

SUPREME COURT OF INDIA

Parasamaya Kolerinatha Madam

Vs.

P.Natesa Achari

C.A.No.8439 of 2001

(R.V. Raveendran and H.L.Gokhale,JJ.,)

22.09.2011

JUDGMENT

R.V.Raveendran,J.,

1. The appellant Math was the plaintiff in a suit (C.S.No.2/1983) filed against the respondents 1 and 2 (defendants 1 and 2) and two others on the file of the Madras High Court. The appellant math situated in Tirunelveli, claims to be the owner of property bearing No.16, Chandrabanu Street, Komaleeswararpet also described as Komaleeswaranpettai, Chennai (described in the first schedule to the plaint) known as Parasamaya Kolerinatha Madam and several idols including those of Goddess Meenakshi, Lord Vigneshwara, Lord Murugan installed therein (described in the second schedule to the plaint), together referred to as the `suit property`.

2. The plaint averments in brief are: The appellant is a Math established several centuries ago at Tirunelveli by Swami Anavaratha Soundaraja Perumal. The Mathadhipathi of the Math is elected for life by the Viswakarma community. In the year 1922, a suit (OS No.58/1922 as the file of the Sub-court, Tirunelveli) was filed for framing a scheme for regulating the succession and administration of the plaintiff Math and its properties. In the said suit, a scheme was framed by order dated 2.5.1925. The suit property was one of the properties shown as vested in the Math in the final decree in the said scheme suit. The suit property was owned by the plaintiff Math for several centuries and the Head of the Math would stay there during his visit to the city. His disciples were regularly using the premises and staying therein. The Math premises were being managed by a nominee of the Math. The idol of Goddess Meenakshi and the statue of the Head of the Math with his Padukas were installed by the Math in the suit property in the eighteenth century and were worshipped by the disciples of the Math and other devotees. As the Headquarters of the Math was situated at the far-away Tirunelveli, the Mathadhipathi had entrusted the management of the said Math property to nominated Agent/s who were the local elders of the Viswakarma community. When a new Mathadhipathi was installed on 17.8.1981, he sent his agent to routinely enquire about the affairs of the Math property in Chennai and learnt that the persons earlier managing the property had handed over the management to defendants 1 and 2. When the

Mathadhipathi visited Chennai in 1982 and stayed in the suit property. One R. Venugopal Achari who was appointed to look after the suit property in the year 1963, informed the Mathadhipathi that he had handed over management to Kanagasabapathy Achary who in turn handed over management to defendants. When the Mathadhipathi sent word to defendants to come and discuss the affairs of the Math, they did not turn up, but the community people spoke to the Mathadipathi and made several complaints about the irregular and ineffective management by defendants 1 and 2. Further inquiries revealed that defendants 1 and 2 were attempting to claim that the suit property with the Meenakshiamman idol as a temple independent of the Math, managed by the local Viswakarma community and had arranged for Kumbabishekam without the knowledge and consent of the Mathadhipathi. In view of the above, the plaintiff Math filed the said suit and sought a declaration of title to the suit property (with the idols and movables therein) and delivery thereof.

3. Defendants 1 and 2 resisted the suit. They contended that the suit property (describing it as the Meenakshiamman temple) was a denominational temple that has been in existence for the benefit of the members of the Viswakarma community living in Komaleeswararpet in Chennai. The suit property was a temple and the Math did not 'exist' in the suit property. The plaintiff Math had no connection with the suit property. Neither the final decree nor the scheme in the scheme suit (O.S.No.58 of 1922) relating to the plaintiff Mutt was binding on the members of the community living in Komaleeswararpet in Chennai as they were not parties to the scheme suit. Though the temple in Komaleeswararpet was dedicated to Goddess Meenakshiamman, as Parasamaya Kolerinatha Swami was a great saint and Guru of Viswakarma community, the said temple was also called by the name of the said Swami, but the plaintiff Math has nothing to do with the suit property. The said denominational temple was under the management of the members of the Viswakarma community through their elected representatives. In the beginning of the twentieth century, one Arumuga Achary was managing the affairs of the temple. Later one C. V. Raju Achary was the trustee till 1938. From 1938, Adhimoola Achary functioned as a Trustee with the assistance of a committee of members. Kanagasabai Achari became the Trustee in 1963 and in 1969, first and second defendants along with one more person were elected as trustees and they were in management. The idols and statues in the temple were installed by the members of the Viswakarma community of Komaleeswararpet and not by the plaintiff Math. The community performed the Kumbhabhishekam of the temple on 21.1.1983. They filed a petition in the office of the Commissioner for Religious and Charitable Endowments for framing a scheme for the said temple by impleading the plaintiff math as a respondent. The property did not belong to the Math and that for more than a century, the property has been under the absolute control of the members of the Viswakarma community of Komaleeswararpet. As the suit property was a temple and not a Math as defined under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short 'the Act') and as the plaintiff Math have nothing to do with the property, the suit was not maintainable and was liable to be dismissed.

