

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1880 of 2002

1.Krishnammal
2.Krishnasamy

... Appellants /Defendants

Vs.

Arulmighu Madanagopalaswamy
Deity and Temple rep. by
its Executive Officer
Mariappan
Perambalur.

... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 06.08.2002 made in A.S.No.84 of 2002 on the file of the Principal District Judge's Court, Perambalur confirming the Judgment and decree dated 26.06.2000 made in O.S.No.54 of 1992 on the file of the Additional District Munsif Court, Ariyalur.

For Appellants : Mr.P.Dinesh Kumar
for M/s.Sarvabhauman Associates

For Respondent : Mr.A.K.Kumarasamy
Senior Counsel
for M/s.Kaithaimalai Kumaran

J U D G M E N T

The defendants who lost their case before the Courts below have filed the second appeal before this Court.

2.The plaintiff Temple filed a suit for recovery of possession in respect of four items of property. After trial, the lower Court decreed the suit in respect of Item Nos.1, 3 and 4, however, negatived the claim in respect of Item No.2. The plaintiff did not prefer any appeal against the rejection of Item No.2. However, the defendants preferred appeal before the lower Appellate Court as against the decree granted by the lower Court in respect of Item Nos.1, 3 and 4. The lower Appellate Court confirmed the decree. Aggrieved by the same, the

defendants have preferred the second appeal before this Court.

3.The case of the plaintiff is as follows: The suit is filed by the Executive Officer on behalf of Arulmighu Madanagopalaswamy Deity and Temple, Perambalur. The properties fully described in the plaint Schedule absolutely belong to the plaintiff Deity, having deserved title under the settlement deed dated 26.04.1979 executed by one Gurusamy Naicker son of Subba Naicker who is none other than the father of the defendants. The first defendant is the daughter and the second defendant is the son. The said Gurusamy Naicker had executed a settlement deed out of his free will and volition and on faith to Arulmighu Madanagopalaswamy Temple. All the properties that are settled are separate and exclusive properties of the settler namely Gurusamy Naicker and hence the settlement is perfectly valid. Till the date of settlement, the said Gurusamy Naicker alone was in possession of the suit Schedule properties.

4.The said Gurusamy Naicker with his own intention has conveyed the valid title to the Executive Officer of the Temple and the plaintiff/ Executive Officer has also taken possession of the suit property by accepting the settlement deed. The settlement deed was executed by Gurusamy Naicker in the year 1979. The defendants on knowing that Gurusamy Naicker has settled the lands, have illegally and wantonly trespassed the suit property on 01.05.1979. Immediately thereafter, the plaintiff issued a legal notice on 02.05.1979. The said notice was served upon the defendants.

5.The plaintiff further avers in the plaint that after execution of the settlement in favour of the plaintiff, the plaintiff has relevant title and the same is perfect as it has been given possession with all relevant documents. As a matter of fact, the defendants have no manner of right or title to remain in possession and to obtain the profits of the land. Hence, the suit is instituted for mesne profits. Accordingly, the plaintiff filed a suit for declaration of title of property and consequentially for recovery of possession.

6.The sum and substance of the written statement filed by the defendants is as follows: The allegations contained in the plaint is false and the suit is not maintainable. The suit property is not self acquired property of Gurusamy Naicker and Gurusamy Naicker is not in possession of the suit property. Since the suit property is not possessed by Gurusamy Naicker, Gurusamy Naicker have no right to execute settlement deed in favour of the plaintiff Temple. Infact, the suit property belongs to Gurusamy Naicker, first defendant's husband namely, Seetharama Naicker, the second defendant and another brother namely, Sreenivasa Naicker.

7.The suit properties are Hindu joint family properties and the suit properties were purchased through the sale of lands under sale deeds marked as Ex.B11 and Ex.B12 which was sold in the year 1943 and 1942. Out of the nucleus fund of the joint family property, the suit property was purchased for the welfare of the joint family. Accordingly, the defendants and other persons are entitled to suit schedule property. Hence, the said Gurusamy Naicker has no right to alienate the property in favour of the Temple.

