



S.A.No.653 of 1999 and S.A.(MD)No.1270 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18 / 08 / 2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.653 of 1999 and S.A.(MD)No.1270 of 2005

and

M.P.(MD).Nos.3 & 4 of 2008

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P.Mariappan

.. Appellant in S.A.No.653 of 1999

Arulmigu Madyapureeswara Swamy Temple,
Rep. by its Executive Officer,
Parakkalakottai Village,
Pattukottai Taluk.

.. Appellant in S.A.(MD)1270 of 2005

Vs.

1. Sadagopa Ramanujam
2. Mathiapureeswara Swamy Koil,
Rep. by its Hereditary Trustee
3. R.M.S.Meyyappan (died)
4. The Executive Officer,
Arulmighu Madhyapureeswara Swamy Temple,
Parakkalakottai Village,
Pattukottai Taluk, Tanjore District. PIN.614 613.
(Fourth respondent impleaded as respondent,
Vide Order dated 25.02.2008 made in
C.M.P.No.3445 of 2002 in S.A.No.653 of 1999
5. M.Thangavadivel
6. M.Bagavandoss

(Respondents 5 and 6 are represented

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through Power Agent R.M.S.Meyappa Thevar)
(Respondents 5 and 6 are impleaded,
Vide Order dated 12.03.2013 made
in M.P.Nos.1 and 1 of 2009 in
S.A.No.653 of 1999 and
S.A.(MD)No.1270 of 2005)

7. M.Rajathi Ammal
8. S.Shengagam
9. A.Marichelvam
10. P.Kaladevi
11. M.Sivayogham

(Respondents 7 to 11 are brought on record
as LR's of the deceased third respondent,
vide Court Order dated 20.09.2018
in C.M.P.No.9916 of 2017 in S.A.No.653 of 1999)

.. Respondents in S.A.No.653 of 1999

1. Sadagoparamanujam,
Rep. by its Power Agent R.M.S.Meyyappan
2. Mariappan
3. M.Thangavadivel
4. M. Bagavandoss

(Respondents 3 and 4 are represented
through their Power Agent R.M.S.Meyappa Thevar)
(Respondents 3 and 4 are impleaded
vide Court order dated 12.02.2013
made in M.P.Nos.1 and 1 of 2009 in
S.A.No.653 of 1999
and S.A.(MD)No.1270 of 2005)

.. Respondents in S.A.(MD)No.1270 of 2005

Second Appeal No.653 of 1999 filed under Section 100 of the Code
of Civil Procedure Code (i.e. CPC) against the judgment and decree dated

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01.02.1999 made in A.S.No.31 of 1998 on the file of the Subordinate Court, Pattukottai, reversing the judgment and decree dated 27.04.1998 made in O.S.No.345 of 1992 on the file of the District Munsif Court, Pattukottai.

Second Appeal(MD)No.1270 of 2005 filed under Section 100 of the CPC against the judgment and decree dated 28.04.2004 made in A.S.No. 18 of 2003 on the file of the Additional District Judge/Fast Track Court No. 2, Pattukottai, as confirmed by the judgment and decree dated 19.03.2003 in O.S.No.139 of 2000, on the file of the District Munsif Court, Pattukottai.

For appellant in S.A.No.653 of 1999 : Mr.A.Thiagarajan

For appellant in

S.A.(MD)No.1270 of 2005 : Mr.R.Devaraj

For respondents in S.A.No.653 of 1999: Mr.R.Devaraj for R-4

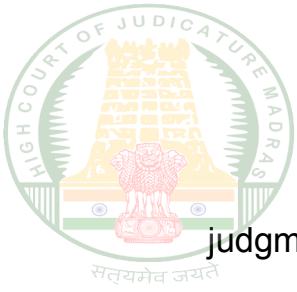
Mr.P.T.Narendravan
for RR-1 and
5 to 11 in S.A.No.653 of 1999

Mr.P.Thiagarajan
for R-2 in S.A.(MD)1270 of 2005

Mr.P.T.S.Narendravan
for RR-3 and 4
in S.A.(MD)No.1270 of 2005

COMMON JUDGMENT

S.A.No.653 of 1999 has been filed by one P.Mariappan against the



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judgment and decree dated 01.02.1999 made in A.S.No.31 of 1998 on the file of the Subordinate Court, Pattukottai, which reversed the judgment and decree dated 27.04.1998 made in O.S.No.345 of 1992 on the file of the District Munsif Court, Pattukottai.

2. S.A.(MD)No.1270 of 2005 has been filed by the Executive Officer of Arulmigu Madyapureeswara Swamy Temple-Sadagoparamanujam, Parakkalakottai Village, Pattukottai Taluk, against the judgment and decree dated 28.04.2004 made in A.S.No.18 of 2003 on the file of the Additional District Judge/Fast Track Court No.2, Pattukottai, confirming the judgment and decree dated 19.03.2003 made in O.S.No.139 of 2000 on the file of the District Munsif Court, Pattukottai.

3. The suit in O.S.No.345 of 1992 was filed by one P.Mariappan, a worshipper of Arulmigu Sri Madyapureeswarasamy Temple at Parakkalakottai Village, before the District Munsif Court, Pattukottai, seeking a declaration that the suit schedule properties belong to the said Temple, and for a permanent injunction restraining the first defendant, Sadagopa Ramanujam, and the second defendant from alienating or encumbering the said properties. The trial Court decreed the suit. Aggrieved by the same, the first defendant-Sadagopa Ramanujam,

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preferred an appeal in A.S.No.31 of 1998 before the Subordinate Court, Pattukottai. The said appeal was allowed, thereby setting aside the decree of the trial Court and dismissing the suit filed by the said Mariappan. Aggrieved by the same, Mariappan preferred the present second appeal in S.A.No.653 of 1999 before this Court.

4. While so, the first respondent in both these second appeals is one and the same person, being the hereditary trustee of Arulmigu Madyapureeswarasamy Temple-Sadagopa Ramanujam. The said trustee filed a suit in O.S.No.139 of 2000 before the District Munsif Court, Pattukottai, seeking a permanent injunction restraining Mariappan and the Temple authorities from interfering with his peaceful possession and enjoyment of the suit properties. The said suit was decreed in favour of the plaintiff. Aggrieved by the same, Mariappan preferred an appeal in A.S.No. 18 of 2003 before the Additional District Judge/Fast Track Court No.2, Pattukottai, which was dismissed. Challenging the same, Mariappan filed S.A.(MD)No.1270 of 2005 before this Court.

