
(1993) 12 MAD CK 0059
In the Madras High Court

V. Srinivasa Chettiar and Others

APPELLANT

Vs

G. Selvanambi and Others

RESPONDENT

Date of Decision : 23-12-1993

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63(a)

Citation : (1994) 1 LW 226 : (1994) 1 MPLJ 550

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—Defendants 5 to 8 are the appellants in this appeal against the decree in O.S. No. 906 of 1978 on the file of Subordinate Judge's court, Tiruchirapalli, setting aside the order dated 16.10.1976 of the 1st defendant 2nd respondent herein, viz., the Commissioner, Hindu Religious and Charitable Endowments, Madras and declaring that the suit trust is not a religious institution" under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act"), but that it is only a private trust of the plaintiff-1st respondent's family. Originally the 1st respondent filed C.A. No. 6 of 1974 on the file of the Deputy Commissioner, H.R.& C.E., Trichy, u/s 63(a) of the Act for declaring that the suit Trust is not a religious institution under the Act. But, that application was dismissed by order dated 28.8.1975 (marked as Ex. B-2 in the suit) by the Deputy Commissioner, holding that the suit trust was only a religious institution. Thereafter, the 1st respondent preferred an appeal in A.P. No. 73 of 1976 before the 2nd respondent-Commissioner and by order dated 16.10.1976 (marked as Ex. A-13 in the suit) the Commissioner only confirmed the order of the Deputy Commissioner and dismissed the appeal. Hence the present suit was filed u/s 70 of the Act for setting aside the order of the said Commissioner and for declaring that the trust is a private trust. The suit having been decreed as prayed for, the trial court holding that the suit trust was not a religious institution, the appeal has been preferred by defendants 5 to 8.

2. The 2nd defendant-3rd respondent is the Fit Person appointed by the Commissioner and 3rd defendant-4th respondent is a paternal grandson of one of the original three trustees to the said trust. It may also be pointed out here that the plaintiff himself is the maternal grandson of an other original trustee of the said Trust. Admittedly, originally there was a Sabha founded by one Ramanujadasar and he dedicated the suit properties which were got by him partly by way of purchase and partly by way of donations under the trust deed Ex. A-1 dated 11.3.1930, whereby he appointed three trustees by name (1) Nallasamy Chettiar (2) Venkatarama Chettiar, and (3) Veeraraghava Chettiar. It is these trustees who are referred to as original trustees earlier.

3. Now, while the plea of the plaintiff is that the said suit trust is only a private trust and would not come under the definition of the term "temple" u/s 6(2) of the Act and consequently not a religious institution as defined u/s 6(18) of the Act, the plea of the appellant as well as the 1st defendant is that it is a temple and consequently a religious institution. Therefore, in this appeal it has only to be seen which of these two contentions is correct and whether the decision of the court below that it is a private trust and not a religious institution is correct. The 1st defendant though did not prefer an appeal, supported the appellants and both the learned Counsel for the appellants and the learned Counsel for the 2nd respondent made the same arguments. The said arguments are as follows : The recital in Ex. A-1 itself shows that the dedication made therein is not for any specified individuals, but only for the Hindu Community as a whole or at least a section thereof, in which case, the trust would only be a public trust. In this connection the decision in *Deoki Nandan Vs. Murlidhar*, is relied on. Further, even the court below has held that idols of Navalarasamigal and Sri Kannabiran were worshipped by the people and D.Ws. 2 to 5 have stated that people from various places would come and worship the deities. The decisions in *S. Ramaswamy Naidu and Others Vs. Commissioner, Hindu Religious and Charitable Endowments and Others*, *Chennammal Vs. The Commissioner, for Hindu Religious and Charitable Endowments*, *Commissioner, Hindu Religious and Charitable Endowments Vs. S. Kalayanasundara Mudaliar, and T.V. Mahalinga Iyer v. State of Madras AIR 1980 S.C. 2030*, are also relied on. It is also pointed out that the endowment was for continued performance of poojas not only to the abovesaid Navalarasamigal, but also to Sri Kannabiran. It is also pointed out that the Archakas are paid and the public also contributed for the endowment. The relevant pleadings and evidence were also relied on. It is also pointed out that the only witness examined on the side of the plaintiff is not the plaintiff, but only the 3rd defendant. On the other hand, the defendants have examined as many as five witnesses to prove their case.

