

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.321 of 2011

1. K.Marimuthu
 - V.Mariyayee [deceased]
 2. R.Ramayee
 3. V.Vaiyapuri
 - S.Jawahar [deceased]
 4. C.Ganesan
 5. K.Arjunan
 6. Chinnammal
 7. Kavitha
 8. Poongodi
 9. Saroja
 10. Karuppaiah
 11. Govindaraj
- Appellants/Plaintiffs.

-Versus-

1. V.Jagatheesan
 2. V.Ganesan
 3. C.Thiagarajan
 4. S.Selvaraj
 5. S.Mahalingam
 6. S.Palanisamy
- Respondents/Respondents.

This second appeal is filed against the judgment and decree dated 30.08.2010 passed in A.S.No.117 of 2006 by the learned Subordinate Judge, Namakkal, reversing the judgement and decree dated 09.06.2006 passed in O.S.No.520 of 2003 by the learned Additional District Munsif, Namakkal.

For Appellants : Mr.C.Kulanthaivel

For Respondents : Mr.S.Parthasarathy for R1 to R6

Amici Curiae : Mr.R.Subramanian and
Mr.V.Raghavachari

JUDGMENT

The plaintiffs in O.S.No.520 of 2003 on the file of the learned Additional District Munsif, Namakkal, are the appellants herein and

the respondents herein are the defendants in the suit. The said suit was filed by the plaintiffs in a representative capacity, representing the Adi Dravida community people belonging to Chidambarapatti Village in Namakkal Taluk. The defendants have been impleaded as parties in their individual capacity. The said suit was filed for declaration that the suit property absolutely belongs to the entire Adi Dravida community people of Chidambarapatti Village in Namakkal District and consequently, interdicting the defendants from disturbing the plaintiffs' enjoyment, worshiping and celebrating in the temple and participating in the affairs of "Periyasamy Temple" situated in S.No.42/3j at Chidambarapatti Village in Namakkal Taluk. The trial court, by decree and judgement dated 09.06.2006, decreed the suit thereby declaring that the suit property belongs to Adi Dravida community people of Chidambarapatti village in Namakkal Taluk and granting permanent injunction restraining the defendants from disturbing the plaintiffs from participating in the temple festival and in worshiping the deity. As against the same, the defendants filed an appeal in A.S.No.117 of 2006 before the learned Subordinate Judge, Namakkal. By decree and judgement dated 30.08.2010, the first appellate court, allowed the appeal, set aside the decree and judgement of the trial court and dismissed the suit. Aggrieved over the same, the plaintiffs are, now, before this court with this second appeal.

2. The case of the plaintiffs in brief is as follows:- The plaintiffs, who represent the entire community people belonging to Adi Dravida community of Chidambarapatti village, are all residing in the same village. The suit property is situated in the same village. According to the plaintiffs, the suit property originally belonged to a Zamin known as "Mudugapatti Zamin". An extent of 10.01 Acres of land belonging to the said Zamin was offered by the Zamindar to Adi Dravida community people of Chidambarapatti village, who served the village. The land was classified by the revenue authorities as "Devadhaya Inam" [Thoti Service Inam Poramboke Land / தேவதாய இனாம் புறம்போக்கு நிலம்]. The residents of the village, according to the plaintiffs, occupied the said property and started residing thereon. The suit property is a portion of the land, which was given by way of Inam by the Zamindar. The people belonging to Adi Dravida community have constructed a temple known as "Periyasamy Temple" on a portion of the suit property. On the abolition of "The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963", according to the plaintiffs, an extent of 10.01 Acres was resurveyed and Pattas were issued to the respective occupants. So far as the suit property is concerned, it was assigned the new survey number as "Survey No.42/3j" measuring an extent of 0.06.0 Hectares. The people belonging to Adi Dravida community of Chidambarapatti village have been worshiping the deity in the temple and they have been celebrating the temple festival also.

3. While so, between the two groups of people belonging to the same community of the said village, there arose misunderstanding. Some people belonging to the defendants' group filed a suit in O.S.No.1366 of 1987 against the plaintiffs 1 and 2 herein. Later on, the said suit was withdrawn. Thereafter, yet another suit was filed by the defendants 3 to 5 in O.S.No.101 of 1994 against the plaintiffs 1 and 2 herein before the learned District Munsif, Namakkal and the same was dismissed for default. Now, the defendants have been claiming that they have got absolute title and right over the entire suit property including the temple. Thus, the title of the entire adi dravida community people is under cloud. Therefore, the plaintiffs filed the present suit seeking the relief as mentioned herein above.

