

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

S.A.No.1876 of 2001

and

C.M.P.No.19916 of 2001

and

C.M.P.No.463 of 2015

Safia Bivi

..Appellant/Appellant/Defendant
Vs.

Arulmigu Chokkanathaswamy Koil
Rep. by its Trustee
Balasubramanian

..Respondent/Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No.12 of 1999 dated 27.04.2000 on the file of Additional District Judge cum Chief Judicial Magistrate, Cuddalore District, Cuddalore in confirming the judgment and decree made in O.S.No.442 of 1985 dated 16.10.1998 on the file of the Additional District Munsif, Cuddalore in decreeing the suit with cost.

For Appellant : M/s.A.Thamizharasan

For Respondent : M/s.P.Arivudainambi

J U D G M E N T

The respondent / plaintiff temple filed a suit for declaration of title and recovery of possession. The suit was decreed by the Trial Court. The unsuccessful defendant had lost before the Trial Court. Aggrieved by the same, the defendant filed an appeal before the First Appellate Court. The First Appellate Court dismissed the appeal and confirmed the order of the Trial Court. Hence, the defendant has filed the present second appeal.

2.The defendant is the appellant herein and the plaintiff is the respondent herein. For the sake of convenience, the parties will be hereinafter referred to as per their rank in the suit.

3.The sum and substance of the plaint averments are as follows:

The plaintiff is the Managing Trustee of Arulmigu Chokkanathanswamy Temple coming within the purview of the H.R. & C.E. Department. The suit property and the entire extent in the Survey No.112 absolutely belonged to the plaintiff's temple. There was a tamarind thope, mango and other trees in the property. The property is the main source of income for the temple. The Revenue Authorities granted patta No.318 in favour of the temple. After the same, the temple paid kist and other taxes to the Government. Except the temple, nobody has any right or interest in the suit property. The plaintiff, by being in exclusive possession of the suit property for over the statutory period, has also prescribed title by adverse possession. The temple has asserted title throughout with the tamarind trees and mango trees being auctioned every year and the income derived from it are used for the purpose of pooja.

4.While being so, on 03.06.1995, the defendant attempted to extend the hut westwards into the suit property. The plaintiff came to know about the encroachment, immediately the same was prevented. However, the defendant falsely claims that the suit property is the poramboke property and hence she has a right to extend the suit property. As against the encroachment, the plaintiff temple filed a suit for declaration of title and recovery of possession.

5.The sum and substance of the written statement filed by the defendant are as follows:

The defendant denied the allegations made in the plaint averments and also denied that the plaintiff is the Managing Trustee of the temple. The defendant has been residing in the suit property for the past nine years. The plaintiff has no right or title or possession over the suit property. In fact the defendant has purchased the suit property through a registered sale deed dated 27.11.1990 for a sum of Rs.33,440/- for a proper and valuable consideration from one Kulandaivel Mudaliar. Since then the defendant has been residing in the house and she has raised Murungai trees and a neem tree in the suit property. Prior to her, the vendor of the defendant has been in possession and enjoyment of the suit property for more than the statutory period and also had prescribed title by adverse possession. The house has been in existence of more than 30 years. The suit property is a house site and the valuation is made deliberately. The suit should have been valued on the market value of the suit

property. At present, the value of the suit property is Rs.20,000/- per cent. The District Munsif Court has no pecuniary jurisdiction to try the matter and hence the suit is not maintainable.

6.The Trial Court after framing the issues and on a perusal of entire records dismissed the suit and the same was confirmed by the First Appellate Court. As against the concurrent findings, the defendant has filed the present second appeal.

7.At the time of admission of the second appeal the following substantial question of law has been formulated for consideration:

1.Whether the Courts below ought not to have held that the defendant / appellant and her predecessors in title is in long, uninterrupted, open hostile and continuous possession and thereby perfected their prescriptive title by adverse possession?

8.The learned counsel appearing for the appellant would submit that the defendant purchased the suit property from one Kulandaivel Mudaliar in the year 1990 for a valuable consideration. The suit property is a poramboke property adjacent to the main road and the house of the defendant and that was the only access for the defendant to reach the main road. She has also raised Murungai and neem trees in the suit property. Accordingly, she prescribed title for more than the statutory period. However, both the courts have failed to consider Ex.B1 viz. sale deed and a long standing possession and enjoyment of the suit property by the defendant. Without analyzing these facts, both the Courts have concurrently held in favour of the plaintiff, which is unsustainable in law. Accordingly, prays for allowing the second appeal.

9.The learned counsel appearing for the respondent / plaintiff would submit that the temple has vast extend of land i.e. 2.88 hectares. The plaintiff is the Managing Trustee of the temple. Immediately, he came to know about the encroachment made by the defendant, a legal notice was issued to the defendant. Thereafter, the plaintiff's temple filed a suit for declaration and recovery of possession. Initially the suit was filed for declaration and permanent injunction. After obtaining injunction from the Trial Court, the defendant encroached the property, thereby, the plaint prayer has been altered for recovery of possession. In fact, a portion of the property was encroached by the defendant. Though the same was questioned by the plaintiff, the defendant did not remove the encroachment thereby the plaintiff filed a suit for declaration and recovery of

possession.

10. Heard the arguments advanced on either side and perused the materials placed on record.

11. In order to prove the case of the plaintiff's temple, the plaintiff has examined himself as P.W.1 and other residents of the particular village were examined as P.W.2 and P.W.3 and they deposed that the suit property belonged to the plaintiff's temple. Apart from the above, they have also marked 22 documents as exhibits in order to prove that the suit property belongs to the temple.

