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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2018
PRONOUNCED ON : 10 .10.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.73 of 2015

Arulmigu Vaikunda Perumal Koil,
Kancheepuram
represented by its Executive Officer,
Kancheepuram ...Appellant/Plaintiff

Vs.

S.Geetha ...Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 24.11.2010 passed in A.S.No.12 of 2005 on the file of Subordinate Court, Kancheepuram, reversing the judgment and decree dated 28.12.2004 passed in O.S. No.439 of 1998 before the Principal District Munsif Court, Kancheepuram.

For Appellant : Mr.Arul Phazam Nee

For Respondent : Mr.R.Singaravelan, Senior Counsel
for M/s.A.Kandasamy

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 24.11.2010 passed in A.S.No.12 of 2005 on the file of Subordinate Court, Kancheepuram, reversing the judgment and decree dated 28.12.2004 passed in O.S. No.439 of 1998 on the file of the Principal District Munsif Court, Kancheepuram.

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

3. Suit for permanent injunction and mandatory injunction.

4. The case of the plaintiff, in brief, is that the suit property belongs to the plaintiff temple and covered under the Inam title deed No.1042 and the plaintiff temple filed a revision petition before the settlement officer against the



order passed by the assistant settlement officer and the said revision petition was dismissed by order dated 21.12.1979 and as against the said order, the plaintiff temple filed a revision petition before the special commissioner and the commissioner of land administration, Chepauk, Madras by order dated 08.04.1986 and the commissioner was pleased to set aside the order of the settlement officer, Tanjavore with respect to survey number 847/68 and other survey numbers and against the order passed by the special commissioner, the plaintiff temple filed a writ petition in the High Court of Madras in W.P. No.13642/86 and the same was allowed by the High Court by order dated 21.02.1997 and the matter was remitted back to the settlement authorities for fresh disposal and the matter is subjudice and the defendant has no legal right, whatsoever, over the suit property and she claims to be the successor in interest of one Pattammal who was a party to the settlement proceedings and as the matter is still subjudice, the defendant's vendor had no title to convey the property to the defendant and the plaintiff temple is the absolute owner of the suit property and the same is in the possession and enjoyment and while so, the defendant all of a sudden started to put up some building in the suit property without any authority and despite the issuance of the legal notice by the plaintiff temple dated 27.06.1998, inasmuch as the defendant has proceeded with the construction, according to the plaintiff, it has been necessitated to lay the suit.

5. The case of the defendant, in brief, is that, after denying the allegations contained in the plaint, contended that she has purchased the suit property from one Murugan Vagayara by way of the sale deed dated 15.02.1996 for a valid consideration and the suit property is the ancestral property of the defendant's vendors obtained by way of the registered partition deed dated 07.06.1972 and in this connection O.S.No.29/1985 was preferred between the sons of D.K.T.Arasu Mudaliar, who is the father of the defendant's vendors and the suit ended in compromise and thus the defendant's vendors have perfected the title, right and interest over the suit property and conveyed the same to the defendant and thereafter the defendant had put up a temporary structure in the suit property and living in the same and now after removing the old structure, she had applied for the construction of a new house from the Kanchipuram Municipality and after getting the approved plan, put up a new construction and if really the plaintiff temple had any right over the suit property, the plaintiff would have objected the same. The defendant has put up the temporary construction in the year 1996 itself and the suit property is a piece of land of the Rice mill building and the dry yard kalam is still in the possession and enjoyment of the defendant's vendors and there are other buildings also constructed and the defendant is the bonafide purchaser and invested a huge amount in the development



of the property. The plaintiff should have impleaded the vendors of the defendant as the necessary parties and the description of the suit property is incorrect and the plaintiff's petition before the settlement officer had been rejected and the plaintiff's claim of patta under Tamil Nadu Minor Inam Abolition Act having been rejected, the plaintiff cannot maintain the suit and the suit laid by the plaintiff is liable to be dismissed.

6. In support of the Plaintiff's case, PW1 was examined and Exs.A1 to A7 were marked. On the side of the defendant Dws1 and 2 were examined and EXs.B1 to B12 were marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiff and the first appellate court, on an appreciation of the materials placed on record was pleased to reverse the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been laid.

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

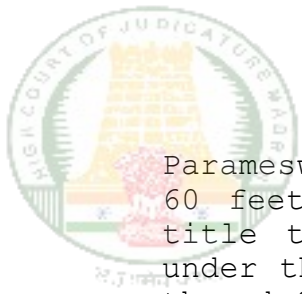
1) Whether the judgment and decree of the lower appellate court is correct in law in wrongly interpreting Sec.13 of Act 26 of 1963?

2) Whether the judgment and decree of the lower appellate court is correct in law in diverting the title of the appellate, even though it had accepted it, as against the dictum laid in 1996 ILW (SC) 98?

3) Whether the judgment and decree of the lower appellate court is sustainable in law, as its finding goes against law laid down by the Apex court in 1996 IMLJ (SC)?

