

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.03.2022

Delivered On : 05.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

A.S.(MD)No.262 of 2008
and
C.M.P.(MD)No.1463 of 2022

1.K.Murugesan (died)

2.Mariammal

3.Kalarani

4.Surili Raja

5.Bhanumathi

6.Shanmuga Sundaram

.. Appellants

(appellants 2 to 6 are brought on record as LR's of the deceased sole appellant, vide Court order, dated 11.04.2017, made in CMP(MD)No.1928 of 2017 in A.S.(MD)No.262 of 2008.

Vs.

1.E.Mayandi (died)

2.N.Raju Pillai

3.G.Natarajan

4.P.Murugesan

5.T.Thurkkaiyan Pillai

6.N.Balan

7.M.Gurusamy Pillai

8.S.Erulappa Pillai

9.Lakshmanan

10.V.Subramanian

11.M.Karuppana Pillai

12.M.Thurkkaiyan Pillai

13.G.Saraswathy Ammal

14.G.Marimuthu .. Respondents / Respondents 2 to 14

15.Pitchai Ammal

16.Mari Ammal .. Respondents 15 & 16 /

LRs of deceased 1st Respondent

(R15 and R16 are brought on record as LRs of the deceased R1

vide Court order, dated 27.04.2017, made in MP(MD)No.1/2009)

Prayer :Appeal Suit is filed under Section 96 of Civil Procedure Code, against the judgment and decree, dated 29.06.2007 made in O.S.No.34 of 2007 on the file of the Principal District Judge, Madurai.

For Appellants : Mr.S.A.Ajmal Khan

For Respondents 13 to 16 : Mr.R.Suriyanarayanan

Respondent No.1 : Died

Respondent Nos.2 to 12 : Given up

JUDGMENT

This appeal suit is filed against the dismissal of the suit made in O.S.No.34 of 2007, dated 29.06.2007, on the file of the Principal District Judge, Madurai. The suit was filed for a prayer of recovery of possession.

2. Brief substance of the plaint, in O.S.No.34 of 2007 is as follows:-

2.1. The suit property and the building thereon belonged to Arulmighu Ilapaiyadi Gurunathaswamy Kovil, that belonged to the family of both the plaintiff and the defendants. The income from the property was utilized for performing daily poojas and for the maintenance. The temple was constructed a Century ago, for the benefit of the family. The predecessor of the plaintiff and the defendants, by name, Veerapathira Pillai was performing pooja in the temple. His descendents are seven branches of families. Except the seven branches of family, nobody is having any right over the property. The senior male member of the Senior family has to administer the suit temple and to perform the poojas. The plaintiff is the senior most male member of the senior family. The first and second defendants belonged to one branch, the defendants 3 to 6 belonged to Pattukarar branch, the defendants 7 to 9 belonged to Sankarapillai branch, the 10th defendant belonged to Gounder Veedu branch. The 11th defendant belonged to Nanji branch and the 13th defendant belonged to Thottathu Karuppu branch. Earlier, there was a coconut farm around the temple. Subsequently, buildings were constructed and from out of the income from the buildings, the temple poojas were conducted. 60 years ago, some third

party try to claim some right over the temple and a suit in O.S.No.42 of 1933 was filed and the temple was declared as the private property, that belonged to Mayandiyapillai and brothers. An appeal in A.S.No.135 of 1935 on the file of the District Court, Madurai, was also dismissed.

2.2. The Said Mayandiyapillai died on 02.05.1945, without any issues. The plaintiff in his own capacity and as the legal heir of Mayandiyapillai and as the Senior most male member of the family is having a right to maintain the temple. The most of the family members were residing in various places and they used to come only on important dates to attend the Poojas. The plaintiff was working in the police Department. The predecessors of the plaintiff, by name, Irulappa Pillai was administering the temple. He released his right in favour of Mayandiyapillai. Mayandiyapillai was the managing trustee, one Parattaiyapillai and Muthukaruppa Pillai and another Mayandiyapillai, who were the brothers of the father of the plaintiff, were the trustees. Among them, Parattaiyapillai died without issues. Another Mayandiyapillai was having a son, by name, Irulappapillai and the defendants 1 and 2 are the sons of Irulappapillai. The plaintiff is the senior male member of the Trustees. Gurusamy Pillai S/o. Natchiyappa Pillai and Irulappapillai were joint Trustees. After the demise of Irulappapillai, though

the first and second defendants have no right to administer the suit property, since the plaintiff was working in the police station, he was not able to maintain the temple, the plaintiff with the consent of the other family members, handed over the administration of the temple with the defendants 1 and 2.

