

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2020

Date of Verdict : 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.584 of 2003
and C.M.P.Nos.5320 & 11517 of 2003
and C.M.P.No.1890 of 2009

- 1.Ganesa Gounder
- 2.Pachiappa Gounder
- 3.Mangalam Pachiappan

...Appellants

Vs.

- 1.Radhapuram Village, Ammachar,
Angaliyamman, Pidari, Vedyappan
Temples Hereditary Trustees
By one of the Trustees Dhanakodi (Died),
Radhapuram Village, Chengam Taluk,
Tiruvannamalai District.
- 2.The Assistant Commissioner,
Hindu Religious & Charitable
Endowments Department,
Thiruvoodal Street,
Tiruvannamalai Town and District.
(R2 impleaded as party respondent
vide order of the Court dated 08.02.2010
made in C.M.P.No.1774 of 2009)

- 3.Radhapuram Village, Ammachar
Angaliyamman, Pidari, Vedyappan
Temples Hereditary Trustee
By one of the Trustees Palanivel, S/o.Dhanakodi,
Radhapuram Village, Chengam Taluk,
Tiruvannamalai District - 606 707.
(R3 brought on record as legal heir
of the deceased R1 viz., Dhanakodi
vide order of the Court dated 13.12.2019
made in C.M.P.Nos.13970, 13972 &
13975 of 2019 in S.A.No.584 of 2003)

...Respondents

Prayer :- This Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 21.02.2003, in A.S.No.97 of 2001 on the file of the Principal District Judge, Tiruvannamalai setting aside the judgment and

decree dated 23.02.2001 in O.S.No.40 of 1996 on the file of the District Munsiff, Chengam.

For Appellants : Mr.S.Vediappan
for Mr.R.Karthikeyan

R1 : Died

For R2 : Mr.S.Jegannathan
Government Advocate (CS)

R3 : NA

JUDGMENT

This second appeal is directed as against the judgment and decree dated 21.02.2003 passed in A.S.No.97 of 2001 on the file of the Principal District Judge, Tiruvannamalai reversing the judgment and decree dated 23.02.2001 passed in O.S.No.40 of 1996 on the file of the District Munsiff, Chengam.

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 along with past and future mesne profits. The plaintiff is the hereditary trustee of Ammachar, Angaliamman, Pidari, Vedyappan Temple in Radhapuram Village, Chengam Taluk. The hereditary trustees including their representative Dhanakotee are Andari Poosari, Sivanesa Poosari, Ayyavu Poosari, Kandan Poosari, Dhanikachala Poosari, Sivalinga Poosari and Thangavel Poosari. All were appointed by the Hindu Religious & Charitable Endowment Board. The suit property, which belonged to the Vedyappan Temple are in the care and maintenance of the plaintiff. While being so, the plaintiff/hereditary trustees leased out the suit property on 15.04.1978 to the defendants 1 to 3 for the lease amount of Rs.200/-. In the last week of October, 1982, the defendants 1 to 3 handed over the suit property to the plaintiff. When the plaintiff entered into the suit property to lease out to third parties, the defendants tress passed in the suit property and did not allow the plaintiff to enter into the suit property. Hence, the plaintiff issued notice on 22.05.1982 to the defendants. The defendants sent reply notice denying the Hereditary Trusteeship of the plaintiff to the suit properties. Therefore, the plaintiff filed the suit for declaration, recovery of possession and for past and future mesne profits.

4. Resisting the plaintiff's case, the defendants filed written statement stating that the plaintiff is not the hereditary trustee to the properties of Vedyappan Temple, since it is the properties of Vedyappan Temple and are situated at Malagaram Village, a hamlet of Radhapuram Village. The plaintiff and seven others are not either trustees or hereditary trustees in respect of Vedyappan Temple. The first defendant alone has been appointed as trustee for the Vedyappan Temple as well as Ayyanar Temple. Therefore, the plaintiff never leased out the suit properties to the defendants and the defendants never handed over the possession and enjoyment of the suit properties to the plaintiff. The defendants are in possession and enjoyment of the suit properties from the appointment of the first defendant as trustee. In fact, the suit property was leased out to fourth defendant by the first defendant. The suit properties are never situated at Radhapuram Village and as such the plaintiff is not at all entitled for any relief and prayed for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 was examined and marked Exs.A1 to A17. On the side of the defendants D.W.1 to D.W.4 were examined and marked Exs.B1 to B42. 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 filed by the plaintiff. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.97 of 2001 before the Principal District Judge, Tiruvannamalai. The first Appellate Court on appreciating the materials placed on records, allowed the appeal and decreed the suit in favour of the plaintiff by reversing the judgment and decree passed by the trial Court. Challenging the same, the defendants 2 to 4 have come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the judgment and decree of the Lower Appellate Court is right in rejecting the documentary evidence as regards the subsequent appointment of trustees and the payment of Kist & receipts in respect of the suit properties etc. on the sole ground of after the suit, ignoring the nature of claim of the suitees relating to trusteeship?

b) Whether the conclusion of the Lower Appellate Court that the plaintiff being a joint trustee out of 8 trustees is entitled to maintain a suit on the basis of patta

being issued in the name of the plaintiff?

c) Whether the Lower Appellate Court is right in denying relief to D3 on the score of abatement of the suit against D1/trustee for want of impleading legal representative?

d) Whether the findings of the Lower Appellate Court in regard to possession and locus standi of D1 to D3 suffers from mutual inconsistency as such the same would constitute error of law and misleading of evidence are not?

