

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**A.S.No.930 of 1997
and
Tr.A.S.(MD)No.1 of 2023**

A.S.(MD)No.930 of 1997

Saraswathi Ammal (Died)

2.N.Murugesan

3.A.P.Sundari

4.P.Mahalakshmi

5.R.Chellam

6.K.Dhanam

7.V.Murugeswari

(Appellants 2 to 7 are brought on records as LRs
of the deceased sole appellant vide Court order
dated 31.03.2015 made in M.P.(MD)Nos.3 to 5
of 2014.)

.. Appellants / Defendant

Vs.

Sri Ayyappa Seva Sangam,
Periyakulam,
Reg.No.119/1974 by its

President Seetharaman, S/o.K.A.N.Anumanthan,
Pallivasal Street,
Thenkarai, Periyakulam.

(President of the respondent Sangam is
Substituted vide Court order dated 16.03.2023
made in C.M.P.(MD)No.8764/2021)

... Respondent / Plaintiff

Tr.A.S.(MD)No.1 of 2023

Saraswathi Ammal (Died)

... Appellant / Plaintiff

Vs.

1.Haripriya

2.Latha

3.Ram Manohari

4.P.Subramanian Chettiar,
S/o.Perumal Chettiar,
President, Periyakulam Ayyappa Seva Sangam,
Reg.No.119/1974, Pallivasal Street,
Thenkarai, Periyakulam Town.

... Respondent / Defendant

COMMON PRAYER: These Appeal Suits are filed under Section 96 of C.P.C.
against the judgment and decree passed in O.S.Nos.133 of 1988 and 103 of 1992
dated 30.09.1993 on the file of the Subordinate Judge at Periyakulam.

For Appellants : Mr.A.Haja Mohideen
(In both Appeals)

For Respondent
in A.S.(MD)No.930/1997

&

For R4 in
Tr.A.S.(MD)No.1/2023 : Mr.L.Velpradeep

COMMON JUDGMENT

Aggrieved over the common judgment and decree passed in O.S.Nos.133 of 1988 and 103 of 1992 dated 30.09.1993, on the file of the Subordinate Court at Periyakulam, the defendant in O.S.No.133 of 1998 has filed these two appeals.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking before the Trial Court in O.S.No.133 of 1988.

3. The brief facts, leading to the filing of this Appeal, are as follows:-

The suit properties and its counter-part on the West bearing T.S.No. 4651/2/2 originally belonged to Machi Ramabadran and his elder brother. After the death of elder brother of Machi Ramabadran, his wife and Machi Ramabadran

effected a division and the suit property fell into the share of Machi Ramabadran. The plaintiff society purchased the same from Machi Ramabadran on 10.12.1983. Thereafter, the suit property was subdivided and the property purchased by the plaintiff came to be recorded as T.S.No.4651/2/2 and the share of elder brother came to be recorded as T.S.No. 4651/2/1. The land is a barren site, incapable of cultivation and at no time cultivated. The defendant was a menial under the brothers, who constituted a Zamin family and she was permitted to reside in the Mandapam situate in T.S.No. 4651/2/1 and make use of the front area of Manadapam in T.S.No. 4651/2/1, as a licensee. The arrangement between the Zamindar brothers and the defendant was only a Master and Servant. The plaintiff, after purchase of the site that lies East of Mandapam, decided to construct a Mandapam for its exclusive use and hence, informed the defendant that she should not trespass into the suit properties. However, she has not followed the advice. Therefore, the plaintiff revoked the license and issued a notice, directing her to vacate the property. Hence, the suit was filed by the plaintiff for declaration, for recovery of possession and also for mandatory injunction.

4. It is the case of the defendant that the suit property and its Western part originally owned by one Venkataramabadran Nayudu and he has given the said

land to the defendant's father for the annual lease of Rs.18. After the death of the said Venkataramabadra Nayudu, his son has extended the lease to the defendant and the defendant has continued to pay the lease amount and on that basis, they are cultivating and enjoying the lands. Hence, opposed the suit.

5. Based on the above pleadings, the trial Court has framed the following issues in O.S.No.133 of 1988:

“1. It is true that the defendant's father was a lessee and cultivating the land?

2. It is true that the defendant was doing cultivation in the suit property?

3. It is true that the defendant is entitled to tenancy right in the suit property?

4. After the cancellation of the license, whether the defendant has any right in the suit property?

5. To what other relief, the plaintiff is entitled to?”

6. The defendant has also filed a suit in O.S.No.103/1992 for permanent injunction as against the legal heirs of Venkataramabadran Nayudu, in which the plaintiff in O.S. No. 133 of 1988 was made as 4th defendant. It is the case of the plaintiff in the said suit that one Venkataramabadran Nayudu and his brother

Machi Ramabadran were enjoying the suit property without any partition. In the suit property, except one small Mandapam, other areas are cultivable lands and the Mandapam and other lands were leased out to the plaintiff's father for annual lease of Rs.18. He was in enjoyment of the property and also cultivating the same. After the death of the plaintiff's father, the plaintiff along with her children were enjoying the property and they are cultivating the land as tenant. Machi Ramabadran also sold the Eastern side of the land to the defendant on 10.12.1983. Hence, relief of injunction is sought.

