

S.A.No.365 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22 / 10 / 2024

JUDGMENT PRONOUNCED ON : 23 / 01 / 2025

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.365 OF 2021

1.Suma

2.V.Arunkumar

... Appellants / Respondents /
Plaintiffs

Vs.

1.The State of Tamil Nadu,
Represented by the District Collector,
Namakkal.

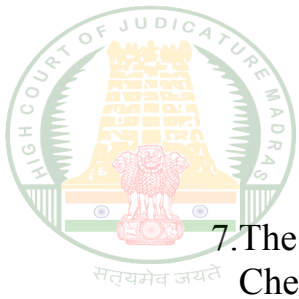
2.The District Revenue Officer,
Namakkal.

3.The Revenue Divisional Officer,
Namakkal.

4.The Tahsildar,
Namakkal Taluk, Namakkal.

5.The Commissioner,
HR & CE Department,
Chennai – 600 034.

6.The Assistant Commissioner,
HR & CE Department,
Namakkal.



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7.The Inspector General of Registration,
Chennai – 600 028.

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8.The Sub Registrar,
Sendamangalam,
Namakkal District.

... Respondents / Appellants /
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated September 6, 2019 made in A.S.No.24 of 2018 on the file of the learned Principal District Judge, Namakkal, reversing the Judgment and Decree dated September 2, 2016 made in O.S.No.211 of 2009 on the file of the Sub Court, Namakkal.

For Appellants : Mr.M.Ravi

For Respondents : Mr.R.Siddharth
1 to 4, 7 & 8 Government Advocate

For Respondents
5 and 6 : Mr.S.Ravichandran
Additional Government Pleader

JUDGMENT

This Second Appeal is directed at the instance of the plaintiffs in the Original Suit. Challenge is to the Judgment and Decree dated September 6, 2019 passed in A.S.No.24 of 2018 by the 'Principal



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District Court, Namakkal' [henceforth 'First Appellate Court'], wherein and whereby the Judgment and Decree dated September 2, 2016 passed in O.S.No.211 of 2009 by the 'Subordinate Court, Namakkal' [henceforth 'Trial Court'] was reversed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

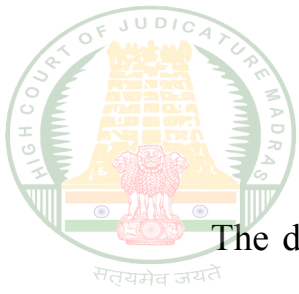
PLAINTIFFS' CASE

3. The Suit Properties, measuring an extent of 8.24 Acres located in Thirumalaigiri Village, belong to the plaintiffs. Originally, a portion thereof, measuring an extent of 1.90 Acres, referred to by the locals as '*Naikkan Kulathulvai Puravai Nanjai*', [நாயக்கன் குளத்துள்வாய் புரவாய் நஞ்சை] was purchased by one Nanjundaiyyar, son of Ramayyar on November 21, 1895, under a registered Sale Deed, for the purpose of conducting poojas regularly to Idol of Lord Vinayaga installed by him in the Easwaran Temple in Samayasangili Village, Tiruchengode Taluk. Nanjundaiyyar later executed a registered Will dated April 2, 1905 and bequeathed the said 1.90 Acres to his adopted son - Sankararamaiyar on a specific condition that the income derived



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therefrom shall be utilized for conducting poojas to Idol Vinayaga consecrated in the aforesaid Temple. Upon Nanjundaiyyar's death, Sankararamaiyar managed the said 1.90 Acres and carried out the obligations out of the income therefrom. Subsequently, vide Trust Deed dated March 25, 1960, Sankararamaiyar dedicated the remaining portion of the Suit Properties, in addition to the said extent of 1.90 Acre, to Idol Vinayaga, and appointed his three sons as Trustees to manage and maintain the Suit Properties as well as to carry out poojas to Idol Vinayaga. Due to insufficient income from the Suit Properties, the plaintiffs requested the 'Hindu Religious and Charitable Endowments Department' ['HR & CE Department' for short] to take over the management of the Suit Properties, however, no response was received. After the demise of Sankararamaiyar, his grandchildren formed a new Trust on July 9, 1998 and appointed an agent to sell the Suit Properties. Despite obtaining permission of Court to sell the Suit Properties in Trust O.P.No.46 of 2004 on the file of Principal District Court, Namakkal, the Sub-Registrar refused registration of the Sale Deed, claiming that the Suit Properties belonged to the Temple. Actually, the Suit Properties are not Temple Lands but they were purchased by Nanjundaiyyar in his name.



