



A.S.Nos.481 and 362 of 1990

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 13.03.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

A.S.Nos.481 and 362 of 1990

and

CMP(MD)No.5700 of 2023

Annapoorani Dharma Chatram and
- Veda Padasalai Religious Trust,
Thiruchoruthurai by its Trustee
Tmt.Usha Rajaraman (Died)

... Appellant/Plaintiff
in A.S.No.481 of 1990

Kannan,
S/o.Rajaraman

(New Trustee brought on record vide order dated 07.12.2009 made in
MP(MD)No.4 of 2009)

Annapoorani Dharma Chatram and
Vedapadasalai, a religious Trust
by its Trustee,
Kannan

...Appellant /5th Defendant
in A.S.No.362 of 1990

*(New trustee brought on record
vide order dated 07.12.2009
made in MP(MD) No. 1/2009)*

Vs.

1.Ravindran

2.Selvi Sundaram

3.K.Elangovan

4.N.Rajaram (Died)

1/45



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5.Vaidyanatha Iyer (Died)

6.Uma Viswesvaran

7.Sankari Sundaresan

8.Saroja (Died)

(8th Respondent is brought on record as LRs of the deceased 5th respondent vide Court order dated 08.02.2022 made in MP(MD)Nos.1 to 3 of 2009 in AS.No.481 of 1990 by RTJ)

(Memo dated 16.02.2015 filed on 16.02.2015 in USR No.754 is recorded As R8 died and respondents 6 & 7 who are already on record, are recorded as Lrs of the deceased R8 vide Court order dated 09.11.2018 made in MP(MD)Nos.1 to 3 of 2009 in AS.No.481 of 1990 by RSMJ)

9.Kavitha

10.Kannan

(10th Respondent is deleted vide Court order dated 08.03.2023 made in CMP(MD)Nos.7654 & 7655 of 2022 in A.Nos362 and 481 of 1990 by NSKJ)

11.Karthik

12.Rajini

13.Minnalkodi

14.Minor Uma Venkatesan

15.Minor Archana Venkatesan

16.Minor Valli Venkatesan

(Minor respondents 14 to 16 are represented by her mother, R13)



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17. Chamundeshwari

18. Minor Sriharini Srinivasan

(Minor R18 is represented by her mother, R17)

(Respondents 9 to 18 are brought on record as Lrs of the deceased 4th Respondent vide Court order dated 09.11.2018 made in MP(MD)Nos.1 to 3 of 2015 in AS.No.481 of 1990)

... Respondents in A.S.No.481 of 1990

1. Ravindran

... 1st Respondent /Plaintiff

2. Vaidayanatha Iyer

3. K.Elangovan

4. Selvi Sundaram

5. Rajaraman(Died)

... Respondents 2 to 5/Defendants 1 to 4

6. Venkatesan(Died)

7. Srinivasan(Died)

8. Kavitha

9. Kannan

(9th respondent deleted vide court order dated 08.03.2023 made in CMP Nos.7654 & 7655 of 2022)

10. Karthick

11. Rajini

(Respondents 6 to 11 are brought on record as Lrs of the deceased R5 vide Court order dated 09.11.2018 made in MP(MD)Nos.1 to 3 of 2012 in A.S.No.363 of 1990)

12. Minnalkodi

13. Minor. Uma Venkatesan

14. Minor. Archana Venkatesan

15. Minor. Vallivenkatesan

*(Respondents 12 to 15 are brought on record as LRS of the deceased /R6 vide court order dated 09.11.2018 made in MP(MD) Nos.1 to 3/15)
(Minors 13 to 15 are represented by their mother Minnalkodi/R12)*



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16.Chamundeswari

17.Minor Sriharini Srinivasan

..Respondents 6 to 17

(Respondents 16 and 17 are brought on record as LRS of the deceased /R7 vide court order dated 09.11.2018 made in MP(MD) Nos.4 to 6/15) (Minor 17 represented by her mother Chamundeswari(R/16)

...Respondents in A.S.No.362 of 1990

Prayer in A.S.No.481 of 1990: This Appeal Suit has been filed under Section 96 of C.P.C., to set aside the decree and judgment made in O.S.No.214 of 1987 dated 06.01.1990 on the file of the Subordinate Judge's Court at Thanjavur.

Prayer in A.S.No.362 of 1990: This Appeal Suit has been filed under Section 96 of C.P.C., against the decree and judgment made in O.S. No. 76 of 1984 dated 06.01.1990 on the file of the Sub Court, Thanjavur.

For Appellant Mr.V.M.Balamohan Thampi

in both A.S. : for Mr.K.Govindarajan

For R1,3,8 to 12& 16
in both A.S. : No appearance

For R13 to 15 & 17
in both A.S. : Mr. M.Balakrishnan
(Legal aid counsel)

COMMON JUDGMENT

These appeals have been preferred as against the decree and common judgment passed by the Subordinate Judge's Court at



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Thanjavur, in O.S.No.214 of 1987 and O.S.No.76 of 1984, dated 06.01.1990, wherein, the appellant herein in A.S.No. 481 of 1990 has filed a suit for the relief of declaration and permanent injunction. The trial Court has dismissed the suit. Aggrieved against the same, the present appeal in A.S.No. 481 of 1990 has been preferred by the appellant/plaintiff. The Appellant in A.S.No.362 of 1990 is the 5th defendant in O.S.No.76 of 1984 and the plaintiff therein filed the suit for specific performance and the same was decreed. Aggrieved over the same, the present appeal in A.S.No.362 of 1990 has been filed by the appellant/5th defendant.

