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S.A.No.2145 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22/08/2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

S.A.No.2145 of 2002

Sri Sankara Narayanaswamy
Devasthanam, Sankarankoil,
Tirunelveli District,
Through its Executive Officer/
Assistant Commissioner

: Appellant

.VS.

1. Bangles Chettiars' Mandagapadi,
Rep. by its President,
Swamy Sannathi Street,
Sankarankoil Taluk,
Tirunelveli District.

2. J.Selvaraj

: Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.24 of 2000, dated 23.10.2000, on the file of the learned Sub Judge, Sankarankoil, by confirming the Judgment and Decree in OS.No.423 of 1994, dated 06.04.1998, on the file of the learned Principal District Munsif, Sankarankoil.

For Appellant : Mr.M.P.Senthil



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For Respondents : Mr.S.Meenakshisundaram
Senior Counsel
For Mr.M.Sengu Vijay for R1
R2- Dispensed with

* * *

J U D G M E N T

This Second Appeal is directed against the judgment and decree dated 23.10.2000 passed in A.S.No.24 of 2000 by the learned Subordinate Judge, Sankarankoil, confirming the judgment and decree dated 06.04.1998 passed by the learned Principal District Munsif, Sankarankoil, in O.S.No.423 of 1994.

2. The appellant herein is the plaintiff who instituted the suit seeking a declaration that the first schedule property belongs to the appellant temple and for a permanent injunction restraining the respondents from interfering with the usage of the suit pathway by the temple during the festival season, and for a mandatory injunction directing removal of the alleged encroachment by the respondents.

3. The case of the appellant/plaintiff, in brief, is as follows:

The first schedule property is claimed to be the property of the plaintiff temple. It is the custom and religious practice of the temple to conduct the annual car festival during the Tamil month of Chithirai, wherein the idol of the



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deity is ceremoniously taken from the temple premises through a pathway that traverses the third schedule property, known as the Kal Mandapam. The deity is taken through a staircase located on the eastern side of the Kal Mandapam, which leads to the chariot situated on the eastern side. According to the plaintiff, this practice has continued from time immemorial, and there is no alternative route available for carrying the idol to the car. However, in the second week of June 1994, the respondents allegedly encroached upon the first schedule property and constructed a wall measuring 48 feet in length (north-south), 10 feet in height, and 1 foot in width. The said wall is described as the second schedule property.

4. The plaintiff objected to the construction, and the respondents initially assured that the wall would be removed. However, upon their failure to do so, the plaintiff issued a notice dated 22.06.1994. The respondents, in their reply, claimed title over the disputed property. The plaintiff asserts that the second schedule property forms part of the first schedule property and that the Kal Mandapam (third schedule property) has been used continuously as a pathway for the deity. In the first week of July 1994, the respondents are said to have constructed an additional wall in the Kal Mandapam area, further obstructing the pathway, leading to the filing of the present suit.



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5. The suit was resisted by the respondents/defendants on the ground that the suit properties are the absolute properties of their community and that the plaintiff temple has no right, title, or interest over the same. They denied any encroachment and asserted that permission was temporarily granted in earlier times for taking the deity through the Kal Mandapam as a matter of courtesy. The respondents relied upon the earlier litigation in O.S.No.285 of 1929 on the file of the District Munsif Court, Kovilpatti, to contend that the Kal Mandapam was admitted therein to belong to the respondents' community, and there exists an alternative route for the temple to carry the idol.

6. Before the trial Court, on the side of the plaintiff, one Alwari was examined as P.W.1 and V.M.Subramanian was examined as P.W.2 and three documents were marked as Exhibits A1 to A3. On the side of the defendants, one Murugan was examined as D.W.1 and Navaneethakrishnan was examined as D.W.2 and twenty-three documents were marked as Exhibits B1 to B23. The Advocate Commissioner's report and the sketch were marked as Exhibits C1 and C2 respectively.

7. Upon consideration of the oral and documentary evidence, the trial Court held that the description of the suit properties in the plaint was vague and insufficient. It was further held that the plaintiff had failed to produce any



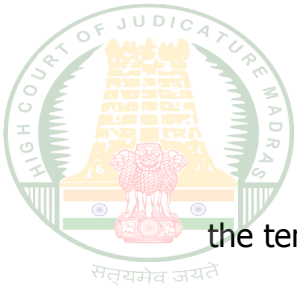
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conclusive documentary evidence to establish title over the first schedule property. Accordingly, the suit was dismissed.

