

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 622 of 2012

1.P.Nagaraja Reddiar
2.N.Ram Mahidhar

...Appellants

Vs.

A/M Devanathaswamy Temple
Thiruvandhipuram represented
by its Executive Officer
Holding office at Thiruvandhipuram
Cuddalore Taluk.

... Respondent

Prayer: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 20.02.2012 made in A.S. No. 48 of 2011 on the file of the Principal District Judge, Cuddalore, confirming the judgment and decree dated 25.11.2009 made in O.S. No. 115 of 2008 on the file of the Principal Subordinate Judge, Cuddalore.

For Appellants : Mr.P.Dinesh Kumar

For Respondent : Mr.T.S.Baskaran

JUDGMENT

The appellants are the plaintiffs, who lost the suit filed for seeking permission to sell the suit property before the trial Court. The first appeal preferred by the plaintiffs has also been dismissed by confirming the judgment of the trial Court. Hence, the plaintiffs have filed this second appeal.

2. The short facts of the plaintiff leading to the case :-

The suit properties are the ancestral properties of the plaintiff's family, which are attached with an obligation to perform the Ani Pournami Thoppu Uthsava Kattalai (hereinafter referred to as 'the Kattalai' for short) in respect of the defendant Temple and the Kattalai is being performed by the first plaintiff as the Hereditary Trustee and he has been recognizing as a Hereditary Trustee by the Deputy Commissioner of Hindu Religious and Charitable Endowments Department (hereinafter referred to as 'HR&CE Department', Mayiladuthurai in O.A. No. 9 of 1994. The second plaintiff is the son of the first plaintiff and is the next in the order

succeeding Hereditary Trusteeship. Though the defendant Temple is under the control of HR&CE Department, the Kattalai is not under the control of HR&CE Department. The suit properties are in possession of various person, who are tenants by paying meager rent or third party trespassers, who do not pay any rent. Some of the third party trespassers maneuvered to get patta in their name and with great difficulty the plaintiffs managed to get patta re-transferred in the name of the Temple. As the income from the property is not sufficient to perform the Kattalai, the first plaintiff is performing the Kattalai out of his own funds. The appellants are not able to evict persons, who used to trespass into the property and establish some right in the property by spending money for the litigation. Hence, the first plaintiff had decided to dispose of the property either to persons, who are in possession or to the third party, who would take the risk of eviction. The sale price is deposited in the Bank. The Kattalai is performed from and out of the interest earned on the deposit. Hence, the plaintiffs have filed the suit seeking for permission to sell the properties

in the interest of Kattalai.

3. The defendant has filed written-statement with the following averments:-

The suit property belongs to the plaintiff's family. However, with an obligation to perform the Kattalai during Desigan Vasantha Urchavam to the defendant's deity.

3.2 The allegation that the Kattalai is not under the control of the HR & CE Department is false. The Kattalai is under the control of the HR & CE Department vide order in O.A. No. 9 of 1994 dated 12.01.1996 passed by the Joint Commissioner of HR & CE Department.

3.3. The Executive Officer of the Temple is only a supervising authority and for any modification in the Kattalai property or any permission relating to the Kattalai, the Commissioner of HR & CE Department is the appropriate authority.

3.4. Since the suit has been filed without impleading the Commissioner of HR & CE Department, it is bad for the non-joinder of necessary parties. The suit properties are in the

possession of various persons, who are either tenants by paying meagre rents or third party trespassers, who do not pay any rent. The allegation that the income from the property is not sufficient to perform the Kattalai is not true. The property can be sold only after getting permission from the Commissioner of HR & CE Department and he has not been arrayed as a party in the suit.

4. On the basis of the above pleadings, the Court framed the following issues:-

(1) Whether the suit is bad for non-joinder of HR & CE Commissioner as a party?

(2) Whether permission for sale can be given by this Court?

(3) Whether permission to sell the suit properties can be given to the first plaintiff?

(4) Whether the plaintiffs are entitled to decree as prayed for?

(5) To what other relief or reliefs the plaintiff are entitled to?

5. During the course of trial, on the side of the plaintiff, the first plaintiff has been examined as PW1 and Exhibits A1 to A14 have been marked and on the side of the defendant, the defendant has been examined as DW1 and no documents have been marked.

