



S.A.No.323 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.323 of 2020

S.N.S.Nachimuthu Mudaliyar

... Appellant

vs.

Arulmigu Bavaoushadeeswara Swami Thirukovil
Represented by its Executive Officer
thiruthuraipoondi Town and Post
Thiruturaipoondi District.

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set-aside the Judgment and Decree passed in A.S.No.20 of 2017 dated 13.03.2019 on the file of Subordinate Judge, Mannargudi, reversing the Judgment and Decree passed in O.S.No.10 of 2012 dated 20.02.2017 on the file of District Munsif, Thiruturaipoondi.

For Appellant : M/s.Mahamandra Rajalakshmi
for M/s.P.Dinesh Kumar

For Respondent : Mr.R.Bharanidharan
for M/s.R.Karthikeyan



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J U D G M E N T

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The unsuccessful defendant in the suit is the appellant.

2. The Respondent/Temple filed a suit for bare injunction restraining the appellant/defendant from putting up any construction in the suit property and also for recovery of possession of the suit property after removal of the construction standing thereon. The suit was dismissed by the Trial Court and the first appeal filed by the plaintiff was partly allowed by the First Appellate Court. The plaintiff was granted decree for recovery of possession of the vacant site after removal of the construction standing thereon. The suit was dismissed in respect of the prayer for injunction. Aggrieved by the said judgment and decree, the defendant has come before this Court.

3. According to the Respondent/Temple, the site of the suit property belonged to it and one Saradambal was Lessee of the site under Temple. The defendant has no right over the suit property and presently, he is in occupation of the suit property and his status is that of the encroacher. The defendant without any manner of right occupied the suit property and attempted to put up construction. Hence, the above said suit was filed by the Respondent/Temple.



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4. The appellant/defendant filed a written statement and denied various averments found in the plaint. In the written statement, the appellant clearly admitted the suit site belonged to the Temple and Saradambal was the original Lessee of the site. It was further pleaded that after death of Saradambal, her husband Kalimuthu got the Leasehold Right and as per the Will executed by him dated 22.02.2007, the suit property was bequeathed in favour of one N.Kuppusamy. He sold the property along with Superstructure that stood thereon to one Iqbal by Document dated 01.05.2009. Thereafter, the defendant purchased the Superstructure in the suit property and the Leasehold right over the site under Document dated 02.05.2009 from said Iqbal. It was also stated that in view of the general ban on registration of the document regarding the temple property, the Document dated 02.05.2009 was only a notarised one. After purchase of the superstructure of the subject property, the defendant submitted a representation dated 15.05.2009 before the Executive Officer of the Plaintiff/Temple seeking his recognition as the Lessee of the site. Though the Executive Officer of the Temple agreed for said course and advised the defendant to pay rent for the site in the name of the original Lessee, till date no such Lease Arrangement came into existence.



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5. After getting no objection from the Executive Officer of the Temple, the defendant started putting up construction in the suit property after removal of the old construction. In these circumstances, the present suit has been filed. It was the specific case of the defendant that he is not an encroacher in the suit property and he is a Purchaser of the Superstructure along with Leasehold right from the earlier Lessee.

6. The Trial Court based on the pleadings of the parties, formulated the following issues for consideration:-

- “1. தாவாசொத்து வாதி ஆலயத்திற்கு சொந்தமானதா?
2. தாவாச்சொத்தில் பிரதிவாதியோ அவரது ஆட்களோ நிரந்தர கட்டுமானம் செய்யக்கூடாது என்று வாதி கோரக்கூடிய நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?
3. வாதி கோரக்கூடிய கட்டுமானத்தை நீக்கி சுவாதீனம் ஒப்படைக்க கோரும் பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?
4. தாவா சொத்தில் பிரதிவாதி சொல்வது போல கட்டுமானங்கள் முன்பே முடிந்துவிட்டனவா?
5. கிடைக்கக்கூடிய இதர பரிகாரம் என்ன?”



