

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :17.10.2019

PRONOUNCED ON: 11.11.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.84 of 2012

and

M.P.No.1 of 2012

M.Sethupathy ... Appellant/2<sup>nd</sup> Defendant

Vs.

1.Arulmighu Chithira Puthira Yemadharma Raja Trust,  
Rep. by its Managing Trustee,  
R.A.Kandavelu  
at Arulmighu Chithira Puthira Yemadharma Raja Koil,  
Singanallur Road, Edayarapalayam,  
Vellalore, Coimbatore - 641 111.

... Respondent/Plaintiff

2.The Tahsildar,  
North Taluk Office,  
Coimbatore.

... Respondent/1<sup>st</sup> Defendant

Prayer: First Appeal filed under Section 96 of C.P.C., and Order 41 Rule 1 & 2 of C.P.C., against the judgment and Decree dated 20.08.2011 made in O.S.No.327 of 2006 on the file of the Additional District Court/Fast Track Court No.III, Coimbatore.

For Appellant : Mr.D.Ramesh Rai

For RR1 : M/s.V.J.Latha

For RR2 : Mr.J.Balagopal  
Special Government Pleader (CS)

J U D G M E N T

Aggrieved over the judgment and decree dated 20.08.2011 passed in O.S.No.327 of 2006 on the file of the Additional District Court/Fast Track Court No.III, Coimbatore, the second defendant has preferred this Appeal.

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

3. Suit for declaration, permanent injunction and direction.

4. The case of the plaintiff in brief is that the plaintiff is the registered Trust under the Trust Act. The beneficiary of the Trust is 300 years old ancient temple named as Arulmighu Chithira Puthira Yemadharma Raja Koil and the managing trustee of the Trust is Mr.R.A.Kandavelu. The suit property belongs to the abovesaid Koil and in the enjoyment of the plaintiff. The income received from the suit property is fully utilized to perform the daily poojas and maintenance of the temple apart from the donations. The suit property originally belonged to Irulandi Thevar, Nanjappa Thevar, Masana Thevar in the year 1914. The suit property was acquired by five trustees namely Subbaiah Thevar, Chinnaya Thevar, Ramalinga Thevar, Mariappa Thevar and Palaniyandi Thevar on behalf of the temple by using the temple money. The sale deed was registered as document No.2426/1914. In the abovesaid document, it was clearly mentioned that the suit property had been acquired by the abovesaid five trustees on behalf of the temple and the consideration was paid from the temple's fund. Since then, the suit property has been in the possession and enjoyment of the temple. The temple and Trust were administered by the secretaries of the Trust and while so, one Ayyasamy, came to the scene, who is the total stranger to the temple and Trust, projected a registered Will alleged to be written by Ramalinga Thevar claiming that the suit property is the self acquired property of Ramalinga Thevar and Ramalinga Thevar had executed a registered Will in his favour on 04.04.1978, however the abovesaid claim of Ayyasamy was totally questioned and Ayyasamy thereafter did not rake up the issue. However, Ayyasamy during his lifetime attempted to grab the suit property and applied for the transfer of patta in his name based on the Will executed by Ramalinga Thevar. The plaintiff had been putting forth severe objections to the same and the revenue authority accordingly rejected the claim of transfer of patta sought for by Ayyasamy. While so, Ayyasamy attempted to obtain the patta illegally and accordingly he approached various authorities with reference to the same. However the same had been stoutly resisted by the plaintiff. However, during the middle of 2004, Ayyasamy seem to have got a transfer of patta in his name by making false representation and illegally. Ayyasamy had no right over the suit property and no one can transfer the property belonging to the temple to third parties and therefore the plaintiff made a representation to the first defendant on 30.08.2004 requesting to cancel the transfer of patta in favour of Ayyasamy and further requested the change of patta in favour of the temple. After the demise of Ayyasamy, the second defendant came forward in claiming title to the suit property without any basis and projected a Will said to have been executed in his favour by