2.3. Now, the plaintiff retired from service, the defendants 1 and 2 are not maintaining the temple properly and they are swindling the rental income and they are trying to alienate the property. The plaintiff sent an Advocate notice, on 21.06.1991, the defendants failed to send any reply. But, they are trying to alienate the property. During the pendency of the suit, the first defendant died and his wife and son were impleaded as defendants 14 and 15 a prayed for recovery of possession.

3. Brief substance of the written statement filed by the first defendant, in O.S.No.34 of 2007, adopted by the second defendant, is as follows:-

The plaintiff is not a Trustee of the suit temple. The suit property is the family property of the defendants 1 and 2. They are in enjoyment of the property for the past 100 years. The plaintiff has no right or connection

with the suit property. The defendants 1 and 2 are the owners of the property and they have perfected their title by way of adverse possession and prayed the suit to be dismissed.

4. Brief substance of the additional written statement filed by the the second defendant, in O.S.No.34 of 2007, is as follows:-

4.1. The averments in the plaint are denied. The suit property belonged to defendants 1, 2, 14 and 15. The plaintiff or any other persons have no right over the property. The plaintiff failed to file a Genealogy tree of the family of Veerapathira Pillai. The plaintiff has failed to mention the 7 families and the name of the members of the 7 branches of families. The plaintiff failed to mention how the plaintiff is the legal heir of Veerapathira Pillai. The defendants 3 to 13 are not the Legal representatives of Adhi Veerapathira Pillai. Only the defendants 1, 2, 14 and 15 are the legal representatives of Adhi Veerapathira Pillai. Neither the plaintiff nor the defendants 3 to 13 or their predecessors have constructed any building.

4.2. Mayandiyapillai filed a suit in O.S.No.42 of 1933 against one Subbaiyathevar and others for a prayer of declaration and for permanent

injunction. It is true that the suit was decreed and Mayandiyapillai and another Mayandiyapillai S/o. Veerapathrapillai, Parattaiyapillai @ Muthukaruppapillai were declared as the Trustees of Gurunatha swamy kovil. The said Mayandiyapillai died, leaving his mother , by name, Chellammal and two wives, by name, Muthammal and Durgaiammal. The LRs of Mayandiyapillai executed a settlement deed, on 15.07.1942, in favour of Mayandiyapillai, S/o. Veerapathirapillai and the temple administration was handed over to Mayandiyapillai. After the death of Mayandiyapillai S/o. Veerapathirapillai, his son, viz., Irulappapillai was in enjoyment of the property. After his death, the defendants 1 and 2, who are the sons of Irulappapillai, were in the administration of the property.

4.3. After the death of the first defendant, the defendants 14 and 15 are the Trustees. The defendants 1, 2 and 14, 15 and their predecessors were in enjoyment of the property, for more than the statutory period and their title is perfected by way of adverse possession. The defendants 1 and 2 were enjoying the property as owners and not as the Agent of the plaintiff. The plaintiff was never a Trustee or a joint trustee. The plaintiff is no way connected with the temple. The plaintiff is not having any right for administration and he is not having any title or possession and he is not

entitled for recovery of possession. The suit was not correctly valued. The Court fee paid under 28 of TNCF Act is not correct. The suit is barred by limitation and prayed the suit to be dismissed with costs.

5. Brief substance of the reply statement filed by the plaintiff in O.S. No.34 of 2007 is as follows:-

The suit temple belonged to the original predecessors of the plaintiff and the defendants, by name, Veerapathirapillai. Already the details of the legal heirs were mentioned and hence, a genealogy tree is not necessary. The predecessors of the plaintiff and the defendants had constructed the temple. The settlement deed alleged to have been executed by the wives of Mayandiyapillai and the mother of Mayandiyapillai, is not valid. They did not have any right to fix the L.R. The suit property did not belong to a single family. Even in the earlier suit, it was decided that the suit property was maintained by joint trustees. The defendants try to sell the properties to one Santhanathevar. The defendants 1 and 2 have admitted that they have received advance. As the senior most male member, the plaintiff is entitled to the relief sought for.

