

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.324 of 2015
and
M.P.Nos.1 and 2 of 2015

S.Inbaraj ... Appellant/Plaintiff.

Versus

The Executive Officer/
Assistant Commissioner,
Kalamman Koil,
Kalamman Koil Street,
Virugambakkam,
Chennai - 600 092.

...Respondent/Respondent

Prayer: Appeal filed under Section 100 C.P.C., praying to set aside the Judgment and Decree dated 29.10.2014 made in A.S.No.127 of 2014 on the file of the III Additional Judge, City Civil Court at Chennai, confirming the Judgment and Decree dated 31.1.2014 made in O.S.No.2266 of 2012 on the file of the XIII Assistant Judge, City Civil Court at Chennai.

For Appellant : Mr.A.Rajesh Kanna

For Respondent : Mr.R.Mahalingam

JUDGMENT

The appellant herein is the plaintiff in the suit in O.S.No.2266 of 2012 on the file of the XIII Assistant Judge, City Civil Court at Chennai, whereas the respondent is the defendant.

2. Having lost the suit before the Courts below, the appellant stands before this Court with this Appeal.

3. Heard Mr.M.V.Muralidharan, learned counsel appearing for the appellant and Mr.R.Mahalingam, learned counsel appearing for the respondent.

4. As it appears from the averments of the pleadings, the appellant had filed the suit in O.S.No.2266 of 2012 against

the respondent seeking the relief of permanent injunction.

5. The respondent had contested the suit by filing his written statement.

6. On evaluating the evidences, both oral and documentary, the Trial Court had dismissed the suit on the ground that the suit property is belonged to the Government and that the defendant was brought under the control of the Hindu Religious and Charitable Endowment Department 16 years back. It is observed by the Trial Court that it is a well settled principle that the weakness of the defendant's case or inconsistent plea taken by the defendant would not be a ground for granting the discretionary relief of permanent injunction. The Trial Court has also observed that if an order of injunction is granted, the plaintiff would utilise the said order against the public authorities and would try to grab the Government land so as to enrich himself illegally.

7. The appellant, challenging the Judgment of dismissal passed by the Trial Court, had preferred an Appeal in A.S.No.127 of 2014 on the file of the learned III Additional Judge, City Civil Court at Chennai.

8. After hearing both sides, the first Appellate Court had also dismissed the Appeal on the ground that no cause of action arose on 26.3.2012, to file the suit in O.S.No.2266 of 2012, seeking the relief of permanent injunction against the respondent.

9. Excerpts of facts of this case:

(i) During the life time of the appellant's father viz., late D.Selvaraj, he was in possession and enjoyment of the property comprised in Survey No.98, bearing Door No.81, Kalamman Koil Street, Virugambakkam, Chennai - 92, measuring a total extent of 5440 sq.ft. of vacant land. He was in possession of this property for more than 60 years.

(ii) During his life time, he had executed a Will in favour of his 3 sons including the appellant herein. In the said Will, the property was divided into two schedules, viz., "A" and "B".

(iii) Out of 5440 sq.ft., a vacant site of 2676 sq.ft. was allotted to the plaintiff with the following boundaries:-

- (a) North by "A" Schedule Property
- (b) South by Dr. Srinivasan's land
- (c) East by vacant site
- (d) West by Kalamman Koil Street.

(iv) As per the Will, the plaintiff is entitled to get "B" schedule property therein. The said Will came into effect after the demise of appellant's father on 10.2.2008.

(vii) That on 26.3.2012, the Executive Officer/Assistant Commissioner of the respondent Temple had trespassed into the appellant's property and attempted to remove the sand and stones, which were kept by him in the suit property. When it was questioned, he was informed that the suit property was belonged to the Temple.

10. It is the case of the appellant that the property is absolutely belonged to the Government and the respondent Temple had no connection with the suit property. According to the appellant, the Executive Officer of the respondent Temple had trespassed into the suit property on 26.3.2012 and made an attempt to remove the sand and stones and only under such circumstances, the appellant was constrained to file the above said suit for permanent injunction.

11. The respondent in his written statement has contended that Arul Mighu Kaliyamman Koil Temple is a public religious institution and it came into existence about 100 years back. The Temple is situated over the Government poramboke land measuring to an extent of 0.03 cents in Survey No.98 of Virugambakkam village. The total extent of the property owned by the Temple in in Survey No.98 of Virugambakkam village is 1 acre and 0.57 cents. The remaining extent of the property, viz., 1 acre and 0.57 cents owned by the Temple was only a vacant land at first.

