

# SUPREME COURT OF INDIA

Arulmighu Devanatha Swamy Temple

Vs.

Neelamega Bhattachariar

C.A.No.3321 of 1997

(D.P.Mohapatro and S.R.Babu JJ.)

03.09.2001

## JUDGMENT

### **Rajendra Babu, J.**

Respondent brought a suit for injunction to restrain the appellant from installing 'Hundi' in the temple precincts of Hayagriver Temple attached to Devanathaswamy Temple of Thiruvendhipuram to receive cash offerings to direct the appellant to pay him the cost of the suit and to grant all other just and necessary reliefs. In respect of the subject-matter of the suit, there had been earlier litigation too. When the matter reached the High Court in LPA No.124/59, a scheme was framed by the High Court, which was subsequently modified whereby providing that the Archaka shall be generally entitled to take all offerings in cash made within the temple precincts in open cups and plates, but that he shall not be entitled to appropriate for his own use such cash offerings as are made by worshippers for some other specific or general purpose stipulated in that form. It was stated that as per the terms of this clause, in general, all cash offerings made within the temple precincts can be appropriated by the Archaka unless the offerings are for any other specific or general purpose stipulated, that is, either for the Temple or to perform any festival or for any express purpose. It was contended that this clause does not authorise or give rise to appellant to instal any 'Hundi' to collect the general offerings and that, if the 'Hundial' is installed, the 'sevarthis' would put their general offerings as well, only in the 'Hundial' and the respondent will be deprived of his earnings, which he was legally entitled to. It was also pleaded that the respondent is not paid any salary by the Temple authority. It was disclosed in the plaint that there were several 'sannidhis' in the Temple like Devanathar Sannidhi, Thaayar Sannidhi, Desikar Sannidhi and Hayagriver Sannidhi. In Sannidhis, pooja and araadhana have to be performed simultaneously. Since the respondent is the only Archaka-cum-Sthanika in the Temple, he has to employ several persons for pooja and araadhana in various Sannidhis and he has to pay and feed all of them. In the 'Hayagriver shrine and the Temple in the hill top which is attached to the appellant Temple, till now no 'Hundial' is installed and the entire cash offerings is taken only by the respondent. On 26.9.1988, the appellant attempted to instal a 'Hundial' in the said temple precincts contrary to the terms of the scheme and this was objected to by the respondent. In the meanwhile, there was a panchayat to be conducted

within a week and appellant served two notices on the respondent on 27.9.1988 stating the reasons why the 'Hundial' was to be placed. Pursuant thereto, the suit has been filed for permanent injunction as stated earlier. Apart from raising certain objections as to the jurisdiction of the court, on merits it was stated that the respondent cannot claim to be a hereditary Archaka inasmuch as the system of hereditary succession in Temple service has been abolished in the State of Tamil Nadu and it was also contended that no special or peculiar privilege or status has been clothed to him either under the *Hindu Religious Charitable Endowments Act, 1959* [hereinafter referred to as 'the Act'] or in the scheme of administration finalised by the High Court in LPA No.124/59 and that though the Temple is an important Temple, it is financially very poor. It has various immovable and movable properties but on account of tenancy laws in force it is not getting necessary income. Under the scheme framed by the High Court, all the immovable and movable properties vest in the Executive Authority of the Temple. However, it is admitted that the jewellery and clothes are in the custody of the Archaka for adorning the 'Moolavar' and 'Uthsavar' deities. The valuable jewels are kept in a separate strong room in triple lock system in the Temple. It was contended that there is already a 'Thiruppani Hundial' inside the main Temple. It was also contended that in spite of the scheme framed by the High Court, the authorities under the Act are entitled to fix the fee for performance of service in the Temple and installation of 'Hundial' is also permissible to augment the income of the Temple to meet the day-to-day expenses of the management and the suit is barred by res judicata inasmuch as the appellant had placed the 'Thiruppani Hundial' within the Temple and that was challenged in contempt proceedings which stood dismissed. Another suit in O.S.No.512/69 had been filed for identical relief and that suit had also been dismissed after contest against which there was an appeal and the second appeal without success. The trial court framed the issues as to (1) bar of jurisdiction under the Act; (2) bar of res judicata and nature of relief, apart from the question relating to court fees. The Trial Court decided the suit in favour of the respondent as in its view under the scheme framed in LPA No.124/59, the appellant is not entitled to instal the 'Hundial' to collect the offerings which are due to Archaka or Sthanika. The Trial Court also held that if a 'Hundial' is installed without any general or special purpose that will amount to acting against the scheme framed by the High Court. The contentions regarding the jurisdiction and res judicata did not find favour with the Trial Court. The First Appellate Court confirmed the findings of the Trial Court regarding the right of respondent to collect the offerings given by the worshippers unless they are earmarked for general or special purpose. It held that the findings of the Trial Court that the appellant is not entitled to instal the 'Hundial' is justified. The High Court found that the matter involves only pure questions of fact. There is already settled legal position and it was only application of that legal position to the facts arising in the case was to be considered. DW.1 witness examined on behalf of the appellant admitted that the installation of the 'Hundial' in the earlier case related to specific purpose, namely, the renovation of Temple or Dhvajasthambam and now the attempt of the appellant is to instal a 'Hundial' to collect all the offerings of the worshippers and therefore, the earlier litigation was entirely for a different purpose. On that basis, it was held that earlier decisions could not act as bar of res judicata. In the scheme suit, the High Court passed the decree as follows: 1. That the plaintiff as hereditary Archaka and stanika has the right to receive in open cups or plates all cash and jewel offerings made to the Deity Devanathaswami of Tiruvendipuram by devotees, without reference to the trustees. 2. That

