BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE K.K. RAMAKRISHNAN

A.S(MD)No.649 of 2011

Idol Sri Kalyanapasupatheeswara Swamy
Sri Kalayanapasupatheeswaraswamy Devasthanam,
Karur, represented by its Executive Officer,
Karur. .. Appellant/Plaintiff

Vs.

1.K.Natarajan
2.K.Somasundaram
3.K.Krishnan
4.M.Palaniappan
5.M.Ramasamy
6.P.Sekar
7.P.Subramanian
8.R.Marimuthu
9.V.Srinivasan
10.V.Venkatesan
11.P.Ganesan
12.P.Sivasamy
13.P.Balan
14.P.Nagarani
15.P.Ponmudi .. Respondents/Defendants

Appeal filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 31.03.2010 made in O.S.No.22 of 2007 on the file of the District Judge, Karur and allow this first appeal.

For Appellant	: Mrs.N.Krishnaveni, Sr.Counsel for Mr.P.Thiyagarajan
For R1 to R3, R11 to R15	: Mr.K.Govindarajan
For R4 to R10	: No appearance

J U D G M E N T

DR. G.JAYACHANDRAN,J.
AND
K.K. RAMAKRISHNAN,J.

This appeal suit is directed against the judgment and decree passed by the District Court, Karur, in O.S.No.22 of 2007 filed by the appellant herein, against the disallowed portion of the relief sought for.

2.The sum and substance of the plaint is that, the suit schedule properties, three in numbers, are the properties dedicated for the Temple to perform Aani Thirumanjanam Kattalai and other religious ceremony and the same was endowed by one Appavoo Chettiar.

3.According to the plaintiff, items 1 & 2 of the suit schedule properties were endowed to the Temple through a registered Will, dated 11.01.1914 by Appavoo Chettiar for due performance of Aani Thirumanjanam Kattalai to the deity of Natarajar in Pasupatheeswara Swamy Temple, Karur and the third item of property was purchased from and out of income derived from the first schedule properties, in the year 17.01.1927, by the Trustees for the purpose of Aani Thirumanjanam expenses. While so, the grandsons of Appavoo Chettiar, who were arrayed as D1 to D3, had leased out the first schedule properties to the defendants 4 to 8 and had collected advance of Rs.15 Lakhs and also permitted the defendants 4 to 8 to put up a construction over the land. Likewise, the third item of the suit schedule properties leased to the defendants 9 & 10. As far as the second schedule properties are concerned, the same been sold to the defendants 11 to 15. The defendants 1 to 3 has dealt the property as if their personal property deriving the right through Will of Nagalinga Chettiar, who is one of the son of Appavoo Chettiar, stating the Temple as a beneficiary entitled for the absolute right over the suit properties and for possession of the same. Hence, suit for declaration possession and for permanent injunction. The said suit was resisted by the defendants 1 to 3.

3(i).A written statement was filed by the first defendant and adopted by the other two defendants. The remaining defendants remained ex-parte. The written statement filed by the defendants 1 to 3 was on the line that the properties mentioned in schedule 1 and 2 were not dedicated to the Temple absolutely for conducting Aani Thirumanjanam Kattalai. The claim of the plaintiff that Appavoo Chettiar created trust with his sons as trustees for the performance of Kattalai also denied. Further, it was contended that the Executive Officer of the plaintiff Temple has no right to file a suit and he is not a person authorized to file a suit. It was also contended on behalf of the defendants that the properties have not yielded adequate income from the suit schedule properties. Therefore, for performing Kattalai, the first schedule properties were leased out in favour of the defendants 4 to 8. The third item of properties were leased out to the defendants 9 and 10. The properties being agricultural lands and due to urbanization, it has necessitated the defendants to lease out the property for better income. As far as the title over the property is concerned, it always vested with the defendants as a personal property with the charge mentioned in the Will of Appavoo Chettiar.

3(ii).With these pleadings, the trial Court has framed the following issues on 04.02.2009:

(1).Whether the suit properties 1 and 2 are self acquired properties of Appavoo Chettiar?

(2)Whether schedule 1 and 2 of the suit properties have been dedicated by Appavu Chettiar is favour of Aani Thirumanjanam Kattalai?

(3)Whether the Will executed by Kandasamy with respect to schedule 1 and 2 of the suit properties in favour of defendants 1 to 3 is valid and whether the Will binds on the plaintiff's temple?

(4)Whether the third schedule of suit properties was purchased out of income derived from the first item of suit properties for the purpose of Aani Thirumanjanam Kattalai Fund?

(5)Whether the plaintiff is entitled to the relief of declaration that the suit properties are absoluted properties of Aan Thirumanjanam Kattalai?

(6)Whether the plaintiff is entitled to recovery of possession?

(7)Whether the plaintiff is entitled to the relief of

declaration with respect to sale deed effected on 19.04.2002 and 25.01.2005 in favour of the defendants 11 to 15 by the defendants 1 to 3?

(8)Whether the plaintiff is entitled to the relief of permanent injunction that the suit properties should be encumbered?

