BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	19.07.2024
PRONOUNCED ON	02.08.2024

CORAM :

JUSTICE **N.SESHASAYEE**
and
JUSTICE **P.VADAMALAI**

A.S(MD)No.143 of 2014
and
M.P(MD)No.1 of 2014
and
A.S(MD)No.193 of 2014
and
M.P(MD)Nos.1 of 2014 and 1 of 2015

A.S(MD)No.143 of 2014
1.Padmavathi
2.Lavanya
3.G.Ramakrishnan
4.A.S.Krishnakumar
5.S.Prakash
6.S.Mohanraj
7.N.Jothi
8.J.Banumathy
9.V.Shankar
10.M.Sudha ...Appellants/Defendant Nos.1, 4, 5, 6, 7, 11, 13, 14 & 16

Vs

1.The Idol of Sri Renganathaswami,
Srirngam,
rep. by its Joint Commissioner/
Executive Officer,
having its office at Devasthanam office,
Srirangam, Trichy – 6. ... 1st Respondent / Plaintiff
Kamalam Amma(died) ... respondent /2nd defendant

2.Kamaraj ...2nd respondent /3rd defendant

3.Durga Devi	... 3rd respondent /8th defendant
4.N.Sundararajan	... 4th respondent / 9th defendant
5.C.Rajendran	... 5th respondent / 10th defendant
6.V.Ramasamy	... 6th respondent / 12th defendant
7.Vasanthi	... 7th respondent / 17th defendant
8.Vanith	... 8th respondent / 18th defendant
9.Vanipriya	... 9th respondent / 19th defendant

PRAYER: Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 18.02.2014 in O.S.No.98 of 2010 on the file of the Principal District Judge, Trichy.

For Appellants	: Mr.Raguvaran Gopalan
For R-1	: Mr.R.Subramaniam for Mr.M.Saravanan
For R-2 to 7 to 9	: Mr.AR.L.Sundaresan, Senior Counsel for Mr.N.Nithianandam
For R-3 to 6	: No Appearance

A.S(MD)No.193 of 2014:

1.Kamaraj
2.Vasanthi
3.Vanitha
4.Vanipriya ...Appellants/Defendant Nos.3, 17, 18 and 19

Vs

1.The Idol of Sri Renganathaswami,
Srirngam,
rep. by its Joint Commissioner/
Executive Officer,
having its office at Devasthanam office,
Srirangam, Trichy – 6. ... 1st Respondent / Plaintiff

Padhmavathy(since deceased) .... respondent /2nd defendant

3.Lavanya
4.G.Ramakrishnan
5.A.S.Krishnakumar
6.S.Prakash
7.Durga Devi
8.N.Sundararajan
9.C.Rajendiran
10.N.Jothi
11.V.Ramasamy
12.S.Mohanraj
13.J.Bhanumathy
14.V.Shankar
15.M.A.Sudha ... Respondent Nos.3 to 15/Defendant Nos. 4 to 16

PRAYER: Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 18.02.2014 in O.S.No.98 of 2010 on the file of the Principal District Judge, Trichy.

For Appellants	: Mr.AR.L.Sundaresan, Senior Counsel for Mr.N.Nithianandam
For R-1	: Mr.R.Subramaniam for Mr.M.Saravanan
For R-2 to R-14	: Mr.Raguvaran Gopalan
For R-15	: No Appearance

COMMON JUDGMENT

(Judgment was delivered by N.SESHASAYEE J.)

1. These twin appeals, preferred by some of the defendants, arising out of a decree passed by the learned Principal District Judge in a suit for

recovery of possession of suit properties and other associated reliefs in O.S.No.98/2010.

2. The facts are as below:

(a) The plaint lists four items of suit properties and they are,

(i) 1.67 acres in T.S.No.2 of Vellithirumutham Village in Srirangam Taluk;

(ii) 1.0 acre in T.S.No.15;

(iii) 95 cents in T.S.No.15; and

(iv) 68 cents in T.S.No.13.

(b) The plaintiff is the Idol of Sri Ranganatha Swamy, Srirangam. The suit properties are minor inam lands and are covered under title deeds, TD 1045 and 1046, under which these properties were granted to (i) Sri Vedha Vyasa Thatha Bhattar, (ii) Sri Vedha Vyasa Venkata Sudharsana Bhattar, and (iii) Sri Vedha Vyasa Venkata Bhattar.

