

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 02.12.2022

Judgment Pronounced on : **14.12.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.397 of 2010
and M.P.No.1 of 2010

1. Durgai Lakshmi Kalyana Mandapam
a specific endowment to
Arulmigu Siddhi Ganesar Nataraj Perumal
Durgaiamman Group Temples,
Represented by K.Jeevanandam

2. K.Jeevanandam

.. Appellants

Versus

1. Idols of Arulmigu Siddhi Ganesar Nataraja Perumal
Durgaiamman Group Temples,
Rep. by its Executive Officer

2. Govindarajulu

.. Respondents

Prayer : Appeal Suit filed under Section 96 and Or XLI R 1 and 2 of Civil Procedure Code to set aside the judgment and decree, dated 11.06.2008 made in O.S.No.4769 of 2006 on the file of the learned VI Additional Judge, City Civil Court at Chennai and allow the above Appeal Suit.

For Appellants : M/s.P.Priyanka
for M/s.R.Gouri

For Respondents : Mr.S.D.Ramalingam
Mr.D.R.Sivakumar, for R1

: R2 - Exparte

JUDGMENT

A. The Appeal Suit :

This Appeal Suit is filed against the judgment and decree, dated 11.06.2008 passed by the learned VI Additional Judge, City Civil Court, Chennai in O.S.No.4769 of 2006, in and by which, the suit filed by the plaintiff, to declare that the plaintiff temple will be entitled to manage and administer the Durgai Lakshmi Kalyana Mandapam and to direct the defendants to quit and deliver vacant possession of the schedule properties and for verifying the accounts and rents, was decreed by the Trial Court.

B. The Plaint :

2. The case of the plaintiff is that, it is one of the oldest temple situated at No.8, Manali Chinniah Garden II Street, Old Washermanpet, Chennai - 600 021. For the maintenance of the temple, the then Trustees, with the help of the public and collections made from the devotees, had put up a Kalyana Mandapam in the temple premises itself in the first floor as a

specific endowment for the temple. The same is rented out for weddings and other functions and the income derived there from was utilised by the temple for its maintenance. The second defendant's father, *D.Kandaswamy Chetty* and one *D.Munuswamy Chetty* were declared as the Hereditary Trustees of the temple. Subsequently, by order, dated 12.12.1974, with the consent of the then Trustees, an Executive Officer was also appointed to be incharge of the day to day administration and properties of the temple. While so, the Deputy Commissioner, H.R. & C.E., by order in O.A.No.37 of 1987, dated 27.02.1995, had declared that the said Kalyana Mandapam as a specific endowment within the meaning of Section 6(19) of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The then Trustees of the temple namely, *D.Kandaswamy Chettiar* and *D.Munuswamy Chettiar*, had also filed O.A.No.34 of 1985 before the Deputy Commissioner, H.R. & C.E., for a declaration that they are the founding Hereditary Trustees of the said Durgai Lakshmi Thirumana Mandapam and the same was dismissed by an order, dated 27.02.1995. After the death of the said *D.Kandaswamy Chettiar*, the second defendant was appointed as the Hereditary Trustee of the temple. In the place of the other Hereditary Trustee, *D.Munuswamy Chettiar*, the third defendant was appointed as the Hereditary Trustee of the temple. Being the Trustees, they also looked after

the endowment attached to the temple. However, the collections made and the income derived from the said Kalyana Mandapam have not been accounted and the monies were not handed over to the temple and has been personally utilised by the said *K.Jeevanandam* and *Govindarajulu*. Therefore, the Executive Officer sent a communication, dated 20.10.2004 to the said *K.Jeevanandam* asking him to hand over all the documents and accounts relating to the Mandapam, but, however, the said *K.Jeevanandam* neither cared to reply nor handed over the charges. The Mandapam, at the time of filing of the suit, was deriving atleast a minimum of Rs.10,000/- per month. Therefore, the suit was filed for declaration that the plaintiff is entitled to manage and administer the endowment more-fully described in the schedule and attached to the temple; secondly, directing the defendants to deliver vacant possession of the said Mandapam more-fully described in the schedule; to appoint an Advocate Commissioner to take accounts of the income by way of collection of rents from the suit property and the expenditure incurred and to arrive at the amounts due to the defendants by the plaintiff and to pass a decree against such sum which would be found due.

