



S.A.No.1609 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 27.01.2022

JUDGMENT PRONOUNDED ON : 07 .06.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.No.1609 of 2000

1.Smartha Brahims Living in the
State of Tamil Nadu Practising
and propagating the Religious Philosophy and tents of
Advaitha Philosophy through
P.S.Sundaram
S/o.P.S.Subbaraman
1-A, Perumalpuram, Tuticorin – 3

2.R.Sriram

3.Extension Middle School
New Colony, Tuticorin-3
Through its Hony.Secretary P.S.Sundaram

...Appellants/Appellants
/Plaintiffs

Vs

1.Union of India through its
Secretary to the Govt.of India
North Block, New Delhi

1/34



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2.State of Tamil Nadu,
Through its Chief Secretary,
St.George, Madras

3.Director of School Education
Madras – 6

...Respondents/Respondents
/Defendants

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 15.12.1998 made in A.S.No.8 of 1996 on the file of the Sub Court, Tuticorin as confirming the judgment and decree in O.S.No.200 of 1993 on the file of the Principal District Munsif Court, Tuticorin dated 30.08.1995.

For Appellants : Mr.B.Kumar
Senior Counsel
For Mr.R.Kannan

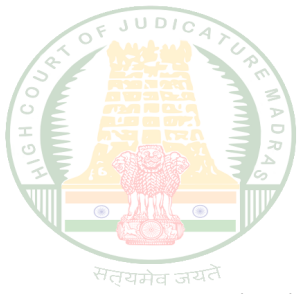
For R1 : Mr.Sankaranarayanan
Additional Solicitor General of India
Assisted by Mr.G.Raja Raman
Central Govt.Standing Counsel

For R2 & R3 : Mr.G.Siva Raja
Government Advocate

JUDGMENT

The plaintiffs are the appellants.

2.The plaintiffs filed O.S.No.200 of 1993 before the Principal

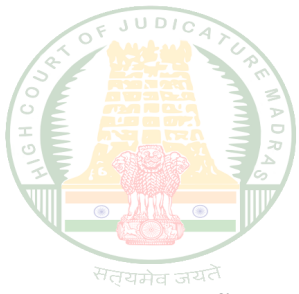


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District Munsif Court, Tuticorin for the relief of declaration that the plaintiffs are entitled to the benefits and privileges conferred under Article 25(1), Article 26, Article 29(1) and Article 30(1) of Indian Constitution in view of their minority character and consequentially pass an order of permanent injunction calling upon the defendants not to enforce on them any Act, Rules, Regulations and Notifications which take away the plaintiffs' rights as a minority community. After trial, the suit was dismissed by the trial Court. Plaintiffs filed A.S.No.8 of 1996 before the Subordinate Court, Tuticorin. The learned Subordinate Judge concurred with the findings of the trial Court and dismissed the appeal. As against the same, the present second appeal has been filed by the plaintiffs.

3.The plaintiffs had contended that the first and second plaintiffs are the followers of Advaita Vendanta founded by Adi Sankara and are scattered through out the State of Tamil Nadu and the suit is filed in the representative capacity. According to the plaintiffs, Smartha Brahmins are minority group within the larger minority group practising the Advaita Philosophy. The plaintiffs had further contended that a smaller group of



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first plaintiff's denominational sect has settled at Tuticorin and they have founded the third plaintiff's School in the year 1924. According to the plaintiffs, the said Smartha Brahmins have a peculiar mode of wearing apparel while performing their religious ceremonies. The plaintiffs had further contended that the right from birth to death they have their individual stamp in their ceremonies and all of them are in Sanskrit language. The plaintiff's had further contended that the followers of Advaita were treated as a religious denomination by the Hon'ble Supreme Court in ***AIR 1954 SC Page 282***. Based upon the said averments, the plaintiffs had contended that they are entitled to the privileges conferred under Article 30 of Indian Constitution because of their minority character. The plaintiffs had further contended that the educational authorities are interfering in the day to day administration of the third plaintiff School. They should be restrained by doing so, in view of the minority character of the third plaintiff School. Based upon the said pleadings, the plaintiffs prayed for declaration that they are entitled to the benefits and privileges conferred under Articles 25 to 30 of Indian Constitution.



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4.The third defendant filed a written statement which was adopted by the first and second defendants.

