



S.A.(MD).No.456 of 2019

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2023

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.456 of 2019

and

C.M.P.(MD)No.9298 of 2019

Arulmigu Koppiliamman Temple,
through its President,
Tr.Kanaka Thevar,
Elumalai Village,
Peraiyur Taluk, Madurai District.

... Appellant

/Vs./

1.M.Ayyappan
2.M.Manikandan
3.M.Saraswathiammal
4.S.Subramani (Died)
5.S.Kalimuthu

6.Elumalai Town Panchayat,
represented by its Executive Officer,
Elumalai, Peraiyur Taluk,
Madurai District.

7.Balakrishnan
8.Senthil
9.Udhayakumar

10.Tahsildar,
Peraiyur Taluk, Peraiyur,
Madurai District.

...Respondents



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(Respondents 7 to 9 are brought on records as LR's of the deceased 4th respondent, vide Court order, dated 24.08.2022, made in CMP(MD)Nos.5303 to 5305 of 2022 in S.A.(MD)No.456 of 2019)

(R10 is suo motu impleaded by this Court vide this order, dated 29.11.2023)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 05.01.2019, passed in A.S.No.41 of 2017 on the file of the Sub Court, Thirumangalam, Madurai District, confirming the Judgment and Decree, dated 18.04.2016, passed in O.S.No.111 of 2013 on the file of the District Munsif Cum Judicial Magistrate, Peraiyur, Madurai District.

For Appellant : Mr.A.Rajaram
For R1 and 3 : Mr.K.Hema Karthikeyan
For R2, 5, 6 and 9 : No appearance
R4 : Died

JUDGMENT

The suit is filed by the temple claiming right over the disputed property.

2. The plaintiff is the appellant herein. For the sake of convenience, the ranking in suit as plaintiff and defendant is referred herein.

3. According to the plaintiff, the land belongs to temple. According



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to the defendants, the land is earmarked as poramboke. However, a portion of the temple's peedam is blocking the pathway. Therefore, the 5th defendant has issued a notice, dated 25.07.2006, to remove the encroachment. In spite of such notice, the plaintiff temple has not removed the encroachment. Therefore, the 5th defendant was taking steps to remove the encroachment on 23.12.2006. Aggrieved over the same, the temple has filed the suit.

4. The Trial Court had relied on “A register” and also referred to the Advocate Commissioner's report, thereafter had dismissed the suit. Aggrieved over the same, the plaintiff has preferred first appeal. The Appellate Court has confirmed the Judgment and Decree rendered by the Trial Court. Aggrieved over the same, the present second appeal is filed.

5. The second appeal is listed under the caption “Notice of Motion”.

6. By relying on the Advocate Commissioner's report, the Learned Counsel appearing for the appellant / plaintiff submitted that there is no clear identification of properties and the marking of four boundaries is



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missing. Therefore, it is necessary to survey the property and earmark the properties, road as well as other peedams belonging to the temple.

7. On perusing the exhibits, it is seen that the Trial Court has relied on the A register, Tahsildar's letter and the notice served by the revenue authorities. On perusing the Advocate Commissioner's sketch, it is seen that a portion of the peedam is blocking the way. Therefore, the claim of the defendants may be right, but without surveying the property and earmarking the temple's land and other peedams, it is incorrect to remove the encroachments. Moreover, even trespasser / encroachers are entitled to notice, hence the temple is entitled to notice.

8. The appropriate authority is Tahsildar but the Tahsildar is not a party in the suit, hence this Court is suo motu impleading the Tahsildar, Peraiyur Taluk, Peraiyur, Madurai District, as 10th defendant.

9. The Tahsildar is directed to survey the land in the presence of the temple authorities and other rival claimants and earmark the temple



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properties and road and also earmark the encroachment. Thereafter issue notice to the plaintiff temple to remove the encroachment by granting sufficient time. If the same is not removed within the stipulated time, the defendants are at liberty to remove the encroachments.

10. The Tahsildar shall survey the land within a period of four weeks from the date of receipt of a copy of this judgment. If there is any encroachment, the temple is directed to remove the same within a period of six months from the date of notice to remove the encroachment. The temple shall cooperate in the above process. With these directions, the judgment and decree are modified to that extent.

11. Hence, the second appeal is partly allowed. No costs. A copy of this judgment shall be marked to the Tahsildar for completing the directions stated supra.

29.11.2023

Index : Yes / No

NCC : Yes / No

Tmg



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1. Sub Court, Thirumangalam, Madurai District.
2. District Munsif Cum Judicial Magistrate,
Peraiyur, Madurai District.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
4. Tahsildar,
Peraiyur Taluk, Peraiyur,
Madurai District.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.456 of 2019

Dated:
29.11.2023