



S.A.No.1712 of 2003

BEFORE THE MADUARAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

S.A.No.1712 of 2003

and

C.M.P.No.15623 of 2003

1. Ganesan
2. Subramanian
3. Thangaiah
4. Chelliah
5. Lingammal
6. Chandra
7. Shenbagam
8. Kasi
9. Sundar Raj

[Since Rajalingam, the third appellant/
plaintiff expired, hence deleted]

... Appellants

Vs.



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1. Madhavan Nair
2. Hyden
3. Ladis Vaz
4. A.Joyson
5. B.Ravi
6. B.Dominic
7. J.Wellington Vaz
8. J.Ramesh Vaz
9. M.Usha
- 10.P.Ramasamy
- 11.Minor Ragunth
[Represented by his father B.Ravi]
12. Minor Geeyanth
[Represented by his father B.Ravi]
- 13.Leoni
- 14.Minor Maiclin Vaz
[Represented by her mother Leoni]

... Respondents

PRAYER:

Second Appeal filed under Section 100 of C.P.C., against the



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judgment and decree of the learned Additional District Judge-cum-Chief Judicial Magistrate, Tuticorin, dated 12.07.2002 made in A.S.No.6 of 2002, confirming the judgment and decree of the learned Principal District Munsif, Tuticorin dated 20.02.1998 made in O.S.No.19 of 1997.

For Appellants : Mr.M.R.Sreenivasan
For R2 to 5,7,9,10 & 13 : Mr.M.Sengu Vijay
R11 & R12 : Minors represented by R5
R14 : Minor represented by R13
R6 : Notice returned with an endorsement “insufficient address”
R1 & R8 : Expired (steps due)

* * * * *

J U D G E M E N T

This second appeal has been filed against the judgment and



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decree dated 12.07.2002 passed in A.S.No.6 of 2002 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Tuticorin, confirming the judgment and decree dated 20.02.1998 passed in O.S.No. 19 of 1997 on the file of the learned Principal District Munsif, Tuticorin.

2. Appellants are the plaintiffs filed the suit in O.S.No.19 of 1997 on the file of the learned Principal District Munsif, Tuticorin for bare injunction restraining the respondents/defendants from interfering with the peaceful possession and enjoyment of the plaint schedule mentioned property and the same was dismissed. Challenging the same, the appellants herein have filed a First Appeal in A.S.No.6 of 2002 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Tuticorin. The First Appellate court also dismissed the appeal, by confirming the judgment and decree of the trial court. Challenging the same, the plaintiffs have filed the present Second Appeal before this Court.

3. The parties are referred to as per the rankings in the trial court.

4. The case of the plaintiffs in brief is that the Deity Arulmigu



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Muneeswaran Amman and the Peedam of Arulmigu Muneeswarar described in the plaint schedule, is known as Arulmigu Muneeswarar Temple and is situated in T.S.No.1114/1A in Tuticorin Town, Chidambaranar District. Original T.S.No.1114/1A measuring 4 acre 9 cents was Government poramboke land. The plaintiffs' predecessor one Thiru.Masilamani and his forefathers were in occupation and enjoyment of the Eastern 2 acres of land in the abovesaid Town Survey Number for more than 100 years. They founded Arulmigu Muneeswarar Temple in the suit land on the North Western portion and Arulmigu Muneeswarar Peedam was constructed in the same place. The Muneeswarar Temple had one Arulmigu Muneeswara Amman Deity, made of mixture of gold, silver, brass and copper and on every Tuesday and Friday, Pooja will be held and on every last Friday of Tamil month, special Pooja will be held and on that occasion, the Amman/Deity will be brought to the Temple. After performance of the Pooja, the Amman/Deity will be in the custody of the said Masilamani and his family members. The said Masilamani and his forefathers were conducting Poojas regularly and they were in possession of the suit property continuously for more than 100 years. The Temple was founded for the benefit of the founder and his family



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members and no other persons had any right in the said Temple on the said land.