(c) These were personal gifts made to the grantees and this grant was confirmed by the Inam Commissioner on 27.07.1865 and is reflected in the Inam Fair Register (henceforth would be referred to as the IFR). The IFR deals with both the properties covered under TD 1045 and 1046;

(d) While so, on 06.03.1870, the aforesaid grantees have relinquished their grant obtained under title deed 1046. Thereafter, the IFR was not modified to exclude the properties covered under TD1046. When once the grantees relinquished the properties obtained under TD1046, they ceased to have any right over the same any longer;

(e) While so, on 21.12.1890, vide Ext.A2, the aforesaid three grantees divided the properties among themselves vis-a-vis, the properties covered under TD1046. While dividing the properties among themselves, they set apart the suit properties specifically for rendering certain service to the plaintiff and receive certain honours for rendering those service. This would constitute a specific endowment within the meaning of Section 6(19) of the Hindu Religious Charitable Endowment Act, (Tamil Nadu Act 22 of 1959), indeed, it reflects an intention on the part of these grantees to dedicate the property in favour of the Idol. This apart, they had also imposed a restriction upon themselves from alienating the properties.

(f) While so, on 17.05.1957, vide Ex.A3, the descendants of the aforesaid grantees entered into a partition, in which, the suit properties came to be allotted to the share of Vedha Viyasa Sri Rama Pattar, and this document included the properties which were specifically endowed to the plaintiff under Ex.A2. The plaintiff is not a party to Ex.A3 partition deed;

(g) Be that as it may, under Exts.A4 and Ex.A5 sale deeds dated respectively 27.12.1974 and 25.10.1989, the alottee of the suit properties under Ex.A3 sold them to the second defendant. The 3rd and 4th defendants are the children of the second defendant. (2nd defendant had since passed away and her other legal heirs are impleaded as D17 to D19).

(h) Subsequently the purchaser and her children had developed the suit properties into a lay-out and sold those plots to defendants 5 to 16.

(i) In terms of Sec. 34 of the H.R. & C.E. Act, Ext.A3 and all subsequent documents executed on the strength of Ext.A3 are bad in law.

Claiming that the properties specifically endowed to the plaintiff has been wrongly dealt with and alienated by the defendants 2 to 4 and thereby letting defendants 5 to 16 occupied specific portion of the suit properties is contrary to the vested right of the plaintiff, it has come forward with the suit for recovery of possession;

3. The defendants entered appearance in two batches but putforth an identical line of defence. They plead:

(a) That the suit is not maintainable since the Executive Officer of the temple does not have the authority to institute a suit without a resolution of the Board of Trustees;

(b) The service rendered by the parties to Ext.A2 dates back by few generation prior to title deeds TD1045 and 1046 and hence, TD1045 and 1046 cannot be related to the services rendered by the parties to Ex.A2 or their descendants.

(c) TD1045, even according to the plaintiff, are personal grants and hence, the plaintiff cannot claim any right whatsoever vis-a-vis the properties covered. The relinquishment of TD1046 without anything more, cannot be construed as vesting the plaintiff with any right;

(d) So far as Ex.A2 is concerned, it does not create any specific endowment in favour of the plaintiff and simple suit for recovery of possession without seeking declaration of title is not maintainable.

4. On the above set of pleadings, the trial Court had framed four issues, and it ventured to construct Ex.A2 and collated certain information that Ext.A2 conveyed, to draw an inference that portion of the properties dealt with under Ext. A2 constituted a specific endowment in favour of the plaintiff and accordingly decreed the suit.

5. The aforesaid decree of the trial court is now under challenge. The defendants 1, 4 to 7, 13 to 16 form one group and they have laid AS 143/2014, whereas the third defendant and defendants 17 to 19 have joined to institute AS 193/2014.

Points

6. The points for consideration are:

a) Whether Ex.A2 constitute a specific endowment of the suit properties in favour of the plaintiff;

b) What is the implication of Ext.A1, IFR ; and

c) Whether the suit is maintainable, (a) for not obtaining the permission of the Board of Trustees of the plaintiff; and (b) for not seeking a declaratory relief.

