

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :26.10.2011

PRONOUNCED ON: 07.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.186 of 2011
and
M.P.No.1 of 2011

Arulmigu Ulageswaraswamy &
 Varadaraja Perumal Temples,
 Allalapuram
 represented by its Executive Officer,
 Pichampalayam,
 Tirupur Town,
 Tirupur.

... Appellant

Vs.

1. Subramaniam
2. Ramathal (Died)
3. G.Nachimuthu
4. Palanisami
5. Samathal
6. Ramathal
7. Krishnaveni
8. Sarojini
9. Muthukumar @ Mani
- 10.Sulochana
- 11.Dharmaraj
- 12.Duraisamy
- 13.Saraswathi

... Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 29.09.2009 made in A.S.No.14 of 2008 on the file of the Principal Sub Judge, Thiruppur District, Thiruppur, confirming the judgment and decree dated 26.02.2008 made in O.S.No.331 of 2004 on the file of the District Munsiff Court, Thiruppur.

For Appellant : Mr.K.Ashok kumar
For Respondent : Mr.S.V.Jayaraman
Nos.1, 3 to 5, Senior counsel
6 to 13 for M/s.K.Goviganesan

JUDGMENT

Challenge in this second appeal is made by the defendant against the judgment and decree dated 29.09.2009 made in A.S.No.14 of 2008 on the file of the Principal Sub-Court, Thiruppur confirming the judgment and decree dated 26.02.2008 made in O.S.No.331 of 2004 on the file of the District Munsif Court, Thiruppur.

2. The suit has been laid for declaration and permanent injunction.

3. The averments contained in the plaint filed by the plaintiffs, in brief, are as follows:

The suit properties are the ancestral and joint family properties of the plaintiffs. The plaintiffs' great grandfather one Muthugounder S/o Palanigounder had purchased an extent of common $\frac{1}{4}$ share in out of the total extent of 7.50 acres in S.F.No.433 and another extent of $\frac{1}{4}$ share in the total extent of

15.40 acres in S.F.No.434 of Veerapandi Village, Tiruppur Taluk. Further, on 12.11.1925, the plaintiffs grandfather Nachimuthu Gounder @ Chinna Nachimuthu Gounder had purchased an extent of $\frac{1}{4}$ share in S.F.No.434 out of the total extent of 15.40 acres and another extent of $\frac{1}{8}$ share out of the total extent of 6.95 acres in S.F.No.433, which has been specifically sub divided as 433 /1, 6.92 Acres and 433/2 measuring 6.95 acres respectively and thus, the plaintiffs family became entitled to an extent of 7.73 acres in S.F.No.434 and an extent of 3.60 acres in S.F.No.433 of Veerapandi village.

4. The plaintiffs are the grandchildren of Nachimuthu gounder, who died intestate about 55 years back, leaving behind his three sons viz., Periagounder @ Muthusamy, Govindasamy gounder and Thangamuthu gounder. The relationship between the parties is set out in the Genealogy given in the plaint. Thus, the plaintiffs 1 & 2 are the legal heirs of Periagounder @ Muthusamy and the said Periagounder @ Muthusamy who died intestate on 06.03.1974. The plaintiffs 3 to 5 are the legal heirs of Govindasamy gounder who died intestate on 14.07.1980 and the plaintiffs 6 to 10 are the legal heirs of Thangamuthu gounder who died intestate.

5. The plaintiffs and their predecessors in title are in open, continuous and exclusive possession and enjoyment of the suit properties as absolute owners thereof by exercising all rights from the date of purchase and the lands are minor Inam land, originally granted for the up keep of the defendant temple and Inamdars sold away the lands more than 60 years prior to the appointed date of 01.04.1960 and accordingly, despite the continuous and long enjoyment of the suit properties by the plaintiffs and their predecessor in interest, the authorities failed to grant patta in favour of the plaintiffs erroneously and the defendant temple had no point of time exercised any right or owner ship over the suit properties. The plaintiffs alone are enjoying and cultivating the suit properties. It is also learnt that the other sharers in the suit survey numbers have been granted patta by the concerned authorities and recognised their title and long enjoyment of their shares. While so, the authorities constituted under the relevant Act are not entitled to decide the title on the basis of erroneous pleas and grounds and based upon the same, as the defendant temple is attempting to disturb the plaintiffs' possession and enjoyment of the suit properties, the plaintiffs have been constrained to file the suit against the defendant temple for necessary reliefs.

