



S.A. No. 716 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2025

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 716 of 2015

1.N.A.Samiappa
2.N.S.Aruna Baskar

...Appellants

Vs.

Arulmigu Bhava Oushadheeswara
Swami Koil Devasthanam
Rep. By its Executive Officer
Sannadhi Street, Thiruthuraipoondi
Tiruvarur District.

... Respondent

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 09.01.2015 made in A.S. No. 23 of 2013 on the file of the Subordinate Judge, Mannargudi, reversing the judgment and decree dated 21.06.2013 made in O.S. No. 66 of 2005 on the file of the District Munsif, Thiruthuraipoondi.

For Appellants : Mr.K.V.Ananthakrishnan
or Mr.S.Sathiamurthi

For Respondent : Mr.S.K.Rahunathan



JUDGMENT

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The appellants are the defendants. The suit has been filed by the plaintiff-temple seeking the relief of permanent injunction restraining the defendants from constructing any building in the suit property. The trial Court has dismissed the suit and the first appeal preferred by the plaintiff was allowed by reversing the judgment of the trial Court. Aggrieved over the same, the defendants have preferred this second appeal.

2. The short facts pleaded in the plaint by the plaintiff as under:-

The plaintiff-temple is administered by the Hindu Religious and Charitable Endowments Board (HR&CE). The suit property belongs to the Temple and the revenue records stands in the name of the Temple. The defendants' father, viz., Arunachala Muthaliar has accepted a lease in respect of the suit property in his favour and executed a lease deed in respect of the suit property in Survey No. 183/4 measuring an extent of 12,874 square feet. Subsequent to the demise of the defendants' father, the first and second sons are in enjoyment of the suit property. His sons defendants 1 and 3 are in enjoyment of the suit property. But the lease has not been transferred in the



name of the defendants. It was the intention of the defendants to construct a structure without getting any approval or permission from the plaintiff's Temple. The plaintiff's Temple prevented and instructed the defendants not to put up any construction without getting permission from the Temple, and hence the suit.

3. The defendants resisted the suit by filing the written statement, which is given in brief as under:-

It is false to state that the suit property belongs to the plaintiff-Temple. The Survey No.183/4 is not situated within the boundaries as shown in the plaint. The boundaries pertain only to the property in Survey No.183/5. Survey No. 183/5 does not belong to the plaintiff's Temple. The suit property was originally owned by the ancestors of the defendants and in a family arrangement, the property was given to the share of the defendants and then onwards, they have been in enjoyment of the same. The defendants are running a petrol bunk in the property, which is shown as the boundary for the suit property. Survey No. 183/4 is situated away from Survey No. 183/5 and the suit has been filed with wrong details. The South side boundary for Survey No. 183/5 is Survey No. 183/6. The suit property has been given to



the second defendant on lease in pursuant to the lease deed dated 14.07.2004 in favour of Indian Oil Corporation. As the Indian Oil Corporation is updating the petrol bunk by modernizing it, the defendants have got nothing to do with the construction therein. The constructions are put up by Indian Oil Corporation to whom the lease has been given. The Patta for the suit property has been issued in the name of the second defendant and the suit has been filed against the defendants without any cause of action.

4. On the basis of the above pleadings, the Trial Court has framed the following issues:-“

- (1) Whether the plaintiff-Temple is the owner of the suit property as alleged?*
- (2) Whether the plaintiff will be put to inconvenience if the defendant construct a permanent structure?*
- (3) Whether the plaintiff is entitled to get the relief of permanent injunction?*
- (4) Whether the property with S.F.No.183/4 is not situated within the four boundaries mentioned in the plaint as alleged?*
- (5) Whether plaintiff-Temple is no way connected with the plaint mentioned boundaries?*
- (6) Whether the cause of action mentioned in the plaint is imaginary and illusionary one as stated by the defendants?*



(7) *To what other relief? (this issue is striked out by invoking order 14 rule 5 of CPC on 20.06.2013)*”

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5. During the course of the trial, on the side of the plaintiff, one witness was examined as PW1 and Ex.A1 to A13 were marked and on the side of the defendants, one witness was examined as DW1 and Ex.B1 to B13 were marked.

