SUPREME COURT OF INDIA

Nellor Marthandam Vellalar

Vs.

Commr H. R. and C. E.

C.A.No.175 of 1997

(Shivaraj V. Patil and D. M. Dharmadhikari JJ.)

30.07.2003

JUDGEMENT

Shivaraj V. Patil, J.

1. The appellants filed suit for declaration that the suit temple is a denominational temple and that the defendants 1 and 2 have no jurisdiction to appoint the third defendant as fit person. The trial Court decreed the suit. The first appellate court reversed the judgment and decree passed by the trial Court and dismissed the suit. The High Court in second appeal upheld the judgment and decree passed by the first appellate Court.

2. The High Court in the impugned judgment has narrated the facts in sufficient details based on the pleadings of the parties and the material that was placed on record. It is not necessary to state them again. However, to the extent they are relevant and necessary in the light of the contentions advanced on behalf of the parties, we notice them hereunder.

3. The case of the plaintiff before the trial Court was that the first plaintiff is a denominational temple entitled to exemption as provided under Art. 26 of the Constitution of India and S. 107 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short 'the Act'); the temple is in Nalloor village and is known as Sree Uchini Makali Amman Temple, built on an extent of 17 cents in S. No. 1593 and that the entire extent is owned by the Vellala Community of Marthandam. The Vellalas residing in Marthandam are a collection of individuals professing Hindu faith; the ancestors of the members of the community constituting corporate body founded the temple in the land purchased by the members of Vellala Community. The plaintiff further claimed that the members of Vellala Community observed special religious practices and beliefs which are integral part of their religion and that the front mandapam of the Sanctorium is open to access only to members of their community and none-else. Outsiders can offer worship from the outer compound.

4. The first defendant filed written statement contending that the first plaintiff-temple is a public religious institution under the control of HR and CE Department; it was brought under the control of the Department in the year 1965; the origin of the temple or the name of its

founder not known; the properties owned by the temple stand in its name; an extent in S. No. 1593 has been leased out for a cinema theatre and the rent due forms the main source of income for the temple; the public also contribute in the hundiyal kept in the temple; the temple is not a denominational as claimed by the plaintiffs. It is the further case of the first defendant that the Department has been appointing non-hereditary trustees for the temple and the management vests with the trustees so appointed from time to time by the Department. In the year 1965 when the temple was brought under its control, the Department called for objections for appointment of non-hereditary trustees and there was no objection to the proposal and regular applications were invited for appointment of non-hereditary trustees. Five persons including Padmanabha Pillai and Subramania Pillai (plaintiffs 2 and 3) volunteered for the appointment; the Area Committee by its resolution dated 31-1-1966 appointed those persons as non-hereditary trustees; further in a special meeting convened by the Inspector of the Department. One Manickavasakam Pillai was elected as Chairman of the Board of Trustees and the said resolution was approved by the Assistant Commissioner (defendant No. 2) by his order dated 7-3-1966. After the expiry of the tenure of office of those persons, fresh notices were issued calling for applications from desiring persons to be appointed as non-hereditary trustees to fill up vacancies in the Board. Plaintiffs 2 to 5 were estopped by their conduct from contending that the suit temple is a denominational one and that the plaintiffs have no inherent right to be in management of the said temple.

5. The trial Court on the basis of the pleadings of the parties and the evidence let in, in support of their respective claims held that the suit temple is a denominational temple entitled to protection as claimed and it is not a public religious institution; at the same time, it was held that Department is entitled to exercise such powers which are conferred on them by law in regard to the administration of the institution and that the authorities had no power to appoint fit person so as to interfere with the administration of the temple by Vellala Community. The subordinate Judge in the first appeal held that the members of Vellala Community do not form a religious denomination, but they are merely a sub-caste of the Hindu religion; their practices and observance do not lead to the conclusion that they have common faith or they profess certain religious tenet having common faith. He also took the view that several features relied upon by the plaintiffs were not sufficient to identify the institution as a denominational one. In doing so, the first appellate Court relied upon the principles laid down in the decisions reported in *S. P. Mittal v. Union of India and others*[1] *and the Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Matt*[2]. In the second appeal, the learned Judge of the High Court by a well considered order which is impugned in this appeal concurred with the views expressed by the first appellate court. The learned Judge on a clear analysis of the legal position expressed and explained in various decisions, touching the question in controversy and applying them to the facts of the present case in the light of the rival claims, upheld the judgment and decree passed by the first appellate Court.

