



S.A.No.826 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

**S.A.No.826 of 2021**  
**and CMP No. 15975 of 2021**

|                                                  |                                                    |
|--------------------------------------------------|----------------------------------------------------|
| <b>Judgment reserved on</b><br><b>15.04.2024</b> | <b>Judgment pronounced on</b><br><b>09.07.2024</b> |
|--------------------------------------------------|----------------------------------------------------|

Ramasamy (decd)

1.Venkatachalam

2.Pasupathi

...

Appellants

Vs.

Arulmighu Padayachi Mariamman Koil

Pudupalayam, Gobi

Rep.by its Managing Trustee and

Administrator Subramaniam

(subject to objection by the Appellants)

Manimekalai Street,

Gobi Town & Taluk,

Erode District

...

Respondent

**Prayer:** This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 16.10.2019 passed in A.S.No.7 of 2017 before the Sub Court, Gobichettipalayam reversing the judgment and decree dated 04.02.2017 passed in O.S.No.83 of 2011 on the file of District Munsif Court, Gobichettipalayam.



S.A.No.826 of 2021

For Appellants : Mr.V.Manohar for  
Mr.P.Rajavel

For Respondent : Mr.N.Kathiresan for  
Mr.P.R.Balasubramanian

### **JUDGMENT**

Parties are referred to as per their ranking before the Trial Court, for the sake of convenience.

2. The defeated defendants are the appellants herein. The respondent/ plaintiff Arulmighu Padayatchi Mariamman Koil, Pudupalayam, Gobichettipalayam represented by its Managing Trustee and Administrator Mr.Subramaniam has instituted a suit (in short hereinafter referred to as Temple Trustee) in O.S.No.83 of 2011 before the District Munsif Court, Gobichettipalayam for an injunction restraining the defendants/appellants from interfering with the usage of the pathway and also to bring the pooja sacred wooden pol (used for amman temple during the festival time) to carryout the pooja and to dip the same in the common well of the plaintiff temple and also for a mandatory injunction to remove the new stone erected by the defendants in the pathway except the place already declared as pavadi (area where the soaked dying textile fibre are dried).



S.A.No.826 of 2021

WEB COPY 3. Defendants filed written statement. Original defendant Ramasamy died and his son and Pasupathi was brought on records as his legal heir. In the written statement, it is inter alia contended that the plaintiff has no capacity to file a suit as a representative, on behalf of a particular community, namely Vanniyakula Shatriyar community and the temple is under the control of Tamil Nadu Hindu Religious and Charitable Endowments Board and as proclaimed, Subramaniam, Plaintiff is never Managing Trustee and Administrator of the temple and the suit is bad for non-joinder of necessary parties. The road mentioned therein is not a common passage road and the well is exclusively meant for pavadi belonging to a community namely Sengunthanar community meant for drying weaving works by the Sengunthanar for more number of years and relied upon the judgment and decree in O.S.No.11 of 2023 dated 29.10.2010 marked as Exs.B18 and B19. Ex.B17 is the Commissioner's report filed in the said suit in O.S.No.11 of 2003 referred to by the defendants.



S.A.No.826 of 2021

WEB COPY

4. On the above pleadings, the Trial Court framed the following issues

(i) Whether the plaintiff is entitled for permanent injunction ?

(ii) Whether the plaintiff is entitled for mandatory injunction ?

(iii) Whether the plaintiff is entitled for any other relief ?

5. On the side of the plaintiff, the Temple Trustee examined himself as PW1 and one Viswanathan was examined as PW2. Exs.A1 to A19 were marked. On the side of the defendants, the first defendant Ramasamy (now deceased) examined himself as RW1 and Exs.B1 to B22 were marked.

6. Based upon oral and documentary evidence, the Trial Court has come to the conclusion that the plaintiff is not entitled for the permanent injunction and the mandatory injunction as well and accordingly dismissed the suit.

7. Aggrieved against the said order of dismissal, the defeated plaintiff has filed A.S.No.7 of 2017 before Sub Court, Gobichettipalayam. On re-



S.A.No.826 of 2021

appreciation of the facts, the Lower Appellate Court has formulated necessary points for consideration, namely on the same lines as that of the Trial Court and come to the conclusion that the suit filed by the plaintiff is maintainable., In view of the decision in the earlier suit in O.S.No.138 of 1980 dated 17.12.1987, it has held that “suit well” is a “public well” and the “temple” is a “denominational institution” under the Tamil Nadu HR & CE Act with the Board of Trustees and also based upon Exs.B14 to B19, come to the conclusion that the plaintiff is entitled for the relief and accordingly decreed the suit by allowing the appeal and granted the relief. Hence, the defeated defendants has preferred the present appeal.

