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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.02.2016
Delivered on : 21.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

A.S.No.36 of 2012
and
M.P.No.1 of 2012

A/m.Vadapalani Andavar
Temple Devasthanam
Rep. by its Dy. Commissioner/
Executive Officer
Vadapalani ..Appellant/1st Respondent

-Vs-

- 1.The Society of St. Joseph College
Tiruchirapalli
By Procurator Rev. Francis Vazhapilly
Tiruchirapalli
- 2.The District Collector
Chennai District
Chennai
- 3.The Tahsildar
Mambalam - Nungambakkam Taluk
Egmore, Chennai - 600 008 .. Respondents/Plaintiff
Defendants 2&3

Appeal filed under Section 96 of the Code of Civil Procedure and Order 41 Rules 1 and 2 of CPC against the judgment and decree of the learned VII Additional Judge, City Civil Court, Chennai dated 10.12.2011 made in O.S.No.11346 of 2010.

For Appellant : Mr.Sriram
for M/s.A.S.Kailasam Associates

For Respondent : Mr.AR.L.Sundaresan, Senior Counsel
for M/s.AL.Ganthimathi
R2 and R3 given up vide Court order
dated 20.06.2014



JUDGMENT

The first defendant in the original suit O.S.No.11346/2010 on the file of the VII Additional Judge, City Civil Court, Chennai has brought-forth this appeal under Section 96 of the Code of Civil Procedure against the decree of the trial court dated 10.12.2011 made in the said suit. The first respondent herein filed the said suit for a declaration of absolute title of the first respondent herein/plaintiff in respect of the suit property and for a consequential injunction against the appellant herein and the respondents 2 and 3 herein, not to cause any interference or obstruction to the first respondent/plaintiff's peaceful possession and enjoyment of the suit property. The learned trial judge, after trial, held the first respondent herein/plaintiff entitled to the reliefs sought for and by a judgment and decree dated 10.12.2011 decreed the said suit as prayed for with cost. As against the said decree of the trial court dated 10.12.2011, the first defendant in the suit has preferred the present first appeal on various grounds set out in the memorandum of grounds of first appeal.

2. The first respondent herein/plaintiff filed the suit praying for the above said reliefs based on the plaint averments, which are in brief, as follows:

i) The plaint schedule property measuring an extent of 1.59 acres comprised in old S.No.49 Block No.21, T.S.No.82 in Saligramam Village, Egmore-Nungambakkam Taluk, Chennai District, more fully described in the plaint schedule, originally belonged to one Janakiram Pillai son of Krishnasamy Pillai. The said Janakiram Pillai conveyed the suit property by way of a registered sale deed dated 25.05.1933 registered as Document No.689/1933 in the office of the Sub Registrar, Saidapet, Chennai, to the first respondent/plaintiff society. Ever since the purchase, the first respondent/plaintiff was in possession and control of the same through its representatives at Chennai. Since the property is lying vacant, the first respondent/plaintiff wanted to make use of the same at appropriate time for establishing and promoting educational avenues for the needy, who were public at large.

ii) One Susaiammal and her children filed a suit on the original side of the High Court as C.S.No.198/1931 against the first respondent/plaintiff society, Janakiram Pillai and one Rajammal claiming title to the property and praying for a declaration of their title in respect of the property comprised in S.No.514/1, Patta No.63 and an injunction against the third respondent therein not to alienate the property and for other reliefs. Ultimately the said suit ended in a compromise and a compromise decree came to be passed on 13.03.1933, by which the vendor of the respondent herein/plaintiff, namely Janakiram Pillai acknowledged a sum of Rs. 6,600/- as the amount due to the first



respondent/plaintiff society. For the discharge of the said liability to the plaintiff society as acknowledged by Janakiram Pillai, he executed the registered sale deed referred to above in favour of the first respondent/plaintiff society. Thus the first respondent/plaintiff society derived a valid title to the suit property. The original sale deed was deposited with Tamil Nadu Educational Authorities, but the said authorities informed the first respondent/plaintiff by their communication dated 28.03.2007 that the same could not be traced in view of passage of time. However a certified copy of the said sale deed has been produced along with the plaint.

iii) When the first respondent/plaintiff approached the Revenue Authorities seeking patta to develop the suit property, to its shock and surprise, it was informed that the place came in an inam village taken over by the Government under the Tamil Nadu Act 26/1963 and patta had been granted in the name of the appellant herein/first defendant temple. However the Settlement Officer and the Revenue Authorities had taken note of the fact that the suit property was lying vacant land at all times. The Settlement Officer under Act 26/1963 did not give notice to the first respondent/plaintiff society after verifying the existence of sale deed dated 25.05.1933 and thus wrongly classified the same as ryotwari land and granted patta in the name of the appellant/first defendant temple, which is illegal, void and will not bind the plaintiff. The right of the first respondent herein/plaintiff society based on the sale deed, should have been recognised in accordance with the provisions of the above said Act. After coming to know that patta had been wrongly issued in the name of the appellant/first defendant temple, the first respondent/plaintiff' society made a representation on 06.03.2007 to the third respondent, namely the Tahsildar, Egmore-Nungambakkam Taluk to consider its claim in respect of the schedule mentioned property. As there was no response, a writ petition in W.P.No.13443/2007 came to be filed and the Hon'ble High Court, by order dated 11.04.2007 directed the first respondent/plaintiff society to send another copy of the representation dated 06.03.2007 within a period of one week and directed the respondents therein to consider and pass orders in accordance with law within the time limit prescribed in the order. The competent authority, namely the second respondent (the District Collector of Chennai) heard the first respondent/plaintiff society's submissions and the objections of the appellant/first defendant temple and passed an order on 29.01.2008 rejecting the request of the plaintiff for grant of patta. However the second respondent/second defendant, namely the District Collector directed the first respondent herein/plaintiff to seek appropriate relief from the civil court. In order to establish its right, the first respondent/plaintiff is constrained to file the suit for the above said reliefs.



