

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2902 of 2013

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful 1st defendant is directed against the decree and judgment dated 07.05.2012 of the learned Junior Civil Judge, Vinukonda of Guntur District passed in O.S.no.16 of 2009 filed by the plaintiff/1st respondent herein for restoration of possession of the plaint schedule property admeasuring Ac.1.70 cents in Sy.no.659/A1, 659/3C of Mathukumalli village, Savalyapuram Mandal of Guntur District, more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of the learned Standing Counsel for the revision petitioner/1st defendant Devasthanam and the learned counsel for the plaintiff/1st respondent herein. The respondents 2 to 4 are the defendants 2 to 4 in the suit. I have perused the material record. The parties in this revision shall hereinafter be referred to as arrayed in the suit for convenience and clarity.

3. It is necessary to now refer to the pleadings of the parties.

3.1 The plaint averments, in brief, are as follows:

The plaintiff is the absolute owner of the plaint schedule property having inherited the same. The plaintiff and his predecessors were and are in continuous possession and enjoyment of the plaint schedule property for over hundred years without any let or hindrance from any person or institution up to 04.08.2008. On 04.08.2008, the single trustee of the 1st defendant Devasthanam conducted a public auction of the leasehold rights of the plaint schedule property claiming that the property belongs to the 1st defendant Devasthanam. However, before conducting the auction, he did not issue any notice to the plaintiff to vacate the land and hand over possession of the

same to him. Further, he did not also initiate any action under any provision of law for eviction of the plaintiff in accordance with the procedure established by law. In the auction that was held on 04.08.2008, the 2nd defendant became the highest bidder and the bid was knocked down in his favour. The 2nd defendant is a nominee of the defendants 3 and 4. Pursuant to the said auction, the 1st defendant Devasthanam had by force dispossessed the plaintiff from the plaint schedule property. During the suit year, the defendants 3 and 4 had raised paddy crop in the plaint schedule property and harvested it. The plaint schedule property is a part and parcel of a total extent of Ac.9.42 cents of Sanampudi village and the same was granted as an inaam to the ancestors of the plaintiff. The said property never belonged to the 1st defendant Devasthanam. The 1st defendant Devasthanam never exercised any right over it at any point of time. The plaintiff's possession was well documented by the revenue records, registered and unregistered cowlu and cowboliyath deeds. When the plaintiff came to know that at the behest of the defendants 3 and 4, the Single Trustee of the 1st defendant Devasthanam was bent upon conducting the auction of the leasehold rights highhandedly and without any authority, the plaintiff had got issued a registered notice through his counsel informing him to stop his illegal activities. The Single Trustee of the 1st defendant Devasthanam is very insensitive to the rights of the plaintiff over the schedule property. Despite receiving the said notice, he had acted as if he was not bound by any law. Even the provisions of the Endowment Act do not clothe him with any powers to dispossess a person from the property, which is in possession of that person. Hence, the Trustee of the 1st defendant Devasthanam is bound under law to get the plaintiff evicted by following the procedure established by law. Since the plaintiff is forcefully dispossessed from the plaint schedule property, without his consent and without following the procedure established by law, the suit is filed for restoration of possession of the schedule property to the plaintiff as contemplated under the provision of Section 6 of the Specific Relief Act. The relief claimed in the suit is not based on the title to the property but is based only on dispossession of the plaintiff from the plaint

schedule land without resorting to the due process of law. The suit is filed within six months of dispossession.

3.2 The averments in the written statement of the 1st defendant Devasthanam, in brief, are as follows:

The material averments in the plaint are false. The plaint averments that the plaintiff is the absolute owner of the plaint schedule property having inherited the same from his ancestors and that he and his ancestors were and are in possession of the plaint schedule property for over hundred years are all false. The plaint schedule property is the absolute property of the 1st defendant Devasthanam. For conducting sevas (services), it was given to the plaintiff's families. However, when they stopped performing sevas, the Devasthanam had taken possession of the property and conducted public auction. No notice is necessary to the plaintiff as the property automatically came to the Devasthanam on the plaintiff's family stopping performing sevas/services to the 1st defendant Devasthanam. The land was handed over to the highest bidder. The revenue record discloses that the 1st defendant Devasthanam is the title holder of the subject land. Auction was conducted by the single trustee of the 1st defendant Devasthanam as per the orders of the higher authorities. The plaintiff and the persons, who had purchased the land in the same survey number, filed different suits in the Court of the learned Additional Senior Civil Judge's Court, Narasaraopet and also on the file of the trial Court and also some criminal cases. All the suits are to be clubbed and common trial has to be conducted. The highest bidders are in peaceful possession and enjoyment of the plaint schedule property and they cannot be dispossessed until the lease period is over. The suit is liable for dismissal.

