

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2017

PRONOUNCED ON : 17.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.518 of 2011

and

M.P.No.1 of 2011

Chandrasekaran ... Appellant/2nd Defendant

Vs.

1.Thagattur Anna Chatram
Vinayagar Mutt,
Thanneerpandal Dharmam
Rep.by it's Managing Trustee
Ramkumar

2.Vedavalli ... Respondents/Plaintiff and 1st Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 16.12.2010 made in A.S.No.29 of 2007 on the file of the Sub Court, Nagapattinam, confirming judgment and decree dated 05.02.2007 made in O.S.No.260 of 2000 on the file of the District Munsif Court, Nagapattinam.

For Appellant : Mr.S.Sounthar

For Respondent : Mr.C.Jagadish
No.1

For Respondent : No appearance
No.2

JUDGMENT

In this second appeal, the second defendant has impugned the judgment and decree dated 16.12.2010 made in A.S.No.29 of 2007 on the file of the Sub Court, Nagapattinam, confirming the judgment and decree dated 05.02.2007 made in O.S.No.260 of 2000

on the file of the District Munsif Court, Nagapattinam.

2. The second appeal has been admitted and the following substantial questions of law are formulated for consideration in this second appeal;-

" (a) Whether the suit laid by Ram kumar claiming to be the Managing Trustee of the plaintiff's Trust is maintainable when there is a cloud over the Managing Trusteeship of the plaintiff's Trust?

(b) Whether the Courts are legally correct in granting the relief of permanent injunction and mandatory injunction without prayer for recovery of possession of the suit property?"

3. The suit has been laid by the plaintiff for permanent injunction and mandatory injunction.

4. Originally, the plaintiff Trust represented by its Managing Trustee Sudhakar has laid the suit. Pending the suit, Sudhakar having died, his son Ramkumar has been substituted and he is continuing the suit as the Managing Trustee of the plaintiff Trust.

5. As regards the title of the plaintiff Trust over the suit property, there is no dispute. It is, therefore, evident that the suit property belongs to the plaintiff Trust. According to the plaintiff, the 2nd defendant is an encroacher into the suit property and without authority, as the 2nd defendant attempted to put up construction over the suit property and pending the suit, he had also raised certain structures, it is the case of the plaintiff that suitable reliefs have come to be prayed for in the suit against the defendants. The first defendant has remained exparte.

6. The 2nd defendant claims title to the suit property through one Karnambal under Ex.B10. However, it has not been established by the 2nd defendant that Karnambal had valid title over the suit property and therefore, it is obvious that under Ex.B10, the 2nd defendant cannot claim any valid title over the suit property.

7. Be that as it may, it is now not in dispute that the suit property belongs to the plaintiff Trust. The 2nd defendant, inter alia, has raised the plea that Sudhakar is not entitled to lay the suit as the Managing Trustee of the plaintiff Trust and on that ground alone, the plaintiff's suit should fail.

Thereafter, on his son Ramkumar being substituted in his place, on his demise, it is also contended by the 2nd defendant that Ramkumar is also not entitled to proceed with the suit as the Managing Trustee of the plaintiff Trust. In other words, according to the 2nd defendant, there is a cloud over the Managing Trusteeship of the plaintiff Trust and as one of the trustees of the plaintiff Trust has raised a dispute over the Managing Trusteeship of the plaintiff Trust, it is contended that in absence of the other trustees, the suit is not maintainable.

