

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Judgment Reserved on : 21.08.2017

Judgment Pronounced on : 08.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.259 of 2007

Revathi Appellant/Defendant
Vs.

1.Logambal
2.Seerangan
Trustee of Sri Venugopalaswamy Temple,
Vepplaipatty. Respondents/Plaintiffs

This second appeal has been filed under Section 100 of CPC, against the judgment and decree dated 11.11.2005 made in A.S.No.108 of 2005 passed by the learned Additional Subordinate Judge, Salem reversing the Judgment and decree dated 25.01.2005 passed by the learned I Additional District Munsiff Court, Salem in O.S.No.952 of 2003.

For Appellant : Mr.V.R.Rajasekaran

For Respondents : Mrs.Hema Sampath,
Senior Counsel for
Mr.T.Sezhian

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 11.11.2005 made in A.S.No.108 of 2005 passed by the learned Additional Subordinate Judge, Salem reversing the Judgment and decree dated 25.01.2005 passed by the learned I Additional District Munsiff Court, Salem in O.S.No.952 of 2003.

2. Brief facts of the plaintiffs' case is as follows:-

The suit properties originally belonged to Seerangan Gounder. He executed a settlement deed dated 29.03.1963 in favour of Sri Venugopala Swamy Temple at Vepplaipatty village settling 63 cents of land. The settlement was done for performing poojas and rituals out of the income derived from the property. The said temple is a private temple established

by the said Seerangan Gounder. The said Seerangan has 3 sons namely, Ramasamy Gounder, Saravana Gounder and Ramalingam Gounder. The said Saravanan Gounder pre-deceased without any issues. Ramasamy Gounder left behind one male issue, who is the second plaintiff in the suit. Ramasamy Gounder also predeceased Seeranga Gounder leaving behind the only daughter, who is the first plaintiff herein. He further provided that he would be the Trustee of the said temple during his life time and after his life time his male issue and the first plaintiff should be the trustee maintained the temple. The second plaintiff is the grand son of the Seerangan Gounder through his deceased son Ramaswamy. The said Seerangan Gounder died about 30 years back and after his death, the plaintiffs are managing the affairs of the temple and also enjoying the suit property. The said Seerangan Gounder had a brother by name Chellamuthu Gounder. Even before the settlement deed dated 29.03.1963 both the brothers partitioned their properties and were divided. Only after partition, Seerangan Gounder established the above said temple. The said Chellamuthu Gounder had two sons and one of them predeceased him as a bachelor, the other son Seerangan died two years prior to the suit and the defendant is his wife. Neither Chellamuthu Gounder nor his legal heirs have no manner of right in the management of the temple. The plaintiffs have no objection to the members of the Chellamuthu Gounder family worshipping in the said temple. However, the defendant is trying to interfere in the management of the said temple falsely claims that she is also having the right in the temple. At no point of time, Chellamuthu Gounder family was managing the temple. The defendant and her husband's sisters attempted to take water from one of their land to other lands through the property which belongs to the temple. The same was prevented by the plaintiff. Aggreieved by this the defendants along with their men attempted to obstruct the plaintiff from managing the temple affairs on 28.12.2003. The plaintiffs are prevented from making arrangement in conducting Vaikunda Egadasi Festival. The defendants have no right to do so. Hence, the plaintiffs came forward with the suit for permanent injunction.

3.On the other hand, opposing the claim of the plaintiffs, the defendant contended that the suit is vexatious one. The first plaintiff is residing in Attaiyampatti village, which is 50 Kms away from the suit village. The contention of the defendant that Seerangan Gounder founded the temple and performing Poojas is not correct. In fact, the temple was founded by Masaya Perumal Gounder, the father of Seerangan Gounder and Chellamuthu Gounder. The said Masaya Perumal Gounder had a brother by name Kulamuthu Gounder. The said Masaya Perumal Gounder died before the family partition which took place in 1953. It is true that the suit temple is a private temple, the 6th defendant also taking part in management

of the suit temple. The claim of the plaintiffs that the settlement deed provides the plaintiffs to manage the temple. The first plaintiff alone is managing the affairs of the temple is not correct. The heirs of Chellamuthu Gounder also are having equal rights in the management of the suit temple. The allegations that Seerangan Gounder was absolute owner of the property measuring 63 cents is not correct. The second plaintiff had elder brother, namely, Krishnan. Since the defendant is a widow, the plaintiffs are trying to prevent her from taking part in the management of the temple. Hence, the defendant prays for dismissal of the suit.

