

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2018

PRONOUNCED ON : 06.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2083 of 2004

Sri Throwpathiamman Koil, Nangavalli
rep. by its Hereditary Trustees:

1. V.Shanmugha
2. N.V.Arthanari

...
Vs.

Appellants

1. Executive Officer, Nangavalli
Town Panchayat, Nangavalli Post
and Mettur Taluk.
 2. Varadharajan
 3. Kondaiyan @ Subban
 4. Mani
 5. Prakasam
 6. Minor Janardhanam
 7. Minor Boopathi
- (Minor respondents 6 and 7 are rep.
by their Court guardian Mr.R.Srinivasan
Advocate, Mettur.)

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 31.08.2001 passed in A.S.No.43 of 1999 on the file of the Subordinate Court, Mettur, confirming the Judgment and Decree dated 30.01.1996 passed in O.S.No.380 of 1989 on the file of the District Munsiff Court, Mettur.

For Appellants : Mr.J.Lakshmi Narayanan

For Respondent : No appearance
R1, R6 & R7 set exparte vide
order dated 25.06.2018

Respondent :given up
Nos.2 to 5

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 31.08.2001 passed in A.S.No.43 of 1999 on the file of the Subordinate Court, Mettur, confirming the Judgment and Decree dated 30.01.1996 passed in O.S.No.380 of 1989 on the file of the District Munsiff Court, Mettur.

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

3. Suit for permanent injunction.

4. The case of the plaintiffs, in brief, is that the plaintiffs are the hereditary trustees of Sri Dropathiamman Temple, Nangavalli and prior to them, their father Venkatachalam and prior to Venkatachalam, his fore fathers were the hereditary trustees of the abovesaid temple and accordingly, the plaintiffs have been managing the abovesaid temple as the trustees continuously from the days of their ancestors and the abovesaid temple owns about 25 cents of land in Nangavalli Natham Poramboke and the temple is situated in about 14 cents of the abvoesaid land and the re-survey of the abovesaid temple land is fixed in R.S.No.123/7 extent 0.10.0 Hectares and the same comprises the temple, 2 sheds and vacant space and the abovesaid property is the

property involved in the matter and on the eastern side of the temple in the abovesaid property, there is a vacant space about 11 cents and the same is used during the celebration of the festival and for other temple purposes and the plaintiffs' father had leased out the vacant land to the Salem Co-operative Marketting Society Limited from 1970 upto 1979 on an annual rental basis and thereafter, the plaintiffs had leased out the vacant land to the private persons and been enjoying the same. The defendants have no manner of right, title and possession of the suit property and the first defendant asked the plaintiffs to give the vacant land and the two sheds of about 11 cents to the Panchayat for building the shops and leasing out the same to the third parties and as the same had been refused by the plaintiffs, the first defendant in collusion with the defendants 2 to 4 is making arrangements to lease out the temple land to the third parties without any authority and in this connection, the letter had been sent to the first defendant on 02.05.1989 and despite the same, they have made arrangements to put the shops in the temple property and in this connection, the police complaint has also been lodged and inasmuch as the acts of the defendants as abovestated persisted, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the first defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. After denying

all the plaint averments, it is stated that the entire vacant site in front and around the temple is Gramanatham Poramboke land vested with the defendant Panchayat long back and under the control and custody of the first defendant, who had leased out the same to the other defendants for running various shops by putting up temporary sheds and the documents projected by the plaintiffs do not relate to the suit property nor have any legal existence as such and the plaintiffs are not the owners of the suit property and the suit property is vested with the first defendant and the case of the plaintiffs that they had been enjoying the suit property by leasing out the same to various parties as detailed in the plaint is false. It is false to state that the first defendant requested the plaintiffs to hand over the suit property for leasing out to the third parties and inasmuch as the suit property had been already vested with the first defendant and managed by it, there is no need for making any request to the plaintiffs to handover the possession of the same and it is only the first defendant, who has been in the possession and enjoyment of the vacant land by leasing out to the third parties and the description of the suit property is not correct and misleading, there is no cause of action for the suit and the suit is liable to be dismissed.