5. The said Masilamani died on 17.07.1967. Thereafter, the plaintiffs, the successors-in-title are in possession and enjoyment of the suit property. Arulmigu Muneeswarar Temple and Arulmigu Muneeswarar Amman are powerful God and Goddess. Even during British period, the Bombay Company Private Limited used to visit the Temple. Even the Christians used to worship the Deity, on the eve of commissioning of new fishing yard, sailing vessels with the permission of the plaintiffs and their predecessors, but they do not have any right in the suit property. As of right, they have no interest in the suit Temple. As early as on 31.08.1959, the Bombay Company Private Limited had executed an agreement of sale in favour of the said Masilamani in respect of the ornaments. In that agreement letter, it is clearly stated that Arulmigu Muneeswarar Temple, Beach Road, Tuticorin owned 2 acres of land South of Muneeswarar Temple. The family members of the plaintiffs and their predecessors were performing the abovesaid Poojas and ceremonies and except that, no religious practice was done. The suit



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property is in exclusive possession of the plaintiffs and their forefathers for more than a century and they have perfected title to the suit property by adverse possession. The defendants have no right, title and interest over the suit property. They have unlawfully broken the Southern wall of the suit property and also Arulmigu Muneeswarar Peedam situated in the schedule property. They have completely damaged and removed the Peedam on 13.12.1996. There-upon the plaintiffs re-constructed the Peedam on 16.12.1996. The defendants, with an ulterior motive to grab the suit property, removed the Arulmigu Muneeswarar Temple Peedam. The existence of Aulmigu Muneeswarar Peedam and the Temple are found in the Municipal records and other records. The defendants are interfering with the plaintiffs' possession of the schedule property. Hence the plaintiffs have filed the suit for injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiffs.

6. The case of the defendants in brief is that they denied all the averments made in the plaint and also the existence of right, title and interest over the suit property upon the plaintiffs. They denied the



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existence of Arulmigu Muneeswarar Temple and Arulmigu Muneeswarar Amman Peedam and the performance of Poojas by the plaintiffs and the entitlement of the plaintiffs. The compound wall mentioned in the suit property, was of the private company and not that of the predecessors of the plaintiffs. The defendants have never broken the Southern compound wall of the suit property and also Arulmigu Muneeswarar Amman Peedam, as alleged by the plaintiffs. The suit property originally belonged to M/s. Tirunelveli Cotton Press Company Limited, registered under the Indian Companies Act of Madras and they were in possession and enjoyment of the suit property. On 04.04.1951, the Tirunelveli Cotton Press Company sold the suit property to M/s.Madura Mills Company, under a registered sale deed, with all the buildings, godowns and the compound wall on all the boundaries with two gate ways on the Eastern side. The Madura Mills Company deemed as M/s.Madura Coats Limited on 04.04.1951 was in exclusive possession and enjoyment of the suit property, without any interruption and the said company paid Municipal tax and other taxes. The two gates were closed and guarded by the security guards and the public had no access to the suit property. M/s.Madura Coats Limited decided to alienate the suit



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property by laying-out plots for the residential houses. The lay-out was approved by the Deputy Directors of T and C planning and was numbered as 18/86 TKR and was approved by the Tuticorin Municipal Council on 29.04.1986. The plots therein were laid out and sold to the defendants and others on various dates. If the plaintiffs, as stated in the plaint, were in possession of the suit property and conducting Poojas, they would have objected to lay-out the suit property. The defendants and others have constructed houses in the suit property. The plaintiffs would have objected the construction of houses, if the land belonged to them. The defendants have got electricity connection, Municipal tap water connection and telephone connection even prior to the filing of the suit. The plaintiffs are strangers to the suit property. The plaintiffs do not have right, title and enjoyment of the suit property. When the plaintiffs tried to put up a construction in the North Western portion of the lay-out, which was laid out as Street with 23 feet breadth, the respondents/defendants objected to the attempt to encroach their land and took up the matter to the Municipal Authorities, Police and Revenue department. The Sub-Collector and Sub-Divisional Magistrate, Tuticorin passed an order under Section 144(1) Cr.P.C., on 16.12.1996 and the



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same is pending enquiry. Since all the attempts made by the plaintiffs have failed, they have filed the present suit without any materials.

