



A.S.No.1071 of 2009

J U D G M E N T

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The defeated defendant is the appellant and the respondent Arulmighu Pathala Ponniamman Temple (hereinafter referred to as plaintiff) filed suit in O.S.No.5423 of 2006 on the file of VI Additional judge, City Civil Court, Chennai for recovery of possession, permanent injunction, mandatory injunction and also for future damages.

2. The plaint proceeds on the basis that plaintiff is a public religious temple governed by the Hindu Religious and Charitable Endowment (HR&CE) Department and the Executive Officer of the temple is authorised to represent the temple in all legal proceedings as per Clause 9 of the Scheme decree passed by the Hon'ble High Court in C.S.No.553/1949 r/w Section 6 (9) of the HR&CE Act.

2.1 The plaintiff is an ancient temple. The suit premises bearing Door No.72, Barracca Road, First Street, Nammalwarpet, Chennai – 12 in Survey No.3182 to an extent of 750 sq.ft. is absolutely owned by the respondent/plaintiff and the extract from the Permanent Land Register



A.S.No.1071 of 2009

maintained in Purasawalkam Perambur Taluk 'A' Register.

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2.2 During the inspection of the officers of plaintiff, they came to know that the appellant/defendant is in occupation of the suit property without paying any rent. The appellant/defendant is neither a tenant nor a permissive occupier under the plaintiff. While so, on 06.06.2006, when the collection clerk of the temple visited the premises, it was found that the appellant/defendant totally demolished the existing super structure and tried to put up a new super structure without the consent of the respondent/plaintiff. Hence, the plaintiff filed the suit for delivery of possession and also for permanent injunction restraining the defendant to put up further construction and also seeking mandatory injunction to demolish unauthorised occupation, future damages and for costs.

3. The appellant / defendant filed written statement as well as additional statement denying the allegations mentioned in the plaint. It is further denied that the plaintiff is the owner of the suit property in Survey No.3182 and alleged that the appellant/defendant is in the occupation of the



A.S.No.1071 of 2009

suit property for more than 100 years, after the demise of his father Chinnathambi, he is paying property tax and water tax to the Corporation.

The appellant/defendant has not paid any rent to the respondent / plaintiff and he did not know who is the owner of the said property. The appellant/defendant and his father were enjoying the property for more than 100 years. The learned counsel for the appellant/defendant relied on the judgment in O.S.No.8268 of 1981 and prayed for dismissal of the suit.

4. Based upon the above pleadings, the Trial Court has framed six issues as under -

- (i) Whether the plaintiff is entitled to get delivery of possession of the suit property ?
- (ii) Whether the plaintiff is true owner of the suit property in respect of land ?
- (iii) Whether the defendant is continuously in possession of the suit property for more than 15 years without any interruption ?
- (iv) Whether the plaintiff is entitled to get permanent injunction ?
- (v) Whether the plaintiff is entitled to get a mandatory injunction against the defendant ?



A.S.No.1071 of 2009

(vi) Whether the plaintiff is entitled to get any damages for the past and future? If so, what is the rate ?

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5. During the trial, the plaintiff's Executive Officer examined himself as P.W.1 and Exs.A1 to A7 were marked. The defendant examined himself as D.W.1 and Exs.B1 to B6 were marked.

6. Based upon both oral and documentary evidence, the Trial Court has come to the conclusion that the respondent/plaintiff has proved the pleadings by both oral and documentary evidence, while the appellant/defendant has not established or proved his title to the property, as claimed by him and accordingly decreed the suit in part to the extent of possession and for permanent injunction, however, refused the relief of mandatory injunction due to non-establishment of the case in respect of mandatory injunction and also to grant for damages. Hence, the present appeal.

7. Heard the learned counsel appearing for the appellant and he relied upon the judgment of this Court in A.S.No.248 of 2010 dated 02.12.2022.



A.S.No.1071 of 2009

Heard the learned counsel appearing for the respondent and perused the entire materials available on record.

8. Based upon the pleadings and arguments made by the respective parties, following points arise for consideration -

- (i) Whether the respondent / plaintiff is the true owner of the suit property ?
- (ii) Whether the respondent / plaintiff is entitled to get the delivery of possession of the suit property ?
- (iii) Whether the appellant/defendant has established the plea of continuous possession for more than 15 years ?
- (iv) Whether the respondent/plaintiff is entitled for permanent injunction ?
- (v) Whether the respondent/plaintiff is entitled to get mandatory injunction ?
- (vi) Whether the respondent/plaintiff is entitled for any damages for the past and future occupation ?



