



WEB COPY



A.S.(MD)No.83 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.01.2023

PRONOUNCED ON : 07.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

A.S.(MD)No.83 of 2010

V.Avudaiammal @ Pappa

... Appellant/3rd Defendants

Vs

1. Sri Subramanya Swami Deity of
Sri Subramanya Swami Temple,
Tiruchendur,
Represented by its,
Executive Officer,
Tiruchendur.

...1st Respondent/Plaintiff

2.S.Easwaraiyer

...2nd Respondent/1st Defendant

3.S.Natarajaiyer

... 3rd Respondents/2nd Defendant

PRAYER: Appeal Suit filed under Section 96 read with Order 41 of Code of Civil Procedure, to set aside the judgment and decree passed by the Additional District Judge, Fast Track Court No.1, Thoothukudi in O.S.No. 102 of 2004, dated 08.02.2010.

For Appellant : Mr.S.Meenakshi Sundaram
Senior Advocate
For D.Saravanan
For R1 : Mr.K.Sekar
For R2 & R3 : Given up



A.S.(MD)No.83 of 2010

JUDGMENT

WEB COPY

The appeal is filed challenging the judgment and decree of the Trial Court in O.S.No.102 of 2004, dated 08.02.2010 decreeing the suit filed by the plaintiff for recovery of vacant possession of suit schedule property for the past and future mense profits.

2. The unsuccessful defendant is the appellant in the appeal. The brief facts necessary for the consideration of the appeal are as follows:

The Sri Subramaniaswami Deity of Sri Subramaniaswami Temple, Tiruchendur represented by its Executive Officer, Tiruchendur filed the suit, stating that the suit schedule property belongs to Sivagamiammal Kattalai attached to the plaintiff temple by virtue of a settlement deed, dated 20.09.1933 executed by Pitchammal, SM.K.Kumarasamy Chettiar and Sivagamiammal. The main object of the Kattalai was to perform pooja to Moolavar and Shunmugar Deity of the plaintiff temple during every Sasti Thidhi, Visaga Star and Kiruthihai Star. The other object of the Kattalai was to perform Archana with Coconut, Plantains and betel leaves when the procession of Utsavar deities passed the schedule house. Under the above said settlement deed, one Easwaraier, son of Muthaier was appointed as the trustee of the said endowment. The line of succession of the trustees vested



A.S.(MD)No.83 of 2010

with the legal heirs of the Easwaraier. The defendants 1 and 2 are the present descendants of the said Easwaraier. According to the plaintiff, the Kattalai was an absolute dedication for a specific service in the plaintiff's temple and hence, a specific endowment. While so, Easwaraier illegally settled the suit schedule property in favour of his wife, namely, Avudaiammal, his daughter, Ammani Ammal and grandsons, namely, defendants 1 and 2 by a registered settlement deed, dated 28.04.1948. After the life time of Avudaiammal, the defendants 1 and 2 released their right in favour of their mother Ammani Ammal by a registered release deed, dated 23.12.1968. The said Ammani Ammal thereafter sold the said property to the third defendant by a registered sale deed, dated 14.10.1974. According to the plaintiff, all the above said documents (i.e) settlement deed, release deed and sale deed were illegal and the settlor, releasor and seller respectively had no personal right to the property as the property was endowed to the plaintiff deity. Therefore, the plaintiff pleaded that all the transactions were null and void and they did not confer any right or title in favour of the third defendant. According to the plaintiff, the endowment in favour of the plaintiff was an absolute one and hence, the plaintiff had right of general superintendence over the property dedicated to it. The plaintiff therefore filed the suit for recovery of vacant possession of the suit schedule property from the third defendant with past and future mense profits.



WEB COPY

3. The third defendant contested the suit by filing a written statement and also an additional written statement. According to the third defendant, the property did not belong to Sivagami Ammal Kattalai attached to plaintiff's temple but it was the property of Ammani Ammal from whom the third defendant purchased the same by registered sale deed. The title of Ammani Ammal was traced to the settlement deed, dated 28.04.1948 and the relinquishment deed, dated 23.12.1968 executed by her two sons in her favour. According to the third defendant, at the time of his purchase, the building was in dilapidated condition and he had to spend huge amount to re-construct and ever since he is in enjoyment of the same. According to the third defendant, he came to know about the dedication deed only in October 2002, when the plaintiff sent notice to him. It was the third defendant's further case that the endowment was not an absolute dedication for specific service. According to the third defendant, several properties were given to the Kattalai with a direction to do Kaingariyam worth less than Rs.100/-, which would show that there was neither specific dedication nor absolute dedication. The third defendant further stated that the plaintiff had no right to file the suit for recovery of property or to collect past and future profits and that the suit was barred by limitation.



