R.M. Sundaram @ R.Meenakshisundaram vs Sri Kayarohanasamy And Neelayabhakshi ... on 11 July, 2022

Author: Ajay Rastogi

Bench: Ajay Rastogi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3964-3965 OF 2009

R.M. SUNDARAM @ MEENAKSHISUNDARAM ... APPELLANT

VERSUS

SRI KAYAROHANASAMY AND
NEELAYADHAKSHI AMMAN TEMPLE
(THROUGH ITS EXECUTIVE OFFICER)
NAGAPATTINAM, TAMIL NADU ... RESPONDENT

JUDGMENT

SANJIV KHANNA, J.

The dispute in the present appeals arises from two separate suits in relation to (i) the dedication of 26 items of jewellery1, some of which are embedded with diamonds and precious stones, to the deity Sri Neelayadhakshi Amman of the Sri Kayarohanasamy and Neelayadhakshi Amman Temple;2 and (ii) the exclusive possession of the 'Kudavarai' (safe vaults) of the Temple which houses the suit jewellery.

1 For short, 'suit jewellery'.

2 Hereinafter referred to as the 'respondent' or 'Temple'.

2. It is the case of the appellant, R.M. Sundaram, that the suit jewellery was inherited by him as his personal property being the adopted son of Muthuthandapani Chettiar and his wife, M. Thangammal. On 6th November 1985, the appellant had instituted a civil suit (O.S. No. 156/1986) before the court of the District Munsiff of Nagapattinam seeking, inter alia, a mandatory injunction directing the Temple to comply with the undertaking given in the letter dated 4th October 1962 and

thereby permit the appellant to "maintain independent and exclusive possession and enjoyment of the Kudavarai" of the Temple. It was pleaded that during the lifetime of his father, Muthuthandapani Chettiar, the suit jewellery known as 'Abaranam', that was owned and possessed by Muthuthandapani Chettiar, was licensed to be kept in the Kudavarai of the Temple. The proprietary right, title and interest in the suit jewellery continued to vest with Muthuthandapani Chettiar, who had retained possession and remained the exclusive owner of the suit jewellery throughout his lifetime. By way of gratitude, Muthuthandapani Chettiar, in terms of a letter of undertaking dated 4th October 1962, had given the keys of two external locks of the Kudavarai to the Executive Officer of the Temple to temporarily store the Temple jewellery, which is different from the suit jewellery, in the Kudavarai. This was a temporary arrangement, as expressly stated in the undertaking, and the Temple jewellery would be shifted back to the treasury room of the Temple after it was renovated. The plaint also refers to a civil suit filed by the respondent/Temple in the year 1981 (O.S. No. 99/1981) before the Subordinate Judge of Nagapattinam, an aspect which we would advert to in some detail later on.

3. The respondent/Temple contested the suit on several grounds including, inter alia, the appellant's right to file such a suit, the maintainability of the suit filed, the appellant's status as the adopted son on Muthuthandapani Chettiar, the appellant's lack of title over the suit jewellery, and the custody over the keys of the Kudavarai by Muthuthandapani Chettiar being merely an honorary responsibility. On merits, it was contended by the Temple that the suit jewellery, namely Abaranams, and the Temple jewellery were acquired from time to time over the past few centuries by way of donations or endowments made by unknown donors. The suit jewellery as well as the other Temple jewels have always been in the custody, use, enjoyment and possession of the idol/deity, Sri Neelayadhakshi Amman, only through the functionaries of the Temple and no other person. The suit jewellery was donated by the ancestors of Muthuthandapani Chettiar absolutely to the idol/deity and constitutes a specific endowment attached to the Temple. The donations have been recorded as Sri Adipoora Amman (Neelayadhakshi Amman) Thiruvabaranam Endownment. The suit jewellery is adorned by Sri Neelayadhakshi Amman deity for ten days in the month of Adi every year marking the festival of adolescence and puberty in a celestial and mythological sense. On this occasion, many people, particularly women, celebrate the festival with great enthusiasm by distributing all sorts of 'Mangala Samans' to all women devotees and worshippers thronging the Temple. During this festival time, the 'Utsava' deity of Sri Neelayadhakshi Amman (popularly known as Sri Adipoora Amman) and the deity idol (Sri Neelayadhakshi Amman) used to be/are decked and decorated in all glory and grandeur with gold and silver jewellery studded with precious stones from 'Kireedam to Thiruvadi' and then taken out in a Temple car and ratham in grand procession around the four streets on all ten days of the festival. The Kudavarai is located inside the Temple and is the innermost and integral portion of the Temple. It is guarded in terms of security and operated on a system of 'Multiple Lock and Keys and Joint Control, Operation and Maintenance' (MLKJCOM), to ensure safe custody of jewellery and valuable articles. Therefore, the suit jewellery was only used on the occasion of the Adipooram festival and could not be taken out of the Kudavarai frequently or at will. While admitting that two keys of the external door-way of the Kudavarai as well as the keys of the iron safe, wherein the suit jewellery was kept, were with the appellant, it is stated that the management of the respondent/Temple was in possession of several keys, including keys of the external door-way of the Kudavarai. Apart from the wooden jewellery

boxes inside the iron safe, the Kudavarai also houses the two steel almirahs wherein the Temple jewellery and other Thiruvabaranams are kept. These articles and the suit jewellery do not belong to any person or private individual and were/are for the use of the deity.

