



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 07.03.2022

DELIVERED ON : 29.03.2022

CORAM:

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

A.S. (MD)No.176 of 2021

and

C.M.P. (MD)No.5854 of 2021

1.Nallammai @ Meena

2.SP.V.Kasirajan

Appellants/Defendants 1 & 4

Vs.

1.Arulmighu Sonai Poosari Kovil,

A Private Temple represented by  
its Pangali and Worshipper R.S.Mani,  
Door No.6,

Koodal Alagar Perumal West Mada Street,  
Madurai - 625 001.

Respondent/Plaintiff

2.Valliamman,

Wife of Chokalingam,  
Door No.86, Thennarasu Street,  
Anna Nagar,  
Karaikudi.

3.Kalyani

Respondents/Defendants

2 & 3

**PRAYER:** Appeal Suit is filed under Section 96 of the Civil Procedure Code to set aside the decree and judgment dated 03.10.2019 in O.S.No.117 of 2013, passed by the I Additional District Court, Madurai.

For Appellants : Mr.M.V.Venkataseshan

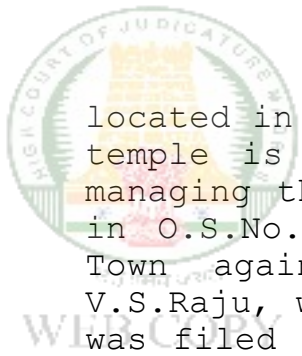
For R1 : Mr.H.Arumugam

For R2 & R3 : No appearance

**J U D G M E N T**

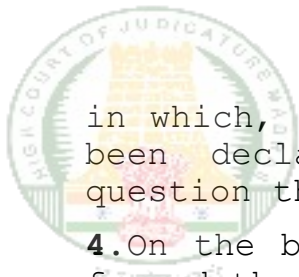
This Appeal suit has been filed challenging the judgment and decree of the learned I Additional District Judge, Madurai, dated 03.10.2019, made in O.S.No.117 of 2013.

**2.**The appellants were the defendants 1 & 4 in the suit. The respondents are the private temple, namely Arulmighu Sonai Poosari Kovil



located in Koodal Alagar Perumal West Mada Street, Madurai; the said temple is the ancestral property of pangali R.S.Mani and he was managing the properties of the temple; he had already filed a suit in O.S.No.505 of 1975, before the District Munsif Court, Madurai Town against one Guruvammal and her Mortgagee including one V.S.Raju, who is the father of the defendants 1 to 3; the said suit was filed for the relief of declaration that the mortgage as void; on transfer, the said suit got renumbered as O.S.No.249 of 1980, by the District Munsif Court, Madurai Taluk and the same was dismissed on 25.08.1983; however, the appeal in A.S.No.195 of 1989, on the file of the I Additional Subordinate Judge, Madurai was allowed on 25.06.1991, by holding that the said Guruvammal has only life estate in the properties and she has no right to alienate the properties of the temple; the second appeal filed before this Court in S.A.No.1916 of 1999 was dismissed on 21.04.2003; the said Guruvammal died on 16.12.2001 and life estate came to an end; one of the purchasers of the Guruvammal, namely V.S.Raju, who is the father of the defendants 1 to 3 also died on 05.06.2005; the defendants' father Raju had purchased the suit property on 19.01.1979 from Guruvammal, subsequent to the mortgage; Guruvammal herself has no right to sell the properties hence the sale will not convey any title to the father of the defendants 1 to 3; despite the same, the defendants 1 to 3 had partitioned the suit property and had given power in favour of the fourth defendant; in pursuance of the earlier decree passed in respect of the subject matter, the plaintiff is entitled to recover the possession of the suit property; except the plaintiff and other plaintiffs in O.S.No.249 of 1980 died; so, the plaintiff alone is entitled to file the suit; since the defendants refused to hand over the possession by vacating the suit property, the plaintiff has filed the suit for seeking declaration that any alienation or mortgage or any other endorsement made by Guruvammal in favour of the father of the defendants 1 to 3, V.S.Raju is null and void and not binding on the plaintiff and consequently recovery of possession of the suit property.

