

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.982 OF 1998

Dated 5th June, 2015

Between:

Tirumala Tirupati Devasthanams, represented by Executive Officer,
Holding his office in Administrative Building, K.T.Road, Tirupati.

..Appellant.

And:

M.Narasimhulu and others.

..Respondents.

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JUDGMENT:

This appeal is preferred against judgment dated 20-2-1998 in A.S.No.67 of 1991 on the file of III Additional District Judge, Tirupati whereunder judgment dated 28-8-1991 in O.S.No.197 of 1983 on the file of Principal Senior Civil Judge, Tirupati is confirmed.

Appellant herein is defendant and respondent herein is plaintiff and they are hereinafter referred to as "plaintiff and defendant" as arrayed in the suit for convenience sake.

Brief facts leading to this appeal are as follows:

Plaintiff filed the above suit seeking declaration that the plaintiff is absolute owner of plaint 'A' schedule property and to restrain the defendant from interfering with peaceful possession and enjoyment of the said property. According to plaintiff, his father had been in possession and enjoyment of the suit property as owner since more than 50 years and raised thatched house in the said property; after the death of plaintiff's father in the year 1965, plaintiff succeeded to the possession and he is in enjoyment of plaint 'A' schedule property. Plaintiff, after sometime, demolished the thatched house and raised mangalore tiled building in its place and door number was assigned as 5 of 53 and the building consists of six portions. Plaintiff is residing in one portion and the respondent had been collecting tax from the plaintiff for the suit schedule property being the Executive Authority of

Tirumala Grampanchayat; while so, defendant issued show cause notice stating that plaintiff is an encroacher and liable for eviction.

Defendant resisted the claim of plaintiff and contended that defendant is entitled to evict the plaintiff as owner of the property. It is contended that defendant filed O.A.No.90 of 75 before the Joint Commissioner and eviction was also ordered and plaintiff suppressed all these facts and filed the suit and that the plaintiff is not entitled for the relief.

Trial court framed appropriate issues including plaintiff's right in view of the orders in O.A.No.90 of 75 of Joint Commissioner and Endowments Department and conducted trial. During trial, two witnesses are examined and 19 documents are marked on behalf of plaintiff whereas one witness is examined and no document is marked on behalf of defendant. On an over all consideration of oral and documentary evidence, trial court decreed the suit. Aggrieved by the decree passed by the trial court, defendant preferred appeal and the appellate court i.e., III Additional District Judge, Tirupati, on a reappraisal of entire oral and documentary evidence, confirmed the findings of the trial court and aggrieved by the same, present Second Appeal is preferred.

The following are the substantial questions of law that are urged in the grounds of appeal.

(a) Whether the finding of the court below in regard to adverse possession and title of plaintiff is legal and valid in the light of Sections 83 and 143 of the Endowments Act (Act 30 of 1987)?

(b) Whether the possession of the plaintiff of the plaint schedule property is lawful in view of the decision rendered in OA.No.90 of 1975 on the file of the Joint Commissioner of Endowment Department under Section 83 of the Endowments Act?

(c) Whether the interpretation sought to be placed as Exs.A.2 to A.19 and G.O. are legal, proper and correct in deciding the title and possession of the plaintiff in respect of the suit schedule property?

This court admitted the appeal treating the above grounds as substantial questions of law.

Heard both sides.

Advocate for appellant-defendant submitted that both the courts erroneously granted declaration in favour of plaintiff though plaintiff has not produced any document to prove his title over the suit land. He further submitted that house tax receipts marked on behalf of plaintiff would only denote enjoyment of the property and it would no way convey title and further submitted that document is only for

building i.e., structures. He further submitted that by simply raising structures in the property, plaintiff cannot get ownership and both the courts failed to consider this aspect and granted decree. He further submitted that in view of the order of the Joint Commissioner in O.A.No.75 of 1990, plaintiff has to be treated as encroacher and that he is not entitled for the relief of declaration and consequential injunction. He further submitted that plaintiff is an encroacher as per Section 83 of the Endowments Act and suit cannot be decreed without producing any document of title.

