



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2018

PRONOUNCED ON : 03.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.29 of 2004

1. Subbiyan
2. Kumarasamy

..Appellants/Plaintiffs

Vs.

1. The Commissioner,
Tamilnadu Hindu Religious &
Charitable Endowment Department,
Chennai -1.

2. The Deputy Commissioner,
Tamilnadu Hindu Religious &
Charitable Endowment Department,
Erode, Periyar District

....3rd & 4th Respondents/
Defendants 1 & 2

3. The Executive Officer,
Arulmigu Vaidhyanathaswaraswami
Temple, Vellakkovil,
Periyar District.

... 4th Respondents/
3rd Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Subordinate Judge Court, Dharapuram made in A.S.No.39/94 dated 14.02.1995 against the judgment and decree of the District Munsif Court, Kangayam, made in O.S. No.106/93 dated 29.11.1993.

For Appellants : Mr.S.Saravanan
for M/s.V.P.Senguttuvel

For R1 and R2 : Mrs.A.Madhumathi,AGP (CS)

For R3 : Set ex-parte
vide order dated 13.03.2018



JUDGMENT

This second appeal is directed against the judgment and decree dated 14.02.1995 passed in dated A.S.No.39/94, on the file of the Subordinate Court, Dharapuram, reversing the judgment and decree dated 29.11.1993 passed in O.S. No.106/93 on the file of the District Munsif Court, Kangayam.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiffs, in brief, is that the total property of 9.93 acres comprised in S.No.22 was the subject matter of the partition deed dated 14.03.47 between the plaintiffs' father Ramasamy gounder and his brother Kumarasamy gounder, whereunder the parties had divided the specific extent of 4.97 acres and allotted the common share in an extent of 2.48 acres of the abovesaid total extent and thereupon, the sharers had been in possession and enjoyment of their allotted shares to the exclusion of one and all by paying kist etc., and in respect of the 4.97 acres, patta had been granted in favour of the plaintiffs under the Inam Abolition Act and however, the authorities concerned had failed to take into consideration the extent of 2.48 acres of land, of which, the plaintiffs had been conferred right in the abovestated partition deed and instead of granting the patta in respect of the above said extent, erroneously granted the patta in favour of the third defendant and further inasmuch as an extent of 2.48 acres in the abovesaid survey number belonged to Pazhanisamy gounder, son of Chinnasamy gounder and accordingly, the parties entered into the partition deed dated 06.04.48 and in the said partition, the share allotted has been wrongly mentioned as 2.16 acres instead of 2.48 acres and the plaintiffs are in possession and enjoyment of the suit property right from 1947 onwards and thereby, prescribed title to the same by way of adverse possession and the erroneous grant of patta in respect of the third defendant temple is against law and the plaintiff had not been issued any notice in respect of the proceedings initiated under the Inam Abolition Act and therefore, the third defendant cannot lay any claim of title to the suit property as such and on the other hand, the third defendant endeavoured to bring the suit property for sale and as the suit property is in the possession and enjoyment of the plaintiffs and the third defendant having not obtained the possession of the suit property based upon the patta erroneously granted in their favour, the right, if at all, if any of the third defendant's temple, in respect of the suit property has got extinguished by lapse of time and hence, according to the plaintiffs, they had been necessitated to lay



the suit for appropriate reliefs.

5. The case of the third defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts and the partition projected by the plaintiffs is nowhere connected with the subject matter of the suit and only after due enquiry, the patta had been granted in favour of the third defendant's temple under the Inam Abolition Act and the plaintiffs have not preferred any appeal against the determination of the authorities under the Inam Abolition Act and the plaintiffs' ancestors accepted the patta granted in favour of the temple, based upon the oral lease arrangement remained in the possession and enjoyment of the suit property under the temple and despite the same, they have failed to pay the lease to the temple and accordingly, the third defendant took steps to bring the suit property for auction and hence, the plaintiffs are not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

6. In support of the plaintiffs case PWs 1 and 2 had been examined, Exs.A1 to A31 were marked and on the side of the third defendant, DW1 was examined, Ex.B1 was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. In the first appellate Court, it is found that two additional documents have come to be marked on behalf of the third defendant as Exs. B2 and B3. The first appellate Court, on an appreciation of the materials placed on record and the submissions made, was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the third defendant, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has been laid.

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

"Whether the plaintiff's claim for adverse possession based on documents traceable to the year 1959 would get disrupted by the issue of patta in favour of the defendants in the year 1986?"

