



S.A.No.828 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE **G.ARUL MURUGAN**

S.A.No.828 of 2010

1.Kaliammal
2.Anbalagan
3.Ganesah

... Appellants

vs.

Ramalingam

...Respondent

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 29.03.2007 in A.S.No.13 of 2007 passed by the learned Principal Subordinate Judge, Salem, confirming the judgment and decree dated 25.07.2006 in O.S.No.526 of 2002 passed by the II Additional District Munsif, Salem.

For appellants	: Mr.P.Jagadeesan
For respondent	: No appearance

J U D G M E N T

The unsuccessful plaintiffs are before this Court in this Second Appeal.



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2. This Appeal has been filed against the judgment and decree dated 29.03.2007 in A.S.No.13 of 2007 on the file of the Principle Subordinate Judge, Salem, confirming the judgment and decree dated 25.07.2006 in O.S.No.526 of 2002 on the file of the II Additional District Munsif Court, Salem.

3. For the sake of convenience, the parties are referred to as per the ranking as before the Trial Court.

The brief facts, which gave rise to the present Second Appeal, are as follows:

4. According to the plaintiffs, they are the permanent residents of Agathiar Street of Annadanapatty, Salem and there is a Perumal Samy Temple. The Perumal Samy diety was installed in the said temple in the suit property by one Dasan, a devotee in and around 1970 and he was performing poojas till his death.

5. Further, according to the plaintiffs, the residents offered pooja on every day on and all auspicious days. There is a Vel and



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Nagasurpam in the temple and the temple is surrounded by a compound wall around the Perumal Samy deity to the height of 3 feet is installed under a peepal tree and that the plaintiffs are the devotees of the Perumal Samy temple. The plaintiffs, as residents, had been performing pooja and now, one Pandiyan is performing pooja and the suit temple belonged to Agathiar Street.

6. The defendant, who is also a resident of Agathiar Street, is also having a right to worship in the temple. But, due to the enmity, the defendant prevented the plaintiff from performing pooja in the temple. The defendant and his followers, on 10.04.2002, forcibly attempted to obstruct the temple from performing pooja and therefore, they have come up with the suit for permanent injunction.

7. The defendant resisted the suit by filing a written statement disputing that there was a Perumal Samy temple in the suit property and poojas were performed. According to the defendant, there was a litigation in between the defendant's father and the plaintiff's father, which resulted



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in filing of suit in O.S.No.611 of 1991 against the plaintiff and his ancestors. The Trial Court was decreed the suit on 27.08.1996, declaring the title of the suit property in favour of the defendant's father. Aggrieved by the same, the plaintiff's father had filed A.S.No.49 of 1997. However, the appeal was also dismissed on 19.06.2000. Now, in respect of the same issue that has attained finality, the plaintiff has come up with the this suit by taking false allegations and as such, sought for dismissal of the suit.

Documents and evidence:

8. During trial, on the side of the plaintiffs, the first plaintiff examined herself as P.W.1 and one Pandian as P.W.2 and marked Exs.A1 to A32. On the side of the defendants, the defendant examined himself as D.W.1 and marked Exs.B1 to B4.

9. In the suit, an Advocate Commissioner was appointed and the report and plan filed by the Advocate Commissioner were marked as Exs.C1 and C2, respectively.



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Findings of the Courts below:

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10. After analysing the evidence and documents, the Trial Court, by judgment and decree dated 25.07.2006, dismissed the suit. The Trial Court, found that in respect of the suit property, already, after trial, the decree has been passed, declaring the title of the defendant's father in the earlier suit and confirmed in the appeal. After considering the Advocate Commissioner's report, the Trial Court found that there was actually no such deity and there was no compound wall also.

11. Aggrieved by the same, the plaintiffs filed an appeal in A.S.No.13 of 2007 on the file of the Principal Subordinate Court, Salem. The Lower Appellate Court, after re-appraising the evidence, dismissed the appeal.

12. Challenging the concurrent finding of fact, the plaintiffs are before this Court in this Second Appeal.

13. This Court, by order dated 30.07.2010, ordered only notice regarding admission.

Submission on both sides:



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14. The learned counsel appearing for the plaintiffs/appellants argued that the suit property belonged to the residents of Agathiar Street and the Perumal Samy deity has been installed, there upon and all the residents in Agathiar Street were performing poojas all along. Even the defendant, as a resident of Agathiar Street, has a right to worship the deity. However, since the defendant prevented the plaintiff from performing poojas, the same resulted in filing of the suit.

