



S.A.No.83 of 2001

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.04.2023

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

S.A.No.83 of 2001

- 1.Vellayan alias Vellaichamy Gounder (died)
- 2.Poochammal
- 3.Muthulakshmi
- 4.Elumalai S/o Vellaichamy Gounder
- 5.Azhagumani
- 6.Minor Kumar

**(Appellants 2 to 6 are brought on record as
Legal Heirs of the deceased sole appellant
vide court order dated 20.02.2003
in C.M.P(MD)Nos.200 to 202 of 2003.)**

... Appellants

-VS-

- 1.Alaga Gounder (died)
- 2.Samikannu
- 3.Elumalai S/o Alagu Gounder
- 4.Dhanalakshmi

**(R2 to R4 are brought on record as Legal Heirs of
the deceased sole respondent vide
court order dated 12.11.2011 made in
MP(MD)Nos.1to 3/2008)**

..Respondents



S.A.No.83 of 2001

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree made in A.S.No.31 of 2000 dated 21.09.2000 on the file of the Additional District Judge, Pudukottai reversing the Judgment and Decree made in O.S.No.241 of 1995 dated 11.08.1999 on the file of the District Munsif, Keeranur.

For Appellants ... Mr.S.Balasubramanian

For Respondents ... Mr.V.K.Vijaya Raghavan

JUDGMENT

The appellant is the defendant and the respondent is the plaintiff in the suit. The respondent/plaintiff filed a suit against the appellant/defendant in O.S.No.241 of 1995 on the file of the District Munsif, Keeranur, for permanent injunction restraining the appellant/defendant from interfering with performing the pooja and not to disturb the respondent/plaintiff in performing the pooja. The said suit was dismissed. Against which, the respondent/plaintiff filed the appeal before the Additional District Court, Pudukottai in A.S.No.31 of 2000. The first appellate Court allowed the appeal suit by setting aside the Judgment and Decree passed by the trial Court and granted decree in favour of the respondent/plaintiff. Challenging the said Judgment and



S.A.No.83 of 2001

Decree passed by the first appellate Court, the appellant/defendant has filed the present second appeal before this Court raising the following substantial questions of law:-

“1.Whether the Decree and Judgment of the 1st appellate Court in reversing the Decree and Judgment of the trial Court is legally sustainable.

2.Whether the Judgment and Decree of the 1st appellate Court is legally sustainable in as much no document has been produced to show that the respondent was elected as “Nattanmai”.

3.Whether the Judgment and Decree of the 1st appellate Court in granting a Decree for injunction against the appellant when specifically the documents produced by the respondent speak only about the Pooja and not with respect to “Nattanmai”.

4.Whether the Judgment and Decree of the 1st appellate Court is legally sustainable in as much the respondent claims “Nattanmai” by selection when especially the right is conferred by Succession.”

2. However, this Court, considering the facts and circumstances of the case, while admitting the second appeal, has formulated the following substantial questions of law:-



S.A.No.83 of 2001

WEB COPY

“1. Whether the Judgment and Decree of the 1st appellate Court is legally sustainable in as much no document has been produced to show that the respondent was elected as “Nattanmai”.

2. Whether the Judgment and Decree of the 1st appellate Court is legally sustainable in as much the respondent claims “Nattanmai” by selection when especially the right is conferred by Succession.”

