



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.810 of 2010

Arulmighu Muppudathi Amman Thirukoil,
Attached with Arulmighu Sankaranarayanawaswamy Thirukoil,
Through its Assistant Commissioner/Executive Officer,
Sankarankoil,
Tirunelveli District. ... Appellant/Appellant/Plaintiff

-Vs-

The Municipal Commissioner,
Sankarankoil,
Tirunelveli District. ... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.24 of 2008 on the file of the Subordinate Judge, Sankarankoil, dated 03.09.2009 confirming the judgment and decree passed in O.S.No.25 of 2004 on the file of the Additional District Munsif Court, Sankarankoil, dated 06.01.2005.

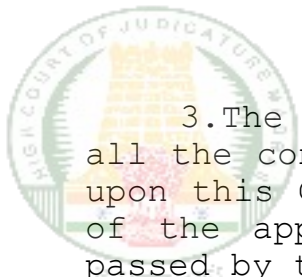
For Appellant : Mr.M.P.Senthil
For Respondent : Mr.P.Senthur Pandian

JUDGMENT

The plaintiff in O.S.No.25 of 2004 on the file of the Additional District Munsif Court, Sankarankoil is the appellant in this second appeal.

2.The suit was one for declaration and permanent injunction. The relief of recovery of possession was also sought in the alternative. The Sankarankoil Municipality was the sole defendant. The suit property is in the possession of the local body. They have put up shops and leased out for rent. The local body filed written statement controverting the plaint averments. Based on the divergent pleadings, as many as six issues were framed by the trial court. On the side of the temple, an official was examined as P.W.1. Ex.A1 to Ex.A8 were marked. On the side of the local body, two officials were examined. Ex.B1 to Ex.B27 were marked. After considering the evidence on record, the trial court by judgment and decree dated 06.01.2005 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.24 of 2008 before the Sub Court, Sankarankoil. By the impugned judgment and decree dated 03.09.2009, the appeal was dismissed and the decision of the trial court was confirmed. The second appeal was admitted on 30.11.2010 on the following substantial question of law:-

"Whether the courts below are correct in rendering its judgments and decrees against the admission made by D.W.1"



3.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellant and set aside the impugned judgment and decree passed by the courts below and decree the suit as prayed for.

4.Per contra, the learned standing counsel for Sankarankoil Municipality submitted that no substantial question of law arises for consideration.

5.I carefully considered the rival contentions and went through the evidence on record.

6.Since primary relief sought for by the appellant is in the nature of declaration, I wanted to know from the counsel on what basis the claim was put forth. The learned counsel submitted that the appellant anchored their case on Ex.A8. Ex.A8 is the letter dated 13.03.1992 sent by the Tahsildar, Sankarankoil to the Municipal Corporation, Sankarankoil. The Tahsildar had relied on the order dated 10.08.1939 issued by the then District Collector, Tirunelveli stating that the land comprised in Survey Nos.368/10 and 368/11 has been included in the prohibitory index and was required for the use of the appellant temple during festival occasions. In fact, based on the same, the Tahsildar, Sankarankoil had called upon the defendant to vacate the suit property. The courts below have correctly considered Ex.A8. It only means that the suit property is a government poromboke and that at some point of time, the Government had taken the decision that the site in question would be required for the appellant temple on festival occasions. It does not mean anything more. It is true that the courts below have rendered a concurrent finding that neither the plaintiff temple nor the defendant municipality have title over the suit property. The only course open to the appellant temple is to move the Government for relief. Filing of the instant suit was clearly misconceived. Merely because D.W.1 had made some admission in favour of the plaintiff temple, that cannot be a ground for granting the suit reliefs as prayed for. The substantial question of law is answered against the appellant.

7.With the aforesaid observation that the appellant should pursue the matter with the Government, this second appeal stands dismissed. No cost.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

1.The Subordinate Judge,
Sankarankoil.

2.The Additional District Munsif,
Sankarankoil.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.P.SENTHUR PANDIAN, Advocate (SR-14802[F] dated
28/03/2022)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-15036[F] dated 29/03/2022)

Judgment made in
S.A. (MD) No.810 of 2010
28.03.2022

MK (19.04.2022) 3P-7C