6. In support of the plaintiffs' case, PW1 has been examined and Exs.A1 to A8 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B23 were 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 dismiss the plaintiffs' suit. Aggrieved over the same, the present second appeal has been laid.

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

" (i). Whether the Courts below are right in rejecting the documentary evidences in Exs.A1 to A4 which evidences recognizing the lawful possession by the plaintiffs: whether non mentioning of the details of the property while the trusteeship is admitted is fatal in accepting the documents and through the documents the possession of the suit properties?

(ii). Whether the Courts below are right in rejecting the documentary evidence on the ground that they are subsequent dated to the date of filing of the suit without adjudicating the bonafides of the claim of the plaintiffs?

(iii). Whether the Courts below are right in ignoring Ex.A5 whereby the

Devasthanam's property has been categorically recognised?"

9. The plaintiffs claim that the suit property belongs to Sri Dropathiammal Temple, Nangavalli. It is found that as determined by the Courts below, the dispute is about with reference to the vacant land in and around the abovesaid temple. Now, according to the plaintiffs, the abovesaid vacant land measuring about 11 cents had been used during the festival occasions and also for the other temple purposes and further, it is also pleaded that the vacant land had been leased out to the third parties including the Salem Co-operative Marketing Society Limited by the plaintiffs' father as well as the plaintiffs and accordingly, the rental income had been utilised for the administration of the temple and thus, it is contended that the vacant land in dispute is in the possession and enjoyment of the plaintiffs and the first defendant, without any authority, directed the plaintiffs to handover the same for the purpose of leasing out the same to the third parties and as the plaintiffs refused to accept the abovesaid request, according to the plaintiffs, the first defendant, without any authority, has attempted to interfere with their possession and enjoyment of the suit property as such by taking steps to lease out the same to the third parties and hence, it is stated that the plaintiffs had been necessitated to institute the suit for appropriate reliefs.

10. The first defendant has disputed the claim of the plaintiffs as regards the ownership of the suit property vesting with Sri Dropathiammal Temple as put forth in the plaint. According to the first defendant, the vacant land in dispute as such had been already vested with the first defendant Panchayat and accordingly, it is only the first defendant, who has been managing and controlling the vacant land by leasing out the same to the various parties and therefore, it is contended that the plaintiffs has never been in the possession and enjoyment of the vacant land in question and therefore, the suit laid by the plaintiffs is liable to be dismissed.

11. In support of their case, the plaintiffs have marked the letter dated 07.05.1991 exhibited as Ex.A1 alleged to have been sent by the Salem Co-operative Marketing Society Limited. However, as rightly determined by the Courts below, particularly, the first appellate Court, there is no reference about any rental agreement in the said letter between the plaintiffs' father and the Salem Co-operative Marketing Society Limited. Now, according to the plaintiffs, as avered in the plaint, their father had leased out the vacant land to the abovesaid Society from 1970 to 1979 and fetching the rental income. However, to establish the abovesaid tenancy arrangement, there is no lease deed as such produced by the plaintiffs. That apart, the plaintiffs have not made clear as to

what is need for the Salem Co-operative Marketing Society Limited situated at Salem to take the suit property on lease as alleged in the plaint. As rightly found by the first appellate Court, there is no plea as to for what purpose the abovesaid Society took the vacant land on lease and further, there is no clear averment or also the materials placed as to what is the actual extent of the land leased out to the society by giving the survey number, extent etc and the rent agreed to be paid and in such view of the matter, when there is no plea with reference to the same by the plaintiffs in their plaint, merely on the basis of Ex.A1, when it does not contain any description of the suit property as such alleged to have been rented out to the Society by giving the particulars of the same and merely on the footing that there is a reference about the direction to collect the rental amount of Rs.200/-, that by itself would not lead to the conclusion, as such, to hold that Ex.A1 letter pertains to the vacant land in question, particularly, as above discussed, when there is no mention about any particulars that the said document refers to the suit property as such. Apart from Ex.A1, there is no other material placed by the plaintiffs as to whether a lease arrangement as such had been in existence between the plaintiffs' temple and the abovesaid society from 1970 to 1979 as put forth by the plaintiffs. In such view of the matter, when the plea has been taken by the plaintiffs that the vacant land in dispute had been leased out to the abovesaid society from 1970 to 1979 by the plaintiffs' father and with reference to the same, other than Ex.A1,

