

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.01.2021

PRONOUNCED ON:03.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1329 of 2008

and

M.P.No.1 of 2008

Arulmigu Thirunageshwaraswamy Devasthanam,
Thirunageshwaram,
Kundrathur,
Chennai - 69

Rep. By Fit person/Executive Officer

... Appellant/Appellant/Plaintiff

Vs.

1. Anna Kaithari Nesavu Thozhilalar Sangam,
C.P.T.No.321
By its President and Secretary,
Office at Pudhuvattaram,
Kundrathur,
Chennai - 600 069.

2. Thirunageshwaram Anna Kaitharai Nesavu
Thozhilalar Sasngam by its
President and Secretary G.1021,
Office at No.15/2,
Vembuli Amman Koil Street,
Kundrathur,
Chennai - 600 069.

... Respondents/Respondents/
Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed by the Sub Ordinate Court, at Poonamallee, dated 02.03.2007 in A.S.No.51 of 2005 confirming the judgment and decree passed by the District Munsif Court, at Poonamallee dated 29.07.2005 in O.S.No.393 of 1993.

For Appellant : Mr.A.Palaniappan

For R1 : Mr.K.v.Subramanian, SC
for M/s.AAV Partners

For R2 : Mr.T.Karunakaran

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 02.03.2007 passed in A.S.No.51 of 2005 on the file of the Subordinate Court, Poonamallee, confirming the judgment and decree dated 29.07.2005 passed in O.S.No.393 of 1993 on the file of the District Munsif Court, Poonamlee.

2. For the sake convenience, the parties are referred to as per their rankings in the trial court. The plaintiff in O.S.No.393 of 1993 is the appellant in this second appeal.

3. Suit for recovery of possession.

4. The case of the plaintiff in brief is that the plaintiff is the absolute owner of the suit properties described in the plaint schedule and the defendants approached the plaintiff to purchase the suit properties and the defendants offered to purchase the suit properties for a sum of Rs.120 per cent and paid a sum of Rs.60,000/- to the plaintiff on 24.06.1981 and the sale deed is to be executed in favour of the defendants by the plaintiff after obtaining necessary permission from the HR&CE Board, Commissioner. The plaintiff has placed the defendants in the possession of the suit properties on 24.06.1981 and there is no concluded and completed contract or agreement between the plaintiff and the defendants and it is only at a proposal stage as the agreement will come into existence only after obtaining sanction from the HR&CE Board. The HR&CE Board has not sanctioned the abovesaid proposal and therefore the defendantss are liable to surrender the vacant possession of the suit properties to the plaintiff. The suit properties are lying vacant without any superstructure and the plaintiff apprehend that the defendants and his members may cut and carry away the standing trees and also put up the superstructure over the suit properties which may cause hardship to the plaintiff. Hence, according to the plaintiff, he has been necessitated to institute the suit for appropriate reliefs.

5. The second defendant resisted the plaintiff's suit contending that the plaintiff is the owner of the suit properties and it is true that the plaintiff entered into an agreement with the second defendant on 24.06.1981 for the sale of the suit properties at the rate of Rs.120 per cent and also received the entire sale consideration of Rs.60,000/- on that date itself and put the second defendant in possession of the suit properties. The second defendant also took the possession of the suit properties and he had been in the peaceful possession and enjoyment of the same, pursuant to the abovesaid sale agreement and inasmuch as, the second defendant has paid the entire sale consideration, the execution and registration of

the sale deed is only a formal and an administrative act and therefore the allegations of the plaintiff that the sale deed is to be executed only after obtaining the necessary permission from HR&CE Board, that there is no concluded and completed contract or agreement and the transaction between the plaintiff and the second defendant is only a proposal and that the agreement will come into existence only after obtaining the sanction from HR&CE Board are untenable and the agreement entered into between the plaintiff and the second defendant is a valid and concluded contract and binding upon the plaintiff. The absence of permission from HR&CE Board will not vitiate the lawful agreement abovestated. In fact the Deputy Commissioner of HR&CE Board recommended the proposal by his letter dated 10.11.1982 to the Commissioner, HR&CE Board and the Commissioner had also accepted the proposal and he only wanted to to have clarification about the price, hence all the formalities have been complied with and the sanction was not done due to certain administrative latches and the same will not take away the rights of the defendant and the liability of the plaintiff. The plaintiff being satisfied that it would not be able to safeguard the suit properties, accordingly deemed it fit to sell the suit properties and invest the sale proceeds in a Nationalized Bank to get income regularly for the administration of the temple. The members of the defendants' Sangam are all poor and downtrodden people and they being weavers, all the abovesaid facts were taken into consideration by the plaintiff to sell the suit properties to the defendant. Hence the sale agreement abovestated is in the best interest of the plaintiff's temple and the plaintiff cannot give a go-bye to the abovesaid agreement at this point of time. The defendants are necessitated to put up residential houses in the suit properties and also have requested the Government to construct and hand over the free houses for them. At that point of time, the plaintiff has filed the present suit with a view to deprive the legitimate rights of the defendants. There is also a proposal by the Government to put up construction of free houses in the suit properties for the members of the defendants' Sangam and the first defendant's Society has become defunct and it is only the second defendant who is alone functioning and the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.W.1 was examined. Ex.A1 was marked. On the side of the second defendant, D.Ws.1 to 3 examined. Exs.B1 to B3 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit.

