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S.A. No. 1098 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

Second Appeal No.1098 of 2013

Kaliyamurthy

... Appellant

Versus

Arulmighu Sarva Sithi Vinayagar Koil, Thiruvankadu,
Rep. by its Administrator,
Mr. T. Agora Gurukkal @ Appu Gurukkal,
S/o. Mr. Swaminathan,
Residing at Thiruvankadu Village,
Sirkali Taluk & Munsif.

... Respondent

Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and decree dated 29.03.2012 in A.S. No. 65 of 2011 on the file of the Principal District Judge, Mayiladuthurai, confirming the Judgment and Decree dated 07.10.2010 in O.S. No. 93 of 2005 on the file of the District Munsif, Sirkazhi.

For Appellant : Mr. S. Sadasharam

For Respondent : Mr. A. Muthukumar



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JUDGMENT

The plaintiff is the appellant herein. The suit in O.S. No. 93 of 2005 was filed by the plaintiff seeking mandatory injunction against the defendant temple to remove the encroached sunshade extending on the northern side of the northern compound wall of the defendant temple morefully set out in B-Schedule property in the plaint and for permanent injunction restraining the care taker of the defendant temple, his successors, his men, and agents from encroaching on the north side of the northern compound wall of the defendant temple in any portion of the A-Schedule property and for costs.

2. For the sake of convenience, the parties are referred as plaintiff and defendant as referred in the suit.

3. As per the plaint averments, the property in question is located in Sirkali Taluk, No.79/A, Thiruvengadu vattam, and village. The specific details about the boundaries and neighbouring properties are as follows:-



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“(i) A-Schedule property is situated in R.S.No.312/5A Dry, admeasuring acre 24.04 cents marked as A, B, C, D, E and F in the plan and situated South of Mariappan and the plaintiff's property, West of Kuttai, North of portion of R.S No. 312/5A owned by Venkateswara Thirumana Mandapam, East of Street.

(ii) B-Schedule property is a part of the A-Schedule property situated in R.S.No.313/5A, portion marked as E, F, G and H in the plan. The B-Schedule property is situated West and South of plaintiff's other portion of R.S.No.312/5A, East of Street, North of defendant Temple, Northern side compound wall.

4. The contention of the plaintiff is that, Mr. Rathina Padayachi, the father of the plaintiff, had purchased the property to an extent of 45 cents in S.No.312/5, by way of various sale deeds. The plaintiff's father executed a settlement deed dated 18.12.1956 in favour of his only son, namely, the plaintiff. The said 45 cents is comprised in R.S No. 312/5-A after sub division and UDR patta was granted in the name of the plaintiff in the year 1987 for the said extent. The plaintiff is having two houses, out



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of which, the house in the northern side is a terraced one and the house in the southern side is a brick built tiled house. There is a lane on the south of the brick built tiled house bearing door No. 2/436.

5. The plaintiff contended that, one Appu Gurukkal claiming to be the care taker of the defendant temple began to construct a Mandapam on the western side of the sanctum of the defendant temple in February 2005 by increasing the height of the northern compound wall and attempted to extend the sun shade for the Mandapam on the northern side of the compound wall of the defendant temple by projecting over the plaintiff's lane portion and also over the southern vari of the plaintiff's tiled house. As the plaintiff objected to the same, the work was stopped.

6. The plaintiff contended that, he informed the panchayatdars and requested them to direct the said Appu gurukkal to remove the encroachment on the plaintiff's portion. However, from 18.04.2005, he started the work and completed the sunshade by trespassing over the plaintiff's property which is detailed as B schedule. The plaintiff



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contended that the said Appu-Gurukkal has no right to extend the sun shade beyond the Northern phase of the Northern main wall of the defendant temple. The said Appu gurukkal is not only an affluent man but also very influential person with money power, and he is having number of men at his command. The said Appu gurukkal has caused extensive damage to the plaintiff's southern vari of the tiled house. Hence the present suit.

