

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2020

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1739 of 2003

Sri Sattanathaswamy Devasthanam
Sirkali, rep by Hereditary Trustee
Sri-La-Sri Masilamani Desiga
Gnanasambandan Paramacharya
Swamigal, Adhinakartha,
Dharmapuram Madam,
Dharmapuram, Mayiladuthurai (Tk),
Nagapattinam District.
(Cause title amended vide order
of this Court dated 24.01.2020
made in C.M.P.No.1160 of 2020
in S.A.No.1739 of 2003)

...Appellant/Plaintiff

Vs.

1. Kalyana Sundari Ammal (died)
2. Dhanathammal
3. Jayaraman
4. The Sub Registrar,
Sirkali, having his office at
Sirkali Town, Nagapattinam Dt.
5. Balu
6. Murthy
7. Gnanam
8. Seethalakshmi
9. Sundarrajan
10. Vaithiyanathan
11. Sivakumar
12. Panchanathan
13. Saraswathi
14. Vijayarani

(Respondents 5 to 14
brought on record as
legal heirs of the deceased
first respondent vide order
of the Court dated 05.11.2019
made in C.M.P.Nos. 3337 to 3339
of 2019 in S.A.No.1739 of 2003)

...Respondents/Defendants 3,1,2,4

PRAYER:

The Second Appeal is filed under Section 100 of CPC against the judgment and decree dated 21.12.1996 in A.S.No.24 of 1996 on the file of the Additional Subordinate Court, Mayiladuthurai, reversing the judgment and decree dated 20.07.1995 in O.S.No.134 of 1987 on the file of the Court of the District Munsif Court, Sirkali.

For Appellant : Mr.S.Sounthar

For Respondents

R1 : Died

For R2, R3,
R5 to R14 : No appearance

For R4 : Mr.T.M.Pappiah
Special Government Pleader

JUDGMENT

The second appeal is directed as against the judgment and decree dated 21.12.1996 passed in A.S.No.24 of 1996 on the file of the Additional Subordinate Court, Mayiladuthurai, reversing the judgment and decree dated 20.07.1995 made in O.S.No.134 of 1987 on the file of the Court of the District Munsif Court, Sirkali.

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, declaring that the sale transaction between the defendants 1 & 2 and third defendant is not valid and permanent injunction. The suit property belonged to the plaintiff Devasthanam and the defendants 1 & 2 are paguthidhars of the suit property under the plaintiff. The paguthi payable is Rs.100/- per annum, by the defendants to the plaintiff. In fact, there are rental arrears and the defendants 1 & 2 have no right except as paguthidhars under the plaintiff as such, they have no power to alienate the suit property to any other.

3.2. While being so, the plaintiff received communication dated 24.02.1987 from the fourth defendant viz., the Sub Registrar, Sirkali, in respect of the transaction between the

defendants 1 & 2 with the third defendant. The said communication revealed that the defendants 1 & 2 have entered into sale transaction with the third defendant in respect of the suit property. While verifying the documents, the fourth defendant found that the suit property belonged to the plaintiff Devasthanam, as such, he issued notice to the plaintiff. However, the document between the defendants 1 & 2 with the third defendant will not bind the plaintiff at any cost, since they have no title over the property except the right of paguthidhars. Hence, the suit for declaration, declaring that the sale transaction between the defendants 1 & 2 with the third defendant is not valid one and subsequent injunction.

4. Resisting the same, the third defendant filed written statement and contended that the suit property admittedly belonged to the plaintiff and the defendants 1 & 2 are the paguthidhars. The defendants 1 & 2 used to do service to the temple by carrying the idol during festival, and those who can not do the service personally, used to engage men for the same. The first defendant purchased the suit property by registered two sale deeds dated 31.10.1955 and 25.12.1958 from her vendor. The vendor under the later document, he himself purchased from one Muthia Thevar under the registered sale deed dated 08.12.1955. The property was also partitioned between the paguthidhars under the registered document dated 31.10.1955. Therefore, the defendants 1 & 2 and their predecessors in title were in possession of the suit property over the century with unfettered rights of alienation. Therefore, the defendants 1 & 2 have every right to convey the property and prayed for dismissal of the suit.

