

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 30.01.2018****PRONOUNCED ON : 15.02.2018****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.230 of 2003**

R.Govindarajan ... Appellant

Vs.

1. The Church of South India,
Repd by its Former President
B.Mutlur, Chidambaram Taluk,
Cuddalore District.

2. Karunakaran Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 09.04.2002 passed in A.S.No.22 of 2001 on the file of the Subordinate Court, Chidambaram, confirming the judgment and decree dated 31.10.2000 passed in O.S.No.18 of 1996 on the file of the District Munsif cum Judicial Magistrate Court, Paragipettai.

For Appellant : Mr.V.Raghavachari

For Respondent : Mrs.T.Jayalakshmi
No.1 for M/s.Paul & PaulFor Respondent : given up
No.2

JUDGMENT

This second appeal is directed against the Judgment and decree dated 09.04.2002 passed in A.S.No.22 of 2001 on the file of the Subordinate Court, Chidambaram, confirming the judgment and decree dated 31.10.2000 passed in O.S.No.18 of 1996 on the file of the District Munsif cum Judicial Magistrate Court, Paragipettai.

2. Parties are referred to as per their rankings in the trial Court.
3. Suit for declaration, recovery of possession and mandatory injunction.
4. The case of the plaintiff, in brief, is that the suit property originally belonged to Viswanatha Pillai and he was in possession and enjoyment of the same in his own right and there was an old and partially dilapidated choultry in the said property, which was built by one Natesam Pillai and pilgrims and other public passing through that way used to come and stay and take rest and subsequently, the choultry was not made use of due to other transport facilities and the choultry, which was in existence, was being managed by Viswanatham

Pillai and the suit property consisting both the choultry and the land, the land was used for cultivation and casuarina crop used to be raised in the suit property. The first plaintiff purchased the suit property from Viswanatha Pillai on 24.03.1962 and obtained possession of the same and continued to enjoy the suit property and the old choultry, which was in dilapidated condition, fell down completely a year ago and the suit property became a vacant site practically and the plaintiff was residing permanently at Portonovo, which is about six miles away from the suit property and due to ill health and old age was unable to personally go and attend the suit property and the defendants, who have no manner of right, title and interest in the suit property, trespassed into the suit property and without the consent of the plaintiff, put up a construction and proposed to start a Christian Missionary Church in the suit property and the above said action is illegal and high handed and the defendants contended that they had purchased the suit property and have title to the same, thereby denying the title of the plaintiff in respect of the suit property. The defendants began to speed up the construction work, when the plaintiff questioned the same and hence, the defendants are liable to remove the illegal construction put up by them in the suit property and hand over the possession of the suit property to the plaintiff. Pending

the suit, the first plaintiff died and the second plaintiff, who is the son of the first plaintiff, has been impleaded. The case of the defendants that the suit property is a government poromboke property is false and even assuming for the sake of arguments that the suit property is a government poromboke property, on account of long and continuous possession of the plaintiff and his predecessors in interest for several years, they have acquired possessory title to the suit property, which is heritable and alienable and the said possessory right has to be declared and hence, the suit for appropriate reliefs.

5. The case of the defendants 1 and 4, in brief, is that the suit is not maintainable either in law or on facts. The suit property never belonged to Viswanatha Pillai as claimed in the plaint and the further case of the plaintiff that the Choultry put up in the suit property was raised by Natasan Pillam and the same was managed by Viswanatha Pillai are all false and incorrect. The suit property is not a cultivable land as claimed in the plaint and it is false to state that casuarina crop has been raised in the suit property, the plaintiff never obtained possession of the suit property at any point of time and the defendants never trespassed into the suit property as projected in the plaint. Considering the Christian Community living in the village, the chairman

of Cuddalore pastorate decided to locate a church in the suit property and for the said purpose, a thatched shed was put up in the suit property so that the people belonging to Christian community could assemble and worship and the shed was erected in 1980 and since then, people are performing their worship without any disturbance and in fact, Viswanatha Pillai offered to sell the suit property and accordingly, the Cuddalore pastorate unit directed to examine the title of Viswanatha Pillai and purchase it, if necessary and however, Viswanatha Pillai could not convince his title to the suit property as such and accordingly, the defendants understood that he did not possess marketable title and the suit property on verification is found to be classified as Chatrum Poromboke and the defendants have occupied an extent of 5 cents in the suit property and the Cuddore pastorate proposed to locate a primary health unit and also run a Nursery School in the suit property and accordingly, had written to the Collector of South Arcot requesting him to assign 90 cents of lands for the above said purpose and the same is now under the attention of the Government and the suit property is an unoccupied 'Natham Poromboke' and the plaintiff has no title to the suit property and hence, the suit is liable to be dismissed.