6. At the conclusion of the trial and on appreciating the materials available on record, the Trial Court has dismissed the suit. The first appeal filed by the plaintiff was allowed and judgment of the Trial Court was set aside and the suit was decreed. Hence, the defendants have preferred this Second Appeal and the Second Appeal has been admitted on the following substantial questions of law:-

“(a) Whether the findings of the lower appellate Court is correct and sustainable without considering documents Ex.B-2 to B-7 which support the case of the defendants that the property in Survey No.183/5 absolutely belong to the defendants and the plaintiff-Temple has nothing to do with the said survey number?”



(b) Whether the findings of the lower appellate Court is sustainable in law, when the Commissioner is sustainable in law, when the Commissioner report and sketch Ex.C-3 and C4 which clearly says that the construction has made only in Survey No.183/5 and the Survey No.183/4 claimed by the plaintiff is situated on the North of Poi Sollaa Pillayar Koil Street and south of Rama Madam Temple which is far away from the Survey No.183/5?

(c) Whether the decree for permanent injunction granted by the lower appellate Court for a property which was the absolute property of the second defendant and such injunction can be granted against the true owner as per judgment reported in 2012(2)MWN (Civil) 370?"

7. The learned counsel for the appellants submitted that the boundary details given in the particulars of the property pertains only to Survey No.183/5. But, by giving wrong boundary details, the relief of injunction is sought in respect of Survey No. 183/4. Even though the trial Court has rightly appreciated the evidence and has arrived at a conclusion that the boundary



details do not relate to the property in Survey No.183/4, the first appellate Court has misguided itself and thrown the burden on the defendants and thereby, decreed the suit.

8. The categorical contention of the appellants /defendants is that the property in Survey No.183/5 is their ancestral property and they have put up construction to modernize the petrol bunk only in Survey No.183/5. The lease deed has been executed in favour of the Indian Oil Corporation in respect of the property situated in Survey No.183/5 as it appears from Ex.B2. After obtaining 'No Objection Certificate' from the District Revenue Officer, Thiruvarur, the construction is being put up therein. It is submitted that the Patta for the suit property has been standing in the name of the defendants and that pertains to the property in Survey No.183/5.

9. According to the appellants, the suit property is situated only in Survey No.183/5 and the boundary details are shown in Ex.A2 lease deed executed by the defendants in favour of the Indian Oil Corporation. But the plaintiff has wrongly narrated the boundaries and claim a right in respect of Survey No.183/4.



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10. Admittedly, the defendants do not claim any right in respect of Survey No.183/4. Insofar as the property in Survey No.183/5 is concerned, it is stated that the same has been purchased by their ancestors through a registered sale deed dated 28.07.1924.

11. The petition in C.M.P. No. 20017 of 2016 has been filed to receive two additional documents, viz., Certified copy of the sale deed dated 28.07.1924 and the judgment made in S.A. No.156/39 reported in **1942 I MLJ 99**. The appellants have filed the sale deed dated 28.07.1924 standing in the name of one Ramalinga Mudaliar, who has purchased 21 cents of land in Survey Nos.183/3 and 183/5. More specifically, 12 cents in Survey No.183/3 and 5 cents in Survey No.183/5. In this regard a suit has also been filed in respect of Survey Nos.183/3 and 183/5, in which the second appeal filed in S.A. No. 156 of 1939 wherein it has been held that the first defendant in the said suit has purchased 21 cents and the suit property of that suit comprised in an extent of 24 cents. The first defendant of that suit is one Swamiyappa Mudaliar in whose favour the second appeal was allowed in respect of 21 cents in Survey Nos.183/3 and 183/5. This is in pursuant to the purchase



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made by one Ramalinga Mudaliar through a sale deed dated 28.07.1924. The suit property is said to have been purchased for the benefit of the first defendant of that suit, viz., Swamiyappa Mudaliar. In the body of the above judgment, it is seen that the defendants father, viz., Arunachala Mudaliar is the undivided brother of the Ramalinga Mudaliar in whose name the property in Survey Nos. 183/3 and 183/5 has been purchased on 28.07.1924.