8. As seen from the above evidence adduced by the respective parties, it is found that the plaintiff Trust has been founded by Kuppa Thevar S/o Vairappa Thevar under the Will dated 12.10.1919, which has been marked as Ex.A1. As per the terms of the said Will, it is found that the main object of the Trust is to do "Annadhanam" on the date of the death of Kuppa Thevar's father viz., Vairappa Thevar and as per the terms of the Will, it is also found that on the demise of Kuppa Thevar, his first son, viz., Vairappa Thevar administered the Trust and after his death, the next son Kandasamy Thevar held the office of the Trustee. It is also admitted that Kandasamy Thevar had three sons viz., Kuppa Thevar, Ganesa Thevar and Vairappa Thevar and they were all managing and administering the Trust properties including the suit property under an arrangement dated 15.09.1955, which has been marked as Ex.B18. It is also found that Kuppa Thevar being the eldest son of Kandasamy Thevar, as such, had been administering the Trust. On the demise of the said Kuppa Thevar, it is found that the Trust administration was taken over by his son Sudhakar. Following the dispute between the other two sons of Kandasamy Thevar viz., Genasa Thevar and Vairappa Thevar and the sons of Kuppa Thevar viz. Sudhakar, Venkatachalapathi, it is found that the suit in O.S.No.17/1970 had been laid and it is also found that a compromise decree had been made in the above said suit on 29.03.1973, the copy of which has been marked as Ex.B1. As per the terms of the said compromise decree, it is found that as far as the plaintiff Trust, particularly, the suit property is concerned, the same had been allotted to the sons of the Kuppa Thevar viz., Anbanandam, Sudhakar and Venkatachalapathi. Accordingly, it is the case of the plaintiff that the Management of the plaintiff Trust vested with Sudhakar, as admittedly Anbanandam was an insane person and Venkatachalapathi was a minor at that point of time. It is, therefore, contended that Sudhakar rightly in his capacity as the Managing Trustee or the sole trustee had laid the suit against the defendants. A perusal of Ex.B1 compromise decree would go to show that even therein Anbanandam has been described as an insane person being arrayed as the first defendant in the said suit. Venkatachalapathi has been mentioned as Minor, who is arrayed as third defendant in

the said suit. Therefore, as rightly put forth by the plaintiff's counsel, it is evident that being the fit person having the capacity to administer the Trust, it is found that Sudhakar had taken over the administration of the Trust and managing the same. Accordingly, in that capacity, he has laid the suit against the defendants, the 2nd defendant being an encroacher, for protecting the suit property or preventing the defendants from doing illegal acts to the detriment of the suit property as the same belonged to the plaintiff's Trust.

9. In the light of the above position, the case of the 2nd defendant that Sudhakar had no capacity to lay the suit as the Managing Trustee of the plaintiff Trust, as such, cannot be countenanced. As adverted to earlier, pending the suit, Sudhakar had died, he is succeeded by two sons viz. Ramkumar and Senthilkumar. It is also found that Anbanandam died leaving behind his only son Muthukumar. As per the terms of Ex.A1 Will, it is found that the plaintiff Trust has to be administered by the fit person, who is having the capacity to manage the same. Accordingly, in the line of succession, by the lineal descendants of the original trustee, it is found as seen above, Sudhakar had managed the plaintiff Trust during his life time and following his demise, as three persons remained for taking over the administration of the Trust, as per the case of the plaintiff, the above said three persons viz. Ramkumar, Senthilkumar, the sons of Sudhakar and Muthukumar, the son of Anbanandam entered into an arrangement called deed of appointment of Trustee on the death of previous trustees viz., Sudhakar and Venkatachalapathi and also for the purpose of appointment of the Managing Trustee, the said arrangement has been marked as Ex.A6, where under, the above said three persons have been constituted as Trustees of the plaintiff Trust, on the demise of Sudhakar and the eldest son of Sudhakar viz., Ramkumar has been nominated as the Managing Trustee. Accordingly, it is found based upon Ex.A6, on the demise of Sudhakar, it is found that Ramkumar has been substituted in his place and Ramkumar is continuing the suit as the Managing Trustee of the plaintiff Trust. Thus according to the plaintiff, Ramkumar derives the Managing Trusteeship under Ex.A6 arrangement. A perusal of Ex.A6 disclose that the same support the plaintiff's version by and under which, it is found that Ramkumar had been appointed as Managing Trustee of the plaintiff Trust and the other trustees are Senthil Kumar and Muthukumar.

10. Meanwhile, it is also found that Muthukumar claiming that he is more fit and having the ability to administer the Trust than Ramkumar appears to have issued a notice to Ramkumar marked as Ex.A2 canceling the appointment of Muthukumar as the Managing Trustee under Ex.A6, the said notice has been marked as Ex.A2. To the same, Muthukumar has responded by sending a reply,

