



S.A.No.1009 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 03.01.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

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M.P.No.1 of 2013 & M.P.No.1 of 2015

- 1.Bhuvaneswari
- 2.Maheswari
- 3.Bhanumathi ammal
- 4.Malliga
- 5.Ramachandran
- 6.Banumathi
- 7.Minnalkodi
- 8.Janaki
- 9.Mageswari
- 10.Arumainathan @ Rajasimman
- 11.Sivaganesan
- 12.Venkatesan
- 13.Kavitha
- 14.Chinnayee @ Ananthavalli
- 15.Kayathri

... Appellants

Vs.

- 1.Swariz Towraj
- 2.Thiruchirapalli, Thanjavur Diocese Church of South India,
By its Property Agent M.Jeyaseelan,
S/o. Marimuthu,



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102-A, Addakkara Street,
Manambu Chavadi,
Thanjavur and D.M.C.

3.Church of South India Trust Association, Madras,
Rep. by its Bishop of Madras,
St. Peter's Church,
Mission Church Road,
Thanjavur and D.M.C.

4.Church of South India Trust Association,
Thiruchirappalli, Thanjavur Discesson,
Council rep. by its Power of Attorney,
Discissan Treasurer,
Rev. Suresh Kumar,
S/o. Albert Arockiasamy,
Puthur,
Trichirappalli and D.M.C.

5.Church of South India Trust Association,
Thiruchirappalli, Thanjavur Discesson,
Council rep. by its Power of Attorney,
Discissan Way Secretary,
S.Rajendran,
S/o. Samuel,
Puthur,
Trichirappalli and D.M.C.

6.Stanley

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil



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Procedure against the decree and judgment passed in A.S.No.16 of 2011 on the file of the Sub court, Mannargudi dated 02.04.2013 reversing the decree and judgment passed in O.S.No.50 of 1997 on the file of the Additional District Munsif, Valangiman at Kumbakonam dated 18.12.2007.

For Appellants : Mr.V.K.Vijayaraghavan

For Respondent 1 : Mr.P.Raja

For Respondent 3 : Mr.P.Parthikannan

For Respondents 4 & 5 : Mr.P.Balamurali

For Respondents 2 & 6 : No appearance

ORDER

The present second appeal arises against the judgment and decree passed in A.S.No.16 of 2011 on the file of the learned Subordinate Judge, Mannargudi dated 02.04.2013 in reversing the judgment and decree in O.S.No.50 of 1997 on the file of the learned Additional District Munsif, Valangiman at Kumbakonam dated 18.12.2007 and consequently, decreeing



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the suit as prayed for.

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2. The appellants before me are the defendants 4 to 6 and 8 to 19.

The suit was presented by the first and sixth respondents.

3. For the sake of clarity and convenience, the parties will be referred to as per their ranks in the suit.

4. The plaintiffs presented the suit for the following reliefs.

(a) to pass a decree for mandatory injunction directing the defendants 1 & 2 to take action against the defendants 3 to 8 in cancellation of the sale deeds and for vacancy of possession of suit lands.

(b) to pass a decree for permanent injunction restraining the defendants 3 to 12 and their men, agents and servants from any manner cultivating the suit lands.

(c) to award costs.

5. The case of the plaintiffs is that the suit schedule mentioned



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property belonged to the Society for Propagation of Gospel (hereinafter referred to as S.P.G. Mission). S.P.G. Mission merged itself with the Church of South India and its property started to be managed by the second defendant/Church of South India Trust Association. The Church of South India Association alienated the property to the defendants 3 to 19. The plaintiffs alleged that the alienations were not for proper consideration or under proper authorisation and therefore, it deserves to be interfered with.

6. Curiously enough in this suit, after having alienated the property in favour of the private defendants/appellants, the first and second defendants remained ex parte in the suit. The private defendants/appellants filed written statement stating that they are the bonafide purchasers of value and they have purchased the property on 06.10.1987 and 21.08.1987 for true and valid consideration. They also attacked the frame of the suit and further pleaded that previously a suit had been instituted by one C.J.Jayanathan and the suit had been dismissed on 08.01.1991 and since the said suit had been dismissed,



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the present suit is barred by *res judicata*.

