



A.S.Nos.396 of 2000 & 277 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2021

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

A.S.Nos.396 of 2000 & 277 of 2009

and

MP(MD)Nos.1 & 2 of 2009 & MP(MD)No.1 of 2013

in AS No.396 of 2000 : -

Arulmighu Pazhikanchiya
Vinayagar and its Temple
rep by its hereditary
Poosaries and trustees,
Sivakasi Pilliar Koil Street

1. Rathinammal

2. Visalakshi

... Appellants / Plaintiffs

vs.

1. Raveendran

2. Adinarayanan

3. Srinivasan

4. Gomathiammal

5. The Commissioner
Hindu Religious and Charitable
Endowments Board,
Nungambakkam, Chennai.



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6. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Board,
Thirupattur Salai, Sivagangai.

7. G.Jayalakshmi

8. G.Jayaprabha

9. A.Premaladha

10. A.Renukadevi

11. S.Alagarsami

12. S.Loganathan

(R7 to R12 impleaded as respondents as per the
order dated 10.02.2003 in CMP No.1372 of 2003)

13. The Fit Person
The Arulmighu Pazhikanchiya
Vinayagar temple,
Sivakasi.

... Respondents in A.S.(MD).No.396 of 2000

(13th respondent impleaded as
vide order dated 08.09.2003 in CMP No.8558 of 2002

Prayer : Appeal Suit filed under Section 96 C.P. against the judgment
and decree passed in O.S.No.242 of 1999 on the file of the Sub-Court,
Sivakasi, dated 12.07.2000.



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In AS(MD)No.277 of 2009 :

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1. The Commissioner,
Hindu Religious & Charitable
Endowments (Admn). Department,
Nungambakkam, Chennai.

2. The Joint Commissioner,
HR & CE. (Admn) Department,
Sivagangai.

... Appellants / Defendants

vs.

1.Rathinammal

2.Visalatchi

... Respondents 1 & 2 /Plaintiffs 1 & 3

3.Raveendran

4.Athinarayanan

5.Srinivasan

6.Gomathiammal

... Respondents 3 to 6 / Defendants

Prayer : Appeal suit is filed under Section 96 C.P.C, against the judgment and decree passed in O.S.No.242 of 1999 on the file of the Sub-Court, Sivakasi, dated 12.07.2000.

For Appellants : Mr.Shankar Ganesh
for M/s.Srinath Sridevan.
(In AS No.396 of 2000)

For Respondents : Mr.H.Arumugam for R1 to R3



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R4-No appearance

Mr.R.Ragavendiran,

Government Advocate for R5 & R6.

Mr.M.V.Venkateseshan for R7 to R12

(In A.S No.396 of 2000)

For Appellants : Mr.R.Ragavendran,

Government Advocate.

(In AS(MD)No.277 of 2009)

For Respondents : Mr.M.P.Senthil for R1 and R2

Mr.H.Arumugam for R3 to R5.

R6 – No appearance.

(In AS(MD)No.277 of 2009)

COMMON JUDGMENT

These first appeals are directed against the judgment and decree dated 12.07.2000 made in OS No.242 of 1999 on the file of Sub-Court, Sivakasi. AS No.396 of 2000 was filed by the plaintiffs while AS(MD)No.277 of 2009 was filed by the Commissioner, HR & CE. The subject matter of these proceedings pertains to the six shops situated in Pillayar Koil street, Sivakasi Town described in the suit schedule.



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2.The suit was filed by Rathinammal, Panchavarnam and Visalakshi on behalf of Arulmighu Pazhikanjiya Vinayagar Temple, Sivakasi in their capacity as hereditary priests cum trustees. The suit temple is a public temple. It was constructed a few centuries ago. The suit properties were endowed in favour of the temple. Since the contesting defendants were attempting to alienate the suit properties, the suit was filed seeking declaration that the suit properties belong to the plaintiff temple and for restraining the contesting defendants from alienating the same. The stand of the contesting defendants was that the suit properties are not temple properties and that they belonged to their ancestor Muthusamy Odhuvar. In the partition that took place among the family members in the year 1917, the suit properties were dealt with as if they were private properties. According to them, the suit was liable to be dismissed.

