



S.A.(MD).No.166 of 2024

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.03.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.166 of 2024

and

C.M.P.(MD)No.3918 of 2024

Vahuthalwarpatti Panchayat,
Represented by its President Vahuthalwarpatti Village,
Manapparai Taluk,
Trichy District.

... Appellant

/Vs./

1.The Idol of Sri Raja Rajendra Soleeswaramudaya
Veeramakali Amman,
Represented by its Hereditary Trustee,
T.R.K.Kumara Vijayan.

2.Marungapuri Panchayat Union,
Represented by its Commissioner,
Kallupatty, Manapparai Taluk.

3.A.Rasu

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgement and Decree dated 12.02.2024 in A.S.No.6 of 2019 on the file of the Subordinate Judge, Manapparai, confirming the Judgment and Decree dated 07.03.2015 made in O.S.No.148 of 2004 on the file of the District Court, Manapparai.



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For Appellant : Mr.K.Govindarajan
for Mr.S.Pon Senthil Kumaran
For R1 : Mr.T.Vadivelan

JUDGMENT

The 1st defendant is the appellant herein, the plaintiff is the first respondent herein and the second and third defendants are the second and third respondents herein. For the sake of convenience, the parties shall be referred as plaintiff and defendants as per the ranking in the suit.

2. The suit is filed to declare that the act of the 1st and 2nd defendants in allowing the 3rd defendant to conduct weekly shandy in the suit properties and permitting him to collect a toll in the suit properties is illegal, ultra vires, null and void and consequently to grant permanent injunction restraining the defendants or anybody through them from conducting a weekly shandy and collecting toll in the suit properties and permanent injunction restraining the defendants or anybody through them from interfering with the rights and possession and enjoyment of the plaintiff or its tenant in any manner whatsoever. The Trial Court had allowed the suit. Aggrieved over the same, the 1st defendant had preferred an appeal before the First Appellate Court and the appeal was dismissed. Aggrieved over the same, the



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present second appeal is filed by the 1st defendant before this Court.

3. The brief facts of the case are that the suit properties belong to the deity namely Sri Raja Rajendra Solesswarmudayar Veerama Kali Amman represented by its hereditary trustee T.R.K. Kumara Vijayan. The plaintiff Temple had leased out the land situated in S.F.No.158/3 which are described as items 1 and 2 of the suit properties to one Nirmala, wife of Dharmaraj and items 3 and 4 of the suit properties to one A.Krishnan, son of Andi Gounder, who are cultivating tenants under the plaintiff. In respect of the same S.F.No.158/3, the plaintiff granted permission for constructing a Kalyana Mandapam within 10 cents of land under the Jawahar Yojana Scheme for the benefit of plaintiff Temple and for public. The second respondent after completing the construction ought to have handed over the Mandapam to the plaintiff, since the management of the Mandapam rests with the plaintiff Temple and the defendants have no right to do anything in the suit mention properties. When the plaintiff had permitted only for construction of Mandapam, but the second defendant without consent of the plaintiff has let the third defendant to conduct weekly shandy and also constructed a water tank which are illegal.



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4. The plaintiff further submitted that the plaintiff came to know about the conduct of weekly shandy when the third defendant namely A.Rasu had filed writ petition in W.P.No.20379 of 2003 against Panchayat President and the cultivating tenants restraining them from interfering with the conduct of weekly shandy and also restrain from interfering the act of collecting toll in the suit properties. Thereafter, the plaintiff Temple came to know that the Panchayat President had auctioned the land for conducting weekly shandy in the properties and for collection of tolls and the third defendant participated in the auction and the lease was granted to the said A.Rasu. The 1st and 2nd defendants do not have any right, title, interest or possession in respect the properties but the defendants, by taking law in their own hands had interfered with the possession and enjoyment of the plaintiff over the suit properties. By conducting a weekly shandy in the suit properties which belong to the Temple, the defendants have gone to the extent of having a shop for selling mutton, pork and beef. Hence such an act of the defendant is illegal and high handed. The plaintiff never permitted the defendants to conduct weekly shandy or do anything with the suit properties.

