



A.S(MD)No.174 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 26.04.2024

CORAM :

**JUSTICE N.SESHASAYEE**

and

**JUSTICE P.VADAMALAI**

**A.S(MD)No.174 of 2016**

**and**

**C.M.P(MD)No.10976 of 2016**

1.The Idol of Sri Renganathaswamy  
Srirengam,  
Rep. By its Joint Commissioner/Executive Officer,  
Devasthanam Office, Srirengam,  
Trichy – 6.

2.The Idol of Sri Thayumanavaswamy also known as  
The Idol of Sri Mathrubhoodheswara Rock Fort,  
Trichy,  
Rep. By its Assistant Commissioner/Executive Officer,  
Devasthanam Office,  
Rock Fort Temple,  
Trichy

...Appellants/Plaintiffs

**Vs**

1.R.M.Venkatesh  
2.N.Kanagasabapathy Pillai  
3.Jayachandrakumar @ P.J.Kumar  
4.Sargurunathan  
5.Kamalam

... Respondents/Defendants



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**PRAYER:** Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 05.02.2014 in O.S.No.14 of 2012 on the file of the II Additional District Judge, Tiruchirapalli.

For Appellants : Mr.M.Saravanan

For Respondents :Mr.H.Lakshmi Shankar

### **JUDGMENT**

(Judgment was delivered by **N.SESHASAYEE., J**)

This appeal is preferred challenging a judgment and decree dismissing the suit filed for recovery of possession and for declaration. The parties would be referred to by their rank before the trial Court.

#### **2. The facts are as below:**

(a) The suit properties belonged to the plaintiff idols. These properties originally belonged to a certain Aani Muthammal, who vide a deed of endowment, dated 22.12.1915 (Ext.B1), founded a religious charity and endowed the properties to the idols, and nominated a certain Manicka Naicker as the *haqudhar* (Trustee) to perform the charities from the income derived from the properties.



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Ext.A1 provided for performance of about half dozen religious charties associated with different temples or idols on specific occasions. The entire income from the properties had been spent for the performance of the specific charities created by Aani Muthammal. Even though Manicka Naicker was the trustee for the performance of these charities, no beneficial interest was created in his favour. Ani Muthammal did not part away the suit properties in favour of Manicka Naicker, nor any title to these properties ever vested in him.

(b) Be that as it may, on 18.02.1965 Murugamanikkam, son of Manicka Naicker, executed a registered document settling the suit properties in favour of Ponnaiah Pillai, Natesan Pillai and Paramasivam Pillai.(This document or documents are no produced by either side). Ext.B1 settlement deed has not authorised the trustees to deal with the property, more particularly to encumber or alienate the endowed properties. This deed of settlement executed by Muruganantham is void and non-est in the eye of law.

(c) Earlier on 02.03.1960, Murugamanickam had also executed a security bond in favour of the idol of Sri Renganathaswamy for the performance of Utsavam. Since no prior permission was obtained



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from the Commissioner under Section 34 of the Hindu Religious and Charitable Endowments Act, 22/1959, the security bond dated 02.03.1960 is also void.

(d) On the basis of settlement deed dated 18.02.1965, Paramasivam Pillai and Natesa Pillai's son joined to institute a suit in O.S.No.1537 of 1967 for permanent injunction that Ponnaihi Pillai and another defendant should not interfere with the plaintiff's possession of the suit properties. This suit was decreed vide Ext.A3 judgement dated 14.07.1969. Against the judgment passed in that suit, A.S.No.198 of 1970 was filed before the Sub Court, Tiruchirappalli, and it came to be allowed vide Ext.A7 judgement, dated 15.02.1972. The decree of the first appellate court was challenged by the plaintiffs in S.A.525 of 1972, and on 24.09.1975, it came to be allowed. (Copy of the judgement in S.A.525 of 1972 not marked), and this was followed by challenge to the decree in S.A.525 of 1972 in LPA No.85 of 1976. In the above proceedings, the predecessors of the defendants suppressed the endowment deed dated 22.12.1915. Nor have they impleaded the plaintiffs as parties.

(e) There was another set of in O.S.No.2007 of 1983 was laid seeking



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accounts against the defendants in O.S.198 of 1970 referred to above. That suit was dismissed vide Ext.A11 judgement, challenging which the plaintiff preferred A.S.No.172 of 1993 which came to be allowed vide Ext.A13 judgement. The decree of the first appellate court was challenged in S.A.No.1404 of 1994 where both sides compromised. What is significant in the context of the present case is that in none of these cases, the plaintiff idols were impleaded nor the endowment deed dated 22.12.1915 was produced.

