



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 12.06.2019
DELIVERED ON : 14.08.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

S.A.(MD)No.268 of 2009

The Parish Priest,
R.C.Church, Mulagumoodu,
Mulagumoodu Post,
Valvachagostam Village,
Kalkulam Taluk,
Kanyakumari District.

... Appellant/Appellant/1st Defendant

Vs.

1.Mohanan

2.The Executive Officer,
Kappiarai Town Panchayat,
Officer at Kappiarai,
Kappiarai Post,
Kappiarai Village,
Kalkulam Taluk,
Kanyakumari District.

... 1st Respondent/1st Respondent/
Plaintiff

Prayer :Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No.70 of 1997 dated 31.12.2008 on the file of the learned Sub Judge, Padmanabhapuram confirming the Judgment and decree passed in O.S.No.28 of 1991 dated 31.07.1996 on the file of the learned District Munsif, Padmanabhapuram.

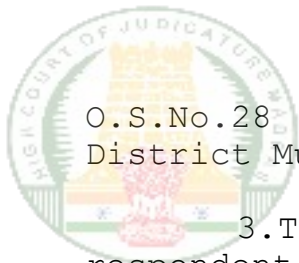
For Appellant : Mr.S.Meenakshi Sundaram,
Senior Counsel
For Mr.S.Yasar Arafath
For 1st Respondent : Mr.H.Velava Dhas
For 2nd Respondent : K.M.Vijaya Kumar

JUDGMENT

Heard the learned counsel appearing on both the side.

2.This appeal is filed against the Judgment and Decree passed in A.S.No.70 of 1997 dated 31.12.2008 on the file of the learned Sub Judge, Padmanabhapuram confirming the Judgment and decree passed in

<https://hcservices.ecourts.gov.in/hcservices/>

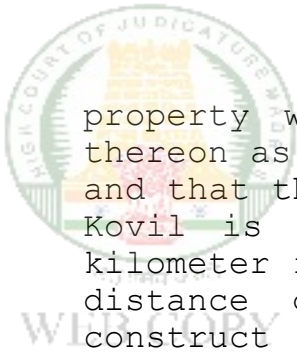


O.S.No.28 of 1991 dated 31.07.1996 on the file of the learned District Munsif, Padmanabhapuram.

3.The appellant herein is the first defendant, the first respondent herein is the plaintiff and the second respondent herein is the second defendant in the suit. The first respondent herein has filed a suit in O.S.No.28 of 1991 before the learned District Munsif, Padmanabhapuram for a prayer of permanent injunction restraining any construction in the schedule property. The trial Court decreed the suit. Against that Judgment and decree, the appellant herein has preferred an appeal in A.S.No.70 of 1997 before the learned Sub Judge, Padmanabhapuram. After considering both sides, the appeal was also dismissed by confirming the Judgment and decree passed by the trial Court. Against which, the appellants have come forward with this second appeal.

4.The case of the plaintiff is that the suit property originally belong to one Singarayan and after his death his widow Ponnesam alienated the property to the first defendant for the purpose of construction of a church. The property is situated at Maruthancode, Thulukkanvilai within Kaappiaral Town Panchayat. It is stated that around the suit property, there are 7,000 hindus residing and only 9 christians are residing in that locality. Within 150 feet distance of the suit property, there is an ancient hindu temple by name Sree Mukku Sastha Temple at a distance of 200m. There is one Vinayagar Temple and eleven other ancient hindu Temples are situated within a distance of 1/4th km from the suit schedule property. The Collector, Kanyakumari has issued a circular vide in R.C.No.1/60578/82 dated 18.08.1982 that no new buildings of workshop shall be constructed or any already existing building shall be converted into a place of workshop within a radius of 1 k.m., from the already existing place of workshop of another religious groups. In G.O.No.916 Public Law and Order Department dated 29.04.1986, it is mentioned that no place of workshop shall be constructed or existing building be converted into place of workshop near the already place of workshop of a different religious group. It is stated that the first defendant tried to construct the church in the suit property on the night of 04.01.1991 and the next day itself, the plaintiff lodged a complaint before the Police and on 07.01.1991, the plaintiff approached the Collector and on 08.01.1991, at about 16.00 hours, the first defendant again made an attempt to construct the building and the second defendant is not an authority to give any permission for the first defendant to construct a church. The second defendant is to be restrained from granting any such permissble by an order of permanent injunction.

