

The Commissioner and anr. Vs. Sri. V. Varada Ganesa Perumal and anr.

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Court : Chennai

Decided On : Dec-14-2011

Judge : G.Rajasuria, J.

Acts : Tamil Nadu Hindu Religious and Charitable Endowments Act, 22 of 1959 - Sections 63(a), 69(1)

Appeal No. : Appeal Suit No.356 of 1996 and M.P.(MD) No.1 of 2011

Appellant : The Commissioner and anr.

Respondent : Sri. V. Varada Ganesa Perumal and anr.

Advocate for Def. : Mr.Anand C. Rajesh, Adv.

Advocate for Pet/Ap. : Mr.K.Chellapandian, Adv.

Judgement :

This Appeal Suit is focussed by the original defendants animadverting upon the judgment and decree dated 19.01.1994, passed in O.S.No.116 of 1988 by the learned Principal Subordinate Judge, Tirunelveli.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. A summation and summarisation of the relevant facts absolutely necessary and germane for the disposal of this Appeal Suit would run thus: The plaintiffs filed the

statutory suit, invoking Section 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 22 of 1959 on the ground that their ancestors constructed a house, wherein a part of it was set apart for installing the deity Uchinimakaliamman, which happened to be their family deity. The said temple and the residential portion forms part of one and the same structure. The land measuring 66 cents belongs to the plaintiffs and it is a private property. From out of the income derived from it Poojas are performed. No member, out side the plaintiffs family, was permitted to worship the said deity. While so, the Hindu Religious and Charitable Endowments Department attempted to get possession of the said temple as well as the landed property. Whereupon, the second plaintiff's father Natarajan was constrained to file an application under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 22 of 1959 for a declaration that the said temple is a private one. Thereupon, the second defendant through its Inspector conducted an enquiry and gathered evidence and ultimately rejected the prayer of the second plaintiff's father for declaration that the suit temple is a private one. As against which an appeal was filed before the first defendant under Section 69(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 22 of 1959, for nothing but to be dismissed by him. Being aggrieved by and dissatisfied with the same, the present suit was filed.

4. Resisting the suit, the defendants filed the written statement.

5. Whereupon, the relevant issues were framed. During the trial on the side of the plaintiffs, P.W.1 was examined and Exs.A.1 to A.16 were marked and on the side the defendants D.W.1 was examined and Exs.B.1 to B.4 were marked.

6. Ultimately, the trial Court decreed the suit, as against which the present Appeal Suit has been filed on various grounds.

7. The learned Additional Advocate General for the appellants/defendants reiterating the grounds of appeal would pilot his arguments, the gist and kernel of the same would run thusly:

The trial Court was wrong in holding as though the temple is a private one. No member of the public was examined before the trial Court to prove and establish

that the temple is not a private one, even though the statement of the second plaintiff's father Natarajan was to the effect that Prasatham was being distributed in the said Temple to the public. The trial Court ignoring the decision of the Hon'ble Apex Court in T.V.Mahalinga Iyer v. State of Madras reported in AIR 1980 SUPREME COURT 2036 decided the lis warranting interference in this appeal.

8. Per contra, in a bid to mince meat and shoot down, and also to torpedo and pulverise the arguments as put forth and set forth on the side of the defendants, the learned Counsel for the plaintiffs would advance his arguments, the nitty-gritty of them would run thus:

The Inspector of Hindu Religious and Charitable Endowments Department, who conducted the enquiry palpably and pellucidly, categorically and plainly pointed out that there is nothing to indicate and exemplify that any function was being celebrated in the temple and there is also nothing to show that any Hundial was being kept or any collection was made for conducting function in the temple. The Inspector could not gather any evidence to prove that public are participating in the temple by way of right. The exhibits marked on the side of the plaintiffs would highlight and spotlight the fact that the plaintiffs ancestors were paying tax for the properties concerned. There is nothing to establish that any member of the public had any grievance as against the plaintiffs exclusively enjoying the said structure and also the land concerned. In such a case, the Hindu Religious and Charitable Endowments Department had no reason at all to interfere with the said structure and the property. The plaintiffs ancestors were residing in the said structure and following them the plaintiffs are now enjoying the same. In such a case, the question of public having any interest over it, does not arise at all. Considering all these facts alone, the trial Court in its detailed judgment decreed the suit, which warrants no interference in the appeal. Accordingly, he prays for dismissing the Appeal Suit.

