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S.A.No.1056 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.1056 of 2007

and

M.P.No.1 of 2007

1.Jayaramachandra Iyer (died)

2.J.Ranganathan

3.J.Narayanan

4.J.Indra

... Appellants

(Appellants 2 to 4 brought on record as legal heirs of deceased 1st appellant vide Court order dated 24.01.2013 in M.P.No.4 of 2008)

vs.

1.K.A.Srinivasan (died)

2.Sundaresan

3.Ravichandran

4.Krishnamoorthy (died)

5.V.Arunachalam

6.P.D.K.Vasudevan

7.Sivagamasundari

...Respondents

(Respondent 5 impleaded as a legal heir of the deceased 1st respondent vide Court order dated 05.03.2013 in M.P.Nos.1 to 3 of 2008)

(Respondents 6 & 7 brought on record as legal heirs of deceased R4 vide Court order dated 26.07.2021 in C.M.P.No.9244 of 2021)

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure



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Code against the judgment and decree dated 08.11.2006 in A.S.No.5 of 2006 passed by the Additional District Judge, Fast Track Court No.3, Virudhachalam, confirming the judgment and decree dated 11.08.2000 in O.S.No.116 of 1993 passed by the Principal Sub Court, Virudhachalam.

For appellants : Mrs.R.Meenal

For respondents 1 & 4 : Died

For respondents 2, 3 & 5: Mr.T.Dhanasekaran

For respondents 6 & 7 : No appearance

J U D G M E N T

The unsuccessful plaintiff is the appellant before this Court. This Second Appeal has been filed as against the judgment and decree dated 08.11.2006 in A.S.No.5 of 2006 on the file of the Additional District Judge, Fast Track Court No.3, Virudhachalam, confirming the judgment and decree dated 11.08.2000 in O.S.No.116 of 1993 on the file of the Sub Court, Virudhachalam.

2. Pending this Second Appeal, the sole appellant died and the appellants 2 to 4 have been substituted as his legal heirs and pending this Second Appeal, the respondents 1 and 4 also died and their legal heirs



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have been substituted as respondents 5 to 7.

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3. For the sake of convenience, the parties will be referred to according to their ranking as before the Trial Court.

The brief facts, which gave rise to this Second Appeal, are that:

4. According to the plaintiff, the suit properties consist of both building and landed property situated at Kaspas Virudhachalam and also in Sathukudal and Ka.Elamangalam Village, Virudhachalam. According to the plaintiff, item 1 of the suit properties is a building, purchased through Court sale by one Shanmugam Pillai in an execution proceedings filed by one Natesa Iyer against Jayaram Iyer in O.S.No.1214 of 1927 on the file of the District Munsif Court, Virudhachalam. Since the purchaser Shanmugam Pillai was a man of pious disposition, he dedicated his property for being used for Veda Parayana and for feeding Brahmins during Masi Magam and Adi Pooram.

5. According to the plaintiff, the Brahmins, who went there in festival times, stayed there and were fed. The said Shanmugam Pillai



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rented out the properties to several tenants and income was derived for the purposes mentioned above. Apart from item 1, landed properties were also gifted by one Ramakrishna Pillai to religious trust and he had also gifted the landed properties for the purpose of feeding Brahmins, who assembled in the building for Veda Parayana.

6. According to the plaintiff, the plaintiff's father Krishna Iyer was collecting funds from the public and also from and out of his own funds, had been continuing the Veda Parayana during the festival times. He was in the actual possession of the management of the properties. After the death of his father, his elder brother P.K.Dhandapani Iyer took control over the management of the religious trust. His brother had continued the activities, which were being carried on by his father earlier. Further, his elder brother also died during 1963, pursuant to which, the plaintiff took control over the management of the religious trust and was in possession and enjoyment of the suit properties.

7. According to the plaintiff, some office bearers of Tamil Nadu Brahmin Association approached the plaintiff to hand over the properties



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and activities of the trust. Since the plaintiff refused, they started to give trouble to the plaintiff and they instigated a tenant/4th defendant in the suit, not to pay the rent to the plaintiff.

