



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No. 8374 OF 2024

**SRI SIDDARAJA MANICKA
PRABHU TEMPLE**

... APPELLANT

VERSUS

**THE IDOL OF ARULMIGHU KAMAKALA
KAMESHWARAR TEMPLE**

... RESPONDENT

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. The challenge in this Appeal pertains to the Judgment dated 26.10.2017 passed by the Division Bench of the High Court of Judicature at Madras (hereinafter referred to as the “Madras High Court”) in Original Side Appeal No. 272 of 2011, whereby the appeal preferred by the Appellant-Defendant was dismissed.
2. The relevant facts for the purpose of adjudication of the present challenge are succinctly enumerated as follows. The subject matter in question comprises of

an immovable property located adjacent to the Respondent-Plaintiff-Temple, namely, Kamakala Kameshwarar Temple (hereinafter referred to as the “suit property” or “Schedule ‘A’ property”). The suit property and the Respondent-Plaintiff-Temple were owned by one late Rai Raja Eswardoss Diawanth Bahadur. On his death, the properties dwelled upon his son Mr. T. Lakshmidoss and his grandson Mr. T. Venkataprasad. They were declared as insolvents vide Order dated 27.04.1914 passed by the Madras High Court. In pursuance thereto, the Official Assignee became the possessor of the properties in the said authority.

3. Thereupon, Mr. T. Lakshmidoss and Mr. T. Venkataprasad arrived at an arrangement with the creditors and with the intent of annulling the declaration of their insolvency obtained a Decree dated 31.12.1915. According to the said decree, the Official Assignee was required to divide the estate between the said two insolvents in the proportion of three-fourth and one-fourth respectively, subject to clearance of the amounts due to the creditors. For the purposes of making payments of such outstanding

dues, Mr. T. Lakshmidoss and Mr. T. Venkataprasad agreed to sell some of their properties, including the suit property. The said sale was made in favour of one Mr. W. Ramakrishna Lala for an amount of INR 1,10,000/- (Rupees One Lakh Ten Thousand only). Consequently, two Conveyance-cum-Sale Deeds dated 23.03.1917 were executed in favour of Mr. W. Ramakrishna Lala, who executed a Trust Deed dated 12.12.1917 appointing three trustees by name, Mr. M.S. Anantha Ram Lala, Mr. A.S. Subba Rao and Mr. C. Ranganadhan Nayudu (proprietor of creditor-company, namely, M/s Dowden and Company). As stipulated under the said Trust Deed, these trustees were empowered to sell all the properties except for the family house which is the suit property. Also, the income derived from the properties was required to be distributed between Mr. T. Lakshmidoss and Mr. T. Venkataprasad in a ratio of 3:1.

4. On 07.02.1924, Mr. T. Lakshmidoss and Mr. T. Venkataprasad were adjudged as insolvents for the second time resulting in vesting of the possession of the properties again in the Official Assignee. An Agreement dated 15.09.1925 came to be entered into

with the creditors where the three trustees were also associated. The suit seeking specific performance of the said Agreement dated 15.09.1925 was preferred by the creditors namely, M/s Devakinandan Dubey and Sons where apart from the debtors, the aforementioned three trustees were impleaded as defendants. The said suit was decreed in favour of the creditors vide Compromise Decree dated 26.11.1929. To the said decree were appended three separate schedules which were marked as Schedule 'A' which comprised of the suit property, Schedule 'B' encompassed the properties which stood excluded from the Trust dated 12.12.1917, and Schedule 'C' relating to the Respondent-Plaintiff-Temple. It is this Decree dated 26.11.1929 which holds the key with regard to the nature of the property which is a subject matter of the present *lis*.

5. Pursuant to the terms of the said decree, the Official Assignee along with the two insolvents, and Mr. W. Ramakrishna Lala executed a Conveyance Deed bearing No. 1113 of 1931 for the transfer of the suit property enumerated in Schedule 'A' subject to certain cogent conditions and another Conveyance

Deed bearing No. 1114 of 1931 comprising of the Respondent-Plaintiff-Temple stipulated in the Schedule 'C', in favour of the then spiritual head of the Guru Manicka Prabhu Temple and his successors in office.