there is no material forth coming and when Ex.A1 does not point out that it relates to the vacant land in dispute as such and also does not speak about any tenancy arrangement as such between the parties concerned in respect of the disputed land, as rightly determined by the Courts below, no safe reliance could be attached to Ex.A1 for holding that the vacant land in dispute had been in the possession and enjoyment of the plaintiffs as put forth by them.

12. The further case of the plaintiffs that after their father, it is they, who had been leased out the vacant land in question to various parties and fetching rental income. However, with reference to the abovesaid claim of the plaintiffs, there is no proof whatsoever placed by the plaintiffs. The plaintiffs have not averred as to who are the third party, who had been let on lease the vacant land and the period of lease, the rent fixed for their occupation etc., and with reference to the same, there is no plea made out by the plaintiffs other than vaguely stating that the vacant land had been leased out to the third parties for more than 10 years and sans any acceptable and reliable material pointing to the same, the abovesaid case of the plaintiffs cannot be accepted in any manner. That apart, the so-called lessees of the vacant land, who are said to be in the enjoyment of the same, had not been summoned and examined by the plaintiffs.

13. At the foremost, as rightly found by the Courts below, there is no proof placed by the plaintiffs as such to hold that the disputed property is owned by Sri Dropathiamman Temple. If really, the disputed land had been assigned to the temple, definitely, the documents pointing to the same would have obtained by the plaintiffs and placed before the Court for consideration. However, the plaintiffs had not taken any endeavour to establish that the suit property had been assigned to the plaintiffs' temple or the plaintiffs' temple had the ownership of the disputed land. Thus, it is found that no title deed as such either by way of a regular title deed or revenue document as such had been placed by the plaintiffs to hold that the temple has ownership in respect of the same. As above seen, the defendants have disputed the claim of title to the disputed property by the temple as put forth by the plaintiffs tooth and nail and on the other hand, the first defendant has pleaded that the vacant land in dispute had been vested with it. Despite the above defence projected by the first defendant, the plaintiffs had not endeavoured to seek the declaration of title to the disputed property for sustaining the suit. Thus, it is found that when the title itself is in dispute in respect of the disputed land in all aspects, the suit laid by the plaintiffs without seeking the declaration of title to the same and seeking only the relief of permanent injunction simpliciter is found to be not maintainable and on the abovesaid ground alone, it is found that the suit laid by the plaintiffs is liable to be dismissed.

14. That apart, the other documents projected by the plaintiffs would not in any manner be useful to sustain their case. The letter dated 05.05.1989 sent by HR & CE department has been marked as Ex.A2 and the said letter had been addressed to the Assistant Commissioner, Salem and when the said letter does not contain any particulars of the suit property and in such view of the matter, by way of the same, no interference as such could be gathered that the suit property is owned by the plaintiffs' temple or that the plaintiffs' temple is in the possession and enjoyment of the suit property. The Adangal extract dated 13.04.1989 has been marked as Ex.A3. The suit has been laid by the plaintiffs on 26.06.1989, it is thus found that just a few days prior to the institution of the suit, the Adangal extract Ex.A3 has been secured by the plaintiffs. On the face of it, Ex.A3 contains alterations, particularly, as regards the total extent available in the suit survey number, thereafter, there is a reference about 0.10.0 Hectares by mentioning about the Dropathiamman Temple adjacent to the same. However, when the Adangal extract depicts that the total extent available in the suit survey is 19.57.0 Hectares and that too with corrections, as rightly found by the Courts below, when there is no clear indication as to the possession and enjoyment of the other extent of lands and when there is no clear indication as to how the abovesaid adangal had come to be executed only for 0.10.0 Hectares in the name of the temple and when there is mention of 2A in the said entry and to the same, the plaintiffs have not

