

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2018

PRONOUNCED ON : 20.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S. A.No.1144 of 2003

and

C.M.P. No.2860 of 2018

The Commissioner,
Villupuram Municipality,
Villupuram.

... Appellant

Vs.

1. Usha Rani
2. Sri Anjenayaswamy Temple,
by its Hereditary Trustee,
D.Kumar,
116, West Street,
Villupuram

... Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 26.02.2002 made in A.S.No.179 of 2001 on the file of the Principal District Judge, Villupuram in reversing the well considered judgment and decree dated 10.09.2001 made in O.S. No.223 of 2000 on the file of the Principal District Munsif Court, Villupuram.

For Appellant : Mr.P.Srinivas

For Respondents : Mr.N.Suresh

JUDGMENT

This second appeal is directed against the judgment and decree dated 26.02.2002, passed in A.S.No.179 of 2001, on the file of the Principal District Court, Villupuram, reversing the judgment and decree dated 10.09.2001 passed in O.S. No.223 of 2000, on the file of the Principal District Munsif Court, Villupuram.

2. The 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 plaintiff is the tenant under the second defendant in respect of the suit property on a monthly rent of Rs.160/- and the plaintiff was inducted into the possession of the suit property on 20.08.1997, by means of a tenancy agreement and continued to occupy the suit property as the tenant thereof under the second defendant and the plaintiff had been running a nursery school in the suit property and prior to the plaintiff, one Alamelu ammal was in possession and enjoyment of the suit property as the tenant under the second defendant and after she had vacated the suit property, the same was let out to the plaintiff by the second defendant and the plaintiff recently undertook some minor repairs in the property and whileso, the first defendant issued a notice to the plaintiff on 22.5.2000 to the plaintiff, alleging that the plaintiff had trespassed into the suit property, which is said to be maintained by the first defendant and accordingly, the first defendant had also directed the plaintiff to remove the unauthorised construction said to have been made by the plaintiff. The plaintiff sent a reply on 29.5.2000 to the defendants. The first defendant is not entitled to issue notice to the plaintiff and infact, the erstwhile tenant Alamelu ammal had originally laid the suit against the first defendant and others including the Government for permanent injunction in O.S.No.623/1983 and obtained interim order in her favour and also the said suit ended in favour of Alamelu ammal and the appeal preferred by the Government and the first defendant were dismissed by the Appellate Court and in the said suit, the Court had come to the conclusion that Alamelu ammal was inducted into the possession of the suit property by the second defendant and accordingly, neither the first defendant or the Government is entitled to disturb the possession and enjoyment and accordingly, granted the necessary relief in her favour and likewise, the first defendant is also not entitled to disturb the possession and enjoyment of the plaintiff in respect of the suit property and hence, left with no other alternative, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The allegations that the suit property belong to the second defendant and that it had inducted the plaintiff as a tenant thereof from 20.08.1997, on a monthly rent of Rs.160/- and that the plaintiff has been enjoying the suit property by running nursery school and effected minor repairs are all false. The suit property is classified as Iyyanar Kulam Poromboke and

placed under the custody of the Municipality for maintenance by the proceedings of the District Collector dated 8.7.83 and the second defendant has no right whatsoever to let out the suit property in favour of the third parties including the plaintiff and the alleged lease agreement between the second defendant and the plaintiff is invalid and not binding on the defendant and the plaintiff is not in lawful possession of the suit property and encroached the same without any authority and accordingly, the suit property being vested with the first defendant, the first defendant is entitled to evict or remove the unauthorised construction put up by the plaintiff and the plaintiff cannot question the same in any manner and the plaintiff had constructed a light roof building in the suit property which is nothing but an unauthorised construction without obtaining the permission of the first defendant and hence, due notice was sent to the plaintiff under the Tamil Nadu District Municipality Act for the removal of the encroachment and in such view of the matter, the plaintiff cannot take advantage of the earlier litigation between Alamelu ammal and the Municipality and others and the same is not relevant to the present case and there is no question of res judicata and the plaintiff has laid the suit without any cause of action and the suit is liable to be dismissed.