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7. The learned trial judge in O.S.No.50 of 1997 had framed the following issues:

“வழக்குரை மற்றும் எதிர்வழக்குரைகளின்
அடிப்படையில் இவ்வழக்கில் கீழ்க்கண்ட வழக்கெழு
வினாக்கள் வனையப்பட்டன:-

1) வாதிகள் கோரியுள்ளவாறு
செயலுறுத்துக்கட்டளை பரிகாரம் நிரந்தர உறுத்துக்கட்டளை
பரிகாரம் கிடைக்கக்கூடியதா?

2) கிரயப்பத்திரத்தை நீக்கரவு செய்யாததால்
தாவா சொத்துக்களை பொறுத்து 3 முதல் 8
பிரதிவாதிகள் மீது 1, 2 பிரதிவாதிகள் நடவடிக்கை
எடுத்துக்கொள்ள முடியுமா?

3) 3 முதல் 8 பிரதிவாதிகள் தாவா
சொத்துக்களை கரயம் பெற உரிமையில்லையா?

4) வேறு என்ன பரிகாரம் கிடைக்கும்?

கூடுதல் வழக்கெழுவினாக்கள்:



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- 1) 13 முதல் 19 வரையிலான பிரதிவாதிகளை
பொறுத்து வழக்கு மூலம் ஏற்படவில்லை என்று
பிரதிவாதிகள் சொல்வது சரியானதா?
- 2) வழக்கில் விளம்புகை பரிகாரம் கோராததால்,
வழக்கு தள்ளுபடிக்கு அருகமானதா?
- 3) வழக்கில் 13 முதல் 19 வரையிலான
பிரதிவாதிகளை பொருத்து வாதிக்கு வழக்கு பரிகாரம்
கிடைக்கத்தக்கதா?
- 4) 20, 21 பிரதிவாதிகள் இந்த வழக்கிற்கு
அவசியமான தரப்பினரா?
- 5) வழக்கில் கோரிய பரிகாரம் 20, 21
பிரதிவாதிகளை கட்டுப்படுத்துமா?"

8. On behalf of the plaintiffs, PW1 and PW2 were examined and Ex.P1 to Ex.P6 were marked. Similarly on the side of the defendants, DW1 to DW4 were examined and Ex.D1 to Ex.D19 were marked.

9. After detailed examination of the case, the trial court dismissed



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the suit on 18.12.2007. An appeal was presented by the second plaintiff

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alone, arraying the first plaintiff as the 22nd respondent in A.S.No.16 of 2011.

Learned Subordinate Judge at Mannarkudi who took up the appeal and allowed the same on 02.04.2013. She granted the decree for mandatory injunction as well as permanent injunction. Consequently, the present second appeal.

10. When the appeal came up for admission, the court framed the following substantial questions of law for consideration of the appeal:

“ 1. When the lands were sold lawfully by the competent person as per Ex.B19 and when proper procedure was adopted in regard to alienations whether plaintiffs have locus-standi to question the alienation?

2. When the suit was not filed by the plaintiffs in a representative capacity or under Section 92 of C.P.C, whether the decree and judgment granted by the appellate court sustainable in law?

3. When the alienations or the resolution passed



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to sell suit lands were not challenged was the suit as framed maintainable?

4. When the alienations were beneficial to the trust and made for the benefit of the trust whether the decree directing defendants 1 and 2 to take action for cancellation of sale deeds legal and sustainable?”

11. Heard Mr.V.K.Vijayaraghavan, learned counsel for the Appellants and Mr.P.Raja, learned counsel for the first respondent.

12. I have carefully gone through the records and heard the submissions made by the learned counsels on either side.

Locus standi of the plaintiffs:

13. Mr.V.K.Vijayaraghavan would open the argument stating that the property had been lawfully sold by the competent authority under Ex.D19 and therefore, the plaintiffs do not have *locus standi* to present the suit.