7. In the above suit, it is the case of the defendant that annual lease has been denied and the Eastern side of the property was purchased by them. The plaintiff also aware of the sale and only for the purpose of extracting the money, the suit has been filed.

8. Based on the above pleadings, the trial Court has framed the following issues in O.S.No.103 of 1992?

“1. Whether the defendant is entitled to permanent injunction as prayed for?

2. To what other relief, the defendant is entitled?”

9. Common evidence was recorded in both the suits. On behalf of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and 12 documents were marked as Ex.A1 to A12. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and 9 documents were marked as Ex.B1 to B9.

10. On the basis of the evidence and materials, the trial Court has decreed the suit in O.S.No.133 of 1988, filed by the plaintiff for declaration, recovery of possession and also permanent injunction and dismissed the suit in O.S.No.103 of 1992 filed by the defendant, the so called tenant for permanent injunction. Challenging the same, two appeals have been filed.

11. The learned counsel appearing for the defendant / appellants would submit that the defendant was a lessee and she was doing cultivation in the suit property. The defendant has pleaded that she was cultivating the land and therefore, the plaintiff is not entitled for relief of declaration, recovery of possession and other reliefs. The trial Court has not properly appreciated the said fact, despite several documents have been filed to prove the lease. Therefore, the judgment of the trial Court is liable to be set aside.

12. The learned counsel appearing for the respondent / plaintiff would submit that the defendant / appellant herself has admitted that she was a lessee and particularly, the plaintiff has laid a suit for recovery of possession. It is their case that as far as the suit properties are concerned, it is only a Mandapam and not a cultivable land which has been clearly admitted by the defendant in her evidence. Therefore, the trial Court has rightly decreed the suit.

13. In the light of the above submissions, now the only point arise for consideration in these appeals is as follows:

Whether the trial Court is right in dismissing the suit in
O.S.No.103 of 1992 and decreeing the suit in O.S.No. 133 of
1988?

14. The suit in O.S.No.133 of 1988 was filed for declaration, recovery of possession and also for permanent injunction. The suit property situated in T.S.No.4651/2/2, measuring on the North-East to West 51' 6" in the South 54' 6", North – South on the West – 75' in the East 99' vacant barren site declaration and possession in the extreme South a hut for mandatory injunction. The description of the suit property has not been disputed in the entire written statement.

15. The defendant /appellant is also pleaded in the plaint in O.S.No.103 of 1992 that the Eastern portion of the suit property was sold to the plaintiff on 10.12.1983. It is the only contention of the defendant that her father was a tenant and cultivating the lands from more than 20 years and after the death of her father, she was continuing for cultivation in the said land. The title to the property purchased by the plaintiff is not disputed by the defendant.

16. The only contention of the defendant is that she has been cultivating the land for many years. Whereas the evidences of P.W.1 and P.W.2 clearly show that the plaintiff-Society have purchased the property from Machi Ramabadran and the lands are not fit for cultivation. D.W.1-defendant in her evidence has not denied the fact that only Eastern portion of the land was purchased by the plaintiff. The document filed by the defendant relate to the receipts for Mandapam and pettikadai. Similarly she has also agreed that half of the shares have been purchased by the plaintiff and admitted that Ex.B1 to Ex.B9-receipts relate only in respect of the agricultural lands and not in respect of the vacant site. Therefore, when the vacant site is not covered under the so called lease, the trial Court has rightly held that notice under Section 106 of the Transfer of Property Act, 1882 is not necessary. When the defendants' document itself does not indicate any lease of

the vacant site and when the plaintiff also clearly pleaded that in Mandapam, the defendant was stayed only in few days and the license was also cancelled by way of legal notice, the defendant cannot resist the recovery of possession. Accordingly, this Court is of the view that the defendant has not established any right over the suit property and therefore, she is liable to be vacated from the suit property. Accordingly, the point is answered. The trial Court has rightly decided both the suit and held against the defendant / appellant and therefore, it does not require any interference. In Tr.A.S.(MD)No.1 of 2023, the learned counsel appearing for the appellant also not taken any steps to bring the legal heirs of the deceased sole appellant on record.

17. Accordingly, both the appeals are dismissed and the judgment and decree passed by the learned Subordinate Judge at Periyakulam, in O.S.Nos.133 of 1988 and 103 of 1992, dated 30.09.1993 is confirmed. No costs.

29.03.2023

NCC : Yes /No
Index : Yes/No
vsm

To

- 1.The Subordinate Judge, Sub-Court, Periyakulam.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

*A.S.No.930 of 1997
and Tr.A.S.(MD)No.1 of 2023*

N.SATHISH KUMAR, J.

vsm

A.S.No.930 of 1997
Tr.A.S.(MD)No.1 of 2023

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