IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :23.02.2018

PRONOUNCED ON:12.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1303 of 2003

Gejalakshmi ammal
... Appellant/Appellant/Defendant

Vs.

Arulmigu Tharakeswara Swamy temple,
Thottapalayam,
Vellore.
By its Executive Officer.
... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree made in A.S.No.11 of 2002 dated 08.01.2003 on the file of the learned District Court, Vellore against the Decree and judgment made in O.S.No.503 of 1990 dated 20.02.2002 on the file of the Subordinate Court, Vellore.

For Appellant : Mr.A.Palaniappan

For Respondent: Mr.Ashok Kumar
for M/s.J.Viswanathan

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 08.01.2003 passed in A.S.No.11 of 2002 on the file of the Principal District Court, Vellore, confirming the judgment and decree dated 20.02.2002 passed in O.S.No.503 of 1990 on the file of the Subordinate Court, Vellore.



2. The parties are referred to as per the rankings in the trial court.

3. Suit for recovery of possession and mesne profits.

4.The case of the plaintiff in brief is that the suit property originally belonged to Janarthana Mudaliar and he executed a gift deed dated 27.08.1937 in favour of the trustee of the plaintiff's temple namely Balasundara Mudaliar and the said gift deed had been accepted and by way of the same, a specific religious endowment had been created and thus the suit property has become a religious institution and out of the income derived from the suit property, temple rituals are being conducted as per the terms of the gift deed and the trustees who succeeded Balasundara Mudaliar also utilized the income derived from the suit property for the above said purpose and subsequently the executive officer was appointed for the plaintiff's temple and the defendant claiming to have acquired title to the suit property by way of a sale deed dated 16.06.1977 said to have been executed by Balammal and others illegally occupied the suit property and failed to pay the rent to the plaintiff's temple and inasmuch as it is only the plaintiff's temple, who owns title to the suit property and the defendant has no right or interest over the suit property and unlawfully occupying the same, the plaintiff's temple, is entitled to recover the possession of the suit property from the defendant and there is no question on any adverse possession in favour of the defendant in the light of Section 107 of the Tamilnadu Religious Charitable Endowment Act 1959 and hence the suit for appropriate reliefs.

5.The case of the defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. The plaintiff has neither the title to the suit property nor the possession and enjoyment of the same. The suit laid by the plaintiff without seeking the relief of declaration is untenable and the plaintiff's case that the suit property had been gifted in its favour by Janarthana Mudaliyar by way of the gift deed dated 27.08.1937 and the plaintiff's temple is utilizing the income derived from the suit property for performing the temple rituals as per the terms of the gift deed is false and on the other hand, it is only the defendant, who had purchased the suit property, by way of a registered sale deed dated 16.06.1977 from Balammal, W/o Sagadeva Mudaliyar and others and thus it is only the defendant, who has a valid title to the suit property and in possession and enjoyment of the same. The suit property and other extent originally belonged to Dharmalinga Mudaliyar and after his death, his three sons divided the property and accordingly, they were allotted specific extents in the said survey number and Sagadeva Mudaliyar had also purchased the share of Lakshmana Mudaliyar and thus Sagadeva Mudaliyar became the owner of two shares from the date of purchase on 14.06.1917 and after the demise of Sagadeva Mudaliyar, his legal heirs sold the property belonging to them to the defendant and thus the defendant had acquired title to the suit property and been in possession and enjoyment of the same and further the defendant and his predecessors in title had been in open, continuous and uninterrupted possession of the property over a long period of time, beyond the statutory period and thereby prescribed title to the suit property by way of adverse possession and the plaintiff's suit is barred by limitation and hence the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A4 were marked. On the side of the defendant, D.Ws.1 and 2 were examined. Exs.B1 to B5 marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and decreed the suit as prayed for. Aggrieved over 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.

