

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.02.2020

Date of Verdict : 18.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.973 of 2001
and C.M.P.No.10184 of 2001

Karthikeyan ... Appellant / Plaintiff

Vs.

1.Thyagarajan (Died)
2.Ramalingam
3.The Executive Officer,
Arulmighu Kirupaburisarar
Devasthanam,
T.V.Nallur,
Villupuram District.
4.T.Salai Mantharavasan
5.T.Salai Sivabagyam ... Respondents/Defendants
(Respondents 4 and 5 are brought
on record as legal heirs of the
deceased R1 viz., A.V.Thyagarajan
vide order of the Court dated
08.01.2020 made in C.M.P.No.239
to 241 of 2014 in S.A.No.973 of
2001)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree of the Principal District Judge, Villupuram in A.S.No.181 of 1998 dated 06.07.2000 confirming the Decree and Judgment of the Principal District Munsif, Tirukoilur in O.S.No.323 of 1991 dated 13.08.1998.

For Appellant : Mr.V.Sairam

For R1 : Died

For R3 : Mr.K.Chandrasekar

For R2, R4 & R5: Notice served

J U D G M E N T

This appeal has been filed as against the
Judgment and the Decree dated 06.07.2000 passed in
<https://hcservices.ecourts.gov.in/hcservices/>

A.S.No.181 of 1998 on the file of the Principal District Court, Villupuram, confirming the Judgment and the Decree dated 13.08.1998, passed in O.S.No.323 of 1991 on the file of the Principal District Munsif's Court, Tirukoilur.

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

3.The case of the plaintiff in brief is as follows :-

3.1.The suit is filed for declaration and recovery of possession with means profit. The suit property has been endowed by the ancestors of the plaintiff for the purpose of performing "Thiruvadirai" festival in the month of Margazhi every year in the third defendant temple. The above said property has been shown as "E" Schedule in the Partition Deed between Shanmugam Pillai and Arumugam Pillai as early as on 28.06.1902. Shanmugam Pillai was a minor then, his mother Amirthammal was the guardian for him. The plaintiff is the legal heir of Shanmugam Pillai representing one branch and the first defendant grandson of late Arumugam Pillai representing the other branch.

3.2.The plaintiff and the first defendant were doing the above said Festival with the income derived from the suit property. The plaintiff was under bona fide impression that the first defendant was doing the Festival as usual. While being so, on 18.12.1989 the plaintiff received a notice from the third defendant that for the last few years the plaintiff and the first defendant were arranging to sell the endowed items to the third parties. Thereafter, the first defendant also sold the suit property to the second defendant on 17.09.1980, suppressing the fact that the first defendant had no right to sell the property. Therefore, the plaintiff caused notice to the first and second defendants to deliver the possession of the suit properties and means profit. Though the first and second defendants received the notice, they neither replied anything nor vacate the premises. Kamalammal, the widow of the late Shanmugam Pillai had executed a registered will in favour of the plaintiff on 30.04.1990. Thereafter, she died on 08.07.1992. After her demise, the will came into force and the plaintiff is performing the kattalai as per the ancestors direction and as such the properties cannot be salable and the plaintiff has got right to question the alienation. Hence the suit.

4.The first defendant resisted the plaintiff's case by filing the written statement and stating that the first defendant denies all the averments and allegations made in the plaint are false and frivolous. By the Partition Deed made in the year 1902, between Shanmugam Pillai and Arumugam Pillai, in which there was a dwelling

house with a portion of garden on the rear side, were set apart for performing the charities on the Thiruvadirai Festival, out of the income from the said property. Both the said Shanmugam Pillai and Arumugam Pillai relinquished their respective right in the said property and the said Arumugam Pillai was appointed as the sole Trustee, to take charge of the property and to perform charities on the Thiruvadirai Festival, without reference to the third defendant. Therefore, the third defendant is not a necessary party to the present suit.