6. Subsequently, a set of proceedings was initiated by the Appellant-Defendant in 1954 whereby an application being O.A. No. 76 of 1954 was moved before the Deputy Commissioner of Hindu Religious and Charitable Endowments (hereinafter referred to as the "HR & CE") seeking hereditary trusteeship in the Respondent-Plaintiff-Temple. The said application was initially allowed, however, in an appeal the same was reversed vide Order dated 31.12.1954. A suit bearing Original Suit No. 557 of 1955 assailing the said decision of the appellate authority preferred by the Appellant-Defendant also met the same fate of dismissal and so was the appeal, being A.S. No. 14 of 1960, moved thereafter.

After the decision of the appeal, an application being C.M.P. No. 5404 of 1962 for withdrawal of suit was filed with a plea that the claim of the hereditary

trusteeship was made by mistake and that the Respondent-Plaintiff-Temple was his private property.

7. It is thereafter that in April 1962 another application being O.A. No. 38 of 1962 was preferred before the Deputy Commissioner of HR & CE putting forth a claim that the Respondent-Plaintiff-Temple was a private temple. The said application was dismissed vide Order dated 04.10.1963 and an appeal assailing the said order was also dismissed. Subsequently, the Appellant-Defendant preferred a civil suit being Original Suit No. 547 of 1965 to overturn these orders. The said suit was decreed, and a declaration as prayed for that Kamakala Kameshwarar Temple being the Respondent-Plaintiff-Temple herein was a private temple was granted vide Judgment dated 10.02.1965. The decree was affirmed in an appeal. Thereupon, an Appeal being L.P.A. No. 119 of 1983, preferred before a Division Bench of the Madras High Court by the Respondent-Plaintiff was allowed vide Judgment dated 04.04.1990, thereby setting aside the decree of declaration in favour of the Appellant-Defendant and consequently declaring the Respondent-Plaintiff-Temple as a public temple.

Further, a challenge to the said decision before this Court by way of Special Leave Petition (Civil) No. 326 of 1991 was dismissed vide Order dated 07.10.1991. Consequently, the Judgment dated 04.04.1990 of the Division Bench of the Madras High Court attained finality and the Respondent-Plaintiff Kamakala Kameshwarar Temple became a public temple.

8. With this the claim as regards the Appellant-Defendant in the present proceedings came to an end with the opening up of a new chapter which emerged with the filing of a suit being Original Suit No. 921 of 1999 by the Respondent-Plaintiff in the Madras High Court, wherein the Respondent-Plaintiff herein sought a declaration of being the absolute owner of the plaint schedule property with a direction for the delivery of possession thereof. The learned Single Judge of the Madras High Court proceeded to hold vide its Judgment dated 26.04.2011 that the suit property is a trust property whilst relying on the contents of the Compromise Decree dated 26.11.1926 and the conveyance deeds executed in pursuance thereof. The High Court, upon perusal of the conditions encapsulated in the said compromise

decree and the admissions made by the Appellant-Defendant in his cross-examination, concluded that the suit property along with other properties contained in Schedule 'C' of the said decree was conveyed to the Appellant-Defendant for the purposes of utilisation of income thereof for a limited object of maintenance and upkeep of the Respondent-Plaintiff-Temple as well as the Guru Manicka Prabhu Temple. Moreover, the High Court noted that the Appellant-Defendant forfeited his position as a trustee over the suit property, as well as the Respondent-Plaintiff-Temple upon failure to utilise the income for the aforesaid restricted purpose and rather misappropriating such funds for personal use. Consequently, the Court required the Appellant-Defendant to handover the possession of the suit property to the Respondent-Plaintiff. Accordingly, the suit was decreed as sought for by the Respondent-Plaintiff.

9. The Appellant-Defendant being aggrieved by the aforesaid decision of learned Single Judge preferred an appeal being Original Appeal No. 272 of 2011 before the Division Bench of the Madras High Court,

which was dismissed vide Impugned Judgment dated 26.10.2017 holding therein that the suit property is a trust property and if the Appellant-Defendant was in its possession, it was only as a trustee and not as an absolute owner. The reasons for arriving at such conclusion was a comprehensive analysis of the terms of transfer of the suit property stipulated in the Compromise Decree dated 26.11.1929 conspicuously paragraph numbers 01 to 04, 11, and 13, as also the subsequent conduct of the Appellant-Defendant in pursuing multiple proceedings whilst maintaining the claim for hereditary trusteeship till 1962 and the absence of any sale consideration backing the claim of absolute vesting in favour of the Appellant-Defendant. Such perusal of the documents incentivised the Division Bench to adjudge the suit property as one belonging to the trust. Moreover, the Division Bench unequivocally rejected the argument that the proceedings were barred by the principle of *res judicata* considering the previous proceedings which declared an adjacent property, namely, the Respondent-Plaintiff-Temple to be a public temple, as relating to an issue distinct from the present

proceedings, which do not impact the nature of the suit property herein.