4. The High Court framed four issues. The main issue was whether the plaintiff Math was entitled to the ownership of the suit property and if so whether it was entitled to recover possession. Both sides led oral and documentary evidence. After detailed consideration of the several documents exhibited by the parties and the oral evidence, the learned Single Judge

who tried the suit, decreed the suit by judgment and decree dated 20.4.1993. He held that there was abundant evidence to show that the suit property belonged to the plaintiff Math and it was not the property of Viswakarma community residing at Komaleeswararpet, Chennai. He also accepted the case of the plaintiff Math that the Thirty Second Head of the plaintiff Math had installed the idol of the Goddess Meenakshi more than two centuries ago. The learned Single Judge also referred to the series of documents produced by the defendants themselves which stated that Meenakshiamman temple was situated in Parasamaya Kolerinatha Swami Math. The learned Single Judge held that merely because idols were installed and worshipped in a Math premises, the property will not cease to be a Math nor will it become a place of public religious worship. Consequently the learned Single Judge decreed the suit granting declaration of title and directing delivery of possession of the suit property to the plaintiff Math.

5. Feeling aggrieved, defendants 1 and 2 filed an intra-court appeal. A Division Bench of the High Court allowed the said appeal (OSA No.29/1994) by the impugned judgment dated 29.4.1999. The division bench held that the oral and documentary evidence established the existence of Meenakshiamman temple in the suit property, possessing the characteristics of a temple. The Managing Committee elected from Viswakarma community was managing the said temple, attending to its repairs, paying municipal taxes and conducting festivals. It held that the characteristics of a Math were absent and the plaintiff Math had failed to prove that the affairs of the Math alone were carried on in the premises; and as the goddess Meenakshiamman was being worshipped by the public and temple festivals were being regularly conducted, the finding of the learned Single Judge that the installation of idol of Meenakshi did not extinguish the rights of the Math, was not sustainable. The division bench held the suit property to be a 'temple' and consequently dismissed the suit. The said judgment and decree is challenged in this appeal by special leave.

6. On the contentions urged three questions arise for consideration :

(i) Whether the suit property belongs to the Plaintiff Math?

(ii) Whether the Division Bench ignored the material documents exhibited by plaintiffs and defendants in holding that the suit property did not belong to the plaintiff Math?

(iii) Whether the property of the Math ceased to belong to the Math, as idols were installed therein are worshipped by the members of Viswakarma community, thereby converting it to a temple.

7. As all these questions are interconnected, we will consider them together. We may at first refer to the definitions of the words 'Math' and 'Temple' in the Act. Section 6(13) of the Act defines 'Math' thus:

"Math means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with

the direction of the founder of the institution or is regulated by usage and (i) whose duty it is to engage himself in imparting religious instruction or rendering spiritual service; or (ii) who exercises or claims to exercise spiritual headship over a body of disciples; and includes places of religious worship or instruction which are appurtenant to the institution. xxx xxx"

Section 6(20) of the said Act defines the term "temple" as "Temple means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship. xxx xxx"

