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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
31.07.2024	.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)No. 656 of 2022

and

C.M.P(MD)No.9298 of 2022

G. Oomaidurai

... Appellant

/Vs./

1. Subramanian

2. Kulanthaiyalwar

3. Anandan

4. Gurusamy

5. Sankar

6. Arulmigu Sri Meenakshi Sundareswarar Thirukovil,
Vilathikulam Reprsented Through Executive Officer,
Office at Arulmigu Sri Meenakshi Sundrareswarar Thirukovil,
Villathikulam Town,
Vilathikulam Taluk,
Thoothukudi District.

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to call for that records in AS.No.24 of 2019 on the file of Sub Court, Kovilpatti dated 21.07.2022, reversed the Decree and Judgment in O.S.No.63 of 2014 on the file of District Munsif Cum Judicial Magistrate, Vilathikulam, dated 14.03.2019 and set aside the same.



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For Appellant : Mr.J.Gunaseelan Muthiah

For Respondents : Mr.N.Karthikeyan, for R-1 to R-5

Mr.M.Muthu Geethayan, for R-6

JUDGEMENT

This Second Appeal is filed by the 1st defendant in the suit to set aside the Judgment and Decree dated 21.07.2022 passed in A.S.No.24 of 2019 on the file of the Sub Court, Kovilpatti, reversed the Decree and Judgment dated 14.03.2019 passed in O.S.No.63 of 2014 on the file of District Munsif Cum Judicial Magistrate, Vilathikulam,

2. The 1st defendant is the Appellant herein and the Plaintiffs are the Respondents 1 to 5 and the 2nd defendant is the 6th Respondent herein. For the sake of convenience, the parties shall be referred to as Plaintiffs and Defendants.

3. The plaintiffs have filed a suit in O.S.No.63 of 2014 for declaration and consequential injunction and the same was dismissed on 14.03.2019. Aggrieved over the same the plaintiffs have preferred A.S.No.24 of 2019 and the same was allowed on 21.07.2022. Aggrieved over the same, the 1st defendant has preferred this Second appeal.



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4. The brief facts as stated in the plaint is that the suit schedule properties were originally belonged to one Muthusamy Pillai. He had two daughters, of which the younger daughter, namely Ganammal was married one Paramasivam Pillai and the suit schedule and other properties were given to the said Ganammal at the time of her marriage and she was enjoyment of the properties. Thereafter, after the demise of her husband, the said Ganammal had executed a Will, dated 10.05.2002 and bequeathed her properties to her three sons namely Arumugam, Muthusamy and Meenakshi Sundaram except one son namely Devabiran since he was already granted some properties. The suit schedule properties were bequeathed to her fourth son Meenakshi Sundaram. Therefore, the said Meenakshi Sundaram was in possession and enjoyment of the suit schedule properties and after his demise, the suit schedule properties were in possession and enjoyment of his legal heirs, namely Visalakshi (wife), Paramasivam (son) and Ganam (daughter). They had constructed houses and paying House Tax. Thereafter, the said house was in dilapidated condition and the same was sold to the plaintiffs through registered Sale Deed, dated 15.07.2013, since there were mistakes in the measurement of the property in the sale deed, the vendors had a Rectification Deed, dated 30.01.2014. Since there were no house in the suit schedule properties, the plaintiffs submitted petition



to the Vilathikulam Panchayat to stop collecting house tax to the said property and electricity connection was also disconnected temporarily. The aforesaid purchased property is shown as Item No.1 in the schedule of the properties. On the eastern side of the Item No.1, the 1st defendant had constructed a house in the land belonging to the 2nd defendant/Meenakshi Sundareswarar Temple. However, the 1st defendant is not having land beyond the land belonging to the temple. But on 02.06.2014 the 1st defendant had attempted to disturb the possession of land admeasuring 8 feet east-west, 38 feet north-south, totally 304 square feet on the eastern side to the plaint 1st schedule property which is shown as 2nd schedule property. The 2nd schedule property is belonged to the plaintiffs and therefore the defendants have no right over the same. Hence the suit was filed for declaration of title and for consequential injunction.

5. The 1st defendant had filed written statement and stated that the claim of titled based upon an alleged Will, dated 10.05.2002 and the Sale deed, dated 15.07.2013 are all disputed by the 1st defendant. Since there was no house, hence no electricity connection was there and the claim of the plaintiffs the electricity connection was disconnected is false. The alleged sale itself is fraud. The entire contents of the plaint are denied as false. And submitted that the plaint schedule properties are belonging to the 2nd defendant temple and at



no point of time the said lands were not never belonged to any individual and the claim of the plaintiffs that the land belongs to their erstwhile vendors are false. The 1st defendant is a lessee under the 2nd defendant. The 1st defendant had put up house construction in the said land and is paying rent for the land to the 2nd defendant temple.