4.2. He further submitted that Arumugam Pillai was performing the charities on the Thiruvadirai Festival up to his life time and after his demise his sons viz., Vaidyanathan Pillai and Singarampillai as the legal heirs continued to perform the charities on the Thiruvadirai Festival. Thereafter, the first defendant, being the legal heir and to honour the wishes of his ancestors continued to perform the charities on the Thiruvadirai Festival, out of his own funds, as the property was not fetching any considerable income. Since, there was no mentioning in the Partition Deed to manage the Trust as the Trustee after the life time of Arumugam Pillai his legal heirs continued to perform the charities on the Thiruvadirai Festival. Therefore, the plaintiff is a stranger to the Trust property and he was all along a spectator of the first defendant performing the charities on the Thiruvadirai Festival and as such the plaintiff has no right over the Trust property as a Trustee. Therefore, the entire claims of the plaintiff is nothing but a concocted story.

4.3. The strip of land in the suit schedule was never formed as a part of "E" Schedule property in the Partition Deed dated 28.06.1902. The suit property was only a portion of the property purchased by one Krishnammal from one Varagasamy Iyengar, under a Registered Sale Deed dated 16.06.1924 bearing Document No.2644 of 1924. The said Krishnammal conveyed the property in favour of the second defendant by a registered Sale Deed dated 16.06.1965, bearing Document No.1262 of 1965. The strip of land in between the property endowed in 1902 and the property sold to the second defendant, though belonged to Krishnammal, was used by the tenants, as and access to the garden on the rear side of Krishnammal's property, as well as the Trust property. The second defendant with a view to perfect the title to the strip of lands by a document and to avoid the claim on the easementary rights by the dominant owner offered to pay a substantial amount to the first defendant for executing a Sale Deed in his favour. Therefore, the suit property is not being a portion of the Trust property and as such the first defendant agreed for the same and executed the Sale Deed in favour of the second respondent.

4.4.In fact, the entire sale proceedings he carried out the essential repairs to the Trust property and also laid the foundation for a house in the garden for augmentation of income from the Trust property. Therefore, the second defendant had become the owner of the property, by virtue of the Sale Deed and perfected his title by eliminating the claim on easementary rights over the strip of lands by getting the Sale Deed in his favour from the first defendant. Further stated that the plaintiff is only a stranger to the endowed property and he has no right in that property and prayed for dismissal of the suit.

5.On the side of the plaintiff PW1 to PW3 were examined and six documents were marked as Ex.A1 to Ex.A8 (Ex.A7 and Ex.A8 were marked on the side of the plaintiff as per order in I.A.No.8 of 2000 dated 26.02.2000). On the side of the defendants DW1 and DW2 were examined and no documents were marked in their favour. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the Judgment and Decree of the trial Court, the defendants preferred an appeal suit in A.S.No.181 of 1998 before the Principal District Court, Villupuram. The first appellate Court on appreciating the materials placed on records dismissed the appeal, by confirming the Judgment and the Decree passed by the Principal District Munsif's Court, Thirukoilur. Challenging the same, the plaintiff has come forward with the present second appeal.

6.At the time of admission of the second appeal on 22.01.2019 the following substantial question of law was framed :-

(i) Whether the First Appellate Court had misdirected itself in its interpretation and application of under Section 108 of the HR & CE to the facts of the case, particularly when the suit had been filed to set aside a sale deed executed by the first defendant in favour of the second defendant."

7.The learned counsel appearing for the appellant/plaintiff and the respondents/defendants are present and they are reiterated the averments set out in the plaint as well as the written statement.

8.Heard Mr. V.Sairam, learned counsel appearing for the appellant and Mr.K.Chandrasekar, learned counsel appearing for the third respondent.

9.This Court considered the rival submission made by the learned counsel on either side. Admittedly the suit property was endowed by the ancestors of the plaintiff and

the first defendant to perform the charities on the Thiruvadirai Festival in the month of Margazhi every year by the Partition Deed dated 28.06.1902, which was marked as Ex.A2. On perusal of the said Partition Deed it is seen that the grand father of the first defendant i.e. Arumugam Pillai was allotted the suit property to perform the charities on the Thiruvadirai Festival from the income derived from the suit property. After demise of the said Arumugam Pillai, his legal heirs i.e. his two sons viz., Vaidyanathan Pillai and Singarampillai as the legal heirs continued to perform the charities on the Thiruvadirai Festival. Thereafter, the first defendant, being the legal heir and grandson of Arumugam Pillai is now looking after the suit property and performed the charities on the Thiruvadirai Festival.

