IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2017

CORAM:
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Second Appeal No.491 of 2011

1. Vadivel (died)
2. Kaliyammal
3. Annamalai
4. Kasiammal
5. Anjalai
6. Alamelu ... Appellants

(Appellants 2 to 6 brought on record as LRs of the deceased 1st appellant vide court order dated 09.03.2017 in C.M.P.No.2887 to 2889 of 2017 in S.A.No.491 of 2011)

Vs.

1. Kamban
2. Narayanan
3. Jeyabalan
4. Oomaiyan
5. Kamalakannan
6. Ramalingam ... Respondents/Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 27.09.2010 made in A.S.No.16 of 2010 on the file of the Principal Subordinate Judge, Tiruvannamalai, challenging the judgment and decree dated 03.02.2010 made in O.S.No.281 of 2006 on the file of the Principal District Munsif Court, Tiruvannamalai.

For Appellants : Mr.R.Krishna Prasad
for M/s.Sarvabhauman Associates

For Respondents : Mr.W.M.Abdul Majeed

J U D G M E N T

The deceased 1st appellant herein is the plaintiff in the suit. Since he died during the pendency of this Appeal, his legal heirs have been brought on record. The present Second Appeal is filed challenging the judgment and decree dated

27.09.2010 made in A.S.No.16 of 2010 on the file of the Principal Subordinate Judge, Tiruvannamalai, dismissing the judgment and decree dated 03.02.2010 made in O.S.No.281 of 2006 on the file of the Principal District Munsif Court, Tiruvannamalai.

2. This Court, by an order dated 21.04.2011, ordered notice to the respondents returnable by 07.06.2011. Thereafter, the matter stood adjourned from time to time for one reason or the other. Today, the Second Appeal is taken up for final disposal on the merits of the matter.

3. Before the Trial Court, the deceased 1st appellant/plaintiff pleaded that the suit property, which is an extent of 38 cents of land in S.No.74/1B belongs to the Government and that his forefathers were in occupation of the same for more than 60 years. To substantiate his claim that he had also been in occupation of the Government land, the 1st appellant marked a copy of the 'A' Register, dated 30.06.2001 vide Ex.A7 and Ex.A10 - Patta. He also marked Tax Receipts from the year 1987 to 1995, vide Exs.A2 to A5.

4. While so, it is the case of the respondents herein that the suit property, which was a Government Tharisu land was occupied by their forefathers before 100 years and that a Kaliamman Temple was built there and the Kali deity is now being worshipped by their relatives and by all the people in and around their Village as their family deity. It is their further case that there are several neem trees in the said land and that the appellants have never been in exclusive possession or enjoyment of the land in question. According to the respondents, the appellants have obtained patta for the said land by manipulating the records with the undue influence of the Revenue authorities.

5. The Trial Court, on a consideration of the entire oral and documentary evidence, more particularly relying on the Advocate Commissioner's Report vide Ex.C1, allowed the suit in O.S.No.281 of 2006 holding that the plaintiff is entitled to the relief of declaration in respect of the suit property except the extent of land in the suit property, where the Kali Temple is constructed. Challenging the said judgment, the plaintiff filed an appeal in A.S.No.16 of 2010 and the First Appellate Court dismissed the same, setting aside the judgment and decree of the Trial Court. Aggrieved by the judgment and decree of the First Appellate Court, the plaintiff has filed the present Appeal.

6. It is the contention of the learned counsel for the appellants that the First Appellate Court failed to appreciate the fact that the 1st appellant had been allotted patta for an

extent of 0.38 cents of land in S.No.74/1B way back in the year 1984 itself and the said fact had not been denied by the respondents by letting in contra evidence. He further contended that the First Appellate Court also failed to appreciate Exs.A2 to A5, i.e. Tax Receipts and Ex.A7 - 'A' Register marked by the 1st appellant in respect of the suit property. It is also his contention that the Advocate Commissioner's Report has not been challenged by the respondents and that no appeal has been filed by them, insofar as that finding is concerned.

7. On the other hand, learned counsel appearing for the respondents/defendants contended that the relief sought by the plaintiff is only for declaration with regard to 38 cents in S.No.74/1B apart from the neem trees situated in the said land.

8. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

9. It is not in dispute that the land in question belongs to the Government. However, it has been disputed that the 1st appellant/plaintiff was in exclusive possession and enjoyment of the suit property and cultivated crops. The contention of the appellants that their forefathers were in enjoyment of the property in question and that the 1st appellant/plaintiff was also in continuous occupation of the property is not correct. Accepting the contention of the 1st appellant/plaintiff and looking into the revenue records and the evidence of the parties, more particularly, the evidence of one Pandurangan, who was examined as P.W.2, the Trial Court has held that the plaintiff can seek the relief of declaration in respect of the suit property excluding the Temple portion marked as 'ABCD' in the Advocate Commissioner's Report.

10. The First Appellate Court, being the final Court on finding of fact, scrutinized the documents produced by the plaintiff and came to the conclusion that there is a Kaliamman Temple in the suit property, which is meant for public, apart from neem trees, which are over 15 years old. It further held that the defendants have established their case and that the evidence of P.W.2- Pandurangan is fortified by his own statement when he was examined. He deposed that he was a witness in a criminal case with regard to the issue in question and that he has stated that he has no knowledge about the case and that he turned hostile before the Criminal Court. Apart from admitting the fact that he was taken to hospital, he has also stated that the suit property in question is common to the public. Even in the cross-examination, he has admitted that the property in question belongs to the Temple and it is meant for the down-

trodden people.

11. Though much emphasis has been made with regard to the revenue records, as the plaintiff has not come to this Court with clean hands, this Court has serious doubt with regard to the documents produced by him and the First Appellate Court has rightly disbelieved those documents and came to the conclusion that the property in question belongs to Kaliamman Temple, the deity of which is being worshipped by the people belonging to down-trodden community. Also, no appeal has been filed by the respondents/defendants insofar as the finding of the Trial Court that has gone against them. Taking into consideration all the above aspects, this Court is not inclined to allow a private party to usurp the Government land by creating false records, when those documents have been disbelieved by the Trial Court.

12. In view of the above, this Court finds no illegality or perversity in the findings of the First Appellate Court and hence, the same is liable to be confirmed. There is no question of law much less substantial question of law that arises for consideration in this Appeal.

In fine, the Second Appeal is dismissed, confirming the judgment and decree of the First Appellate Court. No costs. Consequently, connected M.P.No.1 of 2011 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Subordinate Judge, Tiruvannamalai.
2. The Principal District Munsif Court, Tiruvannamalai.
3.The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.Sarvabhuman Associates, Advocate SR.No.44072
+1cc to Ms.G.Sumitra, Advocate SR.No.43939

Judgment in
S.A.No.491 of 2011

RSK(CO)
GN(17/08/2017)