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

3.The brief averments of the plaint in O.S.No.214 of 1987 are as follows:

The plaintiff is the trustee of the present trust has filed a suit for the relief of declaration. The trust was formed by one Vaidyanatha Iyer



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S/o.Ganesa Iyer through Will dated 16.10.1895. As per the Will, in the suit property, have to conduct School for 'Yajur Vethapadasalai' and during the festival of Subthasthanam, offered 'Annathanam' and also other days in the Chatram, they have to offer meals and also performed Poojas in the Sivan Temple at Thiruchotruthurai. Again, the said Vaidyanatha Iyer executed another Will dated 07.09.1898 stating that he adopted one Ganesa Iyer as son and he also entitled to some properties except the properties already given for the charitable purpose. The said Vaidyanatha Iyer died on 15.09.1898. After the demise of the said Vaidyanatha Iyer, both the Wills came into force. The Executors mentioned in the earlier Will are entitled to administrate the trust. To that effect, the Ganesa Iyer filed a suit before the Thiruvaiyaru District Munsif Court in O.S.No.203 of 1913 and the same was entered into compromise and compromise decree was also passed. As per the compromise decree, the adopted son of Vaidyanatha Iyer namely, Ganesa Iyer and his legal heirs have to administer the trust as executive Directors. Thereafter, the administrators of the Will died without any legal heirs. The Ganesa Iyer alone was managing the trust. Till the demise of Ganesa Iyer, he administrated the trust properties and he died



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on 07.09.1945. After the demise of Ganesha Iyer, his son namely, Vaidyanatha Iyer administrated the trust and he failed to administrate the trust properly and utilized the amounts for other purpose and also he started to sell the trust properties and also formed a new trust on 28.06.1956 and thereafter, cancelled the said trust on 14.09.1976. Thereby, he disqualified from becoming a trustee. He has no right to form any new trust or cancel the earlier trust. The suit properties are in two survey numbers. The Dharmachatram situated in S.Nos.160/4 & 160/5. The said property belonged to 'Sri Odanavaneswarar Swami Temple'. The founder of the trust and his legal heirs are residing there for more than 100 years. Rs.50/- per year have to be contributed by the Annapoorani Dharmachatram Trust. Therefore, the said Chatram belongs to the trust. The plaintiff is the second daughter of the fifth defendant. The defendants 6 & 7 are sisters of the plaintiff. The fifth defendant has no male heir. The plaintiff being the daughter of the fifth defendant, managing the trust. Already, the plaintiff has filed a suit as against the fifth defendant in respect of the trust properties. The plaintiff is running the Vedhapadasalai and also offering 'Annathanam'. The fifth defendant colluding with the first defendant, attempted to alienate the property in



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favour of the first defendant. Thereby, the first defendant filed a suit in O.S.No.76 of 1984 on the file of the sub Court, Thanjavur for the relief of specific performance. The fourth defendant also filed a suit in O.S.No. 30 of 1984 on the file of the Sub Court, Thanjavur for the relief of specific performance. Further, the fifth defendant also created a lease deed dated 16.04.1984 in favour of the defendants 2 & 3. The fifth defendant has no right to create encumbrance over the suit properties.

4. The gist of the written statement filed by the first defendant in O.S.No.214 of 1987 are as follows:

The description about the plaintiff in the plaint is not correct. There is no existence of Annapoorani Dharmachatram Vedhapadasalai and the plaintiff is not a trustee of the said Annapoorani Dharmachatram. There is no reference in the Will about the Annapoorani Dharmachatram. Once, the Vaidyanatha Iyer adopted his son Ganesa Iyer, he has no right to execute any Will in respect of the properties since the son of Vaidyanatha Iyer also co-parceaner of the joint family properties. After the demise of Vaidyanatha Iyer, Ganesa Iyer has not administrated the properties as alleged in the plaint. Per contra, the Ganesa Iyer enjoying the properties as his original properties. After the demise of Ganesa Iyer,



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the fifth defendant is enjoying the properties as absolute owner. The properties are not the trust properties and the properties belongs to Odanavaneswarar Temple. The Vaidyanatha Iyer enjoyed the property by paying Rs.50/- per year as 'Kudikani'. After his demise, his legal heirs enjoying the property as their exclusive properties. Therefore, the properties are not trust properties. In fact, the plaintiff under the guise of trustee of the Annapoorani Trust attempted to purchase the properties through her husband namely, the fourth defendant. The fifth defendant entered into agreement with the fourth defendant on 10.01.1983 to sell the property. The fourth defendant filed a suit in O.S.No.30 of 1984 on the file of the Sub Court, Thanjavur for the relief of specific performance of contract. The first defendant entered into agreement with the fifth defendant dated 19.08.1982. At that time, the plaintiff Usha and her husband attempted to purchase the properties. Therefore, the fourth defendant filed a suit through his wife. The other daughters of the fifth defendant have not claimed any right over the properties. It shows that the properties is not a trust properties. The properties are under the enjoyment of the defendants 2 & 3 as lessee. Therefore, the suit is liable to be dismissed.



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5. The gist of the written statement filed by the defendants 2 & 3 in

O.S.No.214 of 1987 are as follows:

There is no existence of Annapoorani Dharmachatthiram and Vedhapadasalai as alleged by the plaintiff. The Vaidyanatha Iyer had no right to create trust since he adopted a son. The Ganesa Iyer being the adopted son of Vaidyanatha Iyer, entitled the property as his absolute properties. The fifth defendant is only the legal heir of the Ganesa Iyer, having right of Kudikani and leased out the properties to the defendants 2 & 3. Though, there is a trust, the trust only can receive the rent from the defendants 2 & 3. The plaintiff attempted to purchase the properties through her husband. Therefore, the suit is liable to be dismissed.