5. Since both the Second Appeals involve the same parties and relate to the same subject matter concerning the properties of Arulmigu Madyapureeswarasamy Temple, they are taken up together for common



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disposal by this common judgment.

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6. The suit in O.S.No.345 of 1992 was filed by one P. Mariappan, a worshipper of Arulmigu Sri Madyapureeswaraswamy Temple, Parakkalakottai Village, on the following averments:

6.1. It is averred by the plaintiff that he is interested in the welfare and proper administration of the said Temple. The properties described in the plaint schedule, along with other related properties, are stated to be vested in the Temple. The first defendant is the hereditary trustee of the said Temple. It is further stated that, in the village title deed register, these properties are recorded as belonging to Arulmigu Naganatha Swamy Temple, which is a subsidiary temple under Arulmigu Sri Madyapureeswaraswamy Temple.

6.2. The grievance of the plaintiff is that the first defendant, without any authority, necessity, or benefit to the Temple, has attempted to alienate the suit properties to the second defendant as if they were his personal properties. The plaintiff has also referred to an earlier proceeding in O.S.No.85 of 1981 on the file of the Pattukottai Sub Court, wherein one S.R.Rengasamy Ayyangar sought a declaration of his right to administer the same properties as a hereditary co-trustee. The said suit was decreed

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in favour of the plaintiff therein, and since the first defendant in the present case was also a party to that proceeding, the decision therein is binding on him.

6.3. According to the plaintiff, the suit properties belong to the Temple, and therefore, the first defendant has no right to sell or alienate them. Despite the plaintiff's objection and his warning to the second defendant not to purchase the disputed properties, the second defendant expressed his intention to proceed with the purchase.

6.4. Hence, the present suit has been filed seeking a declaration that the suit properties are vested in the third defendant—Temple and for a permanent injunction restraining the defendants from alienating or otherwise dealing with the same. The Temple has been impleaded as the third defendant, though no relief has been sought against it.

7. The first defendant filed a written statement, which was adopted by the second and third defendants, contending as follows:

7.1. The allegation that the suit properties belong to the third defendant—Temple is denied. It is stated that the properties described as

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Item Nos.1, 3, 4, 5, 6, 7 and 8 in the plaint are the personal properties of the first defendant and are neither owned nor enjoyed by Arulmigu Naganatha Swamy Temple or Arulmigu Madyapureeswaraswamy Temple. The entries in the revenue or village registers do not confer title and cannot affect the personal ownership of the defendant.

7.2. It is further contended that O.S.No.85 of 1981 on the file of the Pattukottai Sub-Court, relied upon by the plaintiff, related to matters of Dharmakarthaship and has no bearing on the present properties. The said judgment was also appealed in A.S.No.156 of 1984 before this Court, and the decree therein was stayed in C.M.P.No.4009 of 1984. Hence, the said decision is not binding on the defendant or his personal properties.

7.3. The defendant further submits that the suit properties are not temple or dharmadayam properties and that he has full right to deal with or alienate his personal properties, including sale to the second defendant. The inclusion of the second and third defendants in the suit is unnecessary, and the suit suffers from non-joinder and misjoinder of parties.

7.4. It is also stated that the defendant's ancestors, including one



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Chinnaramanuja Ayyangar, were in enjoyment of these lands as personal properties from 1859, collecting rent from mirasidars. The properties were later transferred under valid documents and were held as private lands under Tamil Nadu Act 26 of 1948, and title deeds were issued in their favour. In O.P.No.43 of 1956 on the file of the District Court, Thanjavur, it was held that the said properties were the personal properties of the defendant's ancestors. Pursuant thereto, title deeds were granted and land registration entries were made in the defendant's name.

7.5. It is further stated that enquiries by the Hindu Religious and Charitable Endowments Department, as well as the Tahsildar, Kumbakonam, and the Land Reforms Officer, Mannargudi, confirmed that the properties are private lands of the first defendant. The defendant has been paying land revenue and agricultural income tax thereon, has raised coconut plantations, and has also mortgaged the lands with Canara Bank, Adirampattinam, for obtaining loans. The defendant contends that the suit is motivated by personal animosity and instigation by local enemies, that the plaintiff has no locus standi to file or continue the suit, and that the claim is barred by res judicata in view of the decision in O.P.No.43 of 1956. Hence, the suit is liable to be dismissed.

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8. During the course of trial in O.S.No.345 of 1992, P.W.1 (plaintiff) and P.W.2 were examined and Exs.P-1 to P-23 were marked. On the side of defendants, D.Ws.1 and 2 were examined and Exs.D-1 to D-21 were marked.

9. The trial Court, considering the oral and documentary evidence, decreed the suit in O.S.No.345 of 1992, against which, the first defendant-Sadagopa Ramanujam preferred First Appeal in A.S.No.31 of 1998, which was allowed, against which, the plaintiff-Mariappan has preferred the Second Appeal in S.A.No.653 of 1999 before this Court.

10. Pending the Second Appeal in S.A.No.653 of 1999, the said Sadagopa Ramanujam, who was the first defendant in O.S.No.345 of 1992, filed O.S.No.139 of 2000, seeking a decree of permanent injunction restraining the defendants and their agents from interfering with his peaceful possession and enjoyment of the suit properties, and for costs, on the following averments:

10.1 The plaintiff claimed that the suit properties are his personal and self-acquired properties situated at Parakkalakottai Village, Pattukottai



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Taluk, and that he and his ancestors have been in continuous possession and enjoyment of the same for more than four decades. It was stated that his ancestor, Chinnaramanuja Ayyangar, had purchased the lands from the local mirasidars on 24.11.1859 for personal use and enjoyment. Subsequently, the properties were divided among the family members and mortgaged by the plaintiff's father and ancestors under valid documents dated 24.12.1945.

10.2 When the lands in the village were taken over by the Government under the provisions of the Tamil Nadu Act 26 of 1948, separate pattas were issued in the name of the plaintiff, thereby recognizing his ownership. The plaintiff has also mortgaged the suit properties with Canara Bank, Adirampattinam, for obtaining agricultural loans, and with the financial assistance so obtained, he developed the lands by planting coconut trees, converting them into a well-maintained coconut grove.

10.3. The plaintiff further stated that his possession and ownership

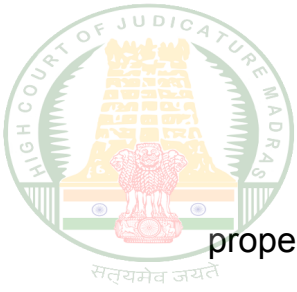


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were upheld in A.S.No.31 of 1998 on the file of the Subordinate Court, Pattukottai, and that the judgment in his favour was challenged in S.A.No. 653 of 1999, which was pending. The Hindu Religious and Charitable Endowments Department had, after due enquiry, recognized him as the hereditary trustee of the Temple. Despite this, the defendants attempted to interfere with his peaceful possession and tried to trespass into the suit lands on 02.06.2000. Hence, the present suit was filed seeking a decree of permanent injunction to protect his possession and enjoyment of the suit properties.

