

T. D. GOPALAN

v.

**COMMISSIONER OF HINDU RELIGIOUS & CHARITABLE
ENDOWMENTS, MADRAS**

April 5, 1966

[M. HIDAYATULLAH, J. R. MUDHOLKAR, R. S. BACHAWAT AND
J. M. SHELAT, JJ.]

Constitution of India, Art. 133(1) (a) and (b)—Valuation of property for purpose of appeal before Supreme Court—Suit for declaration that property was not a temple within meaning of Madras Act 19 of 1951—Claim whether capable of valuation.

The appellant sought a declaration that certain premises belonged to his family as private property and did not constitute a temple within the meaning of the Madras Hindu Religious and Charitable Endowments Act (19 of 1951). The District Court decreed the suit but the High Court found that the property in question was a temple. The appellant then filed a petition for leave to appeal to this Court under Art. 133(1) (a) and (b) of the Constitution and submitted that the property was more than Rs. 20000 in value. The High Court dismissed the application on the ground, *inter alia*, that the subject matter of the dispute whether as a private or a public temple was incapable of valuation as it could have in either case no market value. The appellant by special leave came to this Court.

HELD: The High Court was not right in assuming that whether the property was a private or a public temple, it was incapable of valuation. The subject-matter of the dispute had to be ascertained with reference to the claim made by the plaintiff in his plaint and since according to the plaint the property was the private property of the appellant's family capable of alienation, the High Court ought to have valued the property accordingly. [157 A, B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 230 of 1964.

Appeal by special leave from the judgment and order dated January 11, 1961 of the Madras High Court in S. C. Petition No. 165 of 1960.

R. Ganapathy Iyer and R. Thiagarajan, for the appellant.

A. V. Rangam, for the respondent.

The Judgment of the Court was delivered by

Shelat, J. This appeal by special leave is against the order of the High Court of Madras dated January 11, 1961 refusing the certificate under Art. 133(1)(a) and (b) of the Constitution.

A The authorities appointed under the Hindu Religious and Charitable Endowments Act, Madras Act II of 1927 having held that the premises No. 29 South Masi Street, Madurai, wherein the idol of Sri Srinivasaparumal and certain other idols were located

B constituted a temple within the meaning of the said Act, the appellant filed an application in the District Court for a declaration that the said premises were private property and for an order setting aside the said decision. The said application was by an order of the High Court converted into a suit. The main question in the suit was whether the said premises could be said to be a temple as defined by Madras Act 19 of 1951. The District Judge, Madurai, decreed the suit in favour of the appellant holding that

C the aforesaid premises did not constitute a temple and set aside the decision of the said authorities. On appeal, the High Court reversed the said judgment and decree and found that the premises in question constituted a temple. The appellant thereupon filed a petition for leave to appeal to this Court and submitted that the value of the subject-matter of dispute in the District Court as also in appeal in the High Court was more than Rs. 20,000/- and that

D the judgment of the High Court having reversed the judgment and decree of the Trial Court he was entitled to leave under Art. 133(1)(a) and (b). The High Court dismissed that application on the following grounds: (a) that the subject-matter of the dispute, whether it was a private or a public temple could have no market value and therefore was incapable of valuation; (b) that cl. (b) of Art. 133(1) could not apply as the judgment and decree passed by

E it did not involve directly or indirectly a claim or question respecting property of the value of Rs. 20,000/- or more and (c) that the appeal did not involve any substantial question of law.

For the time being we are concerned with grounds (a) and (b) and not with ground (c) as the contention raised by Mr. Ganapathy Iyer for the appellant was that the refusal to grant leave by the

F High Court under either of the clauses (a) and (b) of Art. 133(1) was not correct.

The point for consideration is whether the High Court was right in holding that the property in question whether as a private or a public temple was incapable of valuation as it could have in either case no market value. It may be observed that the appellant claimed that the property belonged to the Thoguluva family and he was in management thereof for and on behalf of the family.

G The suit in the first instance was filed by him in the form of an application, being O.P. No. 37 of 1950 under s. 84(2) of Madras Act II of 1927. Under that Act only a fixed court fee was payable. That being so, the appellant did not have to pay court fees as it would in the case of an ordinary suit on a valuation made by

H him therefor. The application was subsequently converted into a suit by an order of the High Court. He was therefore entitled

to contend at the time of the leave application that the property in dispute was of the value of not less than Rs. 20,000/-.

It does not appear to be in dispute that the site of the Mandapam and the structure standing thereon was originally the property of one Kuppaiyan and his undivided sons. The appellant's case was that in execution of the decree in Suit No. 650 of 1882 passed against the said Kuppaiyan the property was sold by public auction and purchased by Thoguluva Thirumalayyan, the appellant's ancestor, for a sum of Rs. 1,060/-. The original mandapam was thereafter improved upon and some additional structures e.g., shops and other constructions were added, the expenses for such repairs and additions having been met by the descendants of the said Thoguluva Thirumalayyan, and therefore the property belonged to and was an alienable private property of the family. On the other hand, the case of the respondents in their written statement was that the property was a public temple for public religious worship and that the allegation of the plaintiff that it was a private property capable of alienation was "false and misleading." The case of the appellant was accepted by the Trial Court but was rejected by the High Court and the High Court held that the property was a public temple within the meaning of Madras Act 19 of 1951.

The dispute between the parties was thus centred round the question whether the property was the private alienable property of the said family or was a public temple as held by the High Court. There was evidence that the shops subsequently constructed as aforesaid were let out to tenants for a number of years and property taxes were levied thereon by the Madurai Municipality, presumably on their rateable value. We may also mention here that in his application to this Court for directing an inquiry into the value of the property under O. 45, r. 1 of the Code of Civil Procedure the appellant has stated that he has in his possession municipal receipts showing the property tax paid to the Madurai Municipality. According to the appellant, property tax for the half year ending September 30, 1950 was Rs. 94-0-6 and for the half year ending March 31, 1961 it was Rs. 130.36nP. According to him the half yearly tax would be equivalent to one month's rent and on that basis the annual rental value would come to Rs. 1,126-6-0 in 1950 and to Rs. 1,672.32nP in 1961. If that be so, capitalising that value at twenty times the annual rental value, the value of the property would come to more than Rs. 20,000/-.

The refusal of the High Court to grant leave was based on the observation that whether the property is a private or a public temple it was incapable of valuation. But as observed earlier the appellant's case was that the subject-matter of dispute in the suit was the private property of the said family and that it was alienable property and therefore capable of a valid transfer. That being

- A** the dispute between the parties, the High Court was not right in assuming that whether the property was a private or a public temple, it was incapable of valuation. The subject-matter of the dispute has to be ascertained with reference to the claim made by the plaintiff in his plaint and since according to the plaint, the property is the private property of the said family capable of alienation, the High Court ought to have valued the property accordingly though according to the respondents the property was inalienable and was a public temple. The High Court was thus wrong in proceeding on the aforesaid assumption.

- C** We would therefore allow the appeal, set aside the order passed by the High Court and remand the case to the High Court to decide the application for leave in accordance with the observations made in this judgment. The High Court may either hold the inquiry itself or remit the case to the Trial Court to hold such inquiry and report to it. Accordingly, the appeal is allowed and the High Court's order is set aside. The respondents will pay to the appellant the costs of this appeal.

Appeal allowed.