8. It is the further case of the plaintiff that the defendants 1 to 3 were claiming to become the office bearers of the Veda Parayana madam and the plaintiff disputed the formation of the committee and election of office bearers. It is the case of the plaintiff that the defendants 1 to 3 trespassed into item 1 of the suit properties in the month of August 1994. Therefore, the plaintiff filed the suit for declaration to declare the rights of the plaintiff to manage the Veda Parayana trust, to direct the defendants 1 to 3 to hand over the possession of item 1 of the suit properties and for permanent injunction restraining the defendants 1 to 3 from interfering with the possession of the suit properties.

9. The first defendant resisted the suit by filing a written statement, which was adopted by the defendants 2 and 3, stating that the plaintiff has no *locus standi* to file the suit. He is not in possession of any of the suit properties and not in the management of the trust. According



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to the defendants, the plaintiff self styled himself as Manager of the trust and due to the misdeeds done by him, he was no longer in any manner connected with the trust.

10. It is their case that the plaintiff had been squandering over the trust property, misappropriating the income from the landed properties and he did not perform his duties as a Manager of the trust. In fact, even he was not even appointed as a Manager, but he self styled himself as a Manager, who was indulging in the activities. According to the defendants, the landed properties originally belonged to Thandavaraya Pillai and since he had no male issues, his wife Sellathachi and daughter Poongavanam were left behind as his legal heirs and the landed properties came to the hands of Ramakrishna Pillai and he executed a gift deed in favour of the Veda Parayana Committee for the performance of pious activities.

11. It is the case of the defendants that neither plaintiff nor his brother or his father had any control over the trust and the trust, by due resolutions, formed a committee and the committee is in possession of the



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suit properties and undertaking the activities of the trust in carrying out the Veda Parayana. The committee had also duly passed resolutions that the collection of rents and profits have been deposited in Virudhachalam Janepaharanidi Bank and the day-to-day affairs of the Veda Parayana committee will be decided by the working committee. According to the defendants, the committee took over the landed properties of the trust from the tenants on 29.04.1993 and entered into fresh agreements with the tenants in their own rights. As such, the suit filed by the plaintiff is not maintainable.

Evidence and documents:

12. During trial, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A42. On the side of the defendants, one Arunachalam was examined as D.W.1 and Exs.B1 to B34 were marked.

Findings of the Courts below:

13. The Trial Court, after appraising the evidence and documents, dismissed the suit. The Trial Court found that the plaintiff was never handed over the management of the trust nor the plaintiff was



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in possession of the suit properties. The Trial Court found that the Veda Parayana committee was in the actual management of the trust and the same was in possession of the suit properties carrying on the welfare activities.

14. Aggrieved by the judgment and decree, the plaintiff filed an appeal in A.S.No.5 of 2006 on the file of the Additional District Court, Fast Track Court No.3, Virudhachalam.

15. The Lower Appellate Court, after reappraising the evidence, dismissed the appeal. The Lower Appellate Court found that the plaintiff has not established his right, title over the suit properties to succeed the suit for declaration.

16. Challenging the judgment and decree passed by the Lower Appellate Court, the plaintiff is before this Court in this Second Appeal.

Substantial questions of law:



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17. This Court, by order dated 22.10.2007, admitted this Second Appeal and framed the following substantial questions of law:

“1. Whether in law the Courts below are right in overlooking that the suit ought to be decreed on the admissions made in the written statement itself with respect to the management of the charity by the appellant?”

2. Whether in law the Lower Appellate Court was right in dismissing I.A.No.68 of 2006 for receipt of additional evidence of 85 tax receipts to show the management of the Madam's properties by the appellant from 1964?”

Submissions on both sides:

18. The learned counsel for the plaintiff/appellant contended that the suit properties were in possession and enjoyment of the plaintiff's father Krishna Iyer and he had been carrying on the Veda Parayana during Masi Magam and Adipuram. The plaintiff's father was collecting funds from public and he was carrying on pious activities and feeding the public, who came to Veda Parayana during the festival days. The learned counsel further contended that after the plaintiff's father died during



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1942, his elder brother P.K.Dhandapani Iyer took over the management of Veda Parayana and he had been carrying on the activities of the trust till his death during 1963. Pursuant to the same, the plaintiff came to be in possession and enjoyment of the suit properties, from when onwards, the plaintiff had been carrying on the activities of feeding the Brahmins, who attend Veda Parayana during Masi Magam and Adi Puram.

