



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2023

PRONOUNCED ON : 21.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.310 of 2017

Kadambadi Innoothy Vagai Kongu
Chettiar Dharma Paribalana Sabai,
Represented by its President
S.N.Swaminathan,
Avinashi, Tiruppur.

(Cause title has been amended vide order of Court dated 28.04.2022
made in CMP.No.8037 of 2022 in S.A.No.310 of 2017 (SSSRJ)

...Appellant

Vs.

1.The District Collector,
Tiruppur.

2.The Revenue Authority and Additional Collector of Tiruppur, Tiruppur.

3.The Revenue Divisional Officer,
Tiruppur.

4.The Tahsildar,
Avinashi.

5.Sri Avinashilingeshwarar Temple
Represented by its Executive Officer,
Avinashi.

...Respondents



Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree of the Court of the Subordinate Judge, Avinashi, dated 11.01.2017 in A.S.No.1 of 2015 confirming the judgment and decree of the Court of the District Munsif, Avinashi, dated 27.04.2009 in O.S.No.311 of 2005.

For Appellant : Mr.Isaac Mohanlal
for M/s.P.Godson Swaminathan
For Respondents : Mrs.Hema Sampath
Senior Counsel
for M/s.R.Meenal for R5
Mr.C.Sathish
Government Advocate for R1 to R4

J U D G M E N T

The plaintiff in the suit is the appellant. The suit is for declaration of title and mandatory injunction seeking direction to the respondents to issue patta in the name of the appellant/plaintiff. The suit as well as First Appeal filed by the appellant herein have been dismissed. Hence the appellant is before this Court.

2. According to the appellant/plaintiff, suit property originally belonged to Chinnan Chettiar and family. In the year 1901, there was a registered partition between son of Chinnan Chettiar viz., Karuppan



Chettiar and his two sons Viswanathan Chettiar and Venkatachalam Chettiar. In the said partition, the suit property in S.F.No.93 was allotted to Viswanathan Chettiar under "B" schedule to partition deed. As per the recitals in the document an obligation was imposed on Viswanathan Chettiar to perform certain religious duties out of the income from the property. The said Viswanathan Chettiar in the year 1904 executed a release deed in favour of appellant/plaintiff in respect of suit property. The patta for the suit property was in the name of Viswanathan Chettiar and he addressed a letter to Tahsildar, Avinashi on 05.06.1928 requesting him to transfer patta in the name of appellant/plaintiff. Thus the revenue records namely patta had been in the name of appellant from 1928 to 1987. In the year 1987, Tahsildar of Avinashi issued patta for the suit property in the name of appellant Sabai represented by its President Venkatachala Chettiar. Thus the suit property had been in possession and enjoyment of the appellant for more than 100 years. Since the suit property could not fetch desired income, the appellant decided to construct a Kalyana Mandapam to generate income so as to look after the obligations imposed by 1901 document. In the year 1988 clandestinely the patta of the suit property was transferred in favour of 5th respondent temple. The appellant represented to



the 4th respondent to make necessary correction in the revenue records namely patta seeking removal of 5th respondent's name and for the inclusion of appellant name. The 4th respondent gave a finding in favour of appellant. Aggrieved by the same, the 5th respondent preferred an appeal before Revenue Divisional Officer, Tiruppur. The order passed by the 4th respondent was confirmed by Revenue Divisional Officer, the third respondent. Aggrieved by the same, the 5th respondent preferred a revision before the second respondent and the second respondent without proper appreciation of records set aside the orders of respondents 3 and 4. Aggrieved by the same, the appellant filed a Writ Petition before this Court and the same was dismissed. Hence, the appellant preferred a Writ Appeal and the same was disposed of by observing that the appellant was entitled to file a suit for declaration of title and consequential relief. Therefore, the appellant has filed the present suit seeking declaration of title and mandatory injunction as prayed for.

3. The second respondent filed a written statement and the same was adopted by other respondents wherein, it was averred by the



respondents that the suit property had been dedicated to the 5th respondent temple under partition deed dated 26.07.1901. The above said Viswanathan Chettiar was only given right to perform the religious services out of income from property. But contrary to the recitals in the partition deed, he released his right in the suit property in favour of certain individuals and Viswanathan Chettiar had no right to execute such a release deed. It was also averred that the property was not absolute property of the Viswanathan Chettiar to enable him to execute release deed. Thus it was contended in the written statement that the suit property was dedicated to the 5th respondent temple and the same has been the owner of the suit property from 1901 onwards.

