

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.07.2017

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.285 of 2010

1.N.Mani  
2.T.Seetharaman  
3.P.Pachamuthu  
4.Sengoden E.P.  
5.K.Sigamani ...Appellants/Defendants 2,3,5 to 7

vs.

Pachiayae Koil represented by its  
Hereditary Trustees & Poojari

1. Raman  
2. N.G.Vijayakumar ...Respondents 1&2/Plaintiffs 1&2  
3. Thangaraj  
4. A.Subramani  
5. Dakshinamurthy ...Respondents 3to 5/Defendants1,4 &8

Prayer: Civil Miscellaneous Appeal is filed Under Section 43 Rule 1(u) of the C.P.C., against the decree and judgment dated 10.09.2009, passed in A.S.No.101/2008 by the Principal Sub-Judge, Salem reversing the fair and decretal order dated 30.04.2008 passed in O.S.No.763/2002 by the learned District Munsif, Salem.

For Appellants : Mr.M.Vaidyanathan  
For Respondents 1 & 2 : Ms.K.Vennila  
For Respondents 3 to 5 :Served,NoAppearance

JUDGMENT

The present appeal has been filed by the defendants in O.S.No.763 of 2002, challenging the decree passed in A.S.No.101 of 2008 on the file of the Principal Sub-Judge, Salem.

2. The brief facts necessary for the case as follows:  
The plaintiff has filed the suit for declaration of right of pathway over the suit property and along with prayer for permanent injunction that the right of pathway shall not be disturbed by the defendants. It appears that the 1<sup>st</sup> defendant/3<sup>rd</sup>

respondent herein has put up some structure in the disputed plaint and to remove the same, the prayer for mandatory injunction to remove such obstruction has been sought.

3. The learned counsel for the appellant sought time to make his submissions. When the matter came up last week on 21.07.2017, a similar prayer was made and the same was entertained to enable the counsel to obtain necessary instruction. Since the matter is pending since 2010 and the suit itself is of the year 2002, this Court is not inclined to entertain his prayer for adjournment.

4. The learned counsel for the appellants vehemently argued that the plaintiffs are seeking to eject what they unilaterally claim as a pathway belonging to the temple and as such, there is a bar under Section 78 of the HR & CE Act. He also argued the learned First Appellate Judge has not applied his mind to the facts of the case, and came to the conclusion that the lane in dispute is a public lane, whereas, it is only a private lane belonging to the temple.

5. The learned counsel for the respondents informed this Court that the defendants in the suit have filed their written statement, the trial court had failed to frame the issues and trial of the case had commenced, when PW1 was examined in chief through his affidavit. At this juncture, the defendants had filed I.A.No.490 of 2008 under Order VII Rule 11 C.P.C seeking to reject the plaint on the ground that the plaintiffs' temple was under the control of HR & CE Act and the suit was barred under Section 78 of the H.R. & C.E. Act. By a speaking order, the trial court allowed the application and rejected the plaint from its file. Challenging the said decree rejecting the plaint, the plaintiffs have filed A.S.No.101 of 2008 before the Principal Sub-Court, Salem, by its judgment dated 10.09.2009, the lower appellate court set aside the judgment and decree of the trial court rejecting the plaint and remitted the matter back to the trial court for consideration of all the issues arising in the suit.

6. In paragraph 14 of its judgment, the 1<sup>st</sup> appellate court has observed that the plaintiff temple is situated in S.No.30 which comes under the control of HR & CE whereas the suit property is in S.No.31 and is classified as a lane, which property does not vest with the HR & CE Department. Inasmuch as the suit property does not fall within the administrative control of the HR & CE Department, the bar against the suit under the relevant provisions of the Act, would not be invited to the factual matrix of the present case.

7. After hearing the respective counsel appearing for the

parties and also perusing the documents, this Court finds that prima facie there is a triable issue and this cannot be foreclosed by accepting the version of the appellants/defendants. In other words, whether the suit property, namely, lane in question is a private property of the temple or the public lane, can only be adjudicated only after a proper trial.

8. I therefore, find there is no merit in this appeal and the appeal is dismissed. As a consequence, the order of stay passed in M.P.No.1 of 2011 is vacated.

9. The trial court is directed to complete the trial within a period of four months from the date of receipt of a copy of this order. Parties are directed to appear before the trial court on 4.10.2017.

Sd/-  
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

ssn

To

1.The Principal Sub-Judge,  
Salem.

2.The District Munsif,  
Salem.

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

+1CC to Mr.Mr.M.Vaidyanathan, Advocate SR.No.54518

+1CC to Mr.K.Vennila, Advocate SR.No.54059

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BR(CO)  
CS(28/09/2017)