

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.650 of 1999

- 1.Nallamuthu Raja (Deceased)
- 2.Sellannal (Deceased)
- 3.Chinnammal
- 4.Mamudi
- 5.Mani
- 6.Pappathi

.... Plaintiff/Appellants

(Appellants 2 to 6 are impleaded as LR's of Nallamuthu Raja in S.A.No.650 of 1999 in C.M.P.No.19731/2000 by Order dated 14.07.2000)

(Memo is recorded appellants 3 to 6 already on record are LR's of the Deceased 2nd Appellant vide order of Court dated 13.12.2017 made in Memo dated 13.12.2017 in S.A.No.650 of 1999)

Vs.

1. Arulmighu Kunnadi Thambiram Alayam, Rep. by its Executive Officer and Thakkar, Madanagopalasamy Alayam, Perambalur.
2. T.Vasanthakumar
3. S.Andimurugan
4. R.Seerangan

.... Defendant/Respondents

(R2 to R4 are impleaded in S.A.No.650 of 1999 as per order dated 14.07.2000 in CMP.No.19731 of 1999)

PRAYER:

Second Appeal filed under Section 100 of the Code of Civil Procedure praying to prefer the Second Appeal against the Judgment and Decree dated 14.10.1997 made in A.S.No.23 of 1993 on the file of the Subordinate Court, Ariyalur District confirming the Judgment and Decree dated 24.11.1992 made in O.S.No.508 of 1997 on the file of the District Munsif Court, Perambalur.

For Plaintiffs/Appellants : M/s. Sarvabhauman Associates

J U D G E M E N T

The plaintiffs/appellants have filed the Second Appeal against the Judgment and Decree dated 14.10.1997 made in A.S.No.23 of 1993 on the file of the Subordinate Court, Ariyalur District confirming the Judgment and Decree dated 24.11.1992 made in O.S.No.508 of 1997 on the file of the District Munsif Court, Perambalur.

2.Initially the Court records were missed and thereafter, the records were restored by this Court as per the order dated 20.11.2009.

3) The plaintiffs/appellants who lost their case before the Lower Appellate Court filed the present Second Appeal and the ground of facts which are relevant to the second appeal are as follows.

(i) The plaintiffs/appellants purchased a property through two sale deed which were marked as Ex.A1 and Ex.A2 from one Ramalingachi Reddiar on 31.05.1957 and 03.03.1967. Thereafter, the appellants/plaintiffs developed the property by spending Rs.15,000/- and enjoying the property from the date of purchase. While such being the position, the patta stands in the name of the first respondent temple. The temple authorities namely Hindu Religious and Charitable Endowment Department interfered with the possession of the property. Thereby, the appellants/plaintiffs filed a suit for declaration and permanent injunction.

4.The defendants filed a written statement are as follows:

(i) The Hindu Religious and Charitable Endowment Department/first respondent denied the allegation that the plaintiffs purchased the property from Ramalingachi Reddiar through sale deeds dated 31.05.1957 and 03.03.1967, and enjoyed the property and seeking declaration through adverse possession. In fact, from the time of disbursing, the property belongs to the first respondent temple.

(ii) Initially Ramalingachi Reddiar family maintained the temple and the temple properties. Thereafter, the Trusteeship was transferred to one Konnar and then the Hindu Religious and Charitable Endowment Department took over the management of the first respondent temple and appointed a Trustee for managing the first respondent temple. Since, the appellants/plaintiffs refused to pay the lease amount, the suit property enjoyed by the appellants/plaintiffs were brought to the public auction. In order to defeat the public auction the plaintiff has filed a vexatious suit.

(iii) The Lower Court as well as the Lower Appellate Court concurrently held that the property belonging to the temple have no parent document and in order to receive the patta, the plaintiff created a document as if the property owned by Ramalingachi Reddiar, from Ramalingachi Reddiar conveyed the property in favour of the plaintiffs.

5.This Court has not framed any substantial questions of law, at the time of admission. However, the learned counsel appearing for the appellants/plaintiffs raised the following substantial questions of law:

"a) Whether the Lower Appellate Court is correct in law in non-suiting the plaintiff by relying upon the Chitta pass book produced by the defendant in preference to the sale deeds produced by the plaintiffs?

b) Whether the Lower Appellate Court is correct in law in dismissing the suit having found that the plaintiff is in possession of the suit property?

c) Whether in law the Courts below correct in not applying the principles contained in Section 110 of the Evidence Act?

d) Whether in law the Lower Appellate Court is correct in coming to the conclusion that Patta is the conclusive proof of title over-looking the fact that is only a Revenue Record for the purpose of collection of Revenue?"

6.The learned counsel appearing for the appellant would submit that the appellants/plaintiffs purchase the property after paying the sale consideration vide document in Ex.A1 and Ex.A2 dated 31.05.1957 and 03.03.1967 from one Ramalingachi Reddiar and after the purchase, the appellants/plaintiffs were put in possession and are continuously enjoying the property without any disturbance.

7.However, taking advantage of the patta in favour of the temple, the Hindu Religious and Charitable Endowment Department officials interfered with the possession of the plaintiffs. Hence, the appellants/plaintiffs was forced to file the suit for declaration and permanent injunction on the ground of adverse possession. Both the Courts below committed a serious error in not considering the documents Ex.A1 and Ex.A2 filed by the appellants/plaintiffs. In view of the title possessed by the appellants/plaintiffs mere patta will not give right to the temple to possess a title. Patta is only a possessing right granted by the Revenue Authorities. Patta cannot over take the title. Accordingly, he prayed for allowing the second appeal.

8. On a perusal of the substantial question of law raised by the appellants/plaintiffs, the main grounds required to be decided by the Court whether the Court below are correct in not applying the principles contained in Section 110 of the Evidence Act. On a perusal of the Section 110 of the Evidence Act, "whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

9. On a perusal of the material records marked by the defendants show that patta stands in the name of the temple. Initially, one Ramalingachi Reddiar acted as a Trustee of the Temple. Subsequently, one Konnar took over the charge. Thereafter, the entire administration of the temple came under the purview of the Hindu Religious and Charitable Endowment Department. The Hindu Religious and Charitable Endowment Department took over the management of the temple administration. In the present case, in order to prove the ownership the appellants/plaintiffs relied upon the documents Ex.A1 and A2 which was purchased by the appellants vide Sale deed dated 31.05.1957 and 03.03.1967. However, the appellants/plaintiffs failed to produce the documents regarding the vendor title namely Ramalingachi Reddiar owned the property. In the absence of any documents to prove that Ramalingachi Reddiar has title over the property, he did not have right to alienate the property without any title or authorization. On the other hand, Patta, Revenue records stand in the name of the temple.

10. The appellants/plaintiffs did not possess a valid title. The above aspect is clearly discussed by both the Courts below. Hence, I do not find any error in the Judgment and Decree passed by both the Courts below. Accordingly, the substantial questions of law are answered against the appellants/plaintiffs.

11. In the result, the Second Appeal is dismissed and the Judgment and Decree dated 14.10.1997 made in A.S.No.23 of 1993 on the file of the Subordinate Court, Ariyalur District confirming the Judgment and Decree dated 24.11.1992 made in O.S.No.508 of 1997 on the file of the District Munsif Court, Perambalur is confirmed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ah

To

1. The Subordinate Judge,
Ariyalur District
2. The District Munsif,
Perambalur.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s. Sarvabhauman Associates,
Advocate, S.R.No.1321

S.A.No.650 of 1999

NMI (CO)
CS/09/03/18



WEB COPY