19. The learned counsel further contended that all along, there has been no dispute or quarrel and the plaintiff had been carrying on the duties in a proper and lawful manner. However, only after some of the office bearers of the Tamil Nadu Brahmins Association wanted to take over the management and possession of the properties, since the plaintiff did not accept their demand, they became inimical and they instigated the tenants not to pay the rent and also created several hindrances in the activities of the plaintiff in conducting Veda Parayana.

20. The learned counsel further contended that in fact, D.W.1, in his evidence, admitted that the plaintiff had been in possession and enjoyment of the properties, which would show that the plaintiff was



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carrying on the Veda Parayana, all along. Even prior to him, his elder brother and his father were carrying on those activities. However, the Courts below did not consider the very admission of D.W.1 and erroneously dismissed the suit. The learned counsel contended that since the findings of the Courts below are not based on proper appreciation of the documents filed by the plaintiff and proper appreciation of the admission of D.W.1, the findings are perverse and hence, sought for allowing this Second Appeal.

21. The learned counsel for the defendants/respondents contended that the plaintiff has no right to maintain the suit. In fact, he has claimed as self styled manager of the trust, which is in management of the suit properties and carrying on the Veda Parayana during Masi Magam and Adipuram. The properties were never handed over to the plaintiff or his elder brother or his father as claimed by him and only the plaintiff's father was an Accountant in the trust, based on which, he was looking after the accounts in respect of the rents collected and the expenses made. With the strength of the same, the plaintiff, who was also indulging in some of the works, has come up with the suit claiming



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declaration, injunction and also recovery of possession from the trust itself. The plaintiff does not have any manner of right over the suit properties.

22. The learned counsel further contended that there is no such admission made by D.W.1 and the plaintiff, who has come up with the suit for declaration, has not filed any documentary evidence or evidence to establish his right or title over the suit properties. As the plaintiff has failed to establish his claim, the Courts below have rightly dismissed the suit and the findings arrived at by the Courts below based on materials available on record and therefore, sought for dismissal of this Second Appeal.

23. Heard both sides and perused the materials on record.

Analysis of the submissions:

24. Admittedly, the Veda Parayana is being conducted by the trust, which is in possession and enjoyment of the suit properties and it is handled by a committee duly constituted by the trust. The trust, by



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passing due resolutions, has entered into lease agreements with the respective tenants and the funds received from the tenants and also from landed properties are utilised for the performance of Veda Parayana. When it is so, it can be seen that the plaintiff's father was earlier appointed as an accountant by the Vedaparyana madam and he had been looking after the accounts of the madam and pursuant to the death of the father and the elder brother of the plaintiff, he had also been carrying on those activities. Since the activities of the Madam was mainly in respect of feeding of Brahmins, who came for Veda Parayana, during festival times and the plaintiff's father, and thereafter his brother, were looking after the accounts of the Madam, they had never made any claim as the plaintiff. It is only after the plaintiff, who came into the activities of the Madam, slowly started to make claim over the suit properties, which necessitated the committee of the trust to pass necessary resolutions and by removing the plaintiff from all the activities of the Madam, the Madam had been in the possession and enjoyment of the properties and also had been in the administration all along. When the plaintiff claims that his father and his elder brother had been in possession and enjoyment of the properties and also claims title over the suit properties, it is for the



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plaintiff to establish his claim by filing the documents and also producing evidence to that effect.

25. Admittedly, the plaintiff has not filed any document to establish his title over the suit properties and also the documents filed and evidence filed by the plaintiff, do not show that the plaintiff was in the possession and enjoyment of the suit properties at any point of time as an individual owner.

26. As rightly found by the Courts below, it is for the plaintiff, to succeed in his case on his own strength and not on the weakness of the defence. A perusal of the documents filed by the plaintiff, clearly shows that the plaintiff was not successful in establishing his title over the suit properties and he had not established the fact that the defendants have trespassed into the suit properties and taken over the possession of item 1 of the suit properties from the plaintiff.

27. The Courts below have rightly analysed the documents and arrived at the findings, which are based on materials available on record



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and there is no perversity or illegality in the findings of the Courts below.

28. In such circumstances, the substantial questions are answered against the appellant and in favour of the respondents.

29. In the result, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

20.02.2024.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The Additional District Judge, Fast Track Court No.3, Virudhachalam.

2. The Principal Sub Court, Virudhachalam.

3. The Section Officer, V.R.Section, High Court, Madras.

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