

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No. 1274 of 1995
and C.M.P.No.54 of 2010

Malaiperumal ...Appellant/Appellant/Plaintiff
Vs.

Sri Sivaloganathar Swami Devasthanam
Thala Theru, Karaikal ...Respondent/Respondent/Defendant

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the decree and judgment dated 14.02.1994 made in A.S.No.37 of 1991, on the file of the Court of the Additional District Judge, Pondicherry at Karaikal, confirming the judgment and decree dated 19.07.1991 made in O.S.No.202 of 1988 on the file of the Court of the Principal District Munsiff at Karaikal.

For Appellant : Mr.G.Masilamani, Senior Counsel
for T.P.Manoharan

For Respondent : Mr.R.Natarajan

JUDGMENT

Suit for declaration that the plaintiff is the absolute owner of the suit schedule property. The claim of the plaintiff is based on the notorial documents Ex.A.1 and Ex.A.2 which were legal and permissible in the Union Territory of Pondicherry as per French Law. However, the Courts below dismissed the claim of the plaintiffs. Aggrieved by the findings of the trial Court, as well as the appellate Court, this appeal was presented by the unsuccessful plaintiff.

2. This Court at the time of admission has framed the following substantial questions of law:-

1. Whether Exs.A.1, A.2 and A.2, which are ancient Notorial documents produced by the appellant, would not establish his title and possession over the suit property especially

when the respondent has not produced any title document in its favour?

2. Whether, in view of the facts and circumstances of the case, pleading and the materials on record the lower appellate Court was right in holding that the Matrice according to French Law is not a mere revenue record and it is indicative of title and proof of possession and consequently, whether its finding that the suit property has been in the enjoyment of the respondent since 1922, is sustainable in law?

3. The learned senior counsel appearing for the appellant referred the judgment of the Hon'ble Supreme Court rendered in "Mourougaessa Modeliar Vs. Aguilandammallee reported in 1995(1) LW 72 J.S." and submitted that Notarial deed is relevant for determining the question of title and emphasised that the Courts below have not considered the notarial documents produced by the appellant which were marked as Exs.A.1, 2 and 5 and contended that by virtue of title deed, the appellant is in possession of the suit property. He emphasised that the suit property being a vacant site, possession follows title.

4. Per contra, the learned counsel for the respondent submitted that the tax receipts which were marked as Exs.B.3 to B.6 and Adangal marked as Ex.B.8 are sufficient documents to show that the possession of the suit property is with the respondent/temple. However, on a perusal of these receipts, it appears that the temple owned several properties and have paid taxes to the government and the tax receipts marked as exhibits did not appear to correlate with the subject schedule property.

5. However, the learned counsel for the respondent submitted that after searching of the records it has come to light that there are few more documents which support the case of the temple to prove the title as well as the possession. Four documents were listed in the affidavit filed along with the petition in C.M.P.No.54 of 2010, which are sought to be marked as additional documents by invoking under Order 41 Rule 27 of C.P.C.

6. A cursory glance of the documents indicates that the entire matrix of the suit has to be re-visited if these documents are allowed to be admitted. This Court is conscious of the law that only on grounds enumerated in Order 41 Rule 27 (a) and (b) permit the parties to produce additional documents at the appellate stage and Order 41 Rule 28 contemplates the mode of taking additional evidence. Taking note of the fact that the respondent being the temple and Court being a "paren patriae" of

the temple property it should not prevent the temple from adducing best evidence available but withheld by its employee, to produce and substantiate the case and defend the suit.

7. In order to achieve the said object, the matter has to be remanded back to the trial Court for further trial and permit the parties to adduce additional documents both oral and document.

8. Specific plea was taken by the learned counsel for the respondent that the plaintiff has not been mounted the witness box to substantiate his case but a third party who is admittedly a real estate broker and without any knowledge about the suit, has been examined on behalf of the plaintiff and for that reason alone the suit is not maintainable.

9. This Court is not inclined to go into the submissions made on either side, since it may prejudice the mind of the trial Court. It is open to the plaintiff to adduce oral evidence on his behalf. Plaintiff is permitted under Order 18 Rule 3A of C.P.C. to be examined, if he so inclined Documents filed along with the application in C.M.P.No.54 of 2010 shall be returned to the trial Court for the purpose of marking them and prove its veracity.

10. It is submitted by the learned counsel for the respondent that pending appeal the property was sold to a society in the year 2005. Any such alienation pending litigation shall be subject to the outcome of the suit.

11. In the result the second appeal is allowed and the matter is remanded back for further trial. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

सत्यमेव जयते
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge, Pondicherry at Karaikal,
2. The Principal District Munsiff at Karaikal.

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The Section Officer
V.R. Section
High Court
Madras

+1 CC to Mr. T.P. Manoharan, Advocate sr 13355
+1 CC to Mr. R. Natarajan, Advocate sr 13214

S.A.No. 1274 of 1995

SSI (CO)
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