

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-12-2013

CORAM

THE HONOURABLE MR. JUSTICE S. PALANIVELU

S.A.Nos.539 and 540 of 2009

S.A.No.540/2009

C. Rajeswari

... Appellant/Appellant/Plaintiff

vs.

Loganatha Naicker (Decd.)
rep.by his Legal Representatives

- 1.L.Janardhanan
- 2.S.Meenakumari
- 3.R.Poornima
- 4.L.Deenadayalan
- 5.L.Anantharaman

... Respondents/Respondents/Defendants

S.A.No.539/2009

C. Rajeswari

... Appellant/Appellant/1st Defendant

vs.

Arulmighu Dharmaraja Temple
rep.by its Hereditary Trustee
G.Loganatha Naicker (Decd.)
rep.by his Legal Representatives

1. L.Janardhanan
- 2.S.Meenakumari
- 3.R.Poornima
- 4.L..Deenadayalan

5.L.Anantharaman ... Respondents 1 to 5 / 1st Respondent/Plaintiff

6.C.Rajalakshmi ... Respondent 6 / 2nd Respondent / 2nd Defendant

Second Appeals filed under Section 100 of CPC against the Judgment and Decree dated 29.7.2008 in A.S.Nos.412 of 2004 and 324 of 2002 on the file of the V Additional Judge, City Civil Court, Chennai, confirming the judgment and decree of the III Assistant Judge, City Civil Court, Chennai dated 10.12.2001 in O.S.Nos.8584 of 1995 and 8273 of 1996

For appellants : Mr.S.Sadasharam
(in both S.As.)

For Respondents : Mr.T. Sundaresan
(in both S.As.)

COMMON JUDGMENT

The following are the brief averments contained in O.S.No.8584 of 1995:

1.(a) The plaintiff is owner of the house and ground in premises No.62, Old No.26 and 26-A, South Coovam River Road, Madras-2, described in the schedule. The suit property originally belonged to Thiru M.Venkatachalam, the maternal grandfather of the plaintiff. The plaintiff's father Chandrasekar and mother Saraswathi died at the tender age of Plaintiff and her sister Rajalakshmi. The said Venkatachalam, the maternal grandfather of the plaintiff bequeathed the plaint schedule property absolutely in favour of the plaintiff by a Will dated 13.6.1973. This suit property was his self acquired property and was in his possession and enjoyment for more than 60 years before his death. After his death on 19.8.1973, the plaintiff presented the Will for grant of Probate before the High Court, Chennai and Probate was granted in TOS No.3 of 1977. The plaintiff is in possession and absolute enjoyment of the suit property. Her predecessor in title has been in possession and enjoyment for more than 70 years.

1(b). The defendant claiming to be the Trustee of the Road side Temple Dharma Raja Koil started to put up construction adjoining the scheudle property and also the property in the plaint. The only access to the road was through the space in front of the road side temple which was vacant. The temple has no property endowed in its favour and it is situated on the road. In the processes of attempting to construct the temple, the defendant alleging himself as a trustee without any appointment and without any right, encroached in the suit property on 5.12.1995 and put up pillars in the plaintiff's property. The pillars are shown as Pillar 1,2,3 in the plaint plan. The defendant has put up few bricks in front of the way in the vacant space and is raising a wall in between the pillars thereby obstructing the passage and preventing the easementary right of air, light acquired by the plaintiff and her predecessor in the adjoining vacant site. As she has easementary right of way access to the main road through the vacant space, neither the defendant nor anybody else has any right to prevent her access. The defendant is neither the successor in interest of the vacant space nor the temple. The defendant has no right whatsoever to encroach the plaintiff's property, to put up pillars or to construct the passage.

1(c) The plaintiff and her predecessors in title have been in continuous and uninterrupted enjoyment of the pathway leading to the vacant site and the plaintiff is entitled to access to the road through the vacant space by prescription and easement of necessity. In spite of the request made by the plaintiff, the defendant is proceeding with the construction and the plaintiff has no other alternative except to approach the Court for the

relief of declaration, that she is entitled to right to access, uninterrupted, through the vacant site of which the defendant is claiming to be trustee, and for an injunction restraining the defendant and his agents from interfering with her right. Hence she filed this suit for declaration, consequential permanent injunction and Mandatory injunction to remove the construction and for costs.

2. In the written statement by the defendant it is averred as follows:

2(a). The defendant is denying all the allegations in the plaint except those specifically admitted. The suit property is the absolute property of Arulmigu Dharmaraja Temple situated at Door No.61, South Coovam River Road, Komaleeswaranpet, Chennai. One A.Murugesu Achari the maternal great grand father of the plaintiff had taken the suit land on lease from the hereditary trustee of Arulmigu Dharmaraja temple. The lease was for a period of 10 years with a renewal clause. As the lease agreement, the lessee should pay property tax and other taxes except the quit rent for the land which is to be paid by the lessor. The lessor was entitled to construct the compound wall adjoining the demise land to protect and preserve the sanctity of Dwajasthambam and the lessee agreed to surrender the possession of the land along with the superstructure put up by him after receiving compensation from the lessor and also to let out the property to any Non Hindu. The lessee A.Murugesu Achari paid increased rent of Rs.5/- regularly till his death. After his death, his son M.Venkatachalam succeeded to his leasehold right in the suit property and was regularly paying rent at the initial stages and thereafter committed default in payment of rent for several years inspite of repeated demands and reminders from the defendant.