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14. I am not agreeable to Mr.V.K.Vijayaraghavan on this point, because the plaintiffs have shown that they are inextricably linked to the church, which is the parent body for the S.P.G. Mission as well as for the second defendant/ CSITA. It is well settled position of law that any worshipper can file a suit and for presentation of such a suit, no such authorisation is necessary. A recent judgment of the Supreme Court has dealt with this very issue in ***M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das, (2020) 1 SCC 1*** and the relevant paragraphs are extracted hereunder:

“A suit by a worshipper or person interested

443. There may arise a situation where a shebait has been derelict in the performance of duties, either by not taking any action or by being complicit in the wrongful alienation of the endowed property. In such a situation, where a suit is instituted for the recovery of the deity's property, the action is against both the shebait and the person possessing or claiming the property in a manner hostile to the deity. The remedy for an action against mismanagement simpliciter by a shebait can be found in Section 92 of the Civil Procedure Code, 1908. However, where an action against a stranger to the trust is contemplated, the



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remedy is not a suit under Section 92 of the Civil Procedure Code, 1908 but a suit in general law.

444. In Vemareddi Ramaraghava Reddy v. Konduru Seshu Reddy, AIR 1967 SC 436, the plaintiffs accused the defendants, who were the managers of the temple and its properties, of mismanagement. Subsequently, a compromise decree was executed between the defendants and the Hindu Religious Endowments Board which inter alia declared the temple properties as the personal property of the defendants. The plaintiffs sought a declaration under Section 42 of the Specific Relief Act, 1963 that the provision of the compromise decree stating that the temple properties were the absolute personal properties of the defendant was not binding on the temple. The defendants resisted this contention on the ground that the plaintiffs had no legal interest in the temple or temple property and were mere worshippers whose suit could not bind the temple. V. Ramaswami, J. speaking for a two-Judge Bench of this Court held : (AIR p. 441, para 12)

“12.... As a matter of law the only person who can represent the deity or who can bring a suit on behalf of the deity is the Shebait, and although a deity is a judicial person capable of holding property, it is only in an ideal sense that the property is so held. The possession and management of the property with the right to sue in respect thereof are, in the normal course, vested in the Shebait, but where, however, the Shebait is



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negligent or where the Shebait himself is the guilty party against whom the deity needs relief it is open to the worshippers or other persons interested in the religious endowment to file suits for the protection of the trust properties. It is open, in such a case, to the deity to file a suit through some person as next friend for recovery of possession of the property improperly alienated or for other relief. Such a next friend may be a person who is a worshipper of the deity or as a prospective Shebait is legally interested in the endowment. In a case where the Shebait has denied the right of the deity to the dedicated properties, it is obviously desirable that the deity should file the suit through a disinterested next friend, nominated by the court.”

(emphasis supplied)

445. *A necessary adjunct of managing of the temple properties is the right to sue for recovery of the said properties. Ordinarily a shebait alone will be entitled to bring a suit on behalf of the idol. In addition to being convenient and providing immediate recourse for the idol, it also provides a valuable check against strangers instituting suits, the outcomes of which may adversely impact the idol without the knowledge of the idol or the shebait. But there may*



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be cases where the conduct of a shebait is in question. In certain cases, where the shebait itself is negligent or sets up a claim hostile to the idol, it is open for a worshipper or a next friend interested in protecting the properties of the idol to file a suit to remedy the situation. In the above case, by entering into the compromise decree declaring the temple properties as personal properties of the defendant shebait, the defendants set up a title contrary to the title of the idol itself. This Court held that it was hence permissible for the plaintiffs, who were worshippers, to maintain a suit invalidating the compromise decree."

Therefore, the first substantial question of law framed by this Court is answered against the appellants and in favour of the plaintiffs.

Is Section 92 a bar to the present suit?

15. Insofar as the second substantial question of law is concerned, Mr.V.K.Vijayaraghavan would contend that Section 92 is a bar to the present suit. Section 92 of the Code of Civil Procedure comes within the chapter relating to institution of suits of special nature. It comes under Part V of Code of Civil Procedure, which begins with the heading "SPECIAL



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PROCEEDINGS”.