4. With reference to the letter of undertaking dated 4th October 1962, it is stated that the undertaking is a dead letter as it creates no right or privilege in favour of the appellant and in any event, Muthuthandapani Chettiar and his wife, M. Thangammal, had neither sought to enforce this letter-undertaking nor sought return of the two keys during their lifetime. The appellant had, nearly 23 years thereafter, raised a claim in respect of the suit jewellery.

5. The suit filed by the appellant was dismissed by the trial court, vide judgment dated 26th November 1990, primarily on the ground that the suit was not maintainable and that the undertaking was not acted upon by the appellant's adoptive father, Muthuthandapani Chettiar. The respondent/Temple being a religious institution under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959,3 the Government can frame rules regarding the custody of jewels, other valuables and documents of religious institutions under Section 116(2)(xii) of the 1959 Act, which would also apply to the suit jewellery in the Kudavarai. The appellant, instead of applying to the Commissioner, had filed the civil suit which was not maintainable under Section 108 of the 1959 Act. The claim for possession of Kudavarai was also barred as it interfered with the internal administration of the Temple.

6. In relation to the undertaking dated 4th October 1962, the trial court observed that it was never acted upon by Muthuthandapani Chettiar prior to his death in 1969 and that the relief sought by the appellant was barred by limitation as it was instituted beyond the period of three years as stipulated in Article 113 of the Limitation Act, 1963.

7. The first appeal (A.S. No. 354/1992) preferred by the appellant against this judgment was also dismissed by the Subordinate Judge, Nagapattinam, vide judgment dated 30th August 1993, who reiterated that the suit was barred under the 1959 Act and the undertaking dated 4th October 1962 was not acted upon during the lifetime of Muthuthandapani Chettiar.

3 Hereinafter referred to as the '1959 Act'.

8. The appellant had, thereupon, preferred a second appeal (S.A. No. 1522/1993) before the High Court which has been dismissed by the impugned judgment dated 30th June 2008.

9. The impugned common judgment, however, allowed the second appeal (S.A. No. 829/2000) preferred by the respondent/Temple which had arisen from a separate independent suit (O.S. No. 87/1990, renumbered as O.S. No. 56/1996) instituted by the Temple on 11th June 1990 before the Subordinate Judge of Nagapattinam seeking, inter alia, a declaration of existence of specific endowment in respect of the suit jewellery in favour of the deity, Sri Neelayadhakshi Amman, and for a decree of permanent injunction restraining the appellant from interfering with the right of the deity to take out the suit jewellery from the Kudavarai.

10. The trial court vide judgment dated 17th October 1996 decreed the suit accepting the version of the respondent/Temple that the suit jewellery was donated by the ancestors of Muthuthandapani Chettiar since 1894. Specific reliance was placed on the Temple Account Book (Exhibit A-1), which had recorded and given details of the suit jewellery. Further, witnesses produced by the respondent/Temple had deposed that the suit jewellery was adorned by the Amman idol and the suit jewellery would be taken out by Muthuthandapani Chettiar from the Kudavarai for this purpose. It was observed that the undertaking dated 4th October 1962, which was marked as Exhibit B-1, was not acted upon by Muthuthandapani Chettiar, as was recorded in the decision of the trial court dated 26th November 1990 in the appellant's suit. The trial court held that the reliance placed by the appellant upon the adoption deed (marked as Exhibit A-6), entered into after the death of Muthuthandapani Chettiar, was of no avail as the suit jewellery had been donated to the Temple and stored within the premises of the Temple since 1894. The suit jewellery was not made for the benefit of the family of Muthuthandapani Chettiar. The suit jewellery was kept inside the vault of the respondent/Temple as it was donated by the ancestors of Sri Muthuthandapani Chettiar for decorating and use of the idol Amman. The trial court was also of the view that the appellant had not been able to prove his adoption by Muthuthandapani Chettiar and his wife, M. Thangammal, an aspect which was not examined by the High Court in the second appeal.

11. The trial court, while granting a decree of declaration, refused to issue a decree for permanent injunction since that the Temple had stated that two keys of the main door of the Kudavarai and the iron safe were in the possession of Muthuthandapani Chettiar and the evidence indicated the right of possession of Muthuthandapani Chettiar to the extent of taking out and keeping back the suit jewellery as a mark of honour. As such, the appellant had the right of possession to give and take back the donated suit jewellery during the Adipooram festival days. The appellant, it was observed, would render full cooperation in opening the Kudavarai and giving the suit jewellery on the festive occasion. Granting an injunction would result in depriving the members of the family of Muthuthandapani Chettiar from the honour of opening the doors of Kudavarai with the keys in their possession and handing over the suit jewellery for adorning the idol/ deity.

