

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH

SECOND APPEAL No.606 of 1999

Between:

Sri Swamy Hathiramjee Mutt, Tirupathi, rep. by its Custodian/ Assistant
Commissioner of Endowments

.....Appellant

and

Komma Venkatamuni and 6 others

.....Respondents

Date of Judgment pronounced on : 12-06-2018

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/ No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/ No
to Law Reporters/ Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/ No
Of the Judgment ?

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> HEAD NOTE:

! Counsel for the Appellant : Sri Srinivas Bobbili
Sri K.R. Prabhakar

^ Counsel for the respondents : Sri Srinivasa Rao Bodduluri

? Cases referred

1. 1971(2)ALT 293=1972(1)AnWR-63
2. 2009 (2) SCC 177
3. 2012 (2) ALT 280
4. 2016 (3) ALT 120 (DB)
5. AIR 1955 AP 212
6. AIR 1916 Mad 1001
7. AIR 1917 Mad 706(1)(B)
8. AIR 1919 Mad 972 (FB) at 984-985 (C)
9. AIR 1938 Mad 353(FB)
10. ILR-34-Madras-535
11. 1909 (ILR) 30 Cal-1003
12. 1904 (ILR) 27 Madras 291
13. 1869 (13 MIA)270
14. 1856(6 MIA)393
15. AIR 1916 Madras 332
16. AIR 1916 Madras 502
17. ILR 19 Madras 485
18. 2003(6)ALT-62-D.B
19. AIR-1961-Madras-66=(1960) 1 MLJ 247
20. 1960(1) MLJ 467 at 468
21. 1989(2) ALT 181
22. AIR 2001 SC 3616=2001(6)ALD-95(SC)
23. 2010 3 SCC 776
24. 2004 (6) ALT 739

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

SECOND APPEAL No.606 of 1999

JUDGMENT:

The appellant of the second appeal Sri Swamy Hathiramjee Mutt, Tirupati, represented by its custodian by then Assistant Commissioner of Endowments was the plaintiff in the suit in O.S.No.244/ 1985 on the file of the Additional Subordinate Judge (Senior Civil Judge), Tirupati. The respondents 1 to 7 of the second appeal are defendants 40 to 43, 51, 47 & 73 respectively.

2. In the suit there were as many as 74 defendants. The suit filed was in respect of the plaint schedule property of Ac.174.75 cents in the survey Nos.13, 15, 17/ 2, 3 & 5 respectively and patta No.139 standing in the name of the plaintiff mutt of Avilala Revenue Village of Tirupati urban and sub registrar of Chittoor District and bounded by West-road, North-road leading to Gollapalle, East-S.No.18 of Avilala Tank and South-lands in S.Nos.12 & 5 belonging to Avilala Village.

3. The suit filed is for permanent injunction restraining defendant No.1 to 74 supra [of whom defendants 52 to 72 are added as per orders in I.A.No.194/ 1987 and D.73 as per orders in IA.No.1375/ 1987 and D.74 as per orders in IA.No.883/ 1989], from converting the plaint schedule land into house site or other than for agricultural purpose and alienating the same.

4. The averments in the plaint in nutshell shows plaintiff-Mutt having properties at various places represented by Mahants of various periods time to time and when there is no Mahant in charge, receivers were appointed by Courts and Assistant Commissioner was appointed by Endowments Department as the case may be and one Sarju Dossji

Mahant was removed from the office and Assistant Commissioner was appointed as custodian of the Mutt as incharge of the affairs of the Mutt by the Commissioner of Endowments. The plaintiff Mutt is owner of the land supra referred in the plaint schedule. The defendants are the lessees of the plaintiff's Mutt in occupation of different portions of the plaint schedule by paying rents to the plaintiff Mutt for agricultural purpose same leased out, however it came to light of defendants are trying to convert the plaint schedule agricultural lands into house sites and contemplate to alienate to third parties as house sites mainly as part of their illegal design under the leadership of 48th defendant, which constrained the plaintiff thereby to avoid the multiplicity of proceedings to maintain the present suit for permanent injunction from converting the plaint schedule agricultural lands into house sites or to alienate other than for agricultural purpose to use.

5. Among the defendants 1 to 74 supra, having been served; only the defendants 5, 6, 16, 31, 42, 48, 49, 50 & 74 filed written statements and contested. The case of the 5th defendant is while questioning the locus standi of plaintiff and disputing the ownership of the Mutt over the property and the defendants as lessees under the Mutt and the allegation of converting the agricultural lands into house sites all as false and engineered in saying Mutt lost its right if any in the previous litigation between Mutt and the defendants. The earlier suit filed for possession and other reliefs by Mutt was ended in dismissal by attaining finality and same operates as *resjudicata*, consequently defendants are owners and plaintiff cannot question either conversion of plaint schedule property into non-agricultural purpose or otherwise for they lost the suits for eviction earlier and seeking to dismiss the suit.

