



A.S(MD)No.132 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 05.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD)No.132 of 2018
and
C.M.P(MD)No.11767 of 2023

1.K.Venkatesan

2.G.Praveen Vishnu

3.G.Ishwarya

... Appellants/Plaintiffs

Vs.

1.Baby Girija

2.R.Karthic

3.Anitha

4.Lekha

5.C.R.Gopu @ Gopalakrishnan

6.R.Srinivasan

7.R.Karthikeyan

... Respondents/Defendants

Prayer : This Appeal Suit filed under Section 41, Rule 1 and 2 of CPC r/w Section 96 of CPC, to set aside the decree and judgment, dated



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28.02.2018 passed in O.S.No.175 of 2014 by V Additional District Judge,
Madurai.

For Appellants : Mr.D.Saravanan
for M/s.T.Sathya Selvi

For R-1 to R-4 : Mr.C.Godwin

For R-5 to R-7 : Mr.K.S.Sreenivasan
Assisted by
Mr.S.Ravindran

JUDGMENT

This Appeal Suit has been preferred as against the decree and judgment passed in O.S.No.175 of 2014 on the file of the V Additional District Judge, Madurai, wherein, the appellants herein have filed a suit as against the respondents herein for the relief of declaration and recovery of possession and the suit was dismissed. As against the dismissal of the suit, the present Appeal Suit has been preferred by the plaintiffs.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.



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3. The brief facts of the plaint are as follows:

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The first plaintiff is the son of 7th defendant and the plaintiffs 2 and 3 are son and daughter of fifth defendant respectively. The defendants 5 to 7 are sons of one Sri.Ramanathan, who died in the year 1998. The suit property consist of a constructed portion along with vacant site. The plaintiffs' fore-fathers were highly religious and had a great faith and reverence to the goddess Adhi Meenambal. According to the plaintiffs and their fore-fathers, the goddess Adhi Meenambal was living in the portion of constructed house in the room. They were offering worship and poojas to the said family deity and there is a wooden box kept in the room containing the saree, bangles, ear rings, nose rings, chain, bracelet and bell etc. A special prayer was conducted on the Pournami of Karthigai Tamil month every year. On which date, all the members of the family assembled and offer Sweet Pongal and the same was distributed among the family members as Prasadam. The said pooja and worship have been done continuously for several decades in the schedule mentioned property. The said property was called as Kovil Veedu. The paternal grand-mother's father one N.S.Duraisamy Reddiyar, after his father's death was performing poojas and carrying out the obligation of trust. The said



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N.S.Duraisamy Reddiyar had only daughter, namely, Kasthuri and she was married to one Ramanathan and three male children were born to them, namely, defendants 5 to 7 herein. The said N.S.Duraisamy Reddiyar had executed a confirmation document in respect of existing trust by deed, dated 23.02.1985. The said deed was came to knowledge only last week of May 2014, when the plaintiffs re-arranging the household articles. The first defendant and her husband belonged to same village and actually they living in the next door and fully aware of the nature of the property. As per the trust deed, the plaintiffs are entitled to be trustees and also the beneficiaries to protect the trust. The plaintiffs came to know that two documents, dated 11.12.1997 were executed by defendants 5 to 7 in favour of the first defendant and her husband Rajasekaran through sale deeds. Neither the plaintiffs' grand-father nor their sons had any right to execute any document in respect of the trust property. The above said sale deeds are in violation of the trust deed, dated 23.02.1985. Therefore, the plaintiffs have filed the suit for declaration declaring that the suit property has been dedicated for the performance of pooja and worship which has been in existence and created by the plaintiffs' fore-father and confirmed and evidenced by deed, dated 23.02.1985 as "Kovil Veedu" and also



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prayed for recovery of possession of the property from the defendants 1 to

4.

4. The averments made in the written statement filed by the defendants 1 and 2 are as follows:

The suit is not maintainable either in law or on facts. The defendants denied the entire allegation in the plaint and the document trust deed, dated 23.02.1985 is concocted and fraudulent one. The said trust deed is un-registered trust deed and it is not valid under the eye of law. The plaintiffs' suppressed the real facts in respect of the sale deed executed by their father and grand-father, dated 11.12.1997. These suit property and other properties were mortgaged by the defendants 5 to 7 to the Tamilnadu Mercantile Bank and the Bank has initiated SARFAESI proceedings and in the said proceedings, defendants 5 to 7 have never spoken about the existing trust. These defendants are *bona fide* purchasers and after purchase of the properties, they mutated the names in revenue records. Now the School is running in the property, as per the agreement, dated 01.02.1999. The same also known to the plaintiffs as well as the defendants 5 to 7. Already the plaintiffs have issued notice and the same



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was suitably replied by the defendants. Therefore, the suit is liable to be dismissed.