3.3 The averments in the written statement of the defendants 2 to 4, in brief, are as follows:

The plaint averments are false. The suit schedule land is part of a land in a total extent of Ac.9.42 cents in Sanampudi village. It was endowed in

favour of the deity by one Matukumalli Ramaiah about 200 years back. He had donated the land to the Devasthanam. The title of the land is in favour of the deity of the Devasthanam. The ryotwari patta issued under the provisions of the Inams Abolition Act vide proceedings in Rc.no.139/5979 dated 26.03.1962, the revenue records being maintained by the revenue authorities and the R.S.R register evidence the said fact and confirm the title of the 1st defendant Devasthanam over the schedule property. Ac.1.04 cents out of Ac.9.42 cents was acquired by the Government and compensation was paid to the 1st defendant Devasthanam. The title of the 1st defendant Devasthanam was recognized by the Government and all the Government authorities. Since times immemorial, the property is an endowed property and is in possession and enjoyment of the 1st defendant Devasthanam through its managing trustee. It is a dry land at the inception. Later, it was converted into wet land. It is now a fertile land and is giving good yield. The Single Trustee of the 1st defendant Devasthanam conducted public auction on 04.08.2008 for leasehold rights of the schedule property for the crop periods 2008-2009 to 2010-2011. The 2nd defendant participated in the said auction and was declared as the highest bidder. The 2nd defendant had paid the maktha amount of Rs.18,800/- to the Single Trustee of the 1st defendant Devasthanam for the crop year 2008-2009. Immediately, he had delivered possession of the schedule property to the 2nd defendant and issued possession certificate. The 2nd defendant had raised paddy crop. He has got legal right to continue as a tenant till the tenancy period expires. The plaintiff has no possession over the schedule property and has nothing to do with it. Therefore, the question of the plaintiff and his predecessors enjoying the suit schedule property does not arise. The plaintiff had filed criminal complaints against the defendants 1 to 4. The police found that the plaintiff was never in possession of the plaint schedule property. The documents filed along with the suit are not genuine. The Court fee paid is not correct. The suit is barred by limitation. The defendants 3 and 4 are not necessary parties.

3.4 The averments in the additional written statement filed by the 1st defendant Devasthanam are as follows:

The suit land originally belonged to Mathukumalli Ramaiah. Long ago, he had endowed the said land in favour of 1st defendant Devasthanam. Since then the land is under the management of the Devasthanam and was being managed by the descendants of the said Ramaiah. The revenue 1 B Register also clearly shows the name of the deity. Out of total extent of Ac.9.42 cents, an extent of Ac.0.90 cents was acquired by the Public Works Department (PWD) for formation of a canal. Thereafter, an extent of Ac.0.11 cents was also acquired for field channels. Thus, in all, Ac.1.04 cents was acquired. 10(1) Adangal also shows the name of Mathukumalli Poleramma as owner of the land for patta no.1054 and the plaint schedule land is a part and parcel of Ac.9.42 cents in Sy.no.659/A of Sanampudi village. The village Account no.3, i.e., Adangal/pahani clearly shows the name of deity Poleramma as Khatadar/Pattadar. Ryotwari patta was also granted in favour of the Devasthanam in R.C.no.139/5979 dated 26.03.1962. The same was mentioned by the Tahasildar in his letter dated 18.06.2007 addressed to the Revenue Divisional Officer, Narasaraopet. On account of some complaints stating that an extent of Ac.5.00 cents of land was illegally sold away by Mandapati China Yogaiah and four others by playing fraud, the District Collector had ordered enquiry. In that regard, a civil suit is pending. The Assistant Commissioner made enquiries and submitted a report. One M. Akki Reddy who was the Executive Officer of Nuzendla group Devasthanams was appointed as the single trustee of the 1st defendant Devasthanam vide proceedings dated 04.05.2007. He took oath of office and assumed the charge of the institution and had entered into the management. The reports submitted to the Collector clearly support the case of the 1st defendant Devasthanam. Cancellation deeds were executed on 02.04.2008 canceling the fraudulent sale deeds. There is a presumption under the provisions of the Endowments Act that the land belongs to the Devasthanam. The trial Court is not having jurisdiction. The suit is not filed within the period of limitation.

3.5 The plaintiff had filed a rejoinder reiterating his pleaded case and denying the averments in the additional written statement of the 1st defendant.

