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S.A.No.580 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.580 of 2016
and
C.M.P.No.10654 of 2016

Arulmigu Subramanyaswamy Tirukoil,
Tiruttani represented by its Executive
Officer-cum-Joint Commissioner,
Devasthanam, Tiruttani

... Appellant

Vs

1 Vijayakumar
2.K.Nandhakumar
3.S.Balasubramaniam
4.R.Sivakumar
5.S.Shanmugham
6.N.K.Jagannathan
7.Chinnappa
8.The Collector of Chengalpattu
District, Kancheepuram.

9.The Tahsildar, Taluk Office,
Tiruttani

10.V.Munuswamy Reddy

... Respondents

PRAYER: Second Appeal filed Under Section 100 of the Civil
Procedure Code against the judgment and decree order dated 23.01.2015



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passed in A.S.No.34 of 2011 on the file of Subordinate Judge, Tiruttani, confirming the judgment and decree dated 17.04.1997 passed in O.S.No.278 of 1987 on the file of the District Munsif Court, Tiruttani.

For Appellant : M/s.P.Gopalan

For R1,R3, R5 to R7 : Mr.V.Raghavachari
Senior Counsel
for Mr.A.Gowthaman

For R8 & R9 : Mr.S.Suriya
Addl.Govt.Pleader (C.S)

J U D G M E N T

The appellant has filed this Second Appeal against the judgment and decree dated 23.01.2015 passed in A.S.No.34 of 2011 on the file of Subordinate Judge, Tiruttani, confirming the judgment and decree dated 17.04.1997 passed in O.S.No.278 of 1987 on the file of the District Munsif Court, Tiruttani.

2. The appellant is the Plaintiff in O.S.No.278 of 1987. The plaintiff filed a suit in O.S.No.278 of 1987 on the file of the District



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Munsif Court, Tiruttani against the defendants 1 to 13. The said suit for declaration of the plaintiff's right and title and interest in the schedule mentioned suit properties i.e. item Nos.1 and 2 of the schedule mentioned properties and to direct the defendants to restore the Item No.1 of the schedule mentioned tank and also for reconstruction of the Neerazhi Mandapam in the middle of it to its original position and condition and also to deliver possession of them to the plaintiff.

3. For the sake of convenience, the parties are referred to as they were ranked in the suit.

4. The brief facts of the case are as follows :-

i) The suit properties are belonging to the plaintiff temple, endowed by the Raja of Karvetnagar, for the performance of certain specific services and 'Specific Endowment' as detailed in Section 6(19) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. The predeceased ancestral of the defendants 1 to 8



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were in the habit of regularly performing the services which consist of Parivettai Festival which falls on the 10th day of Navarathiri Vijayadasami Day) in the plaintiff's temple. At that time, the Utsavar deity of Lord Muruga of the plaintiff will be taken out in procession from the temple a top the Hill down to the tank as Sri Narayana Theertham alias' Dasi Kulam' and the procession deity will be stationed in the Mandapam situated on the southern side of the schedule mentioned property, during which, the ancestral of defendants 1 to 8 performed poojas and after the mandagapadi and worship was over, gifts of Prasadams viz., Neivedyam, will be given to the ancestral of the defendants. Now the defendant Nos.1 to 8, who claimed themselves as trustees in their presence of worship by way of honours in view of the Parivettai Festival performed by them.