11. The first defendant–Temple filed a written statement contending as follows:

The allegation that the suit properties are the personal properties of the plaintiff is denied. The suit properties, along with other lands, belong to Arulmigu Sri Madyapureeswaraswamy Temple, Parakkalakottai Village, and are temple properties vested in the deity. The plaintiff, though claiming to be in possession, is only a hereditary trustee of the Temple and cannot claim ownership or any personal right over the temple properties. The alleged purchase by his ancestors and the subsequent transactions pleaded are not true and, in any event, do not confer personal title upon the plaintiff. It is further contended that the grant of patta or the mortgage of the



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properties with Canara Bank does not alter the character of the lands, which continue to remain temple properties. The plaintiff, being only in possession as trustee, cannot claim adverse or personal possession against the Temple. The plea of long possession, therefore, is untenable. The suit is false, misconceived, and not maintainable either in law or on facts, and has been filed only to create a personal claim over temple properties. Hence, the first defendant prayed that the suit be dismissed with costs.

12. The second defendant–Mariappan filed a written statement contending as follows:

12.1. The second defendant contended that the plaintiff's claim is false, fraudulent, and unsustainable in law. The suit properties never belonged to the plaintiff or his ancestors but are the absolute properties of the first defendant, Arulmigu Sri Madhyapureeswarar Temple, Parakkalakottai, which has been in continuous possession and enjoyment thereof. During the Cauvery–Mettur Irrigation Project and subsequent land survey and registration, the lands were classified as Inam Nanjai and registered in the name of the Temple, not the plaintiff. Hence, the plaintiff's assertion of personal ownership is baseless.

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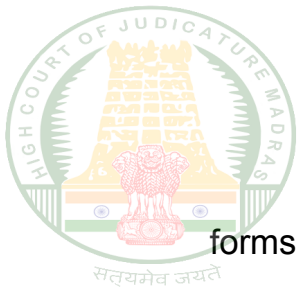
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12.2. In O.S.No.345 of 1992, the plaintiff, then acting as the hereditary trustee of the Temple, represented and defended the Temple, yet simultaneously claimed the very same properties as his own ancestral lands. The counter-claim made by him in that suit was purely personal and not on behalf of the Temple. The plaintiff has thus attempted to misuse his hereditary trusteeship to convert temple lands into personal property.

12.3. The second defendant further stated that the suit properties were originally given to the Temple by the plaintiff's ancestor, Chinna Ramanuja Ayyangar, while serving as hereditary trustee. In the family partition of 20.09.1895, the suit lands were deliberately excluded, as they were recognized as Temple properties. Later transactions, including the sale by Thiruvengata Ayyangar in 1895 and the transfer of management rights in 1925, related only to the right of management and not to ownership. The plaintiff's family continued as hereditary trustees but never held title to the lands.

12.4. During the land settlement proceedings under Tamil Nadu Act 26 of 1948, the plaintiff, being then the hereditary trustee, fraudulently obtained patta in his own name instead of the Temple's. This manipulation

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forms the basis of his false ownership claim in the present suit and in O.S.No.345 of 1992. In truth, the properties are temple lands and continue under the administration of the Executive Officer appointed by the Hindu Religious and Charitable Endowments Department.

12.5. It is also contended that the earlier judgment in O.P.No.43 of 1956 relied upon by the plaintiff was obtained by concealing material documents, including the partition award dated 20.09.1895, and therefore cannot operate as res judicata under Section 44 of the Indian Evidence Act.

12.6. The second defendant denied that the plaintiff ever mortgaged the suit lands or planted coconut trees with his own funds. Any such improvements were made using temple income. The alleged incident of interference on 02.06.2000 is false, as the plaintiff has been residing permanently in Chennai. The plaintiff and his ancestors, having only managed the properties as hereditary trustees, have no personal or ownership rights. Accordingly, the second defendant prayed that the suit be dismissed with costs.

13. During the course of trial in O.S.No.139 of 2000, P.W.1 (plaintiff)

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was examined and Exs.P-1 to P-24 were marked. On the side of defendants, D.Ws.1 to 4 were examined and Exs.D-1 to D-24 were marked.

14. The trial Court, considering the oral and documentary evidence, decreed the suit in O.S.No.139 of 2000, against which, the first defendant-preferred First Appeal in A.S.No.18 of 2003, which was dismissed, against which, the first defendant-Temple has preferred the present Second Appeal in S.A.(MD)No.1270 of 2005 before this Court.

15. This Court, by order dated 25.01.2006 in S.A.(MD)No.1270 of 2005 formulated the following substantial questions of law:

- "(i) Whether the Courts below are right in placing the burden on the appellant/defendant that the appellant had not proved his possession to grant the decree for plaintiff ? and*
(ii) Whether the Courts below are right in relying the Exs.A-9 and A-10 which are not valid as per Section 44 of the Indian Evidence Act ?"

16. This Court, by order dated 30.04.1999, formulated the following substantial questions of law in S.A.No.653 of 1999:

- (i) When the documents, viz., family partition, Award*



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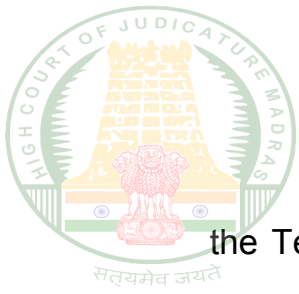
and ROR coupled with the admission of the first defendant, show that the properties does not belong to the first defendant exclusively, is the learned Subordinate Judge right in dismissing the suit ?

(ii) Whether the decision rendered in LAOP.No.43 of 1956 on the file of the District Court, Thanjavur, would be binding on the Temple, when the said decision was obtained in collusion between the first defendant and Assistant Commissioner, HR & CE ? and

(iii) Is not the decision rendered in O.S.No.85 of 1981 on the file of the Sub-Court, Thanjavur, which was confirmed in A.S.No.156 of 1984 on the file of the High Court, Madras, would bind the first plaintiff on the principles of res-judicata and estoppel ?

17. Though there are two separate suits in O.S.No.139 of 2000 and O.S.No.345 of 1992, both the suits arise out of the same properties and claim of the rights of the parties, is also same and therefore, both these appeals are taken up together and disposed of by this common judgment.