6. The gist of the reply statement filed by the plaintiff in O.S.No. 214 of 1987 are as follows:-

The existence of trust has been mentioned in the Wills dated 16.10.1895 and 07.09.1898 and the decree passed by the District Munsif Court, Thiruvaiyaru. The Vaidyanatha Iyer was given the administrator of the Chatram through partition in the month of July 1873. All the revenue records are also revealed the existence of Annapoorani Trust.



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The document dated 08.12.1956 also revealed that the plaintiff was announced as trustee for the Annapoorani trust.

7. Based on the above said proceedings, the trial Court has framed the following issues:-

1. Whether the plaintiff is entitled to decree for declaration as prayed for in the plaint?

2. Whether the properties and the Chatram belongs to the trust?

3. Whether the plaintiff namely, Usha is having right to file a suit?

4. Whether the plaintiff is entitled for permanent injunction?

5. To what relief the plaintiff is entitled to?

8. The trial Court has also framed the following additional issue:-

1. Whether the plaint is correctly framed and paid proper Court fee?



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9. Before the trial Court joint trial was conducted along with the other suits in O.S.No.30 of 1984 and O.S.No.76 of 1984. The suit in O.S.No.214 of 1987 was taken as main suit and the evidences were recorded in that suit.

10. Before the trial Court on the side of the plaintiff, she was examined as P.W.1 and P.W.2 was also examined and Exs.A1 to A23 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.B1 to B18 were marked.

11. After analyzing the evidence adduced on both sides, the trial Court has dismissed the suit.

12. Aggrieved over by the said judgment and decree, the present appeal has been preferred by the unsuccessful plaintiff on the following grounds.

i) The judgment and decree of the trial Court are contrary to law weight of evidence and the probabilities of the case.



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ii) The trial Court has failed to appreciate the documents relating to the declaration of the properties to the plaintiff Chatram from a correct and proper perspective.

iii) The reasons given by the trial Court with reference to the validity of Ex.A2 and A3 and the resultant compromise entered into by the parties to the suit in O.S.No.203 of 1913 as per Ex.A5 are totally contrary to law.

iv) The trial Court has failed to consider that Ex.A1 clearly mentions about the existence of Annapoorni Dharma Chatram and Vedapadasalai At Thiruchoruthurai.

v) The trial Court has failed to consider that Ex.A5 the legatee under Ex.A3 late Ganesa Iyer father of the 5th defendant as sole surviving coparcener had accepted the Will as a valid dedication of the properties to the charitable uses and acted as a trustee of the charities.

vi) The trial Court failed to consider that under Ex.A5 late Ganesa Iyer adopted son of Vaidyanatha Iyer had clearly accepted the validity of the Wills Exs.A2 & A3 and has clearly consented to the dedication created thereunder.



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vi) The trial Court failed to consider that there is no dispute that the properties leased out by Sri.Othinavaneeswarar Swami Temple and lease amount of Rs.50/- was paid.

vii) The trial Court failed to consider that Ex.A.1 to Ex.A.23 several notices and orders passed by the HR & CE Board in which the 5th defendant has been clearly described as the Trustee of the Plaintiff Chatram.

viii) The trial Court failed to see that under Ex.A6, the 5th defendant has transferred his right of trusteeship in favour of his daughter R.Usha and she is entitled to file the suit for declaration in respect of the suit properties belong to the Plaintiff trust.

ix) The trial Court erred in came into the conclusion that Ex.A1 to Ex.A3 have not came into effect and there is no question of any endowment.

x) The trial Court failed to consider that the fifth defendant has absolutely no right to enter into any agreement of sale with reference to the suit properties in favour of the first defendant as the superstructure belong to the plaintiff trust and the plaintiff trust has 'kudikani' rights with reference to the suit properties.



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xi) The trial Court failed to consider that the deceased Ganesa Iyer having accepted the position of a trustee and had acquired the property in that capacity. His legal heirs cannot be permitted to assert any independent title de-hore the trust.

Therefore, the judgment and decree passed by the trial Court are liable to be set aside by allowing this appeal.

13.During the pendency of the appeal, the appellant has filed a petition in CMP(MD)No.5700 of 2023 to receive the copy of order in W.A.No.1557 of 1999 as additional evidence in this case. According to the petitioner, the said document is pertaining to the Registration Fee for the trust properties and the mother of the appellant namely, Usha Rajaram, the erstwhile trustee filed Writ Petition as against the registration fee and the same was dismissed and thereafter filed Writ Appeal and the said Writ Appeal was disposed of by directing the respondents to pass appropriate orders on the representation of the petitioner in respect of the Registration Fee on merits. The said order is very essential to prove the case of the appellant. Therefore, the said order has to be received as additional documents.



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14. The respondents vehemently opposed to receive the document stating that the said document is no way helpful to decide the case and only to delay the proceedings, the said petition has been filed.