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ii) Thereafter, the deity will be taken around the tank by way of “Pradakshanam” and after that the deity of the plaintiff will be taken back in procession in the evening to the Hill temple. The said Raja of Karvetnagar ,who was the hereditary Trustee of the plaintiff's temple constructed the tank namely, Narayana Theertham, Mandapam. The said Mandapam as described in the suit schedule, to conduct the float festival of Arulmigu Vijayaragavasamy, which is attached to the plaintiff's temple. Therefore, as per the specific endowment rendered by the Raja of Karvetnagar for the purpose of specific services which are in nature of 'Specific Endowment' .

iii) Accordingly, the plaintiff's temple got the absolute right in respect of the suit property in which neither the defendants 1 to 8 nor their successors have absolute right or adjacent to the



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schedule mentioned property. They are not entitled to claim any right or title over the said properties. Defendants 1 to 8 have unlawfully leased out the same and tank bund area to third parties for running shops and they are appropriating income therefrom for themselves. Defendants 1 to 8 entered into an agreement of sale with Defendants 9 and 10 in respect of the scheduled mentioned property.

iv) The Collector of Chengalpattu District and the Tahsildar were impleaded and added themselves as defendants 11 and 12. They have no right, title or interest in the suit properties and they were never in possession and enjoyment of the suit property. The 13th respondent is the purchaser of the portion of the property from Defendants 1 to 6 in the year 1987. The defendants 1 to 10 had completely closed the 1st



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item of the property after demolishing and removing the Neerazhi Mandampam and put up the fence. Therefore, the plaintiff had unlawfully trespassed into the first item of the suit properties.

Hence, the present suit was filed.

5. The defendants 1 to 4 had filed written statement contending as under :-

The defendants 1 to 4 and their predecessors have been in possession and enjoyment of the suit property for more than 100 years continuously and uninterrupted by anyone including the plaintiff. The defendants have not valid title to the property in any event, the defendants and their predecessors in title have perfected the title to the property by adverse possession. Further, earlier suit was filed by the first defendant and others in O.S.No.33 of 1941 on the file of the Subordinate Judge, Chittoor. There was an issue was decided in respect of the title of the suit property wherein there was an observation made in para 9 of the judgment that the temple Devasthanam had not proved that these properties are belonged to Devasthanam properties. But the Hindu



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Religious Endowments Board itself admitted that the plaintiff's in the suit (filed by the first defendant herein) have got a good and valid title and held that the Devasthanam has not proved to substantiate its title. Therefore, the present plaintiff Devasthanam had no title and right over the suit property. Therefore, the suit claim hit by *res judicata*.

6. By way of additional written statement on behalf of the first defendant would submit that the disputed property was in a dilapidated condition and the same was not in existence as on date and the plaintiff is not entitled to either for declaration and mandatory injunction as there is no title vested in favour of the plaintiff. The plaintiff never enjoyed the property as alleged in the plaint and, therefore, the plaintiff is claiming title, right or possession over the property .

7. The 8th defendant had filed written statement contending that the defendants have not sold any property which form part of the suit property. The allegation is that the defendants.1 to 6 have unlawfully sold the western portion of the 1st item of the bund on the western side to the 13th defendant for a consideration of Rs.18,225/- under a registered



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sale deed dated 31.07.1987 is incorrect.

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8. The 11th defendant had filed written statement contending as under:-

The suit property is classified as gramanatham poramboke which is vested in the Government of Tamil Nadu wherein there was a dilapidated tank called Dasikulam, in which, defendants 1 to 10 and their men seem to have filed the instant suit. The defendant would submit that the suit property neither belongs to the plaintiff nor to defendants 1 to 10 and the suit property is gramanatham vested with the State of Tamil Nadu. The 13th defendant stating that he has no right over the suit property.

9. During the trial, both parties adduced oral and documentary evidence. After considering the evidence, the learned trial Judge held that the plaintiff having failed to establish that he derived the title to the suit property and also having failed to establish that he exercised control or possession over the suit property. Further held that the evidence of the contesting defendants 1 to 4 as well as the Commissioner's report



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proves that there is an existence of shops and houses for more than 4 decades and the plaintiff has not raised any objection in order to make any claim over the suit property till 1987. Therefore, the plaintiff's temple is not entitled for declaration as well as consequential injunction and for restoration of the suit tank as well as the recovery of possession.

