



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: **23.11.2016**

C O R A M

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No.43 of 2014 & M.P(MD)No.1 of 2014

1.Gunaseelan
2.N.Muruganantham
3.S.Paramasivam :Appellants/Appellants/Defendants 1,3 & 4

Vs.

Kutchanur Sri Saneeswara Baghavan Temple,
Rep.by the Executive Officer,
Kutchanur,
Uthamapalayam Taluk,
Theni District. :Respondent/Respondent/Plaintiff

Prayer: - Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, to call for the records in pursuant to the Decree and Judgment passed in A.S.No.7 of 2011 dated 11.11.2011 on the file of the Subordinate Judge, Uthamapalayam, confirming the judgment and decree passed in O.S.No.246 of 2007 dated 25.06.2010 on the file of the District Munsif, Uthamapalayam and set aside the same.

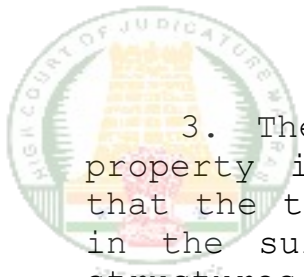
For Appellants : Mr.T.Srinivasa Raghavan
for Mr.D.Nallathambi.

For Respondent : Mr.M.Karuppasamay Pandian

J U D G M E N T

The defendants 1, 3 and 4 in the suit in O.S.No.246 of 1997 on the file of the District Munsif Court, Uthamapalayam are the appellants in this Second Appeal.

2. The respondent in the appeal as plaintiff has filed the suit in O.S.No.246 of 1997 for permanent injunction restraining the defendants and their people from putting up any construction in the suit property and for permanent injunction to remove the brick wall that has been put up by the defendants in the suit property. The suit property is described as a raised platform measuring 20 x 21 feet located in the middle of the property in Survey No.363/3 (measuring an extent of 0.47.5 Ares).



3. The case of the plaintiff/respondent is that the whole property in Survey No.583/3 belong to the plaintiff/Temple and that the temple is in enjoyment of the suit property. It is only in the suit Survey number, the temple and other buildings and structures put up by the temple, are located. The suit platform was constructed by the Trustees of the temple and it is also in the exclusive control and enjoyment of the temple.

4. Though the plaintiff admits that people belonging to Asari community used to conduct "Thirukkan" for Lord Saneeswara Bhagagan and that the said ritual is being conducted in the suit platform, it was the specific case of the plaintiff that the Asari community has no right over the suit property, except to perform the ritual namely "Thirukkan" with the temple.

5. It is the further case of the plaintiff that the defendants all of a sudden constructed three feet brick wall over the suit platform despite serious objections by the Trustee of the temple on 19.08.1997 and that the defendants have no right. It was only because of the construction, the suit came to be filed. The suit was filed against defendants in a representative capacity. Hence, the defendants 1 to 4 were shown as defendants who are impleaded not only in their individual capacity, but also, as representatives of people belonging to Asari community. However, despite the compliance of formalities, no other person except D1 to D4 came forward to contest the suit. In the written statement, filed by the defendants, the defendants raised several points.

6. According to the appellants, the suit property is Natham Poramboke land and that therefore, the temple has no right to claim title over the same. The defendants specifically denied the construction of the suit platform by the Trustees of the temple. The defendants also claimed that the suit platform is not merely a raised platform, but a regular construction which was constructed by the people in the land belonging to the defendants' community to recognize as the property of the community. The contention of the plaintiff with regard to the restricted right of the defendants was specifically denied in the written statement. Though the defendants admitted that the temple was established for Lord Saneeswarar, they claimed rights and privileges on the basis of custom which was in vogue for a long number of years (more than 200 years). Since the superstructure, namely, the suit platform was constructed about 200 years ago, it was contended by the defendants' that the said construction was in a dilapidated condition and that the members of the defendants' community removed the old construction and put up the new construction. Since the defendants were not able to mobilise funds, the construction was temporarily stopped earlier and that 1992 the construction was proceeded by raising walls after receiving donations. For various other reasons, the defendants also denied



the right of the temple in respect of the extent of 0.45 hectares in Survey No.583/3 without any documents of title.

7. The trial Court decreed the suit partly by granting the relief of permanent injunction. The prayer for mandatory injunction was rejected. However, the trial Court found that the plaintiff/temple has proved its case regarding title to the suit property and the land in Survey No.583/3. It was also concluded by the trial Court that plaintiff has established its rights and enjoyment over the suit property. However, after granting a decree for permanent injunction, the trial Court refused to grant a decree for mandatory injunction as there was no wall found on the date of inspection by the Advocate Commissioner appointed by the Court. The defendants thereafter preferred an appeal in A.S.No.7 of 2011 and the learned sub-Judge, confirmed the judgment of the trial Court and dismissed the appeal.

8. As against the concurrent judgment and decree of the Courts below, the present Second Appeal has been filed.

9. The learned Counsel appearing for the appellants raised the following substantial questions of law in the memorandum of grounds:

" a) Whether the failure to note that Ex.A1 is not copy of permanent Adangal Account, but only a Fasli year cultivation Account, mislead and the Courts can granting decree?

b) Whether the Courts below is erroneous in concluding that a natham poramboke is a Government property as against the laid down by our High Court and Apex Court?

c) Whether the suit for bare injunction when the title is being questioned in the written statement itself, is sustained?"