5.The third defendant in his written statement has categorically disputed the fact that the plaintiffs are followers of Advaita Philosophy. The defendants also contended that the Smartha Brahmins are not minority groups. The defendants had further contended that the third plaintiff School is an aided non-minority institution and hence, the third defendant and his subordinate authorities have got every jurisdiction to enforce Government orders on the third plaintiff Institution. The defendants had further contended that the third plaintiff educational institution is not entitled to the benefit of privileges conferred under Articles 25 to 30 of Indian Constitution since Smartha Brahmins do not enjoy minority status. The defendants had further contended that the Educational Department has got every right to enforce the rules and regulations of Tamil Nadu Recognised Private School Regulations Act 1973 and its Rules 1974 upon third plaintiff School.

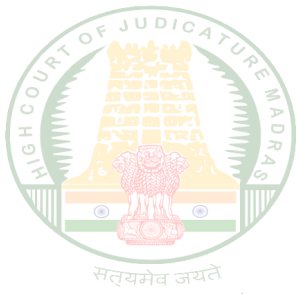


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6.The trial Court after going through the pleadings, oral and documentary evidence, arrived at a finding that the plaintiffs have not established that they belong to Smartha Brahmins community. The trial Court further found that though the plaintiffs claim that they are representative of the Smartha Brahmins of the State of Tamil Nadu, except PW1 and PW2, no one has been examined to establish the complete represented character of the plaintiffs. The trial Court further found that Smartha Brahmins cannot be treated as either religious minority or linguistic minority, in view of various judgments of the Hon'ble Supreme Court. The trial Court further found that since the third plaintiff institution was not established by any minority group, the State is within its power to enforce the Tamil Nadu Recognised Private Schools Regulations Act 1973 and its Rules 1974 on the third plaintiff Institution. The trial Court further found that since the Smartha Brahmins are not minority, they are not entitled to the benefit under Article 26 or Article 30 of Constitution of India.

7.The First Appellate Court fully concurred with the findings of the trial Court and arrived at a finding that the plaintiffs have no authority



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whatsoever to file the present suit in the representative capacity on behalf of Smartha Brahmins residing in the entire State of Tamil Nadu. The First Appellate Court rejected the various judgments cited by the plaintiffs on the ground that all these judgements relate to institutions which were founded and run by either religious or linguistic minority. On the other hand, the present third plaintiff institution has not been proved to be a minority institution. As against the said concurrent findings, the present second appeal has been filed by the plaintiffs.

8.The second appeal has been admitted on the following substantial questions of law:

“1.Whether the Courts below are right in not granting the relief of declaration that Smartha Brahmins is a minority community entitled to the benefits under Article 29 and 30 of the Constitution of India?

2.Whether the Courts below are right in not granting the relief that the Appellants representing Smartha community is a religious denomination and entitled to the benefits of Article 25 and 26 of the Constitution of India?”



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9.The learned Senior counsel appearing for the appellants contended that though the plaintiffs have made a comprehensive prayer claiming benefit and privileges under Article 25 to 30 of Constitution of India, in the present second appeal, the plaintiffs are restricting their prayer with regard to the benefit and privileges as conferred under Article 26 of Constitution of India alone. The written submission filed on behalf of the plaintiffs/appellants also indicates that the plaintiffs have given up their prayer with regard to claiming benefit under other Articles except Article 26 of Constitution of India.

10.The learned Senior Counsel appearing for the appellants had further contended that Smartha Brahmins constitute a denomination within the meaning of Article 26 of Constitution of India and therefore, they are entitled to such a declaration and consequentially, there shall be a decree for permanent injunction as against the third defendant from interfering or enforcing any of the enactments to regulate and force of the third plaintiff School.

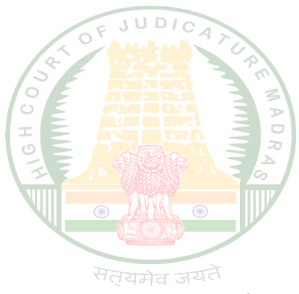


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11.The learned Senior Counsel had further contended that the Hon'ble Division Bench of Madras High Court in a judgment reported in ***1952 1 MLJ Page 557(Marimuthu Deekshtar Vs. State)*** has held that Smartha Brahmins constitute a denomination. Though the said judgment was challenged by the State of Tamil Nadu, the same was withdrawn before the Hon'ble Supreme Court. Hence, the findings of the Hon'ble Division Bench of our High Court that Smartha Brahmins constitute a denomination has become final and hence, the consequential benefit and privileges of an institution established by denomination will follow suit.