which has been marked as Ex.A3. It is found, thereafter, that according to the 2nd defendant, Muthukumar had unilaterally cancelled the arrangement made by the trustees under Ex.A6 on 13.01.2003 vide Ex.B4 a self serving document, admittedly, which has not been registered. Therefore, it could be seen that according to the 2nd defendant, inasmuch as Ex.A6 has come to be challenged or cancelled, particularly, the appointment of Ramkumar as the Managing Trustee had been challenged by one of the trustees viz, Muthukumar, Ramkumar cannot proceed with the suit further and therefore, it is contended that the suit, as such, is not maintainable. However, as rightly put forth by the plaintiff counsel, under Ex.A6 registered arrangement, the trustees had unanimously appointed Ramkumar as the Managing Trustee and accordingly, as per the line of succession, it is found that Ramkumar had been Managing the Trust. In such a view of the matter, it cannot be accepted that Muthukumar would be entitled to cancel the same unilaterally under Ex.B4, which is admittedly not registered and therefore, can not have the seal of approval by a competent court. In such view of the matter, it could be seen that when Ex.B4 has no legal entity as such and when it has not been established that under the same Ex.A6 had been legally cancelled, as rightly put forth by the plaintiff's counsel. Ex.B4 cancellation deed is non est in the eyes of law and no reliance could be safely placed upon the same.

11. Further, it is also found that till date, it has not been made clear that Muthukumar had really challenged the Managing Trusteeship of Ramkumar conferred on him under Ex.A6, though the notice alleged to have been sent by him is marked as Ex.A2 and the cancellation deed alleged to have been sent by him is marked as Ex.B4. No doubt, they had been marked during the cross examination of PW1. Still to hold that Muthukumar is competent to cancel Ex.A6 deed and as such, cancelled the same and further, to hold that Muthukumar is entitled to cancel the same under Ex.B4, particularly, Ex.B4 being a xerox copy and further as to what are the further steps taken by Muthukumar with reference to Ex.B4, as such, are not established by the 2nd defendant by summoning and examining the said Muthukumar. Therefore, it could be seen that merely by marking Exs.B2 & 4, on their own, we cannot assume that Muthukumar had legally cancelled Ex.A6 arrangement and thus, Ramkumar is not entitled to proceed further with the suit. Therefore, it is found that when as on date, apart from Ramkumar, the other two trustees viz. Senthilkumar and Muthukumar are also continuing as Trustees, if really, Muthukumar had thrown a challenge to the Managing trusteeship of Ramkumar, nothing prevented him from getting himself impleaded as a party to the present proceeding and put forth his case. Besides, the 2nd defendant, in support of his defence, should have endeavoured to examine Muthukumar in support of his case. Nothing has been done and therefore, it is

found that as on date, Ex.A6, remained uncontroverted and in such view of the matter, as rightly found by the courts below, Ramkumar is having the capacity to administer the Trust, on the demise of Sudhakar, under Ex.A6 arrangement, which is admittedly made between the trustees of the plaintiff Trust, the trustees, being the lineal descendants of the original trustee i.e. Kuppa Thevar.

12. In the light of the above discussions, it is found that the case of the defendants that there is a cloud over the managing trusteeship of the plaintiff Trust and therefore, the suit laid by Ramkumar claiming to be the Managing Trustee of the plaintiff Trust is not maintainable, as such, cannot be accepted in any manner.

13. Now, coming to the question whether the plaintiff Trust represented by its Managing Trustee, is empowered to lay the suit against the defendants, admittedly the 2nd defendant being an encroacher. A perusal of Ex.A6 would go to show that powers had been conferred on the Managing Trustee viz, Ramkumar to take appropriate legal action against the encroacher i.e. he had been empowered to evict the encroacher of the properties belonging to the Trust and to recover the possession of the properties. Therefore, it is found that Ex.A6 empowers Ramkumar, Managing Trustee of the plaintiff Trust to lay the suit against the defendants. Therefore, it is found that, as already held by the Courts below, Ramkumar, as the Managing Trustee of the plaintiff Trust, is empowered to lay the suit against the defendants.

14. The suit property admittedly belongs to the Trust and the 2nd defendant has not made a valid claim over the suit property and his claim over the suit property is found to be not legal. Resultantly, it is found that the 2nd defendant is only an encroacher into the suit property. Therefore, the plaintiff being the owner of the suit property is entitled to evict the defendants from the suit property. Now, according to the plaintiff Trust, it has leased out the site of the suit property to the first defendant and it is also pleaded that the suit property is in the possession and enjoyment of the plaintiff Trust. Be that as it may, in so far as the entitlement of the suit property by the plaintiff Trust, the first defendant has not thrown a challenge. The first defendant has remained ex parte. The person, from whom, the second defendant claims title to the suit property is found to be not owning any right over the suit property. Accordingly, the plaintiff, on the apprehension that the defendants are attempting to encroach into the suit property and put up illegal construction, claimed the relief of permanent injunction against the defendants. Pending the suit, as the defendants had encroached into the portion and put up some illegal construction, the plaintiff has also

amended the plaint and sought the relief of mandatory injunction.

