

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2016
PRONOUNCED ON : .01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.Nos.533 & 619 of 2011
&
M.P.Nos.1 & 1 of 2011

S. A.No.533 of 2011

P.Ambika ...Appellant in S.A.No.533 of 2011/
Defendant

Vs.

Arulmigu Vedharanyeswara
Swamy Devasthanam,
Rep. by its Executive Officer,
Arulmigu Vedharanyeswara
Swamy Devasthanam Office,
Vedharanyam Town, Taluk
Nagapattinam District. ...Respondent in S.A.No.533 of 2011/
Plaintiff

S. A.No.619 of 2011

Prema ...Appellant in S.A.No.619 of 2011/
Defendant

Vs.

Arulmigu Vedharanyeswara
Swamy Devasthanam,
Rep. by its Executive Officer,
Arulmigu Vedharanyeswara
Swamy Devasthanam Office,
Vedharanyam Town, Taluk
Nagapattinam District. ...Respondent in S.A.No.619 of 2011/
Plaintiff

Second Appeals are filed under Section 100 of Civil Procedure Code,

(i) against the judgment and decree dated 07.02.2011 made in A.S.No.45 of 2010 on the file of the Subordinate Court, Nagapattinam confirming the judgment and decree dated 30.06.2010 in O.S.No.40 of 2008 on the file of the District Munsif cum Judicial Magistrate Court, Vedharanyam(S.A.No.533 of 2011).

(ii) against the judgment and decree dated 07.02.2011 made in A.S.No.41 of 2010 on the file of the Subordinate Court, Nagapattinam confirming the judgement and decree dated 30.06.2010 in O.S.No.39 of 2008 on the file of the District Munsif cum Judicial Magistrate Court, Vedharanyam(S.A.No.619 of 2011).

For Appellant in both the appeals: Mr.N.Karthikeyan

For Respondent in both the appeals: Mr.S.Kingston Jerold

COMMON JUDGMENT

S.A.No.533 of 2011

Challenge in this second appeal is made by the defendant against the judgment and decree dated 07.02.2011 made in A.S.No.45 of 2010 on the file of the Subordinate Court, Nagapattinam, confirming the judgement and decree dated 30.06.2010 in O.S.No.40 of 2008 on the file of the District Munsif cum Judicial Magistrate Court, Vedharanyam. S.A.No.619 of 2011

Challenge in this second appeal is made by the defendant against the judgment and decree dated 07.02.2011 made in A.S.No.41 of 2010 on the file of the Subordinate Court, Nagapattinam confirming the judgement and decree dated 30.06.2010 in O.S.No.39 of 2008 on the file of the District Munsif cum Judicial Magistrate Court, Vedharanyam.

2.The suits have been laid by the plaintiff Devastanam for possession, past and future damages. Claiming title over the suit property and contending that the defendants have trespassed into the suit property illegally after the plaintiff Devastanam has taken possession of the suit property, pursuant to the execution proceedings from the erstwhile tenants Venkatachalam and Ramasamy, the plaintiff Devastanam has laid the suit against the defendants. Originally the defendants have taken a plea that they are in possession and enjoyment of the suit property as tenants under the plaintiff Devastanam and therefore, the plaintiff Devastanam is not entitled to recover possession of the suit property without resorting to due process of law. However, in the additional written statement, the defendants have taken a plea that the plaintiff Devastanam is not the owner of the suit property and that the suit property belongs to Arulmigu Aeri Sri Vidhyeswarar Temple and it has been given as the Trust property of Arulmigu Aeri Sri Vidhyeswarar Temple, according to the defendants, they became the tenants of the suit property and as such the plaintiff Devastanam is not entitled to seek the recovery of possession of the suit property from them and also the other reliefs sought for.

3. On an analysis of the evidence, both oral and documentary, adduced by the respective parties, the Courts below have found that the plaintiff Devasthanam is entitled to obtain the reliefs sought for in the plaint and accordingly rejected the defence put forth by the defendants. Challenging the same, the present second appeals have been preferred by the defendants.

