



S.A.No.1232 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

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- 1 Sivalingam (died)
- 2 Lakshmi(died)
- 3 Gurumurthi
- 4 Krishnamurthi
- 5 Selvi Jayanthi
- 6 Shoba
- 7 S.Jagannathan
- 8 G.Vasantha
- 9 N.Kumutha
- 10 P.Meenakshi

... Appellants

(A1 died A6, R6 to R8 are LR's of the deceased A1 and A2 died, A3 to A5 who already on record and A7 to A10 were brought on record as LR's of the deceased A2, vide Order of this Court, dated 28.02.2023 made in CMP Nos.60 and 11654 of 2021 in SA No.1232 of 2009)

VS.

- 1 Executive Officer,
Kusalapureeswarer Temple,
Koyambedu, Chennai- 600 107.
- 2 The Commissioner
HR & CE Board,
Chennai- 34.
- 3 The Tahsildar,
Nungambakkam, Egmore.
- 4 The Junior Engineer,
6th Division Corporation of Chennai



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5 The Commissioner,
Corporation of Chennai- 3.

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6 Kalpana

7 Radhika

8 Sapana

(R6 to R8 are LR's of A1)

.. Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the decree and Judgment dated 31.08.2005 in A.S.No.281 of 2004 on the file of the Fast Track Court-II, Chennai confirming the decree and Judgment, dated 31.12.2003 in O.S.No.6434 of 1993 on the file of the learned V Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.J.R.K.Bhavanantham for A1
Mr.V.Manoharan for A2 to A5

For Respondents : Mr.Willson Topaz for
M/s.A.S.Kailasam & Associates for R1
Mr.K.Karthikeyan,
Government Advocate for R2
Mr.A.Arun Babu,
Standing Counsel for R4 and R5
Mr.G.Ameedius,
Government Advocate for R3

JUDGMENT

The Second Appeal has been filed by the plaintiffs in O.S.No.6434 of 1993 on the file of the V Assistant Judge, City Civil Court at Chennai. The suit had been filed seeking permanent injunction restraining the defendants from interfering with their peaceful possession of the plaintiffs and enjoyment of the suit property. The suit property had



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been described as measuring 8891 sq.ft., including house and vacant land at Survey No.121 Koyambedu Village at Nungambakkam.

2. In the plaint, the plaintiffs have contended that they are the legal heirs of one Srinivasan who, it was claimed was the owner of the suit property at No.2, Perumal Koil Street, Koyambedu in Survey No.121. It had been claimed that after his death, the plaintiffs came into possession of the suit schedule property. It is claimed that Srinivasan had purchased the suit property consisting of two pieces in Survey No.121, Koyambedu by two sale deeds in the years 1960 and 1966, and so it was claimed that the properties are ancestral properties. It had been stated that their forefathers have been in continuous possession of that property nearly about 200 years. It had been further stated that the 6th defendant who is a cousin of the plaintiffs had tried to encroach into the suit property and raised objections. The first defendant is the Executive Officer, Kusalapureeswarar Temple, Koyambedu. The second defendant is the Commissioner, Hindu Religious and Charitable Endowments (in short HR & CE) Department.



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3. A written statement had been filed on behalf of the first

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defendant wherein it had been stated that the land is under the control of HR & CE Administration Department and that the first defendant had been appointed under Section 45 (1) of HR & CE Act and that the first defendant had been administering the properties of the first defendant temple. It had been stated that the plaintiffs had encroached and constructed a wall overnight in the suit property when a road was about to be repaired by the Corporation of Madras. It had been further stated that the father of the plaintiffs, Srinivasan had earlier filed O.S.No.2906 of 1986 before the City Civil Court, which was dismissed. It had been stated that even before 1985 and 1986, the said Srinivasan had tried to encroach the Western Madaveedi of Sri Vaikunda Perumal Temple. That was resisted by the Authorities and the local public. It had been further stated that thereafter the Deputy Commissioner, HR & CE Administration Department had addressed a letter dated 14.10.1991 seeking laying of a pakka road and at that particular time, the plaintiffs had again encroached the road on 11.07.1993 on the Northern and Southern sides and raised walls. It had been stated with respect to the enquiry conducted by the third defendant as contended by the plaintiffs that no right would accrue



to the plaintiffs and it had been stated that since the earlier suit had been dismissed, this suit being only a re-agitation of the same issue should also be dismissed.