endeavoured to offer any explanation, accordingly, it is seen that on the mere entry of the same, particularly, without the description of the abovesaid property by giving out the boundaries etc., we cannot safely conclude that the disputed land as such is in the possession and enjoyment of the plaintiffs. If that be so, it does not stand to reason as to why the plaintiffs have not endeavoured to produce the adangal extracts for the other fasalis and if really, as claimed by the plaintiffs, the suit property had been in their possession and enjoyment on behalf of the plaintiffs' temple from the days of their ancestors, the adangal extracts of the relevant fasalis would have pointed out to the same and if that be so, the plaintiffs should have marked all the adangal extracts to sustain their case and on the other hand, they have chosen to mark only one adangal extract Ex.A3, which has come into existence a few days prior to the institution of the suit and when the abovesaid adanagl is found to be shrouded with mysteries as above discussed, on the basis of the same, we cannot safely conclude that the suit property is in the possession and enjoyment of the plaintiffs. The document marked as Ex.A4 is the complaint given to the police and the same would not be in any useful to sustain the plaintiffs' case and to uphold their claim of title, possession and enjoyment to the disputed land. Ex.A5 is the letter sent to the Thasildar seeking patta of the suit property in favour of the temple. It is thus found that by way of Ex.A5, patta, in respect of the suit property as such, had been not granted in favour of the plaintiffs' temple till the date

of filing of the suit and even thereafter, accordingly, it is seen that the only a requisition had been sent on behalf of the temple to give the patta in favour of the plaintiffs' temple. The said document Ex.A5 is found to have come into existence after the institution of the suit and such being the position, no reliance at all could be placed on the said document for upholding the plaintiffs' case. The other documents projected by the plaintiffs marked as Exs.A6 and A7 are also found to be after the institution of the abovesaid suit and therefore, the same would not in any manner serve the plaintiffs' case. A letter had been sent by the first defendant to the plaintiffs asserting its control over the suit property and directing the plaintiffs not to let out the property to others without the permission of the Panchayat. Thus, it is seen that it is only the Panchayat, who had been asserting their control over the disputed land and there is no plea projected by the plaintiffs as to whether they had sent any response to the abovesaid direction issued by the Panchayat marked as Ex.A8.

15. In the light of the above position, when the documents marked by the plaintiffs Exs.A1 to A8 do not in any manner show their entitlement to the suit property as pointing to their ownership or their possession and enjoyment in any manner, it is found that as rightly determined by the Courts below, the plaintiffs have miserably failed to establish their claim of title, possession and enjoyment of the suit

property and in such view of the matter, the Courts below had rightly declined the relief of permanent injunction sought for by the plaintiffs.

16. On the other hand, as rightly found and determined by the first appellate Court and on a perusal of the documents placed by the first respondent, it is found that the suit property had been vested with the Panchayat, which could be gathered from Ex.B1 and thereafter, it is found that it is only the Panchayat, who had been leasing out the same to others, which could be evidenced from the lease agreements marked as Exs.A2 to A4 as well as the rental receipts issued by the Panchayat to various parties marked as Exs.B5 to B23 and the abovesaid documents put together would go to show that, in toto, the suit property, particularly, the vacant site in dispute has been in the possession and enjoyment of the first defendant Panchayat and accordingly, it is only the Panchayat, who had been exercising its control and management over the same by leasing out the same to various parties and collecting the rental income. Accordingly, it is found that the first defendant is in the possession and enjoyment of the disputed land and such being the position, the plaintiffs' suit had been correctly non suited by the Courts below and no interference is called for with reference to the abovesaid determination of the Courts below.

17. In the light of the above discussions, in my considered opinion, no substantial question of law is found to be involved in this second appeal and the substantial questions of law formulated in this second appeal are answered against the plaintiffs and in favour of the first defendant.

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

Index : Yes / No
Internet : Yes / No
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06 .07.2018

To

1. The Subordinate Court, Mettur.
2. The District Munsiff Court, Mettur.
3. The Section Officer, V.R.Section, High Court, Madras.

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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.2083 of 2004**

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