

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2019
PRONOUNCED ON : 07.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No.806 of 2019
and
CMP Nos.16143 & 16144 of 2019

1. K.Shanmugam
2. P.Natarasu ... Appellants/Plaintiffs

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments,
Nungampakkam, Chennai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Coimbatore.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Tiruppur.
4. The Inspector,
Hindu Religious and Charitable Endowments,
Kangayam.
5. The Executive Officer,
Hindu Religious and Charitable Endowments,
A/m. Veerakkumarasamy Temple,
Vellakovil. ... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.04.2019, passed in A.S.No.01 of 2018 on the file of the learned Subordinate Judge, Kangayam confirming the judgment and decree dated 11.08.2016 passed in O.S. No.350 of 2013 on the file of the learned District Munsif, Kangayam.

For Appellants : Mr.M.Sriram
for M/s. S.Yashwanth

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 23.04.2019, passed in A.S.No.01 of 2018, on the file of the Subordinate Court, Kangeyam confirming the judgment and decree dated 11.08.2016, passed in O.S. No.350 of 2013, on the file of the District Munsif Court, Kangeyam.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for permanent injunction.

4. Suit has been laid by the plaintiffs against the defendants for perpetual injunction restraining the defendants, their men, servants in any manner disturbing the peaceful possession and enjoyment of the plaintiffs and their men in the suit property.

5. At the foremost, the plaintiffs have not come forward clearly as to whether the suit has come to be laid on behalf of the trust styled as Kumaran Trust or in the individual capacity of the plaintiffs. According to the plaintiffs, 11 sects of Kongu Vellala gounder community people had proposed to form the trust and to have a building for rendering services to the community people and it is further averred that the plaintiffs also joined and the Kumaran Trust had been created and the trust deed has been marked as Ex.A1. Further, it is stated that originally the trust was functioning at Moolanur and subsequently, by the supplementary deed, marked as Ex.A2, the trust had come to shift its office to the suit property. As rightly found and determined by the Courts below, in the trust deed projected by the plaintiffs, marked as Ex.A1, there is no reference about the suit property comprised in S.No.333/2. Furthermore, as abovenoted, according to the plaintiffs, based on the supplementary deed, marked as Ex.A2, the trust had decided to shift the office and building to the suit property and in this connection, on a perusal of Ex.A2 deed, the same recites as if, following the resolution passed in the General Body meeting of Kumaran Trust, they have decided to shift the office to the suit property from Moolanur. However, the so called resolution passed by the trust is not forthcoming and when the same being confronted to the plaintiffs' witnesses, they would claim that the resolution had been passed orally and on the other hand, the perusal of Ex.A2 deed would go to show that the trust is found to be maintaining registers and resolution book etc., and therefore, to say that the trust which had been started at Moolanur had proceeded to shift the office building at the suit property based on the alleged resolution and the supplementary deed, marked as Ex.A2, cannot be countenanced, when the plaintiffs has miserably failed to establish that any such valid resolution has been passed by the

trust for shifting to the suit property.

6. Furthermore, though the plaintiffs would claim that the plaintiffs building had been in existence for more than 100 years and rendering service to the community in general, however, with reference to the said case, absolutely there is no material projected on the part of the plaintiffs to evidence that the trust had been functioning prior to 2011. As abovenoted, the plaintiffs have not come forward clearly as to whether the suit had been laid on behalf of the trust or in the individual capacity, however, PW1, during the course of his evidence, at time of cross examination has stated that the suit has been laid only on behalf of the Kumaran Trust and that he is deposing as the President of the abovesaid trust and that he is unable to point out clearly as to when the Kumaran Trust had been formed and who had actually formed the said trust and when with reference to the formation of the trust and the functioning of the same at Moolanur as put forth by the plaintiffs for more than 100 years, the same is not buttressed by any materials whatsoever. Therefore, the claim of the plaintiffs that the said Kumaran Trust had been in existence fore more than 100 years and also had entitlement to the suit property, as such, cannot at all be accepted. Particularly, as abovenoted, there is no reference at all about the suit property in the trust deed projected by the plaintiffs marked as Ex.A1. If according to the PW1, the suit had been laid on behalf of the Kumaran Trust and when the very frame of the plaintiffs suit is found to be defective, the plaintiffs have chosen to file certain invitations marked as Exs.A3 to A8 and pointed out the activities of the Kumaran Trust. However, it has been admitted by PW1 that the abovesaid invitations had not been printed by Kumaran Trust and equally even in Ex.B1 invitation, there is no reference at all about the Kumaran Trust. Furthermore, the plaintiffs have also not placed the documents submitted by them to the Electricity Board for obtaining the so called service connection in the name of the Kumaran Trust and the plaintiffs have not placed any document to show that the Kumaran Trust had been in the possession and enjoyment of the suit property as sought to be made out by them. That apart, considering the materials projected on the part of the defendants, when it is seen that the 'Madam' in the suit property had been made use of by the plaintiffs by paying necessary fees to the defendants temple and the same could be gathered from Exs.B21 to B25 and when the name of the first plaintiff is reflected in the abovesaid receipts, without any basis, PW1 would claim that his signature is not contained in the abovesaid documents and the same had been forged. However, with reference to his abovesaid claim of fabrication of the abovesaid receipts, there is no material on the part of the plaintiffs.