6. Originally, the suit schedule properties and other nearby lands are government natham puramboke lands and the authorities of the 2nd defendant temple are collecting rent for the said lands from the occupiers. Since the suit property is classified as natham puramboke, the state Government is a necessary party. The allegation of the plaintiffs is that the 1st defendant has attempted to disturb the possession of the 2nd schedule property. The plaintiffs were never been in possession of the 2nd schedule property. After amendment of plaint the contention of the 1st defendant is that the plaintiffs have come up with the new case. Earlier the plaintiffs claimed that the plaint schedule properties are situated in S.No.585/14. However, after cross examination of P.W.1, the plaintiffs had amended the plaint stating that the plaint schedule properties are situated in S.No.585/4. The property in S.No.585/4 was never ever belonged to the plaintiffs since it is temple properties belonging to the 2nd defendant temple. Hence, the contention of the plaintiffs the plaint 2nd schedule property is a



common pathway to 1st schedule property is false and created by the plaintiffs.

Hence, the 1st defendant prayed to dismiss the suit.

7. The 2nd defendant had filed a written statement and additional written statement wherein the temple had denied the entire contents of the plaint and submitted that the claim of the plaintiffs is false and nothing but false, hence the plaintiffs are not entitled to any relief. The land never ever belonged to the alleged Muthusamy Pillai or alleged erstwhile vendors or any other individuals at any point of time. Infact the suit schedule properties are government natham purambooke lands, the temple had let the lands for rent “Tharai Vadagai”, the individuals had put up construction. The temple is collecting rent and has issued receipts for the same. The suit property was let to one Gurusamy Chettiar as a tenant under the 2nd defendant temple and he is in possession of the property. Further the son of Gurusamy Chettiyar namely Selvam is paying rent to the temple hence, the said Selvam is a necessary party to the suit. Hence the suit is bad for non-joinder of necessary parties. Since the suit property is a natham puramboke land and it is in possession and enjoyment of the 2nd defendant temple the plaintiffs have no right over the said lands. Further the property belongs to the temple but the plaintiffs had added the 1st defendant and hence the suit is bad for mis joinder of parties. The suit schedule



properties were in possession and enjoyment of the temple for more than 150 years. Infact in the year 1922 a civil suit was filed before District Munsif Court, Kovilpatti and it was held the S.No.42/1 consists of 21 acres 17 cents belongs to the temple. Hence the previous vendors had created the documents, especially the said Muthusamy Pillai had served as Village Karnam and he had misused his office and had created the documents.

8. The 2nd item in the suit schedule property never belonged to the plaintiffs. The 2nd defendants had filed additional written statement to object the amendment of plaint, wherein it is stated that the plaintiffs have amended the survey number of the suit properties in order to fill the lacuna in this case. The property in S.No.585/4 and S.No.585/14 are different properties. The land in S.No.585/4 is a temple property. When the plaintiffs had executed a sale deed in Document No.245 / 2013 and found out the document is registered for lesser extent, then had executed a Rectification Deed in Document No.247/2013, it is not believable that the wrong mentioning of survey number is typographical error and the claim of the plaintiffs is to fill the lacuna of the case with the help of the Courts. Further the amendment was carried out after the cross examination of PW1. When the PW1 had specifically admitted during cross examination that the property is situated in S.No.585/14, then the plaintiffs is



not entitled to claim right over the property situated at S.No.585/4. Even in the plaint and the proof affidavit the suit schedule of properties is mentioned as situated in the survey number as S.No.585/14. Further the plaintiffs had stated that the 2nd item is a portion of 1st item and the same is incorrect and false. When the plaintiffs and the 1st defendant had completed their disposition, the case was posted for 2nd defendant witness and it is at this situation the plaintiffs had amended the survey number and the same cannot be taken into account.

