



S.A.(MD).No.443 of 2017

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2023

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.443 of 2017

and

C.M.P.(MD)No.9272 of 2017

PL.Murugappan

... Appellant

/Vs./

1.The State of Tamilnadu,
represented by the District Collector,
District Collector's Office,
Sivagangai.

2.The Tahsildar,
Taluk Office,
Karaikudi, Sivagangai District.

3.The Panchayat Development Officer (GP),
Sakkottai Panchayat Office,
Karaikudi Taluk,
Sivangai District.

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment of the Sub-Court, Devakottai in AS.No.31 of 2016, dated 16.06.2017, confirming the Decree and Judgment of the Principal District Munsif Cum Judicial Magistrate Court, Karaikudi, in O.S.No.52 of 2013, dated 29.04.2016.

For Appellant : Mr.S.Madhavan

For R1 and 2 : Mr.A.Baskaran
Additional Government Pleader

For R3 : Mr.R.Velmurugan



S.A.(MD).No.443 of 2017

JUDGMENT

WEB COPY The plaintiff is the appellant herein and the defendants are the respondents.

For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit.

2. The suit is filed for declaration, permanent injunction and mandatory injunction for B-schedule property and bare injunction for “C” Schedule property. The defendants have put up an overhead water tank, constructed Panchayat Office, Village Administrative Office, Library and TV Room. When the defendants proposed to lay Tar Road, the dispute arose between the temple and the respondents. The Trial Court had dismissed the suit, against the same First Appeal was preferred and the same was dismissed. Hence the present second appeal is preferred by the Temple against the concurrent judgments of the Courts below.

3. The second appeal is admitted for the following substantial questions of law:

“(1) Whether the Lower Court is correct when it failed to note that the tank Patharkulam and the surrounding area of the temple, mentioning four boundaries fall in O.Siryvayal village belonging to A/m Airavatieswarar Soundranayagi Amman temple as assigned under Exhibit. A.5 by the Land Holder?”



(2) *Whether the lower court failed to note that the temple has got pre-existing title prior to the notified date by the Government under Act 26 of 1948 and further the same is in Natham area?*

(3) *Whether merely because the then Trustees of the temple have slept when Panchayat building and Over-head tank were put up but that will not take away the title of the Idol and under Section 108 of the Hindu Religious and Charitable Endowments Act; there is no limitation for the temple to claim the same?*

(4) *Whether the Lower Court erred in saying that in all the earlier cases in Civil Courts possession alone had been took note off but not the title; failing to infer that the possession shows the area as part of O.Siruvaal estate and further that the Kunnakkudi Dewasthanm held it as part of their Inam Estate?*

(5) *Whether the Lower court fails to understand the real significance of earlier Civil Court judgments Exhibits A1 to A4 keeping in mind the tenure law at the time not properly inferred how the Land Holder Kunnakudi Devasthanam got it has part of their Estate and assigning the set part with four boundaries in favour the plaintiff temple under Exhibit A5 creating title in the plaintiff temple?*

(6) *Whether the Lower Court simply categorize the citations filed by the plaintiff and without going in to them simply brushes aside saying that they are not applicable to the case?"*



4. The facts of the case is that the suit property belongs to the Airathieswarar Sowndranaygi Amman Temple. Originally the suit property belongs to Kundarkudi Devasthanam. One Ramanathan Chettiyar had filed the suit in O.S.No.446/1974 in respect of suit property in which the Courts have held that the suit property belonged to Kundarkudi Devasthanam Thambiran. There was an appeal in A.S.No.578 of 1875 and Second Appeal in S.A.No.770/ 1876 in which the Trial Court judgment was confirmed. After the aforesaid judgments the Kunnrakudi Adigalar executed Inam Settlement dated 22.02.1896 in favour of the temple. As per the settlement deed the plaintiff temple is in possession and enjoyment over the Ooranai by taking water for special worship in the temple. Further there was another suit in O.S.No.17 of 1939 and O.S.No.289 of 1939 filed by Ilayathankudi Nagarathar as Trustee of Airathieswarar Sowndranaygi Amman Temple in which the suit property was held as plaintiff temple property. Against which there was an appeal in A.S.No.24 and 28/1942 before Sub-Court Devakottai in which Trial Court judgment was confirmed. But in revenue records the suit property was stated as Sivan Temple Vacant Site. The suit property is used as pathway to reach the temple by the pilgrims and hence the fence was not put up. But the defendants constructed Panchayat Office Village Administration Office, Library, Water Tank on the southern portion of plaintiff "A" Schedule property. The constructed portion is shown as "B" Schedule property. The temple



