



S.A.(MD)No.60 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.(MD)No.60 of 2025

and

C.M.P.(MD)No.1365 of 2025

Deivanai

... Appellant

Vs.

Sri Hanumar Temple,
Rep. by its Fit Person / Executive Officer,
Having Office at Kodeeswaran Arakattalai,
West Main Street, Thanjavur Town and Munsifi,
Thanjavur District.

... Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 15.10.2024 made in A.S.No.7 of 2023 on the file of the Principal District Court, Thanjavur, by upholding the judgment and decree dated 02.06.2022 made in O.S.No.9 of 2015 on the file of the Additional Subordinate Court, Thanjavur.

For Appellant : Mr.N.Tamilmani

For Respondent : Mr.V.Chandrasekar



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JUDGMENT

This Second Appeal is filed against the judgment and decree passed by the Principal District Court, Thanjavur, made in A.S.No.7 of 2023 dated 15.10.2024, confirming the judgment and decree passed by the Additional Sub Court, Thanjavur made in O.S.No.9 of 2015, dated 09.06.2022.

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

3.The following substantial questions of law were suggested by the learned counsel for the appellant:-

(a)Whether the Courts below are correct in decreeing the suit for declaration of title in the absence of impleading the vendor of the defendant?;

(b)Whether the Courts below are correct in holding that the vendor of the defendant or his legal heirs and the purchasers of the defendant are not the necessary and proper parties for the adjudication of title dispute pertaining to the suit property?; and

(c)Whether the Courts below are correct in holding that the suit is not barred by limitation?.



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4.A perusal of the records would show that one of the trustees of the temple, namely, P.K.Venkatesan had executed sale agreement on 03.07.1998 in respect of the suit property in favour of the appellant. Since he had not executed sale deed, the appellant had filed a suit for specific performance in O.S.No.90 of 2004 before the Sub Court, Thanjavur and the said suit was decreed in favour of the appellant. In spite of the decree was passed, no sale deed was executed by the said P.K.Venkatesan. Thereafter, the appellant herein had filed execution petition in E.P.No.51 of 2007. Therefore, through the Court, the sale deed was executed on 25.07.2007. It appears that based on the sale deed the appellant had also obtained patta, however, the same has not been produced either before the trial Court or before the 1st appellate Court.

5.On the other hand, the respondent / plaintiff had filed suit before the Sub Court, Thanjavur, stating that the said P.K.Venkatesan has no authority to execute the sale deed in respect of the suit property. Though the appellant filed O.S.No.90 of 2004, in the said suit, no one had appeared for the sole defendant. However, according to the appellant, one Advocate was engaged. Therefore, it is a collusive decree.



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6.In the present suit, before the trial Court, on the side of the plaintiff, the respondent / plaintiff examined himself as P.W.1 and P.W.2 was examined and Ex.A.1 to A.6 were marked. On the side of the appellant / defendant, one witness was examined as D.W.1 and 12 documents were marked as Ex.B.1 to B.12. Besides, on the side of the Court, Ex.X.1 to X.3 were marked.

7.The trial Court, after considering the oral and documentary evidence, come to the conclusion that the suit property belongs to the temple and the said P.K.Venkatesan has no authority to execute the sale deed in respect of the suit property and also held that the sale agreement dated 03.07.1998 executed by the said P.K.Venkatesan is not a valid document. On appeal, the first appellate Court also confirmed the finding given by the trial Court.

8.Upon perusal of the documents, exhibits and depositions, it is crystal clear that the previous suit in O.S.No.90 of 2024 was filed, without impleading the Temple as a party, as if the trustee had executed the sale deed. However, the said trustee did not have any power to execute the sale deed on behalf of the Temple. Thereafter, the decree was obtained based on the said sale deed and subsequently, the first sale deed was executed, through the lower



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Court, wherein the appellant had played fraud. Finally, based on Ex.P.1 to P.6 and deposition of P.W.1 and P.W.2 both the trial Court and the first appellate Court had arrived at a conclusion that the property belongs to the Temple. Therefore, I do not find any error in the judgment of the trial Court and the first appellate Court.

9.Further, this Court does not find any substantial question of law, that arises as suggested by the learned counsel for the appellant. Hence, this appeal is liable to be dismissed. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2025

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

Yuva

To

1.The Principal District Court,
Thanjavur.

2.The Additional Subordinate Court,
Thanjavur.



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KRISHNAN RAMASAMY, J

Yuva

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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