4. On the other hand, the learned Counsel for the 1st respondent-plaintiff made the following submissions : There is no evidence that as of right, the public worshipped in the suit sabha. It is also in evidence that there is no Gopuram, Kalasam, Kodimaram, Vaganam, Undial and Dwajastjambam. There is also no public subscription. The trustees appointed in Ex. A-1 and their descendants

alone are in management continuously. The worship of Navalar only shows that there was guru pooja and no importance has been given for the worship of Sri Kannabiran. There is also no express dedication for any temple in favour of the idols. He also relied on the decision in *Gopalan v. Commissioner H.R. and C.E., Madras* (1973) 1 M.L.J. 43. The five witnesses examined on the side of the defendants were only interested witnesses as held by the court below and they were not independent witnesses and not one among the alleged public worshippers.

5. I have considered the rival submissions. Even at the outset I must point out that though the plaintiff has filed the suit he has not even chosen to examine himself as one of the witnesses on his side. Though initially the learned Counsel for the 1st respondent-plaintiff stated that he was only young and that is why he was not examined, I find that he was as old as 37 years when the suit was filed and there is not even any explanation why he was not examined. In fact, P.W. 1 the 3rd defendant deposed that the plaintiff was in town and he had also come to court. But, yet, he did not even chose to give any explanation as to why the plaintiff was not examined.

6. Before going into the relevant pleadings, and the evidence recorded, I may set out the definition of the term "religious institution" as found in Section 6(18) of the Act. According to the said definition, "religious institution" means "a math, temple or specific endowment". In turn, the term "temple" is defined u/s 6(20) of the Act. According to the said definition, "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. It has been held in *Commissioner, Hindu Religious and Charitable Endowments Vs. S. Kalayanasundara Mudaliar*, , with reference to the corresponding similar definition of the term "temple under the old Madras Hindu Religious Endowments Act, 1927 that firstly the place in question should be used as a place of public religious worship and secondly that it must be dedicated to or for the benefit of or used as of right by Hindu Community or any section thereof. It has also been held in *Chennammal Vs. The Commissioner, for Hindu Religious and Charitable Endowments*, as follows:

The distinction between a public and a private trust and temple has been elaborately considered by the Supreme Court in *Deoki Nandan Vs. Murlidhar*, . It was held in that decision that the distinction between a private and a public trust was that whereas in the former the beneficiaries were specific individuals. In the latter they were the general public, or a class thereof and that the true beneficiaries of a religious endowment were the worshippers and the test to decide whether an endowment was public or private was to ascertain whether it was the intention of the founder that specified individuals were to have the right of worship at the shrine or the general public or any section thereof. The main characteristic of a public temple is that it is intended for the use of the public or a section thereof. On the other hand private temples are intended for the worship

by the members of the family of the donor exclusively. In the case of a public temple the public would be entitled to worship therein as a matter of right while in the case of a private temple such worship by persons other than the founder's family would be by the sufferance of the latter.

No doubt in the abovesaid decision on facts, the court held that the temple in question was only a private temple. It has been held in *S. Ramaswamy Naidu and Others Vs. Commissioner, Hindu Religious and Charitable Endowments and Others*, , that where it is clear that by long usage and acceptance the public were visiting a temple and performing poojas therein and participating in the processions and daily poojas, that by itself would raise a very strong presumption against the private character of the temple. Further, it has also been held in *T.V. Mahalinga Iyer Vs. State of Madras and Another*, thus:

It is undisputed law that as far as Tamil Nadu is concerned, there is an initial presumption that a temple is a public one, it being up to the party who claims that it is a private temple, to establish that fact affirmatively. Of course, this initial presumption must be rebutted by clinching testimony and the crucial question is as to whether the public worship in the temple as of right. Ordinarily, there may not be direct evidence regarding the exercise of such right and inference used to be drawn from a wealth of circumstances....

