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S.A.(MD)NO.692 OF 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.10.2024

PRONOUNCED ON : 08.05.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.692 of 2014

Sami Arul Educational Trust
rep.by its Managing Trustee,
L.B.S.Yadhav,
Pilaiyarpatti, Vallam,
Thnjavur Taluk
Defendant

... Appellant / Respondent /

Vs.

S.Peter

... Respondent / Appellant / Plaintiff

Prayer: Second Appeal filed under Section 100 CPC against the judgment and decree dated 29.04.2014 in A.S No.70 of 2012 on the file of the Principal District Judge, Thanjavur reversing the judgment and decree dated 28.08.2012 made in O.S No.290 of 2010 on the file of the Principal Subordinate Judge, Thanjavur.

For Appellant : Mr.S.Parthasarathy, Senior Counsel
for Mr.V.Balaji

For Respondent : Mr.Sricharan Rangarajan,
Senior Counsel
for Mr.D.Selvanayagam

**JUDGMENT**

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The defendant in OS No.290 of 2010 on the file of the Principal Sub Court, Thanjavur is the appellant in this second appeal.

2.S.Peter, the respondent herein filed the said suit for declaration and recovery of possession and for permanent injunction. The suit was dismissed vide judgment and decree dated 28.08.2012. Challenging the same, the plaintiff filed A.S No.70 of 2012 before the Principal District Judge, Thanjavur. The first appellate court reversed the decision of the trial court and decreed the suit as prayed for on 29.04.2014. Challenging the same, the defendant filed SA(MD)No.692 of 2014. It was dismissed on 16.04.2015. Questioning the same, the defendant filed Civil Appeal No.6595 of 2016. The Hon'ble Supreme Court set aside the judgment of the High Court since substantial questions of law were not answered. The matter was remitted back. On 20.07.2016, the second appeal was formally admitted on the following substantial questions of law :

"1.Whether the judgment of the first appellate court reversing the judgment of the trial court in respect of the suit A schedule property suffers from the vice of perversity for not having considered the material evidence on record such as admissions of PW.1 in the cross



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examination, Ex.B21 to Ex.B23 and the seal found affixed in Ex.A1.

ii.Whether the suit was liable to be dismissed since the plaintiff failed to seek the relief of declaration in respect of B schedule property.

iii.Whether the plaintiff has proved the possession of B schedule property as on date of filing of the suit?."

3.The learned Senior Counsel appearing for the appellant reiterated all the contentions set out in the grounds of appeal and also the written arguments and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and restore the decision of the trial court. Per contra, the learned Senior Counsel appearing for the respondent submitted that the impugned judgment is a well reasoned and that it does not call for any interference. He also filed written notes of arguments. Both sides relied on a catena of case laws in support of the various propositions advanced by them.

4.The case of the plaintiff is as follows :



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The plaintiff purchased the suit items 1 and 2 vide sale deeds dated 05.11.2004 and 06.07.2005 for valuable consideration.

Subsequently, patta was also transferred in his name. The plaintiff was the Chairman and managing trustee of Sami Arul Educational Trust, Pillaiyarpattti near Vallam. Subsequently, he resigned from the board. The suit properties are his private properties and not that of the said trust. On 12.02.2007, the plaintiff came to know that the trust was putting up structures on the A schedule property. Hence, the suit was filed for declaration that the plaintiff is the absolute owner of the suit schedule properties and for delivery of possession of the A schedule property after removing the superstructures and for permanent injunction restraining the defendant from interfering with the plaintiff's possession of the B schedule property.

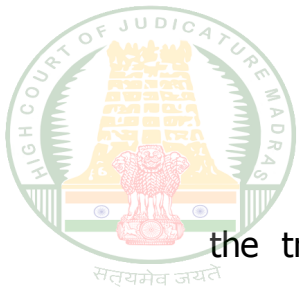
5.The defendant filed written statement controverting the plaint averments. The claim that the plaintiff purchased the suit items under two different sale deeds was denied. He had purchased the suit properties only in his capacity as managing trustee and President of Sami Arul College and that the suit properties belong only to the trust. The plaintiff resigned from the board in September 2005. The ledger maintained by the trust would indicate that the cash flow for purchase



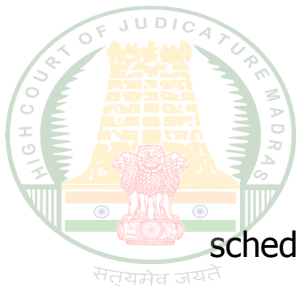
of the properties went from trust account. The plaintiff is not in possession of the suit schedule properties. In A schedule, there are buildings. The plaintiff himself in his legal notice has admitted that the defendant is in possession of the B Schedule property. But no declaration of title as regards the B schedule property has been sought for. The plaintiff himself applied to the local body for permission to construct a building for the college. The plaintiff did not implead the trust as a party defendant. The defendant called for dismissal of the suit.

