

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.07.2015

Coram:

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

S.A.No.2137 of 2001

Sri Arulmighu Subramaniaswamy
Thieukoil rep. By its
Executive Officer,
Pollachi.
Appellant

vs.

1.K.Subramanian
2.D.Amuthavalli
3.Palanichamy
4.P.Thangam
5.Somaskandan
6.Sumathi
7.A.Venkatasubramaniam
8.P.Illango
9.The Secretary,
Pollachi Town Co-op.
Building Society, Pollachi.
10.Jayalakshmi
11.Venkatasubramanian
13.Thilagavathi

.. Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 13.01.2000 made in A.S.No.153/1999 on the file of the Principal District Judge, Coimbatore confirming the judgment and decree dated 30.04.1990 made in O.S.No.187 of 1990 on the file of the Subordinate Judge, Udumalpet.

For Appellant : Mr.

For Respondents : Mr.

JUDGMENT

The unsuccessful plaintiff/temple is the appellant herein. The present second appeal is filed against the concurrent judgments of the trial court as confirmed by the lower appellate court.

2.The suit in O.S.187/90 was filed by the plaintiff for declaring the plaintiff's title to the suit property and for recovery of vacant possession of the suit property. The plaint proceeds as if the suit property belongs to the temple by way of devadaya Inam vide TD no.111 and the grant was confirmed till the temple was maintained from and out of the income from the same and the property was registered under Minor Inams (Abolition and Conversion into Ryotwari) Act (hereinafter shortly referred to as Act) and the same has been maintained so, by the first defendant who was the hereditary trustee of the plaintiff temple and he had been treating the income of the property as temple property and utilised the same for maintenance of the temple and the first defendant has been in possession and enjoyment of the same in his capacity as hereditary trustee of the same and in order to protect the property, on behalf of the temple and after coming into force the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act (hereinafter shortly referred to as Act), steps were taken to obtain ryotwari patta in respect of the suit property belonging of the temple and the ryotwari patta was duly issued to the temple by the Settlement Tahsildar and patta issued by the Settlement Tahsildar was set aside by the Minor Inam Tribunal, Coimbatore in CMA.334/69 wherein, the first defendant claimed independent right over the suit property and on the failure of the temple to produce relevant documents, before the appellate authority, the order of the settlement Tahsildar was set aside and ryotwari patta was issued in the name of the first defendant and thereafter no step was taken to file further appeal against the order of the settlement Tahsildar. While so, the first defendant was removed from the hereditary trusteeship by the HR&CE Department and the same was challenged by a suit, which is now culminated and pending as appeal before the Supreme Court. In the mean while, an Executive officer was appointed as in-charge of the temple, who preferred an appeal with a delay of 30 days and the High Court, Chennai refused to condone the delay and dismissed the appeal on the ground of delay. Thereafter, the first defendant had been continuing in possession and enjoyment of the property belonging to the temple and by utilising the income from the same for his personal use without any right to do so and also sold a portion of the same to the defendants 2 to 10 during 1990 which compelled the plaintiff to come forward with the suit for the relief stated supra.

3.During the pendency of the suit, the purchasers of a portion of the suit property and on death of the first defendant, her legal heirs were brought on record as the defendants 2 to 10 and 11 to 13 respectively. The first defendant in the written statement filed by her during her lifetime, seriously resisted the claim of the temple. The first defendant opposed the relief by challenging the maintainability of the suit on the ground of limitation and by applying the principle of resjudicata and by claiming prescriptive title by adverse possession. The suit relief was also opposed by the

defendants 2,4,6,7,9 10, and 11 to 13 on the same grounds as raised by the first defendant.

4.The contesting parties, in support of their respective contentions during trial, examined the Executive officer, HR&CE Department, Coimbatore as PW1 and produced Exs.A1 to A25 and Exs.B1 to B18 documents. The trial court on the basis of the available evidence, arrived at a conclusion that though the grant was made in favour of the temple in 1862 vide Ex.A2 and though the property was treated as temple property, Exs.A3 to A7 auditor's reports for the temple do not establish the exclusive title of the temple in respect of the suit property. Having regard to Ex.B16 patta issued in 1805 in favour of the poojari kuppaiyan in respect of the suit property and Ex.B17 Jarimania patta issued in the name of the same person and Ex.B1 order made in CMA.334/69 by the Inam Tribunal thereby granting ryotwari patta in favour of the first defendant, Exs.A3 and A4 patta issued by the special Tahsildar, Ex.B7 Extract of permanent register for inam for the faslis 1620 and fasli for 1342 and other documents produced on the side of the defendants, it would prove that the patta was issued to the individual Kuppaiyan Poosari, who was the predecessor in title of the defendant as early as 1805 as such, the plaintiff cannot be held to be the owner on the strength of A2 patta issued in the year 1962 and the property granted as 'Maniyam' to Kuppaiyan Poosari was later on partitioned between Kuppaiyan Poosari and others and the same has been since the date of patta, in possession and enjoyment of predecessor in title and thereafter in the hands of the first defendant and thereafter with her legal heirs and the purchaser from her and there was no evidence to show that the same was treated as temple property and the income from the same was utilised for the temple purpose and it is the first defendant and her legal heirs who were entitled to kudivaram right. The trial court has also held that the suit having not been filed for declaration within 3 years from the date of order passed by the Inam Tribunal in 1972, and from the date of issuance of ryotwari patta in favour of the first defendant during 1978 is hence barred by limitation. The trial court also arrived at the conclusion that the first defendant having claimed title in her favour in respect of the suit property as early as in 1972 and having obtained ryowari patta in 1973, the first defendant by her open, continue, uninterrupted and adverse possession from 1973 to the knowledge of the temple, obtained prescribed title in respect of the suit property and the claim of the plaintiff/temple if any is lost. The trial court also found that the issue relating to right of the parties for obtaining patta having been ultimately decided by Minor Inam Tribunal, the same cannot be permitted to re-agitate by way of civil suit and the civil suit is barred by resjudicata. The trial court on the basis of such findings, held the temple to be dis-entitled to get the suit relief and dismissed the suit. Aggrieved against the same, the plaintiff preferred AS.153/1999. The lower appellate court agreed with the findings of the trial court, with regard to maintainability of the suit on the ground of limitation and the claim of the first defendant for independent title over the suit property on the basis of Exs.B1, B4, B7 and B16 to B18 documents and her claim for prescriptive title by adverse possession and accordingly dismissed the appeal filed by the plaintiff temple. Hence, this second appeal by the plaintiff before this court.

