

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO OF 2009
ARISING OUT OF S.L.P. (C) NO. 20197/2006

G. JAYALAKSHMI & ORS.

... APPELLANTS

VERSUS

ARULMIGHU PAZKHIKANCHIYA
VINAYAGAR & ITS TEMPLE

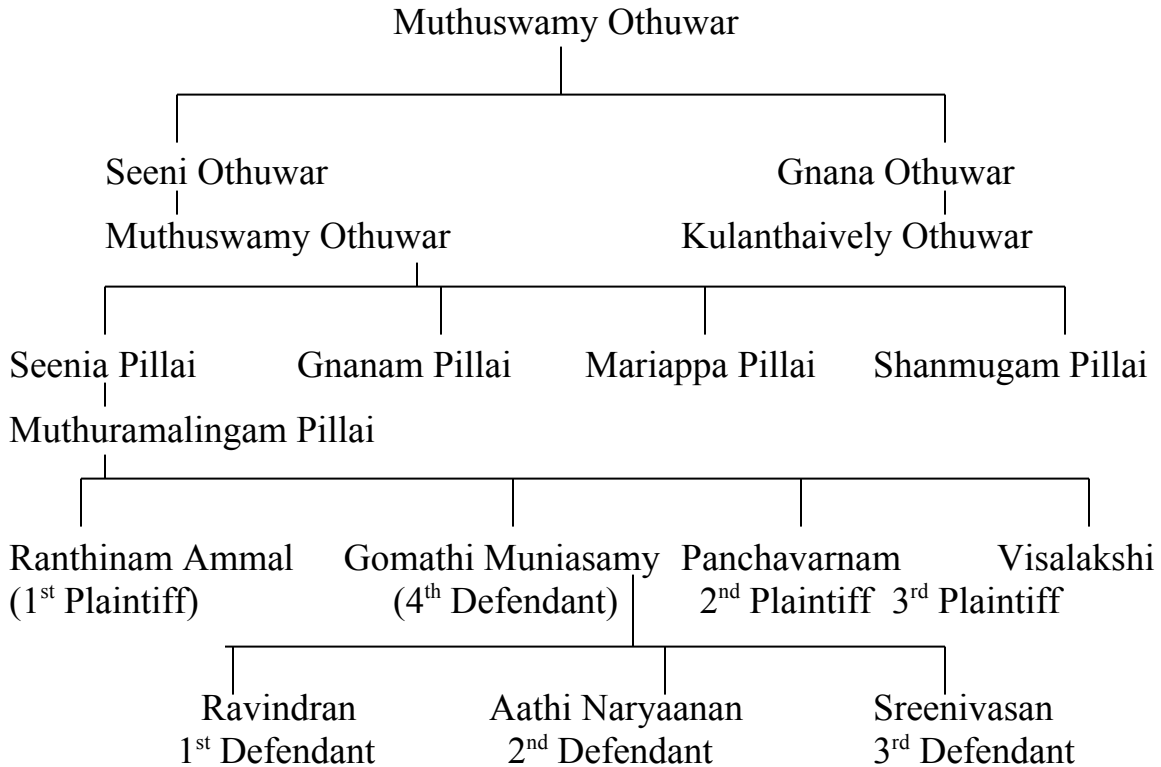
... RESPONDENTS

J U D G M E N T

S.B. SINHA, J.

1. Some of the defendants in the original suit, who purchased the suit property from the defendant Nos. 1-3, are before us questioning the judgment and order dated 25.4.1996 passed by a learned single Judge of the High Court in Appeal Suit No.396/2000 whereby and whereunder judgment and decree dated 12.07.2000 passed by the learned Subordinate Judge, Sivakasi in O.S. No.242 of 1999 was set aside.