4. A perusal of the judgments of the Courts below would go to show that based upon the Trust made over deeds filed in the case, they have found that the same had been executed by the Managing Trustees of the plaintiff Devasthanam in favour of the trustees of Arulmigu Aeri Sri Vidhyeswarar Temple and they have also found that the trust has been created only to perform the daily poozas, Naivethiyam, Urchavam and the other functions and further found that Arulmigu Aeri Sri Vidhyeswarar Temple is owned by the plaintiff Devasthanam, therefore came to the conclusion that Arulmigu Aeri Sri Vidhyeswarar Temple is only a sub-temple of the plaintiff Devasthanam and so holding, they have also found that the trustees of Arulmigu Aeri Sri Vidhyeswarar Temple are not competent to create encumbrance over the suit property other than for attaining the objects of the trust as above mentioned and so found that the defendants case that they are the tenants of the erstwhile trustees of Arulmigu Aeri Sri Vidhyeswarar Temple as such cannot be accepted.

5. Further, the Courts below also placed reliance upon the history document of the plaintiff Devasthanam in coming to the conclusion that there are various sub-temples attached to the plaintiff Devasthanam. It could therefore be seen that from the findings of the Courts below that Arulmigu Aeri Sri Vidhyeswarar Temple is only a sub-temple of the plaintiff Devasthanam and the trust made over deeds created in respect of the same should be executed or carry forward only for achieving the objects of the trust and not for defeating the same, the claim of the defendants that they are entitled to remain in the suit property as the tenants of Arulmigu Aeri Sri Vidhyeswarar Temple cannot be accepted.

6. The Courts below have also rejected the contentions of the defendants, based upon the proceedings laid in O.S.No.292 of 1986 and O.S.No.295 of 1986 on the file of the District Munsif Court, Thiruthuraipoondi and further found that the proceedings were conducted by the Executive Officer of the plaintiff Temple, during the absence of the trustees of Arulmigu Aeri Sri Vidhyeswarar Temple. On that basis also the Courts below have found that only as per the proceedings of the Commissioner, HR & CE Department, the plaintiff Devasthanam's Executive Officer was permitted to continue the above said proceedings and in this connection reliance was also placed upon Section 60 of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959.

7.The Courts below have also found that the case of the defendants that they were inducted as the tenants of the suit property by the sons of the erstwhile trustee Ramanathan Chettiar, cannot be accepted. The trust made over deeds did not permit such actions. Further, the Courts below have also found that the defendants having admitted that they were inducted as tenants by the plaintiff Devasthanam, cannot discard the same and raise a plea that the plaintiff Devasthanam is not the owner of the suit property and that the title of the suit property vests in some other entity. Therefore, the Courts below have found that the pleas of the defendants are mutually destructive.

8.Considering the above facts and circumstances of the case and based upon the evidence adduced by the respective parties, the Courts below have found that the plaintiff Devasthanam has the possessory title over the suit property and accordingly also found that the defendants have failed to establish the plea of tenancy put up by them and holding that the defendants are the trespassers in the suit property and accordingly found that the plaintiff Devasthanam is entitled to recover possession of the suit property from the defendants and also the other reliefs sought for.

9.The findings of the Courts below for holding that the plaintiff Devasthanam is entitled to seek possession of the suit property from the defendants and also the other appropriate reliefs are not shown to be misdirected against the evidence on record and also against the principles of law pertaining to the same. No exception could be taken with reference to the above findings of the Courts below for upholding the plaintiff's case and rejecting the defendants' case.

10.Thus, it could be seen that the only contention put forth by the learned counsel for the defendants that the Courts below have shifted the burden on the defendants to establish the tenancy pleaded by them and also to establish the title of Arulmigu Aeri Sri Vidhyeswarar Temple and not calling upon the plaintiff Devasthanam to establish title in respect of the suit property cannot be countenanced. In the light of the correct approach of the Courts below in coming to the conclusion that the plaintiff Devasthanam is entitled to seek the recovery of possession of the suit property from the defendants, as such, the second appeals are found to be devoid of merits.

11.In such view of the matter, the authorities relied upon by the learned counsel for the defendants reported in 2002 (2) SCC 440(Neelakantan and Others Vs. Mallika Begum) and 2010(5) LW 898(Muniammal and others Vs. Chellammal), as rightly argued by the learned counsel for the plaintiff Devasthanam, are not applicable to the facts and circumstances of the present case.

12.At the end, no substantial question of law is found to be involved in these second appeals. Resultantly, both second appeals fail and accordingly are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Court,
Nagapattinam
2. The District Munsif cum
Judicial Magistrate Court,
Vedharanyam

+2ccs to Mr.N. Karthikeyan, Advocate, S.R.No.166 & 167
+2ccs to Mr. S.K. Raghunathan, Advocate, S.R.No.257 & 258

TM(CO)
EU 14.2.17

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