6. On the above pleadings, the trial Court has framed the following issues:-

1. Whether the plaintiff is entitled to the suit property and the temple administration?

2. Whether the plaintiff is entitled to a relief of recovery of possession?

3. Whether the suit property is the private property of the defendants 1 and 2?

4. Whether the plaintiff is not having any right in the suit property?

5. Whether the Court fee paid is correct?

6. Whether the suit is barred by limitation?

7. Whether the defendants 1 and 2 are having adverse possession?

8. Whether the suit is maintainable?

9. What are the other reliefs available to the plaintiff?

7. On the side of the plaintiff, 3 witnesses were examined and 13 documents were marked. On the side of the defendants, 1 witness was examined and 31 documents were marked. After considering the pleadings and evidence, the trial Court has dismissed the suit.

8. Against the dismissal of the suit, the plaintiff / appellant herein has preferred this appeal suit on the following grounds:-

The trial Court failed to note that the defendants 1 and 2 have failed to deny all the allegations. The trial Court failed to consider that Ex.A9 does not relate to the suit property, but, it proves the relationship between the plaintiff and those who were managing the temple before him. The trial Court failed to consider the evidence of P.W.2 and P.W.3 and that there is no necessity for a document to prove the existence of 7 branches of families. The plaintiff was related to the original trustee Veerapathirapillai and the same was proved by the evidence of P.W.2 and P.W.3. The plaintiff is a younger brother of Veerapathirapillai and this statement was not denied by the defendants. Veerapathirapillai had 4 sons as found in Ex.A7. The said Veerapathirapillai, who was mentioned in Ex.A7 is not the founder mentioned in Ex.A1. The settlors in Ex.B20 had no right to give the right of trusteeship to the beneficiary as only the senior member of the family is having the right of administration. The settlors being a women had no such right. The trial Court failed to consider that there is no question of adverse possession between the Trustees. The defendants failed to mention the date of possession and thereby, they impliedly admitted the rights of the plaintiff

against whom they have claimed adverse possession. The trial Court failed to consider the testimony of P.W.2 and P.W.3, who are close relatives both to the plaintiff and the defendants.

9. On the side of the appellants, a petition in CMP(MD)No.1463 of 2022 is filed. Brief substance of the petition in CMP(MD)No.1463 of 2022, is as follows:-

9.1. The petitioners 1 to 5 are the LR's of the deceased / appellant. The suit property is a small temple, dedicated to Arulmigu Iluppayadi Gurunathaswamy, which is a family deity of the family of the plaintiff and the defendants. The temple was constructed by the common ancestors and one of the ancestors, by name, Veerapathrapillai was doing the Pooja and he was maintaining the temple. Now, there are seven branches of families, the senior most male member of the senior family has to maintain the temple and to perform the pooja.

9.2. Mayandiyapillai filed a suit in O.S.No.42 of 1933, on the file of the Sub Court, Madurai, for a relief of declaration, declaring that the deity Gurunathasway is a family deity and that the suit temple belonged to the families, who inherited the rights from their common ancestors and that

the suit was decreed on 03.11.1935. The appeal against the decree in A.S.No.173 of 1935 was dismissed by the District Court, Madurai on 23.02.1937. On 21.02.2020, the family members of all the seven branches during Sivarathiri festival, agreed to form a management committee to conduct the festival and to maintain the temple properties. An agreement was entered into between the members. One Irulappa pillai, S/o. Nanjayapillai executed an affidavit stating that he belonged to Thottathal veedu branch and he agreed to form a management committee for the temple. On the same day, Suruliraja S/o. Murugesan pillai. Raman S/o. Karuppanapillai, who belonged to Nonji veedu branch, Lakshmana pillai, S/o. Ramalingapillai, who belonged to Goundar veedu branch, have executed similar affidavits and agreements and these affidavits are necessary documents to decide the fact in issue and the documents are necessary to be marked in the suit.

10. On the basis of the grounds of appeal and on the basis of C.M.P.(MD)No.1463 of 2022, the following issues were framed:-

(i) whether the plaintiff is entitled to maintain the temple and the suit properties?