6. The averments contained in the written statement filed by the defendant temple in brief are as follows:

The suit is not maintainable either in law or on facts. The suit properties are owned and enjoyed by the defendant temple. The plaintiffs, at no point of time had any title, possession and enjoyment of the suit properties as pleaded in the plaint. The suit properties were granted to the defendant temple on 18.06.1863 and the documents are available to evidence the same and out of the income derived from the suit properties, Dharma Karthas of the defendant temple were performing the rites and other functions of the temple. While so, the persons, who have no title to the suit properties and other properties, which are belonging to the temple, were indiscriminately selling the properties. In any event, no person is entitled to claim title or possession over the properties belonging to the temple. Accordingly, steps were taken by the Settlement Tahsildar to initiate necessary proceedings and accordingly, on 10.10.1968, he has passed an order conferring patta to the defendant temple in respect of the suit properties. The patta for the suit properties had been vested with the temple from time immemorial and the plaintiffs are claiming title to the suit properties, based on the title deeds obtained from persons, who have no title to convey the same. The claim of the ownership of the

suit properties by the plaintiffs on the document of title alleged in the plaint has no validity and legality. The plaintiffs are not entitled to claim the relief sought for. While so, based upon the patta granted by the Settlement Tahsildar and when steps have been taken by the defendant temple to enforce the said order for the proper management of the defendant temple, the plaintiffs have come forward with the false suit making untenable claims. The documents of title projected by the plaintiffs are not true and created for the purpose of their case and the genealogy set up in the plaint is false and to grab the properties, the genealogy has been projected. The plaintiffs have no title to the suit properties. Taking advantage of the mis-management of the defendant temple by the erstwhile Dharma karthas, the plaintiffs illegally trespassed into the suit properties and are making false claim over the same. There is no cause of action to file the suit and hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case, PWs1 to 3 were examined and Exs.A1 to 15 were marked. On the side of the defendant's case, DW1 has been examined and Exs.D1 to 13 were marked. Ex.X1 has also been marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial court was pleased to decree the suit as prayed for. The first appeal preferred by the defendant temple came to be dismissed confirming the judgment and decree of the trial court. Aggrieved over the same, the present second appeal has been preferred by the defendant temple.

9. The second appeal has been admitted and the following substantial questions of law are formulated for consideration in this second appeal.

(a) Is not the judgment of the first Appellate Court exercising powers under Section 96 of CPC vitiated when the first Appellate Court does not comply all the requirements of Order XLI Rule 31 of CPC by framing issues pertaining to the lis between the parties?

(b) Whether the provisions of Limitation Act will apply to the properties of the religious institution under the control of the Hindu Religious and Charitable Endowments more so when there is a specific bar under Section 109 of the H.R. & C.E Act?

(c)A suit for declaration of title not barred from being laid in a civil court when the provisions of a statute provides for statutory appeal under The Tamil Nadu Minor Inams(Abolition and conversion into Ryotwari) Act, 1963, only when the statutory remedies have been pursued?

(d)Can a civil suit in a civil court be filed as an alternative to statutory appeals/revisions provided for in the abolition regime statutes, particularly under the The Tamil Nadu Minor Inams(Abolition and conversion into Ryotwari) Act, 1963 (Tamil Nadu act No.30 of 1963)?

10. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

11. The defendant's counsel at the foremost contended that the first appellate court has not formulated any point for determination in the first appeal and therefore, as it does not conform to the requirements Order 41 Rule 31 C.P.C, on the above said sole ground, the judgment and decree of the first appellate court is liable to be set aside. However, countering the same, it is

argued by the plaintiffs' counsel that even though the first appellate court has not framed several points for determination, framed the main point for determination and accordingly, it dealt with the issues put forth by the respective parties in a detailed manner by giving cogent and acceptable reasons and therefore, no interference is called for on the above footing with regard to the findings of the first appellate court. Further, it is contended that in any event, as per Section 99 of Code of Civil Procedure, no decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

12. Though the first appellate court has not specifically formulated various points for determination, as rightly argued by the plaintiffs counsel, it has formulated the main point for determination as to whether the judgement and decree of the trial court are liable to be set aside and the defendant is entitled to succeed in the appeal. While deciding that main point, it could be seen that the first appellate court has discussed in detail the issues put forth by the respective parties and accordingly, disposed of the first appeal by answering all the issues. In such circumstances, it

could be seen that the first appellate court has formulated the main point for determination in the appeal and accordingly, disposed of the appeal. Therefore, to contend that the first appellate court did not comply with the requirements of Order 41 Rule 31 C.P.C. as such could not be countenanced.

13. The main point urged by the defendant's counsel is that the courts below have acted as appellate authority to the proceedings of the settlement Tashildar under Ex.A12 and on that ground alone, the judgments and decrees of the courts below are liable to be varied and set aside. It is contended that the civil Court would have no jurisdiction to decide the lis initiated by the plaintiffs on the footing that as the claim of the plaintiffs for grant of patta has been declined by the appropriate authority under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, the civil suit laid by the plaintiffs would not be maintainable.

14. According to the counsel for the appellant, the appropriate remedy for the plaintiffs would be only to prefer the appeal as provided under the above said Act before the special tribunal and having failed to prefer the appeal within the time stipulated by law, in order to overcome that legal bar, according to him, the plaintiffs have come forward with the present suit and

therefore, it is contended that the suit filed by the plaintiffs should be held to be not maintainable in the eyes of law and on that ground, the judgement and decree of the courts below have to be set aside.

15. Per contra, it is contended by the plaintiffs' counsel that dehors the proceedings of the Settlement Tahsildar, whether patta has been granted in favour of the plaintiffs or not, Still the civil court would have jurisdiction to decide the question of title and the issues with reference to the same is not res integra as the same had already been decided by the Full Bench of our Madras High Court. According to him, the civil court is competent to decide the question of title with reference to the suit properties and also, hold whether the plaintiffs would be entitled to seek patta under the above mentioned Act. Straightaway, he would point to the decision of the Full Bench, reported in **1998 (1) CTC 630 (Srinivasan and six others V. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District by its Executive Officer at Pettavaithalai Devsthanam and five others)**, wherein as rightly argued by him, it has been held that the jurisdiction of the civil court to entertain the suit for declaration of title and injunction is not barred by reason of grant of patta under provisions of Tamil Nadu Act 30 of 1963.

16. The plaintiffs' counsel further contended that the mere fact that the orders passed or decisions rendered under the above said Act and other allied Acts were given finality for the purposes of those Acts or that the issues, which they are obliged or required to be decided, when so decided are ordained to bind the parties to the proceedings or their privies and successors-in-interest applying the principles of *res judicata*, does not have the effect of ousting the jurisdiction of the Civil Court once and for all and it is further contended that it is by now well settled that even in cases where finality is accorded to any decision or order, there are certain well settled exceptions and proved existence of such exceptional factors, the Civil Court is entitled to nullify any or all such decisions. Similarly, it is stated that even in cases where the principles of *res judicata* are rendered applicable, the jurisdiction of the competent Civil Court to go into the question and find out whether the necessary ingredients to apply the principles of *res judicata exist in* a given case or not cannot be denied to the Civil Courts and from the mere fact of according finality to the orders or decisions rendered under the Act or the application of the principles of *res judicata*, a total or complete bar or ouster of the jurisdiction of the Civil Courts for all and any purpose cannot be automatically inferred or implied.