15. In this background, it is the contention of the defendants' counsel that without seeking the relief of possession, the suit laid by the plaintiff simpliciter for mandatory injunction as well as permanent injunction is not maintainable. However, countering the above contention of the defendants' counsel, it is argued by the plaintiff's counsel that though the relief of mandatory injunction is sought for, the defendants being the encroachers or trespassers into the suit property, the relief of mandatory injunction, would, by itself, suffice and on that score alone, the plaintiff is entitled to recover the possession and there is no need to separately ask for the relief of recovery of possession, particularly, vis-a-vis the position of the defendants in the suit property being only trespassers. In this connection, strong reliance is placed upon the decisions reported in AIR 1985 Supreme Court 857 (Sant Lal Jain V. Avtar Singh), 2016 SCC Online Del 4356 (Shri K.C.Bhargava V. Sanatan Dharam Sabha Lakshmi Narain Temple Trust (Regd)), 2016 SCC Online Del 4680 (Sh.Baij Nath V. Murti Bhagwan Jagannathji Maharaj & Anr.) and 2009 (5) CTC 798 (Satvithri Padmanabhan and seven others V. M.Rajendran).

16. A perusal of the above said decisions would go to show that considering the nature of the reliefs sought for in the plaint and also the position of the defendants being trespassers, it is found that the plaintiff is entitled to obtain the relief of mandatory injunction as prayed for and on that basis, the plaintiff's suit cannot fail merely because, it has not specifically sought for the relief of possession. The suit is found to be in effect one for possession though couched in the form of the suit for mandatory injunction as has been held in the decision reported in AIR 1985 SCC page 857 (Sant Lal Jain V. Avtar Singh).

17. Therefore, the argument put forth by the defendants' counsel that the plaintiff is not empowered to obtain the reliefs of permanent and mandatory injunction without seeking the relief of recovery of possession the suit property, as such, cannot be accepted. The defendants have not raised the plea of acquiescence amounting to equitable estoppel for retaining the possession of the suit property as such and in such view of the matter, it has to be held that the plaintiff is entitled to obtain the reliefs sought for in the suit without specifically seeking the relief of recovery of possession.

18. The plaintiff's counsel, in support of his case, also relied upon the other authorities, reported in (1997) 5 Supreme Court Cases 438 (Kshitish Chandra Purkait V. Santosh Kumar Purkait and others), (2012) 5 Supreme Court Cases 370 (Maria

Margarida Sequeira Fernandes and others V. Erasmo Jack De Sequeira (Dead) Through Lrs.), 2005 (3) CTC 233 (Manicka Poosali (D) by Lrs. And others V. Anjalai Ammal and another), XI L.W 197 (Kadhira Masthan Rowther V. Segammal), 1957 MLJ 300 (Thangachi Nachial alias Shaik Ali Nachial and another V. Ahmed Hussain Malumiar and others), AIR 1956 ANDHRA 19 (Vol.43, C.5 Jan) (Mohideen Khan V. Ganikhan and others), AIR 1956 Supreme Court 382 (Vikrama Das Mahant V. Daulat Ram Asthana and others) and Part 29 LW 547 (Chandrasekaran Pillai and others V. Muthu Bogi (deed) and others). The principles of law outlined in those decisions, are taken into consideration and followed as applicable to the facts and circumstances of the present case.

19. In the light of the above discussions, the substantial questions of law formulated for consideration in this second appeal are answered against the defendants and in favour of the plaintiff.

In conclusion, the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar

/true copy/

Sub Assistant Registrar

sms

To

1. The Subordinate Judge, Nagapattinam.
2. The District Munsif, Nagapattinam.

Copy to

The Section Officer, VR Section,
High Court, Madras.

+lcc to Mr.C.Jagadish, Advocate SR.No.10544

+lcc to Mr.S.Sounthar, Advocate SR.No.10488

S. A.No.518 of 2011
and
M.P.No.1 of 2011

SAI (CO)
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