5. The 1st defendant has no right to auction the suit property since the



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property belongs to the Temple and the defendants are fully aware of the fact that they cannot auction the property for conducting weekly market. But by collusion among themselves, the defendants are resorting to such high-handed acts in the suit properties belonging to the plaintiff. The defendants are claiming some unfounded rights over the suit properties. The defendants have no right to file a writ petition. The third defendant had filed the writ petition against the cultivating tenant of the plaintiff, but the plaintiff was not a party in the writ petition. All the defendants together had acted against the plaintiff in a high handed manner. Hence, in order to put an end to the unfounded claims of the defendants, the plaintiff had filed the suit for relief of declaration and permanent injunction.

6. The 1st and 2nd defendants had filed written statement wherein it is stated that the properties are the absolute properties of the plaintiff. But the defendants are not having any knowledge about the lease executed in the name of Nirmala and Krishna in respect of S.F.No.158/3. Thereafter, all the pleadings of the plaintiff were denied as incorrect. Further, the defendants had stated that the plaintiff had granted permission to put up Kalyana Mandapam in the S.F.No. 150/3. But in the permission, it is not stated Mandapam ought to be constructed



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within an extent of 10 cents of land. The plaintiff had concealed the said fact. The defendant further stated that there is no agreement to hand over the management of the Mandapam to plaintiff after construction. Until now the management of Mandapam is with the defendants only. The defendant had put up overhead water tank without permission which is also incorrect. The defendant denied all other contentions of the plaintiff. The defendant further stated that the third defendant took auction and he collected toll with the consent of the Panchayat. Further in connection with the said issue, the third defendant had filed a writ petition and obtain an order. After the expiry of the lease period, the writ petition was disposed and during the said period, the order was in force. Hence, the plaintiff had no right to deny the auction rights of the third defendant. The plaintiff had a direct knowledge about the defendants' act of putting up a Mandapam, overhead water tank and weekly shandy. After giving permission to the defendants to put up the said construction, the plaintiff has no right to deny the said construction and weekly shandy. The 1st and 2nd defendants are running the weekly shandy continuously with the permission of the higher authorities and by following the rules and regulations of the Panchayat. The Panchayat is having surplus income through the weekly shandy. Once the plaintiff permitted the defendants to put up



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Kalyana Mandapam, water tank and weekly shandy, thereafter, is estopped to raise any objection. Hence, the plaintiff is not entitled to get any relief of declaration and injunction.

7. Both the Courts below had concurrently held in favour of the plaintiff. Aggrieved over the same, the present second appeal is filed.

8. The substantial question of law raised by the defendants in the present second appeal is that the plaintiff had not impleaded the lessees as one of the parties in the suit and hence, the Ex.A1 and A2, which are lease agreements executed with the lessees cannot be taken as proved. Since both the lease agreements under Ex.A1 and Ex.A2 ought to be proved by examining the alleged lessees as witnesses, if not proved, then adverse inference ought to be drawn under section 114 of Evidence Act.

9. The said substantial question of law cannot be entertained at all, since the dispute is between the Temple and the Panchayat, hence it is unnecessary to implead the lessees of the Temple.



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10. The issue between the plaintiff and the defendants is whether the plaintiff had granted any permission to the 1st and 2nd defendants / Panchayat to run weekly shandy in the land of the Temple and whether the Panchayat have any right to collect toll from public by using the land of the Temple. Both the plaintiff and the defendants admit that the land belongs to Temple. It is the case of the plaintiff that permission was granted to construct Kalyana Mandapam in 10 cents of land. But it is the case of the defendants that Kalyana Mandapam ought to be constructed in the land but the extent of land was not mentioned in the permission letter in Ex.A6. When the defendants admit that permission is granted for constructing Kalyana Mandapam, then the defendants had violated the condition granted under the permission letter. In other words, when the defendants had no permission to conduct weekly shandy and construct water tank, then the defendants had violated the conditions granted under the permission letter. In such circumstances, the above substantial question of law is irrelevant.

