



S.A. No. 293 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 293 of 2025
and
C.M.P.No. 8645 of 2025

Shanmuganathan

... Appellant

Vs.

Thiruvannamalai Kundrakudi Adheenam,
Sri La Sri Ponnambala Desiga Paramacharya
Swamigal
rep. by its Adheenakarthar
Sri La Sri Ponnambala Desiga Paramacharya
Swamigal,
Having office at Hotel Karpagam,
Old No.19, New No.41, South Mada Street,
Mylapore, Chennai-600 004.
Alandur Firka and Taluk

... Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.74 of 2021 on the file of Subordinate Court, Alandur dated 01.08.2024 reversing the judgment and decree made in O.S.No.726 of 2004 on the file of Addl. District Munsif Court at Alandur, dated 05.03.2019.



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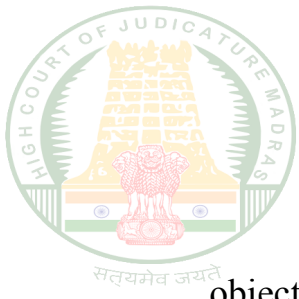


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For Appellant : Mr.V.Subramanian
For Respondent : Mr.K.Thulasiraman

JUDGMENT

The appellant herein is the defendant in the suit in O.S.No.726 of 2004 on the file of Addl. District Munsif Court, Alandur. The said suit was filed by the respondent/plaintiff for the relief of directing the defendant to remove the superstructure put up in the suit property and hand over the vacant possession to the plaintiff mutt and other consequential relief. The said suit was contested by the appellant/defendant stating that he is the absolute owner of the suit property by way of purchase through sale deed dated 10.02.1983 from the power agent of respondent/plaintiff mutt and thereafter, he put up the construction with the knowledge of mutt. As absolute owner, ever since from the date of purchase, he enjoyed the property, besides the suit is also barred by limitation. Before the trial court, both parties adduced evidence. Considering the same, the trial judge had framed issues and finally held that the suit was filed nearly about 20 years later from the date of purchase made by the defendant and the property also sold by the plaintiff through his power agent nor plaintiff raised any



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objections to put up construction by the defendant and also not prayed for any relief of declaration to cancel the sale deed stands in the name of defendant, thereby the suit was dismissed.

2. Challenging the said finding, plaintiff mutt preferred an appeal in A.S.No.74 of 2021 before the Sub-Judge, Alandur. The first appellate judge had independently analysed entire facts and circumstances and also by relying earlier proceedings pertaining to the suit survey number which ended upto Apex court and finally held that the said suit as such is maintainable even without the prayer of declaration by relying ratio laid down in the authority reported in **2024 (1) Law Weekly 577 Flora Sunathi Samuel**, which arose out of similarly purchased plot owners against the very same plaintiff mutt, those findings are upheld upto Supreme Court in favour of the said mutt. Considering the legal and factual contentions raised and upheld by Supreme Court, the learned first appellate judge also relied on the findings rendered in **1989 Law Weekly 68 between the Commissioner, H.R. & C.E. Department Vs. Mary Isabel**. From that Mary Isabel, the defendant Shanmuganathan through the power agent



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purchased the suit land, wherein Division Bench of this court held that the Commissioner, H.R. & C.E. Department could not compel to accord sanction under Sec.34 of H.R. & C.E. Act, thereby the alleged sale agreement between Mary Isabel and the power agent Shanmugasundaram Pillai was not accepted, thereby the permission sought by Mary Isabel was already rejected by this court, however, pending proceedings, the defendant purchased the property as such is not valid under law nor binding on the plaintiff mutt. Therefore, the plaintiff is entitled for the relief as prayed for. Accordingly, the first appellate judge directed the defendant to hand over the possession by removing superstructure in the suit property to the plaintiff mutt by allowing the appeal. Challenging the said findings, the defendant preferred this Second Appeal.

3. At the time of admission, both learned counsel for appellant and the learned caveator counsel for respondent also appeared and their arguments heard.

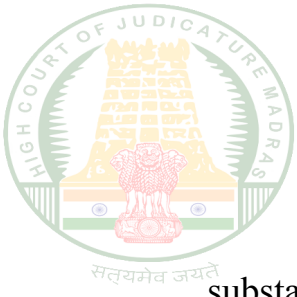


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4. The learned counsel for appellant would argue that the entire property of the respondent mutt measuring 4.5 acres was plotted out by forming a layout by obtaining approval in the year 1970 and sold the plot to prospective buyers from the year 1970 and one such plot was purchased by the appellant in the year 1983 through the valid sale deed executed by respondent mutt's power agent. Eversince, he was in absolute possession of property, but nearly about 12 years later, the present suit was filed in the year 2004 beyond the period of limitation. Though it was properly appreciated by the learned trial judge, but the first appellate court failed to take note of the said legal aspect and erroneously allowed the appeal in favour of plaintiff as such is illegal and liable to be set aside.

