



A.S.No.194 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.11.2022

Judgment Delivered on : **30.11.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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- 1.K.C.Rathinasamy Gounder (died)
- 2.K.C.Amirthalingam (deceased)
- 3.K.C.Balakrishnan (died)
- 4.N.Periyasamy (died)
- 5.K.M.Chenniyappan (died)
- 6.K.R.Somasundaram (died)
- 7.K.R.Varadharajan (died)
- 8.A.Ravindran
- 9.A.Kumaravadivelu
- 10.S.Thavamani
- 11.P.Ambujam
- 12.K.R.Ganasundaram
- 13.K.S.Karunakaran
- 14.Revathi
- 15.B.Suresh
- 16.P.Rajendran
- 17.Hamsaveni

... Appellants

[Appellants 8 and 9 are brought on record as L.R's, of the deceased 2nd Appellant viz., K.C.Amirthalingam, Vide Court order dated 15.04.2019 made in CMP.Nos.9634,9638 & 9640 of 2019]

[Appellant 10 is brought on record as LR of the deceased 5th Appellant viz., K.M.Chenniyappan Vide Court order dated 15.04.2019 made in CMP.Nos.9625,9626 & 9628 of 2019]

[Appellant 11 is brought on record as LR of the deceased 7th Appellant viz., K.R.Varadharajan Vide Court order dated 15.04.2019 made



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in CMP.Nos.9627,9629 & 9630 of 2019]

WEB COPY [Appellant 12 is brought on record as LR of the deceased 1st Appellant viz., K.C.Rathinasamy Gounder Vide Court order dated 15.04.2019 made in CMP.Nos.9642,9643 & 9646 of 2019]

[Appellant 13 is brought on record as LR of the deceased 6th Appellant viz., K.R.Somasundaram Vide Court order dated 15.04.2019 made in CMP.Nos.9641,9644 & 9647 of 2019]

[Appellant 14 & 15 brought on record as LR of the deceased 3rd Appellant viz., K.C.Balakrishnan Vide Court order dated 24.09.2021 made in CMP.No.16097 of 2021]

[Appellant 16 & 17 brought on record as LR of the deceased 4th Appellant viz., N.Periyasamy Vide Court order dated 20.09.2022 made in CMP.No.13649 of 2022]

Versus

1.Arulmighu Magudeswara Swamy,
Sri Veerananarayana Perumal Devasthanam,
Kodumudi.
Rep.by its Executive Officer.

2.Dr.A.K.Natarajan

... Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 01.02.2006 made in O.S.No.34 of 2004 on the file of the Additional Court – cum – Fast Track Court – I, Erode, in so far as decreeing the suit for recovery of possession and prohibitory injunction and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Appellants : Mr.K.Rajasekaran

For Respondents : Mr.S.Parthasarathy, Senior Counsel.
for Mr.Jayaganesan (for R1)

: No Appearance (for R2)



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JUDGMENT

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A.The Appeal :

This Appeal Suit is filed against the Judgment and Decree dated 01.02.2006 passed by the Additional District Judge, Fast Track Court – I, Erode, in O.S.No.34 of 2004 in and by which, the suit filed by the first respondent temple herein, for recovery of possession and permanent injunction, was decreed by the Trial Court.

B.The Case of the Plaintiff :

2.The suit property belongs to the Temple. While so, one *Chandrasekara Gounder, Malaikozhunthu Gounder, Venkatachala Gounder* and *Subburayalu Gounder*, approached the plaintiff/Temple on 27.05.1923 and sought the suit property for charitable purposes putting up *Mandapam* for use of the devotees to stay in the Temple at the time of festivals and to dig a Well to establish a garden (*Nanthavanam*) for cultivating flowering plants, to offer the flowers for conducting Poojas in the Temple. By giving an undertaking that except for the above purpose, they will not claim any other proprietary rights in the suit schedule property, requested the plaintiff/Temple for the use of the suit property.