11. The next substantial question of law raised by the defendants is that plaintiff is estopped from challenging Ex.B1 to Ex.B4. The said Exhibits are resolutions passed by the Panchayat and auction notice issued by Panchayat. The



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said substantial question of law cannot be entertained. The plaintiff being a Temple has no say in any resolution that would be passed by the Panchayat and the Temple would not have say in the auction notice issued by the Panchayat. This Court is at loss by such substantial question of law raised by the Panchayat. First of all, how can a Panchayat pass a resolution to conduct weekly shandy and to put up water tank in the property of Temple? In fact, the Temple is not having any authority to let the land of Temple for weekly shandy and put up any water tank. In the present case, when the Temple had not granted any permission to conduct weekly shandy and to put up water tank, then in such circumstances, the Panchayat has no right to pass any resolution to conduct weekly shandy or to put up water tank or to conduct any auction. When the Panchayat itself has no right to pass such resolution to conduct weekly shandy or auction, there is no question of estoppel. Further, simply because the Panchayat had passed a resolution to conduct weekly shandy or construct water tank, the same would not act as estoppel for the plaintiff. This Court is of the considered opinion that this substantial question of law is perverse and the same cannot be entertained.

12. The Trial Court had relied on the evidence and also on the deposition of



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the defendants and had rightly come to the conclusion that the Panchayat was not granted any right to put up weekly shandy and water tank. The relevant portion of the judgment is extracted hereunder:

“... Now the defendants are admitted already that the schedule properties are belonged to the temple but there is no document to show that the temple or its trustee had given the properties to the panchayat. However Ex.A6 is the consent deed executed by the plaintiff to the panchayat. It is not registered document. As per the Registration Act Ex.A6 is not valid in the eye of law and no evidenceary value of the document but plaintiff admitted that he gave 4 Ares only to the panchayat for (to) construct a Thirumanamandapam. In this respect the panchayat president is examined as DW1 his evidence shows “எக்ஸ்.ஏ6 ஆவணத்தில் மேற்படி திருமண மண்டபம் அ.வ.எண்.148ல் எனக்கு தாவா சொத்தில் பரம்பரை அறங்காவலர் கொடுத்த பத்திரத்தில் திருமண மண்டபம் கட்டியபிறகு அலுவலகத்திற்கு பயன்படும் வகையில் தான் கண்டு எழுதப்பட்டுள்ளது என்றால் சரிதான் 4 ஏர்ஸ் கொடுத்ததுதான் திருமண மண்டபம் கட்டுவதற்கு அமைக்கப்பட்டது என்றால் சரிதான் அந்த 4 ஏர்ஸ் என்பதுதான் தாவா பி அட்டவணை சொத்தில் கிழக்கு பகுதியில் வடகிழக்கு முலையில் உள்ள சொத்து என்றால் சரிதான் அந்த 4 ஏர்ஸ் திருமண மண்டபத்திற்கு நீக்கிதான் இந்த வழக்கு தாக்கல் செய்யப்பட்டுள்ளது என்றால் சரிதான்.” என்றும் “பஞ்சாயத்தில் சொத்து பதிவு ரிஜிஸ்டர் என்ற ஒன்று உண்டா என்றால் உண்டு அதில் வார சந்தை திருமண மண்டபம் முதலிய விவரங்கள் அதில் ஏற்றப்பட்டிருக்கும் என்றால் சரிதான். தாவா சொத்தில் வார சந்தை நடப்பதற்கு எதாவது ஆதாரம் நீதிமன்றத்தில் தாக்கல் செய்தேனா என்றால் தாக்கல் செய்யவில்லை.” என்றும் “தாவா



