

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :15.03.2018

PRONOUNCED ON :04.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2045 of 2003

1. Valikandapuram Government High School
Rep.by its Head Master,
Mr.Shanmugam,
Veppanthattai Circle,
Perambalur District.
 2. The Chief Educational Officer,
Perambalur District. ... Appellants/Defendants 1 & 2
- Vs.
- 1.A.Chellamuthu
 - 2.Krishnaswamy
 - 3.Basha Sahib ... Respondents/Plaintiff
 - 4.Syed Abdul Rabub Sahib
 - 5.The Executive Officer,
Kasi Viswanathar Swamy Temple,
Valikandapuram Village & Post,
Perambalur District. ... Respondents/Defendants 3 to 5

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 30.04.2002 made in A.S.No.79 of 2002 on the file of the Additional District Judge cum Chief Judicial Magistrate, Perambalur reversing the judgment and decree passed in O.S.No.379 of 1993 dated 09.12.1999 passed by the District Munsif, Perambalur.

For Appellants :Mr.V.S.Sethuraman, AAG, Assisted by
for M/s.A.Madhumathi
Addl. Government Pleader, (C.S)

For RR5 : M/s.P.Srinivas

RR1 to R4 :Set exparte by an order of this Court dated 15.03.2018.

J U D G M E N T

Challenge in this second appeal is made against the judgment and Decree dated 30.04.2002 passed in A.S.No.79 of 2002 on the file of the Additional District Judge cum Chief Judicial Magistrate Court, Perambalur reversing the judgment and decree dated 09.12.1999 passed in O.S.No.379 of 1993 on the file of the District Munsif Court, Perambalur.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiffs in brief is that the suit property belongs to Kasi Viswanathar Swamy Temple, Valikandapuram Village lying in patta No.1153 and the first plaintiff's father Appavu Padayachi was managing the abovesaid temple as well as the properties belonging to the temple as the manager and after the demise of Appavu Padayachi, his son namely the first plaintiff has been managing the suit property as well as the properties of the other temples in the village namely Pidary Amman Temple and Selly Amman Temple and accordingly, Appavu Padayachi and thereafter the first plaintiff has been leasing out the properties belonging to the abovesaid temples and accordingly, out of the income derived from the same, performing the rituals and festivals of the temples and also utilizing the same for public purposes and the suit property belongs to the Hindus, who are worshipping Kasi Viswanathar Swamy Temple and the Muslims in Valikandapuram village cannot claim any right or interest in the suit property and there was a primary school at Valikandapuram village and accordingly the proposal was initiated for starting a High school in the village and as there was no land available for building the High school, the building committee was constituted of which the second plaintiff Krishnaswamy was the President and accordingly, the building committee approached Appavu Padayachi to convey the suit property belonging to the temple, however, Appavu Padayachi did not accept to the same and the building committee assured him that, they would collect donation from the public and give another land to Appavu Padayachi for conveying the suit property, in favour of the proposed school and accordingly, by using force and exerting compulsion, the building committee had obtained a deed from Appavu Padayachi in respect of the suit property against his wish and consent on 02.06.1968 and the said document has also come to be registered and however, the

above said sale deed dated 02.06.1966 is not a true and valid document and as recited therein, no consideration of Rs.1000/- passed on to Appavu Padayachi, by the building committee President Krishnaswamy and the suit property was also not handed over to the building committee, pursuant to the above said sale deed, the said document is therefore invalid and not needed to be set aside as such. The school is now running only in the space, where the primary school was running and there is no building in the suit property, the plaintiffs are managing the suit property on behalf of the temple and Appavu Padayachi has no right to convey the suit property in favour of the building committee and he has not obtained necessary permission for the conveyance as per the rules and hence, the sale deed dated 02.06.1966 is invalid and the above said sale deed had been obtained, by using undue influence and also by enticement and it is only the temple, which has title to the suit property and while so, the defendants particularly, the Government officials at the instigation of the Muslims in the village are attempting to interfere with the possession and enjoyment of the plaintiffs in respect of the suit property by denying their title to the same and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendants 1 and 2 in brief is that the the suit laid by the plaintiffs is not maintainable either in law or on facts. It is true that the suit property is associated with Kasi Viswanathar Swamy Temple, Pidary Amman Temple and Selli Ammal Temple of Valikandapuram Village and the suit property had been conveyed in favour of the President of the building committee, by way of the sale deed dated 02.06.1966 and since then, it is only the school authorities concerned, who are in possession and enjoyment of the suit property and accordingly, the suit property is being used and utilized for the agricultural activities of the school and thereby income had been derived and utilized for the propose of the school activities and the suit property is not in the possession and enjoyment of the plaintiffs as claimed in the plaint and further the plaintiffs have no right to lay a claim of title or interest in the suit property and it is false to state that the suit property had been leased out by the plaintiffs and earning income thereof and utilizing the same for the temple rituals and festivals and for public purposes and it is only the school, which is in the possession and enjoyment of the suit property and hence the suit is liable to be dismissed.