4. The 5th respondent filed a separate additional written statement and contended that the suit property had been registered in the re-survey settlement register in the name of Viswanathan Chettiar and Venkatachala Chettiar and Arunachala Chettiar Trustees of 5th respondent temple. It was also contended that the suit property was dedicated to 5th respondent temple long prior to 1901 partition deed and the duty was



imposed on Viswanathan Chettiar to perform Poojas and Ceremonies as recited in partition deed. The said right of Viswanathan Chettiar alone was only released and hence the beneficiaries under release deed could not claim title and interest over the suit property. It was also specifically averred by the 5th respondent that Viswanathan Chettiar had no right or title to execute any release deed in favour of 3rd parties when the suit property was endowed and dedicated in favour of 5th respondent temple.

5. Before the trial Court, two witnesses were examined on the side of the appellant as PW.1 and PW.2 and thirty three documents were marked as Exs.A1 to A33. On the side of the respondents, two witnesses were examined as DW.1 and DW.2 and one document was marked as Ex.B1. Further four other documents were marked as Exs.X1 to X4.

6. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that there was a complete dedication of the suit property in favour of 5th respondent temple and therefore, the appellant/plaintiff could not claim any ownership



over the same. While upholding the title of the 5th respondent temple, the trial Court found that the appellant could continue his obligations of religious duties like supplying of flower and performance of Poojas as mentioned under Ex.A1. Thus, the trial Court, came to the conclusion that the appellant was not entitled to declaration of title and dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.1 of 2015 on the file of Subordinate Court, Avinashi. The First Appellate Court also concurred with the findings of the trial Court and dismissed the suit. Aggrieved by the same, the appellant is before this Court.

7. At the time of admission, this Court formulated the following substantial questions of law by order dated 26.04.2017:

(i) Whether the learned Sub Judge is right in interpreting Ex.A1 (Partition Deed) and Ex.A2 (Release Deed) with reference to the objects avowed?;

(ii) Whether the learned Sub Judge is right in arriving at the conclusion that the temple is the title holder



*of the schedule property in absence of any single document
produced by the temple lending support to the same?.*

8. Mr.Isaac Mohanlal, learned Senior counsel appearing for the appellant by taking this Court to the recitals found in Ex.A1 partition deed submitted that under the said document there was no complete dedication of the suit property in favour of 5th respondent temple and it created only obligation to perform certain religious services while allotting the suit property to the share of Viswanathan Chettiar. Therefore, the learned senior counsel contended that the suit property was allotted to the share of Viswanathan Chettiar and he could enjoy, alienate the same, as per his wish subject only to the burden or obligation created under the deed.

9. In nutshell, it is the submission of the learned senior counsel that under Exs.A1 and A2, there was no dedication of suit property in favour of 5th respondent temple and it only created obligation while allotting the suit property to Viswanathan Chettiar's share. Therefore, at the most, the suit property can only treated as the one burdened with an obligation. Therefore, the learned senior counsel submitted that the findings arrived at by the Courts below that there was total dedication of



the suit property in favour of the 5th respondent temple is vitiated by
misconstruction of Exs.A1 and A2.

10. In support of his contention, the learned senior counsel relied on the following judgments:

(i) ***Menakuru Dasaratharami Reddi and another Vs. Duddukudru Subbu Rao and others*** reported in ***AIR 1957 SCC 797***;

(ii) ***Sappani Mohamed Mohideen and another Vs. R. V. Sethusubramania Pillai and others*** reported in ***AIR 1974 SCC 740***;

(iii) ***Angamuthu vs K. Pugazhendi and 11 others*** reported in ***1999-1- L. W. 415***;

(iv) ***V. Kannadasan Petitioner in CRP No. 1360/2000, I.K. Swaminatha Pathar, 2.S.Ganesan, 3. S. Sankar in CRP No. 1361/2000, 1.A.Malik, 2.A. Kadar Hussein, 3. A. Moula Petitioner in CRP No.1362/2000 S. A. Jabbar Hussain Petitioner in CRP No. 1363/2000 Vs. Sirajunnisa Bivi*** reported in ***2007-4-L.W.435***;

