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S.A.No.1033 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2022

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1033 of 2022

Babu Appellant

Vs

1. R.Sakthivel
2. G.Murugesan Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 12.09.2022 made in A.S.No.40 of 2013 on the file of the Principal Sub Court, Kallakurichi, dismissing the appeal and confirming the Judgement and Decree dated 26.07.2013 made in O.S.No.431 of 2009 on the file of the Principal District Munsif, Kallakurichi,

For Appellant : Mr.N.A.Nassir Hussain

JUDGMENT

This second appeal has been filed to set aside the Judgment and Decree dated 12.09.2022 made in A.S.No.40 of 2013 on the file of the Principal Sub Court, Kallakurichi, thereby confirming the Judgement and Decree dated 26.07.2013 made in O.S.No.431 of 2009 on the file of the Principal District Munsif, Kallakurichi, thereby dismissing the suit filed by



S.A.No.1033 of 2022

the appellant.

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2. The appellant is the plaintiff and the respondents are the defendants in the suit for permanent injunction. The case of the appellant is that the suit property belong to the Wakf and it is a Edgah Ground used for conducting special prayers and other rituals of the mosque. It is in possession and enjoyment of the appellant from time immemorial. While being so, the respondents, on 25.01.2009, attempted to interfere with the peaceful possession and enjoyment of the appellant in the suit property without any right or authority on the basis of illegal documents. Hence, the suit.

3. The respondents resisted the suit by way of written statement stating that the appellant did not file a suit as Muthawalli of the suit property and the said suit is not filed by Islamic people. The suit property is part of the property comprised in Survey No.255/1 admeasuring 0.93.0 ares. Originally, it was classified as Natham and thereafter whoever possession and enjoyment of the respective portion of the land, they were issued Natham patta. The father of the first respondent was in possession and enjoyment of the property admeasuring 0.17.5 ares in Survey No.255/1,



S.A.No.1033 of 2022

the same was purchased by him from one Chidambaram Konar in the year 1980 itself. After his demise, the first respondent is in possession and enjoyment of the same and he inherited the property by Will executed by his father. Therefore, the suit property is not at all belong to the Wakf.

4. After framing the issues, the appellant had examined P.Ws.1 to 3 and marked Exs.A1 to A6. On the side of the respondents, the first respondent had examined D.W.1 and marked Exs.D1 to D12. The Court witnesses were marked as C.Ws.1 and 2. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in AS.No.40 of 2013 before the Principal Subordinate Judge, Kallakurichi, and the same was also dismissed and the judgment and decree passed by the trial Court was confirmed. Challenging the same, the present second appeal.

5. The learned counsel for the appellant has raised the following substantial questions of law:

a) Whether the Courts below are right in not



properly appreciating Ex.P1 by and under which the possession of the appellant is well evidenced ?.

b) Whether the Courts below are right in holding that the appellant had not proved his possession in the suit property ?

c) Whether the Courts below are right in holding that even for a suit by a Muthwalli in his individual official capacity to protect the interest of the Mosque under his administration provision of Order 1 Rule 8 CPC are attracted and suit is liable to fail for not obtaining prior leave ?

d) Whether the Courts below erred in not seeking the respondent has not proved his claim in the suit property and to the contrary the appellant having proved his possession through oral and documentary evidence is entitled for the relief as prayed for ?

e) Whether the Courts below erred in not seeing that a Wakf property under the supervisory control of the Tamil Nadu Wakf Board remains to be a wakf property for all times to come unless a declaration to the contrary is obtained from the competent Court by the person aggrieved and the nature of the wakf property cannot be disputed until the property is declared not be a wakf property by the competent Court ?

6 . Heard, Mr.N.A.Nassir Hussain, the learned counsel



S.A.No.1033 of 2022

appearing for the appellant and this Court considered the rival submission made by the learned counsel for the appellant.

7. The learned counsel appearing for the appellant would submit that pending suit, an Advocate Commissioner was appointed and he filed a report. It reveals that the possession of the appellant in the suit property is proved. Though the respondent failed to prove their possession and enjoyment of the suit property, the Trial Court dismissed the suit. However, the first Appellate Court held that the appellant has proved his possession and concluded that the respondent failed to prove his claim in the suit property and set aside the Judgment and Decree passed by the Trial Court. However, instead of granting interim injunction as prayed for, status quo was ordered. Aggrieved by the same, the respondents preferred the second appeal in S.A.No.49 of 2016. This Court, by a Judgment and Decree dated 02.02.2016, remanded back the appeal suit to the First Appellate Court for fresh consideration. Thereafter, the First Appellate Court dismissed the appeal. He further contended that even according to the respondent, they are in possession and enjoyment of a part of the suit property. The remaining land is in possession and enjoyment of the appellant.

8. A perusal of the records reveals that on 16.05.1972, a resolution



S.A.No.1033 of 2022

was passed by the Town Panchayat, Chinna Salem, in which both the appellants as well as the respondents are in possession and enjoyment of the suit property. Ex.D4 reveals that the father of the first respondent was issued 'B' Memo. It shows that he is in possession and enjoyment of the suit property. Subsequently, they were issued patta in respect of their portion of the land. That apart, the appellant categorically admitted that the suit was filed for public purpose and he is not in possession and enjoyment of the suit property and that he has no right over the property. Even then, the appellant failed to obtain leave as contemplated under Section Order 1 Rule 8 of CPC. Further the appellant failed to produce any document to show that he is in possession and enjoyment

9. As such the Courts below have analyzed the evidences, both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit. This Court is of the considered opinion that no substantial question of law is involved in this appeal.

10. In view of above, this Second Appeal is dismissed and Judgment and Decree dated 12.09.2022 made in A.S.No.40 of 2013 on the file of the Principal Sub Court, Kallakurichi, thereby confirming the Judgement and Decree dated 26.07.2013 made in O.S.No.431 of 2009 on



S.A.No.1033 of 2022

the file of the Principal District Munsif, Kallakurichi, is confirmed. There shall be no order as to costs.

22.12.2022

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

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To

1.The Principal Subordinate Judge, Kallakurichi

2.The Principal District Munsif, Kallakurichi.



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S.A.No.1033 of 2022

G.K.ILANTHIRAIYAN, J.

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S.A.No.1033 of 2022

22.12.2022