

(1985) 04 MAD CK 0027
In the Madras High Court
Case No : A.S. No. 268 of 1979

T.V. Durairajulu Naidu

APPELLANT

Vs

Commissioner, Hindu Religious and Charitable Endowments
(Administration) Department, Madras

RESPONDENT

Date of Decision : 12-04-1985

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(20)

Citation : AIR 1989 Mad 60 : (1986) 99 LW 630

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : T.R. Rajagopalan, for the Appellant; V. Nicholas, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, J.—The unsuccessful plaintiff is the appellant before me. He filed. O.S. No. 313 of 1975 on the file of the Court of the Subordinate

Judge, Tiruchirapalli, praying for declaration that the Institution ""Sri Ramar Madalayam"" is a private institution and not a public one. There has been

a further prayer to modify or cancel the order passed by the Commissioner of Hindu Religious, and Charitable Endowment Board dated 1-11-

1974 in A.P. 83 of 1973.

2. The allegations as averred in the plaint are as under: -- One Veeraswami Naidu, the maternal grandfather of the plaintiff, executed a will dated

26-9-1899 and a codicil dated 4-7-1900. He founded the Private place of worship known as ""Sri Ramar Madalayam"" in Naciar Koil Road at

Woriyur in Tiruchy Town as his own private property. The plaintiff is in management of the same as per the terms of the will The said Sri Ramar

Madalayam, is not a religious institution coming within the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act (Act 22 of 1959);

It is a private endowment belonging to the family of the founder. It was never dedicated to the general public as a place of public worship

nor do the general public have any right of worship. No idol was installed by the founder. Only the subsequent trustee installed the picture of Sri

Rama in consonance with the name of Sri Ramar Madalayam. Even now, there is no idol. The institution does not answer the definition of

"temple". There is no dhvajasthambam, prakaram, hundi, kanikkai etc. There is no uthsava idol, nor is there any uthsavam. There is no archaka

for performing pooja. The heirs of founder have a right to reside in one of the houses and manage the Madalayam. In addition, the persons to

whom the cooked food has to be distributed is not restricted to the followers of the Hindu faith alone. On the other hand, the persons other than

Hindus could also be the beneficiaries of the distribution of the cooked food, because the word used in the will is "Desanthrugal".

3. The Deputy Commissioner of Hindu Religious and Charitable Endowment by his common judgment dated 13-6-1972 in O.A. Nos. 21 and 180

of 1969 on his file rejected the contention of the plaintiffs father that the office of the trusteeship in the suit institution is hereditary. However, the

Commissioner in A.P. No. 83 of 1973 has reversed that order. He held that the trusteeship in the suit institution is hereditary. The plaintiff, who was

impleaded as a respondent in O.A. Nos. 21 and 180 of 1969 contended that the suit institution is not a religious institution. This contention was

overruled by both the Deputy Commissioner and, the Commissioner. It is under these circumstances that the present suit has come to be filed for

the above said reliefs.

4. The defendant (The Commissioner, Hindu Religious and Charitable Endowments) filed a written statement to the effect that the plaintiff has no

right to file the suit, since the question as to whether it is a private temple or not did not come up for adjudication either in O.A. No. 21 of 1969 or

in O.A. No. 180 of 1969.

5. Even otherwise, Sri Ramar Madalayam is a religious institution and a temple as defined in Tamil Nadu Act 22 of 1959, for an institution to be a

temple, it is not necessary that there should be Dhvajasthambam, prakaram,

hundi or collection of Kanikkai, utsava idols and utsavams. Simply

because the suit institution, Sri Ramar Madalayam, was managed by the relations of the founder, it cannot be said that it is not a public one. It is

undoubtedly a temple dedicated to the general public. A reading of the will clearly shows the same. It is not correct to state that the distribution of

cooked rice is not restricted to the followers of the Hindu faith. The various recitals in the will clearly show that it was treated as a temple at every

point of time. Hence the orders of the Departmental Authorities are perfectly valid and legal No exception could be taken to the same. The suit

was also barred by limitation.