11. Per contra, Mrs.Hema Sampath, learned Senior counsel appearing for the 5th respondent submitted that there was a total dedication of the suit property in favour of 5th respondent temple under Ex.A1 and the recitals found in said document cannot be construed as the one creating obligations to perform religious service without total



dedication. The learned counsel by taking this Court to the recitals found in Ex.A2 contended the word “*Pattayam*” used in Ex.A2 would mean deed of gift as per “The Law Lexicon” authored by P.Ramanatha Aiyar. The learned senior counsel further submitted that Ex.A1 only creates an obligation on the part of Viswanthan Chettiar to perform certain religious services like supply of flowers and performance of Poojas to Avinashi Eswarasamy, presiding deity of 5th respondent temple. Therefore, in nutshell, it is the submission of the learned senior counsel that recitals in Exs.A1 and A2 clearly established total dedication of the suit property in favour of 5th respondent temple and the same could not be construed as a mere charge or obligation without total dedication.

12. In support of her contention, the learned Senior Counsel relied on the following judgments:

(i) Menakuru Dasaratharami Reddi and another Vs. Duddukudru Subbu Rao and others reported in ***AIR 1957 SCC 797***;

(ii) Nirmala Bala Ghose vs Balai Chand Ghose reported in ***AIR 1965 SCC 1874***;



(iii) ***M. J. Thulasiraman Vs. Hindu Religious & Charitable Endowment Admn.*** Reported in (2019) 8 SCC 689;

(iv) ***Sri Renganathaswamy Vs. Ramanuja Koodam Anandhana Trust*** reported in (2020) 17 SCC 96.

13. The learned Government Advocate appearing for the respondents 1 to 4 also supported the submissions of learned Senior Counsel for 5th respondent.

14. Ex.A1 is a partition deed among Karuppan Chettiar and his sons viz., Viswanathan Chettiar and Venkatachalam Chettiar. The properties allotted to the share of Viswanathan Chettiar were described in “B” schedule. In the very same schedule the suit property is referred to as follows:

"அவினாசி கிராமத்தில் சர்க்கார் சர்வை 93 நெ.பு.ஏ.152க்கு தீர்வை 2.5.0 இதின் 5 மடங்கு தீர்வை ரூ.11.9.0 லைக் காலையில் உள்ள கிணர் 1ன் மதிப்பு ரூ.100 லைக் காலையானது மாழில்படி சுவாமிக்கு புஷ்ப செடி வைத்து பயிர் செய்யவும், அவினாசி ஈஸ்வர சுவாமிக்கு தேர் காலத்திலும், ஆருத்திரா



தரிசன காலத்திலும் அபிசேகம் செய்து வரும் பொருட்டும், அர்ச்சனை செய்து வரும் பொருட்டும் விடப்பட்டதால் 2 லக்கமிட்டவனாகிய நீ அதின் வரும்படியை கொண்டு நடத்தி வர வேண்டியது."

The Words “மாழிஸ்படி” (as usual) and “விடப்பட்டதால்” (dedicated) employed in said recital would imply the suit property was dedicated to Avinashi Eswarasamy which is the presiding deity of 5th respondent temple. The words “மாழிஸ்படி” and “விடப்பட்டதால்” also signify the past act of dedication. It only means the suit property in survey No.93 was already dedicated for Avinashi Eswarasamy and the second party in the partition deed namely Viswanathan Chettiar has to perform the religious obligations like rearing of flower yielding plants and performance of Abishekam during Aruthra Dharishanam, as usual, by utilizing the income from the property.

15. The guiding principles in deciding the dedication of property to charity was very well explained by Apex Court in ***Menakuru Dasaratharami Reddi and another Vs. Duddukudru Subbu Rao and others*** reported in ***AIR 1957 SCC 797***. The relevant observation in this regard reads as follows:



Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document

.....If the income of the property is substantially intended to be used for the purpose of the charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. (Emphasis supplied by this Court). If, on the other hand, for the maintenance of public charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purposes, it would be difficult to accept the theory of complete dedication.

16. In ***Nirmala Bala Ghose vs Balai Chand Ghose*** reported in ***AIR 1965 SCC 1874***, the Apex Court observed as follows:



“If the property is wholly dedicated to the worship of the idol and no beneficial interest is reserved to the settlor, his descendants or other persons, the dedication is complete: if by the deed what is intended to create is a charge in favour of the deity and the residue vests in the settlor, the dedication is partial.”