Arguments

(a) Arguments for the Appellants:

7.1 Mr.Raguvaran Gopalan the learned counsel for the appellants in A.S.(MD) 143 of 2014 along with Mr.AR.L.Sundaresan, the learned Senior Counsel for the appellants in A.S.(MD) 193 of 2014, made the following submissions:

a) The plaintiff's assertion of title to the suit property is traced to Ext.A1 Inam Fair Register, dated 27.07.1865. If this document is perused, it makes a reference to three individuals from three branches of Vedha Vyasa Bhattar's family, and also makes a reference to title deeds in T.D. 1045 and T.D. 1046, that T.D. 1046 has been deducted etc. But there is nothing to connect T.D. 1045 and T.D. 1046 with the suit properties herein. Since the burden is on the plaintiff to establish, it is for it to establish that the specific properties in T.S.Nos.13, 15 and 2 are the properties covered under T.D. 1045 and T.D. 1046.

b) Even going by the plaintiff's case only the properties covered under T.D. 1046 had been deducted, but a mere assertive statement in the plaint does not take the case of the plaintiff anywhere. The plaintiff is still endeavour to establish that the suit properties originally belonged to Srirangam Temple and that it granted them to the family of Vedha Vyasa Bhattar for rendering certain services and that Ext.A1 IFR explains the aforesaid state of affairs. An entry in the IFR is merely a record of a pre-existing state of affairs and the plaintiff-temple is under a burden to establish the state of affairs that was prior to IFR, at least for the purpose of clarifying the contents of Ext.A.1, the plaintiff may not succeed. And, IFR refers to TD 1045 and 1046 but gives no clue to the properties covered under these documents. These are material facts, and they cannot be presumed.

c) The next fact which the plaintiff asserts is that the alleged grantee of the property had entered into a partition in November, 1870 as evidenced by Ext.A.2. If this document is carefully read, it is not a document pertaining to the properties which the three Bhattars of Vedha Vyasa Bhattar family possessed, but it is an agreement that they had entered into with a view to preserve their common properties for their own benefit without over-burdening their common properties with debts. The express statements made in the document only indicate that the parties thereto had chosen to impose an embargo upon themselves on their power of alienation, but there is not a whisper they had endowed any property to the plaintiff, nor had they recognized the title of the plaintiff to any of the suit properties herein.

d) The next document which the plaintiff relies on is Ext.A.3, dated 17.05.1957 a partition deed which apparently had taken place among the descendants of one of the parties to Ext.A.2 . And even this document neither recognizes any pre-existing title to the suit properties in favour of the plaintiff, nor does it create an endowment in favour of the plaintiff. And all the other narration in the plaint refers to facts subsequent the alienation by the parties to Ext.A.3.

Summing up their arguments, learned counsel for the appellants submitted that unless it is established that the plaintiff owned these properties at any time prior to IFR and unless the IFR actually describes the suit properties as one covered by it, it cannot succeed.

7.2 Moving further, the learned counsel submitted that it is a case where the suit was laid on a pre-supposition that the plaintiff's title is not in question, whereas the defendants literally challenge the plaintiff's title. Therefore, in fitness of things, the plaintiff ought to have laid the suit for declaration of its title and not just for recovery of possession. They also added that the administration of Srirangam Temple is with the Board of Trustees and in terms of Section 45(2) of the Hindu Religious and Charitable Endowments Act, 1959, there ought to be a passed by the Board of Trustees for instituting a suit. Therefore, the suit as now laid is without the approval of the Board of Trustees, is incompetent. Reliance was placed on the ratio in ***Sri Arthanareeswarar of Tiruchendgode by its present Executive Officer Vs. T.M.Muthuswamy Padayachi. etc., & Others*** [2003-1-L.W. 386], ***B.S.Manian & Others Vs Arulmigu Yoganarasimhaswami Thirucoil*** [2019 SCC online mad 36241] and ***Arulmigu Parvatheeswaraswami Thirucoil by its E.O. Vs Sundaram Gurukkal & Others*** [S.A.No.224 of 2001, dated 03.04.2023].