7. Heard Mr.S.Vediappan, learned counsel appearing for the appellants and Mr.S.Jegannathan, learned Government Advocate appearing for the second respondent.

8. This Court considered the rival submission made by the learned counsel on either side.

9. The plaintiff filed a suit for declaration and recovery of possession in the capacity of representative and as one of the eight hereditary trustees of the Ammachar, Angaliyamman, Pidari, Vedyappan Temple in Radhapuram Village, Chengam Taluk. The suit properties are in the management of the plaintiff as hereditary trustees and they leased out the same to the defendants 1 to 4. Whereas, the defendants took a specific plea that they are in possession and enjoyment of the suit properties as trustees and the plaintiff has never been a trustee of Vedyappan Temple and its properties. The plaintiff was examined as P.W.1 and he was appointed as hereditary trustee for the above said temples by the Hindu Religious & Charitable Endowment Board, which was marked as Ex.A1. In respect of possession of the suit property, the patta was issued in favour of the temporary Dharmakartha of Vedyappan Temple in Patta No.836, which was marked as Ex.A2. The Village Administrative Officer was examined as D.W.3 and he revealed that the villages called Agaram alias Malagaram, Arasampatty Thazhayodai, Asanpur, Radhapuram are part of Radhapuram Madhura Village and are under his control. He further deposed that the Vedyappan Temple is situated at Malagaram Village and the Arulmigu Ammachar, Pidari, Angalamman temples are situated in Radhapuram Village. The Inspector of HR & CE Board, Chengam Taluk was examined as P.W.4. He also deposed that the Ayyanar, Vedyappan and Pidariamman temples are situated at Malagaram Village and all the temples are under the purview of HR & CE Board. In fact, the distance between the Malagaram village and Radhapuram village is about 2 kilo meters and the temples called as Vedyappan and Ayyanar are not situated in the Radhapuram Village. Ex.B1 was marked to prove his contentions in which, the temples situated in Chengam Taluk were mentioned. The Register also shows that the

temples called as Ayyanar and VEDIYAPPAN are situated at Malagaram Village. The temples called as Ammachar, Angalamman and other temples are situated at Radhapuram Village. Therefore, the suit property, the temple is not situated in the Radhapuram village and it is situated at Malagaram Village. Whereas, the plaintiff did not produce any piece of evidence to show that the VEDIYAPPAN temple is situated at Radhapuram Village. According to the Revenue records both the villages are different one, though coming under the taluk of Chengam.

10. On perusal of Ex.A1, it is nowhere stated about the VEDIYAPPAN temple in which the plaintiff is one of the hereditary trustees was said to be appointed in O.A.No.35 of 1972 by order dated 13.12.1972. In fact, there is no whisper about the VEDIYAPPAN Temple in the said order, which was marked as Ex.A1. In fact, in Ex.A1, the defendants are not parties. Therefore, it was not challenged by the defendants. Even then the order is not pertaining to the VEDIYAPPAN Temple situated at Malagaram Village of Chengam Taluk. Further, the plaintiff produced patta, which was issued for the VEDIYAPPAN Temple in the name of Tharkaliga Dharmakartha of VEDIYAPPAN Temple and the plaintiff as one of the trustees of the temple claimed the suit property. Whereas, nowhere it is mentioned about the location of the temple i.e., it is situated at Radhapuram Village and also nothing mentioned about the hereditary trustee.

11. In fact, the suit property ad-measuring 71 cents comprised in S.No.132/2012 and the land ad-measuring 1.62 acres comprised in S.No.152/2013 were gifted in favour of VEDIYAPPAN Temple and after Inam Abolition Act, those properties were converted as Ryotwari land and thereafter, the patta was issued in favour of VEDIYAPPAN Temple. Therefore, the Trial Court rightly dismissed the suit filed by the plaintiff.

12. The first Appellate Court reversed the findings of the Trial Court for the reason that plaintiff was appointed as hereditary trustee for VEDIYAPPAN Temple at Radhapuram Village. Ex.A2 — Patta No.836 also issued corresponding to the suit property and the patta stands in the name of VEDIYAPPAN Temple Tharkaliga Dharmakartha. Further, Ex.A1 was never challenged by the defendants and as such it become final and the plaintiff is one of the hereditary trustees of the VEDIYAPPAN Temple, situated at Radhapuram Village.

13. As discussed above, the suit property belonged to VEDIYAPPAN Temple situated at Malagaram Village. Therefore, the reasoning and findings rendered by the first Appellate Court are perverse and against the evidence on record and they are liable to be interfered with. Accordingly, all the

substantial questions of law formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiff.

14. Accordingly, the second appeal is allowed and the Judgment and Decree dated 21.02.2003 made in A.S.No.97 of 2001 on the file of the Principal District Court, Thiruvannamalai are set aside and consequently, the Judgment and Decree dated 23.02.2001 made in O.S.No.40 of 1996 on the file of the District Munsif Court, Chengam is restored. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III-MDU)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The Principal District Judge,
Thiruvannamalai.
2. The District Munsif,
Chengam.

Copy to:

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

+1cc to M/s.R.Karthikeyan, Advocate SR.17901
+1cc to Spl.Government Pleader SR.17927

Pre delivery Judgment

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RLD(CO)
CB(23/12/2020)

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