12. The Trial Court after considering the entire materials and after perusing the H.R. & C.E. department's correspondences to the plaintiff, confirming that the plaintiff is the Managing Trustee of the temple which are marked as Ex.A19 to Ex.A22, patta granted in favour of the plaintiff temple by the Revenue Authorities and after analyzing the entire documents, the Trial Court decreed the suit in favour of the plaintiff and the same was confirmed by the First Appellate Court, which is a well considered one and the same need not be interfered with the second appeal, since the defendant did not raise any substantial question of law before this Court.

13. On a perusal of the entire records, the Managing Trustee has filed a suit on behalf of the temple against the defendant for declaration of title and for recovery of possession. It is also not in dispute that the old survey No.112 has been subdivided as New survey Nos.112/1 and 112/3.

14. In order to prove that the plaintiff is functioning as the Managing Trustee, he has marked Ex.A19 to A22 the correspondences between the H.R. & C.E. Department and himself. Apart from the above, the plaintiff has marked Ex.A1 i.e. patta which stands in the name of the temple. Apart from the patta granted by the Revenue Authorities, the settlement Register has been marked as Ex.A26. Ex.A2 to Ex.A18 are kist receipts, which establish the title and possession of the plaintiff temple over the suit property and its enjoyment.

15. In order to disprove the title of the plaintiff, the defendant has marked Ex.B1 i.e. sale deed dated 27.11.1990. On a perusal of Ex.B1 i.e. sale deed, shows that the defendant purchased the suit property from one Kulandaivel Mudaliar for a valuable consideration for a sum of Rs.33,440/-. The defendant's property is situated in Survey No.110/1 but the temple property is situated in the old Survey No.112 and the new survey No.112/1 and 112/3 and the defendant claimed that the suit property is a

poramboke land and she claimed title by way of adverse possession but did not mark any documents.

16.On the contrary, the plaintiff temple has established its title through exhibits particularly, the patta granted by the Revenue Authorities and the correspondence of the H.R.& C.E. Department to the plaintiff confirming that the property belong to the temple.

17.On a perusal of the entire records, it is clearly proved that the suit property belongs to the plaintiff temple. However, the defendant did not produce any document to prove her title over the suit property by way of adverse possession. In the absence of any positive evidence to prove her title by way of adverse possession, I do not find any error or illegality in the judgment and decree passed by the Trial Court and the First Appellate Court. Hence, the substantial question of law is answered against the appellant.

18.In the result, the second appeal is dismissed and the judgment and decree made in A.S.No.12 of 1999 dated 27.04.2000 on the file of the Learned Additional District Judge cum Chief Judicial Magistrate, Cuddalore District, Cuddalore is confirmed. Consequently, connected CMPs are closed. No costs.

Sd/-
Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

kas
To

1.Additional District Judge
cum Chief Judicial Magistrate
Cuddalore District, Cuddalore

2.Additional District Munsif
Cuddalore

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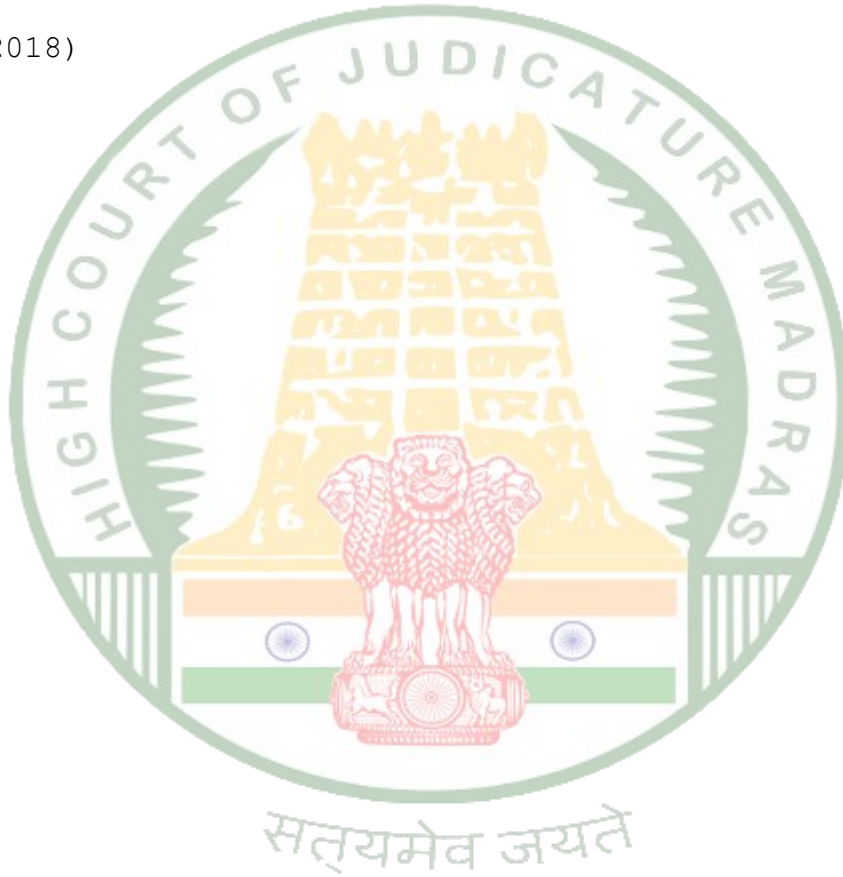
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The Section Officer
V.R.Section
High Court of Madras(2 COPIES)

+2cc to Mr.A.TAMIZHARASAN, Advocate, S.R.No. 19459
+1cc to Mr.P.ARIVUDAINAMBI, Advocate, S.R.No. 19944

S.A.No.1876 of 2001

RSY(CO)
TR(16/04/2018)



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