4. On the basis of the pleadings, the learned Trial Judge had framed the following issues:

- i. *Whether the plaintiffs are having a title over the suit property?*
- ii. *Whether it is true that the plaintiffs are encroachers of the suit property?*
- iii. *Whether the plaintiffs are entitled for permanent injunction as prayed for?*
- iv. *To what other relief the plaintiffs are entitled?*

5. During the course of trial, the first plaintiff Sivalingam was examined as P.W.1 and he marked Ex.A1 to Ex.A14. Ex.A3 and Ex.A4 were copies of the Sale deeds. Ex.A6 was the Survey notice issued to P.W.1. Ex.A8 dated 26.05.1850 was a Koor Cheetu, Ex.A9 to Ex.A11 were the property tax receipts and Ex.A12 was the Electricity Board Meter card and Ex.A13 was C.M.W.S.S.B Tax receipt and A14 was a Family Ration Card.



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6. On the side of the defendants, one witness was examined as

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D.W.1. The defendants marked Ex.B1 to Ex.B11. Ex.B1 was a copy of the plaint in O.S.No.2906 of 1986 and Ex.B2 was a copy of the Judgment in the said suit, dated 11.01.1990 and Ex.B3 was a copy of the decree in the said suit, dated 12.07.1993. Ex.B4 was a copy of the letter sent by the Executive Officer to the Tahsildar dated 12.07.1993. Ex.B7 was a copy of the letter sent by the Tahsildar to the Executive Officer, dated 10.11.1993. Ex.B9 to Ex.B11 are further correspondents from the office of the HR & CE Department to the Corporation and to the Tahsildar.

7. During the course of trial, Ex.C1 and Ex.C2 were also marked. They were the report of the Commissioner and the Rough Sketch.

8. In the Judgment dated 31.12.2003, the learned V Assistant Judge had examined the evidence adduced during the course of trial and observed that the suit property measures 8891 sq.ft., and was in enjoyment of the plaintiffs. But it was further observed that under Ex.A3, a portion of the property had been purchased under document



No.2701/1960. It had been observed that under the said document the property measured at 41 ft. X 104 ft. Thereafter, under Ex.A4, the property conveyed was 2 feet X 52 feet. With respect to Ex.A5, it had been observed that the property was full of trees and bushes. It had also been admitted by P.W.1 that patta had not been issued for the suit property. The notice issued by the Tahsildar was marked as Ex.A6 and the measurement of the property was given as 875 sq.ft., It had also been admitted by P.W.1 that the width of the road is 15 feet and a Tar road had been laid previously and now it is a mud road.

9. The report of the Commissioner, Ex.C1 had also been examined and according to the Commissioner, there was a wall of 5.6 feet height and though the total property measured 8868 sq.ft under Ex.A8, the plaintiff claimed an area of 3252 sq.ft.

10. The learned trial Court Judge also examined the contentions of the defendants about the earlier suit in O.S.No.2906 of 1986 seeking declaration. That suit was also dismissed for non impleading the legal heirs and no appeal has been filed. The other documents filed by the



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defendants had also been examined. The learned Trial Judge also examined Exs.A9, A10, A11, A12, A13 and A14 and also examined the admission of P.W.1 that the measurement of the garden area was 60 feet X 110 ft. The plaint and the Judgment in O.S.No.2906 of 1986 has been marked as Ex.B1 and Ex.B3.

11. A complaint had also been given about the encroachment by the plaintiffs. It had also been observed that it was the definite case of the first defendant that on 12.07.1993, the plaintiffs attempted to put up a compound wall and in this connection had also addressed a letter to the Tahsildar under Ex.B4. The learned trial Judge rejected the Koor Cheetu on which the learned counsel placed reliance for title of the property on behalf of the appellants.

12. The Koor Cheetu was dated 25.05.1985. That was marked as Ex.A8. It is obvious that it cannot convey any title and it cannot convey any right over the suit property. It is only a piece of paper and it is evident that as of now the title is relied on the said document, when the defendants had raised the issue that the plaintiffs do not have any title,



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the plaintiffs have also not sought any amendment seeking declaration of title. The suit had been filed only for permanent injunction.

13. On appreciation of the evidence, the learned Trial Judge found that the suit had not been instituted with any bonafide intention and therefore dismissed the suit.

