

**In Re: Jambulinga Chetti and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/778212](http://sooperkanoon.com/778212)

**Court :** Chennai

**Decided On :** Feb-01-1924

**Reported in :** 83Ind.Cas.1003; (1924)47MLJ437

**Appellant :** In Re: Jambulinga Chetti and ors.

**Judgement :**

ORDER

1. In this case the six accused who are the petitioners before me, have been convicted by the Third Class Magistrate of Ginjee of criminal trespass and sentenced to pay a fine of Rs. 10 each. The convictions and the sentences were upheld by the Sub-divisional Magistrate of Cuddalore.

2. The land on which the criminal trespass is said to have been committed was a vacant piece of land. It originally be-longed to one Muthia Chetti. This is admitted on both sides. The complainant's father purchased it from Muthia Chetti first; but he did not get a registered sale deed; he, however, kept possession of the property; and under the Transfer of Property Act, the property being worth only Rs. 25, that is, less than Rs. 100, title in it would certainly pass to him. But unfortunately for him Muthia Chetti again sold the land to one Dharma Chetti under a registered sale deed. It is clear law that the subsequent registered sale deed will prevail against the earlier unregistered sale deed, even though the latter is accompanied by possession. See Ammani v. Jagannatha Reddi (1915) MWN 442.

3. While the land was in the possession of the complainant, the accused who are the headmen of the village and look after some small temple there, entered upon the land and put up a water pandal for the purpose of giving water to persons who attend the temple festival. They were charged with criminal trespass and mischief for cutting down some trees on this land, but they have been acquitted of the latter charge; and I need not consider it any further. It is on this entering upon the land and putting up a water pandal that the charge of criminal trespass has been based against them. The accused pleaded that they were acting for the temple for whose benefit Dharma Chetti had purchased the property.

4. The lower Courts say on certain grounds, which seem to me doubtful, that it is not shown that the purchase money came from the temple. The temple accounts have not been produced and therefore the lower Courts held that the property is not proved to have been purchased for the temple by Dharma Chetti, but was purchased by him for himself. Dharma Chetti himself has given evidence in this case as D. W. 6 and he positively asserts that the purchase was for the temple. In the face of such a statement as this, it seems to me rather strange that the lower Courts should have found that the property was not purchased for the temple. Even taking the view that Dharma Chetti purchased the property for himself and not for the temple, it was certainly open to Dharma Chetti to assert his title to the property as against the complainant's: and if the accused went on the land, as they seem to have done, with Dharma Chetti's sanction, it is difficult to see how any criminal trespass arises at all. The first Court says that this defence is an imaginary one. I am not able to see how it is. After all what they did on the land was to put up a water pandal, and even if they had committed trespass in entering upon the land which I do not find, I do not think there is evidence to establish any criminal trespass, for there is no ground for holding that they went on this land for the purpose of annoying any one or for committing any offence.

5. In these circumstances I have come to the conclusion that the conviction for criminal trespass cannot stand and must be set aside. The accused will be acquitted of the charge under Section 447, I.P.C., and the fines, if paid by them, will be refunded to them.