Thereafter, an order was passed on 16.10.1923, granting permission to



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them, and based on the said permission, on 12.11.1923, a *Muchalika* was

executed by the above said persons. As per the said *Muchalika*, a *Chathiram* will be put up and no fee will be charged to the devotees staying in it. A Well would be dug and *Nanthavanam* will be established offering flowers for the Pooja in the Temple. But, however, in due course of time, the defendants who are the legal representatives of the said persons, violated the *Muchalika* and they are running a *Kalyana Mandapam* and the same is rented out, like any other private *Kalyana Mandapam* for all functions. The defendants are making profits as if they are the owners of the property. Moreover, no pilgrims or devotees are permitted to use the said property. There is no *Nanthavanam* in the property, and no flowers are offered to the Temple Pooja. Even non-vegetarian foods were prepared and served in several Muslim marriages. Functions like “*Manjal Neerattu Vizha*” were also conducted in violation of the sanctity of the temple premises. Detailed particulars about the renting out of the *Mandapam* with rent details is also furnished in the plaint. Therefore, on 16.05.2003, the license was terminated and the defendants were asked to quit and deliver vacant possession of the property.



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C.The Case of the defendants :

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3.The said *Muchalika*, dated 12.11.1923 is true. Pursuant to the said *Muchalika*, even at that point of time, proper construction was put up and both *Nanthavanam* and well were created by the defendants' forefathers. Thereafter, the defendants are continuing the charity. While so, the Executive Officer filed the suit only for political reasons. Already, a suit in O.S.No.72 of 1968, was filed, objecting to the marriages being conducted in the *Chathiram* and for accounts, stating that flowers were not given to the Temple. The same was dismissed by the Court and the decree had become final. The defendants have not violated the said Judgment. The defendants had issued a reply notice to the legal notice on 10.06.2003, that if they are evicted the charitable purposes will be stopped, and general public will be affected. No non-vegetarian food is served even while conducting Muslim marriages.

D. Issues framed before the Trial Court :

4.On the strength of the above said pleadings, the Trial Court framed the following five issues:-

“i) *Whether the plaintiff is entitled for possession as prayed for ?*

ii) *Whether the plaintiff is entitled for the relief*



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of directing the defendants to submit the accounts of profits in the suit property ?

iii) Whether the plaintiff is entitled for the relief of permanent injunction?

iv) Whether the suit is barred by Res-Judicata ?
and

v) To what relief ?

E.The trial :

5.On the above issues, the parties let in evidence. On the side of the plaintiffs, P.W.1 to P.W.6 were examined and ***Exs.A-1 to A-4*** were marked. On behalf of the defendants, D.W.1 to D.W.4 have been examined and ***Exs.B-1 to B-11*** were marked. The Advocate Commissioner's report and rough sketch were marked as Court documents under ***Exs.C-1 & C-2***.

6.Thereafter, the Trial Court proceeded to consider the case of the parties and by Judgment dated 01.02.2006, the Trial Court found that it is an admitted case of the parties that the suit property belongs to the Temple. It is also further admitted that the suit property is given for charitable purposes which is evident from ***Ex.A-1 /Muchalika***. Further, it found that in the earlier suit, there was no issue as to whether the plaintiff is entitled to the recovery for possession and therefore, the Trial Court held that even



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though the suit was between the same parties, essentially the subject matter in the issue in the earlier suit was whether the defendants are performing the charities and therefore, held that the present suit is not barred by *res-judicata*. From the evidence on record, the Trial Court categorically found that the defendants have been commercially exploiting the suit property and absolutely, no charity whatsoever was being done. Therefore, it held that the defendants had violated the said *Muchalika*, dated 12.11.1923 and rejected the arguments of the defendants that it is an irrevocable license and held that the plaintiffs are entitled for recovery of possession and decreed the suit and directed the defendants to remove their superstructure and quit and deliver the possession of the suit property and it cannot be used for any other purpose than for the stay of the devotees. The Trial Court dismissed the suit as far as the past accounts are concerned. The Trial Court granted six months time for the defendants to quit and deliver the vacant possession. Aggrieved by the same present Appeal Suit is filed before this Court by the defendants.

F.The Submissions :

7. Heard *Mr.K.Rajasekaran*, learned Counsel for the Appellants and *Mr.S.Parthasarathy*, learned Senior Counsel appearing for the respondents.



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8.The learned Counsel for the appellants would submit that the suit

is filed by the Executive Officer of the Temple. In the cross-examination before the Trial Court, he had answered that he had applied for permission from the Commissioner, but, he had not produced any permission. Therefore, the suit was filed without the specific permission of the Commissioner and therefore, it is not maintainable. The learned Counsel relied upon the Judgment of a Division Bench of this Court, in ***Sri Arthanareeshwarar of Thiruchengode, by its present Executive Officer, Mr.Sabapathy Vs. T.Munuswamy***¹, morefully relying on Paragraphs Nos.19,20, and 21, therein to contend that the suit on behalf of the plaintiff/Temple can be filed by the Executive Officer, if only he has been specifically authorised by the Commissioner for that purpose. He would also rely upon the said Judgment for the proposition that maintainability of the suit being a legal plea can be raised at the appellate stage, even though there is no pleadings to the effect in the written statement. The learned Counsel also relied upon the Judgment of this Court, in ***S.Radhabai Vs. Palani Abisheka Kattalai***², which followed the Judgment ***Sri Arthanareeshwarar***, cited supra, and held that the suit filed by the Executive Officer is not maintainable. Apart from the said Judgment of