4. The defendants filed a written statement, in which, they contended that the suit property including the temple does not belong to the entire people of Adi Dravida community of Chidambarapatti Village. According to them, among the adi dravida community people living in Chidambarapatti village only 9 families have got right over the said temple including the right to have worshipping. Precisely, according to the defendants, the entire extent of 0.06.0 Hectares in S.No.42/3j belongs to one Vellaiyan and his 9 pangalis. On 15.07.1946, Vellaiyan and his pangalis partitioned the properties belonging to them in which the suit property was left as a common property for the use of Velliayan and his 9 pangalis. The defendants are decedents of Vellaiyan and his 9 pangalis and accordingly, they alone have absolute title for the suit property.

5. Based on the above pleadings, the trial court framed the following issues:-

(1) Whether the plaintiffs are entitled for relief sought for in the suit?

(2) Whether the plaintiffs are entitled for permanent injunction as prayed for?

(3) Whether the claim of the defendants that the suit property including the temple absolutely belongs to them alone is justifiable?

(4) To what relief the plaintiffs are entitled for?

6. Pausing for a moment, I have to mention the following facts which I am able to culled out from the judgement of the trial court. More or less, simultaneously, the 2nd defendant herein filed a suit in O.S.No.306 of 2003 representing himself and his pangalis. That suit was also pending before the learned Additional District Munsif, Namakkal. In O.S.No.306 of 2003, there were six defendants in their individual capacity. The defendants 3, 4, 6 & 7 herein are also the

defendants in O.S.NO.306 of 2003. In that suit, the 1st defendant herein had prayed for a decree for permanent injunction restraining the defendants from preventing him and his 16 pangalis from renovating the temple. In that suit, one of the issues framed was whether the suit temple absolutely belongs to the entire community people belonging to Adi Dravida community of Chidambarapatti village.

7. It is seen from the trial court records that in O.S.No.306 of 2003 evidence was recorded first. In that suit, 2 witnesses were examined on the side of the plaintiffs therein and 6 documents were marked on his side as Ex.A.1 to A.6. On the side of the defendants, 4 witnesses were examined and 6 documents were marked as Ex.B.1 to Ex.B.6. The Advocate Commissioner's Report and Rough Sketch were marked as Ex.C.1 and Ex.C.2 respectively.

8. After the evidence in O.S.No.306 of 2003 was completed, the trial of the present suit in O.S.No.520 of 2003 was taken up. It was represented by the counsel who appeared for both sides that the evidence recorded in O.S.No.306 of 2003 could be treated as evidence in O.S.No.520 of 2003. In other words, the evidence of P.W.1 and P.W.2 in O.S.No.306 of 2003 were taken as the evidence on the side of the defendants in O.S.No.520 of 2003 as D.W.1 and D.W.2. Similarly, the evidence of D.W.1 to D.W.4 in O.S.No.306 of 2003 were taken as the evidence on the side of the plaintiffs in O.S.No.520 of 2003 and treated as evidence of P.W.1 to P.W.4. Similarly, Ex.A.1 to A.6 in O.S.No.306 of 2003 were treated as Ex.B.1 to B.6 in O.S.No.520 of 2003. Lastly, Ex.B.1 to B.6 in O.S.No.306 of 2003 were treated as the plaintiffs' side documentary evidence as Ex.A.1 to A.4. However, Exs.C.1 and C.2 were not marked as court documents in O.S.No.520 of 2003.

9. After having considered the above, both oral and documentary evidences recorded in O.S.No.306 of 2003, the trial court, by decree and judgement dated 09.06.2006, dismissed the suit in O.S.No.306 of 2003. But, there was no appeal preferred by the plaintiffs therein as against the said decree and judgement of the trial court and the same has become final.

10. Considering the above evidences, which were recorded in O.S.No.306 of 2003, as evidences in O.S.No.520 of 2003, the trial court, by decree and judgement dated 09.06.2006, decreed the suit in O.S.No.520 of 2003 as prayed for and the same was reversed by the first appellate court. That is how, the plaintiffs are now before this court with this second appeal.

11. In this second appeal, it is contended that the first appellate court has erroneously reversed the well considered judgement and decree of the trial court. According to the learned counsel for the appellants, from the evidences, both oral and documentary, let in by the appellants, they have clearly established

that the suit property including the temple absolutely belongs to the entire community people belonging to Adi Dravida community residing in Chidambarapatti village. The learned counsel would further submit that as per the revenue records, the land was classified as "Devadhaya Inam" [Thoti Service Inam Poramboke Land / njtjha ,dhk; g [wk;nghf;F epyk;]. After the introduction of The Minor Inam Abolition Act and the Updating Register Scheme, the suit property was assigned with new Survey Number as "S.No.42/3j" and patta was issued in the name of one Periyannan and others. This has now been cancelled by the Revenue Divisional Officer by his order dated 26.10.1988 [Ex.B.3], however, leaving it open for the parties to workout their remedies before the civil court.