18. Learned counsel for the appellant in S.A.No.653 of 1999 (Mariappan) submitted that the appellant had filed the suit as a worshipper of the Temple, with the intention of ensuring that the Temple's properties are properly protected. The first defendant being the hereditary Trustee of



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the Temple, instead of protecting the Temple properties, claimed that the suit schedule properties are absolute properties, inspite of the fact that the suit schedule properties are registered as Temple properties in ROR. The appellant was not in possession and without producing the documents relating to the suit schedule properties, as he is only worshipper of the Temple, the first respondent-hereditary Trustee of the Temple might have been in possession of those documents, and he did not produce the same in order to see that the Temple's title should not be declared. Only in the earlier proceedings, the first respondent represented the Temple as hereditary Trustee of the Temple and failed to safeguard the interest of the Temple and acted adversely to the interest of the Temple in order to grab the Temple's properties. Even though the first respondent's ancestors originally purchased the suit schedule properties, and have dedicated the same in favour of the Temple, that is the reason why there was family partition in the first respondent's family under Ex.A-11 (Award dated 20.09.1895). The suit schedule properties were not allotted in favour of any of the family members and in the subsequent ROR, under Ex.A-1, it has been registered as the Temple's properties and it has remained unchallenged, even though the first defendant continued to be the hereditary Trustee of the Temple and claimed absolute right over the suit schedule properties. The entries in the ROR proceedings, are legally

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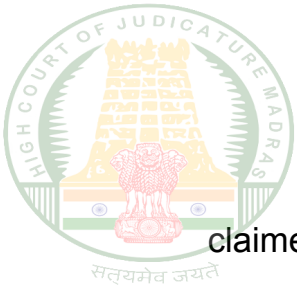


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acceptable proof of evidence to show that the Temple's right and title over the properties got registered as Temple's properties, unless it is proved otherwise.

19. It is further contended by the learned counsel for the appellant in S.A.No.653 of 1999 that in the earlier land acquisition proceedings in O.P.No.43 of 1956 on the file of the District Court, Thanjavur, the first respondent has only contested the case as hereditary Trustee of the Temple against his mother's claim over the properties acquired and as such, he has not filed any document, except ROR proceedings to prove the title of the Temple and as such, the said judgment deciding the properties, is not the Temple's properties and they are only the properties belonging to the first respondent's family, and it is nothing but collusive decree at the instance of the first respondent, and as such, the said judgment and decree marked as Exs.B-6 and B-7, dated 24.11.1964 will not operate as 'res-judicata', as decided by the first appellate Court. The findings of the trial Court are fairly justifiable in the interest of justice. Likewise, Ex.B-19 order, dated 08.01.1991 of the H.R & C.E Department, is not binding the Civil Court to decide the Temple's right over the suit schedule properties, especially when the said proceedings are defended only by the first respondent as hereditary Trustee of the Temple, and the first respondent might not act fairly and properly, on behalf of the Temple, as he has

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claimed absolute right over the suit schedule properties adverse to the interest of the Temple.

20. Learned counsel for the appellant in S.A.No.653 of 1999 further referred to Ex.A-19 being the plaint, dated 02.03.1981 in O.S.No.85 of 1981 on the file of the Sub-Court, Pattukottai, the previous suit among the co-trustees, wherein the present suit schedule properties were shown as suit B-schedule properties and claimed to be the Trust properties of the Temple and the first respondent herein, who was the first defendant in the above said previous suit, had filed written statement, dated 16.11.1981, which is marked as Ex.A-20 before the trial Court and did not dispute the plaint averment that the suit properties are Trust properties, remained ex-parte and ultimately, the said suit's decree declaring the plaintiff in that suit, as joint Trustee of the Trust properties. The said judgment and decree were confirmed by this Court in the First Appeal filed by the first respondent in A.S.No.156 of 1984, by judgment and decree, dated 10.01.1995.

21. Learned counsel for the appellant further submitted that this Court is having inherent power as the custodian of the minor idols, and as such, having every right to see that the minor's properties should not be swindled away by any person under the *parens-patriae* jurisdiction and it is

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just and necessary to set aside the judgment and decree of the first appellate Court and to restore the judgment and decree of the trial Court and to allow the present Second Appeal in S.A.No.653 of 1999.

22. Learned counsel for the appellant (Arul Mighu Madyapureeswara Swamy Temple, represented by its Executive Officer Parakkalakottai Village, Pattukottai Taluk), contended that the first respondent has not proved his possession in the suit properties on the date of filing of the suit in individual capacity and his possession is only as hereditary Trustee of the Temple. The suit properties absolutely belong to the Temple and Ex.B-20 and the other documents clearly prove the possession of the Temple even on the date of filing of the suit. The first respondent filed the suit only pending S.A.No.653 of 1999. The trial Court ought to have granted decree for injunction against the true owner and the suit also is sub-judice. The Temple disputed the possession and claims title to the suit properties and the suit filed by the first respondent without declaration of title, ought to have been dismissed and the suit filed by the first respondent, without the prayer of declaration of title, is not maintainable. The order passed in C.M.P.No.579 of 2000 in O.S.No.653 of 1999 does not give any right to the first respondent to file the suit without proper relief and the Courts below are merely carried away by the observations of the

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order passed by this Court, and had granted the decree of injunction without considering the maintainability of the suit and possession by the first respondent as the plaintiff, has not been proved.

23. Learned counsel for the Temple further submitted that it is only the plaintiff, who has filed the suit, and he has to prove the possession and the Courts below decided based on the evidence and documents of the appellant and came to the wrong conclusion that the Temple failed to prove possession and granted decree of injunction to the first respondent, which is not sustainable. The possession altered by the first respondent is on behalf of the Temple as hereditary Trustee, which cannot be put against the Temple contrary to the documents.

24. Learned counsel further contended that in the earlier suit filed by the second respondent, the Temple was represented by the first respondent as hereditary Trustee and he is also defending the suit, and failed to file any separate written statement on behalf of the Temple, but adopted the statement filed, which goes contrary to the stand obtained in the decree by fraud, which is now pending before this Court in S.A.No.653 of 1999. The first respondent who is the hereditary Trustee and who is in possession of all the records, failed to produce the same before the Court

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in the earlier suit and the first respondent cannot rely on any of the findings in support of his claim for possession. In the partition Award, dated 20.09.1895, the suit properties were not included for partition by the sons of the Chinna Ramanuja Iyengar, since the properties were given by their father to the Temple and the members of the family will be the hereditary Trustees of the Temple. The first respondent is not entitled for decree of injunction.