¹ 2003 1 L.W. 386

² Second Appeal No.1224 of 2007, dated 13.08.2001



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this Court, in *E.V.Mohan Vs. Arulmigu Sengazhuni Vinayagar and Tholraman Thirukoil, by its Executive Officer/Manager*³, and the Judgment of this Court in *V.Kuppusamy Vs. A/M. Prasanna Vinayagar Thirukoil, rep.by its Executive Officer*⁴, were relied upon, which also followed the same proposition.

8.1.The learned Counsel further submitted that on a reading of *Muchalika*, it can be seen that irrevocable license had been granted to the defendants. Even if there is any violation on behalf of the defendants, only that violation has to be enjoined and corrected and the defendants' forefathers established the *Mandapam* and have been performing the charitable purpose, and the right to continue to perform such charitable purpose, should not be taken away from them. Therefore, the decree for eviction is erroneous.

8.2.The learned Counsel for the defendants has categorically pleaded that they were carrying on charitable purposes. There were no complaints from any devotees. In any event, the defendants would give a solemn undertaking before this Court that they will do the charitable

³ CRP.(NPD).No.2966 of 2007, dated 23.04.2018
⁴ CRP.(NPD).No.2112 of 2014, dated 01.11.2007



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purpose alone and the property will not be commercially exploited. Even the meager rent charged is used only for the purpose of paying electricity bills and maintenance of the premises etc., and therefore, the finding of the Trial Court to the contrary is erroneous, and prays that the Appeal Suit may be allowed.

9.Per contra, the learned Senior Counsel appearing for the respondents would submit that, now only at the stage of arguments in the year 2022, a new plea of maintainability of the suit is raised. The learned Senior Counsel, from the file would produce the document bearing No.MM/1249/2003, dated 26.08.2003, whereby specific permission has been given by the Commissioner for the purpose of filing the instant suit. The learned Senior Counsel would submit that if a written plea has been taken before the Trial Court, the said document would have been produced. Even before this Court, the learned Senior Counsel would submit that if procedural formality is insisted they are ready to file an application to produce the same as an additional document. Therefore, the learned Senior Counsel, states that the contention is factually incorrect. The learned Senior Counsel would further submit that on a reading of *Muchalika*, it would be clear that it is nothing but a leave and license to use the property



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for the particular charitable/religious/pious purposes. On the other hand,

what the defendants had done is atrocious. They did not care that the property belonged to the Deity. They exploited it for commercial purposes and were earning money, unmindful of the pious nature of the premises. The premise is supposed to be *Nanthavanam* from where flowers would be offered to the Deity and Chathiram for the stay of devotees. Marriages of people of other religions were performed and non-vegetarian food is served, which is the present use of the said Temple property premises. The report of the learned Advocate Commissioner shows that a *Kalyana Mandapam* with marble flooring, etc., is presently maintained. The solemn undertaking given by them by way of *Ex.A-1/Muchalika* is violated and hence the license was rightly revoked by the Temple and therefore, the defendants have no other go than to quit and deliver the vacant possession. Learned Senior Counsel taking this Court through the findings of the Trial Court, would submit that the Trial Court has duly and correctly appraised the evidence and rendered its findings, and submit that it would not in manner require interference by this Court.

13.I have considered the rival submissions made on behalf of either side and perused the material records of this case. The following points



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arise for consideration:

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i) Whether or not the suit filed by the Executive Officer of the Temple is maintainable?

ii) Whether the right granted to the defendants is irrevocable right to do the charity, and therefore, the decree of quit and deliver the vacant possession should not be granted?

iii) To what relief the parties are entitled to?