6. The learned Subordinate Judge, Tiruchirapalli, having regard to the above pleadings, set down the following issues for trial:--

1. Whether the suit Ramar Madalayam in Nachiyar Koil Road, Woraiyur, Tiruchirapalli is a private institution as contended for by the plaintiff;

2. Whether the order in A.P. No. 83 of 1971 dated. 1-11-1974, passed by the Commissioner is liable to be set aside for any of the reasons

contended for by the plaintiff;

3. Whether the suit Ramar Madalayam is a religious institution and a temple coming within the provisions of the Tamil Nadu Hindu Religious and

Charitable Endowments Act, 1959;

4. Whether there is no cause of action for the suit as contended for by the defendant;

5. Whether the suit is barred by time;

6. Whether the suit is not Maintainable for any of the reasons contended for by the defendants;

7. Whether the plaintiff is entitled to the declaration prayed for.

7. On a consideration of the various materials placed before him, both oral and documentary evidence, under issues 1 to 3, he came to the

conclusion that the suit institution viz., Sri Ramar Madalayam .is a Hindu religious institution coming within the purview of Tamil Nadu Act 22 of

1959. On issues 4 and 6, he held that the plaintiff is aggrieved by the order of the Commissioner in A.P. No. 83 of 1973. He, is, therefore, entitled

to file a statutory suit On issue 5, he held that the suit was in time. In the result, under issue No. 7, he dismissed the suit. Aggrieved by the dismissal

of the suit, the plaintiff has come up by way of appeal as aforesaid.

8. The contentions of Mr. T.R. Rajagopalan, the learned counsel for the appellant are as follows :--

1. The suit institution viz., Sri Ramar Madalayam does not answer the definition of "temple" as laid down u/s 6, Clause (20) of Tamil Nadu Act 22

of 1959

2. It has not been established by positive evidence that the public have a right of worship.

3. It is merely a God where provision is made for all wayfarers, providing shelter and food. Beyond that, it has absolutely no characteristics of a temple.

4. A reading of the will Ex. A. 1, clearly postulates that even non-Hindus could come and stay and have the bounties of the cooked rice.

Therefore, it is riot a Hindu religious institution, because the words "Nechal" and "Milechal" are found.

5. In so fat as he is belonging to the other religion, which is found mentioned in the will, it is certainly not a Hindu religious institution.

In support of the above submission, reliance is placed on Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The

Commissioner, Hindu Religious Endowments, Madras and Others, ; The Executive Officer of Sri Ranganathaswami Devasthanam, Sri Rangam

appointed as Fit person to manage the Plaint Trust Estate, The name of Rathnam deleted as per order dated 20th January, 1978 in C.M.P. No.

11911 of 1975 Vs. Sri Sehsha Iyengar Hamsa Vahana Mandagapadi Private Family Trust Estate by Hereditary Trustee and Manager S.

Parthasarathy Iyengar, and S. Kannan and Others Vs. The All India Sai Satnaj (Registered), .

9. The learned Government Pleader, supporting the judgment of the court below in opposition to the contentions of the appellant, would argue that

it is not necessary for an idol to be installed to hold that a particular institution is a temple. The Decision in T.R.K. Ramaswami Servai and Another

Vs. The Board of Commissioners of the Hindu Religious Endowments, is a clear authority. The further argument is that if there has been a

dedication to the public; as the recitals in Ex. A. 1 would clearly show that it is enough to establish that the public hastily right to worship, that

dedication is stated in Ex. A. 1. The various clauses in Ex. A. 1, if carefully read, would show that it was to be treated as a temple. Otherwise,

there was no question of temple prasadam or offering temple honours. Therefore, Section 6(20) of the Tamil Nadu Act 22 of 1959 clearly

applies. It is not correct to contend that the bounties of the cooked rice could be to the persons belonging to other religion, because Ex. A. 1 will

describe specifically distribution of cooked rice without reference to caste, which is peculiar to a Hindu Religion Nowhere the will contemplates the

participation of persons belonging to the religion other than the Hinduism either with regard to stay of or the distribution of cooked food. Lastly it is

submitted that in the concluding portion of the will referring to God, reference is made as God being common to all religion. But that does not mean

that the persons belonging to other religion could have any say with regard to the institution.

10. In view of the above submissions, the only question that arises for my determination is whether the suit institution (Sri Ramar Madalayam) is a

temple within the meaning of Section 6 (20) of the Act.