8. Aggrieved by the said decision, the plaintiff preferred an appeal in A.S.No.24 of 2000 before the Subordinate Court, Sankarankoil. The first appellate Court concurred with the findings of the trial Court and held that the plaintiff had failed to prove ownership over the first schedule property or to establish any legal right of user over the second and third schedule properties. The appeal was consequently dismissed.

9. Challenging the concurrent findings of the Courts below, the plaintiff has preferred the present Second Appeal.

10. The learned counsel appearing for the appellant submits that the temple has been conducting the annual car festival from time immemorial, and the only available route to take the idol to the car is through the Kal Mandapam (third schedule property), which also includes the staircase situated on its eastern side. It is contended that the right of the temple to use the suit pathway has been admitted by D.W.1 during cross-examination, wherein he stated that for over 60 years, the temple has been permitted to take the idol through the Kal Mandapam. The learned counsel also relies upon Ex.A2, a property register of



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the temple, which includes the Kal Mandapam as item No.17. It is submitted that the right of user by the temple is long-standing, continuous, and uninterrupted, giving rise to an easement by necessity or by prescription.

11. On the other hand, the learned senior counsel appearing for the respondents submits that the appellant temple has no title over the suit properties and has failed to produce any documentary proof to establish ownership. The first schedule property is the absolute property of the respondents' community. The alleged use of the Kal Mandapam (third schedule property) by the temple was only permissive and never as a matter of right. Easement by necessity or prescription is not made out, especially when an alternative pathway admittedly exists. It is further submitted that in O.S.No.285 of 1929, the appellant temple itself admitted that the Kal Mandapam belonged to the respondents. That admission estops the appellant from claiming otherwise now. The concurrent findings of fact by both Courts below are well-reasoned and based on evidence, and no substantial question of law arises. Hence, the appeal deserves to be dismissed.

12. Heard the learned counsel on either side and perused the materials available on record.



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13. The Second Appeal was admitted on the following substantial questions of law:-

(i) Whether the learned Judge is erred in not granting the relief as prayed for in the suit in favour of the plaintiff, when admittedly, the plaint schedule property has been used for taking the idol during the Chitra Pournami Festival and also during Car Festival for performing various ritual rites including Mandagapadai etc.,?

(ii) Whether the learned Judge is right in ignoring the claim of the plaintiff-Temple that except the suit pathway, no other way is available for taking the idol during the Chitra Pournami Festival and Car Festival?

(iii) Whether the learned Judge is right in not adverting to the Property Register maintained by the plaintiff-Temple ? and

(iv) Having found that the plaintiff-Temple has got possessory title to use the suit pathway for taking idol during the Chitra Pournami Festival, Car Festival etc., whether the learned Judge is right in rejecting the claim of the plaintiff-Temple?"

14. The specific case of the appellant/plaintiff is that the suit first schedule property belongs to the appellant temple and that the temple has been exercising the right of taking the deity during the annual Chithirai Car Festival and other important festivals through the pathway which passes by the Kal Mandapam, forming part of the third schedule property. The appellant



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asserts that this practice has been in vogue from time immemorial, that the usage has been continuous, uninterrupted, and as of right, and that no alternative passage is available for carrying the deity. The erection of a wall by the respondents in June 1994, forming the second schedule property, is said to have obstructed the customary usage of the pathway and encroached upon the temple land. Reliance is placed upon Ex.A2, the property register of the temple, wherein the Kal Mandapam is described as item No.17, and also upon the admission of D.W.1 during cross-examination that the deity was being taken through the Kal Mandapam for over sixty years. It is therefore contended that the temple has established both title and possessory right, alternatively an easement by necessity or prescription, and that the Courts below erred in denying the reliefs of declaration, mandatory injunction, and permanent injunction.

15. The specific case of the respondents/defendants is that the suit schedule properties are the absolute properties of their community and the plaintiff temple has no right, title, or interest therein. According to them, the user of the Kal Mandapam by the temple on certain festive occasions was only by way of permission extended by their community, and never as a matter of legal right. They contend that the appellant temple has failed to establish title



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over the first schedule property or any legal entitlement over the second and third schedule properties. It is further argued that an alternative route exists for taking the deity during the festival, and hence no case of easement by necessity arises. They rely on the earlier proceedings in O.S.No.285 of 1929 on the file of the District Munsif Court, Kovilpatti, wherein it was recognised that the Kal Mandapam belonged to the respondents' community. That admission, according to them, estops the appellant from contending otherwise in the present suit. The respondents therefore maintain that the concurrent findings of the Courts below, which dismissed the suit and the appeal, are sound and call for no interference.

