

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.03.2015
Delivered on : 18.06.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.544 of 2006
and
C.M.P.No.6708 of 2006

1.Ramasamy

2.Minor Aswin

Rep. By Father Sundaramurthi
16, Kumaran Avenue
Mangalam Road
Karuvam Palayam
Tiruppur

... Appellants/Plaintiffs

(Appellant - 2 is declared as major
and his father as guardian is
discharged vide order of Court
dated 12.02.2014 made in C.M.P.No.66
of 2014 in S.a.No.544 of 2006)

-Vs-

1.M/s.Arulmighu Visweswaraswamy
Veeraraghavaperumal Temple
Tiruppur, Rep. By its Executive Officer

2. State of Tamil Nadu

Rep. By the District Collector
Coimbatore

.. Respondents/Defendants

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.19 of 2004 before the Sub-Judge, Tiruppur dated 15.07.2004 confirming the judgment and decree passed in O.S.No.46 of 1997 by the District Munsif Court, Tiruppur dated 23.09.2003.

For Appellants : Ms.P.T.Asha
for M/s.Sarvabhauman
Associates

For Respondents : Mr.T.M.Hariharan for R1
No appearance for R2

JUDGMENT

The plaintiffs, who failed in both the Courts below, have come forward with the present second appeal challenging the decree of the lower appellate Court dated 15.07.2004 made in A.S.No.19 of

2004 confirming the decree of the trial Court dated 23.09.2003 made in O.S.No.46 of 1997 dismissing the said suit.

2. For the sake convenience and for achieving clarity, the parties are referred to in accordance with their ranks in the original suit and at appropriate places their ranks in the second appeal shall also be furnished.

3. The above said suit came to be filed by the appellants/appellants against the respondents herein/defendants based on the following averments:

i) Originally a total extent of 11.78 acres comprised in S.F.No.128 of Tiruppur Village belonged to one Velappa Gounder. On his death, the said property devolved upon his legal heirs and in a partition among them, Muthu Gounder son of Velappa Gounder got 3.93 acres, Velappa Gounder and Palani Gounder sons of Chinnia Gounder together got 3.93 acres and Sankarappa Gounder got 3.93 acres. Out of 3.93 acres of land allotted to Sankarappa Gounder, his sons Velappa Gounder, Muthu Gounder and Lakshmana Gounder were allotted 1.31 acres each in a subsequent partition among them. The above said Velappa Gounder son of Sankarappa Gounder had got a son by name Ramasamy Gounder. On the death of his father, Ramasamy Gounder possessed and enjoyed the property absolutely till his death. After the death of Ramasamy Gounder, his sons, namely Kandaswamy Gounder, Subbaraya Gounder, Kaliappa Gounder and Rasappa Gounder got title to the properties left by Ramasamy Gounder and they were in possession and enjoyment of their respective portions of the land continuously without any interruption. On the death of Kandaswamy Gounder, his daughter Valliammal acquired title to the property left by her father. Likewise, Periaswamy, Palaniswamy and Kandaswamy, all legal heirs of Subbaraya Gounder, Narayanaswamy, Subramaniam and Palaniswamy, all legal heirs of Kaliappa Gounder, Banumathi and Subbathal @ Subbulakshmi, all legal heirs of Rasappa Gounder, acquired title to the properties left by their respective fathers. The above said persons subsequently sold their respective shares in the suit property to Muthurathinam and Mahalingam sons of Samiappa Gounder under a registered sale deed dated 25.06.1992. The said Muthurathinam and Mahalingam, who possessed and enjoyed the property, in turn sold the same to the first plaintiff under a sale deed dated 26.07.1993. The said property, thus purchased by the first plaintiff, is the suit property and the same is in the absolute possession and enjoyment of the first plaintiff. The first plaintiff and before him, his predecessors-in-title were in continuous possession and enjoyment of the suit property for more than 100 years and the first plaintiff and his predecessors-in-title had perfected title by adverse possession.

ii) Under such circumstances, a notice dated 06.01.1995 sent by the first defendant temple seeking delivery of possession of the suit property came to be received by the first plaintiff. When it was informed to the vendors of the first plaintiff, it came to their knowledge that the suit properties were originally unenfranchised Devadayam Minor Inam Lands granted to Arulmighu Visweswaraswamy and Veeraraghavaperumal Temple situated at Tirupur.