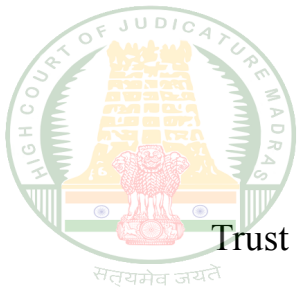
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The defendants 5 and 6 have no right in the Suit Properties. Hence, the Suit for declaration of title, mandatory injunction directing the Defendant Nos.1 to 4 to rectify the Patta relating to the Suit Properties by deleting the Idol's name and to register the Sale Deed presented by the plaintiffs on November 20, 2007 in respect of the Suit Properties and other reliefs.

DEFENDANTS' CASE

4. The sixth defendant filed written statement and the same was adopted by other defendants. It is averred in the written statement that Suit Temple is a non-listed Temple under the control of the Arulmigu Samba Parameshwara Swamy Thirukoil's Assistant Commissioner. The Suit Properties were dedicated to the Idol – Raja Ganapathy [Lord Vinayagar] located in front of the aforesaid Temple as a religious endowment; it belongs to the Idol. Mere kist receipts will not confer any title or right to the plaintiffs. The mutation in the revenue records, effected without notice to the HR & CE Department, is void and would not bind the Idol. The Suit Properties cannot be sold or transferred without prior permission from the HR & CE Department. The plaintiffs failed to establish their ownership or rights over the Suit Properties. The



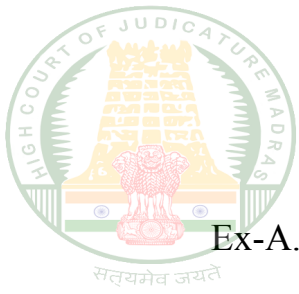
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Trust Deed executed by Sankararamaiyar's grandsons does not confer any authority to sell Temple Lands. Without getting prior permission from the HR & CE Department, the Suit Properties were intended for sale, which is not valid. The Order in said Trust O.P.No.46 of 2004 has been passed in the year 2005, whereas the alleged amount said to be the sale price was received in the year 2003 itself. The moment the Suit Properties were dedicated and handed over in favour of Lord Vinayaga, from then on, they would be governed by Section 34 of the 'Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959' ['HR & CE Act' for brevity]. The sellers of the Suit Properties viz., the grandsons of Sankararamaiyar have to be impleaded as necessary parties to the Suit. Further, in the Gift Settlement Deed, the grandsons of Sankararamaiyar were only shown as '*Dharmakarthis*', who have no right to sell or alienate the Suit Properties; they are only the managers. Accordingly, the defendants sought for dismissal of the plaintiffs' suit.

TRIAL COURT:

5. During trial, on the side of the plaintiffs, second plaintiff was examined as P.W.1, one Venkateswaran was examined as P.W.2, and



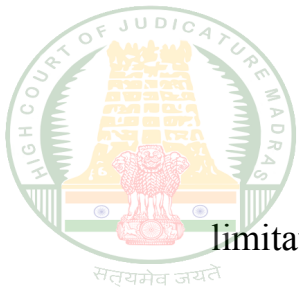
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Ex-A.1 to Ex-A.40 were marked. On the side of the defendants, one Devarajan was examined as D.W.1, one Parasuraman was examined as D.W.2, one Krishnaraj was examined as D.W.3, and Ex-B.1 to Ex-B.4 were marked.

6. After completion of trial and hearing both sides, the Trial Court concluded that, at the material point of time, the Suit Idol and its Temple were not under the purview of HR & CE Department and the Suit Temple was also not listed under the list of temples under the control of HR & CE Department. Primarily based on this finding, the Trial Court decreed the Suit as prayed for.

FIRST APPELLATE COURT:

7. Feeling aggrieved, the defendants preferred an appeal in A.S.No.24 of 2018 before the First Appellate Court, which after hearing both sides and perusing the records, concluded that the Suit Properties are public trust properties and hence, the Indian Trust Act, 1882 would not apply. The HR & CE Department was not added as a party in the said Trust Original Petition and hence, the Order passed therein granting permission to sell the Suit Properties is void. The Suit is barred by



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limitation under Section 77 of the Registration Act, 1908. The grandsons of Sankararamaiyar, who are mere Trustees, do not have any right to execute Sale Deed in favour of plaintiffs. The plaintiffs' predecessor in title ought to have filed a Suit under Section 92 of the Code of Civil Procedure, 1908. The Trial Court erroneously marked the unregistered Sale Deed as Ex-A.16 and the same shall be eschewed. Upon these findings, First Appellate Court allowed the Appeal Suit by setting aside the Judgment and Decree passed by the Trial Court.