10. However, the trial Court also held that defendants 1 to 3 and their ancestors got the suit property as claimed by them from the Raja of Karuvetnagar. Further, the trial Court held that the shops around the suit properties were in existence for more than 40 years. P.W.7 had deposed that the right of the defendants to perform the rituals during the Devasthanam temple festival and they can exercise their rights in their property rendered. By virtue of enjoyment of the properties abutting the suit pond which is found in S.No.118/2, defendants 1 to 3 and their ancestors have established their possession adverse to the plaintiff and also everyone else. Further, by relying upon the evidence of P.W.3, VAO, categorically stated that the deity cannot come around the bund and the houses were in existence for about 30 years, which also establishes the temple has not chosen to agitate its right for the observations caused in



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performing the rituals for a very long time. After the disposal of O.S.No.33/1941 on the file of the Sub Court, Chittoor, the plaintiff has not preferred any appeal. Accordingly, the defendants perfected their right and title by adverse possession in respect of the suit property. Accordingly, issue No.4 was answered in favour of defendants 1 to 4 .

11. In respect of the claim made by the Government (D11 and D12) in issue No.5, relying on the VAO's evidence, P.W.3 in his evidence admitted that the suit property in S.No.118/2 is not a natham poramboke and it is classified as only Village natham. Ex.B9 - which is the official gazette dated 02.09.1964, wherein it was published that the Government village site poramboke S.No.118/2 belonging to defendants 1 to 3 and others have been withdrawn from the classification of lands for acquisition already notified. Accordingly, the possession of the property in S.No.118/2 was established that the notification of the Government as early as in the year 1963, which shows that the said notification the alleged claim of D11 and D12 that the Government has got right over the suit property also goes to the wind. Therefore, defendants 9 and 10 have purchased the suit properties from defendants 1



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to 8 in any agreement of sale have failed to submit any documentary proof or any oral evidence to substantiate their pleadings by marking the alleged agreement .

12. In the light of the evidence of both oral and documentary evidence, the trial Judge held that the plaintiff failed to establish his right and title over the suit property and not proved their title from Raja of Karvetnagar by way of specific endowment and also not established that he exercised control or possession over the suit property. Accordingly, the suit was dismissed and the plaintiff appealed in A.S.No.4 of 2011. The first Appellate Judge independently analyzed the facts and evidence on record, framing separate issues, including whether the judgment and decree of the trial Court should be set aside. After reviewing the evidence, the appellate Court confirmed the trial Court's findings, concluding that the plaintiff derived the property by way of last grant but they have not chosen to mark any documents in this regard. Hence, the Appeal Suit was dismissed. Challenging the concurrent findings, the plaintiff has preferred this present second appeal.



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WEB COPY 13. The learned counsel for the appellants submitted arguments challenging the findings of the lower Courts on the following grounds:-

i) The Court below should have found that the suit properties are endowed properties for performance of certain specific services and specific endowment as detailed in Section 6(19) of the Tamil Nadu, H.R. & C.E. and that the plaintiff got them by way of last grant.

ii) The Court below should have found that defendants 1 to 8 and their predecessors were the trustees and they have performed Mandagapadi and the deity was stationed in the Mandapam and later taken for “Pradakshanam” and “Seva” known as “ Vannia Chedi” and that Raja of Karvetnagar, who was the hereditary trustee of the plaintiff temple constructed the suit tank, Mandapam etc. in Visuvavasu (1905) year for the purpose of float festival for Arulmigu Vijayaraghavaswami Temple situated to the East of Tiruttani attached to the plaintiff's temple as sub-temple.



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iii) The Court below should have found that the suit properties are in the nature of “RES EXTRA COMMERCIIUM” and that the suit properties being specific endowments as defined in the Act and that any lease or sale or exchange of the suit properties by defendants or their predecessors-in-title, is void as being hit by Section 34 of the H.R. & C.E.Act.

iv) The Court below has not properly considered the documentary evidence properly, especially the plaintiff's exhibits.

v) The Court below has not properly considered the oral evidences adduced by the plaintiff to prove that the suit property is the plaintiff's (temple) property.

vi) The Court below should have found that the plaintiff is entitled to decree for mandatory injunction to restore the suit property to its original condition.

vii) The Court below has no properly framed the issues with reference to pleadings of the parties.

viii) The Court below should have found that the defendants have no perfected title by adverse possession, as alleged by them.