9. The points for consideration are:

(i) Whether the trial Court did not consider the dictum laid down by the Hon'ble Apex court in T.V.Mahalinga Iyer v. State of Madras reported in AIR 1980 SUPREME COURT 2036 that so far as Tamil Nadu is concerned, there is an initial

presumption that a temple is a public one?

(ii) Whether the trial Court was justified in not giving a specific finding as to when and in what manner the plaintiffs started enjoying the properties concerned?

(iii) Whether the trial Court in the wake of the evidence showing that nobody knows as to when the temple originated, was justified in holding that the said temple is a private one?

(iv) Whether there is any perversity or illegality in the judgment and decree of the trial Court?"

10. The aforesaid points are taken up together for discussion as they are inter-linked and interwoven, entwined and intertwined with one another.

11. At the outset itself, I would like to refer to decisions cited on both sides.

12. The learned Additional Advocate General cited the following decisions:
(i) T.V.Mahalinga Iyer v. State of Madras reported in AIR 1980 SUPREME COURT 2036. An excerpt from it would run thus:

"2. Shri Balakrishnan, appearing for the appellant, has taken us through the details of the evidence to impress upon us that the High Court had grievously erred in holding that the temple was a public one. It is undisputed law that so far as Tamil Nadu is concerned, there is an initial presumption that a temple is a public one, it being up to the party who claims that it is a private temple, to establish that fact affirmatively. Of course, this initial presumption must be rebutted by clinching testimony and the crucial question is as to whether the public worship in the temple is as of right. Ordinarily, there may not be direct evidence regarding the exercise of such right and inference has to be drawn from a wealth of circumstances. In the present case, the High Court has gone into great detail and taken up circumstance after circumstance to uphold its conclusion that the institution is a public temple. The dedication to the public need not be by a deed and may be spelt out of the circumstances present. The right of the public to worship again is a matter of inference. In the present case, the founder is no more and he died issueless with the result that his family is extinct. A will had been

executed by him and the trustees under the will are now claiming the institution as a private temple. The various features referred to by the appellate court and discussed at some length do not call for reiteration and we desist from doing so. It may be noted that the temple itself is situate on government property, that processions with the deity are taken out and that offerings are made, that the structure especially of Gopuram and Mandapam also indicates the public nature of the temple. Many other facts have been accumulated by the High Court and the evidence (Ex. B-1) in the case also supports the conclusion that there had been contributions made by the public and the temple was not a private one. We are not inclined to reappraise the evidence in this Court as we are thoroughly satisfied that no serious error of law or perspective or misappreciation of evidence has been pointed out in the judgment of the High Court. We are, therefore, constrained to reject the case of the plaintiff-appellant that the institution is private or that the deity is a family idol. We accordingly dismiss the appeal.”

(ii) The Commissioner, H.R. & C.E. Admn. Department v. K. Ramanathan reported in 2009 (4) CTC 563. An excerpt from it would run thus: “15.It was argued by the learned counsel appearing for the respondent that the settlement deed Ex.A1 would prove that it is a private temple. As stated supra, in that deed it was mentioned that the temple was constructed by the plaintiff's ancestor and the temple was established for the family only. In my opinion, when the plaintiff is not able to prove the origin or failed to produce any evidence to show that the temple was constructed by his ancestors and the fact that the temple is situate in a porompoke land and villagers are worshiping the deity as of right and Viswarkarma Community people are performing poojas in the month of Adi, all would go to show that the temple is only public temple and the Court cannot declare it as a private temple only on the basis of Ex.A1. My finding is further fortified by the decision reported in the case of T.V.Mahalinga Iyer v. State of Madras, 1981(1) SCC 445,

“so far as Tamil Nadu is concerned there is initial presumption that a temple is a public one, it being up to the party, who claims that it is a private temple, to establish that fact affirmatively. Of course, this initial presumption must be rebutted by clinching testimony in order to establish that a temple is a private temple. In the same judgment the vary situation of temple on Government property was also

taken as a piece of evidence in support of public temple. In the case on hand, as already stated about, there was neither pleading nor clinching evidence as to who founded the temple and as to how the temple belonged to the appellants. It is also on record that the temple was constructed on pormboke land. Under the circumstances, it is clear that the appellants have failed to establish that denomination of Rajus constructed the temple.” The above passage in the judgment squarely applies to the facts of the case and therefore, I have no hesitation to hold that the Kamatchiamman temple is not a private and but only a public temple.