(ii) whether 7 branches of families are entitled for the administration of the temple?

(iii) whether the plaintiff is entitled for the relief of recovery of possession

(iv) whether the suit is time barred?

(v) whether the additional documents are to be marked?

(vi) whether the appeal is to be allowed?

Issue No.I:

11. On the side of the appellants, it is stated that the suit property belonged to one Veerapathirapillai and subsequently, the plaintiff and the defendants 1 to 13, who belonged to 7 branches of family were the owners of the suit property. It is stated that the plaintiff belonged to one of the 7 branches, defendants 1 and 2 belonged to another branch, defendants 3 to 6 belonged to one branch, defendants 7 to 9 belonged to one branch, 10th defendant belonged to one branch, 11th defendant belonged to one branch and the 13th defendant belonged to another branch. Veerapathirapillai gave the right of administration of the temple to his younger brother Mayandiyapillai. The said Mayandiyapillai has filed a suit in O.S.No.42 of 1933. Mayandiyapillai died on 02.05.1941, without any issues. The plaintiff is the great grand son of Mayandiyapillai and the plaintiff as the senior male member of the senior family is entitled to the administration of

the temple. Since the appellant was working in the police department, he permitted the defendants 1 and 2 to maintain the temple. They failed to maintain the temple properly and they are trying to alienate the property.

12. Ex.A1 and Ex.A2 are copies of the Inam register. Column 7 in Ex.A2 was marked as Ex.A4. Ex.A3 is the settlement register of the Inamthar. On the side of the appellants, it is stated that (i) Mayandiyapillai, S/o. Palaniyandipillai, filed a suit in O.S.No.42 of 1933 against one Subbaiyathevar (ii) Mayandiyapillai, (iii) Parattai @ Muthukarupa pillai. Ex.A6 is the copy of the judgment. Ex.A7 is the copy of the decree. Against the judgment, an appeal was filed. Decree in A.S.No. 173 of 1935, on the file of the Principal District Judge, Madurai, was marked as Ex.A8. Partition deed between Palaniyandiyapillai Vagaiyara was marked as Ex.A9. Copy of the legal notice was marked as Ex.A10. Acknowledgment card of the first defendant was marked as Ex.A11. Unserved cover sent to the second defendant was marked as Ex.A12. Letter received by the plaintiff dated 14.10.1991 was marked as Ex.A13.

13. On the side of the respondents, it is stated that the deity is a family deity and that the plaintiff does not belong to the family. The

defendants 14 and 15 are managing the temple. The plaintiff has filed the suit not in the capacity of a trustee, he has filed the suit only in the capacity of an individual. The right of the plaintiff was not specifically stated in the plaint. The plaintiff is not the descendant of the original trustee. There is no nexus between the plaintiff and Mayandiyapillai.

14. On the side of the respondents, it is stated that the original trustee is Veerapathirapillai and the property was managed by 3 trustees in the year 1933. Mayandiyapillai was the managing trustee and that the plaintiff is claiming himself as a descendant of Mayandiyapillai. Mayandiyapillai died issueless, but, he left his mother and two widows,. They executed Ex.B20 and they handed over the management to another Mayandiyapillai. The another Mayandiyapillai and his descendants are in possession and enjoyment of the temple from the year 1942 onwards.

15. The genealogy tree of the defendants is marked as Ex.B1. The tax demand notice 32 numbers were marked Ex.B2 series. 16 numbers of tax receipts were marked as Ex.B3 series. 3 demand notices issued by the Madurai Municipality were marked as Ex.B4. Reminders 5 numbers were marked as Ex.B5. Seizure notice 5 numbers were marked as Ex.B6. 30

numbers of EB bills were marked as Ex.B7 series. The receipt book in the name of Irulappapillai was marked as Ex.B8. The sale deed in the name of Irulappapillai was marked as Ex.B9. An agreement executed by one Sundarrajakone in favour of Gurusamy and Mayandi was marked as Ex.B10. The rent agreement executed by Mayandiyapillai in favour of Irulappapillai was marked as Ex.B11. Tax demand notice 4 numbers were marked as Ex.B12 series. Tax receipts were marked as Ex.B13 to Ex.B18. Receipt in the name of Gurusamy and Mayandi was marked as Ex.B19. Settlement deed executed by Chinnammal was marked as Ex.B20. The rent agreements in the name of Irulappapillai were marked as Ex.B21 to Ex.B28. Rental agreements in the name of Mayandiyapillai were marked as Ex.B29 to Ex.B31.