C. The Written Statement :

3. The second defendant, for himself and also representing the first defendant endowment, filed a written statement contesting the suit. It is their contention that the suit is not maintainable. The second defendant was residing separately and he did not know about the earlier proceedings initiated by his father. As a Hereditary Trustee, from the date of the death of his father, he has been managing the affairs of the said Kalyana Mandapam. As against the earlier order, denying the rights to his father, the second defendant has preferred appeal to the Commissioner and the same is pending. There is no cause of action for the plaintiff to file the present suit.

D. The Issues :

4. On the said pleadings, the Trial Court framed the following issues:-

1) Whether the suit is maintainable?

2) Whether the order made in O.A.No.34/95 in O.A.No.37/85 by the Deputy Commissioner of HR&CE is final one?

3) Whether the plaintiff is entitled to any declaration against the defendant?

4) Whether the second defendant is hereditary trustee of the first defendant?

5) *Whether the plaintiff is entitled to recovery of possession from the second defendant?*

6) *Whether the plaintiff is entitled to get any damages? If so what quantum?*

7) *Whether the defendants 1 and 2 are liable to render accounts to the plaintiff?*

8) *To what other reliefs the plaintiff is entitled to?*

E. The Evidence :

5. On the said issues, the parties let in evidence. One *M.Baskaran* was examined on behalf of the plaintiff temple and *Exs.A-1* to *A-7* were marked. On behalf of the defendants, the second defendant examined himself as *D.W.1* and *Exs.B-1* to *B-4* were marked.

F. The Findings of the Trial Court :

6. The Trial Court, thereafter, proceeded to consider the case of the parties and by a judgment, dated 11.06.2008, held that the Executive Officer has power to file the suit on behalf of the temple. The Trial Court found that by the earlier order dated 27.02.1995, the first defendant endowment is declared as a specific endowment under Section 16(9) of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The

defendants, except producing water tax receipt and property tax receipt and **Ex.B-4** rental bill book, did not file any other document to show what is the actual income of the Mandapam from the year 1995 to 2006. Even after the filing of the suit, the defendants did not file any document to show that any appeal was pending. Taking into account the admission of the defendants that daily cash was not properly deposited into the bank, the Trial Court held that the second defendant is not properly maintaining the endowment and came to the conclusion that there was mismanagement and therefore, the plaintiff temple is entitled for the reliefs as prayed for and decreed the suit. Aggrieved by the same, the present Appeal Suit is filed before this Court.

G. The Submissions :

7. Heard *M/s.P.Priyanka*, the learned Counsel appearing on behalf of the appellants and *Mr.S.D.Ramalingam*, the learned Counsel appearing on behalf of the first respondent. The second respondent remained *ex parte*.

8. *M/s.P.Priyanka*, the learned Counsel appearing on behalf of the appellants, would submit that the suit filed by the Executive Officer is not maintainable. For the said proposition, she relied upon a judgment of a Division Bench of this Court in ***Sri Arthanaeeswarar of Tiruchengode by***

*its present Executive Officer, Sri Sabapathy Vs. T.M.Muthusamy Padayachi, etc. & Ors.*¹ and submitted that the said precedent is followed in judgments of this Court in *S.Radhabai Vs. Bharani Abishheka Kattalai attached to A/M Arunachaleswarar Thirukoil, Rep. by its Deputy Commissioner/Executive Officer* (S.A.No.1224 of 2007, judgment dated 13.08.2021); in *E.V.Mohan Vs. Arulmigu Sengaluneer Vinayakar and Koluraman Thirukoil by its Executive Officer/Manager* (C.R.P.(NPD) No.2966 of 2007, judgment dated 23.04.2018); in *V.Kuppusamy Vs. A/M.Prasanna Vinayagar Thirukoil Represented by its Executive Officer Pudupet, Chennai-14.* (C.R.P.(NPD)No.2112 of 2014, judgment dated 01.11.2017). Thus, she would contend that it has been consistently held that the suit filed by the Executive Officer without a special authorisation by the Commissioner is not maintainable. Admittedly, in this case, there is no express authorisation and therefore, the suit is liable to be dismissed.

9. The learned Counsel would further submit that when the second defendant had produced *Ex.B-4*, rental bill book and from the said bill book it is clear that the rental amounts were being deposited into the account of the temple. Therefore the learned Trial Judge ought not to have held that there is mismanagement and ought to have seen that the suit

¹ 2002 SCC OnLine Mad 514

property is properly managed. The second defendant has also filed an appeal in respect of the Order declining the prayer of his father for appointment as hereditary trustee specifically in respect of the endowment, which is also pending and therefore, the Trial Court ought not to have directed delivery and possession of the suit property even before the decision in the said appeal.

