CASE NO.:
Appeal (civil) 4740 of 1999

PETITIONER:
Commissioner Hindu Religious & Charitable Endowment

RESPONDENT:
P Shanmugama & Ors.

DATE OF JUDGMENT: 10/01/2005

BENCH:
Shivaraj V. Patil & B.N. Srikrishna

JUDGMENT:
J U D G M E N T

Srikrishna, J.

One Ponnu Iyer alias Viruddeswara Sivacharya had purchased large extent of land and properties. One of such properties was Door no.278, West Car Street, Tirunelveli. In 1960 the second respondent who was Madathipathi of "Meda Madam" and the Kartha of family filed O.A. No.74/60 before the Deputy Commissioner of the Hindu Religious and Charitable Endowment under section 63(a) of the Hindu Religious and Charitable Endowment Act, to declare the property mentioned above as his personal property and not belonging to a religious institution. This application was rejected by the Deputy Commissioner. An appeal carried by the second respondent to the Commissioner was also rejected. In 1969 the second respondent filed a statutory suit being OS No.133/69 before the Sub-Judge, Tirunelveli seeking a declaration that the property was his private property. This suit was also dismissed by the Sub-Judge holding that the property belonged to the "Mela Madam" a religious institution. The appeal carried to the High Court vide A.S.No.640/1971 was also dismissed. The second respondent thereafter continued to maintain records as directed by the concerned authorities and submitted to the jurisdiction of the Hindu Religious and Charitable Endowment Act with respect to all the properties belonging to the Mela Madam.

In the year 1978, after the first respondent attained the age of majority he filed a suit for declaration that the properties described in schedule A,B and C of the plaint were his ancestral properties, and in view of the oral partition which was subsequently registered, he was entitled to B schedule properties. He, therefore, sought a decree for partition of the ancestral properties and a declaration that the 'B' schedule properties exclusively belonged to him and sought consequential injunction.

This suit was opposed, inter alia, by the Commissioner, Hindu Religious and Charitable Endowment (appellant before us and the 4th defendant in the suit).

The appellant contended in the suit that the suit properties were endowed properties and that the character of properties had been affirmatively declared as one belonging to a religious institution. He contended that the second respondent, who had not succeeded in his earlier attempt to grab the property, had now set up the first respondent to commence a second round of litigation for the same purpose.

The trial court accepted the contentions of the plaintiff and granted a preliminary decree as sought for in the plaint. The present

appellant preferred an appeal against the trial court judgment in O.S. No. 228/78. The first appellate court, the District Judge, Tirunelveli allowed the appeal, and dismissed the suit of the 1st respondent. The first respondent brought second appeal No.S.A.No.2105 of 1983 before the High Court. The High Court in a lengthy judgment reversed all the findings of facts recorded by the 1st appellate court, set aside the judgment of the first appellate court and decreed the suit. Hence this appeal by special leave.

At the very outset, we notice that, though the High Court was deciding the second appeal under section 100 of the Code of Civil Procedure, it failed to act in accordance with the requirements of section 100. It is trite law that under section 100 of the CPC a High Court can entertain a second appeal only if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of section 100 provides that where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. Sub-section (5) stipulates that the appeal shall be heard on the question so formulated and the respondent shall at the hearing of the appeal be allowed to argue that the case does not involve such question. The mandatory requirements of this provision of law have been totally flouted by the High Court. The High Court has not indicated in the long judgment as to which was the substantial question of law, if any, considered, nor has it formulated the substantial question of law on which the decision in the second appeal was being given. The High Court has proceeded as if it were deciding a first appeal against a decree in original proceedings. On this ground alone the judgment is liable to be interfered with.

When the appeal was argued before us, we repeatedly called upon the learned counsel for the respondent to satisfy us as to the substantial question of law which could have given jurisdiction to the High Court to entertain and adjudicate the second appeal. The learned counsel replied that the question of interpretation of the documents placed on record was such a substantial question of law. We are not satisfied that this was so. Nonetheless we permitted the learned counsel on both sides to make detailed submissions since the present appeal had already been admitted.

The first appellate court formulated the points for determination in the two appeals and the cross objection in AS No.139 of 1981 as under:

1. Whether the plaint 'A' schedule properties are the joint family properties of defendants 1 and 2 and the plaintiffs ?

2. Is the plaintiff entitled to declaration of title over plaint 'B' Schedule lands and for paramount injunction against the defendants 4 and 5 in respect of those lands?