12. Even though it is claimed by the defendants that the above property was allotted to their share in the family partition, the defendants did not show any family partition to substantiate their claim. However, much reliance was placed on Ex.B2 lease agreement executed in favour of the Indian Oil Corporation in respect of 19 cents situated in Survey No. 183/5. Even in respect of 19 cents in Survey No. 183/5, the defendants did not produce any title deed to substantiate the claim that the Temple is not the original owner of the property comprised in Survey Nos. 183/3, 183/4 and 183/5. Insofar as the defendants undivided brother Ramalinga Muthaliar is concerned, he has purchased an extent of 21 cents in Survey Nos. 183/3 and 183/5. Even in that sale deed, it is not known whether the vendor represents the Temple in a suit filed by the Temple against certain parties in respect of Survey Nos. 183/3



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and 183/5. It is held that the first defendant of that suit has got title in respect of 21 cents. However, the defendants do not relate to the properties situated in Survey No. 183/5 and title in respect of Survey No. 183/5 vested in some other members of his family, viz., Ramalinga Muthaliar, and hence, the defendants cannot claim any title in respect of the said properties. If the defendants could be in possession of Survey No.183/5 or in Survey No. 183/4 either by obtaining permission from their family members or by obtaining any lease right. In the absence of any title deeds produced by the defendants, even though it is alleged that the said property was allotted to their share in a family partition, it is difficult to presume title in respect of Survey No. 183/5 as alleged by the defendants. It may be right that the plaintiff did not give the boundaries for Survey No. 183/4 rightly, but Ex.A3 is the application submitted by the defendant's father to request the plaintiff/Temple to sell the properties comprised in Survey No. 183/4 and that cannot be denied by the defendants. In whatever the way, it is seen that these defendants are not the owners of the property situated either in Survey Nos. 183/4 or 183/5.

13. However, the defendants have submitted certain revenue records like Patta to show that the portion of Survey No. 183/5 stands in the name of



Swamiappa Muthaliar. In the earlier suit between the plaintiff and Swamiappa Muthaliar, it is held that the Swamiappa Muthaliar has title in respect of 21 cents purchased for his benefit by one Ramalinga Muthaliar and hence, it is correct that Patta is issued in his name.

14. Though the plaintiff has filed a petition to appoint a Commissioner and the Commissioner has also been appointed, the Commissioner has also filed his report stating that without the help of the Surveyor, the property cannot be identified. The defendants have neither filed any counter suit against the plaintiff to seek any appropriate relief against the plaintiff in respect of Survey No. 183/5. However, the fact remains that the plaintiff, who has filed the suit has got the burden to prove that the property in Survey No. 183/4 is situated well within the boundaries as shown in the particulars of the properties and that the same is in possession and enjoyment of the plaintiff. The plaintiff cannot stand on the weakness of the defendants' case. The first appellate Court has proceeded to find title in respect of Survey No. 183/4 in favour of the Temple by taking clue from Ex.A3, application submitted by the defendants father to the plaintiff in which he has admitted the title of the Temple in Survey No. 183/4. But the first appellate Court has also thrown up



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the burden on the defendants to show which is the correct boundary for Survey No.183/4. The defendants 1 and 2's possession in respect of Survey No.183/5 as claimed by them can be very well objected by any of the parties to the sale deed, which is now sought to be produced as additional evidence, but not by the temple.

15. Even the Temple's case is not in respect of Survey No.183/5. The suit itself has been filed without giving correct details of boundaries. The Commissioner has filed a report stating that survey No.183/4 is situated next to two sub divisions to the North from Survey No.183/5 and he has also stated that Survey No.183/4 does not have four boundaries as shown in the plaint and that those boundaries pertains to Survey No.183/5. As the plaintiff has not filed the suit with correct boundaries in order to prove that the constructions are being made only in Survey No.183/4 and not in Survey No.183/5 as alleged by the defendants and the Adangal extract Ex.A5 also does not show that the petrol bunk is situated in Survey No.183/4, the first appellate Court ought to have appreciated the evidence in a holistic fashion. But the first appellate Court has simply thrown the burden on the defendants to give correct boundaries of Survey No.183/4 for which the suit has been



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filed. However, the Temple is at liberty to file a fresh suit with correct details in respect of Survey No.183/4, if so advised. Since the additional documents sought to be filed does not show any title in favour of the defendants and the merits of the appeal can be decided even without these additional documents, the petition in C.M.P. No. 20017 of 2016 is dismissed and the additional documents are not received as evidence. **In view of the above discussion, the substantial questions of law are answered in favour of the appellants.**

16. In the result, the second appeal is allowed and the judgment and decree dated 09.01.2015 of the first appellate Court in A.S. No. 23 of 2013 is set aside by restoring the judgment of the trial Court. No costs. Consequently, connected miscellaneous petition is closed.

24.01.2025

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

Maya

To

1. The Subordinate Judge, Mannargudi.



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2. The District Munsif, Thiruthuraipoondi.

3. The Section Officer,
V.R. Section, High Court, Madras.



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R.N.MANJULA, J.

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