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S.A.NO.801 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 13 / 08 / 2024

JUDGMENT PRONOUNCED ON : 15 / 10 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

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AND CMP NO.20108 OF 2017

Selvaraj (Died)
Gajendran (Died)

- 1.Kanniammal
D/o. Late K.Parthasarathy
- 2.Vijaya
D/o. Late K.Parthasarathy
- 3.Pattu
S/o. Late K.Parthasarathy
- 4.Ganesan
S/o. Late K.Parthasarathy
- 5.Dillibai
W/o. Selvaraj

S.Balu (Died)

6.S.Malathi @ Vanitha
D/o. Selvaraj

7.S.Anitha
D/o. Selvaraj

... Appellants / Respondents/
Defendants 1 to 10

Versus

1.Arulmigu Sreenivasa Perumal Devasthanam,
represented by its Executive Officer and Trustees



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2.M.Ethirajulu Chetty

3.Dandu Munusamy Deenadayalan

4.Vellore Balasubramaniam

5.C.R.Ramakoti

6.Kavala Jayachandran

... Respondents/ Appellants /
Plaintiffs

7.G.Sulochana

W/o. Late P.Gajendran

8.A.Manju

D/o. Late P.Gajendran

9.G.Shankar

S/o. Late P.Gajendran

10.G.Prabhu

S/o. Late P.Gajendran

... Respondents / Legal heirs
of deceased Gajendran,
the 2nd Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated December 16, 2016 passed in A.S.No.494 of 2011 by the VI Additional City Civil Court, Chennai, which reversed the Judgment and Decree dated November 21, 2007 made in O.S.No.8140 of 1993 by the learned V Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.G.Saravanan

For Respondents : Mr.M.Ramamoorthy
1, 4 and 6

For Respondents : Notice dispensed with vide this Court's
2, 3 and 5 : Order dated November 25, 2022

For Respondents : Mr.R.Chakaravarthy
7 to 10



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J U D G M E N T

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This Second Appeal is directed against the Judgment and Decree dated December 16, 2016 made by the ‘VI Additional Judge, VI Additional City Civil Court, Chennai’ [‘First Appellate Court’ for short] in A.S.No.494 of 2011, whereby the Judgment and Decree dated November 21, 2007 of the ‘learned V Assistant Judge, City Civil Court, Chennai’ [‘Trial Court’ for short] made in O.S.No.8140 of 1993 was set aside.

2. Hereinafter, for the sake of convenience, the parties will be denoted as per their array in the Original Suit.

PLAINTIFFS' CASE:

3. ‘Arulmigu Sreenivasa Perumal Devasthanam’ [‘Devasthanam’ for brevity] is a Denominational Temple belonging to the Sadhu Chetty Community. In view of Section 107 of the ‘Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959’ [‘HR & CE Act’ for brevity], Devasthanam’s autonomy is vouchsafed by the Constitution of India. The Commissioner and the Officials of the ‘Hindu Religious and Charitable Endowments Department’ [‘HR & CE Department’ for short] have only a regulatory and supervisory



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control. The power of management is vested with the Board of Trustees constituted under the Scheme Decree passed by this High Court in C.S.No.553 of 1928. The Plaintiff Nos.2 to 6 were appointed as Trustees of the first plaintiff - Devasthanam by this High Court in W.P.No.15564 of 1989 and they assumed charge on January 22, 1991. The Suit Property solely belonged to the first plaintiff - Devasthanam.

3.1. Upon assuming charge, the Plaintiff Nos.2 to 6 came to know that one of the then Executive Officer inducted certain persons as lessees in the outer *prakaram* within the campus of the Devasthanam for carrying on business by putting up superstructures there. One late K. Parthasarathy is one such lessee who had taken the Suit Property for lease and built a superstructure thereupon.

3.2. The then Executive Officer collusively and fraudulently filed a Suit for ejectment in 'O.S.No.6699 of 1980 on the file of City Civil Court, Chennai' (henceforth 'earlier Suit') in order to afford an opportunity to late K. Parthasarathy to invoke the provision under Section 9 of 'the Madras City Tenants' Protection Act, 1921' [in short 'MCTP Act'] (now the MCTP Act has been renamed into 'Chennai City Tenants' Protection Act, 1921'). In the earli-



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er Suit, the said Parthasarathy has filed an 'Interlocutory Application, numbered as I.A.No.5376 of 1981, under Section 9 of the MCTP Act praying to direct the Executive Officer to sell the Suit Property in his favour' ('said Interlocutory Application' for short). The then Executive Officer, being in collusion with late K. Parthasarathy, did not properly contest the said Interlocutory Application. An Order was passed in the said Interlocutory Application, and on the strength of the said Order, the Sale Deed dated December 9, 1986 was executed without complying the procedure contemplated under Section 34 of the HR & CE Act. Further, the Sale Deed was not communicated to the Commissioner of HR & CE Department by the then Executive Officer to enable the Commissioner to intervene into the matter, and to file an appeal in time.