12. The appellant, however, succeeded in the first appeal (A.S. No. 6/1999) before the Additional Subordinate Judge of Nagapattinam wherein the appellant court, vide judgment dated 5th August 1999, held that the suit filed by the respondent/Temple for declaration was barred under Order II Rule 2 of Code of Civil Procedure, 19084 as the respondent had earlier filed a civil suit in 1981(O.S. No. 99/1981) with a prayer for appointment of a receiver to make an inventory of the suit jewellery which was dismissed by the trial court 4 For short, the 'Code' on 6th September 1982. The first appellate court held that the Temple had omitted to seek a declaration as to the ownership of the suit jewellery and as such the Temple was barred from filing a suit for declaration of the suit jewellery as a specific endowment. At the same time, the first appellate court held that the suit was not barred by limitation as the suit jewellery was in custody of the respondent Temple being kept in the Kudavarai situated inside the Temple. The two keys of the Kudavarai were also with the respondent/Temple and, therefore, it was clear that the locks of the Kudavarai could be jointly operated by the appellant and the respondent/Temple, and the suit jewellery boxes could not be opened without joint operation. The first appellate court examined the question of ownership and affirmatively accepted the case of the respondent that the suit jewellery was donated by the

ancestors of Muthuthandapani Chettiar and is an endowment vested in the respondent/Temple. The suit jewellery was also recorded in the register, Exhibit A-1, maintained by the respondent/Temple even in the year 1963.

13. The cross-appeal (A.S. No. 40/1997) preferred by the respondent/ Temple against rejection of the prayer for grant of injunction was also dismissed by the first appellate court.

14. Aggrieved, the respondent/Temple had preferred a second appeal before the High Court, which was allowed by the impugned judgment, which as noticed above, had also decided the second appeal preferred by the appellant dismissing his suit for mandatory injunction.

15. It is clear from the aforesaid discussion that, as far as endowment of the suit jewellery is concerned, there are concurrent findings of fact by the three courts in favour of the respondent/Temple and against the appellant. As per the said findings, the suit jewellery, 26 in number, had been gifted by the ancestors of Muthuthandapani Chettiar for the specific purpose of adorning the deity, Sri Neelayadhakshi Amman, during the Adipooram festival. No doubt, the keys of the Kudavarai were in the custody of Muthuthandapani Chettiar and thereafter, his widow, M. Thangammal. However, this was more out of deference and honour, as the ancestors of Muthuthandapani Chettiar had donated the jewellery, and not on account of personal ownership of Muthuthandapani Chettiar or his ancestors. The administration of the Temple was originally vested with Nagai District Devasthanam Committee. Pursuant to Order No. G.O. 135 dated 16th January 1942, a revised scheme of Hindu Religious and Charitable Endowment was implemented and the respondent/Temple came under direct administration of the Hindu Religious and Charitable Endowments under the Madras Hindu Religious Endowments Act, 1926 enforced with effect from 19th January 1927. Subsequently, on enforcement of the 1959 Act, the management was taken over by the Executive Officer and Trustees appointed under the 1959 Act. It is to be noted that two important festivals are celebrated at the Temple, namely Adipooram and Panchakrosam. Adipooram is a unique festival spread over ten days celebrating the coming of age of the goddess. On the tenth day, after sacred bath, the idol of goddess Sri Neelayadhakshi Amman is taken in procession in a Temple car. During the Adipooram festival, the goddess Sri Neelayadhakshi Amman is adorned with the suit jewellery. The High Court rereferred to the evidence on record, including testimony of the witnesses, who, it is obvious, could not have deposed as to the donation of the 'suit jewellery' which had taken place in or before 1894, but what was seen and noticed by the witnesses during their lifetime. PW-3, Abadhthothranam Chettiar5, the son of an erstwhile trustee of the Temple, had testified that the ancestors of Muthuthandapani Chettiar gave the suit jewellery to the Temple which was used during the ten days of the Adipooram festival to adorn the idol/deity, Sri Neelayadhakshi Amman, and could not be used by members of 5 'Abathaoranam Chettiar' in the record of evidence the family of Muthuthandapani Chettiar. The jewellery was never taken out of the Temple and Muthuthandapani Chettiar had the honour of taking and giving out the suit jewellery at the Adipooram festival. Members of the family of Muthuthandapani Chettiar had never claimed rights over the suit jewellery. PW-4, Sundarajan 6, another erstwhile trustee of the Temple during the period 1972- 1977, had similarly deposed that the jewellery was only adorned by the idol/ deity, Sri Neelayadhakshi Amman, and neither Muthuthandapani Chettiar nor the members of his family claimed any right over the suit jewellery. There was no custom to take the suit jewellery by the

family of Muthuthandapani Chettiar outside the Temple. PW-5, Kalimuthu7, who had been closely associated with Muthuthandapani Chettiar, had affirmatively stated that the suit jewellery was gifted by ancestors of Muthuthandapani Chettiar to be adorned by the idol/ deity during the Adipooram festival. On this festive occasion, Muthuthandapani Chettiar would be happy to open the Kudavarai and take out the suit jewellery for being adorned by the deity. In doing so, Muthuthandapani Chettiar would follow the practice of his ancestors and had never claimed any right over the suit jewellery.