8. The distinction between maths and temples, stated in several judicial pronouncement has found statutory recognition in the aforesaid definitions. There are two necessary ingredients for a structure or place to be described as a temple under the Act. First is its use as a place of public religious worship. Second is dedication of the structure or place to, or for the benefit of, or use as of right by, the Hindu community or a section thereof, as a place of public religious worship. The mere fact that members of the public are allowed to worship at a place, will not make it a public temple. The Hindu sentiments and the tenets of Hinduism do not normally exclude worshippers from a place of worship, even when it is private or part of a Math. Therefore, the crucial test is not whether the members of the public are permitted to worship, but whether the worship by the members of the public is as of right by the Hindu community or any section thereof, or whether a place has been dedicated a place of public religious worship. [See : the decision of the Privy Council in *Mundacheri Koman vs. Atchuthan*¹- the decisions of the Madras High Court in *Madras Hindu Religious Endowments Board vs. Deivanai Ammal*²- *Bodendraswami Mutt vs. The President of the Board of Commissioners for Hindu Religious Endowments*³- and *The Commissioner, Hindu Religious & Charitable Endowment (Admn.) Department vs. T.A.T. Srimath Gnaniar Madalayam*⁴

9. In *Goswami Shri Mahalaxmi Vahuji vs. Shah Ranchhoddas Kalidas (Dead) & Ors.*⁵- and *T.D. Gopalan vs. The Commissioner of Hindu Religions and Charitable Endowments, Madras*⁶- this Court held that the origin of the temple, the manner in which the affairs are managed, the gifts received by it, the rights exercised by devotees in regard to worship therein and the consciousness of the devotees themselves as to the character of the temple, are the factors which go to show whether a temple is a public temple or a private temple. It is also well-settled that mere installation and consecration of idols in a place will not make it a place of public religious worship. Where the evidence shows that the disputed property retained the identity as a Math and where Gurupoojas (functions celebrating/important days associated with the founder or head of the math) are performed regularly, it will not lose the characteristic of a Math and become a temple, merely because idols have been installed and members of a section of Hindu community offer worship. In fact, this fact is now statutorily recognized in the definition of Math in section 6(13) of the Act which makes it clear that a Math includes any place of religious worship which is appurtenant to the institution of a Math.

10. This Court in *Radhakanta Deb vs. The Commissioner of Hindu Religious Endowments, Orissa*⁷ on a conspectus of earlier authorities, laid down the following tests to provide sufficient guidelines to determine on the facts of each case, whether an endowment is of a private or a public nature :

"Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature :

(1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by member of the public is as of right;

(2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

(3) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."

(emphasis supplied)

11. We may also in this context refer to one of the earliest judgments of the Madras High Court. In *Thambu Chetti Subraya Chetti vs. A.T. Arundel*⁸- The question considered therein was whether a building known as the Dharma Sivachari Mattam could be considered to be a place of public worship, as idols were installed in the said Math premises, so that exemption from payment of municipal tax could be availed. A Division Bench of the Madras High Court held :

"The original signification of the term Math or Matha is a building or set of buildings in which Hindu religious mendicants reside under a superior, who is called a Mahant. This spiritual superior is regarded with veneration by the members of the sect, and is installed with some ceremony, and not infrequently receives an honorific title. Although a place of worship is not a necessary part of a Math, such a place is, as may

be expected, often found in such institutions, and, though intended primarily for the use of the inmates, the public may be admitted to it, and so this part of the building may become a place of religious worship. A Hindu Math somewhat resembles a Catholic Monastery. From the circumstance that a portion of it is not infrequently devoted to worship, and that the public may be admitted to it, the term Math has acquired a secondary signification as a small temple. Taking the whole of the facts mentioned in the judgment, we see reason to think that the institution was a Math in the original rather than the secondary sense of that term.....when the Mattam is in part of in whole used for purposes other than those of public worship, it will be liable to taxation."

(emphasis supplied)

12. Therefore, the fact that there are some idols installed in a Math and members of the public offer worship to such idol will not make it a place of public religious worship, that is, a temple, if the other ingredients of a math exist or if it is established to be a premises belonging to a math and used by the math for its purposes. If the property in its origin was a math property, it cannot be treated as a temple merely because the math had installed idols and permitted worship by the members of the community and the premises is used for rendering charitable and religious services. The Division Bench has proceeded on the erroneous impression that existence of an idol in a math property, when worshipped by the members of the community, would convert the math property into a temple.

