

(2009) 04 MAD CK 0491

Madras High Court (Madurai Bench)

Case No: Second Appeal (MD) No. 1112 of 2008 and M.P. No. 1 of 2008

Muthamil Selvam and 3 others

APPELLANT

Vs

A. Manickam and 8 others

RESPONDENT

Date of Decision: April 27, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 2

Citation: (2009) 4 CTC 377

Hon'ble Judges: A. Selvam, J

Bench: Single Bench

Advocate: M.V. Venkatasashan, for the Appellant; T.R. Jeyapalam (Caveator) for 1st respondent, for the Respondent

Judgement

A. Selvam, J.

Challenge in this second appeal is to the concurrent judgments passed in Original Suit No. 144 of 2003 by the District Munsif Court, Melur and in Appeal Suit No. 127 of 2007 by the Principal Subordinate Court, Madurai. The respondents herein as plaintiffs have instituted Original Suit No. 144 of 2003 on the file of the District Munsif Court, Melur, for the relief's of declaration and perpetual injunction, wherein the present appellants have been shown as defendants.

2. The averments made in the plaint are that the plaintiffs and defendants are descendants of one Chinnan Pitchan Vagayara. The plaintiffs and defendants are entitled to get third honour with regard to receiving of sacred ash, sacred water and also untying of bull after sacrificing a scapegoat in Periya Panaiyoor Ayyanar Temple. The first honour belongs to Thanikodi Ambalam. The second honour belongs to Mandakan Ambalam. The plaintiffs 1 to 4 are the descendants of the first heir of Chinnan Pitchan by name Lakshmanan. The plaintiffs 5 to 8 are descendants of the second heir of Chinnan Pitchan by name Chinnaiya. The defendants 1 to 3 are also descendants of fourth heir of Chinnan Pitchan. The 9th plaintiff is the

descendant of Palani Ambalam. Prior to 20 years, a tussle has arisen with regard to receiving of honour in Periya Panaiyoor Ayyanar Temple and the same has been settled to the effect that the first heir of Chinnan Pitchan Ambalam viz., Lakshmanan is entitled to receive honour for one year. The second heir of Chinnan Pitchan Ambalam viz., Chinnaiya is entitled to get honour for one year. The third heir of Chinnan Pitchan Ambalam viz., Palani Ambalam is entitled to get honour for one year and the same has been fixed on the basis of rotation. The honour mentioned in the plaint is not with reference to a separate person and the same is attached to Chinnan Pitchan Vagayara. On 05.07.2003 "Kumbabisheham" has been conducted in the suit temple. The defendants 1 to 3 have made tussle with regard to honour and due to that a Panchayat has been convened on 04.07.2003. But, no compromise has been effected. Since the defendants are having political influence, they refused the honour of the plaintiffs. Now the defendants are making arrangements to disturb the plaintiffs from receiving their honour in the suit temple. Under the said circumstances, the present suit has been instituted praying to declare that the plaintiffs are entitled to get their honour in the suit temple by means of rotation and also for passing permanent injunction restraining the defendants from interfering with the rights of the plaintiffs.

3. In the written statement filed on the side of the defendants, it is averred that both the plaintiffs and defendants are descendants of Chinnan Pitchan Ambalam. The plaintiffs have wrongly mentioned about "Vagai" and Thanikodi Ambalam who belongs to "Nadu Vagai" is entitled to get first honour. Mandakan Ambalam who belongs to "Mela Vagai" is entitled to get second honour and the third honour belongs to Chinnan Pitchan Ambalam of "Keela Vagai". One Chinnaiah Ambalam is the descendant of Chinnan Pitchan Ambalam. The second defendant is the father of the third defendant and the defendants 1 & 4 are the brother's son of the second defendant. In the year 1961, a dispute has arisen between Chinnaiah Ambalam and others, and Lakshmana Ambalam and Palani Ambalam and subsequently, a Panchayat has been convened and in the said Panchayat, it is resolved that Chinnaiah Ambalam is entitled to receive honour from the suit temple and subsequently a dispute has arisen which resulted in the institution of a criminal case. From the year 1961 onwards, the defendants have excluded Lakshmanan Ambalam and Palani Ambalam and therefore, the plaintiffs are not entitled to get the alleged honour from the suit temple. There is no merit in the suit and the same deserves dismissal.

4. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after contemplating both the oral and documentary evidence, has decreed the suit as prayed for. Against the judgment and decree passed by the trial Court, the defendants as appellants have preferred Appeal Suit No. 127 of 2007 on the file of the first appellate Court. The first appellate Court, after reappraising the evidence available on record, has dismissed the appeal, whereby and whereunder confirmed the judgment and decree passed by the trial Court.

Against the concurrent judgments, the present second appeal has been filed at the instance of the defendants as appellants.

5. As agreed by the learned counsel appearing for the both sides, the present second appeal is disposed of on merits at the stage of admission.

6. On the side of the appellants/defendants, the following substantial questions of law have been raised for consideration;

a) Whether the Courts below are right in decreeing the suit filed by the respondents when the civil Court has no jurisdiction to entertain a suit relating to receipt of honour in a temple which falls under exclusive jurisdiction of the authorities under the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959?

b) Whether the Courts below are right in ignoring the decision reported in [Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another](#), which was followed in the decision in [Sadhu Sri Vaishnavar Nambi Srinivasa Iyengar Vs. K.K.V. Annan Srinivasachariar and others](#), relating to ouster of jurisdiction of civil Court in manner of receiving honors?

c) Whether the Courts below are right in decreeing the suit filed by the respondents when Exs. A1 to A9 filed by them do not at all prove their alleged right to receive honour in the subject temple and there is not even independent evidence to prove their case in this regard?

7. The crux of the case of the plaintiffs is that both the plaintiffs and defendants are the descendants of one Chinnan Pitchan Ambalam Vagayara and both of them are entitled to receive third honour in Periya Panaiyoor Ayyanar Temple by means of rotation and since the defendants are trying to deny the rights of the plaintiffs, the present suit has been instituted for the relief's of declaration and perpetual injunction.

8. The sum and substance of the written statement filed on the side of the defendants is that from the year 1961, the plaintiffs and their ancestors have been excluded from receiving the alleged honour and therefore, the plaintiffs have no locus standi to file the present suit for establishing their alleged honour and altogether the present suit deserves dismissal.

9. The Courts below, after analysing all the rival contentions raised on either side, have concurrently found that the plaintiffs are entitled to get the relief's sought for in the plaint.

10. Before considering the rival submissions made by either counsel, it would be apropos to perorate the following admitted facts;

It is an admitted fact that both the plaintiffs and defendants are the descendants of their ancestors by name Chinnan Pitchan Ambalam. It is also equally an admitted fact that one Thanikodi Ambalam Vagayara (Nadu Vagai) are entitled to get first

honour of the suit temple and one Mandakan Ambalam Vagayara (Mela Vagai) are entitled to get second honour and Chinnan Pitchan Ambalam Vagayara (Keel Vagai) are entitled to get third honour. As stated earlier, both the plaintiffs and defendants are the descendants of their common ancestor viz., Chinnan Pitchan Ambalam and therefore, it is quite clear that both the plaintiffs and defendants are entitled to receive the alleged third honour from the suit temple.

11. The learned counsel appearing for the appellants/defendants has advanced two fold arguments. The first limb of argument is that from the year 1961, the ancestors of the plaintiffs as well as the plaintiffs have been excluded from the alleged honour from the suit temple and therefore, the plaintiffs are not entitled to get the same and therefore, the judgments and decrees passed by the Courts below are liable to be interfered with.

12. In order to repudiate the argument advanced by the learned counsel appearing for the appellants/defendants, the learned counsel appearing for the first respondent/first plaintiff has also equally contended that the alleged exclusion of plaintiffs and their ancestors from receiving honour mentioned in the plaint is false and since both the plaintiffs and defendants are descendants of Chinnan Pitchan Ambalam, the plaintiffs are also entitled to get the third honour once in a year by means of rotation.

13. In paragraph No. 7 of the written statement, it has been mentioned that from the year 1961, the plaintiffs and their predecessors have been excluded from getting alleged honour from the suit temple and thereby the defendants and their predecessors in interest have acquired absolute right for the said honour by prescription and also by adverse possession. In order to prove the above factual aspect, no acceptable and trustworthy evidence are forthcoming on the side of the appellants/defendants and therefore, the first limb of argument advanced by the learned counsel appearing for the appellants/defendants is sans merit.