cash offerings made by the devotees vest solely in plaintiff for his personal use; 3. That offerings in kind vest in the deity and will be in plaintiff's custody subject to the direction and control of the trustees; 4. That the plaintiff as Archaka and sthanika is also entitled to be in possession of jewels, gold and silver articles and brass vessels pertaining to the Temple similarly subject to the direction and control of the trustees. Certain modifications were made to the aforesaid decree on appeal, which are as follows: 2(a) that the Archaka shall have the exclusive right to receive the offerings in kind that is in the shape of articles of gold and silver offered to the deity in the said Devanathaswami Temple in open cups and plates and he shall then account for the same to the trustees; 2(b) that he shall have no right whatsoever in the said offerings in kind in the shape of jewels or ornaments intended for the deity; 2(c) that he shall be entitled to the offerings particularly intended for him for doing archana or aradhana or whatever form of assistance he may render in the conduct or worship that is intended for the benefit of the devotees. A contention was noticed by the High Court that it would be an invasion of the right of the Archaka to direct that even cash offerings made by devotees within the Temple should be taken by him and appropriated for his use, only where it is clear that the worshippers intend those offerings for him or as return for archana or aradhana performed by him. It is thereafter, the High Court held as follows: .....We have carefully considered this matter which is the vital part of this appeal. We do not see how the appellant could claim any absolute right to take offerings in cash made by devotees within the temple precincts, irrespective of the express intent of those devotees. It is obvious that offerings may be made in cash for archana or aradhana or for the Archaka generally. They may be made without any express stipulation that they should be appropriated for a particular purpose. In all these cases, we can well understand the argument that the prior history of this institution clothes this appellant with a right to take those offerings, and that they should be made in open cups and plates and not in closed receptacles. But we do not see what there is to prevent any worshipper or worshippers from making a specific cash offering either for the Temple generally, or for the conduct of a festival, or for any other express purpose incompatible with the appropriation of that offering by the appellant for his personal use. Obviously if the offering is made in that form, the appellant cannot take it whether it is made in cash within the Temple, or just outside it or placed in a cup or on a plate. Therefore, the High Court modified clause 2(c) referred to earlier as follows: That the appellant shall be generally entitled to take all offerings in cash made within the temple precincts, in open cups and plates, but that he shall not be so entitled to appropriate for his own use such cash offerings as are made by worshippers for some other specific or general purpose, stipulated in that form. Shri K.R.Choudhary, learned Senior Advocate appearing for the appellant, submitted that the respondent is generally entitled to take all offerings in cash made within the temple precincts in open cups and plates, but that he shall not be so entitled to appropriate for his own use such cash offerings as are made by worshippers for some other specific or general purpose, stipulated in that form, and that as was held in the earlier suit, if 'Hundial' is installed outside the temple precincts or even inside the temple precincts but specifically made clear that it would be appropriated that it is only for offerings for specific or general purpose, the 'Hundial' could be installed and not otherwise. Shri K. Ramamurthi, learned Senior Advocate appearing for the respondent, submitted that the Temple has hardly any income as is expressly admitted by the appellant himself in the course of written statement. No salary is paid to the respondent. However, he has to perform the pooja in accordance with

the 'Shastras' applicable to the Temple, which involve good deal of expenditure apart from the fact that the respondent has to sustain himself and, therefore, he needs funds which are offered by the devotees and such offerings are made within the Temple and in those circumstances in the scheme suit it was made clear that he is entitled to take those offerings. If the 'Hundial' is installed within the temple precincts, the effect would be that instead of giving offerings to Archaka, the offerings would be made in the 'Hundial' and it will not be possible to find out whether it is for any specific or general purpose such offerings have been made. It was in those circumstances, the Trial Court, the First Appellate Court and the High Court have concurrently come to the conclusion that the offerings could not have been collected in 'Hundial' by the appellant. Undoubtedly as had been done on the previous occasion 'Hundial' can be kept for any specific purpose as made clear in the scheme and that right is in no way affected by the decree affirmed by the High Court. Therefore, the findings having been recorded by proper application of the declaration made in the scheme suit as modified from time to time, we find no substance in this appeal. The same shall stand dismissed. No costs.