4. In the additional written statement, the third defendant submitted that the recitals in the settlement deed, dated 20.09.1933 showed that it was only a partial or private endowment and not a complete dedication. The third defendant's further case was that it was not a specific endowment but only a charge was created for performance of Archanai and Thirukans during Sami Ula in the street. The defendant's further case was that the suit was barred by Sections 108 and 109 of the Hindu Religious and Charitable Endowments Act and as such the Civil Court had no jurisdiction to entertain the suit. On these and other grounds, the third defendant prayed for dismissal of the suit.

5. The trial Court framed the following issues:

“8. Considering the pleadings the following issues are framed:-

(1) Whether the deceased Eswaraiyer was having any right over the suit property to settle the same in favour of his wife viz. Avudai ammal and his daughter viz. Ammaniammal and his grand sons D1 and D2.

(2) If so, whether the registered sale deed dated 14.10.1974 in favour of D3 by the mother of D1 and D2 is having any legal entity and any right have been transferred to D3 according to transfer of property Act.

(3) Whether the Plaintiff could get reliefs as prayed for from the D1 to D3.



WEB COPY

6. In the trial Court on the side of plaintiff, two witnesses were examined and Exhibit A.1 to A.9 were marked and on the side of the defendant, one witness was examined and Exhibit B.1 to B.5 were marked.

7. The trial Court on an appreciation of entire evidence on record decreed the suit in favour of the plaintiff. Aggrieved by the judgment and decree of the Trial Court, the third defendant has filed this appeal.

8. The learned counsel for the appellant/third defendant submitted that the suit was not maintainable as the Executive Officer did not have the sanction of the Commissioner to institute the suit. The learned counsel further submitted that the trial Court had failed to note that the endowment was not absolute and complete one but was only partial in nature and therefore, the alienation in favour of the third defendant could not be questioned by the respondent/plaintiff. The learned counsel therefore submitted that the appeal be allowed.

9. The learned counsel for the respondents submitted that the suit is very much maintainable as the suit is filed by the deity and as such, no sanction of the Commissioner is necessary. Even otherwise, the learned



A.S.(MD)No.83 of 2010

counsel submitted that the appointment letter of the Executive Officer gives power to the Executive Officer to institute the suit on behalf of the deity. The learned counsel further submitted that on a construction of the settlement deed, dated 20.09.1933, the conclusion is inevitable that there was total and complete dedication of the suit property and specific endowment was created in favour of the plaintiff. According to the learned counsel, when the dedication was complete there was no right in the trustees to deal with the property and therefore, all subsequent transactions like the settlement deed by Easwaraier, the release deed of defendants 1 and 2 and the sale deed in favour of the third defendant were all void documents.

10. Heard both the learned counsels and perused the records.

11. In the light of the submission of the learned counsels, the following points arise for consideration in this appeal:

1. Whether the suit filed by the deity through the Executive Officer is maintainable in the absence of sanction by the Commissioner, Hindu Religious and Charitable Endowments Department.

2. Whether the endowment created under the settlement deed, dated 20.09.1933 is complete endowment or partial endowment creating a mere charge over the property.



WEB COPY

3. Whether the sale deed in favour of the third defendant is valid and legal.

Discussion:

Point No.1:

12. The learned counsel for the appellant submitted that the suit ought to have been rejected by the Trial Court as the Executive Officer had no right to file a suit in the absence of sanction by the Commissioner, Hindu Religious and Charitable Endowments Department. It is pertinent to note here that such a specific plea was not raised in the pleading, but as it is a pure question of law, the appellant was permitted to raise the same.

13. I am fortified in my view by the judgment in the case of *State of Rajasthan Vs Rao Kalyan Singh* reported in *AIR 1971 SC 2018*, wherein, it was held that the plea of maintainability of a suit is essentially legal plea. If the suit, on the face of it, is not maintainable that no specific plea was taken or no precise issues were framed is of little consequence. Therefore, it is open to the parties to raise the plea of maintainability of the suit as it is a legal plea without there being a specific plea in the written statement or the issues.



14. At the time of hearing, the respondent was directed to produce the appointment order of the Executive Officer with the annexures, if any, to enable the Court to find out if sanction was obtained.

15. The Executive Officer produced the Commissioner's order along with annexures. The first of the orders is dated 08.01.1953 and the relevant Clause of the annexure is Clause 11. Clause 11 reads as follows:

“11. The Executive Officer shall be the person entitled to sue or be sued on behalf of the temple. It shall be the duty of the Executive Officer to see that all legal proceedings on behalf of or against the institution are instituted in one time and properly prosecuted and that such proceedings against the institution or properly defended.”

From a reading of the Clause, it is clear that the sanction of the Commissioner is not mandated.

