



S.A.No.2260 of 2003

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE KALAIMATHI

S.A.No.2260 of 2003

- 1.Nataraja Pillai (died)
- 2.Shanmuga Vadivu
- 3.Subbiayan
- 4.Backiam
- 5.Kolammal
- 6.Geetha

Appellants 2 to 6 are brought on record as
LRs of the deceased 1st appellant
vide order dated 21.07.2010 made
in M.P.(MD).No.2 of 2010 in
S.A.No.2260 of 2003.

... Appellants

-Vs-

Incorporated and Unincorporated
Devaswoms, Suchindrum,
represented by its Assistant Commissioner/
Executive Officer,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondent



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PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 02.07.2003 made in A.S.No.35 of 2001 on the file of the District Court, Kanyakumari District at Nagercoil, reversing the judgment and decree dated 17.10.2000 made in O.S.No.176 of 1987 on the file of II Additional District Munsif Court, Nagercoil.

For Appellants : Mr.T.Selvakumaran
For Respondent : Mr.Thayumanaswamy
for Mr.D.Hari

J U D G M E N T

The second appeal is filed against the judgment and decree passed in A.S.No.35 of 2001, dated 02.07.2003, on the file of District Court, Kanyakumari District at Nagercoil, by the defendant.

2. The suit in O.S.No.176 of 1987 was filed by the Assistant Commissioner / Executive Officer of



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Incorporated and Unincorporated Devaswoms, Suchindrum for the relief of declaration of title and recovery of possession of plaint schedule property with mesne profits at the rate of Rs.1,000/- per annum from the date of suit till recovery of possession.

3. Parties are indicated as per their litigative status before the Trial Court.

4. According to the plaintiff, the suit property belongs to Pachaperumal Sastha Devaswoms, which is under the control of plaintiff Devaswoms. The said Pachaperumal Sastha Devaswoms is in Ezhakaram Sub Group, which is a part of plaintiff Devaswoms. The suit property is a wet land in Survey No.1940 A / Resurvey No.8/79 and 9/37 measuring about 0.96 cents / 36 Ares at Agasteeswaram Village at Nagercoil Taluk. As per the G.O.(Ms.)No.460, dated 09.11.1960, the plaintiff is the owner of the suit property. The defendant has



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encroached upon the suit property on 27.04.1977. The plaintiff lodged a police complaint and the defendant had given an undertaking that he will not encroach upon the suit property. On petition, patta was also granted in the name of the plaintiff in respect of the suit property. The plaintiff planted coconut saplings in the suit property on 17.06.1971. From 01.06.1973 to 30.06.1975, one Vincent George was given permission to enjoy the suit properties for an amount of Rs.350/-. The defendant does not have any right or title over the suit property. On several occasions, on demand, as the defendant did not accede to hand over the possession of the suit property, legal notice was caused to be sent on 09.04.1985, for which, a reply notice was sent on 22.04.1985 and hence the suit.

5. Contending contra, the defendant claimed that the suit property does not belong to the plaintiff Board. Among the two survey numbers found in the



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plaint, Survey No.8/79 alone is there in Vadiveeswaram Village. It is not correct to contend that the plaintiff is the owner of the suit properties. Based on the G.O.(Ms.)No.460, dated 09.11.1960, the plaintiff was not in possession and enjoyment of the suit property at any point of time. As alleged the plaintiff never planted any coconut saplings in the suit schedule property. At the instance of the plaintiff one Vincent George filed the suit on the basis of the fraudulent licence, against the defendant in O.S.No.215 of 1977 before the District Munsif Court, Nagercoil for the relief of permanent injunction. The same was dismissed holding that the defendant is in possession of the suit property. The appeal preferred by the said Vincent George in A.S.No.124 of 1978 was also dismissed.

6. Based on the above pleadings, the following issues were framed by the trial Court:



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1. Whether the suit property is not a poramboke land?

2. Whether the suit property situates only in Resurvey No.8/79 or whether the suit property situates in Resurvey No.9/37 of Vadiveeswaram village?