12.The learned Senior Counsel further contended that the Hon'ble Supreme Court in its judgement reported in ***(2014) 5 SCC 75 (Dr.Subramanian Swamy Vs. State of Tamil Nadu and others)*** has held that Smartha Brahmins would constitute a denomination. The learned Senior Counsel further contended that a leading Advocate of Turicorin Bar has been examined as PW1 and another gentleman has been examined as PW2. A careful reading of deposition of both witnesses will clearly set out that Smartha Brahmins have a peculiar philosophy of Advaitam propounded by



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Sri Adi Sankara which is followed by well known disciples including Abasthambur. The learned Senior Counsel further contended that the mode of worship and living of Smartha Brahmins are completely distinct from that of the main stream Hindus. He further contended that the ceremonies attendant upon death of Smartha Brahmins are different one from that of the Hindus who follow the main stream Hindu religious. The learned Senior Counsel further pointed out that the defendants neither let in any rebuttal evidence nor have examined any witness on their behalf to discredit the deposition of PW1 and PW2.

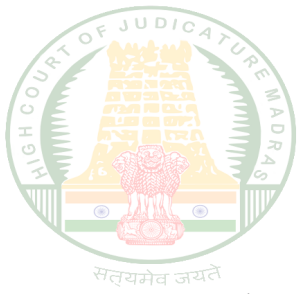
13.The learned Senior Counsel for the appellants had further contended that no witness has been examined on the side of the defendants and no document has been marked on the side of the defendants challenging the contention of the plaintiffs. Hence, according to the learned Senior Counsel, the plaintiff have established that they constitute a denomination and hence, they are entitled to the benefit of privilege conferred under Article 26 of Constitution of India.



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14.The learned Senior Counsel appearing for the appellants elaborately dealt with the Hon'ble Division Bench judgment of our High Court reported in *(1952) 1 MLJ 557 (Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and another vs. The Commissioner, Hindu Religious Endowments, Madras and others)* to impress upon the Court that Podu Deekshars are Smartha Brahmins who were declared to be a denomination. Though the State of Tamil Nadu challenged the same before the Hon'ble Supreme Court, the said appeal was withdrawn by the State of Tamil Nadu. Hence, the findings that Smartha Brahmins in the State of Tamil Nadu constitute a denomination has become final and hence, they are entitled to the benefit under Article 26 of Constitution of India. Since the status of Smartha Brahmins constituting a denomination has already been settled by the Hon'ble Supreme Court, the said issue cannot be disputed again by the defendants. He further contended that the defendants are bound by the judgment of the Division Bench and it would operate as res judicata. The learned Senior Counsel had further contended that when the Hon'ble Apex Court has decided the issue relating to the status of Smartha Brahmins of the State of Tamil Nadu, the same would be binding upon the parties in the



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subsequent proceedings in which the same issue is raised even though the parties are not the same.

15.The learned Senior Counsel further contended that Smartha Brahmins of the State of Tamil Nadu are a denomination having a common faith of Advaita Philosophy and a common spiritual organisation and a common guru namely the most revered Shri Adhi Sankara. The learned Senior Counsel further contended that the oral and documentary evidence let in the present case will clearly establish that Smartha Brahmins are the followers of Sri Adhi Sankara and religious philosophy of Advaitam propounded by Sri Adhi Sankara. He further contended that Smartha Brahmins have several peculiarities which distinguishes them from normal Hindus.

16.The learned Senior Counsel appearing for the appellants further contended that since Smartha Brahmins constitute a denomination, they are entitled to the benefit under Aarticle 26 of Constitution of India. The learned Senior Counsel relied upon a judgment of the Hon'ble Supreme

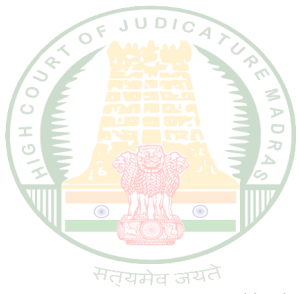


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Court reported in **(2002) 8 SCC 481 (T.M.A.Pai foundation and others Vs. State of Karnataka and others)** to impress upon the Court that the education is a recognised head of charity. He further contended that the Hon'ble Supreme Court has categorically held that an establishment of an educational institution comes within the meaning of expression ' Charitable Purpose'. Since the third plaintiff School has been established by a denomination, the said institution is also entitled to get protection under Article 26 of Constitution of India. The learned Senior Counsel further contended that the rights, privileges and benefits conferred under Article 26 of Constitution of India is a fundamental right and hence, the question of waiver of the same does not arise. Just because, the third plaintiff institution has received grant from the State of Tamil Nadu, the School cannot be denied the benefit under Article 26 of Constitution of India.