2(b). M.Venkatachalam had a daughter called Saraswathi who was married to one Chandrasekaran. They had two daughters namely C.Rajeswari, the plaintiff and C.Rajalakshmi. Saraswathi died in the year 1972 and Venkatachalam died in the year 1973. After their death, the plaintiff and his sister are in constructive possession and in enjoyment of the suit land as the legal heirs of Venkatachalam. They have not paid rent to the temple inspite of repeated demands from the hereditary trustee. The plaintiff filed a suit denying the title of her lessor, the hereditary trustee of temple, the temple terminated the tenancy right of plaintiff and her sister Rajalakshmi and filed suit against them in O.S.No.8273 of 1996. The deceased Venkatachalam was not the owner of the suit land and he was only a tenant under the hereditary trustee of Arulmigu Dharmaraja Temple. The said Venkatachalam has not purchased the property from any one and no one had sold the temple land to him. Therefore, he had no right, title and capacity to bequeath the land in favour of the plaintiff by the alleged Will dated 13.6.1973. Neither the plaintiff nor her predecessor in title acquired any right or title in the suit land. The suit land is a patta land belonging

to the temple and it is not on the northern side adjoining the platform. The defendant has not put up any new construction on the land leased out to the predecessor of the plaintiff. The plaintiff has no easementary right at all and the defendant has not interfered therein. The possession of the suit property by the plaintiff and her sister was only as a tenant under Arulmigu Dharmaraja Temple and not as an absolute owner. As per the lease deed the tenant has to pay the taxes to the Corporation and other taxes except quit rent. Since, the plaintiff is not the absolute owner of the suit property which belongs to temple she is not entitled to any declaration. Therefore, the suit may be dismissed with costs.

3. In view of the interconnected of the issues to be decided are in both the appeals one and the same, this Common Judgment is rendered.[The ranks of the parties to the suit are referred as in O.S.No.8273/1996].

4. The averments contained in the plaint in O.S.No.8273 of 1996 as as follows:

The plaintiff temple is absolute owner of the house site. The plaintiff temple let out a house site to one Murugesu Achari, the great grandfather of the defendant on a monthly rent of Rs.4/- under registered lease deed for a period of 10 years. The rent was increased to Rs.10/- and thereafter he committed default in payment of rent.

5. On the plaintiff's side 1 witness was examined and 4 documents were exhibited and on the side of the defendants side, 1 witness was examined and 21 exhibits were marked. After perused the oral testimony of witnesses, documents and arguments of both sides, the trial Court has dismissed the suit in O.S.No.8584/1995 and decreed the suit in O.S.No.8273/1996 in favour of the plaintiff temple. The Judgments and Decrees of the trial Court were confirmed by the First Appellate Court. Aggrieved against which, the plaintiff and 1st defendant in the respective suits are before this Court.

6. Since the appeals were not admitted, no Substantial Question of law were framed. The suit property is concededly in the possession of defendants. It is the version of the plaintiff that the suit properties belongs to the plaintiff's temple and it was leased to Murugesu Achari, the great grandfather of the defendant, on 9.6.1915 by means of a registered Lease Deed for a period of ten years. The sale deed is marked as Ex.B.12. The lessees have been shown as Trustees of the plaintiff temple. There was a building in the property and it was built by lessee. He agreed to pay a rent of Rs.4/- payable on every 15th English Calendar Month. He further agreed that if the lessee fails to pay lease amount continuously, the land owner may give one month notice and the lessee could be vacated on his cost and vacate the building as well as the vacant site and the land owner may

take possession of the property.

7. The 1st defendant has filed a suit in O.S.No.8584/1995 and claiming declaration that she has right to access the vacant site, a permanent injunction restraining the plaintiff the hereditary trustee, agents, servants and his son interfering the right of access through the vacant site and also to remove the construction made on the suit property by putting pillars. She puts forth her claim by filing a Will reportedly executed by one Venkatachalam which is dated on 13.06.1973. The said Venkatachalam is son of Murugesu Achari. The executor has narrated the relationship with the defendant in the Will that he has one daughter by name Saraswathi and she was married to T.Chandrasekar. The said Chandrasekar died in 1973 leaving behind 2 daughters C.Rajeswari and C.Rajalakshmi. C. Rajalakshmi was living with him from her childhood and she was looking after her family particularly in his old age. It is also mentioned that another grand daughter would not have any right on this property. He has bequeathed all the properties mentioned in the schedule of the Will and other properties possessed by him to the 1st defendant. The Will was probated in this Court.

8. By production of Exs.B.12 to B.18 the plaintiff has proved their title in the suit land and also by oral and documentary evidence.

9. The original lessee A.Murugesu Achari was paying increased rent of Rs.5/- per month. After his death, his only son M.Venkatachalam was paying Rs.10/- as monthly rent.