Ayyasamy. However, when Ayyasamy himself has no valid title to the suit property, he cannot convey a better title to the second defendant by way of the alleged Will said to have been executed by him. Hence, the second defendant has no right or title over the suit property and the suit property is in the possession and enjoyment of the plaintiff. However, the second defendant endeavored to change the patta in his name and also alienate the suit property to third parties without any basis and hence according to the plaintiff, it has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The second defendant resisted the plaintiff's suit contending that the plaintiff is a registered Trust in the year 2001 and the temple was 150 years old and the administration of the temple was originally with the ancestors of the second defendant and not by the plaintiff and putforth the case that the plaintiff is not a Trustee to the temple and the plaintiff was not looking after the affairs of the temple and further putforth the case that the daily pooja was maintained by Agamudaiyar community and the ancestors of the second defendant and accordingly, the first defendant had granted the patta in the name of the second defendant after making several enquiries and it is only the second defendant who has tittle to the suit property. The second defendant denied the case of the plaintiff that the suit property had been purchased by five persons vide the sale deed No.2426/1914 in the name of the temple. Further according to the second defendant, the suit property is not included in the abovesaid sale deed. Further putforth the case that it is only the second defendant who had been collecting the rent from the tenant who is in the possession and enjoyment of the suit property and also initiated legal action against the tenant in O.S.No.1695 of 2005 on the file of the District Munsif Court. The second defendant has also putforth the case that Chinnaiah Thevar acquired the suit property and enjoyed the same and executed a Will infavour of Ramalinga Thevar on 01.04.1948 and subsequently Ramalinga Thevar executed a Will in favour of Ayyasamy on 03.04.1978 and Ayyasamy obtained the patta in his name and executed a Will in favour of the second defendant on 15.04.2005 and all the abovesaid Wills are registered and the second defendant has produced the proper records before the concerned authorities and obtained the change of patta in his name and there is no cause of action for the plaintiff's suit and the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas setout by the respective parties, the following issues were framed by the trial court for consideration:

i. Whether the plaintiff is entitled for relief of declaration as prayed for?

ii. Whether the plaintiff is entitled for permanent injunction prayed against the second defendant?

iii. Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for against the first defendant?

iv. To what relief, the plaintiff is entitled to?

7. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A27 were marked. On the side of the second defendant, D.W.1 was examined. Exs.B1 to B9 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, trial court was pleased to grant the reliefs in favour of the plaintiff as prayed for. Challenging the same, the present First Appeal has been preferred by the second defendant.

9. The following points arise for determination in the First Appeal:

i. Whether the plaintiff has title to the suit property?

ii. Whether the second defendant has title to the suit property?

iii. Whether the plaintiff is entitled to obtain the relief of declaration in respect of the suit property as prayed for?

iv. Whether the plaintiff is entitled to obtain the relief of permanent injunction against the second defendant as prayed for?

v. Whether the plaintiff is entitled to obtain the relief of mandatory injunction against the first defendant as prayed for?

vi. To what relief the plaintiff is entitled to?

vii. To what relief the second defendant/appellant is entitled to?

Point Nos.1 to 5:

10. The plaintiff claims title to the suit property based on the sale deed dated 23.05.1914 and the copy of the abovesaid sale deed has been marked as Ex.A2. According to the plaintiff, the plaintiff's temple is an ancient temple established about 300 years ago and originally a committee had been managing the affairs of the temple. It is found that in the year 2001, a trust deed had been created by the trustees of the temple and the copy of the trust deed has been marked as Ex.A1. As rightly found by the trial court, on a perusal of Ex.A1 Trust deed, it is seen that the second defendant is shown as one of the trustees in the said document. So, from the trust deed Ex.A1, it is found and also it has been admitted by the

defendant in the written statement that the plaintiff's temple has been originally managed by the committee. It is the defence version that the affairs of the temple had been only managed by the second defendant's ancestors and not by the committee members as putforth by the plaintiff. However, when the trust deed projected in the matter portrays that the second defendant is the Vice President of the committee and when it is found that various groups had been managing the temple, in such view of the matter, the case of the defendant that the affairs of the plaintiff's temple had been managed exclusively by his ancestors and not by committee members as putforth by the plaintiff, as such, cannot be believed and accepted in any manner. If the defendant had not participated in the management of the temple as a committee member, he would have not agreed for the inclusion of his name as the Vice President of the committee in Ex.A1 Trust deed. As rightly held by the trial court, there is no material to show that the second defendant had resigned from the committee. Therefore the trial court is found to be justified in upholding the locus standi of the plaintiff in maintaining the suit based on Ex.A1.