15. The learned counsel further contended that the plaintiffs, by filing the documents in Exs.A1 to A32, have established their right over the Perumal Samy temple in the suit property and also the poojas were carried on by the residents in Agathiar street. The Courts below have not considered the documents filed in proper perspective and therefore, finding of fact arrived at by the Courts below are perverse and sought for allowing this Second Appeal.

16. Despite the name of the respondent having been printed in the cause list, no one has entered appearance and there is no



17. Heard the learned counsel for the appellants and perused the materials available on record.

Analysis of the submissions:

18. It is the claim of the plaintiffs that there is a deity installed in the temple in the suit property and a compound wall has been built and that all the residents of Agathiar street have been worshipping and performing the pooja for the Perumal Samy deity. The plaintiffs claim that all the residents were performing poojas without any disturbance and only when the defendant, along with his men, attempted to prevent the plaintiffs from performing the poojas, the plaintiffs were constrained to file the suit.

19. From the perusal of the records, it is seen that an Advocate Commissioner was appointed in the suit and he had filed a report along with plain in Exs.C1 and C2. From the Advocate Commissioner's report, it could be seen that actually there is no such Perumal Samy deity



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installed and also there is no compound wall found in the suit property.

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20. When there is no compound wall and further, when there is no deity installed in the suit property as claimed by the plaintiffs, their claim that the residents of Agathiar street were performing poojas and worshipping the deity, cannot be accepted and it also cannot be actually correct.

21. Further, it is seen that since there was a dispute, the defendant's father had earlier filed the suit as against the plaintiff's father and others in O.S.No.611 of 1991. After trial, by judgment and decree dated 27.08.1996, the title of the defendant was declared in respect of the suit property, as against which, the plaintiffs' father had filed an appeal in A.S.No.49 of 1997 and the appeal was also dismissed on 19.06.2000 by confirming the decree declaring the title in favour of the defendant. The judgment and decree passed by the Trial Court and the Lower Appellate Court in the said suit, have been filed as Exs.B2 and B3, respectively. When already a dispute in respect of the suit property was trial before the Courts and after trial, the Courts have decreed the title of the defendant in respect of the suit property, that too, as against the plaintiffs' father



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and others, the present suit filed by the plaintiffs for bare injunction that they have the right to worship the temple which is in the suit property, is not legally sustainable.

22. In fact, a complaint had also been lodged by Raman, who is the father of P.W.2 in Ex.A18 as against the defendant alleging dispute in respect of Perumal Samy deity. The complaint had been closed, after on the settlement of the parties that they will abide by the judgment and decree in the civil suit, which was pending at that time. Later, the civil proceedings had attained finality and the title of the defendant's father was declared in respect of the suit property in Exs.B2 and B3.

23. Even the documents filed by the plaintiffs in Exs.A1 to A7 and A11 to A14, as rightly observed by the Lower Appellate Court, which are all the pamphlets inviting public for conducting the festival in the alleged Perumal Samy temple and the documents filed in Exs.A11 to A14 are all subsequent to the previous suit, which had been rightly rejected.



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24. Even in respect of the documents filed in Exs.A16 and 17, it was found that notices were issued for the purpose of removing the construction in Door Nos.84, 84A, which are not related to the suit property. Exs.A19 to A23 are the letters, based on which, it cannot be established that the plaintiffs are performing poojas in the suit property.

25. Further, the Deputy Inspector of Land Survey and Tahsildar had issued patta in Ex.B4 in favour of the defendant for the suit property. From the documents filed by the defendant *viz.*, the decree passed in the earlier proceedings in Exs.B2 and B3 and the patta in Ex.B4, the defendant has established his title and possession of the suit property. The Courts below have rightly come to a conclusion that when from the Advocate Commissioner's report, it was found that there is no such Perumal Samy deity or the compound wall and also the title of the suit property had been declared in favour of the defendant, the plaintiffs cannot maintain the suit for bare injunction as against the true owner of the suit property.



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26. The finding of fact arrived at by the Courts below are based on materials available on record. There is no illegality and perversity and need not any interference. This Court does not find any substantial question of law for the consideration of this Court in this Second Appeal.

27. In the result, this Second Appeal is dismissed. There shall be no order as to costs.

08.03.2024.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The Principal Subordinate Judge, Salem.
2. The II Additional District Munsif, Salem.
3. The Section Officer, V.R.Section, High Court, Madras.

G.ARUL MURUGAN,J



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