11. As to what is a temple can be gathered from the following definition of Section 6, Clause (20) of the Tamil Nadu Act 22 of 1959, hereinafter

referred to as "the Act"

6(20) ""temple"" means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of,

or used as of right, by the Hindu community or any section thereof, as a place of public religious worship;

Explanation : -- Where a temple situated outside the State has properties situated within the State, control shall be exercised over the temple in

accordance with the provisions of this Act, in so far as the properties of the temple situated within the State are concerned :--

A careful reading of the above discloses the following :

A temple is a place -

(i) used for public religious worship;

(ii) dedicated to the Hindu community or section thereof as a place of public religious worship; and

(iii) dedicated for the benefit of the Hindu community or any section thereof, or used as of right by the Hindu community or any section thereof, as

a place of public religious worship.

Therefore, it follows that it may include another place irrespective of installation of idols or a building with a door, Dhvajasthambam or Stoopi.

12. It cannot be gain said that the temples came to be established for the spiritual benefit of the Hindu community in general or a particular section

thereof. The object was to afford an opportunity for prayer and worship.

13. Sadasiva Iyer, J. has traced the origin of Hindu temples in Gopala Muppanar and Others Vs. Dharmakarta Subramania Aiyar and Others, .

Those observations being relevant may be quoted here with advantage :--

The origin of image worship in temple is stated in the authoritative puranas to have been in the Threthayugam and subsequent ages. In the first or

Krithayugam, God was worshipped by mankind (which consisted of only one caste) as imminent in the heart of everything and worship consisted

solely in the service of one's fellow creatures. As the spirit of universal brotherhood decayed in the second age and notions of inferiority and

superiority among men were indulged in, the inferior man was asked to worship God's higher manifestations in the superior man. Then, disputes

naturally rose about relative superiority and inferiority and the sages considered it expedient to introduce image worship in order to prevent

quarrels about superiorities, and in order that all men (who had now become divided into four distinct castes) without unseemly squabbles about

their relative excellences might worship God in a common image. (See the 4th sloka in the 7th skanda 14th chapter of Sreemath Bhagavatham)

Though image worship was thus recommended and laid open to all castes, it was clearly recognised as not the highest form of worship. (see

succeeding slokas). The appropriate mode of worship for the Brahmins was held to be through the media of the Fire and the Sun and the Highest

form of worship for all castes was always recognised as that which prevailed in the first age. It is clear from the above that temples were intended

for the worship of people belonging to all the four castes without exception. Even outcastes were not wholly left out of the benefits of temple

worship, their mode of worship being however made subject to severe restrictions as they could not pass beyond the Dhvajasthambam (and

sometimes not beyond the temple outer gate) and they could not have a sight of the images other than the procession images brought out at the

times of festivals. The Agamas and the Thanthras which regulated the worship in the temples laid down rules as regards what caused pollution to a

temple and as regards the ceremonies for removing pollution when caused. There are, it is well known, Thanthries in Malabar who are specialists in

these matters of pollution. As the temple priests have not the special Saivite initiation of Dheeksha which entitled them to touch the innermost image

and as the touch of the persons who have got no such initiation even though they be Brahmins was supposed to pollute the image, even Brahmins

other than the temple priest Brahmins were in many temples not allowed to go into the Garbhagraham. In one of the Agamas, it is said (as freely

translated) thus :-- "'Saivite Brahmin priests are entitled to worship in the Antharala portion. Brahmins learned in the Vedas are entitled to worship

in the Arthamantabha.

Other Brahmins in the front Mantabha, Kings and Vysyas in the Dwaramantabha. Initiated Sudras in the Bahir Mantabha"' and sonon.

14. In passing, it may be said that those restrictions on worship by outcastes, the purificatory ceremonies to remove pollution caused by entry by

out caste, etc., in temple are now anachronic in view of the Tamil Nadu Temple Entry Authorisation Act, 1947.

15. Bijan Kumar Mukherjee's Hindu Law of Religious and Charitable Trust states at pages 152 to 154 on this subject as follows :--

The Gods that are worshipped by the Hindus at the present day are mostly puranic Gods whose legends are given in the various puranas, though

there are some divinities of Tantric Origin. Though the Puranas are by no means uniform, the legends associated with the various Gods are fairly

well known and have been the basis of a considerable mass of poetic literature in later times. One cardinal principle underlying idol worship you

would always bear in mind -- and this has some bearing on the law relating to gift of property to idols, that whichever God the devotees might

choose for purposes of worship and whatever image he might set up and consecrate with the object, the image represents the Supreme ,God and

non else. There is, no superiority or inferiority amongst the different Gods Siva, Vishnu, Ganpathi, or Surya is extolled, each in its turn as the

preserver and supreme Lord of the universe. The image simply gives a name and form to the formless God and the orthodox Hindu idea is that

conception of form is only for the benefit of the worshipper and nothing else.

