



A.S.(MD)No.80 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Order Reserved On	Order Pronounced On
09.12.2024	20.01.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.80 of 2016

G.V.Manoharan

...Appellant

--Vs--

1.Bakkiya Trust, Palani,
Through its Managing Trustee,
V.Vijayasimman,
Door No.71-C, Anna Nagar,
Palani, Dindigul District.

2.G.V.Baskaran

3.Kamatchi

4.V.Chokkaraj

...Respondents

PRAYER: Appeal Suit filed under Section 96 of Civil Procedure Code, 1908, against the Judgment and Decree in O.S.No.83 of 2012, dated 17.02.2016, on the file of the Principal District Judge, Dindigul, Dindigul District.

For Appellant	: Mr.V.R.Venkatesan
For R1	: Mr.H.Lakshmi Shankar for Mr.J.Karthikeyan
For R2 to R4	: No appearance



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JUDGMENT

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The present appeal suit is filed by the 1st defendant in the suit against the judgment and decree, dated 17.02.2016 passed in O.S.No.83 of 2012 on the file of the Principal District Court, Dindigul.

2. The plaintiff in the suit is the 1st respondent herein. The 1st defendant is the appellant herein. The defendants 2 to 4 in the suit are respondents 2 to 4 herein. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the original suit.

3. The plaintiff is a Trust represented by the present Managing Trustee V.Vijayasimman and has filed the suit inter alia praying for declaration that the suit property is absolute and exclusive property of the Trust, consequently, to direct the defendants to deliver possession of property to the plaintiff's Trust.

4. The brief facts as stated in the plaint is that the Trust was originally formed on 27.06.1995 by one Yogi, namely K.Arunachala Swamigal as the founder and author of the Trust. At the time of formation of the Trust, the following persons were inducted as Charter Trustees namely, G.Viswasam, Dr.A.



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Balasubramaniam, G.V.Manoharan, G.V.Baskaran and Mrs.V.Vasanthi. The object of the Trust is to arrange for spiritual discourses and to start and establish Sidha Medical Educational and Research Centre and to give treatment to the patients and to propagate Sidha medical knowledge and to practice Sidha medicine and several other objects. The original deed of the Trust was either in the custody of the 1st defendant or is lost. The Managing Trustee applied for certified copy and the same could not be obtained as the original is stated to have been submitted in Court. Among the Trustees, G.Viswasam was chosen as Managing Trustee and out of contributions received by the Trust, the founder Yogi, K.Arunachala Swamigal and the Managing Trustee Viswasam has purchased the suit property as vacant site on 13.07.2000, through a registered sale deed. The said property was purchased for and on behalf of Trust with an intention to preserve, maintain and improve as Trust property for the better performance of its activity and the intention is specifically mentioned in the said sale deed. Subsequent to the purchase, an idol of Goddess Annai Parasakthi was installed and a marriage hall namely Bakkiya Mahal with rooms were built in the vacant site. The said building is rented for pilgrims and for functions and the income generated is used for furthering the objectives of the Trust. The said Yogi had printed invitations relating to the performance of the Trust and one such invitation, dated 13.01.2002,



describing various charity is produced. The said founder Yogi died on 03.11.2002. Thereafter, G.Viswasam, the Managing Trustee took over the management. He had two wives namely, Kamatchi (1st wife) who the 3rd defendant herein and one Susila. The said Kamatchi deserted her husband Viswasam few years after marriage and started living separately. The defendants 1 and 2 are the sons of Viswasam through his 1st wife. The present Managing Trustee V.Vijayasimman is the son of Viswavam through 2nd wife Susila and they have two daughters namely, Vasanthi and Hemalatha who are also Trustees of the plaintiff Trust. On 05.09.2002, Viswasam's 2nd wife Susila along with her son Vijayasimman and daughter Hemalatha became the Trustees in the place of Dr.A.Balasubramaniam and G.V.Baskaran (the 2nd defendant herein). Both expressed their desire to resign from the post and retire on the same date. The 1st defendant who was functioning as Trustee during December 2011, expressed his desire to resign and resigned on 22.12.2011 and by a deed dated 22.12.2011 the 1st defendant's name was also deleted from the rolls of the plaintiff Trust. Hence, from 22.12.2011, the defendants were not associated with the activities of the plaintiff Trust, since they ceased to be Trustees. To this effect, a printed letter of thanks is produced. Thereafter, the said Viswasam and his second wife Susila as plaintiff filed suit in O.S.No.702 of 2004 on the file of District Munsif Court,