However, the first plaintiff's predecessors-in-title had been given Ryotwari patta by the Assistant Settlement Officer, Salem in S.R.No.751 of 1968 dated 07.04.1980 in respect of the lands comprised in S.F.No.128. But it also came to the knowledge of the first plaintiff that the said order of the Settlement Officer was reversed by the Sub-Court, Coimbatore by its order dated 10.12.1998 in C.M.A.No.19 of 1981.

iii) Even after the passing of the above said order in C.M.A.No.19 of 1981, the first defendant temple accepted the title of the first plaintiff and his predecessors-in-title and hence, the temple did not take steps for recovery of possession of the suit property till the date of filing of the present suit concerned in this second appeal. Even if it is assumed that the first defendant temple shall have a right to claim recovery of possession, it would amount to waiver of the temple's right to claim recovery of possession of the suit properties since it allowed 15 years to elapse from the date of order of the Civil Miscellaneous Appeal. The first defendant temple had issued a "no objection" certificate dated 19.02.1992, wherein it had been informed that the temple had no objection for issuing patta in favour of the first plaintiff's predecessors-in-title in respect of the suit property. On the basis of such no objection certificate alone, the Tahsildar, Tirupur issued patta in the name of Valliammal and others, the first plaintiff's predecessor-in-title. Hence, the first defendant temple is estopped from claiming recovery of possession of the properties from the first plaintiff. As the first plaintiff and his predecessors-in-title were in peaceful possession and enjoyment of the suit property openly, uninterruptedly and continuously to the knowledge of the defendants for more than 100 years and the order passed by the Inam Abolition Tribunal caused a cloud over the title of the plaintiff in respect of the suit property, the plaintiffs were compelled to file the suit for declaration of the absolute title of the first plaintiff and for injunction restraining the respondents herein/defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.

iv) During the pendency of the suit, the first plaintiff Ramasamy sold a portion of the suit property to the second plaintiff and both the first and second plaintiffs are in joint possession and enjoyment of the suit property and hence, the second plaintiff is also added as a party to the suit.

4. The suit was resisted by the first defendant based on the averments found in the written statement, which are, in brief, as follows:

i) The sale deed dated 26.07.1993 is a fabricated document cooked up for the purpose of the suit. The plaintiffs are not in absolute possession and enjoyment of the suit property. The further averments made in the plaint to the effect that an extent of 11.78 acres comprised in S.F.No.128 originally belonged to one Velappa gounder and by virtue of partition and succession to the estate of the deceased and by virtue of the sale deed dated 25.06.1992 the suit property became the absolute property of the first plaintiff are false. The revenue records relied on by the plaintiffs were also concocted for the purpose of the suit to make

unlawful gain. Neither the plaintiffs nor their predecessors-in-title were in possession and enjoyment of the suit property. The order dated 07.04.1980 passed by the Assistant Settlement Officer, Salem was subsequently cancelled by the appellate authority, namely the Principal Subordinate Judge, Coimbatore by order dated 10.12.1982 made in C.M.A.No.18 of 1981. The first defendant, at no point of time, admitted any right of the plaintiffs as claimed by them in the plaint. The alleged waiver pleaded by the plaintiffs in the plaint is also false.

ii) The plaintiffs are not bonafide purchasers and in order to grab the temple land, false allegations were made in the plaint as if the first defendant gave a no objection certificate in favour of the first plaintiff for issuing patta in favour of the plaintiffs' vendors. Estoppel cannot be pleaded against the suit. The allegation that the first defendant attempted to take possession of the suit property by using force on 10.01.1997 was falsely made for the purpose of citing a cause of action for the suit. The suit property and other properties known as Kelangadu was the Devadeyam lands granted for supplying theertham to the visitors, who come to the Pagodas of Visweswarasami and Veeraraghava Perumal Temple and the grant was made by Hyder, Nawab of Sri Rangapattinam. The grant was also made in the name of one Aiyavariyengar @ Srinivasachar and he continued the service of supplying of theertham and he was enjoying the suit property and other properties. The grant was the service Inam which was not followed regularly or subsequently by the Inamdars. Neither the plaintiffs nor their predecessors-in-title are the legal heirs of the said service holder Aiyavariyengar @ Srinivasachar. Neither the plaintiffs nor their predecessors-in-title were doing the service of supplying theertham to the devotees, who come to the said temple. The first plaintiff was not a bonafide purchaser and he did not approach the Court with clean hands. After the Inam Abolition Tribunal passed the order in C.M.A.No.19 of 1981, neither the vendors of the plaintiffs nor their predecessors-in-title did file an appeal against the order of the Inam Abolition Tribunal. Hence, the reliefs claimed by the plaintiffs are liable to be rejected.

5. Necessary issues were framed and the parties went for trial. In the trial, two witnesses were examined as Pws 1 and 2 and 16 documents were marked as Exs.A1 to A16 on the side of the plaintiffs, whereas one witness was examined as DW1 and two documents were marked as Exs.B1 and B2 on the side of the defendants.