10. On receipt of the notice from the third defendant, the plaintiff caused notice to the first defendant to handover the vacant possession of the suit property. Since he did not perform the charities on the Thiruvadirai Festival for the past few years. The first defendant conveyed the suit property in favour of the second defendant, which was marked as Ex.A4. Ex.A4 is the part of land measuring 4 ½ feet E.W. x 146 ½ feet N.S. Surrounded by temple compound wall on the south street, on the north the property of Thiagarajan i.e. the first defendant, on the east and the property of the second defendant on the west. The Rental Agreement, which was marked as Ex.A8 refers to a part of the suit property and Shanmugam Pillai is none else than the husband of Kamalammal, who is the founder of the Trust. Therefore, the suit property is form a part of the Trust property.

11. Both the Courts below held that as per Section 108 of the Hindu Religious and Charitable Endowment Act, 1959 there is a bar to file a civil suit. Therefore, both the Courts below dismissed the suit filed by the plaintiff.

12. Section 108 of the Hindu Religious and Charitable Endowment Act, 1959 reads as follows:

"Bar of suits in respect of administration or management of religious institutions, etc.—No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act."

13. Admittedly, the suit property is a trust property kept over for the purpose of performing the

charities on the religious festival i.e. Thiruvadirai Festival. In this regard, the learned counsel appearing for the third respondent relied upon the Judgment reported in (2011) 3 MLJ 230 in the case of A.N.Kumar /Vs./ Arulmighu Arunachaleswarar Devasthanam, Thiruvannamalai, Rep. by its Executive Officer, (Asst. Commissioner), Thiruvannamalai and others and the Hon'ble Division Bench of this Court held as follows:

"39. As discussed earlier, under proviso to Section 79, there is express bar for the suits instituted by licensees/lessees or mortgagees, who are in possession of the temple property. There is no such express bar for the ejectment suits instituted by the temple. As discussed earlier, since there is no adequate remedy provided under the H.R. & C.E. Act for eviction of tenants, licensees, lessees or mortgagees, in our considered view, Section 108 is not a bar for the ejectment suits instituted by the temple notwithstanding the provisions contained in Chapter VII.

42. It is a settled position of law that until and unless the jurisdiction of the Civil Court is ousted either expressly or impliedly, an affected party cannot be prevented from approaching it. As observed above, Sections 78 and 79 which deal with encroachment, merely embark upon a procedure for removing an encroacher of a temple property. They do not put any fetters on the power of the authority acting as a guardian of the temple property to have recourse to the Civil Court. The jurisdiction of the Civil Court is plenary in nature. Hence, unless the suit is barred either expressly or by necessary implication, it cannot be non-suited. (see Nahar Industrial Enterprises Ltd. v. Hong Kong And Shanghai Banking Corporation (2009) 8 SCC 646 : (2009) 8 MLJ 701 and Rajasthan SRTC v. Bal Mukund Bairwa (2009) 4 SCC 299 : (2009) 5 MLJ 307 : 2009-III-LLJ-177).

43. When the temple has not chosen to go under the purview of the Act, then it cannot be said that the suit is barred. In other words, it is for the temple to choose either the common law remedy by way of filing a regular suit or invoke the provisions of the Act by approaching the authorities concerned. When such an action is taken against an encroacher, it cannot

be questioned on the ground of lack of jurisdiction. Because initiation of the action ultimately lies with the temple.

48. During the course of arguments, it was submitted that about 6500 eviction petitions are pending before the Joint Commissioner, H.R. & C.E. Act, out of which only few cases have been disposed. If the temples are to approach the Joint Commissioner in all the cases for filing eviction petitions, the very object of H.R. & C.E. Act would be defeated. Having regard to the number of eviction petitions, keeping in view the interest of temple and the temple properties, it would be in order if the Government appoints more Officers to deal with the eviction petitions.