9. The plaintiffs had stated that the 1st item is situated in S.No. 585/4 and the 2nd item in S.No.585/14 but had amendment and now claim that the 2nd item is part of 1st item and the survey number for both as “S.No.585/4”. Both the survey numbers are different. The S.No.585 is sub divided into 54 sub divisions and hence S.No.585/4 and S.No.585/14 are two different properties. The revenue documents show Muthusamy Pillai name in S.No.585/14. And also shows the S.No.585/4 belongs to the temple. Infact the land belongs to the temple for more than 150 years, wherein the temple is using the land by installing the oil extract and using the oil to lit the lamps of the temple. Further the other lands are let in to the individuals and collecting rents. It is pertinent to point out that the alleged Will dated 10.05.2002 which is the parent document to the plaintiffs and which was executed by Ganammal in favour of her son



Meenakshi Sundaram, the land in S.No.585/4 was not mentioned at all. Hence the S.No.585/4 was not belonging to the said Muthusamy Pillai or his descendants. Hence, the 2nd defendant prays to dismiss the suit.

10. The Trial Court after considering the pleadings and evidences had dismissed the suit, but the First Appellate Court reversed the finding and allowed the appeal. The First Appellate Court had held even though the plaintiffs had not proved that the Muthusamy Pillai has two daughters and the properties were given to the second daughter and even though there are no revenue documents stands in the name of the said Ganammal (who is the second daughter of the said Muthusamy Pillai), the said Ganammal had executed a Will, dated 10.05.2002 to Meenakshi Sundaram and the sale deed indicates the plaintiffs have purchased the properties from the legal heirs of Meenakshi Sundaram, hence the sale is acceptable. Further originally the survey number was mentioned as 584/14 after rectification it is 585/4. Admittedly, under Ex.A.7, the Natham S.No.585/4 correlated to S.No.42/A1 and it was executed in the name of one Muthusami Pillai. Hence in such circumstances, the legal heirs of Muthusamy Pillai had executed the sale deed under Ex.A.1 in favour of the plaintiffs in respect to the 1st schedule of the suit properties. On the other hand, the 1st defendant had claimed that the suit



schedule properties belonged to the 2nd defendant temple and he had only put construction and paying rent to the temple. The 1st defendant had marked 'A' register under Ex.B.1 and Ex.B.3 Pasali but the same stands in respect of S.No. 525. Whereas the suit survey number is in respect of S.No.585/4. Hence, the defendants land is for different survey number.

11. The VAO, Villathikulam was examined as P.W.4, wherein he has deposed that the natham adangal register stated that the S.No.585/4 measuring the total extent of the property is 232 square meter and the four boundaries and measurement are stated for the said four boundaries. As per Ex.A7 which is natham adangal register stands in the name of Muthusamy Pillai. The officer of HR & CE Department was examined as P.W.5, where he had stated that the S.No.584/4 as per Ex.A7 stands in the name of Muthusamy Pillai and however as Meenakshi Sundareswarar temple record, it is stands in the name of the temple and the S.No.585/4 and he has also stated that the land in S.No.585/4 was not let to lease to anybody. The Appellate Court also held that, though the temple claimed right over the suit property in S.No.584/14, after amendment the temple did not claim right over the property. But the 1st defendant had right over to claim the property. Hence the 1st defendant claim cannot be considered in the light of the claim of 2nd defendant, who had stated



S.No.585/4 was not let for lease to anybody. Admittedly, the plaint schedule properties are vacant land as per the plaintiffs in the plaint. But nowhere it is pleaded that the 1st defendant had encroached the 1st suit schedule property. It is pleaded that the 1st defendant has attempted to disturb the possession of the 2nd schedule property. P.W.1 has deposed in the cross examination that the 1st defendant has encroached his property. Therefore, the Appellate Court held that since the 1st defendant is encroacher, then the 1st defendant has no right to stay in the property. Hence, the Appellate Court held that the Trial Court erred in not granting injunction and allowed the First appeal. Aggrieved over the same the 1st defendant who is a lesser under the 2nd defendant had filed the present second appeal.

12. In the present Second Appeal the 1st defendant had raised four substantial questions of law and the same is rephrased as under:

- 1. Whether the 1st Appellate Court is correct in allowing the suit when the plaintiffs had not proved the origin of the suit property and consequently their title through documentary evidence?*
- 2. Whether the 1st Appellate Court is correct in allowing the suit against the 1st defendant when the plaintiffs through PW1 Subramaniam had admitted in his cross examination that the 1st defendant is in possession of the 2nd schedule of the suit property?*
- 3. The plaintiff had filed the suit for declaration and permanent injunction, but had admitted the 1st defendant is in possession of the suit*



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property and hence the suit is bad in law for not praying recovery of possession, in such circumstances whether the 1st Appellate Court had erred in evicting the 1st defendant from the suit property?