3.3. The then Executive Officer had no power to file the earlier Suit as well as to lease out the land to late K. Parthasarathy in contravention of Sections 34, 77, 78 and 107 of the HR & CE Act. Therefore, the Sale Deed dated December 9, 1986 executed in favour of the first defendant's father – late K. Parthasarathy is invalid, *non-est* and void *ab initio* and the Order dated July 30, 1983 passed in the said Interlocutory Application is liable to be set aside.



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3.4.The lessee late K. Parthasarathy passed away on July 15, 1990 leaving behind the Defendant Nos.1 to 6 as his legal heirs / representatives. Defendant Nos.7 to 10 are the legal heirs / representatives of the first defendant. Accordingly, the plaintiffs filed this Suit for declaration, recovery of possession and costs against the defendants.

DEFENDANTS' CASE:

4.The defendants deny that the plaintiffs are the trustees of the Devasthanam, and the plaintiffs are put to strict proof of the same. The father of Defendant Nos. 1 to 6 viz., K. Parthasarathy passed away on July 15, 1990 leaving behind Defendant Nos.1 to 6 as his legal heirs / representatives. The said Parthasarathy was in possession and enjoyment of the Suit Property from 1955 onwards *i.e.*, even before the HR & CE Act came into force. Originally, late K. Parthasarathy was inducted as lessee. The then Executive Officer had filed the earlier Suit (in O.S.No.6699 of 1980 against the said K. Parthasarathy for ejectment from the Suit Property). Late K. Parthasarathy filed the said Interlocutory Application (in I.A.No.5376 of 1981 in O.S.No.6699 of 1980 under Section 9 of the MCTP Act for selling the Suit



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Property in his favour). After following due procedure, the Court passed an Order, pursuant to which, the then Executive Officer had executed a Sale Deed to and in favour of late K. Parthasarathy. There is no appeal preferred by the plaintiffs against the Order passed in the said Interlocutory Application. Hence, the present Suit is barred by principles of *res-judicata*.

4.1.The Suit property is not being in the Devasthanam's *prakaram* as alleged by the plaintiffs; it is situated in *Vathiar Kanda Pillai* Street which is away from the Devasthanam. The plaintiffs themselves admitted that their remedy is to file an appeal against the Order passed in the said Interlocutory Application. Hence, the plaintiffs cannot be permitted to circumvent the procedure prescribed by law by filing the present Suit. Since the Sale Deed dated December 9, 1986 was executed pursuant to the Order passed by the Civil Court under Section 9 of the MCTP Act and after due sanction from the Competent Authority under HR & CE Act, the present Suit is not maintainable. Further, the present Suit is unsustainable in view of delay and laches on the side of the plaintiffs. Furthermore, the present Suit as framed is not maintainable as the prayer for recovery of possession is not maintainable when there is no prayer for mandatory injunction to demolish the superstruc-



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ture put up by the late K. Parthasarathy in the Suit Property. Hence, the Suit is liable to be dismissed.

TRIAL COURT:

5. At trial, the plaintiffs' side examined P.W.1 to P.W.8 and marked Ex-A.1 to Ex-A.8. On the side of the defendants, the sixth defendant was examined as D.W.1 and no document was marked.

6. After full-fledged trial, the Trial Court dismissed the Suit. It is pertinent to note that, in the Judgment of the Trial Court, the cause title, preamble, prayer, list of documents and witnesses are correct and relevant to the present case *viz.*, O.S.No.8140 of 1993. However, the pleadings, arguments, and discussion contained therein are irrelevant to the present case and appears to have been incorporated from some other matter. This blunder on the part of the Trial Court demonstrating lack of application of mind, has led to material misapprehension of the facts and legal issues. Hence, the Judgment is not in consonance with Order XX Rule 5 of the Code of Civil Procedure, 1908 and is not a valid one in the eyes of law.



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FIRST APPELLATE COURT:

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7. Being aggrieved with the Judgment and Decree of the Trial Court, the plaintiffs preferred an appeal before the First Appellate Court in A.S.No.494 of 2011. The First Appellate Court, after hearing both sides, came to the conclusion that the Suit Property is appurtenant to the first plaintiff - Devasthanam. Ex-A.7 - Sale Deed dated December 9, 1986 was executed by the then Executive Officer in favour of the first defendant's father – late K. Parthasarathy without following the procedures contemplated under Section 34 of the HR & CE Act. Hence, Ex-A.7 - Sale Deed is void and illegal. Further, the then Executive Officer did not contest the case properly, and a Decree fraudulently obtained in collusion would not operate as *res judicata*. Accordingly, the First Appellate Court allowed the Appeal and decreed the Suit as prayed for except for the prayer for costs.

SUBSTANTIAL QUESTIONS OF LAW:

8. Feeling aggrieved by the Judgment and Decree of the First Appellate Court, the defendants preferred this Second Appeal. The Second Ap-



peal was admitted on December 11, 2017 on the following substantial questions of law:

“a)Whether the burden of proving the validity of sanction for compliance under Section 34 of the HR & CE is on the appellants / defendants and the finding rendered by the 1st Appellate Court in regard to the same is sustainable in law?

b)Whether any decree can be passed by the 1st Appellate Court for the reliefs as contained in the plaint without framing an issue on the maintainability of the suit and rendering a finding thereon?

c)Whether the decree passed by the 1st Appellate Court for possession of the suit property, which is only consequential to the relief for setting aside or cancelling the decree, when the main relief itself is barred by Limitation?

d)Whether the suit for recovery of possession and for setting aside the Sale Deed, without depositing the sale consideration and when the contract is a concluded one, is maintainable in law?”

