



SA(MD)No.760 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved	16/12/2024
Date of Pronounced	20/03/2025

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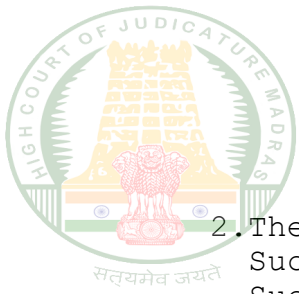
The Hon'ble Mr.Justice **G.ILANGO VAN**

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- 1.Rajakkamangalam Chathan Eravi
Ollittar Trust,
Represented by its Trustees
Petitioners 2 and 3
Rajakkamangalam,
Neendakarai 'B' Village,
Agasteeswaram Taluk,
Kanyakumari District.
 - 2.R.Subramonia Pillai,
S/o.Raman Pillai,
Trustee,
Rajakkamangalam Chathan Eravi Ollittar Trust,
Rajakkamangalam,
Neendakarai 'B' Village,
Agasteeswaram Taluk,
Kanyakumari District.
 - 3.S.Monikandan,
S/o.Sivathanu Pillai,
Trustee,
Rajakkamangalam Chathan Eravi Ollittar Trust,
Rajakkamangalam,
Neendakarai 'B' Village,
Agasteeswaram Taluk,
Kanyakumari District.
- : Appellants/Appellants/
Plaintiffs

Vs.

- 1.R.Narayanan



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2.The Panchayat President,
Suchindram Town Panchayat,
Suchindaram Village,
Agasteeswaram Taluk,
Kanyakumari District.

3.The Executive Officer,
Suchindram Town Panchayat,
Suchindram Village,
Agasteeswaram Taluk,
Kanyakumari District.

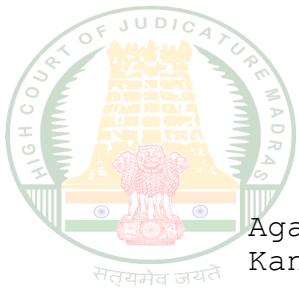
4.The Asramam Oor Vagai Anjanam Ezhuthia Kandan
Sastha Trust Asramam,
represented by its Trustees
N.Ramachandran, S/o.Narayanan,
Asramam,
Suchindram Village,
Agasteeswaram Taluk,
Kanyakumari District.

5.The State of Tamil Nadu,
represented by the District Collector,
Kanyakumari District,
Collectorate Campus,
K.P.Road, Nagercoil,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

6.The Deputy Commissioner of Hindu Religious and
Charitable Endowment,
Suchindram,
Suchindram Village,
Agasteeswaram Taluk,
Kanyakumari District.

7.The District Project Officer,
Collectorate Campus,
Nagercoil,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

8.The Assistant Director of District Town Panchayat,
Collectorate Campus,
Nagercoil,
Nagercoil Village,



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Agasteeswaram Taluk,
Kanyakumari District.

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9.M.Serkaralingom,
Member of Parliament (Rajya Sabha),
Upstairs of Bharathi Dental Clinic,
Near Office of Superintendent of Police,
East of Tower,
Nagercoil, Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

: Respondents/
Respondents/
Defendants

PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, to set side the judgment and decree, dated 24/04/2009 passed by the Principal Subordinate Judge, Nagercoil, in A.S No.119 of 2007 confirming the judgment and decree, dated 06/07/2007 passed by the I Additional District Munsif, Nagercoil, in OS No.512 of 2000.

For Appellants : Mr.T.Antony Arulraj
For 2nd Respondent : Mr.D.Gandhiraj (NA)
For 3rd Respondent : Mr.M.Rajaraman (NA)
For R5, R7 and R8 : Mr.N.Ramesh Arumugam
Government Advocate

J U D G M E N T

This Second Appeal is filed against the judgment and decree, dated 24/04/2009 passed by the Principal Sub Judge, Nagercoil, in A.S No.119 of 2007 confirming the judgment and decree, dated 06/07/2007 passed by the I Additional District Munsif, Nagercoil, in OS No.512 of 2000.