5.The averments of the first defendant is that the first defendant is intending to construct a community hall in the suit property. The first defendant purchased the property from Ponnesam, Sebastian and Mahalingam and that two sale deeds were executed in



property was not sold for the purchase of constructing a church thereon as alleged. Maruthancode R.C. Church consists of 118 members and that the Hindu members are about five hundred. Sree Mukku Sastha Kovil is situated in Pookkadai area which is more than half a kilometer from the suit property and other temples are situated at a distance of 2 kilometers. The defendant is not intending to construct a new church nor he is intending to convert an existing building into a place of public worship. His only intention is to construct a community hall for conducting adult education and for giving training in cottage industries and for other social work activities. The first defendant is not intending to construct new church and hence, seeking permission from the the Deputy Collector does not arise. The Sub Inspector of Police is convinced of the bonafide intention of this defendant and he advised the defendant to obtain the Panchayat permission for the construction of a community hall and that the defendant obtained due building licence from the Kappiarai Town Panchayat. There was already church in the plaint schedule property where public worship was being conducted for the past 25 years and there is no need to construct a new church or to renew the building into a church.

6.On the above said pleadings, the following issues were framed by the trial Court:

(i) பட்டிகை வஸ்துவில் 1ம் பிரதிவாதி கிறிஸ்துவ ஆலயமானது அல்லது வழிபாட்டு கூடமானது கட்டட உள்ளாரா ?

(ii) வாதி வழக்குரையில் கூறியவாறு உறுத்துக்கட்டளைபெற உரியவரா ?

(iii)பரிகாரம் மற்றும் செலவுத்தொகை பற்றிய உத்தரவு என்ன ?

7.Two witnesses were examined as P.W.1 and P.W.2 and two documents were marked as Exs.A1 and A2 on the side of the plaintiff and two witnesses were examined as D.W.1 and D.W.2 and three documents were marked as Exs.B1 to B3 on the side of the defendants. After considering the pleadings and evidence, the trial Court decreed the suit. Against which, the respondents herein have preferred an appeal in A.S.No.70 of 1991 before the learned Subordinate Judge, Padmanabhapuram.

8. The first Appellate Court has framed the following issues:

"(a) Whether the appeal preferred by the appellant/1st defendant to set aside the decree and judgment of the trial Court deserve to be allowed ?

(b)To what relief the appellant/1st defendant is entitled ?"

9.The first appellate Court allowed a petition to receive additional documents and marked Exs.A3 to A5 on the side of the plaintiff. After hearing both sides, the appeal was dismissed and the Judgment and decree of the trial Court was confirmed. Against which, the appellant herein has come forward with this second appeal.



10. In the grounds of second appeal, it is stated that the Courts below have failed to note that the subject matter in the suit, covered under Ex.B1 and Ex.B2 are purchased only for the purpose of constructing a community hall. Both the Courts below have failed to note that already there was a prayer hall in a portion of the suit property. The Courts below have failed to note that the appellant is not going to put up a new church in the suit schedule property. The Courts below ought not to have granted a blanket injunction that this respondents should not put up any construction which would take away the fundamental rights of a citizen to enjoy his own property.

11. This Court by its order dated 08.02.2019, has admitted the second appeal and has framed the following substantial questions of law, which are as follows:

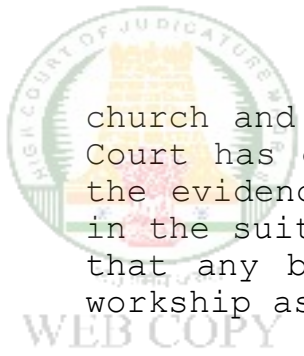
"(1) Whether the Courts below are correct in granting an order of permanent injunction without any cause of action ?

(2) Whether the Courts below are correct in granting a blanket order of permanent injunction not to put up any construction in the suit property even for purpose other than church ?"

Issue Nos.1 and 2 :

12. On the side of the appellant, it is stated that the suit was filed in the representative capacity and that the ownership of the appellant was admitted and even in the written statement of the defendant, it was specifically stated that there was an old church existing in the suit property. It is stated that the first defendant was not intending to construct a church and that the defendant was only constructing a hall for old age education and for other social activities. It is stated that the cause of action was not specific and only on assumption that the first defendant was going to construct a church, the case was filed and that already a cemetery and a church were there and that the first defendant obtained permission from the Panchayat for constructing a community hall which was marked as Ex.B3. Even the lower Court in its Judgment in paragraph no.9. has concluded that the suit property was not a church. But in paragraph no.9, the learned District Munsif assumed that the building may be converted into a church and he granted injunction order on the basis of the assumption and an order of injunction against the owner of the property was illegal. Constructing a church can be prevented. But a blanket order of injunction was granted preventing the owner from using the property for any other purpose. A probability that may arise in future cannot be the cause of action and that the first defendant already gave an undertaking not to construct a church.

