

xv) Ex.A14 is the letter of the second respondent dated 04.12.1991 abolishing

the advisory committee and constituting a new advisory committee.

xvi) Ex.A1 is the Certificate of Registration in favour of the appellant.

16. It is evident from the above said documents Exs. X3, X4, A27, A30, B32, B8, A31, X7, A13, X8 and A14 that the land was allotted to the

appellant, but sale deed was not executed/assignment made and the society itself permitted the second respondent to construct the church on the

request made by the appellant; that the initial amount was sanctioned by the second respondent; that the appellant also sought for permission to

raise donations and subscription from their members; that the appellant also requested the second respondent to sanction loan of Rs. 50,000/-.

17. It is seen that there is some misunderstanding between the appellant and the respondents, with the result, the pastoral services were withdrawn,

again, on the request made by the appellant, it was restored. Again, dispute arose consequent to the dissolution of the first advisory committee by

which PW2 was removed. The second advisory committee was constituted on 04.10.1991. The said factual position made it clear that the above

said Frank Moses was the President of the Appellant association during that period and both administrative and financial control of the suit

properties were with the respondents, construction made out of the initial contribution of the respondents, funds were raised by the appellant from

the members and public with the permission of the respondents. It is contended by the respondents that for a short while when an injunction order

was obtained by the appellant in the first suit in O.S. No. 8854 of 1991 the possession was with the appellant on behalf of the respondents,

however, the said interim order was not extended beyond 22.12.1992. In the present suit, an interim arrangement was made by this Court enabling

both the appellant and the respondents to offer their prayers.

18. In order to get a declaratory relief (i) the plaintiff must be a person entitled to any legal character or to any right as to any property (ii) the

defendant must be a person denying or interested to deny the plaintiff's title to such character or right (iii) the declaration sued for must be a

declaration that the plaintiff is entitled to a legal character or to a right to property and (iv) where the plaintiff is able to seek further relief than mere

declaration of title, he must seek such relief. If any of the above first three condition is not fulfilled, the suit should be dismissed. If these conditions

are fulfilled but the fourth condition is not, the Court shall not make the declaration sued for.

19. In view of the above said discussion, this Court is of the considered view that the appellant has not fulfilled any of the three conditions. The

relief of declaration is not a matter of absolute right and it is discretionary for the Court to grant it or not and in every case, the Court must exercise

sound judgment as to whether it is reasonable or not under the facts and circumstance of the case to grant the relief prayed for. In this context, it

would be useful to refer to the decisions of the Honourable Supreme Court mentioned below:

(i) (Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors. AIR 1976 SC 888 wherein in Para No. 26, the

Honourable Supreme Court held thus:

26. It seems to us that neither the First Additional Civil and Sessions Judge nor the High Court, while decreeing the plaintiff's suit, considered this

aspect of the matter whether this was a fit case in which the discretion should have been exercised in favour of the respondent. It is manifestly clear

from the authorities discussed above that the relief of declaration and injunction under the provisions of the Specific Relief Act is purely

discretionary and the plaintiff cannot claim it as of right. The relief has to be granted by the court according to sound legal principles and ex debito

justitiae. The court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression.

In these circumstances, while exercising its discretionary powers the court must keep in mind the well settled principles of justice and fairplay and

should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in vacuum.

ii) Prabhakar Adsule Vs. State of M.P. and Another, wherein in Para Nos. 5 and 6, it was held thus:

5. The defendants produced the relevant file bearing No. 114/1912 of Residency Area Authority. However, this file does not show that any

permission was given to Somaji for either construction of a boundary wall or for sale of the plot. The trial court gave good reasons for doubting the

genuineness of these documents, which were ignored by the learned Single Judge. The Division Bench, in our opinion, has rightly held that the

documents were suspicious in nature and could not have been relied upon. Even otherwise, a document granting permission to construct a

boundary wall cannot establish title to the property as even a lessee or a tenant can seek permission for making such kind of construction. The

plaintiff has admitted in his cross-examination that he was the Mayor of the Municipal Corporation, Indore, in 1959-60, and was a Corporator till

1964. He was in a position to exercise his influence in obtaining some kind of documents from the Public Works Department of the Municipal

Corporation.

