



S.A.No.790 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.02.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.790 of 2021
and
C.M.P.No.15287 of 2021

1.M.Vijayan
2.P.Ezhilarasan
3.G.Rathinam

... Appellants

Vs.

Varadharaj Reddiyar

... Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the judgment and Clause 3 of the decree dated 18.03.2020 made in AS No.81 of 2016 on the file of the Learned Sub Court, Vaniyambadi confirming the judgment and decree dated 15.09.2016 made in OS No.40 of 2014 on the file of the Learned Principal District Munsif Court, Vaniyambadi by allowing this Second Appeal.

For Appellant : M/s.N.Manoharan



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For Respondent : No appearance [served]

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JUDGEMENT

The defendants who are aggrieved by the observation made by the Sub Judge, Vaniyambadi in A.S.No.81 of 2018 while dismissing the suit filed by the respondents herein are the appellants before this Court.

2. The facts that are necessary for the purpose of disposing of this Second Appeal is set out herein below and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff had filed the suit O.S.No.40 of 2014 on the file of the Additional District Munsif, Vaniyambadi for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The property in question is an extent of 75 cents in S.No.321/6 Puthukoil Village Vaniyambadi, Vellore which is described as a Sandy Poramboke together with a



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wedding hall called Thirumagal Kalyana Mandapam constructed thereupon with all its fixtures and furniture including service connection.

4. The plaintiff would submit that he had formed an Association in the name and style of Thirumagal Narpani Manram in the year 1992 for the welfare of the villagers in the 5 villages, namely, Puthukoil, Koothandakuppan, China Mottur, Kethandapatti and Thekkupattu. He would submit that he had been appointed as the president of this Association which is also registered under the Society Registration Act. The defendants are the office bearers and the 1st defendant was appointed as a Treasurer.

5. It is the contention of the plaintiff that he had occupied the suit property for the purpose of putting up a marriage hall and the same had also been constructed with the help of donations made by the local people and also his own contribution of Rs.50,000/-. The plaintiff



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would submit that electricity service connection in respect of this Kalyana Mandapam has been obtained in his name. It is the contention of the plaintiff that the 1st defendant who was taking care of the accounts of the Association and the wedding hall had committed misappropriation of funds. The plaintiff had demanded the 1st defendant to render proper accounts which he refused. Therefore, the plaintiff was forced to remove the 1st defendant from the post of Treasurer in the year 2002. The other members had also disowned their membership and the Society became a non-functional one. Thereafter, the plaintiff has been maintaining the wedding hall without the support of anyone.

6. All of these resulted in the 1st defendant becoming inimically disposed towards the plaintiff and he had started indulging in all illegal activities all aimed at taking control of the wedding hall. With this in mind, the 1st defendant had sent a report to the Joint Commissioner of Hindu Religious and Charitable Endowments Board (HR & CE Board)



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asking them to take over the wedding hall as it was constructed from out of the funds of the Puthumariamman Temple. The Commissioner had issued a notice dated 28.06.2013 calling upon the plaintiff to surrender possession of the Kalyana Mandapam. To the said notice, a reply dated 05.07.2013 was issued by the plaintiff.

7. The plaintiff would further submit that the 1st defendant had constructed over 3 wedding halls in Puthukoil Village. His wedding halls were not earning sufficient income on account of the existence of the wedding hall in the suit property which is made available at cheaper rates to the villagers. He would further submit that the 1st defendant had attempted to trespass into the suit property and cause damage to it which was successfully prevented. Therefore, the plaintiff had come forward with the suit in question.

8. The said allegations were countered by the defendants in the written statement by denying the allegations contained therein. The



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written statement was filed by the 1st defendant and adopted by the others. The defendants would submit that the wedding hall in the suit property had been constructed out of the contributions of 40 members of the Thirumagal Narpani Manram and income from donations and rent from the Puthumariyamman temple. From out of the income that the wedding hall had generated, the first floor had been constructed in the year 2000. The total value of this hall is now at a sum of Rs.20,00,000/-. The plaintiff was alone enjoying the income from the wedding hall for the past 17 years. He has not been conducting any meetings nor taking steps to renew the registration of the Society. The defendants would submit that they have equal right to the property and the wedding hall.

9. The Trial Court had framed 3 issues and the plaintiff examined himself as P.W.1 and another witness as P.W.2 and marked Ex.A.1 to A.20. The 2nd defendant examined himself as D.W.1 and 3rd defendant



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as D.W.2 and 3 other witnesses were examined as D.W.3 to D.W.5 and Ex.B.1 to B.5 were marked on the of the defendants. Ex.X.1 was marked through the third party.

10. Ultimately, the Trial Court had dismissed the suit. Aggrieved by the same the plaintiff had filed A.S.No.81 of 2016 on the file of the Sub Court Vaniyambadi. The Lower Appellate Court also concurred with the findings of the Trial Court. However, while dismissing the appeal the Lower Appellate Court had proceeded to direct the Joint Commissioner HR & CE Board, Vellore to take possession of the property and maintain the Kalayanamandapam. It is aggrieved by this observation that the defendants are before this Court.

11. The matter was admitted on the following substantial questions of law:-

“1. Has not the Ld. First Appellate Court



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committed an error in granting clause 3 of the decree by directing the HR & CE Department to take possession of the property with the help of the Tahsildar, in the absence of any pleadings, prayer, legal evidence adduced by the parties to the suit or clam made at the instance of the HR & CE Department?

2. Whether the Judgement of the Ld.First Appellate Court in respect of the clause 3 of the decree is perverse and vitiated for granting relief in favour of a non party to the lis, particularly when the conclusion of the Court is not borne out of the records”?

12. Heard Mr.N.Manoharan, the learned counsel for the appellants.

13. It is nobody's case that the Kalayanamandapam has been constructed by the HR and CE Board or that it is owned by HR and CE



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Board. In fact, the HR and CE Board which had issued a notice dated 28.06.2018 which was marked as Ex.A.18, has not taken any further steps after receiving the reply dated 05.07.2013, under Ex.A.13. The HR and CE Board had not taken any interest or staked a claim to the suit property. The wedding hall has been constructed by a registered Society and it is this Society that is paying the tax and other public outgoings. It is not associated with any temple coming within the control of the HR and CE Board. Therefore, the order of the learned Appellate Judge directing the HR and CE Board to take over the Kalayanamandapam is a case of judicial overreach. Therefore, clause 3 of the decree of Lower Appellate Court, namely, the Subordinate Judge, Vaniyambadi has to necessarily be set aside. Therefore, the substantial questions of law are answered in favour of the appellants.

14. In fine, the above Second Appeal is allowed modifying the decree of the Lower Appellate Court, namely, the Subordinate Judge,



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Vaniyambadi, by setting aside Clause 3 of the decree dated 18.03.2020 made in A.S.No.81 of 2016. No costs. Consequently, the connected Miscellaneous Petition is closed.

15.02.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Sub Court, Vaniyambadi.
2. The Principal District Munsif Court, Vaniyambadi.
3. The Section Officer,
V.R.Section,
High Court, Madras.

P.T.ASHA, J.,

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