

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2018

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

S.A.No.1422 of 1997
and
C.M.P.No.14244 of 1997

1.Makali Pandaram @ Chinnappan
2.Ramasamy Pandaram
3.Palanisamy ...Appellants
Vs

Sri Sengapidariamman Temple
at Kavilipalayam
Rep. by its hereditary Poojaries

1.Makali Andi
2.Velusamy
3.Gopalakrishnan
4.Venkatachalam
5.Poona Pandaram
6.Nanjappa Pandaram
7.Kitta Andi
8.Palanisamy
9.Balasubramanian ...Respondents

Prayer: The Second Appeal is filed under Section 100 of CPC, against the judgment and decree passed by the learned Subordinate Judge, Gobichettipalayam made in A.S.No.54 of 1994 dated 19.07.1996 confirming the judgment and decree of the learned District Munsif, Sathyamangalam made in O.S.No.274 of 1990 dated 27.04.1994.

For Appellants : T. Murugamanickam

For RR1 -- 7 : Mr.A.Veerasamy

JUDGMENT

The first, second and third defendants in O.S.No.274 of 1990 on the file of the District Munsif Court, Sathyamangalam, are the appellants herein. O.S.No.274 of 1990 had been filed for a declaration that the plaintiffs and the fourth and fifth defendants have title over the suit property and for a permanent injunction restraining

the first, second and third defendants from interfering with peaceful possession. This suit came up for consideration before the learned District Munsif Court, Sathyamangalam and by Judgment and decree dated 27.04.1994, the suit was decreed.

2. The first, second and third defendants then filed A.S.No.54 of 1994 on the file of the Subordinate Court, Gobichettipalayam. The first appeal also dismissed by judgment and decree dated 19.07.1996. Challenging that judgment, the first, second and third defendants have filed the present Second Appeal. At the time of admission, the following substantial questions of law were framed for consideration:

1. Whether the plaintiffs can maintain the suit as hereditary poojaries inspite of such a declaration not having been granted by the Hindu Religious and Charitable Endowments Department which is governed by the special Act wherein bar of jurisdiction of the civil courts is envisaged?

2. When the title to the suit property vests in the idol of Sri Sengapidariamman, whether the plaintiffs can ask for a declaration of their title to the suit property?

3. Heard arguments advanced by Mrs.Zenath Begam, learned counsel for the appellants and Mr.A.Veerassamy, learned counsel appearing for the respondents.

4. The learned counsel for the appellants took the Court through the plaint and stated that even though it had been instituted by Sri Sengapidariamman Temple at Kavilipalayam, represented by its hereditary poojaries, the appellants herein who are the first, second and third defendants are also hereditary poojaries. It was stated that Ex.A1 is the extract of UDR Settlement Register and Ex.A2 is the patta, which had been granted only in the name of the Temple and consequently the plaintiffs who have hidden behind the shadow of the Temple cannot claim exclusive title of the property. The property includes land in S.F.No.180/1 measuring about 2.44.5 hectares, which is equivalent to 6 acres and S.F.No.451/1 is measuring about 2.11.5 hectares, which is equivalent to 5.22 acers. On 28.06.1969, Ryotwari patta was granted in the name of Temple by the settlement Tahsildar under section 8 (a)(ii) of the Tamil Nadu Inam Abolition Act 1963.

5. The learned counsel for the appellants stated that the patta recognizes only the Temple as the owner of the lands and the individuals who now represent the Temple cannot claim exclusive title or seek declaration that they alone are entitled to the title of the lands. A perusal of Ex.A1 reveals that the patta had been granted only in favour of the Temple for the vacant land in S.F.No.180/1 and S.F.No.451/01 measuring 6 acres and 5.22 acres respectively under section 8 (a)(ii) of the Tamil Nadu Inam Abolition Act 1963. However, even in the said patta, the names of the then survive hereditary trustees had been given, which names are smudged in the original document owing to the longevity of the document as it is nearly 50 years old.

6. In the plaint, there is a positive averment that while granting Ryotwari patta, though the patta had been issued in the name of Sri Sengapidariamman Temple, possession of the poojaries had also been confirmed. The names of the poojaries which had been confirmed are Patta Pandaram, who is the father of the sixth plaintiff, Palanisamy who is the fourth defendant, Balasubramanian who is fifth defendant, Periya Karuppan who is the father of the first plaintiff, Muruga Pandaram who is the father of the fourth plaintiff, Chinna Pandaram @ Palani Pandaram who is the father of the second and third plaintiffs.

7. The learned counsel for the appellants pointed out the written statement filed on behalf of the first, second and third defendants, in which they have stated that they are also in possession of a portion of the lands and are also cultivating the same. As a matter of fact, it was stated that they were in possession of 95 cents of land.

8. The Trial Court, on the basis of the above pleadings, had framed issues with respect to the jurisdiction of the Court and whether the plaintiffs can be granted the reliefs sought. The Trial Court stated that since it was a suit for declaration of title and permanent injunction, and since the plaintiff was actually Sri Sengapidariamman Temple, the jurisdiction of the civil Court is not ousted. The Trial Court also found that the possession of the plaintiffs have been established not only by the patta Ex.A1, but also by the Adangal receipts, which had been filed on behalf of the plaintiffs as Ex.A18, Ex.A19 and Ex.A20. The Trial Court decreed the suit.