5. The brief averments of the counter filed by the respondents 5 to 7 are as follows:

These defendants are interested in the performance of the usual poojas to the family goddess Adhi Meenambal, who is believed to be in existence in the portion of the house building. The relationship set out in the plaint is correct. It is true that the plaintiffs' fore-fathers were highly religious and had great faith and reverence to Adhi Meenambal, who is believed to be in existence and living in the portion of the building and they are rendering poojas on every Karthigai Pournami. These defendants' grand-father N.S.Duraisamy Reddiyar after their father's death was actually performing and carrying out the obligations of the trust in the Kovil Veedu in the suit property. The said N.S.Duraisamy Reddiyar executed a document, dated 23.02.1985 to evidence the already existing trust. These defendants have not sold the properties to the first defendant and her husband. The husband of the first defendant agreed to lend a loan of Rs.2,00,000/- to these defendants' father but insisted the document



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styling as a sale deed to be executed. The transaction was only a mortgage and not a sale. The first defendant and her husband also knew well that it was never intended to be a sale deed. The first defendant and her husband also aware that the property was already under mortgage to the Tamilnadu Mercantile Bank. Therefore, there is no actual sale deed executed. Due to mis-understanding in the family children of these defendants, they issue notice to these defendants. In May 2014, these defendants met the first defendant and requested her to execute necessary document relating to trust property. The first defendant demanded double the amount mentioned in the deed. This will clearly show that the defendants were taking steps to recover the property for the trust. These defendants also sent a notice, dated 04.08.2014 to the defendants 1 to 4 and they also sent a reply with false allegations. The defendants 1 to 4 are bound to execute the document in respect of the suit trust property. Therefore, the suit has to be decreed.

6. Based on the above said pleadings, the Trial Court has framed the following issues:

"i) Whether the suit property has been dedicated for the performance of Pooja and Worship as alleged by the plaintiffs?



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ii) Whether the plaintiffs are entitled to the relief of declaration and recovery of possession?

iii) To what other relief and cost the plaintiffs are entitled to?"

7. On the side of the plaintiffs, P.W.1 was examined and Exhibits A.1 to A6 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and marked Exhibits B.1 to B.20.

8. After elaborate discussion, the Trial Court has dismissed the suit without cost.

9. Aggrieved by the dismissal of the suit, the plaintiffs have preferred this appeal on the following grounds:

i) The judgment and decree of the Lower Court is against law, weight of evidence and opposed to the probabilities of the case.

ii) The Lower Court throughout proceeded by wrongly assuming that the case of the appellants is that Exhibit A.1 is the "Trust Deed" and since is not registered it cannot be relied. But the appellants' case is that Exhibit A.1 is only a confirmation of already existing transaction and



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hence, does not requires compulsory registration.

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iii) The Lower Court failed to frame necessary issues and failed to see that the defendants have not produced the original documents of their sale deeds.

iv) The Lower Court failed to see that the defendants 5 to 7 clearly denied the execution of Exhibits A.2 and A.3 and thereby, the defendants have to prove the execution of above said sale deeds. According to the defendants 5 to 7, the document was only executed for security of the loan transaction and they never intended to sell the properties. The said fact has not been considered by the Lower Court.

v) The Lower Court failed to consider that the defendants have not specifically denied the averments of the plaint and the denial is only evasive and thereby, the defendants admitted the plaint averments.

vi) The Lower Court failed to consider that Exhibit A.1 is more than 30 years old document and presumption under Section 90 of the Evidence Act is applicable to that document.

vii) The Lower Court wrongly held that Exhibit A.1 is only "Pious wish" and there is no beneficiary and also failed to consider that the patta and other documents cannot confer any title.



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viii) The Lower Court failed to consider that already the property was mortgaged with the Bank. While so, there is no scope for execution of sale deed without redeeming the mortgage.