ARGUMENTS:

9.Mr.G.Saravanan, learned Counsel for the appellants would argue that Ex-A.7 - Sale Deed was executed in favour of late K. Parthasarathy pursuant to the Order passed in the said Interlocutory Application (under Section 9 of the MCTP Act). No appeal has been preferred against the said Or-



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der. Hence, the said Order has reached its finality. Further, the Executive Officer is appointed by the HR & CE Department, and he is acting under the control of the Commissioner of the HR & CE Department. He can sue and be sued on behalf of the Devasthanam. Hence, the earlier Suit filed by the Devasthanam represented by the Executive Officer is valid. Therefore, the plaintiffs, who are said to be the Trustees of the Devasthanam, had no right to institute the Original Suit as it is barred by the principle of *res-judicata*.

9.1. Further would argue that, Ex-A.7 - Sale Deed contains recitals that the Sale Deed was executed by the Executive Officer after obtaining due permission from the HR & CE Department vide the proceedings in O.M.No.30181/86 dated December 4, 1986 made by the Deputy Commissioner of HR & CE Department, who had been duly delegated by the Commissioner under HR & CE Act. Further, the Devasthanam appropriated the sale consideration deposited by late K. Parthasarathy. The entire burden is upon the plaintiffs to prove the alleged fraud committed by the defendants against the first plaintiff - Devasthanam. Further, the Suit is barred by limitation as it is filed beyond three years from the date of execution of Ex-A.7 - Sale Deed. The Trial Court has rightly appreciated the evidence and dismissed



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the Suit, and there is no need to interfere with the same. The First Appellate Court failed to consider these facts and erred in reversing the Trial Court's decision. Accordingly, prayed to allow the Second Appeal.

10. Mr.R.Chakaravarthy, learned Counsel for the Respondent Nos.7 to 10, who are the legal heirs of the second defendant - deceased P. Gajendran, would adopt the arguments put forth by the learned Counsel for the appellants.

11.Mr.M.Ramamoorthy, learned Counsel for the Respondents Nos.1, 4 and 6 / Plaintiff Nos. 1, 4 and 6, would argue that the Suit Property is situate within the Devasthanam's precinct and hence, as per Section 77 of HR & CE Act, the Suit Property cannot be transferred by way of lease or mortgage nor be licenced for any occupation. Therefore, the lease in favour of late K. Parthasarathy is itself void.

11.1. Further would argue that, the first plaintiff being a Denominational Temple, the Executive Officer thereof has no power to institute a Suit as well as to sell property representing the Devasthanam, without obtaining



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prior sanction under Section 34 of HR & CE Act. In this case, the procedures contemplated under Section 34 of HR & CE Act have not been followed. The earlier Suit filed by the Executive Officer representing the Devasthanam has not been authorised by the HR & CE Department nor by the Trustees of the Devasthanam and hence, the Order passed in the said Interlocutory Application as well as the pursuant Sale Deed dated December 9, 1986 are void *ab initio* as per Section 34 of HR & CE Act.

11.2. Further would argue that, as per Section 109 of HR & CE Act, the Limitation Act, 1963 would not apply to property belonging to religious institutions. Hence, the Suit is not barred by limitation.

11.3. Further would argue that, the earlier Suit was filed fraudulently with active collusion between the then Executive Officer and the defendants with an ulterior motive to grab the Suit Property. The Trial Court failed to consider these aspects and erred in dismissing the Suit. The First Appellate Court considering the materials and evidence available on record in the right perspective, allowed the appeal reversing the Trial Court's Judgment and Decree and there is no warrant to interfere with it. Accordingly, he prayed to dismiss the Second Appeal.



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11.4. The learned counsel for the Respondent Nos.1, 4 and 6 would rely on the following Judgments in support of his contentions:

- (i) ***Mary Isabal's Case*** - Judgment of this Court in *The Commissioner of Hindu Religious and Charitable Endowments Department - vs - Mary Isabal and Others*, reported in (1989) 1 LW 68 = (1989) 1 MLJ 83;
- (ii) ***Arulmighu Thiruvallieswarar Thirukkoil's Case*** - Judgment of this Court in *The Executive Officer, Arulmighu Thiruvallieswarar Thirukkoil and Others - vs - Jagathambigai Nagar Co-operative House Site Society and Others*, reported in (2007) 2 LW 1035 = (2007) 4 MLJ 476.