15. The learned counsel appearing for the appellant would contend that the suit properties are belong to the trust and the defendants attempted to alienate the properties to the third parties. Thereby, the plaintiff has filed a suit for the relief of declaration. Before the trial Court, they examined P.W.1 & P.W.2 and marked Ex.A1 to Ex.A23. The plaintiff has produced the Wills for the year 1895 & 1898. Though the Wills, the properties were dedicated properties for the endowment purpose. Already a Civil Suit was filed by the Vaidyanatha Iyer, who is the founder of the trustee and it was compromised. In the said compromise, they also specifically mentioned about the trust. Thereafter, the said Ganesa Iyer managed the trust and then after the demise of Ganesa Iyer, the fifth defendant Vaidyanatha Iyer being the son of Ganesa Iyer was managing the trust properties. Due to his mismanagement, the present plaintiff Usha was appointed as trustee for the Annachatram. The trial Court has failed to consider the documents



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filed by the plaintiff and erroneously held that the properties are not the trust properties and dismissed the suit. Therefore, the judgment and decree passed by the trial Court are liable to be set aside.

16. There is no representation on the side of the respondents and their names were printed in the cause list. On behalf of the minor defendants No.14 to 16 and 18, Advocate was appointed as Court Guardian.

17. Heard the learned counsel appearing for the appellant and Court guardian and perused the records.

18. Points for determination in the appeal in A.S.No.481 of 1990 are,

- i) Whether the CMP(MD)No.5700 of 2023 is to be allowed or not?*
- ii) Whether the plaintiff trust is in existence?*
- iii) Whether the properties are belonged to the plaintiff's trust?*



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iv) Whether the plaintiff is entitled to the relief of declaration of title of the properties?

v) Whether the plaintiff is entitled to relief of permanent injunction?

vi) Whether the decree and judgment passed by the trial Court are sustainable in law and on facts?

vii) Whether the appeal has to be allowed or not?

viii) To what reliefs, the appellant is entitled for?

19. The brief averments of the plaint in O.S.No.76 of 1984 are as follows:

The scheduled property belongs to the first defendant. The ground belongs to Arulmighu Odanavaneswarar Temple situated at Tiruchotruthurai Village. The first defendant is holding Kudikani right over the suit properties which belong to the temple. The first defendant entered into a sale agreement with the plaintiff on 19.08.1982, agreeing to sell the suit properties with the super structures raised by the first defendant in the suit property for valuable consideration of Rs.60,000/-. The plaintiff agreed that he has to pay the balance sale consideration within two years from the date of agreement and to get the sale deed.



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The said agreement was entered into between the parties on 19.08.1982.

Subsequently on 15.01.1983 the plaintiff has paid a sum of Rs.15,000/- towards part payment of balance sale consideration. To that effect the first defendant made endorsement on the back side of the agreement. In total, the plaintiff paid Rs.36,000/- towards advance of sale consideration and balance amount of Rs.24,000/- has to be paid and at that time of execution of sale deed. The plaintiff was always ready and willing to perform his part of contract and he approached the first defendant several times for getting sale deed after payment of balance consideration, but the first defendant evaded from executing sale deed. On 04.08.1984, the plaintiff issued notice through his counsel to the first defendant and the first defendant also after receipt of notice issued reply with false averments. In the reply notice, he stated that he has leased out the suit properties to the defendants 2 and 3. Though the first defendant has agreed to give possession free of all encumbrances, he has created encumbrances over the properties by inducting the defendants 2 and 3 as tenants. Now, the first defendant has set up the fourth defendant, who is his son-in-law to make rival claims by creating and putting up certain documents. Hence the plaintiff has filed the suit. The fifth defendant has



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nothing to do with suit properties and has claimed that the suit properties belong to the Trust which is inalienable, is not correct. The fifth defendant was added as a Eeconomy party.

20. The gist of the written statement filed by the first defendant in O.S.No.76 of 1984 are as follows:

The suit is not maintainable either in law or on facts and the same is liable to be dismissed in limine. It is true that this defendant entered into a sale agreement with the plaintiff on 19.08.1982 for a sum of Rs. 60,000/- and also he received a sum of Rs.6000/- as advance and has received Rs.3000/- in two installment on two occasions. The averments in respect of ready and willingness by the plaintiff to perform his part of contract is not correct . Infact during the month of February 1984, the first defendant approached the plaintiff to pay the balance amount and to get the sale deed but the plaintiff was not having the balance amount. Hence, he evaded the payment of balance amount to complete the transaction. Since the first defendant wanted money for his expenses, he approached the defendants 2 and 3 and entered into lease agreement with them, thereby, they received some money and now they are in possession



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and enjoyment of the properties. Even now the first defendant is ready and willing to receive the balance of sale consideration and to execute the sale deed and the plaintiff can settle the matter with the defendants 2 and 3 for taking possession and therefore the suit is liable to be dismissed.

21. The gist of the written statement filed by the second and third defendants in O.S.No.76 of 1984 are as follows:

The averments made in the plaint are all incorrect and the plaintiff is put to strict proof of the same. These defendants are not aware of the sale agreement between the plaintiff and the first defendant. Even if there was sale agreement, it will not bind these defendants as they are only lessees. The first defendant was collecting usufructs from the coconut grove. The first defendant approached these defendants for money and at that time, these defendants entered into lease agreement with the first defendant to collect usufructs from the coconut grove and agreed for rent of Rs.3600/- per annum. Towards lease agreement the second defendant has paid an advance of Rs.1000/- and the third defendant has paid a sum of Rs.500/- and the agreement was entered



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into on 16.04.1984 On the date of lease agreement itself, possession of the properties was handed over to the second and third defendants respectively. These defendants have no objection for passing a decree for specific performance, provided the plaintiff is prepared to adorn the tenancy agreement of these defendants and the defendants right of lease hold enjoyment may be recognized.