13. The plaintiff (Parasamaya Kolerinatha Madam) specifically claims that the suit property belonged to the plaintiff Mutt and produced several documents, the genuineness of which was not under question. We may examine the said evidence. Exhibit-P1 is the certified copy of the preliminary decree in the scheme suit (Ponnaivasan Achari & Ors. v. Nelliappa Achari - OS No.58 of 1922, dated 29.3.1924) with reference to Parasamaya Kolerinatha Madam situated at Tirunelveli and its properties. The said preliminary decree declares that Parasamaya Kolerinatha Madam situated at Tirunelveli is a public religious and charitable foundation for the benefit of five sections of Vishwakarma community of the Tamil districts of Southern India as also Travancore, Cochin and Malabar, holding the properties mentioned in the plaint schedule; that the office of Mathadhipathi of the said Mutt was vacant; that it was necessary to frame the scheme for the appointment of a Mathadhipathi and regulate succession to the office of the Mathadhipathi and vest the Mutt and such property in such Mathadhipathi. The suit property was one of the properties shown as belonging to the math. After such preliminary decree, a draft scheme was filed and a scheme was framed on 2.5.1925. Ex. P2 is the final decree dated 10.9.1927 in the said suit (OS No.58/1922) which confirms that a scheme has been framed for the said Parasamaya Kolerinatha Madam, Tirunelveli on 2.5.1925; that the said scheme provided for appointment of Mathadhipathi and regulating the succession to the office of Mathadhipathi; that as per the directions of the court, the disciples of the plaintiff Mutt was convened on 5.9.1927 and Srimath Rajaratna Swami was unanimously elected as the Mathadhipathi. The final decree declared that the said Rajaratna Swamigal was the Mathadhipathi of the institution in whom, according to the scheme settled in the preliminary decree, the properties described in the said final decree

vested. The first schedule thereto enumerates the properties owned by the Math situated at Tirunelveli and third schedule describes the agricultural lands owned by the Math. The fourth schedule describes the movables. The fifth schedule to the said decree describes the two properties situated outside Tirunelveli district - one property in Travancore area and the property situated at Komaleeswararpet, Chennai described as "Srimath Parasamaya Kolerinatha Swami Madam - Sri Meenakshiamman temple and its assets". This document establishes beyond doubt that at a undisputed point of time, the said suit property was the property belonging to the plaintiff Math, vested in its Madhathipathi.

14. As against the said documents (Ex P1 and P2) which trace the title to more than 55 years before filing of the suit, the defendants have not produced any title deeds. The contention of the defendants that as neither they nor the trustees preceding them, were parties to the scheme suit of 1922, the decree in the said scheme suit was not binding on them, is not tenable. The defendants have produced documents to show that the suit property and the temple therein are being managed by the members of the community at Komaleeswararpet from around 1938 onwards. Obviously therefore the question of impleading either defendants 1 and 2 or their predecessors in 1924 or 1925 did not arise. In fact plaintiff Math does not deny the fact that idol of Meenakshiamman is installed in the suit property and that the day to day management of the suit property was entrusted to the Viswakarma community members in Komaleeswararpet Chennai, as the head quarters of the Math was situated at Tirunelveli. The entrustment of management by the Math to the elders/members of the Viswakarma Community under the guidance and supervision of the Math, would not divest the title of the Math to the property.

15. We may next refer to the undisputed documents which establish that the suit property where the idol of Meenakshiamman is installed is the property of the plaintiff Math. The most important of the documents, which would clinch the case in support of the plaintiff Math is Ex. P16 which is a certified copy of the petition dated 7.10.1978 under section 64(1) of the Act (OA No.102/1978) filed by defendants 1 and 2 and other managing committee members of Meenakshiamman Temple before the Deputy Commissioner for Hindu Religious and Charitable Endowments (Administration), Madras, for framing a scheme for appointment of Trustees and management of the temple. The subject-matter of the petition is described as "In the matter of Sri Meenakshiamman temple situated in Srimad Parasamaya Kolarinatha Swamigal Mutt in 16, Chandra Banu Street, Komaleeswaranpettai, Madras". In para 2 of the said petition, defendants 1 and 2 and other petitioners therein averred: "There is a temple dedicated to Sri Meenakshiamman in Chandrabanu Street, Komaleeswararpet, Madras-2. The institution in question is located in a Mutt belonging to Srimath Parasamaya Kolarinathaswami. The said Swami was the head of the members of the Viswakarma Community residing in Komaleeswararpet, from time immemorial." Having made such admission, they however claimed that "though the temple has been located in the Mutt, the Mutt is no longer in existence and that the institution in question has been considered as the property of the members of the Viswakarma Community..... the institution in question has always been under the management of the members of the said community ever since its inception." The said petition was dismissed.