Impugning the judgment and decree of the Courts below, the present second appeal has been preferred. In both the Courts below, the first defendant remained *ex parte* and not participated in the proceedings.

8. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

a) whether the Courts below have failed to consider that the said proposal for sale dated 24.06.1981, Ex.A1, in respect of vast extent of land belonging to the temple being land situated in Thirunageshwaram village, Kunrathur, Sriperumbudur of an extent of acres 5.00 cents subject matter of a proposal for sale by the nominated trustees of the temple and that the same is only a proposal and that it is not a valid agreement of sale?

b) Whether the Courts below have failed to consider that the said proposal for sale dated 24.06.1981, Ex.A1 is devoid of prior sanction of sale of property by the competent authority namely the Commissioner HR&CE by virtue of Section 34 of the aid HR&CE act hence sustainable?

9. The suit has been laid by the plaintiff's temple seeking for the recovery of the possession of the suit properties from the defendants. Before the Courts below, only the second defendant contested the plaintiff's case and the first defendant remained *ex-parte*. From the materials placed on record, it is found that the suit properties belong to the plaintiff's temple. Even in the written statement filed by the second defendant, it has been clearly averred and admitted that the plaintiff's temple is the owner of the suit properties. By way of the materials placed on record, both oral and documentary, as well as the pleas put forth by the respective parties, it is noted that the Managing Trustee of the plaintiff's temple had offered to sell the suit properties to the defendants and accordingly following the understanding reached between him and the defendants, it is noted that following the sale proposal of the suit properties, a sum of Rs.60,000/- has been paid by the defendants to the Managing Trustee towards the sale price of the suit properties and also the Managing Trustee had entrusted the possession of the suit properties to the defendants and in this connection, it is further seen that the Managing Trustee of the plaintiff's temple had issued a letter to the defendants' Sangam informing that after obtaining the accord and consent of the Commissioner of HR&CE, he would alienate the suit properties in favour of the defendants. In this connection, it is admitted that the letter has been given by the Managing Trustee dated 24.06.1981, the copy of which has been marked as Ex.A1 and the original of the same has been marked as Ex.B1. Even the plaintiff has not disputed the same in the plaint as well as

during the course of evidence and therefore, it is noted that the sale proposal was made qua the suit properties by the Managing Trustee of the plaintiff's temple to the defendants' and accordingly a sum of Rs.60,000/- was parted by the defendants towards the sale price and following the same, the suit properties were also put in the possession of the defendants. As above pointed out, even in Ex.A1/B1, it has been clearly mentioned by the Managing Trustee that he would execute the sale deed only after obtaining the sanction of the Commissioner, HR&CE. Therefore, it is seen that there has been only a sale proposal qua the sale of the suit properties between the parties concerned and as rightly contended by the plaintiff, there has been no concluded and completed contract or agreement between the plaintiff and the defendants and the sale proposal mooted by way of Ex.A1/B1 would attain validity only after obtaining the sanction of the Commissioner, HR&CE as provided under section 34 of the TamilNadu Hindu Religious and Charitable and Endowments Act, 1959.