22. The brief written statement averments of the fourth defendant in O.S.No.76 of 1984 as follows:

The suit is false, frivolous and vexatious and the plaintiff has to prove the same. The agreement dated 19.08.1982 is false and it is only a created document to defeat the rights of this defendant. The allegations of payment of advance and subsequent payment to the total extent of Rs. 36,000/- are all false. This defendant has married the daughter of the first defendant and he agreed to sell the suit property to this defendant who executed agreement of sale on 10.01.1983. Due to domestic circumstances and at the instigation of people inimical to this defendant, the defendants 2 and 3 have connived to get the lease deed from the first defendant. This defendant and his wife are in possession and enjoyment



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of the suit property for a long time. The first defendant has also received money from this defendant and his wife regularly. The defendants 2 and 3 after coming to know about the agreement in favour of this defendant hit upon the novel idea of 90 years lease and with the active help of first defendant has created document. The first defendant filed the suit before the District Munsif Court at Thiruvaiyaru in O.S. No. 131 of 1984 for permanent injunction to restrain the first defendant from creating and registering documents in favour of third parties and exparte injunction was granted. The first defendant was set exparte and the suit was decreed. Because of this tactics, this defendant has filed a suit for specific performance of his agreement dated 10.01.1983 before this Court in O.S. No.30 of 1984. Whileso the second and third defendant have now set up the plaintiff with the connivance of the first defendant for creating the suit agreement antedating the same to suit the convenience and set up this plaintiff to file this suit. The price of Rs. 60,000/- is purposely inflated. The plaintiff has no means to pay the advance amount of Rs.36,000/-. The allegation of the plaintiff being ready is false and only cooked up for the plaintiff. Therefore the suit is liable to be dismissed.



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23. The brief averment of the written statement filed by the fifth defendant in O.S.No.76 of 1984 are as follows:

This defendant does not admit the averments in the plaint, except those which are specifically admitted. This defendant is the present Trustee of Annapoorani Dharma Chatram and Veda Padasalai Trust. The previous Trustee was the first defendant, who is none other than the father of this defendant. The said Vaidyanantha Iyer was guilty of mismanagement and wrongful alienations of the Trust properties. Finally he stopped performing the charities as per the deed of Trust and the Wills dated 16.10.1895 and 15.09.1898 executed by his grand father Vaidyanantha Iyer and also the compromise decree in O.S. No.203/1913, on the file of the District Munsif Court, Thiruaviyaru. He had abandoned the Trust and thereby allowed this defendant to succeed her as the sole Trustee. When this defendant took over this Trust, she found that the first defendant had alienated several Trust properties for a low price or without any consideration. Infact the Trust properties are inalienable. This defendant also filed a suit in O.S. No.214 of 1987 before this Court for the relief of declaration of title of the Trust with reference to the suit property. The suit property is Choultry ie., Annapoorani Dharma



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Chatram were in padasala also located. The poor feeding and

Sapthasthana Mandagapadi is also performed only in this suit building.

This defendant is the lessee having permanent tenancy rights in the site and the backyard where the Chatram buildings stands. This defendant as a lessee is having permanent tenancy right in the site and the backyard where the Chatram building stands. Admittedly the site belongs to Sri Odanavaneswarar Temple, Tircuhotruthurai. The alleged payment of Rs. 36,000/- by the first defendant to the plaintiff is not admitted and there is no cause of action for the suit, therefore the suit is liable to be dismissed.

24. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

- a) Whether the plaintiff is entitled to the relief of specific performance as against the first defendant ?
- b) Whether the plaintiff is entitled for the recovery of possession without encumbrance?
- c) Whether the suit is maintainable as per law?
- d) Whether the agreement dated 10.01.1983 is genuine?
- e) To what relief the plaintiff is entitled to?



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Additional Issues:

a) Whether the property belongs to the Trust ?

25. Before the trial Court joint trial was conducted and this suit was tried along with other suits and common judgment was passed by the trial Court. The suit in O.S. No.214 of 1987 was taken as main suit and evidence was rendered. In order to prove the case before the trial Court, on the side of the plaintiff, the plaintiff in O.S. No.214 of 1987 was examined as P.W.1 and he has also examined P.W.2 Exs.A1 to A.23 and on the side of the defendants, D.W.1 to D.W3 were examined and documents Exs.B.1 to B.18 were marked.

26. The trial Court through common judgment decreed the suit and granted decree for specific performance. As against the decree and common judgment passed in O.S No.76 of 1984 the fifth defendant has filed this appeal on various grounds:

Grounds of appeal:

i) The judgment and decree of the learned Subordinate Judge are contrary to law, weight of evidence and the probabilities of the case.



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ii) The learned Judge failed to approach the points that arise for consideration from a correct stand point and proper perspective and this erroneous approach has vitiated the entire judgment.

iii) The reasoning of the learned Judge in paragraph 22 of his judgment with reference to the validity of Ex.A2 and A3 and the resultant compromise entered into by the parties to the suit O.S.No. 203/1913 as per Ex.A5 are totally contrary to law and well established principles laid down by the Supreme Court of India and the Privy Council.

iv) The learned Judge further failed to see that the late Ganesa Iyer, father of the fifth defendant, noted as a Trustee of the charities and thereby accepted the Will as constituting a valid dedication of the properties to charitable uses and he treated the properties as being vested in him as the trustee of the charities.

v) The learned Judge further failed to see that there is a contention that the suit properties have been leased out by Sri. Odanavaneswarar temple and the yearly rent was Rs.50/- and this has not been denied by the first defendant in the written statement. On the other hand, it has been clearly admitted in paragraph 6 of the written statement that the



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properties have been so leased by the temple.

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vi)The learned Judge failed to see that Ex.A.9 has been given by the Village Administrative Officer and it has been given as per the existence of the land in the village.