DISCUSSION:

12. This Court has considered the submissions made on either side and perused the materials available on record.

Locus Standi:

13. Undisputedly, the Suit Property originally belonged to the first plaintiff - Devasthanam. In the plaint, it has been stated that the Devasthanam is a Denominational Temple; that the power of management is vest-



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ed with the Board of Trustees constituted under a Scheme Decree passed by this Court in C.S.No.553 of 1928; that the Plaintiff Nos.2 to 6 were appointed as trustees by this Court in W.P.No.15564 of 1989 and they assumed charge on January 22, 1991. Whereas, the defendants deny these plaint averments contending that the plaintiffs are put to strict proof of same. The plaintiffs did not file any document in support of their aforesaid contentions. There is no document filed to show that the Devasthanam is a Denominational Temple as alleged, nor is there anything to show that this Suit has been filed with the concurrence of the HR & CE Department. The Scheme Decree is essential to ascertain the powers, rights and duties of the Board of Trustees and to appreciate the facts of this case in the right perspective. The plaintiffs have filed neither the certified copy of the Scheme Decree said to have been passed by this Court in C.S.No.553 of 1928 nor that of the Order allegedly passed by this Court in W.P.No.15564 of 1989. Only oral evidence of P.W.1 to P.W.8 are available on record to help the case of the plaintiffs, however, the same is not adequate.

14.At this point, it is pertinent to extract the relevant portion of evidence of P.W.1 - Ethirajulu Chetty, who is said to be the chairman of trustee



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appointed under the Order of this Court in the aforesaid Writ Petition, hereunder:

“நான் வாதி தேவஸ்தானத்தில் சேர்மேனாகவும், டிரஸ்டியாகவும் இருக்கிறேன். என்னை கோர்ட்டில் சேர்மேன் மற்றும் டிரஸ்டியாக நியமனம் செய்துள்ளதால் அதை கோர்ட்டில் தாக்கல் செய்யவில்லை. கோர்ட்டில் என்னை சேர்மேன் மற்றும் டிரஸ்டியாக நியமிக்கவில்லை என்றும், அதனால் இந்த வழக்கில் கோர்ட்டு உத்தரவு எதுவும் தாக்கல் செய்யவில்லை என்றால் சரியல்ல. கோவலில் விஸ்தீரணம் மற்றும் பரப்பளவு எவ்வளவு என்று தெரியாது. என்னை நிரந்தர டிரஸ்டியாக நியமனம் செய்யவில்லை. என்னை இந்து சமய அறநிலைய உத்தரவுப்படி 5 ஆண்டுகளுக்கு ஒருமுறை டிரஸ்டியாக நியமனம் செய்தார்கள். இன்றைய தேதியில் நான் சேர்மேன் மற்றும் டிரஸ்டி என்பதற்கு ஆவணம் எதுவும் தாக்கல் செய்யவில்லை
.
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. . . பழைய நிர்வாக அதிகாரி முறைகேடாக விற்றது சம்பந்தமாக நாங்கள் குற்ற வழக்கு எதுவும் தொடரவில்லை. இந்த வழக்கில் பழைய நிர்வாக அதிகாரியை பார்டியாக சேர்த்தோமா என்றால் ரூபகம் இல்லை. தாவா சொத்து கோவில் பிரகாரத்தில் உள்ளது என்பதற்கு எங்களிடம் ரெக்கார்ட்டு இல்லை. இந்து சமய அறநிலைய ஆட்சித்துறையில் உள்ளது. தாவா சொத்தின்



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விஸ்தீரணம் ஞாபகம் இல்லை. தாவா சொத்து ஏற்கனவே இந்த நீதிமன்றத்தில் நி.ம.எண். ----- இல் விற்கப்பட்டு அதற்கு ரூ.----- பெறப்பட்டுள்ளது என்றால் அது விவரம் எங்கள் அலுவலகத்தில் கிடையாது. அந்த பணத்தை கோவிலுக்கு பெறுவது சம்பந்தமாகவும் அது தவறாக விற்கப்பட்டுள்ளது என்றும் எங்களுக்கு தெரியாது. எனக்கு பழைய வழக்கு பற்றியும் தாவா சொத்து பற்றிய முன் நடவடிக்கைகள் தெரியாது என்பதாலும் சாட்சி சொல்ல அதிகாரம் இல்லை என்றால் சரியல்ல. தாவா சொத்தில் உள்ள கட்டிடம் எத்தனை ஆண்டுகளாக உள்ளது என்றால் அது பற்றி எனக்கு முன்னால் இருந்தவர்களுக்கு தான் தெரியும். பிரதிவாதிக்கு 5 வருடங்களுக்கு மேலாக குத்தகைக்கு கொடுத்தது தவறு என்று கூறுவதற்கு ரெக்கார்ட்டு உள்ளதா என்றால் அது இந்து சமய அறநிலைய ஆட்சித்துறையிடம் உள்ளது. .”

2. 14.1.Perusal of P.W.1's evidence would show that, he has given evasive and insincere answers to the questions posed to him. His evidence is not concrete and does not inspire the confidence of this Court. Likewise, the evidence of P.W.2 to P.W.8 are also evasive in nature and do not inspire the confidence of this Court. As per the best evidence rule, the plaintiffs, whose specific case is that the power of management is vested with the Board of Trustees constituted under a Scheme Decree passed by this Court and that they were appointed through Court Order, ought to have adduced documen-



tary evidence in support of their case. Despite the defendants' denial of their contentions, they have miserably failed to add documentary evidence in support of their aforesaid contentions.