6 'Soundarajan' in the record of evidence 7 'Marimuthu' in the record of evidence

16. It is interesting to note that the appellant does not dispute that the Kudavarai is located in the Temple. In his testimony in Suit No. 156/86, the appellant Sundaram as PW-1 had deposed that Muthuthandapani Chettiar had plenty of ornaments which belonged to the family, and the claim made is that Kudavarai in the Temple, was allotted to them to keep the ornaments for safety. The stand is ex-facie implausible and unbelievable, given the fact that the Temple is a public temple. Kudavarai is not a public vault where people keep their personal jewellery, and the suit jewellery kept in it since 1894 was always and only used for adorning the Temple deity for ten days at the Adipooram festival.

17. Referring to the documents on record, specific reference has been made by the High Court to Exhibit A-1, the register containing details and particulars of the suit jewellery, wherein the suit jewellery (26 in number) were shown as 'Adipooram Ambal Thiru Abaranam'. In the remarks column it was noted that the jewellery "are in the custody of Mr. S.M.T.M. Muthuthandapani Chettiar of Nagapattinam". Other jewellery items were shown in different headings of 'Temple Series'. The impugned judgment observes that the 26 items of suit jewellery being identified as 'Adipooram Ambal Thiru Abaranam', is a strong piece of evidence which supports the respondent's case. Exhibit A-1 was a register maintained in regular course of administration of Temple containing details and particulars of jewels of the Temple. Even in 1963, the suit jewellery had been shown as 'Adipooram Ambal Thiru Abaranam'. Muthuthandapani Chettiar died on 21st August 1969 and had never claimed any right on the suit jewellery during his lifetime. Reference was also made to Exhibit A-3 which indicated that the respondent/ Temple was under the administration of Devasthanam Committee of Nagapattinam District. Thereafter, in terms of the revised scheme dated 16th January 1942, the Temple had come under the State administration, which had continued under the 1959 Act with appointment of Executive Officer and Trustees. The High Court referred to Section 29(d) of the 1959 Act in relation to preparation of register of every religious institution for "jewels, gold, silver, precious stones, vessels and utensils and other movables belonging to the institution, with their weights and estimated value" and placed reliance on illustration (e) to Section 114 of the Indian Evidence Act, 1872 concerning the presumption that an official act has been regularly performed, to hold that the Exhibit A-1 is unimpeachable evidence showing that the suit jewellery are 'Adipooram Ambal Thiru Abaranam'. The High Court also made reference to Exhibit B-1, the family settlement dated 26th October 1969, which was entered into, after the death of Muthuthandapani Chettiar, by the wife of Muthuthandapani Chettiar, M. Thangammal, and his brother's widow, which referred to the large number of family properties dedicated for endowment to various temples by the family of Muthuthandapani Chettiar. Exhibit B-1 records that Muthuthandapani Chettiar and his ancestors

were liberal in creating endowments and dedicating family properties to temples and performance of other dharmams. Exhibit B-1 referred to the 'Adipooram Ambal Thiru Abaranam' and the fact that after the death of Muthuthandapani Chettiar, his wife, M. Thangammal, "had the keys of the Kudavarai and she will hand over the jewellery during the festival sessions or whenever required."

18. We are in agreement with the said findings recorded by the High Court. The findings are supported by the legal position on the effect of endowment, which is well settled and we would like to refer to only a few decisions.

19. In Deoki Nandan v. Murlidhar and Others,8 a bench of five Judges of this Court has held that:

> "the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the 8 AIR 1957 SC 133 intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. In accordance with this theory, it has been held that when property is dedicated for the worship of a family idol, it is a private and not a public endowment, as the persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.
>
> xx xx xx Endowment can validly be created in favour of an idol or temple without the performance of any particular ceremonies, provided the settlor has clearly and unambiguously expressed his intention in that behalf.

Where it is proved that ceremonies were performed, that would be valuable evidence of endowment, but absence of such proof would not be conclusive against it."

20. Following the above ratio in The Commissioner for Hindu Religious and Charitable Endowments, Mysore v. Sri Ratnavarma Heggade (Deceased) by his L. Rs.,9 this Court has observed that:

> "Neither a document nor express words are essential for a dedication for a religious or public purpose in our country. Such dedications may be implied from user permitted for public and religious purposes for sufficient length of time. The conduct of those whose property is presumed to be dedicated for a religious or public purpose and other circumstances are taken into account in arriving at the inference of such a dedication. Although religious ceremonies of Sankalpa and 9 (1977) 1 SCC 525 Samarpanam are relevant for proving a dedication, yet, they are not indispensable" Thus, extinction of private character of a property can be inferred from the circumstances and facts on record, including sufficient length of time, which shows

user permitted for religious or public purposes.