49. We summarise our conclusions as under:

So far as the suits filed by the temple for eviction of tenants/licensees/lessees/mortgagees for filing of the ejectment suit, the Civil Court's jurisdiction is not barred. The decision to approach Civil Court or invoke the provisions of H.R. & C.E. Act vests with the Temple.

In cases of encroachers, temple authorities can either resort to the provisions under Sections 78, 79, 79-A, 79-B or to approach the Civil Court. The decision to elect a particular procedure lies with the owner of the property, being the Temple.

In view of the express bar under 2nd proviso to Section 79, in so far as the suits by the encroachers/lessees/licensees/mortgagees, the bar under Section 108 will get attracted excepting in instances specifically stated in the 1st proviso to Section 79."

This Court held that for ejectment suit filed by the temple, jurisdiction of the Civil Court is not expressly barred.

14. The learned counsel appearing for the third defendant also cited another Judgment reported in CDJ 2001 MHC 1059 in the case of Sayarakshai Kattalia & Arthajama Kattalai attached to Arulmigu Kayaroganaswamy & Neelayadakshi Amman Thirukoil, Nagapattinam represented by its Executive Officer and Another and the relevant portion of the judgment is extracted as under:

"20. Notwithstanding Section 108 of the Act, where the dispute relates to a temple is only between two private parties and the Endowments Department is not directly concerned, yet the Civil Court has jurisdiction to try the suit as has been held by this Court in Kailasa Mudaliar and Ors. v. Anandavadivelu Mudaliar and Ors. (1980) 1 MLJ. 140 a Division Bench of this Court in the said judgment held thus:

The principle on which the jurisdiction of the Civil Court is excluded under Section 108 of Tamil Nadu Act XXII of 1959 are now well settled. If the dispute raised in the suit relates to the administration or management of a religious institution of which a provision has been made in the Act, the bar under Section 108 of the Act will be attracted. On the other hand if the question arising for adjudication falls outside the scope and ambit of Section 108 of the Act, then the Civil Court will have jurisdiction to entertain the suit and the bar of exclusion of jurisdiction provided for under Section 108 cannot be invoked.

It is equally settled that if, in a suit, any matter in respect of which a provision is made under the Act had to be incidentally decided the jurisdiction of the Civil Court will not be excluded. To be more specific if any other question in respect of which the power is conferred on the Deputy Commissioner to decide under Section 63 of the Act, arises incidentally, for consideration in the suit, the jurisdiction of the Civil Court will not be excluded. Notwithstanding Section 108 of the Act, where the dispute relating to a temple is only between two private parties and the board is not directly concerned, the Civil Court has jurisdiction to try the suit.

In the instant case it is clear that the jurisdiction of the Civil Court was not excluded. The plaint proceeded definitely on the basis that the first defendant had been clearly appointed as trustee and subsequently plaintiffs 1 to 4 had been appointed trustees by the Board. There was a clear statement that the first defendant had been directed to hand over charge of

all the records and properties of the trust to the newly appointed trustee viz., plaintiffs 1 to 4. The alienees from the first defendant were in possession of the suit properties. The alienees were strangers so far as the Devasathanam was concerned and naturally therefore, the plaintiffs had to recover possession of the properties from the strangers who are in the wrongful possession, according to the plaintiff, of the suit properties. This as the main and substantial relief asked for in the suit.

21. It is also equally well-settled so far as the present suit is concerned, the suit claim as to title of a religious endowments has not been excluded nor it is vested with any other authority so as to limit the jurisdiction of Civil Court to decide the question of title and declare any conveyance void and therefore it is obvious that the Civil Court has the jurisdiction to decide such issues.

