

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :24.01.2019

Pronounced on :06.02.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.1521 of 1999

1.Gopalakrishnan
2.M.R.Thimmaraya Pillai
3.Ayyappan
4.Ramanathan
5.V.Thimmaraya Pillai (Deceased)
6.Chinna Murthi
7.Mokkamma @ Thimmi
8.Chandra
9.Yosadha
10.Govindammal
11.Nagarajan
12.Minor Vasantha
Rep.by her mother and natural guardian 7th appellant.
13.Mangammal
14.Rajamanickam
15.Vajjram
Appellants 13 to 15 brought on
record as LR's of the deceased 5th
appellant vide order of court
dated 22.12.2017 made in
CMP.No.22448 to 22450 of 2017 in
S.A.No.1521 of 1999

.... Appellants

सत्यमेव जयते
Vs

1.Sri Perumal Temple, Panneswaramadam,
by its Trustee and Fit Person,
Inspector H.R. & C.E. Resident of
Krishnagiri Town, Dharmapuri
2.Govindasami
3.Ponnusami
4.Madhu Rao @ Pachaiappan
5.Balaraman
6.Chinnapayan
7.Mari
8.Puddu @ Mannar

9.M.Subramanian
10.Pachaiappan
11.Shamugam
12.Arumugam
13.Krishnan
14.Mannar
15.Pachammal
16.Lakshmi
17.Kuttiammal
18.Govindammal.

... Respondents

RR5 to 9 brought on record as LRs of the deceased R4 vide order of court dated 18.08.2011 made in CMP.No.20073 of 2004 in S.A.No.1814 of 1997

R10 & R11 brought on record as LRs of the deceased R3 vide order of court dated 13.10.2011 made in CMP.No.997 to 999 of 2011 in S.A.No.1814 of 1997.

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the learned III Additional District Judge, Dharmapuri, in A.S.No.30 of 1992 dated 20.11.1996 in reversing the well considered judgment and decree of the learned District Munsif, Krishnagiri, in O.S.No.1105 of 1971 dated 03.05.1991.

For Appellants : Mrs.V.Srimathi

For R1 :Mr.M.Manikandan (Government Advocate)

For RR2 to 18 : Given up

JUDGMENT

The plaintiffs in O.S.No.1105 of 1971 on the file of the District Munsif Court, Krishnagiri, are the appellants herein.

2.O.S.No.1105 of 1971 had been filed by seven plaintiffs who claimed to be poojaris of the Temple of Lord Sri Perumal at Panneswaramadam, Krishnagiri, seeking a judgment and decree of declaration of their possessory right to the suit properties and for a permanent injunction against the defendants from trespassing on the suit property and for costs of the suit. By judgment and decree dated 03.05.1991, the learned District

Munsif, Krishnagiri, decreed the suit.

3.The eleventh defendant namely, Sri Perumal Temple, Panneswaramadam, represented by its Trustee and Fit Person, Inspector H.R. & C.E., filed A.S.No.30 of 1992, before the District Court, Dharmapuri. By judgment and decree dated 20.11.1996, the learned III Additional District Judge, Dharmapuri allowed the appeal.

4.The plaintiffs have therefore filed the present Second Appeal. The Second Appeal had been admitted on 26.10.1999, on the following three substantial questions of law:

"1.Whether the lower appellate court is right in dismissing the suit and should it not have held that the Inam is a service inam and mere description of the land as 'Devadayam' is not conclusive of the nature of the inam?

2.Whether the lower appellate court is right in going into the question of title in a suit for declaration of possessory title and injunction

3.Whether the lower appellate court ought not to have held that the first respondent is bound by the settlement proceedings under Exs.A2 and A3 and the same would operate res-judicata in the present suit?"

O.S.No.1105 of 1971 (District Munsif Court, Krishnagiri):-

5.The suit had been originally filed by seven plaintiffs, who claimed to be poojaris of the Sri Perumal Temple at Panneswaramadam, Krishnagiri District. Pending the suit the sixth plaintiff died and his legal representatives were brought on record as 8-13 plaintiffs. The suit was filed originally against nine defendants and thereafter, the 10th - 11th defendants were impleaded. The first defendant died pending the suit and his legal representatives were impleaded as 12-21 defendants. As stated above the suit had been filed for a declaration of the possessory right of the suit properties in favour of the plaintiffs and for permanent injunction protecting possession. The suit properties were vacant lands in S.No.11/1 measuring 24.91 acres, in S.No.11/2 measuring 4.28 acres, in S.No.81/2 measuring 0.56 acres and in S.No.81/2 measuring 0.50 acres in Panneswaramadam Village, Krishnagiri Taluk.