21. Earlier, in M.R. Goda Rao Sahib v. State of Madras,10 this Court has observed that in an absolute dedication, the property is given out and out to an idol or religious or charitable institution and the donor divests himself of all beneficial interests in the property comprised in the endowment. Where the dedication is partial, a charge is created on the property or there is a trust to receive and apply a portion of the income for the religious or charitable purposes. In the latter case, the property descends and is alienable and partible in the ordinary way, but the only reference is that it passes with a charge upon it. The Court had relied on the provisions of the Madras Hindu Religious and Charitable Endowments Act,1951 and in particular to Section 3211 thereof, to observe that:

> 10 (1966) 1 SCR 643 11 Section 38(1) of the 1959 Act reads- "Section 38 - Enforcement of service or charity in certain cases
>
> -(1) Where a specific endowment attached to a math or temple consists merely of a charge on property and there is failure in the due performance of the service or charity, the trustee of the math or temple concerned may require the person in possession of the property on which the endowment is a charge, to pay the expenses incurred or likely to be incurred in causing the service or charity to be performed otherwise. In default of such person making payment as required, the Commissioner in the case of a specific endowment attached to a math, and the Joint Commissioner or the Deputy Commissioner, as the case may be, in the case of a specific endowment attached to a temple, may, on the application of "There is no dispute that in order that there may be an endowment within the meaning of the Act, the settlor must divest himself of the property endowed. To create an endowment he must give it and if he has given it, he of course has not retained it; he has then divested himself of it. ....By the instrument the settlors certainly divested themselves of the right to receive a certain part of the income derived from the properties in question.

They deprived themselves of the right to deal with the properties free of charge as absolute owners which they previously were. The instrument was a binding instrument. This indeed is not in dispute. The rights created by it were, therefore, enforceable in law. The charities could compel the payment to them of the amount provided in Schedule B, and, if necessary for that purpose, enforce the charge. This, of course, could not be if the proprietors had retained the right to the amount or remained full owners of the property as before the creation of the charge....By providing that their liability to pay the amount would be a charge on the properties, the settlors emphasised that they were divesting themselves of the right to the income and the right to deal with the property as if it was unencumbered. By creating the charge they provided a security for the due performance by them of the liability which they undertook. Further Section 32 of the Act provides that where a specific endowment to a temple consists merely of a charge on property, the trustees of the temple might require the person in possession of the properties charged to pay the expenses in respect of which the charge was created. This section undoubtedly shows that the Act contemplates a charge as an endowment." Interpreting the said section, this Court held that specific endowment attached to a math or a temple may consist merely of a charge on the property. Therefore, in order to constitute

specific the trustee and after giving the person in possession, a reasonable opportunity of stating his objections in regard thereto, by order determine the amount payable to the trustee." endowment it is not necessary that there must be transfer of title or divestment of the title to the property.

22. For the sake of completeness, we must record that under the 1926 Act, the expression 'religious endowment' or 'endowment' was defined vide sub-section (11) to Section 9 to mean "all property belonging to, or given or endowed for the support of, maths or temples or for the performance of any service or charity connected therewith and includes the premises of maths or temples but does not include gifts of property made as personal gifts or offerings to the head of a math or to the archaka or other employee of a temple".

The 1959 Act, on the other hand, defines 'religious endowment' or 'endowment' in sub-section (17) to Section 6 as under:

> ""Religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution Explanation.— (1) Any inam granted to an archaka, service holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service holder or employee but shall be deemed to be a religious endowment.
>
> Explanation.— (2) All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a "religious endowment" or endowment" within the meaning of this definition, notwithstanding that, before or after the date of the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed:
>
> Provided that this Explanation shall not be deemed to apply in respect of any property which vested in any person before the 30th September 1951, by the operation of the law of limitation;" Sub-section (19) to Section 6 defines 'specific endowment' reads as under:
>
> ""specific endowment" means any property or money endowed for the performance of any specific service or charity in a math or temple or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to clause (17); Explanation. — (1) Two or more endowments of the nature specified in this clause, the administration of which is vested in a common

trustee, or which are managed under a common scheme settled or deemed to have been settled under this Act, shall be construed as a single specific endowment for the purposes of this Act ;

Explanation.— (2) Where a specific endowment attached to a math or temple is situated partly within the State and partly outside the State, control shall be exercised in accordance with the provisions of this Act over the part of the specific endowment situated within the State;" In the context of the present case and the facts recorded above, it is clear that the suit jewellery was a 'specific endowment' for the performance of the specific service of adorning the deity, Sri Neelayadhakshi Amman, to be taken out in the Temple car and ratham in a grand procession during the Adipooram festival.

Further, as explained below, it was a charity in favour of the Temple and was for performance of a religious charity. The involvement of the family of the appellant was limited and restricted to retaining the keys of the Kudavarai and the iron safe which were to be opened at the time of the festival of Adipooram and the suit jewellery was to be taken out for the specific purpose of adorning the deity, Sri Neelayadhakshi Amman.

