

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

S.A.No.884 of 2006

Sri Pillaiyar Temple
Sellappa Goundanpudur
rep.by its Fit Person,
Medampatti,
Coimbatore Taluk and District
Office at Sri Patteswaraswamy Temple,
Porur, Coimbatore - 641 010.

... Appellant/Appellant/
Plaintiff

Vs.

1. M.N.Chellappa Gounder,
2. C.Rajamani
3. M.C.Kalingaraj
4. M.P.Sivasubramanian
5. Sub Registrar,
Thondamuthur Sub Registrar Office
Coimbatore Taluk.
6. Manohari
7. Chandrakala
8. Chandrasekar

... Respondents/Respondents/
Defendants

Respondents No.2 and 6 to 8 are given up.

PRAYER: Second Appeal filed Section 100 of Civil Procedure Code against the Judgment and decree dated 25.7.2005 made in A.S.No.51 of 2004 on the file of the II Additional Subordinate Judge, Coimbatore confirming the Judgment and decree dated 23.1.2004 made in O.S.No.2529 of 1999 on the file of II Additional District Munsif, Coimbatore.

For Appellant	: Mr.R.T.Doraisamy
For Respondents	: Mr.M.Baskar for RR.1 to 4 Ms.B.Saraswathi for R.5

JUDGMENT

The unsuccessful plaintiff temple is the appellant herein. The suit is filed by the plaintiff for restraining the 6th defendant - Sub Registrar, Thondamuthur from registering the sale deed dated 6.9.1999 executed by the defendants No.1 to 4 in favour of the 5th defendant in respect of the suit property and pending as document No.181 of 1999.

2. The relief of permanent injunction is sought for by the plaintiff by claiming title over the suit property as per document dated 18.12.1911 executed by one Chellappa Gounder in favour of five individuals. According to the plaintiff, under the document above referred to, the suit property is dedicated to the plaintiff temple by earmarking the income from and out of the property to conduct poojas and other rituals in the temple. It is their contention that when the properties are endowed in favour of the plaintiff temple, the defendants, who are the heirs of late Chellappa Gounder, have no manner of right in the suit property and they have no right to execute sale deeds in favour of the 5th defendant under the document dated 6.9.1999 and the document cannot be registered so as to convey any right, title and interest in favour of the 5th defendant.

3. The suit is resisted by the contesting defendants mainly on the ground that the document dated 18.12.1911 was executed as sham and nominal document by late Chellappa Gounder, who was heavily indebted to third parties, to keep the property out of reach of the creditors and even after the execution of the document dated 18.12.1911, the property continued to be in the hands of Chellappa Gounder and thereafter in the hands of his legal representatives. His legal representatives - defendants 1 to 4 have thus perfected their title by adverse possession. The suit relief was further opposed by them by questioning the maintainability of the suit for bare injunction without seeking any relief of declaration of title over the suit property.

4. The suit was after due contest dismissed on the basis of the findings that the suit temple does not come under the administration and control of Hindu Religious and Charitable Endowments Department and the plaintiff failed to establish that the suit temple was administered by Hindu Religious and Charitable Endowments Department and the original owner of the suit property did not divest his right, title and interest in favour of the plaintiff temple and the plaintiff temple as well as the suit property have been under the control of the defendants' predecessors in title and thereafter the defendants and the remedy available to the plaintiff is only to seek appropriate remedy before the appropriate civil forum and no injunction against the registration of document can be granted against the registering authority. Aggrieved against the same, the plaintiff preferred A.S.No.51 of 2004. The lower appellate court after duly analysing the pleadings on both sides in the light of the oral evidence adduced upheld the conclusion of the trial Court and confirmed the judgment and decree of the trial Court and dismissed

the appeal. Both the Courts below have while disposing of the main case taken note of the fact that the sale deed in respect of which the relief is sought for was registered as early as 22.10.1999 much before the institution of the suit. Aggrieved against the judgment and decree of the Courts below the plaintiff is now before this Court by way of present Second Appeal.

5. The Second Appeal is admitted on the following substantial questions of law:

'a) Whether the Trial Court is correct in granting decree in favour of the defendants 1 to 4 in a suit filed by the plaintiff for injunction restraining the 6th defendant from registering the Sale Deed created by Defendants 1 to 4?

b) After having admitted the execution and the existence of settlement deed Ex.A-1 dated 18.11.1911, whether the Courts below are correct in dismissing the suit unless and until Ex.A.1 is set aside by competent Court?

c) Whether Courts below are correct in framing issues and decide the case outside the scope of the suit?

6. Heard the learned counsel appearing on either side and perused the materials on record.

7. The suit relief, as already stated, is by claiming ownership over the suit property. While opposing the suit relief, the contesting defendants denied the claim so made by the plaintiff temple on the strength of Ex.A.1 document. Strictly speaking, the relief in the suit is not maintainable, as the document in respect of which relief is sought for was registered on 22.10.1999 much prior to the suit. When the registration of the document is completed on 22.10.1999 as document No.181 of 1999, nothing survives in the suit, which is filed during December, 1999 seeking permanent injunction restraining the registering authority from registering the document.

8. Be that as it may, as the suit is filed for the relief by claiming ownership, as the same is stoutly denied by the defendants, both the Courts below have, while deciding the issue as to whether the plaintiff is entitled to seek the injunction relief or not, incidentally gone into the issue relating to the title. The trial Court having entertained the suit, ought to have decided the relief in the light of the main controversy raised in the respective pleadings of the contesting parties. Both the courts below have on the basis of the available evidence decided the issue relating to the basic claim made by the plaintiff. The same cannot be said to be outside the scope of the suit.

9. Further, the trial Court as well as the lower appellate court on the basis of the available evidence rendered a finding regarding the nature of the temple, manner of administration of temple and the possession and enjoyment of the plaintiff temple as well as the suit property by the predecessors in title of the contesting defendants as well as the defendants. In the absence of any material to show that the findings so rendered by the trial Court as confirmed by the lower

Appellate Court are perverse in nature, based on no evidence or by overlooking any material evidence, the correctness of such factual findings cannot be re-agitated before this Court and the question of re-appreciation of evidence does not arise at this second appeal stage.

10. Further, the relief sought for herein restraining the registering authority from registering the document without seeking any relief of declaration of title is not maintainable. Instead of filing suit for permanent injunction, the plaintiff ought to have come forward with the suit for a larger relief and the dismissal of the plaintiff's suit by the Court below for injunction by driving the party to go for comprehensive suit, in my considered view, warrants no interference.

11. In the result, the Second Appeal is dismissed. No order as to costs.

-Sd/-

Assistant Registrar(cs-III)

//True copy//

Sub Assistant Registrar

To

1. The II Additional Subordinate Judge, Coimbatore,
2. The II Additional District Munsif, Coimbatore.
3. The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to Mr.R.T.Doraisamy, Advocate (SR.3235)
+ 1 cc to Mr.M.Baskar, Advocate (SR.2941)

S.A.No.884 of 2006

PVR (CO)
Rs 12.08.2015

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