5.Originally the second appeal was by judgment dated 21.12.2001 dismissed by this court on the ground that both the courts below have considered the claim of the parties on appreciation of evidence both oral as well as documentary, pertaining to the title of the property and

ultimately found that the appellant temple failed to establish their title to the suit property. The correctness of the same was challenged by way of civil appeal before the Apex Court, which set aside the judgment and decree of this court and remanded the appeal for fresh disposal strictly in accordance with law and gave liberty to the parties to raise all factual and legal issues which are permissible in law.

6.After the remand, this court by order dated 4.11.2013 framed 9 substantial questions of law for determination of this second appeal and the same were by order dated 20.2.2004 re-framed, which read as follows:

RKJ order.....

7.During the pendency of this second appeal, both the appellant/plaintiff and the defendants have come forward with CMP.Nos.877 and 353/2014 for receiving additional documents on their respective sides and this court by order dated 4.2.2105, on consent of the parties, allowed CMPs and received the additional documents as Exs.A26 to A40 on the plaintiff's side and Exs.B19 to 24 on the defendants' side.

8.Heard the rival submissions made on both sides and perused the records.

9.As already stated, the plaintiff temple claimed the suit relief for declaration and recovery of possession of the suit property on the strength of devadaya inam granted in favour of the temple by Zamindar of Ramnad vide T.D.No.111. The facts that the predecessor-in-title of the first defendant and the first defendant were the service holders-cum-hereditary trustees of the plaintiff temple and had been managing the affairs of the temple and had been in possession and enjoyment of the property belonging to the temple and the property granted by way of Inam and the suit property have also been in their possession, are not denied. While the plaintiff claimed that the suit property belongs to the temple by way of Devadaya Inam by Zamindar of Ramnad vide TD No.111, Ex.A2 Inam register extract, Exs.A3 to A7 auditor's reports and Ex.A24 order of the Settlement Tahsildar in SR.No.410 and 462/1968 made under the Minor Inams (Abolition and Conversion into Ryotwari) Act 30/1963, the first defendant denied the plaintiff's title and set the title in favour of her predecessor and thereafter herself by virtue of Ex.B1 order made in CMA.334/69 by the Inam Tribunal, Coimbatore for issuance of ryotwari patta in favour of the first defendant, Ex.B3 patta issued by the Special Tahsildar, Exs.B7 and B8 Inam register extracts, Ex.B11 lease deed Exs.B16 order of the Collector of chennai directing to issue jarimania patta, Ex.17 jarimania patta and Ex.B18 patta for the fasli 1348. In the course of argument before this court, additional documents are produced and are received as Exs.A26 to A40 and Exs.B19 to B24 on the side of the plaintiff and the contesting defendants. The suit was originally filed against the first defendant only. Thereafter the purchasers of a portion of the suit property were impleaded as the defendants 2 to 10 and after the death of the first defendant Subbulakshmiammal, her legal heirs were impleaded as the defendants 11 to 13. Both the courts below have rejected the plaintiff's claim for title by holding that Ex.A2 inam register extract shall not be conclusive proof in the absence of any other records such as inam title deed and the predecessor of the first defendant and thereafter the first defendant have to be entitled for the suit property on the strength of Ex.B6.....

The learned single judge of our High Court in the authority reported in 2012 (1) MWN (Civil) 241 (Sambandam (died) and others v. Nataraja Chettiar), observed that “as per decision Sainath Mandir Trust v. Vijaya V.Mandale, 2004 Vol.106 (1) Bom LR 259 (267) (Bom), when the contest in the suit is between the persons beneficially interested in such property under third person, it is not necessary to make all the Trustees party in the suit”. It is further observed therein that “the suit can be maintained by all the trustees jointly or by any one of them when authorised in that behalf by rest of them and the omission to show the trustee in such capacity in the long cause title of the plaint and shown in his individual capacity is only a matter of form and not of substance and the suit filed by him for recovery of possession in the long cause title of the plaint describing himself as an individual is maintainable in law”.