13. Earlier the plaintiffs had claimed title over the property situated in S.No.585/14. After the deposition of plaintiffs and 1st defendant, before the deposition of the 2nd defendant, the plaintiffs had sought to amend the survey number as S.No.585/4 instead of S.No.585/14 and the amendment was allowed. Hence, after amendment the plaintiffs claim title over the property situated in S.No.585/4. The plaintiffs are claiming right over the suit schedule property in S.No.585/4 based on the sale deed dated 15.07.2013 marked as Ex.A1 and the rectification deed dated 30.01.2014 marked as Ex.A2. In the sale deed and the rectification deed it is seen that the property situated in S.No.585/4 was sold to the plaintiffs by the vendors namely Visalakshi wife of Late Meenakshi Sundaram and son and daughter of Late Meenakshi Sundaram. The said vendors are claiming title over the property in S.No.585/4 by relying on the Will dated 10.05.2002 executed by the one Ganammal, the mother of the Late Meenakshi Sundaram. In the said Will the said Ganammal had stated that she was blessed with four sons, namely Arumugam, Devabiran, Muthusamy and Meenakshi Sundaram and a daughter namely Muthulakshmi. All the children were married. The daughter predeceased the said Ganammal. Even though all the four sons were together, later on the second son Devabiran left the home



and he was given some properties and settled elsewhere. Thereafter the said Arumugam and Devabiran also died. The said Will was executed in order to avoid disputes between the sons and their families. The 1st schedule properties were allotted to Sornam, wife of the 1st son Arumugam, 2nd schedule was allotted to Meenakshi Sundaram and 3rd schedule was allotted to Muthusamy. Further 4th schedule property is allotted to Muthusamy where he cannot encumber the property but allowed to take the proceeds from the property for the expenses to do Meenakshi Sundareswarar Thirukalyanam in the said temple.

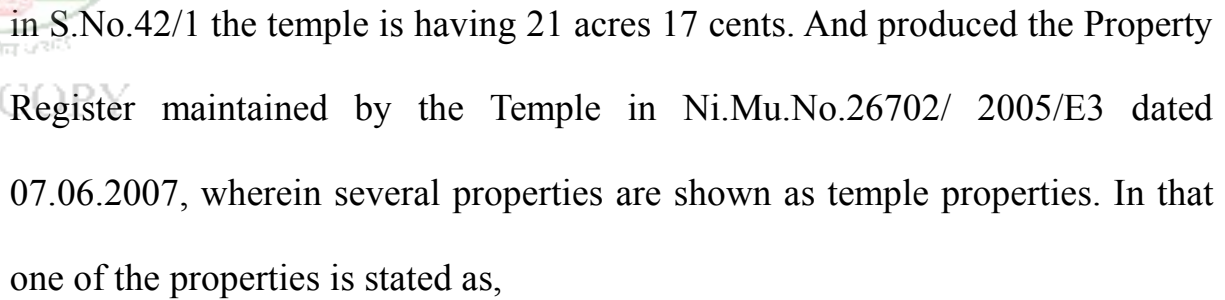
14. In the Will it is also mentioned that the second son Devabiran and his family are not having any right over the properties mentioned in the said Will. In the Will the 2nd schedule was allotted to the said Meenakshi Sundaram and it is seen he was allotted 6 houses situated in **old S.No.42/A1** and it further states the property is comprised in “**New Natham S.No.525/4**”. The said Meenakshi Sundaram was allotted only this property alone situated in “**Old S.No.42/A1 / New Natham S.No.525/4**”. Further it is seen the other legal heir namely Muthusamy was allotted property in **old S.No.42/A1** and renumbered in **New Natham S.No.584/23**. The other properties dealt with in the said Will are entirely different survey numbers. From the above discussion



it is evident that the said Meenakshi Sundaram is having right over the “**Old S.No.42/A1 / New Natham S.No.525/4**”, but the legal heirs of the said Meenakshi Sundaram had sold the property situated in **Old S.No.42/A1 / Natham S.No.585/4** and both are entirely different. Therefore, the plaintiffs had not clearly proved through their ‘parent documents’ that the property belongs to the said Meenakshi Sundaram. Therefore, this Court is of the considered opinion that the said legal heirs of Meenakshi Sundaram are not having any right to sell the property situated in S.No.585/4. In other words, the legal heirs of the said Meenakshi Sundaram may have right to sell the properties situated in S.No.525/4 and not 585/4.

15. The plaintiffs’ claim that they had purchased property in S.No. 585/4, but the parent document states the vendor is having right only for S.No. 525/4. The 1st Appellate Court had stated that it is not known why the temple had produced records relating to S.No.525, but it is seen since the parent document Will speaks of S.No.525 and hence the temple had produced the records pertaining to S.No.525.