7. The defendant filed a written statement denying the allegations made by the plaintiff and contended that the compound wall of the defendant temple is not the Northern limit of the defendant's property. In order to bring the temple site in a proper shape, a wall was put up on all the three sides, leaving space beyond the compound wall. So far as the defendant temple is concerned, it has about 6 feet North of the Northern compound wall. It is false to state that the plaintiff was having his lane north of the northern compound wall. It belongs to the defendant temple. The defendant further contended that the sun shade of the temple is not projecting beyond the northern compound wall, though the defendant is entitled to extend the same. Thus, the defendant prayed for dismissal of



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the suit.

8. The Trial Court after considering the plaint and the written statement filed by the respective parties, framed the following issues:-

“(i) Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for?

(ii) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

(iii) To what other reliefs, the plaintiff is entitled?”

9. Before the Trial Court, the plaintiff examined himself as P.W.1 and one Anbazhagan was examined as P.W.2. Ex.P1 to P10 were marked. On the side of the defendant, one Agora Gurukkal @ Appu Gurukkal was examined as D.W.1 and one Sanmugampillai was examined as D.W.2, and three documents were marked as Ex.D1 to Ex.D3. The Court documents were marked as Ex.C1 to Ex.C5.



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10. The Trial Court while answering the above issues, had come to the conclusion that the plaintiff had not proved his title and right over the suit property by producing oral and documentary evidence. The documents marked as Ex.P1 to P10 are not in support of the plaintiff's case. After perusing the Court evidence marked as Ex.C1 & Ex. C2 which are the Advocate Commissioner's report and sketch, Ex.C3 to Ex.C5 which are the Surveyor's report and sketches, the Trial Court decided that the defendant temple did not encroach the plaintiff's land as alleged in the plaint. Consequently, the Trial Court dismissed the suit.

11. Challenging the Judgment and Decree in O.S. No.93 of 2005 dated 07.10.2010 passed by the District Munsif Court, Sirkazhi, the plaintiff filed an appeal before the Principal Sub-Court, Mayiladuthurai in A.S.No.65 of 2011. The First Appellate Court had raised a point for determination, which is as follows:-

“Whether this appeal deserves to be allowed by setting aside the Judgment and Decree of the Trial Court?”



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12. After scrutinizing the judgment of the Trial Court, the First Appellate Court had come to the conclusion that the appellant has not proved his case by acceptable evidence, particularly his right and title over the suit described property. The First Appellate Court has taken note of the fact that, as per the report and sketch of the Advocate Commissioner and Surveyor marked as Ex. C1 to C5, the defendant temple has not encroached the property of the plaintiff as claimed in the plaint and the plaintiff has failed to object the said Court documents. The First Appellate Court, concurring with the findings of the Trial Court, dismissed the appeal. Aggrieved by the concurrent findings of the Courts below, the plaintiff has preferred this Second Appeal.

13. At the time of admission of this second appeal, this Court has only issued notice to the respondent temple. No substantial question of law was framed, and the Second Appeal was not admitted.

14. I have heard the arguments of the counsels appearing on either side and perused the materials available on record.



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15. After considering the facts adverted by the appellant and the respondent temple, this Court finds that, there is no substantial question of law to be decided in the second appeal based on the arguments advanced by the learned counsel for the appellant. In the absence of any substantial question of law for consideration, this Court cannot re-examine the facts or interfere in the well-reasoned concurrent findings of the Courts below. Therefore, this Court finds no reason to interfere in the Judgment and Decree of the First Appellate Court.

16. In view of the above, the Second Appeal is dismissed. The Judgment and Decree in A.S. No. 65 of 2011 dated 29.03.2012 passed by the Principal Sub Court, Mayiladuthurai is hereby confirmed. No costs.

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Index :Yes/No
Speaking/Non-Speaking Order
Neutral Case Citation : Yes/No

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To:

1. The District Munisf Court, Sirkazhi.
2. The Principal Sub Court, Mayiladuthurai.
3. The Section Officer, V.R.Section, High Court of Madras.



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N.SENTHILKUMAR, J.

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