10. The plaintiff has terminated the leasehold right of the defendant on the expiry of 31.5.1996. After getting notice, the defendant did not send any reply. In her suit the defendant has taken a plea that her grandfather M. Venkatachalam had purchased the property and bequeathed the same to her under the Will. But she did not produce any documents to show the alleged purchase. She has also not got any patta to the property. Her evidence does not touch the title of the land. The denial on the part of defendant is malafide. M.Venkatachalam has no right to bequeath the temple property taken on lease to his grand daughter. Even though she has taken up a plea that she has perfected title by adverse possession, there is no proof for the same. Under Section 116 of the Indian Evidence Act, the defendant is estopped from denying title of the landlord. In other part of the case she is claiming compensation to the superstructure. It is an anti-thesis.

11. The appellant has lost hold in either way, one, as a tenant having disputed the title of the respondent; two, by depriving the rent due to the respondent under the termination of lease.

12. in this case, the tenancy is proved by virtue of Ex.B.12, which continued till the termination under Ex.B.2 to the successors of the original tenant A.Murugesu Achari. There is no plea nor evidence that at any point of time, the demised land has been surrendered to the Lessor and then they had occupied the same under hostile to the Lessor. On the other hand there is admission that the demised land had never been surrendered to the lessor. Hence, the 1st defendant/appellant cannot maintain a claim of adverse possession to the suit property.

13. The Appellant/1st defendant cannot be permitted to plead adverse possession or any compensation for the superstructure. As a matter of fact, she has not made any such claims in her evidence. The only remedy available for the appellant/1st defendant under Section 108(h) of the Transfer of Property Act is to remove the superstructure before delivering vacant possession of the land to the Lessor.

14. The plaintiff has established that they are previous owner of the property having every right. On the contrary the defendant is not able to prove that she has proprietary right over the suit property. The authorities on the points raised are in favour of the plaintiff. Hence, the concurrent findings of both the courts below have to be confirmed and accordingly they are confirmed. The appeals are devoid of merits. No valid grounds are made out to upset the upshot the conclusion of the courts below. These appeals suffer dismissal.

15. In fine, both the Second Appeals are dismissed. No costs. Time for delivery: 6 months from the date of receipt of copy of this order.

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Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

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To

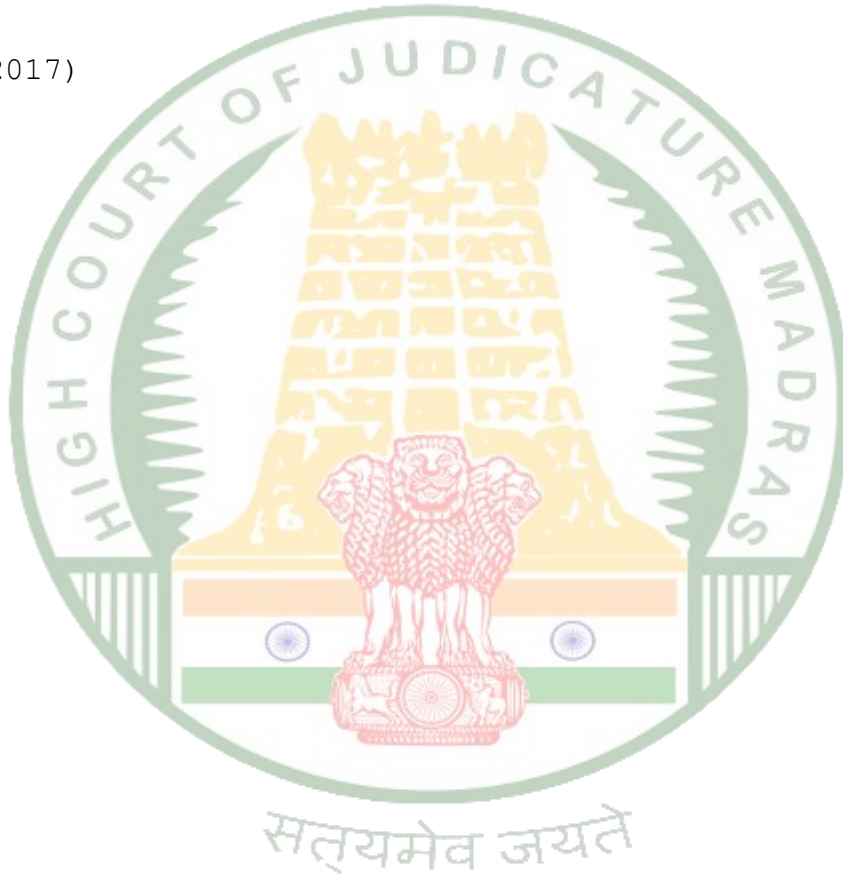
1. V Additional Judge,
City Civil Court, Chennai.

2. III Assistant Judge,
City Civil Court, Chennai.

+2 Ccs to Mr.S. Sadasharam, Advocate sr 66507,66508

S.A.Nos.539 and 540 of 2009

VSN (CO)
sp(11/07/2017)



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