16. Several other documents produced by plaintiff Math issued by the defendants and their predecessors also establish that the suit property was always considered to be the property of the Math. They are :

(i) Ex.P2 dated 16.10.1963 is a pamphlet issued by R.Kanakasabhapathy Achari on behalf of Srimath Parasamaya Kolerinatha Swami Madam, Komaleeswararpet Chennai, inviting devotees to participate in the worship of Meenakshiammam during Navarathri celebrations.

(ii) Ex. P6 is the Navrathri Mahotsava invitation/pamphlet issued by R. Kanagasabapathy Achari and others on 16.10.1963 describing the temple as "Srimath Parasamaya Kolerinatha Swamigal Madam - Vishwa Karma Samootha Aadheenam - Sri Meenakshi temple".

(iii) Ex. P7 is an invitation pamphlet dated 2.5.1970 in connection with Guru pooja offered to Nellai Parasamaya Kolerinatha Guru Swami and in that connection aradhana to Meenakshiammam and poor feeding at the suit property.

(iv) Ex.P8 is a receipt dated 10.5.1972 issued by first defendant for a sum of Rs.3 towards Gurupooja and the receipt is issued in the name of "Sri Parasamaya Kolerinatha Math -- Sri Meenakshiamman Temple".

(v) Ex. P9 is a programme schedule dated 21.9.1981 issued by the first defendant in regard to the celebration of Navarathri festival at "Srimath Parasamaya Kolerinatha Swami Madam - Sri Meenakshiamman Navarathri celebrations."

(vi) Ex. P13 is a pamphlet relating to a musical festival to be held between 1.6.1960 to 5.6.1960 in connection with the Kumbabhishekham at "Chennai Komaleeswararpet, Chandrabanu Street, Nellai Srimath Parasamaya Kolerinatha Math -- Sri Meenakshi Sannidhi", issued by the Math Temple Festival Committee on the directions of Nellai Jagatguru Shrimath Parasamaya Kolerinathar Adeenam, 37th Jagatguru Swami Sivananda Muneeswara.

(vii) Ex. P14 is an invitation pamphlet dated 25.5.1960 issued by the Managing Committee of "Nellai Jagatguru Srimath Parasamaya Kolerinathar Adeenam" regarding Sri Meenakshiamman Idol Procession in Komaleeswararpet in the presence of Nellai Jagatguru Parasamaya Kolerinathar 37th Jagatguru Swami Sivananda Muneeswarar.

(viii) Ex. P15 is a pamphlet dated 6.7.1960 issued by the person-in-charge Parasamaya Kolerinatha Madam, No.11, Chandrabanu Street, Komaleeswararpet, Chennai, in connection with the celebration of the coronation of the 37th Peetadhipathi Jagatguru Parasamaya Kolerinathar.

(ix) Ex.P17 is the pamphlet dated 21.3.1960 issued by the management of Parasamaya Kolerinatha Madam mutt, Kamaleeswaranpettai in connection with a festival in regard to Goddess Meenakshiamman installed two centuries earlier by 32nd Jagatguru Srinath Swami Anavaradacharya.

(x) Ex. P18 dated 18.7.1960 is the invitation to the disciples and followers of Shrimath Parasamaya Kolerinatha Swami to have darshan of the Swami at Parasamaya Kelarinatha Swami Math, No.11, Chandrabanu Street, Komaleeswaranpet, Chennai. It is not necessary to refer to other documents exhibited by plaintiff math, most of which relate to a period subsequent to the filing of the suit.

17. The defendants marked Ex D1 to D 42. Most of the documents related to the festivals conducted in connection with the Meenakshiamman temple or regarding the handing over of management of the temple from one managing committee to another managing committee. Many relate to the period subsequent to the suit and not relevant. But several of them relate to the undisputed period before the suit and clearly prove the case of the plaintiff Math. We may refer to some of defendants' exhibits:

(i) Ex. D1 dated 7.4.1938 is the pamphlet issued by the person-in-charge of the suit property - Adhimoola Achari in regard to appointment of Committee for managing "Sri Meenakshi Temple situated in Chennai Komaleeswaranpettai Srimath Parasamaya Kolerinatha Swami Math".

