



S.A.(MD) No.419 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.11.2022

Pronounced on : 16.12.2022

CORAM : JUSTICE N.SESHASAYEE

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1. Chinnan @ Chinnaiyapoosari (Died)
.. Appellant/Respondent/Plaintiff
2. Periyasamy (Died)
3. Subbaiah
...Appellants 2 and 3/
LRs of the sole appellant
4. Chinnasamy
5. Vadivelu
6. Moorthy
.. Appellants 4 to 6/
LRs of the 2nd appellant

(Appellants 2 and 3 are brought on record as LR's of the deceased sole appellant Vide order dated 11.10.2012 made in M.P(MD)Nos.1 to 3 of 2009 in SA No.419 of 2003 by MVRJ)

(Appellants 4 to 6 are brought on record as LR's of the deceased 2nd appellant Vide Court order dated 08.11.2022 made in C.M.P.(MD) Nos. 9838 to 9840 of 2022 in SANo.419 of 2004 by NSSJ)

Vs.

C.A.Chinnaiya Poosari .. Respondent/Appellant/Defendant



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Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 06.06.2002 made in A.S.No.99 of 2001 on the file of the Principal District Court, Pudukkottai reversing the judgment and decree dated 28.06.2001 made in O.S.No.43 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Thirumayam.

For Appellants : Mr.D.Parisutha Nathan

For Respondent : Mr.R.Balasundaram

J U D G M E N T

The plaintiff, who was successful in his suit in O.S.No.43 of 1997 to declare his right to perform pooja as a poojari of a village temple but was unsuccessful in A.S.No.99 of 2001 in an appeal preferred by the defendant, is the appellant herein. For narrative convenience, the parties would be referred to by their rank before the trial court.

2. The facts of the case fall under the narrow compass:

- According to the plaintiff, he is a poojari of the village temple which belongs to the villagers of Arasamalai Village and Mongampatti Village. He further alleges that prior to him, his father Periandi was



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the poojari and before him, his paternal grand-father Chinnan was a poojari. In essence, he claims that he has been a hereditary poojari of the said temple.

- The cause of action for the suit is founded on Ext.B.1, which contain *exparte* decree and the judgment obtained by the defendant in a suit that he had laid in O.S.No.526 of 1995 he was declared as the poojari of the same temple. Ext.B.2 is a copy of the plaint in the aforesaid suit. That suit was laid against some strangers.

3. The defendant's case is predictable and he also claims that he is the hereditary *poojari* of the said temple and relies on Exts.B.1 and B.2 to sustain his contention.

4. The dispute went to trial and before the trial court, both sides adduced oral and documentary evidence. On the side of the plaintiff, he examined himself as P.W.1 and produced Exts.A.1 to A.4. Besides, he examined four other independent witnesses as P.W.2 to P.W.5. For the defendant, he examined himself as D.W.1 and examined an independent witness as D.W.



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2. On his side, besides Ext.B.1 and Ext.B.2 referred to above, another 8 documents were marked as Exts.B.3 to B.10.

4.1. Of the documentary evidence produced by the plaintiff, Ext.A.1 is an inscription in *palmyra leaves* ('*Olai Chuvadi*') dated 04.12.1941. P.W.1 in his evidence speaks about it. The executants of the document are stated to be the villagers of Mongampatti Village and one of the executants is shown to be the plaintiff's father Periyandi poojari. The trial court believed Ext.A.1 and decreed the suit.

4.2 When the matter reached the First Appellate Court, it disbelieved Ext.A.1 for the following reasons:

- a) that in 1941, paper and printing has already come into existence and therefore, there is no reason for the parties to execute some documents through palm leaves inscription;
- b) the document inasmuch as it was executed by Mongampatti villagers in favour of Arasamalai villagers, and since the plaintiff belong to Mongampatti village, he has not explained how he obtained



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custody of the document, rather the document has not been produced before the court from proper custody;

c) Ext.A.1 document was prepared in multiple palm leaves which makes it easy for inserting a new palm leaf; and

d) that neither P.W.1 nor P.W.2 are competent to speak about the genuineness of Ext.A.1.

Hence, the plaintiff is before this Court. It may be stated that during the pendency of the appeal, the plaintiff has passed away and his legal heirs have been impleaded. Of them, the second appellant has passed away and his legal heirs were impleaded as appellants 4 to 6.

5. This Second Appeal was admitted for considering the following substantial questions of law:

i) Whether the lower appellate court is right in law in reversing the decree of the trial court on a over simplification of the matter even without adverting to and finding to be wrong, the specific finding of the trial court that the appellant has proved his case on the strength of Exts.A.1 to A.4 and also on the basis of the oral evidence



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of P.W.5?

ii) Whether the lower appellate court has erred in law in not raising presumption under Section 90 of the Indian Evidence Act regarding Ext.A.1, a document of 50 years old and whether the vital error which goes to the root of the matter does not vitiate the judgment thereby?

iii) Whether the finding of the lower appellate court that the appellant has not discharged his burden of proof as to the genuineness of the document Ext.A.1 does not proceed on a total misconception of Ext.A.1 and is not merely perverse?

iv) Whether the dismissal of the suit on the ground that the trial court has omitted to frame a specific issue on the genuineness of Ext.A.1 is tenable in law when both the parties went to trial fully knowing their rival case and lead all the evidence in support of their contentions regarding Ext.A.1 more particularly when the trial court had given a categoric finding on Ext.A.1 after detailed analysis?



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6. The learned counsel for the appellants submitted that the first appellate Court has negated Ext.A.1 not on the basis of evidence disproving its genuineness but on the basis of its own impressions. It may be true that paper and printing might have come into existence in 1941, but no law prohibits the parties from executing a document on palm leaves. After all, it is not a registered document. It is left to the choice of the parties as to how they intend to execute certain documents, and it is not for the court to invest its suspicion on the genuineness of the documents. So far as the custody of the document is concerned, after all the temple belongs to Arasamalai village and Mongampatti village, and the document was obtained from Arasamalai village. The third point is that there is a possibility for inserting any new leaf is concerned, first there must be a basis for its suspicion on evidence and if at all the first appellate Court was apprehensive about it, it should have directed its examination by men competent to speak about it, rather than disbelieving it without a shred of evidence to support it.

7. The learned counsel for the respondent submitted that at the end of the day, the plaintiff has filed the suit claiming right to office and inasmuch as



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he passed away, the cause of action does not survive to his son since the hereditary character of the office of the plaintiff was not established. As to the rest, he had adopted the line of reasoning of the First Appellate Court.

8. This Court is in agreement with the argument of the counsel for the defendant/respondent. The suit is laid for right to office and it necessarily ends with the plaintiff. Having stated thus, there is also merit in the arguments of the counsel for the plaintiffs that an ex-parte decree not inter parties which the defendant has produced cannot tilt the balance in his favour. The defendant also needs to establish how he was entitled to claim a right to be a poojari of the temple. And, this Court does not also appreciate the line of reasoning of the first appellate court for rejecting Ext.A.1.

9. In conclusion, this Court dismisses the appeal, not because the plaintiffs have not made out a case on merit, but because the plaintiff has died. It is however, open to any of his heirs who claim a right of hereditary *poojari* of the village temple in question to work out remedies in an independent suit. It is made clear in the eventuality of any such suit being filed, no finding of



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the first appellate court can be treated as having attained finality, since the suit itself has now become an aborted effort. No costs.

.12.2022

Index : Yes/No
Internet : Yes/no
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To,
1. The District Judge Court, Sivaganga.
2. The District Munsif Court, Manamadurai.

N.SESHASAYEE, J.

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