6. The defendants have filed a copy of the lease deed which shows that a lease for a period of 10 years was granted by the Residency Area

Authority, Indore, in favour of the General Secretary, United Church of Canada Mission, Indore on 31-7-1947 for 5.11 acres of land and the

boundary of the leased-out area more or less tallies with the boundary of the land in dispute. This document belies the case set up by the plaintiff

that Somaji was the owner in possession of the land in dispute.

20. Applying the decisions of the Honourable Supreme Court referred to above and the documents Exs. X3, X4, A27, A30, B32, B8, A31, X7,

A13, X8 and A14 and also the fact that the suit property was not registered or assigned in the name of the appellant association, the case set up

by the appellant that they are the owner in possession of the suit property is belied. Mere registration of the appellant association or change of

name of the church is of no consequence and it would not entitle the appellant to seek declaration or injunction, that too, in the absence of any valid

evidence or bye-laws or list of members of the association or resolution, if any passed, hence, the first substantial question of Law is answered

against the appellant.

21. Frank Moses representing the appellant filed the first suit in O.S. No. 8854 of 1991 against Wesley Brown for permanent injunction in which

interim injunction was granted, which was subsequently vacated on 23.12.1992, however, the said main suit was pending. The appellant

association was registered only on 23.12.1991, which is after filing the first suit.

22. PW2, who was the Secretary of Periyar Nagar Christian Association has filed O.S. No. 1134 of 1994 on 14.02.1994 against Wesley Brown

seeking the very same relief of injunction. It is not in dispute that in the second

suit, no interim order was granted. While the two suits were pending, the present suit was filed before this Court on 17.03.1994 in C.S. No. 339 of 1994, later, the same was transferred to the file of City Civil Court and re-numbered as O.S. No. 8936 of 1995. The respondents have taken the plea that the third suit is not maintainable and is hit by the provisions of Order 2 Rule 2 CPC.

23. Order II Rule 2 CPC is designed to counteract two evils namely the splitting up of claim and splitting up of cause of action. For application of the bar, three essential conditions must be satisfied, namely, the earlier suit and the later suit must arise from the same cause of action, the two suits must be between the same parties and that the earlier suit must be decided on merits. In this regard, it will be useful to refer to the below mentioned decisions:

i) The Honourable Supreme Court in the decision reported in Kewal Singh Vs. Smt. Lajwanti, held in Para Nos. 5 & 8 thus:

5. A perusal of Order 2 Rule 2 would clearly reveal that this provision applies to cases where a plaintiff omits to sue a portion of the cause of action on which the suit is based either by relinquishing the cause of action or by omitting a part of it. The provision has, therefore, no application to cases where the plaintiff bases his suit on separate and distinct causes of action and chooses to relinquish one or the other of them. In such cases, it is always open to the plaintiff to file a fresh suit on the basis of a distinct cause of action which he may have so relinquished.

8. Secondly, as regards the question of constructive resjudicata it has no application whatsoever in the instant case. It is well settled that one of the essential conditions of res judicata is that there must be a formal adjudication between the parties after full hearing. In other words, the matter must be finally decided between the parties. Here also at a time when the plaintiff relinquished her first cause of action the defendant was nowhere in the picture, and there being no adjudication between the parties the doctrine of resjudicata does not apply.

ii) In the decision reported in Smt. Nirmala Vs. Hari Singh, , a learned single Judge held on Para Nos. 18 and 19 thus:

18. The rule, it is apparent, does not preclude second suit based on distinct and separate cause of action. To make this rule applicable, the

defendant must satisfy three conditions:

- (a) The previous and second suit must arise out of the same cause of action;
- (b) Both the suits must be between the same parties and
- (c) The earlier suit must have been decided on merits.

19. In the present case as discussed earlier, there is no evidence to show that cause of action for the previous suit was the same. This apart, the previous suit admittedly was not decided on merits as the same was withdrawn by the plaintiff-respondent. Therefore, the argument of Shri.