25. Learned counsel for the appellant further stated that in the earlier suit in O.S.No.85 of 1981, the first respondent did not dispute that the properties are Temple properties, which was confirmed by this Court in the appeal in A.S.No.156 of 1984. Therefore, the first respondent is not in possession as individual capacity, but only as hereditary Trustee of the Temple. The Patta was obtained by playing fraud on the Temple and documents filed by the first respondent, were obtained by taking advantage that he was the hereditary Trustee of the Temple and those documents cannot be relied on by the first respondent to establish his right. The first respondent has not proved or pleaded as to from what date the properties are in independent possession and how he obtained possession from the Temple and from when and from whom he obtained possession, adverse to the Temple. Till 1992, the Executive Officer was appointed by the first

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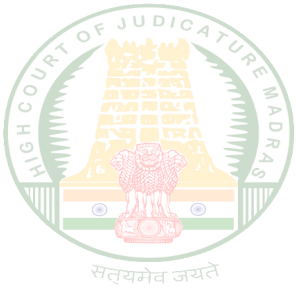


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respondent in administration of the Temple properties as hereditary Trustee and the dispute against the Temple was determined by him as hereditary Trustee, and obtained adverse finding against the Temple. Therefore, the first respondent has not approached the Court with clean hands. Only in the year 1992, after the Executive Officer was appointed, the administration of the Temple was handed over to the Temple and in the absence of proof by the first respondent, whether the suit properties belong to the Temple or to the first respondent, the decree granted by the trial Court in O.S.No.139 of 2000 is erroneous,

26. Learned counsel for the appellant submitted that the appellant had clearly proved the possession through Exs.B-1 to B-4 and the decision of the Temple and the evidence in support of the same, was not controverted. The order in O.P.No.43 of 1956 was obtained by suppressing the partition Award, dated 20.09.1895 and the order was obtained by playing fraud, which is not binding on the Temple as per Section 44 of the Indian Evidence Act and the same is not valid. Section 44 reads as follows:

"Section 44: Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved: Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under sections 40, 41 or 42 and which has been proved by the adverse party, was delivered by a



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court not competent to deliver it, or was obtained by fraud or collusion. "

27. Therefore, the trial Court failed to consider the earlier proceedings and also the nature of possession of the first respondent and erroneously decreed the suit, when especially the Temple denied the title of the first respondent and the second respondent has also filed the suit and claiming that the suit properties belong to the Temple and without filing or amending the plaint for declaration and the suit was simply filed for injunction. The trial Court erroneously granted the decree, when the appellant filed appeal before the first appellate Court, the first appellate Court also failed to consider the facts and erroneously considered the judgment of the trial Court. At any rate, the properties belong to the Temple and the first respondent is in possession only as a hereditary Trustee and not in the individual capacity. Therefore, the learned counsel for the appellant in S.A.(MD)No.1270 of 2005 submitted that the judgment and decree of both the Courts below may be set aside and S.A.(MD)No.1270 of 2005 may be allowed.

28. Learned counsel for the first respondent (Sadagopa Ramanujam) submitted that the suit schedule mentioned properties originally belonged

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to the ancestors of the first respondent and they were in absolute possession and enjoyment of the suit properties. The suit properties belong to one Chinna Ramanuja Iyengar, who has purchased the suit schedule properties under the sale deed, dated 24.01.1859 and was in enjoyment of the suit properties. The suit properties absolutely belongs to the first respondent and they are in absolute possession and enjoyment of the first respondent and his predecessor(s)-in-interest. Further, the Temple claimed the right over the suit schedule properties in the earlier land acquisition proceedings in O.P.No.43 of 1959 and they have failed in the suit proceedings.

29. Learned counsel for the first respondent further contended that the suit properties were mortgaged by the first respondent's father on 24.12.1945 and his father mortgaged the suit schedule properties with the Canara Bank in respect of the agricultural land and planted coconut trees and formed coconut grove therein. Further, in the other suit in O.S.No.345 of 1995 filed by the appellant in S.A.No.653 of 1999 and the decree passed therein in favour of the Temple, he started to interfere with the possession of the first respondent, and as a result, the first respondent filed a suit in O.S.No.139 of 2000.



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30. Learned counsel for the first respondent also contended that the other suit in O.S.No.345 of 1992 was filed only for the relief of declaration and permanent injunction restraining the first respondent from alienating the suit schedule properties without seeking the prayer for recovery of possession and as such, the suit in O.S.No.345 of 1992 is not sustainable.

31. Learned counsel for the first respondent also contended that in view of the interference by the appellant with respect to the respondents' possession, the respondent(s) have filed an application for interim injunction in C.M.P.No.579 of 2000 in S.A.No.653 of 1999, in order to protect their possession, but however, the same was rejected, as they cannot seek any relief of permanent injunction in the Second Appeal. As a result, since the respondent(s) planted coconut saplings and was doing agricultural operations in the suit schedule properties and only to protect the same, he has filed the present suit being the subject matter of appeal in O.S.No.139 of 2000.

32. Learned counsel for the first respondent further submitted that in O.P.No.43 of 1956, a claim petition was filed by Udaya Achi and she claimed that she is entitled to compensation amount awarded in the land acquisition proceedings. The first defendant contested as the hereditary Trustee of the Temple, but claimed that item Nos.2, 3, 8 and 9 in the

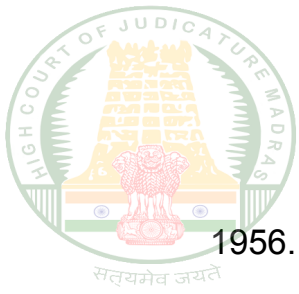
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present suit, are his personal properties. Even though the trial Court has given finding that the suit properties belong to Arulmighu Naganatha Swamy Temple and as against them, appeal was filed before this Court. This Court remitted the matter back to the trial Court and since the first respondent claimed his private properties, H.R. & C.E. Department was impleaded as a party and an enquiry was conducted afresh and a finding was rendered to the effect that item Nos.2, 3, 8 and 9 do not belong to the Temple and they are private properties of the first respondent. Without any records, the appellant simply stated that the order in O.P.No.43 of 1956 was fraudulently obtained by the first respondent. Even though the trial Court accepted the case of the appellant and Ex.B-6 was fraudulently obtained and negated the issue of res-judicata, which is not sustainable. The trial Court totally failed to note that the order in O.P.No.43 of 1956 has become final, since neither the Temple, nor the H.R. & C.E. Department has filed appeal against the order passed in O.P.No.43 of 1956. As per the said order, the first respondent alone is the owner of the above said properties. Though the trial Court merely on presumption, has given a wrong conclusion stating that the first respondent and Joint Commissioner of H.R. & C.E. Department collusively obtained the order, but the same is without any basis. Moreover, the trial Court is not the appellate authority to decide or discuss about the order passed by the petition in O.P.No.43 of

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1956. Long back, it has reached its finality.