6. In the additional written statement, the defendants 1 & 4 have pleaded that the suit property was once a Trust property and as per the pleadings put forth by the plaintiff, the suit property was used as Rest House and one Viswanatha Pillai was managing the Choultry and hence, the alienation of the Trust property is void and without the sanction of the commissioner for Hindu Religious and Charitable Endowments Board, the alienation effected is a nullity and according to the government records, the suit property is only a Government poromboke property and there is no valid document to confer title on Viswanatha pillai in respect of the suit property and the government is a necessary party and the suit is bad for non-joinder of the government and Viswanatha pillai and his predecessor in title had no possession of the suit property at any point of time and hence, the plaintiff cannot claim possessory title in respect of the suit property as put forth in the plaint and hence, the suit is liable to be dismissed.

7. In the reply statement, the second plaintiff has pleaded that it is false to state that the suit property is a Trust property and the same could not be alienated and that, the sanction of the Commissioner of Hindu Religious and Charitable Endowments Board is necessary for the alienation. It is false to state that the suit property is a government

Poromboke and Viswanatha Pillai and his predecessor in interest had not been in possession of the suit property at any point of time and the defendants have no locus standi to question the alienation of the suit property by Viswanatha Pillai in favour of the first plaintiff and hence, the suit is liable to be decreed as prayed for.

8. In support of the plaintiff's case, Pws 1 to 3 were examined and Exs.A1 to A5 were marked. On the side of the defendants, Dws 1 to 3 were examined and no documentary evidence was marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, it is found that originally the suit was decreed in favour of the plaintiff as prayed for. Aggrieved over the same, the first appeal in A.S.No.22 of 2001 has been preferred before the Sub Court, Chidambaram and in the above said first appeal, the defendants projected two documents in support of their version and accordingly, it is seen that the said documents had come to be received and marked as Exs.B1 & 2 and pursuant thereof, the first appellate Court had remitted the matter back to the trial for fresh trial. Following the same, the trial Court, on the basis of the materials placed in the matter and the submissions

made, was pleased to dismiss the suit laid by the plaintiff and the first appellate Court also concurred with the judgment and decree of the trial Court. Impugning the same, the present second appeal has been laid.

10. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

" Whether the courts below erred in law and misdirected themselves in holding that the plaintiffs title has not been established, despite the admission by D.W.S 1 and 2?"

11. The suit property is described as Ayan Punjai R.S.No.74/1 1.93 cents in Chidambaram Taluk, Parankipettai Sub Registry in Manajakuzhi village. The boundaries, within which the above said property is located, have not been disclosed in the plaint schedule. Now, according to the plaintiff, the above said property originally belonged to Viswanatha Pillai and that, he had sold the same in favour of the first plaintiff by way of a registered sale deed dated 24.03.1962, which document has come to be marked as Ex.A1. The plaintiff's case is that Choultry was located in the suit property, where in, the

travellers passing that way used to take rest in the choultry and it is their further case that Viswanathan Pillai was maintaining the choultry and the remaining portion was used for cultivation and accordingly, it is the case of the plaintiff that Viswanatha Pillai had alienated the suit property to the first plaintiff by way of Ex.A1. It is further pleaded by the plaintiff that the defendants, without any authority, illegally trespassed into the suit property and put up a thatched shed for worship amongst the members of the Christian community, to which, they are not entitled to and despite the protests made by the plaintiff, the defendants continue their construction and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

12. Per contra, it is the case of the contesting defendants that neither the plaintiffs nor their predecessor in interest have any valid title to the suit property as put forth in the plaint and hence, according to them, Viswanatha Pillai has no valid right in respect of the suit property to convey a valid title in respect of the same to the first plaintiff by way of Ex.A1 and further, according to them, neither Viswathan Pillai nor his predecessor in interest have a valid title to the suit property and hence, Ex.A1 would not confer any valid title to the

suit property in favour of the first plaintiff as projected in the plaint and it is further pleaded on the part of the defendants that at no point of time, either the plaintiffs or their predecessors in title had been in possession and enjoyment of the suit property as claimed in the plaint and according to the defendants, the suit property is a government poromboke property and accordingly, in the interest of the members of the Christian community, the defendants have put up a small thatched shed for the purpose of enabling the members of the Christian community to assemble and worship in the place and accordingly, they had been in the occupation of an extent of 5 cents in the suit property and proposed to start a primary health unit and Nursery School and for which, necessary requisition has been made to the Government and therefore, it is contended by the defendants that the plaintiffs are not entitled to obtain the reliefs sought for in the plaint.