16. Another order along with Annexure which was to come into effect from 16.07.1966 was also produced. The relevant Clause in the said annexure is Clause 9 and the same reads as under:

“Rule 9: The Executive Officer shall be the person entitled to sue or be sued on behalf of the Temple. It shall be the duty of the Executive Officer to see that all legal proceedings on behalf of or against the institution are instituted in due time and properly



A.S.(MD)No.83 of 2010

prosecuted and that all such proceedings against the institution are properly defended. He should act in accord with the resolutions of the Trustees and also obtain prior sanction of the competent authority.”

A reading of the said Clause reflects the powers and duty of the Executive Officer vis-a-vis legal proceedings. It is in this annexure that prior sanction of the competent authority is mandated.

17. The learned counsel for the appellant submitted that under Clause 11, the Executive Officer was required to get the sanction of the Commissioner for instituting the suit. In my view the same is not necessary because it is only when the Executive Officer acts in accordance with the resolution of the trustees that prior sanction from competent authority is necessary. Otherwise, it is the duty of the Executive Officer to see that all legal proceedings instituted on behalf of or against the institution are properly defended. When the trustees fail to act in the interest of the institution, it becomes the duty of the Executive Officer to do all acts necessary in the interest of the institution including filing of suits. In other words it is only when the trustees pass lawful resolutions in the interest of the institution that the Executive Officer is required to act in conformity with the resolution and get the sanction from the competent authority where, the trustees fail to



discharge their functions in furtherance to the interest of the institution it becomes the duty of the Executive Officer to see that legal proceedings are promptly and properly instituted and the interest of the institution is protected.

18. The latest G.O. dated 06.11.2015 in this regard would establish the paradigm shift in the delegation of the authority to the Executive Officer. The relevant Clause in G.O. is Clause 4 (iii) which is extracted hereunder:

“4.----

(a)----

(b)----

(iii) *Sue or be sued in the name of the religious institution in all legal proceedings with the approval of the competent authority:*

Provided that any legal proceedings pending immediately before the commencement of these Rules by or against the religious institution shall not be affected.”

19. The very fact that the legislature enacted a Proviso saying legal proceedings pending the commencement of the Rules shows that under the earlier Rules the mandate was not as categorical as it is at present.

20. I am therefore of the considered view that the sanction of the Commissioner to institute the suit was not mandatory under the Rules filed as annexure to the Executive Officer's appointment letter in the present case.

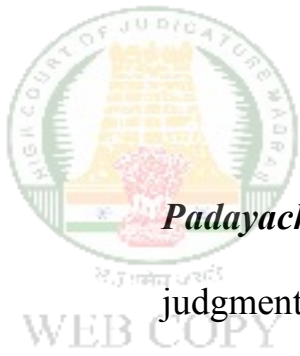
One other aspect I Would like to refer in this context is the duty of the Courts



in protecting the properties of the temple and the dieties. It is now well settled that the “deity” is a perpetual infant/minor and as custodian of the minor's interest the Court is bound to protect the same. In this context, the following observations of the Hon'ble Supreme Court in the case of **A.A. Gopalakrishnan vs Cochin Devaswom Board** reported in AIR 2007 SC 3162 is worth mentioning.

“10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/ Sebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.”

21. The learned counsel for the appellant heavily relied on the Division Bench judgment of this Court in the case of **Sri Arthanareeswarar of Tiruchengode represented by its Executive Officer Vs T.M.Muthusamy**



A.S.(MD)No.83 of 2010

Padayachi and others reported in ***2003-1-L.W.386***. I have perused the judgment and I find that in the said case, as a matter of fact it was found that the sanction of the Commissioner was not obtained. The instructions issued to the Executive Officer in that case did not authorise the Executive Officer to sue on behalf of the temple. I am therefore of the view that the said case is not applicable to the facts of the present case. Following the said Division Bench judgment, several judgments were passed and in the judgment reported in ***2018 (3) MWN (Civil) 45*** and ***2020 (1) LW 214*** relied on by the appellant's counsel, the same factual scenario existed in that, that the Executive Officer was not given permission to sue on behalf of the temple.

22. For all the foregoing reasons, I am of the considered view that the suit framed by the deity of Sri Subramaniya Swami of Sri Subramany Swami Temple, Trichendur is maintainable and the contentions to the contrary are rejected.