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33. It is further submitted that the learned counsel for the first respondent that the finding of the trial Court is beyond the scope of the case and the order passed in O.P.No.43 of 1956 in favour of the first respondent, was brushed aside by the trial Court, particularly when the order in O.P.No.43 of 1956 has not been challenged by way of appeal, either by the Temple or by the H.R. & C.E. Department. The finding of the trial Court is erroneous and therefore, the first appellate Court has rightly considered and set aside the same. There is no merit in the present Second Appeals on this point. The first appellate Court elaborately discussed the issue and rightly came to the conclusion that the suit filed by the appellant in S.A.No.653 of 1999 is hit by the principle of res-judicata on the ground that after impleading the H.R. & C.E. Department as party to the proceedings in O.P.No.43 of 1956, the H.R. & C.E. authority has to produce the documentary evidence to prove that the suit properties belong to the Temple. No document has been produced before the Courts below and the Court came to the conclusion that the said properties are private properties of the first respondent. Since no appeal was filed as against the order in O.P.No.43 of 1956, the said order has become final. The appellant failed to prove that the order in O.P.No.43 of 1956 was obtained collusively

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and fraudulently. Further, the first appellate Court rightly re-appreciated the entire materials and rendered a finding stating that the present suit is barred by the principles of res-judicata.

34. Learned counsel for the first respondent further submitted that the prayer in the suit is for declaration of title to the suit properties and injunction not to alienate by the respondents 1 and 3. It is the case of the appellant that the suit properties belong to the Temple. Since the suit is decreed in favour of the appellant, the first respondent has filed appeal before the first appellate Court and the same was allowed.

35. It is further contended by the learned counsel for the first respondent that as per the findings of the first appellate Court, the suit properties are private properties of the first respondent. If really the Temple is affected by the first appellate Court's order, the fourth respondent ought to have filed the Second Appeal separately and since the fourth respondent did not file any Second Appeal separately, it is sufficient to presume that the fourth respondent has no interest or right over the suit properties. The Temple did not show any interest over the suit properties. The appellant has no locus-standi to maintain the Second Appeal. The appellant has failed to file the suit declaring that the suit properties belong to the Temple,

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naturally, the Temple has to support the case of the appellant and the appellant has to establish independently by marking the documentary evidence as well as oral evidence to prove the title to the suit properties. Ex.A-1 being the RoR register, has been marked. The RoR register is not the title document, though it is stated in the RoR that the suit properties belong to the Arul Mighu Naganathaswamy Temple. Absolutely, there is no document to show that the properties have been dedicated to the Temple. If it is really dedicated to the Temple, there must be an entry to that effect in the property Register of the Temple. The appellants had not taken any steps to send for the documents relating to the Temple properties, which is the Register of the Temple properties and from Ex.A-1, in the RoR, it has been mentioned as Arul Mighu Naganatha Swamy Temple, but the relief sought for in the suit is to declare that the suit properties belong to the Temple, namely Arul Mighu Madhyapureeswarar Swamy Temple. No explanation has been given by the appellant in the pleadings to that effect. Moreover, the first respondent categorically stated that there is no entry in the Temple properties registered regarding the suit properties. If that is so, it is the duty of the appellant to prove it.

36. As already stated supra, Ex.A-1 ROR alone is not sufficient to prove the title to the suit properties. Except Ex.A-1, no other document was

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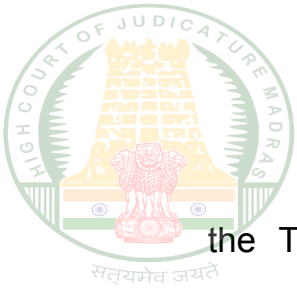
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marked on the side of the appellant to prove that the Temple is in possession and enjoyment of the suit properties.

37. At this juncture, it is stated by the learned counsel for the first respondent that the appellant has not proved with regard to the relief prayed for in the suit, which is not maintainable. The appellant had admitted that the first respondent is in possession and enjoyment of the suit properties, and hence, the appellant ought to have sought for the relief of recovery of the suit properties. In the absence of the same, the suit itself is not maintainable, and on this score also, the Second Appeals are liable to be dismissed.

38. It is further contended by the learned counsel for the first respondent that it is the duty of the plaintiff to establish his case independently and the plaintiff has failed to prove the same. On the other hand, the first respondent marked several documents to prove that the suit properties are private properties of the first respondent. Ex.B-2 sale deed was executed in favour of Chinna Ramanuja Iyengar, who is the ancestor of the first respondent who purchased the properties in the year 1859. The suit properties are the other properties purchased under Ex.B-2. There is absolutely no document to show that the suit properties are dedicated to

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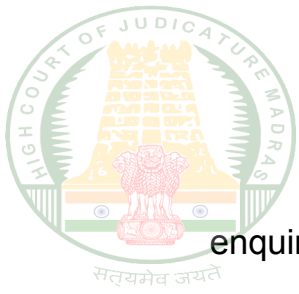
S.A.No.653 of 1999 and S.A.(MD)No.1270 of 2005

the Temple. Even though there is no entry in the property Register maintained by the Temple, but the said Register has not been marked by the appellant as an exhibit.

39. It is further contended that P.W.4 in his evidence has categorically stated that the Temple is maintaining the property Register, but the appellant did not take any steps to mark the same. Ex.B-5 is the mortgage deed of the year 1945 and it shows that the father of the first respondent mortgaged the suit properties with borrowed money, and it is sufficient to prove that the first respondent enjoyed the suit properties as private properties. Even in Ex.B-19, the order was passed by the H.R. & C.E. Department as per the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948.

40. It is further contended by the learned counsel for the first respondent that the suit village has been taken over by the Government and all the properties vested with the Government, and therefore, the Settlement Tahsildar conducted enquiry and issued Ryotwari Patta to the first respondent for most of the suit properties. If really the Temple is aggrieved by the said properties, the Temple could have filed appeal challenging the same. Further, the H.R. & C.E. Department conducted

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enquiry and made it clear that the suit properties are the exclusive properties of the first respondent.

