

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

S.A.No.520 of 2015
and
M.P.No.1 of 2015

P.Chinnathambi Gounder

... Appellant
(Defendant)

Vs.

1.C.Jayaseelan
2.C.Prema
3.C.Malliga
4.C.Gomathi
5.C.Jeyalakshmi
6.C.Hemalatha

... Respondents
(LRS of Plaintiff)

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the decree and judgment dated 15.02.2003 in O.S.No.868 of 2002 on the file of the learned I Additional District Munsif, Salem as confirmed by the decree and judgment dated 03.02.2015 in A.S.No.36 of 2003 on the file of the learned Principal District Judge, Salem.

For Appellant : Mr.D.Shivakumaran

For Respondents : Mr.V.Ayyadurai

JUDGMENT

One Mr.E.Chinna Gounder filed a suit in O.S.No.868 of 2003 on the file of the learned I Additional District Munsif, Salem for declaration to declare that the plaintiff is entitled to manage and maintain the affairs of Mariamman Temple in Chinnapudur Village, Salem Taluk and also to celebrate the annual festival and other festivals of the said temple along with the defendant and for permanent injunction to restrain the defendant from maintaining and managing the affairs of the said temple and also celebrating all the festivals of the said temple including the annual festival in the month of Masi without

associating the plaintiff also and for mandatory injunction to remove the grill inscription fixed in the outer wall of the newly built room adjoining the temple showing him as the sole Oor Gounder and Dharmakartha of the temple.

2.By decree and judgment dated 15.02.2003, the trial Court decreed the suit as prayed for. As against the same, the defendant filed an appeal in A.S.No.36 of 2003 on the file of the learned Principal District Judge, Salem. During the pendency of the appeal, the sole plaintiff Mr.E.Chinna Gounder who was the first respondent in the appeal died. Therefore, the respondents 2 to 7 herein were impleaded as his legal representatives. By decree and judgment dated 03.02.2015, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the defendant is before this Court with this second appeal.

3.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and the learned counsel for the respondents who has entered appearance as caveator and I have also perused the records carefully.

4.The case of the plaintiffs is as follows:-

The suit temple by name Mariamman Temple, Chinnapudur Village, Salem Taluk, is a temple belonging to the Vanniyar Community people of the said Village. The temple is managed and the festivals are organized and conducted by Oor Gounder on behalf of the said community people of the village. There were 3 Oor Gounders originally. The father of the respondents/plaintiffs, Mr.E.Chinna Gounder, the defendant, and one Mr.Arunachalam Gounder were the Oor Gounders. In the year 1985, one Mr.Ariyaputhiran and his brother, the sons of one Mr.Perumal Gounder claimed that the suit temple was built by their ancestors and hence, they have got right to manage the temple and to celebrate festivals of the temple. Aggrieved over the said claim made, the defendant herein and Mr.E.Chinnathambi Gounder's father Mr.Elumalai Gounder and others have filed a suit in O.S.No.158 of 1985 on the file of the learned Subordinate Judge, Salem, seeking a declaration that the plaintiffs in that suit are entitled to conduct festivals through the Oor Gounders and for permanent injunction to restrain the defendants therein from interfering with the celebration of the festivals. The said suit was decreed by the trial Court as prayed for on 27.09.1988. As against the same, an appeal was filed by the defendants in A.S.No.51 of 1991 on the file of the learned District Judge, Salem. The said First Appeal was not pursued by the appellants therein and thus, the same was dismissed for default and the same was not subsequently

restored. Thus, the decree and judgment passed by the trial Court in O.S.No.158 of 1985 has become final. Now, after the demise of Mr.Elumalai Gounder, the father of the sole plaintiff, the defendant/appellant herein disputed the right of Mr.Chinna Gounder to participate in the management and in the celebrations of festivals of the said temple, in the capacity of one of Oor Gounders. The defendant also made a grill inscription on the outer wall of the newly constructed room adjoining the temple showing that he is the sole Oor Gounder and Dharmakartha of the Temple. In those circumstances, the plaintiff filed the present suit for the reliefs as mentioned herein above.

