

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.06.2019

Judgment Delivered on : 22.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1951 of 2001

Sri Rethinagireeswara Swamy Devasthanam,
by its Executive Officer,
Tirumarugal Village,
Nagapattinam Munsif & Taluk. Appellant/Plaintiff

Versus

- 1.Tirumarugal Panchayat
by its President
Tirumarugal Village,
Nagapattinam Munsif & Taluk.
- 2.Tirumarugal Panchayat Union,
by its Commissioner,
Tirumarugal Village,
Nagapattinam Munsif & Taluk.
- 3.Tamil Nadu Government,
rep.by its Collector,
Nagapattinam Munsif & Taluk. Respondents/
Defendants

This Second Appeal has been filed under Section 100 of C.P.C., against the Judgment and decree dated 26.07.2000 in A.S.No.42 of 2000 on the file of the Principal District Judge at Nagapattinam, confirming the Judgment and decree dated 23.12.1999 made in O.S.No.211 of 1999 on the file of the District Munsif Judge at Nagapattinam.

For Appellant : Mr.R.Balasubramanian

For Respondents : Mr.P.P.Shanmugasundaram (for R1 & R2)
: Mr.S.Jagannathan,
Government Advocate (for R3)

JUDGMENT

The unsuccessful plaintiff is the appellant herein.

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2.The plaintiff/Rethinagireeswara Swamy Devasthanam, Thirumugal Village has filed the suit, seeking declaration of

customary right over the suit property. The customary right used by the Temple on the festival occasion convened and for consequential permanent injunction restraining the first defendant/Panchayat Board from interference with the right of the plaintiff in the suit by putting up any construction in the suit property.

2.The plaint proceeds on the basis that the plaintiff-temple is an ancient one in that part of the district and venerated by "samaya kuravers". The majesty with which the temple and its Rajagoupuram situated with Thirukulam on East of it, with all gaiety aesthetical and opulence, stand as an example for its sanctity and ancient culture and architect. The plaintiff-temple has its presiding deity "Sri Rethanagireeswarar" with all "goshta devathas". Festivals on all the important occasion is being marked by gaiety and forever and the longest festival in the Temple is Bramotsavam in the month of Chithirai every Tamil year when Car festival used to be conducted. Besides the above "Utsavam" there are other festival and auspicious occasions in other months when the presiding deity with all paraphernalia would be taken in procession through main streets (Raja Veedhi) and other streets. The celebration is being done (though not in the same scale as was done). The Temple is listed temple in Hindu Religious and Charitable Endowment Board, Government of Tamil Nadu and the administration of the Temple and its properties are done through the Executive Officer of the Temple. The Temple and the tank are part of the temple administration. There is a strip of land between the temple and the tank which has been used by the temple without any let or hindrance continuously which is being misused by the defendants against the custom and practice of the temple. In fact, the strip of land measuring about 5 cents in all, is being used by the temple much less on festival occasions and it is normal, legal and essential. The 1st respondent/Panchayat, has constructed an office and an over head tank few years before only for water supply to the nearby areas and the plaintiff has not passed any conveyance made to the public by the defendants. However, such of those construction should not cause damage to the rights and privilege of the people like plaintiff/temple and for convenience of temple to conduct festival and to take "Utsava moorthy" for procession. The suit property has been used from the time of immemorial and such use is legal. Any tampering of the space in between the tank and temple, will cause great hardship to the temple and the customarily possessed right of the temple in the suit property. Prior constructions being insignificant, it does not matter much to the temple and devotees. The plaintiff submits that there are "ghomukis" ejecting out of the temple's compound on east. The water discharged during Abisekam room Yagasalai would not drain in the Western part of the suit property, hence, the suit.

3.The respondent/Panchayat filed a written statement alleging that there was a Panchayat board office building situated in the very same suit property. As it was in a dilapidated condition the Panchayat has proposed for construction of new Panchayat Administrative building with new

over head water tank to provide water supply to the public at large. The suit is bad for non issuance of pre-suit notice as required under Rule 231 of Panchayat Rules and further stated that the suit land originally belonged to the Government of Tamilnadu on and from the year 1959. After implementation of the Panchayat Act, the land has been vested with the defendant/Panchayat Union, in the year 1955. There was a water tank and due to the increase of the people, pollution, wear-tear, the building of the said water tank has been damaged and on the recommendation under resolution passed by the Panchayat, the Government of Tamilnadu has sanctioned a sum of Rs.10 lakhs for the construction of the over head water tank in the very same suit property. There was no pre-existing structure and the same was removed and there is a proposal to construct a new administration building.

4. During the trial, the Executive Officer of the temple was examined as PW.1 and the Villagers were examined as PW.2 to PW.4 and Exs.A1 to A3 were marked. On behalf of the defendant, DW.1 was examined and the Advocate Commissioner's report and sketch were marked as Exs.C1 to C3.