5. On the side of the plaintiff, they examined P.W.1 and were marked Ex.A.1. On the side of the defendants, they examined D.W.1 to D.W.3 and were marked Ex.B.1 to Ex.B.5. On perusal of the evidence on record and on considering both the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff. Aggrieved over the same, the third defendant alone preferred an appeal suit in A.S.No.24 of 1996 and the first appellate Court allowed the appeal and dismissed the suit filed by the plaintiff. Challenging the same, the plaintiff preferred this second appeal.

6. At the time of admission of the second appeal on 14.11.2003, the following substantial question of law was framed by this Court:-

"Whether the lower appellate Court is right in holding that the respondents 2 and 3 can transfer their rights in the suit property to the respondent No.1 even without

any permission from the temple administration Board or from the appellant herein overlooking mandatory provision under Section 34 of the Tamilnadu HR & CE Act?"

7. The learned counsel appearing for the plaintiff submitted that admittedly, the defendants 1 & 2 are the paguthidhars under the plaintiff and it is categorically admitted in the written statement. The plaintiff Sri Sattanathaswamy Devasthanam is a public temple. When it being so, any sale of immovable property belonged the temple shall be null and void, unless permission is sanctioned by the Commissioner, Tamil Nadu Hindu Religious & Charitable Endowments (herein after referred to as TN HR&CE) Board as being necessary and beneficial to the institution. Therefore, no transaction in respect of the suit property between the defendants 1 & 2 with the third defendant is null and void and it is directly hit by the provisions of Section 34 of TN HR&CE Act. The defendants are admittedly paguthidhars, viz., lessees. The plaintiff is the absolutely owner of the property and lessor. Even as per the Act, if the plaintiff wanted to release the property or indented to sell the property, they have to get proper permission from the Commissioner of Tamil Nadu HR&CE Board.

7.1. He further submitted that the defendants 1 & 2 are admittedly paguthidhars and have executed sale deed in favour of the third defendant and it was rightly noticed by the fourth defendant and issued notice to the plaintiff, which was marked as Ex.A.1 and prevented the sale. Further he contented that though the lessee can transfer their right, but they cannot sell the property. The customary right cannot prevail over the law, since there is clear prohibition under Section 34 of TN HR&CE Act, 1959 and though the trial Court rightly decreed the suit in favour of the plaintiff, the first appellate Court reversed the findings for the reason that earlier sale transactions were not objected by the plaintiff and as such the sale can be done. In fact, the earlier transaction held even prior to the HR & CE Act came into effect. More over, the earlier transactions only in respect of the lease hold right, but the present transaction is entirely different and in respect of the entire property.

7.2. The learned counsel appearing for the plaintiff to support of his contention relied upon the following reported judgments :-

1. (2006) 1 SCC 257 - Joint Commissioner, HR&CE Vs. Jayaraman and ors.

2. (2010)11 SCC 159 - Maharashi Dayanand University Vs. Surjeet Kaur.

8. Heard Mr.S.Sounthar, learned counsel appearing for the appellant/plaintiff and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the fourth respondent/fourth defendant. Though notice was served, no one appeared on behalf of the respondents/ defendants 1-3.

