

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2015

Coram:

THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Review Application No. 156 of 2014
IN
S.A.No.1051 of 2007

Sri venugopalaswamy Temple
Rep. by its Executive Officer
Kannampalayam
Palladam Taluk
Coimbatore District
(Substituted vide order of this Court
dated 23.01.2013 and made in
M.P.No. 2 / 2010 and S.A.No. 1051/2007

... Review Petitioner/Appellant

-Vs-

K.T.Sivasundararajan (died)

1. K.T.Venugopalan

K.A.Natarajan (Died)

2. K.N.Ponnusamy

3. K.A.Sathish Kumar

4. K.A.Vijayakumar

5. K.A.Mohankumar

6. Government of Tamil Nadu
Rep. by its District Collector
Coimbatore – 641 018.

7. The Revenue Divisional Officer
Tiruppur
Coimbatore.
8. The Tahsildar
Tiruppur
Coimbatore.
9. The Joint Commissioner
HR & CE Department
Coimbatore.
10. Malathi
11. Navin Kumar
12. Savitha
13. N.Jothimani
14. Indra Devi
15. K.Narayanasamy ... Respondents/Respondents

PRAYER: Review application is filed under Order XLVI Rule 1 of C.P.C., read with Section 114 of C.P.C against the Judgement and Decree passed by the Hon'ble Mr.Justice M.Vijayaraghavan in S.A.No. 1051 of 2007 dated 30.04.2013 for reviewing the Judgement and Decree in S.A.No. 1051 of 2007.

For petitioner : Mr.R.T.Doraisamy

For RR 1, 3 to 5,
10 to 12 : Mr. P.Krishnan
For RR 2, 14 to 15: Mr.V.Balaji

ORDER

The appellant in the Second Appeal is the review petitioner herein. The suit is filed by the respondents 1 to 7 against the Government Officials - the respondents 6 to 9 herein and the appellant temple arrayed as defendants 1 to 5 for declaring the plaintiffs' title to the suit property and for declaring the proceedings of the second defendant – Revenue Divisional Officer, Tiruppur, dated 11.08.1993 as legally invalid with consequential relief of mandatory injunction directing the defendants to effect mutation of the revenue records in respect of the suit property in favour of the plaintiffs. The plaintiffs claimed title to the suit property both on the basis of the title as well as adverse possession.

2. The trial Court upholding the claim of the plaintiffs on both grounds decreed the suit. Aggrieved against the same, the fifth defendant temple preferred A.S.No. 25 of 2006. The Lower Appellate Court also by confirming the Judgement and Decree of the trial Court, dismissed the appeal and the same was also confirmed by this Court in the Second Appeal filed by the temple. Aggrieved against the Judgments of Courts below as well as High Court, Temple preferred

S.L.P. 24813/2013. The Hon'ble Apex Court was not inclined to entertain Special Leave Petition and disposed of the same, however with an observation allowing the petitioner to approach the High Court by way of Review Petition, in respect of their stand that the High Court did not apply correct provision of law as reported in **Arulmigu Kolavizhi Amman Temple Vs. R.Shanmugham (died) and 48 others (2008-3-L.W. 1083)**. Hence, this Review Petition by the temple.

3. As already referred to, this Court has while disposing of the Second Appeal upheld the plaintiffs' claim for ownership on the basis of title and also on the basis of adverse possession. The appellant - 5th defendant in this review petition has questioned the correctness of the Judgement made in the Second Appeal confirming the Judgement and Decree of the Lower Courts on the ground that after amendment of Section 109 of the HR & CE Act 22 of 1958 by Tamil Nadu Amendment Act 28 of 2003 which is applicable to pending proceedings, no one can set up plea of adverse possession or prescription of title in respect of the properties owned by Religious Institutions and the law laid down by the High Court in the Judgment reported in 2008-3- L.W. 1083 to that effect is not correctly applied to

the facts of the case. As such, the finding rendered by this Court in upholding the plaintiffs' title on the plea of adverse possession is manifestly wrong and warrants reconsideration and review.

4. Per contra, the learned counsel for the respondents/plaintiffs would oppose the relief by saying as the plaintiffs' title is established based on documents and on adverse possession and as amended Section 109 is applicable to only in respect of the finding regarding adverse possession, the finding regarding plaintiffs' ownership based on title requires no reconsideration and the Judgment and Decree of this Court based on title requires no interference.