3. The case of the respondent/plaintiff is that Mariamman and Karuppar temples are family deity of the respondent/plaintiff and the appellant/defendant and their village people, which are situated at Thengathiniipatti Village, Kulathur Taluk, Pudukkottai District. Every year, during the festival, in order to perform the pooja, there are three karais among their families. Both the respondent/plaintiff and the appellant/defendant belong to the second karai. Each karai has got Nattanmai/Hereditary Trustee. The respondent/plaintiff is the Nattanmai/Hereditary Trustee of the second karai. He is managed and administered the suit temples on behalf of the said second karai. Presently, the respondent/plaintiff is managing the said temples as Nattanmai/Hereditary Trustee. Previously, the plaintiff's grandfather one Perchi Kavandar had acted as Nattanmai/Hereditary Trustee and



S.A.No.83 of 2001

WEB COPY

thereafter, the plaintiff's father Srirenga Kavandar had acted as Nattanmai/Hereditary Trustee. After the death of the said Srirenga Kavandar, the respondent/plaintiff is managing the Trustee. Since there was a difference of opinion arose between the said three karaidhars in respect of conduct of the temple festival, the matter was brought before the Diwan Peihkhar of Pudukkottai Palace and the same was referred to the Additional Chief Magistrate, Pudukkottai. The plaintiff's father Srirenga Kavandar had participated on behalf of the second karai as Nattanmai/Hereditary Trustee. The final conclusion was arrived that each karai would conduct yearly temple festival once in three years. The respondent/plaintiff was allowed to conduct the festival. When the respondent/plaintiff make arrangements to conduct the festival, the appellant/defendant interfered with the administration. Therefore, he filed the suit for injunction as against the appellant/defendant.

4. The case of the appellant/defendant is that admittedly, the Mariamman and Karuppar temples are the family deity of the respondent/plaintiff and the appellant/defendant and their village people. There was a dispute with regard to the conduct of the temple festival. Hence, they divided among them as three karais and each karai has to



S.A.No.83 of 2001

WEB COPY

perform the festival once in three years. The paternal uncle of the appellant/defendant, as Nattanmai/Hereditary Trustee, was administering the temple on behalf of the second karai. Neither the respondent/plaintiff nor his father were Nattanmai of the second karai. The name of the defendant's paternal uncle is Srirenga Gounder and the name of the plaintiff's father is also Srirenga Gounder. The paternal uncle of the appellant/defendant was performing the pooja and administering the festival on behalf of the second Karaidhars. At that time, the plaintiff's father assisted to the paternal uncle of the appellant/defendant. Since the paternal uncle of the appellant/defendant died, taking advantage of the similarity in the name, the plaintiff's father had administered the temple festival for the second karai. Hence, the respondent/plaintiff had never been acted as a Nattanmai on behalf of the second karai. The respondent/plaintiff is only entitled to worship the Gods and he has no authority to lead the second karai. Hence, the appellant/defendant denied the right and capacity of the respondent/plaintiff as Nattanmai of the second karai.

5. The trial Court, considering the pleadings, framed the issues.

During the trial, on the side of the respondent/plaintiff, six witnesses



S.A.No.83 of 2001

WEB COPY

were examined as P.W.1 to P.W.6 and nine documents were marked as Ex.A1 to Ex.A9. On the side of the appellant/defendant, four witnesses were examined as D.W.1 to D.W.4 and no document was marked. Besides, one witness document was marked as Ex.X1. After trial, the trial Court found that the respondent/plaintiff had not proved the case and hence, dismissed the suit. As against which, the respondent/plaintiff filed the appeal before the first appellate Court. The first appellate Court allowed the said appeal. Hence, the present second appeal is filed by the defendant.

6. The learned counsel for the appellant/defendant would submit that the families of both the parties have got a family deity (குலதெய்வம்), namely, Mariamman and Karuppar Swamy. Every year, they used to conduct the festival. In the said temples, there are three karais. The appellant/defendant and the respondent/plaintiff are belonging to the second karai. The appellant/defendant's paternal uncle Srirenga Gounder had conducted the festival and administered the festival for and on behalf of the second karai. Since the Srirenga Gounder died issueless, the appellant/defendant's father Sevakkavandar, as Nattanmai, was conducting festival. After his demise, his son, viz., the