6. In support of the plaintiff's case PW1 was examined, Exs.A1 to A7 were marked. On the side of the defendants DWs 1 and 2 were examined, Exs.B1 to B3 were 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 dismiss the suit. On appeal, the first appellate Court, on an appreciation of the materials placed was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Impugning the same, the present second appeal has come to be laid.

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

1.
Whether the lower appellate Court erred in reversing the judgment of the trial Court relying on the relief granted to one Alamelu ammal, plaintiff in a previous suit in O.S. No.623 of 1983 and holding that the same relief would extent to the plaintiff in the present suit also when both the plaintiffs are different persons and no nexus or relation has been proved to exist between the

two?

2. Whether the lower appellate Court fell in error in coming to the conclusion that the claim of the second defendant is covered by the principle of estoppel?

3. Whether the judgment of the lower appellate court is perverse and unlawful in that it did not consider the merits of documentary evidence marked in Ex.B1 and Ex.B2 and ignoring to weigh the merits in the deposition of DW1 and ignoring the vital contradictions in the deposition of PW1?

C.M.P. No.2860 of 2018

9. In this second appeal, an application in C.M.P. No.2860 of 2018 had been preferred by the plaintiff for the reception of the additional evidence and it is stated that after the disposal of the first appeal, the Revenue Tahsildar, Villupuram, by his proceedings dated 01.10.2002, had granted the patta for the entire extent of 4.16 acres in R.S.No.453/1, in favour of the second defendant temple. Accordingly, the plaintiff having been entrusted with the true copy of the same and as such, the said document is very essential for arriving at the just decision in the matter, it is stated by the plaintiff that she has been necessitated to prefer the application for the reception of the abovesaid additional evidence.

10. Though the counsel appearing for the first defendant has taken notice on the above said application, despite ample opportunities, counter has not been filed by him. During the course of hearing of the second appeal, submissions were heard from both sides as regards the merits of the application.

11. The plaintiff's case, in brief, is that she had been inducted in the suit property as the tenant thereof by the second defendant temple, who according to the plaintiff, is the owner of the suit property and accordingly, it is stated that the plaintiff is in possession and enjoyment of the suit property and running the school therein and while she effected some minor repairs in the suit property, the first defendant issued notices complaining of trespass and putting up of unauthorised construction by the plaintiff in respect of the suit property and the same had been properly responded by the plaintiff and inasmuch as the first defendant is attempting to disturb the peaceful possession and enjoyment of the suit property, according to the plaintiff, she has been necessitated

to lay the suit for appropriate reliefs.

12. The first defendant had taken a plea that the suit property classified as Iyyanar Kulam Poromboke had been vested with it, by the proceedings of the collector dated 08.07.83 and as such, it is only the first defendant, who has full control, management and enjoyment of the suit property and inasmuch as the plaintiff had unlawfully trespassed into the suit property and put up the unauthorised construction, according to the defendants, it had taken steps with reference to the same and the plaintiff therefore is not entitled to complain about the same and hence, according to the first defendant, the suit laid by the plaintiff sans cause of action is liable to be dismissed. Further, according to the first defendant, the second defendant has no title to the suit property as such and hence, the case of the plaintiff that she has been inducted as a tenant by the second defendant is not true and projected only for the purpose of the case falsely.