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16. Unless and until a suit comes within the four corners of Section 92 of Code of Civil Procedure i.e., within Sections 92(a) to 92(h), it cannot be treated as a suit under Part V. A reading of the relief sought for in the present case shows that it is not covered under any one of the elements of Section 92. *This issue has been dealt with in two Supreme Court judgments; the first one being **Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai**, (1952) 1 SCC 323 which was approved and followed in **Jamia Masjid v. K.V. Rudrappa**, (2022) 9 SCC 225 wherein it was held as follows:*

“37. *Pragdasji Guru Bhagwandasji v. Patel Ishwarlalbhai Narsibhai*, (1952) 1 SCC 323 lays down the following principles on the ambit of a representative suit under Section 92CPC.

37.1. The plaintiff can only seek reliefs that fall under any of the clauses in Section 92CPC. A declaration that the suit property belongs to the trust, does not fall under the scope of any of the reliefs enumerated in Section 92CPC and is outside the scope of the provision.



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37.2. Merely because the defendant denies the title of the trust over the suit property, the jurisdiction of the court cannot be ousted.

37.3. When the title of the trust is contested, a determination of the title of the suit property is necessary for the purpose of adjudication on the final relief, and thus it can be made ancillary to the main relief if the plaintiff is entitled to the relief sought under Section 92CPC.

37.4. If the plaintiff is not entitled to the relief sought, then in that case no determination on the title of the suit property can be made since it would be inconsequential to the final decision in the suit.

38. On applying the principles evolved in *Bhagwandasji* to the facts of the case, the relief sought in the first suit under Section 92CPC was for determination of a scheme of management of the mosque. A determination of the title of the suit property with respect to the mosque was *ancillary* to the main relief, under Section 92CPC."

Therefore, the second substantial question of law is also answered against the appellants and in favour of the plaintiffs.

Should the plaintiff have sought for declaration?

17. I take up the substantial questions of law 3 and 4 together and



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answer the same.

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18. Mr.V.K.Vijayaraghavan would point out that no declaratory relief had been sought for especially when alienations of the property had been admitted in the plaint itself. He would draw my attention to Section 25(d) and Section 40 of Tamil Nadu Court Fees and Suit Valuation Act and would very strongly urge that the declaratory relief seeking to set aside the sale should have been sought for and without such a relief, the suit is not maintainable. He would also rely upon the classic judgment of the Supreme Court in *Anathula Sudhakar vs. P. Buchi Reddy (Dead) by Lrs., AIR 2008 SC 2033*. In particular, he would draw the attention of this Court to paragraph 13 of the said judgment.

19. Mr.P.Raja would submit that this is a case where the property belonging to the public trust had been alienated and therefore, no such declaratory relief is necessary.



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20. I am afraid that I am not in a position to accept the argument of Mr.P.Raja for a simple reason, that I am dealing with the suit which has been filed, insofar as it relates to an immovable property. The suit must answer to the provisions of the Specific Relief Act and the Code of Civil Procedure, if it doesn't, it has to fail.

21. The relief that the plaintiff ought to have sought for is for declaration that the sale deed which had been executed in favour of the appellants/defendants is null and void or not binding on the trust. On the contrary, all that has been sought for is a simple mandatory injunction directing the first and second defendants (who had alienated the property in favour of the private defendants) to take steps for cancellation of the sale deed.

22. The Transfer of Property Act imposes a burden on the vendor to ensure that he conveys proper title to his purchasers and defends the title,



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once he has alienated the property in favour of the third party. In other words,

it is the duty of the vendor to convey proper title to the purchaser as held in

the case of ***Jyoti Prosad Singh Deo vs. H.V.Low & Co. Ltd., 1929 SCC***

OnLine Cal 202 and the relevant portion is extracted hereunder:

*“There is a further provision in sub-sec. (2) that the seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same. From other provisions of this subsection it seems to me [though this has been disputed, cf. *Adkesadam v. M.V. Guruatha, 1914 ILR 40 MAD 338*] that this clause contemplates a completed sale and corresponds to the covenant for title in an English conveyance. There, can, however, be no doubt that in India a contract for sale of immoveable property implies some warranty as to title by the seller. It has been held in India that defects of title are within the scope of the clause which requires the seller to disclose to the buyer any material defect in the property of which the seller is and the buyer is not aware, and which the buyer could*



