

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2017

PRONOUNCED ON :25.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1827 of 1999
and
C.M.P.No.19831 of 1999

1.J.Saroja Ammal
2.J.Karunamurthy
3.J.Varadaraj
4.J.Kutty
5.Poongothai ammal
6.Lalli Ammal
7.Thenmozhi Ammal
8.Mallika
9.Minor Diwakar
S/o.Late Ramasamy
10.Minor Durga
D/o.Late Ramasamy
Minors appellants No.9 and No.10
represented by their mother and
natural guardian the 8th appellant ...Appellants/Defendants

...Vs...

Arulmighu Renugambal Amman Temple
Devasthanam, A.K.Padavedu rep. by
Executive Officer Kasturi Rangan ...Respondents/Plaintiff

PRAYER: Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree in A.S.No.54 of 1999 dated 14.10.1999 on the file of Principal District Judge,Tiruvannamalai in reversing the judgment and decree in O.S.No.53 of 1992 dated 31.1.97 on the file of District Munsif Court, Polur.

For Appellants : Mr.V.Raghavachari

For Defendant : Mr.A.K.Sriram
for M/s.A.S.Kailasem and Association.

J U D G M E N T

The defeated defendants are the appellants herein.

2. Challenging the correctness of the judgment passed in A.S.No.54 of 1999 dated 14.10.1999, on the file of the Principal District Judge, Tiruvannamalai, the defendant has preferred this Second Appeal.

3. The respondent/plaintiff-Executive Officer of the Arulmighu Renugambal Devasthanam of A.K.Padavedu in Polur Taluk filed the suit in O.S.No.53 of 1992, for a declaration of the temple's possessory right over the suit property and for a Mandatory Injunction, directing the appellants/defendants to remove the superstructure put up by him in the 3 cents, out of the acres 3.10 in Survey No.271/A1 of A.K.Padavedu village in Polur Taluk.

4. The plaint proceeds on the basis that land measuring a larger extent of acre 3.10 in Survey No.271/A1 as a temple poromboke given by the Revenue Authority for the deity at A.K.Padavedu village and the appellants/defendants as tenants without the permission put up the superstructure and hence, after issuing the notice, instituted the suit for the above relief.

5. The appellants/defendants filed a written statement denying the ownership of the temple over the land. During the trial on behalf of the temple, P.W.1 to P.W.4 were examined and Exhibit A1 to A4 were marked. Per contra, the defendant/appellant examined himself as D.W.1 and marked Ex.B1 to B13. After trial, the suit was dismissed and hence, the temple has preferred in A.S.No.54 of 1999 on the file of the Principal District Judge, Tiruvannamalai.

6. Before the lower Appellate Court following points for determination were considered:-

- (i) whether the suit land is a temple poromboke or revenue poromboke and
- (ii) whether the plaintiff is entitled for the relief of declaration as prayed for and
- (iii) whether the suit property has been enjoyed by the plaintiff's temple as a possessory right?

7. On the re-appreciation of evidence, the lower Appellate Court has come to the conclusion that larger extent of land measuring 3.10 acres belonged to the temple by virtue of Ex.A1 and the defendant/appellant is a tenant under the temple and as such, the plaintiff is entitled for the both relief of

declaration as well as for mandatory injunction. Accordingly, decreed the suit in entirety and hence, appeal filed by the defendants.

8. At the time of admission, the following substantial questions of law were framed for consideration:

- (i) Whether the lower appellate Court is right in coming to the conclusion that the plaintiff is entitled to a declaratory decree in the absence of documentary proof and whether it is right in relying upon Ex.A1 which is not a deed to prove right, title or interest?
- (ii) Whether the lower Appellate Court is right in coming to the conclusion that the plaintiff is entitled to a decree for mandatory injunction when the plaintiff herein had failed to initiate any action against the defendants, particularly when the construction is in existence since 1977 and whether the Courts below should not have held that the plaintiff is not entitled to the relief of mandatory injunction on account of acquiescence?
- (iii) Whether the lower Appellate Court is right in coming to the conclusion that the suit properties are temple poromboke?

9. As all the three substantial questions of law are inter-related and inter-connected, they are dealt in common.

10. The admitted factual matrix of the case is that a larger extent of land measuring 3.10 acre in Survey No.271/A1 in A.K.Padavedu Village in Polur Taluk is a Revenue poromboke and Arulmighu Renugambal temple was in existence for the time immemorial in the said larger extent of land. On behalf of the temple (respondent/plaintiff temple), Ex.A1 has been marked, which goes to show that the appellant/defendant was originally having a small hut of a 3 cents, out of the larger extent of 3.10 acres of land as mentioned above wanted to change the roof in the year 1975. At the time, temple Devasthanam has preferred a complaint with the Tahsildar of Polur and there was an appeal before the R.D.O, T.V.Malai, wherein the R.D.O., T.V.Malai as observed to the extent that the appellant/defendant is a tenant under the temple Devasthanam and the rent fixed by the said Devasthanam has to be paid by him and the appellant/defendant as to pay the rent as fixed by the temple Devasthanam and has to surrender the possession of the site as and when, it is required