27. The learned counsel appearing for the appellant would contend that originally the suit properties belongs to the Trust properties and his grand father executed a Will on 16.10.1985 and by dedicating the properties to the trust through the another Will dated 15.09.1898. There was a compromise decree passed in O.S. No. 203/1913 on the file of the District Munsif Court, Thiruvaiyaru. Thereafter, the said Vaidyanatha Iyer was guilty of mismanagement and wrongful alienation of the Trust properties, thereby allowed the appellant/ fifth defendant to succeed her as a sole Trustee. This first defendant has assumed charge as Trustee and he is performing various acts of the Trust as against the trust deed. The appellant is the present Trustee of Annapoorani Dharma Chatram and Vedapadasalai Trust. The first defendant had alienated several items of Trust properties for very low price or without any consideration. Infact the Trust properties are inalienable, therefore this appellant/5th defendant has filed several suits against former Trustees and third



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parties who are in possession of the Trust properties. The same appellant/5th defendant has filed a suit in O.S. No.214 of 1987 for declaration of title of the Trust properties. Before the trial Court he has examined P.W.1 and marked exhibits but the trial Court failed to consider that the suit properties belongs to the appellant Trust and they are inalienable and the first defendant has no authority to dispose the suit properties as they are Trust properties. The trial Court has totally brushed aside Ex.A.1 which amply proved the existence of appellant/Chatram. The trial Court failed to consider that the first respondent has not proved the truth, validity and genuineness of Ex.B.3 sale agreement. The plaintiff has not examined any of the attesting witnesses of Ex.B.3 agreement and failed to consider that the first respondent has no absolute right to create encumbrance over the property. The property was already bequeathed by the grand father of the appellant through Ex.A2 and Ex.A3 dated 16.10.1895 and 15.09.1898. Therefore, the first defendant has no right to alienate the property. The trial Court failed to consider the same and decreed the suit for specific performance.

28. Despite service of notice, there is no representation for the



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respondents. For the minor respondents, this Court has appointed a Court guardian and he made his submission and this Court heard him also. Since the main contesting respondents did not appear, this Court heard the learned counsel for the appellant and Court guardian appearing for the minors.

29. This Court heard the learned counsel for the appellant and the learned counsel for the minor respondents and perused the records and upon hearing both sides and perusing the records including the judgment of the trial Court, the points for determination in this appeal are as follows:

- 1) Whether the agreement dated 19.08.1982, executed between the first defendant and plaintiff in O.S. No.76 of 1984 is valid?
- 2) Whether the plaintiff was always ready and willing to perform his part of the contract ?
- 3) Whether the plaintiff is entitled to a decree for specific performance of contract?
- 4) Whether the appeal is liable to be allowed or not?
- 5) To what other relief the parties are entitled to?

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30. **Point No.1:** Whether the CMP(MD)No.5700 of 2023 is allowed or not?

The appellant during the pendency of the appeal filed a petition before this Court in CMP(MD)No.5700 of 2023 to receive the documents as additional evidence under Order 41 Rule 27 of CPC., According to the petitioner, the document sought to be received is the order passed by this Court in W.A.No.1557 of 1999 wherein, the mother of the plaintiff namely, Usha Rajaram has filed a Writ Petition in W.P.No. 13386 of 1991 challenging the value of the Registration Fee fixed by the Registration Department in respect of the trust. The said Writ Petition was dismissed by the Writ Court and thereafter, the writ appeal was filed. In the writ appeal, the Division Bench of this Court directed the authorities to consider the representation of the appellant. The said document is no way helpful to decide the case, because in the Writ Appeal nothing was adjudicated through that document and only the Division Bench of this Court had directed the authorities to consider the representation of the appellant. Therefore, the said document is not essential for effective disposal of this appeal. Further, the petitioner did not produce the document at the earliest point of time. The date of order



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is 29.09.2006. But, after a lapse of 16 years, the petitioner has filed this petition to receive the document. Without the said documents, the Court can pronounce the judgment and therefore, the above said document need not be received as additional evidence. Therefore, the petition is liable to be dismissed. Accordingly, the petition in CMP.(MD)No.5700 of 2023 is dismissed. Thus, the point is answered.

31. Point No.2 : *Whether the plaintiff trust is in existence?*

According to the plaintiff, the trust was formed by the grand father of the 5th respondent namely, Vaidyanatha Iyer. The defendants denied the existence of the trust. In order to prove the said trust the plaintiff examined PW1 and PW2 and marked Ex.A1 to A23. The dedication of properties to the trust was mentioned in the Ex.A2 and Ex.A3. Thereafter, in the year 1913, a suit was filed in respect of the suit properties in O.S.No.203 of 1913 on the file of District Munsiff Court, Tiruvaiyaru. In that suit, compromise decree was passed. In the said compromise decree, the existence of trust was clearly mentioned. Further, Ex.A1 also reveals the existence of the plaintiff trust. Ex.A5 is the compromise decree and the same is also revealed the existence of trust.



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Ex.A6 is dated 08.12.1986 and the same also revealed the existence of Annapoorni Trust. Ex.A14, dated 04.06.1988 is the Agricultural Officer sent a letter to the Village Administrator Officer stating that the plaintiff trust properties not to be sold through auction. Ex.A17 is the memo issued by the HR & CE department to the fifth defendant dated 11.11.1953. Ex.A19 is the letter sent to the Chief Minister of Chennai to remove the Administrator of the plaintiff trust. Ex.A20 is the letter issued to the fifth defendant by the HR & CE department. Ex.A20 to Ex.A22 are the notices issued by the HR & CE department to the fifth defendant. Therefore, from the above said documents, it is clear that the plaintiff trust is in existence and there is no any contrary evidence adduced by the defendants. Therefore, this Court is of the considered opinion that the plaintiff proved the existence of the plaintiff trust. Thus, the point is answered.

