KAUP020000642003

IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM., AT UDUPI.

Dated : This the 15th day of March, 2022

Present: Smt. Shakunthala S.,
B.A. L.L.B.
Prl. Senior Civil Judge & CJM.,
Udupi.

O.S. No.75/2003

Plaintiffs :

1. H.H. Sugunendera Theertha
Swamier of Udupi
Shri Puthige Mutt,
Managing Trustee,
Shri Anantheswara and
Chamundeshwara temples,
Car Street, Udupi.

2. Shri. Krishna Mutt,
Udupi – represented by
its Paryaya Swamier

Vidhyadheesha Theertha Swamier of
Palimar Mutt, Udupi.

(Rep. By Sri. J.K.A., Advocate)

V/s

Defendants : 1. State of Karnataka,
Represented by Dy. Commissioner,
Having his office near
Inspection Bunglow,
Udupi.

2. The Commissioner,
Hindu Religious and
Charitable Endowment Department,
Bangalore,
Having his office at Chamarajpet,
Bangalore – 560 018.

3. H.H. Sri Viswesha Theertha Swamiji,
Sri. Pejawar Mutt, Udupi.

3(a). H.H. Sri. Viswaprasanna Theertha
Swamier,
matadipathi of Pejawara Mutt,
Aged about 56 years,
Shishya of Viswesha Theerthya
Swamier,

Car Street, Udupi – 576 101.

4. H.H. sri. Vidyasagara Theertha Swamiji,
   Sri. Krishnapur Mutt, Udupi.

5. H.H. Sri. Vidyavallabha Theertha Swamiji,
   Sri. Kaniyoor Mutt, Udupi.

6. H.H. Sri. Vishwavallabha Theertha Swamiji,
   Sri. Sode Vadiraj Mutt, Udupi.

(D1 & D2 – Rep. By A.D.G.P/A.S.H.
D3 – Dead.
D3(a), D4 to D6 – Rep. By Sri.V.M.S.U., Advocate.

<u>I.A.No.30</u>

Applicant s : The State Rep. By Dy. Commissioner, Udupi and others.

V/s

Opponent : Sugunendra Theertha Swamier and others.

ORDERS ON I.A. NO.30 FILED BY DEFENDANTS U/O.26 RULE 9 R/W. SECTIONS 75, 151 OF CPC.

This order arising out of an application filed by defendants with a prayer to appoint a Court Commissioner to conduct local inspection, to observe and note the physical features, positions of suit temples and its function, to observe the situations and the existence of, constructions of temples and its buildings, to observe and note the installations of idols and its existence in and around the surrounding area of the temples Lord Anantheshwara and Lord Chandramouleshwara Temple along with Shri Krishna temple and the Parivara Daivas of Lord Anantheshwara and Lord Chandramouleshwara and such other facts that may be pointed out to him by the parties and prepare a plan and file the same along with his report in the interest of justice.

2. In support of the application, the Assistant Commissioner Kundapura sworn to an affidavit that the suit filed for the relief of declaration that the temples Shri Anantheshwara

and Chandramouleshwara of Shivally village are attached to Shri Krishna Mutt of Ashta Mutts of Udupi. In order to elucidate the matter in dispute, to adjudicate and decide the reliefs prayed by plaintiffs and the defence raised by the defendants, for which it is necessary to conduct local inspection by appointing a Court Commissioner, further the appointment of Court commissioner will shorten the evidence of the defendant side.

3. To note the actual position of Shri Anantheshwara and Shri Chandramouleshwara temples, its conditions to observe, inspect the existence of situations, affairs of the temples are necessary and to note whether the suit temples were attached to Shri Krishna temple or not, to note the exact situations in that locality, it is necessary to conduct inspection of the temples and its administrations. Hence, the appointment of Court Commissioner to note the same and observe the same it is necessary and if the application is allowed, no prejudice will be caused to the other side. Hence, prayed to allow the application.