6.The plaintiffs claimed that the properties belonged to their ancestors who were poojaris of the Temple. They were rendering service to the Temple and had been granted the lands as service inam. They were in possession and enjoyment of the suit properties. The inam lands were covered by title deed No.1429 and were classified in the revenue accounts as service inam. The Government took over the lands on 15.02.1965, under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 1963. The Settlement Tahsildar, Salem, issued notice to the plaintiffs. Enquiry was conducted. Final orders were passed. Ryotwari patta granted in favour of the plaintiffs.

7.The plaintiffs agreed to pay the fair rent as fixed by the Government. The fair rent was fixed at Rs.29,317/-. The plaintiffs claimed to have paid nearly 15,000/- at the time of filing the suit. They claimed that they had perfected their possessory rights over the suit property. The eleventh defendant was represented by the Inspector H.R & C.E, Board, Krishnagiri, as Fit Person. The other defendants were attempting to trespass into the suit property claiming possessory title. The suit had been filed seeking such declaration and also protection from dispossession.

8.The eleventh defendant filed a written statement. It was denied that the land were inam lands or that it was covered under title deed No.1429. It was claimed that the lands belonged to the Temple absolutely. They are Devadayam lands granted to the eleventh defendant for its support, and was not for the purpose of rendering services. It was stated that during the inam settlement, some persons were mentioned as doing pooja. But the grant was only in favour of the eleventh defendant. The proceedings of the Settlement Tashildar were disputed as being fraudulent in nature. It was stated that the plaintiffs were not entitled to ryotwari patta. It was further stated that the order of fixation of fair rent was not binding on the eleventh defendant. It was stated that the plaintiffs have no manner or right to claim title over the suit property.

9.An additional written statement was filed claiming that the plaintiffs have not perfected possessory right over the suit properties. They also do not have hereditary rights. It was reiterated that the lands were Devadayam lands and the eleventh defendant was in possession of the enjoyment of lands. It was claimed that the suit should be dismissed.

10.The other defendants did not participate in the judicial proceedings.

11.On the basis of the above pleadings, the following issues were framed for trial.

- 1.Whether the suit property were service inam lands?
- 2.Whether the plaintiffs have any right over the suit property?
- 3.Whether the suit is barred for non-joinder of necessary parties?
- 4.Whether the plaintiffs are entitled for relief of permanent injunction?
- 5.To what other reliefs?

12.The following additional issues were also framed:

- 1.Whether the plaintiffs have perfected title by long possession?
- 2.Whether the eleventh defendant can object to the order of Settlement Tashildar?
- 3.Whether the plaintiffs is entitled for relief under Tamil Nadu Act 30/63?

13.During trial, the plaintiffs examined seven witnesses. The first plaintiff Gopalakrishnan was examined as PW1. The defendant examined nine witnesses. The plaintiffs marked Exs.A1 to A88. The defendants marked Exs.B1 to B7. The report and sketch of the Advocate Commissioner were marked as Exs.C1 and C2. Among the documents filed by the plaintiffs, Ex.A1 was the title deed No.1429, Ex.A2 was the order of the Settlement Tashildar, Salem, dated 18.04.1968, Ex.A3 was the patta and Ex.A4 was the order of the Settlement Tashildar, Krishnagiri, dated 07.10.1969. Exs.A5-A33 were the kist receipts. Ex.A80 was the patta in the name of the sixth plaintiff and others. Ex.A82 was the order of the Sub Court, Krishnagiri in CMA.No.3 of 1981 dated 06.08.1983. On the side of the defendants Ex.B1 dated 14.12.1971 was the extract of the settlement register. Ex.B3 was the receipt book of the Sri Perumal Temple. Ex.B4 was the auction book of the Sri Perumal Temple. Ex.B6 was the settlement A register relating to the suit property. Ex.B7 were adangal receipts.

