

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 02.03.2017

Judgment pronounced on : 13.03.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.1450 of 1999
& C.M.P.No.15624 of 1999

Sri Vinayagar Temple,
(Sidhi Vinayagar Temple), Kuppakonampudur,
Formerly rep. By M.Balasubramaniam
Now rep. By A.Shanmugham ... Appellant/Plaintiff

Versus

K.R.Swaminathan ... Respondent /Defendant

Prayer: Petition filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the Principal District Court, Coimbatore dated 02.09.1998 made in A.S.No.27/1997 confirming the judgment and decree of the Principal District Munsif, Coimbatore dated 07.08.1996 made in O.S.No.1733/90.

For Appellant : Mr.S.Mukunth
for M/s.Sarvabhauman Associates
For Respondent : Mr.S.V.Jayaraman, Senior Counsel
for Mr.K.Muthukumarasamy

JUDGMENT

The plaintiff is the appellant herein. The suit is originally filed for declaration of title in respect of the suit property. Later amended to the effect declaration of right and permanent injunction restraining the defendant from interfering the plaintiff's possession and enjoyment of the suit schedule property. The suit schedule property is an vacant site to the extent of 4 ½ cents.

2. The appellant is relying upon the the agreement of settlement executed by the respondent herein on 07.11.1977,

claiming right over the suit schedule property. Whereas the contention of the respondent is that he agreed to settle the suit mentioned property, but did not settle the property as agreed and he did not give possession of the property to the appellant Temple Management and in the absence of any conveyance, agreement for settlement itself will not pass title. Both the Courts have held against the plaintiff on the ground that the property was not transferred to the appellant Temple and the appellant Temple is not in possession of the property. The suit filed by M.Balasubramanian as representative of the Temple management and latter substituted by A.Shanmugam is not maintainable.

3. This Court at the time of admitting the second appeal has formulated the following substantial question of law:

"When the appellant temple has satisfied the essential requirements constituting a valid endowment according to Hindu Law, whether the Courts below are correct in law in non-suiting the appellant on the ground that there is no valid endowment?"

4. The learned counsel appearing for the appellant has submitted that the respondent while executed the Exhibit A9 voluntarily agreed to settle the suit property in favour of the Temple and handed over the possession to the temple management on the same day. Thus the suit property was endowed in favour the appellant Temple and endowment requires no registration and mere declaration of the suit property in favour of the temple and handing over the property is sufficient. Since the dedication of the property is already been effected, no formal registration of settlement deed is required. The agreement Exhibit A9 is sufficient indication for passing of ownership. Having disbelieved the case of the respondent, regarding the execution of Exhibit A9, the lower appellate Court ought to have construed in favour of the appellant, which is the only natural corollary finding regarding execution of Exhibit A9 and the Court below ought to have held that the possession of the property has been handed over to the appellant Temple. The court below ought to have held that the dedication is completed and registration of the document is only an option. For want of registration, the dedication cannot be nullified.

5. Regarding the maintainability of the suit, the learned counsel for the appellant submitted that in respect of Temple property, any worshipper can maintain a suit to protect the Temple's right over its property. Therefore, the trial court ought not to have non suited the appellant.

6. Per contra, the learned senior counsel appearing for the respondent has submitted that Exhibit A9 is only an expression

of intention to dedicate the property, subject to permission of exemption should be obtained from the authorities of Urban Land Ceiling Department. Any intention without dedication cannot be enforced. Exhibit A9 is only an executory in nature, which is not enforceable under law. The recital of Exhibit A9 indicates that the pious intention of the respondent to gift the suit schedule property to the temple Sidhi Vinayagar Temple represented by its trustees Kaliappa Gounder, Marappa Gounder and Lakshmana Konar. None of these trustees have filed the suit. Balasubramanian claiming himself as secretary of the Temple management board has lodged the suit without any right or authority to represent the temple. The witness who are signatories of Exhibit A9 were examined, but in the cross examination they admitted that the suit property and the Temple are separated and the suit land is not appurtenant to the Temple. There is no evidence to show that the appellants are in possession of the vacant site, while Exhibit A9 specifically indicates that the settlement deed will be executed after getting permission from Urban Land Ceiling Office. In the absence of permission from Urban Land Ceiling Authority, no title will be passed on to the appellant.

7. In support of his case, the learned counsel for the appellant relying upon the decision reported in 1961 (74) LW 388, wherein this Court observed as follows:

.....In order to constitute a valid endowment it is necessary that the donor should divest himself of the property. What is essential is that there should be an unambiguous expression of an intention to divest and an actual divestment for the benefit of the beneficiary, for example the temple or the particular purpose specified. Such divestiture can be proved by a written document. But as dedication to God or to a charity is not a transaction inter parties the provisions of the Transfer of Property Act will not apply and dedication can be effectuated orally without any necessity for a written instrument. So also a trust for a public purpose. In either case, that is, making of an endowment or creating a public trust, the fact of dedication can be established by evidence.....

8. Similarly, in the case of Sainath Mandir Trust Vs. Vijaya and Others reported in (2011) 1 SCC 623, has observed as follows:

".....19. It is no doubt true that the gift deed was an unregistered instrument and no title could pass on the basis of the same under Section 123 of the Transfer of Property Act, However, when the document is in the nature of a dedication of immovable property to God, the same does not require registration as it constitutes a religious trust and is exempt from registration....."

9. This Court after considering the rival submission made by the parties and the judgment cited, finds that the entire dispute regarding the suit property could be solved from recital to Exhibit A9 and the ocular evidence given in support and against the Exhibit A9 by the respective parties. It is an admitted fact that the suit property belongs to the respondent. The Court below has held that Exhibit A9 is a valid document executed with free of will by the respondent. Whether endowment under Exhibit A9 came into force on 07.11.1977, is to be decided by the conduct of the respective parties.