6.The case of the defendants 3 and 4 in brief is that the suit laid by the plaintiffs is not maintainable either in law or on facts. It is false to state that the suit property belong to Kasi Viswanathar Swamy Temple and the plaintiffs are managing the suit property on behalf of the temple. There is no temple as Kasi Viswanathar Swamy Temple, or any idol of the temple in

the suit village and the suit is bad for non-joinder of the idol of Kasi Viswanathar Swamy Temple. The plaintiffs cannot lay claim and maintain the suit as the representatives of the villagers in respect of the suit property. The suit laid by the plaintiffs as against the defendants 1 and 2 in their individual capacity without impleading the Tamilnadu Government as a party is bad in law and on that ground alone the suit is liable to be dismissed. The suit property is the public property of the villagers and by way of clandestine methods, the patta had been obtained in respect of the suit property in the name of Kasi Viswanathar Swamy Temple and on that score alone the plaintiffs cannot lay any claim of title or interest or right in the suit property as belonging to the said temple and for the purpose of raising a High school in the suit village, the building committee was formed and accordingly, the suit property was conveyed by Appavu Padayachi in favour of the President, building committee, by way of a sale deed dated 02.06.1966 and accordingly, the possession of the suit property was handed over to the building committee and inasmuch as at that point of time, the patta stood in the name of Kasi Viswanathar Swamy Temple, accordingly, the sale deed had come to be obtained from Appavu Padayachi, the manager and since then, it is only the Education Department of Government of Tamilnadu, who is in control, possession and enjoyment of the suit property and the case of the plaintiffs that they had leased out the suit property to the third parties and earning income out of the same and utilizing the same for the temple rituals and functions etc., is false and the plaintiffs are not entitled to maintain the suit as the representatives of the village or on behalf of the temple and there is no cause of action to lay the suit and the suit is liable to the dismissed.

7.The case of the 5th defendant in brief is that the suit laid by the plaintiffs is not maintainable. The suit property belong to Kasi Viswanathar Swamy Temple, Valikandapuram Village and the suit belongs to the temple/idol of the said temple and the parties are not entitled to claim title to the suit property contrary to the same. The plaintiffs have not obtained the prior permission from the executive officer for laying the suit and the plaintiffs cannot independently lay the suit on behalf of Kasi Viswanathar Swamy Temple, and when the above said temple is under the control and management of the executive officer of the temple, the claim of the plaintiffs that they are in possession and enjoyment of the suit property on behalf of the temple is unacceptable and on account of the difference of opinion amongst all the villagers, the suit has come to be laid without any cause of action and hence the suit is liable to be dismissed.

8.In support of the plaintiff's case, P.Ws.1 to 5 were examined. Exs.A1 to A12 were marked. On the side of the

defendants, D.Ws.1 to 5 were examined. Exs.B1 to B44 were marked. In addition to that, C.W.1 was examined. Exs.X1 to X8 were marked. Further, Exs.C1 and C2 were also marked.

9.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 laid by the plaintiffs. 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 plaintiffs, decreed the suit as prayed for. Aggrieved over the same, the present second appeal has been laid.

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

"(i) Whether the lower appellate court is correct in reversing well considered judgment of the trial court?

(ii)Whether the lower appellate court is having dismissed the I.A.No.82 of 2000 was correct in allowing the first appeal?

(iii)Whether the lower appellate court was not erred in holding that the Ex.B1 is invalid in view of the provisions contained in Section 34 of the Tamilnadu Hindu Religious and Charitable Endowments Act?

(iv)Whether the court below not erred in knot discussing the Exs.B1 to B44 in the relevant title possession and especially regarding the adverse possession of the appellants.

