

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2019
PRONOUNCED ON: 02.08.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S. No.930 of 2005

Nataraja Gurukkal ... Appellant/Defendant

Vs.

Arulmighu Jadayupureeswaraswamy,
Devasthanam, T.R.Pattinam,
rep. by its Board of Trustees
T.R. Pattinam, Karaikkal. ... Respondent/Plaintiff

(Cause title amended vide order
dated 13.04.2006 made in
C.M.P. No.4290/06)

Prayer: Appeal Suit filed under section 96 of Civil Procedure
Code to set aside the judgment and decree of the Additional
District Judge's Court, Pondicherry at Karaikkal made in
O.S.No.40 of 2000 dated 21.06.2002.

For Appellant : Mr.T.P.Manoharan, Senior Counsel
for M/s. D.Kamatchi

For Respondent : Mr. R.Vasudevan

J U D G M E N T

Aggrieved over the judgment and decree dated 21.06.2002,
passed in O.S.No.40 of 2000, on the file of the Additional
District Court, Pondicherry, at Karaikkal, the defendant has
come forward with the appeal.

2. For the sake of convenience, the parties are referred to
as per their rankings in the trial Court.

3. Suit for possession and past and future mesne profits.

4. The case of the plaintiff, in brief, is that it is the
absolute owner of the suit properties described in the plaint A,
B and C schedule and it is stated that while the defendant was

employed in the plaintiff's temple, he had been authorized to occupy the plaintiff A schedule house in lieu of the services rendered in the temple on free of rent and later, the defendant resigned the post and despite the same, for the last twenty years he continues to be in the possession of the property as the trespasser and not doing any service to the temple. Despite repeated demands to vacate the same, the defendant, about five years ago encroached upon the plaintiff's temple property described in the plaintiff B schedule and further, it is stated that the plaintiff C schedule property had been leased out to one Muthulakshmi and she had left the village and abandoned the said property and the defendant encroached into the plaintiff C schedule property and the defendant is in the occupation of the plaintiff A schedule property without any agreement with the plaintiff and he is an unauthorized occupant and trespasser in respect of the plaintiff B and C schedule properties and if the plaintiff A house property is let out, it would fetch a monthly rent of Rs.1,000/- and as the defendant is an unauthorized occupant of the suit properties, he is liable to pay mesne profits to the plaintiff's temple at Rs.1,000/- per month at least for the immediate and past three years from the date of the plaint. On 25.06.1998, 25.11.1998, the plaintiff caused demand notices being sent to the defendant and directed him to vacate and surrender the possession of the suit properties and despite the same, the defendant failed to hand over the possession of the suit properties and instead sent a reply dated 12.12.1998, putting forth that he is ready to do pooja works in the plaintiff's temple and even thereafter, to the letter given by the plaintiff's temple calling upon the defendant to settle the dispute, he did not turn up and replied and instead gave a reply dated 06.01.1999, containing false allegations and the same has been repudiated by the plaintiff's temple and hence, according to the plaintiff, it has been necessitated to institute the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiff's suit by stating that he does not deny the plaintiff's title to the suit properties and according to him, he had perfected title to the plaintiff A and B schedule properties by prescription and further stated that he has been holding the abovesaid properties since 1970 and enjoying the same continuously, openly, notoriously and adversely to the knowledge of the plaintiff and with an animus to hold the properties as his own and he had been appointed as the poojari and according to him, the then President of the plaintiff's temple, Somasundaram, appointed him to perform poojas in the temple as detailed in the written statement and he was not appointed as Gurukkal of the plaintiff's temple and his pay was fixed at Rs.20/- per month, 1 kalam of paddy and in the letter of appointment, it has been mentioned that he will not be entitled to occupy any house of the temple by reason of his

employment and that he is not entitled for house rent allowance and the plaintiff's temple made preparations to put up a house in the portion of the suit property during 1970 and thereafter, abandoned the same leaving the construction with the foundation and walls and in such circumstances, the defendant took over the plaint A and B schedule properties in his possession and on his own, put up the construction of the house in the suit properties without any protest on the part of the plaintiff and the present house in the plaint A schedule property is belonging to the defendant and his possession has never been interfered by the plaintiff's temple at any point of time and the defendant is not liable to pay any damages for the house and occupation of the suit properties and the rent control proceedings initiated by the plaintiff's temple ended in dismissal. The plaintiff's attempts to evict him from the suit property were not successful and when the plaintiff resorted to violent methods, the defendant approached the Executive Magistrate, under Section 145 of Cr.P.C. and after enquiry, the Executive Magistrate upheld the defendant's possession of the suit properties and the defendant has been in the occupation of the suit properties as trespasser without paying any rent to the temple for the last 25 years and also without doing any service to the temple and accordingly, prescribed title to the suit properties by way of adverse possession and the plaint C schedule property was occupied by one Muthulakshmi and others and they offered to sell the same to the defendant along with the lease holding right of the manicut and accordingly, the defendant purchased the plaint C schedule property along with the super structure from Muthulakshmi and others for valid consideration and enjoying the same and therefore, the plea of the plaintiff that the defendant had trespassed into the plaint C schedule property is false and the claim of mesne profits, both past and future as put forth in the plaint is untenable and the suit has not been properly instituted and accordingly, prayed for the dismissal of the plaintiff's suit.

