

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2017
PRONOUNCED ON : 11.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.277 of 2002
&
C.M.P No.1019 of 2010

G. SubbaiyanAppellant/Appellant/
Plaintiff

Vs.

K.PannerselvamRespondent/Respondent/
Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 06.08.2001, passed in A.S.No.34 of 2001, on the file of the Principal District Judge, Nagapattinam, confirming the judgment and decree dated 06.02.2001 passed in O.S. No.114 of 1999, on the file of the District Munsiff, Nagapattinam.

For Appellant : M/s.R.T.Shyamala

For Respondent : Mr.K.Selvaraj

JUDGMENT

This second appeal is directed against the judgment and decree dated 06.08.2001, passed in A.S.No.34 of 2001, on the file of the Principal District Court, Nagapattinam, confirming the judgment and decree dated 06.02.2001, passed in O.S. No.114 of 1999, on the file of the District Munsif Court, Nagapattinam.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property belonged to Thiruvelmur Sri Thiagaraja Swami Devasthanam and the plaintiff's father Govindaraj Naidu took the suit property on lease from the temple and enjoying the same for the past 25 years, by paying the lease amount and the records in connection with the same are maintained by the Devasthanam and after the death of Govindaraj

Naidu in 1986, the plaintiff being the eldest son and the other son Jeyaraman having died, according to the plaintiff, the partition had been effected amongst the family members in the presence of Panchayatdars and in the said partition arrangement, the suit property was allotted to the plaintiff and pursuant to the same, it is only the plaintiff who has been enjoying the property by putting up a thatched shed and tying cattles and forming the manure pit etc., and also paying lease amount to the Devasthanam and subsequently changed the Paguthi in his name in respect of the suit property under the Devasthanam and the defendant is a third party and has no connection whatsoever, in respect of the suit property and he is in possession of the property situated in the west of suit property which was originally enjoyed by Rethinasamy Thanjharayar and while so, the defendant without legal authority, attempted to trespass into the suit property which was prevented by the plaintiff and inasmuch as the defendant's attempts to interfere with the possession and enjoyment of the suit property by the plaintiff persisted, according to the plaintiff, he has been necessitated to institute the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the case of the plaintiff that his father Govindaraj Naidu took the suit property on lease from the Devasthanam is false and that he had been enjoying the suit property for the past 25 years, by paying lease amount to the Devasthanam is also false and it is false to state that in the partition effected among the family members of the plaintiff, after the demise of Govindaraj Naidu, the suit property was allotted to him and thereafter, the plaintiff had been enjoying the suit property by keeping the same in possession by raising the thatched shed and forming manure pit tying cattles etc., and it is false to state that the defendant attempted to interfere with the plaintiff's enjoyment of the suit property. On the other hand, according to the defendant Rethinasamy Thanjarayar was enjoying the Devasthanam property and the eastern property was given to the plaintiff's parents and the western property was given to the defendant and accordingly, the defendant was enjoying the property allotted to him and the thatched house put up in the suit property belonged to the defendant and the defendant has also raised manure putting and keeping hay heap in the suit property and also put up a bamboo fence and therefore, it is stated that the plaintiff is not in possession and enjoyment of the suit property as claimed and hence, the suit is liable to be dismissed.

C.M.P No.1019 of 2010

6. Petition filed under Order 41 Rule 27 of the code of Civil Procedure. According to the petitioner/plaintiff after the disposal of the case, he had been paying rent to the temple in respect of the suit property and on 15.8.2008, the temple had issued notice to him as regards the fair rent fixed for the suit property and accordingly, he had executed a fresh lease deed, in

favour of the temple and based on the same, paid rent till date and in such view of the matter, the documents pertaining to the same being necessary for the determination of the issues involved in the matter to establish that he is in possession and enjoyment as a lessee of the temple, the documents filed along with the petition should be received as additional evidence in support of his case and hence the petition.

