



S.A.No.180 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.180 of 2021
and C.M.P.No.3712 of 2021

Arulmigu Saravana Pillaiyar Temple,
Saravappa Naiyaken Dharma Chanthiram and
Arulmigu Selva Muthu Mariamman Temple,
S.N.Chavadi, Cuddalore,
Rep. by its fit person,
J.Raja Saravanakumar,
S/o. K.Jayachandran,
Executive Officer,
Arulmigu Subramanaswamy Tirukoil,
Karamanikuppam,
Cuddalore Taluk.

... Appellant

Vs.

1. K.Amutha
2. The Joint Registrar,
Thirupathiripuliyur,
Cuddalore – 2.

... Respondents

Prayer :- Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 31.10.2019 made in A.S.No.66 of 2016 by the learned Principal District Judge, Cuddalore, confirming the judgment and decree dated 01.08.2016 passed in O.S.No.134 of 2010 on the file of the



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learned Principal Sub Judge, Cuddalore by allowing the above appeal and decreeing the suit as prayed for.

For Appellant : Mr.T.S.Baskaran
For Respondents
For R1 : Mr.V.Raghavachari
Senior Counsel
Mr.A.Tamilarasan
For R2 : Mr.C.Sathish
Government Advocate.

JUDGMENT

This Second Appeal has been filed as against the judgment and decree dated 31.10.2019 passed by the learned Principal District Judge, Cuddalore, in A.S.No.66 of 2016, confirming the judgment and decree dated 01.08.2016 passed by the learned Principal Sub Judge, Cuddalore, in O.S.No.134 of 2010, thereby dismissing the suit filed by the appellant for declaration, delivery of possession, permanent injunction and mandatory injunction.

2. The appellant is the plaintiff and the respondents are the defendants. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

2.1. The case of the plaintiff is that the suit property originally



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belonged to the government and thereafter it was endowed to the plaintiff, by virtue of title grant in T.D.No.2310 issued by the Inam Commissioner in favour of the plaintiff. The income derived from the suit property has been utilized for the temple. It was managed by its manager Abbai Naidu. The said Abbai Naidu had three sons viz., Gopalsamy Naidu, Saranagapani Naidu and Deenadayala Naidu. The said Gopalsamy Naidu had two sons viz., G.Sudersanan and G.Parthasarathy. Therefore, the said Abbai Naidu had no title, interest or right over the suit schedule property, since he was Manager and he was directed to manage the suit property belonged to the plaintiff.

2.2. While being so, there was dispute in managing the suit property between the heir of Gopalsamy Naidu viz., G.Sudersanan and one Palani. They filed proceeding before the Inam Abolition Tribunal in I.A.T.A.No.88 of 1971 and it was declared that the suit property is the temple property and as such no individual has right to get patta in their favour. Further held that the property comprised in survey No.2669/1 to an extent of 2.53 acres and the property comprised in survey No.2669/5 to an extent of 4 cents, totalling



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2.57 acres belongs to the plaintiff by an order dated 07.11.1977, which was marked as Ex.A.3.

2.3. Again the three sons of Abbai Naidu filed suit for declaration in respect of the suit schedule property in their favour and recovery of possession from the third party in O.S.No.268 of 1961 and it was dismissed and declared that the suit property belongs to the plaintiff temple and confirmed up to this Court in SA.No.1040 of 1965. In fact, one Sudersanan, son of Gopalsamy Naidu filed another suit in O.S.No.498 of 1992 in the name of the plaintiff represented by him as the Manager, for declaration and permanent injunction in respect of the suit property. It was also decreed in favour of the plaintiff.