7. The trial court, after completing the pleadings, framed the following issues:

i. Whether the plaintiffs are entitled to get the relief of permanent injunction as prayed for in the plaint?

ii. Whether the plaintiffs are having cause of action to file the suit?

iii. Whether the suit is bad for non- joinder of necessary parties? and

iv. To what other relief the plaintiffs are entitled to?

8. On completion of pleadings and framing of issues, in order to substantiate the case of the plaintiffs, on the side of the plaintiffs, two witnesses were examined as P.W.1 and P.W.2 and six documents were marked as Exs.A1 to A6. On the side of the respondents/defendants, two witnesses were examined as D.W.1 and D.W.2 and 14 documents were marked as Exs.B1 to B14.



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9. After trial, considering the oral and documentary evidence, the trial Court dismissed the suit filed by the plaintiffs. Challenging the same, the plaintiffs filed first appeal before the District Judge, Tuticorin and the same was made over to the Additional District Judge cum Chief Judicial Magistrate, Tuticorin in A.S.No.6 of 2002. The learned Additional District Judge, Tuticorin, after hearing, dismissed the appeal. Aggrieved by the same, the plaintiffs are before this Court by way of filing the Second Appeal.

10. On 23.01.2004, this Court admitted the Second Appeal on following substantial questions of law:

i. Whether the lower Courts are correct in proceeding on the basis that the appellants claim independent possession and enjoyment over the suit property, forgetting that the appellants' case is that the suit property belongs to Arulmighu Muneeswarar Temple and the appellants and before them, their forefathers, all and were in possession and enjoyment of the suit property by doing Pooja regularly to the said Muneeswarar and Amman regularly from time immemorial?



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ii. Whether the first Appellate Court is correct in giving a finding that the suit property belongs to the respondents, without any basis and against the findings of the trial Court and without jurisdiction? and

iii. Whether the Courts below are correct in dismissing the suit by mis-reading and mis-appreciating the evidence and documents produced by the appellants and on surmises and conjectures and presumptions?

11. It is the contention of the learned counsel for the plaintiffs that the plaintiffs filed the suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property. The trial Court without considering the possession and enjoyment and also the evidence of P.Ws.1 and 2, dismissed the suit. When the plaintiffs, filed the First Appeal before the District Court, the first appellate court held that the suit property belonging to Madura Coats Limited and the respondents purchased different plots in the suit property and they are in possession and enjoyment of the respective plots, by putting up construction thereon and also given a finding with



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regard to title in favour of the respondents.

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12. In the suit for bare injunction, trial Court which has categorically held that there is no proof to hold that the Madura Coats Ltd., purchased the suit property comprised in T.S.No.1114/1A, whereas, the lower appellate Court, committed an error in holding that the respondents are in possession and enjoyment of the suit property as against the findings of the trial Court that the respondents have not proved that they are in possession and enjoyment of the suit property.

13. Ex.A1 sale agreement entered into between the Bombay Company Private Limited and the predecessors of the plaintiffs ie., one Masilamani, in respect of both the suit property as well as Arulmigu Muneeswaran Amman ornaments. Ex.A1 is 30 years old document. Therefore, the genuineness of the document cannot be questioned. The suit property originally belonged to Arulmigu Muneeswarar Temple and Peedam, which was founded by the predecessors of the plaintiffs. Masilamani and his forefathers were in possession and enjoyment of the suit property for over 100 years by establishing the said Arulmigu



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Muneeswarar Temple and the Peedam in the suit property and by doing Poojas to the Arulmigh Muneeswarar and Goddess Arulmigu Muneeswara Amman regularly.

