

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.150 of 2000

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Date:17.12.2015

Between:

Sri Siddhi Bhairaveswara Swamy Alaya
Bhaktha Smajam, Somidevipalli Village,
Racherla Mandal, Prakasam District
rep by its President and Trustee
of the Temple Kappeta Rama Subba Reddy.

... Appellant.

AND

Madire Sriranga Reddy and others.

...Respondents.

The Court made the following :

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JUDGMENT:
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This appeal is preferred against Judgment & Decree dated 27-10-1999 in A.S.No.62/1998 on the file of Senior Civil Judge, Markapur whereunder Judgment & Decree dated 11-12-1998 in O.S.No.25/1993 on the file of Junior Civil Judge, Giddalur is reversed.

2. Sri Siddhi Bhairaveswara Swamy Alaya Bhaktha Smajam represented by its Trustee-K. Rama Subba Reddy filed O.S.No.25/1993 against ten persons for relief of permanent injunction to restrain the defendants therein their men, relatives and

agents from interfering with plaintiff's right to perform Poojas, Vustavams and Thirunals on all days and on Sivarathri day as Trustee of the Temple and President of plaintiff's Samajam. Another suit in O.S.No.28/1993 was filed by Sri Siddhi Bhairaveswara Swamy Alaya Bhaktha Smajam represented by its President Annapureddi Polireddy @ Srirangapu Polireddy, who is second defendant in O.S.No.25/1993 against K. Rama Subba Reddy & B. Venkata Subba Reddy also for a similar relief of injunction. These suits were tried together and on a consideration of oral and documentary evidence, trial Court decreed O.S.No.25/1993 and dismissed O.S.No.28/1993. Aggrieved by the judgment of the trial Court, defendants in O.S.No.25/1993 and plaintiff in O.S.No.28/1993 preferred two separate appeals in A.S.No.62/1998 & A.S.No.3/1999 respectively. The appellate Court, on a reappraisal of entire evidence on record, reversed the findings in both the suits and consequently, decreed O.S.No.28/1993 and dismissed O.S.No.25/1993. In other words, the appellate Court granted injunction in favour of the respondents herein and refused to grant injunction in favour of appellant herein. Aggrieved by the appellate Court judgment, the plaintiff in O.S.No.25/1993 preferred the second appeal and this Court by treating the following as substantial questions of law admitted the second appeal:-

- i) *Whether the appellate Court was justified in reversing the well considered judgment of the trial Court without any material?*
- ii) *The lower appellate Court is justified in law to ignore the registered instruments relied upon by the appellant herein?*
- iii) *Whether the appellate Court was justified in coming to conclusion especially when the respondents in the appeal failed to prove the onus as per Section 102 of the Evidence Act?*
- iv) *Whether the Court below was justified in reversing the decree contrary to the well*

settled connotations in the matter of grant of permanent injunctions?

- v) *The judgment of the lower appellate Court would it be justified as being contrary to Sections 61, 79 & 80 of the Indian Evidence Act.*
- vi) *Whether the Court below was justified in coming to conclusion as regards distance from the temple contrary to the revenue record?"*

3. Heard both sides.

4. Advocate for appellant submitted that plaintiff was a trustee of the temple and there are rival claims with regard to management of the temple and trial Court rightly held that the appellant herein is the hereditary trustee and has every right to perform Poojas, Vustavams and Thirunals and as the respondents herein were interfering granted injunction in favour of the appellant, but the appellate Court reversed the findings of the trial Court merely on surmises and presumptions. He submitted that documents-Exs.A1 to A15 would clearly support the claim of appellant but the appellate Court discarded these documents on flimsy grounds and the findings of the lower appellate Court are contrary to the provisions of Sections 61, 79 & 80 of the Indian Evidence Act. It is submitted that lower appellate Court gave unnecessary importance to Exs.B2 to B5 & B7 documents in accepting the rival claim of respondents herein. It is submitted that as the appellant has also got right, at least the appellant should have been given opportunity for every alternative year to perform Poojas, Vustavams and Thirunals. He submitted at least from now onwards, the appellant may be given permission to perform these Poojas, Vustavams and Thirunals etc., every alternative year by allowing the respondents to perform these acts in the remaining years. It is submitted that one year appellant may be allowed to perform these

acts and the next year respondents may be allowed to do these acts so that devotees may not suffer any inconvenience.