9. Admittedly, the suit property belonged to the plaintiff and the defendants 1 & 2 are the paguthidhars for the yearly rent of Rs.100/-. The defendants 1 & 2 intended to sell the suit property in favour of the third defendant and while presenting the documents for registration, the fourth defendant, the officer of the Sub Registrar, Sirkali, issued notice to the plaintiff, which was marked as Ex.A.1. The said notice indicated that sale transaction between the defendants 1 & 2 with the third defendant in respect of the suit property. According to the defendants 1 & 2, the super structure of the suit property were purchased by the defendants 1 & 2 by the deeds, which were marked as Ex.B.2 to Ex.B.5 and they categorically admitted that the land belonged to the plaintiff. He also deposed that no regular rent for the super structure and they bound to participate in the festival for lifting idols, failing which they have to pay a sum of Rs.100/- to the temple Nattammai, in which the Nattammai can engage other labourer to lift the idols. Therefore, the suit property were occupied only for paguthi by the defendants 1 & 2.

10. The defendants contended that the sale deed which is marked as Ex.B.1, only in respect of the lease hold right. On perusal of the same, it revealed that the entire suit property has been executed for sale in favour of the third defendant. The learned counsel appearing for the plaintiff draws attention of this Court to the provision under Section 34 of the TN HR & CE Act. It is relevant to extract the provision under Section 34 of the TN HR & CE Act, hereunder:-

"34. Alienation of immovable trust property:- (1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.

Provided that before such sanction is accorded, the particulars relating to the proposed sanction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect

thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner. Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government."

11. In the case on hand, the defendants 1 & 2 are the paguthidhars viz., lessees and they executed sale deed in respect of the entire suit property in favour of the third defendant. The defendants 1 & 2 have no right, interest or title over the property to alienate the same, which belonged to the plaintiff. That apart, even assuming that they are having some right over the property, the sale is null and void, unless and otherwise obtained sanction from the Commissioner. In this regard, the learned counsel appearing for the plaintiff cited the judgment reported in (2006) 1 SCC 257 in the case of Joint Commissioner, HR&CE Vs. Jayaraman and ors., in respect of the applicability of Act as follows :-

"9. H.R & C.E. Act applies to all Hindu Public Religious Institutions and endowments. This is clear from Section 1(3) of that Act. A religious endowment or endowment is defined in Section 6(17) of the Act. It reads:-

"6(17) "religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution;

Explanation (1) Any inam granted to an archaka, service holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service holder or employee but shall be deemed to be a religious endowment.

Explanation (2) All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a "religious endowment" or "endowment" within the meaning of this definition, notwithstanding that, before or after the date of the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed;

Provided that this Explanation shall not be deemed to apply in respect of any property which vested in any person before the 30th September 1951, by the operation of the law of limitation."

Section 6(18) defines a "religious institution" as meaning a math, temple or specific endowment. Going by the definition it is clear that the endowment in question is governed by the H.R & C.E. Act. Even if one were to accept the case of the claimants that it was an Inam granted to an archaka, the same would come within the definition of "religious endowment" or "endowment" under the Act in view of Explanation (1) thereto. Thus, it is clear that the endowment, gift or donation was governed by the H.R & C.E. Act. It is in this context that we have to appreciate the effect of the conduct of the claimants in getting themselves appointed as trustees by moving under Section 63(b) of the Act. Any alienation would, prima facie, be hit by Section 34 of the Act and even if the case of the claimants were to be taken at face value, the transaction would be hit by Section 41 of the Act. In either case, the permission contemplated by the respective sections was a must and the District Court lacked jurisdiction to give the permission for sale on an application under Section 34 of the Indian Trusts Act, that too, without issuing notice to and hearing the authorities under the H.R & C.E. Act.

Admittedly, the plaintiff temple is a public temple and as such the Act applies to the plaintiff temple and there is a specific bar under Section 34 of TN HR & CE Act, to alienate the property belonged to the public temple.