6. On the basis of the above pleas put forth by the respective parties, the following issues were framed by the trial Court for consideration:

a) Whether the plaintiff is entitled to obtain the reliefs prayed for in the plaint?

b) Whether the plaintiff is entitled to secure the possession of the suit properties after evicting the defendant as claimed in the plaint?

c) Whether the defendant is liable to pay the mesne profits in respect of the suit properties to the plaintiff for three years

prior to the institution of the suit?

d) Whether the defendant is liable to pay future mesne profits till the delivery of the suit properties?

e) Whether the claim of the defendant that he has title to the suit properties on account of his enjoyment of the same from 1970 onwards is true?

f) To what other reliefs?

7. In support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 to A21 were marked. On the side of the defendant, DW1 was examined, Exs.B1 to B8 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Court below was pleased to grant the relief of possession in favour of the plaintiff as prayed for and also held that the defendant is liable to pay the mesne profits at the rate of Rs.1,000/- for the past three years prior to the filing of the suit and future mesne profits at the rate of Rs.1,000/- till the date of delivery and accordingly, disposed of the suit in favour of the plaintiff. Aggrieved over the same, the present appeal has been preferred by the defendant.

9. The following points arise for determination in this appeal:

1) Whether the plaintiff is entitled to obtain the recovery of the possession of the suit properties from the defendant as prayed for?

2) Whether the plaintiff is entitled to claim past and future mesne profits from the defendant as put forth in the plaint ?

3) Whether the defendant has projected title to the suit properties by way of adverse possession?

4) To what reliefs, the defendant/appellant is entitled to?

5) To what reliefs, the plaintiff/respondent is entitled to?

Point Nos 1 to 3:-

10. It is mainly put forth by the plaintiff's temple that

the suit properties belong to it and that the plaintiff A schedule property was entrusted to the defendant in lieu of the service rendered by him to the plaintiff's temple and however, the defendant left the services of the plaintiff's temple and even thereafter, continued to occupy the plaintiff A schedule property without any right and thereby, also intrude and trespassed into the plaintiff B and C schedule properties without any authority and hence, according to the plaintiff, the defendant is liable to hand over the vacant possession of the suit properties as prayed for and also put forth the case that the defendant is liable to pay the past and future mesne profits to the plaintiff's temple in a sum of Rs.1,000/- per month as claimed in the plaint.

11. On a reading of the written statement filed by the defendant, it is seen that the defendant has not disputed the title of the plaintiff's temple in respect of the suit properties. The only plea taken by the defendant with reference to his possession and enjoyment of the suit properties is that as he had been enjoying the suit properties from 1970 onwards in his own right without rendering any services to the plaintiff's temple and without paying any rent and as his possession and enjoyment of the suit properties had been continuous, open and to the knowledge of the plaintiff and with an animus to enjoy the same independently, according to the defendant, he has prescribed title to the suit properties by way of adverse possession and accordingly, contended that the plaintiff is not entitled to seek and obtain the reliefs as prayed for. As rightly put forth by the plaintiff's counsel, by taking the plea of adverse possession, impliedly thereby, it is evident that on that score also, the defendant has admitted the claim of title of the plaintiff's temple qua the suit properties.

12. In addition to that, as rightly found and determined by the trial Court, considering the patta marked as Ex.A9 and the tax receipts marked as Ex.A13 as well as the photographs marked as Exs.A14 to 16, in all, it is seen that it is only the plaintiff's temple which has title to the suit properties and accordingly, the trial Court is justified in holding that the plaintiff's temple has title to the suit properties.

13. As abovestated, the only plea put forth by the defendant is that he has prescribed title to the suit properties by way of adverse possession. However, the abovesaid plea of the defendant is found to be totally untenable. It is seen that the plaintiff's temple, before the institution of the suit, had issued a legal notice on 25.11.98, marked as Ex.A2, informing the defendant that he had occupied the plaintiff A schedule property in lieu of his services rendered by him to the plaintiff's temple and even after he had left the services, he continued to occupy the same without any basis or right and also