8. At the time of admission, the following substantial questions of law were framed.

(i) Whether the Suit filed by the Plaintiff in his capacity as President/Administrator of the Trust viz.,Arulmighu Padayachi Mariamman Koil on behalf of the Vanniyar community people, without seeking permission to file a representative suit under Order 1 Rule 8 is maintainable?

(ii) Whether the reversal of the finding of the trial Court



S.A.No.826 of 2021

that the Suit is not maintainable without proving the locus standi of the Plaintiff to file the Suit, by the first appellate Court is not supported by evidence and on wrong appreciation of evidence?

(iii) When it was found that the Defendants are entitled for Pavadi as per the judgment and decree passed in O.S.No.7 of 2003, the finding of the learned Appellate Judge that the Defendants are restraining the Plaintiff from using the pathway other than Pavadi for reaching the Plaintiff's temple is perverse and contrary to the evidence available?

9. Heard the learned counsel appearing for the appellants/defendants as well as the respondent/plaintiff and perused the materials available on record.

10. The plaintiff filed suit for permanent injunction and for mandatory injunction against the defendants. The Trial Court dismissed the suit and the appeal filed by the plaintiff was allowed and decreed by the Lower Appellate Court. The plaintiff examined himself as PW1 and marked judgment and decree in O.S.No.38 of 1980 dated 11.12.1981 as Exs.A1 & A2. On a



S.A.No.826 of 2021

perusal of the said judgment, it goes to show that in the said suit, the suit temple is declared as a Religious Denominational Institution belonging to Vaniyakula Shatriyar community of Manimegalai Street of Gobichettipalayam. As per Ex.A2, it goes to show that the decree was granted in favour of the plaintiff temple holding that the temple is a Religious Denominational Institution belonging to a particular community as stated supra.

11(a) It remains to be stated that the plaintiff by name Subramaniam has filed the suit in the capacity of Chairman of the Board of Trustees and Administrator. (அறங்காவலர் குழு தலைவர் மற்றும் நிர்வாகி). It was questioned by the learned counsel for the appellants/defendants that when the suit was filed by the respondent/plaintiff, a wrong claim has been made and that the temple is only under the control to HR & CE department.

11(b) In view of the judgment in O.S No.138 of 1980 namely Exs.A1 & A2, I have no hesitation to negate the contention of the learned counsel for the appellant and further hold that the 'suit temple' is a Religious



S.A.No.826 of 2021

Denomination Institution and the same belongs to Vanniyakula Shatriyar of Manimegalai Street of Gobichettipalayam.

**Substantial question of law No.(i)**

12(a) The next point for consideration is whether the plaintiff has capacity to institute a case. Admittedly, he belong to the said manimegalai street. The suit temple was already declared by the competent court to be Religious Denomination Institution of Vanniyakula Shatriyar community people in the Manimegalai street.

12(b) It remains to be stated that in the S.A.No.71 of 2008 dated 04.11.2016 reported in **2017 (1) MLJ 495** , this Court has held as follows -

*13. Even otherwise, it is well settled principle of law that idol is a juristic person and it has to act through human agencies. Therefore, in the interest of Idol, even worshipper. can sue and protect the rights and interest of the idol. While so, there is no reason to question the maintainability of the*



WEB COPY



S.A.No.826 of 2021

*suit on the ground that Bava Chockkappa Mudaliar was not declared as the hereditary Trustee of the plaintiff temple at the time of filing the suit. More so, when it is not disputed that the plaintiff temple is a hereditary temple and the forefathers of Bava Chockkappa Mudaliar were maintaining the temple. Both the Courts below have rightly held that the suit is maintainable (emphasis supplied)*

12 (c) Yet another point is that, on a close perusal of Exs.P9 to P16, it goes to show that the Tamil Nadu Hindu Religious & Charitable Endowments Department has communicated to the plaintiff, by recognising the plaintiff as a Managing Trustee and Administrator of the religious denominational institution. When an overwhelming document has been placed before the Court, i.e. besides property tax have also been assessed under Exs.A17 & A18, Electricity Board receipts are Exs.A5 & A6 and water connection charges are Exs.A7 & A8 which goes to show that the plaintiff is not an Administrator of the religious denominational institution belonging to the particular community which has been duly administered and constituted under HR&CE, namely the Commissioner of HR&CE, the Lower Appellate Court has rightly come to the conclusion that the plaintiff has a right to sue on



S.A.No.826 of 2021

behalf of the temple as a worshipper belonging to the particular community residing in the area, as mentioned in Ex.A1 judgment rendered by the competent Civil Court. I have no hesitation to hold that the suit instituted by the plaintiff is maintainable. The plaintiff is having a right to sue on behalf of the temple.