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2. The averments in the plaint in brief:-

The first plaintiff is a private Trust and its election of office-bearers are conducted as per the decree passed in OS No.104/1120, dated 13/07/1953. The Trust is having large number of properties including the suit property. The plaintiffs 2 and 3 are elected as Trustees. They are managing the affairs of the Trust. The suit property and other properties were endowed to the Trust by the family members to the first plaintiff by a registered document No.1871 of 1077. By way of the above said document, the suit property absolutely belongs to the first plaintiff.

3.The defendants have no right or enjoyment over the properties. They tried to encroach upon the property and put up construction. Hence, the suit for permanent injunction was filed.

4.Pending suit, the defendants encroached upon the property and put up construction. Now the defendants claim that the construction was made with the aid of the MP fund. If the defendants wants to put up any construction, they ought to have taken steps for acquiring the land. So the suit is laid for declaration, recovery of possession, *mesne profit*, etc.

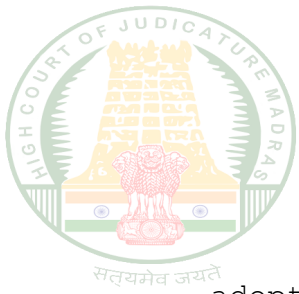


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5.The statement filed by the second defendant

adopted by the defendants 1 and 4:- The suit property never belonged to the plaintiffs and they were never in occupation. An old dilapidated building is available in that property. Originally, a library was conducted by the Trust called 'Anusaiya Nool Nilayam. Later, H.R & C.E department took over the temple and properties including the schedule property. At the request made by the local people, library was renovated with the aid of MP Fund. Now the construction is completed, came into the operation. Now the suit has become infructuous.

6.The third defendant filed written statement contending that the suit property belongs to one Aaramam Oor Vagai Ajanam Ezhathia Kanidan Santha Trust run by the Trustees. Originally, in the old survey No.1537/10 (new survey No.35/16) measuring in 3 cents, there was a Library called 'Anusuya vasaka Salai'. The property was taken up by H.R & C.E Department. A Trustee was appointed for the Library. They were maintaining the Library. After getting their approval only, Library was renovated. The writ petition filed by plaintiffs in WP No.15894 of 2000 was dismissed.



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7.The statement filed by the 8th defendant was adopted by the 7th defendant contending that the library was constructed and renovated at the cost of MP fund. Apart from that, funds were released by the District Collector. The first defendant is the Contractor and completed the work even before filing of the suit.

8.The trial court originally framed certain issues. After amendment, issues have been recasted as follows:-

(1)Whether there was a building in the suit property and it was under the control and enjoyment of H.R. & C.E. Department?

9.Additional recasted issues:-

1.Whether the suit relief has become infructuous?

2.Whether the suit is bad for non-joinder of necessary parties?

3.Whether the 1st plaintiff is the owner of the suit property?

4.Whether the plaintiffs are entitled for the relief of declaration and recovery of possession as prayed for?



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5. Whether the plaintiffs are entitled for the relief of mense profits as prayed for?

6. To what other reliefs, the plaintiffs are entitled to?

10. On the side of the plaintiffs, one witness was examined and 16 documents marked. On the side of the defendants, 3 witnesses were examined and 23 documents marked.

11. At the conclusion of the trial process, the suit was dismissed by the trial court. Against which, appeal was preferred before the Principal Sub Judge, Nagercoil, in AS No.119 of 2007. That came to be dismissed by the appellate court.

12. Against which, this second appeal is preferred by the plaintiffs.

13. At the time of admission, the following substantial questions of law is framed:-

"Whether the reasons given by the Courts below for rejecting the old



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**documents under Ex.A14 and Ex.A15 are
vitiating by perversity?**

14.Heard both sides.

15.The suit is based upon Ex.A1, A14 and A15. Per contra the fourth defendant namely the Asramam Oor Vagai Anjanam Ezhuthia Kandan Sastha Trust Asramam, claims rival title over the property. Now it is admitted that the fifth defendant out of the fund provided by the Member of Parliament, a Library was constructed in the suit property pending the suit. Later plaint was amended seeking recovery of possession.