9. Though the plaintiffs claim title to the suit property by way of the partition deeds dated 14.3.47 and 06.4.48, even as per their case, under the Inam Abolition Act, the authorities concerned had granted them patta only in respect of the 4.97 acres in the suit survey number. It is the case of the



plaintiffs that the patta had been granted in respect of the abovesaid extent by the authorities concerned under the Inam Abolition Act after due enquiry. It is thus found that the plaintiffs are put on notice about the proceedings initiated by the authorities concerned under the Inam Abolition Act and accordingly based on the materials placed on record by the respective parties and as the plaintiffs were able to establish a valid claim only to the extent of 4.97 acres in the suit survey number, the patta had been granted only with reference to the abovesaid extent in favour of the plaintiffs and accordingly the authorities concerned had granted the patta in respect of the suit property in favour of the third defendant's temple.

10. It is further pleaded by the plaintiffs that the suit property was also the subject matter of the partition deed dated 6.4.48 and it is accordingly pleaded that the suit property wrongly described as measuring 2.16 instead of 2.48 acres and thus, according to the plaintiffs, the suit property had been in their possession and enjoyment right from 1947 onwards and enjoyed by them openly, continuously and thus, according to them, though the patta had been granted under the Inam Abolition Act in respect of the suit property in favour of the third defendant temple, the temple having not obtained the possession and enjoyment of the suit property, pursuant to the same, has lost its title by extinguishment of time and thus, it is only the plaintiffs, who have prescribed title to the suit property and accordingly, enjoying the same and as the third defendant attempted to auction the suit property, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

11. The third defendant has taken a stand that when the plaintiffs have themselves admitted that it is only the third defendant who had been granted patta by the authorities concerned under the Inam Abolition Act and when the plaintiffs are also aware of the proceedings initiated by the authorities concerned under the Inam Abolition Act, it is only the third defendant, who has title to the suit property and further, according to the third defendant, the predecessors in interest agreed to remain as the lessees of the suit property under the temple and as thereafter, the lease amount had not been paid, according to the third defendant, it has taken steps to bring the suit property for auction and hence, it is contended that the plaintiffs have no cause of action to lay the suit and the suit is liable to be dismissed.

12. Considering the pleadings set forth by the respective parties, particularly, the plaintiffs, it is found that the plaintiffs seek the reliefs sought for only on the basis of the plea of adverse possession. Even as per the case of the



WEB COPY

plaintiffs, though they would claim that the suit property has been the subject matter of the partition deeds dated 14.3.47 and 6.4.48, according to them, the authorities concerned under the Inam Abolition Act, after due enquiry, had granted patta to them only in respect of the extent of 4.97 acres in the suit survey number. It is however pleaded by them that though they had been granted and allotted the suit property by way of the partition deeds abovesated, the authorities concerned failed to take into consideration the same and erroneously granted the patta in favour of the third defendant temple. Such being the pleas set out in the plaint, it is found that as rightly determined by the first appellate court, the plaintiffs are put on notice about the proceedings initiated by the authorities concerned under the Inam Abolition Act and in such view of the matter, the plaintiffs cannot be allowed to argue that no notice had been given to them before issuing the patta in respect of the suit property in favour of the third defendant temple. On the other hand, their pleas by itself would go to reveal that they were aware of the proceedings initiated by the authorities concerned under the Inam Abolition Act and based on the materials placed by them, it is found that they had been granted patta only in respect of the extent of 4.97 acres. Such being the position, it is found that the plaintiffs cannot be allowed to plead that, as such, the suit property had been allotted to them by way of the above said partition deeds.

13. The plaintiffs also being aware of the position that they had not been allotted the suit property by way of the abovesaid partition deeds had endeavoured to claim title to the suit property not on the basis of the abovesaid partition deed but only on the pleas of adverse possession. According to the plaintiffs, though the patta had been granted under the Inam Abolition Act in favour of the third temple, right from 1959 onwards or even prior to the same i.e., 1947 onwards, it is only the plaintiffs, who had been in possession and enjoyment of the suit property openly, continuously and uninterruptedly to the knowledge of one and all including the third defendant and in such view of the matter, according to the plaintiffs, they had prescribed title to the suit property by way of adverse possession and hence, the plaintiffs had been necessitated to lay the suit for appropriate reliefs.

14. From the materials placed on record, particularly, Exs.B2 and B3, it is found that PW2's father Pazhanisamy gounder having putforth a claim in respect of the 2.51 acres in the suit survey number, accordingly, it is seen that the authorities concerned had granted patta in his favour by way of Ex.B3 proceedings and accordingly as no claim has been made in respect of the remaining extent, granted patta in favour of the third defendant temple and it is found that as above seen the



plaintiffs being aware of the proceedings initiated by the authorities concerned under the Inam Abolition Act, cannot now complain that the patta had been erroneously granted in favour of the third defendant temple without the issuance of any notice to them. The said plea of the plaintiffs has been rightly negatived by the first appellate Court.