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Palani against the 3rd person called Natchimuthu Swamigal who had indulged in competing activities affecting the good name and performance of the plaintiff Trust. In the said suit, I.A.No.191 of 2004 was filed seeking interim injunction and the same was dismissed on 15.06.2004. However, in the said fair order, the entire history of the plaintiff Trust and its activities were described. The said Viswasam died on 27.02.2012 leaving behind the defendants and children through his second wife as legal heirs. Subsequent to the death of Viswasam, dispute arose between two families on account of claim made by the defendants over the properties personally owned by Susila and also over the suit property. A legal notice, dated 20.03.2012, was issued by the defendants to Susila and her sons demanding partition of their alleged share in several properties including the exclusive properties of Susila and also the suit Trust property. The said Susila and her children denied the claim made by the defendants reiterating the fact that the suit property is a Trust property through a reply notice. The defendants claim right over the property stating it to be separate individual property of Viswasam. On 24.03.2012, Vijayasimman was nominated as Managing Trustee and Vasanthi was nominated as Trustee but she resigned from the Trust. Two new Trustees namely, V.Srinivasan and V.Rajaram were inducted through the registered deed of codicil to the original Trust deed, dated 26.03.2012. In the notice dated 20.03.2012 the



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defendants had claimed 1/7th share each by claiming the Trust property and separate property of Susila as joint family properties. The said Susila and others replied through notice, dated 02.04.2012, explaining all details relating to the properties and denying their claim. The 1st defendant contrary to the averments made by him in the legal notice seems to have executed simple mortgage deed for Rs.2,50,000/- in favour of one V.Sokkaraj on 24.02.2012. The said mortgage is not valid as the mortgagor has no title to the property and the same is not binding on the Trust. The Managing Trustee came to know about the deed later on. After obtaining the certified copy, to the shock of the plaintiff Trust the said document refers to two Wills which were made in the said deed. The 1st Will alleged to have been executed on 22.04.2001 by the founder Yogi, Arunachala Swamigal bequeathing the entire Trust properties as his personal properties. Subsequently, another Will, dated 03.02.2012, by Viswasam in favour of 1st defendant bequeathing the Trust property as his personal property to the 1st defendant. The above said two documents were fabricated and forged based on the above two Wills. Thereafter, the 1st defendant started claiming right in the suit property and disturbing the enjoyment and possession of the same and also the performance of the Trust. The 1st defendant with a view to make it appear the alleged Wills were acted upon seems to have created an encumbrance on the suit property by way of



fraudulent and sham mortgage deed. The above said Wills were not in existence and they were fabricated which would be evident from the notice, since there is no reference in the notice, dated 20.03.2012 or in earlier notices. The 1st defendant basing his claims in the alleged Wills started quarreling with Vijayasimman and others and also foisted false criminal cases against the Managing Trustee and other Trustees. The Managing Trustee also lodged criminal complaint against the 1st defendant and others and there were exchanges of paper publication and counter publication by respective parties followed by exchange of register notices. Against the criminal action, the said Susila and her son Vijayasimman approached Madurai Bench of Madras High Court to set aside the order. The suit property was purchased as vacant site at the time of purchase, with a clear intention of dedicating it for the purpose of plaintiff Trust. The suit property is assessed to property tax in the name of Trust, income tax returns are filed in the name of the Trust. Except for the suit property, the plaintiff Trust does not own any other immovable property. The 1st defendant is estopped from making contrary claim when the deed of sale clearly mentions that it is purchased by the Trust and not in the individual capacity. Another crucial aspect of determination of character and determination of the suit property is wherein the idol of Goddess Annai Parasakthi being installed and the mortal remains of the founder was interned and Samathi