15.It is true that the Suit Property being a temple property, anyone, even a worshipper, has *locus standi* to institute a Suit representing the temple. But, when the plaintiffs assert that they're the trustees, they ought to establish the same and prove their case. Mere pleadings do not amount to proof. The Court is also duty bound to protect the properties belonging to religious and charitable institutions from wrongful claims or misappropriation [Vide *A.A. Gopalakrishnan - vs - Cochin Devaswom Board*, reported in (2007) 7 SCC 482]. However, in the absence of any positive evidence supporting the assertions made on the side of the plaintiffs, this Court is unable to accept the aforesaid contentions of the plaintiffs.

Maintainability and Burden of Proof:

16.The prayer in the present Suit has been contained in Paragraph No. 13 of the Plaint. It reads thus:

*“13. The plaintiffs therefore prays judgment and decree
a. For a declaration that the registered Sale Deed bearing*



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Doc. No.1569/1986 dated 09.12.1986 executed by the Executive Officers E.Radhakrishnan of Plaintiff Temple in Office Registrar Madras Central in favour of the defendant and executed by the Executive Office in pursuance of the decree and ordered dated 30.07.1983 passed as orders in IA 5376/1981 in OS 6699/1980 on the file of the City Civil Court, Madras as illegal non-est, and null and ab initio void and is liable to set aside and not binding on the Plaintiffs Devasthanam or Executive Officers or its Trustees;

b. To declare and set aside and cancel the order dated 30.07.1983 passed in IA 5376/1981 in OS 6699/1980 on the file of the city civil court, madras directing the sale of the suit properties in favour of the defendants under Section 9 of the city tenants protection act as illegal, invalid non-est and void in law.

c. for possession of the suit property described in the schedule given hereunder;

d. to direct the defendants to pay the costs of the suit;

e. and to pass such further or other order as this Hon'ble Court may deemed just and necessary in the circumstances of the case and thus render justice.”

17.The plaintiffs case is that Ex-A.7 - Sale Deed in favour of late K. Parthasarathy was executed collusively by the then Executive Officer without following the procedures contemplated under Section 34 of HR & CE Act and hence, the Sale is null and void. Further, only after assuming charge as



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trustees in the year 1991, the alleged fraud and treachery committed by the defendants in collusion with the Executive Officers came to light.

18.In view of the pleadings that the fraud came into light only in 1993 and the prayer *qua* setting aside the Order passed in the said Interlocutory Application, no doubt, the Suit is maintainable.

19.As far a Burden of Proof is concerned, given that it is the specific case of the plaintiffs that the procedures contemplated under Section 34 of HR & CE Act was not followed in the execution of Ex-A.7 – Sale Deed, the burden is upon the plaintiffs to prove the same.

Lie & Location of the Suit Property and Section 77 of HR & CE Act:

20.Further case of the plaintiff is that the Suit Property is situate within the Devasthanam's precinct *i.e.*, in the outer *prakaram* and hence, the lease in favour of late K. Parthasarathy is null and void as per Section 77 of HR & CE Act. According to the defendants, late K. Parthasarathy was the



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lessee under the Devasthanam since 1955 *i.e.*, before the commencement of HR & CE Act. The said fact has not been denied by the plaintiffs. In the year 1980, the Devasthanam being represented by the then Executive Officer filed the earlier Suit praying to direct the defendants to quit and deliver the vacant possession of the Suit Property. In the earlier Suit, it has been specifically stated by the Devasthanam that late Parthasarathy was a lessee under it with respect to Suit Property for a monthly rent. Relevant portion of the plaint filed therein reads thus:

'3.The plaintiff devasthanam is the owner of house, ground and premises No.3/20A, New No.27, V.K.Pillai St., Ms-7 more fully described in the schedule hereto. The defendant is a tenant under the plaintiff in respect of portion is the said premises on a monthly rent of Rs.240/-. The tenancy is month to month according to English Calender. The tenancy of the defendant has too duly terminated by notice dt. 15-7-80...'

21.In the case on hand, the plaintiffs have pleaded that the lease in favour of late K. Parthasarathy contravenes Section 77 of the HR & CE Act. However, the plaintiffs did not prove that the Suit Property is situate in the outer *prakaram* as alleged or within the precinct of the Devasthanam. If



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really the Suit Property is situate in the *prakaram* or within the precinct of the Devasthanam, the Devasthanam would not have leased out the Suit Property in the first place. Even while assuming so, the plaintiffs have not filed any documentary evidence to show that the Suit Property lies in the outer *prakaram* as alleged or within the precinct of Devasthanam or to show that the lease is in contravention of Section 77 of HR & CE Act in any other manner. Plaintiffs could have very well taken steps to appoint an Advocate Commissioner to prove the lie and location of the Suit Property or could have let in photographs as evidence to prove the same, but they have miserably failed to do so. Hence, this Court is of the opinion that the plaintiffs failed to prove that the lease contravenes Section 77 of HR & CE Act.