14. The plaintiffs then filed A.S.No.281 of 2004 which came up for consideration before the Fast track Court II, City Civil Court, Chennai. By Judgment, dated 31.08.2005, the said Appeal Suit was also dismissed. The learned Fast Track Court II Judge, City Civil Court, again reappraised the evidence and framed points for consideration under Order 41 Rule 30 of C.P.C., The documents presented had again been re-appreciated and reexamined. It was again held that the plaintiffs had encroached the areas which claim was for a far less extent what had been described in the Schedule to the plaint. It had been observed that since the earlier suit had been dismissed and the plaintiffs cannot re-agitate the same issue. The first Appellate Judge had therefore confirmed the Judgment of the trial Court and had dismissed the Appeal Suit.



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15. Questioning that Judgment and Decree, the present Second

Appeal had been filed.

16. Pending the Second Appeal, the first and second appellants

have died and their legal representatives had been brought on record. The Second Appeal had not yet been admitted.

17. The learned counsel claimed that in the year 2012, patta had

been granted to the appellants herein. The learned counsel further claimed that on the basis of the Koor Cheetu, the appellants have title over the suit property. The learned counsel further claimed that an enquiry was conducted by the Commissioner, HR and CE Department and that the title of the appellants had been confirmed in the said enquiry.

18. It is trite in law to point out that Patta is not a document of

title. Further, the Koor Cheetu (Ex.A8) cannot confer title, the document being inadequately stamped and unregistered and is not admissible in evidence. The Commissioner, HR and CE Department can never declare title. It is the exclusive privilege of a Civil Court.



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19. It is clear that the plaintiffs have encroached upon the property of the first respondent / first defendant and had put up a wall surreptitiously. They cannot claim any title over the property. Their title had been very specifically denied and disputed by the first defendant in their written statement. When a cloud is raised over the title, then the plaintiffs should have sought the relief of declaration of title.

20. *Anathula Sudhakar Vs. P.Buchi Reddy (Dead by Lrs & Ors.* reported in **2008 AIR (SC) 2033**, the Hon'ble Supreme Court had very clearly stated that in a suit for injunction, when the defendants had raised a cloud over the title, the suit is not maintainable, without seeking the relief of declaration of title.

21. In the instant case, the Commissioner's report (Ex.C1) and the documents produced by the appellants themselves show that the plaintiffs have included a vast area in the schedule to the plaint for more than they were in actual possession. This itself shows that the appellants have not come to Court with clean hands. Their only intention is to grab the properties of the first respondent temple. Both the Courts below have



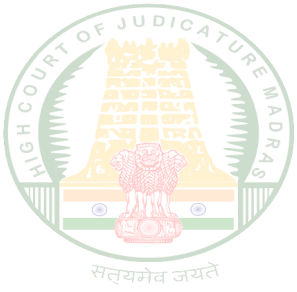
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appreciated the evidence produced in entirety and have rejected the said evidence. They found that the appellants claimed title on the basis of an inadmissible document which cannot grant any title and which cannot be relied upon for any purpose namely the Koor Cheetu which has been marked as Ex.A8.

22. In *K.K.Modi Vs. K.N.Modi & other* reported in (1998) 3

SCC 573, the Hon'ble Supreme Court had hold as follows in Para 44:

"44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."



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23. The learned counsel for the appellants placed reliance on an order of this Court made in W.P.No.25608 of 2023 with respect to the encroachment wherein it had been observed that if land is required for public purposes, the Government should initiate acquisition proceedings in accordance with law.

24. In the instant case, the appellants had only sought the relief of injunction. They have not protested about any acquisition by the respondents. It is for the respondents to initiate appropriate proceedings in manner known to law for recovery of the property and they are at liberty to do so by following due procedure of law as enunciated by law.

25. In view of the fact that no substantial questions of law arises for consideration, I find no reason to differ with the findings of the Trial court and the first Appellate Court. The Second Appeal stands dismissed with costs.

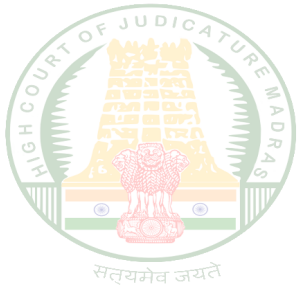
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Index : Yes/No

Speaking / Non-speaking order

Neutral Citation : Yes / No



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C.V.KARTHIKEYAN, J.

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To

1. The Fast Track Court-II, Chennai.
2. The V Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, VR Section, High Court, Madras.

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