6. Learned counsel for the appellants contended that-

> "(1) Under S. 1(3) of the Act, the institution concerned should be public religious institution; the religious institution is defined in S. 6(18) and temple is defined in S.

6(20) which includes a sectarian temple; a sectarian temple could be a public or private; the Act gets attracted only to sectarian temples which are public and not which are private.

(2) The suit temple belongs to Vellala Community and there is one single deity, namely, the Uchini Makali Amman and that their own distinct customs and beliefs constitute a "religious denomination" and as such their fundamental right under Art. 26 of the Constitution and their right under S. 107 of the Act, cannot be transgressed by the authorities under the Act. In support of this submission, he placed reliance on the decisions of this Court in *Gurpur Gunni Venkataraya Narashima Prabhu and others v. B. C. Achia, Asstt. Commissioner, Hindu Religious and Charitable Endowment, Mangalore and another*[3] *and K. Eranna and others v. Commissioner for Hindu Religious and Charitable Endowments, Bangalore and others*[4]).

(3) The High Court committed an error in holding that the members of Vellala Community have no distinct name and common faith.

(4) Plaintiffs moved the Court in 1976 as soon as a non-Vellala Community man was sought to be made a trustee; the conduct of plaintiffs between 1965 to 1976 cannot result in a waiver of fundamental rights."

7. In opposition, the learned counsel for the respondents made submissions supporting the impugned judgment reiterating the submissions that were made before the High Court. He further contended that the first appellate Court on a reappreciation of entire evidence on record has recorded a finding of fact against the plaintiffs as to nature of temple supported by good reasons; the High Court rightly found that the judgment and decree of the first appellate Court did not call for any interference. Under the circumstances, according to him, the impugned judgment deserved to be maintained.

8. It is settled position in law, having regard to the various decisions of this Court that the words "religious denomination" take their colour from the word 'religion.' The expression "religious denomination" must satisfy three requirements- (1) it must be collection of individuals who have a system of belief or doctrine which they regard as conducive to their spiritual well being, i.e., a common faith; (2) a common organisation; and (3) designation of a distinctive name. It necessarily follows that the common faith of the community should be based on religion and in that they should have common religious tenets and the basic cord which connects them, should be religion and not merely considerations of caste or community or societal status. On the basis of the evidence placed on record, the first appellate Court as well as the High Court found that Vellala Community is not shown to be a distinct religious denomination, group or sect so as to be covered by Art. 26 of the Constitution. Further, it was necessary for the plaintiffs to establish their claim in respect of the temple that the said denomination group has established and is maintaining and administering the suit temple to take the protection of Art. 26 of the Constitution and S. 107 of the Act. High Court found, after meticulous and careful consideration of material that there was no evidence to prove that the members of the Vellala Community have been shown