by the temple Devasthanam. As could be seen from the Ex.A1, dated 23.06.77, it goes to show that the temple is in possessory right of the said extent of the land by virtue of Exhibit A1 and based upon Ex.A1, it appears that the appellant/defendant accepting its position (legal status as that of the tenant) remitted rent under Ex.A2,A3&A4 and continuously paid the rent and the same is not disputed by the D.W.1. On perusal of the Ex.A1, the lower Appellate Court has come to the correct conclusion that Government is the owner of the land as it is a Government poromboke and as such by long position for time immemorial entire extent of land which is described as temple poromboke for time immemorial.

11. In this regard, it is relevant to refer the decision reported in 2001(1) Law weekly 723 M.S.Krishnan (Died) and 26 others Vs. Government of Tamil Nadu rep.by the District Collector, Salem. 2. The Revenue Divisional Officer, O/o.the Revenue Divisional office, Salem. 3. The Tahsildar, Taluk Office, Fort Main Road, Salem. 4. Arulmigu Sri Mariamman Koil Devasthanam rep.by the President Secretary and Treasurer of the Trustees has held that:-

"The word ' Temple Site' has to be assigned only the restricted meaning which is also the natural meaning, viz., the site on which the temple or its appurtenances are situated and the actual premises of the temple. It will not include other properties belonging to the temple. If the legislature had intended to give a wider meaning and application and intended to include the lands or properties belonging to the temple, then the legislature could have as well used the expression 'Temple Lands' or 'Temple Properties'. The expression 'Temple Poromboke' can only signify one of the species of poromboke lands. Such a land doe not cease to be a poromboke property over which the Government will have control subject only to the rights of the temple. "

12. On perusal of Ex.A1, the lower Appellate Court has correctly comes to the conclusion that the entire suit property has been given for the benefit of the plaintiff's temple Devasthanam as and when, the temple Devasthanam requires the land. The defendant/appellant has to surrender the same and as such, the defendant who having accepting Ex.A1 and remitted the rent in the status of the tenant under Ex.A2,A3,A4 cannot now take a rebuttal stand for his own action.

13. It is to be stated that based upon the Ex.A1 issued by the R.D.O, the competent Revenue Authority stated that the land is given for the benefit of the temple which is in existence for time immemorial and the appellant/defendant was specifically directed to pay the rent as demanded and fixed by the temple and also further, directed to surrender possession as and when demanded by the temple. The Lower Appellate Court is quite right in coming to the conclusion that the plaintiff is entitled for declaratory decree is well founded and well merited and cannot be interfered by exercising power of under Section 100 of C.P.C.

14. Consequently, the lower Appellate Court also appears to have found that the construction put up by the appellant/defendant is in violation of the notice issued by the temple Authority and hence, decreed the Mandatory Injunction and hence, this Court is of the considered view that the finding and direction issued by the lower Appellate Court for Mandatory Injunction is justifiable on the basis of the documentary evidence produced by the temple under Ex.A1 to A14 and in view of the specific recital in Ex.A1, the lower Appellate Court has rightly come to the conclusion that the suit properties are vested with the temple on the basis of the recitals in the Ex.A1 and thereby, treating it as a temple poromboke.

15. In this regard, the decision rendered in 2011(4) CTC 48 T.K.Saminathan Vs. 1.The Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai -5. 2. The District Collector, Thanjavur. 3. The Fit Person, A/M.Karpaga Vinayagar Temple, Vanakkara Street, Maharnombu Chavadi, Thanjavur Town. 4.Venugopalan has held that:

" Public interest will prevail over private interest and Courts have to lean to uphold public interest in preference to private interest and Temple property and lands that are temple poromboke lands were encroached by private individuals".

16. On considering the entirety of the circumstances and also the clear evidence available on record, the lower Appellate Court has rightly come to the conclusion that the temple Devasthanam has got possessory right over the suit property and accordingly, declared the same and the appellant/defendant is being in the status of tenant having remitted the rent under Ex.A2 to Ex.A4 and has held that in view of the Ex.A1, the plaintiff temple Devasthanam is entitled for relief of Mandatory Injunction is sustainable in law and hence, all the three substantial questions of law are held against the appellant/defendant.

17. In the result,

i) this Second Appeal is dismissed without costs.

ii) Judgment and Decree in A.S.No.54 of 1999 dated 14.10.1999 on the file of Principal District Judge, Tiruvannamalai, reversing the well considered judgment and decree in O.S.No.53 of 1992 dated 31.1.97 on the file of District Munsif Court, Polur is hereby confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal District Judge,
Tiruvannamalai
2. The District Munsif,
Polur
3. The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.75107

S.A.No.1827 of 1999 and
C.M.P.No.19831 of 1999

KJI (CO)
CS/07/02/18

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