Along with the establishment, of idol worship, in Hindu religion, elaborate rites and ceremonies, it seems, were introduced by Brahminical writers in

regard to buildings of temples and consecration and purification of idols.

It is now necessary to mention some of the important decisions which lay down the general principles, by the application of which it may be stated

whether in any given case an endowment or trust is public or private. Some of the tests to be applied to decide whether a "temple" is public or

private" have been discussed in (1963) (2 M. L. J. 280.) "In order to constitute a temple as defined in section 6(17) of the H. R. & C E.: Act,

1951, it has to be proved that the place was and is being used for public religious worship and that it has been dedicated to and for the benefit of

or used as of right by the Hindu community or any section thereof as a place of religious worship".

In the case of very ancient temples whose origin is unknown there being no evidence as to who founded it or built it, and it is in evidence that it is a

popular one in which the right of worship, is not confined to any particular family alone, but it has always been accessible to all the villagers living

on the locality who have been holding the temple in great veneration, it must be held that the institution is a public one and a "temple" as defined by

Section 6(17).

"In respect of temples in the Tamil Nadu there is a strong presumption that they are public institutions. The situation of the temple on a hill, its

accessibility to all the people residing in the locality without let or hindrance the shrine being built, of stone with a mantapam and a tower, the deity

having several vahanams and the existence of utsava vigrahas, the existence of a car in which the deity is taken out in procession during the festival

days, the expenses of the festival of the temple being met by collection from the public, the existence of a hundi in which devotees put money, and

the circumstance that during festival days the public put up big pandals after clearing the thorny tracts, up the hills, all these features indicate that the

temple is a public one.

16. In Board of Commissioners for the Hindu Religious Endowments and Others Vs. Sreemathi Rukmini alias Kunhikavu alias Kuthiravattath

Kongasseri Puthukulangara Amma Neethiyar and Another, the definition of

temple as contained in Section 9 (12) of Tamil Nadu Act II of 1927

came up for consideration. A Division Bench consisting of Beasley C. J. and Cornish, J., held as follows at page 640 :--

Temple, in the definition Clause (12) of Section 9, signifies a temple in the ordinary sense of the word namely, a place dedicated and used for

public worship. The act appears, therefore, to contemplate a place having an existence as a temple. It may be, however, that a temple which, at the

time when the Act came into force, had been temporarily abandoned as a place of worship for any of the reasons suggested in the course of the

arguments, such as destruction by fire or flood, would still be a temple to which the Act applied and be subject to the special powers given to the

Board by Section 67 of the Act"".

17. In T.R.K. Ramaswami Servai and Another Vs. The Board of Commissioners of the Hindu Religious Endowments, , Satyanarayana Rao, J., at

p. 808 : (at pp. 476-477 of AIR) observed as follows : --

A temple is defined u/s 9(12) of the Act as follows : --

Temple means a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used

as of right by the Hindu Community or any section thereof as a place of religious worship.

Confining the attention to this definition, the essence of the matter is the existence of a place of public religious worship. In the case of a temple, it

becomes a place of public religious worship when the idol is installed and consecrated and the Pranaprathishta or vivification ceremony is

performed "Until then, it is elementary knowledge that the image does not become an object of worship.

The deity does not begin to reside in the idol (the visible image) until the consecration or the appropriate ceremony is completed After the image is

completed by the artist, it is brought in procession from the artist's place to the hall of ablution and thenceforward the ceremonies of consecration

commence. This applies to prathishta sthalams, i.e., to the temples in which the deity is established newly by observing a certain set of rules as

opposed to swayambhu sthalams, temples in which the idol or the deity is swayam vyektha or self-revealed, i.e., the image is not established by the

act of men. A description of the ceremonies in the case of prathishta sthalams is

to be found is Saraswathi's Hindu Law of Endowments (page 109) and in P. R. Ganapathi Ayyar's Religious Endowments (at page 224). Unless and until these ceremonies are gone through, the place where the idol is installed, and the idol itself, does not become a fit object of religious worship. We are not in this case concerned with other places of religious worship where it may be by custom or usage some stone image or wooden image becomes an object of worship. We are concerned only with the coming into existence of the temple as contemplated by the founder, the installation of the idol of Alagarwami and its consecration and performance of Kumbhabhishekam after the completion of the building. In the present case, therefore, there is no place of public religious worship.