3. The appellant/first defendant temple contested the suit by filing a written statement denying the plaint averments and making the other averments, which are in brief, as follows:

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i) The suit as framed is not maintainable in view of the fact that the appellant herein/first defendant is in possession of the property for over 55 years and the suit property has also been entered in the statutory Property register maintained by the appellant/defendant. In the revenue records also the name of the appellant/first defendant has been registered as owner. Since the appellant/first defendant is in absolute possession and enjoyment of the suit property for over 55 years as its sole owner, a suit for declaration and consequential injunction without a prayer for possession is not maintainable, besides the suit being hopelessly barred by the law of limitation. Since the appellant/first defendant was in possession of the suit property beyond the statutory period of 12 years to the exclusion of the plaintiff, the suit was filed by the plaintiff for declaration and consequential injunction, is barred by the law of limitation.

ii) Since a Government Official is representing the appellant/first defendant, statutory notice under Section 80 CPC is mandatory. As no notice under Section 80 CPC was served and no order dispensing with the service of notice under Section 80 CPC was obtained, the suit is bound to fail. The suit property measuring 1.59 acres situates near Kodambakkam and its worth is several crores, whereas the suit has been valued at a nominal value of Rs.10,00,000/- and odd. The suit is also bad for non-joinder of proper and necessary parties. Revenue officials have issued patta in the name of the appellant/first defendant, without making the said authorities as parties to the suit their decision cannot be assailed. The plaint averments as to how the plaintiff traces its title cannot be true, since the suit property is in the hands of the appellant/first defendant and the first respondent/plaintiff should have purchased the property without properly investigating the title of the plaintiff's vendor Janakiram Pillai and his predecessors-in-title. It may be true that the plaintiff would have purchased some property by a sale deed dated 25.05.1933 bearing document No.689/1933, but the plaintiff has not stated as to how the vendor under the said sale deed, namely Janakiram Pillai derived title to the suit property.

iii) Though a reference to a decree passed by the High Court in C.S.No.198/1931 has been made, since the same is a compromise decree, it will be binding only on the parties to the Memorandum of Compromise and not on others. Even in the compromise decree nothing has been stated as to how Janakiram Pillai derived title to the suit property or how the plaintiffs in the said suit C.S.No.198/1931 became entitled to the same. The compromise decree will not bind a third party



and it will not constitute a bar of res judicata. Though the plaintiff claimed that they recently approached revenue authorities for patta, the said averment is vague and it does not disclose as to when they approached the revenue authorities for grant of patta. In 1988, one Alamelu made a claim to a portion of the suit property and a writ petition came to be filed in W.P.No.9305/1988 in which the High Court quashed the order of the Collector, who granted patta in favour of Alamelu and rendered a finding that the possession was with the appellant/first defendant temple. That itself will go to show that the appellant/first defendant had been in possession of the suit property over 60 years. The plaintiff property has been in the possession of the appellant/first defendant temple and it has been leased out to various parties, who are in possession for the past five to six decades and the rental income received from the lessees has also been accounted for. In the revision survey and re-settlement register prepared by the Settlement Officer in the year 1911 also the name of the appellant/first defendant finds a place. The appellant/first defendant temple has also been paying the kist for the suit property and the adangal entries also stand in the name of the appellant/first defendant. The plaintiff should have investigated regarding the title of Janakiram Pillai and his predecessor-in-title before venturing to purchase the suit property relying merely on a Memorandum of Compromise dated 13.03.1933. The Settlement Officer rightly classified the suit property as ryotwari land and issued patta in the name of the defendant, consequent to which alone adangal entries came to be made in the name of the appellant/first defendant.

iv) The claim of the plaintiff to be in possession of the suit property is false and it is for the plaintiff to prove its physical possession of the suit property by reliable evidence. Since admittedly patta was issued in the name of the appellant/first defendant in the year 1988 itself, the suit stands hopelessly barred by limitation. The averment made in the plaint that the appellant/first defendant cannot claim a superior right than the right derived by the plaintiff under the sale deed dated 25.05.1933 is legally untenable. The defendant is unaware of the circumstances leading to the filing of the writ petition No.13043/2007 and direction issued by the High Court. It transpires that the first respondent/plaintiff made an application to the Collector of Chennai and the Collector, after hearing the objections of the appellant/first defendant rejected the contention of the first respondent/ plaintiff. Since the claim was barred by limitation even as on 21.01.2008, there is no cause of action for the suit as pleaded in the plaint. Since the appellant/first defendant is in exclusive possession of the suit property to the knowledge of the first respondent/plaintiff for over 55 years, the suit should be held to be barred by limitation. A perusal of the sale deed dated 25.05.1933 and the compromise decree passed in



C.S.No.198/1931 will show that the properties concerned in those documents is different from the suit property. The plaintiff has to necessarily correlate the properties concerned in the above said sale deed and the compromise decree with the suit property to succeed in the claim made in the suit. The encumbrance certificate produced by the first respondent/plaintiff will also show that it was not in consonance with the sale deed dated 25.05.1933. Hence the evidenciary value of the documents produced by the first respondent/plaintiff does not in any way help the first respondent/plaintiff to prove its alleged title to the suit property. The suit is frivolous, vexatious and the same has been filed without properly realising the scope of the Memorandum of Compromise and the sale deed executed on the basis of the Memorandum of Compromise. The first defendant therefore prays for the dismissal of the suit with cost.