2.4. Thereafter, one of the sons of Abbai Naidu viz., Deenadayalan and his grandson viz., Parthasarathy filed collusive suit against one Meera Bai, who is none other than the daughter of the said Deenadayalan, in O.S.No.290 of 1998 and sought for permission to sell the suit property without adding the plaintiff or the HR&CE Department as party. It was a



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collusive suit and the same was decreed. On the strength of the said decree, the suit property encumbered by execution of sale deed dated 08.07.2004 in favour of the first defendant. However, it was returned without registration for the reason that the property stands in the name of the plaintiff, while presented for registration. On the strength of permission obtained in O.S.No.290 of 1998, the first defendant filed a Writ Petition before this Court in W.P.No.32553 of 2004 and as directed by this Court, the second defendant registered the sale deed dated 08.07.2004, that too after the period of 3½ years, without even insisting the presence of the vendor of the property. Therefore, the plaintiff filed suit for declaration, recovery of possession, permanent injunction and also mandatory injunction.

3. Resisting the same, the first defendant filed written statement and stated that there was an attempt made by the HR&CE Department to take over the suit property and hand it over to the Regional Transport Authority, Cuddalore, for construction of office building and house building. Therefore, the Manager of the private trust viz., Saravappa Naicken Dharma Chathiram filed suit in O.S.No.498 of 1992 and the same was decreed by



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the judgment dated 16.07.1993. However, the plaintiff temple is not situated in T.S.No.2669/1 and it is situated in T.S.No.2669/5. In order to sell the suit property, one of the legal heir viz., one Parthasarathy obtained permission from the Court of law in O.S.No.290 of 1998 and executed the sale deed in favour of the first defendant. However, it was returned without registration and as such the first defendant was constrained to file Writ Petition in W.P.No.32553 of 2004 and as directed by this Court, the second defendant registered the sale deed. Therefore, the plaintiff has no title over the property.

4. On the basis of the averment made in the plaint and the written statement, the trial Court framed the following issues:-

(i) Whether the suit properties are trust properties as alleged by the plaintiff?

(ii) Whether the suit is barred by the doctrine of Res Judicate as alleged by the first defendant?

(iii) Whether the plaintiff is entitled to decree of declaration as prayed?

(iv) Whether the plaintiff is entitled to permanent injunction as prayed?



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(v) *Whether the plaintiff is entitled to decree of mandatory injunction as alleged?*

(vi) *to What other relief the plaintiff is entitled to?"*

5. On the side of the plaintiff, they had examined P.W.1 and marked Ex.A.1 to Ex.A.21. On the side of the defendants, they had examined D.W.1 and also marked documents in Ex.B.1 to Ex.B.4. On a perusal of oral and documentary evidences, the trial Court dismissed the suit. Aggrieved by the same, the plaintiff filed appeal suit and the same was also dismissed by confirming the judgment passed by the trial Court. Hence the present Second Appeal.

6. While admitting the Second Appeal, this Court framed the following substantial question of law. :-

“a) Whether the Courts below were in error in dismissing the suit based on the judgment and decree in O.S.No.290 of 1998 in which the plaintiff temple was not a party?

b) Whether the Courts below committed a grave error in holding that the Sale of suit property was with the sanction



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of the Court where admittedly the plaintiff was not the party in the O.S.No.290 of 1998?

c) Whether the Courts below failed to note that the judgment and decree in O.S.No.498 of 1992 was in favour of the plaintiff temple and not in favour of the individual/plaintiff and the second defendant in O.S.No.29 of 1998.”

7. The learned counsel appearing for the appellant submitted that both the Courts below without looking into the documents filed by the plaintiff and relied upon the order dated 30.07.2007, passed by this Court in W.P.No.32553 of 2004, dismissed the suit. He further submitted that by an order dated 29.10.2010, the District Revenue Officer, Cuddalore, observed that the suit property is temple property and directed to reinstatement of patta in favour of the temple. Even till today, the revenue records stands in the name of the plaintiff. The permission obtained in O.S.No.290 of 1998, is nothing but collusive suit between the legal heirs of Abbai Naidu that too without adding the plaintiff and HR&CE Department, for seeking permission to sell the property.