This aspect of the definition was clearly emphasized by the decision in Board of Commissioners for the Hindu Religious Endowments and Others

Vs. Sreemathi Rukmini alias Kunhikavu alias Kuthiravattath Kongasseri Puthukulangara Amma Neethiyar and Another, Breasley C.J. observed as

follows :--

The definition of a temple in the Act requires it to be a place which is used; and this temple, not only was not used and is not being used, but it

cannot be used until it is rebuilt. It has in fact been in ruins for many years. I therefore, think, that the learned trial judge was perfectly right in

holding that the Board had no jurisdiction with regard to its properties." This view of the learned judge was not accepted by Govinda Menon, J.

The learned Judge observed at pp. 821 and 822 (of ILR) : (at p. 483 of AIR) as follows :--

In this connection, it is useful to refer to the dictionary meanings of the word "temple.

In the Concise Oxford Dictionary, at page 1261, the meaning of the word "temple" is given as follows :--

Edifice dedicated to service of God; or place in which God resides.

In the New English Dictionary, Volume IX, Part II the meaning for the word "temple" is given thus : --

An edifice or place regarded primarily as the dwelling place or "house" of a deity; hence an edifice devoted to divine worship. Historically, the

word is applied to sacred buildings of Egyptians, Greeks, Romans, etc., but now to those of Hinduism, Buddhism, Confucianism, Taoism,

Shintoism, etc."".

On a difference of opinion between the two Learned Judges, the matter was referred to Viswanatha Sastri, J. He held at p. 837 (of ILR) : (at p.

489 of AIR) as follows : -

It is common knowledge that there are in this Presidency many institutions of a mixed character, whose exact place among religious and charitable

foundations is likely to be a matter of doubt or dispute. There are some samadhis or tombs and sepulchres of holy men, where an image of Siva is

usually installed and worship, regular or occasional, is offered Some of them have come to be considered as public temples by reason of the

sanctity of the persons interred. There are private mausoleums where idols are installed and pooja offered but which are not temples or temples as

defined in the Act, because the public either do not care or are not allowed to worship at such places; A. Draviasundaram Pillai Vs. N.

Subramania Pillai, Veluswami Goundan Vs. Dandapani by next friend and mother Govindammal and Others, . There have been cases where

memorials erected originally in honour of heroes or martyrs have developed into places of public worship and have been declared to be public

temples; The Board of Commissioner for the Hindu Religious Endowments Vs. Pidugu Narasimham and Others, . There are institutions like

bhajana matams, where pictures or idols of gods of the Hindu pantheon are kept, the public congregate dairy or on stated occasions, sing the

praise of God and receive prasadam. There are institutions loosely called mutts which, however, are private buildings in which householders,

belonging to particular sects or following particular tenets, live with their families. A so-called mutt may merely be the residence of a sanyasi or

Parades). There are also endowed mutts which are public institutions established for propagating particular systems of religious philosophy,

presided over by an ascetic head. There are choultries resorted to by the public, where images of Gods are installed and daily worship offered.

There are also endowments of immovable property and cash for institutions of the foregoing types. There are foundations of which it is difficult to

say whether they are temples or mutts at all and whether they are temples or mutt as defined in the Act.

Again it was observed at p. 841 (of ILR) : (at pp. 490, 491 of AIR) as follows :--

It is next contended by Mr. Muthiah Mudaliar that there is no "institution" in this case so as to attract the operation of Section 84(1), the institution, according to him, coming into existence only if and when the building is completed and the idol installed and consecrated in the manner prescribed by the Agama Sastras, and described by Satyanarayana Rao, J., in his judgment. Consecration according to the ceremonial rites prescribed by the Agama Sastras is not a legal requisite, though it is a sacerdotal necessity according to the views of the orthodox. The test is not whether the installation of an idol and the mode of its worship conform to any particular school of Agama Sastras. If the public or that section of the Public who go for worship consider that there is a Divine presence in a particular place and by offering worship at that place, they are likely to be the recipients of the bounty or blessings of God, then, you, have got the essential features of a temple as defined in Section 9, Clause 12, of the Act. The presence of an idol, though an invariable feature of Hindu temples, is not a legal requisite under the definition of a temple in Section 9, Clause 42 of the Act. The word "institution" which is used in Section 84(1) of the Act is a term of very wide import, capable of different meanings according to the context in which it is used. It means, among other things, a foundation, a system, a constitution, an establishment, or organization, a place designed for the promotion of some religious, charitable or other object of public utility, and so on. In this case, the place for the construction of the temple had been fixed, the building had been substantially erected though not completed, the idol was ready to be installed, properties had been endowed and trustees appointed for the conduct of the worship and the management of the properties.