14. The second limb of argument advanced by the learned counsel appearing for the appellants/defendants is that the present suit has been filed mainly for the relief of declaration to the effect that the plaintiffs are entitled to get honour mentioned in the plaint from the suit temple and in order to decide the above aspect, Civil Court is not having jurisdiction and as per Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Joint Commissioner or Deputy Commissioner, as the case may be, is alone empowered and therefore, the present suit is not legally maintainable and this question of law has not been properly decided by the Courts below and therefore, the judgments and decrees passed by the Courts below are liable to be interfered with.

15. The learned counsel appearing for the first respondent/first plaintiff has also equally contended that the honour mentioned in the plaint is attached with service and therefore, the present suit is legally maintainable and the Courts below have

concurrently found the above aspect and therefore, the judgments and decrees passed by the Courts below are perfectly correct and the same do not require interference.

16. For considering the divergent submissions made by either counsel, the Court has to look into the main relief sought for in the plaint as well as in the decisions referred to infra.

17. As rightly pointed out by the learned counsel appearing for the appellants/defendants, the main relief sought for in the plaint is to declare that the plaintiffs are having right of receiving honour mentioned in the plaint from the suit temple.

18. Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 reads as follows;

Whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter;

19. From the close reading of the provision of Section 63(e) of the said Act, it is pellucid that if any dispute arises with regard to honour, deciding authority is the Joint Commissioner or Deputy Commissioner, as the case may be and Civil Court is not competent to settle such issue.

20. The learned counsel appearing for the appellants/defendants has accepted the following decisions;

a) The first and foremost decision is reported in 1983 MLJ 390 (Sam Ayya also known as Swaminathan and others Vs. Karupiah Ambalam and others) wherein this Court has held that if any subject comes within the contour of Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, Civil Court is not a competent forum to decide the same.

b) The second decision is reported in 1962(1) MLJ 1 (SC) (Sri Sinna Ramanuja Jeer @ Sri Vanamamalai Ramanuja Jeer Swamigal Vs. Sri Ranga Ramanuja Jeer @ Emberumanar Jeer and others) wherein the Honourable Apex Court has held as follows;

A suit for a declaration of religious honors and privileges simpliciter will not lie in a civil Court. But a suit to establish one's right to an office in a temple, and to honors and privileges attached to the said office as its remuneration or perquisites, is maintainable in a civil Court. The essential condition for the existence of an office is that the holder of the alleged office shall be under a legal obligation to discharge the duties attached to the said office and for the non-observance of which he may be visited with penalties. So judged, there cannot be an independent office of theerthakar, for a theerthakar has no obligatory duties to perform; nor can there be

an office of arulipad; the said word only can notes that the names of the theerthakars are called out by the archaka in a certain order. Even if theertham is given or other honors are shown in a particular order to a person holding an office, it does not necessarily follow that the said honors are part of the remuneration attached to the office; but it is a question of fact to be ascertained on the evidence whether the said honors are attached to the office as part of its perquisites in the sense that they become an integral part of the ritual to be performed by the recipient as the office holder or are only shown to him as a mark of respect on the occasion of his visit to the temple.

c) The third decision is reported in 2008(5) CTC 307 (Assistant Engineer, Acquisition, Tamil Nadu Electricity Board, Rural, Court Road, Tanjore Town and others Vs. S. Baskaran) wherein this Court has held that the plaintiff therein has approached the Civil Court without exhausting remedies provided under statute and therefore, civil suit is not maintainable.

d) The fourth decision is reported in [Muthamilselvan and Others Vs. A. Manickam and Others](#), wherein also this Court has held that in view of the decision rendered in [Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another](#), with regard to right of honour, civil suit is barred.

21. It has already been stated that the main relief sought for in the present case is to declare that the plaintiffs are entitled to get the honour mentioned in the plaint from the suit temple by means of rotation. It is an admitted fact that a dispute is in existence between the plaintiffs and defendants with regard to receiving of alleged honour from the suit temple and therefore, either the Joint Commissioner or the Deputy Commissioner of the Hindu Religious and Charitable Endowments Board, as the case may be, is the competent authority to decide the dispute that exists betwixt the parties and under the said circumstances, the present suit is not legally maintainable.

