



S.A.No.1175 of 1998

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2022

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C O R A M

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

S.A.No.1175 of 1998

Arulmighu Kadabmaraneshwarar Temple
Kadambarkoil Kulithalai by
its Executive Officer ...Appellant /
Appellant / plaintiff
Vs.

Vijayakumar ...Respondent
/Respondent/ Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, as against the judgment and decree dated 30.09.1996 in A.S.No.149 of 1995, on the file of the Sub Court, Kulithalai confirming the judgment and decree dated 11.09.1991 made in O.S.No.33 of 1991, on the file of the Principal District Munsif, Kulithalai.

For Appellant : Mr.K.Govindarajan
For Respondent : No appearance

JUDGMENT

This second appeal is filed as against the judgment and decree dated 30.09.1996 passed in A.S.No.149 of 1995, by the Sub Judge, Kulithalai confirming the judgment and decree dated 11.09.1991 passed in O.S.No.33 of 1991 by the District Munsif, Kulithalai.



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2.For the sake of clarity and convenience the parties are referred to as per their respective ranking before the trial Court.

3.The plaintiff / appellant filed a suit for possession of B-Schedule property and for mandatory injunction, directing the defendant / respondent to remove the C-schedule property constructed on the B-Schedule property and for the future profits from the date of plaint till the date of recovery and possession.

4.The case of the plaintiff in brief is as follows:

(i)The plaintiff temple is the owner of the suit property to an extent of Acre 1.45 cents in Survey No. 718, Kadambaneswarar Temple Village, Kulithalai Taluk and it is a Nanja land, which is situated on the Karur - Trichy main road. The defendant is the tenant of that agricultural land. The lease is for Rs.12.50 per cent per fasali year. The land was leased out for cultivation purpose and it is subsisting from the year 1982.



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(ii) While so, the defendant on 23.08.1989 requested the plaintiff to permit him to construct a room to an extent of 10 X 15 feet, for installing oil engine pump set. After obtaining necessary permission from the Deputy Commissioner, Hindu Religious and Charitable Endowments Department, the plaintiff / Executive Officer of the temple granted permission to the defendant for putting up a shed. However, the defendant instead of putting up a shed, constructed a pucca building consisting of two shops.

(iii) The defendant approached the Executive Officer for no objection certificate for getting electricity connection. Therefore the plaintiff visited the suit property and found the pucca construction made in B-schedule property, in violation of the agreement executed by him in Ex.A9. Hence, the plaintiff issued a notice Ex.A11 to the defendant for removal of the construction, on 08.04.1991, but the defendant evaded the same and the postal cover returned as not available. Under such circumstances, the suit was filed for the above said relief.



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(iv) The trial Court, viz., the District Munsif Court, Kulithalai tried the suit in O.S.No.33 of 1991 and dismissed the suit by judgment and decree dated 11.09.1991. The appeal filed by the plaintiff before the Sub Court, Kulithalai in A.S.No.149 of 1995 was dismissed by judgment and decree dated 30.09.1996. As against the concurrent findings of the trial Court, the present second appeal is filed.

5.The second appeal was admitted by this Court on 03.09.1998 on the following substantial questions of law:

"1.Whether the lower appellate Court is correct in law in holding acquiescence as a ground for denial or relief to the plaintiff temple, especially when several rulings of the Apex Court and the various High courts hold otherwise?

2.Whether the lower appellate Court is right in law in assuming acquiescence, the plaintiffs are estopped merely because of silence on the part of the plaintiff temple, particularly when the host of ingredients that are required to constitute acquiescence has not been made out by the defendants?



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6. Pending this second appeal, learned Counsel for the respondent died in the year 2011. Therefore, by order dated 03.11.2011, this Court directed the Registry to serve the death memo to the respondent and the notice was returned as 'left India'. Later on, the appellant has filed a petition in C.M.P(MD)No.10742 of 2021 seeking permission to effect substituted service, the same was allowed by this Court on 14.12.2021 and the appellant has also filed proof for having effected the substituted service.

7. Though the name of the respondent is printed in the cause list, there is no representation for the respondent.

8. Mr. K. Govindarajan, learned Counsel for the appellant submitted that the core issue involved in the suit is, whether the defendant has made construction in violation of agreement dated 09.05.1990 in Ex.A9 and thereby committed waste on the B-schedule property driving the plaintiff to seek possession of the same. He further submits that admittedly B-schedule property is part and parcel of A-schedule property a cultivatable



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land and the A-schedule property was leased out to defendant only for the purpose of cultivation.