6. The learned trial Judge, after considering the pleadings made by the parties and the evidence adduced on both sides, dismissed the suit holding that the appellants had not proved their case. On appeal in A.S.No.19 of 2004, the decree of the trial Court dismissing the suit was confirmed by the lower appellate Court by its decree dated 15.07.2004. Challenging the said decree of the lower appellate Court confirming the decree of the trial Court dismissing the original suit filed by them, the plaintiffs/appellants have come forward with the present second

appeal on various grounds set out in the memorandum of grounds of second appeal.

7. As per the mandate provided under Section 100 CPC, at the time of admission, based on the grounds raised by the appellants/plaintiffs in the second appeal, this Court, formulated the following questions to be the substantial questions of law involved in the second appeal:

"1. Whether the Courts below were right in finding that the appellants have not proved title to the suit property without properly appreciating the tenor and nature of documents, namely Exs.A1 to A10?

2. Whether the Courts below were right in finding that Article 111 of the Limitation Act 1963 is applicable to the case on hand in stead of applying Article 65 of the Limitation Act?

3. Whether the Courts below committed an error in dismissing the suit when the defendants have not discharged their burden of proof?"

8. The arguments advanced by Ms.P.T.Asha of Sarvabhauman Associates, learned counsel for the appellants and by Mr.T.M.Hariharan, learned counsel for the first respondent were heard. The judgments of the Courts below and the materials available on record were also carefully perused by this Court.

9. The suit came to be filed by the appellants herein/plaintiffs for a declaration that they are the absolute owners of the suit properties and for a consequential permanent injunction restraining the respondents/defendants from interfering with the plaintiffs' possession and enjoyment of the suit property. Though the appellants/plaintiffs trace their title to a sale deed dated 26.07.1993 marked as Ex.A14, they have admitted that they made enquiries after they received a notice dated 06.01.1995 from the respondents seeking delivery of possession and on such enquiry with their vendors, they came to know that the suit property was a devadayam minor inam land granted to the first defendant temple. The appellants/plaintiffs also admitted that though the Assistant Settlement Officer granted Ryotwari Patta in respect of the suit property to the predecessors-in-title of the plaintiffs, the same came to be upset in an appeal by the Minor Inam Abolition Tribunal (Sub Judge, Coimbatore) by an order dated 10.12.1992 made in C.M.A.No.19/1981. However, the plaintiffs contended that their predecessors-in-title and after them, the plaintiffs were in continuous possession of the suit property claiming absolute title as owners for more than 100 years and neither inamdhar, nor the first defendant temple was in possession of the same. Though they would have stated that they were in possession for more than 100 years, it was their further contention that even after the order of the Tribunal in C.M.A.No.19/81 came to be passed, the first defendant temple allowed the appellants/plaintiffs to continue in possession accepting their title, kept quiet for more than 15 years and hence the claim of the first respondent temple for possession was barred by limitation. Based on the said pleadings, the appellants/plaintiffs submitted that they had perfected title by adverse possession.

10. When a party to the suit makes a plea of perfection of title by adverse possession, such party should have pleaded and proved the necessary particulars constituting adverse possession, which includes the necessary animus to possess the property adverse to the real owner, besides proving that such possession was open and uninterrupted for more than the statutory period. Though the appellants would have made a plea that their predecessors-in-title and they had been in possession and enjoyment of the suit property for more than 100 years, such possession on their assumed title shall not be adverse possession, since the necessary animus to possess it adverse to the real owner, namely the first respondent temple, was absent.

11. Admittedly, the suit property was a devadayam minor inam land and the grant was made to the first defendant temple by the Nawab of Srirangapattinam for the purpose of supplying theertham to the visitors. It is also an admitted fact that the inamdhar had to supply theertham to the visitors of pagodas of the first defendant temple. The said character of the land was upheld by the Inam Abolition Tribunal (Sub Judge, Coimbatore) under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 by its order dated 10.12.1982 made in C.M.A.No.19 of 1981. A copy of the said order has been produced as Ex.A16. The said order was not challenged and it became final. In view of the fact that the Tribunal under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 directed grant of ryotwari patta to the first respondent temple and the said order remained unchallenged, if at all the possession of the vendor of the appellants had become adverse, it would have been only from 10.12.1982, the date of the order of the Tribunal.