18. It is in this background that I will analyse the various clauses in Ex. A. 1. Veeraswami Naidu, the founder of this temple was a Police Inspector. Therefore one could take it that he was worldly wise. He had already built this Sri Ramar Madalayam. According to him it was built as a charity for the salvation of his soul. He dedicates the same to the Public and requires under the will to use as a temple and a mutt. I do not think anything more necessary than this unequivocal dedication for the public to enjoy as of right. In several places he uses the word "Sannathi"; firstly with regard to the homams; secondly with regard to the lighting during pooja days, offering prasadam and distribution of the same, the cooked rice

being distributed as Prasadam. Therefore, I am unable to accept the contention of Mr. T. R. Rajagopalan, that there is no picture of Sri Rama

which has come to be installed. As a matter of fact, it came to be installed even during the lifetime of Veeraswamy, the founder, and pooja was

being performed. As Viswanatha Sastri, J., pointed out in T.R.K. Ramaswami Servai and Another Vs. The Board of Commissioners of the Hindu

Religious Endowments, the presence of idol is solely unnecessary, I should think this Mutt in question should answer the definition of "temple,

which definition, I have already analysed. If a sense of reverence is created by the place in the belief that God resides there or if an edifice devoted

to divine worship, that would be enough to attract the definition of "Temple" u/s 6(20) of the Act. In other words, it is a sense of reverence that is

very important. It may be stated that this very definition has been repeated under the Act right from Act 2 of 1927, again in Act 19 of 1951 and

also the present Act (Tamil Nadu Act 22 of 1959). Nowhere the requirements as are ordinarily expected of a temple are insisted upon. It is a faith

that it is the abode of God that matters. It is that compelling faith, that by offering prayers, one will be the object of bounty, that is important. I

consider these elements being present in this case.

19. An argument was advanced by Mr. T.R. Rajagopalan, that inasmuch as provision has to be made for the pilgrims, barring low caste and

undesirable, it will not be a Hindu Institution, because of the words "Neechal" and "Milechal" having been used under Clause 8(b) of the will.

20. The learned Subordinate Judge in construing the clause has held thus : --

Even a close scrutiny of the charities described in Clause 8 of Ex. A. 1, would only suggest that the founder N. Veeraswamy Naidu intended to

benefit only the Hindus and not all people irrespective of the religion. At this juncture it must always be borne in mind that the founder was

employed as a chief Inspector of Police in the State of Pudukkottai and was a literate man. He employs several nomenclatures like "Neechal,

Milechal. Brahmina etc." in his will original of Ex. A. 1 for the purpose of describing the beneficiaries of the charities described in Clause 8 of the

will. In Clause 8(b) it is stated,

(.....)

Bagavadhal means religions pandits and Sanyasis obviously refers only to

mendicants. Yathirikars means pilgrims. If all those nomenclatures include people belong to all religions it need not have been stated therein (.....) means people belong to low caste and (.....) must obviously mean people belong to other religions. Since Sri Ramar Madalayam is a Hindu Religious institution naturally the founder would not have intended to make provision for the stay of people belonging to other religions. The circumstances clearly indicated that Milachal in Clause 8(b) of the will Ex.

A. 1, refers only to persons belonging to other religions. Even foreigners who profess Hinduism are entitled to come and stay in the suit institution because it is stated in Clause 8(b) that any one is entitled to come and stay irrespective of their colour.

21. Undoubtedly the word ""Neechal"" would mean out-caste, while ""Milechal"" in the traditional Hindu religion is used to indicate non-believers in idol worship viz., the foreigners. In volume V of Tamil Lexicon published by the University of Madras at page 3206 the meaning of the word

Milechan"" has come to be stated thus :--

In the context of the will, it would only refer to such of those foreigners, who do not subscribe to idol worship, which is the creed of Hindu

Religion. Therefore, the larger meaning just now extracted cannot apply. Again these meanings cannot be imported without regard to the context. I

am relieved of much of my difficulty, because the succeeding words are irrespective of caste. It is axiomatic the caste system is prevalent only

among Hindus. Therefore, the provision for stay must be construed as only applicable to the Hindus.