5. Further he would also argue that the lower appellate court failed to consider that Sec.34 of H.R. & C.E. Act is not applicable for the reason that the respondent mutt had not provided any evidence in order to prove that the suit property is endowed and they are belong to respondent mutt, without which the suit was decreed in favour of respondent/plaintiff mutt as such is illegal and liable to be set aside. Further, the first appellate judge was



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substantially erroneous by concluding that the sale agreement entered into between respondent mutt and Mary Isabel was not accepted by this court by relying the judgment passed in W.A.Nos.1198 & 1199 of 1983. Even in that writ proceedings, the title of respondent mutt was not been properly appreciated, in which the role of H.R. & C.E. Commissioner with regard to the sanction alone was held in that writ appeal proceedings, which would not affect the right and title of appellant/defendant. Therefore, the entire findings is liable to be set aside as it is erroneous conclusion.

6. By way of reply, the learned counsel for respondent would submit that in the writ appeal proceedings in W.A.Nos. 1198 and 1199 of 1983 the Division Bench of this court already held that the alleged agreement holder Mary Isabel with the respondent/plaintiff mutt needs sanction of Commissioner, H.R. & C.E. Department as per Sec.34 of H.R. & C.E.Act, which is empowered to examine and find whether sale is necessary and beneficial to the institution. Therefore, based on these two important elements, sanction is to be accorded. Accordingly, directed the Commissioner to reconsider the entire matter in the light of Sec.34 of the



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Act with regard to sale agreement of Mary Isabel with the alleged power agent of respondent Mutt pertaining to the suit property herein and the said order was passed on 01.11.1988. However, pending Writ Appeal proceedings, the appellant/defendant purchased the suit property on 10.02.1983 from agreement holder Mary Isabel, through the power agent Shanmuganathan as such is not valid under law for the reason that the alleged agreement stand in the name of Mary Isabel itself was not accepted in the writ appeal proceedings for want of sanction under Sec.34 of H.R. & C.E. Act. Therefore, the said purchase as such is illegal one. Hence, the sale deed stands in the name of appellant as such is illegal nor bind the respondent/plaintiff mutt. By relying legal proposition observed in writ appeal proceedings in W.A.Nos.1198 & 1199 of 1983, the first appellate judge rightly reversed the findings of trial judge and decreed the suit in favour of plaintiff mutt as such is valid under law. Therefore, no substantial question of law arose to consider this Second Appeal. Hence, he prayed to dismiss the appeal as no merit.

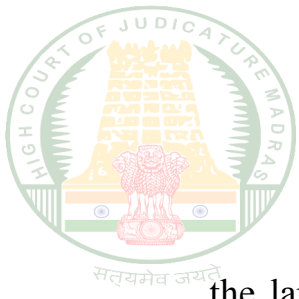
7. Brief facts of the case is as follows:-



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The suit property as described in the plaint schedule in plot No.29 admeasuring an extent of 2632 sq.ft. in Kundrakudi nagar, Adambakkam Village, comprised in Survey Nos. 234/3 and 234/4 admeasuring an extent of 4 acres 5 cents belong to plaintiff mutt and as a religious trust, absolute owner of suit property possessed and enjoyed the same. One Shanmugasundaram Pillai purported to be agent of plaintiff mutt sold other plots to various individuals and one such plot claimed to be purchased by the defendant as a vacant site by the defendant from Shanmugasundaram Pillai through one Mary Isabel vide document No. 373/83 dated 10.02.1983 in S.R.O., Alandur. Thereafter, he put up a construction in the said plot. Having come to know about the said sale, the present Atheenakartha, who assumed the office made extensive enquiry with regard to the mutt property and found that there was a sale agreement between plaintiff mutt and Mary Isabel with regard to the suit property around the year 1978 and fixed the rate as Rs.300/- per cent. The plaintiff mutt applied to Commissioner, H.R. & C.E. Department for sanction of sale under Sec.34 of H.R. & C.E. Act. In the meanwhile, by mutual agreement per cent Rs.600/- was agreed on 11.01.1979 and application was made to H.R. & C.E. Commissioner to sell



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the land at the rate of Rs.600/- per cent, but the Commissioner had fixed Rs.1000/- per cent and sent letter to Mary Isabel, but she considered as it is exorbitant one. But, the Commissioner insisted for the sum of Rs.1000/-. Though she was called upon to give publication in the newspaper but, on 22.02.1982 the Commissioner refused to accord sanction. Therefore, the said Mary Isabel, alleged agreement holder filed a Writ Petition in W.P.Nos. 8418 and 1857 of 1982 seeking Writ of Mandamus directing the Commissioner to accord sanction. The Writ Petitions were allowed. Challenging that, Writ Appeals were filed in W.A.No. 1198 and 1199 of 1983. The Division Bench of this court while deciding the said Writ Appeals held that it could not compel the Commissioner, H.R. & C.E.Department to grant sanction as per Sec.34 of H.R. & C.E.Act. In order to grant sanction, the Commissioner alone has constituted the statutory authority for the grant of sanction and he has to find out whether the sale is necessary and beneficial for the institution and his power is plenary power. Therefore, directed the Commissioner to reconsider entire matter in the light of Sec.34 of the Act. With that observation, Writ Appeals were allowed on 01.11.1988. Accordingly, the Writ Petitions filed by Mary Isabel were dismissed.