12. The next aspect to be considered is whether such an adverse possession has been proved to be continuous, uninterrupted and lasted for more than the period of limitation. Admittedly, the appellants got Ex.A14-sale deed executed by their vendor purporting to convey the suit property to the plaintiffs. By then, a period of roughly about 9 years and 8 months alone had lapsed after the date of the order of the Tribunal in C.M.A.No.19 of 1981. According to the plea made in the plaint, the appellants came to know that the suit property was a devadayam minor inam land and ryotwari patta for the same came to be issued to the first defendant temple under the Minor Inam Abolition Act, only after they received a notice dated 06.01.1995 issued by the Executive Officer of the first defendant temple seeking delivery of possession. Hence there was a break in the adverse possession and the possession of the appellants/plaintiffs from the date of Ex.A14-sale deed (from 26.7.1993) till 6.1.1995 could not be termed adverse, since the necessary animus to constitute adverse possession was absent during the said period. The possession of the plaintiffs thereafter, will of course be construed as adverse possession, but it shall be a fresh spell of adverse possession. Within two years thereafter the

plaintiffs have filed the suit. Hence the claim that the plaintiffs have perfected title by adverse possession deserves to be discountenanced.

13. Of course it is true that the lower appellate court made an observation and rendered a finding that for claiming adverse possession against the temple, the appellants should have proved their adverse possession for more than 30 years without making any reference to the relevant article of the Limitation Act, 1963 applicable to the case. However the trial court referred to article 111 as the relevant provision and the appellate court also followed it without specifically referring to the said article. The same led to the conclusion made by the lower appellate court that the appellants failed to prove their adverse possession for more than the statutory period. Perhaps the lower appellate court proceeded on the wrong assumption that the temple properties are properties belonging to the local body attracting Article 111 of the Limitation Act, 1963. This court, without any hesitation, holds that the said observation of the lower appellate court is wrong and erroneous. However the finding of the lower appellate court that the plaintiffs had not perfected title by adverse possession has got to be sustained for the reasons indicated supra viz. there was a break in adverse possession before completion of 12 years from the date of Ex.A16-order. From 26.07.1993 till 06.01.1995, the date of receipt of notice from the Executive Officer of the first defendant temple, the possession of the plaintiffs was not adverse, as there was absence of necessary animus to make it an adverse possession. The proper Article under the Limitation Act, 1963 shall be Article 65 of the Limitation Act, 1963, which prescribes 12 years as the period of limitation. The plaintiffs have not proved that their vendor had been in possession which was adverse to the first defendant temple for more than 12 years from the date of the order of the Tribunal. The said period worked out roughly about 9 years and 8 months. The subsequent possession by the plaintiffs from 26.07.1993 till 06.01.1995 was not adverse, as it was not coupled with necessary animus. After the plaintiffs came to know that the first defendant temple is the owner of the suit property, they have not proved that they were in continuous possession for not less than 12 years as contemplated under Article 65 of the Limitation Act, 1963. Hence the second substantial question of law is answered accordingly holding that the lower appellate court committed an error in applying Article 111 of the Limitation Act, 1963 as the relevant Article prescribing the period of limitation for the recovery of the temple property, instead of applying the correct provision, namely Article 65 of the Limitation Act, 1963.

14. Though the second substantial question of law has been answered in favour of the plaintiffs holding that Article 65 of the Limitation Act and not Article 111 of the Limitation Act is applicable for recovery of possession of the temple land, on facts, the plaintiffs have not substantiated their case that they have perfected title by adverse possession by their continuous, uninterrupted adverse possession for not less than 12 years as

contemplated under Article 65 of the Limitation Act. As indicated supra, there was a break in the adverse possession before the completion of the statutory period of 12 years and a fresh spell of adverse possession started only from 06.01.1995. This court, while taking the view that the lower appellate court applied an erroneous provision, namely Article 111 of the Limitation Act instead of the correct provision, namely Article 65 of the Limitation Act, the finding that the plaintiffs had not perfected title by adverse possession deserves to be sustained on the ground that the plaintiffs have not proved that they had been in continuous adverse possession of the suit property with necessary animus for more than 12 years. The documents produced by the plaintiffs as Exs.A1 to A10 will not render any assistance to the appellants/plaintiffs to substantiate their contention that they have perfected title by adverse possession.

