



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.864 of 2006

1.Kalamani  
2.Easwari  
3.Jothimani  
4.Savithiri  
5.Dhanalakshmi

...Appellants/1 to 5 Defendants

Vs.

1.Plague Mariamman Koil,  
represented by its President  
K.Pathiraj S/o.A.Kondasamy  
No.84, Vilankurichi Road,  
Peelamedu, Coimbatore-641 004.

1<sup>st</sup> Respondent /Plaintiff

2.Assistant Electrical Engineer,  
Town - Peelamedu  
C.E.D.C. Metro,  
Coimbatore - 641 004. ...

2<sup>nd</sup> Respondent/6<sup>th</sup> Defendant

(Name substituted representing R1 vide  
Order of Court dated 01/09/2014 made in Mp.No.1/14)

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 07.03.2006 passed in A.S.No.46 of 2004 on the file of the Principal Sub Judge, First Additional Subordinate Court, Coimbatore, reversing the judgement and decree dated 02.07.2004 passed in O.S.No.1929 of 2001 on the file of the Third Additional District Munsif Court, Coimbatore.

For Appellants : Mr.P.Valliappan  
For Respondent : Mr.S.R.Sundaram  
No.1  
For Respondent : Mr.V.Viswanathan  
No.2

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 07.03.2006 passed in A.S.No.46 of 2004 on the file of the First Additional Subordinate Court, Coimbatore, reversing the judgement and decree dated 02.07.2004 passed in



O.S.No.1929 of 2001 on the file of the Third Additional District Munsif Court, Coimbatore.

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

3.Suit for declaration, possession and permanent injunction.

4.The case of the plaintiff, in brief, is that the plaintiff's temple was constructed by the residents of Peelamedu about 100 years ago and the plaintiff's temple was constructed in Natham Poorumbokku land bearing survey Nos.69 & 70 of the suit village and the affairs of the plaintiff's temple are managed by the committee headed by the president and one Arumugam was appointed as Kovil Poosari in the year 1956 to perform poojas and for his convenience, the committee decided and passed a resolution for constructing a house to accommodate the Kovil Poosari and accordingly, the Prasada Mandabam situated on the back side of the Kovil, on the western side was altered and tiled roofed house was constructed thereon in the year 1960 and the Kovil and the house constructed for Poosari and the adjacent vacant places are all belonging to the plaintiff's temple and Arumugam, after becoming old, was unable to continue the poosari job and wished to retire from the Poosari job, after the renovation and consecration of the Kovil and thereafter, he had retired from service and Arumugam died in the year 1991 and his wife Chellammal fell sick and therefore, his daughters requested the plaintiff's temple authorities to permit them to stay till the life time of Chellammal and Chellammal died in the year 1998 and thereafter, the plaintiff's temple requested the defendants to vacate the suit property for allowing the present incumbent poosari to occupy the same. The defendants are only in the permissive possession and enjoyment of the suit property and on the other hand, the defendants are attempting to obtain the service connection to the suit property in their own names without any entitlement and as they had failed to handover the suit property to the plaintiff's temple as promised, according to the plaintiff's temple, it has been necessitated to lay the suit for appropriate reliefs.

5.The defendants resisted the plaintiff's suit contending that the suit property does not belong to the plaintiff and denied the case of the plaintiff that the suit property had been entrusted to Arumugham in his capacity as the Poosari of the plaintiff's temple and on the other hand, according to the defendants, Arumugham on his own put up the superstructure in the suit property and enjoying the same with his family members by paying tax etc., and similar to the defendants, the others are also occupying in the Natham Poorambokku land lying adjacent to the suit property by putting up superstructure thereon and it



is true that Arumugham had been working as poosari in the plaintiff's temple, however, the claim of the plaintiff that it is only the plaintiff's temple, who had put up the superstructure in the suit property and permitted Arumugham to occupy the same are false and further, according to the defendants, after the demise of Arumugham, they have been occupying the suit property on their own by paying tax, other changes etc. And the defendants have also been served with the survey notice as regards the suit property and also the defendants had endeavoured to obtain the service connection for the suit property, which had been unlawfully prevented by the plaintiff and hence, according to the defendants, the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to A9 were marked. On the side of the defendants, DWS1 to 3 were examined and Exs.B1 to B15 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate Court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff. Impugning the same, the defendants have come forward with the present second appeal.