13. The plaintiffs have at the first instance claimed title to the suit property on the basis of Ex.A1. However, as rightly determined by the Courts below, the plaintiffs have not placed any acceptable and reliable material to hold that the predecessor in interest of Viswanatha Pillai had a valid title to the suit property and it has not been disclosed in the plaint as to how Natasen Pillai was entitled to the suit property

as such. In the document marked as Ex.A1 i.e. the sale deed dated 24.03.1962, a reference is made that the suit property belonged to Natesan Pillai by way of a document No.----- of 1952. That apart, the other particulars of the said document, particularly, the document number itself has not been mentioned and the nature of the said document has also not been made clear. Further, neither the original of the said document nor the certified copy of the same has been placed to evidence that Natasen Pillai had a valid title to the suit property so as to enable Viswanatha Pillai to acquire the same either by inheritance or by way of the other legal conveyance. It has not been disclosed as to on what basis Viswanatha Pillai had acquired title to the suit property from the so called Natasen Pillai and the plaint does not disclose whether Viswanatha Pilla had acquired the property from Natasan Pillan by way of inheritance or by other legal conveyance. When there is no material on record to establish that Natasan Pillai himself had a valid title to the suit property as such, the further case of the plaintiff that Viswanatha Pillai had acquired the same from Natasan Pillai as such cannot be readily countenanced. That apart, there is no material placed on behalf of the plaintiff to evidence that either Natasan Pillai or Viswanatha Pilla had at any point of time enjoyed the suit property as projected in the plaint. Now,

according to the plaintiff, there was a choultry located in the suit property, wherein, the travellers passing that way used to take rest in the choultry and it is further stated that Viswanathan Pillai was maintaining the choultry and the remaining portion was used for cultivation. However, with reference to the above claim of the possession and enjoyment of the suit property, either by Natasan Pillai or by Viswanatha Pillai, absolutely there is no material placed by the plaintiff and in such view of the matter, in particular, when the defendants have thrown a challenge to the claim of title to the suit property by the plaintiff as put forth in the plaint, particularly, when they had challenged the title of the plaintiff's predecessors in interest, at least some acceptable and reliable documents should have been placed by the plaintiff to show that their predecessors in title had a valid title to the suit property and that, the suit property had been in their possession and enjoyment. However, as rightly determined by the Courts below, not a scrap of paper has been placed to prove that either Natsan pillai or Viswanatha Pillai had a valid title to the suit property and that, the same had been in their possession and enjoyment. In such view of the matter, when the entitlement of Viswanatha Pillai to the suit property itself has not been established by the plaintiff in the manner known to law, their case that Viswanathan

Pillai had alienated the suit property in favour of the first plaintiff also falls to the ground. It is thus found that accordingly, the plaintiffs are unable to place any material to show that the first plaintiff had been in possession and enjoyment of the suit property as the full owner thereof pursuant to Ex.A1. No material as such has been placed by the plaintiff to determine that the first plaintiff had been enjoying the suit property as the full owner thereof as projected in the plaint and in such view of the matter, the Courts below had rightly negated the reliefs sought for by the plaintiff.

14. The kist receipts marked as Exs.A3 & 4 are projected as if the plaintiffs had been in possession and enjoyment of the suit property. As rightly found by the Courts below, the Patta reflected in the above said documents is not shown to be related to the suit property as such and accordingly, the Courts below did not place reliance upon the above said kist receipts for concluding that the suit property had been in possession and enjoyment of the plaintiffs as pleaded. Neither the patta nor the chitta extract in respect of the suit property in the name of the plaintiffs has been placed. Such being the position, merely from Exs.A3 & 4, we cannot hold that the same is pertaining to the suit property sans material pointing to the same.

15. In the light of the above position, the further case of the plaintiff that the second plaintiff had acquired title to the suit property by way of the Will executed by the first plaintiff also cannot be accepted for upholding the title of the second plaintiff in respect of the suit property. Accordingly, it is found that in the absence of any material to hold that either the plaintiffs or their predecessors in interest had a valid title to the suit property and that, the suit property had been in their possession and enjoyment as projected, the Courts below had rightly rejected the claim of the proprietary rights to the suit property claimed by the plaintiffs.