(iii) L.B. Merchants Assn. Ltd. v. Commr., H.R. & C.E. (Admn.) Dept. reported in (2008) 5 MLJ 1504. An excerpt from it would run thus: “29. In the instant case, though the appellants have stated that the suit temple was a place of worship for about 120 years, on the date of filing of the suit, they have not produced any supporting documents to show, as to who originally constructed the temple at the place of worship, while it was a snake putru (ant hill). It cannot be disputed that the land was originally a poramboke land and then, during Survey Resettlement, patta was issued in the name of three persons. Subsequently, it was transferred in the name of the first appellant temple, only by virtue of an order, dated 26.11.1973. As per the verdict of the Hon'ble Apex Court in T.D. Gopalan v. Commr., H.R. & C.E., Madras (supra), the origin of the temple has to be established to be construed as a private one. In the instant case, the appellants have not established the origin of the temple, with reference to the appellants' association.”

(iv) The Deputy Commissioner, H.R. & C.E. v. V.P.Prithviraj reported in 2008(6) CTC 363. An excerpt from it would run thus:

“9. In Gedela Satchidananda Murthy vs. Dy. Commr., Endowments Deptt., A.P, 2007 AIR SCW 3482, it has been held as follows :

“We have noticed herein before that the Act itself recognizes Samadhi. A religious institution, thus, includes a Samadhi. When it is established or maintained for public purpose together with a temple, it would indisputable come within the purview of the said definition of the said terms.” As per this Judgment, even a Samadhi worshipped by public is construed only as a religious institution. In the

aforesaid Judgment, the Hon'ble Supreme Court has held that merely because the appellant has residential house in a portion of the property, it cannot be said that the same is outside the purview of the H.R. & C.E., Act.”

13. The learned counsel for the plaintiffs cited the following decisions: (1) T.D. Gopalan v. Commr. H.R. & C.E., Madras reported in AIR 1972 SUPREME COURT 1716. Certain excerpt from it would run thus: “15. It is significant that the High Court did not attach sufficient importance to three matters which, in the present case, were of material consequence. The first was that the origin of the Mandapam had been proved to be private. The second was that its management had remained throughout in the members of the Thoguluva family. The third was the absence of any endowed property. There was no Gopuram or Dwajasthamba nor a Nagara bell nor Hundial in the suit temple. The learned District Judge adverted to the evidence on all these and other relevant matters and we concur with him in his conclusions.

16. It is true that the suit temple had some physical characteristics and features which are generally to be found in a public temple. It was also established that persons who were outsiders in the sense that they did not belong to the Thoguluva family used to come and worship at the temple and made offerings there. There were also some jewels and other articles in the temple. But the determination of the question whether the temple was public or private did not depend on some facts or set of facts alone. The entire evidence, both documentary and oral, had to be considered as a whole keeping in view the principles already noticed by us. We are satisfied that the learned District Judge came to the correct conclusion that the suit temple was private in character.”

(ii) Thanumalayaperumal Mudaliar v. Commr., H.R. & C.E. reported in 1975 MLJ 310. Certain excerpt from it would run thus:

“10. The inspection report of the Commissioner, which is to the effect that there is no gopuram, no dwajasthambham, no procession of the utasava idols, no hundi, no vahaham and no bell, cumulatively taken, give the impression that the temple is a private one. The non-production of the copper plate may be for reasons beyond the control of the plaintiff. One could expect that if there was a copper plate at all,

as mentioned in Exhibit A-22, it ought to have been there in 1786, which is the year which the inscription Exhibit A-1 bears. Due to-lapse of time, the copper plate might have been misplaced and none has given any specific evidence about this. But on this slender accident which does not outweigh the abundant [documentary evidence already referred to, we are unable to accept the contention of Mr. T. R. Ramachandran, that the temple is a public one.

...