trespassed into the plaint B and C schedule properties and accordingly, called upon the defendant to hand over the possession of the suit properties and also to pay the mesne profits in a sum of Rs.1,000/- per month. To the abovesaid notice, it is found that the defendant had sent a reply dated 12.12.98, marked as Ex.A3, wherein, the defendant would claim that he had been inducted into the services of the plaintiff's temple as a priest and his appointment has not been cancelled and he had not discontinued the service and according to the defendant, the plaintiff has failed to measure the paddy and pay the salary to him as agreed to and would also state that he is in the occupation of the suit property as the employee of the plaintiff's temple and hence, there is no question of payment of rent with reference to the same and thereafter, as rightly held by the trial Court, the defendant under Ex.A3 has clandestinely admitted that he is only in the occupation of the suit property as an employee of the plaintiff's temple and hence, not liable to pay any rent with reference to the same. Following the same, it is found that the plaintiff's temple has issued another notice dated 22.12.98, marked as Ex.A4, calling upon him to pay the rent for the past three years and to the same, the defendant had sent a reply dated 06.01.99, marked as Ex.A5, wherein also, the defendant would reiterate that he continued to render the service to the plaintiff's temple and on that footing, he is in the occupation of the properties and therefore, there is no question of payment of rent to the plaintiff's temple and also undertook to do any job as directed by the plaintiff's temple. Thus, by way of Ex.A5 also, it is found that the defendant would only claim that he is in the occupation of the suit properties as the employee of the temple and thereby, entitled to enjoy the same without paying the rent. In such view of the matter, when by way of Exs.A3 and A5, the defendant has admitted his possession and enjoyment of the suit properties only as the employee of the plaintiff's temple, quite inconsistent to his abovesaid version, his case projected in the written statement that he has been in the possession and enjoyment of the suit properties from 1970 onwards in his own right, without paying rent or doing service to the plaintiff's temple and thereby, openly, continuously and independently asserting title to the same and thereby prescribed title to the suit properties by way of adverse possession, as such, cannot at all be countenanced in any manner and with reference to the abovesaid claim of possession of the suit properties right from 1970 onwards, absolutely there is no acceptable and reliable materials on the part of the defendant pointing to the same.

14. Though it is claimed by the defendant that it is he who on his own had put up the house construction in the plaint A schedule property and enjoying the same, with reference to the abovesaid case, absolutely there is no material to hold that he

has independently put up the construction in the suit properties and enjoying the same and paying the taxes, water bill, current charges etc., and with reference to his abovesaid case, there is no reliable material put forth by the defendant. Therefore, his claim of putting up the house construction on his own and the enjoyment of the same in his independent right etc., as claimed by the defendant is found to be without any basis and accordingly, the defendant is unable to substantiate the same with acceptable and reliable materials and further, admitted that he has not obtained any permission to put up the house construction and not paid any tax etc., and on the other hand, when from Ex.A13 it is noted that it is only the plaintiff's temple who had been paying the taxes in respect of the suit properties, the claim of the defendant that he has been enjoying the suit properties on his own in an independent manner ever since 1970 and thereby, prescribed title to the suit properties by way of adverse possession cannot at all be countenanced and the abovesaid plea is totally untenable and found to be made without any foundation.

15. As regards the claim of the defendant that he had purchased the plaint C schedule property from the erstwhile tenant Muthulakshmi and others, even to buttress his said plea, there is no material on the part of the defendant worth acceptance and to evidence the same, the defendant had not endeavored to produce the alleged sale deed and his subsequent enjoyment of the same as the title holder with reference to the plaint C schedule property and in such view of the matter, the plea of the defendant qua the plaint C schedule property also is found to be totally unjustified and unacceptable.

16. Considering the materials placed on record, in toto, it is found that the trial Court is correct in holding that the suit properties would fetch an income of Rs.1,000/- per month easily and there is no reason to interfere with the abovesaid determination of the trial Court.

17. In the light of the abovesaid factors, when the main plea of the defendant for squatting in the suit properties being the claim of adverse title and as per the above discussions, the defendant has miserably failed to establish his abovesaid plea of adverse title completely and when the documents projected by the defendant marked as Exs.B1 to B8 do not advance his abovesaid case and when the defendant's possession and enjoyment of the suit properties are found to be unlawful and without any justification, in such view of the matter, as rightly held by the trial Court, the plaintiff's temple being the owner of the suit properties, is entitled to recover the possession of the suit properties from the defendant as prayed for and also is entitled to receive the mesne profits in a sum of Rs.1,000/- per

month from the defendant as determined by the trial Court and in such view of the matter, the point nos.1 and 2 are answered in favour of the plaintiff's temple and the point no.3 is answered against the defendant.

18. In support of his contentions, the counsel for the appellant relied upon the decision reported in (2001) 2 SCC 498 (Balkrishan Vs. Satyaprakash and others). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

Point No.4 and 5:-

19. In conclusion, the judgment and decree of the trial Court are confirmed and resultantly, the first appeal is dismissed 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 Additional District Judge,
Pondicherry at Karaikkal.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.K.P.Jotheeswaran, Advocate, S.R.No. 66374

+1cc to Mr.T.Susindran, Advocate, S.R.No. 66130

सत्यमेव जयते

A.S. No.930 of 2005

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