

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 02.08.2017

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1346 of 2000

1.Nataraja Pathar (died)

2.Sakunthala

3.Selvakumar

4.Nagalakshmi

(Appellants 2 to 4 brought on record
as LRS of the sole appellant viz.,
Nataraja Pathar vide Court order
dated 10.07.2017 made in C.M.P.No.
8719 to 8721/2017 in S.A.No.1346 of 2000)

... Appellants/Appellants/
Plaintiffs

Vs.

Arulmighu Bhawa Oushadheeswaraswamy
Tirukoil by its Executive Officer,
Tirutturaipoondi.

... Respondent/Respondent/
Defendant

Second Appeal is filed under Section 100 of the Civil
Procedure Code against the judgment and decree dated
31.03.2000 in A.S.No.237 of 1999 on the file of the Court of
Principal Subordinate Judge, Nagapattinam, confirming that of
the District Munsif, Tirutturaipoondi in O.S.No.2 of 1996.

For Appellants : Ms.P.Srividhya

For Respondent : No appearance

J U D G M E N T

This second appeal is directed against the concurrent
finding of the Courts below. The suit filed by the appellant
for mandatory injunction directing the defendant/temple to
remove the 4-wheel wooden Sapparam in S.No.4 cents of suit
property and to pay costs of the suit to the plaintiff.

2. The case of the appellant as found in the plaint is
that, the suit property was leased out to the plaintiff's
ancestor several 10 years ago by the defendant-temple and they
are in continuous possession and enjoyment of it by paying
rent to the defendant-temple. While so, the defendant-temple
has brought 4-wheel wooden Sapparam of the temple and parked
on the western side of the suit property only to cause

hindrance to the plaintiff herein and indirectly to force the plaintiff from vacating the suit property.

3. Both the Courts below have held against the plaintiff, while arriving at the conclusion, the Courts below have gone into the title of the parties and incidentally found that, the plaintiff has no locus standi to file the suit, since there was no document to show the possession of the suit property with the plaintiff.

4. The learned counsel appearing for the appellant/plaintiff submits that the defendant-temple has removed the 4-wheel wooden Sapparam. So, cause of action does not longer survives. However, the findings with regard to the possession and title of the suit property as found in the judgments of the trial Court as well as the appellate Court have to be eschewed, since both the Courts have gone beyond the scope of the suit.

5. On perusing the judgments of the Courts below, this Court is of the opinion that if either of the party still have any dispute regarding the title or enjoyment of the suit property, they can work out their remedy separately, without adhering to the findings in this regard recorded by the Courts below. As far as this second appeal is concerned, the cause of action narrated in the plaint is not available due to the subsequent events. Hence, the second appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Nagapattinam.

2.The District Munsif,
Tirutturaipoondi.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.55391

S.A.No.1346 of 2000

SVI (CO)

<https://hcservices.ecourts.gov.in/hcservices/>
CA(07/09/2017)