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not with ordinary care discover [Haji Essa v. Dayabhai, 1895 ILR 20 BOM 522]. Sub-sec. (6) of sec. 55 refers to the buyer having “improperly” or “properly” declined to accept delivery of the property. Upon this section I will make two observations only. It is noticeable that the section says nothing about the seller delivering an abstract of title and in India as a whole this practice does not obtain; the obligation of the seller is to produce his documents of title for examination by the buyer if the buyer so requests. Secondly, [at least if my view of sub-sec. (2) is correct] there is a remarkable absence in a section which appears to be designed as a statement of the rights of the parties upon a contract for sale, of any statement of the cardinal obligation of the seller—certainly of any statement to the effect that the seller undertakes to show a good title (by his documents and his verification of facts) which is a very different thing: from a mere warranty that the seller has in fact and in law the estate which he professes to have—a warranty which would take effect upon proof of breach.”



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The aforesaid proposition has been reiterated in the following cases:

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(a) *Panem Venkanarayana Sastry v. Rajupalli Chinna Yella Reddy*, AIR

1959 AP 256

"33. Under Section 55(2) of the Transfer of Property Act, the seller is deemed to contract with the buyer that the seller has a subsisting interest in the property sought to be transferred and that he has power to transfer the same. In Subayya Chowdary v. Veerayya, 1955 Andh WR 502 at p. 525 : ((S) AIR 1957 Andh Pra 307 at p. 323), Chandra Reddy J. (as he then was) on difference between Subbarao C.J., and Umamaheswaram J., after a review of several authorities held that the statutory covenant under Section 55(2) of the Transfer of Property Act attaches not only to conveyances, but to contracts of sale as well.

34. So there can be no doubt that the duty of showing marketable title rests on the vendor...."

(b) **Jaswant Rai v. Abnash Kaur**, ILR (1974) 1 Del 689.

"....It is the duty of the vendor to inform the intending purchaser that the property is subject to a claim



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which might result in a law suit or is the subject of a pending litigation. Any fact calculated to keep the purchaser in ignorance of the real state of the property is a defect for which the vendor is liable. In other words a purchaser is not obliged to take thing essentially different from that which he agreed to take.

... The purchaser is entitled to a marketable title. A marketable title, it has been said, is a title which a vendor would be in a position to force on an unwilling purchaser: See Shanker Lal v. Jethmel, AIR 1961 Rajasthan 196, 201 (2). If the seller's title is doubtfull and is in dispute in litigation the purchaser will be quite justified in declining to carry through the transaction of sale and to accept the delivery and the court will not in such a case force a doubtful title upon the purchaser: See Sohan Lal v. Bal Kishan, AIR 1960 Punjab 275 (3) A title which will expose the buyer to litigation a hazard is not such a title as could be forced on an unwilling purchaser. A marketable title is title free from reasonable doubt."

23. The vendors in this present case are the first and second



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defendants. It is their duty to protect their alienations made on 06.10.1987 & 21.08.1987 in favour of the private parties. When the Transfer of Property Act imposes a duty on the vendor, there cannot be a relief of mandatory injunction which runs contrary to the statute.

24. No court can grant an equitable relief, let alone the highly equitable relief of mandatory injunction contrary to the public policy, which has been encapsulated in the parliamentary legislation. This was held in ***Surajmull Nargoremull vs. Triton Insurance Company Limited, AIR 1925 PC 83.***

“ ... No court can enforce as valid that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a Court can be dispensed by the consent of the parties, or by a failure to plead or to argue the point at the outset...”

25. The pre-requisites for mandatory injunction are



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(i) To prevent the breach of obligation

(ii) That the court is capable of enforcing

There has to be an obligation on the defendant owed to the plaintiff, so as to compel performance of the same. The plaintiff in this case is not privy to the contract. The plaintiff cannot complain of any breach. The relief sought for in this suit is the anti-thesis of Section 39 of the Specific Relief Act. The court cannot pass a decree to cause the parties to breach a contractual obligation or the duty imposed under S. 55 of the TP Act. The said proposition has been reiterated in the following judgments:

(i) ***Nandalal Ladia vs. Provudayal Tikriwalla, AIR 1952 Cal 74***

“5. Under Sections 54 & 55 of the Specific Relief Act, the plaintiffs may pray for a perpetual or mandatory injunction to prevent the breach of an obligation existing in favour of the plaintiffs.”

