



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.Nos.2103 & 2104 of 2002

and

C.M.P.No.18329 of 2002

Executive Officer,
Arulmigu Palapattarai Mariamman Temple,
Ammamet,
Salem – 3.

...Appellant in both Appeals

Vs

1.A.Vijayaraj
2.A.M.Varadarajulu
3.K.G.Balan
4.A.Dhanapal
5.M.R.Sundaraiar
6.P.Arunachalam
7.M.K.Kanagaraj
8.M.M.Azhagiri
9.A.Natarajan
10.K.Sinraj
11.Asokan
12.Gopal
13.Sacrates
14.G.Anandan @ Anbanandam

... Respondents in S.A.No.2103 of 2002

1.A.Kuppurajam
2.K.G.Balan



3.M.R.Chandraiyyar
4.A.M.Varadarajulu
5.A.Natarajan
6.M.K.Kanagaraj
7.Chinraj

... Respondents in S.A.No.2104 of 2002

Prayer in S.A.No.2103 of 2002:- The Second Appeal filed under Section 100 of CPC, to set aside the judgment and decree made in A.S.No.95 of 2000 dated 29.06.2002 on the file of the First Additional Court, Salem confirming the judgment and decree made in O.S.1325 of 1988 dated 27.11.1998 on the file of the Second Additional District Munsif Court, Salem.

Prayer in S.A.No.2104 of 2002:- The Second Appeal filed under Section 100 of CPC, to set aside the judgment and decree made in A.S.No.47 of 1999 dated 29.06.2001 on the file of the First Additional Court, Salem confirming the judgment and decree made in O.S.No.1418 of 1988 dated 27.11.1998 on the file of the Second Additional District Munsif Court, Salem.

For Appellant : Mr.G.Sugumaran, (in both Appeals)

For Respondents : No appearance

**COMMON JUDGMENT****WEB COPY**

There are two Second Appeals. S.A.No.2103 of 2002 emanates from O.S.No.1325 of 1988 which was on the file of the II Additional District Munsif Court, Salem and which suit had been decreed by judgment dated 27.11.1998 and questioning such decree the appellant herein / 5th defendant in the said suit also filed A.S.No.95 of 2000 before the I Additional District Court / Chief Judicial Magistrate Salem, which Appeal was dismissed by judgment dated 29.06.2001.

2.S.A.No.2104 of 2002 emanates from O.S.No.1418 of 1988 which was on the file of the II Additional District Munsif Court, Salem and which suit had been filed by the 1st respondent herein and which had been decreed by judgment dated 27.11.1998 and which decree had been confirmed in A.S.No.47 of 1999 dated 29.06.2001 by the I Additional District Court / Chief Judicial Magistrate, Salem.

3.It is to be mentioned that as a matter of fact, a common judgment had been delivered in both the Original Suits and in the two Appeal Suits. Though notices had been served and counsels had entered appearance, there is no appearance on behalf of the respondents. But however, in view of the averments and submissions made by the learned counsel for the appellant,



let me not hold over the two Second Appeals any further on the board of this Court.

4.The suit in O.S.No.1325 of 1988 had been filed as a representative suit seeking permanent injunction from putting up any construction over the property of the Arulmigu Palapattarai Mariamman Temple, Ammapet, Salem – 3. The case of the plaintiff was that the land belongs to the said temple and that private individuals should not put up any construction over the said land. The 5th defendant / appellant herein is the Executive Officer of the said temple. The title was traced to a sale deed executed by one Krishna Chettiyar on 22.02.1927 in favour of the temple and which document was marked as Ex.A5. The Courts below found that in the said sale deed, the boundaries did not co-relate with the land as on ground, that no survey number was given and that further no measurements were also given.

5.But however, let me not enter into any discussion on such a findings, since the suit was only for permanent injunction and it would only be proper that the sale deed Ex.A5 is further examined in more detail in a suit, if at all filed seeking declaration of title, and as it now transpires has already been filed.



6.The suit in O.S.No.1418 of 1988 was filed by the one single individual, the 1st respondent herein claiming that he was the owner of the land belonging to the temple and also for permanent injunction. The suit in O.S.No.1418 of 1988 was decreed and the Suit in O.S.No.1325 of 1988 was dismissed. The Appeal Suits namely, A.S.No.47 of 1999 and A.S.No.95 of 2000 both were filed by the present appellant herein and both the appeals were dismissed, leading to the filing of the present Second Appeals.

7.Even though in every Second Appeal, the Court has a duty to examine whether any substantial question of law arises, in the present case there has been a further subsequent event and it would only be prudent that such event is taken judicial note of this Court.

8.It is pointed out by the learned counsel for the appellant that the temple represented by its Executive Officer, the appellant herein had filed a comprehensive suit seeking declaration of title in O.S.No.93 of 2013 before the Principal District Munsif Court, Salem. However, such suit was dismissed on 01.04.2021. Parallely, another individual, Anbanandham had filed O.S.No.305 of 2014 before the Principal District Munsif Court, Salem,



wherein he claimed title over the land. That suit had been decreed.

Questioning dismissal of O.S.No.93 of 2013, the temple had now filed a First Appeal, which is said to be pending. Since the First Appellate Court is now seized of issue of declaration of title, let me give only a small indication that it would only be proper that Ex.A5 namely, the sale deed dated 22.02.1927 executed by Krishna Chettiyar in favour of the temple be examined in its proper perspective by the First Appellate Court. Since a substantial suit had been filed seeking declaration of title, issue of permanent injunction need not be agitated and the Second Appeals need not be kept pending any further. It would only be prudent that the issue of title is finally adjudicated in manner known to law.

9.The learned counsel for the appellant states that he would be filing further documents before the First Appellate Court and if necessary, and proper reasons are given in filing such an application seeking to file additional documents under Order 41 Rule 27 of CPC, I am confident that the learned Judge who is hearing the Appeal Suit consequent to the dismissal of O.S.No.93 of 2013 would take a proper decision with respect to the same.



WEB COPY 10.Both the Second Appeals are dismissed. No order as to costs.

Consequently, connected Civil Miscellaneous Petition is closed. Liberty is granted to the appellant herein, to press further the First Appeal filed against O.S.No.93 of 2013, which is a suit for declaration of title.

23.06.2022

Index:Yes/No
Internet:Yes/No
smv

To

- 1.The First Additional Court, Salem.
- 2.The Second Additional District Munsif Court, Salem.
- 3.The Section Officer, VR Section, Madras High Court.



WEB COPY



8

C.V.KARTHIKEYAN,J.

Smv

S.A.Nos.2103 & 2104 of 2002

23.06.2022