10. Per contra, *Mr.S.D.Ramalingam*, the learned Counsel appearing on behalf of the temple, with regard to maintainability would submit that while it is true that in *Sri Arthanaeeswarar* (cited supra) the Division Bench held that suit filed by the Executive Officer without express authorisation of the commissioner is not maintainable but the same was with reference to the factually context thereunder. Subsequently, another Division Bench of this Court, in *A.N.Kumar Vs. Arulmighu Arunachaleswarar Devasthanam Thiruvannamali, rep. by its Executive Officer (Asst. Commissioner) Thiruvannamalai and Ors.*², has held that it is the duty of the Executive Officer to file the suit against such erring parties and protect the interests of the temple. As a matter of fact, the said judgment is also followed by a learned Single Judge of this Court in *M.Selvaraj Vs. Arulmigu Arunachaleswarar Thirukkoil Represented by*

² 2011-2-L.W. 1

its Assistant Commissioner/Executive Officer, Arulmighu Arunachaleswarar Temple Premises, Thiruvannamalai (S.A.No.768 of 2015, judgment dated 14.03.2022).

11. This apart, he would submit that the Government of Tamil Nadu had subsequently framed rules namely, *The Conditions for Appointment of Executive Officers Rules, 2015*, in and by which, the Executive Officer has been expressly authorised to represent and also file suits for and on behalf of the temple. The constitutional validity of the said rules came to be challenged in *M/s.Temple Worshippers Society Rep. by its President T.R.Ramesh Vs. Government of Tamil Nadu*³ and the Division Bench upheld the validity of the said rules. In view thereof, it cannot be contended that the suit by the Executive Officer was not maintainable. The learned Counsel also relied upon a judgment of a learned Single Judge of this Court in *Mohammed Rafiq and Ors. Vs. Arulmigu Pasupatheeswarar Swamy Koil Avoor*⁴, whereunder, the suit filed by the Executive Officer was held to be maintainable on the ground that any person interested (which includes a devotee) can set the law in motion as per the scheme of the Act.

³ 2017 SCC OnLine Mad 7178

⁴ MANU/TN/6840/2020

12. The learned Counsel would submit that the first defendant, endowment, is a Kalyana Mandapam, which is on the first floor of the temple. No proper accounts were maintained and the second and the third defendants neither submitted the accounts nor the monies were properly deposited in the bank account. Therefore, the Trial Court found that there is mismanagement and in view thereof, the second and the third defendants acted against the interests of the temple and therefore, can no longer be permitted to continue to manage the endowment and therefore, the Trial Court has rightly decreed the suit.

H. Points for consideration :

13. Upon considering the submissions made on either side and perusing the material records of the case, the following questions arise for consideration:-

(i) Whether the suit filed by the Executive Officer on behalf of the temple is maintainable in the absence of a specific authorisation from the Commissioner?

(ii) Whether the second and the third defendants mismanaged the endowment and therefore are liable to quit and deliver vacant possession to the plaintiff temple?

I. Question No.1 :

14. It is useful to extract paragraph Nos.19, 20 and 21 of the judgment in *Sri Arthanaeeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy Vs. T.M.Muthusamy Padayachi, etc. & Ors.* (cited supra) which read as follows:-

" 19. Maintainability of the suits :

*The Executive Officer's suit is filed by the then Executive Officer. The case of the Executive Officer is that after his appointment in the year 1970, he came to know, after enquiry, that the suit property is a trust property and that the various registered documents obtained are colourable and not binding on the temple. Though the question as to the competency of the Executive Officer to file the suit was not raised in the written statements, the question was raised in the course of argument that under the H.R. & C.E. Act, the Board of Trustees alone have been empowered to sue and be sued and that before filing the suit, enquiries have been made by the authorities of the H.R. & C.E. Department and it was found that there was no Nandavanam in the suit property. Rejecting the objection of the plaintiffs, the trial court proceeded to consider the question of maintainability as the question of law and found that the Executive Officer had no authority to file the suit and that he cannot invoke Article 96 of the Limitation Act. The Supreme Court, in **State of Rajasthan Vs. Rao Raja Kalyan Singh (MANU/SC/0558/1971)**, has held that the plea of maintainability of a suit is essentially a legal plea. If the suit, on the face of*

it, is not maintainable, the fact that no specific plea was taken or no precise issues were framed is of little consequence. Therefore, it is open to the parties to raise the plea of maintainability of the suit as a legal plea without there being a specific plea in the written statement or the issues.