Other side submitted that both the courts concurrently held that plaintiff and his father were in possession for more than 50 years to the knowledge of the defendant and thereby, perfected title, and for that reason, conferred title on plaintiff and that there are no grounds to interfere with the concurrent findings.

Now the point that would arise for my consideration in this appeal is whether substantial question of law as urged is tenable and whether there are any grounds that need determination by this Court?.

POINT:

According to plaintiff, plaintiff schedule property is an ancestral property and his father enjoyed the same and in the partition among the brothers, this property fell to the share of plaintiff and he constructed a mangalore tiled house in the year 1976 and Executive Officer of Gram Panchayat, Tirumala assessed this property and collected property tax from the plaintiff. According to plaintiff, defendant has no right in the suit property.

On the other hand, it is the contention of the defendant that plaintiff is an encroacher and department initiated proceedings and Joint Commissioner passed orders of eviction treating the plaintiff as encroacher and therefore, in view of the said order, plaintiff has no right to claim title over the suit property.

As seen from the material, there were land acquisition proceedings and the Land Acquisition Officer has issued notices to plaintiff treating him as owner of the property. Plaintiff got marked the notice issued by the Land Acquisition Officer under Section 4 (1) and 5-A of the Act as Ex.A.2 in which it is clearly mentioned that one Rajakrishna Naik is owner and plaintiff is occupier. This very document would falsify the claim of defendant as to the ownership of the property. If really, defendant is the owner of the schedule property, it is not known as to why Ex.A.2 notice was issued referring one Rajakrishna Naik as owner. After Ex.A.2, plaintiff issued reply disputing the ownership of the said Rajakrishna Naik.

From the material on record, it is clear that the plaintiff and his

predecessor were in possession and enjoyment of the schedule property for more than 50 years and their enjoyment is fortified with property tax demand notice issued by the Executive Officer of Gram Panchayat, Tirumala who is also Executive Officer of defendant institution. There is absolutely no material to show that defendant is owner of the plaint schedule property. When the defendant has no right over the plaint schedule property, any order passed by defendant treating the plaintiff as encroacher has no bearing. Further, defendant has not taken any action in pursuance of these orders which were passed long back, which clearly disclose that the defendant has also recognized possession of plaintiff. Both trial court and appellate court have thoroughly scanned the entire evidence on record and negatived objection of defendant with regard to the status of the plaintiff in respect of plaint schedule property. As rightly pointed out by advocate for plaintiff, concurrent findings of courts below are based on material evidence and there is no perversity in the findings of both the courts. One of the contentions of appellant-defendant is that both trial court and appellate court have decreed the suit in favour of the plaintiff by taking into consideration weakness of the opposite party i.e., defendant. But as seen from the material, the said objection is not tenable because when cogent and convincing evidence is produced on behalf of plaintiff proving his continuous uninterrupted possession for more than 50 years which is supported by documents which are issued by the officials of the defendant, the objection of the defendant cannot be accepted.

According to appellant-defendant, the provisions of Section 83 of Endowments Act and orders in O.A.No.75 of 1990 are the substantial questions of law which have to be determined by this court. These two contentions were also raised before the trial court and appellate court and both the courts on a scrutiny of the material have not accepted the objection of the defendant. As seen from the material, both the courts have rightly applied the law to the facts of the case and they have not committed any illegality or error while dealing with the objection with regard to the orders in O.A.No.75 of 1990 and provisions of Section 83 of the Endowments Act.

On a consideration of material, I am of the considered view that both the courts have rightly decreed the suit and that there are absolutely no grounds to interfere with the findings of the courts below. As rightly pointed out by advocate for plaintiff, no question of law is involved in this appeal leave alone substantial question of law and therefore, this appeal is devoid of merits.

For these reasons, this Second Appeal is dismissed but under the circumstances, no costs.

As a sequel to the disposal of this appeal, the Miscellaneous

Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 5th June, 2015.

Dvs.

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