11. From the materials placed on record, it is found that the suit property had been acquired by the temple under Ex.A2 sale deed. As could be gathered from the recitals found in Ex.A2 sale deed, the plaintiff's temple had been managed by five persons and they chose to purchase the suit property out of the fund belonging to the temple and accordingly it is found that they had purchased the suit property under Ex.A2 sale deed.

12. As regards the sale deed marked as Ex.A2, the second defendant would putforth the version that the suit property is not described in Ex.A2 sale deed. Ex.A2 sale deed describes that the suit property is lying in Anuperpalayam village, Survey No.477 of an extent of 1.60 acres out of total extent of 4.73 acres. As could be gathered from the materials available on record, when it is found that the resettlement was introduced in the year 1910 and accordingly from the documents projected in the matter, it is seen that a portion of Anuperpalayam village had been taken and included in Puliakulam village and the old survey numbers mentioned as 477/1 and 477/2 had been resurveyed as Survey No.199/1 and 199/2 and the patta had been granted in the name of Irulandi Thevar and Veerappa Thevar, when it is found that the Ex.A2 sale deed had been executed in favour of the temple only by Irulandi Thevar and Veerappa Thevar, accordingly, it is found that in the re-settlement process, the patta which had come to be issued only stood in the name of Irulandi Thevar and Veerappa Thevar. However, the sale deed Ex.A2 had come to be executed without taking into consideration, the re-settlement of the properties as comprised in the Survey No.199/1 and 199/2 and 215/1 at

Puliakulam village, and in such view of the matter, the mistake which had crept in following the same cannot be allowed to take advantage of by the defendant to contend that the suit property is not disclosed in Ex.A2 sale deed. When from the registered lease deeds executed in favour of Chinnaiya Thevar marked as Exs.A10 and A11 and A13, when it is seen that in all the abovesaid documents, the resurvey numbers had been clearly mentioned and Chinnaiya Thevar is also found to be the secretary to the committee which had been managing the affairs of the plaintiff's temple and all put together it is seen that, as held by the trial court, right from 1914 onwards, the suit property had been under the management of the committee and under the secretaryship of Chinnaiya Thevar, in such view of the matter, the claim of the second defendant that his ancestors had been managing the affairs of the temple continuously and exclusively cannot be accepted in the absence of any proof or material pointing to the same.

13. As could be gathered from the materials available on record, Chinnaiya Thevar is found to have executed a Will in favour of Ramalinga Thevar marked as Ex.B2 dated 01.07.1948. In the said Will Chinnaiya Thevar had only bequeathed his hereditary trusteeship in favour of Ramalinga Thevar and the document further recites that the suit property must be managed by Ramalinga Thevar after paying tax to the Government and the income derived from the suit property must be utilized for the performance of poojas. Thus by way of Ex.B2 Will Chinnaiya Thevar had not claimed the suit property as belonging to him exclusively. Thereafter it is found that the Will dated 03.04.1978 had come to be executed by Ramanlinga Thevar in favour of Ayyasamy marked as Ex.B3. By way of Ex.B3 Will, Ramalinga Thevar had only conveyed the trusteeship of the temple in favour of Ayyasamy for the purpose of managing the temple and the Will also further recites that the income derived from the suit property should be utilized for the purpose of temple management. However, it is found that under Ex.B3 Will Ramalinga Thevar had claimed that the suit property belonged to him absolutely by inheritance. When no such right had been conveyed in favour of Ramalinga Thevar under Ex.B2 Will, it does not stand to reason as to how Ramalinga Thevar could claim the suit property as belonging to him absolutely by way of inheritance. As regards the same, no proper explanation has been offered by the second defendant. In such view of the matter, as held by the trial court rightly, inasmuch as Ramalinga Thevar was managing the suit property based on Ex.B2 Will, it is found that taking advantage of the same, while executing Ex.B3 Will, he had chosen to describe the suit property as belonging to him absolutely by way of inheritance. Accordingly, it is found that taking advantage of the same, Ayyasamy, the beneficiary of Ex.B3 Will attempted to grab the suit property by securing patta in