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ix) The findings of the Court below that the suit is barred by limitation and *res judicata*, are unsustainable and not sound.

x) The Court below should have found that 13th defendant is a necessary party to the suit as he is subsequent purchaser in respect of a portion of the suit property.

xi) The Court below should have found that Ex.B.9 and B.10 will not confer title on defendants. In any event, they will not binding on the plaintiff.

xii) All the issues should have been found in favour of the plaintiff and the suit should have been decreed as prayed for.

xiii) The Court below should have found that the documents produced by the defendants are not relating to the suit properties especially with regard to Narayana Theertham @ Dasikulam.

xiv) The Oral evidence of PWs should have been believed and the oral evidence of DWs should have been rejected.

14. The Second Appeal was admitted on the following Substantial

Questions of Law:-



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- i) Whether the Courts below are justified in law in holding that the present suit filed by the temple is barred by principles of *res judicata* in view of the decision made in O.S.No.33 of 1941 on the file of the Sub Court, Chittoor when admittedly the plaintiff/temple was not a party to the said proceedings?
- ii) Whether the findings of the Court below in respect of the claim of the defendants based on adverse possession is contrary to the provision contemplated under Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959?

15. The learned counsel for the appellant would submit that the learned Judge failed to note that the suit property is known as ' Sri Narayana Theertham and Veeraraghava Theepam'. The learned Judge, by a non-speaking order, dismissed the appeal. The learned Judge failed to note that once the suit properties have been endowed to the appellant temple for performance of Kattalai, in order to safeguard the endowed property, the appellant-temple is entitled to recover the suit properties from the respondents. The learned counsel further would submit that the learned Judge failed to note that since the respondents denied the title of the appellant temple, the appellant temple filed the suit seeking for title and possession. He would further submit that if the judgments and



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decrees of the Courts below are not set aside, the appellant temple would be put to irreparable loss and serious prejudice.

16. By way of reply, the learned counsel for the contesting respondents would submit that defendants 1 to 3 and their ancestors who belonged to “Devadasi community while giving the title of conducting the Parivettai festival by bringing the deity from the hill top to “Narayana Theertham” also known as “Dasikulam”. The plaintiff temple failed to produce any documentary proof to show that the alleged endowment granted him by the said Raja of Karvetnagar and the same was rightly appreciated by the trial Judge and also affirmed the defendants right and title by allowing uninterrupted possession as well as the right possession by relying on the evidence adduced and the same was confirmed by the first Appellate Judge prayed that this appeal is liable to be dismissed,

17. Having considered the arguments advanced by the learned counsel for the appellant and the learned counsel for the respondents and also perused the documents and relied on the decisions cited by the learned counsel for both sides.



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WEB COPY 18. By considering both the submissions pointed to be decided as to whether the plaintiff temple is proved their right and title over the suit property or from pleas which barred by principle of *res judicata* and in view of the judgment passed in O.S.No.33 of 1941.

19. According to the plaintiff temple, the suit property namely, tank and mandapam were constructed by Raja of Karuvetnagar for the performance of the float festival of Arulmigu Veeraraghavasamy temple which is attached to the plaintiff's temple. Defendants 1 to 8 and their ancestors were performed Abishegam to all the deities in the hill temple and to conduct the Parivettai festival and they were honoured by grant of exemption from collection of kattanam in the hill temple known as “Maffee”. Defendants 1 to 8 contesting that the suit property was in possession and enjoyment of themselves and their ancestors for more than 100 years as they belonged to Devadasi community was given to conduct the festival for bringing the deity. P.W.5 has stated that the suit property is called by the public as Dasikulam also and not aware of the fishing rights in the tank. Furthermore, there is findings rendered in



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earlier suit in O.S.No.33 of 1941 that the plaintiff temple has not produced any documents to establish the right and title over the suit property nor produced any documentary proof to establish the alleged grant made by Raja of Karuvelnagar in favour of the Temple.