13(a) It remains to be stated that the idol of the temple is a juristic person and it has to act through human agencies. So even a worshipper can sue and protect the rights and interest of the idol.

13(b) In the instant case, the plaintiff, Subramaniam who instituted the suit as Chairman of the Board of Trustees and Administrator also belongs to the very same street for which the Civil decree has already been in their favour and being a worshipper and resident of the street in which they reside, are entitled for the decree as per Exs.A1 & A2.

13(c) The finding rendered by the Lower Appellate Court is in consonance with the law settled by this court and in consonance with the law



S.A.No.826 of 2021

declared by the competent court under Exs.A1 & A2. Hence, the substantial questions of law, on facts and circumstances of the case, as discussed supra, does not arise on the factual situation. Accordingly, the point is answered in negation against the appellants / defendants.

**Substantial question of law (ii) & (iii) :-**

14. My attention was drawn to Exs.A3 & A4 namely the judgment and decree dated 29.10.2010 made in O.S.No.11 of 2003 which was instituted at the instance of the defendants. Ex.B7 is the sketch. Exs.B14 & B15 are the judgment and decree passed in A.S.No.10 of 2009. On perusal of the lower court records under Ex.B17, report and rough sketch of the Advocate Commissioner filed in O.S.No.11 of 2003 namely the suit in which the rights of the plaintiff was upheld, as could be seen from Exs.B18 & B19 namely the judgment and decree passed in O.S.No.11 of 2003 dated 29.10.2010, assumes significance.

15. On a combined reading of Ex.B17, Commissioner's report alongwith Exs.B18 & 19 (equivalent to Exs.A3 & A4), the Trial Court has rightly come to the conclusion that the lands in Survey No.82, 83, 114 & 113



S.A.No.826 of 2021

is 0.38.870 sq.mtrs. are pavadi lands and Kamatchiamman Temple and the temple are belonging to Government land namely Government poromboke land. Accordingly, in the said judgment and decree in O.S.No.11 of 2003, Exs.A3 & A4, the Lower Appellate Court, relying upon the very same document filed by both the parties, has come to the conclusion that the suit land belongs to the Government Poromboke within the competent jurisdiction of the Munsif Court of Gobichettipalayam and the competent Civil Court has also held that the temple Arulmighu Kamatchiamman Kovil as well as the suit temple are public temple.

16(a) It remains to be stated that this temple is Mariamman temple. In the above said document, the court appointed Advocate Commissioner and he inspected the property and filed a report alongwith sketch which has been marked as Ex.B17. By consent of both advocates present before the court, the same has been looked into. In the said Ex.B17, Advocate Commissioner's report and the sketch, at Para 17, it gives a detailed study of how the pavadi stones have been laid and it is the specific feature available on the state on ground during the field study for making the report which is to the effect that



S.A.No.826 of 2021

pavadi stones are urgently laid and erected and it has also been admitted by DW1 in the cross examination.

16(b) In this connection, for laying new pavadi stones in sarkar poromboke lands, the defendants 2 to 11 in those cases have been arrested and subsequently released on bail and later acquitted. Criminal Revision Case has been filed before the Court and the same has been marked and thus, this court finds that the persons who are arrayed as defendants 2 to 11 in O.S.No.11 of 2003 have newly laid pavadi stones so as to make it believe that the entire area is pavadi stones which are in fact, earmarked as common pathway and trespassed into those lands, resulting in registration of Ex.B2-FIR. Based upon the same, the defendants 2 to 11 in those suit were arrested and after trial, the case has ended in acquittal, against which Criminal Revision Case No.417 of 2009, marked as Ex.B13 is pending. Thus, this Court finds from the Civil Suit filed by the very same plaintiff in respect of the very same temple and the well in O.S.No.11 of 2003, that the defendants have not only prevented the procession of the temple but also tried to destroy the suit land by planting new pavadi stones resulting in registration of FIR and



S.A.No.826 of 2021

though after trial they have been acquitted, criminal revision has been filed against them, as could be seen from Ex.B13.