3.On the side of the plaintiffs, three witnesses were examined. Vishalakshi (P3) examined herself as PW.1. Exs.A1 to A39 were marked. The first defendant examined himself as DW.1. Exs.B1 to B4 were marked. After a consideration of the evidence on record, the trial court



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dismissed the suit vide judgment and decree dated 12.07.2000. Questioning the same, the plaintiffs filed AS No.396 of 2000. On 25.04.2006, the appeal was allowed and the judgment and decree passed by the trial court was set aside. Questioning the same, the purchasers from the defendant Nos.1 to 3 moved the Supreme Court of India. Vide judgment dated 28.07.2009 in Civil Appeal No.5081 of 2009, the judgment of the High Court was set aside and the matter was remanded to the High Court for fresh consideration.

4.Let me trace the family genealogy. Muthuswamy Odhuwar is the ancestor of the plaintiffs as well as the defendants 1 to 4. He had two sons, namely, Seeni Odhuwar and Gnana Odhuwar. Seeni Odhuwar had two sons. One of them was Muthuswamy Odhuwar who had four sons, namely, Seenia Pillai, Gnanam Pillai, Mariappa Pillai and Shanmugam Pillai. Seenia Pillai had a son by name Muthuramalingam Pillai. He had five children, namely, Rathinammal, Gomathi, Muniasamy, Panchavarnam and Vishalakshi. Three of them are the plaintiffs. Gomathi figured as the fourth defendant. Muniasamy had passed away and defendants 1 to 3 were his sons. The details regarding the other



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legal heirs are not available and the absence will not make any difference.

5.The counsel on either side reiterated their respective contentions. They took me through all the three judgments as well as the pleadings and evidence. The appellants had filed petitions for adducing additional evidence. On 12.10.2018, the petitions were allowed. Before the learned trial judge, the parties adduced additional evidence. Exs.A40 to A46 and Exs.B5 to B8 were marked. One of the subsequent purchasers examined himself as DW.2.

6.The learned counsel appearing for the subsequent purchasers submitted that the plaintiffs failed to prove that the suit property was endowed in favour of the temple. According to him, partition had taken place in the family and that the suit property was allotted to the share of Muthuramalingam Pillai. The fact that the temple was declared as a public temple will not have any bearing on the character of the suit properties. Muniasamy, father of D1 to D3 was the son of Muthuramalingam Pillai. He was enjoying the property as his own



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private property. The purchase by R7 to R12 from D1 to D3 cannot be questioned. The learned counsel also filed written arguments.

7.The point that arises for determination is whether the evidence on record is sufficient to come to the conclusion that the suit properties were endowed in favour of the temple. The learned trial judge came to the conclusion that documents such as rental receipts and kist receipts are not sufficient to establish that the suit properties belong to the temple. The suit came to be dismissed in that view of the matter.

8.The Supreme Court of India wanted to find out whether like the land on which the temple was constructed, the suit properties were also situated on any public land or not. DW.1 Ravindran admitted in his cross examination that the temple and the suit properties are situated within a single compound. The four boundaries set out in the suit schedule for the shops is relevant. They are bounded on the north by Pilliar Koil Street and the south by south car street and the east by Pilliar Koil street and some private buildings and on the west by west car street. Ex.A6 is the patta and Ex.A7 is the chitta. The revenue records are



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standing in the name of Muthuramalingam Pillai, trustee of Pazhikanjiya Vinayagar Temple. In the town survey registers also (Exs.A8 and A9), the very same description is carried over. The land has been classified as “Natham”. In other words, the property had been held by the concerned individuals only in their capacity as trustees. When the earliest revenue records contain such description, it is a definite indication of dedication and endowment in favour of the temple.