20. The learned counsel for the respondents submit that already title of the suit property was declared adjudicated in favour of D1 to D3 and their ancestors for the same property in S.No.118/2, therefore, the plaintiff temple has no right to title or possession of the properties and barred by principle of *res judicata*.

21. By way of reply, the learned counsel for the appellant submits that in the earlier suit, only a portion of the shop was in dispute. therefore, it would not operate the *res judicata*. But, admittedly in earlier suit O.S.No.33 of 1947, the plaintiff Devasthanam is a defendant. Considering the suit register extract in O.S.No.33/1941 on the file of the Sub Court, Chittoor which was marked as Ex.A1 and as per the suit property, some of the shops of S.No.118/2 is said to be the owner by repossession of the defendants and their ancestors. In that suit, the



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temple Devasthanam is a defendant and the suit property in O.S.No.33 of 1941 was referred as Dasikulam. Admittedly, the mother of the first defendant namely Kirwari ammal was mentioned as Devadasi as per the temple records. According to P.W.7, he is the Executive Officer of the plaintiff temple from the year 1942 to 1951. The trial Judge, while disposing the suit in O.S.No.33 of 1941, made an observation that the temple Devasthanam had not produced any document to show the alleged last grant of endowment which is said to be given by Raja of Karivetnagar.

22. On the other hand, the learned counsel for the respondents would submit that the defendants 1 to 3 and their ancestors proved that the suit property was in their enjoyment for more than 4 decades, as Ex.P.28, the plaintiff had got a good and valid title over the suit properties (shops) and that the Devasthanam has not proved their right and title over the suit survey number in earlier suit. However, the right of present defendants 1 to 8 and their ancestors also been to confirm the earlier suit in O.S.No.33 of 1941 filed by his mother in which Devasthanam is defendant. There is a finding against the temple



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Devasthanam which was not challenged as on date. By way of reply, the learned counsel for the appellant submits that the entire suit property was not included, only a portion of the shops on the tank was subject matter in earlier suit. But, admittedly, the present suit Survey No.118/2 was also subject matter and that some of the shops under dispute in an earlier suit as well as present suit. P.W3 categorically stated that the deity cannot come around the bund as houses are in existence for the past 30 years and he also stated that he is not aware of the maintenance of the suit property by the plaintiff's temple. As per evidence of P.W.1 Temple official who himself admitted that they are not having documentary evidence to show the alleged last grant in favour of the temple and therefore no records to show that the suit property is an endowment property. Admittedly, the said property to be in existence for more than 100 years and there is no proof on the side of the plaintiff temple that they maintain the said tank and no security measures were also taken in respect of the pond and the same was rightly appreciated by the trial Court.

23. In all aspects, the plaintiff failed to establish that he derived the



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title to the suit property from Raja of Karvetnagar by way of specific endowment and also having failed to establish that he exercised control or possession over the suit property .

24. It is pertinent to note assuming that the appellant derived the property by way of last grant but they have not chosen to mark any documents in this regard and further the property register of the plaintiff temple marked as Ex.A34 in the lower Court but in Ex.A34, the suit property was also not found place in the register maintained by the plaintiff temple. Hence, it is not proved by the plaintiff that the suit property belongs to the temple.