6. At the conclusion of the trial and after considering the materials available on record, the suit was dismissed. The first appeal preferred by the plaintiffs challenging the said judgment was dismissed by confirming the judgment of the trial Court. Hence, the plaintiffs have preferred the second appeal by raising various questions of law, but on perusal of the materials available on record and on hearing the submissions, the following substantial question of law alone is taken up for admission:-

“ Whether the Court is right in not granting the relief to the appellants despite admitting the fact that there is no dispute to the title?”

7. The question of law revolves around the simple point that permission to sell the property can be denied despite there is no dispute about the title of the

plaintiffs over the suit properties. Even according to the written statement filed by the respondent/defendant, the suit properties belong to the plaintiffs. However, an obligation has been attached on the suit properties to perform the Kattalai of the defendant Temple, for which the first plaintiff has been recognized as Hereditary Trustee. These facts are not denied by the plaintiffs also.

8. Since there were tenants in the suit properties and they were claiming title by making mutation by adopting illegal move, the plaintiffs have been made to run from pillar to post to cancel those orders and get the patta in the name of the Temple.

9. The suit property is attached with an obligations to perform a Kattalai. For the reasons best known to the plaintiffs, they have got a patta in the name of the Temple. There is no dispute about the fact that the properties belong to the plaintiffs and the defendant has filed the written statement and deposed evidence only by admitting the said facts. But in the judgment of the Trial Court, which was confirmed by the First Appellate Court, it is observed that the plaintiffs have to prove the ownership over the Temple.

10. However, the learned counsel for the respondent submitted that the defendant's written statement and evidence before the Trial Court cannot be presumed as though they have admitted title over the properties and that the defendant had only requested the plaintiffs to produce the deed of Kattalai in order to ascertain whether the properties has been charged to the Kattalai alone or whether the properties have been dedicated to the Temple. This would further strengthen the case of the plaintiffs because so far the defendant has not seen any document obligating any Kattalai in respect of the properties.

11. Even during the proceedings under Section 63 of the HR & CE Act, there is no denial of title that the first appellant has been accepted as a Hereditary Trustee only in respect of the Kattalai. At no point of time, the Temple had an absolute right over the properties. The owner of the properties had not created any temple trust by dedicating the whole of the properties to the Temple and the petitioner has been appointed as a Hereditary Trustee for the Kattalai.

12. Had there been any claim from the Temple that the title also vested with them. in view of any arrangement made by the owner of the Temple, then the same ought to have been pleaded in the written statement. But even the respondent did not take up such plea. In such case, the rightful course ought to have been adopted by the first and second plaintiffs is to file an appropriate petition before the Commissioner of HR & CE Department to get permission to sell the properties. To seek permission from the Court for selling the properties, the plaintiffs ought to have satisfied the Court only when there is a public Trust and obtained leave to file a suit.

13. In the instant case, the appellants did not adopt either of the procedure but he has simply filed a suit seeking permission to sell the property even without impleading the Commissioner, HR & CE Department, who is the competent authority to give permission to sell the properties.

14. Though the Court belows is wrong in approaching the issue by making an observation that the title is vested with the Temple, the fact remains that the plaintiffs have not filed a suit in an appropriate manner and he did not

avail the statutory remedy.

15. In fact, the plaintiffs have not made it clear as to whether he has applied for seeking permission to the respondent and it has been denied. But the repeated contention of the appellants is that requirement of seeking permission from the Commissioner, HR & CE Department does not arise in this case as per Section 6(19) of HR & CE Act, and that the suit property will not fall under definition of Section 6 (19) of HR & CE Act. The suit properties are neither Public Trust nor an Endowment. It appears that the appellants have directly filed a suit without choosing to file any application seeking permission either before the HR & CE Department or to ignore the requirement of permission from any of the authorities by assuming title and liberty upon themselves to sell the property.

16. If the appellants thought it fit that no interest in the properties have been given to the Temple, he could have assumed title by himself without waiting to get any permission. It appears that the suit itself has been filed without establishing any cause of action. Hence, it is right for the first appellate Court to dismiss the appeal by confirming the judgment of the trial

Court

17. Accordingly, the substantial questions of law are answered against the appellant and the second appeal is disposed. No costs.

22.11.2024

Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No

Maya

To

1. The Principal District Judge, Cuddalore,
2. The Principal Subordinate Judge, Cuddalore.
3. The Section Officer,
V.R. Section,
High Court, Madras.

S.A. No. 622 of 2012

R.N.MANJULA, J.

Maya

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