4. Taking into consideration the aforesaid pleadings the trial Court has framed the following issues and additional issues:

Issues:

- - 1) Whether the plaintiff is entitled to recovery of possession as prayed for?**
 - 2) Whether the Court Fee is paid Correct?**
 - 3) Whether the D.3 and D.4 are not necessary parties to the suit?**
 - 4) To what relief?**

Additional Issues:

- - 1. Whether the suit is barred by limitation as pleaded by the defendants?**
 - 2. Whether this Court has no jurisdiction to try the suit?**

At trial, the plaintiff was examined as PW1 and exhibits A1 to A16 were marked on the side of the plaintiff. Dw1 was examined and exhibits B1 to B19 were marked on the side of the 1st defendant. No oral and documentary evidence was adduced on behalf of the other defendants. By the judgment under revision, the trial Court had decreed the suit of the plaintiff and had directed the 1st defendant to restore possession of the suit schedule property to the plaintiff and had further granted mesne profits. Therefore, the aggrieved 1st defendant had preferred this revision.

5. As the present suit is a summary suit instituted under Section 6 of the Specific Relief Act, it is necessary to first refer to the said Section of law, which reads as under:

- 6. Suit by person dispossessed of immovable property:-**
 - (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.**
 - (2) No suit under this section shall be brought—**

- (a) after the expiry of six months from the date of dispossession; or
- (b) against the Government
- (3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.
- (4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

6. On facts and the contentions that were advanced at the hearing to which I shall advert to infra, the following questions arise for determination in this revision.

- (i) **Whether the plaintiff is entitled to recover possession of the plaint schedule property from the 1st defendant Devasthanam, as prayed for?**
- (ii) **Whether the suit is barred by law of limitation?**
- (iii) **Whether the suit against the 1st defendant Devasthanam is not maintainable?**
- (iv) **Whether the plaintiff is entitled to the relief of mesne profits?**

7. POINT Nos.1 & 2:

To begin with it is to be noted that the plaintiff brought the summary suit against the defendants for recovery of possession of the plaint schedule property *inter alia* alleging that he was forcefully and without his consent dispossessed from the plaint schedule property pursuant to an auction of the leasehold rights in respect of the said property highhandedly conducted on 04.08.2008 by the Single Trustee of the 1st defendant Devasthanam and that the suit, therefore, is filed within six months from such dispossession and that as such dispossession of the plaintiff from the plaint schedule property being otherwise than in due course of law, the plaintiff is entitled to the relief of recovery of possession of the plaint schedule property notwithstanding any other title that may be set up in the suit. The defendants are denying the plaintiff's entitlement to a decree as prayed for. Thus, the suit is brought on the basis of prior possession and dispossession of the plaintiff from the plaint schedule property without his consent and otherwise than under due course

of law. The learned counsel for the parties canvassed the respective pleaded cases of the parties. It is urged on behalf of the 1st defendant Devasthanam that the plaintiff has failed to establish either his title or pleaded case. It is urged on behalf of the plaintiff that plaintiff has established his entitlement to the relief of restoration of possession and that the trial Court had rightly granted the said relief. Though on behalf of both the parties certain submissions were made regarding title to the plaint schedule property, in a suit of this nature, the issue of title does not arise for determination. From a reading of the provision of law, which is extracted supra, it is clear that if any person is dispossessed from any immovable property without his consent and otherwise than under due course of law, the person dispossessed is empowered to lay a suit for recovery of possession thereof notwithstanding any other title that may be set up in such suit. Therefore, *de hors* the contentions of the parties in regard to the title to the property, the plaintiff's entitlement to recover possession of the plaint schedule property from the 1st defendant Devasthanam has to be examined. It is for the plaintiff to first establish that the plaintiff was dispossessed from the plaint schedule property on 04.08.2008. The plaintiff as PW1 while translating his pleaded case into direct evidence had deposed in line with his pleading in the plaint that he was in possession of the plaint schedule property as on 04.08.2008 and that the single trustee of the 1st defendant Devasthanam had highhandedly conducted an auction of the leasehold rights in respect of the plaint schedule property and that the 2nd defendant, who was the nominee of the defendants 3 and 4, was declared as the highest bidder in the said auction and that pursuant to the said auction he was dispossessed on 04.08.2008 by the 1st defendant Devasthanam and that the property was delivered to the said defendants. Further, he had maintained his stand in his entire evidence and had also exhibited exhibits A1 to A13 to prove his possession as on the date of his dispossession. Though the 1st defendant-Devasthanam claims that the property belongs to it and is accordingly registered in the relevant records, it is averred in its written statement that the plaint schedule property was given to the plaintiff's families for performing Sevas and that the property