6. Based on the rival pleadings, the trial court framed the necessary issues. On the side of the plaintiff, the plaintiff himself examined as PW.1. Two other witnesses have been examined on his side. Exs.A1 to A20 were marked. On the side of the defendant, one Dhanapal, principal of the college, was examined as RW.1. After consideration of the evidence on record, the trial court dismissed the suit. But the first appellate court reversed the decision and decreed the suit as prayed for.

7. I carefully considered the rival contentions and went through the evidence on record. "A" schedule property was purchased under Ex.A1 sale deed dated 05.11.2004. As early as on 10.04.2002,



the trust passed Ex.B4 resolution for purchasing the "A" schedule property measuring 1 acre and 88 cents from S.Thirugnanam of Pillaiyarpatti. Vide Ex.B2 resolution dated 25.09.2004, the plaintiff was co-opted and appointed as the managing trustee of Sami Arul Educational Trust. The said resolution also referred to the proposed purchase of the "A" schedule property. When the plaintiff was examined as PW.1, he admitted the contents of these two resolutions. It is true that the plaintiff has been shown as the purchaser in Ex.A1 but he has been specifically described as the managing trustee of Sami Arul Educational Trust. In every page of the sale deed, the seal of the trust has been specifically affixed above the plaintiff's signature. More than anything else, the stamp papers were purchased in the following name : "Peter, Managing Trustee, Sami Arul Educational Trust, Pillaiyarpatti". If Peter, the plaintiff had purchased the property in his individual name, there was no need for him to purchase the stamp papers by describing him as the managing trustee of the suit trust. This shows the intention behind the transaction. Admittedly, the plaintiff is a resident of Chennai. He is running educational institutions in Chennai. The description found in the stamp paper as well as the sale deed therefore becomes relevant. It was the plaintiff who applied to the local body seeking approval for construction of a ladies hostel in "A"



schedule property. Ex.B9 is the plan for the said building. PW.2 who had taken the contract for construction of the building deposed that Ex.B9 was signed by Peter in his capacity as the Chairman of Sami Arul College. He further stated that it was Peter who prepared Ex.B9. The plaintiff in fact does not deny having made such an application.

8.It is because of these unimpeachable facts, I am not able to endorse the contention of the learned Senior Counsel for the plaintiff/respondent in respect of the "A" schedule property. When the very purchase of the "A" Schedule property was for the benefit of the trust and the plaintiff himself took steps to develop the said property for the benefit of the college, he cannot turn around and set up a rival title. This is all the more so because he was the erstwhile trustee. The evidence adduced on either side point to a singular fact ie., "A" schedule property was meant to be a trust property. It is true that the plaintiff had shown the purchase of the A schedule property in the audited balance sheet. But only on that score, the claim of the plaintiff cannot be upheld. It is quite possible that the consideration for purchase of the "A" schedule property came only from the plaintiff's pocket and probably that was why he was inducted as trustee. The plaintiff also must have infused funds into the trust to facilitate the trust



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activities. Otherwise, there was no reason for coopting the plaintiff and that too as the managing trustee of the board. The first appellate court heavily relied on the testimony of PW.3 Kasthuri, the power agent of Thirugnanam, to come to the conclusion that it was Peter who paid the consideration and not the trust. In fact, even this conclusion from her testimony does not appear to be sound. This is because in the latter part of her cross-examination, PW.3 feigns ignorance. She stated that it is her husband who will have to be asked as to whether receipt of payment (Ex.A16) is genuine. The court below asked a wrong question to itself. The focus must not have been on the flow of funds. Instead, the question must have been regarding the true nature and purpose of the transaction. The saying 'he who pays the piper calls the tune' may not apply in all cases. Hence, there is no need or necessity to examine the books of account maintained by either side in this regard. Since the evidence on record clearly indicates that "A" schedule property was purchased for the benefit of the trust, I hold that the plaintiff is disentitled from maintaining the suit prayer in respect of the "A" schedule property. The approach of any court must be to protect the properties of a trust, particularly, when the challenge is mounted by an erstwhile trustee.



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9.As already mentioned, in each page of the Ex.A1 sale deed, the seal of the trust has been affixed. This clearly indicates the intention of the trust was for the benefit of the trust. The plaintiff is estopped from making any claim on "A" schedule property.

10.However, a different approach is called for in respect of "B" schedule property. The features that characterised the purchase of the "A" schedule property are conspicuously absent in the case of "B" schedule property. If a trust is to purchase a property, it would first pass a resolution. In the case of "A" schedule property, such a resolution was in fact passed. No such resolution has been projected in the case of "B" schedule property. The stamp papers have been purchased only in the name of "Peter, Chennai". The trust seal has not been affixed at the foot of each page of the sale deed Ex.A2 dated 06.07.2005. Of course, one of the descriptions of Peter in Ex.A2 is that he is the managing trustee of Sami Arul College. He is also described as the son of Soosaiya Pillai. The sale deed has been executed in favour of S.Peter and not in favor of the trust. The document is in tamil and it plainly indicates that the transaction is between two individuals, namely, S.Peter and T.Santhi. Even though the language of the two



sale deeds are broadly similar, I adopted a different yardstick for "A" schedule property because of my conclusion that the transaction was for the benefit of the college. Such a conclusion was fortified by the conduct of the plaintiff in submitting a building plan approval for "A" schedule property. Such circumstances are absent in the case of "B" schedule property.