(f) On 15.12.2003, a partition took place among the descendants of those in whose favour a document was executed by Muruganantham on 18.02.1965. Even in this document, plaintiff idols, though were necessary parties, were not impleaded.

(g) Subsequently, in aid of the settlement deed dated 18.02.1965 and partition deed dated 15.12.2003, the 2<sup>nd</sup> defendant alienated the property in favour of the 4<sup>th</sup> defendant on 28.10.2010 vide Ext.A14 sale deed. There were further alienations vide Exts. A15 to A17 sale deeds. All these alienations are bad in law.

Claiming that the properties specifically endowed to the plaintiff idols have been wrongly dealt with and alienated by the defendants, the



plaintiffs have come forward with the suit for recovery of possession.

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3. The defendants entered appearance and put forth the line of defence.

They plead:

- (a) If the properties are given to the plaintiff idols, the same must be mentioned in the property register maintained by the plaintiffs. In the absence of the same, they could not claim that the properties are belonged to the plaintiff idols;
- (b) A plain reading of the endowment deed dated 22.12.1915 would show that there had not been any endowment of the properties in for the performance of any religious or other charitable purposes. Only a direction had been given that religious charities mentioned therein should be done out of the income from the suti properties.
- (c) Title of the property was retained by the executant and the haqudhar was only instructed to do the charitable acts.
- (d) The security bond dated 02.03.1960 executed by Muruganantham is valid. Since the property was not endowed in favour of the plaintiffs, permission under Section 34 of the HR & CE Act is not necessary;
- (e) The title of the property vests only with the defendants 1 to 3 and



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therefore, the sale deeds executed by the defendants 2 and 3 in favour of the defendants 4 and 5 are valid documents.

4. On the above set of pleadings, the trial Court framed three issues, and the critical to the outcome of the suit was whether the sale deeds in favour of the defendants 4 and 5 are *void ab initio*. After placing reliance on the authorities in ***The State of Madras, Rep by the Commissioner for the Madras Hindu Religious and Charitable Endowments Madras Vs. Thuthukudi Kozhumbu Vyaperikalin Thuthukudi Sri Subramaniaswami Mabimi Paripalana Sangam*** [AIR 1962 Mad 48]; ***Angamuthu Vs. K.Pugazhendi & 11 others*** [1999 (1) LW 415] and ***V.Kannadasan & others Vs Sirajunnissa Bivi*** [2007 2 MLJ 636], the trial Court held that under Ext.B1 there had been no divestiture of title of Aanimuthammal and vestiture of title in the trustees, since under Ext.B1, Aanimuthammal had only directed utilisation of income from the properties for certain specific charities. After holding that the Executive Officer of the temple cannot institute a suit without the permission or approval of the Commissioner of HR&CE, the Court proceeded to dismiss the suit. This is now under challenge in this appeal.



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**5.** While hearing this appeal, this Court perused the miscellaneous petition filed by the appellants to produce the settlement deed dated 18.02.1965, to which the respondents are tracing their respective title. Since this Court allowed the said petition vide a separate order dated 26.04.2024, the settlement deed executed by Murugamanickam dated 18.02.1965 is admitted as evidence as Ex.A.28.

**Points:**

**6.** The points for consideration are:

- a) Whether the suit properties have been dedicated absolutely in favour fo the plaintiff idols vide Ex.B.1;
- b) Whether the settlement deed dated 18.02.1965, which is marked as Ex.A.28 is void ; and
- c) Whether the reasoning of the trial court dismissing the suit is acceptable under law.

**7. Arguments for the Appellants:**

**7(a)** Mr.M.Saravanan, the learned counsel for the appellants made the following submissions:

- a) If Ex.B.1 is perused, it would be clear that Manicka Naicker is



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only conferred the right of the Haqudhar, enjoined with the duty to do certain charities mentioned in Ex.B.1 but without power of alienation;

- b) Since D.W.1 admitted that *Aani Muthammal* is the owner of the property, the trial court ought to have held that the alienation made by Manicka Naickar is not valid in law.
- c) The plaintiffs accepted the security bonds in the year 1960, and the suit scheduled properties covered under Ex.B.1 were absolutely devolved on the legal heirs of Manicka Naickar.

Summing up the arguments, learned counsel for the appellants submitted that the reasoning of the trial court is not sustainable under law. Reliance was placed on the ratio in *Idol of Sri Renganathaswamy Rerpesened by its Executive Officer, Joint Commissioner Vs P.K.Thoppulan Chettiar and others* [2020-17-SCC 96], and *The Idol of Sri Renganathaswamy, Srirengam, rep. by its Joint Commissioner/ Executive Officer, Devasthanam Officer, Tiruchirappalli Vs J.Sriram and Others* [2023-2-L.W.577] .