5.In the written statement, the defendant admitted tacitly that the Temple was managed and also the festivals of the Temple were also organized by 3 Oor Gounders. He has further admitted in paragraph No.5 of the written statement that the decree in O.S.No.158 of 1985 is binding on him as well as on the plaintiffs. He has further stated that though the grill inscription was made by the defendant, it does not proclaim that he is the sole Oor Gounder. He has further stated that if the plaintiffs want to put up any inscription in the newly constructed building, the defendant has got no objection for the same. According to the defendant, the suit is liable to be dismissed as there is no cause of action.

6.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, two witnesses were examined and 4 documents were exhibited. On the side of the defendant, two witnesses were examined and nine documents were exhibited.

7.Having considered all the above, the trial Court decreed the suit which was confirmed by the First Appellate Court. That is how the appellant/defendant is before this Court with this second appeal.

8.In this second appeal, the learned counsel for the appellant/defendant would submit that so far as the relief of granting decree to the plaintiffs that they have got right to participate in the management of the suit temple and also to conduct all the festivals of the temple, as one of the Oor Gounders, the defendant has got no objection. The learned counsel for the appellant would further submit that in paragraph No.12 of the written statement, the appellant has tacitly admitted that after the plaintiff, his one of the legal representatives is also a Oor Gounder along with the defendant. The learned counsel would further submit that since, already there is a declaration in the earlier suit in O.S.No.158 of 1985, there is no need for making another declaration. The

learned counsel would further submit that the appellant is aggrieved by the third relief namely in respect of the mandatory injunction granted by the Courts below for the removal of the grill inscription alone.

9.The learned counsel for the appellant/defendant would further submit that there is no denial of the fact that the appellant is also one of the Oor Gounders and therefore, he has got every right to claim himself as one of the Oor Gounders and to put up any inscription. He would further submit that however, the inscription alleged in the instant case is not on the land belonging to the suit temple and therefore, the decree for mandatory injunction is liable to be set aside.

10.The learned counsel for the respondents/plaintiffs would vehemently oppose this appeal. According to him, there is a tacit admission in the written statement stating no objection in respect of the reliefs 1 and 2 sought for by the plaintiffs in the plaint but, the only contention raised by the appellant is that the grill inscription does not proclaim that he is the only Oor Gounder. Hence, the well considered judgment of the trial Court which was confirmed by the First Appellate Court does not require any interference at the hands of this Court.

11.I have considered the above submissions.

12.At the outset, I should say that there is no substantial question of law at all involved in this second appeal so as to admit the same. So far as the right of the plaintiffs to act as one of the Oor Gounders so as to participate in the management of the temple and to organize festivals of the Mariamman Temple, there is already a declaration in O.S.No.158 of 1985 in which, the plaintiffs and the defendant herein were parties. That is the reason why in the written statement, the appellant/defendant has tacitly admitted that the legal representative of the sole plaintiff is also one of the Oor Gounders and he has got right to participate in the management and also in the organization of the temple festivals and therefore, so far as the decree relating to declaration and for injunction granted by the Courts below are concerned, the defendant have got no grievance and therefore, the same is liable to be confirmed.

13.So far as the decree for mandatory injunction is concerned, I do not find any case at all in favour of the appellant/defendant. A perusal of the written statement would go to show that the defendant has put up a grill inscription in the suit temple but his only contention in the written statement is that he would proclaim as the sole Oor Gounder and Dharmakarthha of the suit temple. But, the Courts below have

given a clear finding that the grill inscription proclaims that the appellant is the sole Oor Gounder and Dharmakartha of the temple and that is the reason why the Courts below have granted the decree for mandatory injunction. In this factual finding, I do not find any perversity at all. As a matter of fact, in the written statement also, the appellant/defendant has stated that he has got on objection for a legal representative of the sole plaintiff also to put up such an inscription describing himself as one of the Oor Gounders. He has only stated that he has put up grill inscription defining himself as one of the Oor Goudners. In my considered view, neither the plaintiffs nor the defendant can put up any permanent inscription proclaiming themselves as Oor Gounders.