10. According to the second defendant, the proposal was followed by the authorities concerned and would state that the Deputy Commissioner has recommended the proposal vide his letter dated 10.11.1982 to the Commissioner, HR&CE. It is further stated that the Commissioner has also accepted the proposal, but only with reference to the sale price, the abovesaid formalities had not been completed. However, pointing to the abovesaid defence version, as such, no material is forthcoming on the part of the defendants. Be that as it may, when the suit properties admittedly belong to the plaintiff's temple and the plaintiff's temple fall under the domain of TamilNadu Hindu Religious and Charitable and Endowments Act, 1959, it is noted that as per section 34 of the abovesaid Act, any sale of the property belonging to the religious institution, without the sanction of the Commissioner as provided therein would be null and void. When the position of law is as above and when there is no material placed on record by the defendants that the Commissioner, HR&CE had accorded the sanction for the sale envisaged under Ex.A1/B1, as rightly contended by the plaintiff's counsel, particularly, when the sanction of the Commissioner HR&CE is mandatory, bypassing the same, there cannot be any encumbrance of the temple properties by the Managing Trustee and therefore, as rightly put forth by the plaintiff's counsel, the proposal envisaged under Ex.A1/B1 by the Managing Trustee, for the sale of the suit properties belonging to the plaintiff's temple is null and void and unenforceable in the eyes of law. In such view of the matter, the arguments put forth by the defendants' counsel that the plaintiff should have sought for the relief of declaration that the sale proposal envisaged or mooted under Ex.A1/B1 is null and void, as such, cannot be accepted. When as per the law as

above discussed, any sale of the temple's properties without the prior sanction of the Commissioner, H/R&CE is null and void, the plaintiff is not required to seek for any declaration with reference to the void agreement as such. It is a well settled principle of law that a void document is not required to be avoided. In this connection, the plaintiff's counsel would rely upon the decision of the Apex Court reported in 2008 (15) SCC 673 [Ranganayakamma and another Vs. K.S.Prakash (D) by Lrs and Others]

11. When the proposal envisaged or mooted under Ex.A1/B1 is not enforceable in the eyes of law without the sanction of the Commissioner, HR&CE as provided under section 34 of the TamilNadu Hindu Religious and Charitable and Endowments Act, 1959. the Courts below are found to have non-suited the plaintiff on the footing that the plaintiff has failed to establish that no sanction has been accorded for the abovesaid proposal. When according to the defendants, the agreement pleaded by them under Ex.A1/B1 is a valid agreement and when the same is impugned by the plaintiff on the ground of want of sanction under section 34 of the TamilNadu Hindu Religious and Charitable and Endowments Act, 1959, as rightly contended by the plaintiff's counsel, it is for the defendants who have to establish that the Commissioner, HR&CE had accorded the sanction for the proposal initiated under Ex.A1/B1. On the other hand, there is nil material on the part of the defendants to hold safely that the Commissioner, HR&CE has given his consent for the sale proposal envisaged under Ex.A1/B1.

12. Admittedly, the suit properties are in the possession and enjoyment of the defendants following Ex.A1/B1. It is thus found that only based on the sale proposal, i.e. the agreement initiated under Ex.A1/B1, the defendants are claiming to be in the possession and enjoyment of the suit properties. However, the position of law is that the agreement of sale does not convey any valid title to the agreement holder. Therefore, the claim of the defendants that they have acquired a valid title and their possession and enjoyment of the suit properties is sustainable in the eyes of law as such cannot be accepted for the reasons aforesaid, particularly, when the sale proposal projected by them is found to be not having the sanction of the Commissioner, HR&CE.

13. In the case reported in 2020(1) MLJ 493 [B.Booma Devi and Others Vs. District Collector, Kancheepuram District and Others], it is found that based on the agreement of sale entered into between the temple and third parties, the third parties/purchasers had also preferred the suit for specific performance and obtained an ex-parte decree. Based on the said ex-parte decree, the claim has been made that they have taken

the delivery of the property through Court. It is also further noted that based on the ex-parte decree, the sale deed had also come to be executed by the trial court. On the abovesaid factual matrix, the writ petition has been filed by the third parties/purchasers, praying for the Writ of Mandamus forbearing the authorities concerned in any manner interfering with their possession and enjoyment of the properties said to have been acquired by them. The learned Single Judge, who had disposed of the abovesaid Writ Petition had observed that the trial court should not have decreed the suit without following the procedures as laid down in Code of Civil Procedure, 1908 and further held that the suit has been filed nine years after the agreement of sale and the suit is barred by time and further the learned Single Judge has also held that a temple is a public temple and under section 34 of the Tamil Nadu Hindu Religious and Endowments Act, the property could not be sold without the permission of the Commissioner and on that reasonings, dismissed the writ petition. The abovesaid dismissal order was challenged by way of Writ Appeal by the alleged purchasers by way of an Writ Appeal and the First Division Bench of our Hon'ble High Court in the abovesaid decision has uphold the order of the learned Single Judge by holding that the appellants namely the purchasers cannot derive any advantage of the ex-parte decree and further held that the agreement of sale does not convey any valid title to the agreement holder and the entire basis of claim made by the appellant based on the decree cannot be sustained. The position of law has been outlined in the abovesaid decision by the Division Bench as follows:

Contract-Agreement to sale - Ex-parte decree
- Agreement of sale entered between husband of First Appellant and Petitioner Association / Management of Temple - On suit being filed by legal representatives/Appellants, Trial Court decreed suit ex-parte for specific performance of agreement to sale, however, Single Judge dismissed suit holding that temple was public temple, and property could not have been sold without permission of Commissioner, hence this appeal - Whether the judgement is a valid judgement in eyes of law - Held, Appellants cannot derive advantage of exparte decree - In absence of decree, claim of Appellants based solely on decree cannot be granted - Agreement to sell does not convey any valid title to agreement holder - Entire basis of claim based on decree cannot be sustained - Appeal dismissed.