Point No.2:

23. It is to be seen from the recitals of the documents, whether the dedication under the settlement dated 20.09.1933 was complete dedication or a partial one. In this context, the judgment of the Hon'ble Supreme Court in the case of ***M.Dasaratharma Reddi Vs. D.Suuba Rao*** reported in ***AR 1957 SCC 797***, is referred to:



A.S.(MD)No.83 of 2010

The Hon'ble Supreme Court held that, "that would naturally be a question of fact to be determined in each case in the light of the material terms used in the document. In such cases, it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word 'trust' or 'trustee' is, no doubt, of some help in determining such intention; but, the mere use of such word cannot be treated as decisive of the matter. The answer to the questions whether the private title over the property was intentioned to be completely extinguished or whether the title in regard to the property was intended to be completely transferred to the charity can be found not by concentrating on the significance of the words 'trustee' or 'trust' alone, but by gathering the true intent of the document considered as a whole."

24. In the light of the judgment of the Hon'ble Supreme Court, the recitals in settlement deed, dated 20.09.1933 are examined to determine the true intention of the settlor. The relevant recitals in the said document are extracted hereunder:

□பிரதி சஸ்டி திதிகளிலும் கூடிய வரையில் செலவு செய்து நடத்தி வரவேண்டியது (d) இவ்விடமாயிருந்து அல்லது நாங்கள் எங்களது வாரிசு அனைவரது தரிசனத்திற்கு வருங்காலங்களில் மேற்படி அடியில் கண்ட வீட்டில் வந்திருந்து இவ்விடம் திரும்பி வருகின்ற பரியேந்தம் இடம் வசதி செய்து கொடுக்க வேண்டியதுடன் வரவு செலவு கணக்கு



A.S.(MD)No.83 of 2010

WEB COPY

கட்டாயம் கொடுக்க வேண்டியது. 2 மேற்படி செட்யூலில் கண்ட வீடு, மனை, கிணறு, மாந்தழை வகையறாக்களை தாங்களாவது தங்களுக்குப்பின புத்திர பெளத்திரர்களும் பரம்பரையாய் எந்நக் காலத்திலும் எவ்வித சுணங்களை செம்பியும் செப்பியும் எவ்வித கிரையங்களுக்கும் உட்படுத்த எவ்வித உரிமைகளும் கிடையாது. அதுபோல் எங்களுக்காவது எவ்வித பாத்தியமும் கிடையாது. 3 மேற்கண்டபடி தாங்கள் தங்களது புத்திர பெளத்திரர்களை பாரம்பரியங்களில் என்றாவது மேல் *a, b, c & d* சப் பாராக்களில் சொல்லியுள்ளவாறு நடந்து தவறும் பட்சத்தில் மேற்கண்ட திருச்செந்தூர் தேவஸ்தானத்தில் தர்மகர்த்தாக்கலாவது உடனே மேற்படி செட்யூலில் கண்ட வீடு மனை வகையறாக்களை சட்டப்படி ஒத்துக்கொண்டு இந்த பத்திரத்தில் *a, b, c & d* சப் பாராக்களில் கண்டவாறு பிரிதொரு குறைவில்லாமல் சூரியன் சந்திரன் உள்ள வரையில் நடத்திவர வேண்டியது. இதன்படிக்கு எங்கள் மூவரும் ஏகோபித்து எங்கள் மனப்பூர்வமாய் எழுதிக்கொடுத்த (ளுநவவடநஅநவெ) செட்டில்மெண்ட் பத்திரம்.□

25. From the reading of the recitals, it is clear that there is a complete divesting of the right in the suit property by the settlor and there is clear and un-equivocal manifestation of the intention to create a trust. Under the settlement deed if the Kaingariyans were not performed by the trustees, then dharmakath of Thiruchendur Devasthanam could immediately take over the schedule property and continue the Kaingariyam stated therein till the sun and moon are there. The document further recites that the settlor as well as



A.S.(MD)No.83 of 2010

the trustees and the legal heirs would have no right to alienate and also they have no right in the schedule property. These recitals are clearly pointers to the intention of the settlor to create specific endowment by completely effacing the secular character of the property in the hands of the trustees in favour of plaintiff.

26. I am therefore of the considered view that the dedication in favour of the plaintiff temple was a complete one and hence point No.2 is answered against the appellant.

Point No.3:

27. As I have found on Point No.2 that the dedication was complete, Easwarier and his descendants had no right to deal with the property and hence the settlement deed, dated 28.04.1948 the release deed, dated 23.12.1968 and the sale deed, dated 14.10.1974 in favour of the third defendant are void documents. Point No.3 is also answered against the appellant.

28. For all the above reasons, I find no merits in the appeal. Hence, the appeal is dismissed. There shall be no order as to costs.

07.02.2023



A.S.(MD)No.83 of 2010

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sn

To

- 1.The Additional District Judge,
Fast Track Court No.1, Thoothukudi.
- 2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



A.S.(MD)No.83 of 2010

N.MALA, J

sn

A.S.(MD).No.83 of 2010

07.02.2023