4. After contest, the trial Court dismissed the suit as not maintainable. Hence, the plaintiffs preferred the first appeal before the lower appellate Court. After contest, the first appellate Court allowed the appeal and set aside the decree and judgment of the trial Court and decreed the suit. Aggrieved over the same, the defendants have preferred this second appeal.

5. At the time of admission, the following substantial question of law was framed by this Court.

1) Whether the lower appellate Court is right in holding that the suit temple was managed and administered by the respondents/plaintiffs merely relying upon the endowment created in Ex.A1 and the kist receipts and patta marked as Ex.A3 to Ex.A13 which stands in their name?

2. Whether the judgment and decree of the lower appellate Court is liable to be set aside as perverse as the same failed to appreciate the evidence in Exs.B-22, B9 and B10 and the evidence of P.W.2, P.W.5, D.W.2 and D.W.5 in its proper perspective to decide the right of administration and management of the suit temple?

6.The learned counsel appearing for the appellant/defendant would submit that the first appellate Court solely relied on Ex.A1 under which the endowment was created by one Seerangan Gounder and kist receipts and patta which are marked as Ex.A3 to Ex.A13 to reverse the finding of the trial Court. These documents alone are not sufficient to grant the relief prayed for by the plaintiffs. In contrary to the said documents, the defendant produced Ex.B2 order issued by the Hindu Religious and Charitable Endowments Department appointing Periyammal w/o Chellamuthu as Trustee and Ex.B9 and Ex.B10 are electricity receipts are stands in the name of the defendants.

It is contended that these are clinching evidence to falsify the case of the plaintiffs, but, the first appellate Court without considering these documents decreed the suit by setting aside the decree and judgment of the trial Court on the basis of Ex.A1 alone. It is further contended that the lower Court failed to appreciate the evidence of D.W.2 to D.W.5 properly and failed to appreciate the fact that the suit temple was jointly managed by the plaintiffs and the defendants. The lower Court erred in relying upon the kist receipts produced as Ex.A6 to Ex.A13 to conclude that the plaintiffs are managing the temple. The lower Court also erred in rejecting the claim of the defendant that she was appointed as trustee for three years from 1981 to 1984. As per Ex.B22 on the ground that no supporting document was produced. Thus, According to the appellant/defendant, it is against settled principle of law. Thus, the appellant/defendant seeks to entertain the appeal.

7. Per contra, the learned counsel appearing for the respondents/plaintiffs would submit that admittedly both parties agreed that the suit temple is a private temple and the same was created through Ex.A1. The defendants are the stranger to Ex.A1. In such circumstances, they are falsely claiming right over the affairs of the temple. The first appellate Court rightly upheld the contention of the plaintiffs and set aside the unwarranted findings of the trial Court. Hence, there is no need or necessary to interfere with the judgment of the lower appellate Court. Thus, the respondents seeks for dismissal of the appeal.

8. I have heard the rival submissions and also perused the materials available on record.

9. On perusal, originally, two suits in O.S.No.342 of 2002 and O.S.No.952 of 2003 were dealt with by the trial Court and common judgment was delivered. O.S.No.346 of 2002 is filed for declaration and injunction and O.S.No.952 of 2003 was filed for permanent injunction. The trial Court decreed the suit in O.S.No.346 of 2002 and dismissed the suit in O.S.No.952 of 2003 as not maintainable. Aggrieved upon that the defendants have not preferred any appeal with regard to O.S.No.346 of 2002, but the plaintiff in O.S.No.952 of 2003 preferred the first appeal before the lower appellate Court. After contest, the lower appellate Court reversed the findings of the trial Court and decreed the suit in O.S.No.952 of 2003 as prayed for. Now the unsuccessful defendants preferred this second appeal.

10. Admittedly, the suit temple is a private temple. According to the plaintiffs, one Seerangan Gounder had executed the settlement deed on 29.03.1963 settling the suit property in favour of Sri Venugopala Swamy Temple at Veppilaipatti. The