10. Assailing the judgment of the Division Bench of the Madras High Court, the Appellant-Defendant has approached this Court in the present Appeal. It is the case of the Appellant-Defendant that the Respondent-Plaintiff had neither presented any pleadings or evidence, nor raised any issue claiming the suit property as a trust property. Bereft of such pleadings, it is the submission that the High Court ought not to have decided on the issue as to the nature of the suit property. In addition, it was contended that the suit filed by the Respondent-Plaintiff before the learned Single Judge of the Madras High Court did not adhere to the requirements contemplated under Section 92 of Code of Civil Procedure 1908, which specially deals with suits against trusts, hence, bolstering the contention that the suit property was never intended to be conceived by the Respondent-Plaintiff to be a trust property.
11. Furthermore, drawing reference from the contents of the Compromise Decree dated 26.11.1929, the Appellant-Defendant asserted that the suit property

is not a trust property rather under his absolute ownership as the said decree required modifications to the Trust Deed dated 12.12.1917 in case the property were to be a trust property, but no such modifications were made, nor was any trust deed executed and the Conveyance Deed made pursuant thereto explicitly identifies the Appellant-Defendant as the transferee with absolute ownership, not as a trustee. Additionally, it was contended that the responsibility for maintaining the temples would not tantamount to limiting the vesting of the suit property, rather such conditions are inconsistent and void by virtue of Sections 10 and 11 of the Transfer of Property Act 1882, and the property does not revert after a set period. To buttress this contention, the Appellant-Defendant submitted that the Trust Deed of 1917 and the Conveyance Deed thereto did not confer the status of a trustee to the spiritual head of Guru Manicka Prabhu Temple.

12. Per contra, it is the case of the Respondent-Plaintiff that the Appellant-Defendant initially claimed title over the suit property as a hereditary trustee but later asserted that the Respondent-Plaintiff-Temple is a

private entity. The issue of whether the Respondent-Plaintiff-Temple is public or private has been previously addressed in the proceedings bearing LPA No. 119 of 1983, and the same issue is being re-litigated now. It was, therefore, asserted by the Respondent-Plaintiff that the suit property and Respondent-Plaintiff-Temple being identical properties to the properties enumerated in the Compromise Decree dated 26.11.1929, the present proceedings, being subsequent proceedings, is barred by the principle of *res judicata*.

13. Furthermore, it is the case of the Respondent-Plaintiff that post taking over of the possession of the temple by the HR & CE from the Appellant-Defendant, it has maintained the suit property and managed it as a public temple since 1946, consequently, asserting that the Respondent-Plaintiff-Temple being a declared public institution under HR & CE's stewardship, the property should remain under Respondent-Plaintiff's management to protect public worship and ensure proper maintenance.
14. Having heard the learned Senior Advocate for the Appellant-Defendant and the Counsel for the

Respondent-Plaintiff, it is pertinent to adjudge the present challenge in light of the aforementioned chronology of facts and proceedings.

15. Considering the submissions made by the parties herein and the factual backdrop as has been delineated in the earlier part of the judgment which is not being repeated for brevity, it is evident that the present challenge relating to the title over the suit property rests on the interpretation of terms and conditions enumerated under the Compromise Decree dated 26.11.1929. The Appellant-Defendant posits absolute ownership over the suit property obverse to the claim of the Respondent-Plaintiff being the persistent nature of suit property as trust property. Therefore, it is apposite to delve into a comprehensive analysis of the relevant paragraph numbers 01 to 04, 11, and 13 of the Compromise Decree dated 26.11.1929, as has been reproduced by the Division Bench of the Madras High Court in paragraph number 12 (vii) of the Impugned Judgment which reads as follows:

(1) "That the provisions of the Trust deed dated the 12th day of December 1917 shall

attach only to the property described in Schedule "A" hereto and even in so far as those properties shall immediately be inceded (sic: Vested) in Sri Guru Marthanda Manicka Guru as Head of the Guru Manicka Prabhu Temple and his successors in office as Head of the said Temple, subject to the condition that the net worth (sic: monthly) income from the said properties ascertained after payment of repairs and taxes, as and when the same accrues be applied and utilised by the said Sri Guru Marthanda Manicka Prabhu for the maintenance of the defendants Nos. 7 and 8 and of the survivor of them, during their lifetime.