20. Insofar as the Executive Officer's suit is concerned, it is seen that 'Executive Officer' has been defined under Section 6(2) of the H.R. & C.E. Act. According to this definition, Executive Officer is a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under the Act or the Rules framed thereunder. 'Trustee' has been defined under Section 6(22) of the Act as any person or body in whom the administration of a religious institution is vested. Section 45 of the Act deals with the appointment and the duties of an Executive Officer. Sub-section (2) to Section 45 says that the Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner. The proviso says that only such powers and duties as appertaining to the administration of the properties of the religious institution shall be assigned to the Executive Officer. The powers and duties of the Executive Officer shall be defined by the Commissioner. Section 28 of the Act empowers the trustee of every religious institution to administer its affairs and to apply the funds and properties of the institution. He shall be entitled to exercise all powers incidental to the provident and beneficial administration of the religious institution.

21. In this case, the Executive Officer, in his chief-examination as P.W.1, has stated that

for the purpose of filing the suit, he sought permission from the Commissioner and got the order under Ex.A.12. On a perusal of Ex.A.12 dated 24.6.1970, it is seen that instructions were issued to the Executive Officer and the Board of Trustees to obtain legal opinion to enforce the charges mentioned in the settlement deed dated 1.11.1897 executed by one Thiru Venkatachala Gounder and his wife. A copy of these instructions was issued to the Executive Officer as well as to the Chairman, Board of Trustees. The above instructions did not authorise the Executive Officer to file a suit. As a matter of fact, the instructions were addressed to both the Executive Officer as well as to the Chairman, Board of Trustees in order to obtain legal opinion in reference to the enforcement of the settlement deed. Thereafter, the Inspector, H.R. & C.E. Department held an enquiry on 1.10.1971 on the petition by T.P. Ardhanari Padayachi (the first plaintiff in the Community's suit). Ex.B.107 is the report of the Inspector dated 24.1.1972 wherein he has stated that he found on his enquiry, that from the date of the gift/settlement deed dated 1.11.1897, no such Nandavanam and its performance was conducted. It was further noted that in reference to this property, there was already an enquiry by the Commissioner on 26.5.1970 and an order dated 24.6.1970 had been passed directing the concerned to take legal opinion. From the above, it is clear that the Executive Officer is not the authority competent to initiate legal proceedings and that he had not been assigned with the power of filing a suit. It is only the Board of Trustees in existence at that time which was competent to initiate the legal proceedings. The trustees are not made parties to the suit and therefore, the finding insofar as the Executive Officer's suit is concerned, that it is filed without authority has to be upheld."

Therefore, it can be seen that the Division Bench considered that it is the power exercised by the Executive Officer in filing the suit.

15. It is in this context, by considering Sections 6 & 45 of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, when the powers and duties are to be defined by the Commissioner at the time of appointment of the Executive Officer, it is held that unless the Commissioner expressly authorises the filing of the suit by the Executive Officer, the suit is not maintainable.

16. It is in this context, the march of law has to be understood when the later Division Bench of this Court, in the year 2011, in *A.N.Kumar Vs. Arulmighu Arunachaleswarar Devasthanam Thiruvannamali, rep. by its Executive Officer (Asst. Commissioner) Thiruvannamalai and Ors.* (cited supra) while resolving the question as to whether the temple has to resort to eviction proceedings under Sections 78 and 79 of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 or whether it can file the suit, while deciding that the temple can resort to either of the proceedings, also held that it is the **duty** of the

Executive Officer to file a suit. It is useful to extract paragraph No.32 of the said judgment which reads as follows:-

" 32.....*The Executive officer, being an Officer appointed by a competent authority, is **duty bound** to protect the property of the temple. Therefore, it is **incumbent** on him to file a suit and protect the right of the temple.*"

17. This paradigm shift from 'power' to 'duty' has to be noted. Always the march of law has to be seen with reference to the social transformation and in tune with societal concerns. It could be seen that there were times when people were donating their properties to Temples. Temple properties were not earning great income and quite often Trustees in their discretion permitted persons to occupy or cultivate the same. Many a times if they default to pay the meagre rent, still action was not taken considering their economic background or their services to the temple. Generally people had a sentiment/fear not to exploit the temple property. However, with the population growth and urbanisation, this sentiment has vanished in thin air and the properties of the temple, be it residential plots or commercial buildings or agricultural lands are encroached upon without any guilt and the temple is divested of the income. Thus, the 'power' to file a suit has transformed into a 'duty' to file a suit. When the law has been laid down

that it is the duty of the Executive Officer to protect the property and it is incumbent upon him to file the suit, then Section 45 can no more be read as requiring an express authorisation to file a suit as the very appointment enjoins the said duty.