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சொத்துக்களை பொறுத்து மணப்பாறை வட்டாட்சியர் அவர்கள் தாவா சொத்து குத்தகை பதிவேட்டில் உள்ளது என்றும் எனவே வார சந்தைக்கு கொடுக்ககூடாது என்று கடிதம் எழுதியுள்ளார் என்று சொன்னால் சரிதான்.” என்றும் “சந்தை நடந்தது என்று சொன்னது திருமண மண்டபத்திற்கு முன் புறத்தில்தான் நடந்தது என்று சொல்கிறேன் என்றால் சரிதான்” என்றும் “வார சந்தை ஏலம் இட்டதற்கும் ரசீதுகளும் நான் நீதிமன்றத்தில் தாக்கல் செய்திருக்கிறேனா என்றால் தாக்கல் செய்யவில்லை. In this aspect another one clerical staff of Vakuthalvar party Panchayat was examined as DW2 his evidence shows. “நான் தாக்கல் செய்திருக்கும் எக்ஸ்பிட் பி1ல் இருந்து பி12 வரையுள்ள ஆவணங்கள் ஒரே புத்தகமாக உள்ளது என்றால் சரிதான். அதை நான் நீதிமன்றத்தில் தாக்கல் செய்யவில்லை.” மேற்படி ஆவணங்களை ஊராட்சி மன்ற தலைவர் கேட்டுக்கொண்டதின்படி கொண்டுவந்தேன். ஊராட்சி மன்றத்தலைவர் எழுத்து மூலமாக எதுவும் போடவில்லை. பி1ல் இருந்து பி12 வரையுள்ள ஆவணங்கள் குறித்து எனக்கு தனிப்பட்ட முறையில் எதுவும் தெரியாது பி1 முதல் பி12 வரையுள்ள ஆவணங்களில் கூறப்பட்டிருக்கும் கூட்டங்கள் எழுத்துபூர்வமாக அறிவிப்பு கொடுக்கப்பட்டு கூட்டப்படவில்லை. மேற்படி ஆவணங்களில் நான் ஏதும் கையெழுத்து செய்யவில்லை மேற்படி ஆவணங்களை எழுதியது நான் தான். மேற்படி ஆவணங்களில் கண்ட இங்கு ஒரே இங்கினால் தான் எழுதப்பட்டது.” என்றும் “கோவில் டிரஸ்டி அனுமதியில்லாமல் பஞ்சாயத்து நிலங்களை எதுவும் செய்ய முடியாது என்றால் சரிதான். அ.வ.எண்.148 2004 வழக்கில் எதிர்வழக்குரை தாக்கல் செய்யும் போது பி1 முதல் பி12 வரையுள்ள ஆவணங்கள் தாக்கல் செய்யப்படவில்லை என்றால் சரிதான். இந்த ஆவணங்கள் பற்றிய விவரங்கள் எதிர்வழக்குரையில் சொல்லப்பட்டுள்ளதா என்ற விவரம் எனக்கு தெரியாது. நான் தாக்கல் செய்திருக்கும் ஆவணங்களில் வழக்கு தாக்கல் செய்வதற்கு பின்புள்ள ஆவணங்கள் உள்ளது என்றால் சரிதான். நான் தாக்கல் செய்திருக்கும்