The plaintiff had permitted the defendant to put up construction in B-schedule property with a specified extent (10 X 15 Feet) to protect his oil engine pump set alone. As A-schedule property is a cultivatable land, its utility shall not be affected by making any development and that is the reason why, the plaintiff has specifically mentioned the size of the room in Ex.A9. The defendant by making construction beyond the permitted extent and raising land level, obviously committed waste on the cultivatable land.

9.The learned Counsel further submits that according to the sketch of the Advocate Commissioner, the construction made by the defendant in the B-schedule property is beyond the permitted limit and it is double fold of the permitted extent in the agreement Ex.A9. Furthermore, the entrance of the building facing Karur - Trichy main road insidiously reveals the purpose of the building, which is said to be built as a room for pump set.



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10.Further, the learned Counsel submits that the trial Court has rendered a categorical finding that a perusal of Advocate Commissioner report Ex.C1 and Sketch Ex.C2 along with the testimony of PW.1, clearly establishes the fact that the defendant has made C-schedule construction in violation of Ex.A9, however, held that the said construction would add value to A-schedule property on account of enhancement of rent. According to the learned Counsel, the structure put up by the defendant in fact, diminished the value of A-schedule property.

11.The learned Counsel also submits that the first appellate Court without appreciating the relief sought for by the plaintiff, delved into the issue of maintainability of the suit. Further the appellate Court held that the plaintiff's prayer seeking delivery of B-schedule without annulling the lease for A-schedule cannot be entertained. He further submits that this problem could have been solved if the defendant himself had removed the offending structure, when the plaintiff sent a notice on 08.04.1991 in Ex.A11, before filing the suit. Therefore, the plaintiff need not go to the extent



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of scrapping the lease itself, for the defendant having refused to remove the C-schedule construction. The first appellate Court has also found that the testimony of PW.1 shows that the dereliction of staff attached to the plaintiff temple was the root cause for this dispute. It is submitted that the lapses on the part of the officials cannot be a reason to perpetuate the illegality committed by the defendant. The learned Counsel further submits that the Hon'ble Apex Court has held that the Courts should astute to protect the interest of an idol in any litigation even there is any lapses on the part of the executive officer. The learned Counsel for the appellant has also relied on the judgment of the Hon'ble Apex Court in **Bishwanath and Another Vs Thakur Radha Ballabhli and Others**, reported in **1967 STPL 326 SC**, wherein it has been held as follows:

"10.The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/sebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse



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possession. This is a possible only with the passive or active collusion of the concerned authorities. Such acts of 'fence of eating the crops' should be dealt with sternly. The Government, members of the trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of the Courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

12.Heard the learned Counsel for the appellant and perused the material placed on record. The notice sent to the respondent returned as 'left India'. Since the appeal is of the year 1998, no purpose would be served keeping the matter pending anymore. Therefore, this Court proceeds with the matter based on the materials placed on record.

13.The plaintiff is the owner of the property to an extent of 1.45 Acres of land. A piece of land in A and B schedule has been leased out to the respondent in the year 1989. The respondent made a request for putting up a construction to an extent of 10 X 15 Feet to safe guard



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his pump set. His request was acceded by the appellant/
plaintiff after obtaining permission from the
Deputy Commissioner, HR & CE Department. The agreement
was also executed on 09.05.1990 vide Ex.A9. The defendant
has also requested for no objection for getting
electricity connection. On that date the plaintiff
inspected the property and found the defendant
constructed two shops facing the Karur - Trichy main
Road. However, the defendant has filed the written
statement and contested the case effectively that he has
constructed the rooms only for agricultural purposes, as
if, the first portion is for keeping oil engine pump set
and the second room is for keeping agricultural produces.
Therefore, there is no violation of the agreement on the
part of the defendant.

14.The Courts below also accepted the stand of the
defendant that the building was constructed only in tune
with the agreement and for the agricultural purposes.
Further, held that in the absence of any termination of
agreement dated 09.05.1990, the plaintiff is not entitled
for the relief sought for.



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15. Admittedly the property is agricultural land belonging to the plaintiff /appellant temple. The property was also leased out to the defendant / respondent for agricultural purpose on payment of Rs.12.50 per cent per fasali year.

16. It would be relevant to refer to Section 106 of Transfer of Property Act, which deals with the duration of certain lease in the absence of written contract or local usage and the same is extracted hereunder:

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.



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(3) A notice under sub-section(1) shall be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub section.

(4) Every notice under sub section(1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property].

17.The appellant lessor has also issued notice to the respondent / defendant on the violation of the terms of the agreement dated 09.05.1990 [Ex.A9] in Ex.A11 on 08.04.1991. However the same was evaded by the respondent / defendant and therefore, the suit was filed.