10. The learned Senior Counsel appearing for the appellants also submitted that the Courts below have decided the question of title in favour of the temple, though the suit property has been classified as Natham Poramboke and it is a Government property. Secondly, he submitted that the document under Ex.A1 is not an Extract of permanent adangal account and hence, the Courts below erred in relying upon Ex.A1 as document to prove the title of the plaintiff's temple.

11. The learned Senior Counsel for the appellants also submitted that the suit for bare injunction is not maintainable for relief of title, especially, when the title of the plaintiff is in dispute and that the defendants' claim of title is pleaded in their written statement. Finally, the learned Senior Counsel for the appellants referring to the findings of the Courts below, submitted that the judgment and decree of the Courts below are



perverse, inasmuch as the plaintiff who claimed title to the suit property has not purchased the property by way of any registered instrument or any other document to show that the temple is the real owner of the suit property.

12. With regard to the first submission, relying upon the classification of the land as Natham Poramboke, it is well settled that the properties which are described as Natham does not vest with the Government and that the Government is not the owner of the property. There is no classification as Natham Poramboke under any of the statute. The entry as Natham Poramboke in the revenue records may be due to failure of officials to note possession and enjoyment by temple during Natham settlement. In the present case, the plaintiff has produced the documents under Ex.A1 Adangal Extract for Fasali 1406, apart from examining PW.1 - the Executive Officer of the temple.

13. The trial Court appointed an Advocate Commissioner and he filed a report under Exs.C1 and C3 along with Commissioner's Plan Exs.C2 and C5. The Surveyor sketch is marked as C4. The trial court has accepted the case of the plaintiff with regard to the ownership. The document produced by way of Adangal Extract would relate to the year 1997. The property has been shown as the property of plaintiff temple in this document. Though this document reveals that some other individuals are also shown as persons in possession, it is stated that the temple has put up some building and has let out few shops to the individuals who are in possession as tenants. It is also stated there are encroachments. From this document, the plaintiff's right as the owner of the property, is established. The evidentiary value of the document though disputed by the appellants, I find that the document is admissible in evidence as it is only an extract from the Adangal Account. The defendants/appellants have not produced any other documents to prove their claim of title in respect of the larger extent of land, which is in enjoyment of the temple. The suit platform was constructed in the middle of the land, which was registered in the name of the plaintiff's temple in revenue records. This fact is also not in dispute. However, merely on the assertion of their right to use the suit platform every year on a particular day by custom, it cannot be taken that the defendants are exercising their right of ownership over the suit property. The evidence of DW.1 is to the effect that the defendants claim right only in respect of the suit platform measuring 20' x 21' and that they have not paid any kitst.

14. Having regard to the facts and circumstances of the case and the documents filed on either side, this Court is of the view that the conclusion of the Courts below on the evidentiary value of Ex.A1 Adangal Extract should not be interfered with.



15. The third submission of the learned Counsel for the appellants regarding the maintainability of the suit for bare injunction without a prayer for declaration of title, has no merit. It is a well settled position of law that a suit for bare injunction is maintainable against any other person who has no better title than the plaintiff. Similarly, even in a suit for bare injunction, the Court can incidentally go into the question of title and then grant a decree for injunction in favour of the person who is in lawful possession or upon finding that he has proved his case of title. In the present case, though the plaintiff's title to the suit property is disputed, the defendants only set up title in Government by pleading that the suit property is a Government Poramboke.

16. The documents under Exs.B1 to B3 do not show either the title of defendants or the enjoyment of the suit property by the defendants. None of these documents would establish the case of the defendants that the suit property is a Government Poramboke or Natham Poramboke as pleaded by them in the written statement. The suit property lies in the middle of Survey No.583/3 which has been entered in the revenue records as a land that belongs to the plaintiff's temple. Though the document under Ex.A1 is disputed, the defendants have not produced any other documents to discredit or disbelieve the same. Ex.A1 reflects the revenue records standing in the name of the temple. Further, the case of the defendants before this Court that the suit property is a Natham Poramboke, has no legal basis inasmuch as the property which is classified as Natham does not vest with the Government. Hence, the case of the defendants that the suit properties are the properties of the Government, has no legal basis.

17. Having regard to the findings of the Courts below that the suit property in Survey No.583/3 belongs to the plaintiff/temple on the basis of acceptable material and evidence, this Court is not inclined to interfere with the findings rendered by the Courts below. I do not find any other substantial question of law involved in this second appeal and hence, the Second Appeal is dismissed. Since the plaintiff admits that the members of the defendants community use the suit platform in the plaint itself, the right of the defendants as admitted by the plaintiff in the plaint is recognised and the judgment of the Courts below need not be construed to take away the right of the defendants as admitted in the plaint in the present case. No costs. Consequently, the connected Miscellaneous petition is also dismissed.

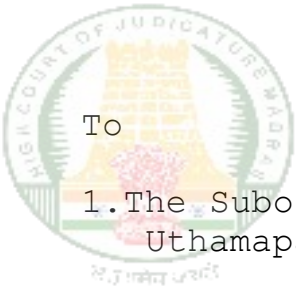
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Assistant Registrar (Writs)

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To

1.The Subordinate Judge,
Uthamapalayam.

2.The District Munsif,
Uthamapalayam.

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V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.KARUPPASAMY, Advocate, SR No.72309

Second Appeal (MD) No.43 OF 2014

23.11.2016

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