12. The learned counsel for the appellants would submit that the first appellate court has committed a grave error in reversing the judgement of the trial court. The learned counsel would also submit that since the decree and judgement in O.S.No.306 of 2003 has become final, as no appeal has been filed, the principle of res judicata would be applicable to the present appeal and, therefore, it is not open for the defendants to contend that the suit property does not belong to the entire community people belonging to Adi Dravida of Chidambarapatti village.

13. When this appeal was admitted, this court framed the following substantial questions of law:-

(1) Whether the schedule mentioned suit property of the temple can be declared that it belongs to the entire village people of the plaintiffs including the defendants by considering the possession and enjoyments when there are no documents to prove the title of the suit property to anybody?

(2) Whether the title of the schedule mentioned suit property of the temple to particular persons can be decided based on Ex.B.3 which is the proceedings of the Revenue Divisional Officer relating to possession and enjoyment of the suit property without any document of title for the suit property?

(3) Whether the lower appellate court was right in reversing the judgement and decree of the trial court without any conclusive differences from the findings of the trial court in respect of the possession and enjoyment of the suit property of the temple by the plaintiffs?

13. The learned counsel for the respondents would submit that the principle of res judicata as enshrined in Section 11 of CPC, is not applicable to the present case, inasmuch as the parties are different. He would further submit that the plaintiffs have not proved their title by means of any document. The revenue records also does not stand in the name of the community people. Thus, the first appellate court, according to the learned counsel, has reversed the decree and judgement of the trial court for want of evidence evidence in support of the claim of the plaintiffs. Therefore, according to the learned counsel for the respondents, the second appeal deserves only to be dismissed.

14. I have considered the above submissions carefully.

15. Though this court has to record its displeasure over the way in which the trial court has conducted itself in treating the evidences recorded in O.S.No.306 of 2003 as evidences recorded in O.S.No.520 of 2003, since the parties before me have got no grievance over the same, treating the same as only an irregularity, I do not venture to consider the legality of the same.

16. At the outset, I should say that when the plaintiffs claiming title in favour of the people belonging to Adi Dravida community of Chidambarapatti village, in law they are bound to prove the same. In this case, on the side of the plaintiffs, they have filed six documents. Ex.A.1 is the partition deed dated 15.07.1946 among the ancestors of the defendants. This document does not refer to anything suggesting the title in favour of the entire community people belonging to Adi Dravida community of Chidambarapatti village. The other documents also do not indicate anything to show that the suit property belongs to the entire adi dravida community people. When a specific query was made to the learned counsel for the appellants, by what documentary evidence the plaintiffs try to prove that the suit property including the temple belongs to the entire adi dravida community people of Chidambarapatti village, the learned counsel would submit that as per original revenue records maintained prior to the introduction of "The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963", the land was classified as "Thoti Oozhiyam". Ex.A.6 is the settlement register which shows that the suit property has been classified as "Thoti Oozhiyam". Relying on this entry in the settlement register, the learned counsel for the appellants would submit that the land belongs to adi dravida community people. But, absolutely, there is no evidence at all to show that the adi dravida community people of Chidambarapatti village were doing any thoti service. It is common knowledge that "thoti service" means scavenging the village. In the State of Tamil Nadu, there is a community known as "Thoti" which normally involve in scavenging work. Adi dravida community is a different community and it is not a thotti community. It is not explained to the court as to how this adi dravida community people of Chidambarapatti village

could be called as "Thotti". Assuming that the term "Thotti" as mentioned in Ex.A.6 would include the people belonging to Adi Dravida community, it does not indicate whether it refers to the entire people belonging to Adi Dravida community. It is also well known that among Adi Dravida people, there are several communities. Whether all these communities are referred to as "thotti" or not is also not explained. Except Ex.A.6, absolutely there is no document in support of the plaintiffs' claim. Instead the plaintiffs wanted to declare title in favour of adi dravida community. The first appellate court has rightly considered the same and has reversed the decree and judgement of the trial court holding that absolutely there is no proof that the suit temple belongs to Adi Dravida community people belonging to Chidambarapatti village. Thus, I do not find any perversity in the well considered judgement passed by the first appellate court.

17. The second substantial question of law framed in this appeal relates to Ex.B.3. Ex.B.3 is the order passed by the Revenue Divisional Officer. It is the admitted case that after the introduction of the updating register scheme in the village, the patta for the suit property was issued jointly in the name of Vellaiyan and others. The plaintiffs objected to the same. The Revenue Divisional Officer, therefore, passed the order [Ex.B.3] cancelling the patta issued in the name of Villaiyan and others, however, leaving it open for the parties to work out their remedies before the civil court. Thus, Ex.B.3 would not in any manner go to prove that the title as claimed by the plaintiffs or possession. Accordingly, the second substantial question of law is answered against the appellants.