6. The 6th defendant also contested in similar lines by further saying at Para 4 of the written statement, of his father Esanakula Venkata Subba Reddy obtained permanent lease out of the plaint schedule property for Ac.20.12 cents in S.No.13 and Ac.5.00 cents in S.No.17/3 and said Venkata Subba Reddy got Ac.10.12 cents in S.No.13 and Ac.5.00 cents in S.No.17/3 and in the family partition for remaining extent in S.No.13 allotted to his brothers Narayanaswamy Reddy and Venkat Rama Reddy. The plaintiff Mutt filed OS.No.217 of 1971 on the file of II Additional District Munsif, Tirupati, against the 6th defendant and 2 others for possession and damages for the extents in S.No.13 supra in question that was ended in dismissal. Further another suit OS.No.97 of 1971 on the file of District Munsif, Tirupati, filed against the 6th defendant for possession and damages in respect of S.No.17/3. The 6th defendant has no idea to convert the lands from agricultural to another purpose of house sites, leave apart the earlier suits operate as *resjudicata* and present suit wont lie. The 16th defendant also in his written statement contested in same lines saying the earlier suit OS.No.217/ 1971 operates as *resjudicata* and the 31st defendant also in his written statement stated in same line saying his father Nallandula Guravareddy acquired permanent rights for Ac.6.75 cents in S.No.13. The earlier suit by Mutt for possession and damages in OS.No.188/ 1971 ended in dismissal also operates as *resjudicata* including dismissal of the appeal AS.No.19/ 1977. The 42nd defendant also filed written statement in same line further saying has been in possession and enjoyment of the property in saying a claim from father of defendants 17 to 21 by name Munaswamy for Ac.1.81 cents in S.No.17/ 5 and Ac.0.25 cents in S.No.13 and similarly 40th defendant Venkatamuni got Ac.1.18 cents in S.No.17/ 5 and Ac.0.26 cents in S.No.13 and ryotwari patta pass

book obtained by them and 42nd defendant also similar for similar extents obtained ryotwari patta passbooks and thereby defendants 40 to 42 are enjoying the properties and OS.No.121/ 1971 filed against them by the Mutt on the file of Principal District Munsif, Tirupati, was dismissed, including the appeal in AS.No.15/1977, but for the 2nd appeal in SA.No.712/ 1984 on the file of High Court is shown pending and the present suit claim is barred by limitation. It is also contended so far as 43rd defendant party to OS.No.123/ 1971 and AS.No.17/ 1977 for some other extent that the SA.No.547/ 1979 was allowed by High Court by restoring the trial Court's dismissal judgment of OS.No.123/ 1971 and the suit claim is barred, so far as the 47th defendant Ganji Venkatramaiah in possession of Ac.9.42 cents in S.No.13 concerned, he was party to the suit of the Mutt OS.No.215/ 1971 for possession and damages that was ended in dismissal and attained finality, so far as the 51st defendant Gunnam Reddy Venkata Subba Reddy in possession for some other extent and the suit for injunction against conversion of the agricultural lands into house sites and for alienation wont lie. Defendants 19, 20, 40, 41, 43, 47 & 51 filed memo adopting written statement of 42nd defendant and 48th defendant filed written statement twice with self same contest and in similar lines supra also in saying earlier suit OS.No.216/ 1971 on the file of District Munsif, Tirupati, ended in dismissal. Defendants 9 to 11, 15, 26 to 29 and 39 filed memo adopting written statement of 48th defendant. Defendant No.49 written statement is also in similar lines supra in saying earlier suit operates as resjudicata and the written statement of 50th defendant also in same line with claim of possession over portions of S.No.13 saying he got 2 sons i.e., Janardhan Reddy and Babu Reddy and they are in actual possession and enjoyment of Ac.2.54 cents each out of Ac.5.08 cents in S.No.13 and they have no intention to

convert the agricultural lands into house sites and suit is liable to be dismissed and the written statement of 74th defendant in claiming Ac.0.36 cents in S.No.17/2 and Ac.5.00 cents in S.No.17/3 in claiming through his father E.Nagireddy as in possession and enjoyment after his death on 07.05.1988 saying he made improvements over the property having spent huge amounts and TTD wanted to acquire part of the lands and he received Section 5 of Land Acquisition Act notices and the suit wont lie.

7. The trial Court from the above, framed two issues as to whether the plaintiff is entitled to permanent injunction prayed for and to what relief.

8. During trial on behalf of plaintiff Mutt one B.Ramaiah deposed as PW.1 and placed reliance on Ex.A1 is 10(1) account and Ex.A2 is No.2 adangal copy of December 1988. On behalf of defendants, Dws.1 to 7 examined and they placed reliance upon Exs.B1 to B21 which are certified copies of decree and judgments in OS.Nos.97/ 1971, 121/ 1971, AS.No.15/ 1977, SA.No.712/ 1984; Pattadar passbooks obtained by D.42, 40 & 41 and one E.Sidda Reddy, the decree and judgment in OS.No.123/ 1971, SA.No.547/ 1979, CC of decree and judgment in OS.No.251/ 1971, Pattadar passbook obtained by Ganji Venkatramaiah and Ganji Chandraiah, besides CC of decree and judgment in OS.No.119/ 1971 respectively.

9. The trial Court in decreeing the suit observed in answering the issue that the plaintiff Mutt is owner of the suit property and 10(1) account and No.2 adangal stand in the name of the plaintiff and defendants are shown in possession and enjoyment as lessees under the Mutt, but not in individual capacity even from the No.2 adangal. The

lessees are entitled to enjoy the property by cultivation for agricultural purpose and cannot convert into non-agricultural purpose as per contest of plaintiff in saying once they choose to violate, they are not entitled to continue in possession as lessees and the contest of the defendants of perfected title since predecessors time by adverse possession by their exercise of rights in own way and against the interest of the Mutt and also from earlier suits ended in dismissal for recovery of possession with damages filed by Mutt against several of the defendants or their predecessors and Mutt went unsuccessful including appeals. In answering the rival contentions, Exs.A1 and A2 when clearly proves when Mutt is the owner of all the properties. Coming to No.2 adangal-Ex.A2, column No.13 though Mutt shown as owner, Ex.B2 shows one Munaswamy Modali and Ankanna obtained saswatha patta on 23.04.1900 and even the Mutt maintained SA.Nos.512, 884, 591, 712, 719, 784, 785, 827, 901 of 1984 and 172/ 1986 those were dismissed by learned single Judge of the High Court with **observation** of new Section 82 of the Endowments Act application concerned, it requires investigation of the further facts and the appellant mutt cannot raise a question with new facts in the second appeal and if the period prescribed under Article 134-B of old Limitation Act expired before 30.09.1951 present suit claims are barred by limitation and it says the limitation 12 years which begins from the death or resignation or removal of the trustee or from the date of appointment of the plaintiff as Manager. In OS.Nos.97, 151 & 119/ 1971, the learned trial District Munsif respectively observed plaintiff Mutt is entitled to realize arrears of rents from defendants/ tenants in possession while dismissing the recovery of possession. Section 13 of AP (AA) Tenancy Act 1956 (for short 'the Tenancy Act 1956') speaks of when eviction of tenant can be ordered which includes any violation of