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was constructed. The building was named as Bakkiya Mahal in the memory of the Founder Trustee who named the Trust as Bakkiya Trust. Since the 1st defendant along with other defendants are denying the character of the suit property who is taking divergent stands and repeatedly interfering, the present suit is for declaration and injunction is filed. During the pendency of the suit, the defendants 1 and 3 obtained an order, dated 21.09.2012 from Divisional Executive Magistrate cum Revenue Divisional Officer, Palani, to the effect that the 1st defendant is in possession and enjoyment of the suit property. Taking advantage of the said order, the 1st defendant attempted to interfere in the possession of the plaintiff. Hence CrI.O.P.(MD)No.8785 of 2012 was filed and order passed by the Revenue Divisional Officer was quashed, vide order, dated 19.12.2012. Subsequently, on 30.12.2012, the 1st defendant stabbed the Managing Trustee with knife and caused serious injuries and also attempted to interfere with the possession. From that time onwards, there were continuous tussle between the plaintiff and defendants. Finally, the defendants succeeded in ousting the Trustee from the suit properties and took forceful possession at the end of the year 2013. Hence the prayed was amended for recovery of possession during the pendency of the suit.

5. The 1st defendant has filed a written statement denying the allegations



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and stated that there is no “Bakkiya Trust” in existence and the plaintiff is not the Managing Trustee. Since there is no Bakkiya Trust, the plaintiff has no right to file the suit in the name of Bakkiya Trust. Further, he disputed the plea that the property was purchased by the said Yogi and Viswasam as Trustee. The said property was purchased by Viswasam out of his own earnings in his name and also in the name of Arunachalam Swamigal on 13.07.2000. And the said property was not purchased for the Bakkiya Trust. As per the request of the said Swamigal, in the front portion small place was granted for establishing temple and for installing Goddess Parasakthi. Then the said Viswasam through his own funds had constructed lodge namely “Bakkiya Mahal” and let out the same for devotees visiting Palani temple. The said building was not used as wedding hall. The averment of the plaintiff that the rental income from the Bakkiya Mahal is used for running Bakkiya Trust is denied by the defendants. The averment of the plaintiff that an invitation dated 13.01.2002 was issued by the said Swamigal for collecting donations is denied by the defendant. The defendant further submitted that the said Arunachala Swamigal executed a Will dated 22.04.2001 in favour of Viswasam and bequeathed his half share to the said Viswasam, thereafter the said Viswasam was enjoying the property as his private property. Thereafter, the said Viswasam executed a Will on 03.02.2012 in favour of the 1st defendant and the



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said Viswasam died on 27.02.2012. As per the Will, after the death of Viswasam, the property should devolve upon the 1st defendant alone, thereafter the 1st defendant was paying property taxes etc. which stands in his name. Therefore, none can claim any right over the property. There is no connection and whatever between the Bakkiya Trust and others. Viswasam's and his legally wedded wife Kamatchi have two children who are the defendants 1 and 2. Hence, they are the only legal heirs. The said Visawam did not marry Susila at any point of time and she was only living together with him. Hence, their children are not legal heirs of the Susila. It is denied that the 1st defendant resigned from the Trust. The plaintiff has created forged document on 22.12.2012 with the persons whom he like. Except cash of Rs.1,000/- no other property belongs to the Trust. The 1st plaintiff enjoyed the property as the absolute owner of the property and executed mortgage deed and also obtained loan. The plaintiff has no right to claim or question the Will executed by Arunachala Swamigal, Bakkiya Trust and the plaintiff is not having any right over the suit claim. When the plaintiff prefer complaint, the Criminal Court took action against the defendants and it is clearly stated that the defendants are in possession and enjoyment of the property. Hence, the 1st defendant prayed to dismiss the suit.