16. As far as the first substantial question of law is concerned, the appellant has instituted the suit for declaration of title in respect of the suit schedule properties. However, no documentary evidence has been produced by the appellant to establish that the properties in question belong to the temple. The appellant relied upon Ex.A2, the temple property register, wherein the Kal Mandapam is shown as Item No.17. But the appellant has failed to prove on what basis the said entry was made in the register, and no supporting document such as a trust deed, gift deed, settlement deed, or donation deed



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has been produced. When the plaintiff comes to Court seeking a declaration, the burden squarely lies upon him to prove his case on his own strength and he cannot succeed by pointing out alleged weaknesses in the defence.

17. Though the respondents admitted that the temple was allowed to take the idol through the Kal Mandapam during the Chitra Pournami festival and the Car festival, including for rituals such as Mandagapadi, their case throughout has been that such user was only permissive in nature and never as of right. Permission granted out of courtesy cannot ripen into a legal right, since permissive possession can be withdrawn at any point of time. The evidence also discloses that in earlier litigations concerning the Kal Mandapam, including O.S.No.285 of 1929, the Courts have held that the Kal Mandapam belongs only to the respondents' community, and even in one of the earlier suits filed by the appellant, it was admitted that the Kal Mandapam belonged to the respondents. Thus, except for Ex.A2, no document of title has been produced by the appellant. The Courts below, therefore, rightly held that the appellant failed to prove ownership or title, and the findings recorded are neither perverse nor unsustainable. Accordingly, the first substantial question of law is answered against the appellant.



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18. As far as the second substantial question of law is concerned, the contention of the appellant is that no other pathway is available for taking the idol during the Chitra Pournami festival except the suit pathway. This argument cannot be accepted. The respondents have consistently asserted that an alternative route is available, and both D.W.1 and D.W.2 have deposed to that effect in their evidence. The Advocate Commissioner appointed in the suit has also filed his report and plan, wherein he has specifically noted that there exists a north-south road adjacent to the eastern side of the place where the car is stationed. This clearly establishes that the temple is not without an alternative way. In the light of such evidence, the claim of easement by necessity cannot be sustained. The Courts below, therefore, correctly concluded that the appellant has not proved exclusivity of the suit pathway. This substantial question of law is accordingly answered against the appellant.

19. As far as the third substantial question of law is concerned, though reliance is placed on Ex.A2, the property register of the temple, as already observed, the mere inclusion of the Kal Mandapam in the register does not by itself confer title. For an entry in the register to carry evidentiary value, the appellant must show the source of acquisition, such as a conveyance, endowment, or donation, which warranted such entry. In the absence of such



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supporting material, Ex.A2 alone cannot be given much weight. Further, in earlier proceedings, it has been judicially determined that the Kal Mandapam belongs to the respondents, and that finding has attained finality. The appellant cannot now circumvent those findings by relying on an unsupported register entry. The Courts below have rightly discarded the claim, and this substantial question of law is also answered against the appellant.

20. As far as the fourth substantial question of law is concerned, the plea of the appellant that they have possessory title to use the suit pathway during the festival cannot be accepted. The respondents have clearly established that the user of the pathway was always on permission and tolerance extended by their community. A permissive user can never create a legal right in favour of the appellant. If the appellant intended to claim easement by necessity, they had to prove the non-existence of an alternative pathway. If the appellant wanted to claim a right of easement by prescription, they had to show that they had been using the property continuously as of right for the statutory period. In the present case, neither requirement has been satisfied. On the contrary, the evidence on record, including the Commissioner's report, shows that there exists an alternative route. Hence, the appellant has failed to prove either a possessory right or an easementary right.



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21. Therefore, in view of the above discussion, this Court holds that the concurrent findings of the trial Court and the first appellate Court are based on proper appreciation of evidence and do not suffer from any perversity warranting interference in Second Appeal. Accordingly, all the substantial questions of law are answered against the appellant.

22. In the result, the Second Appeal stands dismissed. There shall be no order as to costs.

22/08/2025

Index: Yes/No.
Speaking Order : Yes/No.
Neutral Citation Case : Yes/No.

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To

- 1.The Sub Judge, Sankarankoil.
- 2.The Principal District Munsif,
Sankarankoil.



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P.VELMURUGAN, J.

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Pre-Delivery Judgment made in
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