13. On the side of the first respondent, it is stated that the property was purchased for constructing a church and the sale deeds reveals that the property was purchased for building St. Marys



church and in the trial Court judgment in paragraph no.9, the trial Court has observed that only a chapel is mentioned in Ex.B3 but in the evidence it was stated that marriages were used to be conducted in the suit property. The trial Court has observed in paragraph no.5 that any building can be converted by the Bishop into a place of worship as a church.

14.On the side of the first respondent, it is stated that already the appellant has approached the Deputy Commissioner seeking permission to construct a prayer hall in the suit survey number and the Collector gave permission and the respondent challenged the same in W.P.No.40096 of 2002 before this Court and the order of the Deputy Commissioner was set aside and again the appellant filed another writ petition without impleading the first respondent as a party in W.P.No.39618 of 2005 and the first respondent filed an appeal in W.A.No.2341 of 2005 and the order of the Single Judge was set aside. It is stated that the permission was granted by the second respondent for constructing a community hall itself is in violation of the Municipal Act. No such permission can be granted within 19 metres of a burial ground. Under Rule 6, 4 and 5 and Rule 4(4), no site can be used for religious purpose without the approval of the Collector endangering the public peace and order. It is further stated that the licence granted for the construction of a community hall was cancelled as the permission for construction period already expired and the approval was not renewed.

15.In paragraph no.12, the appellant had stated that there was already a church existing where the public workshop was being conducted for the past 20 years and that there was no necessity to put up a new church. But in paragraph no.7, the appellant had stated that the appellant was not intent to construct a new church nor intending to convert the existing building for public workshop. These two contentions of the appellant were contrary. When the appellant had taken a plea that he is not going to construct church or convert the existing building into a place of workshop, the appellant need not have filed a petition before the District Collector for getting a permission for construction of a prayer hall in existing building.

16.It is seen that the Collector in Re.Sy.No.2656/10 dated 12.07.2002 had granted permission and the first respondent filed a writ petition in W.P.No.40096 of 2002, this Court by its order dated 18.06.2004 set aside the order of the Collector. It is seen that even after the order of the Collector was being set aside, the appellant had approached this Court and filed W.P.No.39618 of 2005 without impleading the first respondent as a party and had obtained an order in their favour. Against which, this appellant filed an appeal in W.A.No.2341 of 2005. The prayer sought for by the appellant in W.P.No.39618 of 2005 was to prevent the respondents from obstructing or disturbing in any manner from conducting workshops, special functions, church feast



(Thiruvizha) and other church related activities in the first respondent's church namely Our Lady of St.Lourdu Church, Maruthucode, Pookadai, Kanyakumari District. These two writ petitions clearly reveals that the motive of the appellant was to construct a church and to use the construction for conducting workshop. The writ petitions filed by the appellant clearly reveals that the statement given in the written statement that the first defendant was not having any intention to construct the church is a false statement.

17.The contention of the appellant is that there was a church in existence. The Commissioner report clearly reveals that the construction was within 5 years and some of the portion was constructed after 5 years. The evidence was that there was only a chapal not a prayer hall or a church in that suit property. The Commissioner report also reveals that there was a donation box there was no necessity for a donation box in a community hall which clearly reveals the intention of the appellant was only to construct a church which is proved from Exs.A3 to A5, additional documents filed in A.S.No.70 of 1997. Both the questions of law raised by the appellant are only questions of fact and there is no question of law involved in this case.

18.In the above circumstances, there is nothing sufficient enough to interfere in the Judgment and decree passed by the first appellate Court. Hence, this second appeal is dismissed by confirming the Judgment and decree passed in A.S.No.70 of 1997 dated 31.12.2008 on the file of the learned Sub Judge, Padmanabhapuram confirming the Judgment and decree passed in O.S.No.28 of 1991 dated 31.07.1996 on the file of the learned District Munsif, Padmanabhapuram. No Costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Sub Judge, Padmanabhapuram.
- 2.The District Munsif, Padmanabhapuram.
3. The Record Keeper,
V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.



+1 CC to Mr.H.VELAVADHAS, Advocate (SR-81605[F] dated 14/08/2019)
+1 CC to Mr.S. YASAR ARAFATH, Advocate (SR-81572[F] dated
14/08/2019)
+1 CC to Mr.K.M.VIJAIYAKUMAR, Advocate (SR-81856[F] dated
16/08/2019)

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14.08.2019

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