22. The first appellate Court has relied upon the decision reported in 1966 (1) MLJ 361 : (1996) 79 L.W.173 (Chinnathambi Mooppan and another Vs. Mamundi Mooppan and another) wherein this Court has held that the plaintiffs suing for themselves and for certain villagers, claimed that the right of doing Moopu Service (cleaning the streets, guiding the temple car and doing other miscellaneous work) vested in them. The first defendant claimed that this right vested in him. Under the said circumstances, it has been held that the dispute in question fell within the jurisdiction of the Civil Court.

23. The learned counsel appearing for the first respondent/first plaintiff has argued that the plaintiffs, apart from their right of receiving honour from the suit temple, are doing some sorts of service to the suit temple and therefore, honour of the plaintiffs is attached with service and under the said circumstances, the present suit is legally maintainable.

24. The learned counsel appearing for the first respondent/first plaintiff has advanced his argument only on the basis of evidence given by D.W.1. D.W.1 has stated in his evidence that during festival day, at about 3.00 p.m. their bull will be brought to the place of festival by using a cord and thereafter sacrifice of scapegoat will be done and a drop of its blood will be put on the forehead of the bull and subsequently, unravel the same.

25. The first appellate Court, has come to the conclusion on the basis of the evidence given by D.W.1 that the honour of the plaintiffs and defendants is attached with service in the suit temple. In the plaint, it has not been specifically stated about the alleged service attached to honour of the plaintiffs as well as defendants. Even in the written statement filed on the side of the defendants, the same has not been specifically pleaded.

26. At this juncture, it would be more useful to look into Order 6 Rule 2 of the CPC and the same reads as follows;

Pleading to state material facts and not evidence.- (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

27. From the perusal of the Order 6 Rule 2 of the said Code, it is very clear that pleading means plaint or written statement and every pleading should contain a statement in a concise form of the material facts on which the party pleading relies for his claim or defence and further the evidence by which the material facts have to be proved need not be mentioned in the pleading. In a nut-shell, every pleading should contain all material facts.

28. It is an axiomatic principle of law that without pleadings with regard to particular aspect, no evidence can be adduced and further any amount of evidence without necessary pleadings need not be looked into. In the instant case, the alleged service attached to honour of the plaintiffs and defendants has not been pleaded either in the plaint or in the written statement. Without having sufficient pleading with regard to above aspect, on the basis of the evidence of D.W.1, the Court cannot come to a conclusion that the alleged honour of the plaintiffs as well as defendants in the suit temple is attached with service. The first appellate Court, without considering the above lapses on the part of the plaintiffs as well as on the part of the defendants, has erroneously come to the conclusion that the alleged honour of the plaintiffs and defendants is attached with service and it has also erroneously applied the dictum mentioned in the decision reported in 1966 (1) MLJ 361 (Chinnathambi Mooppan and another Vs. Mamundi Mooppan and another). Therefore, the argument advanced by the learned counsel appearing for the first respondent/first plaintiff is not having effective force.

29. It has already been pointed out in many places that the present suit has been instituted so as to declare that the plaintiffs are entitled to receive honour from the suit temple by means of rotation. Therefore, it is quite clear that the present suit has been instituted only with regard to declaration of the alleged honour. In fact, a rival dispute is in existence between the plaintiffs and defendants. Under the said circumstances, as stated earlier, the Joint Commissioner or the Deputy Commissioner of the Hindu Religious and Charitable Endowments Board is competent to look into the dispute that exists betwixt the parties and therefore, the present suit is not legally maintainable.

30. The Courts below, without considering the correct legal position of law, have erroneously decreed the suit. In view of the discussions made earlier, it is very clear that the concurrent judgments passed by the Courts below are totally against law and the same are liable to be reversed and further all the substantial questions of law raised on the side of the appellants/defendants are decided in their favour. In fine, this second appeal is allowed without costs. The judgment and decree passed in Original Suit No. 144 of 2003 by the District Munsif Court, Melur, upheld in Appeal Suit No. 127 of 2007 by the Principal Subordinate Court, Madurai are set aside and the suit filed in Original Suit No. 144 of 2003 is dismissed without costs. Both parties are directed to establish their alleged honour u/s 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Consequently, connected miscellaneous petition is closed.