

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.04.2018  
PRONOUNCED ON : 04.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.595 of 2004

Veerayee

..Appellant/II Defendant

Vs.

1. Sri Vazha Angalamman Temple,  
Rep. by its Managing Trustee,  
L.Arumugam,  
S/o. Lakshmana, Bakthar,  
119, Old street, K.Pudur,  
Edappadi Post, Sankari Taluk. ..1st Respondent/Plaintiff

2. Elango ..II Respondents/1st Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Subordinate Judge's Court at Sankari dated 28.01.2002 in A.S.No.54/1997 partly reversing the judgment and decree of the District Munsif Court at Sankari dated 03.07.1997 in O.S. No.165/1990.

For Appellant : Mrs. Mythili Suresh  
for M/s. Sarvabhauman Associates

For Respondents: Mr.N.Sathyamoorthy for R1  
R2 Exparte as per order  
dated 24.4.2018

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.01.2002, passed in A.S.No.54/1997, on the file of the Subordinate Court, Sankari, partly reversing the judgment and decree dated 03.07.1997, passed in O.S. No.165/1990, on the file of the District Munsif Court, Sankari.

2. The second appeal has been admitted on the following substantial question of law:

"When the second defendant is not a party to Ex.A7 and when he does not claim any right in the suit property under the 1<sup>st</sup> defendant, can Ex.A7, to which the plaintiff and the 1<sup>st</sup> defendant alone are parties,

confer any legal right of ownership with the plaintiff?"

3. The plaintiff temple claiming that the suit property belongs to it and that the suit property was occupied by the first defendant's father and the second defendant's husband Muthu as a tenant under the plaintiff's temple and running a tea shop therein and after his demise, the first defendant has been continuing as the tenant in the suit property under the plaintiff's temple and however, the first defendant having failed to pay the rent in respect of the suit property from February 1986 and accordingly, the plaintiff demanded the first defendant to vacate the suit property and the first defendant agreeing to the same, signed in the minutes book of the plaintiff, promising to vacate the suit property and inasmuch as he had refused to vacate the suit property, according to the plaintiff, they had sent a notice to the first defendant demanding the possession and to the same, it is stated that the first defendant sent a reply repudiating the case of the plaintiff claiming that the suit property does not belong to the plaintiff and that the second defendant is in the possession and enjoyment of the suit property and further, the second defendant also asserted her title, possession and enjoyment of the suit property by denying the plaintiff's claim of title to the suit property, hence, according to the plaintiff, it has been necessitated to lay the suit for appropriate reliefs.

4. The defendants have set up a case disputing the claim of title to the suit property by the temple and further, also disputed the claim of the plaintiff's temple that the first defendant's father and the second defendant's husband Muthu occupied the suit property as the tenant of the plaintiff's temple and thereafter, the first defendant has occupied the same as the tenant and also disputed the undertaking alleged to have been given by the first defendant in favour of the plaintiff's temple to vacate the suit property by signing in the minutes book and on the other hand, it stated that the second defendant has been in the possession and enjoyment of the suit property from the days of her predecessors in title by encroaching into suit property and enjoying the same independently without any reference to the plaintiff whatsoever and further, according to the defendants, at no point of time they had paid rent in respect of the suit property and hence, according to the defendant, the plaintiff is not entitled to obtain the reliefs sought for. Further both the defendants 1 and 2 have disputed the alleged undertaking given by the first defendant in favour of the plaintiff's temple as regards the handing over of the possession of the suit property to the plaintiff's temple and further, according to the second defendant, even if any undertaking is given by the first defendant, the same is not binding upon her and hence, it is stated that the suit should be dismissed.

5. In support of the plaintiff's case PWs 1 to 3 were examined, Exs.A1 to A16 were marked. On the side of the defendants, DWs 1 to 4 were examined, Exs.B1 to B15 were marked. Exs.C1 to C6 were also marked.

6. 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. On appeal, the first appellate Court was pleased to partly reverse the judgment and decree of the trial Court and thereby granted the relief in favour of the plaintiff in respect of the property situated in survey number 502/2 as prayed for and dismissed the plaintiff's lis in respect of the survey number 493 and accordingly, disposed of the appeal. Impugning the same, the present second appeal has been laid.