22. The preponderance of judicial authority is that a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner and that in such a suit the Civil Court has jurisdiction to decide all incidental issues which are within the jurisdiction of the Deputy Commissioner as has been held by a Division Bench of this Court in Sri Venkataramana Swamy Deity v. Vadugammal (1974) 1 MLJ. 431. The Division Bench in the said pronouncement held thus:

"19. In effect, the aim of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 is not to exclude the jurisdiction of the Civil Court, but to facilitate proper administration of religious institutions by following the procedure prescribed to pursue the remedy before the Deputy commissioner and the Commissioner before filing a suit, under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (XXVI of 1948), in proceedings relating to the grant of patta under Sections 12 to 14, Section 15 provides that the decision of the tribunal regarding claims under Sections 12, 13 and 14 by the landholder is final and not liable to be questioned in any Court of law. The provision excluding the jurisdiction of the Civil

Court is more specific. Though Section 64 (c) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, provides that any order passed by the Government or any of the authorities under the Act shall, subject only to any appeal or revision provided by or under Act, be final, it had been held that the finality is only in respect of the matters to be determined for the purpose of this Act and that there is no machinery in the Act to determine whether a land in the estate is a ryoti land or a communal land and a decision as to the question of title by the statutory authorities is only an incidental matter which would not preclude a Civil Court independently enquiring into title in a properly constituted suit. Thus in the special enactments, the jurisdiction of the Special Tribunals under the Act is confined only to the purposes of the Acts. As already pointed out, the procedure prescribed under the Act regarding the matters specified in Section 57 should be followed before the Deputy Commissioner and in the appeal or revision before the Commissioner, before a suit is filed. A relief which cannot be granted by the Deputy Commissioner can be asked for in a Civil Court. If, in deciding whether the plaintiff is entitled to the relief asked for, the Civil Court also has to decide certain issues which may fall within Section 57 of the Act, the Civil Court's jurisdiction is not barred. There is no provision for reference by the Civil Court of a particular issue which is within the scope of Section 57 to the Deputy Commissioner for determination. Equally, the plaintiff who seeks relief from a Civil Court cannot be asked to get adjudication of an incidental question from the Deputy Commissioner before he filed a suit. Therefore, the preponderance of authority of our Court is that a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner and that in such a suit, the Civil Court has jurisdiction to decide incidental issues which are within the jurisdiction of the Deputy Commissioner."

15. The preponderance of judicial authority is that a civil suit is not barred in respect of a relief

which cannot be granted by the Hindu Religious and Charitable Endowments Department and that in such a suit the Civil Court has jurisdiction to decide all incidental issues which are within the jurisdiction of the Hindu Religious and Charitable Endowments Department. Further held that Section 108 of the Hindu Religious and Charitable Endowments Act where the dispute relates to a temple is only between two private parties and the Hindu Religious and Charitable Endowments Department is not directly concerned. Hence the Civil Court has jurisdiction to try the suit directly.

16. In the case on hand as discussed above, the suit property is allotted only for the purpose of performing the charities on the Thiruvadirai Festival. Therefore, the first defendant cannot sell the property which was originally allotted for the purpose of doing the charity work on the Thiruvadirai Festival. Further the first defendant is a Trustee of the Trust which was formed by the plaintiff's husband and the first defendant's grandfather to perform the charities on the Thiruvadirai Festival for the third defendant temple. Therefore, the first defendant has no title right and interest over the suit property and to sell the same.

17. Further the above Judgments have squarely apply to the case on hand and the Civil Court has absolute jurisdiction to deal the present suit. As such, this Court constraint to interfere with the finding of the Courts below. Therefore, the finding of the Courts below are perverse and against law and also against the evidence on record. Accordingly, the substantial question of law, formulated by this Court in this Second Appeal, is answered in favour of the plaintiff and as against the defendants.

18. In fine, this Second Appeal stands allowed with costs and the Judgments and Decrees passed by the Courts below are set aside. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1. The Principal District Judge,
Villupuram.

2. The Principal District Munsif,
Tirukoilur.

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

S.A.No.973 of 2001
and C.M.P.No.10184 of 2001

SV (CO)
RMP (08/01/2021)



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