7.3. The entire case of the plaintiff proceeds on the footing that the suit properties are covered under T.D. 1046. However Ext.A.2 only makes reference to T.D. 1045 at very many places in the schedules. Now inasmuch as the cause of action for the suit is laid on T.D. 1046, then unless it is established that the suit properties are those which are covered in T.D. 1046, the plaintiff might not be in a position to claim possession of the suit properties. This apart, the services in relation to which suit properties are stated to have been granted as service Inam, continue to be rendered by the male members of the descendants of the parties to Ex.A.2.

(b) Arguments for the Respondents/Plaintiff

8. Opening with a fair statement that the pleadings as disclosed in the plaint claiming plaintiff's assertion of title based on T.D. 1046 might be difficult to establish at this distant point of time and for want of supporting materials, the learned counsel for the first respondent/plaintiff made the following submissions:

a) *Dehors* the case of the plaintiff placing reliance of T.D.1046, the very construction of the tri-party agreement which took place among the descendants of Veda Viyasa Bhattar vide Ex.A2 itself will indicate that these parties through contract intended to create a specific endowment in favour of Sri Ranganathaswamy temple at Srirangam. It is borne out by two specific features as could be gathered from Ext.A2: (a)The parties to Ex.A2 deny themselves the power of alienation of the properties dealt with thereunder; and (b) in the recitals to the document as well as in the schedule where they deal with various properties reference had been to indicate that the parties to Ext.A2 were some kind of trustees of *Sri Ranganathaswamy temple* and that they also intended to do certain religious charity out of the income from the properties. Reliance was placed on the ratio in ***M.J.Thulasiraman and another vs. Commissioner, HR & CE and another*** [(2019) 8 SCC 689] and also in ***Idol of Sri Renganathaswamy represented by its Executive Officer, Joint Commissioner Vs P.K.Thoppulan Chettiar, Ramanuja Koodam Anandha Trust represented by its Managing Trustee and Others*** [(2020) 17 SCC 96].

b) Placing reliance on the ratio in ***Roman Catholic Mission Vs State of Madras and another*** [AIR 1966 SC 1457 (paragraphs 11 and 15)] , the learned counsel submitted that the description in the properties give to themselves as '*Sthaladhar'* is associated with certain '*poruppu*'(பொறுப்பு) which denotes that the properties that they had dealt with under Ex.A2 could not have been their personal grant but could only represent the properties granted to them as service inam.

c) If however the defendants are keen to establish the contra, or how the descendants of the parties to Ex.A2 had dealt with the properties, then they ought to have examined one of their vendors. It has not been done and the trial Court has taken note of. Indeed, there is not even a reference in the written statement that these charities as contemplated in Ex.A2 are being performed.

d) So far as the maintainability of the suit inasmuch as it was laid by the Executive Officer of the plaintiff without any authorisation from the Board of trustees of the temple is concerned, the issue is settled by a learned Single Judge of this Court in ***Idol of A/m.Sri Kalyana Venkataramanaswamy, Thanthonimalai, represented by its Executive Officer/The Assistant Commissioner, vs. M.Palanivel and Others*** [A.S(MD)No.118 of 2020 dated 19.06.2023]. Indeed, Section 34-A and 34-B of HR & CE Act, as inserted vide amendments made in 2003, an Executive Officer has been authorised to initiate action.

e) The suit is maintainable even without a prayer for declaration of plaintiff's title, for, if Ex.A2 constitutes a specific endowment then any alienation made without the sanction of the Commissioner, HR & CE as required under Section 34 of the HR & CE Act is void, and consequently, the plaintiff can ignore all the alienation made by the descendants of the parties to Ex.A2.