(ii) Ex. D8 is a pamphlet dated 16.10.1941 by Adhimoola Achari, 'Dharmakartha' of the temple in regard to a festival at Sri Meenakshi Temple at Sri Parasamaya Kolerinatha Madam, Kamaleeswaranpet, Chennai.

(iii) Ex. D16 is a pamphlet about the appointment of Managing Committee of Sri Meenakshiamman temple at Srimath Parasamaya Kolerinatha Swami Madam for the term 17.6.1945 to 5.3.1950.

(iv) Ex. D24 is the Invitation Pamphlet dated 10.5.1972 in connection with Guru Pooja of the founder of the plaintiff Math at the suit property.

(v) Ex. D32 is a pamphlet dated 5.10.1966 issued by Kanagasabapathy Achari in regard to Navrathri festival in Meenakshi Temple at Srimath Parasamaya Kolerinatha Madam.

18. These documents irrefutably establish that the temple was a part of the Math; that the Math appointed a local elder of Viswakarma Community at Komaleeswaranpet to manage the suit property and the place of worship therein, that the local elder handed over management to successive elected managing committees (from the Viswakarma community at Komaleeswaranpet, Chennai) to be in day to day management; that the defendants and their predecessors who were the members of the Managing Committee of the temple, had always accepted and described the place of worship as being a part of Parasamaya

Kolerinatha Guruswamigal Madam, that is plaintiff-Mutt. When some of the pamphlets exhibited by defendants describe the place of worship in the Math property as Meenakshiamman `koil', the word was not used as referring to a `temple' as defined in the Act, but as a place of worship always as part of and belonging to the plaintiff math.

19. The oral evidence the second defendant - T.R.Nataraj Achary (DW1) also establishes that Meenakshiamman Koil was part of plaintiff Math. In the examination-in-chief, he states that the suit property is Meenakshiamman temple which has been administered by a group of trustees elected/appointed by the Viswakarma community in Komaleeswararpet and the temple belongs to the Viswakarma community of Komaleeswararpet. However he also stated that Srimat Parasamaya Kolerinatha Swamigul, who lived several centuries ago in Tirunelveli, was the Guru of Viswakarma community and there is a statue of the said Swami in the temple; that a sect of Viswakarma community regularly conducts Guru Pooja in honour of the founder of the Math in the premises. He extract below some of his answers which establish the case of the plaintiff Math:

"Q. Did the present Head of Mutt or the previous Head of Mutt stay in the Meenakshi temple ?

A. The present Head of the Mutt stayed only for one and a half hour and the previous Head of the Mutt might have come and stayed."

"Q: This notice (Ex.D.24 and Ex.P.7) was issued by 64 Thalaikettu Viswakarma Community people, is it so?

A: Yes. This pooja is being conducted by them.

Q: See Ex. D.24 and Ex.P.7, there is a song in the beginning of the matter.

A: Yes.

Q: The Guru referred to in both the notification in the song is Nellai Parasamaya Kolarinatha Swamigal, is it not?

A: Yes.

Q: 64 Thalaikattu Viswakarma Community are residing in Madras, is it so?

A: Yes. They are living in Madras.

Q: 64 Thalaikattu Viswakarma Community are celebrating (Guru) poojas in the suit property, is it not?

A: Yes.

Q: That Guru Pooja is in respect of Nellai Parasamaya Kolarinatha Swamigal?

A: Yes.

Q: Ex.P.7 was issued after you claimed to have been a trustee of the suit property?

A: Yes.

Q: Do you know that the present suit has been filed by Nellai Parasamaya Kolarinatha Swamigal?

A: Yes. I am aware.

Q: There is a stone image of Nellai Parasamaya Kolarinatha in the suit property?

A: Yes.

Q: This image in the suit property is that of the man you are referring to?

A: Yes.

Q: The chappals ('Padukas') owned by him are in the suit property?

A: Yes.

Q: Ex.P.9 was a notice issued by you for Navarathiri Festival in the suit property in 1981. Your name is also there?

A: Yes. My name is also there.

Q: In this document the suit property is described as Parasamaya Kolarinatha Swamigal Madam?

A: Yes.

Q: So from 1938 to 1981 suit property is described as Parasamaya Kolarinatha Madam?