9.Ex.A4 is the rental agreement dated 13.12.1922 executed by one Thangasamy Nadar S/o. Kandhasamy Nadar in favour of Seenia Pillai, Mariappa Pillai and Shanmugam Pillai, huqdars of Pazhikanjiya Vinayagar Temple. A careful reading of the description of the four boundaries leads one to the conclusion that it tallies with the suit schedule property. Ex.A5 is another rental agreement executed on 18.01.1958 in favour of Muthuramalingam Pillai in respect of the suit schedule property. In the said lease agreement, Muthuramalingam Pillai is described only as huqdar of the temple. He is none other than the father of the plaintiffs and the fourth defendant and grandfather D1 to D3.



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10. One K.T.T. Ramalinga Chettiar filed O.S No.65 of 1969 on the file of the Sub Court, Ramanathapuram at Madurai for declaration that the suit temple is a public temple. This suit was taken up along with O.S No.124 of 1969 filed by S.Muthuramalingam Pillai. The suit was for recovery of possession of one of the shops (Old Door No.38, Pillaiyar Kovil Street) covered in the present suit schedule and damages. While O.S No.65 of 1969 filed for declaration of the temple as public temple was decreed as prayed for, O.S No.124 of 1969 was dismissed on 29.11.1980. Questioning the same, all the legal heirs of Muthuramalingam Pillai filed A.S Nos.710 of 1981 and 828 of 1983 before the Madras High Court. They were dismissed by the learned Single Judge on 04.10.1991. Ex.A26 dated 30.10.1937 is the copy of the petition given to Sivakasi Municipal Commissioner by Muthuramalingam Pillai. It was marked as Ex.A15 in O.S No.65 of 1969. This document was dealt with in the judgment dated 04.10.1991 in A.S No.710 of 1981 and AS No.828 of 1983 in the following terms :

“Ex A15 is a copy of the petition given by the first Defendant to the Sivakasi Municipal Commissioner on 22.7.1937. Therein, as pointed out by the Trial Court, the first



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Defendant has called himself as 'Huqdar of the suit temple. Huqdar means manager, and the suit temple has not been referred to as the private temple of the Defendant's family. This Ex. A15 is a copy of Petition sent by the first Defendant complaining against his uncle (paternal) Shanmugha Pillal in respect of the temple properties. Therein he has clearly mentioned that the temple properties are endowed properties, and that himself or Shanmugham Pillal has no right whatsoever in it. In one place in it he calls himself as the Inamdar of the temple. These recitals conclusively, by way of admission, prove that the suit temple and its properties belong to the public and not to the family of the Defendants.”

Questioning the said judgment dated 04.10.1991, LPA Nos.2 and 3 of 1992 were filed before the Division Bench of the Madras High Court. The appellants were Munuswamy (Father of D1 to D3, the fourth defendant herein and the plaintiffs). The appeals were dismissed in limini on 08.01.1992. It is beyond dispute that the subsequent purchasers claim through D1 to D3. When their grandfather had admitted that the suit properties had been endowed in favour of the suit temple and a categorical finding had earlier been rendered, it was not open to the



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defendants 1 to 3 to alienate the suit property. In fact, the learned counsel appearing for the appellants went to the extent of asserting that if the entire records had been placed before the Hon'ble Supreme Court, the matter would not have been remanded at all.

11.Of course, it is a fact that in Ex.B1 dated 28.07.1917 partition deed entered into among the four sons of Muthuswamy Odhuwar, the suit properties had been allotted to Seenia Pillai. In the said document, there is no mention that the suit schedule property is the absolute property of the father of the executants or their ancestral property. On the other hand, there is a reference to the suit temple and rendering of priestly service. A partition deed by itself cannot be determinative of the issue raised in these appeals. It has to be read along with the other evidence available on record. Notices issued under Section 9(2) of the Survey and Boundaries Act have been marked by way of additional evidence. They pertain to the suit schedule property. They have been issued to Muthuramalingam Pillai by describing him as the trustee of the suit temple. Even though the property was assessed only in the name of the incumbent trustee of the temple, Munuswamy, father of D1 to D3



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managed to obtain assessment receipts in his individual name. This was after the dismissal of LPA Nos.2 and 3 of 1992 dated 08.01.1992.