condition of tenancy in regarding use of the nature of the land and the lands are meant for agricultural purpose that were leased out by the Mutt to several persons undisputedly for agricultural purposes. However the present case is not under the Tenancy Act 1956 for eviction. The issues framed and decided in earlier suits though different to the present dispute in the suit, where the character of the landlord and tenant was recognized and permitted the plaintiff Mutt only to realize the rents without recovery of possession from the tenants and once the property is converted to non-agricultural lands by forming house sites to sell away to the third parties, further complications may come in and those vendees construct multistoried buildings, in the records Mutt mentioned as owner, plaintiff did not seek any declaratory relief herein than bare injunction against change of the nature of the land from agricultural to house sites. The suit is thereby decreed with no costs.

10. It is against said trial court's decree and judgment dated 30.08.1993, AS.No.84 of 1993 was filed by the defendants 40 to 43, 51, 47 & 73 and AS.No.85 of 1993 filed by the LRs of the defendant No.5 of the suit and AS.No.94 of 1993 was filed by the defendants 31 & 32 and all the three appeals are outcome of the suit OS.No.244 of 1985. All the appeals supra of the respective defendants came for common disposal and the learned I Additional District Judge on 30.11.1998 allowed the same by setting aside the trial Court's decree and judgment and by dismissing the suit claim OS.No.244 of 1985 with observations in answering the point formulated as to whether the learned trial Judge came to the right conclusion on the issues framed by him and whether the suit is rightly decreed in favour of the plaintiff Mutt or said decree and judgment is liable to be reversed?

11. The 1st appellate Court did not formulate any point for consideration as to any application or not of the provisions of the Estates Abolition Act to the lands in question. The observations of the first appellate Court supra in the common disposal of the three appeals in answering the above points for consideration formulated are that, admittedly the plaintiff Mutt possess several agricultural lands which formed an estate governed by AP (AA) Estates Land Act 1908 and the plaint schedule property of Ac.174.75 cents in patta No.139 of Avilala Village concerned, the then Mahant of the plaintiff gave said lands to two persons by name Munaswamy Modali and Ankanna on 23.04.1900 under a saswatha patta conferring rights over the property on payment of rents to the plaintiff Mutt and said 2 persons continued in possession and enjoyment in their lifetime as tenants and ultimately, the property came into possession of different defendants in the suit and Mutt also given on lease to several of the defendants part of the properties and once such land is subject matter of OS.No.503/ 1986, where Mutt has given to one Buri Mangamma said property by registered document dated 16.06.1946 and by another document dated 15.10.1946 subject to payment of rent to the Mutt and Mangamma while continuing in possession and enjoyment died intestate and succeeded by her sons who alienated to M. Satyanarayana Chetty in 1967 and he was while enjoying had sold away to the defendants in OS.No.503/ 1986, a similar suit saying they are trying to convert into non-agricultural purpose from agricultural lands filed for permanent injunction by Mutt that was dismissed including appeal AS.No.61/ 1990 confirmed and SA.No.47/ 1998 also disposed saying relationship of landlord and tenant extinguished under Section 3F of the Estates Abolition Act 1948 that came into force from 19.04.1949 to say Mutt no longer land holder entitled to rents from

persons in occupation for the occupants are governed by provisions of Estates Abolition Act by referring to an earlier single judge expression in Burula Papayya vs. Sri Brundavana Chandra Swamy¹ and said decision is binding and in view of the same, the trial Court's decree granting permanent injunction against the defendants from conversion of the plaint schedule agricultural lands into house sites is erroneous and accordingly set aside the trial Court's decree and judgment by dismissing the suit claim in OS.No.244/ 1985 for permanent injunction in allowing the first appeals.

12. The grounds raised in the second appeal including in saying of involved substantial questions of law are that the lower appellate Court's reversal judgment is contrary to law by interference with the well considered and reasoned judgment and decree of the trial Court decreeing the suit and the lower appellate Court exceeded its jurisdiction by said reversal judgment. As rightly held by the trial Court, the relationship of landlord and tenant is recognized and rents were being received by the Mutt and if the defendants are allowed to convert the agricultural lands into house sites, it changes nature of the lands and injurious to the lands and the rights of the Mutt. The lower appellate Court could not have been permitted to raise a new plea without foundation in pleadings as to nature of land and the earlier judgment and decree determining the relationship between the parties is not binding on the parties in the subsequent proceedings.

13. The second appeal was admitted on 23.07.1999 without formulating any substantial questions of law and thereby this Court having heard both sides on 27.03.2018 formulated the following substantial questions of law involved and taken up for hearing pursuant

¹ 1971(2)ALT 293=1972(1)AnWR-63

to the order of the Supreme Court. The substantial questions of law formulated on 27.03.2018 are the following:

- 1) Whether the appellants in the court below are entitled to raise a new plea with any factual foundation and if not whether the lower appellate Court's finding on the new plea without factual foundation is unsustainable?
- 2) Whether the reversal findings of the lower appellate Court, including in determination of the relationship between the parties, are perverse and unsustainable and are liable to be set aside?