15. As above seen, the only plea putforth by the plaintiffs for claiming title to the suit property is by way of adverse possession. However, when the plea of adverse possession for seeking the declaration of title cannot be the basis for laying the suit and the plea of adverse possession can only be used as a shield and not as a sword, as rightly contended, the suit laid by the plaintiffs seeking the declaration of title to the suit property basically on the plea of adverse possession is found to be not maintainable in the light of the decision of the Apex Court reported in (2014)1 SCC 669 (Gurdwara sahib Vs. Gram Panchayat Villae Sirthala and another).

16. In addition to that, though it is found that the third defendant temple has not placed any document for possession and enjoyment of the suit property, as such, the plaintiffs having taken the plea of title to the suit property only on the basis of adverse possession, thereby, it is found that the plaintiffs have impliedly admitted the title of the third defendant in respect of the suit property. In such view of the matter, even assuming for the sake of arguments, the plaintiffs are entitled to seek the declaration of title to the suit property by way of adverse possession, on the basis of the materials placed by the plaintiffs by way of certain kist receipts alone, it cannot be construed that the plaintiffs have prescribed title to the suit property as against the third defendant temple, by way of adverse possession, on account of open, continuous, long and uninterrupted enjoyment of the same to the knowledge of the third defendant temple. The plaintiffs have not established that they are in possession and enjoyment of the suit property by asserting title on them and by exhibiting animus attitude and intention against the third defendant temple in the enjoyment of the suit property openly, continuously and uninterrupted beyond the statutory period and the materials placed do not lend support to the above pleas and when it is further noted that the suit property being in the enjoyment and control of the third defendant temple, accordingly, it is found that the third defendant had chosen to auction the same, considering the fact that the plaintiffs have failed to pay the lease amount in respect of the suit property to the third defendant temple. When according to the third defendant, the plaintiffs predecessors in title are allowed to remain in the suit property as the lessees and when the documents projected by the plaintiffs do not go to disclose that they have been enjoying



the suit property on their own by asserting title on themselves, it is found that the plaintiffs cannot be declared to have prescribed title to the suit property by way of adverse possession. As rightly found by the first appellate Court, merely on the failure of the third defendant temple to produce the documents of possession and enjoyment of the suit property, as such, that by itself would not lead to the conclusion that the plaintiffs have prescribed title to the suit property by way of adverse possession and accordingly it is found that plaintiffs have miserably failed to establish their plea of prescriptive title to the suit property as per the principles of law governing the proof of adverse possession and in such view of the matter, the substantial questions of law formulated in the second appeal is answered against the plaintiffs.

17. The principles of law outlined in the decisions reported in 1998-3-LW 559 (Ramalingam and two others Vs. The Idol of Sri Thayumanasamy at Sri Thayumanasamy Devasthanam, Arasaloor, Musiri Taluk-by its Executive officer), 2010 Writ LR 1070 (Raju spinning mills P Ltd. by its Director Vs. The Tahsildar, Srivilliputhur, Virudhunagar District and three others), 2010 (4) CTC 161 (K.Saraswathy Vs. The State of Tamil Nadu, rep. by the Collector of Chennai and five others), 2004 (4) CTC 596 (Kanagambaram Ammal Vs. Kakammal and others), 2004 (5) CTC 108 (R.Sulochana Devi Vs. D.M.Sujatha and others) and 2001-3-LW 182 (B.Parvathy Vs. Ramakrishna Mission rep. by duly authorised power agent Swami Amirthanantha and four others), relied upon by the plaintiffs' counsel are taken into consideration and followed as applicable to the case at hand.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sli

To

1. The Subordinate Court,
Dharapuram.
2. The District Munsif Court,
Kangayam.



3. The Commissioner,
Tamilnadu Hindu Religious &
Charitable Endowment Department,
Chennai -1.

WEB COPY

4. The Deputy Commissioner,
Tamilnadu Hindu Religious &
Charitable Endowment Department,
Erode, Periyar District.

5. The Executive Officer,
Arulmigu Vaidhyanathaswarasami Temple,
Vellakkovil, Periyar District.

6. The Section Officer,
VR Section, High Court,
Chennai. (2 copies)

+1cc to Mr.S.Saravanan, Advocate, S.R.No.24449

+1cc to the Government Pleader, S.R.No.24546

S.A.No.29 of 2004

CNR(CO)
CS/08/05/18