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7. Before the Trial Court, an employee of the Temple was examined as PW.1 and 9 documents were marked as Exs.A1 to A9. The defendant was examined as DW.1 and on his behalf, 7 documents were marked as Exs.B1 to B7.

8. The Trial Court based on the evidence of PW.1 that the application submitted by the defendant seeking name transfer was forwarded to the Joint Commissioner, HR and CE Department, came to the conclusion that the defendant's possession over the suit property was recognised by the Temple and dismissed the suit. Aggrieved by the same, the Respondent/Temple preferred an appeal in A.S.No.20 of 2017 on the file of the Subordinate Court, Mannargudi. The First Appellate Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the defendant never entered into any kind of Lease Arrangement with the Temple and till date, the defendant has not been recognised as a Lessee of the site. Therefore, the finding rendered by the Trial Court has been set aside by the First Appellate Court and the suit was decreed as far as the relief of possession is concerned. Since the building in the suit property was already completed, the First Appellate Court refused the relief of injunction. Accordingly, the appeal filed by the Temple was partly allowed. Aggrieved



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by the said judgment and decree passed by the First Appellate Court, the defendant has come before this Court by way of filing the second appeal.

9. The learned counsel appearing for the appellant would submit that the Clerk of the Temple, who was examined as PW.1 clearly admitted that the defendant submitted an application for transfer of tenancy in his favour and the said application was forwarded to the Joint Commissioner for action. In such circumstances, the suit filed by the Temple treating the defendant as an encroacher is not at all maintainable. The learned counsel also submitted that the defendant has been paying rent to the Temple and receipt issued by the Temple has been marked as Ex.A1 and without appreciating the same in proper perspective, the First Appellate Court allowed the appeal.

10. A perusal of the written statement filed by the appellant/defendant would indicate that the title of the suit temple over the suit site has been specifically admitted by the defendant. In Paragraph No.2 of the written statement, the defendant not only admitted title of the Temple over the site, he also admitted the said Saradambal as the Lessee under the Temple over the suit property. It is the case of the defendant that after the death of



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Saradambal, her husband got the leasehold right and he bequeathed the property to one N.Kuppusamy and the said N.Kuppusamy sold the property to the defendant's vendor-Iqbal and from him, the defendant purchased the superstructure along with Leasehold Right. Therefore, it is clear the defendant only claims right over the superstructure in the suit property. The defendant is not entitled to purchase the leasehold right over the suit property without getting sanction from the Competent Authority namely the Commissioner, HR and CE Department under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Even as per the case of the defendant in the written statement, he only submitted an application before the Executive Officer of the Temple seeking his recognition as a tenant of the site and till date no order has been passed recognising the defendant as a Lessee of the site. It is also admitted that the defendant continue to pay rent only in the name of Saradambal.

11. A perusal of the Ex.B1-Receipts issued by the Temple would indicate that rent has been collected only in the name of the Original Lessee Saradambal and defendant has not been recognised as a Lessee of the site. In the absence of any Lease Arrangement between the Plaintiff/Temple and Defendant, the argument made by the learned counsel appearing for the



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14. **In Nutshell:-**

- (i) The Second Appeal is dismissed by confirming the judgment and decree passed by the First Appellate Court.
- (ii) The appellant shall handover vacant possession of suit property after removal of superstructure within a period of two months from the date of receipt of copy of this judgment.
- (iii) It is made clear that the dismissal of the second appeal will not come in the way of the appellant approaching the Competent Authority seeking his recognition as a tenant under the Temple in respect of the suit site. Any such request made by appellant shall be considered in accordance with law.
- (iv) In the facts and circumstances of the case, there will be no order as to costs.

12.03.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

1.The Subordinate Judge,
Mannargudi.



2. The District Munsif,
Thiruturaipoondi.

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S.SOUNTHAR, J.

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