



S.A.(MD)No.151 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 01.11.2021

Pronounced on : 28.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.151 of 2007

1.Eswara Thevar (Died)

2.E.Muthammal

3.S.Duraichi

4.S.Shanthi

5.E.Murugan

6.E.Mahalakshmi

7.E.Balasubramanian

8.E.Senthilvel

9.E.Arumugam

... Appellants

[Appellants 2 to 9 are brought on record as LR's of the deceased 1st appellant vide order dated 18.03.2029 in C.M.P.(MD)Nos.1433 to 1435 of 2019 in S.A.(MD)No.151 of 2007 by RHJ]

Vs.

Sri Muga Vinayagar Kovil, Ilanji
Through its Hugdars,

1.P.Ramasamy

2.A.Thangamari

... Respondents

(Respondents 1 and 2 are substituted vide order dated 21.11.2017 made in C.M.P.(MD)No.12374 of 2016 in S.A.(MD)No.151 of 2007 by SBJ)



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Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Principal Sub Court, Tenkasi dated 15.09.2006 in A.S.No.167 of 2005 modifying the judgment and decree of the learned District Munsif Court, Sengottai dated 01.09.2005 in O.S.No.25 of 2004.

For Appellants : Mr.T.S.R.Venkatramana

For Respondents : Mr.N.G.Nataraj

JUDGMENT

O.S.No.25 of 2004 and O.S.No.98 of 2004 were instituted before the District Munsif Court, Shenkottai by Sri Muga Vinayagar Temple, Ilanji through its hugdars namely, Muthusamy and Kanthanpadyachi. One Eswara Thevar was the defendant in both the suits. O.S.No.25 of 2004 was for the relief of declaration that the suit first schedule property belongs to the plaintiff / temple. The stand of the plaintiff is that the suit second schedule property is also part of the suit first schedule property and that the suit second schedule property had been leased out in favour of the defendant. Apart from the relief of declaration, permanent injunction was sought against the defendant in respect of the suit schedule property except suit second schedule property. The relief of ejectment was sought in respect suit second schedule property. The



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prayer in the other suit was for restraining the defendant from putting up any construction. Both the suits were heard together.

2.On the side of the plaintiff, three witnesses were examined and Exs.A1 to A10 were marked. On the side of the defendant, the defendant examined himself as D.W.1 and two other witnesses were examined. Exs.B1 to B3 were marked. An Advocate Commissioner was appointed. His report and plan were marked as Exs.C1 and C2. Through court witness, two revenue documents were marked.

3.The learned trial Judge decreed the suits on 01.09.2005. While O.S.No.98 of 2004 was decreed as prayed for, the relief of declaration and permanent injunction was granted in O.S.No.25 of 2004. The relief of ejectment was negated. Challenging the same, the temple filed A.S.No.167 of 2005 before the Principal Sub Court, Tenkasi. The first appellate Court vide judgment and decree dated 15.09.2006 allowed the appeal and decreed the suit in O.S.No.25 of 2004 as prayed for and the defendant was directed to hand over possession of suit second schedule property to the plaintiff. Aggrieved by the same, this second appeal came to be filed.



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4.This second appeal was admitted on 19.02.2007 on the following substantial questions of law:-

“1.Whether the Sub Judge was right in allowing the appeal contrary to S.63 of the HR and CE Act?

2.Is the suit based on Ex.A6 an unregistered lease deed is maintainable in view of S.17 of Registration Act?

3.Whether the Court below was right in decreeing the suit in full reversing the well considered judgment of the Trial Court and contrary to the admissions of PW's quoted in the Memorandum?”

5.During the pendency of the second appeal, the appellant passed away and his legal heirs have been brought on record.

6.The learned counsel for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the judgment passed by the first appellate Court and restore the final decree passed by the trial Court.



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7.Per contra, the learned counsel for the respondent submitted that the impugned judgment and decree passed by the first appellate Court is well reasoned and that it does not call for any interference and he called upon this Court to answer the substantial questions of law against the appellants and dismiss the second appeal.

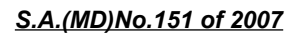
8.I carefully considered the rival contentions and went through the evidence on record. There is no dispute that the suit second schedule property is part of suit first schedule property. The trial Court had granted declaration as sought for in favour of the temple. Questioning the same, the defendant did not file any appeal or cross-appeal. He kept quiet. In fact, he had suffered twin decrees. The defendant ought to have filed two independent appeals. He did not do so. Therefore, the findings rendered by the trial Court as against the defendant became final.

