

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

S.A.No.1965 OF 2004

Arulmighu Thirunageswaram Temple,
Represented by its Executive Officer,
Thirunageswaram,
Kunrathur.

... Appellant/Plaintiff

Vs.

Thirunageswaram Kaithari Nesavalargal
Gudisai Vazhvor Sangam,
Represented by
its President and Secretary

... Respondent/Defendant

PRAYER : This appeal filed under Section 100 C.P.C. against the judgment and decree dated 29.04.2004 passed in A.S.No.17 of 2003 on the file of the Sub Judge, Poonamallee and by confirming the judgment and decree passed in O.S.No.739 of 1991 dated 21.11.2002 on the file of the District Munsif Court, Poonamallee.

For Appellant : Mr.A.Palaniappan

For Respondent : Mr.R.Ashokan

J U D G M E N T
सत्यमेव जयते

The unsuccessful plaintiff is the appellant herein. The suit is filed by the plaintiff/temple for the relief of permanent injunction restraining the defendant - Sangam from laying road over the suit property or putting up any hut or structure or other superstructure over the suit property till necessary permission is obtained from H.R. & C.E. Board and from executing sale deed in favour of the defendant or its members.

2. The fact that the suit property belongs to the plaintiff-Temple which comes under the control of H.R. & C.E. Board is evident from the admission made by the parties. In 1981, the Temple was under the Management of Board Trustees and at that point of time, the defendant-Sangam offered to purchase the property for Rs.120/- per cent and paid a sum of Rs.47,640/- to the plaintiff on 20.06.1981 and due receipt was issued by Trustees for receipt of a sum of Rs.47,640/-. In pursuance of the same, the defendant was put in possession and enjoyment of the property and the defendant sought permission for laying road and for putting up hut or construction or superstructure over the same. While so, the plaintiff come forward with the present suit seeking permanent injunction as stated supra against the defendant-Sangam by stating that as the agreement for selling property to the defendant Sangam will be effected only after getting permission from the H.R. & C.E. Board. The defendants are not permitted or authorized to layout or plot out the suit land and for laying road and for putting up hut, or construction or superstructure over the same and any attempt by the defendant to do so will be an illegal attempt.

3. The suit was seriously contested by the defendant-Sangam by filing written statement, wherein, they raised a defence that no permission from the H.R. & C.E. Board is necessary and the defendant after having entered into an agreement with the plaintiff has got full right to deal with the property. It is their further case that an agreement of sale has been entered into with another Sangam and the plaintiff was objecting to the laying and allotment of plots, construction of house by other sangam and the plaintiff cannot seek such a relief against the defendant Sangam.

4. The suit was after due contest, dismissed on the ground that the plaintiff/temple having duly received the amount and having utilised the same for temple purpose, cannot be permitted to raise any objection against the members of the defendant-Sangam from putting up any superstructure in the suit property in question. Aggrieved against the same, the plaintiff/temple preferred an appeal in A.S.No.17 of 2003 which was also dismissed by the lower Appellate Court, thereby confirming the judgment of the trial Court. Hence, this Second Appeal by the appellant/Temple before this Court.

5. The Second Appeal is admitted on the following Substantial Questions of Law:

"1. Whether the Courts below ought to have held that the transaction between the earlier trustees of the

appellant temple and the defendants are hit by the provisions stipulated in Section 34 of the Tamilnadu Hindu Religious and Charitable Endowment Act, 1959?

2. Whether the Courts below have failed to consider that any transaction without express sanction and permission as provided in Section 34 of the Tamilnadu Hindu Religious and Charitable Endowment Act, 1959, is not permissible in law and would not have any valid and clear title and is in contravention of the aforesaid section and as null and void and is not enforceable against the plaintiff temple?

