



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2026

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THE HON'BLE MR.JUSTICE P. DHANABAL

SA.No.728 of 2015

and

MP.No.1 of 2015

K.Dasarathan

....Appellant/Appellant/Defendant

Vs

Arulmigu Sri Thandava Vinayagar Temple

Rep by the Trustee of Arulmigu Thandava Vinayagar

Trust Mr.N.Rajendran

No.33, Sivan Koil West Mada Street

Villivakkam, Chennai 600 049

..Respondent/Respondent/plaintiff

Prayer: This Second Appeal is filed under Section 100 of the CPC to set aside the Judgment and Decree dated 20.02.2015 passed in AS.No.247 of 2014 by the III Additional Judge, City Civil Court, Chennai which confirmed the Judgment and Decree dated 28.01.2014 passed by the XVII Assistant Judge, City Civil Court, Chennai in OS.No.1806 of 2012 and set aside the same and allow the appeal.

For Appellant: Mr.C.Umashankar

For Respondent: Mr.A.E.Ravichandran

JUDGMENT

This Second Appeal has been preferred as against the decree and Judgment passed in AS.No.247 of 2014 on the file of the III Additional Judge, City Civil Court, Chennai.

2. The Appellant is the defendant in the main suit. The respondent/plaintiff has filed the main suit for the relief of declaration declaring



that the sale deed dated 13.07.1990 registered at Doc.No.4829 of 1990 on the file of the Sub-Registrar Office, Anna Nagar, insofar as the description of the western side boundary mentioned as West Mada street is concerned, as illegal, unlawful and non-est in the eye of law and also for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of suit property by the plaintiffs.

3. The Trial Court decreed the suit as prayed for. Aggrieved by the said decree and judgment, the defendant has preferred Appeal Suit before the First Appellate Court in A.S.No.247 of 2014 and the first appellate court dismissed the appeal by confirming the decree and judgment of the trial court, thereby the present second appeal has been preferred by the appellant/defendant.

4. For the sake of convenience and brevity, the parties will be referred as plaintiff and the defendant as referred before the trial court.

5. The brief facts of the plaint are as follows:-

The plaintiff is a temple situated in the land measuring to the extent of land in S.No.11A/7B 2 of Villivakkam Village, Perambur, Purasaiwakkam Taluk, to an extent of 4.5 cents. The Revenue Authorities have granted SLR and Assignment Patta by the Special Tahsildar (Assignment) Saidapet, as early as on 20.05.1974 in favour of the plaintiff temple for the suit property and the



Special Officer Settlements has also issued Enjoyment Certificate dated 26.04.1986 for the purpose of getting building plan approval from the Corporation of Chennai and CMDA. The plaintiff temple has also obtained an electricity connection in the year 1967 and continuously paying electricity consumption charges to the Department.

5.1. While so, the Agatheeswarar Devasthanam temple is also situated on the southern side of the suit property and the said temple owns vast extent of land. The temple administration of the Agatheeswarar Devasthanam divided the land and converted into plots and granted long lease to various persons. Insofar as the plot in S.No.11A/7B2 is concerned, a long lease was executed by the Agatheeswarar Devasthanam in favour of one Appadurai Mudali, Periyannayagi Ammal on 20.08.1912 through a registered document. The said Appadurai Mudali and Periyannayagi Ammal mortgaged the building with lease hold rights to one Rawthammal Sowr. Thereafter, in respect of the said mortgage, he has filed the suit in OS.No.913 of 1917 on the file of the District Munsif Court, Poonamallee and the same was decreed.

5.2. Due to the non-payment of the mortgage amount, the said suit was executed through EP.No.872 of 2018 and the property was sold through court auction on 24.10.2019. The said Rawthammal Sowcar conveyed the leasehold rights and the superstructure in favour one Angayarkannammal. Thereafter, her son Masilamani Mudaliar conveyed the superstructure with the leasehold rights over the land in favour of one Gajalakshmi Ammal with an extent of 2622 sq.ft



through registered sale deed dated 07.03.1977.

5.3. The four boundaries shown in the abovesaid documents would clearly show that the plaintiff temple is situated to the western side of that property. The said Gajalakshmi Ammal sold her property to the defendant in the year 1990. After purchase of the property, the defendant using the corner junction of the Sivan temple's North Mada street and West Mada street as the entrances to his property. The defendant was never using this West Mada street for access to the Sivan Temple for the simple reason that the plaintiff temple is situated on the western side of his property and the Sivan Temple, West Mada street comes only after the plaintiff temple. The general public in and around Villivakkam regularly used to visit the plaintiff temple for worshipping the plaintiff deity.