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6. In the additional written statement filed by the 1st defendant, it is stated that the plaintiff was not in possession of the property at any point of time. The suit property is self-acquired property of Viswavsam which he had purchased out of his own income and had constructed the building from his income. There is no connection between the Bakkiya Trust and the suit property. Then said Viswavam out of his own will had executed Will dated 03.02.2012 and then he died on 27.02.2012 and the said Will came into effect thereafter. Hence the 1st defendant alone is the owner of the property. The RDO had passed an order dated 21.09.2012 wherein it is stated that the 1st defendant was in possession and enjoyment of the suit property. It is not true that the RDO order was quashed in CrI.O.P.No.8785 of 2012. Further the 1st defendant denied the allegation that he had had stabbed the plaintiff and the defendants took forcible possession of the property on 27.02.2012. The 1st defendant further stated that the said Viswasam is the Kartha of the family consisting of defendants 1 to 3. The said Viswasam had taken the land on lease at Sengula Thottam from 1992 to 2009 and had derived income from the said land. He also got good income through sugarcane cultivation. Also obtained jewel loans in his wife's name from the bank and obtained a sale deed in the name of the 1st defendant on 27.08.2000 which is the adjacent land. The defendants are in enjoyment of the suit property and are also



paying kist receipts. The income of the property was utilized by the 1st defendant and the 1st defendant is the true owner as per the Will, dated 03.02.2012. The plaintiff was not in possession of the property at any point of time hence, the plaintiff is not entitled to recovery of possession.

7. The 2nd defendant has filed a written statement denying the entire allegations. He has also stated that there is no Bakkiya Trust and the averment that Vijayasimman is the Trustee is incorrect. Therefore, Vijayasimman has no right to continue the suit in the capacity of Trustee. After the death of Viswasam, the Will dated 03.02.2012 came into existence, thereafter the 1st defendant is in enjoyment of the suit property and is also paying kist receipts. Therefore, defendants 2 and 3 are not necessary parties to the suit. Further submitted that the suit is bad for misjoinder of unnecessary parties and prayed to dismiss the suit.

8. The 4th defendant has filed a written statement stating he is adopting the written statement of 1st defendant. And also stated that the suit property exclusively belongs to the 1st defendant and the 1st defendant is enjoying the property and also paying the tax. The 1st defendant obtained loan of Rs.2,50,000/- from the 4th defendant and executed mortgage deed on 24.04.2012. Therefore, the 4th defendant is at liberty to recover the loan amount regarding the property. Since



the 4th defendant has every right in the property, the plaintiff has no right to object the same. The plaintiff has no cause of action and the plaintiff is not entitled to relief against the 4th defendant.

9. After considering the pleadings, the Trial Court has framed the following issues:

1. Whether any Trust under the name of the Bakkiya Trust has been in existence?
2. Whether the suit properties belong to Bakkiya Trust and is in enjoyment of the same Trust?
3. Whether G. Viswasam was acting as the Managing Trustee of Bakkiya Trust?
4. Whether Susila is the legally wedded wife of Viswasam?
5. Whether G. Viswasam had constructed building in the suit property and enjoying the same as the owner of the property?
6. Whether will executed by G. Viswasam on 3.2.2012 regarding the property in favour of the 1st defendant is in possession and enjoyment of the property?
7. Whether the mortgage deed dated 24.4.2012 executed by 1st defendant in favour of the 4th defendant is valid and binding one?
8. Whether the defendants 2 and 3 are necessary parties to this suit?
9. Whether the plaintiff is entitled for declaration and permanent injunction as prayed for?



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10. To what relief?

The following additional issue was also framed:

1. Whether the plaintiff is entitled for recovery of possession?

The above issues were re-casted as follows:

1. Whether Bakiya Trust is in existence or not?

2. Whether the properties are belonging to Backiya Trust or the self-acquired properties of Viswasam Servai?

3. Whether any Will dated 22.4.2001 has been executed by Arunachalam Swamigal?

4. Whether the will dated 3.2.2012 has been executed by Viswasam?

5. Whether the plaintiff trust is entitled for the declaration and possession as prayed for?

6. To what relief?

10. On the side of plaintiff Ex.A1 to Ex.A32 are marked and had examined the himself as PW1, Janarthanan, Auditor of the plaintiff trust was examined as PW2, the hand writing expert Gomathi of Madurai Regional Forensic Science Laboratory was examined as PW3. On the side of 1st defendant Ex.B1 to Ex.B12 was marked and had examined himself as DW1, Arumugam as DW2, Ramesh as



DW3, Ganesan as DW4, Backiyaraj as DW5 and Raghupathy as DW6 and Mariappan as DW7. After considering the pleadings, depositions and documents, the suit was decreed with costs.