12. Since the Temple was under the management of some local people, they allotted the lands to third parties to put up huts for their living purpose. Their main intention was to augment the income of the Temple.

13. Later, the erstwhile, Temple authorities had allowed the trespassers to construct pucca buildings after replacing the huts put up by them. The appellant's father was one of the third parties allowed by the previous Temple authorities to put up a hut for his peaceful living. Later, he was allowed to put up a new superstructure by replacing the hut. Accordingly, the appellant's father had put up superstructure over the land encroached by him with the permission of the previous Temple authorities.

14. Later, the appellant's father had got electricity connection where he was permitted to live by the said authorities. With the cooked up documents, the plaintiff was

trying to trespass into the property under the occupation of the defendant's Temple. Some of the places comprised in Survey No.98, Virugambakkam Village are still kept as vacant sites.

15. Till this date, neither the Government nor the local civic body has requested the Temple to handover the vacant possession of the property measuring an extent of 1 acre and 0.54 cents comprised in Survey Number 98 of Virugambakkam Village. Even though the Temple and the property owned by it are in Government poramboke land, it is not causing any traffic hazard to the public and to the passers-by. Only in the year 1996, the said Temple was brought under the control of the Hindu Religious and Charitable Endowment Department.

16. The appellant's father was not in possession of the property measuring an extent of 5440 sq.ft., belonged to the respondent Temple. That much extent of the property was not enjoyed by the appellant's father at any point of time. He might have been in possession of a part of the Temple's property when the Temple was managed by the local people.

17. The allotment of land measuring an extent of 2676 sq.ft. comprised in Survey No.98 bearing Door No.81, Kaliyamman Koil Street is not known to the Temple's authorities till the receipt of summons sent by this Court. If at all, the property was owned by the appellant's father for more than 60 years and he had executed a Will, then the appellant ought to have obtained the Letters of Administration from the High Court since the value of the property would be more than Rs.75,00,000/-.

18. According to the appellant, his father had died on 10.2.2008 but even after passing of 4½ years, he was unable to get his name transferred in the revenue registers concerned.

19. Based on the pleadings of the parties to the suit, the Trial Court had formulated as nearly as 2 issues:-

(i) Whether the plaintiff is entitled for permanent injunction?

(ii) To what other relief?

20. The appellant was examined as PW.1 and during the course of his examination, 13 documents were marked. On the other hand, one Tmt.R. Anbukkarasi, was examined as DW.1 on behalf of the Temple and no documentary evidence was adduced.

21. As stated in the foregoing paragraphs, both the Trial Court as well as the First Appellate Court have negatived the claim of the plaintiff/appellant.

22. Mr.A.Rajesh Kanna, learned counsel appearing for the appellant has submitted that the following substantial questions of law are involved in this Second Appeal.

(i) Whether the both the Courts below are right in holding that the plaintiff is not entitled for the relief of permanent injunction inspite of proving his absolute possession and enjoyment over the suit property through oral and documentary evidence in Ex.A1 to A12?

(ii) Whether both the Courts below are right in holding that in a suit for bare injunction, it is necessary to implead the Government of Tamil Nadu, when there is no interference or disturbance made by the revenue official against the plaintiff's suit property?

23. It is significant to note here that in Paragraph 7 of the plaint, the plaintiff/appellant has stated that the property is absolutely belonged to the Government and the defendant's Temple is in no way connected with the suit property.

24. When the appellant/plaintiff himself has admitted that the suit property is belonged to the Government, as observed by the Courts below, the Government is a proper and necessary party so as to enable the Court to adjudicate and settle all the questions involved in the suit effectually and completely as envisaged under Sub-rule 2 of Rule 10 of Order of CPC.

25. Secondly, as per the case of the appellant, he has claimed that he has been in possession and enjoyment of the vacant land measuring an extent of 2,676 sq.ft., out of the total extent of 5440 sq.ft. Though he has exhibited 13 documents on his behalf, nothing is of helpful in nature to the case of the appellant/plaintiff.

26. The respondent/defendant in his written statement has stated that the erstwhile Temple authorities had allowed to trespass and to construct a pucca building after replacing the huts put up by the third parties at the time of their trespass into the Temple properties. It is also stated that the appellant's father was one of the third parties allowed by the previous Temple authorities to put up a hut and later, he was allowed to put up a new super structure after replacing the hut.

27. It is to be noted here that the suit property is a vacant site and no superstructure is found place over the suit property. Even as per the case of the appellant, if his father had executed a Will in respect of the suit property, the appellant ought to have obtained the Letters of Administration from this Court as according to the respondent/defendant, the property would fetch more than Rs.75,00,000/-. The documents marked on behalf of the appellant are relating to property tax, special notice for house tax, notice of demand for house tax etc.,. All the documents are relating to the house only and not relating to the suit property.