13. In the beginning we have set out the principles which have to be borne in mind in deciding whether a temple is a private one or a public one. At the outset we have to mention that the indicia and the necessary features which ought to be present in a temple are absent in the instant case. Utsavamur this are not taken in procession. There is no gopuram. There is proof of Ashtabandhana Prathishta having been made by the ancestors. There is no external indicia which, is ordinarily present in public temples in South India. The compound wall is not to be equated to a prakaram. There were no worshippers at the time when the deeparadhana was-done. Excepting the representative of : the Commissioner and the two Inspectors,, there is no proof that any member of the public participated in it. D.Ws. 1 and 3,. who readily responded to the call of the defendants, were inimically disposed towards the plaintiffs. No independent witness or member of the public has come to say that he was visiting the temple as of right and performing the poojas pursuant thereto. The mere presence of the worshippers on certain occasions by itself is not conclusive to show that the generality of the public were having ingress into the temple as of right. Though there is no express dedication the passage of time and the course of conduct of the members of the family have clearly established that it was the Periaveettu Mudaliar of Aloor with private funds who conscreated the idols and built the temple and its surroundings and endowed properties in the name of the deity. The defendants wanted to fish information by asking the plaintiffs to produce account books relating to the temple. If a person alleges that a particular religious institution is a public temple, it is for him to establish it. The plaintiffs allege that it is a private temple and that they have fairly established by reasonable oral and documentary evidence that it is such an institution. The defendants have failed to discharge the onus of proof.

When they wanted the plaintiffs to produce the account books, they were fishing for information, as they were not armed with material to discharge the burden of proof, which is on them. Having regard to the essential principles which should govern, the facts while rendering a decision whether a religious institution or a temple is a public or a private one, we are not satisfied that in the instant case the defendants have produced such clinching and acceptable material which should prompt us to hold that the temple is a public one. The learned Subordinate Judge, who was not very clear in the treatment of the materials, came to a different conclusion. But after analysing the evidence both oral and documentary, we are unable to agree with the decision of the learned Subordinate Judge. “

(iii) The Commissioner, HR & CE v. T.S.Palanichamy reported in 2003 (1) CTC 65. Certain excerpt from it would run thus:

“25. The test so formulated in that case when applied to the facts before us clearly lead to the same conclusion, namely, that the temple is a private temple. The temple here was founded by the grandfather of the plaintiff. There is no endowment made to that temple by any outsider. The temple does not have Prakaram, but only has Dwajasthamba. There is no Hundial for the public offering. There is no offering of Kattalai by the members of the public. There is no evidence of monies having been expended for the improvement of the temple by any member of the public.

26. In the case of Radhakanta Deb vs. The Commissioner of Hindu Religious Endowments, Orissa, AIR 1981 SC 798, a case similar to the one before us, the Court held that “the cardinal point to be decided is whether it was the 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.” Thereafter, the Court observed that the mere fact that members of the public are allowed to worship by itself would not make an endowment a public unless it is proved that the members of the public had a right to worship in the temple. At paragraph fourteen of the judgment, the Court formulated four tests as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature. The four tests are - (1) whether the user of the temple by members

of the public is of right; (2) Whether the control and management vests either in a large body of persons or within the members of the public and the founder does not retain any control over the management; (3) Whether the dedication of the properties is made by the founder who retain the control and management and whether control and management of the temple is also retained by him; and (4) where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by the members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment.”

(iv) Sri Krishnavilas Bajanai Madam v. The Commissioner, H.R. & C.E. (DB) reported in 2006 (5) CTC 645. Certain excerpt from it would run thus: “7. The courts below have placed strong reliance upon the document Ex.B-1, which is the Trust Deed dated 20.7.1896, executed by the ancestors of the plaintiff. Particular emphasis has been placed by the defendants on certain recitals in such document. Particularly paragraph 9, where it is recited that the original donor had created a public charity and he himself and his legal heirs have no right over the property except the management and he and his legal heirs have no right to alienate the same. However, there is no other material to indicate that the institution has ever been dedicated to the public. On the other hand, the document itself indicates in para 3 that after construction of the building and naming it as Krishna Vilasam, the donor conducted Grahapravesham and the building was established as a Bajanai Koodam and the said building is treated as Bajanai Koodam accompanied with Bagavatha Goshti. In paragraph 2 of the English translated version, it has been recited as follows:

'2. My father during his life time as well as after his death myself were devotees of Vishnu and joined in Bagavatha Goshti and for the purpose of attaining Sarujya post of those persons who worship and do pooja at Krishna Vilasa Bajanai Koodam which was created by me with the funds available with me through myself earnings and other things and I have directed certain things to be done as follows so as to do the pooja for my Pariloga Paramathma permanently.'