13. It is thus found that as per the pleas put forth by the respective parties, the second defendant claims that the suit property had been vested with it by virtue of the proceedings of the District Collector dated 08.07.83. The copy of the above said proceedings has been marked as Ex.B2. On a perusal of the same, as rightly put forth by the plaintiff's counsel, it is found that only the Kulam in R.S.No.453/3 (453/1A), out of the total extent of 4.16 acres classified as Anjaneyar temple in possession of the trustees of the Anjaneyar temple, Villupuram, is resumed with effect from 08.07.83, leaving the temple and mandapam in the custody of the trustees of the above said temple and the above said Kulam is ordered to be placed in the custody of the Municipality Commissioner, Villupuram, for maintenance and repairs until further orders. It is thus found by way of Ex.B2 proceedings dated 08.07.83, only the Kulam above mentioned has been ordered to be placed in the custody of the first defendant for maintenance and repairs until further orders. Other than Kulam, even as per the proceedings of the District Collector marked as Ex.B2, it is found that the temple and mandapam had been left in the custody of the second defendant temple. Now, coming to the location of the suit property, as rightly determined by the first appellate Court, it is found that the suit property is located in town survey number 40 in Iyyanarkulam North street, Villupuram town situated to the east of Kulam called as Iyyanarkulam of Anjaneyar swamy temple kulam, to the west of Kerosene bunk (formerly noon meal scheme centre building) and Sudhakar's tenanted property, to the south of the Street and to the north of Sri Anjaneya Swamy temple measuring east west 11½ feet, north south 50 feet with superstructure and EB service connection and water connection and it is thus found that the suit property is only located to the east of Kulam and

not in the Kulam portion and in such view of the matter, the case of the first defendant that the plaintiff has trespassed into the Kulam portion, which had been vested by it, by way of Ex.B2 proceedings, cannot be countenanced. When it is noted that the suit property as such had not been entrusted with the maintenance of the first defendant by the proceedings of the District Collector Ex.B2 and only the Kulam has been vested with the first defendant, it is seen that the first defendant would not be competent to issue any notice of eviction as against the plaintiff complaining that she had trespassed into the property vested with the first defendant.

14. In this connection, no doubt the plaintiff has not chosen to produce the copy of the rent deed entered into between her and the second defendant. Be that as it may, as seen from the materials placed on record, prior to the plaintiff, one Alamelu ammal was in the occupation of the suit property as the tenant under the second defendant. On similar lines, it is found that the first defendant attempted to interfere with the possession and enjoyment of the suit property and other property in the occupation of Alamelu ammal and Alamelu ammal seems to have instituted suit in O.S.No.623/1983 against the first defendant as well as the Government and the second defendant. Materials placed on record by way of Exs.A1 to A3 go to show that the said suit ended in favour of Alamelu ammal and it is thus found that the initiative of the first defendant complaining that Alamelu ammal had trespassed into the portion vested with it, particularly, the suit property, in the earlier proceedings has come to be rejected by the civil Court and when the said case had already been determined against the first defendant and as against the same, when there is no material placed on record that appeals had been preferred and when it is found that the said judgment and decree passed on O.S.No.623/1983 has become final and though, no doubt, the plaintiff does not claim entitlement to be in possession and enjoyment of the suit property through Alamelu ammal and on the other hand, she claims to be inducted into the possession of the suit property only by the second defendant temple, still, as rightly put forth by the plaintiff's counsel, when in the earlier suit, the first defendant's claim to have been vested with the suit property had been negated by the civil Court and the same has become final, as rightly determined by the first appellate Court, the first defendant cannot again rake up the issue by contending that the suit property had been vested with it by the proceedings of the District Collector and hence, it is entitled to issue notice to the plaintiff complaining of trespass and other violations.

15. No doubt, in this suit, the second defendant has remained ex-parte. Be that as it may, when it is found that the

temple and other areas had been left in the custody of the temple as per the proceedings of the District Collector marked as Ex.B2 and only the Kulam portion had been vested with the first defendant, it is found that the first defendant is not entitled, as such, to complain about any trespass made by the plaintiff as regards the suit property. When it is found that the suit property had not been actually vested with the first defendant, it is thus found that the first appellate Court, on an over all scrutiny of the materials placed on record, rightly held that the plaintiff is entitled to the relief of permanent injunction.