17. Based upon Ex.B17, Advocate Commissioner's report, coupled with the admission of DW1 in the cross examination that except pavadi stone area, as already held, prior to filing of the suit, he has no objection for conducting temple procession and hence the Lower Appellate Court, based upon the Advocate Commissioner's report, as discussed in detail, at Para 27 of the judgment had come to the conclusion that the Advocate Commissioner who has inspected the property on 28.03.2011 has noticed that on comparison of two Advocate Commissioner's report, new stones have been erected by the defendants and new things have been placed on the pathway which is a public pathway and by touching of the stone, they are shaking which would demonstrate that the defendants who are engaged in weaving has planted new pavadi stones in order to cause hindrance to the general public in which the temple procession has been carried on.



S.A.No.826 of 2021

WEB COPY 18. On re-appreciation of the evidence and on comparison of the Advocate Commissioners' report dated 23.01.2003 and 28.03.2011, the finding rendered by the Lower Appellate Court goes to show that the defendants have indulged in implantation of new pavadai stones with utter disregard to the court proceedings and to make it believe that the entire area has been utilised for the weaving purpose for drying soaked cotton thread. Hence, a finding has been given by the Lower Appellate Court, on appreciation of Advocate Commissioners report and admission of DW1 that in order to create an impression before the Court they have implanted new stones thereby committed trespass during the pendency of the case.

19. At this juncture, the answer elicited during the cross examination of DW1 in connection with the Advocate Commissioner's report dated 28.03.2011 assumes significance. DW1, while in the witness box was confronted with the Advocate Commissioner's report as to the alleged conduct as to how the new stones have been laid as pavadi stones and they are very shaky and found to be newly laid. In this connection, DW1 has answered



S.A.No.826 of 2021

that after 90 days of success in the criminal case, they have planted new stone and covered the entire area with pavadi stone and claimed his right over the place. In view of the fact that the competent court has already held that Kamatchiamman Temple is a public temple and from Manimegalai street to Kamatchiamman Temple, people has to go over in that, the defendants cannot claim exclusive right since the road leading from Manimegalai Street to Kamatchiamman Temple and from the same to the present suit Mariamman Temple street is the public pathway, as already held by the competent court in Exs.A2 & A3, thereafter the defendants have no right to prevent the plaintiff or the people of the worship temple from interfering or preventing the people from using the road. Hence, based upon the Advocate Commissioner's report, the Lower Appellate Court has rightly come to the conclusion that the defendants have taken the law in their own hands and laid new stones in the common pathway as declared by the competent Civil court.

20. As discussed supra, the same stands exposed by the Advocate Commissioner's report and the Advocate Commissioner's report has been compared by the Lower Appellate Court and in view of the decree granted by



S.A.No.826 of 2021

the competent Civil Court and also taking into consideration that the street is a public street and Kamatchiamman Temple is a public temple, people who are residents of the Manimegalai street has right of access through the public temple, namely Kamatchiamman Temple and the suit temple is a religious denominational institution belonging to the Vanniyakula Sathriyar community of Manimegalai street in Gobichettipalayam, the Lower Appellate Court has rightly come to the conclusion that the plaintiff is entitled for the relief of permanent injunction restraining the defendants from interfering with the usage of the well and usage of the pathway and also for mandatory injunction to remove the newly laid stones as indicated by the Advocate Commissioner in his report dated 28.03.2011 and to restore the pathway as per the Government records. Thus, both the substantial questions of law stands answered in negation against the appellants/defendants and there is no merits in this Appeal. The Advocate Commissioner's report shall form part of the decree.

21. In the result, **the Second Appeal is dismissed** confirming the judgment and decree dated 16.10.2019 passed in A.S.No.7 of 2017 before the Sub Court, Gobichettipalayam revering the judgment and decree dated



S.A.No.826 of 2021

04.02.2017 passed in O.S.No.83 of 2011 on the file of District Munsif Court, Gobichettipalayam. The revenue authorities viz. District Collector and Thasildhar, Gobichettipalayam, Erode District shall take necessary action for implementation of the order and smooth conduct of the temple festival in future. No costs. Consequently, the connected Miscellaneous Petition is closed.

**09.07.2024**

Index : Yes/No  
Neutral Citation : Yes/No  
rgr

To

1.The Subordinate Judge,  
Gobichettipalayam

2.The District Munsif Court,  
Gobichettipalayam.

3.The Section Officer  
VR Section, High Court  
Madras.



WEB COPY



S.A.No.826 of 2021

**RMT.TEEKAA RAMAN, J.**

(rgr)

**Judgment in  
S.A.No.826 of 2021**

**09.07.2024**