16.Now both the courts have held concurrently held that the plaintiff failed to establish title and possession over the suit property on the date of plaint. Now the above said concurrent finding of fact recorded by both the trial Court and appellate Court, according to the appellant is vitiated due to misreading of those documents, which according to them is nothing but a perversity. On that ground second appeal is maintainable and entertainable.

17.Now the question which arises for consideration

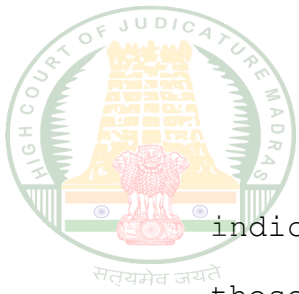


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is whether the finding recorded by both Courts are vitiated due to perversity. Now we will go to Ex.A1 and its evidentiary value as found by the trial Court and the appellate Court. Ex.A1 is a Trust document creating a trust between family members of the plaintiff's ancestors. Properties were endowed for doing some religious and charitable acts as indicated in the document, which we are not very much concerned.

18. According to the appellant the present suit property is mentioned as 7th item, wherein, we find that it is mentioned as Karaikadu, 1537 measuring about 3 cents. According to the appellant this is the suit property now. We will go to the description of property in the plaint. The old survey number is mentioned as 1537 and present re survey number, 35 measuring about 3 cents. Naturally, since Ex.A1 is of the year 1075 of Malayala year, none might have been available to speak about the document, before the Trial Court. But, it was subject matter of subsequent scheme decree proceedings under Ex.A15 dated 04.03.1947. In 8th item it is mentioned as S.No.1537 Keel No.4, 10 measuring about 5 cents. The four boundaries which were existing at the time might not have continued the same on the date of plaint. Now the four boundaries are different in view of the resettlement as

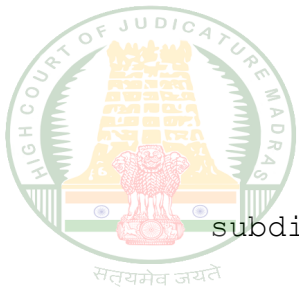


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indicated in the plaint schedule also. Now based upon these two documents it is contended on behalf of the appellant that the suit property belongs to the Trust of the plaintiff. It was not properly appreciated by the trial Court and the appellate Court. The trial Court as well as the appellate Court recorded a finding that no correlation document was produced by the plaintiff to show the same.

19. Now we will go to the evidence of PW1. He would admit that no correlating document was produced by him. Based upon the tax receipt he says that the present survey number is 35/16. He would also further admit that except Ex.A1 no other title document of ancestral character is available. Later, he was recalled. At that time produced certain documents. As mentioned above, he would admit that in Ex.A15, the suit property is shown as 8th item measuring about 5 cents situated in two separate subdivisions. According to him, two cent is situated in S.No.1537/4 and 3 cents are situated in S.No.1537/10. The property schedule in the plaint shows old S.No.1537, resurvey No.35/16 measuring about 3 cents. Now he wants to say that the present 3 cents was situated in S.No. 1537/10. According to him, resurvey was conducted in 1972. But, Ex.A15 was decreed in the year 1943. So no



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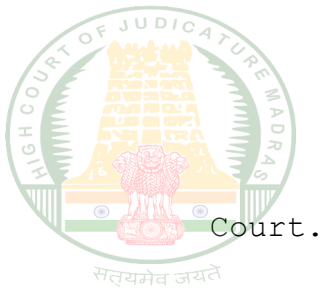
subdivision is mentioned in Ex.A15.

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20.We need not worry about those explanations. But, simple point is that no correlation document was produced by the plaintiff to substantiate his plea.

21.We will go to Ex.A14, which is heavily relied by the plaintiff. Ex.A14 is only Judgment passed in O.S.No. 104 of 1120. So as mentioned above, these two documents does not show that the suit property belongs to the plaintiff's Trust in the absence of correlating documents.

