

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

S.A.No.579 of 2016
and C.M.P.No.10568 of 2016

1. Thangavel Gounder
2. Ramamoorthy
Raja Gounder (Died)
3. Murugan
4. Chidambaram
5. Subramani
6. Chakkarai
7. Jalagandan
8. Govindaraj
Govindaraj Gounder (died)
9. Thangavel Gounder
10. Thavamani
11. Raman
12. Ganesan
13. Veerappan
S/o Vajjiram
14. Veerappan
S/o Ranga Gounder
15. Sampath
S/o Natesan Gounder ... Appellants/Appellants
/Defendants

Vs.
सत्यमेव जयते

Loganathan ... Respondent/Respondent
/Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the Judgment and Decree dated 10.03.2016 made in A.S.No.27 of 2014 on the file of the Subordinate Judge, Gudiyatham, Vellore District, confirming the judgment and decree dated 27.08.2014 made in O.S.No.145 of 2005 on the file of District Munsif, Gudiyatham.

For Appellants : Mr.V.M.G.Ramakkannan

J U D G M E N T

The unsuccessful defendants before both the Courts below in a suit for bare injunction are the appellants.

2. Heard Mr.V.M.G.Ramakkannan, learned counsel appearing for the appellants and perused the materials placed before this Court.

3. The respondent herein filed the suit against the appellants for permanent injunction restraining them from interfering with the peaceful possession and maintenance of the suit temple as Parambarai Dharmakarthha by way of conducting festival on 26.03.2005 and 27.03.2015 or any other day in future. The case of the plaintiff is that he is the hereditary trustee of the suit temple and the defendants who are not having any right, title or interest over the suit temple were trying to interfere with the plaintiff in conducting the festival of the temple.

4. The defendants are residents of the village where the suit temple is situated. They contested the said suit and questioned the right of the plaintiff to conduct the festival in the capacity as the hereditary trustee.

5. Though the trial Court has originally dismissed the suit for want of evidence with regard to the plaintiff's claim of hereditary trusteeship over the suit temple, the Appellate Court, on appeal remanded the matter to the trial Court for fresh trial by its judgment and decree dated 19.11.2013 made in A.S.No.34/2010 also by permitting the parties to let in evidence on their side to sustain their claim. Consequent upon such remand fresh trial commenced and the plaintiff marked Exs.A1 to A15 and examined himself as P.W.1 and another person by name R.Venkatesan as P.W.2. The defendants marked Ex.B1 and examined D.Ws.1 to 3 on their side. The trial Court, after considering the rival pleadings of the parties and the evidence let in by them found that the plaintiff has established his case for the grant of the relief of injunction. Challenging the said judgment and decree, the defendants filed the appeal before the lower Appellate Court, which after considering the merits of the matter once again, rejected the appeal by specifically holding that the documentary evidence filed by the plaintiff supports his case that he is administering the temple as the hereditary trustee, whereas the defendants on their side have not filed any document in support of their claim over the administration of the temple.

6. Learned counsel for the appellants submitted that some of the documents marked by the plaintiff, were obtained by him from the Hindu Religious and Charitable Endowment Department recognising him as the hereditary trustee after remand order of the appellate Court and therefore, such documents ought not to have been taken into consideration by the Courts below for grant of the decree for injunction. Therefore, he contended that both the Courts below erred in decreeing the suit.

7. I have given careful consideration to the submissions of the learned counsel. First of all, it is to be noted that the suit is not the one for declaration of title but on the other hand, it is for bare injunction restraining the defendants from interfering with the conduct of the festival by the plaintiff at the suit temple. Therefore, what is to be seen is as to whether the plaintiff was in possession and management of the suit temple on the date of filing the suit as the hereditary trustee and was there an interference by the defendants at the relevant point of time. In support of his case, the plaintiff marked the proceedings of H.R. & C.E. Department as Ex.A15 dated 18.10.2010. No doubt, the said proceedings by the H.R. & C.E. Department came to be issued subsequent to the suit. However, a perusal of the said order passed by the department dated 18.10.2010 would show that the same came to be passed in a revision filed by the respondent herein challenging the order passed by the Joint Commissioner, H.R. & C.E., Vellore, in dismissing M.P.No.2 of 2003. Therefore, it is evident that the said proceedings was not initiated by the plaintiff subsequent to the dismissal of the suit originally and on the other hand, the proceedings before the Joint Commissioner, H.R. & C.E. came to be initiated in the year 2003 in M.P.No.2 of 2003 even before filing the suit in the year 2005. Therefore, such proceedings initiated much earlier to the filing of the suit culminated into passing an order in the revision on 18.10.2010 cannot be taken to mean that the plaintiff has created some documents or obtained some orders after the suit by initiating fresh proceedings.

8. A perusal of the order passed by the H.R. & C.E. Department, namely, the Commissioner of H.R. & C.E., in R.P.No.14/2009 which has been marked as Ex.A15 before the trial Court would show that the plaintiff was recognised as the hereditary trustee of the suit temple. The defendants have not marked any document in support of their claim before the trial Court except marking an invitation in respect of the festival to be conducted in the suit temple. Needless to say that the invitation itself cannot be the concluding proof to establish any right on the defendants even assuming that their names find a place in such invitation, unless supportive documents from the H.R. & C.E. department are filed before the trial Court. Moreover, it is also to be noted that when the Appellate Court

has remitted the matter for re-trial by specifically giving opportunity to both parties to adduce evidence, the defendants have not chosen to challenge the said order. On the other hand, they allowed the same to become final and conclusive. Therefore, now the defendants cannot question the marking of documents by the plaintiff after remand.

9. In view of the above factual findings rendered by the Courts below based on the documentary evidence let in by the plaintiff as discussed supra, I do not find any substantial question of law arises for consideration in this Second Appeal for entertaining the same. Accordingly, the Second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Gudiyatham,
Vellore District,
2. The District Munsif,
Gudiyatham.

+1cc to Mr.V.M.G.Ramakkannan, Advocate Sr.37665

सत्यमेव जयते

S.A.No.579 of 2016
and
C.M.P.No.10568 of 2016

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srg 11/08/2016

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