A.S.No.1071 of 2009

WEB COPY 9. The schedule properties discloses that the suit premises bearing Door No.72, Barracca Road, First Street, Nammalwarpet, Chennai – 12 in Survey No.3182 to an extent of 750 sq.ft. is absolutely owned by the plaintiff and the extract from the Permanent Land Register maintained in Purasawalkam Perambur Taluk 'A' Register. To substantiate the ownership over the extent of land in Survey No.3182 to an extent of 750 sq.ft. having Door No.72, the plaintiff / temple filed Ex.A1 – scheme decree and Ex.A2 – extract from the land register and also filed copies of judgment in O.S.No.8268 of 1981 and O.S.No.4920 of 1997 as Exs.A5 & A6.

9.1 From Ex.A1 – scheme decree of the year 1953, it reveals that this property is part of the scheme decree. On the plain reading of oral evidence of PW1, coupled with Exs.A1 & A2 alongwith Exs.A & A6, the suit property is declared as extracted above, belongs to the plaintiff/temple. In the cross examination, the DW1 has categorically admitted that he is not aware of who is the owner of the suit property nor he has filed any document to show that who is the owner of the property. Hence, in view of the



A.S.No.1071 of 2009

availability of positive evidence on record and in the absence of any contra evidence being adduced by the appellant/defendant, the Trial Court has rightly come to the conclusion that the respondent/plaintiff is alone entitled to get the ownership in respect of Survey No.3182 in which the portion of the property in the schedule property.

9.2 At this juncture, it remains to be stated that as per Section 109 of the Central Act whereby the Tamil Nadu Hindu Religious and Charitable Endowment (Amendment) Act 2003 wherein in respect of recovery of possession by the temple land, the limitation for recovery of possession is set out and the limitation under Section 123 of the Act has been given exempted to religious institutions.

9.3 This Court, in the judgment dated 20.02.2008 in C.S.No.914 of 1989 reported in **2008 (3) L.W. 10083 [Arulmigu Kolavizhi Amman Temple, Mylapore v. R.Shanmugham and others]** inter alia held that Kolavizhi Amman Temple was amalgamated with Kabaleeswarar Temple as on 17.07.1979 and the suit filed by the Executive Officer representing the



A.S.No.1071 of 2009

temple is maintainable. According to the new Section 109 of HR & CE Act, by Amendment Act 28 of 2003 which came into force on 01.09.2003, the entire provisions of the Limitation Act, 1963 shall not apply to any suit for possession of immovable properties belonging to any religious institutions. On facts, the suit is filed on 21.06.2006 and hence, the suit is in time, consequently, the plaintiff / respondent is entitled for legal ownership of the property and also for recovery of possession.

9.4 In view of the above, the Trial Court has rightly come to the conclusion that, as plaintiff has established his right over the suit property and the appellant/defendant has miserably failed to establish that he is the rightful owner of the property coupled with Section 109 of HR & CE Act, as amended, the suit filed is in time and consequently, the plaintiff temple is entitled for recovery of possession and on the re-appraisal of the facts, I find that the reasoning assigned by the learned VI Additional Judge, City Civil Court, Chennai does not suffer any irregularity or illegality warranting interference at the appellate stage.



A.S.No.1071 of 2009

9.5 Though the appellant/defendant has claimed that he is in possession of the suit property for more than 60 years, he has filed Exs.B2, B3 & B4, Ex.B2 – property tax is of the year 2002, Ex.B3- tax receipts are of the year 2006 and Exs.B5 & B6 – Chennai Metropolitan Water Supply Board Receipts are of the year 2007 & 2008. The suit is filed on 21.06.2006 and hence I find that except the property receipt, Ex.B2, all the documents are subsequent to filing of the suit. Taking into consideration the admissions made by DW1/defendant in the witness box, namely as under -

வழக்கு விபரங்கள் எனக்கு தெளிவாக தெரியும். சர்வே நம்பர் எனக்கு தெரியாது. தாவா சொத்தின் அடிமனை நிலம் யாருக்கு பாத்தியம் என்று எனக்கு தெரியாது. முன்னோர் காலத்திலிருந்து உள்ளேன். அடிமனை எனக்கு சொந்தமா என்றால் அதுவும் எனக்கு தெரியாது. பதிலுரையில் எந்த ஆண்டிலிருந்து இருக்கிறேன் என்று குறிப்பிட்டு சொல்லவில்லை. முன்னோர் காலத்திலிருந்து உள்ளேன் என்று காட்ட வேறு ஆவணங்கள் எதுவும் தாக்கல் செய்யவில்லை. வா.சா.ஆ.2 முதல் 6 வரை உள்ள ஆவணங்கள் எல்லாம் என் பெயரில் ஏற்பட்டவைதான். என் முன்னோர் பெயரில் ஏற்பட்ட வரி ரசீதுகள் எதுவும் தாக்கல் செய்யவில்லை. ரசீதுகள் எல்லாம் வெள்ளத்தில் அடித்து செல்லப்பட்டது. அந்த விபரத்தை என் எதிருரையில் சொல்லவில்லை.