25. It is further contended that the temple deity was never used to go round the tank since the entire bunds of the so-called tank are full of buildings and shops belonging to the first defendant and their predecessors. The defendants referred to the judgment in O.S.No.33 of 1941 with reference to the shops put up on the bund portion of the suit property in which the Court held that the plaintiff had no title or possession over the bund portion of the property. In fact, the suit



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property is a trust property and the same was given by Raja of Karvetnagar to the defendants family as an absolute property. The suit in S.No.118/2 already claimed of the plaintiff temple Devasthanam was not been accepted. In order to establish that the right and title of defendants 1 to 8 and their ancestors was declared and as on date, it was not set aside more particularly S.No118/2 which clearly establishes their ownership and recognition by the Government as early as in the year 1963, when the said lands were proposed for acquisition. To prove the claim of the defendants with the oral evidence of P.W.3- VAO, with Exs.B.7 and B8 which are the settlement register and Sagubadi Adangal extract in respect of S.No.118/2 and therefore, the issue No.1 is answered against the plaintiff.

26. Eventually, the plaintiff's temple approached the relief of declaration without sufficient proof to establish the suit property was given to the temple by way of last grant of endowment for specific rituals. Therefore, they are not proved the right and title of the suit property as per Section 109 of the Hindu Religious and Charitable Endowment Act, 1959.



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27. The learned counsel for the appellant has relied on the following judgment of the Hon'ble Supreme Court :-

Joint Commissioner, Hindu Religious and Charitable Endowments, Admn.Department, vs. Jayaraman and Others, (2006) 1 SCC 257, it has been held as follows:-

7. It is seen that the claimant had got themselves appointed as hereditary trustees by applying under Section 63(b) of the H.R. & C.E. Act. They could not thereafter shed their character as trustees of the temples holding the lands belonging to the temples at a subsequent stage at least without impleading the H.R. & C.E. Department and the deities and without getting a valid adjudication of their right over the properties. It is clear that in spite of the claimants made no attempt to implead the HR & CE Department either before the Settlement Tahsildar or before the District Judge and consequently, the orders passed by the Settlement Tahsildar and by the District Court were clearly illegal and not binding on the deities or the HR & CE Department. The claimants had, in fact, acted totally without bonafides in an attempt to corner the properties or themselves or atleast to make undue gains for themselves by selling the properties. Such action would certainly not bind the deities or the HR & CE Department. The High Court, representing the sovereign as parents patriae ought to have come down on the respondents herein and ought to have issued directions for the protection of the



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properties.

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The above Judgment will not apply to the facts of the present case on H.R. & C.E is not a party to the proceeding. Thus, the substantial questions of law No.2 is answered.

28. The learned counsel for the respondent also submits that the last grant claim made by the plaintiff temple without sufficient document and the same cannot be presumed. Further, the respondent has relied on the decision of the Supreme Court in ***Government of Tamil Nadu and Another vs. Arulmighu Kallalagar Thirukoil Alagar Koil and Others***, (2020)18 SCC 443, wherein it has been held as under :-

“18. As the suit filed by the respondent was not dismissed as barred by limitation, it is not necessary for us to examine the point relating to Section 10 of the Limitation Act. Another point decided in favour of the respondent is that lost grant has to be presumed. On the basis hat the respondent temple had been in long and continuous possession of Alagar Hills, the High Court was of the opinion that last grant was to be presumed. The High court observed that the respondent temple had been exercising acts of



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ownership over the suit hills for several centuries. The application filed under Order 41 Rule 27 of C.P.C. By the respondent was allowed and the documents produced by them were marked as Exts A.46 to A.56. We have carefully examined those documents which only show that honey and other forest produce were being collected by those who were permitted by the respondent temple. The right, title or possession of the temple over Alagar Hills cannot be determined on the basis of the above documents”.

29. The decision taken in the above cited case is squarely applicable to the facts of the present case. In view of the above said findings, the substantial questions of law are answered against the appellant and the second appeal is liable to be dismissed.

30. In the result, the second appeal is dismissed and concurrent finding dismissing the suit is hereby confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.11.2024

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T.V.THAMILSELVI, J.

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To

1. The Subordinate Judge, Tiruttani,
2. The District Munsif, Tiruttani.

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