8. The second appeal has been admitted on the following substantial questions of law:

"1. Whether the lower appellate Court is correct in law in granting decree for declaration, recovery of possession and injunction by picking artificial holes in the defence, especially when it is well settled in law that the plaintiff has to succeed on the strength of his case?

2. Whether the lower appellate Court is correct in law in reversing the judgment of the trial Court, without specifically advertng to and setting aside the findings rendered by the trial Court, as mandated by the Apex Court?

3. When it is incumbent as per Sections 101 to 103 of the Evidence Act, 1872, for the plaintiff to establish his case, whether the plaintiff cannot obtain a decree on the weakness of his adversary?



WEB COPY

4. When the lower appellate Court had neither framed points for determination as required under Order 41 Rule 31 of the Code of Civil Procedure nor substantially complied with the said provision of law, whether the judgment of the lower appellate Court is tenable in law?

5. When Exs. B1 to B15 coupled with the evidence of DWS1 to 3, would clinchingly prove the entitlement of the appellants, whether the lower Appellate Court is correct in law in eschewing the same.?"

9. The plaintiff claims title to the suit property. The defendants challenged the plaintiff's claim of title to the suit property as put forth in the plaint. In such view of the matter, it is for the plaintiff to establish that it has a valid title to the suit property as claimed by it. According to the plaintiff, the suit property forms part of the property belonging to the plaintiff's temple and it is stated that it is only the plaintiff's temple, who had put up the superstructure in the suit property for the purpose of accommodating the Poosari and accordingly, it is further pleaded that the Poosari, viz., Arumugham, was permitted to occupy the suit property by the plaintiff and he had been residing therein and after he retired from the Poosari service, the defendants requested the plaintiff to continue the occupation of the suit property till the life time of their mother, who was sick at that point of time and after the demise of their mother, as the defendants had failed to surrender the possession and on the other hand, continue to squat in the suit property and also endeavoured to obtain the service connection, as if they are the owners of the same, according to the plaintiff, it has been necessitated to lay the suit against the defendants for appropriate reliefs.

10. The defendants, as abovestated, impugned the claim of title of the plaintiff to the suit property and according to the defendants, their predecessor in interest Arumugham in his own capacity had put up the superstructure in the suit property and been enjoying the same, like the other inhabitants of the adjacent area and accordingly, it is stated that the defendants had been enjoying the suit property by paying tax etc., and also endeavoured to obtain service connection, which had been unlawfully prevented by the plaintiff and hence, according to the defendants, the plaintiff is not entitled to seek the reliefs prayed for.

11. It is the specific case of the plaintiff that the suit property forms part of the property belonging to the plaintiff's temple. Materials placed on record go to show that the