5. On consideration of both the oral and documentary evidence, the Trial Court has held that pre-suit notice was not issued. It was further held that the declaration relief sought for by the plaintiff/Temple on the customary right has not been proved. On appreciation of the fact the Trial Court held that the plaintiff temple did not prove that the suit land was occupied and is in possession of the Temple. Accordingly, the suit was dismissed and aggrieved against the said judgment and decree passed in O.S.No.211 of 1998, dated 23.12.1999, the Temple has preferred A.S.No.42 of 2000 before the Principal District Judge, Nagapattinam. On re-appreciation of evidence the Lower Appellate Court confirmed the judgment and decree of the trial court, however, under different reasonings. Hence, the Second appeal.

6. The Second appeal was admitted on the following substantial questions of law:-

"(a) Whether the Natham land does not vest in the Government?

(b) Whether the occupier of the Natham is the owner thereof?

(c) When the appellant is proved to have used the suit land, whether the appellant would be deemed to be the owner of the suit land?"

7. The learned counsel for the appellant/plaintiff would contend that the suit property is admittedly a Natham land and it does not vest in the Government or in the Panchayat. The Temple is the occupier of Natham land hence the courts below ought to have been granted the decree for declaration of customary right to use the suit land. The temple has been using the suit land periodically during festival time and for

performance of procession and Poojas, to do music festival during festival season scheduled by the HR&CE department. The Trial Court has failed to consider that the impugned construction could interfere with the performance of the festival and made submissions in support of the substantial questions of law.

8. Heard the learned counsel for the appellant as well as the learned counsel appearing for the respondents and perused the records.

9. It is seen from the evidence of PW.1 that his evidence is inconsistent with the plea that the land was occupied by the Temple. In the latter part of his evidence, though he claims that the plaintiff/Temple is in possession and enjoyment of the suit property there are no documents evidencing such enjoyment. Further having not filed any document to that effect also assumes significance.

10. It appears that PW.1 has admitted in the cross-examination that in the suit property, there is proposed construction for new Panchayat office building and over head water tank and even before the proposal construction, there existed office building and water tank in the very same site also assumes significance as observed by both the Courts below. Furthermore PW.1 has admitted that at the time of construction of over head water tank and office, the Temple has not raised any objection also assumes significance. Thus, the Lower Appellate Court rightly observed that whether the plaintiff/Temple is in possession and enjoyment of the suit property, which is classified as Natham promboke, there was no document has been produced by the Temple and even assuming that the land was orally enjoyed plaintiff, it does not raise any objection for construction of office building and over head water tank which was admittedly existing even prior to the proposed construction of water tank and had allowed the Panchayat for construction of previous building as discussed supra.

11. After a long time, when the existing building was in dilapidated condition and proposal for demolition and reconstruction new building and new over head water tank was made, for which the Government has also sanctioned a sum of Rs.10 lakhs, the suit was filed. Hence, the Lower Appellate Court rightly come to the conclusion that no objection was put forward by the Temple is bare acceptable by their in action in having permitted the defendant, who is none other than the Panchayat, in constructing office building and tank admittedly at any point of time. Furthermore, the plaintiff having not raised any objection for construction of earlier building, which is now sought to be reconstructed, in view of the fact at the time it was in a damaged condition and in the absence of any positive evidence to show that the plaintiff/Temple was in possession of the property and as per the established principles of law it is the plaintiff has to succeed or to fail on his own pleadings, the plaintiff/Temple having failed to prove the occupation, both the Courts below had rightly dismissed the

claim of the plaintiff.

12.It is to be stated that both the Courts have concurrently held that since there was existing building in the suit property and many years have passed and there was no objection on the side of the plaintiff at that time for the use of building by the Panchayat board, hence, the Court below has rightly come to the conclusion that the suit land measuring 5 cents in S.No.122/5 in the said Thirumugal Village is situated between the Temple and the tank. As per the Advocate Commissioner's report, both the Courts below has rightly concluded that the stand of the defendant/Panchayat that there was a pre-existing building belonging to the Panchayat and there was a over head water tank was constructed and the Temple has not raised any objection for the said construction over past several years, now come up with the plea while old construction has been proposed to be demolished and new construction put up. Hence, the finding rendered before the Trial Court as confirmed by the Lower Appellate Court does not warrant interference.

13.As stated supra, though the suit property is classified as Natham and the plaintiff/Temple had not produced any document to show that they are in occupation of the said Natham land and hence, both the Courts below have rightly come to the conclusion that the plaintiff has to stand or fall on his own legs and the plaintiff has to prove the pleadings raised and the three substantial questions of law that has been framed at the time of admission, does not arisen for consideration, in view of the factual matrix of the case as discussed supra. Hence, the substantial questions of law are held against the plaintiff/Temple and the Second appeal is liable to be dismissed as devoid of merits.

14.In fine, the Second appeal is dismissed confirming the judgment and decree dated 26.07.2000 made in A.S.No.42 of 2000 on the file of the Principal District Judge at Nagapattinam, confirming the Judgment and decree dated 23.12.1999 made in O.S.No.211 of 1999 on the file of the District Munsif Judge at Nagapattinam. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge, Nagapattinam.

2.The District Munsif, Nagapattinam.

3.The Section Officer,

V.R. Section, High Court, Madras - 104.

+1 cc to Spl Government Pleader Sr.No. 72229

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A.SK(13/02/2020)