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SA.No.1276 of 2009



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

CORAM

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**SA.No.1276 of 2009**

**and**

**M.P.No.1 of 2009**

1.Andavankoil Samy,  
Param Village,  
Rep. by its Dharmakatha  
Cum Poosari Chandrahasa Padayachi (died)

2.C.Kaliya Perumal

3.C.Rajenderan

... Appellants

Vs.

Paranam Andavar Veeran Kovil  
Thiruvaru,  
Through its Nattanmai Karargal

1.Vadivel (died)

2.Okandha Padayachi (died)

3.Ranganathan (died)

4.Chinnasamy Padayachi (died)

5.Palanivel

6.State of Tamil Nadu rep. by its  
District Collector, Perambalur.



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7.The Tahsildar,  
Sendurai, Perambalur.

8.R.Palanisamy.

... Respondents

*[Sole Appellant died, A.2 and 3 are brought on record as LR's of the deceased sole appellant viz. Chandrahasa Padayachi vide Court order dated 14.09.2022 made in CMP.No.4847, 4851 & 4852 of 2022 in SA.No.1276 of 2009 (KRJ)]*

*[R.1, R.2, R.4 died, A.2 & A.3 are exempted from bringing LR of R1, R.2 and R..4 vide Court order dated 14.09.2022 made in C.M.P.No.13548/22 in S.A.No.1276/2009]*

*[R.3 died, R.8 brought on record as LR's of the deceased R.3 vide Court order dated 14.09.2022 made in CMP.No.11711, 11715 & 11723 of 2022 in S.A.No.1276 of 2009 (KRJ)]*

**PRAYER:** Second Appeal filed under Section 100 of the CPC, against the judgement and decree of the learned Subordinate Judge Ariyalur made in A.S.No.52/2003 dated 29.06.2006 in confirming the Judgement and Decree of the learned Additional District Munsif of Ariyaur made in O.S.No.254 of 2000 dated 27.12.2002.

For Petitioner : Mr.J.Ramakrishan

For Respondent : Mr.P.Valliappan [R.1, R.4 and R.5]

: MR.Gokul Krishnan [R.3, R.6 and R.7]



## **JUDGEMENT**

The defendants in O.S.No.254 of 2000, on the file of the District Munsif, Ariyalur are the appellants before this Court. The suit had been presented by the Nattamaiders of the Paranam Andavar, Veeran Temple for declaration that the suit temple (i.e., Paranam Andavar, Veeran Temple) belongs to the plaintiff's and for a consequential injunction restraining the 1st defendant and their men from interfering with the right and management of the temple by the plaintiffs.

2. The suit temple is situated in the village of Paranam under the name and style of Paranam Andavar, Veeran Temple in S.F.No.118 and measuring an extent of 16.76 acres (marked as red portion in the rough plan).

3. The case of the plaintiffs is that S.F.No.118 belongs to the Government and it is a temple poromboke. There is another temple which had been in usage by the ancestors of the 1st defendant also by the same name. Dispute had arisen with respect of the management of the temple (marked as blue portion in the rough plan) between those belonging to the plaintiff's branch and those belonging to the 1st defendant's branch in



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O.S.No.38/45. The said suit in OS.No.38/45 went in favour of the 1st defendant. Therefore, the ancestors of the plaintiffs constructed a new temple by name Veeran and Andavar in the year 1955. Therefore, it is clear that the second temple came to be constructed on account of the fact that the plaintiff's predecessors in management of the temple had lost OS.No.38/45. The narration does not stop here. The 1st defendant's ancestors filed another suit in OS.No.87/1956 for the purpose of a mandatory injunction to remove the Soolam and the temple constructed by the plaintiff's ancestors in the year 1955. The said suit was dismissed.

4. The cause of action for the present suit was that the 1st defendant had filed OS.No.142/1996 for a declaration that the entire extent of 16.76 acres belongs to the previous temple, namely, the deity of Andavar Kovil. Fearing that under the guise of obtaining the decree in OS.No.142/1996, the 1st defendant might interfere with their right, the plaintiffs filed an application to implead themselves in the said suit. The application was dismissed. As they feared the 1st defendant might interfere with their right, the present suit had been filed.



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5. Pending the suit, an application was taken out for appointment of an Advocate Commissioner in IA.No.192/1995. An Advocate Commissioner was appointed and had submitted a report which was marked as Ex.B.1.

6. The Trial Court came to the conclusion that the plaintiffs are in possession of the property and that they, being in distinct and separate portions of S.F.No.118. There was no confusion in the minds of the parties with respect to the separate existence of the temples. The Andavar & Veeran temple is shown in red portion in the rough plan and the Andavar temple shown in the blue portion. After appreciation of evidence, the Trial Court decreed the suit in so far as the red color portion is concerned. Aggrieved by the same, an appeal was preferred in A.S.No.52/2003 on the file of the Sub Court, Ariyalur.

7. The learned first Appellate Judge held that the previous judgement referred to above i.e. OS.No.87/1956 would categorically show that the 1st defendant cannot interfere with the right of the plaintiffs over the suit schedule mentioned property and therefore he dismissed the appeal. Against the said concurrent findings, the present Second Appeal has been filed.



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8. Mr.S.Parthasarthy, learned Senior Counsel appearing on behalf of Mr.J.Ramakrishnan, learned counsel for the appellant would vehemently contend that notice under Section 80 CPC was not issued and the suit should fail. Apart from that, he would contend that since material particulars as required under Order VII Rule 3 CPC had not been furnished, the suit properties are incapable of identification and hence the suit ought to have been dismissed.

9. This Court had ordered notice of admission on 17.06.2010. The appeal had not been admitted. I have gone through the plaint, the rough-plan, the written statement and the documents filed by either side. I have carefully perused the judgements of the Courts below. Both the parties have in clear cut terms, are aware as to where the two temples are existing and went to trial on that issue. Hence, the question of identification of property is not an issue at all. It is on record that the 1st defendant's predecessors had filed OS.No.87/1956 to remove the temple. The said suit was dismissed which shows that the plaintiffs have been in possession and enjoyment of the temple at least from 1956 till date. The said judgment is binding on the parties and their successive legal representatives.



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10. In so far as argument under Section 80 CPC, it is the matter ought to have been raised before the evidence of merits of the case. I am not willing to reject the plaint on a technical plea when the Courts below have granted a decree in favour of the respondent. Therefore, despite the vehement contentions of the learned senior counsel, I do not think any Substantial Question of law arise for consideration in this appeal.

11. In fine, the Second Appeal is dismissed. The judgement and decree in A.S.No.52/2003 on the file of the Sub Court, Ariyalur dated 29.06.2006 in confirming the judgement and decree in OS.No.254 of 2000 on the file of the District Munsif, Ariyalur dated 27.12.2002 stands confirmed. The rough plan appended to the plaint shall form part of the decree. No costs. Consequently, the connected Miscellaneous Petition is closed.

**24.03.2023**

Index : Yes/No  
Internet : Yes/No  
Neutral Citation : Yes/No  
shr



SA.No.1276 of 20

To

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1. The Subordinate Judge Ariyalur.
2. The Additional District Munsif of Ariyaur.



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SA.No.1276 of 2009

**V.LAKSHMINARAYANAN. J,**

shr

**SA.No.1276 of 2009**  
**and**  
**M.P.No.1 of 2009**

**24.03.2023**