



S.A.(MD).No.56 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

S.A.(MD).No.56 of 2023

and

C.M.P.(MD).No.1627 of 2023

1.Padmanathan

2.M.Muniyasamy

3.Kallathan @ Lingam

4.Ramachandran

... Appellants/Appellants/Defendants

Vs.

1.R.Arumuga Nainar

2.R.Pattani Yadav

3.M.Pattani Yadav

4.Pon Isakkimuthu

... Respondents/Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 10.10.2022 made in A.S.No.87 of 2017 on the file of the Sub Court, Thoothukudi confirming the judgment and decree dated 06.10.2017 made in O.S.No.294 of 2013 on the file of the Principal District Munsif Court, Thoothukudi and allow the second appeal.



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For Appellants : M/s.K.R.Shivashankari

For Respondents : Mr.R.Pon Karthikeyan

JUDGMENT

The defendants are the appellants in the above Second Appeal. The respondents/plaintiffs had filed a suit for relief of permanent injunction restraining the appellants from interfering in their erection of stone inscription in the temple to be constructed by the respondents.

2. It is the case of the respondents/plaintiffs that the wife of the first respondent purchased the suit schedule property and the first respondent had donated the land to a temple. They wanted to construct a proper building for the temple and for that purpose collected donation from the members of the public with a promise that the names of persons, who donated more than Rs.5000/-, would find place in the stone inscription to be installed in the new building. The members of the Village belonging to all the communities met on 30.01.2013 and passed a resolution to that effect. The appellants in order to promote enmity insisted that the names of only a particular community should find place in the stone inscription. Thereafter, the respondents gave a complaint to the Police and since the Police advised the parties to settle the dispute in Court, the respondents have filed the instant suit.



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3. The appellants filed a written statement denying the averments made in the plaint. The appellants claimed that they had objected to the installation of the stone inscription since all persons donating for the construction of the temple must be treated equally and hence, the decision of listing the names of persons, who pay more than Rs.5000/-, is discriminatory. Thus, after negotiation, a final decision was taken on 07.05.2013. As per the decision, the villagers decided to go by the flower draw, i.e., if a red colour flower is drawn, the stone inscription would be placed and if the white colour flower is drawn, the stone inscription would not be placed. This resolution was accepted by the respondents 1, 2 and 4. As per the said resolution, the flower draw took place and since a white colour flower was drawn, the villagers decided to drop the plan installing the stone inscription. The respondents had suppressed the said resolution and had filed this suit.

4. Before the Trial Court, the respondents examined nine witnesses and marked exhibits A1 to A17. The appellants examined four witnesses and marked exhibits B1 to B4.

5. The issue before the Trial Court was whether the respondents were entitled to their prayer for permanent injunction. The Trial Court found that as



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per the resolution dated 30.01.2013, the appellants and the respondents had decided to install the stone inscription and list out the names of persons, who had contributed more than Rs.5000/-, in the said inscription. The Trial Court further found that the subsequent resolution is not valid and was made at the Police Station which was not voluntarily passed. Therefore, the Trial Court found that the appellants are bound by the resolution dated 30.01.2013 and cannot prevent the respondents from making the stone inscription.

6. The Lower Appellate Court considered the evidence of P.W.2, P.W.5 and P.W.6 besides the cross-examination of D.W.2 and found that there was a resolution passed on 30.01.2013, wherein, both the parties agreed to install a stone inscription. The Appellate Court further found that the subsequent resolution dated 07.05.2013 was not passed voluntarily. Further, the Appellate Court also found that as many as 123 members had contributed Rs.5000/- and they have all been promised that their names would find place in the stone inscription to be installed in the temple and therefore, the respondents are entitled to the grant of relief of permanent injunction against the appellants.

7. The learned counsel for the appellants would submit that the subsequent resolution has been passed voluntarily and both the Courts below had erroneously concluded that the said resolution was passed in the Police



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Station and was not made voluntarily. The Courts below had not considered the evidence and documents in the proper perspective.

8. The learned counsel for the respondents submitted that the Courts below had considered the evidence in the proper perspective and the factual findings cannot be faulted with. There is no question of law much less a substantial question of law in this Second Appeal.

9. Heard the learned counsel for the appellants and the learned counsel for the respondents.

10. This Court, on perusal of the judgments of the Courts below, finds that both the Courts have after a detailed and thorough appreciation of facts held that the resolution passed by the members managing the construction of temple dated 30.01.2013 is binding on all the parties concerned. The appellants had without any basis objected to the installation of the stone inscription contrary to the said resolution. This Court also finds that the appellants have not disputed the passing of the said resolution. Their conduct in objecting to the installation of the stone inscription is not bonafide. In any case, both the Courts below found that the alleged subsequent resolution dated 07.05.2013 had not been passed voluntarily. The said resolution has been passed at the



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Police Station as admitted by D.W.3 in his cross-examination. In such circumstances, the voluntariness of the resolution dated 07.05.2013 is highly doubtful. The Courts below have rightly rejected the said resolution. Further, it is also found on facts that nearly 123 people were made to believe that since they contributed Rs.5000/- and more, their names would find place in the stone inscription. The said promise was based on the resolution dated 30.01.2013. The appellants, who were parties to the resolution dated 30.01.2013, cannot raise objections.

11. In view of the above, the findings of the Courts below on facts and law are in accordance with law and does not call for any interference. There is no question of law involved in the Second Appeal much less a substantial question of law for interference by this Court under Section 100 of CPC.

12. Hence, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

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- 1.The Sub Court,
Thoothukudi.
- 2.The Principal District Munsif Court,
Thoothukudi.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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