23. Lastly, we would refer to a recent judgment of this Court in Idol of Sri Renganathaswamy represented by its Executive Officer, Joint Commissioner v. P.K. Thoppulan Chettiar, Ramanuja Koodam Anandhana Trust, represented by its Managing Trustee and Others12 which draws a distinction between a 'religious charity' as defined in sub-section (16) to Section 6 from a charity associated with a finite group of identifiable persons, which is a charity of a private character. It was observed that:

12 (2020) 17 SCC 96 "for a charity to constitute a "religious charity", there is no requirement for the public charity to be connected with a particular temple or a math. In terms of the statutory definition, for a charity to constitute a "religious charity" under the 1959 Act, two conditions must be met. First, it must be a "public charity" and second, it must be "associated with" a Hindu festival or observance of a religious character. If these two conditions are satisfied, a charity is a "religious charity (emphasis added) xx xx xx Where the beneficiaries of a trust or charity are limited to a finite group of identifiable individuals, the trust or charity is of a private character. However, where the beneficiaries are either the public at large or an amorphous and fluctuating body of persons incapable of being specifically identifiable, the trust or charity is of a public character."

24. This decision has referred to an earlier decision in M.J. Thulasiraman and Another v. Commissioner, Hindu Religious and Charitable Endowment Administration and Another,13 which had examined and elucidated on the words 'endow' and 'endowment' to state that they relate to idea of giving, bequeathing or dedicating something, whether property or otherwise, for some purpose. The purpose should be with respect to religion or charity. In our opinion, the said tests are satisfied

in the present case and the specific endowment of the suit jewellery as religious charity is established beyond doubt.

13 (2019) 8 SCC 689

25. Therefore, in view of the judgments quoted above and the aforesaid statutory provisions, it must be held that the case of the appellant that there was no endowment or specific endowment must fail and has no legs to stand on. The dedication of the suit jewellery does not require an express dedication or document, and can be inferred from the circumstances, especially the uninterrupted and long possession of the suit jewellery by the respondent/Temple. The private character of the jewels had extinguished long back and the appellant has no basis to claim that the suit jewellery was inherited by him from his adoptive parents. The endowment is clearly public in nature and for the purposes of performing religious ceremonies. As confirmed by three courts, with which we are in agreement, the suit jewellery was dedicated for a specific purpose and can only be used during the performance of the religious ceremony during the Adipooram festival.

26. The claim of the appellant based on the principle of res judicata and constructive res judicata/ Order II Rule 2 of the Code14 as the respondent/ Temple has earlier filed a suit for appointment of a 14 “Order II - Suit to include the whole claim.—... (2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.” receiver for taking inventory of the suit jewellery is also without merit.

27. The respondent had filed a civil suit in November 1981 (O.S. No. 99/1981) before the Subordinate Judge, Nagapattinam against the present appellant, R. M. Sundaram, and his mother, M. Thangammal. It was stated that there is a separate room in the Temple called the Kudavarai which has an iron gate. Inside the Kudavarai, there are two steel almirahs and an iron safe. The two steel almirahs contain many items of gold jewellery belonging exclusively to the respondent/Temple and the iron safe in the Kudavarai had 26 items of jewellery, namely the suit jewellery, which were donated to the respondent/Temple about 80 years back by the ancestors of Muthuthandapani Chettiar. It was further stated that the keys of the iron safe were with the family of Muthuthandapani Chettiar while the keys of the two almirahs were with the Joint Sub-Registrar, Nagapattinam, in the capacity as Double Lock Officer. One set of the keys of the outer door was with the Executive Officer and the other set was with the family of Muthuthandapani Chettiar. The Kudavarai cannot be accessed unless the two sets of keys were jointly operated to open the main door. It was stated that large items of jewellery were missing from the Temple premises for some time and the then Executive Officer of the respondent/Temple had died under suspicious circumstances. Some jewellery was found to be missing from the Temple which was being investigated by the police, and shortage of jewellery had also been discovered in other temples. In these circumstances and on the instructions of the State Government, the Commissioner, under the 1959 Act, had directed all temples to verify the jewellery as per the original appraisement register. The family of Muthuthandapani Chettiar had been requested and was served with the notice in this regard, but had expressed their inability to comply with the request for inspection.

28. In the written statement filed by the appellant, they had accepted use of the suit jewellery on the festive occasions for adorning the presiding deity but had pleaded that there was no dedication or charity, absolute or conditional. It was submitted that the suit jewellery was used by the family of Muthuthandapani Chettiar. The suit jewellery was licensed to be kept in the Kudavarai under the control of the respondent /Temple to avoid loss on account of natural calamity or cyclone and tidal waves. The suit jewellery was kept for safe custody with the right to revoke the license. The appellant, therefore, contended that he was entitled to remove the suit jewellery to a place of his choice and even to stop the respondent/Temple from using the suit jewellery during Adipooram festival.