The dedication to the public need not be by a deed and may be spelt out of the circumstances present. The right of the public to worship again is a matter of inference.

7. In the light of the decisions referred to above, I shall now try to deal with the relevant pleadings and evidence, Even initially I may point out one passage in the plaint itself. In paragraph 14 of the plaint, it is alleged as follows:

The occasion if any for the public to participate in the functions of the sabha are, occasions of the celebration of the birthday Thirunatchatram of the said Guru which is after all on annual celebration. The nature of celebrations or mode of participation by the members of the public will in no way probabalise that the sabha is a religious institution much less are dedicated to the public.

Thus even in the plaint, an admission to this effect is there, viz., the public participated annually in the celebration of the birthday Thirunatchatram of the abovesaid Guru.

8. This part, though P.W. 1 deposed in chief-examination thus:

he deposed in cross-examination thus:

From one of the above passages, it can be safely said that in so far as the alleged non-participation by public in the worship is concerned, the evidence given is only hearsay evidence. At any rate, there is admission by P.W. 1 that worship is done atleast by the caste or Jathi to which P.W. 1 belongs. If that is so, since that caste would amount to a section of a Hindu community, it can be

inferred that poojas are performed by atleast a section of the Hindu community, as of right. That apart, even though P.W. 1 initially deposed that with reference to the abovesaid idol of Kannabiran there was no predhishtai or consecration, he later deposed as follows:

So, it is clear that his earlier deposition was not true. Further, he also deposed in cross-examination thus:

9. Further, on the side of the defendants as many as five witnesses have been examined. The 2nd defendant, the fit person has given evidence as D.W. 4 and the 5th defendant has been examined as D.W. 2. D.W. 3 is the Archakar of the temple ever since 1950. D.W. 4 is also the headman of the village. He has deposed as follows:

For all these depositions in the chief-examination, there is no specific cross-examination, excepting suggesting his enmity against the plaintiff. Likewise for a similar detailed deposition by D.W. 5, who was aged about 60 years, there was no specific cross-examination on the different details given by D.W. 5 and enmity against the plaintiff was suggested. In the above circumstances, I do not think that the court below is right in describing the entire evidence of all the witnesses examined on the side of the defendants as interested, particularly when there is no specific cross-examination on each of the details given by D.Ws. in their chief examination regarding the public character of the temple.

10. Further, from Ex. A-1 the original trust deed, certainly it cannot be said that the trust is for the benefit of the specified individuals. Further, even out of the three trustees appointed under Ex. A-1, even though according to the learned Counsel for the 1st respondent, two of them were related to each other, the other was not related to the remaining two trustees. Further, in Ex. A-1 itself it is mentioned that the superstructure put up over the first item site under Ex. A-1 was put up out of the financial assistance given by several persons. It is also provided there that the appointed trustees have no right to alienate the properties given under Ex. A-1. It is also provided there that out of the income of its properties, poojas have to be conducted for ever. The relevant passage therein is as follows:

The court below erred in concluding that the scrutiny of Ex. A-1 would go to show that there was no public temple.

11. No doubt in the above referred to Chennammal Vs. The Commissioner, for Hindu Religious and Charitable Endowments, , it is observed that the mere fact that outsiders are allowed to worship in a temple cannot necessarily mean that the temple was dedicated to the public as no Hindu will ever prohibit strangers from offering worship to the deity enshrined in his private temple. But, in the present case, in view of the above said other features, there is no good reason to hold that the said temple was a private one. The features pointed out above would only show that the suit temple was only a public temple and dedication for public religious worship could be inferred from the above referred to features.

12. In the result, the judgment and decree of the court below are set aside and the suit is dismissed. Accordingly, the appeal is allowed. However, in the circumstances of the case, there will be no order as to costs.