16. On the side of the appellants, it is stated that the defendants have produced only revenue records and that revenue records are not documents of title and the defendants' documents are not valid. A judgment of the Hon'ble Supreme Court reported in ***2008-AIR (SCW) 298 [Gurunath Manohar Pavaskar and others]*** is cited.

17. On the side of the appellants, it is stated that the settlement deed Ex.B20 is not valid. The settler of Ex.B20 is having no right to execute such a document. Ex.B8 is in the name of Irulappapillai and Ex.A3 also contains the name of Irulappapillai, who is the predecessor of the plaintiff. Ex.B1 is not a genuine document. Ex.B5 to B10 proved that the property belonged to the predecessor of the plaintiff. In Ex.B13 the name of the receiver was not mentioned. The documents of the defendants were not supported by oral evidence.

18. On the side of the respondents, it is stated that after the death of the Mayandiyapillai, his son, Irulappa pillai and the defendants 1 and 2 were managing the temple. The first defendant died during the pendency of the suit and the defendants 14 and 15 are his LRs and at present the defendants 2, 14 and 15 are managing the temple. The plaintiff has failed to produce any documents to prove that he is the LR of Mayandiyapillai S/o. Veerapathirapillai. The plaintiff and his predecessors were not a party to the earlier suit. The plaintiff failed to file any document to show the relationship between himself and Mayandiyapillai. The plaintiff himself has admitted that his ancestor is one Karupanapillai S/o. Muthukumarasampillai and his grand father, name is Mayandiyapillai and

he did not know the father name of his grand father, which clearly reveals that the plaintiff is not the descendants of Mayandiyapillai S/o. Veerapathirapillai. The plaintiff himself has admitted that he is not the descendants of Veerapathirapillai. There is no nexus between the plaintiff and the earlier managing Trustee. All the tax receipts were paid in the name of Irulappapillai S/o. Mayandiyapillai. Mayandiyapillai his son, Irulappapillai and his sons defendants 1 and 2 were in possession of the property from the year 1942. The plaintiff failed to prove that the temple belonged to the 7 branches of the family. It is the duty of the plaintiff to prove his case and that the appeal is to be dismissed.

19. The plaintiff claimed right over the property through Veerapathirapillai, who was the original owner. Ex.A1 to Ex.A4 are in the name of Veerapathirapillai. A suit was filed by Mayandiyapillai S/o. Palaniyandiyapillai against Subbaiyathevar, Mayandiyapillai and Parattai @ Muthukaruppa pillai, in O.S.No.42 of 1933, where in it was decided that Mayandiyapillai S/o. Palaniyandiyapillai, Mayandiyapillai S/o. Veerapathirapillai, Parattai @ Muthukaruppapillai were the hereditary trustees of the temple. The documents relating to the earlier suit were marked as Ex.A5 to EX.A8.

20. A perusal of the records reveals that three persons, by name, Mayandiyapillai S/o. Palaniyandiyapillai, Mayandiyapillai S/o. Veerapathirapillai and Parattaiyapillai @ Muthukaruppupillai were the trustees as per the decree in the suit in O.S.No.42 of 1933. The appeal against the decree in A.S.No.173 of 1935 was dismissed by the Principal District Court, Madurai. Ex.A5 to Ex.A8, are the documents regarding the earlier suit. In Ex.A9, a partition deed, executed on 30.04.1923, the suit properties were not mentioned as the family properties of the plaintiff. Ex.A10 to Ex.A12 are suit notice and acknowledgement cards. Ex.A13 is a letter written by one Eswaran regarding the sale agreement, executed by the defendants 1 and 2. P.W.1 has admitted that in Ex.A13, the name of the recipient was not mentioned and that the name of the plaintiff was not mentioned in Ex.A13. The plaintiff failed to examine Eswaran, who was the author of Ex.A13. P.W.1 has deposed that along with Ex.A13, a copy of the sale agreement was annexed, but, no such copy of sale agreement was marked as Exhibit. There is no wordings in Ex.A13 regarding the annexure of sale agreement. The right of the plaintiff cannot be decided on the basis of Ex.A10 to Ex.A13.