14. The second appeal was earlier allowed between parties to it viz., appellant/plaintiff and the contested first appellate Court's appellants/ defendants 40 to 43, 51, 47 & 73 of OS.No.244/ 1985 in AS.No.84/ 1993, vide SA judgment of this Court, dated 03.06.2013, by setting aside the lower appellate Court's decree and judgment dated 30.11.1998 in AS.No.84/ 1993 and by restoring trial Court's decree and judgment in OS.No.244/ 1985 dated 30.08.1993 and with no costs.

15. It is while so, a review application, against the SA judgment of this Court, dated 03.06.2013, was filed by the persons by name - Komma Venkatamuni, K.Parthasarathy, Komma Madavaiah, E.Sidda Reddy, G.Venkatasubba Reddy, G.Venkataramaiah and G.Chenchaiah. That review application on contest was allowed by another single bench of this Court on 02.07.2014 vide review SAMP.No.2106 of 2013 in SA.No.606 of 1999 by recalling the order allowing the second appeal on 03.06.2013 and by restoring the SA.No.606/ 1999 for further hearing of the review petitioners supra from their contest of they were not given opportunity to meet the substantial questions of law from which the judgment of the lower Court was earlier reversed. The Mutt aggrieved thereby filed petition for special leave to appeal (C).No.30873/ 2014 before the Supreme Court and the same was dismissed before admission by saying the learned Judges of the High Court hearing the second appeal shall

consider earlier hearing of the second appeal pursuant to the impugned review order dated 02.07.2014.

16. It is in the background supra, heard both sides with reference to facts and law and perused entire material on record.

17. As held by the Apex Court in U.R.Virupakshappa Vs. Sarvamangale² at Para 15 that the second appellate Court can interfere with the findings of the Courts below within the scope of the substantial questions of law, which can later if need be reformulated after hearing both sides by referring to three earlier expressions in this regard.

18. There is no dispute on the said plaint schedule property of Ac.174.75 cents in S.Nos.13, 15, 17/2, 3 & 5 respectively as described and of the fact that the same is as agricultural land and the same belongs to the Mutt and the defendants or their predecessors in interest earlier came into possession of respective extents out of the property supra as tenants, including if any under saswatha/permanent tenancy rights. The earlier suits filed as referred supra covered by the trial Court's judgment with reference to the Exhibits in the B series of the decrees and judgments are clear about the suits for recovery of possession and damages filed by the Mutt against those persons entered the tenancy or those claiming through the tenants originally entered the tenancy as the case may be was that, the Mutt is not entitled by virtue of the permanent tenancy for recovery of possession and damages but for to collect the rents under the permanent tenancy. In fact as can be seen from the above referred material including from the observation of the trial Court particularly from Para 25 mainly with reference to the Exhibits which are the earlier decree and judgments covered by Exs.B7,

² 2009 (2) SCC 177

8, 14 & 15, of which Ex.B8 is the second appeal judgment in the batch of SA.Nos.512, 884, 591, 712, 784, 827, 901 of 1984 and 172/ 1986, where the learned single Judge of the High Court held that Section 82 of AP Endowments Act 30/ 1987 application of the leases of agricultural lands belonging to the institution governed by the provisions of the Act provides cancellation concerned, it requires investigation of further facts and thus not permitted to raise that new plea in the second appeals batch. There was a reference saying if the period prescribed under Article 134-B of the old Limitation Act expired before 30.09.1951, there is no doubt that present suit claim is barred by limitation by referring to said Article 134-B of the Limitation Act 1908 - which say as to the description of the suit by manager of Hindu, Buddhist or religious or charitable endowment to recover the period of limitation of 12 years commenced or begun to run from death or resignation or removal of the transferor where it has been transferred by the previous manager for valuable consideration concerned.

19. In fact is not at all in dispute of the fact that these lands are the Inam lands of the Mutt. Once those are the Inam lands of the religious institution-that is the plaintiff Mutt in question herein, those are governed by the provisions of the Endowments Regulations and the Endowments Act under the Madras Presidency; since legislations were brought into existence during the composite State of Madras under which area, the lands of the Mutt within the Chittoor district are situate. The very judgment in the second appeal referred in Para 25 of the lower appellate Court's judgment of not permitting a new plea to be raised in appeal equally applies to the first appellate Court's impugned common judgment in the present second appeal. In any of the pleadings of the defendants in the suit covered by present lis, it no way covered

specifically from any of the pleadings in the written statements as to the relationship between the landlord and tenant that is between the Mutt and persons taken the property on lease were terminated by virtue of the Estates Abolition Act 1948 that came into force with effect from 19.04.1949 by virtue of Section 3F of the Act from the Inam lands in question of the Mutt whether governed by the Estates Land Act 1908. Once there is no such plea and there is no such evidence before the trial Court but for saying the earlier judgments outcome of several suits of 1971 holding the Mutt as owner of the Inam lands, because of the permanent leases granted to the lessees, is not entitled to recover possession but for entitled to recover rents and not even damages. That itself shows existence of landlord and tenant relationship between them and the Mutt and also their payment of rents to the Mutt undisputedly. It was thereby this Court earlier in deciding the second appeal by judgment dated 03.06.2013 held rightly of the lower appellate court was not right in invoking Section 3F of the Estates Abolition Act 1948 by placing reliance on the single Judge expression of this Court on the scope of Section 3F of the Act 1948 in *Burula Papayya supra*, for there is no such factual foundation, much less plea and evidence to apply that principle or the ratio laid down therein or to invoke Section 3F of the Act 1948. Even from allowing the review application by recalling that judgment and restore the second appeal by affording opportunity to the review petitioners, they could not show any factual foundation from the evidence placed on record before the trial Court nor any discussion as to any such aspect raised before the trial Court, either from the contentions or from the observations, much less from any findings and as such the lower appellate Court went beyond the scope of the lis as held

in Mantha Sunandananda Theertha, Sanyasini Visakhapatnam Vs. Ch. Someswara Rao³.