SECOND APPEAL

8. Feeling aggrieved by the concurrent findings rendered by the Trial Court and the First Appellate Court, the plaintiffs have preferred this Second Appeal, which was admitted on August 16, 2021 on the following substantial questions of law:

“1. Whether the Lower Appellate Court is correct in dismissing the Suit when the Defendants failed to discharge their onus that the properties vest in a public trust when evidently there is no dedication of the Suit property in favour of the temple or deity and the First Appellate Court erroneously concluded that the property is dedicated by way of public trust without any specific deed to that effect by misconstruing and misinterpreting the Private Trust as a



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Public Trust in the absence of actual and specific divestment of the property?

2.Whether the Lower Appellate Court is right in allowing the appeal when especially under the Trust Deed did not create any specific endowment and dedication of the suit property to the temple and the family members retain title and control over the suit property and whether it is right on the part of the Lower Appellate Court to construe erroneously that this is a public trust contrary 1/4 (Sic. one for) to the intention of the creator of the Trust?

3.In the absence of divestment of title in favour of the deity and when there is no evidence to establish that the HR&CE has taken over the property, whether the trust could be construed as a public trust when especially the Appellant has proved beyond doubt that there is no religious charity within the meaning of Section 6 (16), Section 6 (17) of Tamil Nadu HR & CE Act, 1969?

4.Whether the Lower Appellate Court is right in holding that the Plaintiff's predecessor in title ought to have filed the Petition under Section 92 of CPC when especially the order made in Trust OP No.46/2004 was never impeached for any reason and erroneously declaring the Exhibit A-14 is void when there exists no public trust in the eye of law?

5.Whether the Lower Appellate Court is justified in holding that the Suit is barred by limitation in view of Section 77 of the Registration Act, 1908, having failed to consider the



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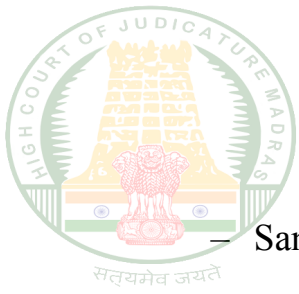
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Registrar had never refused to register the documents and only sought for a No Objection from HR & CE Department and failed to consider the correspondence and deliberations between HR & CE and the Plaintiff till 08.10.2009 and when especially no orders were passed under Section 72 or Section 76 of the Registration Act, holding the suit is barred by time contrary to evidences available on record?

6.When the predecessor in title of the Appellants have discharged their burden that selling of the property has arisen in order to carry out the obligation of conducting pooja for the Vinayakar idol which has been approved by the competent Court in Trust transfer OP No.46 of 2004, and if so, whether the Appellate Court is holding that the Appellant's predecessor in title ought to have involved Section 92 of CPC? ”

ARGUMENTS:

9. Mr.M.Ravi, learned Counsel appearing for the appellants / plaintiffs would argue that the Suit Temple does not come under the control of HR & CE Department. A portion of Suit Properties was purchased by Nanjundaiyar vide Ex-A.1 – Sale Deed and thereafter, he executed Ex-A.2 – Will whereby he dedicated the said portion in favour of the Suit Idol which was consecrated by him in Eashwaran Temple at Samaysangali Village. After the demise of Nanjundaiyar, his adopted son



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— Sankararamaiyar formed a Trust vide Ex-A.4 – Trust Deed and dedicated the remaining portion of Suit Properties for the purpose of conducting poojas, charity and ceremonies to the Suit Idol and appointed his three sons as the Trustees. Since the income from the Suit Properties were insufficient to perform poojas, charity and ceremonies, the three sons addressed Ex-A.5 - Letter to the HR & CE Department requesting them to take over the Suit Properties, and perform poojas and charities as per the wish of Nanjundaiyyar. Subsequently, since the HR & CE Department did not respond, the grandsons formed a new Trust under Ex-A.7 - Trust Deed and decided to sell the Suit Properties and use the sale consideration to perform poojas *etc.* as per the wish of Nanjundaiyyar. Hence, they filed said Trust O.P.No.46 of 2004 and deposited the sale consideration on October 8, 2003. Upon obtaining permission from Court vide Ex-A.14 – Order to sell the Suit Properties, Ex-A.16 (eschewed) - Sale Deed, the Sale Deed in question, was executed in favour of plaintiffs on November 20, 2007 and presented for registration. The Sub-Registrar refused to register citing that the Suit Properties are Temple Lands and hence the Suit. It has to be noted that Ex-A.21 - Government Order prohibiting registration of Temple Lands have been revoked vide Ex-A.22