10. The learned Counsel appearing for the appellants / plaintiffs would contend that the suit property is the trust property and the trust was created for worship of goddess Adhi Meenambal and as per the trust, the fore-fathers of the plaintiffs have been performing poojas to the deity Adhi Meenambal and every Karthigai Pournami, they used to offer Sweet Pongal for the deity and in the suit property, the articles of deity, namely, saree and other things were kept in the box and the same are worshipped by the predecessor of the plaintiffs. In order to confirm the same, the paternal grand-father of the plaintiffs, namely, N.S.Duraisamy Reddiyar has executed a deed by confirming the existence of trust through Exhibit A.1. The suit properties are called as "Kovil Veedu" and the defendants 5 to 7 and their father had no any right to alienate the property. While so, the defendants 5 to 7 and his father Ramanathan had executed a sale deed in favour of the first defendant and her husband. Since the husband of first defendant died, his legal heirs, who are the defendants 2 to 4 are added as



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parties. The properties are trust properties and thereby, the plaintiffs have filed suit for declaration and recovery of possession. The Lower Court without considering the above said aspects, erroneously dismissed the suit. Therefore, the judgment and decree passed by the Lower Court are liable to be set aside by allowing this appeal.

11. The learned Counsel appearing for the respondents 1 to 4 / defendants would contend that the first defendant and her husband have purchased the properties from defendants 5 to 7 and one Sri.Ramathan for good and valuable consideration through sale deed, dated 11.12.1997. On the date of sale itself, the defendants are in possession and enjoyment of the suit property. There is no any Kovil Veedu and there is no any trust as alleged by the plaintiffs and the property is not at Kovil Veedu and the property was never enjoyed as Kovil Veedu and the plaintiffs have failed to prove Exhibit A.1. The plaintiffs failed to seek relief to set aside the sale deeds in favour of the defendants and without seeking relief in respect of the sale deeds, the suit prayer is not maintainable. The plaintiffs are none other than the sons and daughters of the defendants 5 to 7 and at the instigation of the defendants 5 to 7, the present suit has been filed by their



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respective children. Therefore, the plaintiffs are not come to this Court with clean hands and the appeal is liable to be dismissed. Moreover, the Trial Court after elaborate discussion, correctly dismissed the suit, hence this appeal is liable to be dismissed.

12. The learned Counsel appearing for the respondents 5 to 7 would contend that the suit property originally belongs to the plaintiffs' forefathers and it was dedicated for performing the poojas to the family deity goddess Adhi Meenambal and these defendants have mortgaged the property with the husband of first defendant. At that time, the husband of the defendant insisted to execute a sale deed instead of mortgage deed. The defendants also executed sale deed and there is no intention to sell the property and is only for security for the loan amount obtained by the defendants. Already the defendants have sent a notice to the defendants 1 to 4 and they are taking steps to recover the properties from the defendants 1 to 4. In fact already the property was mortgaged with the Tamilnadu Mercantile Bank and defendants 1 to 4 have redeemed the property by paying the mortgage amount after the alleged sale deeds. Therefore, it shows that the property was not sold to the defendants 1 to 4 and only for



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loan purpose, the sale deed was executed. Therefore, the appeal is liable to be allowed.

13. The learned Counsel appearing for the respondents 5 to 7 has relied the following judgments:

i) M/s.Gian Chand and Brothers and Another Vs. Rattan Lal alias Rattan Singh reported in AIR 2013 SC 1078,

ii) Ishwar Dass Jain (dead) through LRs., Vs. Sohan Lal (dead) by LRs., reported in AIR 2000 SC 426 and

iii) Rajammal and Another Vs. M.Senbagam reported in 2016 (5) L.W 425.

During pendency of the appeal, the respondents 5 to 7 have filed petition to receive the documents as additional evidence under Order 41, Rule 27 of C.P.C.

14. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal are as follows:



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not?

"1) Whether the C.M.P(MD)No.11767 of 2023 is to be allowed or

2) Exhibit A.1 trust deed, dated 23.02.1985 is valid in the eye of law?

3) Whether the suit property is trust property and whether the plaintiffs are entitled to the relief of declaration in respect of the suit property?

4) Whether the plaintiffs are entitled to relief of recovery of possession as prayed for in the plaint?

5) Whether the decree and judgment passed by the Trial Court are sustainable in law or on facts?

6) Whether this appeal has to be allowed or not?"

15. Point No.1:

During pendency of the appeal, the respondents 5 to 7 have filed petition under Order 41, Rule 27 to receive the additional documents stating that already they have filed documents before the Trial Court and the notice sent by them on 04.08.2014 and the reply sent by respondents 4 to 7 herein were misplaced and now only they traced out those documents,



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thereby those documents have to be marked as respondent side documents.