22. Coming to the ""distribution of Prasadam (cooked rice), it is stressed that it shall be distributed without reference to caste, (disregard of caste).

That also emphasizes that bounties should be given only to Hindu s.

23. In the end of the will, all that is stated is God is common to all the religion and is omni present. The founder does not anywhere permit the

participation of persons belonging to other religions.

24. In Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The Commissioner, Hindu Religious Endowments, Madras and

Others, the origin of God came to be laid down as "" follows : --

Mutt used as a transitive verb means literally ""to dwell"" or to inhabit. ""Muta"" noun means hut, a small building inhabited by an ascetic or devotee, a

monastery, a college. ""In its original and narrow sense, then, the term Mutt signified the residence of an ascetic or Sanyasi or Paradesi"" -- See

Gryana Sammanda Sannathi v. Kandaswami Tambiran (1887) ILR 10 Mad 375.

From very ancient times, the Sanyasis had no fixed abode but were wandering from place to place receiving such lodging and food as were

provided by devotees. Even now to a large extent the same practice obtains except in cases where such Sanyasis are attached in a Mutt. When

Buddhism was in its ascendancy in India and when Buddhist monks became popular, Sri Jagadguru Adisankaracharya gave a new orientation and

infused fresh Hood into Hinduism and stemmed the tide of the rapid spread of Buddhism in India. He established the Adwaita or Vedantic system

of Philosophy with which his name is always associated He was the first, so far as tradition goes", to establish Mutts for the propagation of his

philosophy and the reclamation of Hindusim. Tradition has it that after conquering the rival faiths he established Adwaita system of Philosophy and

founded four Mutts or seats of learning in the four corners of this vast sub-continent-Sringeri (Sharada Peeta) in Mysore in the south with which, it

is familiar knowledge, the name of the great and erudite scholar and philospher Vidyaranyaswami is associated; Badrinath in the Himalayas in the

north; Jagannath or modern Puri in the east, and Dwaraka in the Bombay Presidency, in the west. In each of these Mutts as their heads, he

installed his principal disciples, and he himself assumed the headship of Sarvanga Peeta or the central seat of knowledge at Kanchi, the modern

Conjeevaram. This central Peetam was first shifted to Tanjore and then to Kumbakonam from where it continues to function even in the present

day. Following the lead of Sankara, (sic) the founder of Visishtadwaita, and others also founded Mutts with similar objects and for similar

purposes. Nanguneri in the Tinnevely district also known as Vanamamalai Mutt and the Ahobila Mutt were founded, so goes tradition, by the

disciples of Sri Ramanujacharya. As adverted to already, the dwaita Mutta at Udipi were founded by Sri Madvacharya. Ahobila Mutt was

established for the spiritual instruction and benefit of the Vaishnava Brahmins of the Vadakali Sect. Rangachariar v. Yegna Dikshatur (1890) ILR

13 Mad. 524 relates to this Mutt. Besides these, there are Saiva Mutts of the Sudras and the Vira Saiva Mutts of the Lingayats. Of the Sudra

Mutts perhaps the Dharmapuram Mutt is the largest.

The origin of these associations"" quote Muttuswami Ayyar, J., in *Giyana Sammanda Pandara Sannadhi v. Kandaswami Tambiran* (1887) ILR 10

Mad 375 their constitution and development form part of the history of the establishment and spread of the Brahminical systems of religious

doctrine among the Sudra communities in Southern India preferring to the Sudra Mutts). Originally, the ascetic who renounced the world and

devoted himself to religion, confined his attention to the study of theology, to imparting religious instruction to his disciples, and to complying with

the ordinances prescribed for the guidance of his order.

"In the well-known case of *Vidyapurna Thirthaswami v. Vidyanidhi Tirtha Swami* (1904) 14 Mad U 105 : ILR 27 Mad 435, Subramania Ayyar,

J., referring to these Mutts described the object with which they were established as follows :--

Now there can be no doubt that institutions of the class under consideration were established as centres of theological learning and in order to

provide a fine of competent teachers with reference to the established Hindu creeds of the country. If any proof of this statement were necessary,

that is furnished by the unquestionable connection which exists between some of the more important of this class of institutions and the leading

exponents of the tenets of those creeds. As pointed out in Mr. Ghose's *Hindu Law*, page 80, no less than seven Mutts being among the most

celebrated, owe their origin to the great adwaita philosopher Sankaracharya. Other Mutts not less numerous or important following the tenents of

the Visishtadwaita system of Ramanujacharya are traceable to that teacher. The wellknown eight Mutts at Udipi, the centre of the Dwaita system

of thought are on all lands admitted to have been founded by Madhavacharya, the Chief expounder of that system. The Sudra Mutts of this

Presidency of which those at Dharmapuram and Tiruvaduthurai are the chief, represent what is known as the Saiva Sidhantam.