to have any common religious tenets peculiar to themselves other than those who are common to the entire Hindu community. The High Court in the impugned judgment has observed that the materials placed by the appellants at best may go to show that during certain period members of their community were playing a major role in the administration of temple. The learned Judge of the High Court also found that the material on record was not sufficient to hold that the members of Vellala Community established the temple in question, nor was there proof of initial establishment of the temple by them. The first appellate Court held that the materials on record were not sufficient in law to show that Vellala Community initially established the temple. Thus, the first appellate Court on facts recorded finding against the plaintiffs which findings were affirmed by the High Court and rightly so in our opinion. Here itself, we may notice one more ancillary submission of the learned counsel for the appellants that there is no presumption as regards the temples in Marthandam that they are public trusts and they must be established so, on evidence. This submission was made taking support from two decisions *(1) Mundacheri Koman v. Thachangat Puthan Vittil Achuthan Nair and others*[5] *and (2) Commissioner, Hindu Religious and Charitable Endowment (Administration Deptt.), Madras v. P. Velappan Nair*[6]. The finding of fact in the case on hand is not recorded merely by raising a presumption. On the other hand, finding of fact is recorded on the basis of evidence available on record. Hence, these two decisions do not advance the case of the appellants.

9. In the light of finding of fact recorded by the first appellate Court as affirmed by the High Court, the argument sought to be made that the Act gets attracted only to sectarian temples which are public and not to sectarian temples which are private in view of Ss. 1(3), 6(18) and 6(20), do not help the appellants when there is a finding that it is not a private temple. Added to this, the temple was taken under the control of the Department in the year 1965. That was not challenged by the appellants; Department called for objections for appointment of non-hereditary trustees not restricting to members of Vellala Community only; then also no objections were filed; thereafter regular applications were invited for appointment of non-hereditary trustees not from the members of Vellala Community only; five persons including appellants 2 and 3 who volunteered for appointment as non-hereditary trustees were appointed by the resolution dated 31-1-1966; further in a special meeting conveyed by Inspector of the Department, one Manickavasakam Pillai was elected as Chairman of the Board and the said election was approved by the Assistant Commissioner of the Department on 7-3-1966; on the expiry of the tenure of office of trustees, fresh notices were issued calling for applications from desiring persons to be appointed as non-hereditary trustees to fill up four vacancies in the Board. We specifically asked learned counsel for the appellants whether in the notices issued inviting applications for appointment as non-hereditary trustees, any restriction was made confining applications to the members of the Vellala Community only. The learned counsel fairly stated that in the notices, no such restriction was made. Again in 1972, as noticed in the impugned order, 5th appellant was appointed as trustee. The appellants 2, 3 and 5 were appointed by the Board and they were not chosen representatives of the community. Under the circumstances, the claim of the appellants was rightly negatived looking to their conduct. Hence, it follows that the appellants were estopped by their conduct from contending that the suit temple is a denominational one and that the plaintiffs have any

inherent right to be in management of the said temple. As such they were not entitled to claim any protection under Art. 26 of the Constitution or under S. 107 of the Act.

10. The decision in Gurpur Gunni Venkataraya Narashima Prabhu and others (supra) in our view does not support the case of the appellants. That decision was rendered on the facts of that case as observed in the impugned judgment. In that case, it was found on evidence that the temple was founded by 37 Goud Saraswat Brahmin families of Gurpur that the trustees managing the temple belonged always to the said community, the landed properties owned by the temple had all been endowed by members of the said community; there was no reliable evidence of endowment of any immovable property by any person outside the community. Further in that case, the subordinate Judge found that the defendants' witnesses on whom the defendants relied to prove that the temple was dedicated to the general Hindu community did not claim right of worship in the temple. But in the present case with which we are concerned, facts are different and findings of the fact recorded go against the appellants.

11. The learned Judge in the impugned judgment referred to the case of K. Eranna and others (supra) and held that the observations made in that decision are too wide and cannot be said to be in conformity with the catena of decisions of this Court as well as the High Court of Madras which are referred to in the impugned judgment itself.

12. Thus, viewed from any angle, we do not find any merit in this appeal. Consequently, it is dismissed. No costs.

Appeal dismissed.

[1]*(AIR 1983 SC 1)*
[2]*(AIR 1954 SC 282)*
[3]*(AIR 1977 SC 1192)*
[4]*AIR 1970 Mysore 191*
[5]*(AIR 1934 PC 230)*
[6]*(2001 (3) LW 327)*