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ஆவணங்களில் வாரசந்தை எந்த இடத்தில் கூடும் என்பதை குறிப்பிடும் சர்வே எண் குறிப்பிடவில்லை என்றால் சரிதான். எவ்வளவு இடத்தில் விஸ்தீரணத்தில் சந்தை கூடும் இடம் குறிப்பிடவில்லை என்றால் சரிதான். வார சந்தை போடுவதற்கு கோவில் நிர்வாகத்திடம் எந்தவிதமான அனுமதியும் வாங்கவில்லை என்றால் சரிதான். வாரசந்தையில் வசூல் செய்வதற்கும் கோவில் நிர்வாகத்திடம் அனுமதி வாங்கவில்லை என்றால் சரிதான். தனியார் இடத்தை பொறுத்து எந்தவிதமான உத்தரவும் வழங்குவதற்கு மாவட்ட ஆட்சித்தலைவருக்கோ ஆணையாளருக்கோ எந்தவிதமான உரிமையும் இல்லை என்றால் சரிதான். நான் தாக்கல் செய்திருக்கும் ஆவணங்களில் வாரசந்தை நடத்தி வசூல் செய்த பணம் பஞ்சாயத்திற்கு வந்ததாக சொல்லியிருக்கிறோம். மேற்படி பணம் வந்ததற்கு பஞ்சாயத்தில் கணக்கு உள்ளது, அந்த கணக்கு எதுவும் கோர்ட்டில் தாக்கல் செய்யவில்லை. பஞ்சாயத்து கணக்கு ஆடிட்டரால் தணிக்கை செய்யப்பட்டுள்ளது. ஆடிட்டர் தணிக்கை எதுவும் நீதிமன்றத்தில் தாக்கல் செய்யவில்லை.” என்றும் “தண்ணீர் தொட்டியும் போர்வெல்லும் போடுவதற்கு கோவில் நிர்வாகத்திடம் எந்தவிதமான அனுமதியும் வாங்கவில்லை” considering these nature the trustee had leased our the schedule properties to one Nirmala land Krishnan only not to the 1st defendant Panchayat. If the properties are not handed over to the panchayat properly the panchayat have no right to use as their wish . Hence after careful perusal of the case records and the documents as well as the evidence shows the tenants of the plaintiffs are in lawfull possession over the suit schedule properties. Hence the Panchayath has no right to auctioned the right and conducted a weekly Santhai and collection of toll. Hence the plaintiff is entitled to get a relief of declaration and the consequential permanent injunction as prayed for. This issue is answered in favour of the plaintiff.”



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From the above, it is evident that the Panchayat was not granted any permission to conduct weekly shandy and to construct water tank. The Trial Court had relied on the deposition of the DW1 and had correctly come to the conclusion that the Ex.A6 cannot be relied on and it is not a valid document in the eye of law. But when the plaintiff had admitted that 10 cents was given for putting up construction then the construction of Kalyana Mandapam alone is acceptable and the weekly shandy and water tank is not permissible.

13. The First Appellant Court has rightly confirmed the well written judgment of the Trial Court. Therefore, this Court is of the considered opinion the appeal has no merits and it is liable to be dismissed.

14. Further, based on the facts and evidence of the case, this Court is bound to record the fact that the Panchayat is indulging in land grabbing. Curiously, the Panchayat is showing the proceedings passed by the District Collector for such land grabbing. This Court fails to understand where from the District Collector gets power to deal with the property of Temple. The written statement states that



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the land was auctioned to third defendant and the period of auction lease was subsisting and hence, the plaintiff Temple has no right over the property. This is an atrocious statement made by the Panchayat. The Panchayat being a local body is having a responsibility to protect the property of the Temple as “*parens patriae*”. But in the present case, the Panchayat is literally grabbing the property of the Temple.

15. In fact, the temple is not having any authority to hand over 10 cents of land for putting up of Kalyana Mandapam. Since the same was handed over, now, the Panchayat exceeded its right and grabbed the entire land in S.F.No.158/3. Therefore, this Court is of the considered opinion that the Temple shall retain the land where the Kalyana Mandapam is constructed and the Temple shall retain the entire management of the Kalyana Mandapam. Further, the entire land in S.F.No. 158/3 belongs to the Temple and the respondents are restrained from interfering with the peaceful possession of the land. Therefore, the second appeal is liable to be dismissed.



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16. Accordingly, the second appeal is dismissed with cost of Rs.10,000/- payable to the 1st respondent. Consequently, connected miscellaneous petition is closed.

26.03.2024

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. The Subordinate Judge, Manapparai.
2. The District Court, Manapparai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).No.166 of 2024

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.166 of 2024

Dated:
26.03.2024