29. As is evident, the prior suit of 1981 arose from a very peculiar set of facts and circumstances and the cause of action as per the plaint are completely unrelated to the suits being considered in the present appeals. In our opinion, the High Court has rightly rejected the plea of res judicata and constructive res judicata / Order II Rule 2 of the Code.

30. This Court in Sheodan Singh v. Daryao Kunwar (SMT)15 has laid down that the following conditions must be satisfied to constitute a plea of res judicata:

> "(i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;
>
> (ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;
>
> (iii) The parties must have litigated under the same title in the former suit;
>
> (iv) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and
>
> (v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the first suit. Further Explanation 15 AIR 1966 SC 1332 1 shows that it is not the date on which the suit is filed that matters but the date on which the suit is decided, so that even if a suit was filed later, it will be a former suit if it has been decided earlier. In order therefore that the decision in the earlier two appeals dismissed by the High Court operates as res judicata it will have to be seen whether all the five conditions mentioned above have been satisfied."

31. General principle of res judicata under Section 11 of the Code contains rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical

mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit.16 The reason is that the first suit is not decided on merits.

32. In the present case, the suit filed in 1981 for appointment of the receiver for preparing an inventory of the suit jewellery was not decided on merits but was dismissed on the ground that the respondent had prayed for mandatory injunction and had not made a prayer for declaration of title. Thus, the suit was dismissed for technical reasons, which decision is not an adjudication on merits of the dispute that would operate as res judicata on the merits of the matter. Further, to succeed and establish a prayer for res judicata, the party taking the said prayer must place on record a copy of the pleadings and the judgments passed, including the appellate judgment which has attained finality. In the present case, the appellant did not place on record a copy of the appellate judgment and it is accepted that the second appeal filed by the respondent was dismissed, giving liberty to the respondent to file a fresh suit with a prayer of declaration of title/endowment in respect of the suit jewellery. The liberty granted was not challenged by the appellant. The right to file a fresh suit to the Temple, therefore, 16 Sheodan Singh v. Daryao Kunwar (SMT) AIR 1966 SC 1332 should not be denied. The bar of constructive res judicata/ Order II Rule 2 of the Code is not attracted.

33. The plea of constructive res judicata/Order II Rule 2 of the Code also fails as the cause of action in the first suit filed in 1981 was limited and predicated on account of the failure of the appellant to open the locks of the safe and the main door of the Kudavarai, the keys of which were available with the appellant and required joint operation. Here again, the party claiming and raising the plea of constructive res judicata/Order II Rule 2 of the Code must place on record in evidence the pleadings of the previous suit and establish the identity of the cause of actions, which cannot be established in the absence of record of judgment and decree which is pleaded to operate as estoppel. In this regard, we would like to refer to judgment of this Court in Gurbux Singh v. Bhooralal17 wherein it has been observed:

> “In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (i) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and 17 AIR 1964 SC 1810 to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a

> particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits.

Just as in the case of a plea of res judicata which cannot be established in the absence on the record of the judgment and decree which is pleaded as estoppel, we consider that a plea under Order 2 Rule 2 of the Civil Procedure Code cannot be made out except on proof of the plaint in the previous suit the filing of which is said to create the bar. As the plea is basically founded on the identity of the cause of action in the two suits the defence which raises the bar has necessarily to establish the cause of action in the previous suit. The cause of action would be the facts which the plaintiff had then alleged to support the right to the relief that he claimed."

34. Reiterating the above principle, this Court in Virgo Industries (Eng.) Private Limited v. Venturetech Solutions Private Limited18 observed that:

> "The object behind the enactment of Order 2 Rules 2(2) and (3) CPC is not far to seek. The Rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a 18 (2013) 1 SCC 625 situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons.
>
> xx xx xx The cardinal requirement for application of the provisions contained in Order 2 Rules 2(2) and (3), therefore, is that the cause of action in the later suit must be the same as in the first suit."

35. There is some merit in the contention of the appellant that the impugned judgment is contradictory as it has affirmed the decree of the trial court, which was upheld by the first appellate court, accepting the plea of the respondent that the suit for mandatory injunction filed by the appellant is not maintainable in view of the bar under the provisions of the 1959 Act. Section 63 of the 1959 Act states that the Joint Commissioner or the Deputy Commissioner has the power to enquire into and decide the disputes and matters concerning "whether any property or money is a religious endowment" and "whether any property or money is a specific endowment". Any decision of the Joint or Deputy Commissioner in terms of Section 63 of the 1959 Act can thereafter be challenged in appeal before the Commissioner under Section 69 of the 1959 Act. Pursuant to Section 70 of the 1959 Act, a party aggrieved by an order passed by the Commissioner in respect of any matter specified under Section 63 (including determination of a religious or specific endowment) can be challenged before the court within 90 days of the receipt of the order. Further, a party aggrieved by a decree of the court, under Section 70, can within 90 days from the date of decree, appeal to the High Court. In the light of the aforesaid, it can be urged that the suit filed by the