7. The respondent/defendant has resisted the above said petition contending that the documents produced along with the petition are all subsequent to the institution of the suit and do not relate to the suit property and the Courts below have rightly non suited the plaintiff, as he has failed to establish that he is in possession and enjoyment of the suit property under the temple as claimed by him and therefore, when the additional evidence projected do not in any manner relate to the suit property and had come into existence after the institution of the suit, the same cannot be received in support of the plaintiff's case and hence the petition is liable to be dismissed.

8. The petition in C.M.P. No.1019/2010 has been laid by the plaintiff for the reception of additional evidence in support of his case. It is the case of the plaintiff that even after the disposal of the suit, he continues to enjoy the suit property as such and paying the lease to the Devasthanam and inasmuch as the documents had come to be issued by the Devasthanam in favour of the plaintiff, according to the plaintiff, he has been necessitated to place the same before the Court by way of additional evidence and hence the petition. According to the defendant, the documents projected as additional evidence do not relate to the suit property and are all subsequent to the suit and hence they cannot be received for up holding the plaintiff's case.

9. On a perusal of the additional evidence projected along with the petition, it is seen that the documents are all after the institution of the suit. Further, there is no indication contained therein that it relates to the suit property. In such view of the matter, as rightly contended by the defendant, when the projected additional evidence do not bear any resemblance or connection to the suit property and had come into existence after the institution of the suit, the same cannot be taken into consideration for upholding that the plaintiff was in possession and enjoyment of the suit property as a lessee under the Devasthanam on the date of the suit. In such view of the matter, it is seen that the additional evidence cannot be received and accordingly, I hold that the petition for the reception of additional evidence does not merit acceptance and resultantly, the same is dismissed.

10. In support of the plaintiff's case Pws 1 to 3 were examined and Exs.A1 to A23 were marked and on the side of the defendant Dws 1 and 2 were examined and Exs.B1 to B17 were

marked and Exs.C1 to C3 were also marked.

11. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, both the Courts did not accept the plaintiff's case and accordingly, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has come to be laid.

12. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. When the temple itself admitted the lease in favour of the plaintiff and collected the lease amount, whether the Courts below can take a contrary view?
2. Whether the Courts below are correct in rejecting Ex.A-1, which is a document executed by the plaintiff's father in favour of the temple in the year 1965 and the same was admitted by P.W.2, the accountant of the temple?
3. Whether the Courts below are right in holding that the plaintiff is having only 0.12 cents of land from the temple, especially when the defendant himself stated in the written statement that the plaintiff is having 30 cents of land from the temple?

13. The plaintiff claims to be in the possession and enjoyment of the suit property on the footing that the suit property had been taken on lease by his father Govindaraj Naidu from the Devasthanam and enjoying the property for several years, by paying lease and after his demise, it is stated that the suit property was allotted to the plaintiff's share in the partition effected amongst the family members of Govindaraj Naidu and pursuant to the same, it is only the plaintiff, who has been in possession and enjoyment of the suit property by raising thatched shed, forming manure pit and tying cattles etc., and further according to the plaintiff, the defendant who is in possession of the property on the western side, attempted to interfere of the plaintiff's possession and enjoyment and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

14. Per contra, the defendant disputed the plaintiff's case and contended that the plaintiff is not possession and enjoyment of the property as put forth by him. Neither the plaintiff's father nor the plaintiff had taken on lease the suit property from the Devasthanam as projected and it is only the defendant, who is in possession and enjoyment of the suit property and the

defendant has put up the thatched shed, formed manure pit and also tying cattles in the suit property and enjoying the same and hence, the plaintiff cannot maintain the suit without being in possession and enjoyment of the suit property and the suit is liable to be dismissed.