17.The learned Senior Counsel had further contended that the trial Court as well as the First Appellate Court have not properly appreciated the fact that Smartha Brahmins in the State of Tamil Nadu, though may not belong to the minority, they are certainly a denomination having distinct,

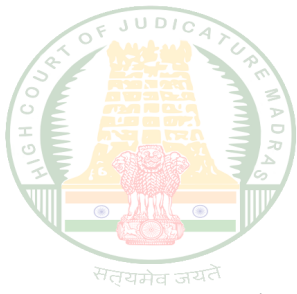


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religious believes, philosophy and way of life which are distinct from the other Hindus following the main stream Hindu religion. The Courts below have dismissed the suit just on the ground that Smartha Brahmins cannot be construed to be either religious minority or linguistic minority. The Courts below have failed to consider the fact that Smartha Brahmins constitute a denomination within the Hindu religion and hence, they are entitled to the benefit under Article 26 of Constitution of India. Hence, he prayed for allowing the second appeal.

18.The learned Additional Solicitor General of India appearing for the first respondent/first defendant had contended that the main relief in the suit is nothing but claiming minority status for Smartha Brahmins in the State of Tamil Nadu. From the prayer, it could be seen that the plaintiffs are claiming minority status for the third plaintiff educational Institution. The learned Additional Solicitor General had further contended that the Central Government has passed an enactment National Commission for Minority Educational Institution Act 2004 (Act 2 of 2005). In view of the said enactment, any educational institution which claims minority status, can only approach the Commission for declaration of the said minority status

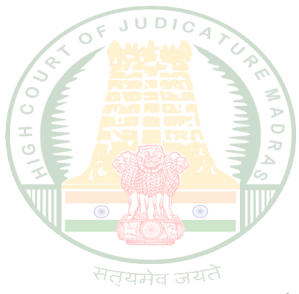


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and a Civil Suit is not maintainable. He had further contended that the status of religious or linguistic minority should be decided by the State and Union Territories at the State level and not at National level. He had further contended that as far as the plea of denomination status of Smartha Brahmins in the State of Tamil Nadu is concerned, the first respondent/first defendant has no say in the said matter.

19.The learned Government Pleader appearing for the third respondent/third defendant had contended that Smartha Brahmins in the State of Tamil do not follow any particular religious belief which is completely distinct from other Hindus who are following the main stream of Hindu Religion. He had further pointed out that in the cross examination PW1 and PW2 have categorically admitted that they do not have any distinct or separate identity to call themselves as a denomination. He had further contended that the prayer in the present suit is only for the benefit of the third plaintiff institution and not to declare that Smartha Brahmins residing in the State of Tamil Nadu as a denomination or a minority. He further contended that the entire body of the plaint proceeds as if they are minorities in the State of Tamil Nadu, claiming benefit under Articles 25 to



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30 of the Constitution of India. The very fact that the learned counsel for the appellants has restricted his prayer with regard to the benefit and privileges under Article 26 of Constitution of India will clearly demonstrate that the plaintiffs have given up their claim that they are minority in the State of Tamil Nadu. Hence, he prayed that the judgment and decree of the Courts below may be confirmed and the second appeal may be dismissed.

20.I have carefully considered the submissions made on either side.

21.The present suit has been filed by Smartha Brahmins living in the State of Tamil practising and propagating the religious philosophy and tenets of Advaita Philosophy. The suit has been filed in the representative capacity represented by one P.S.Sundaram and Mr.R.Sriram. The plaintiffs have prayed that they may be declared to have a minority character as contemplated under Article 25 to 30 of Constitution of India and prayed for a consequential permanent injunction as against the educational authorities not to enforce any Act, Rules or Regulations which takes away the plaintiffs' right as a minority community.



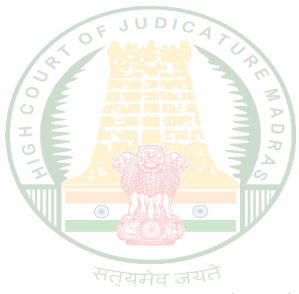
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22. Though the plaintiffs claim that the suit has been filed in the representative capacity on behalf of Smartha Brahmins living in the State of Tamil Nadu, no records are found to the effect that the suit has been instituted as contemplated under Order 1 Rule 8 of C.P.C. There is no reference to the effect that any independent application was filed seeking permission of the Court to file the suit in the representative capacity. No document has also been produced to the effect that whether any publication was made as contemplated under Order 1 Rule 8 of C.P.C.