17. Therefore, it could be seen that in the light of the authoritative pronouncement of the Full Bench of our High Court, the jurisdiction of the Civil Court is not totally and completely ousted or barred in respect of the adjudication of claims of title, questions or issues which requires to be decided for implementing ryotwari settlements in areas governed by legislation abolishing minor inams.

18. The above principles of law are also adumbrated in the decision reported in **(1985) 4 Supreme Court Cases 10 (State of Tamil Nadu V. Ramalinga Samigal Madam)**, wherein it has also been clearly held that Civil Court's jurisdiction is not barred or excluded despite finality given to the orders of statutory authority and prohibition imposed against questioning of such order in court under the Act. The above decision has been rendered while considering the provisions of Tamil Nadu Estates (Abolition and Conversions into Ryotwari) Act, 1948.

19. In the light of the above said decisions of law, it could be seen that the Civil Court de hors the order passed by the settlement Tashildar under Ex.A12 would be competent to go into question whether the plaintiffs have title to the suit properties and whether on that basis, they would be entitled to seek grant of patta

under the Act in question and in compliance of the said Act.

20. As regards the case of parties, now according to the plaintiffs, they claim title to the suit properties through their predecessor in interest and further, according to them, their predecessor in interest had purchased the suit properties under Exs.A1 and 2 and as rightly found by the courts below, a perusal of Exs.A1 and 2 would go to reveal that the predecessor in interest of the plaintiffs had purchased various extents in the suit survey numbers, they being Inam lands from the previous owners, even prior to the appointed day on 01.04.1960 and therefore, as rightly argued by the plaintiffs' counsel, the predecessor in interest of the plaintiffs and after them, the plaintiffs have been in continuous possession and enjoyment of the suit properties for several years anterior to the appoint day viz., 01.04.1960 as stipulated under the aforesaid Act and therefore, it could be seen that considering the title documents projected by the plaintiffs and also their undisputed possession and enjoyment of the suit properties, as found by the courts below, it could be seen that the lawful title, possession and enjoyment of the suit properties by the plaintiffs have been upheld by the courts below.

21. To establish that the plaintiffs are the legal

representatives, the documents marked as Exs.A4 to 8 would bolster the same and therefore, it could be seen that the plaintiffs have also established that they are the legal heirs of their predecessor in interest, who had purchased the suit properties from the previous owners under Exs.A1 and 2.

22. The defendant in its written statement have admitted that the plaintiffs are in possession and enjoyment of the suit properties. However, according to the defendant, the plaintiffs are encroachers. Further, according to the defendant, by consent of the erstwhile Dharma karthas, the plaintiffs have encroached into the suit properties illegally and therefore, merely on the footing that the plaintiffs are in possession and enjoyment of the suit properties, The plaintiffs' title to the suit properties cannot be upheld. DW1 in his evidence has also admitted that the plaintiffs are in possession and enjoyment of the suit properties. However, DW1 would claim that he does not know whether the plaintiffs and their predecessor in interest have been in possession and enjoyment of the suit properties more than 60 years and much prior to the appointed day. On the other hand, the title deeds marked as Exs.A1 and 2 on the side of the plaintiffs would go to show that as contended by the plaintiffs, the plaintiffs and their predecessor in interest have been in possession and enjoyment of the suit properties for several years

and as prescribed under the Act for more than 60 years, prior to the appointed day and therefore, it could be seen that, as found by the courts below, on the basis of the long enjoyment as stipulated in the Act, the plaintiffs are entitled to seek Ryotwari patta under the Act.

23. The plaintiffs have established the truth and validity of Exs.A1 and 2 through PWs 1 & 2, which are more than 30 years old Under Section 90 of the Indian Evidence Act, therefore, the presumption as to such documents should also be made as to the authenticity and execution of the documents as claimed by the plaintiffs. That apart, no material is forthcoming on the side of the defendant to hold that the documents marked as Exs.A1 to 3 have been created by the plaintiffs for the purpose of this case. Similarly though the defendant has disputed the genealogy set out in the plaint by the plaintiffs, still no material is forthcoming on the side of the defendant to disbelieve the same. On the other hand, through the evidence of PWs1 to 3 and also by marking the documents Exs.A4 to 8, the plaintiffs have established that they are the legal descendants of the purchasers of the properties under Exs.A1 and 2 and such being the case, the contention put forth by the defendant that the plaintiffs have come forward with a false case cannot be accepted in any manner.

