

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26..11..2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1032 of 2015
and M.P.Nos.1 and 2 of 2015

P.Durai

... Appellants/Defendant

-Versus-

1.Tamil Nadu Telugu People's Welfare Association,
Rep. by its President Mr.Y.Murthy,
S/o.Basvaya,
Office at Basin Bridge,
Cattle Yard, Sathankadu Village,
Madhavaram Firka,
Saidapet Taluk.

2.Mr.Salla Yandi

... Respondents/Plaintiff

This second appeal is filed Under Section 100 CPC against the decree and judgement dated 29.04.2011 made in A.S.No.2 of 2009 on the file of the learned Subordinate Judge, Ponneri, Reversing the decree and judgement dated 05.06.2008 made in O.S.No.1466 of 1997 on the file of the learned District Munsif-cum-Judicial Magistrate, Thiruvottiyur.

For Appellant : Mr.S.Rajesh

For Respondents : Mr.R.Krishnasamy

JUDGMENT

The defendant in O.S.No.1466 of 1997 on the file of the learned District Munsif cum Judicial Magistrate, Thiruvottiyur, is the appellant. The respondents herein are the plaintiffs in the suit. The said suit was filed for permanent injunction restraining the defendant from putting up either a hut or any other constructions for his residential purpose or making any obstruction on the suit property which belongs to the temple known as "Arulmighu Pidari Uchi Amarnthaal Thirukoil". The trial court, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.2 of 2009 on the file of the learned Subordinate Judge, Ponneri. By decree and judgement,

dated 29.04.2011, the first appellate court allowed the appeal, set aside the decree and judgement of the trial court and decreed the suit as prayed for. As against the same, the defendant is now before this court with the present second appeal.

2. This second appeal has come up today for admission.

3. I have heard the learned counsel for the appellant and the learned counsel for the respondents and also perused the records carefully.

4. The case of the plaintiff in brief is as follows:- The suit property, admittedly, belongs to the Temple known as "Arulmighu Pidari Uchi Amarnthaal ThiruKoil" at Mattumanthai (cattle yard) Sathangadu Village, Saidapet Taluk. The defendant was a Poojari of the Temple. It appears that he was given permission by the Hindu Religious & Charitable Endowment Department [in short, "the HR & CE Department"] to put up a small hut and to reside therein so as to enable him to perform poojas in the temple in the capacity of Poojari of the temple. Utilizing the same, the respondent attempted to construct a pucca building on the suit property. Therefore, the present suit.

5. The defendant in his written statement contended that the suit is not maintainable at the instance of the plaintiffs as the suit property belongs to HR & CE Department. The Assistant Commissioner of HR & CE Department has given permission to construct a building on the suit property. Thus according to him, the suit is liable to be dismissed.

6. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs as many as 2 witnesses were examined and 5 documents were exhibited. On the side of the defendants only 1 witness was examined and 12 documents were exhibited. A letter sent by the Executive Officer of the Temple to defendant dated 21.08.2007 was marked as Public document [Ex.X-1].

7. Having considered all the above, the trial court dismissed the suit. But, however, the first appellate court set aside the decree and judgement of the trial court and decreed the suit as prayed for. That is how, the defendants are now before this court with the present second appeal.

8. In this second appeal, it is contended by the learned counsel for the appellant that the respondents have got no locus standi to file the present suit inasmuch as the temple is the owner of the property and the HR & CE Department has granted permission to the appellant to construct a superstructure in the

suit property. It is further contended that in the absence of the temple as a party, the suit is not at all maintainable. It is also contended that when the HR & CE Department has granted permission to construct a superstructure, the respondents/plaintiffs have got no right what so ever to prevent the appellant/defendant from doing so.

9. Based on the above pleadings, I find the following substantial questions of law int his second appeal for consideration:-

(1) Whether the suit as framed at the instance of the plaintiff is maintainable?

(2) Whether the suit is maintainable in the absence of the temple as a party to the suit?

(3) Whether the first appellate court was right in reversing the decree and judgement of the trial court when the HR & CE Department has granted permission to the appellant to construct a superstructure on the suit property?

10. The learned counsel for the appellant/defendant would reiterate the above grounds and would take me through the records. The learned counsel appearing for the respondents/plaintiffs would submit that the suit at the instance of the respondents/plaintiffs is maintainable as they are worshipers of the temple and they have got every interest to protect the property of the temple. He would further submit that as per the law laid down by this court in Chandrasekharan Pillai and others v. Muthu Bogi (deceased) and others, 1969 II MLJ 643, the suit is maintainable. He would further add that the temple can not at all be a necessary party inasmuch as the interest of the temple is not affected by this suit and that the Executive Officer of the Temple has given evidence as P.W.2 in support of the plaintiffs.

11. I have considered the above submissions carefully.

12. As pointed out by the learned counsel for the respondents/plaintiffs, in Chandrasekharan Pillai and others v. Muthu Bogi (deceased) and others, 1969 II MLJ 643, similar issue came up for consideration before this court wherein also, there was an objection regarding maintainability of the suit at the instance of worshipers of the temple in respect of the property belonged to the temple and this court held that the worshipers had every right to maintain a suit even to the extent of getting the title of the temple declared and insofar as the recovery of possession is concerned, this court had taken the view that a decree for possession may certainly be passed, but the possession shall not be delivered to the worshipers and that the same shall be delivered only to the temple authorities concerned. In the said suit also, the temple was not a party to

the suit. In the instant case, though the temple who is the owner of the property is not a party technically, the Executive Officer of HR & CE Department, had given evidence as P.W.2. Apart from that, on facts also permission was granted to the appellant/defendant to put up a superstructure on the suit property only because of the fact he was a Poojari in the temple. Now, admittedly, he has attained the age of 60 years and he is no more the Poojari of the temple. Thus, he has got no right to continue to be in possession and to construct any superstructure on the suit property. All these facts have not been properly appreciated by the trial court and the first appellate court has rightly reversed the decree and judgement of the trial court. I find that all substantial question of law framed hereinabove are to be answered only against the appellant/defendant. I do not find any merit at all in the second appeal and the same must fail.

13. In the result, the second appeal is dismissed and the decree and judgement of the first appellate court is confirmed and there shall be a decree for permanent injunction as prayed for by the respondents/plaintiffs. However, there shall be no costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Ponneri,
Tiruvallur District.

2.The District Munsif Cum Judicial Magistrate,
Thiruvottiyur,
Tiruvallur District.

+1cc to Mr.S.Arunachalam Association, Advocate, S.R.No.65041

Second Appeal No.1032 of 2015

sv(CO)
srg(05/01/2016)