7.1. He further submitted that in the earlier proceedings, the suit



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property was categorically declared in favour of the plaintiff and the suit property never belonged to any individual. While being so, without adding the plaintiff and the HR&CE Department, any permission obtained by the deceased Parthasarathy is not valid and as such the entire sale is nothing but sham and nominal. In fact, the said sale deed was registered without any identification of the executant and without taking photograph and other details of the executant, the second defendant mechanically registered the sale deed by citing the order passed by this Court in W.P.No.32553 of 2004. Hence, he prayed to allow the Second Appeal and decreed the suit prayed for.

8. The learned counsel appearing for the first defendant submitted that she purchased the property for valid sale consideration that too after obtaining permission from the Court of law in O.S.No.290 of 1998. Thereafter, the sale deed was not registered, as such the first respondent was constrained to file Writ Petition before this Court in W.P.No.32553 of 2004, and this Court directed the second respondent to register the document. Accordingly, it was registered and she is in possession and



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enjoyment of the suit property. Therefore, the Courts below rightly dismissed the suit and prayed for dismissal of the present Second Appeal.

9. Heard Mr.T.S.Baskaran, learned counsel appearing for the appellant and Mr.V.Raghavachari, learned Senior Counsel appearing for the first respondent and Mr.C.Sathish, learned Government Advocate appearing for the second respondent.

10. The appellant filed suit for declaration, recovery of possession, injunction and mandatory injunction in respect of the suit schedule property. The case of the plaintiff is that the suit property originally belonged to the government and thereafter it was endowed to the plaintiff, by virtue of title grant in T.D.No.2310 issued by the Inam Commissioner in favour of the plaintiff. The income derived from the suit property has been utilized for the temple. It was managed by its manager Abbai Naidu. The said Abbai Naidu had three sons viz., Gopalsamy Naidu, Saranagapani Naidu and Deenadayala Naidu. The said Gopalsamy Naidu had two sons viz., G.Sudersanan and G.Parthasarathy. Therefore, the said Abbai Naidu had no



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title, interest or right over the suit schedule property, since he was Manager and he was directed to manage the suit property belonged to the plaintiff.

11. While being so, there was dispute in managing the suit property between the heir of Gopalsamy Naidu viz., G.Sudersanan and one Palani. They filed proceeding before the Inam Abolition Tribunal in I.A.T.A.No.88 of 1971 and it was declared that the suit property is the temple property and as such no individual has right to get patta in their favour. Further held that the property comprised in survey No.2669/1 to an extent of 2.53 acres and the property comprised in survey No.2669/5 to an extent of 4 cents, totalling 2.57 acres belongs to the plaintiff by an order dated 07.11.1977, which was marked as Ex.A.3.

12. In fact, three sons of said Abbai Naidu filed suit for declaration to title and recovery of possession, in respect of the same extent of property from the third parties in O.S.No.268 of 1961 on the file of the learned Additional District Munsif Court, Cuddalore, and it was observed that the suit property is attached to the plaintiff temple and they are the religious



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endowments. Ultimately held that the suit property is not the property of the plaintiffs in that suit and the properties are religious endowment and also dismissed the suit. The said judgment has been marked as Ex.A.4. Aggrieved by the same, appeal suit was filed in A.S.No.337 of 1963 and the same was also dismissed by the judgment dated 18.11.1964, which was marked as Ex.A.5. As against the said judgment, they also filed second Appeal in S.A.No.1040 of 1965 and the same was also dismissed by this Court by the judgment dated 26.08.1969 which was marked as Ex.A.6.

13. Thereafter, the said Sudersanam, who is the son of Gopalsamy Naidu claimed to be the Manager of the plaintiff, filed a suit in O.S.No.498 of 1992 on the file of the District Munsif Court, Cuddalore, as against the Government, the Commissioner of HR & CE and the Regional Transport Officer, Cuddalore, alleged that the suit property should not let out to the Regional Transport Office. Though he obtained exparte decree, the said suit was filed in the name of the plaintiff viz., Saravappa Naicker Dharma Chattiram Chavadi and Pillaiyar Temple represented by present Manager Sudersanam. The prayer sought for in the said suit was also to declare that



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the plaintiff's title to the suit property and also consequential injunction.

