

CASE NO.:
Appeal (civil) 4972 of 1993

PETITIONER:
S. PITCHAI GANAPATHY & ORS.

Vs.

RESPONDENT:
COMMISSIONER,

DATE OF JUDGMENT: 10/09/2001

BENCH:
S. Rajendra Babu & S.N. Variava

JUDGMENT:

J U D G M E N T

RAJENDRA BABU, J. :

This appeal by special leave is against the judgment in Letters Patent Appeal No. 206 of 1992 on the file of the High Court of Madras. The question raised in this appeal is as to whether the temples of the Madurai Veerasami and 18 Padi Karupannasami Temple are private temples of the appellants family or they belong to the second respondent temple Meenakshi Sundereswarar Temple, Madurai or a sub-temple belonging to it as claimed by respondents.

The appellants claim that the two shrines of Madurai Veerasami and 18 Padi Karupannasami Temple are situate in a premises bearing Door No. 52, East Chitrai Street, Madurai; that adjoining these temples are two shops in premises bearing Door Nos. 51 and 53; that they are private temples and are in their possession and enjoyment as such; that though they were situate in paramboke lands of the Government, these lands on which the temple situate are recognised as private lands of the appellants in the proceedings of the Collector dated 1.9.1941 and even earlier; that the origin of the temple is lost in antiquity; that as far as they could trace the records their great great grand mother Meenakshi Ayi had come to be in the possession and enjoyment of the temple through her father who was a Pujari of the temple from about 100 years now; that the litigation raised as early as in 1884 ended in her favour; that there are several documents to show that she constructed a pucca building which was only thatched sheds by raising loans and was in possession and enjoyment of them as her private temples; that even now the members of the appellants alone worship the deities in the temples.

The Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Madras, issued a notice on 26.2.1971 calling upon the appellants to get a declaration that the suit temple is a private temple as the appellants resisted his move to treat it as a public temple. The appellants filed an application in O.A. No. 23 of 1971 before the Deputy Commissioner, Hindu Religious and Charitable Endowments (AIM) Department, Madurai under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as the Act] for a declaration that the temple in question is a private temple of the appellants family. The second respondent was impleaded on its application and contended that these temples formed

part of it and it is one of its subsidiary temples. The Deputy Commissioner by an order made on 24.1.1973 allowed the application holding that the temple is a private temple of the appellants. Against that order second respondent preferred an appeal under Section 69 of the Act and the first respondent, after hearing both the parties, made an order on 24.11.1977 allowing the appeal by holding that the temple in question belonged to the second respondent and is a public temple. Against that order, the appellants filed a suit in O.S. No. 267 of 1978 on the file of the Subordinate Judge, Madurai, as provided under Section 70 of the Act, inter alia, seeking to grant a declaration that the suit temple is a private temple of the appellants and for an injunction to restrain the respondents to interfere with the possession and enjoyment of the temple. After trial the Subordinate Judge decreed the suit holding the suit temple is a private temple of the appellants. Against that judgment two appeals were preferred in A.S. No. 554 of 1982 and A.S. No. 56 of 1984 on the file of the High Court of Madras. The High Court by order dated 6.11.1992 allowed both the appeals on the ground that firstly the suit was not maintainable for want of issue of a notice and secondly, on merits, it was held that the suit temple is a public temple belonging to the second respondent. Against the said judgment and decree the Letters Patent Appeal No. 206 of 1992 was filed. The said appeal has now been dismissed holding that the temple in question is a public temple forming part of the second respondent temple and in a suit of the present nature filed under Section 70 of the Act a notice under Section 80 Civil Procedure Code was not required.

