



S.A.No.14 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 14.09.2023

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

Second Appeal No.14 of 2003

- 1.K.Alagarsamy (died)
- 2.A.Jeyaprakash
- 3.Kalyanasundhari
- 4.Sundara Rajamoorthy
- 5.Kausalya
- 6.Tamilselvi
- 7.Pushpalatha
- 8.Uma Maheswari
- 9.Muruganantham

(Appellants 2 to 9 are brought on record as LR's of deceased sole appellant vide order dated 24.10.2016 made in CMP(MD)Nos.5108 to 5110 of 2016)

... Appellants

-VS-

- 1.Ramamoorthy (died)
- 2.K.Gurusamy
- 3.R.Munirathnam
- 4.R.Rajasekar
- 5.R.Sudhakaran
- 6.S.Malathy
- 7.R.Pandithurai

(Respondents 3 to 7 are brought on record as LR's of the deceased 1st respondent vide order dated 30.06.2023 made in CMP(MD)Nos.10249 to 10251 of 2021)

... Respondent



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PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure against the Judgment and Decree dated 18.01.2002 made in A.S.No.83 of 1998 on the file of the Principal District Judge, Madurai confirming the Judgment and Decree dated 17.04.1998 made in O.S.No. 37 of 1997 on the file of the file of the District Munsif, Melur.

For Appellants	... Mr.C.Anand Chandrasekar for M/s Sarvabhauman Associates
For Respondents	... Mr.A.Arumugam for M/s Ajmal Associates

JUDGMENT

The deceased first respondent is the plaintiff and the deceased first appellant and the second respondent are the defendants. The deceased first respondent/plaintiff filed the suit in O.S.No.37 of 1997 on the file of the District Munsif, Melur, seeking declaration, permanent injunction and also for mandatory injunction directing the first appellant/first defendant to remove the recent construction put up by him in the suit property and restore the same to its original condition. After full-fledged trial, the trial Court decreed the suit. Further, the trial Court granted one month time to the first appellant/first defendant to remove all the unauthorised constructions and to restore the property to its original



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position. Challenging the said Judgment and Decree, the deceased first appellant/first defendant filed the appeal in A.S.No.83 of 1998 on the file of the Principal District Judge, Madurai. After hearing, the first appellate Court dismissed the appeal with costs and confirmed the Judgment and Decree passed by the trial Court. Aggrieved over the same, the deceased first appellant/first defendant has filed the present second appeal before this Court raising the following substantial questions of law:

“(a) Whether the Judgment and Decree of the Courts below is vitiated on account non consideration of material evidence and available on record?

(b) Whether the Courts below are correct in decreeing the suit when there is no cause of action for the suit?”

2. The parties are referred to as mentioned in the original suit.

3.1. The case of the first respondent/plaintiff is that the plaintiff and the defendants 1 and 2 are the sons of Karuppana Pillai and the second defendant is the younger brother and the first defendant is the elder brother of the plaintiff. The said Karuppana Pillai and his sons entered into registered partition deeds dated 06.12.1959 and 17.08.1982 dividing their joint family properties by metes and bounds. On



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06.12.1959 itself, they entered into a registered Trust deed whereby, the suit property belonging to them as one of their joint family properties was set apart to worship Arulmigu kallalagar during Chitra festival at Madurai. Besides the suit property, a building bearing door No.88 in Ward No.13, Sannadhi Street at Madurai, had been endowed by them even before executing the Trust deed. The income from the said building by way of rent had been utilised by Karuppana Pillai to perform the charity for a long time and after the life time of the said Karuppana Pillai, the plaintiff and the defendants had to perform the charity every year during their turn in accordance with their seniority by age. Later, the plaintiff and the defendants had entered into another Trust deed 12.01.1983 with the concurrence of their father Kauppana Pillai, who had attested therein in consonance with the earlier trust deed, dated 06.12.1959, and thereby, they agreed to sell the building in Sannadhi street and instead of that property to endow 75 cents of nanja land in S.No.120/10 in Kadachanendal village. Hence, each one of them had given 25 cents each to form the said property of 75 cents towards endowment and the income therefrom had been contributed by them for the purpose of the charity mentioned above in accordance with the Trust deeds dated 06.12.1959 and 12.01.1983.