4. Defendants 2 and 3 (respondents 2 and 3) remained ex-parte and did not file any written statement.

5. Based on the above said pleadings, the trial court framed as many as twelve issues, which are as follows:

1. Whether plaintiff be declared as the absolute owner of the schedule mentioned property?

2. Whether the plaintiff is entitled for a permanent injunction as prayed for?

3. To what other relief the plaintiff is entitled for?

4. Whether a suit for a declaration and consequential injunction maintainable without a prayer for possession when the plaintiff is not in possession of the suit property for over 55 years for reasons stated in paragraph 3 of the written statement?

5. Whether the suit barred by the Law of Limitation since the defendant has been in exclusive possession of the property beyond a period of 12 years for reasons stated in paragraph 4 of the written statement?

6. Whether the suit maintainable for want of notice under Section 80 CPC against D2 and D3 who have impleaded as party in the suit?

7. Whether the suit property valued and appropriate court fee paid for the reasons stated in paragraph 6 of the written statement?



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8. Whether the plaintiff got title to the suit property for reasons stated in paragraph 8 of the written statement?

9. Whether the property detained in the plaint in C.S.No.198 of 1931 and the schedule in the plaint document No.2 the same?

10. Whether the plaintiff in possession of the suit property?

11. Whether the plaintiff claim superior title by virtue of a sale deed executed in pursuance of a Memorandum of Compromise for reasons as detailed in paragraph 13 of the written statement?

12. To what other relief the plaintiff is entitled?

6. Two witnesses were examined as PWs.1 and 2 and 7 documents were marked as Exs.A1 to A7 on the side of the first respondent herein/plaintiff. Only one witness was examined as DW.1 and four documents were marked as Exs.B1 to B4 on the side of the appellant herein/first defendant. At the conclusion of trial, on an appreciation of evidence, the learned trial judge decreed the suit and granted the reliefs stated supra in favour of the first respondent herein/plaintiff by a judgment and decree dated 10.12.2011. The said decree of the trial court is challenged in the present appeal on various grounds set out in the memorandum of grounds of appeal.

7. The points that arise for consideration in the appeal are as follows:

(1) Whether the suit is not maintainable for want of notice under Section 80(1) of CPC?

(2) Whether the first respondent/plaintiff is entitled to a declaration of title in respect of the suit property as prayed for?

(3) Whether the first respondent/plaintiff is proved to be in possession and enjoyment of the suit property?

(4) Whether the claim of the appellant/first defendant to be in possession of the suit property has been proved?

(5) Whether the first respondent/plaintiff is entitled to the relief of permanent injunction as prayed for?

(6) Whether the suit has been properly valued and proper court fee has been paid?



(7) Whether the suit is barred by limitation?

8. The arguments advanced by Mr.Sriram for M/s.A.S.Kailasam Associates, learned counsel for the appellant and by Mr.AR.L.Sundaresan, learned senior counsel appearing for Ms.AL.Ganthimathi, learned counsel on record for the first respondent were heard. The respondents 2 and 3 were given up as per the order of this court dated 20.06.2014. The materials available on record were also perused.

9. Arulmighu Vadapalani Andavar Temple Devasthanam represented by its Executive Officer, which figured as the first defendant in the original suit is the appellant in the appeal suit. O.S.No.11346/2010 on the file of the VII Additional Judge, City Civil Court, Chennai came to be filed by the Society of St. Joseph's College, Tiruchirappalli, represented by its Procurator, the first respondent herein initially against the appellant herein/first defendant alone for the following reliefs: 1) a declaration of title of the first respondent/plaintiff as absolute owner of the suit property; 2) a permanent injunction restraining the appellant herein/first defendant, their men, or agents or any person claiming under them from in any manner causing interference with or obstruction to the first respondent's/plaintiff's peaceful possession and enjoyment of the suit property and 3) cost.

Point No.1

10. The appellant herein/first defendant, who figured initially as the sole defendant, on appearance contended that the District Collector, Chennai District, Chennai and the Tahsildar, Egmore-Nungambakkam Taluk, Chennai - 8, should also be impleaded, the first respondent herein/plaintiff filed an application for their impleadment and the same was allowed. Thus the respondents 2 and 3 in the appeal/defendants 2 and 3 in the original suit were impleaded. However, after their impleadment, both the respondents 2 and 3/defendants 2 and 3 did not contest the suit and remained ex-parte. No plea of defence was taken by the respondents 2 and 3/defendants 2 and 3 regarding the maintainability of the suit for want of service of notice contemplated under Section 80(1) of the Civil Procedure Code. As such, the appellant herein/first defendant does have no locus standi to contend that the suit as against the respondents 2 and 3/defendants 2 and 3 is not maintainable for want of service of notice under Section 80(1) of the Code of Civil Procedure on the respondents 2 and 3/defendants 2 and 3. That is the reason why the appellant herein/first defendant did not raise any such plea in its written statement.