(c) Reply Arguments of the Appellants/Defendants

9.1 Replying the above submissions (of the learned counsel for the respondent/plaintiff), Mr. Raghuvaran Gopal, the learned counsel appearing for the appellants in A.S. (MD) 143 of 2014 submitted:

a) The mere description of the parties to Ex.A2 as *Sthaladhar* or trustees is neither decisive nor conclusive about the character of the properties that they have dealt with thereunder. That the parties were described as *sthaladhar* in a document only describes their status and not the character of the properties they deal with. Reliance was placed on the ratio in ***Menakuru Dasaratharami Reddi and another Vs Duddukudru Subbu Rao and Others*** [AIR 1957 SC 797].

b) Whether a property is specifically endowed ultimately depends on the intent of the party and it should be gathered on a construction of the document under the consideration of the Court. Here it is not the case of the plaintiff that the properties were given as service *inam* properties or that they are specifically endowed. But, it proceeds on the footing that the plaintiff is the title holder of the suit properties without really explaining how it has become title holder.

c) In terms of the definition of Specific Endowment in terms of Sec. 6 (19) of the HR & CE Act goes, the properties covered under Ex.A2 should have been endowed for the purpose of a specific service or charity for a mutt or a temple or any other religious charity. Therefore, unless the properties are endowed for a specific purpose, no specific endowment can ever be created. If Ex.A2 is considered it merely makes a general statement that charities might be performed in the temple, but still there is no reference to any specific charity of religious character.

d) So far as the contention that none of the descendants/vendors of the present appellants are not examined is concerned, they need not be examined since the burden to examine them will arise only when the plaintiff has discharged its burden in establishing the cause of action as pleaded. When the plaintiff has failed to discharge its case, it is not given to them to search for weakness in the case of the defendants and to garner unmerited advantage.

e) So far as the question whether services are continued to be rendered is concerned, both P.W.1 and P.W.2 concede that they are being performed by the descendants of the three Bhattars who executed Ext.A2 till date. When admittedly the descendants of the executants of Ex.A2 are performing services, hardly any need for them to even to create an endowment of the variety which the plaintiff's counsel now contends.

f) So far as applicability of Sec. 34-A and 34- B of the HR & CE Act is concerned, contrary to the contentions of the counsel for the respondent/defendant, they pertain only to leases of properties belonging to a religious institution. But Sec. 34 stands entirely on a different footing.

9.2 Supporting the above submissions Mr.AR.L.Sunderasen, the learned Senior counsel (for appellants in A.S.193 of 2014) contended that the argument of the plaintiff that the suit is maintainable without seeking declaration of plaintiff's title to suit properties would be begging the question since it presupposes the existence of a specific endowment. But, whether there has been a specific endowment itself is something which has developed only now. Reliance was placed on the authority in ***Anathula Sudhakar Vs P.Buchi Reddy (dead) by LRs., and others*** [AIR 2008 SCC 2033]

Discussion & Decision

10. The plaintiff came with a rousing statement that it is the owner of the

suit properties based on Ext.A1 IFR and TD 1046 referred to therein. But gave up that line of its case and tries to sustain the cause for its present action based on a construction of Ext.A2. Before embarking to examine the merit of the plaintiff's case founded on its construction of Ext.A2, this court intends to investigate the maintainability of the suit on two scores: (a) that the E.O. had laid the suit without the Board of Trustees of the plaintiff temple authorising it through its resolution; and (b) its failure to seek a declaratory relief of a specific endowment.

11.1 First to the non-compliance of the requirements of Sec.45(2) of the H.R. & C.E.Act. In ***Sri Arthanareeswarar of Tiruchendgode by its present Executive Officer Vs T.M.Muthuswamy Padayachi. etc., & Others*** [2003-1-L.W. 386], a Division bench of this Court has held that as per the scheme of the H.R. & C.E. Act, the Executive Officer is not enjoined with the duty to initiate a legal action, and that this power is vested only with the Board of trustees. This ratio is holding the fort in this aspect and it is followed in a quite a few subsequent judgements of this court including ***B.S.Manian & Others Vs Arulmigu Yoganarasimhaswami Thirucoil*** [2019 SCC online mad 36241] and ***Arulmigu Parvatheeswaraswami Thirucoil y its E.O. Vs Sundaram***

Gurukkal & Others [S.A.No.224 of 2001, dated 03.04.2023]. Plainly the present suit cannot be maintained as it was laid by the Executive Officer.