3. Whether the rights transferred in the name of the plaintiff as per G.O.(Ms.)No.460 has been acted upon?

4. Whether the defendant has trespassed into the suit property on 27.04.1977?

5. Whether the suit property which is in possession of the defendant has been enjoyed by him before 27.04.1977?

6. Whether the defendant has made any development in the suit property?

7. Whether the plaintiff has planted any coconut trees in the suit property?



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8. *Whether the Government has issued any tree patta to the defendant in respect of the coconut trees standing in the suit property?*

9. *Whether the judgment and decree in O.S.No.215 of 1977 and A.S.No.124 of 1978 are affected by the principle of res judicata?*

10. *Whether the suit is bad for non-joinder of necessary parties?*

11. *Whether the plaintiff is affected by adverse possession by principles of limitation?*

12. *To what relief and cost the plaintiff is entitled to?*

7. At trial, on the side of the plaintiff, one Chellappan, who is the Secretary of plaintiff Board, was examined as P.W.1. and Exs.A1 to A4 were marked. The special report of the Special Thasildar for Temples, dated 04.01.1984 is Ex.A4. Defendant examined himself as D.W.1 and Exs.B1 to B12 were marked. The



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judgment passed by the Principal District Munsif Court, Nagercoil in O.S.No.215 of 1977 is Ex.B1. The copy of judgment passed in A.S.No.124 of 1978 by the District Court, Nagercoil, dated 11.02.1980 is Ex.B2. The 'B' Memo issued in the name of the defendant is Ex.B10. The tree patta issued in the name of the defendant is Ex.B11.

8. The trial Court held that though the right of the plaintiff was established through Ex.A4 / special report, since the complainant was not added as a party, the suit was dismissed. Against which, an appeal was preferred by the plaintiff in A.S.No.35 of 2001.

9. The first appellate Court has held that as per Ex.B10 'B' Memo, the defendant is an encroacher and it has been observed that correction is effected in 'B' Memo. Relying upon Ex.A4 / special report of the Special Tahsildar of Temples, it was concluded that the



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suit property was assigned to the temple and the suit property belongs to the temple and also held that the mesne profits would be decided in a separate proceedings, thereby the appeal was allowed. Against which, the present appeal has been filed by the defendant Nataraja Pillai.

10. The following substantial question of law arise for consideration:

Is the learned District Judge right in not considering the T.C. patta and kist receipts issued in favour of the defendant while accepting the case of assignment in favour of the petitioner, in the absence of production of the alleged Government Order?

11. The learned counsel appearing for the appellant / defendant strenuously argued that though it was pleaded by the plaintiff that as per G.O.(Ms.)No 460, dated 09.11.1960, the property was given to the



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plaintiff, the said G.O. was not filed. Through Ex.B10 / 'B' Memo and Ex.B11 / tree patta it has been proved that the defendant has been in possession and enjoyment of the suit property for about 38 years and the suit is not maintainable for non-joinder of necessary parties. It is his further argument that the case of the defendant was strengthened by marking Ex.B10 / 'B' Memo issued in the name of the defendant and Ex.B11 / tree patta granted in the name of the defendant.

12. Per contra, the learned counsel appearing for the respondent/plaintiff would vehemently contend that the plaint schedule property belongs to Pachaperumal Sastha Devaswoms, which comes under the control of the plaintiff and the suit property comprised in Resurvey Nos.8/79 and 9/37 of Vadiveeswaram village. It is his further argument that the right to enjoy the property was transferred by the



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Board of Revenue to the plaintiff by way of Government Order in G.O.(Ms.)No.460, dated 09.11.1960. It was further contended that it is the defendant who encroached upon the property on 27.04.1977 and it is the plaintiff, who planted 60 coconut saplings on 17.06.1971. It was further contended that one Vincent George was granted licence for the period from 01.06.1973 to 30.06.1975 for an amount of Rs.350/- by the plaintiff Board. It was also contended that notice was also issued to the defendant and the reply notice with false contents was received.

13. The suit was laid by the Assistant Commissioner / Executive Officer of Incorporated and Unincorporated Devaswoms, Susindram against Nataraja Pillai, S/o. Subbiah Pillai for declaration of title and recovery of possession of the suit property with mesne profits at the rate of Rs.1,000/- per annum from the date of suit till recovery of possession. The suit



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property is situated at Vadiveeswaram Villate at Agasteeswaram Taluk in Old Survey No.1940 A / Resurvey No.8/79 and 9/37. The extent of property is 0.37 Ares / 1.07 cents.

14. The learned counsel appearing for the defendant drew the attention of this Court that the property itself is a poramboke property and therefore, it is only of Government property and the property does not belong to the temple. The G.O., cited by the plaintiff was also not produced, which would go to show that based on the incorrect details the suit was laid.

15. The learned counsel appearing for the respondent/plaintiff would refute the said allegations that even Ex.A4 / special report of the Special Tahsildar shows that the suit property is the poramboke property. As regards the nature of property, it is clear that it is poramboke property.