(ii) ***R.Lakshmiathy vs. Madras Gymkhana Club, (1997) 1 CTC***

“16. ...To get a mandatory injunction, whether



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permanent or temporary, plaintiff should be specific that there was a breach of obligation, and certain acts are necessary to restore the status quo. Learned counsel for the appellant was at pains to substantiate his case that there was an obligation on the part of the defendant-Club, towards the plaintiff. If there is no obligation, the question of granting any mandatory injunction also does not arise."

26. To reiterate, when the vendor should have protected the transfer of title in favour of the purchasers, no court can grant mandatory injunction stating that the vendor should act contrary to the provisions of Section 55 of the Transfer of Property Act. Therefore, the frame of the suit itself is bad.

Failure to implead the trust as a party

27. It is the specific plea that the property belongs to the S.P.G. Mission, which had merged its interest with the Church of South India and was being managed by the Church of South India Trust Association. Though



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S.P.G. Mission is a trust, it had unfortunately not been made a party to the suit. The plaintiffs while taking up cudgels on behalf of S.P.G. Mission, ought to have impleaded the latter as a party to the suit. That not having been done, it goes to the root of the matter and is hit by the provision of Order I Rule 13 & Section 99 of Code of Civil Procedure.

Inadequate consideration

28. I have to necessarily agree with Mr.V.K.Vijayaraghavan, where the consideration has been paid and property has been transferred by way of a registered sale deed, the fact that the consideration is inadequate cannot be a ground to set aside the sale. Further, inadequate consideration also does not arise in the facts and circumstances of the present case in the light of Ex.D17 and D19 which have been filed before the Court. Under Ex.D19, the power of alienation had been given to CSITA. For ready reference, the said clause is extracted as follows:

*“8 (i) Trust Property shall not be leased,
mortgaged or sold without prior sanction of the Synod*



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Executive/Working Committee and the Church of South India Trust Association. Application for permission to lease, mortgage or sell Trust property requires the approval of the Diocesan Executive/Property Committee before submission to Synod Executive/Working Committee and the Church of South India Trust Association.

(ii) Application for permission to sell properties must include evidence of the valuation of the property by

a. Urban or Municipal Taxation

Authorities, or

b. Authorised valuer of recognised

Estate Agent, or

c. A certificate stating the value

according to the Guidelines in the Local Registrar's Office attested by the Treasurer of the Diocese.

(iii) All Sale/Lease/Mortgage shall be through competitive tenders, after giving due publicity in the local papers.



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(iv) If the Sale/Lease/Mortgage is not executed within one year from the date of approval by the Synod Executive/Working Committee, fresh proposal of Sale/Lease/Mortgage shall be submitted by the Diocese.

(v) The Synod Executive/Working Committee and the Church of South Trust Association may call for fresh particulars of the property proposed to be sold, if the Diocesan Executive/Property Committee had not given such information that are necessary for the approval of the sale.

(vi) Such approval of the Synod Executive/Working Committee and the Church of South India Trust Association shall be final and binding on the concerned Trustees.

Every sale deed executed by the Attorneys of the Church of South India Trust Association in favour of the purchaser shall contain the clause stating that the property has been held by the Church of South India Trust Association or any other approved Trust for the benefit of the Church of South India and also the number



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and date of resolution of the Synod Executive/Working Committee approving the resolution of the Synod Executive/Working Committee approving the sale.”

29. From the perusal of Ex.D17, it becomes clear that there had been an authorisation by the first defendant/CSITA. The Trichirapalli Tanjavur Diocese in its meeting held on 09.02.1984 decided to alienate the property which is the subject matter of the suit for a sum of Rs.3,00,000/- together with a donation of Rs.25,000/-. This is in Finance Committee Resolution number 84 of 1930. In addition, the second defendant/CSITA has also passed a resolution on 03.09.1983, which is few months prior to the finance committee resolution authorising the sale of the suit schedule mentioned property, after calling for advertisement in local dailies. It is not in dispute that pursuant to Ex.D17 which is in terms of Ex.D19, the properties had been sold. Therefore, one has to necessarily come to the conclusion that there had been authorisation by the competent authority to make such alienations.