41. It is also contended on behalf of the respondents that Exs.B-20 to 24 show the agricultural income and the lower appellate Court has passed an order stating that the land belongs to the first respondent and while that being so, it is not possible to decide that the land(s) belong to the Temple. In Exs.B-6 and 7 being the fair and decretal order passed in the land acquisition proceedings in L.A.O.P.No.43 of 1956, it has been categorically held that some of the items of the suit properties are private properties of the first respondent and it is also been discussed in the issue relating to res-judicata.

42. It is also contended by the first respondent that the appellant has failed to furnish the present survey number and the correct boundaries and it has been pointed out by the first respondent in his written statement. In spite of that, the appellant has not taken any steps to amend the details of the suit schedule properties. On the other hand, the documents filed by the first respondent certainly reveal that the survey number and the boundaries in the suit properties are correct. Apart from the above said reasons, the most important aspect is that the Temple has adopted the

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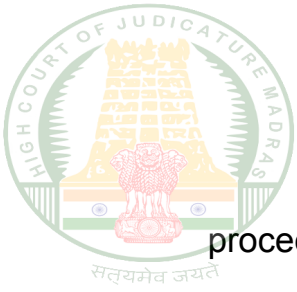
written statement filed by the first respondent. In such circumstances, it is crystal clear that the suit properties belong to the first respondent and hence, the Second Appeals are liable to be dismissed. Since the Temple adopted the written statement filed by the first respondent, the Temple did not file any Second Appeal separately, challenging the judgment and decree of the first appellate Court.

43. The fourth respondent has suffered a decree and hence, the learned counsel for the first respondent submitted that both the Second Appeals are liable to be dismissed. The judgment and decree passed by the first appellate Court, are liable to be restored.

44. Heard the learned counsel for the appellant in both the appeals, the learned counsel appearing for the first respondent in both the appeals, and the learned counsel appearing for the other respondents in both the matters and perused the materials available on record.

45. The specific case of the appellants in both the Second Appeals is that the suit properties belong to the Temple. The first respondent, as the hereditary trustee, was in possession of the suit properties. In the earlier

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proceedings also, it is admitted that the properties belong to the Temple.

However, taking advantage of his position as hereditary trustee, he colluded in the earlier proceedings, created documents, and attempted to alienate the properties to the third respondent. Therefore, as a devotee and worshipper, the appellant in S.A. No.653 of 1999 filed O.S. No.345 of 1992 against respondents 1, 2, and 4. The trial court rightly appreciated the evidence and decreed the suit, but the first appellate court erroneously set aside the judgment and decree of the trial court, compelling the appellant to file the Second Appeal.

46. Pending the Second Appeal in S.A.No.653 of 1999, the first respondent filed O.S.No.139 of 2000 for injunction, and the same was decreed. Therefore, the appellant in S.A.(MD)No.1270 of 2005 filed the First Appeal in A.S. No.31 of 1998, which was dismissed, and hence, the Temple filed the Second Appeal in S.A.(MD)No.1270 of 2005 before this Court.

47. Some of the suit properties and parties are common in both the present Second Appeals. Since the disputes are also similar, both the Second Appeals were taken up together for consideration, heard, and disposed of by this common judgment.

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48. The specific case of the first respondent is that the properties belong to their ancestors, who purchased them way back in 1825. Their successors have since been in enjoyment of the properties, which are claimed to be the absolute properties of the first respondent. The respondents contend that the properties are not Temple properties and that the first respondent is not in possession as hereditary trustee but in his individual capacity. In several earlier proceedings also, it was declared that the properties are the absolute properties of the first respondent.

49. As far as the first substantial question of law in S.A. No.653 of 1999 is concerned, admittedly, the suit properties were purchased by the ancestors of the first respondent, namely one Chinna Ramanuja Iyengar, under a Karu-olai dated 24.01.1859. The Temple now claims rights over the suit properties, stating that they were dedicated to the Temple. The first respondent, being the hereditary trustee of Arulmighu Madyapureeswara Swamy Temple, was in possession of the properties. Since he attempted to alienate the properties to third parties, the appellant, as a worshipper of the Temple, filed the suit to protect the Temple's properties. The first respondent has not denied being the hereditary trustee. The suit properties are also registered as Temple properties in the ROR proceedings. Since

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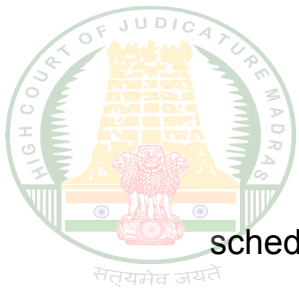
S.A.No.653 of 1999 and S.A.(MD)No.1270 of 2005

the appellant, being a devotee, was unable to produce any documents except Ex.A-1 (ROR book), and since the first respondent, who was in possession of all the relevant documents, failed to produce them, the trial court rightly relied on the available records.

50. In earlier proceedings, it was shown that the ancestors of the first respondent originally purchased the properties and dedicated them to the Temple. Though the appellants could not produce a Trust Deed or Deed of Dedication, the ROR entries show the properties as Temple properties. Under Ex.A-11 (Award dated 20.09.1895), the suit schedule properties were not allotted to any family member, indicating their dedication to the Temple. The entries in Ex.A-1 have not been altered till the date of the suit. If the entries were incorrect, the first respondent, as hereditary trustee, ought to have taken steps to correct them, which he did not. Thus, the ROR entries are legally acceptable, and being a worshipper, the appellant was justified in filing the suit to protect the Temple's properties.

51. As contended by the appellants, the status of the first respondent as hereditary trustee was admitted in earlier proceedings, particularly in O.S.No.85 of 1981 before the Sub-Court, Pattukottai, where the dispute was between co-trustees. The present suit properties were shown as B-

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schedule properties and claimed as Trust properties of the Temple. The first respondent, who was the first defendant in that suit, filed a written statement on 16.11.1981 (marked as Ex.A-20) and did not dispute that the properties were Trust properties. He remained ex parte, and the suit was decreed. The judgment and decree were confirmed in A.S.No.156 of 1984 by this Court on 10.01.1995. Therefore, it stands proved that the first respondent was the hereditary trustee and held possession of the properties only in that capacity.

52. In civil cases, the burden of proof is based on the preponderance of probabilities and not on proof beyond reasonable doubt, as in criminal cases. In that view, the trial court rightly appreciated the oral and documentary evidence in O.S.No.345 of 1992 and decreed the suit. However, the first appellate court failed to consider the facts properly and erred in setting aside the trial court's decree.

53. Considering the ROR entries and the first respondent's admissions in earlier proceedings, the non-production of certain documents by the appellant does not vitiate his case, since the first respondent was in possession of the relevant records as hereditary trustee.