S.A.No.83 of 2001

WEB COPY

appellant/defendant is conducting festival and pooja. Taking advantage of the similarity of the name, the respondent/plaintiff's father had acted as a Nattanmai and administered the festival of the temple for the second karai. Hence, the respondent/plaintiff never acted as a Nattanmai on behalf of the second karai. The respondent/plaintiff is entitled to worship the Gods and he has no authority to lead the second karai. Hence, the appellant/defendant denied the right and capacity of the respondent/plaintiff as Nattanmai of the second karai. The respondent/plaintiff filed the suit only for bare injunction. Since the appellant/defendant denied the respondent/plaintiff's capacity as Nattanmai/Hereditary Trustee, the respondent/plaintiff ought to have amended the plaint, but he has not amended the plaint. Once the capacity of the respondent/plaintiff as Nattanmai/Hereditary Trustee was disputed, without seeking the relief of declaration, the suit for bare injunction, is not maintainable. The trial Court rightly appreciated and dismissed the suit. However, the first appellate Court failed to consider the evidence and legal position and erroneously allowed the appeal. Hence, the defendant is before this Court.



S.A.No.83 of 2001

WEB COPY

7. The learned counsel for the respondent/plaintiff would submit that originally, the grandfather of the respondent/plaintiff was appointed as Nattanmai/Hereditary Trustee. After his demise, his father was appointed as Nattanmai/Hereditary Trustee. After the demise of his father, the respondent/plaintiff, as Nattanmai/Hereditary Trustee, is performing the pooja and administering the temple festival for and on behalf of the second karai. Admittedly, Mariamman Karuppar Temples are the family deities of the families of the plaintiff and the defendant and they are Pangaligals. Since there was a dispute regarding performing the festival among them, they divided into three karais. The respondent/plaintiff and the appellant/defendant are belonging to the second karai. The settlement orders were passed in the year 1933 (Exs.A1 to A3), in which, the appellant/defendant has also signed and he accepted the capacity of the respondent/plaintiff as Nattanmai/Hereditary Trustee for the second karai. Ex.A5 is a Muchaliga and D.W.3 has signed the said Muchaliga and the same was accepted during the cross examination. The appellant/defendant's father Sevakkavandar has also signed in the said Muchaliga. In Ex.A5 Muchaliga, the respondent/plaintiff was referred as 'Nattanmai' for the second karai. Ex.A6 was a letter written by the respondent/ plaintiff to the Inspector,

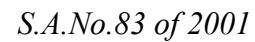


S.A.No.83 of 2001

WEB COPY

Hindu Religious and Endowment Department, Pudukkottai regarding non-attending of the temples by Poojari. In Ex.A6, the appellant/defendant has also signed. In all those documents, the respondent/plaintiff was referred as Nattanmai. Though the Pooja was performing through the Poojari, the administration of the temple was conducted by Nattanmai of the each karai and each karai is entitled to perform the festival once in three years. As such, the respondent/plaintiff was leading the second karai as Nattanmai. Therefore, the families of the respondent/plaintiff are entitled to conduct the festival as a Nattanmai.

8. The learned counsel for the respondent/plaintiff would further submit that in the family functions of the said village, the people used to print the invitation by referring the name of the Nattanmai. In the invitations, the respondent/plaintiff's name was referred as Nattanmai, in short, they used to mention on the prefix to the name “நா”. “நா” for “நாட்டாண்மை”. P.W.2 to P.W.6 have categorically stated that the respondent/plaintiff was Nattanmai/Hereditary Trustee for the second karai for performing the festival. The appellant/defendant, claims to be as Nattanmai, tried to disturb the functions of the respondent/plaintiff



11. According to the respondent/plaintiff, his forefather, thereafter, his father and now, the respondent/plaintiff are the Nattanmai/Hereditary



S.A.No.83 of 2001

WEB COPY

Trustee of the second karai and they were conducting festival by administering the temple for the second karai. All the ornaments of the temple was with the respondent/plaintiff. The appellant/defendant is not Nattanmai/ Hereditary Trustee of the second karai and without any right, he intercepted with the administration of the respondent/plaintiff for conducting the festival during the turn of the second karai. Therefore, he filed the suit.