The respondents have vehemently objected to receive the documents. The case is filed by the plaintiff for the relief of declaration and these petitioners are defendants in the suit and they supported the claim of the plaintiff and the plaintiffs already filed documents available with them and the contesting defendants also already filed their documents. The reasons stated by the petitioners for non production of the documents before the Trial Court is not acceptable. Moreover, the documents sought to be marked are not vital documents and they are notices exchanged between the parties. The available documents are sufficient to prove the effective judgment in this case, therefore the petition has no merits and the same is liable to be dismissed, accordingly the C.M.P(MD)No.11767 of 2023 is dismissed.

Point No.2:

16. According to the plaintiffs, the property belongs to their fore-fathers and they created a trust for the worship of goddess Adhi Meenambal. But they came to know about the trust deed Exhibit A.1 recently (i.e.,) in the year 2014. The fore-fathers of the plaintiffs had been



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rendering poojas to the Adhi Meenambal in the suit property and already the trust was in existence and N.S.Duraisamy Reddiyar on 23.02.1985 by confirming the above said existence of trust, executed a deed, dated 23.02.1985. In the above said deed, the properties were dedicated for the trust. The said deed has been marked as Exhibit A.1. On perusal of Exhibit A.1, it reveals that the suit property was dedicated to the trust. The said deed is un-registered trust deed. According to the plaintiffs, the said deed was confirmation to the existence of the trust and thereby, it need not be registered. But on perusal of the recitals of the document, it shows that the suit property was dedicated to the trust through this document. Therefore, it should be registered in accordance with law. Further the plaintiffs have not offered proper explanation as to how they trace out the documents after 30 years that too they are residing in the apartments, which is far away from the suit property. While so, where they trace out the documents and the defendants 5 to 7, who are the parents of the plaintiffs have not whispered about the above said trust deed. The trust deed was not brought to the knowledge of any of the plaintiffs fore-fathers till the filing of the suit. There is no any reference about the trust deed in the previous documents. Therefore, the documents Exhibit A.1 alleged trust deed, dated



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23.02.1985 has not been proved in accordance with law.

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17. On the side of the plaintiffs, except P.W.1 none of the witnesses were examined to prove the alleged execution of trust deed. In this context, the learned Counsel for the appellants / plaintiffs would contend that the document is 30 years old document and thereby, presumption under Section 90 of the Evidence Act is in favour of the plaintiffs. Therefore, it is a presumption that the deed was executed and duly attested. Though the deed is more than 30 years, the deed was not produced from the proper custody. The plaintiffs have not pleaded from where they obtain the custody of the said document. Neither the plaintiffs' predecessor nor the parents of the predecessor have spoken about the alleged existence of deed and thereby, the plaintiffs failed to prove that the document was from the proper custody of the plaintiffs. Therefore, the presumption under Section 90 of the Evidence Act would not attract. Further the plaintiffs have failed to examine any of the witnesses attested in Exhibit A.1 and moreover, the document is un-registered document and thereby, it is not valid under the eye of law. Thus the point is answered.



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Point No.3:

18. According to the plaintiffs, the properties belonged to trust property and they relied upon Exhibit A.1. Already this Court has discussed in the previous point in respect of Exhibit A.1 and this Court came to a conclusion that Exhibit A.1 has not been proved in accordance with law and except Exhibit A.1, no any other documents produced by the plaintiffs to prove that the property is trust property. The plaintiffs failed to prove the existence of trust and the property belongs to the trust property. Per contra, the plaintiffs admitted the execution of sale deeds in favour of the first defendant and her husband but they denied that the plaintiffs' fathers and grand-father had no right over the property, but once they admitted the execution of sale deed, it is the duty of the plaintiffs to seek relief in respect of the sale already taken place in the year 1997. But the plaintiffs have not taken any steps to attack the sale deeds in accordance with law. The defendants 5 to 7 also admitted that they executed deeds styling as sale deed. But the intention is not to sell the property and they executed deed only for the security of mortgage loan. In order to prove the same, the defendants 5 to 7 have not adduced any evidences and they have not taken any steps to redeem the mortgage as alleged by them. But



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according to the defendants, they purchased the property for good and valuable consideration and on the side of the defendants, D.W.1 to D.W.3 were examined and they clearly deposed about the purchase of the property.