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30. If the arguments of Mr.Raja have to be accepted, the competent authority will pass the resolution for alienations of the property and the alienations are also carried out, but should be invalidated on the ground of inadequate consideration or on the ground that “once a trust always a trust”. This argument does not appeal to me for the simple reason as to how the association wants to put its financial affairs in order, is entirely the discretion of the said body. It is theoretically possible and practically seen that the persons who are the members of the said association might have *inter se* disputes between them and this may lead to litigation over properties which have been properly alienated and backed up by appropriate resolutions. If such litigations were to find acceptance by the court, it will put the title of the purchaser in quandary, which does not go well either for the association or for the purchaser. Therefore, the fact that Ex.D19 followed up by resolution under Ex.D17 had been passed by the competent authority and in exercise of these resolutions, alienations had been made, persuades me to hold that the



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alienations were proper and it is not for the plaintiffs to question the same.

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31. Above all, I have to refer to Ex.D2 which was marked in the cross examination of DW2. This is the minutes of the property standing committee of the Diocese of Thanjavur held on 07.10.1997. Referring to the alienations of this very property, the Diocese namely, the first defendant has passed a resolution in the following terms:

“ SADAIYANGAL LAND AND PADRIKOLAM LAND:

No action is necessary from the Diocesan side. If necessary, the Officers of the Council, the DCC Chairman and the Property Agent, Tanjore will deal with this matter.”

32. This shows that even after the dispute had commenced between the parties, the Thanjavur Diocese namely the first defendant was not interested in seeking to take any action against the alienations. This is perhaps on the legal advice that the vendor cannot go against the sale that had been made by it. A reading of the sale deed itself shows that the alienations



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had been made by the first and second defendants in order to benefit the trust.

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This is clear from Ex.D19 namely the resolution passed by CSITA on 03.09.1983. When the person in management of the trust comes to the conclusion that the alienations will be beneficial to the trust, there cannot be a decree for mandatory injunction directing them to take action for cancellation.

Delay defeats injunction

33 The alienations had been made in the year 1987. The diocese council had passed a resolution saying no action is necessary in the year 1997. However, the decree for mandatory injunction had been granted in the year 2007. I am not holding the delay that has taken place in the disposal of the suit as against the plaintiffs. However, it is too well settled that the law comes to the rescue of a person who is vigilant and not dormant. There is no explanation on the part of the plaintiffs as to why no action had been taken from the date of alienations in the year 1987 till the presentation of the suit



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in the year 1997. Mandatory injunction should be granted only, where the plaintiff is extremely vigilant and has approached the court with all promptitude and not in favour of the person, who has been watching the proceedings go-by. It will be a travesty of justice to permit reversal of an action, which has been settled by passage of time.

34. Alienations were made in 1987 & the suit was filed in 1997.

Mandatory injunction is not maintainable if the plaintiff has approached with delay or has not exercised due diligence as held in ***Mohinder Kumar & Others vs. Kamal Prakash & Another, 2020 AIR CC 1215 – Paragraphs 15-30.***

35. Now turning to the point on the previous litigation in O.S.No.214 of 1987, I am not in agreement with Mr.V.K.Vijayaraghavan that the said suit would be a bar for presentation of the present one. The cause of



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action for O.S.No.214 of 1987 on the file of District Munsif Court, Thanjavur had occurred prior to the alienations, whereas the cause of action for the present suit occurred after the said alienations. This one fact is sufficient to reject the plea that the filing of the suit in O.S.No.214 of 1987 is a bar for the presentation of the present suit.

36. In the light of the above discussion, I answer the substantial questions of law 3 & 4 in favour of the appellants and against the respondents. Therefore, **the second appeal is allowed.** The judgment and decree of the learned Subordinate Judge, Mannarkudi in A.S.No.16 of 2011 dated 02.04.2013 is set aside and that of the Additional District Munsif, Kumbakonam in O.S.No.50 of 1997 dated 18.12.2007 is restored. Since it is a litigation over the trust property and as the plaintiffs were not agitating rights, which were personal to them, but were motivated to deal with alleged public rights involved, I am not imposing any cost on the respondents. Consequently, connected miscellaneous petitions are closed.



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Index : Yes/No

Speaking order/Non-speaking order

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