8. This document creating a trust is therefore susceptible of being interpreted as a private trust more particularly in view of the fact that the place where bajanai koodam is existing is not at all accessible from outside. Apart from the above features, there is no material whatsoever indicating that public had right to participate in the worship or in the bajanai or offer any worship. These aspects had been highlighted by the Deputy Commissioner in his order. Both the Courts below have placed much reliance upon paragraph 9 of the Trust Deed. However, the Trust Deed read as whole is also consistently of a concept that it is a private trust. As a matter of fact, Clause 14 of such trust deed also indicates that during the lifetime the creator was to look after the aforesaid Krishna Vilasa Bajanai Koodam and its building and after his death, the eldest male heir is to manage the trust as a representative. There is also no evidence that at any point of time any member of the public had participated in the management or even had the right of worshipping or participating as a matter of right in any function.”

(v) *Kuppuswamy v. The Commissioner, H.R. & C.E. & another* reported in 2011-1-L.W. 351. Certain excerpt from it would run thus:

25. From the principles laid down in the above referred judgments, it could be seen that the test to determine on facts of each case, whether a temple is a private or a public temple are (i) whether the user of the temple by members of the public is of right; (ii) whether the control and management vests either in a large body of persons or within the members of the public and the founder does not retain any control over the management; (iii) whether the dedication of the properties is made by the founder who retain the control and management and whether the control and management of the temple is also retained by him; and (iv) where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by the members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment.

26. It is not in dispute that the suit temple situate in a private land. It is also not the case of the respondents that the land belongs to them. The specific case of the appellant is that a portion of the lay out was set apart for the common community

purpose at the time of plotting out the lands. Therefore, it is clear that the temple was constructed only in the land belonging to the residents of the teachers' colony.

...

29. It is not in dispute that generally the burden of proof is on the plaintiff to prove the case. But, in the case of dispute with regard to the status of the temple, whether it is a public temple or a private temple, the burden is on the Hindu Religious and Charitable Endowment Department to prove that the temple is a public temple.

...

37. With regard to the distribution of prasadam like sacred water and thulasi, it is common that even in houses, after performing poojas, Hindus used to distribute prasadam. So, merely by distributing sacred water and thulasi, the temple will not become a public temple. In the absence of dedication to the public and by non-examination of any public by the Hindu Religious and Charitable Endowment Department, the respondents miserably failed to establish that the suit temple is a public temple. It is also an admitted fact that the temple committee consist of only the residents of the teachers' colony and no public were allowed to participate in the committee at any point of time. It also prove that the suit temple is a private temple and not a public temple.” (emphasis supplied)

14. A poring over and plain perusal of those precedents would unambiguously and unequivocally highlight and spotlight the fact that in order to label or dub a temple as a public one, there should be certain ingredients established. The more important among them are that the public as of right should have ingress and egress to worship the temple; there should be indications such as gopuram, dwajasthan'ham, procession of the utsava idols, hundi, vahanam and bell in the structure itself showing the temple was dedicated for public worship.

15. However, at this juncture, I would like to point out that this is a singularly singular case, in which the approach of the Court should be somewhat different. No doubt, in the above cited cases, the facts are to the effect that private

individuals virtually constructed the temple, however, the contention were to the effect that those temples were dedicated for public purpose. But here that is not the case at all. Neither side, could establish as of now, regarding the origin of the temple.

16. According to the decision of the Hon'ble Apex Court in T.V.Mahalinga Iyer v. State of Madras reported in AIR 1980 SUPREME COURT 2036 so far as Tamil Nadu is concerned, there is an initial presumption that a temple is a public one. In such a case, it has to be proved as to when the plaintiffs and their ancestors started attaching themselves to the temple and the temple properties. The Hon'ble Apex Court has also highlighted that the burden of proof is on the plaintiffs, who claims the temple as a private one. In such circumstances, the plaintiffs herein ought to have proved that the temple is their family temple and that it has been dedicated only for the purpose of their family, but they have alone so far proved that aspect. The approach of the lower court was different; in fact, the trial Court without adhering to the settled principles of law went to the extent of simply pointing out that no one was examined on the side of the H.R. & C.E. Department to show that public are worshipping in the temple by way of right.

17. The statement of deceased Natarajan, the father of the second plaintiff, which forms part of Ex.B.1 would connate and denote, exemplify and expatiate that whenever the public ventured to come in for worshipping the deity, he did not object. It is also in his statement that after Poojas, Prasatham, namely Vibuthi and Kunkumam were distributed to the worshippers. There is evidence to evince and prove that there are as many as three idols viz. Vinayagar, Uchinimakaliamman and Vairaver with Palipedam. Normally, the existence of Pallipedam would ex-facie show the public nature of the temple. The defendants contention is that Praharam was there and it is inferable also from the available evidence Ex.B.1, that earlier in a small tin shed portion even as per Natarajan, he was living and subsequently construction was made virtually blocking the Prakaram. There factors were not considered by the trial Court at all.