A.S.No.1071 of 2009

WEB COPY

பி.வா.சா.ஆ.4, 5, 6 எல்லாம் 2002ம் ஆண்டுக்கு பிற்பாடு ஏற்பட்டவைதான் 60 ஆண்டுகள் அனுபவத்தில் உள்ளேன் என்று காட்ட எந்த ஆவணமும் தாக்கல் செய்யவில்லை என்றால் அது சரியல்ல. முன்னோர்கள் எவர் காலத்திலிருந்து குடியிருந்து வருவதாக சொல்லவில்லை என்றால் சொல்லியுள்ளேன். எதிருரையில் என்னுடைய விலாசம் 72, பராக்கா ரோடு, முதல் தெரு, நம்மாழ்வார் பேட்டை சென்னை 12 என்று தான் சொல்லியுள்ளேன். என் கூடுதல் எதிர் வழக்குரையில் ஆறுமுக நாயக்கர் வாதிக்கு எதிராக வழக்கு போட்டதாக சொல்லியிருந்தால் அது பற்றி எனக்கு தெரியாது. அந்த தீர்ப்பு நகல் தீர்ப்பாணை நகல் நான் தாக்கல் செய்யவில்லை. ஆறுமுக நாயக்கர் வகையறா யார் என்றும் எனக்கு தெரியாது. 3182 சர்வே எண்ணில் கோவில் எதுவும் உள்ளதா என்று எனக்கு தெரியாது. வாதியின் வழக்குரையில் படிக்க கேட்டு புரிந்து தெரிந்து கொண்டேன். வாதி தாவா அடிமனை தனக்கு பாத்தியமென் சொல்லியிருப்பதை மறுத்து எனது பதிலுரையில் சொல்லவில்லை. அட்டவணை சொத்து தவறாக குறிப்பிடப்பட்டுள்ளது என்றும் சொல்லவில்லை. என்னுடைய சொத்தை குறிக்கவில்லை என்றும் சொல்லவில்லை. 4 எல்லைகள் தவறு என்றும் சொல்லவில்லை. காண்பிக்கப்படும் புகைப்படம் எது சம்மந்தமானது என்று என்னால் சொல்ல இயலாது. வா.சா.ஆ.3 புகைப்படம் நான் குடியுள்ள சொத்து என்று சொன்னால் சரியல்ல.



A.S.No.1071 of 2009

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9.6 In view of the admissions of D.W.1 in the witness box, though a tall claim was made in the written statement, as if his ancestors were residing in the property for more than 100 years, in the cross examination, he has admitted that the duration of occupation of the parents was not known to him. He has also not filed nay other documents for possession and occupation of the suit property by their ancestors. He could state that all the receipts was in his possession but it was washed away in the floods. Even in the additional written statement, he has denied that another suit filed by one Arumuga Naicker which is discussed supra.

9.7 Thus, this Court finds that the entire plea of the defendant/appellant in the written statement that he is in enjoyment of the property for more than 100 years, he has not filed any document to substantiate the same. On the contrary, he would say that all the documents are washed away in the floods. It appears to be only an after thought to escape from the adverse inference.



A.S.No.1071 of 2009

WEB COPY

9.8 Hence, I find that the defendant /appellant though made tall claim of title vesting upon himself on the allegations that the ancestors were in occupation of the property has to fail, as it has no leg to stand. In the absence of any evidence/documents to substantiate that the appellant/defendant or their ancestors was in possession of the suit property for more than 60 years, the Trial Court has rightly negative the tall claim of the defendant in a rightful manner coupled with the evidence made by him in the witness box.

10. The learned counsel appearing for the appellant had relied upon the judgment of this Court in A.S.No.248 of 2010 dated 02.12.2022. After perusing the above said judgment, I find that the case in hand is under different footing. In the above said case, Arulmighu Pathala Ponniamman Temple, vs Padmavathi, the defendant therein who was in possession of the property has taken a specific stand that he is a tenant under *Manyadhar* and the said *Manyadhar* namely *Bolichetty Manyadhar* was not added as a party in the suit and hence, the appeal was allowed however liberty was granted to



A.S.No.1071 of 2009

the temple to initiate fresh proceedings to proceed against both *Mayandhars* and the tenant in occupation. In fact, Exs.B1 & B2 were filed in that case to show that the defendant in that case is not a trespasser but tenant under the *Manyadhar*. In the present case, there is no such plea. In factual ground, I find that the defendant has sought title upon himself by derivative title from ancestors. At the risk of duration, however for the sake of clarity, it is to be stated that neither in the written statement nor in the additional written statement filed before the Trial Court, he has not stated anything about the *Manyadhars* as it was in the case relied upon.