16. It is the specific case of the defendants that the suit property is a Government Poromboke land and according to the defendants, they had put up a thatched shed therein for the purpose of enabling the Christian members to assemble and worship and therefore, there is no question of the defendants trespassing into the suit property as claimed in the plaint. The resettlement extract marked as Ex.B1 would go to show that the suit property has been classified as Chatrum Poromboke. Accordingly, it is found that the plaintiffs, unable to sustain their claim of proprietary right in respect of the suit property, proceeded to seek the relief of declaration only as regards

the possessory title to the suit property and however, the same is also challenged by the defendants. As above pointed out, the plaintiffs have miserably failed to establish that either the plaintiffs or their predecessors in interest had been in possession and enjoyment of the suit property as claimed in the plaint. Exs.A3 & 4 are found to be not related to the suit property and hence, would not serve any purpose to uphold the plea of possessory title of the plaintiffs to the suit property. The plaintiffs have projected Ex.A5 Adangal extract in support of their case, however, as rightly found by the Courts below, Ex.A5, as far as the suit property is concerned, does not stand in the name of the plaintiffs or their predecessors in title and on the other hand, it is found to be in the possession of the third parties viz., Sadaiyandi, Fathima and Viswalingam and the suit property has been described as Chatrum in the said document and in such view of the matter, when Ex.A5 does not stand in the name of the plaintiffs and appears to be in the name of the third parties and when there is no material to show that the above said third parties are in the possession and enjoyment of the suit property on behalf of the plaintiffs and sans plea with reference to the same in the plaint and accordingly, the Courts below have rightly not placed reliance upon Ex.A5 to uphold the claim of the possessory title of the plaintiffs in respect of the suit property.

17. As rightly determined by the Courts below, even assuming for the sake of arguments that the Chatrum was in existence at one point of time in the suit property or for the matter, the defendants had subsequently trespassed into the suit property and put up a thatched shed for the purpose of performing worship as projected in the written statement, the plaintiffs having miserably failed to establish that they have proprietary title to the suit property as such and also miserably failed to establish that they had at least the possessory title in respect of the suit property and when the documents placed on their behalf are found to be not serving in any manner to advance their case, as rightly determined by the Courts below, the reliefs sought for by the plaintiffs cannot be granted in favour of the plaintiffs.

18. During the course of arguments, the counsel for the plaintiffs pointed out certain portions of the evidence adduced by the defendants as well as the Village Administrative Officer examined as DW3 and contended that the existence of Chatrum in the suit property at one point of time had been admitted. However, that would not ipso facto lead to the conclusion that the plaintiffs or their predecessors in title had title to the suit property or had possessory title to the suit

property as such, when in particular, as above discussed, there is no material with reference to the same to sustain the above case of the plaintiffs. Therefore, the abovesaid piece of evidence at the most would only be useful to hold that at one point of time the Chatrum was in existence in the suit property. However, when the title to the suit property or the possessory title in respect of the suit property has been not established by the plaintiffs by placing any acceptable and reliable materials, particularly, when the plaintiffs have miserably failed to establish that their predecessors in title had a valid title to convey the same to them as per law, it is found that the plaintiffs cannot be granted the reliefs sought for.

19. As rightly determined by the Courts below, the evidence of PW3 claiming that he and his father had been in possession and enjoyment of the suit property by cultivating the same for more than 50 years also would be of no use to sustain the plaintiffs' case, when in particular there is no material to uphold the above case of PW3 and when it is not the case of the plaintiffs in the plaint that PW3 and his father had been engaged in cultivation in the suit property. It is thus found that the evidence of PW3 would be of no help to advance the case of the plaintiffs.

20. In the light of the above discussions, it is found that so called admissions projected on the part of DWs1 & 2 by itself would not in any manner be of help to uphold either the plaintiffs proprietary right to the suit property or their claim of possessory title to the suit property and accordingly, it is found that the Courts below had properly appreciated the materials placed on record, both oral and documentary, in the right perspective and held that the plaintiffs have miserably failed to establish their case in toto and in such view of the matter, the determination of the matter by the Courts below against the plaintiffs do not warrant any interference by this Court. The substantial question of law formulated in the second appeal is accordingly, answered against the plaintiffs and in favour of the defendants.