9.The only reason for denying the relief of ejectment was that Muthusamy and Kanthanpadyachi did not establish that they are the hugdars of the temple. The trial Court had also rendered a specific finding that the land lord / lessee relationship has also not been established.



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10.The first appellate Court has dealt with the answers given by the defendant / Eswara Thevar in his testimony. He had clearly accepted that he did not know to whom the property belongs and he conceded that the land on which he was running the tea shop did not belong to him. His whole defence was that the plaintiff did not have the *locus standi* to maintain the suit for ejectment. The first appellate Court after a careful and exhaustive examination of Ex.A6 / lease agreement noted that the defendant had agreed to pay a sum of Rs.8 per month as rent. Ex.A6 was executed by the defendant in favour of one Ramasamy and Kanthanpadyachi. Ramasamy is none other than the father of the first plaintiff / Muthusamy. The second plaintiff / Kanthanpadyachi is also party to Ex.A6. Ramasamy and Kanthanpadyachi described themselves only as hugdars. The first appellate Court after going through the schedule set out in Ex.A6 comes to the conclusion that it corresponds to the suit second schedule property. The finding of the first appellate Court is that the defendant has been acting in a clever and smart manner and that he wants to squat on a property that did not belong to him. Even before this Court, the learned counsel for the appellant primarily contended that the temple in question was virtually in a dilapidated condition and that it was the defendant who spent money to develop the temple.



12. There is yet another reason for finding against the appellants. It is well settled that any interested person can represent an idol or a temple. It is not necessary that the trustee alone should espouse the cause of the idol. Any devotee can do so. Merely because, the appellants have not obtained declaration under Section 63 of the Hindu Religious and Charitable Endowments Act, 1959, they cannot be non-suited.



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13.It is true that Ex.A6 is an unregistered document. Even if Ex.A6 is not taken into consideration, the defendant cannot take advantage of the same. The suit property had been declared to belong to the temple. The defendant is occupying a portion of the same. Therefore, the temple is entitled to seek ejectment. Hence, there is no merit in the contention also. The second substantial question of law is answered against the appellants.

14.For the reasons mentioned above, the third substantial question of law is also answered against the appellants.

15.The learned counsel for the appellants submitted that the defendant was running a tea shop in the suit second schedule property for a very long time and that following his demise, the appellants are presently running the same. It is a matter of their livelihood. The appellants are ready to pay enhanced rent to the temple. I am therefore of the view that the appellants need not be thrown out. At the same time, the appellants cannot insist that they alone will continue to be in occupation of the property. In the very nature of things, the property has to be brought to public auction and the appellants can be one of the bidders. If the appellants are successful in the public auction, then they can continue to



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run the shop and their livelihood will also be protected. Such a course of action need not be adopted if the hugdars decide that they want the property entirely for temple purposes and that they do not propose to lease it out in favour of any private individual. In that event, while filing the execution petition, the hugdars will have to file an affidavit indicating that the suit second schedule property will not be let out in favour of any private party and that it will remain only in the exclusive possession of the temple. This is left to the discretion of the hugdars.

16.This second appeal is disposed of as follows:-

(a) The suit schedule property is declared to belong to Sri Muga Vinayagar Kovil, Ilanji represented by its hugdars.

(b) The hugdars will take a decision as to whether to let out the suit second schedule property or to resume it for the exclusive purpose of the temple. If the hugdars decide to let out the property, public auction will be held and the appellants can also participate therein. The appellants are entitled to remain in possession of the suit second schedule property till



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the public auction is finalized. If they are successful bidders, they can continue to be in possession. Public auction will be held once in five years.

(c) If the hagdars decide not to let out the suit second schedule property, they will file an affidavit to that effect while filing the execution petition for enforcing the decree passed by the first appellate Court. No costs.”

28.04.2022

Index : Yes / No
Internet : Yes/ No
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To:

1.The Principal Sub Court,
Tenkasi.

2.The District Munsif Court,
Senkottai.

Copy to:

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



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G.R.SWAMINATHAN, J.

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Pre-Delivery Judgment in
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