14.By judgment dated 03.05.1991, the learned District Munsif, Krishnagiri, found that the Government had taken over

the suit property on 15.02.1965, under the provisions of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 1963. Notice under Section 8 of the Act was issued to the plaintiffs by the Settlement Tashildar, Salem. Enquiry was conducted. Final orders were passed on 18.04.1968. That order had been produced as Ex.A2. The Settlement Tashildar granted ryotwari patta in favour of the plaintiffs and other sharers under Section 8(2) read with Section 8(5) and 21(1) (2) and (3) of the Act. The condition was that they should render the mentioned services. This patta had been produced as Ex.A3. The plaintiffs had also agreed to pay the fair rent under Section 8 (1)(b) of the Act. The Tashildar, Krishnagiri, was directed to fix the fair rent for the property. By proceedings dated 06.10.1968, the fair rent was fixed at 29,317/-. As against this order, CMA.No.3/1981 was filed before Sub Court, Krishnagiri. This was dismissed by Ex.A82 dated 06.08.1983. In view of these facts, the learned District Munsif found that the property in Ex.A1 was given for the support of Sri Perumal Temple at Paneeswaramadam. It was found that the lands are only service inam lands. It was therefore held that the plaintiffs were entitled for possessory right and also for injunction to protect possession. The suit was therefore decreed.

A.S.No.30 of 1992(III Additional District Court, Krishnagiri):

15.The eleventh defendant Sri Perumal Temple, Paneeswaramadam, filed the said appeal. By judgment dated 20.11.1996, the learned III Additional District Judge, reappraised the evidence and held that the lands were classified as Devadayam lands for the support of Sri Perumal Temple, at Paneeswaramadam. It was stated that the grant was permanent in nature. The original grant was in the name of the Swamy Perumal. Subsequently, in survey proceedings, it was in the name of Poojari Thimma. The name and age was given as Perumal, Poojari Venkatramana, aged 40 years. It was stated that the title deed was in the name of the deity. The learned III Additional District Judge, held that the Settlement Tashildar had not properly examined the issue. He held that therefore the order of the Settlement Tashildar would not be binding. It was stated that Section 46 of the Act provided for finality only in respect of decisions of tribunal. However, even though jurisdiction of the Civil Court was upheld, it was stated that the plaintiffs cannot claim adverse possession as against the Temple. It was also found that the plaintiffs were not in possession. Finally, the appeal was allowed and the suit was dismissed.

S.A.No.1521 of 1999:

16.Challenging that Judgment, the plaintiff filed the present Second Appeal. Pending the Second Appeal, the fifth plaintiff who was the 5th appellant V.Thimmaraya Pillai died and his legal representatives were brought on record as appellants

13-15. The plaintiffs also gave up respondents 2-18. The first respondent, Sri Perumal Temple, Panneswaramadam, represented by its trustee and fit person alone contested the appeal.

17.The Second Appeal had been admitted on 26.10.1999, on the following three substantial questions of law:

"1.Whether the lower appellate court is right in dismissing the suit and should it not have held that the Inam is a service inam and mere description of the land as 'Devadayam' is not conclusive of the nature of the inam?

2.Whether the lower appellate court is right in going into the question of title in a suit for declaration of possessory title and injunction

3.Whether the lower appellate court ought not to have held that the first respondent is bound by the settlement proceedings under Exs.A2 and A3 and the same would operate res-judicata in the present suit?"

18.For the sake of convenience the parties would be referred as plaintiffs and defendants.