5.4. While so, in the year 1992, in the plaintiff temple with the help of public started the process of construction of Manimandapam and the same was also carried out. All of a sudden in the year 1998, the defendant filed a suit in OS.No.4369 of 1998 on the file of the XIII Assistant Judge, City Civil Court, Chennai for permanent injunction restraining one of the Trustees of the plaintiff temple from putting up any superstructure in front of the property and for mandatory injunction to demolish the alleged unauthorized construction adjoining his property. Thereafter, the defendant managed to get an exparte decree on 26.02.2024. Thereafter, the defendant filed an execution petition in EP.No.1092 of 2005 on the file of the X Assistant, City Civil Court to execute



the decree and the said petition was dismissed by an order dated 28.10.2005.

Thereafter, the defendant filed WP.No.16618 of 2009 before the High Court and this Court by its order dated 10.09.2009 directed the authorities to proceed the matter in accordance with law and also the defendant simultaneously filed CRP No.138 of 2009 challenging the dismissal of the E.P and thereafter filed a contempt petition in the Writ Petition. Thereafter, the Corporation of Chennai issued a notice in the month of October, 2009 to stop the work. Thereafter, the plaintiff temple applied for permission for carrying out the renovation work and the same is pending.

5.5. The defendant taking advantage of the order passed by the High Court in WP.No.16618 of 2009 and WP.No.21514 of 2010 was making attempts to encroach upon the suit property belonging to the plaintiff temple from the western side of his property. Therefore, the plaintiff has filed this suit .

6. The brief facts of the written statement are as follows:-

The suit is not maintainable and the plaintiff is put to strict proof of the all the allegations except to those which are specifically admitted herein. The suit is barred by limitation since the date of sale deed is 13.07.1990 and the suit is filed in the year 2012. It is true that there are two entrances for the property of the defendant; one property was facing West and the other one facing North. This defendant was using both the entrances West as well as the North. The temple is situated in a very small place near to the defendant's house. While so,



one Mr.Kesavan started putting up the construction by demolishing the small temple and the said construction is an unauthorized construction thereby the defendant filed a suit in OS.No.4369 of 1998 before the City Civil Court, Chennai and obtained a decree and judgment. Thereafter, he filed an execution proceedings in EP.No.1092 of 2005 and the same was dismissed and the defendant has preferred CRP and the same is pending.

6.1. In the mean time, the said Mr.Kesavan started putting up the construction by blocking the entire road way near the South and West Mada street. Therefore, the defendant has filed a Writ Petition in WP.No.16618 of 2009 on the file of the High Court and the same was ordered. The CRP filed by the defendant was dismissed. Thereafter, the defendant filed WP.No.16618 of 2009 and the Division Bench of High Court through the order dated 10.09.2009 directed the Corporation authorities to demolish the unauthorized construction and the same was demolished.

6.2. In the document purchased by the defendant clearly stated that the western boundary of the defendant is West Mada street and there is no any concealment of any fact that there was a temple. The present Trustee of the temple namely Mr.Kesavan is manipulating the records. There is no cause of action for the suit and therefore the suit is liable to be dismissed .

7. Based on the aforesaid pleadings and after hearing both sides, the trial court has framed the following issues for trial.



- “i) *Whether the plaintiff is entitled to the relief of declaration?;*
ii) *Whether the plaintiff is entitled for relief of permanent injunction?*
iii) *Whether the suit is barred by limitation? and*
iv) *To what other reliefs?”*

8. Before the trial court, on the side of the plaintiff, PW1 to PW3 were examined and marked Exs.A1 to A31. On the side of the defendant, DW1 was examined and no document was marked. After analyzing the oral and documentary evidences adduced on the either side, the trial court decreed the suit in favour of the plaintiff. Aggrieved by the said decree and judgment, the defendant has preferred appeal in AS.No.247 of 2014 on the file of the III Additional City Civil Court, Chennai.

9. The first appellate court framed the following points for determination:

Whether this appeal has to be allowed or not ?

10. After hearing both sides and perusing the records, the first appellate court also confirmed the decree passed by the trial court and dismissed the appeal. Aggrieved by the said decree and judgment, the present second appeal is filed.

11. This Court, at the time of admitting the second appeal, framed the following substantial questions of law:-



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“a. Whether the Courts below are right in decreeing the suit which was barred by law of limitation especially under Article 58 of Limitation Act 1963 since it has been filed after pending 22 years?

b. Whether the Courts below are right in ignoring the admission made by PW1 with regard to previous proceedings especially not taking the same in manner known to law?

c. Whether the Courts below have considered the pleading and evidence with regard to locus standi of the plaintiff trust to file the suit against the defendant?”