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54. A reading of the family partition deed (Ex.A-11 dated 20.09.1895), the ROR (Ex.A-1), and Ex.A-20 shows that the properties are not the exclusive properties of the first respondent. He enjoyed them only in his capacity as hereditary trustee and not as an absolute owner. Accordingly, the first substantial question of law in S.A.(MD)No.1270 of 2005 is answered in favour of the appellant.

55. As regards the second substantial question of law in S.A.(MD)No.1270 of 2005, there were land acquisition proceedings in L.A.O.P.No.43 of 1956 before the Principal District Court, Thanjavur, wherein the father of the first respondent filed a claim, and the first respondent contested it only as hereditary trustee, not in his individual capacity.

56. The Temple administration was taken over by the Executive Officer appointed in 1992, and prior to that, the first respondent administered the properties. The trial court rightly held that the first respondent colluded with the Assistant Commissioner, and such collusive actions cannot bind the Temple. Since the properties belong to the Deity, any alienation by the hereditary trustee is void. Hence, the second substantial question of law in S.A.(MD)No.1270 of 2005 is answered

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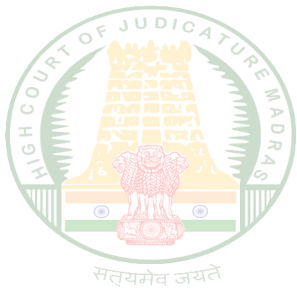
against the first respondent.

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57. Regarding the third substantial question of law in S.A.No.653 of 1999, it is evident from O.S.No.85 of 1981 and A.S.No.156 of 1984 that the first respondent had earlier accepted the properties as Temple Trust properties. Having done so, he cannot now take a contrary stand. On a reading of the pleadings, evidence, and prior records, it is evident that the properties belong to the Temple, and the first respondent, as hereditary trustee, wrongfully claimed them as his own. Hence, the judgment and decree of the first appellate court in A.S.No.31 of 1998 are set aside, and the trial court's decree in O.S.No.345 of 1992 is restored.

58. Admittedly, the suit properties originally belonged to the ancestors of the first respondent, but were subsequently dedicated to the Temple. The appellant filed the suit as a worshipper to prevent alienation. The first appellate court erred in reversing the well-reasoned decree of the trial court. Pending the earlier appeal, the first respondent filed O.S. No. 139 of 2000 for bare injunction without seeking declaration of ownership. The burden of proof lay on him to prove ownership, which he failed to do. The courts below erred in shifting the burden to the appellants.

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59. Since the appellants admitted that the first respondent was in possession only as hereditary trustee, it was for the first respondent to prove absolute ownership, which he did not. Accordingly, all substantial questions of law in both appeals are answered in favour of the appellants.

60. Although the properties were initially owned by the first respondent's ancestors, they were later dedicated to the Temple, as confirmed by Ex.A-1 and the ROR entries. If the first respondent truly believed they were his personal properties, he should have rectified the entries in the Temple Register, which he never did.

61. In earlier proceedings in O.S. No.85 of 1981 and A.S. No.156 of 1984, the first respondent did not deny that the properties were Temple/Trust properties. He cannot now adopt a contrary position.

62. Both the lower courts relied on Exs.A-9 and A-10 and decreed the matter, though the appellants were not parties to those proceedings. The land acquisition case (L.A.O.P. No.43 of 1956) also shows that the first respondent did not protect the Temple's interests. On a conjoint reading of

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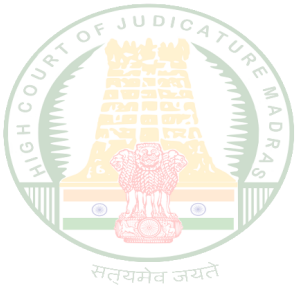
S.A.No.653 of 1999 and S.A.(MD)No.1270 of 2005

Exs.B-1, B-2, and B-11, it is evident that the properties belong to the Temple, and the earlier decrees are erroneous.

63. The trial court in O.S.No.345 of 1992 rightly appreciated the oral evidence and documents, whereas the first appellate court failed to reappraise them properly. Hence, the judgment and decree of the first appellate court are erroneous and are set aside. The trial court's decree in O.S. No.345 of 1992 is restored, and S.A.No.653 of 1999 is allowed.

64. S.A.(MD)No.1270 of 2005 is also allowed. The judgments and decrees of both the lower courts are set aside. Any subsequent alienation will not bind the Temple. The Commissioner of the Tamil Nadu Hindu Religious and Charitable Endowments Department, Chennai, is directed to take appropriate steps to recover possession of the suit properties and maintain them in the interest of the Deity.

65. The substantial questions of law in both Second Appeals are answered in favour of the appellants and against the respondents.



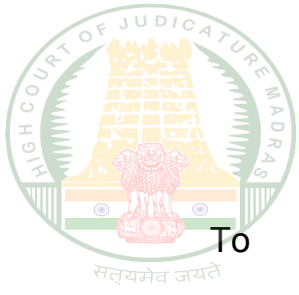
S.A.No.653 of 1999 and S.A.(MD)No.1270 of 2005

66. In the result, both the Second Appeals are allowed. The judgments and decrees of the first appellate court in A.S.Nos.31 of 1998 and 18 of 2003 are set aside. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/no
Speaking Order: Yes/no
Neutral Case citation: Yes/no

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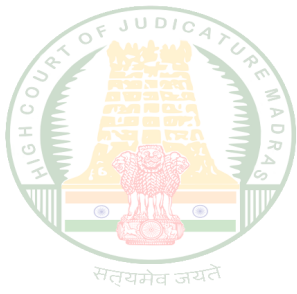


S.A.No.653 of 1999 and S.A.(MD)No.1270 of 2005

To

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1. The Additional District Judge (Fast Track Court No.2), Pattukottai.
2. The Subordinate Judge,, Pattukottai.
3. The District Munsif, Pattukottai.
4. The Record Keeper,
V.R. Section, Madurai Bench of Madras High Court, Madurai.
5. The Executive Officer, Arulmighu Madhya Pureeswara Swamy Temple,
Parakkalakottai Village, Pattukottai Taluk, Tanjore District. PIN.614 613.
6. The Commissioner, Tamil Nadu Hindu Religious and Charitable
Endowments Department, Chennai.



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S.A.No.653 of 1999 and S.A.(MD)No.1270 of 2005

P. VELMURUGAN, J

CS

Pre-delivery Judgment
in S.A.No.653 of 1999 and
S.A.(MD)No.1270 of 2005

Common Judgment
delivered on 18 / 08 / 2025

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