11.The materials placed on record would go to show that the patta in respect of the suit property originally stood in the name of Kasi Viswanathar Swamy Temple, Valikandapuram Village and the same could be seen from the patta marked as Ex.A1. On a perusal of Ex.A1, though the patta holder is shown as the General Public of the Village, in the next page, the suit property is shown as belonging to Kasi Viswanathar Swamy Temple located in patta No.1153. It is also found that the properties belonging to the other temples namely Pidary Amman Temple and Selli Amman Temple are mentioned in Ex.A1 patta. Be that as it may, as per Ex.A1, it is found that originally the patta for the suit property stands only in the name of Kasi Viswanathar Swamy Temple and it is found that the patta number for the suit property is 1153. Further materials placed on record go to show that first plaintiff's father Appavu Padayachi was originally managing Kasi Viswanathar Swamy Temple and the other temples of

the village. It is found that initiatives were taken to start a High school in the suit village and accordingly, it is also found that the building committee was constituted for the purpose of raising the school construction and it is also seen that the second plaintiff Krishnaswamy was nominated as the president of the building committee and it is further found that the building committee had approached Appavu Padayachi for conveying the suit property for the purpose of running the school and it is seen that the sale deed dated 02.06.1966 has come to be executed by Appavu Padayachi in favour of the building committee for a consideration and the copy of the said sale deed has been marked as Ex.B1. On a perusal of Ex.B1, it is clearly found that Appavu Padayachi, the first plaintiff's father as the manager of the temples of Valikandapuram Village had conveyed the suit property to the proposed High school and accordingly, the sale deed Ex.B1 has come to be executed in favour of the president of the building committee i.e., Krishnaswamy and it is found that for the above said sale deed, the building committee had paid a sum of Rs.1000/- to Appavu Padayachi as the consideration for the sale and accordingly, it is found that Appavu Padayachi, on the receipt of the sale consideration, handed over the possession of the suit property to the building committee President Krishnaswamy and it is thus found that a valid sale has been effected in respect of the suit property by the then manager of the temples of Valikandapuram Village and accordingly, it is found that as per the case of the defendants, since Ex.B1 sale deed, it is only the High school or the Educational Department, who would be entitled to lay a valid claim of title to the suit property.

12. Though the plaintiffs would state that the abovesaid sale deed has been obtained by using undue influence, instigation, enticement and other modes and the conveyance had been obtained from Appavu Padayachi against his Will etc., as rightly put forth by the defendants' counsel, on a perusal of the materials placed on record, both oral and documentary, it is found that the plaintiffs have miserably failed to establish that the Ex.B1 sale deed had been secured by the building committee by using any of the abovesaid methods and thereby obtained the sale deed illegally. On the other hand, it is found that on a perusal of the recitals contained in Ex.B1, the suit property had been validly conveyed by Appavu Padyachi in favour of the building committee constituted for the purpose of running the school and when there is no proof placed that the said conveyance had been obtained by third decree methods as projected in the plaint and further, when it is found that the consideration had passed on under the said transaction, it is found that the evidence adduced by the plaintiffs, particularly through the mouth of P.W.2 against the same as if, no consideration had been passed on under Ex.B1, as such, cannot be accepted in any manner, particularly when it is found that P.W.2 is a party to the sale

transaction in the capacity as the President of the building committee and when there are clear recitals found in Ex.B1 that consideration had been passed on to Appavu Padayachi by the building committee for the sale transaction and resultantly, Appavu Padayachi had also handed over the possession of the suit property to the committee, P.W.2 now cannot turn around and depose diametrically opposite to the recitals found in Ex.B1 and as rightly pointed out the abovesaid evidence of P.W.2 cannot be accepted and relied upon lawfully as they are found to be not in consonance with the provisions of sections 91 and 92 of the Indian Evidence Act. In the light of the above discussions, when there is no material worth acceptance placed by the plaintiffs to evidence that Appavu Padayachi had been deceived and thereby the document Ex.B1 had come to be obtained as projected in the plaint and on the the hand, when the materials point out that the sale transaction marked as Ex.B1 has come into the existence in the normal course of events as above discussed i.e., the said conveyance having been made by Appavu Padayachi as the manager of the temples of the suit village and the purchaser being the president of the building committee, in such view of the matter, it is found that, as rightly put forth by the defendants' counsel, Ex.B1 sale transaction has been not shown to be suffering from any vices as such and it is therefore found that as rightly determined by the trial court, Ex.B1 sale transaction is a true and valid sale transaction and binding one and all including the plaintiffs. In such view of the matter, the plaintiffs cannot now to be allowed to contend that Ex.B1 had come to be obtained illegally from Appavu Padayachi as projected in the plaint, when there is no material pointing to the same.

