

(2001) 07 MAD CK 0101
In the Madras High Court

R. Kasimuthu Veerapandian

APPELLANT

Vs

V. Guruvammal and Others

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Citation : (2001) 3 MLJ 467

Hon'ble Judges : A. Ramamurthi, J

Bench : Division Bench

Judgement

A. Ramamurthi, J.—The successful plaintiff in O.S.No. 343 of 1985 on the file of District Munsif Court, Kovilpatti, has preferred the second appeal aggrieved against the judgment and decree of the learned Subordinate Judge, Tuticorin, made in A.S.No. 20 of 1980 dated 19.3.1991 reversing the judgment and decree of the trial Court dated 21.12.1987.

2. The case in brief is as follows: The plaintiff filed a suit for declaration that item 1 of the property is endowed to the II Schedule Trust and permanent injunction restraining the defendants from purchasing the properties. The suit properties originally belonged to Veerabagu Chettiar and his wife, the first defendant. They executed two Trust Deeds under Exs.A-1 and A-2. They founded the Trust as mentioned in the II Schedule and the properties covered under the first schedule were absolutely dedicated. The trust and the Charity has to be carried on with the funds realised from the first schedule. After their lifetime, the eldest male member has to carry on the trust. On 28.6.1974, Veerabagu Chettiar died. Now, the 4th defendant being the eldest male son is functioning as a Trustee and is in enjoyment of the properties. The plaintiff's mother and the brothers of the plaintiff are residing in item No. 2 of Schedule No. 1. Now, the first defendant is aged and lost eyesight and she is not in a position to do any work without the assistance of third party. She is residing at Tuticorin since 1978. Now, at the instigation of one Deivanai, defendants 1 to 4 joining together have alienated the property in favour of defendants 5 to 9. Defendants 1 to 4 have no right whatsoever to alienate the property and hence, the suit.

3. The defendants resisted the suit contending that the entire properties have not been absolutely dedicated to the Trust and there was only partial dedication. The charities mentioned in the documents have to be performed and the excess amount, if any, can be used by the Trustees themselves. When the first defendant, is alive, the plaintiff will not get any right in the administration of the Trust and as such, he is not entitled to file the suit. Defendants 7 and 8 further stated that they are bona fide purchasers. The suit filed by the plaintiff is not maintainable and as such, it is liable to be dismissed.

4. The trial Court framed 4 issues and on behalf of the plaintiff, P.Ws. 1 to 5 Were examined and Exs.A-1 to A-20 were marked. On the side of the defendants, D.Ws. 1 to 4 were examined and Exs.B-1 to B-5 were marked. The trial Court gave a declaration that the properties are Trust properties, but dismissed the claim relating to permanent injunction. Aggrieved against this, defendants 1 and 6 to 9 preferred A.S.No. 20 of 1988 on the file of Sub Court, Tuticorin and the learned Judge after hearing the parties, allowed the appeal and set aside the judgment and decree of the trial Court and dismissed the suit. Aggrieved against this, the plaintiff has come forward with the present second appeal.

5. At the time of admission of the second appeal, the following substantial questions of law were framed:

(1) When the recitals in Exs.A-1 to A-3 clearly show that the suit 1st Schedule properties were absolutely dedicated for the purpose of the 2nd schedule Dharmams, is the learned Sub Judge right in holding that they were not trust properties?

(2) Is the learned Sub Judge right in holding that under Exs.A-1 and A-2, there was only a partial dedication?

(3) Is the learned sub Judge right in holding that the suit for declaration of Trust property filed by the plaintiff, who is a Member of the founder's family, not maintainable?

(4) When the defendants 1 and 4 had not let in any evidence to prove that the first defendant was performing the Dharmams, is the learned Sub Judge right in holding the first defendant is performing Dharmams?

6. In spite of service, the respondents neither appeared in person nor engaged any counsel. Heard the learned Counsel for the appellant.

7. The points that arise for consideration are:

(1) Whether the properties covered under Schedule I were absolutely dedicated to the Trust?

(2) Whether the plaintiff is entitled to the relief of permanent injunction?

(3) To what relief?