12.The trial court had proceeded on the premise that revenue record and rental receipts are not sufficient to grant the declaration sought for. The trial court had completely misdirected itself. The location of the shops is significant. The shops as well as the temple are within a single compound. This has been admitted by DW.1 himself. The grandfather of D1 to D3 had filed a suit for recovery of possession of one of the shops mentioned in the suit schedule. The suit was dismissed with a finding that the shop belongs to the temple. This finding was confirmed by the High Court. The grandfather of D1 to D3 himself had dealt with the suit properties only in his capacity as temple trustee. It had been convincingly demonstrated that the suit property had been treated as temple property for several decades. DW.1 admitted that he had not adduced any evidence to show that the suit property belonged to his father or grandfather. He further admitted that apart from the suit properties, there is no other source of income for the temple.



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13. In a civil proceeding, the standard of proof is one of preponderance of probabilities. More than anything else, when an idol is before the court, the court must assume the *parens patriae* jurisdiction. I take judicial notice of the fact that in innumerable instances, trustees have usurped temple properties. There is a saying in Tamil “fence eating the crop”. When Muthuramalingam Pillai's uncle Shanmugha Pillai tried to treat the suit property as his private property, Muthuramalingam Pillai complained. But his son Munuswamy had done exactly the same thing. The present plaintiffs in the previous round sang a different tune. The plaintiffs are women and hence, their brother Munuswamy Pillai excluded them and that led to the filing of the present suit. This Court is not concerned with the motives of the plaintiffs. It is ironical that the presiding deity of the temple came to the rescue of the devotee (Muthuswamy Odhuwar) to avoid blame. This deity carries the adjective “Pazhikanjiya” i.e., one who is afraid of bad name. But the trustees do not have any such compunction.

14.Ex.A41 contains some rental receipts issued by Muthuramalingam Pillai and M.R.Muniyasamy in their capacity as



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hereditary trustees of the suit temple. Ex.A42 is the Will executed by M.R.Muniyasamy. In the said Will, his properties have been dealt with. There is no reference in the said Will to the suit properties. There is considerable force in the contention of the counsel for the appellants that the silence in the Will with regard to the suit properties assumes significance. If they are the private properties of Muniyasamy, definitely, he would have made an arrangement regarding them. Patta No.6476 issued by Tahsildar, Sattur on 14.08.1988 was marked as Ex.A44 and it is in the name of Muthuramalingam Pillai in his capacity as the trustee of the suit temple. It pertains to T.S Nos.191, 192, 194 to 197. The said patta covers the suit properties. Application was submitted to the Tahsildar for entering the names of the five legal heirs of Muthuramalingam Pillai. The application and the acknowledgement card were marked as Ex.A45. M.R.Muniyasamy, the father of D1 to D3 had signed as the third applicant. It is not the case of the defendants that this patta does not pertain to the suit shops. Ex.A46 is the corresponding Town Survey Register. It also states that T.S No.191, 192, 194 to 197 stand in the name of the suit temple. The land has been mentioned as government land. Ex.A46 answers the question posed by the Hon'ble



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Supreme Court in its remand order. Column 6 of Ex.A46 clinches the issue.

15.The evidence originally and additionally adduced convincingly establish that the suit schedule shops had been endowed in favor of the suit temple. The descendants of Muthuswamy Odhuwar dealt with the shops only in their capacity as trustees. The revenue records indicate that the land on which the shops are standing has been classified as that of “Sarkar”. The finding rendered in the earlier round of litigation is to the effect that at least one of the shops belongs to the temple. The learned trial judge failed to appreciate the issues from a proper perspective. The appeals are allowed. The impugned judgment and decree is set aside. The suit is decreed as prayed for. No costs.

16.This judgement was dictated in the open court.

Connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
Kmm/Skm



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To:

1. The Sub Judge, Sivakasi.
2. The Commissioner,
Hindu Religious & Charitable
Endowments (Admn) Department,
Nungambakkam, Chennai.
3. The Joint Commissioner,
Hr & CE, Admn. Department,
Sivagangai.

Copy to :

The Record Clerk,
Vernacular Records,
Madurai Bench of the Madras High Court.



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G.R.SWAMINATHAN, J.

Kmm/Skm

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