(9)To what relief the plaintiff is entitled to?"

3(iii).After examining all the witnesses, the trial Court, heard the arguments of the learned counsel for the plaintiff and the defendants, already framed the issues which have to be recasted as follows:

(1)Whether the Executive Officer, who has filed the suit on behalf of the plaintiff's Temple is entitled to file the suit?

(2)Whether the suit properties 1 and 2 schedules were dedicated in favour of the plaintiff's Temple by Appavu Chettiar as per Will dated 11.01.1914?

(3)Whether the plaintiff is entitled to claim any right over the schedule 3 of the suit properties?

(4)Whether the plaintiff is entitled to decree for declaration that the suit properties are absolute properties of Aani Thirumanjanam Kattalai?

(5)Whether the plaintiff is entitled to the relief of recovery of possession?

(6)Whether the plaintiff is entitled to declaration that the sale effected in favour of the defendants 11 to 15 through sale deed bearing Nos.5196, 5197, 5198 and 5199 of 2002 executed on 19.04.2022 and sale deed bearing No.444 of 2005 executed on 25.01.2005 as in valid and unenforceble against the plaintiff?

(7)To what relief the plaintiff is entitled to?"

4.The trial Court, after examining the recitals, found that Ex.A.3 is a Will of Appavoo Chettiar, dated 11.01.1914, which has endowed the properties for Kattalai of Pasupatheeswarar Swamy Temple and relying on the judgment of the Hon'ble Supreme Court, in the case of ***Sri Arthanaresswarar of Tiruchengode-vs-T.M.Muthusamy Padayachi***, reported in ***AIR 1972 S.C. 2069***, held that the recital of the Will indicates that the properties are charged for the purpose of Aani Thirumanjanam Kattalai and there is no recital preventing the alienation of the suit property or encumbrance. Therefore, held that Appavoo Chettiar has created a charge over the suit properties mentioned in schedule 1 and 2, but the dedication is only partial and not complete. Regarding the third schedule suit properties, the Trial Court has concluded that there is no evidence to show that the property mentioned in the schedule 1 and 2 had sufficient and surplus income to purchase the schedule three of the properties. Further held that the plaintiff has failed to prove that the third schedule properties were purchased out of income derived from the property mentioned in schedule 1 and 2 and thus, concluded that the plaintiff is not entitled for the relief of declaration and the lease effected in favour of the defendants 4 to 11 cannot be held invalid.

5.Aggrieved by the judgment and rejecting the relief of declaration, the present appeal suit is filed by the Temple on the ground that the trial Judge has failed to appreciate the recitals found in Ex.A.3 in a proper perspective. Further, the trial Judge has failed to consider the recital found in Ex.A.4, dated 17.01.1927, which is a sale deed in respect of third schedule property wherein the purchaser of the property is shown as the trustees of the Kalyanapasutheeswarar Swamy Thirukovil Aani Thirumanjanam.

6.The learned counsel appearing for the appellant would submit that the Court below, without considering the recitals found in these two documents as a whole, cherry picked certain sentence in between, had arrived at a wrong conclusion that there is only a charge created over the property and it is not the property of the Temple endowed absolutely.

7.The learned counsel appearing for the appellant relied upon the judgment of the Hon'ble Supreme Court in the case of ***idol of Sri Renganathaswamy, represented by its Executive Officer, Joint Commissioner-vs-P.K.Thoppulan Chettiar, Ramanuja Koodam Anandhana Trust, represented by its Managing Trustee and others*** reported in ***(2020) 17 SCC 96***. The relevant portion of the judgment is extracted hereunder:

> *"15.In Menakura Dasaratharami Reddi v. Duddukuru Subba Rao, a Constitution Bench of this Court dealt with the question of whether the suit properties were the subject-matter of a public charitable trust or were merely charged with the obligation to undertake specific charities. P.B. Gajendragadkar. J. (as the learned Chief Justice then was), speaking for the Court, held: (AIR p. 800, para 5)*
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> *"5. ..... Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is*

not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document. In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word "trust" or "trustee" is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter.

Is the private title over the property intended to be completely extinguished? Is the title in regard to the property intended to be completely transferred to the charity? The answer to those questions can be found by concentrating on the significance of the use of the word "trustee o "trust" alone but by gathering the true intent of the document considered as a whole."

8.The learned counsel appearing for R1 to R3 and R11 and R15 would submit that Appavoo Chettiar, in his Will dated 11.01.1914, with clear mind had earmarked his properties for endowment mentioned. Those properties are the suit schedule properties 1 and 2. He has dealt with these two properties differently and the purpose for which the beneficiaries of his

Will being clearly stated while in respect of item No.1, it has been mentioned that the property is purchased for the purpose of supporting Aani Thirumanjanam Kattalai of Kalyanapasutheeswarar Swamy Temple, Karur. The recital regarding the second item property is entirely different and in fact, the vesting of the property besides the share and the obligation attached to this property is different to that of the first schedule property. The suit properties been devolved upon the respondents 1 to 3 through their father Nagalinga Chettiar and based on the said Will, the second schedule properties were sold to the respondents 11 to 15.