Earlier Suit, said Interlocutory Application and the alleged fraud:

22.The copy of Complaint in the earlier Suit has been marked as Ex-A.1, which shows that the date of complaint is September 22, 1980. In the earlier Suit, the father of the Defendant Nos.1 to 6 viz., late K. Parthasarathy filed a Written Statement stating that he is the tenant of land belonging to the Devasthanam; that the superstructure erected thereupon was constructed by him by spending more than One Lakh Rupees after getting valid sanction



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from the Corporation of Madras and hence, he is entitled to purchase the Suit Property as per Section 9 of the MCTP Act. Accordingly, in the earlier Suit, late K. Parthasarathy filed the said Interlocutory Application on March 20, 1981 praying to sell the Suit Property in his favour.

22.1. In the said Interlocutory Application, the Devasthanam represented by the then Executive Officer filed a counter wherein it is stated that late Parthasarathy is not the owner of the superstructure nor is he entitled to the benefit under Section 9 of the MCTP Act to purchase the land and that late K. Parthasarathy is a tenant of the building along with the land, and not the land alone.

22.2. The learned Judge, City Civil Court, after hearing both sides, came to the conclusion that the petitioner in the said Interlocutory Application *i.e.*, late K. Parthasarathy is entitled to the benefit under Section 9 of the MCTP Act and accordingly, directed the respondent - Devasthanam to sell the land for a price to be fixed by the Court. The Court fixed a sum of Rs.36,000/- per ground and both the parties agreed with the same. Accordingly, a sum of Rs.18,800/- was fixed for the portion occupied by late K. Parthasarathy *viz.*, an extent of 1253 *sq. ft.*



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22.3. Pursuant to the Order passed by the learned Judge, City Civil Court, Chennai, Ex-A.7 - Sale Deed was executed on December 9, 1986.

Relevant portion of the Sale Deed reads as follows:

“... Whereas the Purchaser has approached the temple for execution of sale deed and whereas the proposal has been duly approved and recommended by Deputy Commissioner, Hindu Religious and Charitable Endowment Board, Administration Department, Madras – 34 in O.M.No.30181/86 dated 4/12/1986. NOW THIS DEED OF SALE WITNESSETH: That in pursuance of the aforementioned proceedings and in consideration of the foregoing the Vendor, in consideration of drawal of the said sum of Rs.18,800/- (Rupees Eighteen Thousand Eight Hundred Only) from the Court, by the Vendor, deposited by the Purchaser herein, being the cost of the land in respect of premises No.27/L, Vadhyar Kandapillai Street, Choolai, Madras – 112 fully set out in schedule hereto, the vendor discharges the purchaser from the primary obligation of payment of full sale price and do hereby sells all the vacant piece of land with all trees, fences (...) the purchaser is already in possession of the property since he is the owner of the superstructure and the purchaser shall henceforth enjoy the property absolutely as owner of both the land and superstructure”

(emphasis supplied by this Court)

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23. In this case, the plaintiffs' side examined Mr. D. V. Seshayya Chetty as P.W.8 through whom Ex-A.8 - Guideline Value Report of the Suit Property has been marked. As per Ex-A.8, the Guideline Value of Survey No.1025/1 in *Vathiyar Kanda Pillai* Street in the year 1986 is Rs.40,000/- per ground. The Suit Property is comprised in the same Survey Number and in the same street, as evident from the plaint description of property. The Court in the earlier Suit fixed the sale price at Rs.36,000/- per ground and there seems to be no significant infirmity with the sale price, fixed by the Court and agreed by the parties.

24. Further, perusal of records show that the Executive Officer who verified the plaint in the earlier Suit as well as filed counter in the said Interlocutory Application is Mr. N. Balasubramaniam; the Executive Officer who deposed as R.W.1 in the earlier Suit (also for the said Interlocutory Application) is Mr. Saravana Bavanandam while the Executive Officer who executed Ex-A.7 - Sale Deed pursuant to the Order of the Court in the earlier Suit is Mr. Radhakrishnan. In short, there had been three different Executive Officer during the material point of time.



25. At this juncture, this Court deems fit to extract Section 6 (9)

of HR & CE Act which defines ‘Executive Officer’ as hereunder:

“6. Definitions. - *In this Act, unless the context otherwise requires, -*

... ..

(9) *“Executive officer” means a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under this Act or the rules made thereunder or by any scheme settled or deemed to have been settled under this Act;”*

25.1. Section 34 of the HR & CE Act, as it stood then, reads

thus:

“34.Alienation of immovable trust property.— (1) *Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution:*

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other



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persons having interest shall be duly considered by the Commissioner.

Explanation: *Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any period exceeding five years.*

(2) When according such sanction, the Commissioner may impose such conditions and give such directions as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may, within three months from the date of the publication of the order, appeal to the Government to modify the order or set it aside.

(5) Nothing contained in this section shall apply to the name referred to in section 41.”



25.2. Further, it is pertinent to extract Section 45 of HR & CE

Act which deals with appointment and duties of Executive Officers, hereunder:

“45. Appointment and duties of Executive Officers.-

(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math.

Explanation.—*In this section “math” shall not include a temple under the control of a math.*

(2) The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner.

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in sub- section (1) shall be assigned to the executed officer.

(3) The Commissioner may define the powers and duties which may be exercised and discharged respectively by the executive officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive Officer.”



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25.3. From the above, it can be seen that the Executive Officer is a statutory authority who functions under the direct supervision of the Commissioner of the HR & CE Department.