8.At the time of admission of the second appeal, this Court framed the following substantial questions of law:

"(i) Have not the courts below erred in law in acting upon the settlement deed Ex.A2 which has not been proved to have been executed and duly attested which is sine qua non to decree the suit for title based on the same?

(ii) When the provisions contained in Sec.68 and 69 of the Indian Evidence Act have been given a total go by whether in law the judgment of Trial Court confirmed in appeal can be sustainable?"

9.The learned Senior Counsel appearing for the plaintiff/respondent would submit that on perusal of Ex.A4 and Ex.A5, the property under Ex.A4 was purchased in the year 1935 and the property under Ex.A5 was purchased in the year 1952. Hence, the allegation in respect of sale of joint family property in the years 1942 and 1943 does not arise because, the first property was purchased prior to the sale of joint family property and the second property which was marked as Ex.A5 was purchased in the year 1952 after nine years of the Ex.B12 property. That itself shows that the said Gurusamy Naicker has not purchased the property from the nucleus joint family funds. The said properties are acquired by the Gurusamy Naicker as self acquired property.

10.The learned Senior Counsel would further submit that in the absence of any documents to substantiate that the properties are purchased from the nucleus joint family funds, the presumption goes in favour of Gurusamy Naicker as self acquired property. At the time of settling the suit property in favour of the Arulmighu Madanagopalaswamy Deity and Temple, Perambalur, the defendants are major. They know about the settlement deed. With the consent of these defendants, the settlement deed was executed in favour of the plaintiff Temple with devotion and affection. In view of the above, the lower

Court rightly arrived at a conclusion that the plaintiff Temple is entitled to decree in respect of the suit Schedule property and the same was confirmed by the lower Appellate Court. Hence, the concurrent findings of the Courts below need not be interfered without any basis or any material and prayed for dismissal of the second appeal.

11.The learned counsel for the appellants/ defendants raised a legal issue before this Court by relying upon a decision of the Division Bench of this Court reported in 2003 - 1 - L.W.386 (Sri Arthanareeswarar of Tiruchengode vs. T.M.Muthuswamy Padayachi etc. and others) as to whether the Executive Officer have any right to file a suit on behalf of the Temple unless the Chairman of Trustees and Commissioner have authorised to file a suit on behalf of the Temple.

12.The learned counsel appearing for the appellants/ defendants fairly conceded that this issue was not raised before the Courts below.

13.For the legal plea which is raised in the decision cited above, the Division Bench of this Court has clearly held that in the absence of any authorisation from the Chairman of Trustees or the Commissioner, the Executive Officer or the Special Officer as the case may be, is not entitled to file a suit on behalf of the Temple.

14.Repudiating the arguments of the learned counsel appearing

for the appellants, the learned Senior Counsel appearing for the respondent would submit that at the relevant point of time, there was no Board of Trustees and no one represented on behalf of the Temple. The Commissioner granted permission to the Executive Officer to protect the properties of the Temple which was settled by the father of the defendants. Accordingly, after obtaining proper permission, the suit was filed.

15.However, in view of the above, the learned counsel appearing for the appellants/ defendants did not produce any document or has not taken any steps to invoke Order 42 of C.P.C. and has not filed any petition for disproving the statement made by the learned Senior Counsel appearing for the plaintiff/ respondent.

16.In view of the above discussions, I do not find any merit in the submission made by the learned counsel appearing

for the appellants/ defendants. Accordingly, the substantial questions of law are answered against the appellants/ defendants and the second appeal deserves to be dismissed.

17. Accordingly, the second appeal is dismissed. The judgment and decree dated 06.08.2002 made in A.S.No.84 of 2002 on the file of the Principal District Judge's Court, Perambalur, confirming the Judgment and decree dated 26.06.2000 made in O.S.No.54 of 1992 on the file of the Additional District Munsif Court, Ariyalur, is confirmed. No costs.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Principal District Judge, Perambalur.

2.The Additional District Munsif, Ariyalur.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.4392

S.A.No.1880 of 2002

KGK (CO)
GN(05/03/2018)



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