



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2021

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A. (MD)No.1 of 2015

N.Ponnusamy

...Appellant/Appellant/Plaintiff

Vs.

1.The Assistant Executive Engineer,
(Operation and Maintenance),
Tamilnadu Electricity Board,
Sinthamanipatti,
Kulithalai Taluk,
Karur District.

2.The Assistant Engineer,
(Operation and Maintenance),
Tamilnadu Electricity Board,
Sinthamanipatti,
Kulithalai Taluk,
Karur District.

3.The Executive Engineer,
(Operation and Maintenance),
Tamilnadu Electricity Board,
Kulithalai Taluk,
Karur District.

4.The Superintendent Engineer,
Electricity Circle,
Tamilnadu Electricity Board,
Karur District.

5.Kittu @ Krishnan
S/o Vembarasu,
Tharagampatti,
Kulithalai Taluk,
Karur District.

...Respondents/Respondents/
Defendants

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, against the Judgment and Decree dated 06.08.2013 in A.S.No.1 of 2012 on the file of Principal Subordinate Court, Karur

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in confirming the judgment and decree dated 02.12.2010, made in O.S.No.500 of 2010, on the file of the Additional District Munsif Court, Karur.

For Appellant : Mr.K.Govindarajan
For R1 to R4 : Mr.C.Selvaraj
For R5 : Mr.N.Sudhakar Nagaraj

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J U D G M E N T

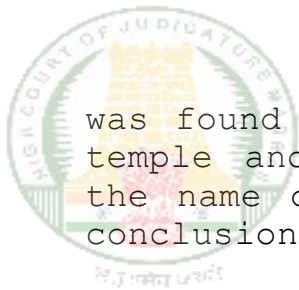
The plaintiff in O.S.No.245 of 2006 is on appeal challenging the dismissal of the suit for mandatory injunction to transfer the electricity service connection No.1187 for the suit property, which is a temple from the name of the fifth defendant to the name of the plaintiff.

2.The plaintiff has filed a suit claiming that he is the hereditary trustee of Kannimar Amman Temple, Tharagampatti, Kulithalai Taluk. According to him, no one else has right to manage the said temple. Contending that the fifth defendant has by foul play, obtained electricity connection for the temple in his name, the plaintiff sought for the above relief for mandatory injunction. The plaintiff heavily relied upon the exparte decree granted in O.S.No.237 of 1999, restraining the Electricity Board from granting service connection to the temple in the name of defendant in the said suit.

3.The suit was resisted by the fifth defendant contending that the plaintiff is not a hereditary trustee of the Kannimar Amman Temple, Tharagampatti, Kulithalai Taluk. He would contend that he was nominated by nine trustees of the temple and authorised to obtain service connection in his name. It was claimed that the plaintiff has given his consent for the grant service connection in the name of the fifth defendant. The defendant would also contend that the exparte decree in O.S.No.237 of 1999 will not confer any right on the plaintiff.

4.At trial, the plaintiff was examined as PW 1 and three other witnesses were examined as PW 2 to PW 4. Exs.A1 to A27 were marked. Mr.Alocious Innasi Martin, the Assistant Executive Engineer was examined as DW 1 and the fifth defendant was examined as DW 2. T.S.Kannan and Mariappan were examined as DW 3 and DW 4. Exs.B1 to B9 were marked.

5.The trial Court, upon consideration of the evidence on record, concluded that the plaintiff has not established his claim that he is the hereditary trustee of the said temple. The learned trial judge had pointed out that no evidence in support of the claim of the plaintiff to hereditary trusteeship was produced. It



was found that the fifth defendant has been in management of the temple and therefore granting electricity service connection in the name of the fifth defendant cannot be faulted. On the above conclusion, the learned trial judge dismissed the suit.

6. Aggrieved, the plaintiff preferred an appeal in A.S.No.1 of 2012. On re-appreciation of the evidence, the learned Appellate Judge concurred with the findings of the trial Court and dismissed the appeal. Hence this Second Appeal.

7.The following substantial questions of law were framed at the time of admission of the Second Appeal.

- i. Whether the finding of the Courts below are correct in not accepting the judgment and decree in O.S.No.237 of 1999, on the file of District Court, Kulithalai, where the Court have clearly held that no one other than the appellant is entitled for the electric connection?
- ii. Whether the Courts below correct in holding that 5th respondent is a necessary party to the earlier suit proceedings?
- iii. Whether the Courts below correct that that appellant is not the hereditary trustee, when he is the chairman of the temple construction committee?
- iv. Whether the Courts below correct in holding that the appellant/plaintiff has not pleaded the history of the temple, when the suit is for bare injunction and for effecting the electric connection in the name of the appellant from the 5th respondent?
- v. Is the Court correct in holding that the appellant is not a hereditary trustee, when P.W.1 to P.W.4 have categorically stated that the appellant is the hereditary trustee of the suit temple?
- vi. Is the Court correct in holding that the appellant have given the consent letter for the electric connection, when he had obstructed for the same?

8.I have heard Mr.K.Govindarajan, the learned counsel appearing for the appellant. Elaborating the questions of law framed, the learned counsel appearing for the appellant would contend that through decree in O.S.No.237 of 1999, is for permanent injunction, the defendant in the said suit raised an issue regarding the capacity of the plaintiff to maintain the said



suit and the said issue was answered in his favour. Hence, he is entitled to sue for mandatory injunction. I am unable to accept the contention of the learned counsel appearing for the appellant. There was no issue regarding the right of the plaintiff to be a hereditary trustee of the temple, framed in the earlier suit. The prayer in the earlier suit in O.S.No.237 of 1999 is for a bare injunction, restraining the authorities from effecting service connection for the suit temple in the name of the third defendant therein. It is seen from the judgment and decree in the said suit, which were marked as Ex.A1 and Ex.A2 that the suit was decreed ex parte and the question as to whether the plaintiff is hereditary trustee of the suit temple or not was not decided therein. In any event, the fifth defendant is not a party to the said suit. The said decree cannot be said to be binding the fifth defendant. It is also seen from the records that the plaintiff has not produced any evidence to show that he is the hereditary trustee of the said temple. In order to prove hereditary trusteeship, he must be able to prove that his forefathers from generation to generation are holding the office of hereditary trustee. Therefore, the Courts below cannot be faulted for having rejecting the claim of the plaintiff. The questions of law framed are answered against the plaintiff/appellant and the appeal is accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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To

1.The Principal Subordinate Judge, Karur.

2.The Additional District Munsif, Karur.

Copy to

The Section Officer, VR Section-2 copies

Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-9379[F] dated 08/03/2021

Judgment made in

S.A. (MD)No.1 of 2015

Dated 04.03.2021

KM(20.05.2021) 4P 6C

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