15. The plaintiff mainly relies upon Ex.A1 lease deed said to have been executed by his father Govindaraj Naidu to the Devasthanam, in respect of the suit property. The suit property has been described in the plaint as situated in Thirukuvalai Taluk, Thiruvasal Village, 12 cents in Survey No.175 situated to the East of Gurusamy West of Rathinasamy, South of pathway and North of Allikulam. So, according to the plaintiff, the suit property is situated in Survey No.175 measuring 12 cents and it is stated that the suit property belongs to Devasthanam. As above seen, the plaintiff mainly relies upon Ex.A1 lease deed said to have been executed by his father Govindaraj Naidu, in favour of Devasthanam. As rightly found by the Courts below, Ex.A1 does not bear the seal of the Devasthanam. Further, no one on behalf of the Devasthanam has signed Ex.A1. If really, Ex.A1 is a pucca lease deed executed by the Devasthanam in favour of Govindaraj Naidu, as put forth by the plaintiff, the copy of the lease deed marked as Ex.A1 would bear, either the seal of the Devasthanam or the signature of the officer concerned of the Devasthanam and on the other hand, it is found that Ex.A1 bears only the signature of the plaintiff's father and in such view of the matter, as rightly found by the Courts below, based on Ex.A1, it cannot be safely concluded that the Devasthanam has executed a pucca lease deed in respect of the suit property in favour of the plaintiff's father. However, in support of the plaintiff's case the plaintiff has examined the accountant of the Devasthanam as PW.2. However, on a perusal of the evidence of PW2, it is found that from his testimony, it cannot be held that Ex.A1 is a lease deed executed between the Govindaraj Naidu, the plaintiff's father and the Devasthanam in respect of the suit property. Eventhough PW.2 claims that the original of Ex.A1 is available with the Devasthanam, stil the plaintiff, for the reasons best known to him, has not endeavoured to send for the documents from the Devasthanam and mark the same in support of his case. The same has been admitted by PW.2 also by testifying the plaintiff has not called for the original documents from the Devasthanam. Further, PW.2 has also admitted that if the lease deed has been executed by the Devasthanam, the same would bear the signature and the seal of the Executive Officer of the Devasthanam. However, as above seen, Ex.A1 does not bear either the signature of the Executed Officer or the seal of the Devasthanam and in such view of the matter, it is found that based on the evidence PW.2 also no safe credence could to attached Ex.A1 for holding that it is a lease deed in respect of the suit property executed by the plaintiff's father and the Devasthanam. Further, as per the evidence of PW.2, Devasthanam is not used to give the copy of the lease deed and they used to give only the true copy. It is thus seen that even

as per the above evidence of PW.2, Ex.A1 cannot be construed as a true copy of the lease deed, inasmuch as it does not bear the seal of the Devasthanam or the signature of the concerned Officer. In such view of the matter, no infirmity could be attached to the determination of the Courts below for not placing reliance upon the Ex.A1 for upholding the plaintiff's case. That apart, from the evidence adduced by the parties in this matter, it is found that admittedly the plaintiff's father was in possession of the Devasthanam property by constructing a house etc., and with reference to the same, PW.3, the plaintiff's brother's wife examined on behalf of the plaintiff would contend that in the property belonging to Devasthanam also measuring 12 cents, it is she who is residing and paying the lease to the Devasthanam and it is her specific case that she has been residing in the house put by her father in law, who had taken the said property on lease from the Devasthanam. Therefore, as per the evidence of PW.3 she claims to be in possession and enjoyment of the property taken on lease by her father in law from the Devasthanam and the said property is also said to be measuring 12 cents. It is thus seen that when the property claimed to be in the possession of PW.3 also been found to be belonging to the Devasthanam and also said to have been taken on lease by the plaintiff's father and when Ex.A1 is not found to be a true document in respect of the suit property and when the plaintiff has not established with acceptable materials that the property said to be in the occupation of PW3 is in any way connected with the suit property as such and that apart, when the plaintiff has not placed any reliable material to hold that it is only the suit property as described in the plaint which had been taken on lease by his father from the Devasthanam, the Courts below have rightly disbelieved the plaintiff's case, as there is no material to hold that the plaintiff is in possession and enjoyment of the suit property as described in the plaint from the days of his father under the Devasthanam. As rightly found by the Courts below, no proof whatsoever has been placed by the plaintiff to show that the suit property was allotted to him under the so called family arrangement/partition.