18. The second reason is that under Section 6 (15) of The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, where under, a person having interest is defined, in which, a devotee/worshiper will also be having interest and the suit filed by them in case of mismanagement is maintainable. Even in the judgment of a Division Bench of this Court in ***Sri Arthanaeeswarar*** (cited supra), it is held that a suit filed by a devotee in case of mismanagement would be maintainable. It is in this context, a learned Single Judge of this Court in ***Mohammed Rafiq and Ors. vs. Arulmigu Pasupatheeswarar Swamy Koil Avoor*** (cited supra) held that when a devotee can set the law in motion, Executive Officer certainly will be entitled to do so. It is useful to extract paragraph No.15 of the said judgment which reads as follows:-

" 15. There can be no doubt over the ownership of the suit property and the plaintiff is entitled to recover the possession from the trespasser. In the absence of proof that the temple land was taken away and assigned to third parties after paying due compensation to the temple. The Division Bench judgment of this

Court, where the defendants have questioned the locus of the Executive Officer, who has laid the suit at the inception does not akin to the facts of the case in hand. Any person, who are interested in the temple, is entitled to initiate law into motion. Further, the Court itself as parens patriae is bound to protect the interest of idol. In this case, when no plea was taken regarding locus of the Executive Officer for filing suit for mandatory injunction and no opportunity given to Executive Officer to show that he, on authorisation from the Commissioner initiate the legal proceedings, it is to be presumed that he had been authorised by the Commissioner to initiate proceedings. "

This Court is the *parens patriae* and is therefore has to protect the properties of the temple. Useful reference in this regard can be made to a judgment of the Hon'ble Supreme Court of India in ***Joint Commissioner, HR&CE, Admn. Deptt. Vs. Jayaraman***⁵. The Court being the *parens patriae* in respect of the Temple and its properties, the Executive Officer only sets the law in motion by filing the suit. Therefore, for all the reasons stated above, the suit filed by the Executive Officer is maintainable and accordingly, I answer this question.

J. Question No.2 :

19. On a perusal of the records, except ***Ex.B-4*** rental bill book, no accounts have been produced by the second and the third defendants even

⁵ (2006) 1 SCC 257, para No.7

before the Court. The third defendant remained *ex parte*. The written statement of the second defendant does not even contain any averment that he is properly maintaining the accounts or the monies, out of the income from the endowment, being paid to the temple. The first defendant, Mandapam, is held to be a specific endowment of the temple and once there is mismanagement, the temple is entitled to recover. The only defence which is taken in the written statement is that an appeal against the order refusing to appoint the second defendant's father as Hereditary Trustee is pending. However, neither in the pleadings nor in the evidence a copy of the said appeal is produced. No particulars are furnished even during the arguments. Therefore, the second and the third defendants do not have any defence whatsoever in respect of the mismanagement and therefore, the plaintiff temple is entitled for the said reliefs and accordingly, I answer this question.

K. Answers to the Issues :

20. I concur with the findings of the Trial Court in respect of the issue No.1 in the Original Suit that the suit is maintainable. I concur with the findings of the Trial Court that the order made in O.A.No.34 of 1995 and O.A.No.37 of 1985 are final. I answer the issue No.3 in the Original

Suit that the plaintiff is entitled for declaration. I answer the issue No.4 in the Original Suit that the second defendant is the Hereditary Trustee of the first defendant, endowment. I answer the issue No.5 in the Original Suit that the plaintiff is also entitled for recovery of possession from the second defendant. As far as the damages and quantum are concerned, opportunity is given for the plaintiff to comply by way of an application for quantification of the damages as to be recovered. Therefore, the judgment and decree of the Trial Court does not need any interference.

L. The Result:

21. In the result, this Appeal Suit in A.S.No.397 of 2010 is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14.12.2022

Index : yes
Speaking order
grs

To

1. The VI Additional Judge, City Civil Court,
Chennai.
2. The Section Officer,
V.R.Section, High Court of Madras.

A.S.No.397 of 2010

D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery Judgment in

A.S.No.397 of 2010
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14.12.2022