automatically became the temple property when they had stopped performing such Sevas and that the property had automatically come into the possession of the 1st defendant Devasthanam and that the 1st defendant Devasthanam took possession of the property and conducted public auction of the leasehold rights and that the land was handed over to the highest bidder and that no notice, therefore, is necessary to the plaintiff. In the written statement of the defendants 2 to 4, it was averred that the 1st defendant Devasthanam conducted public auction of the leasehold rights in respect of the plaint schedule property for the crop periods 2008-09 to 2010-11 and that the 2nd defendant was declared as the highest bidder in the said auction and that the plaint schedule property was delivered by the Single Trustee of the 1st defendant Devasthanam to the 2nd defendant after payment of one year maktha in advance. Thus, from the very defence of the defendants it is obvious that till the date the auction was held, i.e., till 04.08.2008, the plaintiff was in possession of the plaint schedule property. Admittedly, at one point of time, that is prior to 04.08.2008, the plaintiff's family was in possession of the plaint schedule property and such possession was with the plaintiff's family as they were performing Sevas to the temple. Without specifically pleading as to when the performance of Sevas was stopped and without further specifically pleading as to when possession of the plaint schedule property was taken by the 1st defendant Devasthanam, it is vaguely averred in the defence that the property automatically has become the temple property and the 1st defendant Devasthanam had taken possession. In the light of the very pleadings and the evidence adduced in line with the said pleadings in the defence, it can safely be concluded that the plaintiff's pleading and assertion in evidence on oath that the plaintiff was dispossessed on 04.08.2008 are true. The pleadings and the evidence brought on record when examined in juxtaposition would also show that it is not in dispute that the Single Trustee of the 1st defendant Devasthanam conducted the public auction of the leasehold rights of the subject land on 04.08.2008 and that the 2nd defendant became a highest bidder in the said

public auction for the years 2008-2009 to 2010-2011. In fact, when the plaintiff came to know of the impending auction in respect of the plaint schedule land, he had got issued a legal notice under the original of exhibit A12 to the Single Trustee of the 1st defendant Devasthanam. It is undisputed that the said notice was received but, no reply was given. Without issuing any reply, the single trustee of the Devasthanam [DW1] had proceeded to conduct public auction of the leasehold rights in respect of the plaint schedule property. DW1, who was examined on behalf of the 1st defendant Devasthanam, deposed that the property is of the Devasthanam and that therefore, they took possession of the property and that no notice is necessary to the plaintiff. The learned counsel for the plaintiff has rightly contended that the plaint schedule property is a landed property and is not a building and that special provisions under the Endowments Law apply to such land and that even if one has to proceed on the assumption that the property was given to the plaintiff's family for performing Sevas and that they had continued in possession of the property even after stopping to perform the Sevas and that the plaintiff is continuing to cultivate the land at present by being in settled possession as on 04.08.2008, he cannot be dispossessed otherwise than under due course of law. On applying the test of preponderance of probabilities to the evidence brought on record, it can safely be held that the 1st defendant Devasthanam had dispossessed the plaintiff from the plaint schedule property pursuant only to the said auction held on 04.08.2008. Accordingly, this Court is in agreement with the finding of the trial Court that the plaintiff had sufficiently established that he was dispossessed without his consent and otherwise than in due course of law from the plaint schedule property on 04.08.2008. Coming to the issue of limitation, the plaintiff had admittedly brought the suit on 02.02.2009, i.e., within six months from 04.08.2008, the date of dispossession. Since the suit is brought before the expiry of six months from the date of dispossession, the contention of the defendants that the suit is barred by law of limitation is devoid of merit. For the aforesaid reasons, this Court holds that the plaintiff is entitled to recover possession of the plaint schedule property as prayed for,

as rightly held by the trial Court. The points are accordingly answered.

