

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.397 of 2018
and C.M.P.No.11061 of 2018

Arulmigu Sri Kalyanasundari Ambiga Samedha
Sitheswarasamy Thirukoil,
Rep. by its Hereditary Trustee,
R.balasadacharam

.. Appellant/Plaintiff/appellant

Vs.

1.Veeriyan
2.Ramamurthi
3.Sigamani
4.Arasalingam
5.Kumar
6.Venkatesan
7.Sathish

.. Respondents/Defendants/Respondents

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 21.09.2017 made in A.S.No.10 of 2015 on the file of the Sub Court, Mannargudi, confirming the judgment and decree dated 30.01.2015 made in O.S.No.69 of 2009 on the file of the District Munsif cum Judicial Magistrate's Court, Valangaiman.

For Appellants : Mr.D.Ravichander

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 21.09.2017 made in A.S.No.10 of 2015 on the file of the Sub Court, Mannargudi, confirming the judgment and decree dated 30.01.2015 made in O.S.No.69 of 2009 on the file of the District Munsif cum Judicial Magistrate's Court, Valangaiman.

2.The appellant is plaintiff and respondents are the defendants in O.S.No.69 of 2009 on the file of the District Munsif cum Judicial Magistrate's Court, Valangaiman. The

appellant filed the present Second Appeal, challenging the concurrent findings of the Courts below. The appellant filed the said suit for permanent injunction restraining the respondents from interfering with the renovation work of tank, polluting the tank or interfering with the appellant temple and devotees who come to the temple. According to the appellant, the suit tank belongs to the appellant temple. The respondents were interfering with the appellant's renovation work of the tank that they are breeding fish and auction the license to catch fish and they are polluting the tank by throwing garbage and cow dung. The appellant gave a complaint to the Inspector of Police, Valangaiman Police Station. On 02.06.2009, the respondent tried to breed fish in the tank and appellant defended the same and hence filed the suit for the above stated relief.

3.The respondents filed written statement and denied all the averments made in the plaint and denied that suit tank belongs to the appellant. The respondents contended that the suit tank is panchayat Government poramboke tank and belongs to the entire village. The tank is in possession of the respondents and other villagers. The village people are using the water for their use and for their cattle. The village panchayat breed fish in the tank and auction the license to catch fish. From and out of the said income, they carry out poojas and renovation work for the temple and use for the benefit of the villagers. The appellant has no right over the suit tank and prayed for dismissal of the suit.

4.Before the learned Trial Judge, on behalf of the appellant, three witnesses were examined as P.Ws.1 to 3 and 22 documents were marked as Exs.A1 to A22. On behalf of the respondents, fifth respondent was examined as D.W.1 and two others were examined as D.Ws.2 and 3 and marked 15 documents as Exs.B1 to B15. Based on the pleadings, the learned Trial Judge framed necessary issues. The learned Trial Judge considering the pleadings, oral and documentary evidence, dismissed the suit, holding that the suit temple does not belong to the appellant and that appellant is not entitled for permanent injunction.

5.Against the said judgment and decree, the appellant filed A.S.No.10 of 2015. The learned I Appellate Judge framed necessary points for consideration. The learned I Appellate Judge independently considering the materials on record and judgment of the Trial Court, dismissed the appeal, confirming the judgment of the Trial Court.

6.Against the said judgment and decree dated 21.09.2017 made in A.S.No.10 of 2015, the appellant has preferred the present Second Appeal.

7.The learned counsel for the appellant contended that Courts below erred in holding that appellant has no title over the suit tank. Ex.A2, patta pass book, clearly establishes the title of the appellant and appellant is entitled to the relief claimed in the suit. The appellant claims relief not based on the title and hence, the finding of the Courts below with regard to title is erroneous. The appellant has filed Ex.A3, lease deed dated 02.07.1928 which shows that the suit tank was owned and managed by the appellant. The fifth respondent examined as D.W.1 had admitted in his cross examination that the respondents have no intention to interfere with the Thirupani and does not have any intention to pollute the suit tank. The Courts below failed to exercise the provisions of Order XV and Rule 1 of C.P.C.

8.Heard the learned counsel for the appellant and perused the materials available on record.

9.The contention of the learned counsel for the appellant as per Ex.A2, patta, Ex.A3, lease deed is that, they have proved that the suit tank belongs to the temple. Ex.A2, patta relates to Survey No.633/2 and it is shown as punja land. Ex.A3 relates to lease of land. The specific contention of the respondents is that the suit tank belongs to the entire village and they are using the same. The suit tank is situated in Survey No.633/1, belonging to the panchayat and not in Survey No.633/2. The respondents have produced document to show that they are in possession of the suit tank and have the right to breed fish and auction the license to catch the fish. They have produced and marked Ex.B3 relating to the years 1963 to 2004, wherein the income from the tank was being used for various activities and also for the other temples situated in the village. P.W.2, examined on behalf of the appellant had admitted that he was successful bidder for one fasli to catch fish. He also admitted that suit tank belongs to the entire villagers. From the evidence of D.W.1 extracted in the judgment of the Trial Court, it is seen that D.W.1 did not admit that he has no objection for granting relief to the appellant as prayed for in the suit. On the other hand, D.W.1 in his evidence has stated that the respondents have not objected the appellant from doing temple renovation or creating any problem for the devotees. D.W.1 has also stated that they have no intention to pollute the tank. The contention of the learned counsel for the appellant that D.W.1 has admitted for the grant of relief of injunction to the appellant is contrary to the facts. The schedule in the plaint relates only to the tank and not to the renovation work in the temple. The appellant has failed to prove that they are in possession and respondents are interfering with their possession.

10.The Courts below have considered all the materials in proper perspective and dismissed the suit. There is no error of law warranting interference by this Court with the judgment of the Courts below.

11.In the result, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge, Mannargudi.

2.The District Munsif cum Judicial Magistrate, Valangaiman.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.44837

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and C.M.P.No.11061 of 2018

RSI (CO)
GSP (05/09/2018)



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