21. The case of the plaintiff is that Veerapathirapillai handed over the administration to his younger brother Mayandiyapillai, who was the plaintiff in the earlier suit. The claim of the plaintiff is that Mayandiyapillai died on 02.05.1941, without any issues, but, the plaintiff is claiming right as the great grand son of the said Mayandiyapillai. The plaintiff has taken an inconsistent plea that Mayandiyapillai died issueless and he has taken another plea that he is the great grand son of Mayandiyapillai. The plaintiff has to prove his case and it is the duty of the plaintiff to prove how he is the descendant of Mayandiyapillai. Except the oral evidence of P.W.1 and P.W.3, there is no documentary evidence to prove that the plaintiff is the descendant of Mayandiyapillai S/o. Veerapathirapillai. The plaintiff has deposed that the name of his father, is Karupanapillai S/o. Muthukumarasamypillai. He has stated that father of Muthukumarasamypillai is Mayandiyapillai, but, he has not stated the name of the father of Mayandiyapillai.

22. P.W.1 has admitted that the suit property belonged to Veerapathirapillai. He has admitted that he failed to file the LR certificate of Veerapathirapillai and that he has not produced any document to show that

the plaintiffs are the LRs of Veerapathirapillai. He has also admitted that his father and grand father were not parties in the original suit in O.S.No.42 of 1933. P.W.1 has admitted that in the original suit, there was no decision that seven branches of family were having any right over the temple. He has admitted that the said judgment is the binding on them. P.W.1 has deposed that there is no kist receipt in the name of his father or in the name of his grand father. He has admitted that the tax receipt were not in his name.

23. The plaintiff can claim any relief, only when the genealogy is proved by him. The plaintiff failed to prove that the property belonged to 7 branches of family and he failed to prove that he is the senior most male member in the senior family. Even in the plaint, the plaintiff himself has admitted that the defendants 1 and 2 are the sons of Irulappapillai, S/o. Mayandiyapillai. As per the pleadings in the plaint, out of the 3 trustees, Mayandiyapillai S/o. Palaniyandiapillai and Parattaiah pillai died issueless. The other Mayandiyapillai, S/o. Veerapathirapillai, had a son named Irulappapillai. The defendants 1 and 2 are the sons of Irulappapillai. Admitted facts need not be proved.

24. The plaintiff failed to prove that he belonged to the family of Veerapathirapillai and since the plaintiff's father and grand father were not impleaded in the earlier suit, it is decided that the plaintiff is not having any right over the suit property and that the plaintiff is not a trustee and that he is not entitled to maintain the temple.

Issue No. II:

25. The plaintiff is claiming that he is the senior male member of the senior family among the seven families, who are entitled to maintain the temple. No Genealogy tree was filed on the side of the plaintiff. From Ex.A5, it is clear that Mayandiyapillai filed a suit and he obtained a decree regarding the suit schedule property.

26. P.W.1 has deposed that in O.S.No.42 of 1933, it was decided that Mayandiyapillai S/o. Palaniyandiyapillai, Mayandiyapillai S/o.Veerapathirapillai and Parattaiyapillai @ Muthukaruppapillai were the trustees of the temple and that the decree binds on the plaintiff and that there is no wordings in the judgment bestowing any right in favour of the family of the plaintiff or the seven branches of families mentioned by the plaintiff.

27. On the side of the appellant, it is stated that the appellant handed over the possession of the temple to the defendants 1 and 2, since he was working in the Police Department. In the evidence of P.W.1, it is stated that the name of the father of the plaintiff is Karuppanapillai S/o. Muthukumarasamy pillai. He has deposed that the name of his great grand father is Mayandiyapillai, but, he has admitted that he did not know that the name of his great grand father. He has admitted that there is no document to show that the property is a trust property, he has also admitted that he has not filed any document to prove that he is a Managing Trustee.