19.It is the case of the plaintiff that the suit properties being lands in S.No.11/1 measuring 24.91 acres, in S.No.11/2 measuring 4.28 acres, in S.No.81/2 measuring 0.56 acres and in S.No.81/2 measuring 0.50 acres in Panneeswaramadam Village, Krishnagiri Taluk, originally belonged to their ancestors, who were poojaris of the Temple of Lord Perumal at Panneswaramadam. The ancestors rendered pooja service to the Temple and they enjoyed the properties. The inam lands were covered by title deed No.1429 and were classified in revenue accounts as service inam. In Ex.A1, the inam was classified as Devadayam. It was granted in support of Perumal at Panneswaramadam. The inam was permanent. The original grantee was Swamy Perumal. The name entered in subsequent accounts in fasili. 1230 and 1248 was Thimma. This would be equivalent to the years 1824 and 1838. The name and age of the grantee was given as Perumal, Poojari Venkatramana, aged 40 years. It must be kept in mind that the plaintiffs have not claimed title over the property. They were claiming possessory right. Possessory right was claimed by the plaintiff on the basis of Ex.A2 and Ex.A3. Ex.A2 dated 18.04.1968 was the order of the Special Tashildar, Salem. An

enquiry had been made under the provision of the Act by the Settlement Tashildar. He passed an order under Ex.A2. Patta was granted under Ex.A3. The Tashildar, Krishnagiri was directed to fix the fair rent. Accordingly he fixed the fair rent at Rs.29,317/-. At the time of institution of the suit, the plaintiffs claimed that they have paid about 15,000/-. This order was challenged in CMA.No.3 of 1981 before the Sub Court, Krishnagiri. By order dated 06.08.1982, Ex.82, the civil miscellaneous appeal was dismissed. This order was passed in the presence of the eleventh defendant namely, Sri Perumal Temple. As a matter of fact, the temple was the appellant. No further appeal had been filed. That order had being become final. With respect to Ex.A1, it is seen that the lands were actually inam lands. As a matter of fact, the order in Ex.A2 was also passed in the presence of the official from H.R & C.E., Board. Consequently, I hold that the order had become final. It is also to be noted that the documents produced by the eleventh defendant were subsequent to the institution of the suit.

20. In view of the above facts, the possessory rights claimed by the plaintiffs have to be granted and I hold the learned District Munsif, Krishnagiri, had correctly analyzed the evidence on record. The Lower Appellate Court had not properly considered Exs.A1, A2 and A3, particularly, Exs.A2 and A3. Ex.A2, was the order of the Settlement Tashildar, Salem, dated 18.04.1968. Pursuant to that order, patta was granted on 28.10.1968 under Ex.A3. Thereafter, the Tashildar, Krishnagiri had fixed the fair rent by order dated 07.10.1969. The plaintiffs had also produced Exs.A5-A33 which range from 1959-1970 to show payment of kist receipts. All these documents are dated prior to the institution of the suit. Possession has therefore been established. Possessory right had been established by Ex.A2 and A3.

21. The first Substantial question of law was whether the Lower Appellate Court was right in dismissing the suit and holding that, the inam was not a service inam and that the description was not conclusive. I hold that the records produced, particularly, Ex.A1 show that the lands were service inams and during settlement survey, the name of the Poojari Thimma was included. The name was reflected even in fasili 1234 and 1248 namely, 1824 and 1838. The plaintiffs had therefore established continuous possession.

22. With respect to the second substantial question of law, I hold that the Lower Appellate Court was wrong in going into the question of title. The suit was instituted only for possessory right, and possession had been established by the plaintiffs.

23. The third Substantial question of law was whether the Lower Appellate Court had properly appreciated Exs.A2 and A3. The Lower Appellate Court had not considered Ex.A2 and A3 in their proper perspective. As a matter of fact, the plaintiffs also produced Exs.A5-A33 for the period from 24.03.1959 till 17.07.1970 for payment of kist and these documents clearly show possession and also right to possess.

24. In view of the above reasoning, I hold that the judgment of the First Appellate in A.S.No.30 of 1992 dated 20.11.1996 has to be interfered with. Consequently, the Second Appeal is allowed however, without costs. The judgment and decree dated 20.11.1996 on the file of the III Additional District Court, Krishnagiri, is set aside. The judgment and decree in O.S.No.1105 of 1971, on the file of the District Munsif Court, Krishnagiri, dated 03.05.1991 is confirmed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

smv

To

1.The III Additional District Court, Krishnagiri.

2.The District Munsif Court, Krishnagiri.

3.The Section officer

VR Section, Madras High Court

+1cc to Mr.V.Raghavachari, Advocate SR.No.10013

+1cc to Special Government Pleader SR.No.10525

S.A.No.1521 of 1999

RR(CO)

GMV (22/05/2019)

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