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- Government Order. Request for No Objection Certificate for sale of Suit

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Properties by the grandsons of Sankararamaiyar was refused by HR & CE Department. The Suit Properties are Private Trust Properties and the HR & CE Department has no authority or control over the same. The purpose of the sale was to perform poojas and *Kaingariyam* as per the wish of Nanjundaiyyar out of the sale proceeds. The refusal of the Sub-Registrar to register Ex-A.16 (eschewed) - Sale Deed executed in pursuance of the Order passed by the competent Court is not lawful. The First Appellate Court's finding that the Suit Properties belong to a public trust is erroneous. The Trial Court rightly decreed the Suit. The First Appellate Court erroneously allowed the appeal setting aside the Judgment and Decree of the Trial Court. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of First Appellate Court, and restore the Judgment and Decree of the Trial Court. He would rely on the Judgment of this Court in *Chelladurai -vs- Sub-Registrar, Illupur*, reported in (2017) 3 MLJ 832 in support of his contentions.

10. Opposing these submissions, Mr.S.Ravichandran, Additional Government Pleader appearing for Respondent Nos.5 & 6 /



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Defendant Nos.5 & 6, and Mr.R.Siddharth, Government Advocate

appearing for the Respondent Nos.1 to 4, 7 & 8 / Defendant Nos.1 to 4, 7

& 8 would argue that the plaintiffs have no *locus standi* to maintain the Suit based on Ex-A.16 (eschewed) - unregistered Sale Deed. While the Sub-Registrar refused to register the Sale Deed in the year 2007, the Suit was filed on December 7, 2009 which is beyond the stipulated time of 30 days under Section 77 of the Registration Act, 1908 and therefore, barred by limitation. The Suit Properties were dedicated to Suit Idol Vinayaga and hence, Suit Idol Vinayaga is the title holder of the Suit Properties. The vendors to the plaintiffs are mere managers who have no right to alienate the Suit Properties and hence, the Suit is not maintainable. Further, the defendants were not added as parties in the said Trust O.P.No.46 of 2004 and hence the Order passed therein is not binding on the defendants. The First Appellate Court appreciated the evidence in the right perspective and allowed the Appeal Suit and dismissed the Original Suit. There is no reason to interfere with the same. Accordingly, they would pray to dismiss the Second Appeal.



DISCUSSION:

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11.This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

12.An extent of 1 Acre 90 Cents described as '*Naikkan Kulathulvai Puravai Nanjai*' was purchased under the Sale Deed, registration copy of which has been marked as Ex-A.1, in the name of Nanjundaiyar in his capacity as a Trustee of the Suit Vinayagar Idol consecrated by him in Arulmigu Samba Parameshwara Swamy Temple [Easwaran Temple] in Samayasangili Village. Ex-A.1 categorically recites that the Suit Properties were purchased for the purpose of performing poojas, charities and ceremonies to Suit Idol Vinayaga consecrated by the purchaser in Easwaran Temple. Relevant extract of Ex-A.1 reads thus:

“1895 ஏ நவம்பர் மி 21 நாமக்கல் தாலுகா
துத்திக்கொளத்திலிருக்கும்
இராமய்யர் குமாரன் சமயசங்கிலி சிவ
தேவஸ்தானத்திலிருக்கும் வினாயகர் கோவில்
டி.ரஸ்டியாகிய துத்திக்கொளம் மிட்டா ஜமீன் தார்
நஞ்சுண்டையருக்கு ஷை தாலுகா
. வேலகவுண்டர் ஷையார்
குமாரர்கள் சுப்பிரமணிய கவுண்டர் 2 மைனர்
நஞ்சுண்ட கவுண்டர் 3 லக்கமிடவருக்கு கார்டியன்