The trial court proceeded to analyse the matter with reference to the Act as to whether the suit property is a religious institution as defined under the Act. In ascertaining the same the trial court relied upon a decision of the Madras High Court in *The Commissioner for Hindu Religious and Charitable Endowments, Madras vs. A.B.S. Sethurama Pillai & Ors.*, reported in 1960 M.L.J. 157, to the effect that where there is no proof that any dedication of the temple to the public has been made or that the public worship in the temple as of right at any time the institution is a private temple only and the Hindu Religious and Charitable Endowment Board would have jurisdiction to initiate proceeding or regulate the management by a scheme in respect of such a private temple under the Act. Proceeding on this basis the trial court considered the effect of the earlier litigation and looked into the plaint and decree passed in the prior proceedings in O.S. No. 278 of 1966, O.S. No. 511 of 1881 and O.S. No. 577 of 1888 on the file of the District Munsifs Court, Madurai Town. It was stated that one Muthayee alias Meenakshi Ayi wife of Chockalingam Pillai had one daughter by name Karuppayee who had three daughters (i) Periya Chellammal alias Sornathammal, (ii) Chinna Chellammal and (iii) Abbirami Ammal Periya Chellammal alias Soranhammal who had three sons (1) K.S. Kalyanasundaram Pillai, who was the first plaintiff (2) Appavu Pillai, the second plaintiff and (3) Shanmugam Pillai, the father of the third plaintiff. Plaintiff Nos. 1 and 2 died during the pendency of the suit and plaintiff Nos. 6, 7 and 8 who were their legal representatives were brought on record. Muthayee alias Meenakshi Ayi wife of Chockalingam Pillai as hereditary Pujaris and trustee of the temples in the suit property filed O.S. No. 278 of 1866 on the file of the District Munsifs Court, Madurai Town against the Government for an injunction not to interfere with her possession and enjoyment of a pandal put up in the suit property and also not to prevent her from putting up constructions in the suit property. After referring to various proceedings, the trial court held that the title of the ancestors of the plaintiffs to the suit property has been judicially recognised. However, in resisting this plaint, the defendants to the said suit pointed out that the temples in question are situate in between Swami Sannadhi and Amman Gopuram of Sri Meenakshi Temple and adjacent to the eastern Thirumathil of the said temple and geographical lie of the suit temple in between Swami Sannadhi and Amman Gopuram of Sri Meenakshi Temple which will facilitate the public to worship would indicate that the suit temple is a

public temple. An Inspector of the Hindu Religious and Charitable Endowment Department conducted an enquiry during the pendency of the proceedings in O.A. No. 23 of 1971. The report and plans made by him were Exhibits in the suit wherein he stated that the suit temples have the features of the public temple; that during Adi Pournami Day the devotees of Pathinethampadi Karuppanaswamy would take sandal paste from the suit temple and go to Pathinethampadi Karuppanaswamy temple at Alagarkoil accompanying with Pujaris of the suit temple and apply sandal paste in the doors of the Pathinethampadi Karuppanaswamy temple at Alagarkoil; that for applying the sandal paste the Pujaris of the suit temple would collect 60 paise per pot; that for collecting such fee per pot by the Pujaris Alagarkoil Devasthanam are levying fees to the Pujaris of the suit temple. These facts have been admitted by P.W. 1. It was contended before the trial court that the suit property must be a public temple and the claim of the plaintiffs that the suit temple as well as the suit property are their private properties could not be accepted. The trial court rejected these contentions. By mere fact that the suit temples are situated adjoining Thirumathils of Sri Meenakshi Temple in between Swami Sannadhi and Amman Gopuram on the south, on the north by Meenakshi Temple Nandavanam, on the east by East Chitrai Street and on the west by Sri Meenakshi Temple Thirumathil it cannot be construed that the suit temples must be public temples to bring them under the definition of Section 6(20) of the Act. It was held that there must be a dedication to and for the benefit of the Hindu community or any section thereof and it must be used as of right by the Hindu community and it is quite clear that the geographical situation of the suit property alone would not be sufficient to come to the conclusion that the suit temples are private temples. Adverting to the report and the oral evidence of the Inspector, the trial court held that he had not seen any temple records to show that the suit temples are adjacent to the second respondent temple and he stayed in the temple for about 40 minutes but he had not seen any member of the public worshipping in the suit temples. Thereafter, the trial court adverted to the oral evidence of D.W. 2, Peshkar of Sri Meenakshi Temple, who has been holding the office for about 32 years, and stated that in his 32 years of service he paid visit to the suit temple nearly for five times and he had seen Thoobakkal, Theebakkal, Vibhoothi Thattu, Bell, Soodathattu. From his evidence the trial court drew an inference that the suit temples are not under the management of the second respondent temple and no member of the public had been examined to establish the fact that public were worshipping in the suit temples. It was stated that if any death occurs in the houses of any one of the family members of the plaintiffs, the temple would be kept closed nearly for 16 days and after that, they would perform poojas in the temple. The trial court also noticed that in respect of temples in the State of Madras there is a strong presumption that they are public institutions. The trial court proceeded to hold that the temples in question are very ancient temples whose origin is unknown and there is no evidence as to who founded it or built its institutions. A very ancient document was produced to show that Muthayee alias Meenkashi Ayi had mortgaged her property nearly 100 years ago for the purpose of construction of the suit temples. However, the trial court held that even before the execution of the said mortgage deed the temples in question were in existence. However, the trial court did not agree with the contention that when the origin of the temples could not be established the burden lay heavily upon the plaintiffs to establish that the temples are private ones and held that there is no proof that the members of the public are entitled to worship in the suit temples as of right and came to the conclusion that the suit temples are private temples.

