



A.S.No.222 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 13.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

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K.Sundaram

... Appellant

Versus

1. The Executive Officer,
Arulmigu Sevantheeswarar Thirukovil,
Seerapalli, Rasipuram Taluk, Namakkal District.

2. The Assistant Commissioner,
Hindu Charitable Religious Endowment,
Office of Collectorate Office Compound,
Namakkal Town & Taluk & District.

3. Chinnakali Gounder
Hereditary Trustee,
Arulmigu Sevantheeswarar Thirukovil
Seerapalli Rasipuram Taluk, Namakkal District.

... Respondents

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the judgment and decree passed in O.S.No.339 of 2022 dated 18.12.2024 on the file of the I Additional District Judge, Namakkal.

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For Appellant : Ms.Vinu Pradha

For Respondent : Mr.V.Ramesh
Government Advocate – R1 & R2

JUDGMENT

Challenging the decree and judgment of the trial Court dismissing the suit filed for permanent injunction, the present appeal has been filed by the unsuccessful plaintiff.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The plaintiff has filed the suit for permanent injunction. It is the case of the plaintiff that the suit property was originally maintained by the hereditary trustee of the third respondent temple. The plaintiff's grand father was a lessee under the temple from the year 1930 till his death in the year 1952. Till his death he has not paid any rent. Thereafter, the plaintiff's father



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has paid rents to the trustees and he died in the year 1961. When the matter stood thus, the respondents issued a notice dated 23.07.2022 for eviction. Hence, the suit for permanent injunction.

4. The defendants took a stand that the lease period of the plaintiff has expired on 30.06.2022. Therefore, notice has been issued on 23.07.2022 for eviction. After the expiry of the lease period, the petitioner is an encroacher in the suit property. Further, lease has also been granted by one of the trustee contrary to the provisions under section 34 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959.

5. On the basis of the above pleadings, the following issues have been framed :

1. Whether the plaintiff is entitled to claim adverse possession over the suit property?
2. Is it true that the Limitation Act will not apply to this case as alleged by the second defendant?



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3. Whether the suit is maintainable in view of the notice sent by the defendants for eviction?

4. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

5. To what other relief is the plaintiff entitled?

6. On the side of the plaintiff, P.W.1 has been examined and Ex.A.1 to Ex.A.3 have been marked. On the side of the defendants, no witness has been examined nor any document has been marked.

7. The trial Court after analysing entire materials, dismissed the suit. Challenging the same, the present appeal has been filed by the unsuccessful plaintiff.

8. It is the contention of the appellant that the he is in possession of the suit property as a lessee and they are in possession of the property for more



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than 92 years. Therefore, he has prescribed title by adverse possession.

Hence, it is his contention that the trial Court ought to have granted injunction.

9. Whereas, it is the contention of the respondents that as the lease period has already been expired, notice has been sent to the plaintiff for eviction. Hence, the possession of the petitioner has to be termed as an encroacher. Further, lease has been granted contrary to the provisions under section 34 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959. Hence, prayed for dismissal of the appeal.

10. In the light of the above submission, the following points arise for consideration in the appeal :

Whether the plaintiff, who has been inducted as a tenant,
can claim adverse possession against true owner?



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11. Point :

The suit has been filed for permanent injunction. The very pleading of the plaintiff indicate that the plaintiff's predecessor, viz, his grand father was inducted as a tenant under the temple. According to the plaintiff his grandfather was inducted as a tenant by one of the hereditary trustee and he continued to pay rent till 1949. However, from 1949 to 1952, he has not paid rent. Thereafter, the plaintiff's father was paying rent regularly. According to the plaintiff, he is in possession of the property and paying rent. Whereas, the stand of the defendants is that as the lease has expired on 30.06.2023, they issued a legal notice for eviction. The fact remains that the plaintiff has that he is a tenant under the respondents/ When the lease has expired by operation of law, by lapse of time, the status of such a person will be only an encroacher under section 78[1] Explanation [b] of the Tamil Nadu Hindu Religious and Endowments Act.

12. That apart, once a person was inducted as a tenant, the plea of



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adverse possession cannot be raised by such a person. According to the defendant, lease has been given in contrary to the Section 34 of the Tamil Nadu Hindu Religious and Endowments Act and any lease existing without sanction of the Commissioner is null and void. Even Assuming that there was a lease, when the lease was granted without sanction from the Commissioner, such a lease is null and void. Therefore, the possession of the plaintiff based on the said lease is nothing but, only an encroacher, as contemplated under section 78 [1] explanation [b] of the Tamilnadu Hindu Religious and Endowments Act.

13. It is relevant to note that for recovery of possession in respect of temple properties, Limitation Act will not apply. Section 109 of the Tamilnadu Hindu Religious Endowments Act makes it clear that nothing contained in the Limitation Act shall apply to any suits belonging to religious institutions besides for possession in the property. Therefore, the question of claiming adverse possession as against the temple property is nothing but futile exercise on the part of the plaintiff. Further, notice has also been issued



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by the defendants for eviction as per law. In such view of the matter, when the due process of law has already been commenced, the suit filed for permanent injunction is nothing but clear abuse of process of law. Hence, I do not find any merits in entertaining this appeal. The point is answered accordingly.

14. In the result, this Appeal Suit is dismissed and the judgment and decree passed by the trial Court in O.S.No.339 of 2022 dated 18.12.2024 is confirmed. No costs.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

1. The I Additional District Judge,
Namakkal.
2. V.R. Section, High Court, Madras.



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N. SATHISH KUMAR, J.

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