

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6310 OF 2000

EXE.OFFICER ARULMIGHU S.P.&B.A. TEMPLE

Appellant (s)

VERSUS

A.K. MUTHU & ORS.

Respondent(s)

WITH SLP(C) NO. 17794 of 2000

(With appln for exemption from filing O.T. And with prayer for interim relief)

Date: 11/01/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s) Mr. T.L.V. Iyer, Sr.Adv.

State of T.N. Mr.V.G.Pragasam, Adv.

Mr.S.Vallinayagam, Adv.

Mr. S. Prabhu, Adv.

For Respondent(s) Mr. V. Prabhakar,Adv.

Mr. Ramjee Prasad, Adv.

Mr.Subramani, Adv.

Mrs. Revathy Raghavan, Adv.(NP)

Mr. K.V. Vijayakumar,Adv.(NP)

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeals are allowed. No order as to costs.

(Meenu Sethi)  
Court Master

(Pushap Lata Bhardwaj)  
Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6310 OF 2000

.P. &  
B.A.Temple...Appellant

Exe.Officer Arulmighu S

Versus

A.K.Muthu & Ors.

...

Respondent

With

C.

A.No. .257/2007( @ SLP(C) No.17794/2000)

ORDER

Leave granted.

These two appeals arise out of judgment and decree

dated 24.4.2000 passed by the High Court of Judicature at

Madras in Second Appeal No.1338/88 whereby and

whereunder the appeal preferred by the respondents herein had been allowed.

The basic fact of the matter is not in dispute.

Respondents belonged to a community known as "Sanror Kula Nadar". They are residents of Velliampathi and other parts of Tamil Nadu. According to them they constitute a separate sect. It was contended that a temple known as "Arulmigu Badra Kalamman temple". was built by their ancestors about two hundred years back and the same is a denominational temple. In or about 1978, the Commissioner of Hindu Religious and Charitable Endowments in exercise of his power conferred upon him under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (the Act) appointed a 'fit person' in respect of the said temple. The said provision reads as under:

" 49(1) In the case of any religious institution which is not included in the list published under Section 46 and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act (the Assistant Commissioner) shall have the same power to appoint trustees including fit persons or constitute a Board of Trustees as is vested( in the Government , the Commissioner or the Joint Commissioner or the Deputy Commissioner) in the case of a religious institution referred to in clause (a) of sub-section (1) or in sub-section (2) as the case may be of section 47:

Provided further that in addition to the trustees appointed by the Assistant Commissioner under this sub-section, the Government may nominate two persons who are qualified for appointment as trustees under this Act as members of the said Board of Trustees, having regard to the following matters, namely-

(a) the interest of public generally;

(b) the income and the properties of the religious institution;

(c) the number of worshippers and importance of the religious institution as a pilgrim centre; and

(d) such other matters as may be prescribed

Provided also that notwithstanding anything aforesaid in this sub-section the Assistant Commissioner may, in the case of any such religious institution which has no hereditary trustee, appoint a single trustee.

(2)The provisions of sub-sections(3) and (4) of section 47 and of Section 48 apply to the trustee or trustees appointed or the Board of Trustees constituted by (the Assistant Commissioner) as they apply to the trustee or trustees appointed, or the Board of Trustees constituted under Section 47.

A Suit was filed in the year 1982 in terms of Order 1 Rule 8 of the Civil Procedure Code. Allegedly, the original deed of endowment was not available and was, thus, not produced before the Court. Both the parties examined

witnesses with a view to establish their respective cases, namely, as to whether the temple in question was a denominational temple or was a public temple. The learned trial Judge as also the First Appellate Court, upon analysing the evidences brought on records by the parties, arrived at the conclusion that the temple in question is a public temple and not a denominational one.

Aggrieved by the said judgment and decree, a Second Appeal was preferred before the High Court by the respondents. It transpires that on or about 18.10.1988, the said Appeal was admitted on the following substantial questions of law:

"(1) Whether on the facts and circumstances of the case, the Courts below have correctly applied the principles and tests laid down by the Supreme Court of India and this Court to determine the character of the denominational institution?