13.Following Ex.B1 sale transaction, it is found that the suit property had come to be acquired by the building committee and accordingly by way of the settlement deed dated 26.02.1968, the said committee had settled the suit property in favour of the Chief Educational Officer, Trichy, for the purpose of running the school and the copy of the abovesaid settlement deed has come to be marked as Ex.B2. On a perusal of Ex.B2, it is found that there are clear recitals that the suit property had been acquired from Appavu Padayachi by way of the sale transaction dated 02.06.1966 and thereupon the same had come to be settled in favour of the Chief Educational Officer, Trichy, for the above purpose of running the school and when materials had been placed by the defendants to evidence the execution of the settlement deed and the same had also been spoken to by P.W.2, the executor in his capacity as the President of the building committee, it is found that, by virtue of Ex.B2 settlement deed, it is only the Education Department of the Government of Tamilnadu, who would be the title holder of the suit property and in such view of the matter, it is found that the plaintiffs cannot be allowed to still raise a claim of title

to the suit property, on the footing that the same belongs to Kasi Viswanathar Swamy Temple.

14.As regards the case of the plaintiffs that they are in possession and enjoyment of the suit property by leasing out the same to various parties and thereby earning income etc., it is found that as rightly determined by the trial court, no valid material has been placed with reference to the same. Though the plaintiffs would examine the alleged lessee as P.W.3, however, when there is no proof to hold that P.W.3 had taken the suit property on lease from the plaintiffs or the temple as the case may be and paying the lease to them, merely from the ipsi dixit testimony of P.W.3, we cannot come to the conclusion that the suit property is in the possession and enjoyment of the plaintiffs by way of lease to P.W.3 and others and accordingly, it is found that the case of the plaintiffs that the suit property is in their possession and enjoyment through their lessees as such cannot be accepted in any manner. By way of the copy of the Chitta Adangal extract and the Kist receipts filed by the plaintiffs marked as Exs.A2 to A11, we cannot safely conclude that the suit property belongs to the temple, as such, particularly, when it is found that the same had been already been conveyed to the building committee, by way of Ex.B1 and in such view of the matter on the basis of the abovesaid revenue records, the alleged title of the plaintiffs in respect of the suit property cannot be upheld in any manner. On the other hand, it is found that, as rightly determined by the trial court, the various documents projected by the defendants would go to show that it is only the school which had been utilizing the suit property by retaining the same in its possession and enjoyment and accordingly had engaged the suit property for the purpose of cultivation on behalf of the school as well as using a portion of the suit property as the playground for the school and in this connection, as rightly determined by the trial court, abundant materials have been placed by the defendants and considering the same, as well as the documents marked as Exs.X1 to X8 and the oral evidence tendered by the defendants in a cumulative manner would only lead to the irresistible conclusion that the suit property pursuant to Exs.B1 and B2 has gone into the possession and enjoyment of the authorities concerned on behalf of the school and accordingly, the same had been utilized only for the activities of the school as claimed by the defendants and in such view of the matter, it is found that the first appellate court had erred in rejecting the abovesaid documents without any acceptable reasonings and conclusions and it is thus found that the plaintiffs have miserably failed to establish their title, possession and enjoyment of the suit property as claimed by them.

15.No doubt, the fifth defendant had made a claim that the suit property is under the control and management of the

executive officer and accordingly, the plaintiffs are not entitled to maintain the suit without obtaining the prior permission from the executive officer. The first appellate court seems to be have accepted the plaintiffs' case, on the footing that inasmuch as Kasi Viswanathar Swamy Temple is under the control and management of the executive officer i.e., the fifth defendant, according to the first appellate court, the sale transaction covered under Ex.B1 not having been made or effected with the consent of the executive officer, on that basis proceeded to hold that the school authorities cannot lay a claim of title to the suit property based on Exs.B1 and B2. However, as rightly put forth, there is no material placed on record to show as to at what point of time, whether before or after the execution of Exs.B1 and B2, the executive officer had taken the control and management of Kasi Viswanathar Swamy Temple and the properties associated with the temple. In this connection, D.W.5 examined on behalf of the fifth defendant has accepted that only from 1998 onwards i.e., one year prior to his deposition, the documents pertaining to the suit property had been managed by the temple and that he does not know in whose control and management, the suit property had been vested prior to the same and further according to him, prior to Ex.B43 patta, Ex.B44 Kist receipt, there is no other document is available with him that the suit property had been under the control and management of the executive officer as such and further, he has also admitted that no document has been filed on his behalf that the suit property was under the control and management of Kasi Viswanathar Swamy Temple prior to the executive officer taking the control and management of the same. It is thus found that other than Exs.B43 and B44, there is no other material placed on behalf of the fifth defendant to hold that the executive officer had taken the control and management of the temples concerned as well as the properties associated with the said temples particularly, the suit property during 1960's and when it is found that at that point of time, the suit property as well as the temples concerned had been only under the management of the first plaintiff's father namely Appavu Padayachi and accordingly when it is found that he had conveyed the suit property in favour of the high school by way of Ex.B1 and later the high school building committee had settled the suit property in favour of the Chief Educational Officer, Trichy, and when it is found that when there is no material placed by the fifth defendant that a valid permission is required to be obtained from the executive officer at that point of time for effecting the sale transaction marked as Ex.B1 and when it is further found that the executive officer had come into the picture only recently, the approach of the first appellate court that the sale transaction is invalid on th footing that the same had been effected without obtaining the permission of the executive officer as such cannot be accepted and stand scrutiny in the eyes of law. It is found that the abovesaid approach of the