settlement was done for performing pooja and rituals out of the income derived from the properties. The said Seerangan Gounder got one brother by name Chellamuthu Gounder. In Ex.A1 itself, Seerangan Gounder has specifically stated that "vd; \$Ptjir cs;stiuapYk; ehnd nkw;go nfhtpYf;F jh;kfh;j;jtha; ,Ue;J ,jpy; tUk; tUkhdj;ijf; vfhz;L nky fz;l fhhpa';fis bra;J tuntz;oaJ vd; \$Ptjirf;Fg; gpwF vd; Mz; thhpRfSk; vd; rpwpa kfd; fhyk; brd;w uhkyp';fj;jpd; kfs; nyhfehafpa[k; ,ij elj;jp tu ntz;oaJ." The plaintiffs are the legal heirs of Seerangan Gounder. The defendant Revathi is the wife of the one Seerangan Gounder who is the son of Chellamuthu Gounder through his second wife Periammal. As per Ex.A1, the brother of Seerangan Gounder, namely, Chellamuthu Gounder is no way connected with the suit temple. Already there was a partition between the Seerangan Gounder and Chellamuthu Gounder. The origin of the suit property devolved upon Ex.A1, but as far as the defendant is concerned, she has not produced any documentary evidence with regard to the origin of the suit property. The defendant claimed right over the suit temple on the ground that the Hindu Religious Charitable and Endowment Board appointed Periammal who is the mother in law of the defendant through on Trustee for the above said temple as per Ex.B22 and also produced some electricity charges receipts and on that basis the defendant is claiming right over the suit temple. However, the first appellate Court negatived the claim of the defendant on the ground that Ex.B9 and Ex.B10 documents are subsequent to the suit and Ex.B22 is against the contents of Ex.A1 under which the Endowment was created. Hence, the first appellate Court negatived the claim of the defendants. On the other hand, the trial Court dismissed the suit filed by the plaintiff on the ground that the suit is not maintainable, since that the Hindu Religious Charitable and Endowment Board has appointed Trustee and therefore Chellamuthu Gounder family is also having connection with the affairs of the temple and the temple administration being taken over by the Hindu Religious Charitable and Endowment Board which appointed the Trustee, the civil suit is not maintainable. The Trial Court also held that Hindu Religious Charitable and Endowment Board authorities alone are having power in the affairs of the temple. As such, how far these two stands are tenable has to be analysed.

11.The specific case of the plaintiff is that the suit temple is founded by Seeranga Gounder through Ex.A1 and as legal heirs and as per the contents of Ex.A1 they are performing pooja and festivals. However, on the side of the defendant, regarding the origin of the temple, they have not produced any peace of paper, by stating that the second wife of the Chellamuthu Gounder was appointed as Trustee, the defendants are seeking right to manage the temple. This is the specific contention on the side of the defendants. Admittedly, the suit temple is a

private temple and there is no dispute at all in that regard. How the Hindu Religious and Charitable Endowment Board appointed the Trustee through Ex.B22 is not explained and for which no proper answers is available on the side of the defendant. The Hindu Religious and Charitable Endowment Board has not claimed that the temple was taken over by them and the defendant has not stated that the Hindu Religious and Charitable Endowment Board has taken over the suit temple and it is a public temple. In such situation, Section 63 of the Hindu Religious and Charitable Endowment Act need not be invoked. As per Section 63 of the Act, the Hindu Religious and Charitable Endowment, the Joint Commissioner is entitled to decide whether the institution is religious institution and whether the Trustee is hereditary Trustee, but, in this case, the plaintiffs clearly established that they acted as Trustee and they are alone managing the suit temple as per Ex.A1. Therefore, there is no question about hereditary Trustee is to be decided in respect of the suit temple. The defendants claim that the suit temple is situated at village naththam and therefore it is the public temple. However, to that effect no pleading is available in the written statement. Thus, only because the suit temple is situated in Village naththam, it cannot be treated as public temple and the same is also upheld in the ruling reported in 1977 Law Weekly 94.

12. It is contended by the appellant/defendant that Periammal wife of Chellamuthu Gounder was appointed as Trustee for the suit temple by the HR & CE Department and in proof of the same produced Ex.B22 dated 02.12.2004. The said document is produced by D.W.3 employee of HR & CE Department. Ex.B22 is the extract of Register of appointment of Trustees. It is clear from Ex.B22 that the said Periammal was appointed as Trustee for the period from 1981 to 1984. Thus, the defendant claims that they also took part in the management and in support of the same, produced Ex.B9 Electricity Board consumption card and also Ex.B10 Electricity Board cash receipt to prove that the Electricity Service connection stands in the name of said Periammal. On the other hand, refuting the same, the learned counsel for the plaintiffs contended that the suit temple is not a public temple and does not have any features associated with the public temple and the defendant herself admitted that is private temple and as such there is no question to HR & CE Department appointing any one as Trustee of the temple. It is also contended that there is no evidence to prove that any enquiry was conducted and the suit temple was taken over by HR & CE Department. Admittedly, there is no evidence to prove that the suit temple is having necessary features like existing of oondi, contribution to the public and conducted the public. In the absence of any materials to prove the same, it is contended by the learned counsel for the respondents/plaintiffs that relying upon the ruling reported in 2005 (3) MLJ 518 and 1980