8. POINT NO.3:

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From a plain reading of the Section of law, it is clear that no summary suit under this Section can be brought against the Government. The learned Standing Counsel appearing for the 1st defendant Devasthanam had strenuously contended that since the land is that of the 1st defendant Devasthanam, the summary suit in respect of the temple land does not lie against the 1st defendant Devasthanam. In support of the said contentions, the learned counsel placed reliance upon the following decisions: (i) **Anamallai Club v. Government of T.N**^[1]; (ii) **West Bengal Agro Industries Corporation Limited v. Union of India**^[2]; (iii) **East India Hotels Ltd. V. Syndicate Bank**^[3]; and (iv) **Central Bank of India v. Pashudhan Avam Kukurt Vikas Nigam**^[4]. On going through the decisions it is clear that none of the decisions support the proposition that a temple is Government and that the temple land is a Government land and that a summary suit of this kind is not maintainable against the 1st defendant Devasthanam. In the case on hand, the land is being claimed as that of the Devasthanam but not as that of the Government. By no stretch of imagination the temple/1st defendant Devasthanam can be equated to a Government. So even going, for a moment, by the stand of the defendants that the land is that of the Devasthanam, this Court is of the considered view that the contention that Section 6 of the Specific Relief Act has no application to the schedule land belonging to the Devasthanam cannot be countenanced as the Devasthanam is not a Government. Moreover the plaintiff is not admitting that the land belongs to the 1st defendant Devasthanam. He is claiming that he had acquired right, title and interest by inheritance and that the property is his ancestral property and that prior to him his predecessors enjoyed the property and that he and his ancestors were and are in possession and enjoyment of the property for over hundred years and that he had continued

in possession of the property till he was dispossessed on 04.08.2000. As per the command of the law, in this suit, this Court shall not enter the realm of adjudication of title in respect of the plaint schedule property. Therefore, the contention of the 1st defendant Devasthanam that the suit under Section 6 of the Specific Relief is not maintainable is accordingly rejected.

9. POINT NO.4:

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The suit is not one for recovery of possession based on title. The suit is a summary suit. In this suit, the Courts are precluded from deciding the issue of title. Mesne profits will be awarded to a lawful owner and are recoverable from the person in wrongful possession. Since the issue of title is not germane for consideration, in the well considered view of this Court, it is impermissible to award mesne profits in suit of this nature. Perhaps for that obvious reason, the plaintiff did not specifically make a claim for mesne profits. But, the trial Court had erroneously held that the plaintiff is entitled to claim mesne profits. In the decision in **Mohammed Baig v. Ismail Begh** ^[5] this Court while following the earlier decisions had held as follows:

Regarding the other contention that the learned District Munsif could not have ordered recovery of mesne profits in such a suit, there appears to be some force. The scope of such a suit is limited to holding an enquiry into the question whether the person alleging dispossession was in possession of the property within six months prior to the date of suit and neither the question of title nor the possession based on title can be gone into. Therefore, in D. Nataraja Achari v. Balambal Animal, AIR1980Mad222, and Basavayya v. Gursvnyya, AIR1951Mad938, it was held that the rule applies only to cases for ejectment or recovery of possession from a person in possession without title together with a claim for mesne profits, past or future. The rule so discharged implies that the relief of mesne profits can be passed only in case of recovery of possession from a person who has no title to be in possession, the enquiry regarding which cannot be held in such a suit. Moreover, the definition of 'mesne profits' in Section 2(12) of the Code of Civil Procedure implies that the Court will find that a person in possession of such property would be in wrongful possession and makes profit from such wrongful possession which is going to be enquired under Order 20.R.12 of CPC to give a finding as such. In that view of the matter, the relief of mesne profits given is an excess exercise of jurisdiction and illegal and deserves to be set aside.

Thus, the view of this Court gets reinforced from the ratio in the above said decision. Therefore, it is to be held that the trial Court has exceeded in its jurisdiction in awarding mesne profits in this summary suit and that the decree of the trial Court to this extent is liable to be set aside. The point is accordingly answered.

10. In view of the aforesaid findings recorded under the points 1 to 4, this Court holds that the trial Court is justified in decreeing the suit for recovery of possession, but, was in error in granting the relief of mesne profits to the plaintiff.

11. In the result, the Civil Revision Petition is allowed in part. The Judgment and decree under revision are confirmed except to the extent of awarding mesne profits. The 1st defendant is directed to restore possession of the plaint schedule land to the plaintiff within two months from the date of the receipt of a copy of this order. Failing such compliance by the 1st defendant, it is left to the plaintiff to seek execution and recover possession of the plaint schedule property. It is needless to state that the decree of the trial Court to the extent confirmed in this revision shall not be a bar to any of the defendants to sue to establish title and recover possession thereof in a manner provided under law, as this Court did not go into the question of title in the summary suit.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

29th July, 2016
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- [\[1\]](#) (1997) 3 Supreme Court Cases 169
- [\[2\]](#) 2001-LAWS (CAL)-7-23
- [\[3\]](#) 1992 Supp (2) Supreme Court Cases 29
- [\[4\]](#) AIR 2006 MADHYA PRADESH 176
- [\[5\]](#) 1997 (1) ALD 181