23. The trial Court in Para No.11 of the judgment has categorically found that except PW1 and PW2 who hail from Tuticorin, no other person from other place of Tamil Nadu have been examined to prove the case of the plaintiffs. The trial Court also found fault with the representative character of the plaintiffs.

24. The First Appellate Court in Paragraph No.10 of the judgment has categorically found that the present representatives of plaintiffs namely Mr.P.S.Sundaram and R.Sriram have no authority to file a present suit representing the Smartha Brahmins of the State of Tamil Nadu. A perusal of the grounds of second appeal and the substantial questions of law will



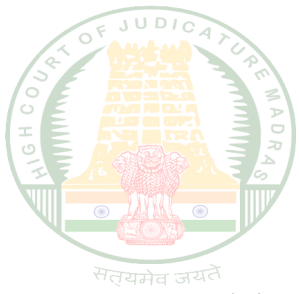
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clearly demonstrate that these findings of the trial Court as well as the First Appellate Court with regard to the representative character of the plaintiffs have not been challenged in the second appeal.

25.A perusal of Paragraph No.4 of the plaint will clearly indicate that the present suit has been filed only representing 500 houses of Brahmin colony now called as New Colony in Tuticorin and not on behalf of all the Smartha Brahmins living in the State of Tamil Nadu. A careful perusal of the plaint will also indicate that the suit has been initiated more to keep the educational authorities away from the education institution than to get a declaration that Smartha Brahmins constitute a denomination or minority.

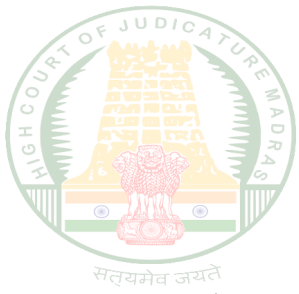
26.The learned Senior Counsel appearing for the appellants during his submissions as well as in the written arguments, has given up the plaintiffs' prayer with regard to the benefit and privileges under other Articles namely Article 25, 29 and 30 of the Constitution of India. Arguments were advanced by the learned Senior Counsel only with regard to the benefit of privileges/ rights conferred under Article 26 of the Constitution of India. Hence, this Court does not find it proper to adjudicate upon the pleadings in the plaint that Smartha Brahmins belong to the minority community. The



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claim of the plaintiffs that they belong to the minority community has been disputed in the written statement. As rightly pointed out by the learned Additional Solicitor General of India that after enactment of Central Act 2 of 2005, a Civil Court will not have any jurisdiction to decide about the minority character of any educational institution. Hence, this Court does not go into the controversy in the plaint and the written statement with regard to the minority character of the plaintiffs or the minority character of the institution namely the third plaintiff.

27.The learned Senior Counsel has contended that Smartha Brahmins constitute a denomination in the State of Tamil, in view of their distinct and different religious believes which are completely different from that of the Hindus following the main stream Hindu religion. The learned Senior counsel further relied upon Paragraph Nos.4, 5 and 6 of the plaint to impress upon the Court that from birth to death, Smartha Brahmins have their individual stamp in all their ceremonies. He had further contended that the followers of Sri Adhi Sankara who follow Advaitam constitute a religious denomination having a common faith and organisation and they have been designated by distinct name namely Smartha Brahmins. According to the

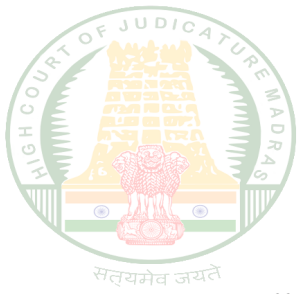


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learned Senior Counsel, Smartha Brahmins are collection of individual and they have particular system of belief and they have a common organisation and they are known by their distinctive in entire namely Smartha Brahmins. The learned Senior Counsel has further contended the fact that Smartha Brahmins constitute a denomination has already been upheld in the Division Bench judgment of our High Court reported in *AIR 1952 Madras 613 (Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and another Vs. the commissioner, Hindu Religious Endowments, Madras and others)*. The learned Senior Counsel relied upon Paragraph No.178 of the said judgment which reads as follows:

“178. Looking at it from the point of view, whether the Podu Dikshitar are a denomination, and whether their right as a denomination is to any extent infringed within the meaning of Article 26, it seems to us that it is a clear case, in which it can safely be said that the Podu Dikshitars who are Smarktha Brahmins form and constitute a religious denomination or in any event, a section thereof. They are even a closed body, because no other Smartha Brahmin who is not a Dikshitar is entitled to participate in the administration or in the worship or in the services to God. It is their exclusive and sole privilege which has been recognised and established for over several centuries. The notification seriously interferes with their right to manage the

