

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.1679 of 1992

1.Krishnasamy Gounder
2.Duraisamy Gounder

..Appellants/1&2 Respondents
1&2 Defendants

Vs.

1.Subramania Gounder
2.Periya Aruchamy Gounder
3.Chinna Aruchamy Gounder

All sons of Palani Gounder

4.Nachimuthu Gounder
5.Mylsamy Gounder

Both sons of Subba Gounder

6.Rakkimuthu Gounder
S/o.Nachimuthu Gounder

7.Deivanai
W/o.Soundappa Gounder

8.Bakkiyammal
D/o.Nachimuthu Gounder

..1 to 8 Respondents/Appellants 2 to 9
2 to 9 Plaintiffs

9.Nallamuthu Asari @ Mottaia Asari

10.Kalimuthu Asari
11.Somasundara Asari
12.Arumuga Asari

R.9 to R.12 sons of Palaniappa Asari

13.Velusami Asari

14.Pooranasami Asari

15.Saminatha Asari

16.The Executive Officer,
Arulmugu Koppa Nachiamman &
Madhala Nachiamman Temple,
Kappalankarai Village,
Pollachi Taluk, Coimbatore District.

..9 to 16 Respondents/3 to 10 Respondents
/3 to 10 Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 23.05.1991 in A.S.No.111 of 1990 on the file of the I Additional District Judge, Coimbatore reversing the judgment and decree dated 12.03.1990 in O.S.No.167 of 1986 on the file of the Subordinate Court, Udumalpet.

For Appellants : Mr.P.Mathivanan
For R3, R6 to R8 : Mr.S.Parthasarathy, Sr.C for
Mr.K.Muthukumarasamy
For R16 : Mr.R.T.Doraisamy
For R1, R2 , R4 & R5 : Not ready in notice
For R9 to R15 : Given up

J U D G M E N T

(The case has been heard through video conferencing)

The subject matter of the Second Appeal pending before this Court is the property alleged to be held by the Arulmigu Koppa Nachiamman & Madhala Nachiamman Temple. In connection with the property, four suits were laid before the Sub Court, Udumalpet between the year 1986 and 1989. The main contestant in this matter is one Nachimuthu Gounder, who is the plaintiff in O.S.No.167 of 1986 and one of the defendant in other three suits O.S.Nos.179 of 1986, 185 of 1989 and 319 of 1989.

2. The basic admitted facts pleaded by the parties in these four suits is that the property owned by the Nachia amman and Madhala Nachiamman koil. The land was leased out to the parties. The electricity connection for the suit land stands in the name of the temple. As per the plaint in O.S.No.167 of 1986 one Subbay Gounder was looking after the affairs of the temple as the trustee of the temple. After his death, his sons are looking after the affairs of the temple.

3. The contention raised by the plaintiff in O.S.No.167 of 1986 was resisted by the temple and other respondents stating that the plaintiffs were never the tenants.

4. The trial Court after framing appropriate issues, examined the witnesses, in its common judgment dismissed the suit in O.S.No.167 of 1986 filed by one Nachimuthu Gounder, who died pending suit and his legal representatives were brought on record as the plaintiff 2 to 9. The permanent injunction was granted in O.S.No.179 of 1986 filed by one Bhuvaneshwari against Nachimuthu Gounder and his legal representatives as the defendants 2 to 10. Injunction was granted in O.S.No.185 of 1989 filed by one K.V.P.Somasundaram against Nachimuthu Gounder and others. Permanent injunction was granted in O.S.No.319 of 1989 against Nachimuthu Gounder and others. In all these four suits, the Executive Officer of Arulmigu Koppa Nachiamman & Madhala Nachiamman Temple was one of the defendants.

5. Against the common judgment and decree passed by the trial Court as mentioned above, the first appeal was filed by the legal representatives of Nachimuthu Gounder and others.

6. The first appellate Court in its common judgment dated 23.05.1991 reversed the finding of the trial Court and allowed the first appeal in A.S.No.111 of 1990 preferred by the legal representatives of Nachimuthu Gounder and others and allowed the suit in O.S.No.167 of 1986 filed for relief of permanent injunction.

7. As far as the other first appeals A.S.Nos.108 to 110 of 1990, the lower appellate Court held that the plaintiffs are not entitled for injunction. Thus, in sum and substance, the first appellate Court held that the property of the temple is in possession of the legal representatives of Nachimuthu Gounder and others/plaintiffs in O.S.No.167 of 1986. The plaintiffs in other suits not proved the possession of the property.

8. In the said circumstances this Second Appeal in S.A.No.1679 of 1992 is preferred by Krishnasamy Gounder and Duraisamy Gounder the defendants in O.S.No.167 of 1986 and respondents in A.S.No.111 of 1990. When the matter was taken up in the earlier occasion, it was reported that the 2nd appellant / Duraisamy Gounder died and the same was recorded by this Court on 23.11.2020, granted time to take necessary steps to bring his legal representatives.

9. Today, when the matter was listed, the learned counsel for the appellants reports that no instructions from the legal representatives of the deceased 2nd appellant nor from the 1st appellant.

10. In the view of the above, the Second Appeal is dismissed for non prosecution. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

rpl

To

- 1.The I Additional District Judge, Coimbatore
- 2.The Subordinate Judge, Udumalpet.

Copy to
The Section Officer,
V.R.Section,
High Court, Madras - 104

S.A.No.1679 of 1992

SSD(CO)
KKV/16/03/2021



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