3. Whether the suit properties belong to Mela Madam ?

4. Is the suit barred under Section 108 of Tamil Nadu Act 22 of 1959 and more particularly in respect of plaint "A' schedule items 1 and 2 comprised in Door No.278 ?

5. Whether the 1st defendant and his sons namely the plaintiff and 2nd defendant are estopped from contending, that the suit properties do not belong to Mela Madam ?"

After considering the manner in which the ancestors of the

plaintiff had dealt with the properties, particularly with regard to the documents placed on record, the first appeal court divided the consideration into 5 periods, namely, from 1845 to 1881, 1882 to 1927, 1927 to 1934, 1934 to1943 and 1943 to 1968.

Upon a careful consideration of the documents, the first appellate court came to the conclusion that it was only in 1960 that the first respondent before us claimed for the first time that the property Door no.278, West Car Street, Tirunelveli, belonged to him personally. At no time earlier had any of his predecessor claimed or dealt with the properties as their own and individual or private properties. The first appellate court found that on the other hand the documents executed throughout the relevant five periods gave a reasonable impression that the properties were always treated as that of the 'Mela Madam'. The first appellate court rightly pointed out that the word "Madam" has been used in the documents right from 1845 and had to be given importance and cannot be lightly brushed aside. It was rightly emphasized by the appellate court that the so called documents of oral partition had come into existence only during the pendency of the proceeding before the Deputy Commissioner, Hindu Religious & Charitable Endowment wherein the father of the first respondent had claimed the property bearing Door no.278, West Car Street, Tirunelveli, as his private property. It noticed that the proceedings before the Deputy Commissioner had also ended in favour of the Hindu Religious and Charitable Endowments department.

The first appellate court, therefore, recorded a clear conclusion : "thus, neither the oral evidence nor the documentary evidence adduced on the side of the plaintiff prove, that these suit properties are the secular or private properties of 1st defendant's family for granting partition relief in respect of plaint 'A' schedule buildings and for declaration of title and consequential relief of permanent injunction in respect of plaint 'B' Schedule lands in favour of the plaintiff".

The first appellate court noticed that in a situation where the Hindu Religious and Charitable Endowment department was called upon to prove that the properties had been endowed more than 100 years ago it was not possible for them to prove it by direct evidence that there was any gift or settlement to the Madam. In the circumstances, the first appellate court rightly relied on the fact of possession of the properties and their dealings by the other respondents. The father of the first respondent who was the first defendant in the suit had filed a written statement supporting the case of the plaintiff. The first appellate court justifiably held that he was really in the position of a co-plaintiff, though ranking as the first defendant. The first defendant had proclaimed himself as a Mathadipati by printing an invitation (Ex.B-5) for the assumption of office by him. It was also noticed that Ex. B-1 property register had been maintained from 1946 by the first defendant and the said register was a statutory register maintained under Tamil Nadu Act 22/1959, in which all the properties were mentioned as belonging to the Madam. The conspicuous failure of the first defendant the father of the plaintiff to come forward and explain this Exhibit B-1 property register maintained and signed by him was a fact held as fatal to the case sought to be made out in the present suit.

These were some of the salient findings made by the first appellate court. We have referred to them briefly to indicate that the first appellate court was not concerned with the construction of a document like a will or sale deed only, but was concerned with appreciation of oral and documentary evidence over the

period from 1846 to 1968. Upon appreciation of the evidence before it, the first appellate court recorded a number of findings, which have to be accepted.

In our view, the High Court has no jurisdiction in the second appeal to interfere with the finding of facts recorded by the first appellate court after careful consideration of the evidence, oral and documentary on record. It was not open to the High Court to reverse the findings of facts as it has done. Even otherwise, we are satisfied that the findings recorded by the first appellate court were justified and there was no scope for interference therewith.

In the result, we hold that the impugned judgment is without jurisdiction and also otherwise erroneous. Consequently, we allow this appeal, set aside the impugned judgment of the High Court and restore the judgment of the District Judge, Tirunelveli in appeal No.139/81, 13/82 and the cross objections filed in AS No.130/81.
The first and second respondents shall pay a sum of Rs.10,000/- as costs to the appellant.