11. On the other hand, a defence plea has been raised by the appellant herein/first defendant to the effect that the suit as against the appellant herein/first defendant is not maintainable for want of service of notice on the first defendant under Section 80(1) of the Code of Civil Procedure on the premise that the appellant herein/first defendant



temple is represented by its Executive Officer, a Government Servant in the cadre of Deputy Commissioner of the Tamil Nadu Hindu Religious and Charitable Endowments Department. Though the respondents 2 and 3/defendants 2 and 3 were impleaded consequent to a plea of non-joinder of necessary parties raised by the appellant herein/first defendant, as pointed out supra, the respondents 2 and 3/defendants 2 and 3, after their impleadment and after service of summons, did not enter appearance to contest the the case. That is so because they are dis-interested and no relief has been sought for by the first respondent herein/plaintiff against them. Even otherwise, the very purpose of enacting the provision Section 80(1) of the Code of Civil Procedure is to enable the Government or the Public Servant, as the case may be, to consider the claim of the proposed plaintiff and avoid litigation in the court of law, if the claim can be considered. That is the reason why though the pre-suit notice under Section 80(1) of CPC is mandatory, sub section (2) of the said section provides for granting an exemption from serving such notice in case urgent orders are sought to be obtained against the government or such public servant. It has also been held in a catena of cases that the notice under Section 80(1) CPC can be waived by the Government or the public servant, as the case may be. For example, in Vellaiyan Chettiar vs. Government of Province of Madras through the Collector of Ramnad @ Madurai reported in AIR 1947 Privy Council 197, it has been held that the persons for whose benefit the provisions of Section 80 were made could legally waive the same. In Dhian Singh Sobha Singh & Another vs. The Union of India reported in 1958 AIR 274, it has been held as follows:

"It is relevant to note that neither was this point taken by the respondent in the written statement which it filed in answer to the appellants' claim nor was any issue framed in that behalf by the Trial Court and this may justify the inference that the objection under Section 80 had been waived."

The above said observation has been cited to show that the person entitled to Section 80 notice can waive the same.

12. It is a well accepted principle that a third party cannot raise the question of notice when it was waived by the Secretary of the State or the concerned public servant. Therefore, as pointed out supra, neither the respondents 2 and 3, who are entitled to such notice nor the appellant herein/first defendant did raise the issue of absence of notice under Section 80(1) of CPC to the respondents 2 and 3 before the trial court. Even though no such issue regarding the absence of notice to the respondents 2 and 3/defendants 2 and 3 was raised before the trial court, the appellant herein/first defendant has chosen to raise it as a ground in



the Memorandum of Appeal. In the light of the above said contention raised by the appellant herein/first defendant, the first respondent herein/plaintiff has chosen to give up respondents 2 and 3/defendants 2 and 3 as parties in the suit itself, as no relief has been sought for against them, even though the appellant herein/first defendant is not competent to raise the issue of absence of notice to the respondents 2 and 3/defendants 2 and 3 under Section 80(1) of CPC. In view of such an election made by the first respondent/plaintiff, the respondents 2 and 3/defendants 2 and 3 in the suit are no more parties to the lis. Hence the question has now become only academic and infructuous.

13. However, the appellant herein/first defendant has made an attempt to contend that the suit as against the appellant herein/first defendant is not maintainable, since no notice under Section 80(1) of CPC was served on the appellant herein/first defendant. Such a plea came to be raised on the ground that the appellant herein/first defendant temple is represented by its Executive Officer, who is a Government servant in the rank of Deputy Commissioner in the Tamil Nadu Hindu Religious and Charitable Endowments Department. The first respondent herein/plaintiff society has not sought any relief against the Executive Officer as a public servant. The deity of the appellant/first defendant temple possesses juristic personality and it can be sued and to be used in its own name. Any act done purporting to act as the Executive Officer of the temple in exercise of the right of the temple cannot be termed an act purported to be done in exercise of his official function as a public servant. The above said contentions seems to have been raised on a misconception that the Executive Officer of the appellant/first defendant temple is sued for an act done in purported exercise of his official function as public servant. The finding of the trial court in this regard that the appellant/first defendant temple is not entitled to a notice under Section 80(1) of the Code of Civil Procedure and the suit is not affected by the absence of service of notice under Section 80(1) CPC on the appellant/first defendant is well founded and this court does not find any defect or infirmity in the said finding of the trial court. Point No.1 is answered accordingly.

Point Nos.3 and 4:

14. The suit has been filed for a declaration of the title of the first respondent/plaintiff to the suit property, since a cloud over the same has been caused by the inclusion of the name of the appellant herein/first defendant temple in the revenue records, as owner of the suit property and also entries in the Adangal Register came to be made in the name of the appellant herein/defendant, as if it is in the possession and enjoyment of the appellant/first defendant temple. The first respondent/plaintiff traces its title to a sale deed dated 25.05.1993 executed by Janakiram Pillai in favour of the first respondent/plaintiff society registered as document



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No.689/1933 on the file of SRO, Saidapet, Chennai. According to the first respondent/plaintiff, the original sale deed had been deposited with the Educational Authorities of Tamil Nadu Government in connection with the educational institution run by the first respondent/plaintiff, namely St. Joseph's College, Tiruchirappalli and the same was lost in the said office. PW1-Mr.A.Victor Paul Sengolraj, one of the Trust members of the governing body of the first respondent society/plaintiff society has deposed in clear terms to the effect that the original sale deed had been deposited with the Tamil Nadu Educational authorities and the same has been reported to be beyond traceable due to passage of time and that hence the plaintiff has to produce a certified copy of the sale deed marked as Ex.A2. The copy of the proceedings of the Educational Authority, namely the Director of School Education, dated 28.03.2007 informing the first respondent/plaintiff of the non traceability of the sale deed has been marked as Ex.A4. Thus the first respondent/plaintiff has made out a case for leading secondary evidence relating to the sale deed under which the suit property is claimed to have been purchased by the first respondent/plaintiff society. Even otherwise, the said sale deed being a registered document of which a certified copy is permitted by law, without further reference as to the whereabouts of the original, secondary evidence in the form of a certified copy can be adduced under Section 65(f) of the Indian Evidence Act, 1872. The said document being an ancient document, its genuineness cannot be doubted and a presumption regarding its genuineness has to be drawn under Section 90 of the Indian Evidence Act, 1872.