4. The said application has been resisted by the plaintiff No.1 by filing objections that the appointment of commissioner to conduct local inspection to observe and note the physical features, position of the suit temple and its function and to observe situations and existence of construction of the temple and its building and to observe and note the installation of idols and its existence in and around the surrounding areas of temple Lord Anantheshwara and Lord Chandramouleshwara along with Krishna temple and Parivara Daivas of Lord Anantheshwara and Lord Chandramouleshwara and to prepare a plan and to submit a report are not required and the points noted by the Commissioner which are unnecessary and irrelevant to decide the dispute involved in the case. Existence of two temples and idol and its surrounding land etc. are not in dispute. Therefore, appointment of commissioner and calling for report is unnecessary. Only to drag on the matter filed the present application. Hence, prayed for dismissal of the application with exemplary cost.

5. Heard on both side.

6. The points that arise for my determination are as under:

1. Is there any sufficient grounds to allow the application by appointing an advocate commissioner for the purpose as stated in the application?

2. What order or decree?

7. My findings on the above points are as under:

Point No.1: In the negative.

Point No.2: As per final order
For the following:

REASONS

8. Point No.1:- The present suit filed by the plaintiffs for the relief of declaration that Shri. Anantheshwara and Chandramouleshwara temples of Shivally village, Udupi taluk are attached to Shri. Krishna Mutt, Ashta Mutts of Udupi and for consequential relief of permanent injunction restraining the defendants from appointing Trustees to the said temples and for cost.

9. It is the specific contention of plaintiffs that Anantheshwara and Chandramouleshwara temples are the

two ancient historical temples of Udupi situated very close to Shri Krishna Mutt, Udupi. Great Saint Madhwacharya established the Mutt for the propagation of Dwaitha system of thought. Shri. Krishna's Idol was acquired from a heap of Gopichandan from Dwaraka brought by the Sailors of a native craft which got standed near Malpe, where Madhwacharya used to go every morning for his ablutions and tapas. The tradition has it that the image is the same that had been worshipped by Rukmini at Dwaraka in pre-historic days. The image was consecrated and installed by Madhwacharya in his Mutt and began to worship it during his life time and the worship continued by one or the other of his 8 disciples. In order to regularize the worship and to give equal opportunities to the 8 disciples, it was arranged that the worship be conducted by each of the disciples by rotation of two months which were subsequently changed to two years. There is no Matadhipathi for Shri Krishna Mutt, but Swamy of each 8 Mutt in turn presides over the affairs of Shri Krishna Mutt for a period of two years in every 16 years under Paryayam. The said Paryaya system was introduced by Shri Vadhiraja Swamier of Sodhe Mutt during his regime. Shri

Madhwacharya took sanyasa deekshe from Achuthaprekshacharya in Shri Anantheshwara temple after completing his education and he used to give preaching to his disciples in Shri Anantheshwara temple as it was then considered as his original Mutt. Permanent seen provided to Madhwacharya to preach his disciples in Anantheshwara temple a small shrine is constructed in the said place and outer portion above the door of the shrine there is a stone carved image of Madhwacharya and the said place is worshiped every day by Paryaya Swamier of Shri Krishna Mutt even now and there is a saying that Madhwacharya disappeared from the very same sacret place at Anantheshwara which is inside the main building of Anantheshwara temple. Therefore, there is direct connection to Shri Krishna Mutt and Anantheshwara temple.

10. Anantheshwara and Chandramouleshwara temples are twin temples and they are throughout under the common management. Madhawacharya being managed during his life time, thereafter Swamiers of Ashta Mutts and it is seen from the records that Deewans of Ashta Mutts functioned as sole

trustees of the plaint temples during certain period. Thereafter area committees started appointing trustees to that temples. However subsequently the provision of appointing trustees by area Committee under Madras Hindu religious and Charitable Endowment Act 1951 has been struck down as invalid and the practise of electing the trustees for a period of 5 years was insisted by the Endowment Department and though Swamiers of Ashta Mutts had the right to manage the plaint temple in olden days, they were compel to hold election among the Hindu devotees of the temples and the said practise continued till date. But, the fact remains that Swamiers of Ashta Mutt functioned as managing trustees even after introduction of election of the devotees and at the time of appointment of trustees by area committee.