5. Heard the rival submissions made on either side and perused the records.

6. This Court has no quarrel over the principle laid down by the Hon'ble Apex Court in the Judgements in (1) ***Inderchand Jain (Dead) Through Lrs. Vs. Motilal (Dead) Through Lrs.*** reported in **(2009) 14 SCC 663**; (2) ***Lily Thomas and Others Vs. Union of India and Others*** reported in **(2000) 6 SCC 224**; and (3) ***Kamlesh***

Verma Vs. Mayawati and Ors. reported in **AIR 2013 SC 3301** regarding the circumstances and the ground on which the Courts can exercise the review jurisdiction. However in the instant case as the review petition is filed in view of the liberty given by the Apex Court to the appellant to approach this Court by way of review on the particular issue, the maintainability of the review petition cannot be questioned herein.

7. As far as the amended Section 109 is concerned, it is true that the learned brother Judge of this Court has in the Judgement in **Arulmigu Kolavizhi Amman Temple Vs. R.Shanmugham (died) and 48 others** reported in **2008-3-L.W. 1083** in paras 39 and 40 observed that the party cannot set up a plea of adverse possession against the Religious Institution and the said paragraphs are extracted hereunder:-

"39. As per the original provision under Section 109 of the HR & CE Act, 1959, a party cannot set up a plea as against the religious institution on the ground of prescription and adverse possession when the properties had vested in him after 30th September 1951. If the property had vested in such a person or

his predecessor before the 30th September 1951, the person vested with the property of any religious institution can validly set up a plea of prescription and adverse possession. But, as per the newly substituted provision under Section 109 of the HR & CE Act through the Tamil Nadu Act 28 of 2003 which came into effect on 01.09.2003, the entire provisions of the Limitation Act, 1963 shall not apply to any suit for possession of immovable property belonging to any religious institution.

40. The intention of the legislature for substitution of Section 109 of the Act is to protect the property of the religious institutions from being lost by adverse possession on account of the limitation prescribed under the Limitation Act, 1963. Let us visualize a situation where the plaintiff temple withdrew this suit and laid a fresh suit after the year 2003. Can the defendants still contend that the suit laid for recovery of possession by the plaintiff temple is barred by limitation in the face of the substitution of Section 109 of the HR & CE Act? The defendants cannot definitely set up such a plea. Denying the plaintiff temple to take advantage of the benevolent substitution of

Section 109 of the HR & CE Act will multiply the civil proceedings between the parties. Therefore, the Court finds that even for the pending suits, the provision under the substituted Section 109 of the HR & CE Act will apply. Such being the case, the Court finds that the suit is not barred by limitation in view of the fact that there is no limitation for the religious institutions to lay a suit for possession of immovable property belonging to it.”

8. The learned brother Judge has thus held that no plea for adverse possession can be set up by anyone by raising grounds of prescription and adverse possession in respect of the property belonging to Religious Institutions.

9. The Hon'ble Apex Court has while disposing of Civil Appeal No. 2830 of 2009, on 27.04.2009 arising out of the dismissal of this appeal at the admission stage remanded the matter for fresh disposal in the light of amended provision of Section 109 of the HR & CE Act by keeping in mind, the dichotomy between title perse and possessory title. After remand, the learned brother Judge of this Court discussed the issue in paragraphs 20 to 22 of the Judgment under review, the

learned brother Judge in paragraph 20 has held that the amended provision of Section 109 of Tamilnadu HR & CE Act do not affect the title of the plaintiffs which accrue under the registered sale deed independently and such title has been vested on the respondents/plaintiffs or their the predecessors in title much before 13.09.1951.

10. It is again stated in para 21 that the plaintiffs had derived title over the scheduled property based on Exhibit A-33 registered document as well as subsequent documents produced on the side of the plaintiffs as such title over the schedule property to the plaintiffs through the predecessors in title accrued to them from the year 1989. It is further stated that the possession and enjoyment of the schedule property is also proved through statutory charges paid to the revenue authority as well as Electricity Board under Exs. A-14 to A-31 as well as A-36 and the Judgment reported in **Arulmigu Kolavizhi Amman Temple Vs. R.Shanmugham (died) and 48 others** reported in **2008-3-L.W. 1083** shall not be helpful to support the case of the appellant and the fifth defendant to negative the claim of the respondents/plaintiffs.

11. This Court has in the concluding paragraph 22, reconfirmed the finding that the plaintiffs have established their title through valid evidence both oral and documentary but added that they also acquire title by adverse possession and ultimately held that the plaintiffs are entitled to the relief of declaration and for consequential mandatory injunction.

12. Considering the nature of the finding rendered by this Court with regard to the plaintiffs' title to the property based on sale deeds and other documents and their possession and enjoyment on the strength of such sale deeds and other documents, the question of reviewing the same finding by applying the provision of Section 109 of HR & CE Act does not arise herein and the appellant /fifth defendant is hence disentitled to claim any relief in this review petition.

13. In the result, the Review Petition is dismissed. No costs.

Vsg

29.01.2015

Index:Yes/No

Internet:Yes/No

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K.B.K.VASUKI, J.

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