(2) Whether the judgments of the Courts below are vitiated for their failure to consider the admissions made by witnesses examined on behalf of the defendants?

(3) Whether the judgment and decree in O.s. No.1000 of 1925, District Munsif's Court, Erode is a judgment IN REM and therefore binding?

The learned Judge of the High Court, however, proceeded to determine the contentions raised before him on the basis of the evidences adduced by the parties. None of the aforementioned purported substantial questions of law were adverted to. The said substantial questions of law, which were framed, had thus not been gone into. Even otherwise, they are not properly framed. The learned Judge, however, upon considering the evidences on record held as under:

" .....On the other hand, I am inclined to hold Sanror Kula Nadar is a separate denominational and they have different methods of pooja unknown to the other communities. The mere fact that members of the general public are permitted to have darshan and offer Kannikkais in the hundials, in my opinion would not alter the situation as pointed in the decision report in 1978 T.L.J. 359(cited supra) with which, I am in entire agreement. It is needless to point out that the facts of the present case are similar to the facts that arose for consideration before the High Court in 1978 T.L.N.J. 359 and the principles of law apply to the facts of the case in all fours."

It was further opined:

"...I am satisfied that the religious tenets of Sanror Kula Nadars are different from that of the other communities and Sanror Kula Nadars is a separate denomination and the Badra Kaliyamman Temple had been constructed by the

ancestors of the said community which is made very clear by the oral evidence on record. It is unfortunate that both the Courts below have failed to consider the material and relevant evidence on record with regard to the construction of the Badra Kaliyamman Temple and the different method of pooja conducted by the Sanror Kula Nadars. It appears to me that both the Courts gave importance only to the fact that there are gopurams to all the Sannadhis except the Murasan, Sunnadhi and that general public had free access to have dharshan in the Temple and offer Kannikkais and one of the Sannadhis had been constructed by a person belonging to a different community, namely, Gounder community and, therefore, the character of the Temple is only public and not denominational.."

We, with respect, fail to appreciate the approach of the learned Judge in determining the substantial questions of law which were framed in the Second Appeal.

The jurisdiction of the High Court to deal with the finding of fact arrived at by the trial Court and First Appellate Court has been considered by this Court in Manikkoth Narayani Amma and Ors. Vs. P.C. Kalliani Amma and Ors. - (2003) 9 SCC 245.

It was not opined by the High Court that the finding of fact arrived at by the learned trial Judge as also by the First Appellate Court was not in consonance with the legal principles applicable for appreciation of evidence or otherwise perverse. It has also not been held that the learned

trial Judge as also the First Appellate Court applied wrong legal principles or posed wrong questions unto themselves so as to arrive at a wrong finding of fact.

Our attention has been drawn to a decision of this Court in Sri Venkataramana Devaru and Ors. Vs. The State of Mysore and Ors. - 1958 S.C.R.895 involving application of Articles 25(2) (b),26(b) of the Constitution this Court held as under:

"...Now, the facts found are that the members of this community migrated from Gowda Desa first to the Goa region and then to the south, that they carried with them their idols, and that when they were first settled in Moolky, a temple was founded and these idols were installed therein.

We are therefore concerned with the Gowda Saraswath Brahmins not as a section of a community but as a sect associated with the foundation and maintenance of the Sri Venkataramana Temple, in other words, not as a mere denomination, but as a religious denomination.."

Keeping in view the aforementioned decision of this Court and furthermore in view of the fact that the learned Judge did not advert to the substantial questions of law framed by the Court at the time of admission of the appeal, we are of the opinion that the matter should be considered afresh by the High Court. The impugned judgment is set aside. The appeals are allowed and the matter is remitted to

the High Court for consideration of the

matter afresh in the light of the substantial questions of law

which may be re-formulated.

As none appears on behalf of the respondent, there

will be no order as to costs.

.....J.

[ S.B. SINHA ]

.....J.

[MARKANDEY KATJU]

New Delhi,

JANUARY 11, 2007