12. The learned counsel appearing for the appellant/plaintiff also relied upon the judgment reported (2010)11 SCC 159 in the case of Maharashtra Dayanand University Vs. Surjeet Kaur, in respect of estoppel, since the plaintiff did not object the earlier transaction between the defendants 1 & 2 and their vendors, which reads as follows :-

"17. In Union Territory, Chandigarh, Admn. & Ors. Vs. Managing Society, Goswami, GSDSC, (1996) 7 SCC 665, this Court considered the case under the provisions of the Punjab (Development and Regulation) Act, 1952, wherein a demand had been challenged on the ground of equitable estoppel. This Court held that promissory estoppel does not apply against the Statute. Therefore, the authority had a right to make recovery of outstanding dues in accordance with law. The Court held as under :-

"4.....(The Administration) only corrected a patent mistake which could not be permitted to subsist.....A contract in violation of the mandatory provisions of law can only be read and enforced in terms of the law and in no other way. The question of equitable estoppel does not arise in this case because there can be no estoppel against a statute."

18. There can be no estoppel/promissory estoppel against the Legislature in the exercise of the legislative function nor can the Government or public authority be debarred from enforcing a statutory prohibition. Promissory estoppel being an equitable doctrine, must yield when the equity so requires. (vide Dr. H.S. Rikhy etc. Vs. The New Delhi Municipal Committee, AIR 1962 SC 554; M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu & Ors., (1999) 6 SCC 464; Shish Ram & Ors. Vs. State of Haryana & Ors., (2000) 6 SCC 84; Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shukla & Ors., (2002) 6 SCC 127; I.T.C. Ltd. Vs. Person Incharge, AMC, Kakinada & Ors., AIR 2004 SC 1796; State

of U.P. & Anr. Vs. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti & Ors., (2008) 12 SCC 675; and Sneh Gupta Vs. Devi Sarup & Ors., (2009) 6 SCC 194).

19. On the other hand, the conduct of the respondent was such that even though she had no statutory right or any vested right to pursue her B.Ed. course, the mistake on the part of the appellant to allow her to appear in the examination cannot be by any logic treated to be a conduct of the appellant to confer any such right on the respondent. The rules and regulations cannot be allowed to be defeated merely because the appellant erroneously allowed the respondent to appear in the B.Ed. examination. The records reveal that the respondent did not challenge the cancellation of her results in respect of 1995 examination. The said order attained finality. Respondent straightaway approached the District Forum in the year 2000 for the conferment of B.Ed. degree in pursuance of the examinations conducted under the Notification dated 16.3.1998. This, in the opinion of the court, was a totally misdirected approach and the District Forum fell into error by granting the relief."

13. In the above cases the Hon'ble Supreme Court of India held that the promissory estoppel does not apply against the statute. In the case on hand, the previous transaction held between the defendants 1 & 2 and their vendors in the year 1955 and 1958. The Tamil Nadu HR & CE Act came into force only in the year 1959. That apart, the duty of the plaintiff is that to prevent the sale of the public temple property as such, there is absolutely no promissory estoppel for the plaintiff to object the sale transaction between the defendants 1 & 2 with the third defendant. Therefore, the above judgments squarely applies to the case on hand. Considering those aspects, the trial Court decreed the suit. Unfortunately, the first appellate Court reversed the judgment and decree of the trial Court only on the ground that the plaintiff failed to object the earlier transaction between the 1 & 2 with their vendors.

14. In view of the above discussion, the findings of the first appellate Court are perverse and against the evidence on record. Therefore, this Court necessarily has to interfere with the findings of the appellate Court. Accordingly, the substantial question of law formulated by this Court is answered

in favour of the plaintiff and as against the defendants.

15. In fine, the second appeal stands allowed and the judgment and decree dated 21.12.1996 made in A.S.No.24 of 1996 by the learned Additional Subordinate Judge, Mayiladuthurai, is hereby set aside and resultantly, the judgment and decree dated 20.07.1995 passed in O.S.No.134 of 1987 by the learned District Munsif, Sirkali, is restored. No order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Additional Subordinate Judge,
Mayiladuthurai.
2. The District Munsif,
Sirkali.

Copy To

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

+1cc to Mr.S.Sounthar, Advocate, S.R.No.7517

S.A.No.1739 of 2003

SSV(CO)
CS/13/10/2020

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