11.2 However, the respondent/plaintiff has placed reliance on the dictum of a learned single Judge of this Court in ***Idol of A/m.Sri Kalyana Venkataramanaswamy, Thanthonimalai, represented by its Executive Officer/The Assistant Commissioner Vs M.Palanivel and Others*** [A.S(MD)No.118 of 2020 dated 19.06.2023]. But the said judgement indicates that the court has relied on sec.34A and 34 B of the H.R. & C.E. Act and these provisions specifically deal with leases of the temple properties. Here, the suit is one based on title on the allegation that the plaintiff is the owner of the suit properties and that they have been specifically endowed under Ext.A2. On facts the factual context of ***Kalayana Venktaramanaswamy Tirucoil case*** is far distanced from the facts of the present case, and this Court therefore, opts to follow the earlier dictum of the Division Bench in ***Sri Arthanareeswarar of Tiruchendgode by its present Executive Officer Vs T.M.Muthuswamy Padayachi. etc., & Others*** [2003-1-L.W. 386]. This Court is now left with very little option than to hold that the suit is not maintainable.

11.3(a) Maintainability of the suit is challenged on yet another ground by the appellants/defendants. This is founded on the failure of the plaintiff to seek declaration of its title over the suit property. Placing reliance on the dictum in ***Anathula Sudhakar's case*** [AIR 2008 SCC 2033] and developing it further, one of us (N. Seshasayee J) has held in ***Arulmigu Velukkai Sri Azhagiya Singaperumal Devasthanam Rep. By its Trustees Vs A.Venkatarayalu & Others*** [2020 -2 - LW 317 : (2020) 4 MLJ 625 : 2020 (3) CTC 69] that where the defendant resists the title of the plaintiff with a sweeping or a bald denial without a plea of a better title in him, such as for instance by a tresspasser of the suit property, then a suit for declaration is not required to be instituted; if however, the defendant resists the title of the plaintiff with a substantial plea of a better title then it is mandatory for the plaintiff to institute a suit for declaration of title.

11.3(b) If the contest in the present suit is tested on the foundation of the principle stated, then the plaintiff cannot sustain a suit for recovery of suit property without a prayer for declaration of title. The cause of action for the suit commences with an allegation that the suit properties are part of T.D.1046 and that it had eventually vested in the grantor, but the defendants challenge that the plaintiff could never be the grantor. And, in the final analysis the plaintiff had given up this plea and has chosen to fall back on Ext.A2, the agreement dated 17.05.1957, (whose construction will occupy this court later in this judgement), and the plaintiff succeeded before the trial court not because it established its cause for the present action in the manner it pleaded but because on the construction of Ext.A2 which is now under challenge. This indicates that the defendants' defence is not bald, but substantial. This in turn would imply that the plaintiff should have gone for a suit for declaration of its title. That it has given up its claim of title and presses into service an argument on specific endowment of the suit properties alternatively, something it has developed midway during this litigious course, may not be adequate to assist it in saving the suit. If it is a case of specific endowment, then it is an acknowledgement of the fact that the parties to Ext.A2 were the owners of the suit property to start with, and if it could not establish a specific endowment of absolute character then the ownership of the parties to Ext.A2 *ipso jure* would devolve on their descendants and that would save Ext.A3 partition. And with Ext.A3 dated in 1957 starring on its face and casting a cloud on his claim of title to the suit properties for 43 years till the plaintiff laid the suit, the plaintiff cannot bypass the same without seeking a declaratory relief.

12. The suit is not maintainable on both the grounds which the defendants have raised. Since the Court has held that the suit itself is not maintainable, it will be a profitless endeavour to embark on a discussion on whether Ext.A2 constitutes a specific endowment. Indeed when a suit filed by an executive Officer itself cannot be maintained, this court may not even have the jurisdiction to take congnizance of the dispute.

13. In conclusion, both these appeals are allowed, and the judement and decree of the Principal District Court, Tiruchirapalli, in O.S._98 of 2010, dated 18.02.2014 is hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

(N.S.S., J.) (P.V.M., J.)
02.08.2024

NCC : Yes/No
Index : Yes/No
ABR/RR/PM

To

1.Principal District Judge,
Trichy.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.SESHASAYEE, J.
and
P.VADAMALAI, J.

PM

Pre-delivery JUDGMENT MADE IN
A.S(MD)Nos.143 and 193 of 2014

02.08.2024