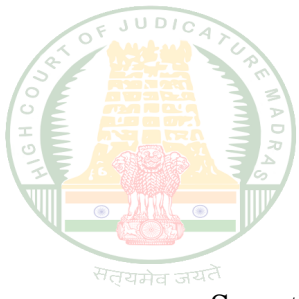


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affairs in matters of religion to own and acquire movable and immovable property, and even to administer such property in accordance with law. A law which substantially deprives the religious denomination of its right to administer the property of the denomination leaving only a scintilla of the right in the denomination cannot be justified and upheld as an exercise of the power to regulate the administration of the institution. Nor is it reasonable restriction within the meaning of Article 19(5) of the Constitution”.

28.A careful reading of the above said finding of the Hon'ble Division Bench will clearly indicate that Podhu Dikshidar who are Smartha Brahmins form and constitute a religious denomination. The Hon'ble Division Bench has further held that no Smartha Brahmins who is not a Dikshidar is entitled to participate in the administration, worship or in the services to God in Chidambaram. In Paragraph No.164 of the said judgment, it has been found that the management of Chidambarm temple is vested in the Dikshitar of 250 families. The said 250 families only constitute a denomination under the name and style of Podhu Dikshitar. Though Podhu Dikshitar are also Smartha Brahmins, the entire community of Smartha Brahmins has not been declared to be a denomination by Hon'ble Division Bench. Only a section of



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Smartha Brahmins namely Podhu Dikshidar belonging to certain families have been declared to constitute a denomination. Hence, the contention of the learned Senior Counsel that Smartha Brahmins of the State of Tamil Nadu have already been declared to be a denomination by a judgment of the Hon'ble Division Bench as stated supra is not legally sustainable.

29.The plaintiffs are duty bound to establish that they constitute a denomination to claim rights/privileges and benefits as contemplated under Article 26 of Constitution of India.

30.PW1 in his cross examination has categorically admitted that he has not filed any document to establish that he belongs to Smartha Brahmins community. PW1 has further admitted that he not produced any document to show that Smartha Brahmins are following the philosophy of Advaita enunciated by Sri Adhi Sankara. The documents filed on side of the plaintiffs namely Exhibits A3 to A7 does not disclose the word Smartha Brahmins. On the other hand, in all these documents, it is mentioned as Iyer. PW1 has also categorically admitted that all Iyers are Smartha Brahmins.

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PW2 has admitted in his cross examination that he has not even read the plaint averments. PW2 has also categorically admitted that various ceremonies that are followed by Smartha Brahmins are also followed by other Brahmins. The last rituals performed by Smartha Brahmins are also followed by other Brahmins. Hence, the oral evidence of PW1 and PW2 will clearly establish that Smartha Brahmins do not follow any distinct or a different religious beliefs other than that of the Hindus following the main stream Hindu Religion. Whatever that is said to be followed by Smartha Brahmins, according to the plaint averments and the deposition of PW1 and PW2 is said to be followed by other Brahmins also.

31.The Hon'ble Supreme Court in a judgment reported in **(1983) 1 SCC Page 51 (S.P.Mittal Vs. Union of India and others)** in Paragraph No. 80 has held as follows;

“80.The words “religious denomination” in Article 26 of the Constitution must take their colour from the word “religion” and if this be so, the expression “religious denomination” must also satisfy three conditions:

(1).It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;



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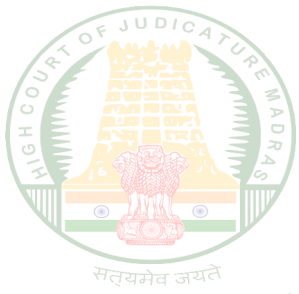
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(2) *common organisation; and*
(3) *designation by a distinctive name”*

32. In the present case, it has not been established by the plaintiffs that they are collection of individuals who have particular system of belief or doctrine. The plaintiffs have also not established that they have a common organisation. In fact, the plaintiffs have categorically admitted that whatever religious belief or ritual that are being followed by Smartha Brahmins are also followed by other Brahmins. That apart, even according to PW1 and PW2, all Iyers should be construed to be a Smartha Brahmins. Hence, the plaintiffs have not proved that they are having an independent designation or a distinctive name. In view of the judgment of the Hon'ble Supreme Court, this Court can safely arrive at a finding that Smartha Brahmins can never be construed to be a denomination.