9.Insofar as the first item of suit schedule properties are concerned, in the recital though there was no restriction for alienating the property but there is direct and absolute vesting of the property with the temple. Therefore, the Temple can claim absolute right over the properties.

10.In respect of the third schedule property, the learned counsel submits that in the absence of any proof that item properties mentioned in schedule 1 and schedule 2 had income to invest for the purchase of item 3 of suit schedule property. The recital found in Ex.A.4 cannot be construed as the property purchased from and out of income derived from the schedule 1 and schedule 2, even assuming the property in item 3 was from the fund of other two properties those two item properties were not the property of the Temple, the third item property purchased from the income of the 1 and 2 item properties only at the most, Will carry charge and nothing more.

11.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

12.The following points for determination framed:

(i)Whether the intention of Appavoo Chettiar as found in Ex.A.3 is to endow the property to the Temple for the purpose of Kattalai is absolute or only to create charge?

(ii)Whether the third item property purchased under Ex.A.4 on 17.01.1927 is a property purchased from the income accrued from the property mentioned in schedule 1 and 2?

(iii)Whether the property endowed to any specific religious purpose vesting absolutely or it has created only a charge?

13.In this case, Ex.A.3 is a Will of Appavoo Chettiar dated 11.01.1914. There is no dispute between the parties regarding the genuineness of the Will. In this Will, Appavoo Chettiar has declared that the first schedule property which he has purchased from and out of his fund absolutely dedicated to Karur Kalyanapasupatheeswaraswamy Temple for the purpose of conducting Aani Thirumanjanam Kattalai. The terms of the Will without any ambiguity disclose that the property is vested with Kalyanapasupatheeswaraswamy and from the income derived Thirumanjanam expenses should be met out. While saying so, Appavoo Chettiar has also provided the lower limit for the expenditure. The trial Court taking into consideration the lower limit fixed by Appavoo Chettiar had wrongly interpreted the document that the intention of Appavoo Chettiar is only to create charge over the property to that extend but not vested the property with the Temple.

14.The very purpose of executing the Will being spelt out by Appavoo Chettiar in his Will and he has also clearly stated that the schedule 1 property will vest with Kalyanapasupatheeswara Swamy Temple and the property should be managed by the trustees and one of the trustees must be his descendants. The moment the Will had come into effect, the Temple has become the owner of the property mentioned in schedule 1 which is to be administered by the trustees. By no stretch of imagination, the trustees have any right to alienate the property mentioned in schedule 1.

15.As far as schedule 2 property is concerned, as pointed out by the learned counsel for the respondents, the terms of recital is different and Appavoo Chettiar had indicated that the beneficiaries after defraying the expenses mentioned in the Will shall share equally the income derived from the second schedule property. Thus, the vesting of the property on the five named persons, who are the sons and daughters, has also specifically stated that the right vested on his daughters will be till her life time and thereafter, his son Nagalinga Chettiar and his heirs will have to share the property equally. Therefore, as far as the second schedule property is concerned, the observation of the trial Court that the endowment is only a charge over the property which the Temple can enforce but no title pass to the temple is correct and the said observation is upheld.

16.Regarding the third schedule property, the trial Court had misinterpreted the recitals of Ex.A.1, dated 17.01.1927. The deed describes the purchaser as the trustees of Kalyanapasupatheeswaraswamy Temple Ani Thirumanjanam Ursavam and the document also specifically say that the schedule mentioned property shall vest with Aani Thirumanjanam trust absolutely. The source for the purchaser money is also mentioned as paid by Aani Thirumanjanam Committee. While the schedule third property is purchased by the trustees of Aani Thirumanjanam Committee with consideration paid by the Aani Thirumanjanam Committee and the deed explicitly say the property purchased with an intention to vest absolutely for the purpose of Aani Thirumanjanam, the said vesting cannot be termed as only a charge and not absolute vesting.

17.As a result, the trial Court judgment and decree needs modification. The declaration sought in respect of the property mentioned in schedule 1 and schedule 3 is allowed and as far as schedule 2 property is concerned, the finding of the trial Court is upheld. The holder of the second schedule property is to perform the Kattalai as mentioned in the Will of Appavoo Chettiar and the charge over the property is in favour of the temple. Having held that the temple is entitled for the declaration of title in respect of the schedule 1 and 3 property, they are entitled for recovery of possession also. Accordingly, the relief of possession also is granted. As far as the relief of mesne profits is concerned, the plaintiff is permitted to work out his remedy under Order 20 Rule 12 C.P.C.

18.In the result, the ***Appeal Suit is allowed***. No costs.

(G.J.,J.) (K.K.R.K.,J.)
02.03.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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To,
1.The District Judge,
Karur.

2.The Section Officer,

VR Section,
Madurai Bench of Madras
High Court,
Madurai.

DR. G.JAYACHANDRAN,J.
AND
K.K. RAMAKRISHNAN,J.

Ns

A.S(MD)No.649 of 2011

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