11. There is inter connection between Krishna Mutt and the two temples. Without there being a co-ordination it is impossible to manage the affairs of the temples. There were several common annual festivals and also Uthsavas, wherein idols are carried and worshipped in Garudaratha,

Chickaratha and Brahmaratha. Further, on the annual festival of Anantheshwara temple Brahmaratha belonging to Krishna Mutt is provided to Anantheshwara temple to carry its Uthsavamurthy, similarly during the annual festival of Chandramouleshwara temple garudaratha of Krishna Mutt is provided to carry uthsava murthy and Krishna Janmashtami celebrated in Krishna Mutt and on the next day Krishna Leelothsava of Lord Krishna celebrated in a peculiar manner called 'Vittla Pindi' and arrangements will be done by Krishna Mutt at its cost. On annual festival days of the plaint temples, elephant, birudu bavali of Krishna Mutts is to be provided without any charges and there is a function at the end of Rathotsva called ‘Volaga mantapa pooja’ which will be held in Vasantha Mantapa of Shri Krishna Mutt. All the expenses used to be met by Shri Krishna Mutt and there is a big lake called Madhwa Sarovara which also belongs to Krishna Mutt and certain religious function performed on the next day of annual festivals of schedule temples which is called ‘Avabritha Snana’ which will be done in Madhwa sarovara of Shri Krishna Mutt.

12. Further, the disappear day of Madhwacharya is being celebrated as 'Madhwanavami day' and special poojas are celebrated in Anantheshwara temple and the Ashta Mutt Swamijis have to visit Anantheshwara temple compulsorily and worship Madhwacharya on that day. Mass feeding will be done in the plaint temples on Madhwa Navami and all the expenses are met by Shri Krishna Mutt.

13. In Section 38 Register maintained by the plaint temples, which is clearly mentioned that daily meals for 12 persons for 'Mristanna' have to be arranged in Aanantheshwara temple at the expenses of Puthige Mutt for which government has provided separate thastic to Puthige Mutt. Similarly out of 13 Nandadeepas of Chandramouleshwara temple expenses of three daily nandadeepas are met by Adhamar Mutt, Shirur Mutt and Krishnapura Mutt equally, all the expenses of Lakshdeepotsava of plaint temples are being met by Krishna Mutt Udupi.

14. Such being the facts, there is inter connection between Krishna Mutt belonging to Ashta Mutts of Udupi and the two

temples therefore, throughout it is treated and recognized that the said two temples are attached to Shri Krishna Mutt belonging to Ashta Mutts of Udupi. As such, the provision of Karnataka Hindu Religious Institutions and Charitable Endowment Act 1997 are not applicable to the said temples. However it is not so far declared that plaint temples are attached to Shri Krishna Mutt belonging to Ashta Mutts of Udupi. Unless declaration given in that behalf the defendants will appoint trustees to the said two temples under the provision of new Act introduced on 1-5-2003 and definitely disturb the management of the plaint temples.

15. There is provision under the new Act for preparing list of all the charitable Hindu Religious Institutions and forming committee for management of the said institutions and prescribed authority shall constitute the committee of management from among the devotees, donors and followers of Hindu Religious Institutions. The said list not prepared and published so far, government may prepare and publish the said list at any moment and appoint trustees to the schedule temples. The act shall not apply to a Mutt or a

temple attached thereto and the schedule temples which are attached to Shri Krishna Mutt of Ashta Mutts, but there is no provision under Hindu Religious and Charitable Endowment Act 1951 to declare that a temple is attached to Mutt. Similarly under the new Act also there is no provision to declare that temple is attached to Mutt, but such declaration is absolutely necessary to safeguard the interest of the temples attached to the Mutt and the management cannot be taken away by appointing new trustees. Therefore, they constrained to file this suit.

16. The defendants filed written statement by denying the entire case of plaintiffs in toto contending that this Court has no jurisdiction to entertain the present suit by virtue of Section 68 of the Karnataka Hindu Religious and Charitable Endowments Act 1977. The plaintiffs have not exhausted the remedy which is available to them by applying to the prescribed authority appointed under the Act which has already come into force. If any order of injunction is granted against them it will cause great injury, inconvenience, loss and hardship since court has no jurisdiction to pass

any orders. There is no cause of action for the suit. Plaintiffs are neither entitled to the relief of declaratory decree nor the relief of consequential injunction. The suit itself is not maintainable for want of statutory notice required under Section 80(1) of the CPC. The Act already came into force with effect from 1-5-2003, there is no question of seeking any urgent reliefs as alleged. Hence, prayed for dismissal of the suit with exemplary cost.