Therefore, the said suit property was also treated as to the plaintiff and not for any individual.

14. Another son of the said Abbai Naidu one Deenadayalan and his grandson viz., Parthasarathy filed suit in O.S.No.290 of 1998 on the file of the Sub Court, Cuddalore and sought for permission to sell the property and obtained permission on 05.07.1999, which was marked as Ex.A.9. It is also seen that they have not added the plaintiff or the HR & CE department in the said suit. It was collusive one since one Meera Bai was shown as the second defendant who is none other than the daughter of the said Deenadayalan, who was the plaintiff in the said suit. In order to grab the suit property, the said permission was obtained by collusive suit and to execute sale deed in favour of the first defendant by the sale deed dated 08.07.2004. Immediately after execution of the sale deed dated 08.07.2004, the said Parthasarathy died. However, the second defendant refused to register the said document and the same was returned without any endorsement.

15. On the strength of the permission granted in O.S.No.290 of



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1998, the first defendant filed Writ Petition before this Court in W.P.No.32553 of 2004 and this Court by an order dated 30.07.2007 held that the document should be registered. As directed by this Court, without even the presence of the vendor viz., Parthasarathy, it was registered by the second defendant. Thus, it is clear that only because of the direction issued by this Court, the second respondent mechanically registered the sale deed without insisting the presence of the parties, since the vendor already died.

16. It is also seen from the records that the present town survey number for the suit property are 2577 (old No.2669/1) and 2581 (old No.2669/5) stand in the name of the plaintiff. Though the description of the property stated in the plaint as 2669/3, it is nothing but typographical error and it should be 2669/5. In fact, the property comprised in survey No.2669/3 is also in the name of the plaintiff with new survey No.2579. Subsequently, on the strength of the sale deed, the first defendant was issue patta and aggrieved by the same, the plaintiff filed an appeal. Though it was dismissed, the further appeal is pending before the District Revenue Officer, Cuddalore in the proceedings No.29181/09/V3. Even then, the Court below



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concluded that there is no records on the part of the plaintiff to show that the suit property is in survey No.2669/3 and the plaintiff produced the document only in respect of the property in survey Nos.2669/1 and 2669/5.

17. As stated supra, except in the description of the property, all the documents and the entire suit averment made only in respect of the property comprised in survey No.2669/5 and not in respect of the property comprised in survey No.2669/3. It is also evidence from the exhibit which is marked as Ex.A.3 viz., the order of the Inam Abolition Tribunal in I.A.T.A.No.88 of 1971 dated 31.10.1977.

18. That apart, the legal heirs of the said Abbai Naidu viz., Deenadayalan and one Parthasarathy, filed the collusive suit in O.S.No.290 of 1998 on the file of the Sub Court, Coudalore, and sought for permission to sell the suit property. In the said suit, they were shown one Meera Bai, as the second defendant, who is none other than the daughter of the said Deenadayalam, without adding the necessary party viz., plaintiff and HR&CE department and any other government body to the suit. Section 34



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of the HE&CE Act contemplates that the permission should be obtained before dealing with the property belongs to the religious endowment.

19. In this regard, it is relevant to rely upon the judgment reported in **(2006) 1 SCC 257** in the case of ***the Joint Commissioner, HR & CE Vs. Jayaraman and ors.***, which held as follows :-

“8. The grant was of government land. The grant was, even going by the case of the claimants, in favour of persons who were acting as poojaries of the temple, for the purpose of utilizing its income for poojas and maintenance of the temple. Even in the extract of the fasil register, it is shown that the registered name of the inamdar is poojaries of Mariamman and Bhagavathiamman Temples and the enjoyers as Veerana Pandaram and Arunachalam Chetty. The relation between the inamdar and the enjoyer is shown as 'Devadayam' and in the column regarding details of inam, it is shown as for poojas to God (Sasvatham) and in the column relating to details of endowment, it is shown that the income of the land is used by the poojaries for pooja and maintenance of the temples. Prima facie, Government land had been dedicated to the temples by