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(1) இலக்கமிட்டவர் நாங்கள் எழுதிக் கொடுத்த நஞ்சை நில சுத்தக்கிரய ஸாஸனம் யாதெனில் இதனடியில் விவரித்திருக்கிற நஞ்சை நிலத்தை நிகழுந்தேதியல் உமக்கு ரூபாய் (475) க்கு சுத்த கிரயஞ் செய்து கிரயத் தொகையும் அடியிற் கண்ட சாதிகள் முன்னிலையில் ரொக்கமாய் பெற்றுக் கொண்டு கிரய சொத்தையும் உம்மசுவாதீனத்தில் விட்டிருப்பதை ஷை நீரே சர்வ சுதந்திரத்துடன் *** ஆண்டனுபவித்துக் கொள்ளவும். இந்த கிரய சொத்தை திருச்செங்கோடு தாலுகா சமயசங்கிலி அக்ரஹாரத்தில் ஈசுவர தேவஸ்தானத்தில் உம்மால் பிரதிஷ்டை செய்திருக்கும் வினாயக கடவுளுக்கு பூஜை முதலிய கைங்கரியத்துக்காக உம்மால் வாங்கிவிடப்பட்டதாகையால் உம்ம பேருக்கு கிரயம் செய்யப்பட்டிருக்கிறது. *** இதில் 10-11 வது வரியில் 'தானாதிவினிமிய விக்கிரயங்களுக்கு யோக்கியமாய்' என்கிற வாசகத்தை அடிக்கப்பட்டிருக்கிறது. ”

(Emphasis Supplied)

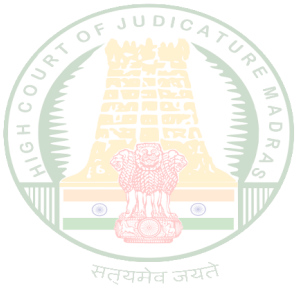
13. From the above, it can be seen that though a recital was embedded in Ex-A.1 to the effect that the purchaser – Nanjundaiyyar as a Trustee can enjoy the property covered thereunder [1 Acre 90 Cents] with the right of alienation, it was later struck off by the parties thereto. The



intention of the parties thereto could very well be gathered from the act of striking off the said recital. It is clear that the property measuring 1 Acre 90 Cents covered under Ex-A.1 was purchased for the purpose of conducting poojas and ceremonies to Suit Idol Vinayaga consecrated in Arulmigu Samba Parameshwara Swamy Temple, and the purchaser / Trustee of the Suit Idol, has no power to alienate the Suit Properties.

14. Subsequently, Nanjundaiyar executed Ex-A.2 - Will, wherein the said 1 Acre 90 Cents is listed as Item No.14 and referred to as 'Pillaiyar Nilam' under 'B' Schedule properties. Nanjundaiyyar has emphasised in his Will that he has appointed his adopted son – Sankararamaiyar as a manager of that property and that he shall manage the same and use the income therefrom to perform poojas and religious charities. In short, the dedication of the property covered under Ex-A.1 in favour of Suit Idol has been reiterated in Ex-A.2. Relevant extract of the Will is hereunder:

“B ஜாப்தாவில் திருமலை கிராமம் 14
லக்கமிட்ட நிலத்தை திருச்செங்கோடு தாலுக்கா
சமியசங்கிலியக்கிரகாரத்தில் என்னால் பிரதிஷ்டை
செய்யப்பட்டிருக்கும் விநாயகக் கடவுள்
கைங்கரியத்துக்காக விடப்பட்டிருப்பதால் அதை



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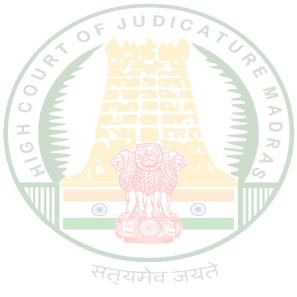


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இனிமேல் நான் ஸ்வீகாரஞ்செய்துக் கொள்ளும்
புத்திரன் பரிபாலிக்கத்தக்கது. ”