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3.2. While so, the second defendant filed a suit in O.S.No.155 of 1984 on the file of the District Munsif, Melur against the plaintiff and the 2nd defendant had obtained a decree in respect of the same property. Similarly, Karuppana Pillai filed a suit against the plaintiff and the first defendant in O.S.No.164 of 1985 on the file of the District Munsif, Melur, wherein also a decree has been passed in his favour confirming the Trust under the said Trust deed dated 06.12.1959. The said Karuppana Pillai died on 23.12.1986 and thereafter, the plaintiff and the defendants joined together and conducted the Mandagapadi during 1987 Chitra festival and subsequently, the first defendant, plaintiff and the second defendant have been performing the Mandagapadi in the suit property during their respective turn every year from 1988 onwards. The assessment for the property tax has been made in the name of the plaintiff and the defendants 1 and 2 and they have been paying the property tax during their turn to celebrate the Mandagapadi in the suit property. They have also improved the property by putting up a compound wall, sinking a bore well and constructing bath room and lavatory and they have also planted fruit bearing trees therein. The defendants have no manner of exclusive right or title to deny the plaintiff's right to celebrate the Mandagapadi during the turn and they are



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estopped from preventing the plaintiff from exercising his rights by reason of the Judgments and Decrees in O.S.Nos.155 of 1984 and 164 of 1985 on the file of the District Munsif, Melur. Their claim is also barred by *res judicata* in view of the said proceedings. While so, the first defendant obtained patta exclusively in respect of the suit property in or about 1994 and the plaintiff preferred an appeal against the said order and obtained a favourable order from the Assistant Settlement Officer on 03.07.1996. The revision filed by the first defendant against the said order to the District Revenue Officer, Madurai, is pending enquiry. The first defendant had removed the iron gate and put up walls and doors in the front portion of the Mandapam causing inconvenience to bring the chariot to carry the deity of Arulmigu Kallalagar into the Mandapam during Chitra Festival and his unlawful act of interfering with the right of possession and enjoyment of the property by the plaintiff has to be restrained. Further, as he is making attempts to lease out the building in his individual right, the second defendant is also colluding with the first defendant in carrying out such unlawful activities in the suit property and if they are not restrained by means of permanent injunction, the plaintiff will be put to irreparable loss and hardship. Hence, the right of the plaintiff to perform the charity once in three years in the suit property has



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to be declared and the defendants have to be directed by means of mandatory injunction to remove the said construction put up by them recently in the suit property. Similarly, the defendants have to be prevented by means of permanent injunction from encumbering the suit property in any manner. Hence, the suit.

4.1. The case of the appellant/first defendant is that it is not true to say that the suit property in its entirety belonged to any Trust. The existence of Mandapam in the suit property and the performance of Pooja during Chitra Festival in the said Mandapam, when the procession of deity Lord Kallalagar is brought into the said premises while in procession, are admitted. It is not true to say that the performance of entire pooja, and other ceremonies are carried out only in the said Mandapam, which measures 31-1/2 feet x 23 feet. Originally, the said Mandapam and the backyard poramboke lands had been used by the predecessors of the first defendant for the purpose of the performance of the said Kattalai and poojas during Chitra Festival. Subsequently, the first defendant had developed the backyard by constructing a house for his own use and has been in possession and enjoyment of the same for over 30 years and more. Hence, he obtained patta in respect of the site



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wherein he has put up house constructions in 1983 and thereupon, the plaintiff preferred a petition before the Assistant Commissioner, Settlement to cancel the said patta and the Assistant Commissioner has also passed order in his favour. Hence, this defendant preferred a revision against the said order to the Revenue Divisional Officer and since the said revision was also dismissed, this defendant has taken steps to proceed against such order in the civil Court. In these circumstances, the plaintiff and others have no right or interest over the backyard and the house constructed by this defendant therein. Similarly, except the performance of Kattalai and Pooja in the Mandapam, no right has been conferred upon the plaintiff and others over the said Mandapam in the suit property.