Held: In view of the above, it can be said that the appellants cannot derive advantage of the exparte decree. In the absence of the decree, the claim of the appellants which is

based solely on the decree cannot be granted. It is well settled that an agreement to sell does not convey any valid title to the agreement holder. The entire basis of the claim which is only based on the decree cannot be sustained.

14. On a reading of the abovesaid decision, it is seen that by dismissing the Writ Appeal, the Division Bench has also upheld the reasonings of the learned Single Judge that the sale of the temple's properties without the sanction of the Commissioner, HR&CE is not valid.

15. Applying the principles of law as well as the facts outlined/involved in the abovesaid decision to the case at hand, when it is seen that the defendants are only in the occupation of the suit properties based on the sale proposal mooted under Ex.A1/B1 and till date, the defendants have not chosen to enforce the so called agreement on the basis of which they claimed to be in the possession and enjoyment of the suit properties and when the agreement to sale envisaged under Ex.A1/B1 per se, does not convey any valid title to the defendants qua the suit properties, when the Hon'ble Division Bench has also gone to the extent of holding that an exparte decree obtained by the purchasers based on the invalid agreement cannot be the basis for restraining the authority concerned to seek the recovery of the possession of the property in dispute, all put together, it is found that the claim of the defendants that they are in the valid possession and enjoyment of the suit properties following Ex.A1/B1 as such cannot be legally sustained.

16. In the light of the abovesaid discussions and the position of law, the contention putforth by the defendants' counsel that section 34 of the HR&CE Act would not apply to Ex.A1/B1 proposal, as such, cannot be accepted in any manner. When Ex.A1/B1 has come into existence, even according to the defendants, only for the sale of the suit properties and particularly under Ex.A1/B1, the Managing Trustee had also pointed out clearly that he could execute the sale deed only after obtaining the sanction of Commissioner, HR&CE and the defendants are also put on notice about the said fact, in such view of the matter, the contention of the defendants that the plaintiff should establish the accord and sanction on the part of the Commissioner, HR&CE to the proposal envisaged under Ex.A1/B1 as such cannot be countenanced in any manner. The abovesaid reasonings of the Courts below for non-suiting the plaintiff's case also deserves to be rejected as totally being perverse, illogical and irrational.

17. As above discussed, the suit properties admittedly

belong to the plaintiff's temple and when the sale proposal mooted under Ex.A1/B1 is found to be devoid for want of prior sanction of the Commissioner, HR&CE by virtue of section 34 of the TamilNadu Hindu Religious and Charitable and Endowments Act, 1959 and when the defendants have failed to establish that they are in the lawful and valid possession and enjoyment of the suit properties based on Ex.A1/B1, the proposal initiated by the Managing Trustee under Ex.A1/B1 has to be held to be not binding on the plaintiff's temple as such and therefore the same would not constitute a valid agreement entered into between the parties.

18. As rightly contended by the plaintiff's counsel, the property belonging to the temple has to be safeguarded by the Court and in this connection, it is seen that the Division Bench of our Hon'ble High Court vide order dated 31.01.2017 in W.P.No.2290 of 2017 has held as follows:

"The other reason is that when we talk about religious institution suing or being sued, it is in effect the idol. Law is well settled that idol is a minor and therefore, somebody should sue and be sued on behalf of the minor. Infact, the Courts have gone as far as saying that courts are parenti locus qua idol. To draw an analogy, it may be relevant to point out that a company (irrespective of whether it is a public company or private limited company) is a juristic person and therefore, a natural person would represent the company in all proceedings. The religious institution being made a party to or becoming a party to any legal proceedings is akin to the situation."

I had an occasion to consider the abovesaid principles of law in the decision rendered by me dated 07.08.2018 in S.A.No.622 of 2005 [Navratan and others Vs. Chennai Sri Ekambareswarar Devasthanam, rep. By its Executive Officer, 315 Mint, Street, Chennai -3] It is noted that W.P.No.2290 of 2017 has been levied challenging the G.O.Ms.No.260, Tourism Culture and Religious Endowments Department styled as the conditions for appointment of Executive Officers Rules, 2015.