(2) That after the death of the survivor of the 7th and 8th defendants the head of the said Guru Manicka Prabhu Temple for the time being do pay to Ponbati Bai (sic: Parvati Bai) the sister of the 8th defendant during the term of her natural life from and out of the said income the sum of Rupees Forty (Rs.40/-) per mensem and the balance of the said income shall be utilised by him for the purpose of the said temple.

(3) That after the death of the said Ponbati Bai (sic: Parvati Bai) the said premises and the income thereof shall absolutely vest in the Guru of the said temple for the time being and be utilised for the maintenance and upkeep of the said Manicka Prabhu Gadi and the Kamakala Kameswarar Temple founded by the late Rai Raja Eswaradas Daiwanth Bahadur, the father of the 7th defendant, and situated in Raja Hanumantha Lala Street, Triplicane, Madras.

(4) That the remaining properties includes (sic: included) in the said. trust deed dated the 12th day of December 1927 (sic - 1917) and (in) particular set out in schedule "B" here to be and are hereby exonerated from the said Trust and that the said properties are the absolute properties of the 7th and 8th defendants, and they have already vested in the 2nd defendant.

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(11) That for the purposes of giving effect to paragraph 1 of this decree, the 2nd and 3rd defendants shall execute in favour of the spiritual Head of the Guru Manicka Prabhu Temple a conveyance of the

properties set out in schedule "A" hereto and the said spiritual Head of the said temple shall execute in favour of the 6th defendant a power of attorney empowering him to manage the properties set out in schedule "A" hereto during the life of the 7th and 8th defendants and the survivor of them and the said Parbati Bai (sic: Parvati Bai) and for the purpose of making the payment set out in paragraphs 1 and 2 above and during such time the said 6th defendant shall hold possession of the said premise.

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(13) That the 2nd, 7th and 8th defendants shall execute in favour of the spiritual Head of the said Kamakala Kameswarar Temple a Conveyance of the building comprising the said temple and the land on which the same is situate more particularly described in schedule "C" hereto that the application of the monthly income from the properties set out in schedule "A" in the manner indicated above shall be in the nature of a provision for maintenance and the said income shall not be liable to be alienated or anticipated (sic: appropriated) by the 7th and 8th defendants or the said

Parbati Bai (sic: Parvati Bai) to be attached or proceeded against by the creditors of the 7th and 8th defendants and the said Parbati Bai (sic: Parvati Bai)...."

16. A perusal of the above would show that the provisions of the Trust Deed dated 12.12.1917 were restricted to property described in Schedule 'A', that is, the suit property herein. The said property would forthwith vest in Shri Guru Marthanda Manicka Prabhu as the head of the Guru Manicka Prabhu Temple and his successors in office. The monthly income as would be derived from the said property after payment of repairs and taxes in relation to the temple would be utilized for Mr. T. Lakshmidoss and Mr. T. Venkataprasad during their lifetime.
17. As stipulated in paragraph number 02 of the decree, post the death of Mr. T. Lakshmidoss and Mr. T. Venkataprasad, the head of the Guru Manicka Prabhu Temple for the time being was to pay during the lifetime a sum of INR 40/- (Rupees Forty only) per month to Ms. Parvati Bai, being daughter of Mr. T. Lakshmidoss and sister of Mr. T. Venkataprasad and the remaining income had to be utilized for the

purposes of the temple. After the death of Ms. Parvati Bai, the Schedule 'A' property which is the suit property as also the income derived therefrom would vest absolutely in Guru of the Manicka Prabhu Temple for the purpose of maintenance and upkeep of Guru Manicka Prabhu Temple and Kamakala Kameshwarar Temple, i.e. the Respondent-Plaintiff Temple herein.