20. It is thus suffice to say, the lower appellate Court went beyond the scope of the pleadings and evidence and in its application of law with reference to facts, though for the first appellate Court being final fact finding Court entire matter is at large even appeal filed against a portion of it. It is in fact a different question to go into, as to Section 3F of the Act 1948 is applicable or not to the Inam lands of the Hindu religious and charitable institutions; also from deciding the nature of the land is Inam of the Institution or Estate of the Institution, in also for deciding as to the application of either Estates Abolition Act or Inams Abolition Act that requires to decide. Leave apart no any patta even shown granted in favour of any of the persons. Apart from it a tenant cannot set up adverse possession from permissive possession even the lease is of permanent nature, in the absence of showing termination of landlord and tenant relationship and entry later with *animus possessandi* by setting up hostile right and title. Even the tenancy is a permanent tenancy, the question of applying adverse possession between landlord and tenant does not arise, for not a case of any surrender of the leasehold rights subsequently and any re-entry by them into any portions of the property to set up animus and claim adverse possession to commence from such contingency and therefrom in so far as that portion of the land concerned. In so far as Inam lands the period to reckon for any claim of adverse possession is also different.

21. For more clarity, the development of law and its application concerned, the place where the property is situated in Chittoor District was covered by the composite state of Madras and the Mutt was earlier

³ 2012 (2) ALT 280

under the control of the Madras Endowments Board and the legislations there under were - The Andhra Pradesh (Andhra area) Endowments and Escheats Regulation, 7/ 1817, later by the 1st legislation of the religious Endowments Act, 20/ 1863, that was followed by the Madras Hindu Religious Endowments Act, 1/ 1925 for the Mutt in existence since prior to those legislations and regulations is not in dispute. It is later a comprehensive legislation called the Madras Hindu Religious Endowments Act, 2/ 1927 came into force and there is a prohibition for any alienation including by permanent lease of the lands of the Institutions and temple or other Endowments by persons in management. The Act was later amended by the amended Act, 11/ 1934 and there was a subsequent legislation called the Madras Hindu Religious and Charitable Endowments Act, 19/ 1951 and its application continued even after formation of the State of Andhra Pradesh and till the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 17/ 1966 came into force for both Andhra and Telangana areas of the composite State of Andhra Pradesh. Same was later repealed and in its place the present Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 30/ 1987 came into force from 28-5-1987 that now governs even after formation of the separate states of Andhra Pradesh and Telangana, with slight modifications if any. The Act, 30/ 1987 was amended time to time including in 2002 and 2008 with some additions or deletions in some of the provisions as to restoration of hereditary rights to Archakas and any member of the family of the founder of any institution as chairman of the trust board etc.,.

22. By the time the so called permanent lease granted by the trustees/ manager or Mathadhipati of the Mutt on its behalf, the Madras Religious Endowments Act, 2/ 1927 came into force prohibiting permanent

leases and alienations and further there was no provision to claim adverse possession to the Inam Endowed lands under the legislations, till the Madras Hindu Religious Endowments Act, 2/ 1927 (amended by Act, 11/ 1934) came into force which prescribes that unless perfected title 60 years prior to that the persons in possession of any Inam lands cannot claim adverse possession and the later legislation covered by the Madras Hindu Religious and Charitable Endowments Act, 19/ 1951 even speaks that unless title is perfected by adverse possession by the time the Act came into force, no one can claim adverse possession of the lands of the entities governed by the Act. The later A.P Act, XVII of 1966 came into force with same provision and the same provision even incorporated even in the Act, XXX of 1987 covered by Sec.143 which provides that nothing in the law of limitation for the time being in force shall be deemed to vest in any person the property governed by the Act which has not vested before 30.9.1951 so far as Andhra area concerned, leave about there are endowment regulations for Telangana area. As per Sec.76(1) of the Act, 1926 (Act, 2/ 1927) the permission is mandatorily required to be obtained by the Trustees or persons in management from the competent authority, which reads that - no exchange, sale or mortgage and no lease for a term exceeding 5 years of any immovable property belonging to any Mutt, Temple or Specific endowment shall be valid or operate unless it is necessary and beneficial to the Mutt, Temple or Specific endowment and is sanctioned by the Board. As such without applying for permission and sanction of permission by the Board any lease exceeding 5 years are invalid and inoperative. The Act amended by Act, 11/ 1934 prescribes that unless perfected title 60 years prior, there is no question of claiming any Inam lands by adverse possession. Same

was also held by the Division Bench of this Court in Tutta Chinnayya Vs. E.O. SVLNSV Devastanam, Simhachalam⁴.