### **Arguments for the Respondents/Defendants:**

**8.1** In Ex. B1, Ani Muthammal has stated that since she had become



very old, that she had no issues and that she was not in a position to conduct the *dharma* or the charities which she had been doing for a considerable time. Therefore, she appointed Manicka Naicker, who was a professor in the Madras Civil Engineering College, as the permanent haqudar of the charities. He was placed with the responsibility of discharging the loans, conducting the court cases, and to conduct various charities from and out of the income of her properties. In the concluding lines of the document she had stated that she had transferred all her rights as a '*proprietor*' of the properties in favour of Manicka Naickar. It amounts to an onerous gift as per section 127 of the Transfer of Property Act, in favour of Manicka Naicker and hence, the transfer of title in respect of the immovable properties in his favour is absolute.

**8.2** As per the recitals in Ex.B1, the plaintiff Idols have no manner of right or interest over the immovable properties. The recitals in Ex.B1 document is enough to disbelieve the case of the plaintiffs.

**8.3** PW.1, when confronted with the Ex.B1, has admitted that there was no recital in Ex.B1 document that the suit properties were given in favour of the plaintiff idols, and that they had been given to Manicka Naicker.



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He also admits that the debts of Animuthammal were discharged by Manicka Naicker. He admits that for ensuring the due performance of the utsavam in the temple, security bond dated 02.03.1960 had been executed and there had been a deposit in the name of Smt.Vedavalliammal and from and out of the interest accrued, the festival is being conducted. He further admits that there is a personal discord between the Executive officer of the temple and the owners of the suit properties due to which the present suit was filed. P.W.2 is staff of the second plaintiff temple. His evidence is also on the same line as that of PW 1. Though he claims that there is patta in the name of Sri Ranganathaswamy such a patta was not at all filed.

**8.4** The trial court has rightly concluded that there never has been any transfer of title in favour of the plaintiff idols and there is no dedication. The trial court also found that the Executive officers of the temple are incompetent to institute the suit without approval or permission from the Commissioner of Hindu Religious and Charitable Endowments Act. Therefore, the suit filed for recovery of possession of the suit properties, on the premise that the plaintiff idols are the absolute owners of the suit properties and that the alienations are totally null and void and non-est is



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misconceived. So far as the listed charities in respect of the plaintiff idols are concerned, the evidence on record clearly shows that the charities are continued to be performed and therefore, there is no occasion for the temple to have any grievance whatsoever. Reliance was placed on the ratio in *Menakuru Dasaratharami Reddi Vs Duddukuru Subba Rao* [AIR 1957 SC 797], *Jadu Gopal Chakravarthi (Dead) Vs Pannalal Bhowmick and others* [1978(3)SCC 215]; and *Satyanarayana Sinha Vs M/s.S.Lal and Company (Pvt.) Ltd.*, [1974(1) SCC 615].

9. Rival contentions are carefully weighed. The issue critical to the outcome of the suit is whether Aanimuthammal divest her title in her in favour of the idols under Ext.B1. If she had done the same, needless to state the plaintiff idols would be owner of the suit properties, and the plaintiff has a better chance of success in this case. She In Ex.A.28, it is stated thus:

"இதுவரை நான் நடத்தி வந்ததை போல  
வருஷாவருஷம் ஸ்ரீமதி வேதவள்ளியம்மாளால்  
கொடுக்கப்படுகிற ரூ.100.00 (ஒரு நூறை)  
கொண்டு ஸ்ரீமலை கோவில் மாத்ரு பூதேசுவர  
சுவாமியின் பங்குனி மாதம் தெப்ப