Bhupender Gupta learned Counsel for the appellant that the present suit is not maintainable has no merit. The questions are answered accordingly.

In this case, the appellant base its case on separate and distinct causes of action. There is no final adjudication in the previous suit, one was dismissed for default and another one was dismissed as not pressed, more over two defendants in the suit were not parties in the earlier suits, hence, Order 2 Rule 2 CPC is not applicable in this case.

24. The second substantial question of Law is whether the Plaintiff association, which is admittedly in administration of the Trust property can be removed without resorting to the procedure set out in Sec. 92 of CPC. In so far as this question of law is concerned, as already decided above, the possession of the plaintiff is on behalf of the respondent also. Section 92 of CPC provides that the suit under this Section can only be filed by the Advocate General or two or more persons having interest in the Trust with the leave of the Court because the main purpose of this section is to give protection to public Trusts of charitable or religious nature from being subjected to harassment by suits being filed against them. Whereas, here, no suit is filed by the defendants against the plaintiff, hence, Section 92 CPC has no application to the case on hand. In this context, it would be relevant to look into the decision of the Honourable Supreme Court reported in (Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulose Athanastus and Ors. AIR 1954 SC 526 wherein in Para Nos. 33 and 35, it was held thus:

33. ...As the suit is for possession of the church properties the plaintiffs, in order to succeed, must establish their title as trustees and this they can only do by adducing sufficient evidence to discharge the onus that is on them under issue 1 (b) irrespective of whether the defendants have proved

the validity of their meeting, for it is well established that the plaintiff in ejectment must succeed on the strength of his own title. It will be noticed that the defendants' objection to the Karingassera meeting was two-fold, (i) that the meeting had not been convened by competent persons and (ii) that notice had not been given to all the churches....

35. ...Here again the suit being one in ejectment it is more important for the plaintiffs to establish their own title by getting issues 19 and 20 decided in their favour than to destroy the defendants' title by getting issues 14 and 15 decided against the defendants, for a mere destruction of the defendants' title in the absence of establishments of their own title carries the plaintiffs nowhere. It is to be remembered that this is a suit by the plaintiffs as the validly constituted trustees and not a suit under the section analogous to Section 92 CPC for removal of defendants from trusteeship or for the framing of a scheme....

In view of the above discussion and the decision of the Honourable Supreme Court referred above, this Court is of the view that the second substantial question of law does not arise for consideration at all in this case and the same is answered accordingly.

25. The third substantial question of Law is whether the findings in CMP No. 1973 of 2003 in A.S. No. 406 of 2003 are conclusive the same

having been confirmed in CRP operates as res judicata. The said CMP No. 1973 of 2003 was disposed of by the first appellate Court on

following the Order passed by this Court in O.S.A. No. 306 of 1994 dated 12.01.1995. It is necessary to mention that the suit was originally filed

in this Court, interim order was passed, which was challenged in O.S.A. No. 306 of 1994 and the said OSA was also disposed of by this Court

by making a temporary arrangement till the disposal of the suit, later, the suit was transferred to the City Civil Court for want of jurisdiction.

Thereafter, the order passed in the said CMP No. 1973 of 2003 was challenged by way of CRP PD No. 2750 of 2003 which was dismissed

holding that it is not necessary to go deep into the merit of the case in an interlocutory application as appeal is pending and directed to follow the

order passed by this Court in OSA No. 306 of 1994 dated 12.01.1995, which was continued by the parties. Now, we have to decide whether

the order passed in CMP No. 1973 of 2003 operates as res judicata or not.

26. The principle of res judicata is founded on equity, justice and good conscience. An order in an interlocutory application at one stage of the case is binding in all the subsequent stages and the same proceeding in general principles of Law. Where an order of interlocutory application leaves the matter open for re-consideration at a later stage, it will not operate as res judicata as the interlocutory orders cannot take away the substantive right of the parties. Keeping in mind the above settled principles, when we look into the order passed in CMP No. 1973 of 2003, which was admittedly passed following the order passed by this Court in OSA No. 306 of 1994 wherein this Court held in Para Nos. 11, 12 and 13 thus:

11. During the pendency of this appeal, we had an opportunity to pass an interim order on 22.01.1994. At that time, we were happy that both sides agreed for passing such an order on a measure of purely interim arrangement....