23. Further it is the settled law that when the temple or Mutt is to represent by human agency as trustee to manage its affairs and the trustees who alienated without right and the persons claiming through them cannot claim commencement of adverse possession till the period when the temple or Mutt is duly represented by another person in management. It is not shown by the Respondents even as to how long the permanent trustee or Manager of the Mutt appointed and acted and continued after the so called leases given as trustee or Manager of the Mutt for its Inam properties. In this regard, in case of other than Inam lands, in Doddipatla Kameswara Rao vs. Tarametla Somanna⁵ on the scope of adverse possession under the Indian Limitation Act, 1908 that was in force by then, regarding property of the charitable institution that, as the Committee was formed only in December 1939, there could be no adverse possession as against the Committee, till it was formed and the President and Secretary thereof elected; as per Article 134-B, the Indian Limitation Act, 1908 which speaks that the 12 years period of limitation begins to run from the death, resignation, removal of Mohammedan or Buddhist or Hindu religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been sold by a previous manager for a valuable consideration after appointment of the next officeholder/ Manager. It was observed that as the plaintiffs now claim title by adverse possession, they must show that their possession was adverse to the Committee and that they were in uninterrupted and continuous possession for a period of 12 years. The Subordinate Judge accepted this contention and found on

⁴ 2016 (3) ALT 120 (DB)

⁵ AIR 1955 AP 212

paras 36 to 39 that as the Committee was not formed till December, 1939 the adverse possession did not at all start. The Hon'ble High Court accepted the said view of trial court and dismissed the appeal and for that conclusion in this regard relied upon the following propositions-

(1).Palaniyandi Malavarayan v. Vadamalai Vidayan⁶ the right to trusteeship of a temple cannot be acquired by adverse possession so long as there is no lawful trustee who could claim to recover the office from person who claims to hold it adversely to him. Sundaram Ayyar J., had carefully and elaborately reviewed all the Indian and English authorities bearing on this question and held that even on principle, there are good reasons for holding that it would be contrary to public interests that a person should acquire the office of a trustee by mere possession when there is no one competent to recover it from him. (2).The above decision was followed in - Manickkam Pillai v. Thanikachallam Pillai⁷ Since there were no properly constituted trustees of the plaintiff temple there was no person with knowledge of the acts of the defendants or capable of taking proceedings necessary for protection of the suit property and, therefore, possession was not adverse until appointment of trustees in 1900. (3).In Seeti Kutti v. Kunhi Pathumma⁸ held on the proposition that, when there is no one competent to sue, there can be no cause of action and consequently limitation cannot run because there is no one against whom it can run. (4).In Subbiah Thevar v. Samiappa Mudaliar⁹ held that "there can be no cause of action until there is a party capable of suing and until there is a cause of action there can be no question of the law of limitation coming into operation." There is nothing more worth to discuss that brought on record even from the

⁶ AIR 1916 Mad 1001

⁷ AIR 1917 Mad 706(1)(B)

⁸ AIR 1919 Mad 972 (FB) at 984-985 (C)

⁹ AIR 1938 Mad 353(FB)

evidence of Respondents side to the said claim of adverse possession, which doesn't confer them any such a right from what is discussed above.

24. So far as permanent leases concerned, there is a bar after 1927 as referred supra and in this regard in SDP alias Nataraja Deekshitar Vs. K.P.L.S.P.Chettiyar¹⁰ it was held that permanent lease is invalid and in later decisions of Abhiram Goswamy Vs. S.C.Nandi¹¹ following Mayandi Chettiyar Vs. Ch.Pillay¹² and M.S.Debia Vs. M.Achajo¹³ of permanent lease is a breach of duty by the trustee unless shown special circumstances to justify, in case of necessity even got power to alienate as held in Hanuman Prasad case¹⁴, in Muttu Swamy Vs. M.Swamiyar¹⁵ of corpus of Math property is inalienable except for absolute necessity and only the extent of the property sufficient to lease out to meet the necessity and not beyond and in Perumal Vs. Mohammed¹⁶ that a permanent lease of religious trust property is beyond powers of trustee and it is to be seen whether it is for the benefit of the entity or not to uphold or not, in Baba M Sitaram vs. Kasturibai Indian appeals XLIX-page 54 by Privy Counsel following Chokalingam case¹⁷ that though Manager has no power to make permanent alienation of temple property but for proved necessity, at the long lapse of time between the alienation and challenge of its validity is a circumstance enable the court to presume that original grant was made in exercise of that extended power on facts for challenge after lapse of 100 years for not to set aside the permanent lease in vogue. It was in saying permanent lease is not absolutely invalid

¹⁰ ILR-34-Madras-535

¹¹ 1909 (ILR) 30 Cal-1003

¹² 1904 (ILR) 27 Madras 291

¹³ 1869 (13 MIA)270

¹⁴ 1856(6 MIA)393

¹⁵ AIR 1916 Madras 332

¹⁶ AIR 1916 Madras 502

¹⁷ ILR 19 Madras 485

as, if it is shown for absolute necessity, it can be validated from the above.

25. Further, even as per Sec.81 of the Act,30/ 1987 where before commencement of this Act any sale, exchange or mortgage of immovable properties belonging to any charitable or religious institution or endowment is effected without prior sanction of the Commissioner or Government, such transaction shall be null and void and shall be deemed never to have been effected and accordingly no right or title in such property shall vest in any person acquiring the property by such transaction and any such property shall be deemed to be the property of the institution or endowment concerned and any person in possession of such property shall be deemed to be an encroacher and there after the provisions of Sec.84 & 85 shall apply.

26. Therefore, no right can be acquired by any permanent lessee because of the statutory prohibition under the Act,2/ 1927 and by subsequent legislations also thereby any right to alienate by them so also from their alienations by the subsequent leases or sales and any in turn alienations and all the so called alienees have no rights and they cannot create any rights in favour of anybody under the above documents to confer any ownership rights over the schedule property including for any part there of.

27. In this regard, also in the case of Secretary to Government, Revenue (Endts.) Dept., A.P Vs. Sri Swamy Ayyappa Coop. Housing Societies Ltd. Hyderabad¹⁸ it was held that all alienations affected prior to the Act,30/ 87 of properties belong to any charitable or religious

¹⁸ 2003(6)ALT-62-D.B

Endowment or institution are null and void from the clear legislative declaration by Section 81 of the Act, 30/ 87.