**3.**The fourth defendant filed the written statement and the same was adopted by the defendants 1 to 3. The defendants contested the suit by stating that the plaintiff R.S.Mani, who is represented the temple has filed earlier suit in O.S.No.249 of 1980 in his individual capacity; now he has filed the suit in his representing capacity; the plaintiff had paid the deficit court fee on the basis of the Government Order in G.O.Ms.No.1574, dated 12.06.1972; the same is applicable only for the temples under the control of HR & CE and not applicable for the temples belonging to private temples; the reliefs sought for by the plaintiff are barred by limitation; the plaintiff committed forgery and impersonation; after the purchase of the suit property, the father of the defendants 1 to 3 was in continuous possession and enjoyment of suit properties and after his demise, the defendants 1 to 3 are in continuous enjoyment of the suit properties; there was decree in favour of the plaintiff temple,



in which, the sale deed dated 19.01.1979, in favour of V.S.Raju has been declared as null and void; hence, the plaintiff cannot question the same, after the lapse of three decades.

4. On the basis of the above pleadings, the learned trial judge has framed the following issues:-

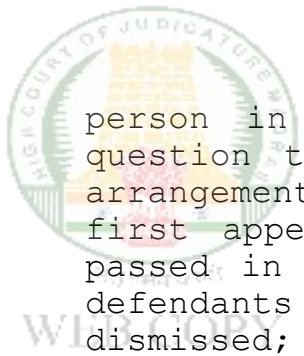
- 1) Whether the suit properties are belonging to the plaintiff temple?
- 2) Whether the plaintiff is entitled to the relief of declaration as to the nullity of the document in favour of V.S.Raju, namely as father of the defendants 1 to 3 executed by Guruvammal?
- 3) Whether the plaintiff is entitled to relief of possession?
- 4) What relief the plaintiff is entitled to?

5. During the course of trial, on the side of the plaintiff, one witness was examined as PW 1 and six documents have been marked as Ex.A1 to Ex.A6. On the side of the defendants, and three witnesses were examined as DW.1 to DW 3 and Ex.B1 to Ex.B8 were marked. Also, Ex.X1 and Ex.X2 were also marked.

6. At the conclusion of the trial, considering the evidence and documents placed on record, the learned trial judge decreed the suit as prayed for. Aggrieved over the same, the defendants 1 & 4 have preferred this Appeal suit.

7. The learned counsel for the appellant submits that during the course of trial, the learned trial judge omitted to note the failure to pay the proper court fee by the plaintiff; during the pendency of the second appeal in S.A.No.1916 of 1999, the father of the defendants 1 to 3, P.S.Raju, was no more; however, the second appeal was conducted as he was alive; hence, they have no *locus standi* to file the suit; the written statement filed by the father of the appellants 1 to 3 Raju in earlier suit has no relevance for filing the present suit; the finding of the trial judge that Ex.B1 sale deed does not have any legal effect is not correct; hence, the Appeal suit should be allowed.

8. The learned counsel for the respondent submits that in earlier suit itself, the allegations made by the beneficiary Guruvammal was held as unlawful; the very same plaintiff has filed another suit in O.S.No.167 of 2010, in respect of some other alienation made by Guruvammal, in favour of some third party; the said suit was allowed in favour of the plaintiff; even in that suit, *locus standi* of the plaintiff was challenged; but, the Court has held that even by a