2. Inter se relationship between the plaintiffs and the predecessor-in-interest of the original defendant Nos. 1-3 is not in dispute. It would appear from the following genealogical tree:



3. In 1963, one S. Muthuramalingam Pillai filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowment (Administration) Department, Madurai for declaring Sri Pazhikanjia Vinayagar Temple, Sivakasi is not a religious and charitable endowment within the meaning of the Madras Hindu Religious and Charitable Endowments Act, 1959 (for short 'the 1959 Act') and that he is the

hereditary trustee of the temple. Shri K. T. T. Ramalingam Chettiar was impleaded as respondent in the application.

4. The learned Deputy Commissioner framed the following issues:

“(1) Whether the suit institution is not a religious institution?

(2) Whether the petitioner is the hereditary trustee of the suit temple?

(3) To what relief is the petitioner entitled?”

5. On the basis of the materials brought on record by the parties to the said proceeding, it was held: -

“I therefore find that the suit institution is not a religious institution falling within the scope of the act. I find on issue No.1 accordingly.

Item No.2: In view of the finding on Issue NO.1 it is not necessary to determine whether the petitioner is the hereditary trustee of the institution, as such this issue does not arise. I find accordingly on issue No.2.

Item No. 3: In view of the finding on issue No.1 it is declared that Sri Pazhikanjia Vinayagar temple is not a religious institution falling within the scope of the Act.”

6. Feeling aggrieved by the afore-mentioned order, Shri K.T.T. Ramalingam Chettiar preferred an appeal before the Commissioner, which

was marked as Appeal No.49/1965. By an order dated 13.12.1960, the Commissioner upheld the order of the Deputy Commissioner stating: -

“On a careful consideration of the entire evidence placed in this case, I am satisfied that the Deputy Commissioner has gone in great detail of the entire evidence placed in the matter and that he has come to the correct conclusion that the temple in question is a private temple of the respondent and his forefathers and that the claim of the appellant that it is a ‘temple’ as defined in Section 6(20) of the Act is unsustainable, but that it is not a ‘religious institution’ falling within the scope of Section 6(18) of the Act. I am, therefore, of the view that this appeal should fail and consequently, the same is dismissed.”

7. Thereafter, Shri K.T.T. Ramalingam Chettiar filed a suit in the Court of Subordinate Judge, Ramanathapuram in terms of Section 70 of the 1959 Act for grant of a declaration that the temple was a public temple and not a private one. Shri S. Muthuramalingam Pillai also filed a suit for recovery of possession of certain properties and damages against K.T.T. Ramalingam Chettiar which was marked as O.S. No.124/1969.

Having regard to the pleadings of the parties, the learned trial Judge framed the following two sets of issues: -

“SET 1:

1. Whether the plaint mentioned temple is a public temple as denied in Madras Act 25 of 1959?
2. Whether the order in OA 37 of 1963 on the file of the Deputy Commissioner, HR & CE, Madurai and AP No.49 of 1965 are liable to be set aside?
3. To what relief is the Plaintiff entitled?

SET 2:

1. Whether the Plaintiffs are entitled to possession of the suit properties?
2. Whether the Plaintiffs are entitled to any damages?
3. If so, what is the quantum?
4. Whether the Plaintiffs are estopped from setting up title to the suit property?
5. Whether the Court has no jurisdiction to try the suit?
6. Whether the temple is a private one or a public one?
7. Whether the court fee paid is correct?
8. Whether the suit is barred by limitation?
9. Whether the suit is not maintainable?
10. To what relief if any, are the plaintiffs entitled?”

8. The suit filed by K.T.T. Ramalingam Chettiar was decreed by the Trial Court and it was declared that the temple in question is a public temple. Simultaneously, the suit filed by Muthuramalingam Pillai was dismissed and it was held that the plaintiff in that suit was not entitled to a decree of possession. The heirs and legal representatives of Shri Muthuramalingam, aggrieved thereby filed two appeals, which were dismissed by a learned Single Judge of the High Court on 4.10.1991. Letters Patent Appeals filed by them were dismissed by the Division Bench and the

judgment and order of the Division Bench was affirmed by this Court by dismissing the SLP.