> "a.Whether the Courts below had erred in law in having decreed tha claim of the plaintiff in spite of the respondent/plaintiff failed to establish the possession of the suit property from the date of the alleged gift deed in the year 1937 till the date of the filing of the suit in the light of the specific admission by the witness of the respondent/plaintiff that they do not have a single document to establish that the property was possessed by the temple?
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> b. Whether the Courts below had erred in law in having failed to consider that the respondent/plaintiff had not filed a single document in the form of rental receipt or even the temple records to establish the property is recorded as one the property of the respondent/plaintiff and had miserably failed to establish that the rents were collected from the Appellant/defendant and the predecessor in title of the appellant defendant?
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> c. Whether the Courts below have committed a grave error in law in having failed to consider that the said Janardhanam Mualiar had himself lost title in respect of the property to the predecessor in title as the sale deed dated 10.08.1924 by Sagadeva Mudaliar in favour of the Rathinam Ammal was not acted upon as the possession was with the

said Sagadeva Mudaliar and his heirs and the later gift dated 17.08.1937 by the said Janardhanam Mudaliar in favour of the respondent/plaintiff temple is of no consequence as the Donor himself had lost the title of the property by adverse possession to the predecessor in title of the appellant/defendant?

d.Whether the Courts below had committed an error in law to consider and give a specific finding in respect of the vital fact that the predecessor in title of the Appellant/defendant were holding the possession of the suit in their capacity as owners of the property and that they were not demanded or paid any rent to the respondent/plaintiff even after the alleged gift and that the said predecessor in title of the appellant/plaintiff was holding the suit property in the absolute capacity as owners of the said property without any hindrance or claim by the respondent/plaintiff or any person or body and that the appellant/plaintiff had prescribed title through adverse possession?

9.The plaintiff's temple claims title to the suit property by way of a gift deed dated 27.08.1937 executed by Janarthana Mudaliar in favour of the plaintiff's temple trustee namely S.Bala Sundaram and the above said gift deed has been marked as Ex.A2. The defendant claims title to the suit property, by way of the purchase of the same on 16.06.1977 from Balammal and others and the said sale deed had been marked as Exs.B3/A1. Balammal is stated to be the wife of Sagadeva Mudaliyar. Materials placed on record would go to disclose that the suit property and the other extent originally belonged to Dharmalinga Mudaliyar, who had three sons namely Lakshmana Mudaliyar, Sagadeva Mudaiyar and Margabandhu Mudaliyar. It is further found that after the demise of Dharmalinga Mudaliyar, his above said three sons divided the property amongst themselves, by way of partition deed dated 04.04.1913 and the copy of which has been marked as Ex.B1 and on perusal of the same, it is found that specific extents had been allotted to the shares of the three brothers as detailed therein. It is further noted that Lakshmana Mudaliyar had subsequently sold the portion allotted to him, by way of Ex.B1 to his brother Sagadeva Mudaliyar, by way of a registered sale deed dated 14.06.1917, the copy of which has been marked as Ex.B2. The materials placed further disclose that Sagadeva Mudaliyar alienated the property belonging to him to Rathinammal, by way of a sale deed dated 10.08.1924, the copy of which has been marked as Ex.A3. It is thus found that the son of Rathinammal namely Janarthana Mudaliar had accordingly acquired the property belonging to his mother, on her demise, and gifted the suit property in favour of the plaintiff's temple by way of the gift deed marked as Ex.A2. It is thus found that Sagadeva Mudaliyar from whose legal heirs, the defendant claims title to the suit property had already sold the property to Rathinammal, by way of Ex.A3. Hence, the case of the defendant that she had acquired title to the suit property from the legal heir of Sagadeva Mudaliyar, by way of Ex.B3 sale transaction dated 16.06.1977 as such cannot be countenanced. At the foremost, the defendant has failed to establish that her vendors had the competency or the legal right to convey the suit property in particular, to her by way of Ex.B3 sale transaction. As above seen when Sagadeva Mudaliayar himself had conveyed the property to Rathinammal, by way of Ex.B2 and thereafter Rathinammal's son Janarthana Mudaliar had gifted the suit property to the plaintiff's temple, by way of Ex.A2 gift deed, the case of the defendant that she had acquired title to the suit property, by way of Ex.B3 sale deed as such cannot be accepted in any manner. In the light of the above position, when the plaintiff's title to the suit property is traced from the original owner as projected in the matter both by the plaintiff as well as the defendant and as above discussed, it is found that the suit property had been validly gifted by Janarthana Mudaliar in favour of the plaintiff's temple and thus it is found that it is only the plaintiff's temple who has a valid title to the suit property. As rightly determined by the Courts below Ex.A2 document being a 30 years old document, there is always the presumption which could be invoked with reference to the execution and attestation of the same as per the provision of section 90 of the Indian Evidence Act. No doubt, the presumption cannot be raised in favour of the contents of the documents as such, however as far as the entitlement of Janarthana Mudaliar to gift the property to the plaintiff's temple, as found by the Courts below rightly and as above discussed, it is seen that it is only the plaintiff, who has title to the suit property.