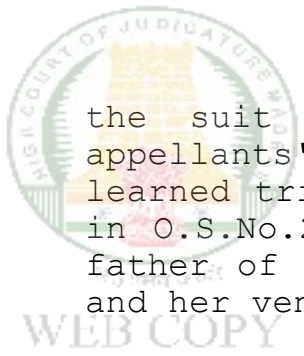
person in his capacity as worshipper has got *locus standi*, to question the alienation made in contravention to the conditional arrangements made in respect of the temple properties; in fact, the first appeal has been filed challenging the judgment and decree passed in O.S.No.167 of 2010 and the same was challenged by the defendants of that suit in A.S.No.15 of 2013 and that was also dismissed; the second appeal filed before the Supreme Court, challenging the judgment of this Court in A.S.No.15 of 2013 was dismissed; hence, the appellants/defendants cannot question the *locus standi* of this plaintiff; if the Court finds that the payment of court fee is deficit or on the order of the Court, the respondent/plaintiff has to pay the deficit court fee; the father of the defendants 1 to 3 have purchased the property from Guruvammal, who herself got no saleable interest in the said property; hence, the appeal filed by the defendants should be dismissed.

**9.** On the basis of the rival submissions, I feel that the following points for consideration would be relevant to decide this Appeal suit.

- 1)Whether the finding of the learned trial judge that the plaintiff has *locus standi* to file this Suit is correct?
- 2)Whether the suit is hit by Order 2 Rule 2 & 3?
- 3)Whether the judgment and the decree of the trial judge in decreeing the suit, on the basis that Guruvammal did not have any title to execute any sale deed in the name of the father of the defendants 1 to 3 is fair and proper?
- 4)Whether the suit is not maintainable due to deficit court fee?

**10.**The suit properties are the temple properties and it was originally belonged to one Mathalai Muthu Konar. The said Mathalai Muthu Konar executed a Will on 30.03.1959. By virtue of which, he gave 'life estate' in favour of Guruvammal with a condition that she should not alienate or encumber the properties. Since Guruvammal had mortgaged the temple properties in favour of the father of the defendants 1 to 3, a suit has already been filed in O.S.No.505 of 1975 and renumbered as O.S.No.249 of 1980. The said suit was filed to declare the mortgage transaction made by the Guruvammal is null and void. The said suit was dismissed. First appeal filed in A.S.No.195 of 1989 was allowed and the second appeal preferred in S.A.No.1916 of 1991 was dismissed.

**11.** As per the judgment held in previous suit, it has been settled that the said Guruvammal did not have any saleable interest, in respect of the temple properties. However, the said Guruvammal is said to have executed the sale deed in favour of the father of the defendants 1 to 3. It is claimed by the appellants/defendants that



the suit was not declared as null and void and hence, the appellants' right over the properties cannot be questioned. The learned trial judge had observed that during the earlier suit filed in O.S.No.249 of 1980, the sale deed Ex.B1 stood in favour of the father of the defendants 1 to 3 was suppressed by both Guruvammal and her vendee.

**12.** Since Ex.B1 was not produced before the Court and the execution about which was also not revealed, it was not possible for the court to appreciate its validity and record any findings on its validity. However, that will not affect the status of the Guruvammal, who is not the absolute owner of the suit properties. Since Guruvammal has only a limited life estate in respect of the properties and she did not have any saleable interest, she cannot convey any title in favour of the father of the defendants 1 to 3. In the earlier suit itself, the plaintiff did not pray for recovery of possession, though it was filed in respect of same property against same defendants. It is to be noted that at that time, the life estate owner Guruvammal was alive. Hence, it was not possible to seek the relief of recovery of possession against her. It is stated that execution of sale deed in favour of the father of the defendants 1 to 3 also suppressed before the Court. In fact, in an another suit by the very same plaintiff in O.S.No.167 of 2010, the defendants of that suit raised same the same plea. The said suit was decreed by declaring that alienation made by Guruvammal in favour of the alienees is null and void. The judgement was challenged by filing A.S.No.15 of 2013 before this court, wherein, this Court has observed as under:-

*"15.It has already been pointed out in many places that the said R.S.Mani has instituted original suit No.249 of 1980 as a worshipper. It is a settled principle of law that a worshipper can institute a suit for the benefit of a temple. Therefore, there is no flaw in instituting the present suit.*