15. In 1960, the adopted son – Sankararamaiyar executed the Trust Deed marked as Ex-A.4, whereby, in addition to the property purchased vide Ex-A.1 [1.90 Acre], he dedicated an extent of 6.10 Acres in *Naikkan Kulathulvai Puravai Nanjai* to the Suit Idol. In the said Trust Deed, it has been clearly recited that, as the income from the said portion of Suit Properties, measuring 1.90 Acres dedicated by Nanjundaiyyar to the Suit Idol for the performance of poojas and charities, is insufficient, his adopted son – Sankararamaiyar is dedicating rest of the Suit Properties to the Suit Idol for the same purpose. Thus, the entire Suit Properties were dedicated to the Suit Idol. The Suit Idol was consecrated by Nanjundaiyyar, and for continuous service of poojas and religious charities as per the wish of Nanjundaiyyar, Ex-A.4 - Trust Deed has been created by his adopted son – Sankararamaiyar. Relevant extract of Ex-A.4 reads as hereunder:

“ என் ஸ்வீதாரர்கார தகப்பனார் 24.1905ல்
எழுதி வைத்த உயில் சாஸனத்திலும் ஷை சொத்து
ஷை வினாயக கடவுளின் பூஜை கைங்கரியத்திற்கு



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விடப்பட்டு இருப்பதாகவும் அவருக்கு பின் நான் அதை பரிபாவித்து வர வேண்டியது என்றும் கண்டிருக்கிறார். அவருக்குப்பிறகு ஷை சொத்தை நான் பரிபாவித்து வந்து ஷை நிலத்திலிருந்து வரும் வருமானத்தை ஷை ஸ்வாமியின் பூஜை கைங்கரியத்திற்கு கொடுத்துக் கொண்டு வருகிறேன். ஷை நிலத்திலிருந்து வரும் வருமானம் ஷைஸ்வாமியின் பூஜை வகையரா சிலவுகளுக்கு போதாது என்றும் என் ஸ்வீகார தகப்பனார் பிரதிஷ்டை செய்த ஸ்வாமியின் பூஜை முதலிய கைங்கரியங்கள் தடங்கலில்லாமல் சரிவர நடந்து வரவேண்டும் என்ற எண்ணத்தினாலும் எனக்கு வயதாகிவிட்டதினாலும் தற்சமயம் என் தியேகஸ்திதி சரியாக இல்லாமல் இருப்பதாலும் நான் நல்ல ஜீவியத்திலிருக்கும் போதே ஷை ஸ்வாமியின் கைங்கரியத்திற்கு இன்னும் அதிக வருமானம் வருவதற்கு ஏற்பாடு செய்ய வேண்டும் என்ற எண்ணம் கொண்டு அடியில் விவரித்திருக்கிற சுமார் ரூபாய் 6000 மதிப்புள்ள நிலங்களை திருச்செங்கோடு தாலுக்கா சமயசங்கிலி அக்ரஹாரத்தில் ஈஸ்வரன் கோவிலில் என் ஸ்வீகார தகப்பனார் பிரதிஷ்டை செய்திருக்கும் வினாயக கடவுளுக்கு இன்று முதல் விட்டுவிட்டேன். இனிமேல் அடியில் கண்ட சொத்தில் வரும் வருமானத்தில் ஷை நிலங்களுக்கு உண்டான சர்க்கார் தீர்வையையும் அந்த
. நிலங்களை அபிவிருத்தி செய்ய ஏற்படும் சிலவுகளையும் செய்துவிட்டு மீதி தொகை பூராவும் ஷை ஸ்வாமியின் கைங்கரியத்திற்கே என் குமாரர்கள் ராமநாதன்



வெங்கட்டரமணன் கிருஷ்ணமூர்த்தி இவர்கள்
மூவரும் Trustee களாக இருந்து செய்து
வரவேண்டியது. அவர்களுக்கு பின் அவர்கள் ஆண்
வாரிசுதாரர்கள் Trustee களாக இருந்து மேலே
சொல்லியுள்ளபடி செய்து வரவேண்டியது ஷை
கோவிலில் ஒரு கால் பின்னிட்டு பூஜை முதலானது
இல்லாமல் அழிந்துபோய் விட்டால் இந்த தர்மத்தை
அக்காலத்திய என் வார்ஸ்தாரான ட்ரஸ்டிகள்
தங்கள் உகிதம் போல் வேறு இதர தர்மங்களுக்கும்
உபயோகப்படுத்த அதிகாரமும் இதன் மூலம்
கொடுத்திருக்கிறேன். இந்தப்படிக்கி என் சம்மதியில்
எழுதிவைத்த ட்ரஸ்டு பத்திரம் ஷை கோவில் இந்து
மத எண்டோமெண்டு போர்டுக்குச்
சம்மந்தப்பட்டதல்ல . . . ”