19. In this context, the learned Counsel appearing for the appellants / plaintiffs would contend that the first defendant has not examined as witness and she failed to enter into box and her son only examined as P.W.1 and he has no personal knowledge about the purchase of the property. In this context, it is to be noted that the defendants themselves admitted the execution of sale deed but their contention is that is not a sale deed, it is only a mortgage deed. While so, it is the duty of the defendants to prove that the document was not executed for sale and only executed for loan purpose. Therefore, the whole burden is lies on the defendants 5 to 7. But they have not examined any witnesses. Therefore the contention of the learned Counsel appearing for the defendants 5 to 7 is not acceptable one.



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20. The learned Counsel appearing for the respondents 5 to 7 had relied the following judgments:

i) Rajammal and Another Vs. M.Senbagam reported in 2016 (5) L.W. 425,

ii) Ravinder Kumar Sharma Vs. State of Assam and Others reported in AIR 1999 SC 3571,

iii) Ishwar Dass Jain (dead) through legal heirs Vs. Sohan Lal (dead) by legal heirs reported in AIR 2000 SC 426 and

iv) M/s.Gian Chand and Brothers and Another Vs. Rattan Lal alias Rattan Singh reported in AIR 2013 SC 1078.

21. On careful perusal of the above said judgments, it is clear that the defendant must not evasively answer the point of substance and specific denial that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted against him. In the case on hand the defendants filed written statement by denying the plaint averments. The plaintiffs filed this suit for declaration and recovery of possession and thereby, they have to prove their case through sufficient evidences, but they failed to prove their case. Therefore, the said case laws



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will not be applicable to this case. In view of the above said discussions, this Court is of the opinion that the plaintiffs failed to prove that the property belongs to the trust and thereby, they are not entitled to the relief of declaration of title over the suit property. Thus the point is answered.

Point No.4:

22. The plaintiffs have sought for the relief of declaration that the suit property belongs to trust and dedicated for the performance of pooja and worship which has been in existence and created by the plaintiffs forefathers and confirmed and evidence by deed, dated 23.02.1985 as the Kovil Veedu and also sought for relief of recovery of possession of the property. The plaintiffs' contention is that the property was dedicated for performance of pooja and worship and the same was confirmed through Exhibit A.1, but this Court already decided in the previous point that Exhibit A.1 has not been proved in accordance with law and the plaintiffs failed to prove that the property is belongs to the trust and dedicated for the performance of pooja and worship. Even according to the plaintiffs, there is no pleadings or evidence that after sale deed, dated 11.12.1997, they have been performing poojas to the said deity. While so, it is clear



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that there is no any evidence for performance of pooja by the plaintiffs and their fore-fathers in the suit property. Therefore, the plaintiffs miserably failed to prove their case and they are not entitled to the relief of declaration as prayed for in the plaint and the same was decided in the previous point, the plaintiffs have also sought for relief of recovery of possession. According to the plaintiffs, the defendants 5 to 7 and grand-father had no right to sell the property. But however, the property was sold in the year 1997 itself. According to the defendants 5 to 7, they have not sold the property and only they executed the mortgage deed. While so, there is no necessity to seek recovery of possession. However, the plaintiffs themselves admitted the possession of the defendants 1 to 4 over the suit property. This Court in the previous points already decided that the plaintiffs are not entitled to the relief of declaration and thereby, they are not entitled to relief of recovery of possession also. Thus the point is answered.

Point Nos.5 and 6:

23. The Trial Court after elaborate discussion, rightly held that Exhibit A.1 has not been proved and the same is not valid in the eye of



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law. After considering the evidences adduced on both sides and also after elaborate discussion, held that the plaintiffs are miserably failed to prove their case and they are not entitled to relief of declaration and recovery of possession. This Court also in the previous points decided that the plaintiffs are not entitled to the relief as prayed for in the plaint in respect of the relief sought for by them. Therefore, the decree and judgment of the Trial Court are correct and warrants no interference. Therefore, the decree and judgment passed by the Trial Court are sustainable in law and on facts and the present Appeal Suit has no merits and deserves to be dismissed.

24. In the result, the C.M.P(MD)No.11767 of 2023 is dismissed.

25. In the result, this Appeal Suit stands dismissed by confirming the decree and judgment passed in O.S.No.175 of 2014 on the file of the V Additional District Judge, Madurai. There shall be no order as to costs.

05.03.2024



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The V Additional District Judge,
Madurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

BTR

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