9. As stated above the first, second and third defendants, aggrieved by the said judgment of the Trial Court filed A.S.No.54 of 1994. The learned Subordinate Judge, Gobichettipalayam, before whom the appeal came up for consideration, confirmed the findings of facts of the

Trial Court.

10. From the pleadings and the evidence, the one fact which is strongly established is that the patta was granted in the name of Sri Sengapidariamman Temple and in Ex.A1, the names of the poojaries/ hereditary trustees who were in administration had been given. It might be a fact that the appellants herein who were the first, second and third defendants might also be in possession of portion of the lands. But they cannot claim title over the lands. As a matter of fact, the title vests only with the Temple. The poojaries/hereditary trustees represent the Temple. If there is a dispute relating to such representation, then the Hindu Religious and Charitable Endowments Department alone is the competent authority to decide on that aspect. The appellants herein are at liberty to approach the Hindu Religious and Charitable Endowments Department for redressal of any issue on this regard.

11. The first substantial question of law which had been framed, relate to whether the plaintiffs can maintain the suit as hereditary poojaries, particularly when such a declaration was not granted by the Hindu Religious and Charitable Endowments Department. It must be mentioned that the plaintiffs have come to Court on the basis of the Ex.A1 and A2. In Ex.A1, the names of the hereditary poojaries have been given and the plaintiffs claim right through them. Consequently, I hold the suit is maintainable on the basis of Exs.A1 and A2.

12. The second substantial question of law is as to whether the plaintiffs ask for a declaration of title to the suit property. A perusal of the entire records reveals that the Temple had been granted patta. The plaintiffs are only poojaries acting on behalf of the temple. Declaratory right can granted only to the Temple and not for individuals. This is made clear by both Exs.A1 and A2.

13. In view of the above facts, I hold that judgment and decree of the Trial Court and the First Appellate Court do not warrant interference and accordingly the Second Appeal is dismissed, however, without costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

smv

To

1. The Subordinate Judge,
Gobichettipalayam.

2.The District Munsif,
Sathyamangalam.

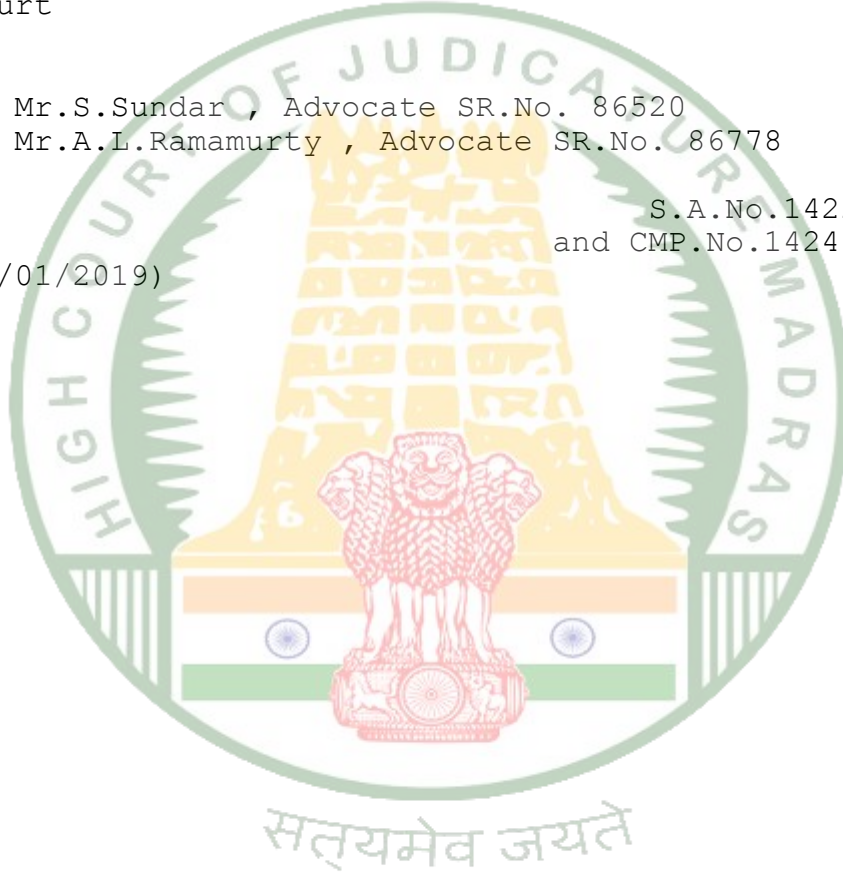
Copy to
The section officer,
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High court
Madras

+1cc to Mr.S.Sundar , Advocate SR.No. 86520

+1cc to Mr.A.L.Ramamurty , Advocate SR.No. 86778

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A.SK(29/01/2019)



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