first appellate court for invalidating Ex.B1 sale transaction and resultantly, invalidating Ex.B2 settlement transaction are found to be without any materials placed on record and hence the same could only be described as perverse and illogical.

16. When the materials placed on record would go to show that, without any iota of doubt, that the suit property has been only in the possession and enjoyment of the high school, Valikandapuram Village, i.e., the defendants 1 and 2 and when the defendants 1 and 2 are enjoying the suit property on behalf of the Education Department, Government of Tamilnadu, it is found that the true owner of the suit property is only the Government of Tamilnadu and in such view of the matter, it is seen that as rightly put forth by the defendants, the plaintiffs should have instituted the suit only as against the Government of Tamilnadu represented by its Secretary, Education Department and on the other hand, it is found that, the plaintiffs have levied the suit against the defendants 1 and 2 in their individual capacities and it is thus seen that the frame of the suit as such is not legally sustainable and accordingly on that score also, as rightly determined by the trial court, the suit laid by the plaintiffs deserves rejection.

17. The materials placed on record clearly point out that the Exs.B1 and B2 transactions have taken place as recited therein and no extraneous factors had any role to play in the execution of the above said documents as claimed by the plaintiffs and when it is found that only the school through its authorities has been in the possession and enjoyment of the suit property as seen from the overwhelming materials placed by the defendants as well as the same could be evidenced from Exs.X1 to X8 and also from Exs.C1 and C2 and the evidence of C.W.1, it is seen that the case of the plaintiffs that Exs.B1 and B2 transactions had come into existence only for name sake without any legal effect as such cannot be accepted and on the other hand, the materials placed on record only go to show that Exs.B1 and B2 have come into existence for the purposes as recited therein and accordingly, it is seen that as rightly determined by the trial court, it is only the Government of Tamilnadu who is the absolute owner of the suit property and the plaintiffs have miserably failed to establish that suit property is vested with Kasi Viswanathar Swamy Temple as claimed in the plaint on the date of the suit and accordingly, it is found that the first appellate court has erred in reversing the well considered reasonings and conclusions of the trial court for rejecting the plaintiffs' case and upholding the case of the defendants. The appellate court erred in holding that Ex.B1 is invalid as violative of Section 34 of the Tamilnadu Hindu Religious and Charitable Endowments Act particularly, when it is noted that there is no material to hold that the HR&CE Department had come to retain the management and control of Kasi Viswanathar Swamy

Temple and the suit property during 1960's and hence the abovesaid reasonings of the first appellate court for rejecting the defence version is found to be legally not sustainable. The first appellate court has failed to consider the true import of Exs.B1 to B44 in the right perspective which would go to show that it is only the Government of Tamilndau, Education Department who would be entitled to the suit property and that the same is in possession and enjoyment of the School authorities as projected by the defendants. As regards the substantial question of law No.2 raised, for the reasons aforesated, there is no need for answering them and therefore left unanswered. The other substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

18.In conclusion, judgment and Decree dated 30.04.2002 passed in A.S.No.79 of 2002 on the file of the Additional District Judge cum Chief Judicial Magistrate Court, Perambalur are set aside and the judgment and decree dated 09.12.1999 passed in O.S.No.379 of 1993 on the file of the District Munsif Court Perambalur are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

mfa

To

1. The Additional District Judge cum Chief Judicial Magistrate, Additional District Judge cum Chief Judicial Magistrate Court, Perambalur .
2. The District Munsif, District Munsif Court, Perambalur.
3. The Section Officer, VR Section, High Court.

+1 CC to Mr.P. Srinivas, Advocate sr 25573.

+1 CC to Govt.Pleader sr 24719

S.A.No.2045 of 2003

SP(08/05/2018)