*16.The second contention urged on the side of the appellant/first defendant is that even though relief of recovery of possession is available at the time of institution of original suit No.249 of 1980, no such relief has been sought for and therefore, the present suit is barred under Order 2 Rule 2 of the Code of Civil Procedure , 1908.*

*17.The learned counsel appearing for the first respondent/plaintiff has befittingly noted out*



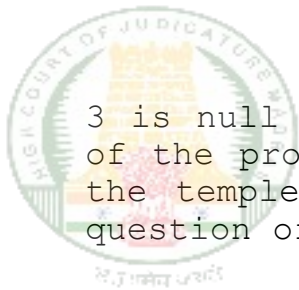
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the second point raised on the side of the appellant/first defendant by way of contending that at the time of instituting original suit No.249 of 1980, one of the beneficiaries by name Guruvammal is alive and further she has been arrayed as first defendant and since life estate has been given to her, question of recovery of possession does not arise and only after her demise, relief of recovery of possession can be sought for and therefore, the present suit is not barred under Order 2 Rule 2 of the Code of Civil Procedure, 1908.

...19. Even at the risk of repetition, the Court would like to point out that as per the recitals mentioned in the Will, dated 30.03.1952, the plaintiff is nothing but a beneficiary and the plaintiff can very well institute the present suit in that capacity by utilizing its worshipper and further the present suit is not barred under Order 2 Rule 2 of the Code of Civil Procedure, 1908. The trial Court, after considering the overall evidence available on record, has decreed the suit as prayed for, even though the first relief is totally unwarranted. Under the said circumstances, the present suit is maintainable with regard to the relief of recovery of possession."

**13.** The above judgment rendered in AS.No.15 of 2013 was challenged before the Honourable Supreme Court in Special Leave Appeal No. 13 of 2013, and it was dismissed. The order of the Honourable Supreme Court is final. Hence there is no reason to challenge the *locus standi* of the respondent/plaintiff, even in his capacity as worshipper to file the suit. Similarly, the question of recovery of possession would not have arisen during the life time of Guruvammal, who was the life estate owner and hence the suit is not hit under Or.2 Rules 2 and 3. **Thus points No.1 and 2 are answered.**

**14.** Since Guruvammal did not have any saleable interest, she had no right to convey the suit property, which belonged to the temple, in favour of the father of the defendants 1 to 3. Since the father of the defendants 1 to 3 themselves did not have any right in the suit property, the defendants 1 to 3 also cannot derive any title over the said property. So it is right for the trial Court to declare that alienation made in favour of the father of the defendants 1 to



3 is null and void and to pass a decree for recovery of possession of the properties from defendants 1 to 3. Since the property being the temple properties, in view of Section 109 of HR & CE Act the question of limitation will not arise. **Thus point No.3 is answered.**

**15.** The next contention of the appellants/defendants 1 & 4 is that the plaintiff has not paid proper court fees and hence the suit itself is not maintainable. The plaintiff has filed the suit by pleading that G.O(Ms) No.363, Home (Courts-VIA) Department, dated 09.04.2010 is applicable to all the temples, including the private temples. But on perusal of such government order, it is seen that maximum court fee is of Rs.100/-, which is applicable only to the properties of temples, which are under the control of HR & CE. Admittedly, the suit temple is a private temple and it is not under the control of HR & CE and hence, the benefit of the above Government order cannot be claimed by the respondent /plaintiff. Once the court finds that there is deficiency of court fee, the court has to pass order to call upon the plaintiff to pay the deficit court fee. Only, if the plaintiff fails to pay the deficit court fee, the consequences would follow. In the case in hand, the trial Court did not call upon the plaintiff to pay the court fee. Hence, the plaintiff cannot be blamed for his failure to pay the deficit court fee. **Thus point No.4 is answered.**