8. Points: There is no dispute that the properties belonged to Veerabagu Chettiar

and his wife Guruvammal. They executed Exs.A-1 and A-2 and created a Trust. The main dispute between the parties is whether absolute dedication was made or only a partial dedication was made by the founders. There is a direction to perform charity on a particular day in a year. It is also made clear that the surplus amount, if any, can be appropriated by the members of the family. Because of this recital only, it was contended that the dedication was only partial and not absolute. The plaintiff as one of the members of the family of the founders alone filed the suit contending that the first defendant is attempting to alienate the property in favour of defendants 5 to 7 and they have right to do the same. The defendants also raised a contention that the plaintiff has no right whatsoever to question the same since he is not a trustee at the relevant point of time. Admittedly, during the lifetime of Veerabagu Chettiar, there was no dispute with reference to the management of the Trust properties or conducting the charity in the temple. Only after his lifetime, problem had arisen between the parties.

9. Exs.A-19 and A-20 have been pressed into service in order to show that the first defendant was residing at Tuticorin and she was not doing the charity in the temple. As adverted to, the charity has to be performed only in a particular day in a year and as such, simply because the first defendant is in separate place, it cannot be concluded that the charity was not done. Now, admittedly, the fourth defendant along with the first defendant alone is conducting the charity and the same is admitted by the plaintiff also. Exs.A-8 and A-9 also stand in the name of the first defendant and similarly, patta also stands in the name of the first defendant and her husband. They have been filed in order to show that there was no absolute dedication of the property. Now, the fourth defendant in his capacity as the eldest son of the first defendant, is functioning as a trustee. Since the first defendant is sufficiently old, the fourth defendant is carrying on the work.

10. Learned Counsel for the appellant/plaintiff contended that the lower appellate Court erred in holding that the suit property is not Trust property intended for performing the second schedule dharmams. The trustees and the heirs should not alienate the suit property though they are entitled to take the income after spending for the charitable purposes. There is absolutely no evidence placed by the defendants to show that the expenses incurred for the charity is small proportionate to the real income in the properties. The lower appellate Court erred in observing that the plaintiff had filed the suit in his individual capacity failing to know that the suit itself is filed for safeguard the properties of the Trust as a member of the Founder Family. Adverse inference against defendants 1 and 4 ought to have been taken in view of their non-examination.

11. The lower appellate Court relied upon the decision reported in *Vadivel Chettiar v. Kuppusamy Mudaliar* (1973) 1 M.L.J. 265 and came to the conclusion that even a worshipper has got right to institute a suit with reference to the management of the temple. Admittedly, the plaintiff is also one of the members

of the family and even assuming that he could not function as a trustee, he is entitled to file a suit and question the alienation of the property. The lower appellate Court came to the conclusion that at best, only a charity was created in respect of the property and there could not have been absolute dedication. Now, the first defendant has conveyed the property to defendants 5, 7 and 8 under Exs.B-1, B-4 and B-5. Now, these alienations are only questioned by the plaintiff. Perusal of documents under Exs.A-1 and A-2 also discloses that by leasing the property or by mortgaging the same, out of the income, the charitable purpose has to be carried out. Under the circumstance, it is evidently clear that there was no absolute dedication of the property as contended by the learned Counsel for the appellant and it was only a partial dedication, thereby creating a charge in respect of the properties and whoever being a purchaser, is entitled to perform the same as mentioned in the document. Although the plaintiff has got right to institute the suit, the first defendant cannot be restrained from alienating the property as the plaintiff had failed to establish that there was absolute dedication of the property.

12. Considering the fact that patta also stands in the name of the first defendant and her husband and the excess income after meeting the charitable purposes can be shared by the trustees, I am of the view that only partial dedication was made by the founders of the trust and a charge is created on the properties. Whoever being a purchaser of the properties, is bound to perform the charity as mentioned in the documents and the lower appellate Court has correctly appreciated the documents and came to the correct conclusion. There is no illegality or infirmity in the judgment calling for an interference and hence, the points are answered accordingly.

13. For the reasons stated above, the second appeal fails and is dismissed. No costs.