10.1 A large extent of properties had been given as inam to the temple for the performance of one Bolichetty Maniyam. The Maniyathars are Arumuga Naicker Vagaiyara. Arumuga Naicker vagaiyara used to let out the properties to various parties and were permitted to collect rents from those parties as long as they render the service of Bolichetty.

10.2 At one point of time, animal sacrifice got stopped and it was at that time only Maniyatharas / inamdars filed suit against the temple seeking



A.S.No.1071 of 2009

the prayer for injunction restraining the temple from interfering with their right to collect rents and the same was granted.

10.3 However, the plaintiff had filed the suit in O.S.No.4920 of 1997 on the file of the V Asst. Judge, City Civil Court, Chennai for declaration of title. The said suit was decreed by judgment and decree dated 23.07.1999. In the schedule, Survey No.3182, Purasawalkam village has been specifically mentioned. The plaintiff temple has filed Ex.A5 which is the judgment obtained by Arumuga Naicker Vagaiyara, Ex.A6 & A7 which are the judgment and decree obtained by the temple declaring its title to show its ownership.

10.4 Hence, I find that on the facts both the cases are totally on two different footing and hence the judgment does not come for the rescue of the appellant/defendant. Accordingly, this Court has no hesitation to hold that the ratio laid down in A.S.No.248 of 2010 cannot be made applicable to the facts of the present case. All the contentions made by the appellant/defendant may be negated.



A.S.No.1071 of 2009

WEB COPY

10.5 Yet another point is that the appellant/defendant is a mere trespasser, especially when he does not know in what capacity he has been residing in the suit property. This suit property is not *Res nullius*. In his cross examination, the appellant/defendant has uttered that he does not know to whom the land belongs. Therefore, his continuous stay in the suit property, whatever be the period, cannot be termed as a legal possession.

11. It remains to be stated that it is trite in law that idol of the temple is akin to minor child. The Court is guardian of minor child both for person and property. Likewise, the Court is guardian of properties of Idol of the temple. The Court has to protect the properties of the Idol like as that of minor child. Being a guardian of the property of the Idol, this Court feels that the appellant/defendant, who is enjoying the property for generations by adopting dubious method. Hence, the Commissioner and Secretary of HR & CE Department is hereby directed to execute the decree and to give suitable instructions to the plaintiff/Executive Officer to take possession as per the decree within a period of three months from the date of receipt of a copy of



A.S.No.1071 of 2009

this order, if necessary to take police assistance through Executing Court.

On such application being filed by the decree holder/plaintiff, the Executing Court shall not delay the matter unnecessarily and to implement the decree granted by the VI Additional City Civil Court, Chennai in O.S.No.5423 of 2006 dated 03.12.2008.

12. The suit is of the year 2006. Considering the passage of time, the Executing Court is directed to dispose of the Execution Petition within a period of twelve weeks from the date of filing of the Execution Petition. The Commissioner, HR & CE Department is directed to supervise personally and to take possession of the property. I find no merits in this case.

13. In fine, be it Lord Ranganathar or Lord Arunachaleswarar, in spirituality, the Lord is timeless and He is not bound by period or time. So is the essence of Section 109 of Hindu Religious and Charitable Endowment Act. For recovery of possession of land belonging to idol of the temple, there is no time limit. For idol of the temple, the time will not run against the Lord and hence the law of limitation does not operate against the temple lands.



A.S.No.1071 of 2009

Accordingly, the Suit filed by the temple is held to be in time and the Respondent / Plaintiff has established its right over the suit property and the Appellant / Defendant has miserably failed to establish that he is the rightful owner of the property. The Appellant is the trespasser and his possession is unlawful and therefore, all the points are determined in favour of the Respondent/Plaintiff and against the Appellant / Defendant.

14. In the result, the Appeal Suit is dismissed and the judgment and decree passed in O.S.No.5423 of 2006 dated 03.12.2008 on the file of the learned VI Additional City Civil Court, Chennai are confirmed. No costs.

19.01.2024

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A.S.No.1071 of 2009

RMT.TEEKAA RAMAN, J.

(rgr)

To

1.The VI Additional Judge,
City Civil Court,
Chennai.

2.The Section Officer,
VR Section, High Court,
Madras.

**Pre-delivery Judgment in
A.S.No.1071 of 2009**

19.01.2024