28. It is from this settled law also the petition schedule property of the Mutt, cannot be alienated not only by permanent lease or sale or gift or exchange but also by mortgage or settlement or the like and thus any such alienations are all null and void and no rights accrue there under in favour of so called vendees or alienees for admittedly no prior sanction of the Board under the Act, 2/ 1927 and 19/ 1951 or later under Act, 17/ 1966 & 30/ 1987 from the Commissioner of Endowments or the Government for the said alienations, as the legislature intended to invalidate such alienations without the prior sanction, that too when the sanction to accord is only by following procedure u/ s.80(1)(b) of the Act by the Commissioner or u/ s.81 of the Act by the Government after the Act, 30/ 1987 came into force and for all practical purposes the lessees are to be considered as tenants holding over even governed by any document of permanent tenancy after 1926-27 and they cannot claim adverse possession from their continuation as lessees as stated supra from the continuation in possession and enjoyment by entry as tenants and in claiming under such tenants and it is not from such continuation with any setting up of hostile title for adverse possession for not surrendered the lease lands for the classical requirement for adverse possession is that the possession should be 'NEC VI NEC CLAM NEC PRECARIO'.

29. Even from that the Respondents cannot claim any adverse possession over the petition property, from the fact that possession of the property governed by the Endowments Acts and these lands are Inam lands and for Inam lands any claim on the ground that such persons acquired an indefeasible title by adverse possession, such possession

should have been proved for 60 years prior to the coming into force of the Madras HRE (Amendment) Act 11/1934 by which Sec.44(b) was introduced in the Madras HRE Act,1926 (Act 2/1927) which came into force in the year,1934 and there is no any claim by any one of them of for more than 60 years the lands in their uninterrupted possession prior to the said amendment in the year,1934 much less with animus and setting up hostility against the real owner the Mutt. It was by referring to the said provisions of the composite Madras state legislation applicable to the petition schedule property lis, it was so held by the Hon'ble High Court of Madras-(1). In the decision reported in Ganapathi Pandaram and Anr. Vs. Collector of Coimbatore and Ors¹⁹-W.P.No.434 of 1957-dt.14.12.1959-that in relation to the properties of Trust and Societies and charitable endowments-as per Section 35 and 35(2) of Madras Hindu Religious and Charitable Endowments Act, 1951 r/w Section 28 and Articles 130 and 149 of Schedule to Limitation Act, 1908 and prior to that u/ s.44B and 44B (2) of the Madras Hindu Religious and Charitable Endowments Act,1927-for Government's right to resume the land granted in Inam for purpose of service connected with a temple and to re-grant the land to temple for performance of service can be extinguished by adverse possession on part of person unconnected with temple or service, however such adverse possession should be lasted for at least 60 years before commencement of Section 44B of Madras Hindu Religious and Charitable Endowments Act,1927, amended by Act,11 of 1934; (2). In the decision of Visweswara Swamy and Veera Raghavan Perumal Devasthanam of Tirupur Vs. Collector of Coimbatore²⁰, it was held from said provisions and propositions that there could be no possibility to claim adverse possession contemplated by the Act,2/ 1927

¹⁹ AIR-1961-Madras-66=(1960) 1 MLJ 247

²⁰ 1960(1) MLJ 467 at 468

amended by Act, 11/ 1934, prescribing proof of prior 60 years possession to claim adverse possession with animus, since lacking.

30. Therefore from the above proposition, the decision relied on by the Respondents in S.P.S.Sastry Vs. Joint Commissioner of Endowments²¹ on the proposition that a person who came unauthorisedly into possession continued for 12 years on those facts held perfected title by adverse possession and thereby cannot be called as encroacher u/ s.75 of the Act, 17/ 1966 has also no application to the facts and also for the reason that in the said decision the scope of the special law governed by Sec.143 of the Act, 30/ 1987 with similar provision was covered by Sec.103 of the repealed Act, 17/ 1966 of the proof to the claim of adverse possession of the properties governed by the Acts is proof of perfecting title by adverse possession prior to coming into force of the earlier composite state of Madras Act, 19/ 1951 dt.30.09.1951.

31. Apart from it Section 82 of the Act No.30/ 1987 is also relevant to consider. In this regard, it was held by the Apex Court in State of Andhra Pradesh Vs. Nallamilli Rami Reddy²² when challenged the validity of Section 82 of the Act 30/ 1987, by upheld the same in holding that Section 82 of the Act provided for cancellation of lease of agricultural land belonging to the institution governed by the Act is not discriminatory and tenants under the religious or charitable institutions under the Act form a special class by themselves and such classification is made so far as such tenants concerned, to achieve object of protecting the interest of the institution and there is nothing unconstitutional, from the Section is constitutionally valid, including not

²¹ 1989(2) ALT 181

²² AIR 2001 SC 3616=2001(6)ALD-95(SC)

discriminatory from exemption of landless poor persons from cancellation of the leases by the statutory application of Section 82 of the Act and it was also held that even under Section 38-E of the Telangana Tenancy and Agricultural Lands Act 1950, Section 82 no way invalid on the ground of Section 38-E of the Act 1950 provides for formation of ownership rights to tenants in question and even the provisions of AP Tenancy Act 1956.

32. As per Sec.82(1) of the Act, any lease of Agricultural land belonging to or given or endowed for the purpose of any Institution or Endowment subsisting on the date of commencement of this Act shall, not withstanding anything in any other Law for the time being in force, held by a person, who is not a landless poor person, stands cancelled.