18. The remaining properties as mentioned in the Trust Deed dated 12.12.1917 as provided for in Schedule 'B' were excluded from the trust as contemplated by paragraph number 04 of the said decree. This can be said with regard to the properties and their utilization which are found in paragraph numbers 01 to 04.
19. Paragraph numbers 11 and 13 enumerate the steps to be undertaken to give effect to the process of rescheduling of the suit property out of properties which formed part of the Trust Deed dated 12.12.1917, in other words, to materialize what was contemplated by virtue of paragraph number 01 of the decree. Paragraph number 11 specifically required the Official Assignee and Mr. W. Ramakrishna Lala to execute in favour of the spiritual head of the Guru

Manicka Prabhu Temple a conveyance of properties as spelt out in Schedule 'A'. On this part, the spiritual head of the Manika Prabhu Temple shall execute a Power of Attorney in favour of Mr. C. Ranganathan Nayudu, the proprietor of M/s Dowden and Company, that is, the creditor's company, to manage the properties set out in Schedule 'A' during the lifetime of Mr. T. Lakshmidoss and Mr. T. Venkataprasad as also Ms. Parvati Bai for the purpose of executing the terms of payment set out as mentioned in paragraph numbers 01 and 02. It is during this period that the creditor shall hold possession of the suit property.

20. Further, paragraph number 13 required the Official Assignee, Mr. T. Lakshmidoss, and Mr. T. Venkataprasad to execute a conveyance deed of the building comprising of Kamakala Kameshwarar Temple, i.e. the Respondent-Plaintiff-Temple herein through its spiritual head qua the building comprising the said temple including the land situated thereon more particularly as described in Schedule 'C' of the decree.
21. It is pertinent to emphasise herein that the income derived from the properties set out in Schedule 'A' as

also in Schedule 'B' were not to be alienated or appropriated by Mr. T. Lakshmidoss, Mr. T. Venkataprasad, and Ms. Parvati Bai nor could the creditors proceed against the said schedule properties.

In the above perspective, it is apparent that the said properties as provided in Schedules 'A' and 'C' could neither be alienated by any of the parties nor proceeded against by the creditors. What in effect it means is that they continue to be a part of the trust property.

22. It would not be out of the way to mention here that the parties to this decree acted upon the same as is apparent from the two transfer deeds dated 28.08.1931 executed by the Official Assignee, Mr. T. Lakshmidoss and Mr. T. Venkataprasad and Mr. W. Ramakrishan Lala. Document bearing no. 1113 of 1931 (Exhibit D-1) was executed by Official Assignee along with Mr. W. Ramkrishna Lala and Document bearing No. 1114 of 1931 (Exhibit P-8) was executed by the Official Assignee in favour of the spiritual head of Guru Manicka Prabhu Temple.

23. From the aforementioned analysis, it is apposite to conclude that except for Schedule 'B' properties, properties in Schedule 'A' and 'C' existed and continued to be a part of the trust. This leads us to a logical corollary that the head of the Guru Manicka Prabhu Temple (Appellant-Defendant herein) could hold the property in Schedule 'A' which is the suit property as a trustee only, and not in any other capacity.
24. Another plea raised by the Counsel with reference to application of principle of *res judicata* for averring a bar on the present proceedings was rightly rejected by the learned Single Judge and the Division Bench of the Madras High Court on account of distinct nature of claims in both proceedings, that is, previous proceedings dealt with the issue of nature of Respondent-Plaintiff-Temple as being public or private temple, whereas the present proceedings relate to a suit for declaration of title over the suit scheduled property. It was rightly pointed out by the learned Single Judge of the High Court that the nature of the Respondent-Plaintiff-Temple would not affect the obligations envisaged by the Compromise

Decree dated 26.11.1926 in relation to the suit scheduled property herein. Hence the challenge raised in the earlier proceedings cannot be said to impact the present litigation.

25. In light of the above, we are in agreement with the judgment passed by the Division Bench of the Madras High Court which is impugned herein. Consequently, the present Appeal being devoid of merit is hereby dismissed.

26. There shall be no order as to costs.

27. Pending applications, if any, stand disposed of.

.....**J.**
(ABHAY S. OKA)

.....**J.**
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
SEPTEMBER 13, 2024.