22.Now we will go further as to the finding of the trial Court and the appellate Court in this regard. Ex.A16, is 'A' register copy, wherein, we find that the old survey number is mentioned as 1537/10 and new survey number as 15/14. It is standing in the name of Raman, Somanathan, Ramalingam, Sankaran, Raman Subramanian, Eswaran and others. It was originally standing in the name of those persons. Later it was changed to one Mudisoodum Perumal pillai S/o Narayana pillai. Now we will go to the explanation of the plaintiff regarding the entries and the arguments advanced and the finding recorded by the trial Court as well as the appellate



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23. Similarly, the defendants also produced 'A' register copy as Ex.B19, wherein, we see that it is standing in the name of one Mudisoodum perumal pillai in patta 2363; on ground a reading hall is available. A finding has been recorded by the appellate Court that now the patta is standing in the name of Mudisoodum perumal the plaintiff has not obtained any patta in respect of the suit property. Because of the corrections, the genuineness of the document was doubted by the appellate Court. So when the document itself causes doubt and out of this court the only document available on the side of the appellant is Ex.A2, the land tax receipt.

24. It was paid for patta 2163 for fasli year 1410. But as mentioned above, it is standing in the name Mudisoodum Perumal. Then, how the plaintiff were able to pay the Tax for the concerned patta number is not explained satisfactorily. A finding has been recorded by the appellate Court that by dubious means the tax was paid by the appellant/plaintiff. So this will not show the title over the property.

25. Now the arguments on the side of the appellant is

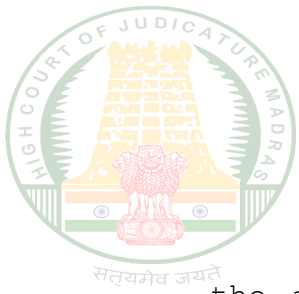


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that proper correlation document was produced by the appellant and right of the fourth defendant was not established before the trial Court. But, as mentioned above, when the plaintiff filed the suit for declaration and recovery of possession, he cannot fall back upon the deficiency of defendant's title. The plaintiff has to establish his right to recover the possession. When the plaintiff has filed to establish the title then he cannot take advantage of the defective title of the fourth defendant, even if we take that the fourth defendant has not established the title, for the sake of argument.

26.Now on the side of respondent, the learned Additional Government Pleader would submit that the contention on the part of the appellant that it was all along vacant till the encroachment made by the fourth defendant is not correct on record, since even as per the arguments by the plaintiff himself and the fourth defendant, an old dilapidated Library was available in the site. Later, at the request made by the Local Panchayat, steps were taken to reconstruct the reading hall with the aid of MP fund for which relevant documents are produced by the defendant, which is elaborately discussed by the appellate Court.



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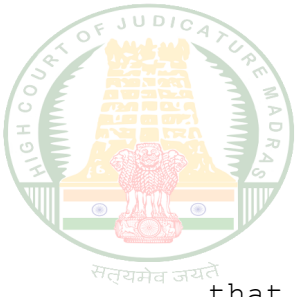
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27. Photographs is produced by the defendant to show the availability of reading hall in the property now. An attempt made by the appellant to prevent the construction did not yield any result in view of the dismissal of the writ petition filed by him.

28. The contention on the part of the appellant that except letter from the H.R & C.E Department, no other document was produced by the defendant to show that now the trust of the defendant No.4 is under the Management of H.R. & C.E. Board. The unauthorisedly trespassing into the property and constructing the library as mentioned above, will not strength the case of the appellant to prove his title.

29. The document produced by the defendant would show that all along, even before the date of the suit, the fourth defendant was in possession and later handed over the same to the Village Panchayat for constructing library by removing old dilapidated reading hall. The appellant without any valid title has filed the suit on the basis of the old documents which was not properly correlated.



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30.So, for all those reasons stated above, I find that trial court as well as the appellate Court have not committed any illegality or perversity in assessing the evidentiary value of Ex.A1, A14 and A15 and the substantial question of law is answered accordingly.

31.In the result, this second appeal fails and the same is **dismissed** without costs, confirming the judgment and decree passed by the courts below.

20/03/2025

Index:Yes/No
Internet:Yes/No
TM

To,

- 1.The Principal Sub Judge,
Nagercoil.
- 2.The I Additional District Munsif,
Nagercoil.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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