33. Further in Sddhartha Academy of General & Technical Education, Vijayawada Vs. Secretary to Government of A.P, Revenue Endowments and others in W.P 20953/ 06 batch- reported in 2010(5)ALD-42=(5)-ALT-557), it was held that the lands at the commencement of lease were since agricultural lands and as such from the emphasis is on subject matter of lease (the nature of lands in question) in contradistinction to purpose of lease and use there from. Thus from the mere fact that the land was put to different use with or without permission of lessor doesn't make any difference for operation of the provisions u/ s.82 of the Act particularly from Sec.82(1,2&4), when the subject lands are agriculture in nature when leased out. Thus, the inevitable conclusion is that lease stood terminated by operation of Sec.82(1) and 2 of the Act of the agricultural lands and once lease stood terminated, the lessee answers the description of encroacher vis-à-vis land. In that case also the lease was for 50 years with provision for enhancement after every 10 years of the agricultural land where

buildings constructed and academic college established and after notice two eviction petitions U/ s 83 of the Act in O.A 33 & 34/ 2006 were filed and evictions were ordered by the Deputy Commissioner, that are impugned in the writ petitions contending that the leases in question for establishment of college are other than for agricultural purposes and governed by Sec.82(4) and not 82(1&2) and the leases to continue subject to G.O U/ s 82(4). The said contention was negated and the writ petitions were dismissed in arriving the said findings by the Hon'ble High Court. It was also discussed that, even after Act,17/ 1966 came into force for no rules framed in relation to administration of immovable properties, the law applicable before the Act came into force to the extent not inconsistent is treated as law made under the Act,17/ 1966. There the property at Vijayawada under the erstwhile part of Madras State and the Madras Endowments Act,1951 that was in force prior to Act,17/ 1966 and rules made therein held to read as part of rules as if made under the Act,17/ 1966 and the inevitable conclusion is that lease stood terminated by operation of Sec.82(1) and (2) of the Act of the agricultural lands and once lease stood terminated, the lessee answers the description of encroacher vis-à-vis land, even the lease was for 50 years with provision for enhancement after every 10 years where buildings constructed and academic college established.

34. It was also laid down in N. Mallakanti Vs. Chennakesava Swamy Temple, Gargeyapuram-2004(2)ALD 148 that by virtue of Sec.82(1) of the Act, the leases since cancelled, as per G.O.Ms. No.379, Rev.(Endts.I) Dept.,dt.11-03-2003-A.P.Charitable & Hindu Religious Institutions and Endowments lease of agricultural lands Rules,2003- enable the E.O of subject temple to take possession of the property in accordance with law that is by giving of notice under rule 5(1) informing

the lessee of the lease stood cancelled by virtue of Sec.82(1) and to forthwith handover possession of land failing which being evicted by treating him as encroacher in the order passed U/s.83(4),84-86 of the Act.

35. Further the Supreme Court in the later expression in Chittoor Chegaiah Vs. Pedda Jeeyangar Mutt²³ observed that even suit by establishment of right, title and possession of the Mutt dismissed and upheld by the High Court saying remedy is to invoke Tenancy Act 1956 Section 13 for eviction of tenant, said earlier suit of the Mutt for title, would not bar the tenancy proceedings, including in relation to the permanent tenancy created by Mutt in favour of the tenant with irrevocable condition in lease patta, that is entitling the Mutt only to recover rents, for no reason why the permanent lease which provides terms would not result in a landlord and tenant relationship from said is implied in such an agreement including from non-fulfillment of the terms of the permanent lease gives right to the landlord to seek for eviction of the tenant.

36. In fact that difficulty no way arises for the case on hand for the lands covered by Act No.30/ 1987, the Tenancy Act provisions have no application and Endowments Act provisions are prevailing so also particularly for the Andhra Area covered by the Tenancy Act 1956 amended provision by Section 18 of the Act as held in Para 6 of Jaladi Seetaramamma Vs. SRS Temple, Gundavaram²⁴ by relying upon the Apex Court's expression in Nallamilli Rami Reddy supra.

37. Having regard to the above, the appellants/ defendants in the first appeal thereby are not entitled to raise the new plea nor the lower

²³ 2010 3 SCC 776

²⁴ 2004 (6) ALT 739

appellate Court is entitled to consider any such new plea to determine the appeal without factual foundation from any pleadings and evidence in this regard and without even formulation of any point for consideration on entitlement to raise the new plea and as to on what factual foundation.

38. Having regard to the above, the second appeal is to be allowed by setting aside the lower appellate Court's decree and judgment for the persons in possession having taken the agricultural lands either by them or their predecessors in interest, including to claim right of succession or as alienees from the permanent lessees of the agricultural land lease hold rights under the Mutt including the second appeal respondents among the several defendants, from the relationship of landlord and tenants in existence including covered by the earlier findings of liable to pay lease amounts to the Mutt are not shown by factual foundation of validly terminated and delivered back possession by surrender or otherwise, to set up any adverse possession thereafter to commence from any *animus possidendi* recognizing the ownership of the Mutt and setting up to the knowledge of the Mutt hostile right to claim extinguishment of the right of the Mutt.

39. Accordingly and in the result, the Second Appeal is allowed setting aside the lower appellate Court's reversal decree and judgment and by restoring the trial Court's decree and judgment in the suit for permanent injunction restraining the defendants from changing the nature of the agricultural land into non-agricultural purpose other than cultivation for which the permanent tenancy rights are created including for any alienees under the permanent tenancy rights came into possession in claiming through the original permanent tenant or his LRs

for the subsequent alienees also cannot claim a better right to the original lessee.

40. Consequently, miscellaneous petitions, if any shall stand closed. No costs through out.

Dr. B.SIVA SANKARA RAO J,

Date: 12.06.2018

Note: L.R. Copy to be marked.

Ska/ vvr