18. The learned counsel for the plaintiffs would place heavy reliance on Ex.A.1 to establish and project that even as early as in the year 1949, in the name of T.S.

Velayutham Pillai, the ancestor of the plaintiffs, the said structure was assessed for property tax and according to him, that would exemplify and demonstrate that the family of the plaintiffs were owning the said property; while so the defendants are bending over backwards to take control over it.

19. At this juncture, I would like point out that the defendants also on their side could have very well produced the old revenue records and municipal records to show the nature of the land on which the structure stands and how it came to be assessed for property tax etc. But, neither the old municipal records nor the old revenue records were placed before the Court by summoning the authorities concerned.

20. At the appellate stage, on the defendants side an application in M.P.(MD) No.1 of 2011 was filed so as to get exhibited the following documents, which were originally produced by the plaintiffs to the defendants during the statutory enquiry:

(1) Survey Register.

(2) Chitta.

(3) Tax Receipt - 1 and

(4) Tax Receipt - 2.

21. A plain reading of Exs.A.3 and A.4 would connote and denote that ever since 1930s the said properties were under the control of the plaintiffs' family. However, Ex.B.3 would show that even as early as in the Fasli year 1283 and 1294, the said land was standing in the name of Uchinimakali Temple and by that it denotes the said temple was in existence even in the year 1873. If the revenue records are produced relating to 18th Century or even later, then it would further throw much light upon the issue. The plaintiffs would contend as though the temple itself was constructed in the year 1890, which cannot be countenanced as correct. Had the temple originated only during 1890, it might not have been shown in the revenue records even in the year 1873. Hence, this is not a case like any other cases cited supra.

22. It is a fact that not even a single witness from the public was examined before the trial Court. While the Inspector of H.R. & C.E. department conducted enquiry along with Natarajan, two other witnesses, who were not residing in the same street, in which the temple is situated were examined. As pointed out by both sides the famous Nellaiappar Temple is situated very near to the temple involved in this case. Axiomatically and obviously the worshippers would be knowing about the history of the temple in question, but none was examined, on either side. As such, I am of the considered view that certainly if steps are taken additional fruitful evidence could be gathered and on strong footing the lis could be decided according to law and justice.

23. The lower Court should have borne in mind the maxim, "In re dubia magis infitatio quam affirmatio intelligenda". [In a doubtful matter, the negation is to be understood rather than the affirmation.]

24. Accordingly, the points are answered to the effect that the trial Court did not consider the dictum laid down by the Hon'ble Apex court in T.V.Mahalinga Iyer v. State of Madras reported in AIR 1980 SUPREME COURT 2036 that so far as Tamil Nadu is concerned, there is an initial presumption that a temple is a public one and the trial Court was not justified in not giving specific finding as to when and in what manner the plaintiffs' ancestors started enjoying the properties concerned and the trial Court in the wake of evidence showing that nobody knows as to when the temple originated, was not justified in holding that the said temple is a private one.

25. On balance, the Appeal Suit is allowed and the judgment and decree of the Principal Subordinate Judge, Tirunelveli in O.S.No.116 of 1988 dated 19.01.1994 are set aside and the matter is remanded back to the trial Court with the following directions:

Additional evidence shall be adduced by both sides on the aforesaid lines set out supra. After giving due opportunity to both sides and entertaining additional evidence, the trial Court shall dispose of the Original Suit within a period of 6 months from 18.01.2012, untrammelled and uninfluenced by any of the observations made by this Court. Both parties shall appear before the trial Court

on 18.01.2012. The additional documents presented are directed to be returned by the Registry to the appellants, so as to enable them to file before the trial Court. The records shall be sent back immediately. Consequently, connected M.P.(MD) No.1 of 2011 is closed. However, in the circumstances of the case, there is no order as to the costs.

26. The learned counsel for the plaintiffs on hearing the judgment would make an extempore submission that till the Original Suit is disposed of by the trial Court the status-quo may be ordered to be maintained, for which the learned Additional Advocate General would submit that as of now they are not interfering with the said properties. As such, it is recorded and both parties shall maintain the same status-quo till the disposal of the suit and the properties involved in this case shall not be modified or encumbered in any manner by either of the parties.

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