19. As rightly contended by the plaintiff's counsel while according the sanction, the Commissioner, HR&CE has to take into account the various factors, particularly, whether the proposal envisaged or mooted is for the benefit of the religious institution and accordingly it is found that considering the interest of the temple, the Commissioner, HR&CE, till date, has not accorded the sanction as contemplated under law. In view of the abovesaid factors, the sale proposal mooted under Ex.A1/B1 is only a void agreement to sell and nothing would flow from the same, enabling the defendants to claim a valid possession and

enjoyment of the suit properties.

20. Till date the defendants have also not endeavored to seek the enforcement of the sale proposal contemplated under Ex.A1/B1 in the manner known to law, particularly, even after the plaintiff has levied the suit against them for the recovery of the suit properties, contending that there has been no concluded and completed contract based on Ex.A1/B1.

21. In the light of the abovesaid discussions, the reasonings and conclusions of the Courts below for non-suiting the plaintiff case are found to be totally perverse, illogical and irrational and cannot be allowed to be sustained in the eyes of law. Accordingly, substantial questions of law formulated in the second appeal are answered in favour of the plaintiff and against the defendants.

22. In conclusion, the judgment and decree dated 02.03.2007 passed in A.S.No.51 of 2005 on the file of the Subordinate Court, Poonamallee, confirming the judgment and decree dated 29.07.2005 passed in O.S.No.393 of 1993 on the file of the District Munsif Court, Poonamallee are set aside and consequently the suit laid by the plaintiff in O.S.No.393 of 1993 is decreed as prayed for with costs. Accordingly, the Second Appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Subordinate Judge,
Subordinate Court,
Poonamallee.

2.The District Munsif,
District Munsif Court,
Poonamallee.

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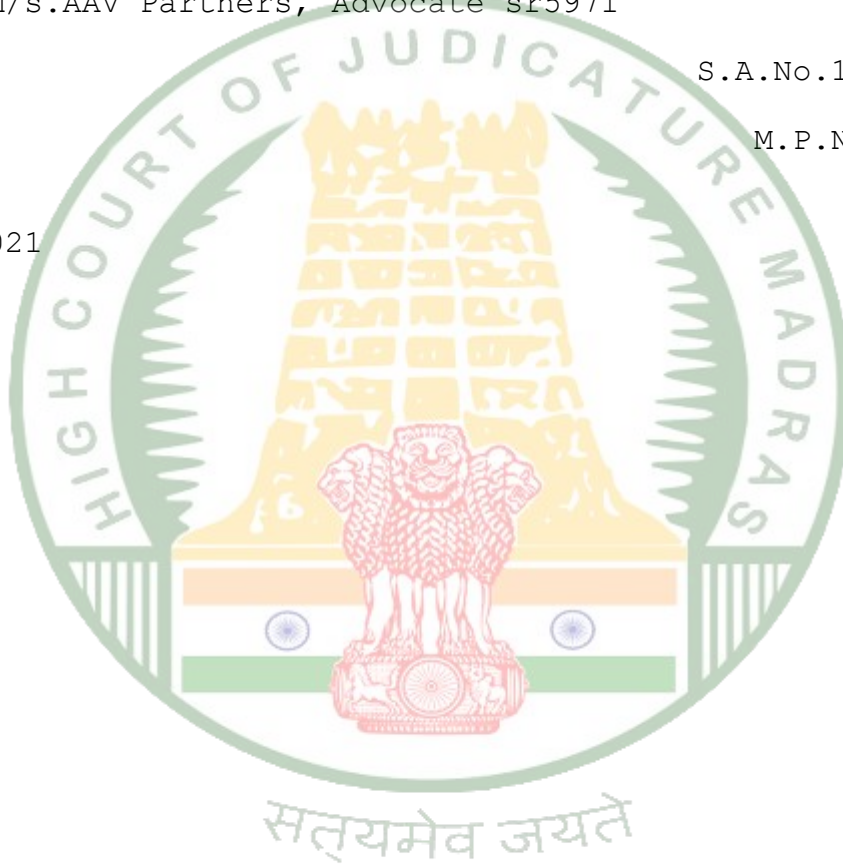
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The Section Officer,
VR Section,
High Court.

+1 cc to Mr.A.Palaniappan Advocate sr5979
+1 cc to Mr.T.Karunakaran Advocate sr6162
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S.A.No.1329 of 2008
and
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