his name though he had not been successful at the inception, he was able to secure the patta later. However, as held by the trial court, the first defendant who is the authority which had granted the patta in favour of Ayyasamy, has not come forward to explain as to on what basis the patta had been granted in favour of Ayyasamy in respect of the suit property. Neither the first defendant nor the second defendant has placed any acceptable and reliable materials to show that the patta had been changed in the name of Ayyasamy based on acceptable and proper materials. In such view of the matter, merely on the grant of patta in favour of Ayyasamy, it cannot be held that the suit property belonged to Ayyasamy, as patta cannot be considered as a document title. Therefore the trial court is found to be justified in not placing reliance upon the patta said to have been granted in the name of Ayyasamy. It is further seen that Ayyasamy had chosen to execute a Will in favour of the second defendant on 15.04.2005 marked as Ex.B7. When Ayyasamy or Ramalinga Thevar has no valid claim of title to the suit property, in such view of the matter, the claim of the defendant that he has secured the valid title to the suit property based on Ex.B7 Will cannot be at all be believed and accepted. Furthermore when the second defendant has projected only Ex.B7 Will for claiming title to the suit property and had also projected Ex.B3 Will for supporting the claim of title of Ayyasamy to the suit property, however when the second defendant had not endeavored to examine the attestors of the Will marked as Ex.B3 or B7, in such view of the matter, it is seen that the alleged Wills projected by the second defendant for claiming title to the suit property cannot be held to be valid documents. On that score alone the second defendant cannot be held to be the legal owner of the suit property. Inasmuch as, the second defendant had not established his valid claim of title or the valid claim of his ancestors to the suit property by placing acceptable and reliable materials and on the other hand, only projected the revenue documents and when the revenue documents projected by the second defendant for sustaining title to the suit property had not been established to have been issued after proper enquiry and after notice to the plaintiff, in such view of the matter. the claim of title of the second defendant to the suit property based on Ex.B7 Will cannot at all be accepted in any manner and rightly rejected by the trial court.

14. As above pointed out, other than revenue documents ie., grant of patta, no other acceptable and reliable materials has been projected by the second defendant for seeking title to the suit property. When as above pointed out, it is only the plaintiff's temple, which has secured the suit property under Ex.A2 sale deed and the plaintiff's temple is found to be managed by a committee and thereafter by a Trust and when it is seen that the second defendant's ancestors, had been the members

of the Trust which had been managing the temple, in such view of the matter, in the guise of managing the temple, the second defendant's ancestors cannot be allowed to usurp the suit property by projecting any exclusive title to the same without any basis and in such view of the matter, when it is found that only the Trust had been managing the plaintiff's temple and accordingly the suit property had been purchased on behalf of the temple by the Committee and the suit property had been managed by the committee and subsequently by the Trust, in all, it is found that as held by the trial court, it is only the plaintiff who has valid title to the suit property and accordingly the suit property is found to be in the possession and enjoyment of the plaintiff as determined by the trial court. Inasmuch as, the second defendant without any basis attempted to put forth the rival claim of title to the suit property based on Will Ex.B7 and the revenue documents and when the abovesaid documents projected by the second defendant has no foundation or basis for giving /affixing legal approval to the same, in such view of the matter, the trial court is correct in holding that it is only the plaintiff who has title to the suit property and entitled to the reliefs prayed for. No interference is called for in the abovesaid determination of the trial court.

15. For the reasons aforesaid, I hold that the plaintiff has title to the suit property. I therefore hold that the second defendant has no title to the suit property. I further hold that the plaintiff is entitled to obtain the reliefs of declaration, permanent injunction and mandatory injunction as prayed for. Accordingly, Point Nos.1 to 5 are answered in favour of the plaintiff and against the second defendant.

Point Nos.6 & 7 :

16. For the reasons aforesaid, the judgment and decree dated 20.08.2011 passed in O.S.No.327 of 2006 on the file of the Additional District Court/Fast Track Court No.III, Coimbatore 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

mfa

To

The Additional District Judge,  
Additional District Court/  
Fast Track Court No.III,  
Coimbatore.

Copy to

The Section Officer,  
VR Section,  
High Court,  
Chennai.

+1cc to Mr.D.Ramesh Rai, Advocate, S.R.No. 93547  
+1cc to Mr.V.J.Latha, Advocate, S.R.No. 93287

A.S.No.84 of 2012  
and  
M.P.No.1 of 2012

CNR(CO)  
GN(05/08/2020)