The reference to seven Mutts of Sankaracharya seems to be a mistake for five. The learned judge refers to the influence exercised by Mutts as

centres of learning in the next paragraph in the same page thus : --

The influence exercised by Mutts as centres of learning on the religious and other literature of the country cannot be denied. The varied and

wellknown contributions made thereto by the famous Vidyaranya Swami of the Sringeri of Sarada Mutt, or under his auspices, are among the most

conspicuous examples of this kind. There is scarcely a branch of learning considered by Hindus important, to which Vidyaranya or the scholars

whom he gathered round him, did not make valuable contribution, and it is to his commentaries that the modern world owes its knowledge of the

traditional meaning of the oldest of sacred books -- the Rig Veda. Nor has the influence of the Mutts at Dharmapuram, Tiruvadhuthurai, etc., on

the Dravidian Literature been inconsiderable." To similar effect are the observations of Bashyam Ayyangar, J., in his judgment in the same case.

Referring to the Mutts of Southern India, Ammer Ali, J., says in *Vidya Varuthi Thirtha v. Baluswami Ayyar* (1921) 41 MLJ 346; LR 48 IA 302;

ILR 44 Mad 831 : AIR 1922 PC 123.

In many cases in Southern India, especially where the diffusion of Aryan Brahmanism was essential for bringing the Dravidian peoples under the

religious rule of the Hindu System, colleges and monasteries under the names of Mutt were founded under spiritual teachers of recognised

sanctity,

It is thus evident that the Mutts are centres of Theological learning especially for the study practices and propagation of the cult of each system of

philosophy, and to train and equip a line of competent teachers whose duty is to go forth into the land bearing the torch of learning and spreading

its light. They must have functioned and indeed in future must continue to function to fulfil the objects with which they were found with foresight by

the great teachers of the religion. If they had survived the onslaughts of other religious through centuries, it can only be due to their intrinsic merits

and not to adventitious circumstances. It is the learning and piety of the head of the Mutt, the superior, which attracted disciples and induced even

laymen to make munificent gifts of land and other properties placing them at the disposal of the swami for the time being. It is common knowledge

that gifts are offered as Padakanikas at the feet of the Swami. There are also permanent endowment of lands and villages made in ancient days by

Kings and Rajas without indicating the particular object for which such properties were endowed. It would perhaps be considered impudence on

or restrictions regarding the use of the income from the properties gifted to a

personage whom he held in high religious esteem. The piety of the head to whom the gifts were made was a sufficient guarantee that the corpus and the income would not be frittered away for mundane purposes.

These Mutts, in short, are something like colleges established and founded for the study and teaching and for propagating the cult of the religion

peculiar to the Mutt." I do not think this has any application to the facts of the present case.

25. In *S. Kannan and Others Vs. The All India Sai Satnaj (Registered)*, the question arose was whether Sri Baba Mandir in Mylapore would be a

temple, A Division Bench of this Court held that having regard to the fact that even non-Hindus like Christians or Muslims or Parsis could be

members of Sai Baba organisation, it could not be called as a Hindu Mutt or a temple. Factually, therefore, that case is distinguished.

26. Lastly, turning to the decision in *The Executive Officer of Sri Ranganathaswami Devasthanam, Sri Rangam* appointed as Fit person to manage

the Plaintiff Trust Estate, The name of Rathnam deleted as per order dated 20th January, 1978 in C.M.P. No. 11911 of 1975 Vs. Sri Sehsha Iyengar

Hamsa Vahana Mandagapadi Private Family Trust Estate by Hereditary Trustee and Manager S. Parthasarathy Iyengar, it dealt with a case of

specific endowment and not a temple of this character in question. Therefore, that ruling is also inapplicable to the facts of the present case.

27. In the result, I do not have the slightest hesitation in upholding the dismissal of the suit by the court below. Accordingly, the appeal will stand

dismissed. However, there will be no order as to costs.