(1) MLJ 187, that the suit temple cannot be considered as a public temple. It is further contended by the plaintiffs that even assuming a Trustee was appointed by HR & CE Department, it wrongly assumption the same will not make the suit temple a public temple. Admittedly, in the case on hand, the suit temple is stated to be a private temple found by the defendant. There is nothing on record to show that at any other point of time, any other person was appointed as Trustee by the HR & CE Department. Apart from that the period from 1981 to 1984, there is nothing on record to show that any member of the defendant family was appointed as Trustee and managed the suit temple. In fact, the HR & CE Department has not stated any thing through D.W.3 about the appointment of any one, over the years as the Trustee of the temple. Further, Ex.B22 mentioning about the Periammal was appointed as Trustee for 1981 to 1984, where Ex.B9 Electricity Card is for the year 2003 - 2004 and Ex.B10 Electricity receipt is dated 04.10.2004. As such it is not explained as to how Ex.B9 and Ex.B10 stands in the name of the Periammal. Even as per Ex.B22 is not a Trustee during the period from 2003 - 2004. The Court also pointed out that Ex.B9 and Ex.B10 are subsequent to the suit. It is therefore clear that in the temple, the Electricity Service connection stands in the name of the said Periammal from 1981 onwards. As such, apart from Ex.B9 and Ex.B10, there is no documents produced by the defendant to show that they were in management of the temple. It is also pointed out by the Courts below that there is no pleadings in the written statement that the suit temple is a public temple. There is no evidence and no claim is made by the HR & CE Department that suit temple is taken over by them. Under such circumstances, the contention of the defendant that following Ex.B22, they are having role in the enjoyment of the temple cannot be accepted. Like wise in view of the admission by the defendant herself and in the absence of any evidence to prove that the suit temple is a public temple, the claim that the said temple is public temple is also unsustainable.

13.Thus, the contention of the defendant that unless and until, the suit temple is a public temple and taken over by the HR & CE Department, the said Periammal would have been appointed as Trustee, Ex.B22 cannot be entertained for the simple reason that nothing is stated in Ex.B22, on that ground Pderiammal was appointed as Trustee for the suit temple. There is no evidence to show that no enquiry was conducted by HR & CE Department prior to issue Ex.B22. On the other hand, the plaintiffs claim right over the suit temple on the basis of Ex.A1 settlement deed executed by Seerangan Gounder. To corroborate the claim, the plaintiff also produced Ex.A3, Ex.A6 to Ex.A13 Kist receipts. Thus, it is clear from the contention of Ex.A1 and other documents produced by the plaintiffs that after the demise of Seerangan Gounder, the temple is managed by his legal heirs, the

plaintiffs herein. On the other hand, the defendant has not produced any original document to prove that her predecessors, viz., legal heirs of Chellamuthu Gounder were managing the affairs of the temple. As stated earlier, Ex.B22, Ex.B9 and Ex.B10, no other documents prior to the filing of the suit is produced. As such, the claim of the defendant is unsustainable. Further, as stated earlier, the plaintiff has clearly established that the right to manage the affairs of the temple as per Ex.A1. It is apparent that their claim is bonafide and the same is to be accepted as rightly held by the first appellate Court. For the reasons stated above, this Court find no infirmity or error in the conclusion arrived at by the first appellate Court. If really the defendants are managing the temple and having right over the temple, they could have very well produced the documents maintained by the Hindu Religious and Charitable Endowment Board, but except Ex.B22 no other document is relied by the defendants from the Hindu Religious and Charitable Endowment Board. This is the suit of civil nature. So, the civil Court has power to decide the issue. Hence, the trial Court finding was rightly set aside by the first appellate Court. For the reasons stated above, this Court is not inclined to interfere with the findings of the first appellate Court and the substantial question of law is answered against the appellant and the point is answered accordingly.

14. In the result, the second appeal is dismissed. No costs. The Judgment and decree dated 11.11.2005 passed in A.S.No.108 of 2005 by the learned Additional Subordinate Judge, Salem is hereby confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Subordinate Judge,Salem.
- 2.The I Additional District Munsif, Salem.
- 3.The Section officer, VR Section, High Court, Madras.

+1cc to Mr.R.Meenal, Advocate, S.R.No. 36405

S.A.No.259 of 2007

VD(CO)
GN(11/01/2019)