28. P.W.2 has deposed that during the year 1980 and 1985 his grandfather was maintaining the temple, but, he has admitted that there is no accounts to show that they have paid tax or electricity charges. P.W.2 has deposed that there is no documents to prove that the temple belonged to the plaintiff and he has not perused any document to show that the temple belonged to seven branches of family, he has admitted that there is no document to prove that he belonged to pattathar branch of family. He has admitted that nobody from the seven branches of family ever paid the Kist or electricity charges and there is no record to show their maintenance of the temple. P.W.2 has admitted that the plaintiff's father and his father were not

brothers. He has admitted that there is no document to show that his father or his grandfather were maintaining the temple.

29. P.W.3 has deposed that the plaintiff's father, grand father, defendant's father, grandfather were not brothers. P.W.3 has deposed that there is no documents to show that the plaintiff handed over the maintenance to the defendants. He has admitted that there is no document to show that the temple belonged to seven branches of family and that he belonged to Gounder branch of family. He has deposed that he has not perused any document to show that the family of the plaintiff was the Senior family and that the plaintiff was the Senior male member of the Senior family.

30. P.W.1 has deposed that there were shops in the suit property. The shops were rented and that only Irulappapillai was receiving the rent and the plaintiff never received the rent from the tenants. He has admitted that he has not produced any documents to show that he permitted Irulappapillai to receive the rent. P.W.1 has deposed that his name was not in the tax receipt. He has not produced any tax receipts. He has not filed any tax receipts in the name of his father or in the name of his grandfather or in the name any of his ancestors. He has deposed that the suit property was

in the custody of one T.S.Velmurugan from the year 1991, but, he has not impleaded the said Velmurugan as a party in the suit.

31. From the evidence of P.W.1 to P.W.3, it is clear that there is no documents to show that the temple belonged to seven branches of family and that the plaintiff belonged to the Senior family and that the plaintiff is the Senior most male member of the senior family. How, the plaintiff is related to Veerapathirapillai was not mentioned in the plaint. Genealogy tree was not filed by the plaintiff. Hence, it is decided that the plaintiff failed to prove that seven branches of family are entitled to the administration of the temple and it is decided that the plaintiff failed to prove that he is entitled to maintain the suit and the suit property.

Issue No.III:-

32.On the side of the plaintiff, it is stated that since the plaintiff is working in the police department, he allowed the defendants 1 and 2 to maintain the temple. On the side of the defendants, it is stated that the defendants 1, 2, 14 and 15 and their predecessor in title were the trustees of the temple and the plaintiff is no way connected with the temple or the property.

33. P.W.1 has deposed that he has not filed any document to prove that himself and the defendants 3 to 13 are the LR's of Veerapathirapillai. He has admitted that the defendants 3 to 13 never maintained the temple and that the plaintiff is dealing with the case on behalf of the defendants 3 to 13. P.W.3 has also admitted that there is no record to show that the plaintiff handed over the maintenance of the temple to the defendants 1 and 2.

34. On the side of the appellants, it is stated that the respondents 1, 2, 14 and 15 cannot claim adverse possession as the appellant is a co-trustee. On the side of the appellants, it is stated that adverse possession cannot be claimed against co-trustees. A judgment of this Court reported in **1963-AIR-Madras-353 [Venkatarama Naidu V. Jayammal]**, is cited.

35. On the side of the appellants, it is stated that the defendant has claimed title to the property and that the defendant also have claimed adverse possession, which is contra to the earlier stand. The inconsistent plea of title and adverse possession is not maintainable. A judgment of the Hon'ble Supreme Court reported in **2006-12-SC-233 [Steel Authority of India Ltd V. Union of India]**, and another judgment of the Hon'ble Supreme Court reported in **2009-11-SCC-609 [Sarva Shramik Sangh V. Indian Oil**

Corporation Limited] are cited.

36. P.W.1 has deposed that the father of the first and second defendants is Irulappapillai S/o.Mayandiyapillai. The father of Mayandiyapillai is Veerapathirapillai. After the demise of Irulappapillai, the first and second defendants are maintaining the temple. The defendants 14 and 15 are the LRs of the first defendant and they are maintaining the temple. Even in the plaint, it is stated that Mayandiyapillai and Parattaiapillai died without issues and it is admitted that another Mayandiyapillai was having a son and Irulappapillai, S/o. Mayandiyapillai was maintaining the temple and that the defendants 1 and 2 are the sons of the said Irulappapillai and that they are maintaining the temple.