28. As per the case of the appellant, cause of action for filing the suit arose on 26.3.2012 on which date, the defendant/respondent is said to have trespassed into the suit property and attempted to remove the sand and stones. In this connection, the Trial Court has observed that since the respondent/defendant has claimed title to the suit property, at the time of filing of the suit, the plaintiff/appellant ought to have filed the suit for declaration of his title to the suit property or he ought to have obtained leave under Order II Rule 2 of CPC to institute the suit with the prayer of declaration of title.

29. The First Appellate Court had also found that no Door Number was mentioned in Exs.A.1 and A.7 and that Exs.A.2 to A.4 were relating to property tax. The appellate Court has also found that the appellant did not evince any interest in getting his name transferred to the revenue records from the name of his father and since no complaint was lodged before the police authorities, with reference to the alleged trespass made by the respondent/defendant, on 26.3.2012, the cause of action for filing the suit is completely absent.

30. It is to be noted that both the Courts below have given concurrent findings saying that the appellant/plaintiff has not established his possession in respect of the suit property satisfactorily. Because, the suit property is a vacant land in respect of which, the respondent/defendant Temple has claimed that the property is under their control. Absence of any documentary evidence on the part of the respondent/defendant does not mean that the appellant/plaintiff has proved his case.

31. Since this is the second appellate Court, it must be very slow in interfering with the concurrent findings of the Courts below unless there is sufficient reason which warrants it's interference.

32. Keeping the above fact, this Court finds that the Second Appeal deserves to be dismissed. Accordingly, the Second Appeal is dismissed confirming the Judgments and Decrees of the Courts below. The connected Miscellaneous Petitions are closed. No order as to costs.

asvm

s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The III Additional Judge,
City Civil Court, Chennai.

2. The XIII Assistant Judge,
City Civil Court, Chennai.

+ 1 cc to Mr.M.V.Muralidaran, Advocate, SR19936

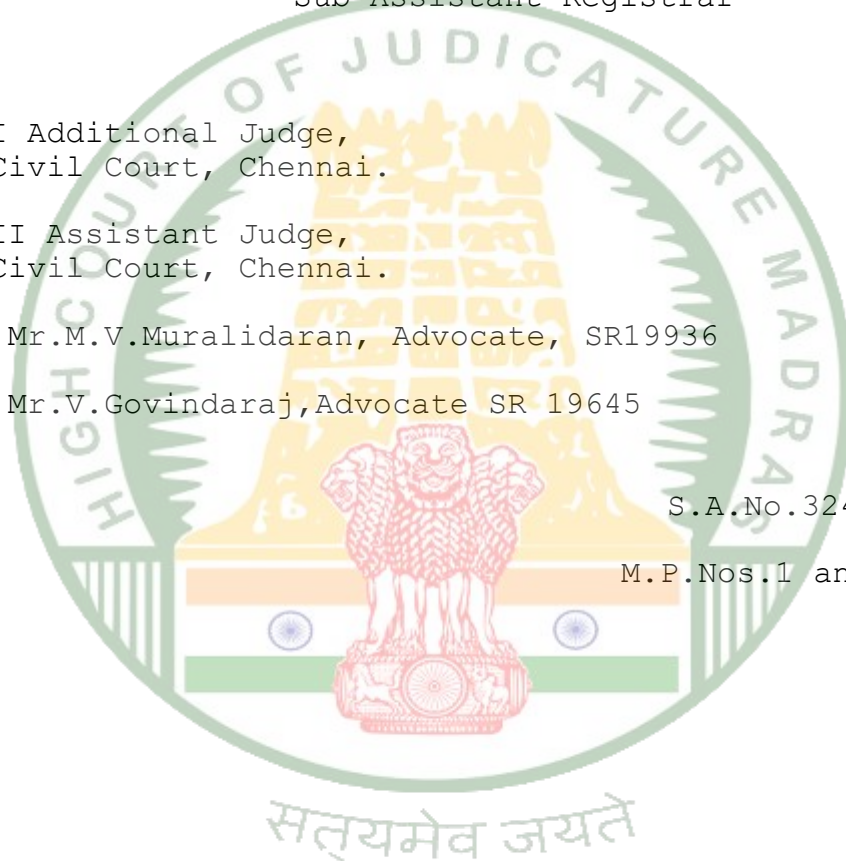
+ 1 cc to Mr.V.Govindaraj, Advocate SR 19645

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