S.A.(MD).No.443 of 2017

came to know that the said construction was in the temple land, when the land was measured in the year 2010 and then the plaintiff temple demanded the defendants to remove the encroachment. But no action was taken. While the matter being so, again the defendants were taking steps to form cement road in plaint “C” Schedule property. Hence the plaintiff has given petition on 08.09.2012. But no action was taken. Further the plaintiff submitted petition along with documents requesting not to form cement road in the plaint “C” Schedule property. But without taking any action, the defendants had replied by giving false reasons. Hence the present suit is filed for declaration that the plaint “B” Schedule property belongs to plaintiff temple and consequential injunction to demolish the construction in the “B” Schedule property by granting mandatory injunction and permanent injunction not to construct any construction in the “B” Schedule property. And permanent injunction in respect of plaint “C” Schedule property restraining the defendants from causing any peaceful enjoyment of plaintiff over the plaint “C” Schedule property. The contention of the temple is that since the land belongs to the temple, the defendants are not having any right over the land and the defendants cannot lay the Tar Road. In fact, the constructions which are put up in the said land itself is unauthorized construction besides being encroachment. When the defendants proposed to lay the Tar Road, the Temple objected and submitted representations to the respondents. However, the defendants submitted



S.A.(MD).No.443 of 2017

that since the said land belongs to the Government, they have every right to lay Tar Road and further submitted that it will be helpful for the temple to take procession of the idol (urchava murthi) during festival. However, the contention of the plaintiff is that the said land belongs to the temple, hence, the respondents cannot lay Tar Road. Further under the pretext of laying road the defendants would claim ownership of the said land. Hence, the temple objected to the proposal of laying Tar Road.

5. The vehement contention of the plaintiff temple is that the suit properties belong to the temple based on the Inam Settlement executed by Kunnrakudi Adigalar on 22.02.1896 in favour of the plaintiff temple marked as Ex.A5. Based on the said settlement the plaintiff temple is in possession of the said land from 1896 onwards, which is more than 126 years. Further the plaintiff temple had submitted that there were previous litigation regarding the land and had marked Ex.A2 copy of the judgment passed in O.S.No.446 of 1874 dated 30.08.1875 and Appellate Court judgments marked as Ex.A3 and Ex.A4. After perusing the said exhibits the First Appellate Court had held that,

“There is no proof that the parties in the said suit are related to Kundrakudi Devasthanam or the present plaintiff temple, further the judgment states the property belongs to village of Oyyakondan Siruvayal, which is confirmed in Ex.A3 and Ex.A4. Further how the Kundrakudi



S.A.(MD).No.443 of 2017

Devasthanam claim right and title over the suit property is unknown and unexplained”.

WEB COPY

This reasoning of the First Appellate Court cannot be accepted since in the present suit in O.S.No.52 of 2013 the Kundrakudi Devasthanam was not a party. The Temple is claiming right over the property based on Ex.A5 Inam Settlement executed by Kundrakudi Devasthanam. Without any right the Kundrakudi Devasthanam could not or would not have executed the document. If the Courts below intended to reject the Kundrakudi Devasthanam rights, then the Kundrakudi Devasthanam ought to have been impleaded as party. After hearing the Kundrakudi Devasthanam and after verifying the records of Kundrakudi Devasthanam, then only the Courts can come to the conclusion whether Kundrakudi Devasthanam is owner of the property or not. But without impleading Kundrakudi Devasthanam the Courts below had disbelieved the rights of Kundrakudi Devasthanam is erroneous and perverse besides being violative of principles of natural justice. Moreover under section 90 of Evidence Act there is presumption of any document which are 30 years old, therefore the Courts below had erred in disbelieving the documents.

6. The first Appellate Court had held that judgment in Ex.A2 states that the suit property belongs to villagers, even in Ex.A6 no iota of documents produced



S.A.(MD).No.443 of 2017

or established that how Devasthanam derived title from the villagers of Oyyakondan and Siruvayal. Further the First Appellate Court also held that the suit is Ex.A2 is filed among some individuals. When the First Appellate Court had held that the suit is among individuals, from this itself it is evident that Kundrakudi Devasthanam was not a party in the suits or appeals filed in Ex.A2 to Ex.A8. Therefore, without impleading Kundrakudi Devasthanam both the Courts below have come to the conclusion that the suit property does not belong to Kundrakudi Devasthanam is absolutely perverse and erroneous.