14. The lower appellate court failed to consider that the property belonged to Madura Coats Ltd., only in S.No. B.1114 and the other survey number, but not in T.S.No.1114/1A. The document produced by the plaintiffs clearly shows that the suit property situated in T.S.No.1114/1A. The documents produced by the plaintiffs were clear and the evidence of P.Ws.1 and 2 also proved the existence of Temple and performance of the Poojas. Without considering the evidence of P.Ws.1 and 2, the Courts below relied on the evidence of D.Ws.1 and 2, which is not acceptable.

15. Specific case of the defendants is that there is no Arulmigu Muneeswarar Temple in the suit property. The fact remains that, there is Arulmigu Muneeswarar Temple and Peedam in the suit property and the



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appellants/plaintiffs and their predecessors were continuously performing Pooja and the Arulmigu Muneeswara Amman Deity made of mixture of Gold, silver, brass and copper and the same is with the possession of the plaintiffs. Therefore, the plaintiffs have proved their case. The respondents/defendants have not filed any counter claim to prove their case. The lower appellate court failed to consider the same. Further, the trial Court failed to consider the main case of the plaintiffs that they are claiming possession and enjoyment of the suit property and suit property belonged to Arulmigu Muneeswara Temple and the plaintiffs' forefathers who were in possession and enjoyment of the suit property, by doing Poojas regularly from time immemorial. Without any basis, the lower appellate Court has also given a finding that the suit property belonged to the defendants.

16. Further, it is the contention of the defendants that the suit property does not belong to either of the plaintiffs or their predecessors and no such Temple/Deity is available in the suit property. The suit property belonged to Madura Coats Ltd., and the Madura Coats Ltd., divided the property as house plots and sold the same to the defendants



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and they had constructed the houses and they are in possession and enjoyment on the date of filing of the suit. The plaintiffs were never in possession and enjoyment of the suit property. When the title itself is denied, it is for the plaintiffs to establish their title. Hence, the suit filed for bare injunction itself, is not maintainable. The plaintiffs have to establish their legal rights and title over the property. Hence they prayed for dismissal of the second appeal and the judgment of both the Courts below have to be confirmed.

17. This Court, as the second appellate Court can always consider the substantial questions of law and cannot sit in the arm chair of the first appellate Court and re-appreciate the entire factual aspects. This Court, being the second appellate Court, has to find out as to whether the first appellate court had re-appreciated the entire materials and evidence of the witnesses properly, and if it is erroneous, which leads to substantial questions of law. This Court can interfere with the finding of the first appellate court if it is otherwise not appreciated the evidence properly.



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18. The specific case of the plaintiffs is that the suit property is in possession and enjoyment of the plaintiffs. The predecessors' of the plaintiffs constructed Arulmigu Muneeswarar Temple and Peedam in the suit property and they were in enjoyment of the suit property. The plaintiffs have specifically stated that there is Arulmigu Muneeswarar Peedam and Deity of Arulmigu Muneeswaran Amman. They stated that their forefathers founded the same and they were enjoying the property and performing Poojas and they were in possession of the ornaments of the Deity and they have kept the ornaments in the house and as and when they were performing Pooja, they used to bring the ornaments from the house. P.W.1 in his evidence, has clearly stated about the same. P.W.2 who is one of the devotees has clearly stated in his evidence about the existence of Arulmigu Muneeswarar Temple /Peedam and Deity of Arulmigu Muneeswaran Amman and stated that with the permission of the plaintiffs, he used to perform Poojas. The plaintiffs have marked the documents Exs.A1 to A6. Ex.A1 dated 31st August 1959 is the agreement between the Bombay Company Employees Union (Registered) with one Masilamani, who is the predecessor of the plaintiffs. In the said agreement, there is mentioning about the existence



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of Temple as below:

Description of Oranamet

“Tuticorin Registrar District, Joint II Sub Register office Tuticorin, Beach Road, West of Harvey Mill Manager Bungalow. North of Sarveriyana Club. South of Sri Muniswarar Temple affected two acres owned by the above Muniswarar Temple, Beach Road, Tuticorin. Ornaments mixing (gold, silver, brass and copper) such as one face, two hands and to legs relating to Muneswarar Amman situated at Beach Road, Tuticorin to the above Masilamaney, Tuticorin.”