16. From Ex-A.1, Ex-A.2 and Ex-A.4, it is easily discernible that the Suit Properties absolutely belong to the said Idol Vinayaga. Initially, Nanjundaiyar as a trustee / manager of the Suit Idol, purchased a portion of the Suit Properties measuring 1.90 Acres and dedicated it to the Suit Idol for performing poojas and other religious service to Suit Idol out of the income derived therefrom, and thereafter, his adopted son - Sankararamaiyar became the manager and dedicated the remaining portion of the Suit Properties to the Suit Idol and was performing poojas



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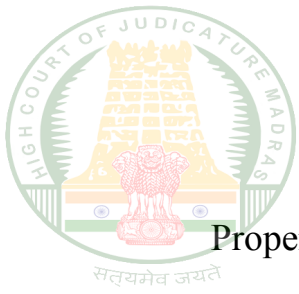
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and charities out of the income derived therefrom. It is clear that the Suit

Properties belong to Suit Idol and the grandsons of Sankararamaiyar are just managers having no power of alienation over the Suit Properties. No doubt that the legal status of an Idol is as that of a minor. If at all any alienation is to be done for the benefit of an Idol, the manager should obtain permission from the HR & CE Department or from the competent Civil Court. To be noted, the Idol is not installed in a private property but in the Suit Temple at Easwarankoil and hence, it can be understood that the ultimate beneficiaries of the poojas and the religious charity performed out of the income from the Suit Properties, are the worshippers at large. The Suit Properties belong to the Suit Idol and the managers, or any individual for that matter, cannot claim absolute title over the same.

Chelladurai's Case (cited *supra*) relied on by the learned Counsel for the appellants / plaintiffs is factually deviant from the instant case. In that case, this Court upon finding that the property is a Private Trust Property, directed the Sub-Registrar to register Sale Deed, which is not the case here. Hence, it is not applicable to the instant case.

17. The said Trust O.P.No.46 of 2004 was not maintainable at all for the reason that the Suit Properties are not a Private Trust



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Properties. As stated *supra*, it belongs to the Idol absolutely. Hence, the

Indian Trust Act, 1882 is not the applicable law. Further, neither the HR &

CE Department nor any Trustee / fit person of the Suit Temple where Suit

Idol is consecrated, was a party to the Trust Original Petition; there was

no respondent therein. Moreover, no reserve price was fixed for the sale

and public was not invited to participate in it. It is the duty of the Court

while selling a Trust property to take steps to ensure the highest sale price

[See ***R.Gopalakrishanan -vs- Tiruparankundam Arumuga Nainar***

Trust, reported in **2013 (3) CTC 870**]. In Ex-A.16 (eschewed) - Sale

Deed, even as per the executant, the market value of the Suit Properties

has been fixed at Rs.8,35,000/-. However, the sale consideration was

fixed at Rs.3,50,000/- and the same has been deposited in a Bank. Even

while assuming that the grandsons of Sankararamaiyar have power to

alienate the Suit Properties, the Sale under Ex-A.16 (eschewed) – Sale

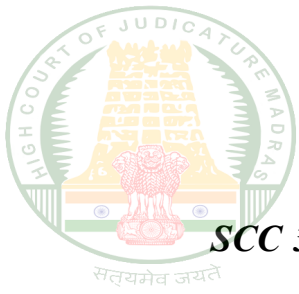
Deed in favour of plaintiffs does not seem to be for the benefit of the Suit

Idol, as the sale consideration is less than that of the market value.

Further, the Sale ought to be a public auction sale [See ***Chenchu Rami***

Reddy -vs- Government of Andhra Pradesh, (1986) 3 SCC 391 and

R.Venugopala Naidu -vs- Venkatarayulu Charitable, 1989 Supp (2)



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SCC 356]. The procedure adopted by the Court in the said Trust Original Petition is not in consonance with law. Hence, the said Order will neither bind the Suit Idol nor the HR & CE Department.

