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S.A.(MD).No.190 of 2021

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.190 of 2021

and

C.M.P.(MD)No.2795 of 2021

Dharmayan (Deceased)
Kamalaveni (Deceased)

1.Balan
2.Guban
3.Selvi

... Appellants

/Vs./

R.Duraikannu Galkkudaiyar (Deceased)

1.Arulmigu Arunguna Perumal Kovil Thillayampoor,
by its Executive Officer,
office at Thenupureeswarar Alayam,
Patteeswaram Village,
Kumbakonam Taluk, Thanjavur District.

2.D.Padmasani
3.D.Ramkumar

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment dated 21.01.2020 made in A.S.No.34 of 2014 on the file of the Additional Sub Court, Kumbakonam, confirming the judgment and decree, dated 30.08.2013, made in O.S.No.370 of 2009 on the file of 1st Additional District Munsif Court, Kumbakonam.



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For Appellants : Mr.G.Gomathi Sankar
For R1 : Mr.V.Chandrasekar
For R2 & R3 : Mr.B.Jameel Arasu

JUDGMENT

The deceased plaintiff R.Duraikannu Galkkudaiyar has filed the suit for himself and on behalf of the other 113 Samudhaya Mirasudars seeking bare injunction against the sole defendant Dharmayan. Pending suit, the Executive Officer of Arulmigu Arunguna Perumal Kovil Thillayampoor was impleaded as second defendant. The Trial Court had allowed the suit. Aggrieved over the same the 1st defendant Dharmayan had preferred First Appeal. Pending First Appeal, the said Dharmayan died and the legal heirs were impleaded. The said First Appeal was dismissed. Aggrieved over the same, the present second appeal is preferred by the legal heirs of the said Dharmayan. The deceased R.Duraikannu Galkkudaiyar is represented by the respondents 2 and 3 herein and the temple is represented by the Executive Officer.

2. At the outset, it is seen that the suit is filed by the said R.Duraikannu Galkkudaiyar for himself and on behalf of other 113 Samudhaya Mirasudars. But in this second appeal, the legal heirs of the deceased R.Duraikannu Galkkudaiyar



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are impleaded. The said legal heirs are representing for themselves and also are representing the 113 Samudhaya Mirasudars.

3. The contention of the appellants herein is that the said R.Duraikannu Galkkudaiyar, who is being represented by his legal heirs i.e. respondents 2 and 3, are the cultivating tenants under the first respondent temple. Hence, the said R.Duraikannu Galkkudaiyar / respondents 2 and 3 are not entitled to any relief and claiming right over the property is incorrect. Moreover, when the property belongs to the temple, the said R.Duraikannu Galkkudaiyar ought to have filed suit for declaration and hence the suit for bare injunction is not maintainable. On these two grounds, the present second appeal is filed.

4. At the time of admission, the second appeal was admitted on the following substantial questions of law:

“i) Whether the suit for injunction is maintainable without seeking relief of declaration of title of the suit property when the defendants questing the title of the plaintiff?”

ii) Whether the documents in Exhibit-B1 to B39 have not proved the possession and enjoyment of the suit property by the 1st defendant?”



5. The first substantial question of law is whether suit for bare injunction is maintainable without seeking declaration relief. When the defendant Dharmayan had raised cloud over the property and submitted that the said property belongs to the temple, then the plaintiff R.Duraikannu Galkkudaiyar ought to have filed declaration and injunction. The Learned Counsel appearing for respondents 2 and 3 submitted that the Trial Court had considered the issue, wherein the Trial Court had relied on the deposition of the Temple and had held that the Temple themselves have accepted that they are not the owner of the Temple. Moreover, the Trial Court had relied on the judgement rendered in the previous suit in O.S.No.49 of 2005 on the file of Valangaiman at Kumbakonam and held that the suit property belongs to the Samudhaya Mirasudars. The relevant portion of the impugned judgment of Trial Court is extracted hereunder:

“Further, on analyzing the entire oral evidence of both side witnesses, it is clear that the plaintiffs are the real owner of the suit property. The second defendant also in the previous suit in O.S.49/05 stated that the suit property belongs to Samudhaya Mirasudars. So, there is no doubt that the suit property belongs to Samudhaya Mirasudars. The defendants who pleaded for the temple stated that the said Mirasudars handed over the property to the temple, has failed to prove on what way, the second defendant obtained title from the Samudhaya Mirasudars. The present document produced by the defendants is not sufficient to decide that the second defendant is the



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owner of the suit property. Hence, this court is of opinion, according to the available materials and the evidence, it is not right to say, that the second defendant is the owner of the suit property and this issue is answered accordingly.”

However, the learned Counsel appearing for the appellants vehemently opposed the same since the earlier suit was not filed for declaration.

6. On perusing the judgment, it is seen that even though it was not for declaration, the Temple has accepted before the Court that the suit property belongs to the Samudhaya Mirasudars and has also stated that the suit property does not belong to the Temple. Moreover, in the property register of the Temple, the property in question is not mentioned and the same would indicate the said property is not belonging to the temple. Therefore, the first substantial question of law is answered against the appellants.

7. As far as the second substantial question of law is concerned, exhibits B1 to B39 would prove the enjoyment of appellants. Of course, the receipts are issued by the Temple. When the Temple has accepted that they are not the owner of the suit property, it is difficult to understand how the Temple has issued such



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receipts. Even if the Temple has issued receipts, when the Temple has accepted that the property belongs to Samudhaya Mirasudars, issuing receipts alone will not prove that the property belongs to the Temple. Hence, the 2nd substantial question of law is also answered against the appellants.

8. Hence, the second appeal is dismissed and the judgment and decree rendered by both the Courts are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

9. It is made clear that the property belongs to the said 113 Samudhaya Mirasudars and the present second appeal is filed by the legal heirs of R.Duraikannu Galkkudaiyar representing for themselves and also are representing the 113 Samudhaya Mirasudars.

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Index : Yes / No
NCC : Yes / No
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1. The Additional Sub Court, Kumbakonam.
2. The 1st Additional District Munsif Court, Kumbakonam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.190 of 2021

Dated:
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