15. It may not be necessary for the first respondent/plaintiff society to plead and prove the passing of consideration for the said sale deed, since the appellant/first defendant temple or any person through whom the appellant/first defendant temple claims title was not the vendor under the sale deed or a party to the said sale deed. However, the first respondent/plaintiff has chosen to adduce evidence through PW1 and by producing Ex.A3-Compromise decree dated 13.03.1933 to show that the amount due to the first respondent/plaintiff society was cited as the consideration for the sale of the suit property under the original of Ex.A2. The said compromise decree was passed by the High Court in its original side in C.S.No.198 of 1931 and the amount adjudged to be due to the first respondent/plaintiff society was cited as the consideration for the sale made in favour of the first respondent/plaintiff society. Hence the first respondent/plaintiff society not only led evidence through an ancient document, a certified copy of which has been produced as Ex.A2, but also proved the passing of the consideration for the said sale by producing Ex.A3-certified copy of the compromise decree, which has been referred to in the sale deed dated 25.03.1933 under which the suit property came to be purchased by the first respondent/plaintiff society. Thus the



first respondent/plaintiff society has traced its title to the suit property under the document dated 25.05.1933.

16. The learned counsel for the appellant/first defendant temple, who felt difficult to attack the sale deed on the ground of absence of consideration or any other vitiating factor, concentrated his attention in contending that the respondent/plaintiff society failed to prove the title of its vendor, namely Janakiram Pillai. The appellant/first defendant temple contended that the first respondent/plaintiff society, without properly verifying the title of its vendor to the suit property and without getting satisfied with such title, chose to get such a sale deed on the basis of which alone, the first respondent/plaintiff society claims title. In addition to the above said submission, the learned counsel for the appellant/first defendant temple would contend that the compromise decree passed in C.S.No.198/1931 will not bind non-parties to the said proceeding and hence the same cannot be pressed into service against the appellant/first defendant temple.

17. This court is not in a position to understand in what context such an argument came to be advanced. Of course the compromise decree came to be passed in a suit filed by 1) Susai ammal, 2) Karunai Rajan, 3) Adaikala Rajan, 4) Hirudaya Rajan, 5) Mary Rosary, 6) Mary Theresa [4 to 6 were minors represented by next friend Susai Ammal] (plaintiffs 1 to 6 therein) against 1) the Society of St. Joseph's College, Tiruchirapalli, the respondent herein/plaintiff in the present suit, 2) Janakiram Pillai (the vendor of the plaintiff) and 3) Rajammal: i) for a declaration that the said Rajammal had no right to alienate the property concerned in that suit, which she had purported to sell by a sale deed dated 10.01.1931 in favour of the Society of St. Joseph's College, Tiruchirappalli (the first respondent/plaintiff society in the present case); ii) an injunction and iii) a direction to the first defendant therein (first respondent/plaintiff society in the present case) to return the sale deed dated 10.01.1931 and for consequential reliefs. The same resulted in a compromise, by which the first respondent/plaintiff in the present suit agreed to relinquish its right under the said sale deed and release all rights of the first respondent/plaintiff society in the present suit, in respect of the property concerned in that suit on getting a sum of Rs.7,100/- to be deposited into the court to the credit of the suit and a sum of Rs.1,500/- in cash towards cost from the plaintiffs 1 to 3 therein. Thus a sum of Rs.8,600/- in all were agreed to be paid to the first defendant therein (plaintiff in the present suit) for releasing its rights under the sale deed dated 10.01.1931. Subsequent to the said decree, the first respondent/plaintiff society agreed to bear a sum of Rs.2,000/- out of the above said amount and got reimbursed with the balance amount of Rs.6,600/-. In discharge of the said liability to pay a sum of Rs.6,600/-, Janakiram Pillai son of Krishnasamy Pillai, the



Shorotriemdar of Puliyur village, conveyed the suit property under the original of Ex.A2 in favour of the respondent herein/plaintiff society. on 25.05.1933.

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18. It is pertinent to note that the property, which was the subject matter of the sale deed dated 10.01.1931 and in turn the subject matter of the previous suit C.S.No.198/1931 was different from the suit property conveyed under the original of Ex.A2, dated 25.05.1933 in favour of the first respondent/plaintiff society. Perhaps absence of clear understanding of the fact that the properties concerned in C.S.No.198/1931 is different from the property conveyed to the first respondent/plaintiff society under the original of Ex.A2, which is the subject matter of the present suit, an argument came to be advanced on behalf of the appellant/first defendant temple that the compromise decree would not be binding on the appellant/first defendant, a non-party to the compromise decree. The problem with the appellant/first defendant, in this regard, arose because of the failure to understand that Ex.A3-decree was relied on only to show that there was a compromise under which the first respondent/plaintiff society became entitled to get a sum of Rs.8,600/- from the plaintiffs 1 to 3 and the second defendant therein (C.S.No.198/1931). The property concerned in the said compromise decree is one comprised in S.No.514/1 having Patta No.63 measuring 7 Acres 7 Grounds and 149 Sq.ft. But the properties conveyed under the original of Ex.A2 are:

Survey No.	Extent		
	Acre	Cents	
59/2	0	50	Out of the total of 1.30 cents
58	0	30	Out of the total of 0.57 Cents
54	0	42	Out of the total of 42 Cents
44	0	74	Out of the total of 2.17 Cents
49	1	59	Out of the total of 1.85 Cents
Total	3	55	

There is no controversy regarding the other four survey numbers, namely survey Nos.59/2, 58, 54 and 44. The present dispute concerns only with 1 Acre 59 cents out of the total extent of 1.85 Acres comprised in Old Survey No.49 New Block No.21/T.S.No.82 situated in Saligramam Village, Egmore-Nungambakkam Taluk, Chennai District. The description of the said property has been provided as under:



"சர்வே 49க்கு செக்கு பந்தி இரங்கநாதம்பிள்ளை நிலத்திற்கு கிழக்கு, முருகேச நாயக்கர் நிலத்திற்கு வடக்கு சீத்தாராம் பிள்ளை நிலத்திற்கு தெற்கு மாசிலாமணி கிராமணி நிலத்துக்கு மேற்கு இதன் மத்தியில் 1.59 "

The property thus described therein is 1.59 acres of land bounded on the west by the land of Ranganatham Pillai, south by land of Murugesu Naicker, North by land of Seetharam Pillan and East by land of Masilamani Gramani. This has nothing to do with the property concerned in C.S.No.148/1931 in which the compromise decree came to be passed.