16. The plaintiff has preferred the application in the second appeal seeking the permission to receive the true copy of the document dated 01.10.2002, stated to be the proceedings of the Tahsildar, Villupuram, granting the patta in favour of the second defendant temple. It is stated that after the disposal of the first appeal, the Tahsildar, by his proceedings dated 01.10.2002, transferred the patta in favour of the plaintiff in respect of the 4.16 acres of land in R.S.No.453/1A and accordingly, it is stated that the plaintiff had been necessitated to place the same for the appreciation of this Court to show that it is only the second defendant temple, who had been acclaimed as the owner of the above said property which includes the suit property and hence, the need for the projection of the additional evidence. No doubt, counter has not been filed in the application, despite adequate opportunities. However, according to the defendants' counsel, pursuant to the issuance of the above said proceedings, the patta had not been actually transferred in favour of the second defendant temple till date and hence, the said document should not be taken into consideration for upholding the plaintiff's case.

17. Even as per the case of the plaintiff, the projected additional evidence had come to be issued on 01.10.2002. In such view of the matter, it is found that the said document should have been placed before the consideration of the Court at the earliest point of time and when it is found that the plaintiff has knowledge about the proceedings of the Tahsildar way back in 2002 itself, the endeavour of the plaintiff to project the same as additional evidence nearly five years thereafter, as such, cannot be accepted straight away. It is thus found that the very belated filing of the application for the reception of the above said document, as such, cannot be appreciated and entertained and further, it is noted that when the materials already placed on record are adequate and sufficient for the adjudication of the issues involved in the matter, in my considered opinion, there is no need for the reception of the additional evidence projected as such and for

the reasons aforesaid, I am not inclined to entertain the said application and resultantly, the C.M.P. No.2860 of 2018 is dismissed.

18. For the foregoing reasons, the first appellate Court is found to have not accepted the plaintiff's case, mainly, based upon the judgment and decree passed in OS No.623/1983 and on the other hand, the same had been taken into consideration as a piece of evidence by the first appellate Court for coming to the conclusion that the initiative of the first defendant to evict the earlier tenant in respect of the suit property, on the footing that the suit property had not been vested with the first defendant also ended in vain and in such view of the matter, there is no reason to hold that the judgment of the first appellate court is vitiated as such for taking into consideration the earlier litigation between Alamelu ammal and the first defendant in O.S. No.623/1983. In such view of the matter, as the plea of estoppel has not been taken by the plaintiff in specific, in my opinion, the first appellate court may not be correct in coming to the conclusion that the claim of the second defendant that the suit property is vested with it, is hit by the principle of estoppel and to that extent, the first appellate court judgment cannot be sustained. The plea of estoppel should be both pleaded and established and in such view of the matter, when it is found that sans plea and also sans the application of the principle of estoppel to the present case not being made out, in my opinion, the principle of estoppel would not apply to the facts and circumstances of the present case. The first appellate Court has considered all the materials placed on record inclusive of the documents projected by the defendants by way of Exs.B1 and B2 as well as the oral evidence adduced by the defendants through DW1 as well as the oral and documentary evidence adduced by the plaintiff in the right perspective and by giving cogent and acceptable reasons which are not found to be impugned either factually or legally, upheld the plaintiff's case. It is seen that no reason whatsoever has been made out to warrant any interference with the determination of the first appellate Court in accepting the plaintiff's case. The substantial questions of law formulated in the second appeal are accordingly answered.

19. The counsel for the plaintiff in support of his contentions placed reliance upon the decision reported in AIR 2005 MADRAS 248 (N.G. Karunakaran and etc Vs. Chairman, National Highways Authority of India, New Delhi and others etc.) The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the case at hand.

20. In conclusion, the second appeal fails and is

accordingly dismissed, C.M.P. No.2860 of 2018 is also dismissed.
No costs. Consequently, connected miscellaneous petition, if
any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court,
Villupuram.
2. The Principal District Munsif Court,
Villupuram.
3. The Section Officer,
V.R.Section,
High Court, Madras. (2 Copies)

+1cc to Mr.N.Suresh, Advocate, S.R.No.21714

+1cc to Mr.P.Srinivas, Advocate, S.R.No.21462

S. A.No.1144 of 2003
and
C.M.P. No.2860 of 2018

CNR (CO)
CS/21/05/18

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