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way of grants by the Government. Even if, the income therefrom had alone been dedicated to the temples, it would still be a religious trust or endowment and certainly not a private trust to which the Indian Trusts Act would apply. Section 1 of the Indian Trusts Act itself provides that nothing contained therein applies to public or private religious or charitable endowments. The endowment here was certainly not a private endowment since there is no case that the temples are private. The endowment was for a religious purpose, the conduct of poojas in the temples and the maintenance of the temples. Therefore, endowment was of public property for the benefit of public temples and the poojaries were constituted the trustees. They were trustees imposed with the obligation of spending the income from the properties, for the poojas and maintenance of the temple. It was clearly a case of a public religious endowment and by virtue of Section 1 of the Act, the Indian Trusts Act would have no application. Learned counsel for the respondents tried to argue that the application under Section 34 of the Indian Trusts Act was maintainable but could not argue that these were private trusts by reference to any relevant material. The lands were



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government lands and the Government had dedicated the properties or the income therefrom for the up-keep of public temples. By no stretch of imagination, it can be held that it was a private trust coming within the purview of the Indian Trusts Act. The District Judge has, therefore, clearly acted without jurisdiction in entertaining the application under Section 34 of the Indian Trusts Act. On this short ground, it has to be held that the order passed by the District Judge in the application filed under Section 34 of the Act granting permission to the claimants to sell the properties is one without jurisdiction. The High Court was completely in error in brushing aside this vital aspect while considering whether the District Judge had acted within jurisdiction in entertaining the application under Section 34 of the Indian Trusts Act, 1882.”

20. It is also seen that the appeal filed by the plaintiff before the Revenue Divisional Officer, Cuddalore, was ordered by an order dated 29.10.2010, which was marked as Ex.A.14. In the said order, it is observed that the suit property is temple property and directed to reinstatement of patta in favour of the plaintiff. In this regard, it is relevant to extract the



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provision under Section 34 of the HR & CE Act, as follows:-

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“34. Alienation of immovable trust property.—(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution :

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by the Commissioner.

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government”

Thus it is clear that once the government land had been dedicated to the temples by way of grants by the Government, even if the income derived has alone been dedicated to the temples, it would still be a religious trust or endowment and certainly not the private trust. Therefore, any sale would be



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hit by Section 34 of the HR&CE Act.

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21. Further, the second respondent mechanically registered the sale deed dated 08.07.2004 as per the order passed by this Court in W.P.No.32553 of 2004, that too without even insisting the presence of the parties. Admittedly, one Parthasarathy had executed the sale deed in favour of the first defendant on 08.07.2004, which was registered only on 27.11.2007 after the period of 3½ years from the date of execution. It is settled law that without the presence of the vendor, no document can be registered and the vendor's presence is very much required. However, the said Parthasarathy was not present at the time of registration of sale deed, since he died in the year of 2004 itself, viz., immediately after execution of sale deed in favour of the first defendant on 08.07.2004.

22. As stated supra, no private individual has right, interest or title over the suit schedule property, since it was endowed in favour of the plaintiff by the Government. Thereafter, the Inam Commissioner had granted title deed on 13.09.1897 by virtue of T.D.No.2310, which was



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marked as Ex.A.1. Therefore, all the substantial questions of law involved in this appeal are answered in favour of the plaintiff and both the judgment and decree passed by the Courts below are liable to be set aside.

23. In view of the above discussions, the judgment and decree dated 31.10.2019 passed by the learned Principal District Judge, Cuddalore, in A.S.No.66 of 2016, confirming the judgment and decree dated 01.08.2016 passed by the learned Principal Sub Judge, Cuddalore, in O.S.No.134 of 2010, are hereby set aside the suit filed by the plaintiff is decreed as prayed for.

24. Accordingly, the Second Appeal stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Speaking order/Non-speaking order

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To

1. The Principal District Judge,
Cuddalore.
2. The Principal Sub Judge,
Cuddalore.

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and C.M.P.No.3712 of 2021

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