15. In fact Ex.A1 - order of the Assistant Settlement Officer, Tiruppur granting patta in favour of the vendor of the plaintiffs will show that the said patta came to be issued on 03.04.1992 i.e. within 10 years after the Inam Abolition Tribunal passed order. Ex.A16-order of the Inam Abolition Tribunal came to be passed in 10.12.1982. The other documents are also of the year 1992 and subsequent period. The said documents would show that the vendor of the plaintiffs was in possession from the date of Ex.A16-order of the Tribunal defying the same. But such a possession fell short of the statutory period and the plaintiffs came to possess the suit property from 26.07.1993. Of course Ex.A15 came into existence only after the filing of the suit. Hence no credence can be given to the same. Exs.A1 to A4 produced on the side of the plaintiffs will not be helpful to the plaintiffs, as the documents are not in the name of their vendor. Exs.A5 to A12 show the possession of the suit property by the plaintiffs. It is not in dispute that the plaintiffs are in possession and that is the reason why notice came to be issued seeking delivery of possession. Ex.A13 also pertains to a period prior to the purchase made by the plaintiffs. Hence the same may not be relevant. The other documents would show possession of the plaintiffs, but such possession of the plaintiffs became adverse with necessary animus only from 06.01.1995. Therefore the first substantial question of law deserves to be answered against the appellants/plaintiffs and in favour of the respondents/defendants holding that the tenor and nature of the documents Exs.A1 to A10 would not prove the title of the plaintiffs to the suit property either by derivation or by adverse possession.

16. The plaintiffs are the persons who filed the suit claiming title to the suit property and praying for a declaration and injunction contending on the ground that they had got derivative title. At the same time, they have also based their claim on their contention that they had perfected title by adverse possession. The claim of derivative title and adverse possession shall not go together. That is the reason why they have taken the plea that though they had purchased the property from their vendors, they came to know the fact that the suit property was a devadayam minor

inam land only when they received a notice dated 06.01.1995 from the Executive Officer of the first defendant temple and that by the continuous possession of their vendor from the date of the order of the Tribunal produced as Ex.A16 and by themselves from the date of their purchase, they had perfected title by adverse possession. Under such circumstances, the burden shall stand heavily cast on the appellants/plaintiffs. The first respondent/first defendant temple has established its title based on oral evidence and Exs.B1 and B2 besides relying on Ex.A16 order of the Inam Abolition Tribunal. Ex.A16-order of the Tribunal conclusively establish the title of the temple. The title of the temple as per the said order, has been admitted by the appellants/plaintiffs. Only based on such admission they claimed perfection of title by adverse possession. The plaintiffs miserably failed in their attempt to substantiate their contention that they have perfected title by adverse possession. Hence third substantial question of law is also liable to be answered against the appellants/plaintiffs and in favour of the respondents/defendants.

17. In addition, the suit was dismissed by the trial court on the ground that the suit was barred by the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Section 108 of the said Act provides as follows:

"108. Bar of suits in respect of administration or management of religious institutions, etc. - No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act."

Section 63 of the HR&CE Act provides that Joint Commissioner or Deputy Commissioner, as the case may be, shall have the power to enquire into and decide whether any property is a religious or specific endowment and whether any property has been given for the support of any religious or charitable institution. Such powers are spelt out in subsections (c), (d) and (g) of Section 63. Section 69 provides for an appeal to the Commissioner of Hindu Religious & Charitable Endowments against the order passed by the Joint Commissioner or the Deputy Commissioner as the case may be. Section 70 of the Act provides that a party aggrieved by the order passed by the Commissioner under Section 69(1) or one relating to any matter specified in Section 63 may, within 90 days from the date of receipt of the order of such Commissioner, institute a suit in a court against such order and that the court may modify or cancel such order. An appeal to the High Court has also been provided under sub section (2) of Section 70.

18. A conjoint reading of Sections 63, 69, 70 and 108 will make it clear that the suit filed by the plaintiffs is one barred by the provisions of the Hindu Religious and Charitable Endowments Act, 1959. Hence the finding of the courts below that the suit is barred by the provisions of the Hindu Religious and Charitable Endowments Act, 1959 is in tune with the provisions of the Hindu Religious and Charitable Endowments Act, 1959. In fact the said finding has not been challenged before the appellate court in the second appeal. In view of the findings of this court regarding the substantial question of law 1 to 3, this court is of the considered view that there is no merit in the second appeal and the same deserves to be dismissed.

In the result, the second appeal is dismissed confirming the decree passed by the lower appellate Judge, namely Sub-Judge, Tiruppur dated 15.07.2004 made in A.S.No.19 of 2004, which in turn confirmed the decree passed by the District Munsif Court, Tiruppur dated 23.09.2003 in O.S.No.46 of 1997. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Sub Judge, Tiruppur
2. The District Munsif, Tiruppur
3. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.Sarvabhauman Associates, SR.30170

+1 cc to M/s.T.M.hariharan, Advocate, Sr.30295

+1 cc to Spl.Government Pleader, SR.30048.

Nm(co)
krd 9/7

Judgment
in S.A.No.544 of 2006