19. The first respondent/plaintiff being an Educational Society formed for a philanthropic cause, according to the plaint averments and the evidence of PWs.1 and 2, got the said property, kept it under its possession and reserved it for future development for establishment of educational institutions for the poor and needy. Admittedly, the suit property is a vacant land and no agricultural activity is being carried on. There is also no superstructures erected in the suit property. Normally in respect of vacant lands, the principle possession shall follow title shall apply. Though PW2 in his cross examination would have pleaded absence of direct knowledge and he deposed only based on the particulars ascertained by him from the records and he also pleaded absence of knowledge as to whether any kist was paid by the first respondent/plaintiff society, he has made it clear that the suit property is not in possession of any other person, much less in the possession of the appellant/first defendant temple or its tenants/lessees. PW2 has clearly asserted that the property has been compounded and it is kept in the possession and enjoyment of the first respondent/plaintiff society. PW1 also, in clear terms, deposed regarding derivation of title and also the continued possession and enjoyment of the suit property by the first respondent/plaintiff society.

20. As against such clear and categorical evidence, both oral and documentary, to establish the title of the first respondent/plaintiff society, which dates back to 25.05.1933 and the possession of the vacant site by the owner, namely the first respondent/plaintiff society, the appellant/first defendant has not adduced reliable and sufficient evidence to show that either the appellant/first defendant temple did get a derivative title or it acquired title by adverse possession. In fact though the appellant/first defendant would have claimed in the written statement that for 55 years prior to the filing of the written statement, the suit property was in the exclusive possession and enjoyment of the appellant/first defendant temple, there is no plea that the appellant/first defendant temple perfected title by adverse possession against the first respondent/plaintiff society. In fact animus



necessary for constituting adverse possession has not been pleaded. The appellant/first defendant temple simply relied on the revenue records and the settlement proceedings in which some how or other the name of the appellant herein/first defendant temple came to be noted as the owner. The appellant/first defendant temple also relies on the property register of the temple in support of his contention that the property belongs to the appellant/first defendant temple. However the appellant/first defendant temple has not produced the Property Register of the temple or its authenticated copy.

21. Even the Property Register of the first defendant temple may not be enough to dislodge the title of the first respondent/plaintiff society which acquired it long back in 1933 itself, unless the first defendant temple is able to show that the property was dedicated to the first defendant temple by a person having title to the property and power to do so. It is not the case of the appellant/first defendant temple that the property was dedicated by any one to the temple. It is also not the case of the appellant/first defendant temple that the suit property was one made as a grant by the erstwhile ruler or by any other competent authority. It is not clear as to in what right the appellant/defendant temple claims to have acquired title to the property excepting the contention that the appellant/first defendant temple has been in possession of the suit property, for more than 55 years before the date of filing of the written statement. Though the appellant/first defendant temple relies on the Survey Resettlement Register and the extract of such Register came to be marked as Ex.B3, there is no evidence to show how the name of the appellant/first defendant temple came to be entered as the owner of the suit property in the re-settlement register and how the appellant/first defendant temple's name came to be noted in the Adangal Register. In Ex.B3, the date of such revision of survey and re-settlement is not found. On the other hand, copy of the same was certified on 29.09.1988. When the revision survey and re-settlement took place? - has not been elucidated either by documentary evidence or by oral evidence. Excepting the said true extract, no other document has been produced on the side of the appellant/first defendant temple to prove its title or possession.

22. In fact, the appellant/first defendant claimed that the suit property was enjoyed by the appellant/first defendant temple for more than 55 years and that some portions of the suit properties were also leased out to third parties, from whom the appellant/first defendant temple collecting the lease amount/rent. However, the only witness examined on the side of the appellant/first defendant temple, who figured as DW1, almost admitted the entire claim of the first respondent/plaintiff society and pleaded ignorance regarding the title or enjoyment of the appellant/first defendant in respect of the suit property. He pleaded ignorance as to whether the suit property was purchased by the appellant/first



defendant temple. Again he has pleaded ignorance as to whom the suit property belongs. He is not in a position to deny that the vendor of the first respondent/plaintiff society, namely Janakiram Pillai, was the owner of the suit property from whom the first respondent/plaintiff purchased it. In fact he made a vital admission during cross examination that his proof affidavit, which was prepared in accordance with the averments found in the written statement, contains averments regarding which he had no direct knowledge. He also admitted that he did not know when patta came to be transferred in the name of the appellant/first defendant temple. In paragraph 12 of the written statement of the appellant/first defendant, it has been averred that the patta for the suit property came to be issued in the name of the appellant/first defendant temple in 1988 and that since the suit was not filed within 12 years thereafter, the suit was barred by limitation. DW1 also confirms in his evidence during cross examination that the year 1988 has been stated in the written statement as the year in which patta came to be issued in favour of the appellant/first defendant temple. As the suit property had been purchased by the first respondent/plaintiff society from Janakiram Pillai in 1933 itself, DW1 admitted that he could not say whether the purchase of the suit property by the first respondent/plaintiff society from Janakiram Pillai was right or wrong. The year in which Revenue Settlement Office was established at Saidapet alone has been noted in Ex.B3 as 1991 and the same has been clearly admitted by DW1. When the evidence of DW1 is correlated with the defence plea made by the appellant/first defendant temple in paragraph 12 of the written statement and Ex.B3, the preponderance of probabilities will show that some how or other patta came to be issued in the name of the appellant/first defendant temple only in the year 1988 and taking advantage of the same, the appellant/first defendant temple claims right to the property.