18.The plaintiffs contend that possession was handed over under Ex-A.12 - Sale Agreement dated October 8, 2003 pursuant to which Ex-A.16 (eschewed) was executed. If that is really the case, Ex-A.12 - Sale Agreement ought to have been registered as registration of Sale Agreement is mandatory when possession is handed over in view of Section 17 of the Registration Act, 1908 as amended by the Registration of Other Related Laws Amendment Act, 2001 [Central Act No.48 of 2001]. Hence, Ex-A.12 – Sale Agreement would not confer any possessory right on the plaintiffs and would not bind the Suit Idol. Further, Ex-A.16 (eschewed) – Sale Deed was not registered. Section 54 of the Transfer of Property Act, 1882, reads that sale of an immovable property worth Rs.100/- or more is mandatorily registrable. That means, Sale requires registration and it is complete only when registered; sale is incomplete in the absence of registration. Hence, the Sale in this case is not yet completed. Therefore, the plaintiffs would not acquire any title over the Suit Properties in any manner. The relief of declaration sought



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for by the plaintiffs cannot be granted based on Ex-A.16 (eschewed) -

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19. The First Appellate Court's conclusion that the 'Public Trust Act' would be the applicable law is an erroneous approach. To be noted, there is no such Act in vogue in the State of Tamil Nadu. As far as a trust property is concerned, if the property belonged to a Private Trust, the Indian Trusts Act, 1882 alone would be applicable; as per Section 1 of the Indian Trusts Act, 1882, it does not apply to Public Charitable Trusts. If a property belongs to a Public Charitable Trust, applicable law is Section 92 of the Code of Civil Procedure, 1908. As stated above, the Suit Properties neither belong to Private Trust nor belong to a Public Charitable Trust. On the other hand, the Suit Properties belong to Suit Idol Vinayaka and therefore, come under the category of religious endowment which is governed by the HR & CE Act.

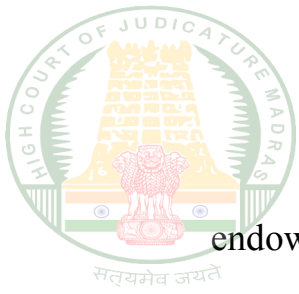
20. Further, the First Appellate Court held that the Suit is barred by limitation under Section 77 of the Limitation Act, 1963. The First Appellate Court has misconstrued Section 77, which deals with limitation for a statutory Suit contemplated thereunder. Here the Suit is



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one for declaration of title and other reliefs, and therefore, the plea that the Suit is barred by limitation is not sustainable. Moreover, neither the executant of Ex-A.16 (eschewed) – Sale Deed nor the Trustees under Ex-A.7 – Trust Deed has been added as party to the Suit and hence, the Suit is bad for non-joinder of necessary parties.

21. To sum up, the Suit Properties absolutely belong to Suit Idol Vinayaga which is a juristic person in whom title to the Suit Properties vests. Though the Idol is the owner, Idol has to act through some human agency and the agents are the Managers who have to take proceedings on its behalf. In this case, Trustees / Managers have no power to sell or alienate the Suit Properties. In case there arises a necessity to alienate the Suit Properties for the purpose of carrying out religious service uninterruptedly, the Managers must either obtain permission under Section 34 of the HR & CE Act, or file a Suit before the competent Civil Court seeking permission. The Trust Original Petition filed by the Managers before the Principal District Court, Namakkal, under the Indian Trusts Act, 1882 is not maintainable and the Order passed therein would not bind the Suit Idol Vinayaka, for the Indian Trusts Act, 1882 is not applicable to property absolutely dedicated to an Idol or religious



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endowment and the Court was devoid of jurisdiction. The Trial Court is not justifiable in decreeing the Suit. Though the First Appellate Court rightly allowed the Appeal and dismissed the Original Suit, the reasons assigned by it for its decisions are not right in law in the considered opinion of this Court. Substantial Questions of Law are answered accordingly.

CONCLUSION:

22. Resultantly, the Second Appeal is dismissed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

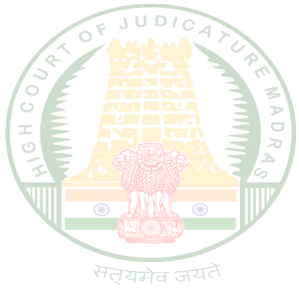
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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

1.The Principal District Judge
Namakkal.

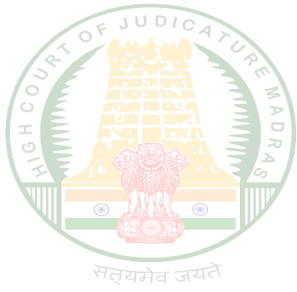
2.The Sub Court
Namakkal.



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R. SAKTHIVEL, J.

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