4.2. Further, it is false to state that the plaintiff and the defendants have joined together and improved the backyard by putting up a compound wall and sinking bore well, constructing bathroom and lavatory and raising fruit bearing trees in the backyard behind the Mandapam and that they have been paying the house tax during their turn of enjoyment. In view of the entrance to the Mandapam having a small door way, the chariot of deity of Lord Kallalagar is not brought



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inside the Mandapam for performing the pooja and other ceremonies during Chitra Festival. But on the other hand, this defendant used to put up a Pandal at his own cost every year during his turn in front of the Mandapam for the purpose of getting the deity inside and performing the pooja during the festival. Therefore, the plaintiff has no right or interest to claim the relief of mandatory injunction in respect of the suit property. It is false to allege that this defendant colluded with the second defendant and removed the existing iron gate of the Mandapam and reduced the side of the entrance to a small door way and thus, prevented the deity of Lord Kallalagar from entering inside the Mandapam. In fact, the state of affairs on ground has been an existence for the last 15 years and it was only with the consent of the plaintiff, the improvised arrangements including the Mandapam had been removed and permanent structure was put up. The suit property belonged to the first defendant as his separate property and has been using the same for the purpose of the Trust. He has not interfered with the right of exercising such performance of the Kattalai by the plaintiff at any time. The plaintiff is entitled to perform the pooja during Chitra Festival in the said Mandapam during his turn. On the contrary, the property situate behind the Mandapam belonged to the first defendant absolutely. The plaintiff has filed the suit in order to



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get the property of the defendant unlawfully. Since the first defendant has been in possession and enjoyment of the same in his own right for more than the statutory period, the plaintiff is ousted from claiming any right over the same. There is no cause of action for the suit and is not maintainable in law and on facts. Hence, the suit is liable to be dismissed with costs.

5. The trial Court, considering the pleadings, framed the issues. During trial, on the side of the first respondent/plaintiff, he examined himself as P.W.1 and besides, three witnesses were examined as P.W.2 to P.W.4 and 21 documents were marked as Exs.A1 to A21. On the side of the defendants, the defendant examined himself as D.W.1 and 10 documents were marked as Exs.B1 to B10.

6. Considering the above pleadings, oral and documentary evidence, the trial Court decreed the suit. Therefore, the appellant/first defendant filed the appeal before the first appellate Court. The first appellate Court has also dismissed appeal with costs. Hence, the appellant/first defendant has filed the present second appeal.



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7. At the time of admission, this Court, considering the facts and circumstances of the case, has formulated the following substantial question of law:

“Whether the finding of the Lower Court is perverse?”

8. After arguing at length, the learned counsel appearing on either side would submit that the first respondent/plaintiff filed the suit for declaration, permanent injunction not to restrain the plaintiff to perform the Mandapabadi and mandatory injunction to remove the iron gate put up on the schedule property. The trial Court decreed the suit and the first appellate Court also confirmed the same, hence, the present second appeal. Both the learned counsel would further submit that the appellant/first defendant has admitted all the aspects, but the only dispute is with regard to the measurement of the property, which mentioned as north-south is 67 feet and east-west is 126 feet, whereas north-south is only 34.4 feet. Actually, there are two items of property, namely, item Nos.85 and 86, in the 'B' schedule properties, which were dedicated to the Trust to perform the Mandagapadi. As far as item No.85 is concerned, east-west is 99 feet and north-south is 33 feet. As far as item No.86 is concerned, east-west is 27 feet and north-south is 34 feet. Both



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the item Nos.85 and 86 of properties are situated one after another. The east-west measurement can be added, but the north-south measurement cannot be added. Hence, it is stated that the total east-west extent is 126 feet and north-west extent starts from 33 feet and ends at 34 feet.

9. Though the trial Court, after hearing the parties, held that item Nos.85 and 86 were situated one after another and the measurement of the east-west is 126 feet by adding both the east-west of item Nos.85 and 86, namely, $99+27=126$, however, erroneously, held that the measurement of the north-south is 67 feet by adding $33+34=67$, which cannot be added. North-south starts 33 feet from one side and ends at 34 feet on the another side and it cannot be added as 67 feet. The trial Court erroneously came to the conclusion that north-south is 67 feet by adding east-west in north 33 feet and east-west in south 34 feet and granted decree. Apart from the above disputed fact, with regard to the other aspects, both the learned counsel are in agreement with the Judgment and Decree passed by both the Courts below.

10. In view of the above fact, this Court is inclined to hold that as far as item Nos.85 and 86 of the suit 'B' schedule properties are



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concerned, east-west measurement is 126 feet and north-south measurement is 34 feet only and not 67 as mentioned by the trial Court as well as the first appellate Court. Accordingly, the substantial question of law framed by this Court is answered.

11. In the result, the Second Appeal is partly allowed. The Judgment and Decree passed by the trial Court as well as the first appellate Court are modified to that extent. No costs.

14.09.2023

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

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



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KRISHNAN RAMASAMY, J.

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