16. The 2nd defendant temple had filed a detailed counter and submitted that the larger extent of the property belongs to the temple, especially



“Villathikulam Kaspā (Nandavanam), East

- S.No.42** – 1 acre 50 cents,
 •Chekkadi **S.No.42** – .05 cents
 •Villathikulam Natham **S.No.42A** – 1 acre 50 cents (Temple, western side
 Nandavanam and Well”

17. Further, it is seen that the Hon'ble Division Bench had considered a Public Interest Litigation in W.P.(MD)No.13986 of 2021, wherein the prayer in the said writ petition is to remove the encroachments in old S.No. 42-1A, **new S.No.577 to 611, 21 Acre 17 cents in Vilathikulam Kaspas, Vilathikulam Taluk, and S.No.587, 618, 620, 655, 656, 657, 658, 659, 660, 661, 662, 663, 597, 598, 599, 600, 601, 603, 604, 607, 586-1, Patta No.368 total extent 123 Acre 51 cents and Ayyanpommaiyapuram Village, Vilathikulam Taluk, S.No.569/1 Keela Vilathikulam Village, Vilathikulam Taluk, total extent 553 Acre 29 Cents, and S.No.458/3, 458/4, 458/7 total extent 8 Cents in Naduvapatti Village Ettaiyapuram Village based on petitioner's representation, dated 22.04.2021. The Hon'ble Division Bench vide order dated 30.11.2022 had directed the official respondents to take necessary action to remove the**



encroachment as per law and as per the directives issued in Suo Motu W.P.No. 574 of 2015 dated 07.06.2021 within a period of three months. The present disputed survey number in S.No.585/4 is covered in the aforesaid direction as **new S.No.577 to 611, 21 Acre 17 cents in Vilathikulam Kaspas.**

18. When the larger extent of land i.e. 21 acres 17 cents in S.No. 42/1 and S.No.42A/1 belongs to the temple then it is incumbent on the plaintiff to prove his title. The lesser extent of land in new Natham S.No.585/4 ought to be correlated with the old survey number. When the temple is claiming larger extent, the plaintiffs have not proved the title over the property, but the plaintiffs had failed to prove the same. The plaintiff ought to have proved how the property belongs to the said Muthusamy Pillai. The plaintiffs had not produced any parent document except the Will executed by Ganammal, the daughter of the Muthusamy Pillai. Further it is seen that the said Muthusamy Pillai had served as Karnam, who had access to all documents and there is a possibility of tampering the records. For the reasons stated, above this Court is of the considered opinion that the plaintiffs had failed to prove the origin of the suit property. Therefore, the substantial questions of law raised (i) is answered accordingly and in favour of the 1st defendant / appellant.



19. As far as injunction is concerned, the plaintiffs have admitted that the 1st defendant is in possession of the 2nd schedule property. The temple had admitted that the land was leased to one Gurusamy Chettiar and his son Selvam is paying the rent. Infact the 1st defendant is in possession of the property through Gurusamy Chettiar. When the possession of the 1st defendant is proved and admitted by the plaintiffs, then the plaintiffs ought to have filed the suit for recovery of possession. But no such prayer is sought for and hence suit is bad in law. Therefore, the substantial questions of law raised (ii) and (iii) are answered accordingly and in favour of the 1st defendant / appellant.

20. For the reasons stated supra, the Second Appeal is allowed. The Judgment and Decree dated 21.07.2022 passed in A.S.No.24 of 2019 on the file of Sub Court, Kovilpatti is set aside. The Decree and Judgment, dated 14.03.2019 passed in O.S.No.63 of 2014 on the file of District Munsif Cum Judicial Magistrate, Vilathikulam, is confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

21. The Hon'ble Division Bench of this Court has already issued direction to the 2nd defendant temple to remove the encroachments from the temple lands. But the 2nd defendant had failed to take any steps. At least the 2nd



defendant ought to have remove the encroachments involved in the survey numbers covered in this case. Therefore, the 2nd defendant is directed to ascertain the total extent of the property in old S.No.42/A1 belonging to the temple and if there is any encroachments in the temple lands, the temple shall take appropriate steps to evict the encroachers as per law.

.09.2024

Index : Yes / No

NCC : Yes / No

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TO:

1. The Sub Court, Kovilpatti.
2. The District Munsif Cum Judicial Magistrate Court,
Vilathikulam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

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Judgment made in
S.A.(MD).No.656 of 2022

.09.2024