In the High Court the learned Single Judge, who considered the appeals filed by the Department and by Sri Meenakshi Sundaraswaran Temple, took the view that the suit temple is situated in Madurai Town and adjoining the famous Sri Meenakshi Sundaraswaran Temple and is situated in between the Swami Sannadhi and Amman Gopuram of Sri

Meenakshi Temple and adjacent to the eastern Thirumathi of that Temple. The second plaintiff, who is now no more, had tendered evidence before the Deputy Commissioner wherein it is stated that the suit temple is situate not in a private land and he did not know how it belonged to his ancestors. It was situate in a paramboke land, but the learned Judge stated that in a place like Madurai Town a space adjoining Sri Meenakshi Sundaraswaran Temple none could claim Nathan right. The evidence disclosed that the suit temple is more than 200 years old. The second plaintiff admitted that he did not know when and why and by whom the suit temple was built. In Exhibit A-3 plaint copy in O.S. No. 511 of 1884 filed by Muthayee alias Meenakshi Ayi whom the plaintiffs claim as their ancestor, it is stated that suit temple had been built before the time of Karnataka Rajas and origin of which is not know. The learned Judge stated that considering the fact that the suit temple is on paramboke land in the heart of Madurai Town adjoining the famous Sri Meenakshi Sundaraswaran Temple, the legitimate inference would be that the founders of the temple intended it to be a temple for public worship and not for private worship. The learned Judge thereafter adverted to the nature of the temples with reference to Exhibit A-3 which is plaint in O.S. 511 of 1884 wherein the temples had been described. After noticing the various parts of the temples, the learned Judge found that the description of the temples probalises that it could be a public one rather than a private one. P.W. 1, the sixth plaintiff, had stated that the suit temple was built by Muthayee alias Meenakshi Ayi but he himself admitted that the second plaintiff who was elder to him had more knowledge about the suit temples than he himself had. The learned Judge stated that his evidence is unbelievable. The second plaintiff in his evidence stated that during Adi Pournami from the suit temples persons of the public used to take sandal pots to Alagarkoil and for that the plaintiff used to collect fees from everyone. He further stated that subsequent to that also they used to collect fees doing Dheeparathani. The learned Judge thereafter considered in detail the procedure in connection with the right to paste Alagarkoil and collection of fees. He did not accept the fact that the mere fact that the Inspector stayed in the temples for about 45 minutes would mean that he could not have seen persons coming to the suit temples for worship and, the oral evidence being very slippery, the learned Judge rejected the same. In regard to the documentary evidence, he noticed that they all indicated that the plaintiffs were Pujaris and trustees of the temples and that they might have right to be Pujaris or trustees but from that fact it could not be inferred that the suit temple is a private temple. Even Muthayee alias Meenakshi Ayi filed O.S. No. 278 of 1866 on the file of the District Munsifs Court, Madurai against the Government for injunction not to interfere with her possession and enjoyment of pandal put up in the suit properties only as a Pujari of the temple and there was no claim made that the land did not belong to the temple but to an individual. In O.S. No. 511 of 1884 also the trustees and authorities of the suit temples had filed a suit for declaration of ownership of the suit properties and for injunction as Pujaris only. When the Municipal Corporation of Madurai took steps to acquire the verandah portion in front of the suit temple, Muthayee alias Meenakshi Ayi objected to the same acting again in the capacity of a Pujari of the temple. Therefore, the learned Judge observed that it is wrong to state, as the trial court had done, that the said legal proceedings had recognised the plaintiffs ownership to the suit temples.

Adverting to Exhibit A-6 which is the rent deed and Exhibit A-7 which is a loan bond, the learned Judge stated that there was no mention in these documents that Muthayee alias Meenakshi Ayi is the owner of the suit properties. Even though she could be in exclusive management of the suit properties but that circumstance would not indicate that the suit temple is a private one. Partition Deed dated 27.5.1897, Exhibit A- 14, indicates that the plaintiffs family had divided the rights of some honour they were entitled to in respect of the suit temple and hence no question of partition of the suit temple had arisen. The trial courts observation was also noticed that it is, of course, true

in the short cause title and long cause title suits they were addressed as poossries and trustees. Thereafter, the learned Judge adverted to the payment of property tax and held that by mere payment of property tax the plaintiffs could not claim to be owners of the properties in question. The learned Judge observed that the trial court had examined the case from a wrong angle to the effect that unless a dedication of the temple to the Hindu communities is proved, the temple cannot be held to be a public temple and the origin of the temple being not known and the temple had been built before the Karnataka Rajas more than 200 years ago, there is a presumption that the suit temples are public temples. On that basis, the learned Judge held that the suit temple is a religious institution as defined under Section 6(20) of the Act and is not a private temple.