26. This Suit has been filed alleging fraud by the Executive Officers appointed by the HR & CE Department in their official capacity. But, none of the Executive Officers have been examined in this case. Further, the earlier Suit was disposed of almost after 6 years of legal proceedings. In these circumstances, it is highly improbable that the Executive Officer fraudulently filed a Suit without the knowledge of the HR & CE Department. Moreover, Ex-A.7, a document marked by plaintiffs, recitals whereof show that the sale proposal has been approved by the Deputy Commissioner of HR & CE Department vide his proceedings in O.M.No.30181/86 dated December 4, 1986. The presence of HR & CE Department in this case is essential to arrive at a just conclusion; they're a necessary party to the Suit. Given that the plaintiffs' specific case is that the Executive Officer acted fraudulently without obtaining due permission from the HR & CE Department, the plaintiffs ought to have either examined the concerned Executive Officers or impleaded the HR & CE



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Department as a party to this Suit or produced any documentary evidence against the aforesaid proceedings. But they have failed to do so.

27. In short, Copy of the Complaint, Written Statement, Petition and Affidavit of the earlier Suit, along with the verified Petition under Section 9 of MCTP Act and counter filed thereon, Order passed in the said Interlocutory Application, pursuant Sale Deed and the Guideline Value as on 1986, marked by the plaintiffs as Ex-A.1 to Ex-A.8, *prima facie* show no infirmity with the earlier Suit proceedings as well as the pursuant Sale, and the plaintiffs have miserably failed to establish their plea of fraud.

28. Needless to mention that, fraud vitiates all solemn acts. If it is really a case of fraud as alleged by the plaintiffs, the entire transaction - the Judgment and Decree in the earlier Suit, the Order passed in the said Interlocutory Application and the pursuant Sale Deed - would stand vitiated. Further, there is no quarrel with the legal proposition laid down in Judgments relied on by the plaintiffs' side. No doubt, when it is established that procedures contemplated under Section 34 of HR & CE Act are not followed, the sale is



null and void. However, in this case as stated *supra*, the plaintiffs' side has failed to establish so.

Whether the transaction is saved by the Tamil Nadu Act No.2 of 1996?:

29.MCTP Act was amended by the Chennai City Tenants Protection (Amendment) Act, 1996 [Tamil Nadu Act No.2 of 1996] which came into force on January 11, 1996. Through the said amendment, clause (f) along with explanation was inserted / added to sub-section 3 of Section 1 of MCTP Act. The said insertion reads as follows:

“(f) by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion.

Explanation. - *For the purpose of this clause,-*

(A) "religious institution" means any-

(i) Temple;

(ii) Math;

(iii) Mosque;

(iv) Church; or

(v) Any other place by whatever name known.

which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof as a place of public religious worship;

(B) "religious charity" means a public charity associated



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with a religious festival or observance of religious character (including a wakf associated with a religious festival or observance of religious character), whether it be connected with any religious institution or not:

Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date.

(emphasis supplied by this Court)

29.1. In this case, as stated *supra*, the earlier Suit for ejectment was filed in the year 1980. The said Interlocutory Application under Section 9 of MCTP Act was filed in the year 1981. The fair and decretal Order thereon was passed on July 30, 1983 and the pursuant Sale Deed was executed on December 9, 1986. Hence, the earlier Suit and its proceedings and the pursuant Sale have been saved by the aforesaid amendment Act *viz.*, Tamil Nadu Act No.2 of 1996.

29.2. In this regard, it is pertinent to cite the Judgment of the Hon'ble Supreme Court in ***Mylapore Club's Case*** [*Mylapore Club - vs - State of Tamil Nadu and Another*, reported in (2005) 12 SCC 752]. In Paragraph No.15, it has been held thus:



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*“15. It is open to the legislature to bring in a law that has retrospective operation. That position is not disputed. When it affects the vested rights or accrued rights, that question will have to be considered in that context. But the right to take advantage of a statute has been held to be not an accrued right. The matter has been discussed in detail in *M. Varadaraja Pillai v. Salem Municipal Council* [85 LW 760] by the Madras High Court after referring to *Abbott v. Minister for Lands* [1895 AC 425 : 64 LJPC 167 : 72 LT 402 (PC)] and the subsequent decisions. By Section 3, which was in pari materia with Section 9 of the amending Act of 1960, the legislature had intended that pending proceedings should be affected. Even otherwise, once the applicability of the Act itself is withdrawn, no relief can be granted to a person who could have been or who was earlier a beneficiary under that enactment, after such withdrawal. Here, the section provides that even if some steps have been taken pursuant to the claim by the tenant under Section 9 of the Parent Act, the proceeding cannot be continued in view of the exemption enacted in favour of the institutions. But the legislature has taken care to save the concluded transactions by providing that nothing contained in the section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date. Reading Section 3 of the amending Act 2 of 1996, it could not be said that it is a legislative intervention with a judicial decision. **The proviso has saved concluded transactions based on judicial adjudications.** All that Section 3 does is to make it explicit that the amendment is*