11.The title deed in respect of "B" schedule property is with the plaintiff. It was he who marked the same as Ex.A2. The suit was filed only in 2007. Peter had left the board in September, 2005 itself. The trust did not call upon Peter to hand over the original document. There is no clear evidence on the side of the trust to show that "B" schedule property was purchased by the trust out of its funds. The only witness examined on the side of the trust was its Principal. Santhi, the vendor of "B" schedule property was not examined by the trust. The sale consideration has been mentioned as Rs.10.00 lakhs. The appellant is able to point to payment of Rs.1.00 lakh under Cheque No. 2279851 to Thirugnanam, husband of Santhi. But the vendor is not Thirugnanam, but Santhi. In the plaintiff's audited balance sheet, purchase of "B" schedule property is reflected. But in the tax returns of the trust, this purchase is not reflected.



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12.After the purchase, the patta was mutated in the individual name of the plaintiff. The trust does not appear to have challenged the same. Merely because in the sale deed, the purchaser's connection with the suit trust forms part of the description, that cannot form the basis for conferring title on the trust in the absence of any other evidence. That was probably why, the learned Senior Counsel appearing for the appellant trained his guns on the maintainability of the suit. Relying on the decision of the Hon'ble Supreme Court reported in **(2008) 4 SCC 594 (Anathula Sudhakar v. Buchi Reddy)**, he contended that when the title is in dispute, the plaintiff must seek declaration and cannot maintain a simple suit for injunction. He also added that when possession is with the defendant, the plaintiff must have sought the relief of recovery of possession.

13.I am not swayed by the said objection. The learned Senior Counsel appearing for the plaintiff relies on the judgment rendered in SA(MD)Nos.550 and 551 of 2008 dated 29.10.2021 **(Narendra Kumar Johar v. A.Shajahan)**. SLP (Civil) No.7394 of 2022 filed against the said judgment was dismissed by the Hon'ble Supreme Court on 13.07.2022. When the counsel for the appellant therein argued against



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the maintainability of the suit for having failed to seek the relief of

declaration by relying on **Anathula Sudhakar v. Buchi**

Reddy(2008) 4 SCC 594, I pointed out that in **T.V.Ramakrishna**

Reddy vs. M.Mallappa (2021 SAR (Civ) 1009, it was observed that

in Anathula Sudhakar, the Supreme Court in unequivocal terms had held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. Merely because the defendant questions the plaintiff's title, that would not necessarily mean that the plaintiff's title is in dispute or under a cloud. The defendant will have to prima facie create a doubt in the mind of the court that the plaintiff's claim of title is under a serious cloud. In the case on hand, the defendant trust had not set up an independent title. On the other hand, the issue turns only on the construction of the recitals of the sale deed. No complicated question of fact and law relating to title had really arisen as both the parties claim to have derived title from one and the same person and that too one and the same document.

14.It is well settled that if a property is a vacant site, the principle is possession follows title. If one can show title, it can be taken that he is in possession. In this case, the plaintiff has



convincingly and beyond reasonable doubt proved that he has title over the "B" schedule property. Patta (Ex.A4) also is in his name. This patta was never challenged by the trust. Since "B" schedule property is a vacant site, the first appellate court rightly granted the relief of permanent injunction in favor of the plaintiff in respect of schedule "B" property.

15.In Ex.A2, it has been mentioned that a sum of Rs.10.00 lakhs was received towards sale consideration from Peter. The Tamil word used is "தங்களிடமிருந்து". In translation, it reads as "from you". There are several such honorific expressions in Tamil language in the said sale deed which can only refer to an individual and not an entity. The use of such expressions is indicative of the fact that the trust is not the purchaser. There is a clear difference in law between an individual representing the trust and an individual being described as an office bearer of the trust. Merely because one of the designations of the individual was also mentioned, that would not alter the character of the transaction. Unlike in the case of Ex.A1, in Ex.A2 the seal of the trust was not affixed.

16.In this view of the matter, the first substantial question of



law is answered in favour of the appellant/defendant. The second and

third substantial questions of law are answered in favour of the plaintiff.

The impugned judgment and decree of the first appellate court are modified accordingly. The suit stands dismissed in respect of "A" schedule property. It shall stand decreed as prayed for in respect of "B" schedule property. This second appeal is partly allowed. No costs.

08.05.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To:

- 1.The Principal District Judge, Thanjavur
- 2.The Principal Subordinate Judge, Thanjavur.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

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