The matter was carried further in appeal on the Letters Patent side. The Division Bench of the High Court in a very erudite and lengthy judgment referred to various facets of the Act and more than half judgment is devoted to the question as to whether the suit would lie without notice under Section 80 C.P.C. The learned Judges reiterated what the learned Single Judge stated on all aspects of the facts and held that the temple in question is a public one and not a private one.

However, Shri A.T.M.Sampath, learned counsel for the plaintiffs-appellants, reiterated the contentions urged before the High Court. Shri Sampath placed strong reliance upon the decision of the trial court. He submitted that in order that a temple to be a religious institution within the meaning of Section 6(20) of the Act, a temple has to be dedicated for the benefit of the Hindu community or any section thereof as a place of public religious worship and used by the public of the temple as of right for worship. The circumstances and the documents upon which reliance has been placed by the parties before the trial court and the High Court are reiterated before us such as decree in O.S.No.511 of 1884 in the court of District Munsif, Madurai, decree in O.S.No.278 of 1866, the deed of loan dated 17.3.1888, decree in O.S.No.577/1888, the deed of partition dated 27.5.1897, sale deed dated 6.11.1907 executed by Chinna Chellammal and others, proceedings of the Collector, Madurai dated 1.9.1941, and on a proper construction of these documents, he submitted that the plaintiffs-appellants family enjoyed the suit temple as a private temple.

The examination made by the trial court has been very thorough on entire material placed before it in the shape of oral and the documentary evidence but its conclusions on many of them or its construction of the documents appear to be faulty as found by the First Appellate Court which equally thoroughly examined the matter and came to the contrary conclusion that the suit temple is not a private temple which stood affirmed by the Division Bench of the High Court on an independent examination of the matter.

The gist of the allegations made by the plaintiffs-appellants in the suit is that their ancestors filed a suit in O.S.No.278 of 1866 on the file of the District Munsifs Court, Madurai, against the Government for declaration of their ownership of the temple and for injunction restraining the Government from interfering with their right of possession and enjoyment as owners and Pujaries. The said suit was decreed. The plaintiffs-appellants again filed another O.S.No.511 of 1884 in the same court against the trustees and the authorities of the Sri Meenakshi Sundereswarar Temple on the ground that they were attempting to interfere with their possession. This suit was also decreed. A partition was entered into between the members of the plaintiffs-appellants family and the portion of the property was leased out to tenants and on this basis, the plaintiffs-appellants contended that the suit temple is not a religious institution as defined under Section 6(20) of the Act and the members of the public have no right to worship in the temple; that the building does not bear any characteristics of a public

temple and that the plaintiffs-appellants and the members of their family alone were performing poojas and other services in the temple hereditarily.

The stand of the defendants-respondents is that the temple is constructed on a poramboke land bounded on three sides by the nandavanam and the second defendant, Sri Meenakshi Sundereswarar Temple; that the devotees worship in that temple as a matter of right and that the judgments rendered in O.S.No.278 of 1866 and O.S.No.511 of 1884 or the partition effected on 27.5.1897 will not affect the right of the public. The stand of Sri Meenakshi Sundereswarar Temple and that of the Commissioner, Hindu Religious & Charitable Endowments Department, Madras are identical.

The trial court, as noted earlier, held that suit temple is not a religious institution as defined under Section 6(20) of the Act. The learned Single Judge on appeal and the Division Bench of the High Court in Letters Patent Appeal took a contrary view and concurrently held that the suit temple is a religious institution as defined in Section 6(20) of the Act and it is not a private temple as held by the trial court on the facts adverted to by the learned Single Judge.