23. It is a settled proposition that in the presence of title deeds like sale deeds, patta shall not be a document of title. Patta is a document showing the person from whom the land revenue will be collected. It cannot be projected against a proper document of title, which is anterior to the issuance of patta. Only in cases of government poramboke and natham poramboke lands, assignment patta shall be treated on par with other title deeds. In no case patta alone will destroy the title of the other person who derived it by a valid title deed. In the case on hand, except the extract from the Settlement Register showing the appellant/first defendant to be the owner of the suit property, no other document has been produced by the appellant/first defendant temple.

24. A marshalling of evidence adduced on both sides, both oral and documentary, will lead to a conclusion that a mistake that was committed in making an entry in the Survey Resettlement Register is sought to be capitalised by the



appellant herein/first defendant. Before making such entry and before ever the Settlement Officer passing an order, no notice to either the vendor of the first respondent/plaintiff or to the first respondent/plaintiff society was given. There is no iota of evidence to show that notice was served on the first respondent/plaintiff society before resurvey and resettlement, based on which the entry in the Settlement Register came to be made. The first respondent herein/plaintiff being a society running educational institution was not aware of the proceedings that resulted in such an entry in the re-survey re-settlement register. Only when the first respondent/plaintiff approached the revenue authorities for the grant of patta, with the intention of developing the suit property, they informed that since the property was situated in an inam village, while taking over the same under the Tamil Nadu Act 26 of 1963, the Settlement Officer granted patta in favour of the appellant herein/first defendant temple. Immediately thereafter the first respondent/plaintiff made a representation to the Tahsildar, Egmore-Nungambakkam Taluk, Chennai-8 to consider its claim for the grant of patta in respect of the suit property. Since there was no response, the first respondent/plaintiff had to approach the High Court with W.P.No.13043/2007 against the Tahsildar. By an order dated 11.04.2007, a copy of which has been marked as Ex.A5, the first respondent/plaintiff was directed to send another copy of its representation and directed the Tahsildar to consider such claim on receipt of such copy of the representation and pass orders in accordance with law. When such a copy of the representation was submitted, the District Collector, Chennai, being the competent authority conducted an enquiry after calling for objections of the appellant/first defendant temple, passed an order on 29.01.2008 rejecting the request of the first respondent/plaintiff for grant of patta. However, the District Collector incorporated a direction in the said order that the first respondent/plaintiff shall approach the civil court for appropriate relief. There upon the first respondent/plaintiff filed the suit for declaration and injunction initially against the appellant/first defendant alone. However, the appellant/first defendant has relied on an order of the High Court dated 17.07.2001 made in W.P.No.9305/1998, which came to be filed against the District Collector, Tahsildar and one Alamelu. The said Alamelu is said to have filed an application on 01.11.1987 before the Tahsildar for sub division of the entire extent of 1.85 acres comprised in S.No.49 and grant of separate patta for her in respect of 9 grounds and 1656 sq.ft. Of course, the request of Alamelu was rejected by the Tahsildar. On appeal, the District Collector came to the conclusion that the temple authorities failed to prove its title over the said land and allowed the appeal holding Alamelu to be entitled to patta. Hence the temple filed the writ petition. A copy of the order passed in the said writ petition has been marked as Ex.B2. A learned Judge of this court allowed the writ petition, quashed the order of the District Collector and advised the parties to



approach the competent civil court to have their rights adjudicated upon. Such an order in the writ petition came to be passed on 17.07.1991 itself. In the said writ proceedings also the title of the appellant/first defendant temple has not been stated to have been established.

25. On the other hand, it seems the said Alamelu filed a suit in O.S.No.8206/1986 on the file of the XI Assistant Judge, City Civil Court, Chennai against the appellant herein/defendant temple, which came to be dismissed by the trial court. As against the dismissal of the suit the said Alamelu filed an appeal in A.S.No.99/1988 on the file of the IV Additional Judge, City Civil Court, Chennai and the learned IV Additional Judge, City Civil Court, Chennai dismissed the appeal confirming the decree of the XI Assistant Judge, City Civil Court, Chennai by a judgment dated 14.12.2000. A copy of the said judgment has been produced and marked as Ex.B4. It is quite obvious that the claim of Alamelu was made regarding 9 grounds. But the total extent of S.No.49 was 1 Acre 85 cents. Out of the said total extent, the first respondent/plaintiff claims only 1 Acre 59 cents and the title to the said property is claimed based on an ancient document, namely a sale deed dated 25.05.1933. Even in the case filed by Alamelu, the appellant herein/first defendant did not claim title based on any dedication made by any one in favour of the temple or any grant. On the other hand, claim of title was made by the appellant/first defendant only based on the revenue entry. The first respondent/plaintiff society was not a party to the above said proceedings. The suit was not one for declaration of title of the appellant herein/first defendant temple. On the other hand, the claim of title by Alamelu alone was negatived. The same would bind the inter-parties alone and it will not bind a non-party, namely the first respondent/plaintiff society.