7. In the light of the abovesaid factors, when the case projected by the plaintiffs that they had created the trust for the maintenance of the 'Madam' in the suit property is not substantiated with acceptable and reliable materials and as abovenoted, when the plaintiffs have miserably failed to establish the existence of the trust for more than 100 years and when the plaintiffs have also miserably failed to establish that the 'Madam' in the suit property had been enjoyed by the so called trust in its own right and that they had secured the service connection by submitting the valid records to the appropriate authority and as abovenoted, when the plaintiffs are using the 'Madam' in the suit property by remitting necessary fees to the defendants temple and in such view of the matter, it is found that when the plaintiffs have, in toto, miserably failed to establish their claim of title and lawful possession and enjoyment of the suit property and on the other hand, as determined by the Courts below, the plaintiffs are found to have enjoyed the 'Madam' available in the suit property only after remitting necessary charges to the defendants temple, in all, as determined by the Courts below, the whole endeavour of the plaintiffs seem to be for sustaining their case is only by way of picking holes in the defendants version and not by placing acceptable and convincing materials to establish their claim of lawful possession and enjoyment of the suit property on behalf of the Kumaran Trust.

8. This Court wonders as to why the plaintiffs had not chosen to seek the relief of declaration of title to the suit property, particularly, when the defendants have in toto repudiated the claim of title of the plaintiffs qua the suit property as well as their claim of possession and enjoyment of the suit property in their own right on behalf of the trust. The abovesaid position has also not been explained by the plaintiffs properly.

9. In the light of the abovesaid discussions, when the plaintiffs had failed to establish that the suit property as described in the plaint, belongs to the Kumaran Trust as claimed by them and also the same is in the possession and enjoyment of the Kumaran Trust as projected and accordingly, when the plaintiffs have come forward with the suit simplicitor for the relief of bare injunction and when the Courts below had rightly assessed the materials placed on record and determined that the plaintiffs has not made out any case for extending the relief of permanent injunction in their favour and the reasonings and conclusion of the Courts below for non suiting the plaintiffs not warranting any interference, on the whole, the second appeal is found to be devoid of merits.

10. In support of his contentions, the plaintiffs' counsel placed reliance upon the decision reported in 2015 (2) CTC 681

(N.Natarajan Vs. The Executive Officer, Chitlapakkam Town Panchayat). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

11. For the reasons aforesaid, no substantial question of law is found to be involved in the second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

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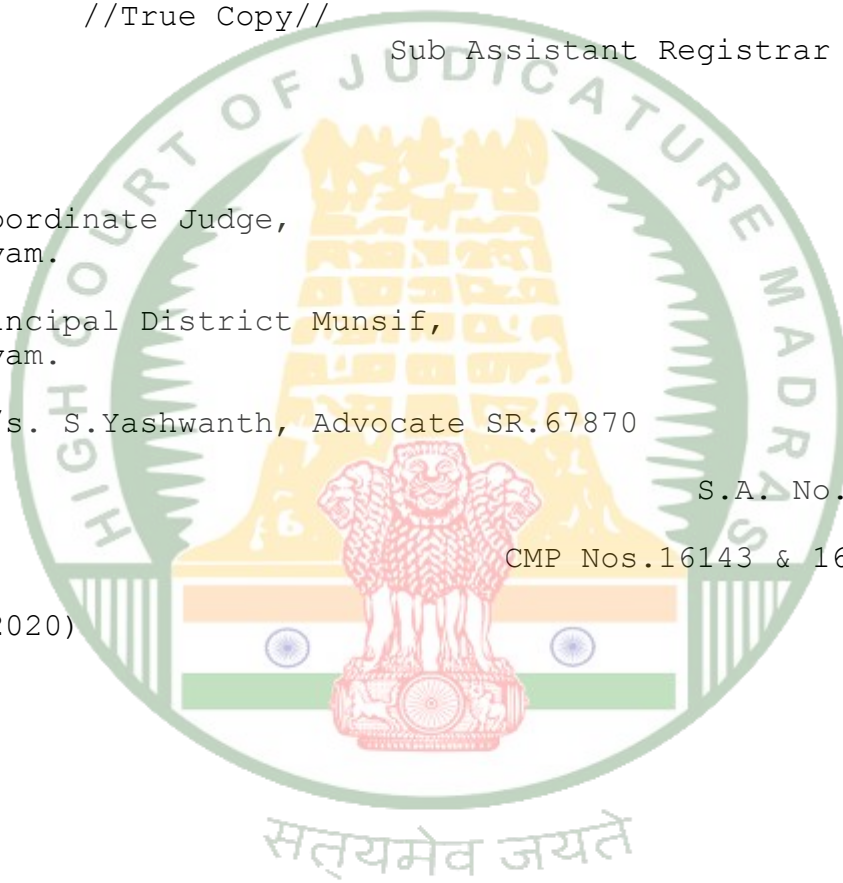
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To

1. The Subordinate Judge,
Kangeyam.
2. The Principal District Munsif,
Kangeyam.

+1cc to M/s. S.Yashwanth, Advocate SR.67870

S.A. No.806 of 2019
and
CMP Nos.16143 & 16144 of 2019

SJ(CO)
CB(24/01/2020)



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