10.It is further found that the gift deed marked as Ex.A2 had been accepted by the trustee of the plaintiff's temple and accordingly he has also moved the revenue authorities to effect the mutation in the concerned records in the name of the plaintiff's temple which document has been marked as Ex.A4. It is thus found that the trustee exercising full ownership over the suit property by accepting the gift deed Ex.A2, has also further moved the revenue department to effect the mutation of the suit property in favour of the plaintiff and it is thus seen that Ex.A2 gift deed had been accepted and acted upon and accordingly, it is found that as per the terms thereof, the temple rituals are being carried, out of the income derived from the suit property.

11.The defendant mainly projects the plea of adverse possession for claiming title to the suit property as such, thereby impliedly admitting the plaintiff's title to the suit property. Even the substantial questions of law formulated in the second appeal only proceeds basing upon the adverse title said to have been prescribed by the defendant in respect of the suit property. It is contended by the defendant that inasmuch as the plaintiff has failed to establish its possession and enjoyment of the suit property pursuant to the gift deed marked as Ex.A2, according to the defendant, it is she and her predecessors in title who had been in the possession and enjoyment of the suit property from time immemorial and accordingly prescribed title to the suit property by way of adverse possession. However, as regards the above plea of the defendant, as rightly determined by the Courts below, there is absolutely no valid and reliable material projected. From Exs.B4 and B5, we cannot conclude that the defendant has prescribed title to the suit property, by way of adverse possession, particularly as against the plaintiff's temple. In the light of the above discussions, when it is noted that the plaintiff's temple has title to the suit property and the plaintiff's temple is now being managed by the executive officer appointed by the HR & CE Department and when the provisions of Tamilnadu Religious Charitable and Endowment Act 1955 would apply to the plaintiff's temple as such, as rightly determined by the Courts below, there is no question of the plea of adverse possession as against the plaintiff's temple, as per the provisions contained in the said Act and even further, when the defendant cannot be held to have prescribed title to the suit property by way of adverse possession from Exs.B4 and B5, it is seen that the Courts below had rightly held that the defendant has no title to the suit property in any manner, as claimed in the written statement and on the other hand, it is only the plaintiff who has a valid title to the suit property. Inasmuch as the plaintiff has projected and established a valid claim of title to the suit property by way of tracing its title through the gift deed marked as Ex.A2 and when the defendant had failed to establish her claim of title to the suit property from her alleged predecessors in title and on the other hand, when it is noted that her predecessors in title had no lawful title to the suit property on the date of Ex.B3 sale transaction, it is found that, in such view of the matter, there is no need on the part of the plaintiff to seek for the relief of declaration as such in respect of the suit property.

12.In the light of the above discussions, when it is found that the defendant cannot raise the plea of adverse possession based on Exs.B4 and B5 against the plaintiff's temple, the true owner of the suit property and when from Exs.B4 and B5, on their own, would also not be adquate to uphold the defendant's plea of adverse possession in respect of the suit property as such and when it is seen that it is only the plaintiff, who has title to the suit property, it is found that the plaintiff is entitled to recover the possession of the suit property from the defendant and also obtain the other reliefs sought for. It is accordingly noted that the Courts below have rightly appreciated the materials placed on record in the proper perceptive, both factually as well as legally and rightly and decreed the suit in favour of the plaintiff and the above said reasonings and conclusions of the Courts below for upholding the plaintiff's case do not warrant any interference and the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendant.

13.In support of his contentions, the defendant's counsel, placed reliance upon the decisions reported in

(i) AIR 1955 Supreme Court 481 [Sahu Madho Das and others Vs. Mukand Ram and another]

(ii) AIR 1989 Supreme Court 1809 [Corporation of the City of Bangalore Vs. M.Papaiah and another]

(iii) AIR 1971 Supreme Court 2548 (V 58 C 550) [Dattatraya Vs. Rangnath Gopalrao Kawathekar (dead) by his legal representatives and others]

The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

14.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
1.The District Judge,
The District Court,
Vellore.

2.The Subordinate Judge,
The Subordinate Court,
Vellore.

3.The Section Officer,
VR Section,
High Court.

+1cc to Mr.J.Viswanathan, Advocate, S.R.No.18615

S.A.No.1303 of 2003

AD(CO)
GSP(05/10/2018)