32. Point No.3 : *Whether the properties belong to the plaintiff's trust?*

According to the plaintiff, the suit properties belong to the trust and the Vaidyanatha Iyer had dedicated the properties to the trust in the



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year 1895 and 1898 through the Will Ex.A2 and Ex.A3. Therefore, the properties are under the enjoyment of the trust. Originally, the properties are belonged to the Odanavaneswarar Temple and the Ganesa Iyer and his successors are paying yearly lease of Rs.50/- to the temple, and they are enjoying the properties as 'Kudikani' rights. The evidence of PW1 and PW2 and the Ex.A1 to A23 clearly shows the existence of plaintiff trust and the trust is functioning in the suit properties. The lands are belongs to the Odanavaneswarar Temple and the same also admitted by both the parties and the plaintiffs grandfather had a Kudikani right over the landed properties and even now they are paying rent to the Temple. Therefore, it is clear that the landed ground properties are belongs to Odanavaneswarar Temple and the plaintiff trust is functioning in the super structures available in the said properties and the plaintiff has only Kudikani rights and the trust is entitled the superstructures and Kudikani rights over the suit properties. According to the defendants, the Vaidyanatha Iyer adopted his son Ganesa Iyer and thereby he cannot dedicate the properties to the Trust after adopting his son. But Ganesa Iyer, son of Vaidyanatha Iyer himself agreed the declaration of the properties and in the Suit in O.S. No.203 of 1913 on the file of District



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Munsif, Thiruvaiyaru, the Ganesa Iyer is also a party and he was recognized as Trustee of the Plaintiff's Trust. Therefore, the 5th defendant cannot deny the Trust. Moreover, the 5th defendant also acted as Trustee for the trust and the same also revealed from the plaintiff side documents. The H.R. & C.E. Department also had letter correspondence with the Trust for the suit properties. Therefore, from the above said evidences, they reveals that the properties are dedicated to the trust and the trustees are also enjoying the properties. Therefore, the suit properties as described above are belongs to the trust. Thus, the point is answered.

33. Point No.4 : *Whether the plaintiff is entitled to the relief of declaration of title of the properties?*

This Court in the previous points decided that the trust is in existence and in the suit properties the trust has to Kudikani right and the same are under the management of the trust. Therefore, the plaintiff is entitled to the relief of declaration of their Kudikani right and superstructure available in the suit properties. Thus, the point is answered.

34. Point Nos.5: *Whether the plaintiff is entitled to relief of*



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permanent injunction?

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The plaintiff has sought for the relief of permanent injunction not to create any encumbrances over the properties. The plaintiff examined PW1 and PW2 and produced Ex.A1 to Ex.A23 and those documents shows the existence of trust and the fifth defendant being the trustee maintained the properties. The HR & CE department also issued the notices by recognizing the possession of the trust. Since the trust is having Kudikani right over the properties and the defendants are no way connected with the trust and the lands belongs to Temple and they are attempting to alienate the property to the third parties, it is appropriate to grant the relief of permanent injunction. Therefore, the plaintiff is entitled to the relief for permanent injunction as against the defendants in respect of alienation of the properties. Thus, the point is answered.

35. Point No. 6 and 7: *Whether the decree and judgment passed by the trial Court are sustainable in law and on facts? and Whether the appeal has to be allowed or not?*

The plaintiff has filed a suit before the Trial Court for the relief of



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declaration and permanent injunction and the same was dismissed by the trial Court by holding that the plaintiff has failed to prove the existence of the trust and the property is not belonged to the trust. The trial Court has failed to consider the documents Ex.A2 & Ex.A3 and the other documents also revealed the existence of the trust and the the properties also enjoyed by the trust and the properties dedicated to the trust by the fore-fathers of the plaintiff. Thereby, the plaintiff has proved that the properties belonged to the trust. The trial Court has failed to consider the documents filed by the plaintiff and also failed to consider the evidences adduced by the plaintiff and erroneously, dismissed the suit instead of decree the suit. Though the main ground lands are belongs to Temple both the parties admitted the Kudikani rights and still they are paying rent to the Temple. Therefore they are entitled to the Kudikani rights and the same was not considered by the trial Court. Further the Trial Court failed to consider that Ganesa Iyer himself agreed the dedication of properties to the Trust and he is a party to the compromise decree passed in O.S. No.203 of 1913 of District Munsif Court, Thiruvaiyaru and as per the decree, Ganesa Iyer was the Trustee of the Trust and thereafter, the son of Ganesa Iyer, the 5th defendant was also added as Trustee for some



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time, thereby he is estopped from doing the existence of Trust and the properties belong to the Trust. Therefore, the decree and judgment passed by the trial Court are liable to be set aside. In view of the above said discussion, this Court is of the opinion that this appeal is to be allowed by setting aside the decree and judgment of the trial Court. Thus, the point is answered.

Point No:8

36. This Court decided in the previous points that the plaintiff is entitled to decree of declaration of Kudikani rights over the properties and also entitle for permanent injunction, from alienating the properties. Apart from these reliefs, the Appellant/Plaintiff is not entitled to any other relief.