10. The plaintiff claims that possession of the property was given to the temple on 07.11.1997 itself. From the oral evidence it can be seen that during festival time, the suit property, which is vacant site was used by the devotees. There is no evidence to show that since 1977, the temple used to conduct festival regularly and during such festival, suit schedule property was used by the temple. The earliest document relied by the plaintiff is of the year 1990, wherein there is some indication that the temple has conducted festival. But it does not indicate that the suit property was used to conduct festival. Even it was conducted in the suit property, the appellant cannot claim possessory right over the suit property. As rightly pointed out by the trial court, it is common in India, whenever temple festivals are conducted, public and private properties temporarily occupied and carnival is held. That per se does not give inference that the property used to accommodate the devotees or to do other activities during the festival is given in possession to the temple authority forever. In a case identical to the case on hand as early as 1914, the Allahabad High Court, in Abdul Aziz and Others vs. Masum Ali and Others, observed as follows:

..... In the case of the money promised by the treasurer himself there was nothing to show that it went beyond the state of promise. He had ofcourse all the money in his hands, but he had not transferred to the account of the fund from his private account. Nor could the committee say that thy had incurred any liability on the strength of that promise. There was a case -Kedar Nath Bhattachari vs. Gorie Mahomed (1886 ILR (14) Calcutta 64), but it has been criticised by Sir Frederick Pollock in his Indian Contract Act at Page 15. See also Page on Contracts, Sec. 298, page 441. No question of estoppel could arise, as committee had done nothing in pursuance of that promise, and this distinguished the present case from the case in 14 Calcutta.....

In the said decision, the transferor promised to subscribe Rs.500/- for rebuilding a mosque, but neglected to pay the subscription. The suit brought by the committee for collection of subscription, was dismissed holding that the gratuitous promise could not be enforced.

11. From the facts of this case, it could be seen that though the plaintiff claims that the possession was given to them and they have levelled the ground in the said property, there is no evidence to support his claim. The oral evidence let in support of the plaintiff only indicate that occasionally, the suit property had been used during the festival period. It is admitted by the parties that suit land is not appurtenant to the temple. Therefore, the plea of handing over the possession and improvement of the land pursuant to Exhibit A9, not proved. On this score itself, the plaintiff temple is liable to lose the case.

12. To sum up, through Exhibit A9, the appellant Temple is only assured of the intention of the respondent to endow the suit property for the temple, it is not the actual dedication but only an intention. The plaintiff has failed to prove that pursuant to Exhibit A9, they were put in possession of the suit property and has improved the suit property on the promise of the respondent. In the absence of these two elements, the plaintiffs cannot claim right whatsoever upon the suit property based on Exhibit A9, since what is found in Exhibit A9 is a gratuitous promise which is not enforceable. Accordingly, the question of law is answered. The second appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

pvs

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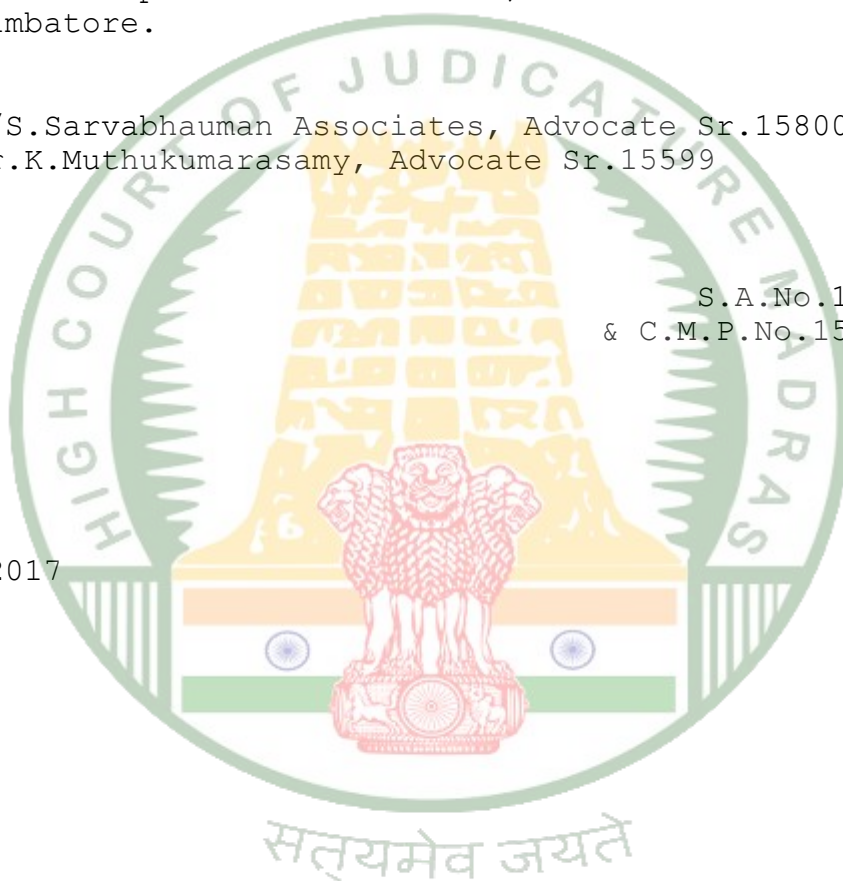
1. The Principal District Court,
Coimbatore.

2. The Principal District Munsif,
Coimbatore.

+1cc to M/S.Sarvabhauman Associates, Advocate Sr.15800
+1cc to Mr.K.Muthukumarasamy, Advocate Sr.15599

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