A: Yes. It is from the beginning known as Parasamaya Kolarinatha Swamigal Madam.

Q: This document Ex.D.30 (Page No.9) is also filed by you?

A: Yes.

Q: There also (Page 8 of Ex.D.30) it is referred that Kolarinatha Swamigal installed the Meenakshi Amman Idol.

A: Yes."

20. The learned Single Judge has referred to oral and documentary evidence in detail and recorded a categorical finding that the property belonged to the plaintiff Mutt and that the claim of the defendants that the plaintiff Math had nothing to do with the suit property was false and untenable. On the other hand, the Division Bench failed to consider the significance of these relevant documents. It inferred that the suit property ceased to be a

Math property and became a 'temple' as defined in section 6(20) of the Act, because the Meenakshiamman idol was installed in the Math property and the members of the community were offering worship and festivals were conducted and celebrated by the Managing Committee and Municipal taxes were being paid by the Managing Committee. But it failed to notice that mere existence of idols in Math premises or worship thereof by the public would not convert a property belonging to the Math into a temple. It failed to notice that installation of the idol Meenakshiamman and installation of the statue of Sri Swami Parasamaya Kolerinatha Guru and conducting the festivals and Gurupoojas were part of Math's activities being held and conducted in the name of the plaintiff Mutt or its Mathadhipathi.

21. The oral and documentary evidence produced by the plaintiff and defendants clearly and categorically establish the following factual positions :

- (i) The suit property belonged to the plaintiff Math;
- (ii) The Meenakshiamman idol was installed by the 32nd Mathadhipathi of the Math in suit property, in the eighteenth century. There is nothing to show that installation was with the object of dedicating the premises as a place of public religious worship. On the other hand the suit property was and always been a property belonging to the plaintiff Math, where the members of Vishwakarma community were permitted to offer worship to the idol of Meenakshiamman.
- (iii) The suit property is used regularly to celebrate Guru pooja in honour of the founder of the Math and the Mathadhipathis. The premises was used by the Mathadhipathi of the plaintiff Math and his disciples and followers for their stay at Chennai.
- (iv) The head of plaintiff Math had directed the Viswakarma community in Komaleeswararpettai, Chennai to manage the day to day affairs of the suit property including provision for worship of idols in the property by constituting a Managing Committee. The Managing Committee was managing the Math property and the temple therein, recognizing and accepting that they were part of plaintiff Math.
- (v) In the year 1978, the defendants and others in management attempted unsuccessfully to assert that the premises is exclusively a temple belonging to the Viswakarma community members at Komaleeswararpet and not the plaintiff Math. In view of the above findings, all the three questions raised are answered in favour of the appellant Math.”

22. As the management through a local committee has been in vogue for several decades, it would be appropriate if the same system is continued for the efficient management of the suit property and the place of worship. The Managing Committee should consist of a Chairman nominated by the Mathadhipathi of plaintiff Math and six members (of whom three shall be

nominated by plaintiff Math and the remaining three shall be elected by the Viswakarma community at Komaleeswararpet, Chennai). The said Managing Committee will be accountable to the plaintiff Math and act under its directions.

23. In view of the above, the appeal is allowed, the judgment and decree of the division bench of the High Court is set aside and the judgment and decree of the learned Single Judge decreeing the suit is restored as under:

“(i) The suit property with the installed idols and other assets is declared to be the property of the plaintiff Math. The possession and control of the suit property with the place of worship (Meenakshiamman temple) vests with the plaintiff Math.

(ii) Neither the Viswakarma community of Komaleeswararpet or the Committees of Management of the `Meenakshiamman Temple' own the suit property or the place of worship therein. They were merely acting as the representatives of the plaintiff Math.

(iii) The defendants and their agents and representatives shall deliver the entire suit property with the place of worship with the installed idols and all movables, to the plaintiff Math forthwith.

(iv) Parties to bear their respective costs. “

Judgment Referred.

¹*ILR 58 Mad. 0091*

²*(1953) 2 MLJ 0688*

³*(1955) 1 MLJ 0060*

⁴*(2003) 1 MLJ 0726*

⁵*AIR 1970 SC 2025*

⁶*AIR 1972 SC 1716*

⁷*AIR 1981 SC 0798*

⁸*ILR 6 (1883) Mad. 0287*