14.Further, though it is contended by the learned counsel for the appellant/defendant that the grill has been installed in the property belonging to yet another temple, I do not find any force at all in the said argument because, there is a tacit admission made in the written statement itself.

15.The learned counsel would further submit that there is no description of the property given in the plaint and therefore, on that score, the suit is liable to be dismissed. In this argument also, I do not find any merit at all since the plaintiffs have filed pleadings and also let in evidence before the trial Court with regard to the description of the property. The Courts below have given factual finding regarding the existence of grill and that is the reason why the Courts below have granted mandatory injunction in favour of the plaintiffs. At any rate, I do not find any substantial question of law at all involved in this second appeal so as to admit the same.

16.In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Principal District Judge,
Salem.

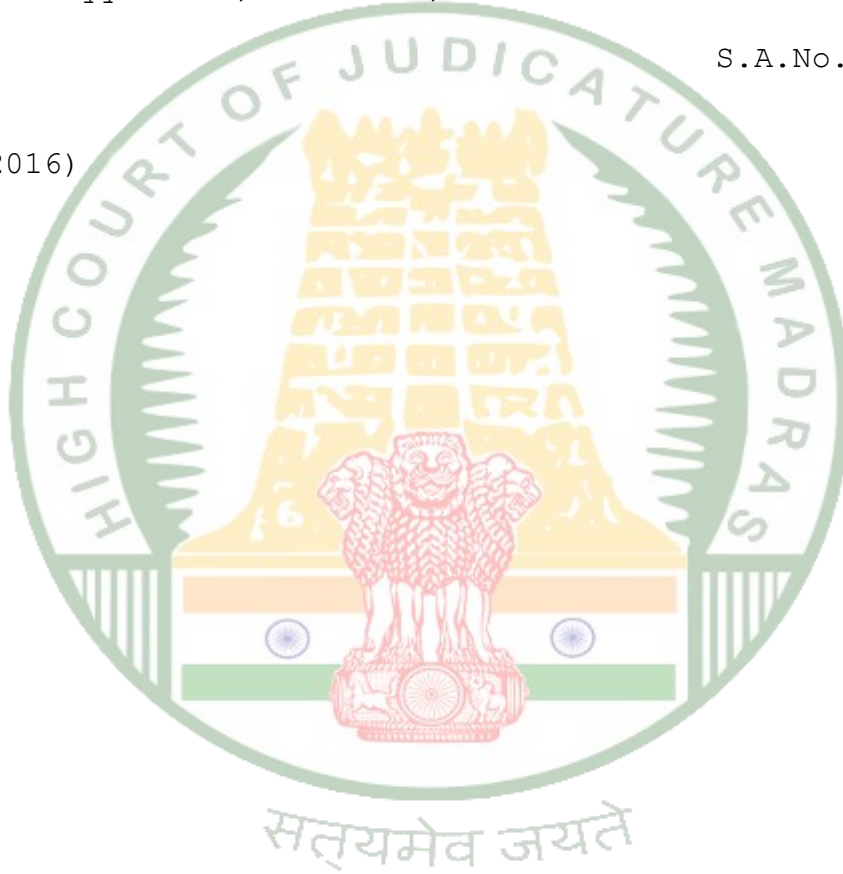
2.The I Additional District Munsif,
Salem.

+1cc to Mr.D.Shivakumaran, Advocate, S.R.No.1122

+1cc to Mr.V.Ayyadurai, Advocate, S.R.No.1046

S.A.No.520 of 2015

SV(CO)
CA(28/01/2016)



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