

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.938 of 2013
and M.P.No.1 of 2013

C.Jayaraman

... Appellant/Defendant

Vs.

Arumbakkam Bala Vinayagar Nagar

Welfare Association, Rep. by its
Secretary, Mr.G.Balakrishnan,
3, Visalakshi Street,
Balavinayagar Nagar,
Arumbakkam, Chennai-600 106.

... Respondent/Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 30.04.2013 in A.S.No.395 of 2010 on the file of the XVIII Additional Judge, City Civil Court, Chennai, against the judgment and decree dated 22.06.2010 in O.S.No.4723 of 2007 on the file of the VI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.P.B.Balaji
For Respondent : Mr.S.Janarthanan

JUDGMENT

The suit is filed by the respondent/plaintiff for permanent injunction restraining the appellant/defendant from encroaching upon the Temple land. The plaintiff is a registered Association. The plaintiff-Association contended that they have absolute right to maintain and administer the Temple (Arulmighu Bala Vinayagar and Arulmighu Sree Saptha Kanniamman Temple). The defendant is said to have purchased the adjoining property, namely Door No.2, Balavinayagar Nagar Main Road and attempted to encroach upon the Temple premises and also damaged the structure of the Temple in order to demolish and take over the Temple for his own occupation. The defendant's high-handedness was thwarted by the worshipers and members of the plaintiff-Association. A complaint was also lodged at K8 Arumbakkam Police Station on 19.02.2007. It is further contended that the defendant is said to have informed the Secretary and members of the plaintiff-Association that he would bring Goondas and henchmen to demolish

the Temple. According to the plaintiff-Association, they are in custody, administration and ownership of the Temple and have approached the Court from preventing the defendant, his men, agents or any persons acting on behalf of him by granting perpetual injunction against the defendant.

2. The appellant/defendant denied the above averments of the respondent/plaintiff and questioned the locus-standi of the plaintiff-Association in maintaining the suit Temple and the right to maintain and administer the same. According to the defendant, there is no Temple at all in the suit premises in Plot No.41, Bala Vinayagar Nagar Main Road. The Temple is situated few kilometers away from the suit premises and it is under the control of the Hindu Religious and Charitable Endowments Department. The said Temple is not at all maintained and managed by the plaintiff-Association. According to the defendant, there are 43 plots allotted by the Tamil Nadu Slum Clearance Board and the defendant is living since 20 years in Plot No.41 and had been paying property tax, water tax etc., to the appropriate authorities. There is no Temple in Plot No.41 and only house constructed by the defendant is situated there. The defendant purchased another 395.5 Sq.Ft in Plot No.40 on 10.08.1992 from Prema, allottee of Plot No.40. The said Plot No.41 belongs to the defendant and Plot No.43 is adjacent to Plot No.41. It is further contended by the defendant that as per the deed, dated 30.08.2000, the Temple is constructed and situated at the intersection of two Roads and not in Plot No.41. It is further contended that one Pandurangan did not have the capacity either in law or on facts to execute the said deed. It is further stated that there is no Temple in the said Plot No.41 or adjacent to Plot No.41. The defendant had not purchased any land adjoining the Temple, as there is no Temple at Plot No.41 or adjacent to Plot No.41. It is further averred by the defendant that one Balakrishnan, the Secretary of the plaintiff-Association is an influential person and his wife and others came to the defendant's house and attacked the guests of the defendant, for which, a case has also been registered before the Police. It is further alleged that Plot No.41 is owned by the defendant and the ownership of Plot No.41 does not vest with the plaintiff. Under the guise of the Temple property, the respondent/plaintiff-Association is trying to grab the property, and hence, the suit is liable to be dismissed.

3. The trial Court decreed the suit in favour of the plaintiff, against which, the defendant preferred First Appeal, which was dismissed by the first appellate Court, against which, the present Second Appeal is preferred by the defendant.

4. At the time of admitting the Second Appeal on 07.02.2014, this Court framed the following substantial questions of law:

(i) Whether the first appellate Court was right in confirming the erroneous findings of the trial Court, based on pleadings and evidence, without exercising powers vested under Order 41 Rule 33 CPC ?

(ii) Whether the Courts below were justified in brushing aside the vital admissions of P.W.1 in cross examination regarding the lack of rights of the plaintiff to the suit property ? and

(iii) Whether the Courts below were right in decreeing the suit contrary to the most basic and fundamental rule of law that there can be no relief when there is no right ?

5. Heard both sides and perused the materials available on record.

6. It is seen that till 1989, the suit property and the other properties in and around the suit property, were handed over to the Tamil Nadu Slum Clearance Board by the H.R. & C.E. Department for allotment of lands to its occupants. After analysing the evidence available on record, the Courts below came to the conclusion that as per Ex.A-3, the Temple and the surrounding area is without any maintenance measuring 12.3 Sq.Mts. The Courts below decreed the suit in favour of the plaintiff based on Ex.A-3. Further, the lower appellate Court came to the conclusion that the defendant has not produced any document to show that he is in possession of the property even prior to 1989 and that he has purchased the superstructure measuring 395.5 Sq.Ft. in Plot No.41 only in 1992 from one Pandurangan who had handed over the maintenance and administration of the Temple situated in the junction of the two Roads measuring about 12.1 Sq.Mts.

7. From the above findings, it is clear that there was Temple in existence and due to the dispute between the appellant and the respondent, the idol of the Deity is now in custody with the Police in Arumbakkam Police Station.

8. With regard to the first question of law, as far as the findings of the Courts below are concerned, they are mainly based on Ex.A-3 and the other evidence, oral and documentary, available on record. The defendant is owning only 395.5 Sq.Ft. in Plot No.41 only from 1992, that too the superstructure and he is not the owner prior to 1989. Further, the Temple is in

existence from 1987. The first appellate Court has rendered the findings of fact by properly exercising powers vested in it under Order 41 Rule 33 CPC. The first question of law is answered accordingly.

9. Taking note of Ex.A-3 and the evidence on record and on facts, the Courts below observed as indicated above. When there is categorical documentary evidence in Ex.A-3, both the Courts below are right in answering the issue against the defendant and in favour of the plaintiff and hence, the Courts below are right in brushing aside the vital admissions of P.W.1 in cross examination regarding the lack of rights of the plaintiff to the suit property. The second substantial question of law is answered against the defendant/appellant.

10. As far as the third question of law is concerned, when the plaintiff-Association has established their right not only through documentary evidence, but also through verbal evidence, which has been accepted by both the Courts below, and that there was idol of the Deity in the intersection of the Roads, the Courts below are right in decreeing the suit in favour of the plaintiff and hence, the principle that there can be no relief when there is no right, will not apply to the facts of this case. The third question of law is answered accordingly.

11. The Second Appeal is dismissed confirming the judgments and decrees of both the Courts below. Ex.A-3 shall form part of the decree. No costs. The Miscellaneous Petition is closed. It is open for the plaintiff-Association to approach the concerned Police Station and get back the idol of the Deity and perform the rituals, pooja, etc., in accordance with law without hindering the residents of the locality.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cs/sts

Copy to

1. The XVIII Additional Judge,
City Civil Court, Chennai.

2. The VI Assistant Judge,
City Civil Court, Chennai.

+lcc to Mr.P.B.Ramanujam, Advocate Sr. 41617
+lcc to Mr.S. Janarthanam, Advocate Sr. 41610

S.A.No.938 of 2013

KS (CO)
VR(28/06/2017)



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