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16. The special report of the Special Tahsildar for temples was marked as Ex.A4. The Government Order in G.O.(Ms.)No.460, dated 09.11.1960, was not filed by the plaintiff. Therefore, Ex.A4 / Special Report needs a close scrutiny. On a careful perusal of Ex.A4, it is discernable that the then Special Tahsildar for Temple lands, Nanguneri sent a special report to the Special Officer of Temple lands, Chennai. The report was sent on 04.01.1984. By means of this report, the basic records of Arulmighu Pachaperumal Sastha Thirukovil was prepared and it was sent as a special report. The relevant details of the said report are extracted hereunder:

“கோவில் நிலப்பதிவேட்டின்படி பழைய சர்வே எண் 1940/A

(ஏ1.07) கோவில் இருப்பிடமாகக் காட்டப்பட்டுள்ளது. *Correlation statement* படி இது ரீசர்வே எண் R.8.79 (ஹே 037.83.01.02 மற்றும் R. 8/184 ஹே 0.03.33.522 ஆகியவற்றை உள்ளடக்கியது. இவை இரண்டும் கிராமக் கணக்குகளில் பெற்றி பச்சம் பெருமாள் சாஸ்தா தேவஸ்வம் புறம்போக்காக



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காட்டப்பட்டுள்ளது. அ/மி பச்சம்பெருமாள் சாஸ்தா கோவில் ரீ சர்வே எண் R8.84ல் உள்ளது. கோவிலுக்குச் சுற்றுச்சுவர் உள்ளது....

ரீசர்வே எண் R . 8.79 ல் தற்பொழுது கோவிலுக்கு அனுபோகம் இல்லை. அதில் முன்பு தேவஸ்வத்திலிருந்து வைத்ததாகத் தெரியப்படும் தென்னை மரங்கள் உள்ளன. இந்நிலம் கோவிலுக்குப் பின்புறம் உள்ளது. S.நடராஜபிள்ளை என்பவர் இதை ஆக்கிரமித்து உள்ளார். B M 3 H 3 / 92 ல் வருவாய்துறையினர் நடவடிக்கை எடுக்கின்றனர். ”

17. The suit was filed in the year 1987. Though the plaintiff has filed the suit for declaration of title, considering the nature of the property being a poramboke land, Ex.A4 / special report has to be given primary importance, as the Special Thasildar for the Temple lands, Nangunery has sent a report to the Special Officer (Temple lands), Chennai in respect of the suit property.



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18. On the defendant side, Ex.B10 / 'B' Memo was issued in the name of the defendant in connection with the Resurvey No.8/79 of Vadiveeswaram village. Tree patta was also granted in the name of the defendant Natarajan Pillai in respect of Resurvey No.8/79 of Vadiveeswaram Village, Agasteeswaram Taluk. Tax at Rs. 248/- was imposed for the trees standing in the suit property. A notice dated 22.12.1981, in respect of the suit property was issued to the defendant by the Tahsildar of Nagercoil under Section 5 of the Act No.3 of 1905, for evicting the suit property. Therefore, it was vividly made clear that the property was granted to Pachaperumal Sastha Thirukovil and it was encroached by the defendant, which is evidenced by 'B' Memo and the notice issued by the Revenue authority as mentioned supra.



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19. Having received the 'B' Memo, tree patta and the notice, it should not lie in the mouth of the defendant that the plaintiff is not the owner of the suit property. In Ex.B12 / notice was issued to the defendant, a clear mention is made that the property belongs to Pachaperumal Sastha Devasoms. Therefore, the suit property is a poramboke property, which was assigned to Pachaperumal Sastha Thirukovil and the said suit property was encroached by the defendant and the said factum is proved by Ex.B10 / 'B' Memo. Ex.B12 / notice was issued by the plaintiff demanding the defendant to vacate the suit property. Therefore, this Court is of the considered view that the property belongs to Arulmighu Pachaperumal Sastha Thirukovil and the defendant is an encroacher of the suit property. Therefore, it has to be necessarily concluded that by virtue of the assignment made by the Revenue Board, the Temple has to be declared as a owner of the property.



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By virtue of Exs.B10, B11 and B12, the defendant is the encroacher, who is in possession of the suit property.

20. In view of the aforesaid discussions, the substantial question of law is answered in favour of the plaintiff.

21. In the result, the Second Appeal is dismissed and the judgment of the first appellate Court is hereby confirmed and the suit is decreed as prayed for. There is no order as to costs. The quantum of mesne profits will be decided in a separate proceedings and the defendant is ordered to hand over the possession within a period of two months from today.

18.10.2023

akv

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To

- 1.The District Court,
Kanyakumari District,
Nagercoil.
- 2.The District Munsif,
Musiri.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI, J.

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