26. Though the appellant/first defendant might have chosen to contend that the property had been leased out to various parties over five to six decades and the rental income from the property had been received by the appellant herein/first defendant temple, no lease deed, no receipt book showing receipt of rental income from the property has been produced. The appellant/first defendant is not in a position to name even a few of such lessees. Not even a single person, who is said to have been a lessee of portions of the property, has been examined on the side of the appellant herein/first defendant temple. On a proper appreciation of the evidence adduced on both sides, the learned trial Judge came to a correct conclusion that the first respondent/plaintiff was able to prove its title, whereas the appellant/first defendant temple, besides failing to prove its title, failed to prove its possession of the suit property. As the property is admittedly a vacant land in an urban area not put to cultivation, the principle "possession follows title" shall be



attracted. In addition, the contention of the first respondent/plaintiff society and the evidence of PW1 that the property has been compounded by the first respondent/plaintiff has not been controverted by necessary pleading and reliable evidence. For all the reasons stated above, this court hereby holds that the first respondent/plaintiff society besides proving its title, has also proved its possession and enjoyment in respect of the suit property, whereas the appellant/first defendant temple failed to prove either its title or possession in respect of the suit property. Hence the finding of the trial court that the property is proved to be in the possession and enjoyment of the first respondent herein/plaintiff and on the other hand, the appellant/first defendant failed to prove its possession cannot be said to be either defective or infirm warranting interference in this appeal. The said finding has got to be confirmed. Point Nos.3 and 4 are answered accordingly in favour of the first respondent and against the appellant.

Point No.6

27. Though the appellant/first defendant has contended in paragraph 6 of the written statement that the suit property is worth several crores, but it has been valued only at Rs.10,00,000/- and odd, no evidence has been adduced to prove that the valuation is incorrect and the court fee paid is not correct. Hence the finding of the trial court regarding the issue No.7 relating to correctness of the valuation and sufficiency of the court fee rendered in favour of the first respondent/plaintiff does not warrant any interference. Point No.6 is answered accordingly.

Point No.7

28. The further contention of the appellant/defendant is based on the law of limitation. It is contended on behalf of the appellant/first defendant that patta came to be issued in the year 1988 in the name of the appellant/first defendant temple and at least from the said date the limitation for declaration of title would have started running and that since the suit was not filed within 12 years thereafter, the suit is barred by limitation. So long as the property is in the possession of the owner, there will be no necessity for the owner to seek a declaration of his title. When a cloud over the title of the real owner is cast by any act of others, then the cause of action for filing a suit for declaration and other reliefs will arise. So long as the owner is not deprived of possession any denial of title or any claim of title by others regarding the said property will be a continuous cause of action for seeking a declaration. Similarly an attempt to disturb the peaceful possession unless proved to be successful and an apprehended act in future will also be a continuing cause of action for seeking injunction and thereby protecting the possession of the owner. Moreover even if the owner loses



the possession, as per Article 65 of the Limitation Act, the limitation will start only from the date on which the possession of the defendant becomes adverse to the plaintiff.

29. In the present case, though the appellant/first defendant claims that it was in possession and enjoyment of the property, it has failed to prove the same and on the other hand, the first respondent/plaintiff has proved its possession. Even if it is assumed for argument sake that the appellant/first defendant is in possession, the possession will become adverse only if it is coupled with the animus to possess the same adverse to that of the real owner. When the possessor does not know who is the real owner, his possession cannot be said to be an adverse possession with necessary animus. If the issue is approached in that angle, the plea of limitation raised by the appellant/first defendant is bound to fail. As we have seen supra, the first respondent/plaintiff has proved not only its title but also its possession, whereas the appellant/first defendant who pleaded limitation as a bar to the relief sought for has miserably failed to prove its possession. Hence the plea of limitation raised by the appellant/first defendant came to be rightly rejected by the learned trial Judge and this court does not find any defect or infirmity in the same warranting interference.

Point Nos.2 & 5

30. In view of the findings recorded under Point Nos.3 and 4 and in view of the finding under Point Nos.6 and 7, the first respondent/plaintiff is found to be entitled to a declaration of title in respect of the suit property as prayed for and for an injunction against the appellant/first defendant temple not to disturb the peaceful possession and enjoyment of the plaintiff in respect of the suit property and that the findings rendered by the trial court in this regard, are bound to be confirmed. Point Nos.2 and 5 are answered accordingly in favour of the first respondent/plaintiff and against the appellant/first defendant.

31. In view of the findings rendered on Points 1 to 7, this court comes to the conclusion that there is no defect or infirmity in the judgment of the trial court warranting interference by this court. The decree of the trial court granting the reliefs sought for in favour of the plaintiff cannot be said to be either defective, infirm or discrepant. No valid ground has been made out for interference with the same and on the other hand, the same deserves to be confirmed.

In the result, the appeal preferred by the appellant/first defendant temple is dismissed. The decree of declaration of title and injunction granted by the VII Additional Judge, City Civil Court, Chennai on 10.12.2011 in O.S.No.11346/2010 in favour of the first respondent/plaintiff



and against the appellant herein/first defendant temple is hereby confirmed. The decree of trial court in respect of 2nd and 3rd defendant is modified as follows: The fact that the respondents 2 and 3/defendants 2 and 3 have been given up, as no relief has been sought for against them in the suit, is recorded. The suit as against respondents 2 and 3/defendants 2 and 3 shall stand dismissed. As no argument pressing for award of cost came to be put-forth, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asr

To

The VII Additional Judge,
City Civil Court, Chennai.

+1cc to M/s. A.L. Ganthi Mathi, Advocate, S.R.No.18254
+1cc to M/s. A.S. Kailasam Associates, Advocate, S.R.No.17985

UG(CO)
EU(20/04/2016)

A.S.No.36 of 2012