7. The First Appellate Court had held that in the Ex.A2 which is the judgment is some suit, the said Court in the judgment had come to the conclusion that the Oorani belongs to two villages namely Oyyakondan and Siruvayal based on the evidence of stone inscription and hence the land belongs to public. But in the same Ex.A2 the judgment further held that there was Nandavanam and the same belongs to the defendants (stated thereunder and the same is temple) who had received their rights from “Thambiran of Kunnakudy”. From the Ex.A2 judgment it would clearly prove that the Nandavanam belongs to “Thambiran of Kunnakudy” i.e. “Kundrakudi Devasthanam”. This would conclusively prove that that the impugned judgments of Courts below had failed to note the subsequent portion of the judgment in Ex.A2 wherein it is clearly stated that the nandavanam



S.A.(MD).No.443 of 2017

belongs to “Thambiran of Kunnakudy” which means the dispute land in the present second appeal belongs to “Thambiran of Kunnakudy” and consequently belongs to the temple based on the settlement.

8. The First Appellate Courts had further held that it is not known whether the Ex.A5 is related to the present suit property. There is no correlation document between the present suit property and Ex.A5 mentioned property. It is seen that the lands in Tamil Nadu were surveyed during 1910 to 1920 and thereafter survey numbers were fixed. Hence there will not be any survey numbers to the suit properties prior to 1920's. In the present case the suit in Ex.A2 was preferred in the year 1894 and hence there will not be any survey numbers. Hence the finding of the Courts below is incorrect.

9. Further on perusing Ex.A5, it states that the Oorani belongs to Kundarkudi Devasthanam and also the villagers. Further it also states that 35 years prior to the said document the Kundrakudi Devasthanam had granted permission to put up temple in the said property near Oornai. From this it is proved that the land belongs to Kundrakudi Devasthanam and the said Kundrakudi Devasthanam had granted permission to put up temple. The Courts below had failed to take the Ex.A5 in entirety and failed to take the contents in



proper perspective.

WEB COPY

10. It is seen as per Ex.A10 the plaintiff temple was directed to obtain patta in their name from the concerned authority. The First Appellate Court has referred to the Ex.A10 and has held that the plaintiff temple after receiving the communication failed to obtain patta and hence the plaintiff is not entitled to the prayer. Further went on to state that the panchayat had constructed a building and hence the ownership of the suit property was not vested with the temple. Such a finding is totally erroneous. When the plaintiff temple is entitled to patta as per Ex.A10, then the temple had proved the ownership and it is entitled to patta. Simply because the plaintiff did not obtain patta the same will not disentitled to their rights to hold the property. On the same breath simply because the panchayat had put up construction, the same would not give ownership right to the suit property to panchayat.

11. The Trial Court had held that as per Ex.A9 the usage of the land is stated as “Sivan Kovil Vacant site”. In the Advocate Commissioner report it is stated as “puramboke”. But the defendants have stated in their written statement that the land is classified as “Natham”. Based on the Advocate Commissioner report and the written statement, the Trial Court had held that the land belongs to



S.A.(MD).No.443 of 2017

the Government and the Temple has no right over the property. But it is seen that the defendants in the present suit had not produced any evidence before the Court to state whether it is puramboke land or Natham. In fact, the respondents had not produced any evidence, it is stated in the judgment that the defendants had produced “NIL” evidence. Therefore, the defendants had made submissions without any evidence.

12. The learned Counsel appearing for the appellant relied on the judgment rendered by the Hon'ble Division Bench of this Court in W.A.Nos.1017 of 2004 and batch, dated 30.04.2004, wherein the Hon'ble Division Bench of this has relied on Papela Narayanaswamy Naidu Vs. The Secretary of State for India, reported in 24 MLJ 36 wherein while interpreting the term “puramboke” had held the word “puramboke” indicates the land is unassessed waste land and would not generate any income to the government. All kinds of communal properties such as burial grounds, temple sites and public roads including road puramboke and river puramboke are lands which would not generate any income to the government. In the present case, the Advocate Commissioner submitted that the temple is in puramboke land. As per the aforesaid judgement then the said land ought to be considered as temple land since the said land is not revenue generating land.