12. Learned counsel appearing for the appellant would submit that the plaintiff temple has filed the suit for declaration declaring that the sale deed registered in favour of the defendant dated 13.07.1990 in respect of the western boundary as null and void. In fact, the plaintiff filed a suit after 22 years in respect of boundary and the suit is barred by limitation. The plaintiff temple has no role in respect of the property purchased by the defendant. The courts below without appreciating the evidence in a proper perspective erroneously decreed the suit. The courts below failed to consider that there is no cause of action for the suit and the suit is barred by limitation and also failed to see that there cannot be any declaration with regard to the boundary of the sale deed by a stranger to the suit property. The plaintiff has no authority or capacity to verify the pleadings and to give evidence before the court. The PW1 admitted that the temple was already demolished by the order of the court and now the plaintiff temple is not at all in existence as on the date of the filing of the suit and as on the date of passing of the judgment. Therefore, the courts below have failed to



consider the evidence of the defendant and erroneously decreed the suit.

Therefore, the Second Appeal is to be allowed.

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13. The learned counsel appearing for the respondent would submit that originally the temple was constructed long back and same is in existence for more than 100 years. While so, the defendant had purchased the property by suppressing the existence of temple and purchased the adjacent property by wrongly mentioning of the eastern four boundaries. The defendant caused obstruction from constructing the building for the temple taking advantage of the wrong recitals mentioned in the four boundaries of the sale deed of the defendant. Therefore, the plaintiff filed the suit for declaration. In order to prove the case of the plaintiff, they examined PW1 to PW3 and marked Ex.A1 to Ex. A31. On the side of the defendant, they have examined only DW1 however, no document was marked. The trial court after considering the oral and documentary evidences, correctly decreed the suit and the first appellate court also after analyzing the evidences and the judgment of the trial court had correctly dismissed the appeal by confirming the judgment and decree. There is no any perversity or illegality in the orders passed by the courts below and there are no substantial questions of law involved in this case and therefore this Second Appeal is liable to be dismissed. He further submitted that, however, the said temple was demolished through the order of the court and now the temple is not in existence and therefore, the court may pass appropriate orders.



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14. This Court heard both sides and perused the records.

15. The suit has been filed by the plaintiff Temple for the relief of declaration declaring that the western boundary mentioned in the sale deed dated 13.07.1990 executed in favour of the defendant as null and void. After full trial, the trial court decreed the suit and the first appellate court also dismissed the appeal by confirming the decree and judgment of the trial court. However, it is admitted by the both the learned counsel that the temple is not in existence and the same was demolished. Therefore, the plaintiff has no any interest over the plaintiff's temple. Since the temple itself is not in existence, no any decree can be passed based on the suit filed by the temple. The temple has filed the suit for declaration in respect of the property purchased by the defendant and the temple has no role in respect of the document purchased by the defendant. Therefore, the courts below have failed to consider that the plaintiff has no *locus standi* to challenge the sale deed in favour of the defendant. It is not the case of the plaintiff temple that the defendant purchased the property of the temple, merely because the four boundary has been wrongly mentioned, the plaintiff need not seek any relief in that regard. If the plaintiff's temple has any right over the property, the plaintiff temple ought to have filed the suit for declaration in respect of that particular property instead filed this suit to declare the four boundaries of the sale deed of the defendant as null and void and



therefore, the framing of the suit itself is not maintainable.

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16. The said sale deed is dated 13.07.1990, but the suit has been filed in the year 2012 with a huge delay. Once the document is registered under Section 3 of the Transfer of Property Act, it is constructive notice to the public about the registration of the document. Therefore, the suit is barred by limitation in respect of declaration of sale deed. However, the courts below have failed to consider the same and erroneously decreed the suit.

17. As far as the substantial questions of law formulated by this court are concerned, the trial court failed to consider the limitation point that the property was purchased by the defendant on 13.07.1990 but the suit was filed in the year 2012 after 22 years. As per Article 58 of Limitation Act, the limitation period is 3 years from the date of the right to sue first accrued and as per Article 56 to declare the forgery of an instrument issued or registered 3 years when the issue or registration become known to the plaintiff. Since the sale deed is registered on 13.07.1990, it is constructive notice to the public as per Section 3 of the Transfer of Property Act. Moreover, the plaintiff Temple was constructed unauthorizedly and the Division Bench of this Court passed an order to demolish the temple and the same was demolished and is not in existence. Moreover, the plaintiff filed this suit as Trustee of the plaintiff temple. But he has not been authorized to file a suit and no *locus standi* to file the suit. The



courts below failed to consider the said aspects and the admissions made by the PW1 with regard to the previous proceedings and the plaintiff has no *locus standi* to file the suit as against the defendant. Therefore, the suit itself is not maintainable and the judgment and decree passed by the courts below are liable to be set aside by allowing this second appeal .

18. In view of the same, the second appeal is allowed. The judgment and decree passed by the trial court in O.S.No.1806 of 2012 dated 28.01.2014 and confirmed by the first appellate court in AS.No.247 of 2014 dated 20.02.2015 are set aside and the suit in O.S.No.1806 of 2012 on the file of the XVII Assistant Judge, City Civil Court, Chennai dated 28.01.2014 is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

17.02.2026

Neutral Citation: Yes/No
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P.DHANABAL., J.

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