12. According to the appellant/defendant, the respondent/plaintiff never acted as Nattanmai or Hereditary Trustee for the second karai and his father or the forefather also never acted as Nattanmai or the Hereditary Trustee. The appellant/defendant's paternal uncle was the Nattanmai/Hereditary Trustee and he died issueless.

13. The respondent/plaintiff has referred to certain documents. In those documents, the respondent/plaintiff was referred as Nattanmai and in the Muchalikka minutes book, the appellant/defendant has also signed. Therefore, he admitted that the respondent/plaintiff is a Nattanmai/Hereditary Trustee for the second karai. Even in the plaint, the respondent/plaintiff sought for bare injunction restraining the



S.A.No.83 of 2001

WEB COPY

appellant/defendant not to interfere with his administration, whereas, the appellant/defendant orally denied the capacity of the respondent. If that being the case, the respondent/plaintiff should have amended the plaint for declaration declaring him as Nattanmai/Hereditary Trustee and for having the right to perform the festival. Despite the denial of his capacity in the written statement and also during the evidence, the respondent/plaintiff continued the suit only for bare injunction. Therefore, once the right of the subject matter of the suit was stoutly denied that the respondent/plaintiff is not a Nattanmai/Hereditary Trustee, the respondent/plaintiff ought to have amended the plaint for declaration, but he has not done so and he has continued the suit filed for declaration. However, the respondent/plaintiff has stated that his forefather and his father and he continued as Hereditary Trustees and in Ex.A6 series, his name was referred to as Nattanmai and pre-fixlly, the letter “நா” has been indicated. That “நா” indicates only Nattanmai. Ex.A6 series only referred the name of the respondent/plaintiff alone and he has not produced any document during life time of his father as Nattanmai before that his grandfather was acting as Nattanmai. Therefore, when he claimed as a Hereditary Trustee even in the year 1973, the temple was there and they are the Karaidhars and they are



S.A.No.83 of 2001

WEB COPY

performing the Pooja. Though the respondent/plaintiff's forefather and father and he have been appointed as Nattanmai/Hereditary Trustee for the second karai, the documents produced by the respondent/plaintiff are totally denied by the defendant/appellant and those documents are not sufficient to prove the same.

14. Especially when the right of the respondent/plaintiff as Nattanmai/Hereditary Trustee was denied by the appellant/defendant even in the written statement itself, the respondent/plaintiff has not amended the plaint and the documents produced by the respondent/plaintiff are not sufficient to show that he was the Hereditary Trustee/Nattanmai and no evidence to show that his father and his forefather were Nattanmai for the second karai. Therefore, it is the bounden duty of the respondent/plaintiff to prove his case on his own strength and he cannot take advantage of the loophole left by the appellant/defendant. When the right and capacity of the Nattanmai itself was denied by the defendant, the respondent/plaintiff ought to have amended the plaint and should have proved that he was Hereditary Trustee and member of his family only acting as a Nattanmai/Hereditary Trustee for the second karai, but he had not done so.



S.A.No.83 of 2001

WEB COPY

15. Under such circumstances, this Court finds that the respondent/plaintiff has not proved his case. The trial Court has rightly dismissed the suit and the appellate Court has erroneously allowed the appeal. Therefore, the Judgment and Decree passed by the first appellant Court is set aside and the Judgment and decree passed by the trial Court is confirmed. All the substantial questions of law are answered accordingly in favour of the appellant/defendant.

16. In the result, this Second Appeal is **allowed**. No costs.

12.04.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes
skn

To:

- 1.The Additional District Judge, Pudukottai.
- 2.The District Munsif, Keeranur.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.No.83 of 2001

P.VELMURUGAN, J.

skn

S.A.No.83 of 2001

12.04.2023