intended to apply to pending proceedings. In the context of Section 6 of the General Clauses Act, unless it is shown that any right has accrued to the claimant under Section 6 of the General Clauses Act, such a provision making it clear that the Act could not be applied any more to pending proceedings is not in any way invalid or incompetent. Unless the proceedings have concluded and the rights of the landlord have passed to the tenant, no right accrues to the tenant. He is only in the process of acquiring a right, the process having been set in motion at his instance. When pending proceedings are affected by an amendment, it is open to the legislature to provide that the said process cannot continue. That alone has been done by Section 3 of the amending Act of 1996. As far as concluded judicial proceedings are concerned and cases where orders for possession have been executed or decrees satisfied in full before the date of the amendment, they have been saved by the proviso thereby ensuring that there was no interference by the legislature with judicial proceedings which had reached a conclusion, even though that judicial proceeding related to a religious or charitable institution exempted by the amendment from the purview of the Parent Act. We are, therefore, not in a position to find any merit in challenge to Section 3 of the amending Act.”

(emphasis supplied by this Court)

29.3.In this case, as stated *supra*, entire proceedings of the earlier Suit as well as the execution of Ex-A.7 - Sale Deed concluded on December 9,



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1986 *i.e.*, well before the aforesaid amendment Act *viz.*, Tamil Nadu Act No.2 of 1996 came into force. Hence, no doubt, they're saved by the proviso to clause (f) under sub-section 3 of Section 1 of MCTP Act.

30. There is no dispute that if any alienation is made in contravention of Section 34 of the HR & CE Act, the alienation would be null and void. In this case, as stated *supra*, the burden of proof lies on the plaintiffs but Ex-A.1 to Ex-A.8 do not support the plaintiffs' case. In fact, Ex-A.1 to Ex-A.8 would *prima facie* establish that Ex-A.7 - Sale Deed was executed after complying with the procedures contemplated under Section 34 of HR & CE Act. Hence, this Court is of the considered view that the plaintiffs have miserably failed to establish their case.

31. Further, in view of the aforesaid lacunas on the plaintiffs' side, considering the fact that the Suit Property is a temple property, this Court is of the view that the question of *res judicata* cannot be decided in this Second Appeal given the evidence available on record and hence, the same is left open.



CONCLUSION:

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32.In view of the forgoing narrative, this court comes to the following conclusions:

32.1. The burden of proving the validity of sanction compliance under Section 34 of the HR & CE Act is on the plaintiffs and they have failed to discharge the said burden satisfactorily. Accordingly the Substantial Question of Law No.1 is answered in favour of the defendants and against plaintiffs.

32.2.As already stated *supra* in Paragraph No.18, in view of the pleadings and the prayer, the Suit is maintainable. Accordingly, the Substantial Question of Law No.2 is answered in favour of the plaintiffs and against the defendants.

32.3. In view of the pleadings of the plaintiffs set out *supra* in Paragraph No.17 as well as the Plaint prayer, the main reliefs *viz.*, declaration that the Sale Deed is null and void, setting aside the Order in said Interlocutory Application, and recovery of possession, is not barred by limitation. But the plaintiffs have not proved their case. Hence, the Judgment and Decree passed by the First Appellate Court is liable to be set aside. Accordingly, the



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Substantial Question of Law No. 3 is answered in partly favour of the plaintiffs and partly in favour of the defendants.

32.4.In view of the pleadings pertaining to collusion and fraudulent execution of Sale Deed through Court Order, and considering the fact that the Suit Property is a temple property, this Court is of the opinion that the Suit is maintainable without depositing the sale consideration. Accordingly, the Substantial Question of Law No. 4 is answered in favour of the plaintiffs.

33.In view of the above findings, this Court is inclined to allow the Second Appeal, set aside the Judgment and Decree of the First Appellate Court and dismiss the Original Suit. At the same time, as stated *supra*, this Court is duty bound to safeguard the temple properties from misappropriation. Bearing the same in mind, this Court is of the view that dismissing the Original Suit without affording the plaintiffs an opportunity to file a fresh Suit, merely because of the defects on the side of the plaintiffs - such as not impleading the HR & CE Department, which is a necessary party as stated *supra*; not establishing the *locus standi* of the plaintiffs; lack of essential documentary evidence such as the said Scheme Decree; lack of evidence to show that the Devasthanam is a Denominational Temple or to show that this Original



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nal Suit has been filed with the concurrence of the HR & CE Department - would cause grave injustice and hence, the plaintiffs shall be given an opportunity to file a fresh Suit after curing these defects.

34.Resultantly, the Second Appeal is allowed in the following terms:

- (i) The Judgment and Decree passed by the First Appellate Court is set aside. The Original Suit in *O.S.No.8140 of 1993* on the file of the learned V Assistant Judge, City Civil Court, Chennai, is hereby dismissed.**
- (ii) As stated *supra* in Paragraph No. 33, the plaintiffs are at liberty to institute a fresh Suit with the same cause of action, after impleading the Commissioner of HR & CE Department and rectifying the defects, if so desired or advised.**
- (iii) There shall be no order as to costs.**
- (iv) Consequently, connected Civil Miscellaneous Petition is closed.**



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15 / 10 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

1.The VI Additional Judge
VI Additional City Civil Court
Chennai.

2.The V Assistant Judge
City Civil Court
Chennai.



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R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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