33. Our High Court in a judgment reported in ***100 -LW-240(The Assistant Commissioner, Hindu Religious and Charitable Endowment, Salem and others Vs. Nattainai K.S.Ellappa Mudaliar and others)*** in Paragraph No.30 has held as follows:

“30.As seen from the decision of the Supreme Court, the words



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'religious denomination' must take their colour from the word "Religion". It is, therefore, clear that the common faith of the community should be based on religion. It is essential that they should have common religious tenets. The basis cord which connects them should be religion and not anything else...."

34.Our High Court in a judgement reported in **(1988) 2 MLJ 344(The Assistant Commissioner, The Hindu Religious and Charitable Endowments(Admn.) Dept, Vs. N.S.Swaminatha Iyer and others)** in Paragraph No.10 has held as follows:

"10.Let us now consider in the light of these decisions whether the Brahmin community of Naranammalpuram constitutes a religious denomination within the ambit of Article 26 of the Constitution. The second plaintiff has been examined as PW1 and he is the only witness for the plaintiffs. He avers that Sri Karpaga Vinayagar temple was founded by the ancestors of the Brahim community of Naranammalpuram and that the administration of the said temple has always vested with the Brahmin community. There is not even a whisper of an averment either in the plaint or in the evidence that the members of the Brahim community of Naranammalpuram have a common faith, i.e, a system of beliefs or doctrine peculiar to themselves other than those that are common to the Hindus in general



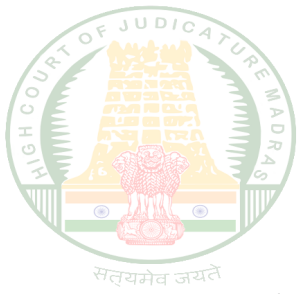
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or that they have common organisation or that they are designated by a distinctive name. None of the three tests laid down by the Supreme Court in S.P.Mittal's case: (1983) 1 SCR 729, referred to above are satisfied. It is, therefore, futile to claim that the members of the Brahmin community of Naranammalpuram constitute a 'religious denomination'. It follows that Sri Karpaga Vinayagar temple is not a denominational institution, even assuming without admitting, that the said temple has been founded, maintained and managed by the Brahmin community of Naranammalpuram”

35.A learned Single Judge of our High Court in a Judgment reported in **2017-1-LW-390 (The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department and others Vs. Hanumar Thirukoil and others)** in Paragraph No.18 has held as follows:

“18.From the reading of judgments above referred to, it is seen that in order to recognise a section of people as a religious denomination, it should be established that the collection of individuals under a particular name is recognised as a religious sect or body having a common faith and organisation and designated by a distinctive name. There must be a distinct common faith and the community as such must be a spiritual organisation. Only if a community has a distinct common faith or belief in a particular



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religious teaching or philosophy it can claim the status of religious denomination. Any organisation of individuals based on caste or community or residence who may have acceptance to the teachings of different spiritual leaders or different forms of worship cannot claim themselves to be a religious denomination. Only if a temple is established and administered by any such religious denomination the same can be recognised as a denominational temple”.

36. Our High Court in a judgment reported in **(1991) 1 LW 382 (State of Tamil Nadu represented by Secretary to Government, Education Department, Fort St. George, Madurai and another Vs. Vilampatti Nadar Uravinmuraikku Pathiyapatta A.V.M. Marimuthu Nadar Melnilaipalliyin Managing Committee, Vilampatti, represented by its Secretary and others)** in paragraph No.9 has held as follows:

“9. Let us now consider the question, in the light of the above decisions, whether the Hindu Nadar community of Vilampatti constitutes a religious denomination within the meaning of Art.26 of the Constitution of India. As seen from the decisions referred to above, the words 'religious denomination' must take their colour from the word 'religion'. In order to hold that the particular community constitutes a religious denomination within the meaning of Art.26 of the Constitution, it must be proved that the said community has a

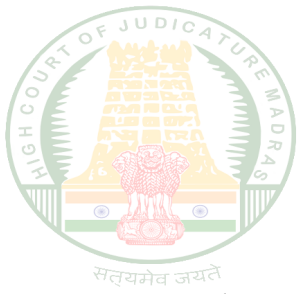


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system of beliefs or doctrines which the members of the community regard as conducive to their spiritual wellbeing. It is essential that the members of that community must have common religious tenets peculiar to themselves other than those which are common to the entire Hindu Community. In this case, there is absolutely no evidence on record either oral or documentary to prove that the members of Vilampatti Hindu Nadar community have a common faith, that is to say, a system of beliefs or doctrines or religious tenet peculiar to themselves other than those that are common to the Hindus in general.....”