G.Question No.(i):

15. I am in agreement with the learned Counsel for the appellant/defendant that even though the contention as to the maintainability of the suit is now raised only at the appellate stage, since the same being the nature of the question of law, can be permitted to raise at the appellate stage. When the additional ground is raised at the appellate stage during the course of the arguments, the document which is produced from the file is taken as additional document by allowing the oral application made on behalf of the respondents. No doubt is raised as to the veracity of the same by the Learned Counsel for the appellant. Considering the fact that the Appeal Suit is of the year 2006, and when the plea itself is raised during the arguments, the relevant documents to counter that plea can be produced at the appellate stage and as such, it is taken as an



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additional document. Since the same is relevant and is absolutely necessary for the Court to arrive at a just conclusion and there is a valid reason for not producing it earlier, the same is received, taken on file and is marked as **Ex.B-12**. By virtue of **Ex.B-12**, dated 26.08.2003, the pleading of the appellant becomes factually incorrect as the Commissioner had specifically authorized the Executive Officer to file the instant suit and accordingly, the said question is answered that the suit is maintainable.

H.Question No.(ii):

16. On a clear perusal of **Ex.A-1/Muchalika**, dated 12.11.1923, it is clear that it is only a license which was granted to the defendants. The license is granted for the specific purposes:

- a) For establishing *Chathiram* for the devotees/pilgrims to stay and that stay should be permitted without any charges;
- b) For digging a Well, maintaining *Nanthavanam* and planting several trees and plants, and to offer the said flowers to the deity;

Except for the other two purposes, the land should not have been used for other purposes and using the premises as a Marriage Hall by itself, is a violation of *Muchalika*. This apart, the defendants had made commercial



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use of the same and commercial use only. The learned Advocate

Commissioner's report and the evidence of a person who rented the *Mandapam* categorically proves the same. The defendants have violated the said *Muchalika* in *toto* and unmindful of the pious purposes for which they had taken the piece of the land. Therefore, the defendants who are in violation of the license granted to them, have no other way than to quit and deliver the vacant possession. The Trial Court has rightly granted liberty to take away the superstructure, if any, if they wish to take from the suit schedule property. The Trial Court rejected the relief of past profits and the same by itself is a big windfall for the appellants. Accordingly, the said question is answered against the appellants and in favour of the respondents.

I.Question No.(iii):

17.In view of the above findings, normally, the Appeal Suit is to be dismissed and the Judgment and Decree of the Trial Court is to be confirmed. But, however, this Appeal Suit is pending for 16 long years. The suit is instituted by the Temple in the year 2004, and therefore, when there is an enormous delay, the Court should be conscious of granting relief to the parties and see to it that they substantially get their relief and



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the decree will not be a mere paper decree, and the defendants can further buy time by way of execution of proceedings. The parties to the litigation are bound to comply with the same. The provisions relating to execution proceedings are with the purposes removing some difficulties etc., while implementing/complying with the decrees and it is not a matter of right or course to be dictated by the Judgment debtors to further delay the matter. Therefore, to remedy the situation, this Court finds that it is not enough to merely confirm the decree of the Trial Court, but the damages of use and occupation after time granted by the Court shall be exemplary and stringent so to grant substantial relief to the decree holder. Therefore, as directed by the Trial Court, six months time is granted from today, to quit and deliver the vacant possession of the suit property,. If the defendants fail to quit and deliver the vacant possession, while recovering the possession, the plaintiff/Temple will also be entitled for a sum of Rs.3,00,000/- per month as damages and the plaintiff's Temple will also be entitled to recover the same. To that extent, the Trial Court's decree stands modified.

J.In the Result:

18.In the result, the Appeal Suit is disposed of on the following terms:



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i) The Judgment and Decree dated 01.02.2006 made in O.S.No.34 of

2004 by the learned Additional District Judge, Fast Track Court No.I, Erode, is confirmed, inasmuch as the relief of directing the defendants to quit and deliver the vacant possession and permanent injunction is concerned with the following modification:-

a) The defendants shall quit and deliver the vacant possession of the suit schedule property on or before 30.05.2023 and no further extension of time will be granted in this regard;

b) On expiry of six months, if the defendants did not vacate and hand over possession, they will also be liable to pay to the plaintiff/Temple a sum of Rs.3,00,000/- per month as damages for the use and occupation from 01.06.2023 and the plaintiff temple will also be entitled to recover the same from the defendants;

ii) The plaintiff/Temple shall also be entitled for the costs throughout.

30.11.2022

Index : Yes/No
Speaking /Non-Speaking order

klt



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To

- 1.The Additional Court – cum – Fast Track Court – I, Erode.
- 2.The Section Officer, V.R.Section, High Court of Madras.



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D.BHARATHA CHAKRAVARHY, J.

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Pre-Delivery Judgment in

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