17. In the light of above settled principles let us examine the recitals found in Ex.A1 partition deed. The recitals in Ex.A1 would suggest the land in Survey No.93 was dedicated for rearing flower bearing plants and performing Abishekam to Avinashi Eswarasamy during car festival and Aruthura festival season as usual. The second party of the partition deed viz., Viswanathan Chettiar shall perform all these religious activities out of income from the property so dedicated. The word " விடப்பட்டதால் " denotes past dedication of property for performing certain religious activities. The word 'மாழைப்படி' also signifies those activities had been performed out of income from the property dedicated even before partition. Therefore, the parties to Ex.A1 by these words expressly acknowledge the land in suit survey number was already dedicated for performing certain religious activities. That is why the words " மாழைப்படி " and " விடப்பட்டதால் " had been used in the said recitals.



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18. It is also seen from the recitals the religious services shall be performed out of income from the property dedicated. It means the entire income from the property shall be used for religious services indicated. No portion of the profits from the property dedicated was reserved for benefit of second party who was appointed to perform the religious charity. Therefore, in the light of the law settled by the Apex Court in *Menakuru Dasaratharami Reddi and another Vs. Duddukudru Subbu Rao and others* reported in *AIR 1957 SCC 797* cited supra, we can safely come to the conclusion, in the case on hand that there was total dedication of the property to presiding deity of 5th respondent temple namely Avinashi Eswara Samy.

19. In Ex.A2 release deed executed by Viswanatha Chettiar in favour of appellant, it is stated as follows:

“அடியில் கண்ட சொத்தானது நம்முடைய ஜநாத்தான் செட்டி வம்சஸ்தர்கள் அனைவருக்கும் சேர்ந்தது அதை முன்னமே அவினாசி ஈஸ்வர சுவாமிக்கு புஷ்ப நந்தவனத்திற்காக விடப்பட்டு ஐடி அவினாசி ஈஸ்வரசுவாமி பேரில் பட்டயமாயிருக்கிற அடியில்கண்ட 200 ரூபாய் மொத்தம் பொருமான பூமியும், கிணறும் நான்வகைகளும் எழுதிக் கொண்ட பாக சாசனத்திற்கு



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சேர்ந்து அது என் பாகத்திற்கு பிரிந்து நான் அனுபவித்து வருவதால் னை
பூமியையும் கிணற்றையும் அவினாசி ஈஸ்வர சுவாமிக்கு நந்தவனத்திற்காக
நாளது தேதியில் உங்கள் பேருக்கு விடுதலை செய்து விட்டேன்.”

20. A reading of above recitals found in Ex.A2 release deed would suggest the suit property was already dedicated for Avinashi Eswara Samy for the purpose of “*Pushpananthavanam*” (Flower Garden of Temple). While referring to the suit property, the recitals in release deed reads “அவிநாசி ஈஸ்வர சாமி பெயரில் பட்டயமாய் இருக்கிற”. According to the Law Lexicon by P.Ramanatha Aiyar, the Tamil word “பட்டயம்” means a deed of gift either on paper or copper plate. Therefore, it signifies dedication of property in favour of Eswara Samy for the purpose of developing flower garden. Both the Courts below, on appreciation of these recitals in Exs.A1 and A2 rightly came to the conclusion that the suit property was dedicated to Presiding deity of 5th respondent temple and hence the title of the appellant/plaintiff could not be declared.

21. In *AIR 1957 SCC 797* cited supra, the Apex Court observed that whether there is a total dedication of the property in favour of



deity or not is a question of fact and the same has to be determined in the light of material terms used in the document. The Courts below on proper consideration of terms of Exs.A1 and A2 rightly came to the conclusion that there was a total dedication of the property in favour of 5th respondent temple. In such circumstances, both the questions of law framed at the time of admission are answered against the appellant and in favour of respondent. In view of the answer to both the questions of law, the second appeal is dismissed.

22. In nutshell:

(a) The second appeal is dismissed by confirming the judgment and decree passed by the Courts below;

(b) In the facts and circumstances of the case, there shall be no order as to costs; and

21.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No



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S.SOUNTHAR, J.

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To

1. The Subordinate Judge, Avinashi.
2. The District Munsif, Avinashi.

Pre-delivery order made in
S.A.No.310 of 2017