11. Aggrieved over the same, the 1st defendant has preferred the present Appeal Suit raising various grounds. Based on the grounds and the submission of either side the following points for consideration are framed by this Court:

- i. Whether the property belongs to Bakkiya Trust?
- ii. Whether the father of the 1st defendant Viswasam is the sole owner of the suit property based on the Will dated 22.04.2001?
- iii. Whether the plaintiff Trust is entitled to recovery of possession?

12. It is an admitted fact that the author of the “Bakkiya Trust” is one Yogi. K. Arunachala Swamigal, who had initially formed the Trust through the registered Trust Deed dated 27.06.1995. The five Charter Trustees are G.Viswasam (Managing Trustee), Dr.A.Balasubramanian (Trustee), G.V.Manoharan (Trustee), G.V.Baskaran (Trustee) and V.Vasanthi (Trustee). The said G.Viswasam had two wives namely Kamatchi (1st wife/ the 3rd defendant herein) and Susila (2nd wife). Through first wife two sons, the defendants



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G.V.Manoharan and G.V.Baskaran were born. Through the second wife one son the present Managing Trustee V.Vijayasimman (son) and two daughters V.Vasanthi (one of the Charter Trustee) and Hemalatha were born. In the present suit the first wife Kamatchi and his two sons are arrayed as defendants 1 to 3. The 4th defendant is the mortgagee.

13. The first contention of the defendants is that the Trust was formed on 27.06.1995 by the said Yogi. K. Arunachala Swamigal with Rs.1001/- only. The said amount is the only amount to the Trust and the Trust had no other assets at all. Then the suit property was purchased through Ex.A2 sale deed dated 13.07.2000 by the said Author of the Trust Yogi. K. Arunachala Swamigal and the Managing Trustee G.Viswasam in their individual names and not in the name of the “Trust” and the entire sale consideration was paid by the said G.Viswasam. Further the said Author of the Trust Yogi. K. Arunachala Swamigal has executed Ex.B5 Will dated 22.04.2001 thereby the share of the said Yogi was bequeathed to G.Viswasam. The amount of Rs.1001/-, the sale in individuals name and the Will in favour of G.Viswasam would clearly indicate that the suit property is not a Trust property.



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14. On the other hand, the plaintiff states that the Ex.A3 invitation seeking donations by Bakkiya Trust from the devotees for construction of the building.

The Ex.A4 the Codicil to Trust Deed dated 05.09.2002, wherein the Susila (2nd wife), the Vijayasimman, Hemalatha were inducted as Trustees by said G.Viswasam and Dr.Balasubramaniam and G.V.Baskaran were removed from trusteeship. In an earlier suit in O.S.No.702 of 2004 Ex.A32 and interim orders in the suit Ex.A7 and 8, wherein the suit is filed by G.Viswasam against one Nachimuthu who interfered in the administration of the Trust and in the suit it clearly stated that the property belongs to Trust. The supplementary Trust Deed dated 22.12.2011 marked as Ex.A6, wherein the said G.V.Manoharan was removed from the Trust by the Managing Trustee G.Viswasam. The Codicil Deed dated 26.03.2012 Ex.A10, wherein the said G.Vijiyasimman was appointed as Managing Trustee, then the said Vasanthi had resigned, new trustees V.Srinivasan, V.Rajaram were inducted as Trustees. All these acts would indicate that the property was managed by the Trust and hence the suit property is not individual property.