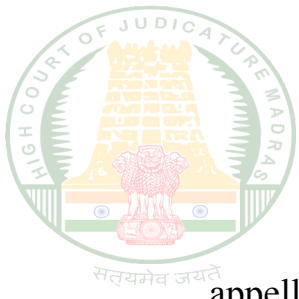


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Therefore, the sanction of Commissioner statutory authority by Mary Isabel was not accepted by the Division Bench of this court. It is pertinent to mention here that the sale deed stands in the name of present appellant/defendant was executed in his favour on 10.02.1983 by power agent Shanmugasundaram Pillai, however, the purchaser/defendant approached the vendor through the aforesaid Mary Isabel for purchasing plot No. 29 for the same sale consideration, which was agreed with the alleged agreement holder Mary Isabel with lesser value.

8. Admittedly, on the date of execution of sale deed, the Writ Appeals in W.A.Nos.1198 & 1199 of 1983 were pending before the Division Bench and the same was disposed in the month of November 1988. Furthermore, it is pertinent to mention here, the Commissioner of H.R. & C.E. Department refused to accord sanction to Mary Isabel and proposed to sell the land in public auction on 22.02.1982. So, Mary Isabel was very well known about the refusal made by the Commissioner, but she entered into sale agreement terms with the present defendant with the connivance of one Shanmugasundaram Pillai and sold the property thereafter on 01.03.1982, which clearly shows that pending sanction proceedings, the

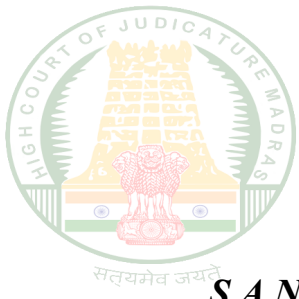


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appellant/purchaser entered into terms to purchase the property as such is not valid one, but also it does not bind plaintiff mutt.

9. It is an admitted fact that the suit property belong to religious mutt with required sanction under Sec.34 of H.R. & C.E. Act to sell the property of religious institution. When the issue is pending before the H.R. & C.E. Commissioner as well as Division Bench of this court, the defendant purchased the property was not been properly appreciated by the trial judge, but the first appellate judge has rightly appreciated all these facts, which needs no interference of this court. At a later stage, the defendant contended that the plaintiff mutt has no right and title over suit the property, but ever since from the year 1969 onwards, the property was dealt by the plaintiff mutt and in various proceedings arising out of selling of property in suit survey Nos.234/3 and 234/4 right and title of plaintiff mutt was confirmed by the order of this court, which was confirmed upto Supreme Court in various proceedings and the same has also been reported in judgment **2024 (1) Law Weekly 577- (Flora Sunathi Samuel), Banu Kumar vs. Thiruvannamalai Kundrakudi Adeenam in S.A.No.621 of 2019 and Shyamala vs. Thiruvannamalai Kundrakudi Adeenam in**



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S.A.No.700 of 2019, wherein this court upheld the decree of demolition of

superstructure and handing over of vacant possession to the plaintiff mutt.

Thus, it is clear that plea of estoppel, bar of limitation and bonafide purchase, all the issues were concluded. Therefore, the right and title of plaintiff mutt should not be challenged by the defendant, since he is not bonafide purchaser as discussed above. Moreover, the Commissioner has not approved the alleged sale agreement with Mary Isabel said to be made by Shanmugasundaram Pillai, as a power of attorney of plaintiff mutt. Furthermore, the fact reveals that recitals of sale deed relied on by the appellant/defendant clearly shows based on the alleged sale agreement between Mary Isabel and Shanmugasundaram Pillai, he entered into terms through them to purchase the property for the same price, which was agreed by Mary Isabel as such is not valid under the eye of law for the reason that already the alleged sale agreement was not accepted by the Commissioner of H.R. & C.E. Department and refused to give sanction under Sec.34 of H.R. & C.E. Act. Therefore, as on date, there is no sanction accorded to the alleged sale made by the appellant/defendant. Hence, it is not valid under the eye of law nor binding the respondent/plaintiff mutt and the same was



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rightly concluded by the first appellate court, which needs no interference.

Further, there is no substantial question of law involved for consideration.

Therefore, this Second Appeal is not fit for admission since there is no question of law is involved. Accordingly, this Second Appeal is dismissed as no merit. Time is granted to the appellant to hand over the premises by removing superstructure within a period of twelve weeks from the date of receipt of this judgment. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

16.04.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

1. Sub-Judge, Alanthur.
2. Addl. District Munsif, Alandur.
3. Section Officer, VR Section, Madras High Court.

T.V.THAMILSELVI, J.



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