S.A.(MD).No.443 of 2017

13. The respondents had stated in the written statement that the land is classified as Natham, if so then the local bodies and the government have not rights over the property. But the respondents have not produced any evidence to prove the same before the Courts below. On the other hand the plaintiff had submitted Ex.A5 which is the settlement executed by Kunnrakudi Adigalar, which would indicate the property originally belongs to Kunnrakudi Adigalar. And from 1896 onwards the land is in possession of the temple through Ex.A5 settlement. In such circumstances this Court is of the considered opinion that the land is in possession of the temple for more than 126 years.

14. Both the Courts are swayed away by the constructions put up by the defendants and the same is in existence for more than 20 years and the temple has not objected to the same. But this is vehemently objected by the plaintiff temple stating that when the construction was put up by the defendants, the Temple had submitted objection several times and the same was not considered at all. Both the plaintiff and the defendants admitted that in the disputed place the temple is using the land for conducting festival. In fact, the dispute between the plaintiff and the defendants arose when the defendants had proposal to lay Tar Road in the “B” Schedule property. The plaintiff had objected stating that the land belongs to the temple. Even according to the defendants if road is laid down then the procession



S.A.(MD).No.443 of 2017

of the deity (urchava murthi) during temple car festival can be smoothly carried on. But the apprehension of the plaintiff is that if road is laid then the Panchayat would claim right over the road, thereby slowly encroach upon the property of the temple. The fear of the plaintiff is absolutely right. When the panchayat had put up water tank and other constructions and claiming right over the said land, likewise if road is laid then the panchayat would claim right over the entire land.

15. In Tamil Nadu temples are situated either in inam lands or in puramboke lands. The patta is not issued to temples. Some temples had patta in the name of Hereditary Trustees, but the said post was abolished, hence there was confusion in several temple lands. Hence it cannot be stated that the temple will not have any right over the property. In fact, if patta is granted to the temple most of the litigations for and against temples would come to an end. In the present case, it is dispute between the temple and the local body, that too for laying road.

16. Both the Trial Court and the First Appellate Court has treated the land in “B” Schedule property as “Oorani” and had denied the prayer of the plaintiff. But the land is in between the temple and the Oorani. Further under Act 26 of 1948 the Oorani will vest with the Government. But the land in between the Oorani and temple belongs to the temple. Having said so this finding is only against the



S.A.(MD).No.443 of 2017

defendants and not against the Kundarkudi Devasthanam. If any title dispute arises between the temple and the Kundarkudi Devasthanam, the same shall be adjudicated based on the records of the parties.

17. As far as limitation is concerned, for any encroachment of temple land there cannot be any limitation. Since the Hon'ble Division Bench of this Court in *Suo Moto W.P.No.574 of 2015* had directed for recovery of all temple lands and directed the HR and CE Department to recover the temple lands and there cannot be limitation for any encroachers. In the present case, even though the temple authorities are aware of the construction, the temple authorities have submitted objections, but the objections of the temple were not considered by the defendants. Therefore, this Court is of the considered opinion limitation will not arise.

18. The defendants had put up the water tank which is for the common public, therefore the said water tank need not be disturbed or demolished. As far as the other constructions are concerned, the defendants may shift to some other place as and when it is viable for the defendants. However, the defendants are restrained from laying road and the defendants are also restrained from further encroaching the said land and also restrained from further putting up any



S.A.(MD).No.443 of 2017

construction. Therefore, the mandatory injunction to demolish the said constructions alone declined, otherwise, the suit is decreed in entirety by declaring that the said property belongs to the temple (appellant) and the defendants are permanently restrained from interfering in the temple property stated in B schedule and C schedule. And the defendants are restrained from laying any road in the plaintiff's property. Even though the plaintiff has not sought declaration for A schedule, it belongs to the temple. The plaintiff as well as the defendants have admitted that the A schedule property belongs to the temple. Since there is no declaration for A schedule, the Court fee issue that is raised by the defendants cannot be entertained.

19. Based on the discussion stated above, all the substantial questions of law are answered in favour of plaintiff / appellant.

20. Therefore for the reasons stated supra, the Second Appeal is allowed by setting aside the judgment and decree by the Trial Court and the First Appellate Court. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2023

Index : Yes / No
NCC : Yes / No
Tmg



S.A.(MD).No.443 of 2017

TO:

- 1.The District Collector,
State of Tamilnadu,
District Collector's Office,
Sivagangai.
- 2.The Tahsildar,
Taluk Office,
Karaikudi, Sivagangai District.
- 3.The Sub-Court, Devakottai.
- 4.The Principal District Munsif Cum Judicial Magistrate Court,
Karaikudi.
- 5.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.443 of 2017

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.443 of 2017

Dated:
08.11.2023