15. After hearing the rival submissions this Court had considered the arguments and perused the documents. It is seen that the 1st defendant has also



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served as trustee, which is evident from the Codicil Deed dated 05.09.2002 marked as Ex.A4. But it is not known from which date the 1st defendant was inducted in the said trust. Further it is seen that the 1st defendant was removed from the trusteeship from 22.12.2011 which is evident from the Codicil Deed dated 22.12.2011 marked as Ex.A6. Therefore, the contention of the 1st defendant that there is no Bakkiya Trust itself is false.

16. The next contention of the 1st defendant is that the Trust was formed with Rs.1001/- alone and the said amount is the only asset at the time of formation of the Trust. Then the father Viswasam had purchased suit property through his own funds, but the same was purchased in the individual name of the said Swamigal and Viswasam and not in the name of the Trust. Therefore, the suit property is individual property of Viswasam, then the said Viswasam had executed Will in favour of the 1st defendant, thereby the 1st defendant become absolute owner of the suit property and consequently the suit property cannot be considered as Trust property. In order to consider this contention, this Court perused the said sale deed dated 27.09.2000 marked as Ex.A2, it is seen that the said Swamigal was mentioned as Author of the Bakkiya Trust and the said G.Viswasam was mentioned as Trustee of the said Bakkiya Trust. Of course, it is



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not mentioned as if the said property is purchased in the representative capacity by representing the Trust. Also, it is not mentioned the property is purchased in individual capacity. For the sake of arguments if it is taken that the property was purchased in individual capacity, their position as author and trustee of Bakkiya Trust need not be mentioned at all. Simply their names would have been mentioned without their position in the Trust. Therefore, at the most it ought to be taken that the said sale deed was poorly drafted. When the position and status of the Swamigal was stated as Author of the Bakkiya Trust and the position and status of G.Viswasam was stated as Managing Trustee in the sale deed, then it ought to be considered that the land was purchased for and on behalf of the Trust only.

17. Further it is seen that the said Bakkiya Trust had filed Income Tax Returns and Balance Sheet. The first income tax return was filed for the assessment year 2001-2002. On perusing the balance sheet, it is seen that the said Trust is having land which is valued at Rs.90,345/-, the building is valued at Rs. 4,50,352/-. Further it is stated that the “building fund received” as Rs.5,12,595/-. Therefore, the contention of the 1st defendant that the suit property belongs to his father Viswasam and he is holding in his individual capacity and he is not holding



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the property as Trust property is incorrect. Further the said Bakkiya Trust is treating the said land and building as Trust property and has filed the balance sheet before Income Tax authorities declaring the said land and building belongs to Bakkiya Trust. The claim of the 1st defendant that his father Viswasam had put up construction from his own fund is false, since the balance sheet states that the Trust had received “building fund” to the tune of Rs.5,12,595/- and the income and expenditure statement states that the trust had received donations of Rs. 1,50,750/-. For the assessment year 2011-2012, the income and expenditure statement for the said Bakkiya Trust states that the donations received is Rs. 2,96,853/- and rental income Rs.1,20,000/-. And the balance sheet states that the land is valued as Rs.90,345/- and the building is valued at Rs.19,75,260/- and both the land and building is shown as assets of Bakkiya Trust. From this it is evident that the rental income received from the suit property belongs to the Bakkiya Trust, hence the Bakkiya Trust is the owner of the building and not any individuals.

18. In the earlier suit filed in O.S.No.702 of 2004, the plaint copy is marked as Ex.A32 and the orders passed in I.A.No.191 of 2004 marked as Ex.A7 and Ex.A8, the plaintiff thereunder was G.Viswasam and his wife Susila, wherein they



had averred that G.Viswasam and the said Swamigal was in possession and enjoyment of the suit property for the benefit of the trust. The relevant portions are extracted hereunder:

*“5.... The 1st plaintiff and the Arunachala Swamigal who are the founder of the Trust were in possession and enjoyment of the 1st item of the suit property **for the benefit of the Trust.***

6. ...

