



S.A.No.16 of 2018 and C.M.P. No.227 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.16 of 2018

and

C.M.P. No.227 of 2018

K.S. Ramu

...Appellant

Vs.

Arulmigu Yoga Sastha Aianar Thirukoil and
Arulmigu Soleeswara Swamy
Represented by it's Management Committee President
G. Durai

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 07.04.2016 passed in A.S. No.34 of 2014, on the file of the Additional Sub-Court, Mayiladuthurai, upholding the decree and judgment dated 31.01.2014 passed in O.S.No.292 of 2012, on the file of the Additional District Munsif Court, Mayiladuthurai.

For Appellant : Mr.M.J. Srinivas

For Respondent : Mr. K. Govi Ganesan



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JUDGMENT

The plaintiff who failed in both the courts below has filed the present Second Appeal.

2. The respondent/plaintiff Arulmigu Yoga Sastha Aianar Thirukoil represented by it's Management Committee President G. Durai filed the suit in O.S.No.292 of 2012, before the Additional District Munsif Court, Mayiladuthurai, for a permanent injunction restraining the appellant/defendant from alienating the suit property in favour of the third parties.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

4.The case of the plaintiff in a nutshell is as follows :

4.1. The suit property, morefully described in the plaint



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schedule is a vacant land in T.S. No.109 and 112 of Kuttalam Village admeasuring 2 acre 30 cents and 22 cents respectively, belonged to the plaintiff's temple. Patta was also issued in favour of the plaintiff's temple. The other revenue records like chitta, adangal and 'A' Register stand in the name of the plaintiff's temple.

4.2. The plaintiff also filed a suit on an earlier occasion in O.S.No.227/2002 before the Principal District Munsif, Mayiladuthurai, against one Baskaran and Sekar for a permanent injunction in respect of the very same suit property. The said suit was decreed by the trial court on 06.01.2004 as against which Baskaran preferred an appeal in A.S. No.45/2004 before the Subordinate Court, Mayiladuthurai. The first appellate court upheld the findings recorded by the trial court. Subsequently Baskaran filed a second appeal before this Court in S.A.No.1062/2007 and the same is pending. The defendant, who is not connected with the suit property, is claiming right over the suit property. Hence the suit.



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5. The suit was resisted by the defendant on the following grounds:

- i. The defendant purchased the second item of the suit property from one Baskaran during the year 1998.
- ii. The plaintiff has no right to represent the temple. Therefore the suit filed by G. Durai on behalf of the temple is liable to be dismissed.

6. On the basis of the above pleadings, the trial Court framed the following issues :

- i. *"Whether the plaintiff is entitled for a permanent injunction as prayed for by him?"*
- ii. *"To what relief the plaintiff is entitled?"*

7. In the trial Court, the plaintiff examined himself and marked Ex.A1. The defendant examined himself and marked Ex.B1



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8. After full contest, the learned trial court judge decreed the suit in favour of the plaintiff vide his decree and judgment dated 31.01.2014, on the following grounds:-

- i. The certified copy of the decree and judgment passed in O.S.No.227/2002 shows that the present suit property was the subject matter of the said suit.
- ii. The Principal District Munsif, Mayiladuthurai, had granted permanent injunction in the said suit against one Baskaran and Sekar.
- iii. In the decree and judgment passed in O.S.No.227/2002, it has been clearly held that Baskaran and Sekar do not have any right or title over the suit property. The appellate court, in A.S. No.45/2004, also upheld the findings recorded by the trial court.
- iv. The defendant claims that he has purchased Item 2 of the suit property from Baskaran, who was one of the defendants in the



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earlier suit in O.S. No.227/2002. Since the vendor of the defendant did not have a valid title, the present defendant cannot claim any right over the suit property through the sale deed dated 20.06.1998 (Ex.B1).

- v. In Ex.B2 the plaintiff G. Durai is mentioned as the president of Managing Committee of the temple and even otherwise a devotee of a temple can very well maintain a suit.

9. Aggrieved over the decree and judgment passed by the trial court judge, the defendant filed an appeal in A.S.No.34/2014, before the Additional Sub-Court, Mayiladuthurai. The learned Additional Subordinate Judge, Mayiladuthurai, after analysing the oral and documentary evidence on record, upheld the findings recorded by the trial court, vide his decree and judgment dated 07.04.2016, as against which the present second appeal is filed.