respondent would not be maintainable. The appellant did not raise this plea, possibly because he had himself filed a civil suit. In fact, this argument would also recoil on the appellant insofar as he has raised the plea of res judicata and constructive res judicata/ Order II Rule 2 of the Code, for the said pleas would not be available in case the civil court had lacked subject matter jurisdiction. We would have normally allowed the appeal preferred by the appellant in the present case and relegated the appellant and the Temple to take recourse to the remedy available under Section 63 of the 1959 Act. However, we do not think it will be appropriate and proper to permit the appellant to do so in the present case as it would be a futile and useless exercise. It is crystal clear that there was a specific endowment of the suit jewellery way back in 1894 and the challenge made by the appellant has no legs to stand on and is totally devoid of merit. It is difficult to reconcile the testimony of the appellant, in the suit filed by him, that the suit jewellery was kept in the Kudavarai of the respondent/Temple only for the purposes of safe-keeping, with the fact that the suit jewellery was only used for the purposes of adorning the idol/ deity during the Adipooram festival. The appellant eventually backtracked from this position and has testified, in the later suit filed by the respondent/Temple, to the effect that he is unaware on "what basis, the 26 items of suit ornaments (suit jewellery) for what purpose are kept in the kudavarai…I don't directly know for what reason the suit jewels were kept in the room in the plaintiff temple". In these circumstances, we do not want another round of litigation which would serve no purpose. We also have no hesitation in holding that the findings recorded above would operate as res judicata even if the appellant is to initiate proceedings under the 1959 Act.

36. We have noted the decree passed by the trial court in the suit filed by the respondent whereby the relief of injunction was declined, albeit observing that the appellant must open the locks and make the suit jewellery available during the festival season. The cross appeal filed by the respondent/Temple against rejection of its prayer of injunction was dismissed by the first appellate court agreeing with the observations made by the trial court regarding the endowment of the suit jewellery. The High Court, in the impugned order, has modified the aforesaid observations of the trial court and has also directed the appellant to hand over the keys to the Joint Commissioner, Tanjore who would perform the necessary responsibility of handing over the jewels during the Adipooram festival. We feel this decree or direction is beyond what was sought by the respondent/ Temple in the plaint. This court in Bachhaj Nahar v. Nilima Mandal and Another19 has clearly stipulated the limits of a court to grant reliefs beyond the prayer and pleadings of the parties and observed that:

> "It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non- joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or

possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

37. In fact, to be fair to the High Court, the impugned judgment also records that the decree for permanent injunction as prayed for is granted to the respondent/Temple. Accordingly, we clarify and pass 19 (2008) 17 SCC 491 a decree restraining the appellant from interfering in any manner with the right of the Temple authorities to take out the suit jewellery from the Kudavarai whenever the occasion demands. In other words, the appellant would cooperate with the request(s) made by the Executive Officer and Trustees of the respondent/Temple to open the Kudavarai doors and take out the suit jewellery from the iron-safe whenever required.

38. Accordingly, the final order and directions issued by the trial court in its decision dated 17th October 1996 in the respondent's suit (Original Suit No.56/96) and the first appellate court rejecting the Temple's prayer for injunction is set aside, and a decree of injunction is passed in the aforesaid terms. The respondent/Temple would be entitled to file an application for execution of the decree of injunction in case of non-compliance and violation of the decree. Further, and in case the appellant fails to honour the commitment made and followed, that is, to open the doors of the Kudavarai and the safe to take out the suit jewellery whenever required by the Temple, it will be open to the respondent to take steps and initiate proceedings under the 1959 Act or by way of a civil suit as permitted in law, in which event the authorities/court would consider passing an order directing the appellant to hand over the keys of the door of the Kudavarai and the iron safe; As any failure to abide by the convention and 'the charge', which forms the basis of this order, would be a fresh or recurring cause of action, and the plea of limitation or Order II Rule 2 of the Code would not apply.

39. It is to be noted in the impugned judgment that one of the items in the suit jewellery (item no. 14) is missing, and a review of the evidence on record reflects that it is with the appellant. The appellant must surrender and give physical possession of the said item to the respondent/ Temple within 30 days from the date of pronouncement of this judgment. In case, the appellant does not give possession of the said item, it would be open for the respondent/ Temple to initiate civil as well as criminal proceedings in accordance with law. In case any such proceeding is initiated, the same would be examined on merits, though the findings recorded herein would be binding. The appellant would have the right to raise all defences as are available with him under law.

40. Accordingly, we dismiss the appeals and uphold the judgment of the High Court affirming the decree of declaration passed by trial court in Suit No. 56/96, which was also upheld by the first appellate court, and thereby confirm existence of specific endowment known as Adipooram Thiruvabaranam comprising of the 26 items of jewellery mentioned in the plaint, as endowed in favour of Sri Neelayadhakshi Amman, the presiding deity of the Temple. The decree of injunction as passed by the High Court, it is clarified, is in the terms of the prayer made in the suit (OS No.56/96) and also is in terms of this judgment. There would be no order as to costs.

.....J. (AJAY RASTOGI) .....J. (SANJIV KHANNA) NEW DELHI;

JULY 11, 2022.