4) Whether the appellate court is correct in law in reversing the judgment of the trial court without appreciating Ex.A7 as done by the trial court, which proves the predecessor in title is only lessor of the temple?

9. As per the amended plaint, it is seen that the suit property is shown to be located in Kanchipuram town,



Parameswaravinnagar village, Town survey No. 847/6812B measuring 60 feet east west and 79½ north south. The plaintiff claims title to the suit property on the footing that it is covered under the Inam Title Deed No. 1042, accordingly contending that the defendant without any legal authority, is putting up a construction over the suit property despite the resistance put forth to the same by the plaintiff, hence according to the plaintiff, it has been neccessiated to lay the suit for appropriate reliefs.

10. The defendant has disputed the claim of title to the suit property put forth by the plaintiff's temple and on the other hand, according to the defendant, after due enquiry and verification of the records, particularly, the encumbrance certificate, she had purchased the suit property from her vendors by way of the registered sale deed dated 15.02.1996 and thereby put up the construction in the suit property after obtaining necessary approval from the municipality and hence the plaintiff is not entitled to seek and obtain the reliefs sought for.

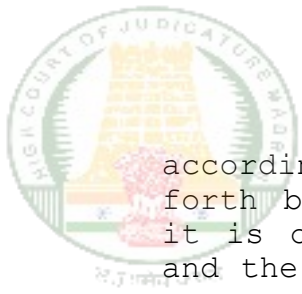
11. Accordingly it is seen that considering the defence set out by the defendant in the written statement, she has thrown out a serious challenge to the claim of title to the suit property by the plaintiff's temple. In such view of the matter, the plaintiff temple should have endeavoured to seek the relief of declaration to the suit property as per law, however, the plaintiff has not chosen to seek the relief of declaration of the title to the suit property.

12. Materials placed on record go to show that even as per the case of the plaintiff, the suit property is covered under the Inam Title Deed No. 1042. With reference to the claim of title to the suit property, the plaintiff temple would only rely upon the copy of the temple register marked as Ex.A1 and thereby contended that the suit property is also included therein. That apart, as rightly put forth by the counsel appearing for the plaintiff and the defendant, it is seen that considering the suit property being an Inam property, it is seen that the Tamil nadu Minor Inams Abolition Act 26/63 and 30/63 would apply to the suit property. Accordingly it is found that, claiming patta under the abovesaid Act, the plaintiff's temple had also moved the assistant settlement officer with reference to the same, however, the assistant settlement officer had negatived the claim of patta prayed for by the plaintiff's temple in respect of the suit property. The plaintiff's temple, aggrieved over the same, had preferred the revision before the settlement officer and the same also ended in dismissal. Challenging the same, it is seen that the plaintiff temple had filed a revision petition before the special commissioner and



the commissioner of land administration, Chepauk, Madras and as per the order by the special commissioner dated 08.04.1986 marked as Ex.A2, it is found that, as also discussed by the first appellate court, in so far as the suit property and other sub divisions are concerned, the special commissioner had only directed in the abovesaid order to the owners of the superstructure available in the property involved in the revision petition to approach the Government for the grant of patta as per the provisions of the act and as per the ruling of High Court reported in 1993 LW 707. Accordingly it is seen that as rightly put forth by the first appellate court neither the plaintiff nor the defendant's predecessor in interest / the defendant had been granted patta by the special commissioner vide order marked as Ex.A2, and in particular, it is seen that the plaintiff's claim of the grant of patta had not been acceded to. Aggrieved over the order of the special commissioner abovestated, it is found that the plaintiff temple had challenged the same before the High Court of Madras in W.P. No.13642/1986 and as per the order passed by the High Court of Madras in the abovesaid writ petition, marked as Ex.A5 dated 25.02.1987, it is seen that the High Court had remitted the matter back to the assistant settlement officer, Chengalpattu to enquire into the matter again, whether anything further survives therein, and if so, proceed thereupon. Accordingly it is found that even as per the admitted case of the plaintiff in the plaint, when the High Court in the abovesaid writ petition had remitted the matter back to the assistant settlement officer for fresh disposal as regards the entitlement of the plaintiff's temple for the grant of patta in respect of the property in dispute, namely, the suit property and the matter is subjudice, it does not stand to reason as to on what basis the plaintiff still seeks the claim of title to the suit property on the footing that the suit property is covered under the Inam Title Deed No. 1042.