10. The second appeal was admitted by this Court on the following substantial questions of law:



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- a) *"Whether the judgments of Court below are vitiated by error of law in its holding that the judgment in O.S. No.227 of 2002 is binding on appellant when he was not a party to the said suit?*
- b) *Whether a person who parted with his ownership in respect of immovable property is entitled to defend a subsequently instituted suit filed in respect of said property as if he continues to be the owner? Whether adjudication on such suit is binding on transferee who was not arrayed as defendant in the said suit?*
- c) *Whether the courts below erred in holding that the suit filed by the respondent is maintainable on behalf of temple, when he failed to establish his right or competency to represent the temple?"*

11. Heard Mr.M.J. Srinivas, learned counsel appearing for the appellant and Mr.K. Govi Ganesan, learned counsel for the respondent.

12. Mr.M.J. Srinivas, learned counsel appearing for the appellant contended that the plaintiff temple has not proved its title over the suit property and that G. Durai cannot represent the plaintiff temple



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as he has not established that he is the President of Managing Committee of the Temple. Though the sale deed of the defendant is dated 20.06.1998, he has not been shown as a party in the earlier suit in O.S.No.227/2002 on the file of the Principal District Munsif Court, Mayiladuthurai. He therefore prayed for allowing the present appeal.

13. *Per contra* Mr. K. Govi Ganesan, learned counsel for the respondent / plaintiff contended that both the Courts below, after analysing the oral and documentary evidence, had decreed the suit in favour of the plaintiff. Therefore, there is no reason for this Court to interfere with the concurrent findings recorded by both the Courts below.

14. It is pertinent to point out that the defendant claims title to the item 2 of the suit property through one Baskaran, who was the first defendant in O.S. No.227/2002. The present plaintiff filed the said suit before the Principal District Munsif, Mayiladuthurai, for a permanent injunction restraining the said Baskaran and one Sekar from alienating various properties including the present suit property to any third parties.



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The suit was decreed by the Principal District Munsif, Myladuthurai, on 06.01.2004 as against which an appeal in A.S. No.45/2004 was filed by Baskaran before the Subordinate Court, Mayiladuthurai. The learned Subordinate Judge confirmed the findings recorded by the trial court judge. Subsequently Baskaran (vendor of the present appellant/defendant) filed a second appeal in S.A. No.1062/2007 before this Court and subsequently had withdrawn the same as is seen from the orders passed by this Court on 04.10.2019 in S.A. No.1062 of 2007. The appellant/defendant mainly claims title to the suit property through the said Baskaran. The appellant has filed the certified copy of the sale deed allegedly executed by Baskaran in his favour. It is pertinent to point out that the defendant has not filed the original sale deed. In the sale deed Ex.B1 it is mentioned that Baskaran was continuously in possession and enjoyment of the suit property and that he is selling the property in favour of the present defendant K.S. Ramasamy. The parent documents of Ex.B2 has not been filed by the defendant. When the defendant is claiming title though Baskaran, who was the first defendant in the previous suit in O.S.No.227/2002, he cannot now contend that he



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has not been impleaded as a party in the previous suit. As far as *locus standi* of the plaintiff G.Durai to represent the temple is concerned, it is seen from Ex.B2 that he is the President of Managing Committee of the plaintiff temple. This particular document was filed by the defendant in the trial court. It is pertinent to point out that G. Durai has not claimed any exclusive right over the suit property and his contention is that the property belongs to the temple, for which already a suit in O.S.No.227/2002 was filed and the decree passed in the said suit in favour of the plaintiff was upheld in A.S. No.45/2004.

15. In the circumstances, the substantial questions of law are answered against the appellant. Accordingly, the second Appeal stands dismissed.

16. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.



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ii. The decree and judgment dated 07.04.2016 passed in A.S. No.34 of 2014, on the file of the Additional Sub-Court, Mayiladuthurai, and the decree and judgment dated 31.01.2014 passed in O.S.No.292 of 2012, on the file of the Additional District Munsif Court, Mayiladuthurai, are upheld.

21.11.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Additional Subordinate Judge, Mayiladuthurai
2. The Additional District Munsif Court, Mayiladuthurai
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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