17. Based on the pleadings of the parties issues have been framed by casting burden on both plaintiffs and defendants, wherein burden is on the plaintiffs to prove that the schedule temples attached to Krishna Mutt of Ashta Mutts of Udupi and burden on defendants to prove that the Court has no jurisdiction to try the suit.

18. In the existence of the issues framed, Mahithosh Acharya the GPA holder of the plaintiffs examined himself as PW1 and also got examined 4 witnesses as PW2 to PW5 and seven documents have been marked as Ex.P1 to P7.

19. On the contra in order to disprove the case of plaintiffs the defendant i.e. the Assistant Commissioner, Kundapura got examined as DW1 and got marked 89 documents at Ex.D1 to D89 and the case set down for further chief of DW1 at that stage the present application filed.

20. When the burden is casting on both parties as the plaintiffs claiming that the suit schedule temples are attached to Krishna Mutts of Ashta Mutts, on the contra it is the contention of defendants that the plaintiffs have not exhausted the remedy which is available to them by applying to the prescribed authority appointed under the Act which already come into force from 1-5-2003, such being the case the parties have to prove their respective cases for which the oral as well as documentary evidence that too the plaintiffs specifically claiming their title which has been denied by the defendants and there are sufficient materials which are available moreover evidence on the plaintiffs side also concluded, so also defendants partly adduced evidence. Such being the case when the existence of the temples not at all been in dispute, but the crux of the matter is in respect of

title whether it belongs to Ashta Mutts or the said temples come under the provisions of Endowment Act for which the oral as well as documentary evidence which have to be produced by the parties and the plaintiffs have to discharge their burden by producing clear sufficient and satisfactory evidence, which have to be rebutted by the defendants, but in what way the appointment of the Court commissioner that too for local inspection to observe and note the physical features, positions of suit temples and its function to observe the situations and the existence of construction of temples and its buildings, installation of idols and existence in and around the surrounding area of the temples, Lord Anantheshwara and Lord Chandramouleshwara temple along with Shri Krishna temple and Parivara Daivas of Lord Anantheshwara and Lord Chandramouleshwara and other facts pointed out by the Court Commissioner by preparing plan which help the defendants in proving their defence in the existence of their specific defence that too when both the parties are specifically stated their cases.

21. Moreover the point for determination between the parties is in respect of the title over the suit schedule temples to which the said two temples were attached for which the Court Commissioner nothing to do with the same and the report if submitted in respect of physical features, functions in what way helpful to this Court in determining the matter in issue not been established by the defendants.

22. Further, the provisions of Order XXVI Rule 9 which reads thus;

> *"Commissioner to make local investigation:- In any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a Commission to such person as ti thinks fit directing him to make such*

> *investigation and to report thereon to the Court;*
>
> *Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules."*

In the present case there is no dispute in respect of existence of the temples. More over the object of local investigation under Rule 9 is to assist the Court, but here the issue cannot be left through the Commissioner and the said issue has to be decided by the Court. Accordingly when the plaint allegations as well as the defence of the defendants are clear and specific, as such there is no need to appoint a Commissioner and the Commissioner can only report the facts as they exist, but cannot report how those facts came into existence which have to be proved by the parties. Accordingly, no sufficient grounds to allow the application. **Hence, I answer point No.1 in the Negative.**

23. Point No.2: In view of the reasons assigned above, I proceed to pass the following:

<u>O R D E R</u>

I.A. NO.30 filed by defendants under Order XXVI Rule 9 r/w Sections 75, 151 of CPC is hereby rejected.

Cost will follow the result of the suit.

(Dictated to the Stenographer, computerized by her, corrected, signed and then pronounced by me in the open court on this the 15th day of March, 2022]

(Smt. Shakunthala S.)
Prl. Sr. Civil Judge and CJM.,
Udupi.

{Order pronounced in open Court,
vide separate detail order}

ORDER

I.A. NO.30 filed by defendants under Order XXVI Rule 9 r/w Sections 75, 151 of CPC is hereby rejected.

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(Smt. Shakunthala S.)
Prl. Sr. Civil Judge and CJM.,
Udupi.

Further chief of DW1 by 30-3-2022.