24. No doubt, as rightly argued by the defendant's counsel, the courts below have made much hue and cry about the order passed by the Settlement Tahsildar under Ex.A12 proceedings. It could be seen that the approach of the Courts below criticizing the order passed by the Settlement Tahsildar that he should have granted an opportunity to the plaintiffs to establish their title, as such, cannot be readily appreciated. Inasmuch as the plaintiffs and their predecessor in interest have failed to establish their claim before the Settlement Tahsildar, it could be seen that the Settlement Tahsildar, under Ex.A12 proceedings, have negated their claim and accordingly, issued the orders granting Ryotwari patta in favour of the defendant temple. However, despite the finality of the said order, inasmuch as the plaintiffs would be entitled to establish their claim in the Civil Court and accordingly, hence to establish the same, the plaintiffs have laid the present suit and also, established their case through acceptable and reliable evidence as adverted to earlier and as found by the courts below, it could be seen that rightly, the courts below have accepted the case of the plaintiffs and accordingly held that inasmuch the plaintiffs have established their title and also, their long possession and enjoyment

of the suit properties prior to the appointed day as stipulated under the Act, held that the plaintiffs are entitled to seek Ryotwari patta under the Act, after paying necessary charges as prescribed under the Act.

25. The defendant's counsel contended that in order to wriggle out of the clutches of the question of limitation in challenging the order of Settlement Tahsildar under Ex.A12, the present suit has come to be laid by the plaintiffs. However, when the jurisdiction of Civil Court to entertain such suits is not found to be barred, in the light of the pronouncement of the Full Bench of our High Court as referred to earlier and merely because, the plaintiffs have not exhausted the remedy available to them under the Act in question, it cannot be held that the Civil Court would not be competent to go into issue of title and decide whether the plaintiffs would be entitled to seek Ryotwari patta under the Act or not .

26. As rightly put forth by the plaintiffs' counsel even as per the proceedings of the Settlement Tahsildar under Ex.A12 it could be seen that Village Karnam has clearly deposed in favour of the plaintiffs' predecessor that they had been in possession and enjoyment of the suit properties. The Settlement Tahsildar had only on the ground that the plaintiffs' predecessor in interest have failed

to establish their title by necessary documentary evidence declined to issue Ryotwari patta in their favour and granted Ryotwari patta in favour of the temple. However, when the Civil Court is competent to decide the issue as per law and when the Civil Court has gone into the matter in detail and found that, the plaintiffs have established their title to the suit properties not only through documentary evidence and also through long and continuous possession for more than period prescribed prior to the appointed day and that when all the documents produced by the plaintiffs including the proceedings of the Settlement Tahsildar are taken into consideration vis-a-vis the stand of the defendant in the written statement that the plaintiffs are not in legal possession and enjoyment of the suit properties and when the defendant has failed to establish that the plaintiffs and their predecessor in interest had been in possession and enjoyment of the suit properties only as encroachers and not as original owners, it has to be held that as found by the courts below that the plaintiffs on the basis of the title and on the basis of long and continuous enjoyment for more than the stipulated period under the Act would be entitled to seek Ryotwari patta under the Act and therefore, the finding of the courts below, to that effect, in favour of the plaintiffs does not call for any interference and therefore, the judgement and decree of the courts below are not open for challenge in any manner.

In view of the aforestated reasons, the substantial questions of law formulated in this second appeal are answered in favour of the respondents and against the appellant. Consequently, I hold that the second appeal is devoid of merits and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.12.2016

Index : Yes/No
Internet:Yes/No
sms
To

1. The Principal Sub Court, Thiruppur District
Thiruppur.
2. The District Munsiff Court, Thiruppur.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.186 of 2011
and
M.P.No.1 of 2011

07.12.2016