19. The abovesaid document shows that the agreement was executed by the Bombay Company Private Limited Management in favour of Masilamani, which shows the existence of the Temple also. Ex.A3 is the F.I.R, in which the case was registered under Section 145 Cr.P.C., in Crime No.1164 of 1996 dated 16.12.1996 on the file of the Mathiya Pagam (Central Part) Police Station. In the F.I.R., it is



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mentioned that respondents 1 to 8 are the residents of Tuticorin Town and it is also mentioned that there was a dispute between the parties over the existence of Sri Muneeswarar Temple situated in the vacant site, Ward No.1, Block Nos.7 and 9, Resurvey No.1114/1128 part 1139/2. The defendants claimed title over the said land which was divided as 23 plots and sold to 23 individuals and they claimed their right from 1986 onwards only. The plaintiffs claimed their right over the said lands from 31.08.1959, being the date of agreement executed between the said Masilamani and the Bombay Company Limited. From that date onwards, the plaintiffs and their predecessors were in possession and enjoyment of the Muniswarar Temple. The said Masilamani was a Watchman for longer period in the said Company and he claimed the customary right of worshipping in the Temple by them as well as by the British Company for a longer period of more than 100 years and further claimed that the Christians were also used to worship the said Deity. Though the defendants are claiming title from 1985 onwards, the plaintiffs were claiming their right and enjoyment from 1959 onwards.



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20. On a careful reading of the pleadings and the relief sought for in the plaint by the plaintiffs, it is found that they are in possession and enjoyment of the suit property and there is a Muniswarar Temple and Deity and Peedam in the suit property. Evidence of P.W.2 also confirmed the same. The defendants have not filed any counter claim for declaration and injunction. The plaintiffs filed the suit for bare injunction restraining the defendants from interfering with the peaceful possession and enjoyment. The first appellate Court, if at all finds that the plaintiffs are not in a possession and enjoyment of the suit property, it has to dismiss the suit. Without seeking the relief of declaration or any counter-claim by the defendants, the lower appellate Court declared that the suit property belonged to the defendants, which is against law and which leads to substantial question No.1. The suit property belongs to Arulmighu Muneeswarar Temple and the plaintiffs and before them, their forefathers, all were in possession and enjoyment of the suit property by doing Pooja regularly to the said Muneeswarar and Amman regularly from time immemorial. When the plaintiffs established the existence of the Temple, both the Courts below failed to appreciate the evidence of



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P.Ws.1 and 2, and simply dismissed the suit, which is against the evidence. The trial Court and the first appellate Court have not properly appreciated the pleadings, oral and documentary evidence of the appellants.

21. As far as the second substantial question of law is concerned, the first appellate court has given a finding that the suit property belongs to the respondents and also wrongly held that the plaintiffs have not taken any steps to appoint an Advocate Commissioner for that. It is a well settled proposition of law that in a suit for bare injunction, Advocate Commissioner cannot be appointed for establishing the possession. The possession has to be established through oral and documentary evidence.

22. In view of the above facts and circumstance, the findings rendered by the first appellate Court are erroneous. Both the Courts below have not considered the documents produced by the plaintiffs. The substantial questions of law 2 and 3 formulated by the plaintiffs are answered accordingly.



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23. In conclusion, the judgment and decree dated 12.07.2002 passed in A.S.No.6 of 2002 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Tuticorin, confirming the judgment and decree dated 20.02.1998 passed in O.S.No.19 of 1997 on the file of the learned Principal District Munsif, Tuticorin, are set aside.

24. Resultantly, the suit laid by the plaintiffs in O.S.No.19 of 1997 on the file of the learned Principal District Munsif, Tuticorin shall stand decreed. There shall be no order as to costs. Accordingly, the second appeal is allowed. Consequently, connected miscellaneous petition, if any, is closed.

21.06.2023

mfa

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1. The Additional District Judge-cum-Chief Judicial Magistrate,
Tuticorin,
2. The Principal District Munsif, Tuticorin
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court.



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P.VELMURUGAN, J,

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