6. Heard the rival submissions made on both sides and perused the records.

7. As already stated, the suit property belong to the appellant/Temple which is under the control of H.R. & C.E. Board. Though an attempt was made by the defendant Sangam to raise an objection that the plaintiff/temple does not come under the control of the H.R. & C.E. Board, the very statement made by them in para-6 of the written statement to the effect that the plaintiff undertook to obtain permission from the H.R. & C.E. Board, would compel this Court to negative the contention so raised herein. As rightly argued by the learned counsel for the appellant/plaintiff, Section 34 of the Hindu Religious and Charitable Endowment Act (shortly referred as H.R. & C.E. Act, 1959), makes it mandatory to obtain sanction from the Commissioner for any exchange, sale or mortgage and any lease for a term of exceeding five years of any immovable property or endowed for the purpose of any religious institution and in absence of any sanction, any contract entered into in respect of the temple property, as stated above, is null and void.

8. The proviso to Section 34 provides for the procedure to be adopted before bringing the temple property for sale. In the present case, admittedly, the procedure as laid down under Section 34(1) of the HR&CE Act has not been complied with. No sanction from the Commissioner was obtained for the allocation, without which, any agreement for sale entered into by the defendant cannot be permitted so as to make any claim for title over the suit property and they cannot be permitted to deal with the same as absolute owner by putting up construction over the same. However, both the Courts below have failed to appreciate the validity of the transaction entered into between the plaintiff/temple and the defendant in 1981, in the light of Section 34 of the Hindu Religious and Endowment Act, 1959, and the same has resulted in an erroneous judgment, declaring

the transaction between the parties to be concluded as valid contract. The Courts below without duly appreciating the applicability of Section 34 of the Hindu Religious and Charitable Endowment Act, 1959, to the plaintiff/temple, and without duly considering the fact that the property belong to the plaintiff/temple, have erroneously found that the defendant has every right to deal with the same and the plaintiff/temple has no right to dispossess them such findings and the judgment and decree based on such findings of the Courts below, are hence, contrary to law and legally unsustainable and the Substantial Questions of law are answered in favour of the plaintiff.

9. However, the plaintiff has admittedly, till date has not taken any steps to recover the possession of the property from the defendant-Sangam. On the other hand, the plaintiff has taken steps to regulate the possession of the members of the defendant Sangam in respect of the suit property. The Joint Commissioner, H.R. & C.E. Board, in his proceedings dated 10.12.2009 considered the resolution passed by the Executive Officer and the Board of Trustees for regulating their possession by recognizing them as tenant under the plaintiff-Temple and has passed an order fixing the rent and directing the occupier of the temple property to pay necessary rent as fixed by the Joint Commissioner on certain terms and conditions.

10. Be that as it may, the learned counsel for the appellant, at this juncture submitted that the members of the defendant-Sangam, who are the occupiers of the property in question may be restrained from putting up further construction, in order to protect the temple property and also protect the right, title and interest of the plaintiff/temple in respect of the suit property.

11. Whereas the learned counsel for the defendant/Sangam would seek to direct the respondent to take appropriate steps to get permission from H.R. & C.E. Board, as done in an earlier occasion. In my considered view, it is for the defendant-Sangam to approach the plaintiff-Temple, failing which, approach through the Court of law.

12. Insofar as the said submission made by the learned counsel for the appellant is concerned, this Court finds considerable force in the same. The defendant-Sangam, having not purchased the suit property in accordance with the procedure laid down under law and in respect of the allocation of temple property, cannot be permitted to deal with the same in their own manner, as such, it is necessary to restrain them from putting up further construction in the suit property. The parties are also at liberty to take appropriate steps,

in order to protect their interest, if any, in respect of the suit property.

13. In the result, the Second Appeal is allowed and the judgment and decree of the courts below are set aside and the suit is decreed by granting permanent injunction restraining the defendant Sangam including their members, their men, agent and others from putting up further construction over the suit property with liberty given to the parties to approach appropriate forum for appropriate relief for enforcing their respective claim over the suit property. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Judge,
Poonamallee
2. The District Munsif,
Poonamallee

Copy To

The Section Officer,
V.R.Section,
High Court, Madras

+1cc to Mr.R.Asokan, Advocate, S.R.No.1889
+1cc to Mr.A.Palaniappan, Advocate, S.R.No.1954

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