17. The third substantial question of law framed in this appeal would in my considered opinion is only a question of fact which I have already answered.

18. During the course of argument, the learned counsel for the appellants raised a plea of res judicata which necessitated this court to frame an additional substantial question of law. The additional substantial question of law is thus:

"Whether the findings in O.S.No.306 of 2003 will operate as res judicata for the respondents/defendants to claim that they have got exclusive title and right over the suit property?"

19. In my considered opinion, at the out set, I should say that this substantial question of law is to be answered only in favour of the defendants. The reasons are many. First of all, under Section 11 of CPC, in order to apply the principle of res judicata, it should be proved that the relevant issue in the present suit should have been in issue in the former suit between the same parties. Here, in the

instant case, first of all, the parties are different. The present suit in O.S.No.520 of 2003 has been filed in the representative capacity representing the entire people belonging to Adi Dravida community of Chidambarapatti village and the defendants six in numbers have been impleaded in their individual capacity. But , the suit in O.S.No.306 of 2003 was filed by the 2nd defendant herein representing 16 families. The defendants in that suit are six in numbers, who were impleaded in their individual capacity. Thus, it cannot be at any stretch of imagination said that the parties are one and the same. Though some of them are common in both the suits it cannot be said that the contesting parties in both the suits were one and the same. Similarly, there was no common issue, which was earlier decided in O.S.No.306 of 2003. The learned counsel for the appellants would refer to Issue No.2 in O.S.No.306 of 2003 which is as follows:-

"Whether the suit temple is a common temple belonging to Adi Dravida community?"

20. The trial court in that suit held that the temple belongs to Adi Dravida community people of Chidambarapatti village. In that suit, the title for the suit property was never in issue, whereas in the present suit, the title for the suit property is in issue. The 2nd relief in the present suit is for permanent injunction restraining the defendants from interdicting the plaintiffs from worshipping and celebrating and also participating in the affairs of Periyasamy Temple. That is, the relief was in respect of the administration of the temple and also right to worship. As I have already pointed out, in the earlier suit, this was not in issue. The issue was totally different. Thus, in my considered opinion, the decree and judgement in O.S.No.360 of 2003 will not operate as res judicata and, therefore, the first appellate court was right in considering the issue independently in the present suit in O.S.No.520 of 2003 and so decided the same on appreciating the facts.

21. In view of the foregoing discussion I do not find any merit at all in this second appeal and the same deserves only to be dismissed.

22. Before concluding I want to clarify the following. In O.S.No.306 of 2003 the trial court has held that the plaintiffs therein had not proved that they had exclusive right to renovate the temple. There was no issue relating to title or right of management. In my considered opinion, these are all matters which are to be gone into by the competent authority under The Tamil Nadu Hindu Religious and Charitable Endowments Act. Simply because the suit in O.S.No.306 of 2003 has been dismissed, it cannot be said that the plaintiffs in the said suit have got no right what soever over the temple. Similarly, the dismissal of the suit in O.S.No.520 of 2003 also cannot be understood as though the plaintiffs in the present suit have got no right of worshipping in the temple. In this second

appeal, the plaintiffs' claim for absolute ownership for the suit property including the temple has been negatived as there is no proof for the same. Regarding the right to worship in the temple, since the plaintiffs have claimed exclusive right, the same has been denied. Therefore, it is for the parties to both the suits to work out their remedies before the competent authority under The Tamil Nadu Hindu Religious and Charitable Endowments Act to establish their so called right of worshiping in the temple or in any other manner known to law.

23. In fact, both the parties are before this court. The efforts taken to mediate between the parties by referring the matter to the Mediation and Conciliation Centre, High Court, Madras, did not materialise. From the narration of the facts, it could be culled out that the parties are at lurch and therefore, it is for the revenue authorities and the officials of the Tamil Nadu Hindu Religious and Charitable Endowments Department to take care of the peace and tranquility in the village.

24. In the result, the second appeal fails and the same is accordingly dismissed. The interim order granted by this court on 26.03.2012 in M.P.No.1 of 2011 is hereby vacated. No costs. Consequently, connected MP is closed.

kmk

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

- 1.The Subordinate Judge, Namakkal, Namakkal District.
- 2.The Additional District Munsif, Namakkal, Namakkal District.
- 3.The Section officer, V.R.Section, High Court, Madras.

+ 1 cc to Mr.S.Parthasarathy, Advocate SR 17292

+ 1 cc to Mr.C.Kulanthaivel, Advocate SR 17188

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prk27/5

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