5. On the other hand, Advocate for respondents submitted that the trial Court completely confused and even failed to consider the admitted facts though it extracted them in the judgments. He submitted for example the trial Court referred A. Laxmi Reddy as D2, but in fact he is not at all D2 and D2 is one A. Poli Reddy. He submitted that such a confusing judgment was rightly reversed by the appellate Court. It is submitted that the findings of the appellate Court are not in contravention of Sections 61, 79 & 80 of the Indian Evidence Act. It is further submitted that the appellant having not filed any appeal against the decree of injunction granted in O.S.No.28/1993 in favour of Annapureddi Poli Reddy, which is operating against the appellant herein in respect of the same temple, this appeal is not maintainable and any order passed in favour of appellant would amount to altering the decree passed by the first appellate Court in O.S.No.28/1993, which has become final.

6. Now the substantial question of law i.e., raised by the appellant and formulated by the appellate Court is whether the findings of the first appellate Court are contrary to the provisions of Sections 61, 79 & 80 of the Indian Evidence Act.

7. **Point:-** According to appellant, his grand father constructed Sri Siddhi Bhairaveswara Swamy Alaya Bhaktha Smajam about 100 years back and his father, his brother and himself acted as trustees of the same temple, but this version is not supported by any documentary evidence. According to appellant, Exs.A1 to A15 are the relevant documents to support the said plea. Plaintiff relied on Ex.A1, which is a Certificate of Registration to show that appellant is a registered Samajam. This Ex.A1 is of the year 1989, but it would no way show that the plaintiff and their fore fathers have been

managing the temple as hereditary trustees. Exs.A2 & A3 are only ancillary documents for Ex.A1. Ex.A5 is a registered gift deed of the year 1976, whereas the gift deed in favour of respondents is of the year 1961 and the appellate Court relied on the gift deed in favour of respondents, which is much earlier to the gift deed relied on by the appellant. The other documents are pamphlets and resolutions passed by the Samajam, which are no way relevant to the plea of the appellant with regard to their enjoyment of hereditary privilege for more than 100 years.

8. According to appellant, the first appellate Court contravened the provisions of Sections 61, 79 & 80 of the Indian Evidence Act. Section 61 of the Indian Evidence Act deals with proof of contents of documents, Section 79 deals with presumptions as to genuineness of the certified copies and Section 80 deals with presumption as to documents produced as record of evidence. None of these documents-Exs.A2 to A15 are not certified copies of any of the documents nor they are produced as record of evidence. Only Ex.A1 is a certificate of registration to show that appellant's Samajam was registered under the provisions of Societies Registration Act and that would no way confer any right on appellant with reference to its right to perform Poojas, Vustavams and Thirunals etc. So the contention of the appellant that the first appellate Court has dealt Exs.A1 to A15 contrary to the provisions of Sections 61, 79 & 80 of the Indian Evidence Act cannot be accepted.

The other contention is that the first appellate Court has wrongly placed burden of proof on the appellant herein. This contention is also not tenable because the appellant herein being plaintiff in O.S.No.25/1993 onus is on it to prove its case as pleaded in the plaint. As rightly pointed out by Advocate for respondents, the trial Court has completely confused and not properly appreciated the

material on record and without discussion granted relief in favour of plaintiff accepting the documents of recent origin relied on by appellant herein ignoring old documents. One document is even more than 30 years old relied on by respondents herein. Other contention is the trial Court though extracted admitted facts in its judgment failed to consider them while appreciating the contentions and rival contentions of both parties, and trial Court even confused with regard to array of parties and referred to a person as D2 who in fact not second defendant in O.S.No.25/1993. Considering these aspects and by examining the entire evidence of both oral and documentary, the lower appellate Court has accepted the contention of respondents herein and disbelieved the case put-forth by appellant herein. I do not find any wrong appreciation of evidence with reference to facts and pleadings by the first appellate Court nor there is any perversity in the findings of the first appellate Court on any of the material aspects.

9. As already referred above, one of the respondents herein filed separate suit O.S.No.28/1993 for the same relief of permanent injunction in respect of the same subject matter and the first appellate Court granted injunction in favour of one of the respondents herein, which is operating against the appellant herein and the appellant has not challenged that decree, thereby it has become final. Now any order in this appeal even granting permission for alternative year, would amount to interfering with the decree granted in O.S.No.28/1993, which has become final. Considering all these aspects and the material on record, I am of the view that the first appellate Court has not committed any error and that the second appeal is devoid of merits and liable to be dismissed.

10. Accordingly, point is held against the appellant and the appeal is dismissed, but under the circumstances without costs.

11. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:17.12.2015

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