**16.** In this context, it is worthwhile to refer the judgment of the Honourable Supreme Court held in **Tajender Singh Ghambhir and another Vs. Gurpreet Singh and others**, reported in (2014) 10 SCC 702 and the relevant portion is extracted as under:-

*"8. The scheme of the above provisions is clear. It casts duty on the court to determine as to whether or not court fee paid on the plaint is deficient and if the court fee is found to be deficient, then give an opportunity to the plaintiff to make up such deficiency within the time that may be fixed by the court. The important thread that runs through sub-sections (2) and (3) of Section 6 of the 1870 Act is that for payment of court fee, time must be granted by the court and if despite the order of the court, deficient court fee is not paid, then consequence as provided therein must follow.*

*9. In so far as the present case is concerned, the first appellate court in its order rightly observed that after the amendment of plaint and consequent amendment in valuation, the trial court*



payment of deficient court fee. Obviously, in the absence of such specific order, sub-sections (2) and (3) of Section 6 of the 1870 Act would not come into operation against the plaintiff.

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10.The argument of the learned Senior Counsel for respondents 1 and 2 on construction of sub-sections (2) and (3) of Section 6 of the 1870 Act cannot be accepted. The High Court was clearly in error in invoking the above provision without appreciating the fact that there was no order by the trial court directing the plaintiffs to make good the deficit court fee within a particular time.

11.The High Court was also in error in holding that the deficiency in court fee in respect of the plaint cannot be made good during the appellate stage. In this regard, the High Court, overlooked the well-known legal position that an appeal is continuation of the suit and the power of the appellate court is coextensive with that of the trial Court. It failed to bear in mind that what could be done by the trial court in the proceeding of the suit can always be done by the appellate court in the interest of justice.

12.Secondly, the High Court failed to consider clause(ii) of Section 12 of the 1870 Act which reads

"12.(ii) But whenever any such suit comes before a court of appeal, reference or revision, if such court considers that the said question has been wrongly decided to the detriment of the Revenue, it shall require the party by whom such fee has been paid, to pay within such time as any be fixed by it, so much additional fee as would have been payable had the question been rightly decided. If such additional fee is not paid within the time fixed and the defaulter is the appellant, the appeal shall be dismissed, but if the defaulter is the respondent the court shall inform the Collector who shall recover the deficiency as if it were an arrear of land revenue"



The above provision clearly empowers the appellate court to direct a party to make up deficit court fee in the plaint at the appellate stage. The power exercised by the first appellate court can be traced to clause (ii) of Section 12 of the 1870 Act as well."

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17. In pursuance of the above judgment, it is always open to this Court, to pass an order to call upon the respondent /plaintiff to pay the deficit court fee of Rs.82,575/-.

**(\*)In the result, this Appeal Suit is dismissed and the decree and judgment of the learned I Additional District Court, Madurai, made in O.S. No. 117 of 2013, dated 03.10.2019 is upheld. The respondent / plaintiff is directed to pay the deficit Court fee of Rs.82,575/- to the filing Court within a period of two weeks from the date of receipt of a copy of this order. Since the trial Court has decreed the suit with cost, the cost that accrued now due to payment of deficit Court fee can be claimed by way of filing additional cost memo. No costs. Consequently, connected miscellaneous petition is closed.**

Sd/-

Assistant Registrar (CS-II)

**(\*) Corrected as per the order of this court dated 29.04.2022 made in AS(MD)No.176 of 2021**

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

**(\*) To be substituted to the order already despatched on 25/04/2022**

1.The I Additional District Court, Madurai.

2.The Record Keeper, Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 COPIES)

+1 CC to M/s.M.V.VENKATASESHAN, Advocate ( SR-15067[F] dated 29/03/2022 )

+1 CC to M/s.H.ARUMUGAM, Advocate ( SR-15506[F] dated 30/03/2022 )

**A.S.(MD)No.176 of 2021 and**

**C.M.P. (MD)No.5854 of 2021**

**29.03.2022**