...We take into account the respective contention put forward by both the parties and the fact that the matter relates to the religious worship to be conducted in the Church. We are of the opinion that place should be maintained in both the groups and prayer should be conducted till the disposal of the suit in a manner which will not prejudice the contentions of either parties.

12. While taking note of the fact that the respondent is having the key of the church and the respondent's counsel did not have any objection to the appeal and its followers offering prayers in the church during the pendency of the suit as evident from the order dated 25.10.1994, which order was not challenged in any appeal, we are of the view that the following arrangement will prove the interest of the justice in the last manner possible....

The said order is nothing but an interim order till the disposal of the suit. The suit was transferred to City Civil Court was also dismissed and the appeal filed by the appellant herein was pending when the said CMP was also disposed of following the order passed in OSA No. 306 of 1994, hence, this Court is of the view that the interim order left open the issues for re-consideration at a later stage and it would not operate as res judicata. It is needless to mention that the said interim order merged with the final order. In this context, the Honourable Supreme Court in the decision reported in Arjun Singh Vs. Mohindra Kumar and Others, , held thus:

14. It is needless to point out that interlocutory orders are of various kinds;

some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court, usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situation which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of res judicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of the court would be justified in rejecting the same as an abuse of the process of court. There are other orders which are also interlocutory but would fall into a different category. The difference from the ones just now referred to lies in the fact that they are not directed to maintaining the status quo, or to preserve the property pending the final adjudication but are designed to ensure the just, smooth, orderly and expeditious disposal of the suit. They are interlocutory in the sense that they do not decide any matter in issue arising in the suit, nor put an end to the litigation....

In the light of the above discussion and the decision of the Honourable Supreme Court mentioned above, this Court is of the view that the order passed in CMP No. 1973 of 2003 would not operate as res judicata and the third substantial question of law is answered against the appellant.

27. The last substantial question of law is whether the findings of fact not based on evidence, indeed contrary to evidence and therefore, perverse.

A perverse verdict may probably be defined as one that it is not only against the weightage of evidence but altogether against the evidence.

Considering the facts and circumstance of the case, this Court is of the view that the findings of the courts below are based on evidence and

therefore the fourth substantial question of law is also answered against the appellant.

28. An argument was advanced by the counsel for the appellant that the first Appellate Court failed to comply the provisions of Order 41 Rule 31

CPC. In *G. Amalorpavam and Others Vs. R.C. Diocese of Madurai and Others*, ,

the Honourable Supreme Court held in Para Nos. 9 and 10

thus:

9. The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be

determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it

wholly void, and may be ignored if there has been substantial compliance with it and the second appellate court is in a position to ascertain the

findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31

CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not

thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail,

come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is

substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of

determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and

there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on

both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not

contain the points for determination. The object of the rule in making it incumbent upon the appellate court to frame points for determination and to

cite reasons for the decision is to focus attention of the court on the rival contentions which arise for determination and also to provide litigant

parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision

and if so considered appropriate and so advised to avail the remedy of second appeal conferred by Section 100 CPC.

10. At this juncture it would be relevant to note what this Court said in *Girja Nandini Devi v. Bijendra Narain Choudhury*. In AIR para 12 it was

noted as follows: (SCR p.101 F-G)

It is not the duty of the appellate court when it agrees with the view of the trial court on the evidence either to restate the effect of the evidence or

to reiterate the reasons given by the trial court. Expression of general agreement with reasons given by the Court decision of which is under appeal

would ordinarily suffice.

On going through the judgment of the first appellate Court, this Court is of the view that the first appellate Court has considered the entire evidence

on record and arrived at a correct decision, hence, this Court is of the view that the first appellate Court has substantially complied with the

provisions of Order 41 Rule 31 CPC and the argument of the counsel for the appellant in this regard is rejected.

29. In the result, the decree and judgment of the courts below are confirmed. The second appeal is dismissed as devoid of merits. No costs.

Consequently, connected CMP is closed.