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Point No.1

37. In this case, according to the appellant, the properties belong to the appellant through Wills dated 18.10.1985 and 15.09.1983. Thereafter, the appellant was in possession and enjoyment of the property and she also conducted vedapadasalai to the poor people as per the recital of the



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Trust. The first defendant in the suit has no right over the properties to execute any agreement in favour of either plaintiff or to anybody.

According to plaintiff, the property belongs to the first defendant and he entered into an agreement with him and the sale price was fixed as Rs. 60,000/- and the plaintiff has paid Rs.6000/- towards advance and subsequently on two occasions Rs.30,000/- was paid and in total Rs. 36000/- was paid. Time for sale is fixed as two years. Thereafter, the first defendant evaded from execution of sale deed. In the meantime, he also executed a lease deed in favour of the defendants 2 and 3 and also created an agreement in favour of the fourth defendant. The plaintiff was always ready and willing to perform his part of his contract, but the first defendant evaded from performing his part of his contract and therefore, he filed the suit.

38. In order to prove the case of the plaintiff, he has examined himself as P.W.1 and marked documents Ex.P.1 to P.23. On the side of defendants, DW1 to DW3 were examined and Ex.B.1 to Ex.B.18 were marked. In fact, before the trial Court, common trial was ordered and common judgment was passed. The plaintiff herein was examined as



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DW1 has deposed about the nature of the agreement and the advance amount paid to the first defendant herein. The first defendant also admitted the receipt of advance. This Court has perused the records. On perusal of Ex.A2 and A3, the grand father of the fifth defendant i.e., the appellant herein i.e., father of the first defendant dedicated the properties and the properties were bequeathed to the Trust through Will. Thereafter, the said Vaithiyanather Iyer died on 15.09.1898. After his demise, the Will came into force. In the same Will, he allotted some properties to the father of first defendant by appointing guardian of his biological father, but the first defendant entered into an agreement with the plaintiff in respect of the property. There is no parental deed produced either by the plaintiff or by the first defendant to show that the plaint scheduled property absolutely belongs to the first defendant and he had right to execute agreement in favour of the plaintiff.

39. In this context, the plaintiff has produced Ex.B.3, original agreement. On a careful persual of the above said Ex.B.3 it is clear that the first defendant has only Kudikani right over the said properties, which belongs to the Temple. The plaintiff also in the plaint pleaded that



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the first defendant is holder of Kudikani right over the properties, which belong to the temple. While entered into agreement for sale, the plaintiff without perusing any documents entered into the agreement and there is no evidence as to under what capacity the first defendant entered into the agreement with the plaintiff. When the agreement itself shows that the property belongs to the temple and the first defendant has only Kudikani right over the property, the execution of the agreement for sale of property itself creates doubt. Therefore, the plaintiff has failed to prove that the first defendant is the absolute owner of the property and having right to execute sale agreement in favour of the plaintiff and thereby the agreement executed between the plaintiff and the first defendant is not valid. Thus, the point is answered.

Point No.2

40. This Court in previous points already decided that the first defendant failed to prove his right over the property and he has no right to execute sale agreement in respect of suit property which belongs to Odanavaneswarar temple and the agreement dated 19.08.1982, is not valid, thereby, there is no question of readiness and willingness would



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arise. Even according to the plaintiff, time was fixed for execution of sale deed as two years and no any explanation from the plaintiff as to why such a long time of two years was fixed. The plaintiff has to prove his readiness and willingness from the date of agreement to filing of suit, but fixing of two years also creates doubt as to whether the plaintiff was always ready and willing to perform his part of contract. The plaintiff has not produced any evidence to show that he was always ready and willing to perform his part of contract and he filed the Suit only in the year 1984. Therefore, the plaintiff failed to prove his readiness and willingness. Thus point is answered.

Point No.3

1. Already this Court in previous points decided that property absolutely not belongs to the first defendant and the agreement also not valid and the plaintiff was also no always ready and willing to perform his part of contentions, thereby the plaintiff is not entitled to the relief of specific performance. Thus the point no. 3 is answered.

2.



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Point No.4

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42. In this case the appellant herein has filed the appeal alleging that the property belongs to the Trust and the first defendant has no right over the property, thereby, the agreement entered into between the parties are not valid. The trial Court decreed the suit by holding that the properties are not belonging to the Trust, however, the trial Court failed to consider that the plaintiff failed to prove that how the first defendant has absolute right over the property and in the agreement itself it was mentioned that the property belongs to the temple and the first defendant is only having Kudikani right. Whiles the agreement for sale of entire property with the land is not valid. The above said aspect has not been considered by the trial Court, thereby the decree and judgment passed by the trial Court are unsustainable and liable to be set aside.

43. In the result, the C.M.P.(MD)No.5700 of 2023 in A.S. No.481 of 1990 is dismissed.

44. In the result, the Appeal Suit in A.S.No.481 of 1990 is allowed and the judgment and decree passed by the Subordinate Court at



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Thanjavur in O.S.No.214 of 1987, dated 06.01.1990, are hereby set aside and the suit is partly decreed in favour of the plaintiff. It is hereby declared that the plaintiff's trust is having Kudikani rights over the suit properties and the defendants are restrained from alienating the suit properties to 3rd parties. There shall be no order as to costs.

45. In the result, the Appeal Suit in A.S.No.362 of 1990 is allowed and the decree and judgment passed in O.S.No.76 of 1984 dated 06.01.1990 on the file of the Sub Court, Thanjavur are set aside and the Suit in O.S.No.76 of 1984 stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss/mpa

To:

1. The Subordinate Judge,
Thanjavur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

44/45



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P. DHANABAL,J.

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and

CMP(MD)No.5700 of 2023

13.03.2024