37. In view of the above said judgments, it is clear that a common faith of community should be based on religion and it is essential that they should have common religious tenets which connects them and it should be religion and not anything else. In the present case, the plaintiffs have clearly failed to establish that they are having some common religious tenets peculiar to themselves other than those which are common to the entire Hindu community in general. Whatever religious ceremonies, philosophy or rituals stated to be followed by the plaintiffs are also followed by other Brahmins in the State of Tamil Nadu, even according to the deposition of PW1 and PW2. It is clear that the plaintiffs Smartha Brahmins community,



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do not have a system of belief or doctrine which is completely different and peculiar from the other Brahmins in the State of Tamil Nadu. Hence, the plaintiffs have utterly failed to establish that they constitute a denomination as a Smartha Brahmins in the State of Tamil Nadu.

38.The present suit has mainly filed only to wriggle out of the provisions of Tamil Nadu Recognised Private Schools Regulations Act 1973 by invoking the benefit under Article 26 of Constitution of India.

39.Article 26 of Constitution of India reads as follows:

“26. Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law”

40.The said Article has been interpreted by the Hon'ble Supreme Court in a judgment reported in *(1983) 1 SCC Page 51 (S.P.Mittal*



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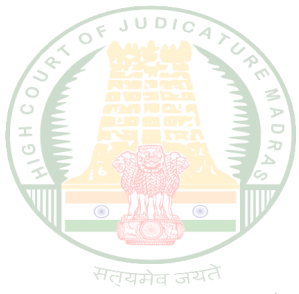
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Vs. Union of India and others) in Paragraph No.134 reads as follows:

“134. On an analysis of the aforesaid cases, it is evident that even assuming that the Society or Auroville was a religious denomination, clause (b) of Article 26 guarantees to a religious denomination a right to manage its own affairs in matters of religion. It will be seen that besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear therefore, that questions merely relating to a religious group or institution are not taken away the right of management in matters of religion of a religious denomination, if the Society or Auroville is a religious denomination at all, rather it has taken away the right of management of the property of Auroville”.

41.PW1 in his deposition has categorically admitted that the children belonging to all the communities are studying in the third plaintiff School.

PW2 in his chief examination has deposed that apart from regular



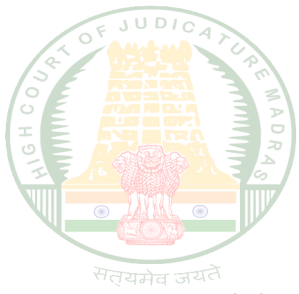
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curriculum of aided School, Advaitam Philosophy, Slogams are also taught to the students. Hence, it is clear that the School is run by the first plaintiff as an aided Institution based upon general curriculum of the State of Tamil Nadu.

42. In view of the judgment of the Hon'ble Supreme Court, as stated supra, it is clear that only the rights guaranteed under Article 26 (a) and (b) of Constitution of India are absolute in nature and free from any interference from the State. However, rights conferred under Article 26 (c) and (d) are placed under a lesser pedestal. Hence, the rights conferred under Article 26(c) and (d) of Constitution of India can very well be regulated by the State through the Statutory Rules and Regulations. In the present case, the plaintiffs not being constituting a denomination, are certainly not entitled to the benefit under Article 26 of the Constitution of India.

43. In view of the above said Supreme Court judgments, the plaintiffs community which does not constitute a denomination is not entitled to the benefit under Article 26 of Constitution of India. Even assuming that the



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plaintiffs community is a denomination, the benefit conferred under Article 26(c) and (d) of the Constitution of India can very well be regulated by the Statutory Provisions of the State.

44.In view of the above said discussion, it is clear that there is no common organisation whatsoever by name Smartha Brahmins or any other name. It is just a caste/community without any peculiarity specifically attributable to them which distinguishes them from other Brahmins of the State of Tamil Nadu. Hence, they cannot call themselves to be a religious denomination. Consequentially, they are not entitled to the benefits under Article 26 of Constitution of India. Both the substantial questions of law are answered as against the appellants. The judgment and decree of the trial Court and the First Appellate Court are confirmed. This second appeal is dismissed. No costs.

07.06.2022

Index : Yes / No
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To

- 1.The Subordinate Judge, Tuticorin

- 2.The Principal District Munsif, Tuticorin

- 3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgment made in
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