7. Inasmuch as the defendants have disputed the claim of title to the suit property by the plaintiff as projected, at the foremost, it is for the plaintiff to establish that it has title to the suit property as pleaded. However, as rightly determined by the trial Court, the plaintiff has failed to establish that it has got a valid title to the suit property as claimed. The suit property is described to be situated in survey number 502/02 measuring an extent of east west 30 feet, north south 20 feet with a thatched shed bearing door number 5A of a total extent of 0.16.5 hectares within the specific boundaries. Thus, it is found that, according to the plaintiff, the suit property is located in survey number 502/2 consisting of the abovesaid extent and measurements. As above seen, the defendants have disputed the claim of the plaintiff as regards the title to the suit property above described. The plaintiff mainly relies upon Exs.A3 to A6 for seeking the title to the suit property. However, as rightly found by the trial Court, out of the four receipts marked as Ex.A3 series, only one receipt dated 27.02.89 is found to be prior to the institution of the suit and the other receipts are found to have come into existence after the institution of the suit. In such view of the matter, the same cannot be the basis for upholding the plaintiff's claim of title to the suit property and even the kist receipt dated 27.02.89 by itself cannot be the sole factor for upholding the plaintiff's claim of title to the suit property. Accordingly, it is found that the trial Court has rightly disbelieved or not placed reliance upon Ex.A3 kist receipt for accepting the plaintiff's claim of title of the suit property.

8. Exs.A4 and A5 tax receipts and the property tax demand notice marked as Ex.A10 as well as the tax receipts marked as Ex.A9 series are all found to be issued in the name of Ongali amman temple. Thus, it is found that when the abovesaid documents pertain to Ongali amman temple, without any material or proof they cannot be stated to be issued in favour of the plaintiff's temple as such and accordingly, it is seen that no safe reliance could be placed upon the abovesaid documents for

upholding the plaintiff's claim of title to the suit property. Though it is stated that the plaintiff's temple as well as the Ongali amman temple are under the management of the community of Paruvadharaja kulam, when it is found that the abovesaid temples are managed by different executive officers and owned separate properties and in such view of the matter, the documents in the name of Ongali amman temple cannot be utilised for projecting as if the same relates to the suit property and as belonging to the plaintiff's temple. In this connection, reliance is placed upon Ex.A6 proceedings of the municipality. However, as rightly found by the trial Court, the said proceedings having emanated after the institution of the suit and further, the said proceedings not bearing the seal of the municipality and when the plaintiff is unable to throw a clear picture as to in what manner the said proceedings has come to be issued in favour of the plaintiff's temple and also the custody of the said document, as rightly determined by the trial Court, Ex.A6 cannot at all be relied upon for accepting the plaintiff's title to the suit property and accordingly, it is seen that there is no material as such placed by the plaintiff to prove the plaintiff's title to the suit property. That apart, as rightly determined by the trial Court, the plaintiff has not established that Ex.A6 proceedings has come to be issued after examining all the parties concerned, particularly, the representatives of the Ongali amman temple by giving the notice to them with reference to the said proceedings. In such view of the matter, merely from certain tax receipts projected by the plaintiff as abovestated, the plaintiff cannot be held to have title to the suit property as described in the plaint.

9. According to the plaintiff, Muthu has been occupying the suit property as a tenant for the past nine years and thus, it is found that, as per the case of the plaintiff, Muthu has been the tenant of the plaintiff's temple in respect of the suit property from 1981 onwards and according to the plaintiff's case, a thatched house located in the suit property has been rented to Muthu for running a tea shop. Such being the position, as rightly determined by the trial Court, the adangal extract marked as Ex.A8, on the face of it, when it is seen that, as per the said document, only during 1400 fasli the plaintiff is shown to have put up a superstructure in the suit property, it is found that the claim of the plaintiff that even during 1981 itself it has rented out the superstructure in favour of Muthu, as such, cannot be accepted and therefore, it is found that the superstructure said to have been in existence in 1981 would not have been in existence and also would not have been put up by the plaintiff and such being the position, it is seen that Ex.A8 adangal extract cannot be the basis for upholding the plaintiff's claim of title to the suit property.

10. As above seen, the suit property is described to be located in survey number 502/2. However, as per the

Commissioner's report and plan marked in the proceedings, the suit property is found to be located in two survey numbers i.e., both in 502/2 and 493 and it is found that the major portion of the suit property is located in survey number 493. Now, according to the defendants, the suit property as well as the properties adjacent thereto being the Government poramboke lands had been encroached by the defendants' predecessor in interest and accordingly, they had been enjoying the same by paying necessary charges in favour of the Government. When as seen from the Commissioner's report and plan, the suit property is found to be located in two survey numbers contrary to the claim of the plaintiff as projected in the plaint, it is found that inasmuch as the plaintiff has no title to the suit property as such, the plaintiff is unable to give a clear description of the suit property in the plaint and such being the position, accordingly, it is found that the plaintiff is unable to place any material worth acceptance to uphold that it has a valid claim of title to the suit property as described in the plaint.

11. As rightly determined by the trial Court, the defendants encroachment into the Government property cannot be taken advantage of by the plaintiff by contending that the defendants had encroached into the Government property in survey number 493, while they had been the tenant of the suit property under the plaintiff. When the plaintiff has failed to establish that Muthu or the defendants had been the tenants in respect of the suit property under the plaintiff, it is found that the plaintiff cannot take advantage of the encroachment made by the defendants in respect of the poramboke property and attempt to tag the same along with the suit property for claiming title to the property as identified by the Commissioner during the course of his inspection.