13. When admittedly, the suit property, being the Inam porperty, at one point of time belonging to the plaintiff's temple, however, when as far as the inam property is concerned, the same, being governed by the Tamil Nadu Minor Inams and Abolition Act 26/63 and Act 30/63, it is found that the persons claiming title or patta under the abovesaid Act, has to approach the concerned authorities with reference to the same and accordingly when it is found that both the plaintiff and the defendant's predecessor in interest had approached the authorities constituted under the Act and as aforestated, after several rounds of litigations before the authorities concerned under the Act as well in the High Court by way of the writ petition as above referred to, when at last, the matter had been remitted back to the settlement authorities for a fresh reconsideration of the issues involved in the matter and



WEB COPY accordingly the matter remains subjudice and as rightly put forth by the senior counsel appearing for the defendant, when, it is only the authorities constituted under the abovesaid Act and the tribunal and the special appellate tribunal would be the appropriate authorities to determine the question of title of the inam land as whether belonging to the plaintiff or whether belonging to the defendant's predecessor in interest, on the footing that the building had been put up in such a property, the owner of the building would be entitled to own the land also on which the building stands with effect on and from the appointed date as provided under Section 13 of the abovesaid Act and in such view of the matter, when as on date the matter remains subjudice before the concerned authorities under the abovesaid Act and accordingly, the plaintiff, as such, cannot claim any valid title to the suit property on the mere footing that at one point of time, the suit property was Inam land belonging to the plaintiff's temple, accordingly, it is seen that as rightly argued by the learned senior counsel appearing for the defendant, the plaintiff's remedy is only to work out his entitlement by pressing his case before the authorities constituted under the abovesaid Act to adjudicate his claim of title to the suit property and thereupon endeavour to seek further reliefs with reference to the same against the defendant or others as the case may be.

14. When it is found that the defendant's predecessor in interest is also a party to the settlement proceeding above referred to and the defendant had also on the basis of the sale deed obtained from her vendors had put up the construction and when as per the provisions of the Minor Inams and Abolition Act above referred to, the owner of the building also would get some vested right over the land on which the building had been put up, considering the existence of the building with effect on and from the appointed date as per the abovesaid Act, in such view of the matter, it is seen that in as much as the civil court would not have the jurisdiction to determine the claim of title of the plaintiff in respect of the suit property as such and the same could only be adjudicated by the authorities or the tribunal or the special appellate tribunal constituted under the Act and when even as per the admitted case of the plaintiff, the proceedings with reference to the same is pending before the authorities concerned under the Act, it is found that at this stage of the matter, the plaintiff's claim of title to the suit property having not been upheld by the abovesaid authorities/tribunal/special appellate tribunal constituted under the Act, in my considered opinion, the suit laid by the plaintiff seeking the relief of permanent injunction and mandatory injunction is pre mature and in such view of the matter, the first appellate court is justified in negating the reliefs sought for by the plaintiff against the defendant. When



it is noted that the defendant is found to be in the possession and enjoyment of the suit property, claiming the title to the suit property based on a registered document from her vendors, accordingly when the rival claims of title to the suit property is to be decided one way or the other between the contesting parties as projected by them under the Tamil Nadu Minor Inams Abolition Act 26/1963 and Act 30/1963, in the light of the above position, the declinment of the reliefs sought for by the plaintiff by the first appellate court, do not warrant any interference.

15. The plaintiff's counsel would however argue that evidence had been tendered by the defendant during the course of trial admitting the title of the plaintiff to the suit property. However, as above discussed, the suit property, being the inam land and at one point of time vested with the plaintiff's temple, however, following the advent of Tamil Nadu Minor Inams Abolition Act 26/1963 and Act 30/1963, when it is seen that only the authorities constituted under the Act are empowered to determine the title of the rival claimants, in such view of the matter, the admission of the defendant during the course of the trial of the plaintiff's title, by itself, would not entitle the plaintiff to claim a valid title to the suit property. On the other hand, on a reading of the evidence adduced by the defendant in toto, it is seen that the defendant has not accepted the plaintiff's title to the suit property and accordingly, is found to have been contesting the suit laid by the plaintiff tooth and nail. Therefore, the so called admission said to have been made by the defendant during the course of the trial as projected by the plaintiff's counsel is found to be not enuring to the plaintiff to claim a valid title to the suit property, particularly, being the inam land.

16. The counsel for the plaintiff relied upon the decisions reported in 1995 II MLJ (SC) 121 (R.Manicka Naiker v. E.Elumalai Naicker) and AIR 1996 Supreme Court 234 (A.T.S.Chinnaswami Chettiar v. Shri Kari Varadaraja Perumal Temple and another). Similarly, the counsel for the defendant, placed reliance upon the decisions reported in (1997) 6 Supreme Court Cases 143 (S.Vanathan Muthuraja v. Ramalingam alias Krishnamurthy Gurukkal and others) and (1985) 4 Supreme Court cases 10 (State of Tamil Nadu v. Ramalinga Samigal Madam). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at the hand.

17. In the light of the above discussions, the plaintiff's claim of title to the suit property being subjudice before the authorities constituted under the Tamil Nadu Minor Inams Abolition Act, the first appellate court is right in holding that the plaintiff's suit is pre mature and accordingly the



first appellate court is justified in not acceding to the reliefs sought for by the plaintiff and dismissing the plaintiff's suit. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendant.

18. In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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

+ 1 cc to MR. P.V. Arulphazhm Nee, Advocate SR.67865
+ 1 cc to Mr.M. Srividhya, Advocate Sr.70213

S. A.No.73 of 2015

NM(CO)
EU(15/11/2018)