7. The contribution made by the devotees has been spending for the very purposes and objectives of the Trust. Thereby the Trust has eaned a good will and public support. The founder of Trust Yogi.. had been performing the poojas in the Para Sakthi temple which is situated in item I of the suit property and rendered astrological predictions to needy people at item II of the suit property in the name and style of Annai Para Sakthi Thirukovil – Arulvaku Arul Jothi Nilayam... Both the temple and astrological predicting nilayam were managed by the 1st plaintiff and Yogi... for the sake of the Trust, till the Yogi died on 03.11.2002.”

From the above averments it is clear that the said G.Viswasam and the said Yogi were treating the suit property as trust property and they were in possession and enjoyment of the property **for the sake of the Trust.**

19. The contention of the 1st defendant is that the both the Wills were proved through the attestor and scribe. But the contention of the plaintiff is that



the said Wills are forged and fraudulently executed. It is seen that the father Viswasam had removed the 1st defendant from the Trust on 22.12.2011, hence it is highly improbable that the father had executed the Will on 03.02.2012 in favour of the 1st defendant within a period of 43 days from the date of removal from trusteeship. Further there are other legal heirs to the father Viswasam, hence bequeathing the suit property exclusively to the 1st defendant by excluding the other legal heirs is highly improbable. Hence the said Will is having cloud, hence the said Will cannot be accepted.

20. Further the Will dated 22.04.2001 executed by the Swamigal in favour of the Viswasam cannot be accepted for the sole reason the said sale deed was executed by mentioning their position as Founder and Managing Trustee respectively. Therefore, the said founder has no right to execute such Will. In other words, when the said Swamigal had no right over the property in his individual capacity, consequently he has no right to execute such Will. Hence, when the suit property belongs to the Trust, the said Will is unnecessary. Further, as right pointed out by the plaintiff, the Wills were not mentioned in the legal notices issued by the 1st defendant and on later date the 1st defendant is claiming Will was executed in his favour, creates doubt that the said Will was fraudulently



created for the sake of the case.

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21. The contention of the 1st defendant that the father Viswasam had purchased the property through his own income, hence the suit property is individual property. Even if this plea is accepted for the sake of arguments, it ought to be taken that the said sale consideration amount was given as donation by the father Viswasam to the Bakkiya Trust. Therefore, this Court is of the considered opinion that merely the sale consideration was paid by the father Viswasam would not determine the status of the suit property as individual property of the father Viswasam. Infact the father Viswasam had treated the suit property as Trust property only, which is evident when he had filed the earlier suit is O.S.No.702 of 2004. Also it is evident from the property tax receipts Ex.A22, which receipts were issued in the name of the Bakkiya Trust and it is mentioned as “Viswasam for Bakkiya Trust”. All these would show that the suit property is trust property and not individual property.

22. If the 1st defendant arguments are accepted then a situation would arise that his father Viswasam had misrepresented before the general public that the suit property belongs to Bakkiya Trust and consequently collected donations but had



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retained and utilized for his family and for himself. Further the 1st defendant was also holding the post of trustee and he was also equally liable for such misrepresentation, thereby attracting criminal prosecution. In such circumstances, the entire family of the said G.Viswasam including the two wives and their children ought to face criminal prosecution. Also, the entire family ought to face criminal prosecution under Income Tax Laws for seeking exemption for the donations received to the Bakkiya Trust. Therefore, the 1st defendant either ought to accept that the property belongs to Bakkiya Trust or ought to face criminal prosecution.

23. For the reasons stated supra, this Court is of the considered opinion the suit property belongs to the Bakkiya Trust and the Will dated 22.04.2001 has no legal sanctity since no right is created over the property to the said Swamigal to hold the property in his individual capacity and the said Will has no legal validity. Consequently, the Bakkiya Trust is entitled to recover of possession. All the points for consideration are held in favour of the plaintiff Trust.

24. Therefore, the Appeal Suit is liable to be dismissed and accordingly dismissed. The Judgment and Decree dated 17.02.2016 passed in O.S.No.83 of



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2012 passed by the Principal District Court, Dindigul is hereby confirmed. No costs.

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NCC : Yes / No

Index : Yes / No

Internet : Yes

Tmg

To

- 1.Principal District Judge, Dindigul,
Dindigul District.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

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Judgment made in

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