The fact that temple is situate on poramboke land cannot be seriously disputed; that the origin of the temple is not known; that its location is next to the famous Meenakshi Amman Temple; that the evidence adduced on behalf of the plaintiffs-appellants was not enough to hold the temple and the properties owned by it belong to the plaintiffs-appellants. The documentary evidence made available to the court with reference to the suit in O.S.No.278/1866, O.S.No.511/1884 and Ex.A-7, which is described as a deed of loan executed on 17.3.1888 by Muthayee alias Meenakshi Ayi. It is not clear from the judgments as to who deposed on behalf of the plaintiffs-appellants and who deposed on behalf of the defendants-respondents and even after careful perusal of the entire judgment no conclusion can be drawn as to in what capacity the ancestors of the plaintiffs-appellants claimed enjoyment of the suit land. There is a specific mention of the claim of the plaintiffs-appellants in the suit that the suit land belonged to the plaintiffs-temple. The ownership of the lands is thus conceded to the temple and not claimed by the plaintiffs and it was not made clear as to who the plaintiffs were. In regard to O.S.No.511/1884, a reference to the plaint would reveal that it was a suit filed by two plaintiffs described as Priest/Priestess of the Padhinettampadi Karuppannasamy Temple and situate at Kizhathirai Street, Madurai and Veerasamy Pillaiyar Temple, Madurai, the Division Bench clearly found that the claim made in the suit was with regard to possession and enjoyment and not title or ownership and the judgment was not made available in that particular case and the decree indicated the date of the judgment to be 11.4.1885 in favour of the plaintiffs-appellants restraining the defendants-respondents by entering into the suit property in order to disturb the peaceful possession and enjoyment of the suit property by the plaintiffs-appellants and also directing the defendants-respondents to pay Rs. 20/- to the plaintiffs-appellants for having demolished the wall unlawfully and also directing to pay the costs to the plaintiffs-appellants. Exhibit A-7, which is dated 17.3.1888, was executed by one of the ancestors of the plaintiffs-appellants and in order to construct a pucca building of the Sri Meenakshi Sundereswarar Temple, the wife of the temple Priest took a loan of Rs.500/- from one Chackarabani Chettiar. Therefore, this document can hardly throw any light on the character of the suit temple. The judgment in O.S.No.577 of 1888 is also useful as in that judgment there is only reference to certain description and nothing of any importance on the question whether the temple was a public or private temple. The deed of partition dated 27.5.1897 indicates that certain rights are available to the plaintiffs-appellants family in the suit temple in offering pooja and the right to apportionment of the offerings and nothing more.

Both the learned Single Judge and the Division Bench strongly relied upon the evidence tendered by Appavoo Pillai, who was the second petitioner in the case before the Deputy Commissioner and he did not depose in the suit but died during the pendency of the suit. In these circumstances, reliance was placed on the statements made by him before the Deputy Commissioner which is to the effect that the plaintiffs-appellants did not buy the same from anyone and since his ancestors were enjoying, it had come to be enjoyed by them. He admitted that the house taxes were paid in his capacity as trustee. The public could offer worship at the temple only with their permission and they had never refused such permission at any time. The public also used to carry the sandal pot from the temple and each individual should pay 10 annas for the same. While the devotees come for such pooja, they used to collect fees from them which would be taken away by them. The tax had not been levied on their original names but only as Manager of the trustee or only in that capacity they had collected the rents. Exhibits A-41 to A-47 did not pertain to the temple. The site mentioned in Exs.A-49, 50, 51 and 52 did not pertain to the suit site of the temple but were lying in front of the suit temple and the aforesaid site and also the site found in Ex.A-53 were not that of the temple but adjoining it. This evidence is fatal to the case of the plaintiffs-appellants and, therefore, the High Court could firmly come to the conclusion that the presumption that the temple is a public temple is not rebutted.

In reaching this conclusion, when on questions of fact and on construction of the documents, none of which can be treated to be documents of title, but only to indicate the description of the property or the nature of possession and enjoyment of the property thereof alone has been considered, we think there is hardly anything for this Court to interfere with such orders. The Division Bench as well as learned Single Judge have each independently applied their mind to the relevant documents and have arrived at identical conclusions. Indeed the Division Bench made very detailed analysis of the judgments rendered in the suits referred to and also to the deed of partition to ascertain the rights of the plaintiffs-appellants. The anxiety shown by the High Court will clearly indicate that even if there was a wee-bit of material before the court the same would have been held in their favour.

We have also independently examined the evidence on record in the matter and we think there is no substance in this appeal. The appeal, therefore, stands dismissed. However, in the circumstances of the case, there shall be no orders as to costs.

.....J.
[S. RAJENDRA BABU]

.....J.
[S.N. VARIAVA]

SEPTEMBER 10, 2001.