18.Perusal of the documents would disclose that the defendant was a cultivating tenant of the nanja land to an extent of 4.15 Acres. By letter dated 22.03.1990, the



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defendant requested the plaintiff / Executive Officer for permission to construct a shed for safeguarding his oil engine pump set. The said letter of the defendant is marked as Ex.A6, by which, the defendant sought permission of the plaintiff only for constructing a room for maintaining the oil engine pump set and he also undertook that he would construct the same within Rs.13,000/- on his own. Further he also agreed by letter dated 14.04.1990 [Ex.A8] that he would increase the rent by Rs.1 per cent. He also executed the agreement on 09.05.1990 in Ex.A9 that he would construct the shed for the purpose of safeguarding his oil engine pump set at Rs.13,200/- and he will not adjust it in the lease amount. From the fassali year 1400, he agreed to pay the lease amount at Rs.15 per cent.

19. In this case an Advocate Commissioner was appointed by the trial Court. The Advocate commissioner after inspecting the property, filed his report Ex.C1 and a sketch Ex.C2. The Advocate Commissioner's report Ex.C1 would disclose that instead of constructing a room of 10 X 15 feet, two rooms have been constructed to the extent of 23 feet on the northern side, 33.3 feet on the



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southern side, 17.6 feet on the western side and 20.10 feet on the eastern side.

20. According to the Advocate Commissioner, the building constructed by the defendant appears to be a shop with pucca concrete construction. Admittedly, the construction was made beyond the requested and permitted extent and also to more extent than the agreed one by the defendant in Ex.A9 agreement.

21. Certain rights and liabilities are imposed upon the lessor and the lessee, under Section 108 of the Transfer of Property Act. Clause o and p of Section 108 of the said Act are extracted:

108. Rights and Liabilities of lessor and lessee:

..
..
..

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use or permit another to use, the property for a purpose other than that for which it was leased, or



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fell (or sell) timber, pull down or damage buildings [belonging to the lessor, or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p)he must no, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

22.In this case, the lessee obtained permission under the guise of constructing a shed for keeping the pump set, he has constructed two rooms beyond the permitted extent. As per the report of the Advocate Commissioner the construction is in the nature of shop and the subject property is also situated on the Karur - Trichy main road.

23.As settled in the judgment cited above, it is not only the responsibility of the temple, it is also the duty of the Courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation. The properties, which were endowed to the religious institutions for certain purposes, cannot be allowed to



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be obliterated. There are numerous temples in the State of Tamil Nadu and most of the temples have thousands of acres of land. Statistics reveals that there are 5.25 lakh of acres of land are with the temple and the same were donated by the devotees of the temples with certain object to do services to the temples. The object behind the enactment of the HR & CE Act itself is for better administration of the temples, mutts and their endowments.

24.The Hon'ble First Bench of this Court in WP.No.1972 of 2015, by order dated 29.02.2016, has observed as follows:

"The lands of the Lords are in trouble!! Even Gods and Lords are not spared. The temples in Tamil Nadu are historic symbols of Tamil history and they are the properties of the community as a whole. But God's money is robbed by the notorious society. The tenants and encroachers are defrauding on rents for the temple lands which are taken on lease and breaking of Hundis, steeling the temple jewels, the value of which are unmeasurable and the lifting of antique metal icons to other countries are increasing day by day."



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25.The respondent/defendant herein has apparently violated the lease and therefore, the appellant/plaintiff is entitled for the relief sought for in the suit. The respondent/defendant is directed to hand over 'B' schedule property, by removing 'C' schedule construction to the appellant/plaintiff within a period of eight weeks from the date of receipt of a copy of this judgment, in default, the trial Court shall effect delivery as above at the cost of the defendant, within a period of four weeks therefrom and the appellant/plaintiff is at liberty to initiate separate proceedings under Order XX Rule 12 of CPC for future profits.

26.In the result, the second appeal is allowed. The judgment and decree dated 30.09.1996 in A.S.No.149 of 1995, passed by the learned Sub Judge, Kulithalai confirming the judgment and decree dated 11.09.1991 passed in O.S.No.33 of 1991 by the learned District Munsif, Kulithalai are set side. No costs. Consequently, connected miscellaneous petitions stand closed.

22.03.2022

Index : yes/No
dsk



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To

- 1.The Subordinate Judge,
Kulithalai.
- 2.The Principal District Munsif,
Kulithalai.
- 3.The Record Keeper (two copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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B. PUGALENDHI . , J

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