37. Admittedly, the defendants 1 and 2 are in possession of the property and they are maintaining the temple. When the plaintiff has not proved that he is the descendants of Veerapathirapillai, the plaintiff cannot question the right of the defendants 1 and 2. In O.S.No.42 of 1933, it was clearly stated that the plaintiff, by name, Mayandiyapillai, is one of the trustees, it is clear that the defendants 1 and 2, 14 and 15 are entitled for trusteeship. Admittedly, the possession was with the defendants 1 and 2 and

the defendants 1 and 2 were maintaining the temple. Ex.B2 to Ex.B19, Ex.B21 to Ex.B31 clearly reveals that the temple is administered by the defendants. The plaintiff failed to seek for a relief of declaration. When the defendants denied the right of the plaintiff, it is the duty of the plaintiff to seek for a prayer of declaration. Without a prayer of declaration, a prayer for recovery of possession alone is not maintainable. The plaintiff failed to prove that he is having the right to be a trustee of the temple and hence, it is decided that the plaintiff is not entitled for recovery of possession.

Issue No.IV:

38. The case of the plaintiff is that he handed over the maintenance of the temple to the defendants 1 and 2, when did the plaintiff handed over possession to the defendants 1 and 2 was not specifically stated in the plaint. A case for recovery of possession has to be filed within 12 years from the date of such dispossession. The plaintiff failed to prove when he handed over possession and when he demanded back the possession. Considering the absence of such particulars and on considering the fact that the possession is with the defendants and their predecessors from the year 1942, it is decided that the claim of the plaintiff is time barred.

Issue No.V:-

39. On the side of the appellant, it is claimed that the suit property belonged to 7 branches of family, but, the plaintiff failed to file a Genealogy tree. The plaintiff failed to prove that there are 7 branches of the family who are all trustees. The plaintiff want to file a document that there was a compromise between the 7 branches of family, regarding the administration of the temple and that the plaintiff want to mark affidavits executed by persons, who are alleged to have belonged to the seven branches of family. Only when the plaintiff is able to prove that there are 7 branches of family, who are all the trustees in the temple, the plaintiff can file these documents. This documents are self serving documents executed after the filing of the suit. The evidence of P.W.1 to P.W.3 reveals that there is no nexus between the plaintiff and the earlier 3 trustees mentioned in O.S.No.42 of 1933. Since the documents proposed to be filed are all subsequent to the suit and are not useful to decide the matter in issue, it is decided that the documents are not necessary and are to be rejected.

Issue No. VI:-

40. In issue No.I, it is decided that the plaintiff failed to prove that he is entitled to maintain the temple and the suit properties. In issue Nos.II and III, it is decided that the plaintiff failed to prove that there are 7 branches of families, who are entitled for the administration of the temple, as hereditary trustees and that the plaintiff is not entitled for the recovery of possession. In issue No.IV, it is decided that the documents proposed to be filed by the plaintiff are not helpful to decide the issue in the suit, since the documents are self serving and subsequent to the suit. Predecessors of the defendants 1, 2, 14 and 15 were in possession from the year 1942. Admittedly, the defendants 1 and 2 are in possession of the property and the suit temple is maintained by the defendants 1, 2, 14 and 15. The plaintiff's prayer for recovery of possession is time barred. For the above reasons, it is decided that there is no merit in the appeal and hence, the appeal is liable to be dismissed.

41. Finally, the appeal is dismissed. The judgment and decree, dated 29.06.2007 made in O.S.No.34 of 2007 , on the file of the Principal

A.S.(MD)No.262 of 2008

District Judge, Madurai, is hereby confirmed. No costs. Since maintainability of C.M.P.(MD) 1463 of 2022 is decided in issue No.V, no separate order is passed in C.M.P.(MD) 1463 of 2022. Consequently, connected Miscellaneous Petition is closed.

05.08.2022

Index : Yes/No

Internet : Yes/No

Ls

To

1.The Principal District Judge,
Madurai.

2.The V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

A.S.(MD)No.262 of 2008

R.THARANI, J.

Ls

Pre-delivery judgment made in
A.S.(MD)No.262 of 2008

05.08.2022