9. After about 6 years of the dismissal of the letters patent appeals, Rathinammal and two others filed a petition under Section 63(b) of the 1959 Act for being declared as the hereditary trustees of the temple. That application is said to be still pending. During the pendency of that application, Rathinammal and two others filed a suit in the name of the temple for declaring that properties mentioned in the suit schedule belong to the temple. They also prayed for grant of a decree of permanent injunction to restrain defendant Nos. 1-4 and their successors/agents from selling or alienating the suit property. The learned Subordinate Judge by a very detailed judgment dated 12.7.2000 dismissed the said suit inter alia holding:-

- (i) that the suit properties were not involved in the earlier round litigation;
- (ii) the plaintiff is bound by the admission made by P.W. 1, one of the plaintiffs, that the properties in suit had been mentioned in the deed of partition dated 1917.

10. On an appeal preferred by the plaintiffs, the High Court reversed the said judgment and decree of the Trial Court.

The High Court rested its conclusion principally on the observations made in the earlier litigation that the temple and its properties are public in character. The High Court also relied upon the admission made by D.W. 1 in his statement before the Court that his grandfather had no right, title or interest over the suit properties.

11. Before us, the learned counsel for the parties have made elaborate submissions. We have been taken through various documents referred to in the judgments of the trial court, the High Court as also the judgments rendered in the earlier round of litigation.

12. However, some of the basic documents including the deed of partition and the pleadings of the two suits filed by K.T.T. Ramalingam Chettiar and S. Muthuramalingam Pillai have not been produced so as to enable us to arrive at a definite conclusion *inter alia* with regard to the identity of the suit properties.

13. A temple may be declared as a public temple *inter alia* when a grant is made in favour of the public by the owner of the property although the temple is constructed by a private person, or if the temple is constructed on government land; and if the public in general have a right of worship the

deity as contra-distinguished from the right of worship in a temple which is confined to a family or a community. If the suit properties had been the subject matter of partition and if the same had nothing to do with the temple in question it would be one thing; however, it will be a different thing if the temple and the suit properties in and around the same had all along been treated as temple properties.

14. Mr. Mohan, learned counsel appearing for the appellants herein has taken great pains before us to show that the suit property (shops) were in exclusive possession of Muniaswamy and he alone was realizing rent therefrom, though he had not been able to participate in the management of the temple because he had been working elsewhere. It was, furthermore, contended that even the property tax in respect of the shops in question used to be paid by Muniaswami.

15. On the other hand, the contention of Mr. Padmanabhan, the learned senior counsel, is that the property tax used to be paid by the temple itself through the Hakdar namely the manager of the temple.

16. Mr. Prabhakar, learned counsel appearing for some of the respondents, informed us that the nature of the said properties were described as “natham” namely ‘village site’.

17. It is, therefore, evident that the nature of the property in respect of the temple as also the suit properties are different.

18. In our view, one of the questions which should have been posed and answered by the High Court is as to whether like the land on which the temple was constructed, the suit properties were also situated on any public land or not. The High Court should have also gone into other aspects of the matter in the backdrop of documents produced by the parties and should not have disposed of the appeal simply by relying upon some observations made with regard to temple properties in the earlier round of litigation by the courts.

A finding of fact was required to be arrived at upon consideration of the pleadings of the parties and the documents produced by them, for the purpose of ascertaining the identification of land as well as the nature and character thereof.

19. It has been contended before us by the learned counsel for the respondents that there are a large number of documents to show that the properties belong to the temple. As against this, learned counsel for the appellants pointed out that there are large number of documents to show that Muniaswami was realizing the rent.

20. We would have ourselves undertaken the exercise but we are not in a position to do so as most of the documents including the deed of partition, patta and other original documents are not before us.

21. We, therefore, set aside the impugned judgment and remand the matter to the High Court for consideration of the matter afresh.

We request the High Court to consider the desirability of disposing of the matter as expeditiously as possible.

22. The appeal is disposed of in the aforesaid terms.

.....J
[S. B. SINHA]

.....J
[G.S. SINGHVI]

New Delhi
July 28, 2009.

.....J
[DEEPAK VERMA]