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உத்சவத்தையும், என் வரும்படியை கொண்டு ஸ்ரீரெங்கம் ஸ்ரீரெங்க நாதருடைய ஐப்பசி மாதம் ஆறாம் திருநாள் ஊஞ்சல் உத்சவத்தையும் வருஷம் ஒன்றுக்கு சுமார் ரூபாய் அறுபது வரையில் செலவு செய்து நான் நடத்திவரும் ஊஞ்சல் உத்சவ தருமத்தையும் மேற்படி க்குதார் பெ.மாணிக்க நாயக்கர் அவர் சொந்த தர்மம் போல நடத்திவர வேண்டியதும் தவிர அவரே C ஷெடியூல் விவகாரங்களையும் உறக்குதார் (Proprietor) ஹேறாதாவில் நடத்தியும் கடன்களை தீர்க்கிற வரையில் வேறு தார்மங்கள் செய்ய வேண்டியதில்லை, கடன் தீர்த்த மேல் வரும்படிகளை சாகவதமாக உபயங்களுக்கும் வித்யாதானம் அன்னதானம் முதலிய தானங்களுக்கும் பிரயோகிக்க வேண்டியது. முதன்மையாக மேலே சொன்ன பங்குனி தெப்ப உற்சவத்துக்கு இப்போது கொடுத்து வரும் சிலவோடு மற்றதையும் செலவிட்டு முழு உபயத்தையும் நடத்த வேண்டும் என சொத்துக்களின் வரும்படியிலிருந்து மேற்படி உபாயங்களுக்கு மேலே கண்டபடி செலவு செய்தது போக மீதி இருக்கும் படியான ஜாஸ்தி வரும்படி உள்ள போது செய்யவேண்டுமென்று நான் பிரியப்படுகிறவைகள் (1) ஆணி முத்தம்மாள் வகையறாவிற்கு பூஜை (2) மாணிக்கவாசகர் அடைந்த திருநட்சத்திரத்தில் திருவிழா (3) கார்த்திகை மாதத்தில் ஸ்ரீ ஆண்டாள் ஊஞ்சல் (4)



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பங்குனி உத்திரத்தில் ஸ்ரீ பழநியாண்டவருக்கு குடம் அனுப்பி பூஜை நடத்தல் (5) புரட்டாசி மாதத்தில் மகாளபகஷத்தில் பிதுர் தர்மம் (6) ஸ்ரீ ரெங்கநாதருக்கு துவாதசி கட்டளை (7) வைகாசி மாதத்தில் திருவோண நட்சத்திரத்தில் வறகநேரி குளூமி ஸ்வாமிக்கு பூஜை (8) தினசரி அன்னதான சமாஜத்துக்கு வருஷத்திற்கு ரூ.12 (9) கார்த்திகைக்கு வருஷம் ஒன்றுக்கு ரூ.10 என்கிற இவைகள் தான் எனக்கு தெய்வீகம் நேரும் போது மேற்படி பெ.மாணிக்கநாயக்கர் யுக்தபடி கிரிகைகள் நடத்தி மலைக்கோயில்களுக்கு ஆயிரம் தீபம் வைத்து வருஷாவருஷம் என்னுடைய ஆத்துமா நல்ல கதி அடைவதற்கு வேண்டிய கிரியைகளை செய்து வைக்கவேண்டியது. மேற்படி சொத்துக்களின் பேரிலும் தர்மங்களிலும் உறக்குதாராக (Proprietor) எனக்கிருந்த சகல பாத்தியங்களையும் நாளது தேதியில் மேற்படி பெ.மாணிக்கநாயக்கருக்கு இதன்மூலமாய் நான் டிரான்சவர் செய்து எனக்குள்ள சுவான் பாதியங்களுடன் அவரிடம் சொத்துக்களையும் கொடுத்து என் சம்மதியில் இந்த எண்டவுமென்ட் பத்திரம் எழுதிக்கொடுத்தேன்."

The above passage establishes beyond doubt that the intent of Aanimuthammal had been to vest the entire title in the property in favour of Manicka Naickar, and he was required to do certain charities out of the



income from the properties. Indeed, the word "Proprietor" has been used very consciously to rule out any other possibility. The dedication if at all any has been only partial and the right to the plaintiffs is only to enforce the obligation created in its favour and accordingly they can only insist that who were who are the owners of the suit properties for the time being to perform the charities spelt out under Ext.B1 and no more. Turning to Ext.A28, it was styled as a settlement deed and had been executed by Manicka Naickar's son Murugamanickam, it recites about how Manicka Naicker had to spent from his pocket to conduct cases apparently relating to suit properties etc. If Ext.B1 has not vested any title over the suit properties in favour of the plaintiffs, it has no locus standi to even challenge what had been done by the heir of Manicka Naicker.

**10.** Points 1 and 2 are answered against the appellants. As regards the 3<sup>rd</sup> question, this Court holds that the finding of the trial court in dismissing the suit is sustainable under law.

**11.** In conclusion, the Appeal Suit is dismissed. The judgment and decree dated 05.02.2014 in O.S.No.14 of 2012 on the file of the II



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Additional District Judge, Tiruchirapalli, is hereby confirmed. No costs.

Consequently, connected miscellaneous petition is closed.

(N.S.S., J.)

(P.V.M., J.)

26.04.2024

Index : Yes / No  
Neutral Citation : Yes / No  
CM

To,

1.The II Additional District Judge, Tiruchirapalli.

2.The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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**and**  
**P.VADAMALAI, J.**

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