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

15.02.2018

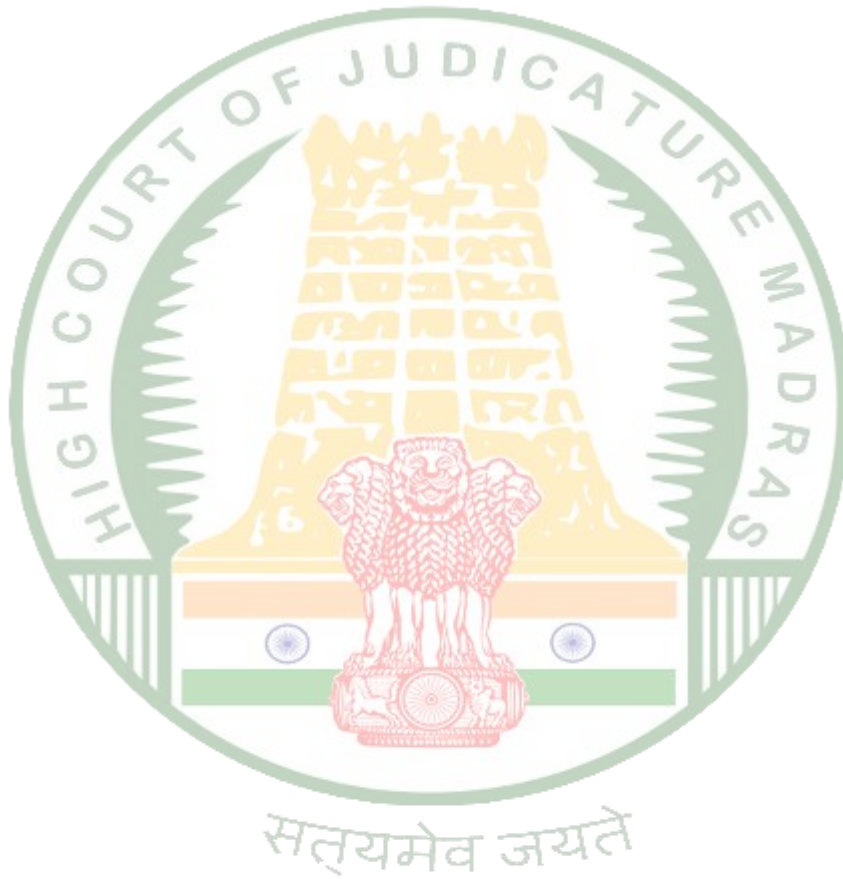
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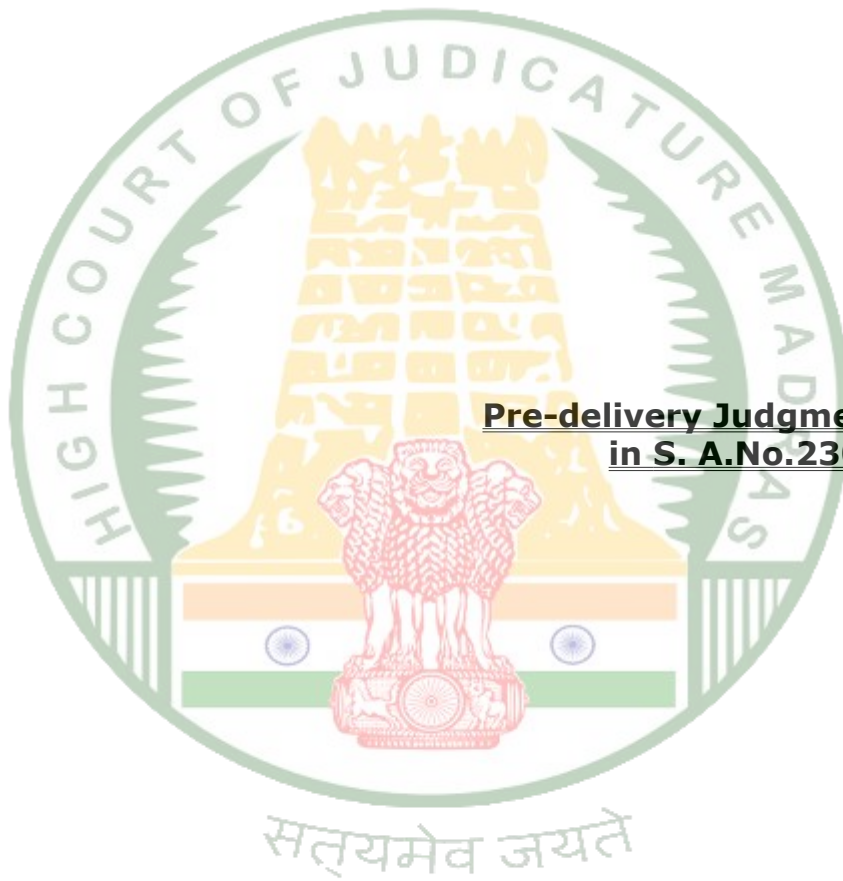
To

1. The Subordinate Court, Chidambaram.
2. The District Munsif cum Judicial Magistrate Court, Paragipettai.



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T.RAVINDRAN,J.
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Pre-delivery Judgment made
in S. A.No.230 of 2003

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