12. The plaintiff has not placed any material to hold that Muthu or the first defendant as the case may be, has paid rent to the temple in respect of the suit property and no rent receipt has been placed by the plaintiff. Therefore, it is found that the very basis of the plaintiff's case that the suit property had been let out to Muthu and thereafter to the first defendant and that they had been paying rent, falls to ground without any material to sustain the same. If really, the suit property belongs to the plaintiff's temple and had been let out to Muthu and thereafter to the first defendant, necessary records would have been maintained by the plaintiff's temple with reference to the same. However, there is no material at all placed by the plaintiff as regards the plaintiff's claim of title to the suit property and the management of the same. Thus, the plaintiff's claim of letting out the same to Muthu and the first defendant etc., in such view of the above position, as rightly determined by the trial Court, nothing is available on record to uphold the plaintiff's case.

13. The only document mainly focused by the plaintiff is the alleged endorsement made by the first defendant admitting that he would vacate the suit property in the minutes book of the plaintiff marked as Ex.A7. However, as rightly determined by the trial Court, when the first defendant is not shown to be the tenant of the plaintiff's temple in respect of the suit property and when there is no material placed on record to show that the first defendant's father Muthu is the original tenant in respect of the suit property and when it is further seen that Muthu, on his death, left behind not only the defendants but also the other legal heirs and when there is no material to hold that it is only the first defendant who succeeded to the alleged tenancy right of Muthu in respect of the suit property as such and in particular, when the second defendant, Muthu's wife is disputing Ex.A7 undertaking of the first defendant as not binding upon her and even the first defendant has disputed the same, it is seen that merely from Ex.A7 signature of the first defendant in the minutes book of the plaintiff's temple, we cannot accept the plaintiff's case as such. Resultantly, it has to be held that the plaintiff has failed to establish its claim of title, possession and enjoyment of the suit property in the manner known to law.

14. The defendants have placed materials to show that they are in possession and enjoyment of the suit property in their own right and accordingly, it is found that the defendants have been in possession and enjoyment of the suit property independent of the plaintiff's claim of title to the same and in such view of the matter, it is seen that the plaintiff having failed to establish its title, possession and enjoyment of the suit property as projected by it, no relief could be granted in favour of the plaintiff as determined by the trial Court. Moreso, when the plaintiff has failed to establish that the suit property is located only in survey number 502/2 and when it is found that the suit property is located in two survey numbers, as above noted.

15. In the light of the above position, the first appellate Court seems to have committed a patent error in granting the relief in favour of the plaintiff's temple in respect of the extent covered in survey number 502/2, failing to note the failure of the plaintiff to establish its claim of title even to the abovesaid extent, as above discussed and in such view of the matter, it is seen that the judgment and decree of the first appellate Court partly granting the relief in favour of the plaintiff's temple in respect of survey number 502/2 cannot be justified as per law.

16. As rightly put forth by the defendants' counsel, a mere perusal of the evidence tendered by PW1 would go to show that there is absolutely no valid document to uphold the plaintiff's claim of title to the suit property, as admitted by PW1 and equally, there is no material placed to hold that the suit

property had been enjoyed by the plaintiff by letting out the same on lease or rent and when Ex.A7 by itself would not confer any title to the suit property in favour of the plaintiff's temple and further, when there is no material to hold that Muthu or the first defendant, as the case may be, had been in possession and enjoyment of the suit property as the tenant of the plaintiff's temple at any point of time, it is found that the plaintiff has no case to sustain and accordingly, the trial Court is justified in dismissing the plaintiff's lis.

17. In the light of the above discussions, Ex.A7 would not be the basis for upholding the plaintiff's lis in any manner and in particular, when the second defendant is claiming independent right in respect of the suit property and not a party to Ex.A7 and does not claim any right to the suit property under the first defendant, it is seen that Ex.A7 by itself would not clothe any right to the plaintiff in respect of the suit property and thus, it is seen that the plaintiff's lis, based upon Ex.A7 does not stand scrutiny in the eyes of law and accordingly, the substantial question of law formulated in the second appeal is answered against the plaintiff and in favour of the defendants.

18. In conclusion, the judgment and decree dated 28.01.2002, passed in A.S.No.54/1997, on the file of the Subordinate Court, Sankari, partly granting the relief in favour of the plaintiff's temple in respect of the survey number 502/2 are set aside and the judgment and decree dated 03.07.1997, passed in O.S. No.165/1990, on the file of the District Munsif Court, Sankari are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Sankakiri.
2. The District Munsif, Sankakiri.
3. The Section Officer, (2-copies)

V.R.Section, High Court, Madras.

+ 1 cc to M/s.Sarvabhauman, Associates Sr.34645

S.A.No.595 of 2004

MG(CO)  
EU(29/06/2018)