16. The receipts marked as Exs.A2 to A4 cannot be safely held to be related to the suit property as there is no indication contained therein to hold that it relates to the suit property as no survey number etc., are mentioned therein. Accordingly, the same had not been taken into consideration by the Courts below. The documents marked as Exs.A5 to A19 being the copies of Miscellaneous demand register maintained by the temple authorities without they containing any indication that it relates to suit property and the same had been given on lease to the plaintiff's father Govindaraj Naidu and when it is seen that Govindaraj Naidu had taken the other property of the Devasthanam on lease, in such view of the matter, Exs.A5 to A19 cannot also be safely relied upon to hold that the plaintiff is in possession and enjoyment of the suit property as put forth in the plaint.

17. As rightly determined by the first appellate Court, based on the communications sent by the temple authorities, with reference to the fixation of fair rent and the conversion of the plaintiff's name with reference to the same, by itself would not be a criteria for holding that the suit property as described in the plaint, is in the possession and enjoyment of the plaintiff. In this matter, the Commissioner had been appointed and he had inspected the suit property and along with the surveyor and filed his report and plan along with the survey plan. From the report and plans marked as Exs. C1 to C3, it is found that the suit property is measuring 23 cents, whereas according to the plaintiff, the suit property measures only 12 cents. Further, the Commissioner noticed only the Thatched house of the defendant in the suit property and also noticed the existence of the manure pit etc. Therefore, when it is found that as per the report and plan of the Advocate Commissioner, the extent of the suit property itself does not tally and the same also supports only the case of the defendant, as such, it is found that inasmuch as the plaintiff is not in possession and enjoyment of the suit property as claimed by him, accordingly, the report and plan of the Advocate Commissioner also does not lend support to his case in any manner. This aspect of the matter has also been considered by the Courts below in right perspective and accordingly negated the plaintiff's case accordingly.

18. In the light of the above position, it is found that merely on the basis of the prevaricative evidence of PW.2 that the plaintiff is in the occupation of the suit property as a lessee under the Devasthanam, when no acceptable and reliable document pointing to the same has been placed by the plaintiff, as rightly held by the Courts below, no safe reliance could be attached to PW.2's evidence alone to uphold the plaintiff's case. Though PW.2 at some places has claimed that the lease deed executed by the plaintiff's father is in the custody of the Devasthanam, to buttress his claim, the documents in the custody of the Devasthanam had not been sent for and marked in the suit. In such view of the matter, when Ex.A1 is found to be not a pucca lease deed entered into between the plaintiff's father and the Devasthanam and Ex.A1 does not bear the seal of the Devasthanam or the signature of the concerned authority, it is seen that the Courts below are perfect in order in rejecting Ex.A1. It is further seen that from the evidence adduced by the parties, though it is noted that the plaintiff's father was enjoying the property of the Devasthanam, but when there is no material on record to hold that it is only the suit property as described in the plaint that was put in his possession and enjoyment as the lessee of the Devasthanam and when according to PW.3, it is she, who is in possession and enjoyment of the property held by her father in law under the Devasthanam and in such view of the matter, it is seen that the mere pleas in the written statement that the plaintiff has been put in possession

of the eastern portion of the property and the defendant has been put in possession of the Western portion of the property by one Rethinasamy Thanjarayar alone cannot be the basis for holding that the suit property is in lawful possession and enjoyment of the plaintiff as claimed by him. The substantial questions of law formulated in this matter are accordingly answered.

19. In conclusion the second appeal fails and is accordingly dismissed with costs. C.M.P.No.1019/2009 is also dismissed. Consequently, connected miscellaneous petition, if any is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sli/bri
To

1. The Principal District Court, Nagapattinam.
2. The District Munsif Court, Nagapattinam.
3. The Section Officer, VR Section,
High Court, Madras (2 copies)

+1cc to Mr.K.Selvaraj, Advocate Sr.No.87838/17

+1cc to M/s.R.T.Shyamala, Advocate Sr.No.87600/17

S.A.No.277 of 2002

SJ(CO)
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