plaintiff's temple had been in existence in several years. Now, according to the plaintiff, it is only the temple, who had put up the superstructure in the suit property for accommodating the Poosari. The defendants have admitted that their predecessor in interest Arumugham had been serving as the Poosari of the plaintiff's temple. According to the plaintiff, Arumugham had been permitted to accommodate in the suit property in his capacity as the Poosari. As could be seen from the materials placed on record, it is found that even the plaintiff's temple had been served with the survey notice in respect of the suit property marked as Ex.A2. No doubt, as could be seen from the materials placed by the defendants, they had been paying the tax in respect of the superstructure put up in the suit property. However, merely on the payment of tax for the superstructure, it cannot be inferred that the defendants had acquired a valid title to the suit property as put forth by them. In this connection, it is found that the defendants had endeavoured to obtain the mutation of their names in respect of the suit property and had presented the application to the concerned authority and thereupon, the concerned authority had issued notice to the plaintiff's temple for objection, if any, to the same and it is found that the plaintiff's temple had also put forth the objections to the name transfer sought for by the defendants and contended that the suit property belongs to the plaintiff's temple and that the same had been permitted to be occupied by the Poosari Arumugham and the defendants are endeavouring to effect the mutation in their names without any authority, on the abovesaid rival contentions, the concerned authority had passed the order dated 03.11.1997 and the said order has been marked as Ex.A3 and on a perusal of Ex.A3 order, it is found that the concerned authority had analysed and assessed the various materials pertaining to the suit property and considering that the suit property had been recorded only in the name of the plaintiff's temple in the Government records and also the ownership of the plaintiff's temple to the superstructure had been recorded only in the name of the plaintiff in the earlier sale deeds of the properties adjacent to the suit property, in all, determined that it is only the plaintiff's temple, which has the title to the suit property and accordingly, declined the request of the defendants for the name transfer as prayed for. The defendants have not disputed the order passed by the concerned authority marked as Ex.A3, in fact, it is found that Ex.A3 order had been communicated to the defendant Dhanalakshmi, by whom, the application for name transfer was mooted and the said order had also been communicated to the plaintiff's temple. Thus from Ex.A3, it is found that the suit property had been recorded in the Government records as standing only in the name of the plaintiff's temple and evidently, it is found that as put forth by the plaintiff, it is only the plaintiff's temple, which had put up the



superstructure thereon for accommodating the Poosari thereon.

12. The defendants, though, would claim that their predecessor in interest Arumugham had put up the superstructure on his own, however, there is no material on the part of the defendants as to when the superstructure was put up in the suit property etc., and other than tax receipts projected by them, there is no other valid material placed on the part of the defendants evidencing their claim of title to the suit property as put forth by them. In this connection, the documents marked as Exs.A8 & A9 assume importance. Exs.A8 & A9 are found to be the sale deeds pertaining to the property lying to the east of the suit property, the sale deed Ex.A8 pertains to the year 1957 and the anterior title deed of the same has been marked as Ex.A9. PW2, the owner of the property, lying on the eastern side of the suit property has been examined and through him Exs.A8 & A9 have been marked. On a perusal of Ex.A8, it is found that while describing the property comprised therein, the same is described as situated on the eastern side of the suit property, i.e. the same is described as lying to the east of the house belonging to the plaintiff's temple. Therefore, it is found that much earlier, even before the lis had commenced between the parties, the anti litem document marked as Ex.A8 goes to disclose that the suit property belonged only to the plaintiff's temple and accordingly, necessary recitals with reference to the same are disclosed in Ex.A8. Therefore, as rightly determined by the first appellate Court, the parties would not have foreseen any litigation in future for incorporating such recitals in Ex.A8 sale transaction, particularly, when the plaintiff is not a party to Ex.A8 sale transaction and admittedly, when Ex.A8 pertains to the property lying to the east of the suit property and when the plaintiff has endeavoured to establish the sale transaction covered under Ex.A8 through a competent witness viz., PW2 and when PW2 is found to be entitled and authority to depose about the sale transaction marked as Exs.A8 & A9, in the light of the abovesaid recitals contained in Ex.A8 sale transaction, it is found that as the suit property belongs to the temple and that it is the temple, which had put up the superstructure in the suit property, accordingly, it is found that the suit property has been described as belonging to the plaintiff's temple in Ex.A8 sale transaction. The abovesaid factors cannot be easily brushed aside, as sought to be made out by the defendants' counsel. When the plaintiff has established the boundaries recitals contained in Ex.A8 through the competent witness, on the basis of the same, it is found that the first appellate Court is justified in upholding the plaintiff's claim of title to the suit property.

13. No doubt, the defendants have produced tax receipts in respect of the superstructure standing in the suit property, however, as determined by the first appellate Court, merely on the basis of the tax receipt projected by the defendants, we



cannot confer that the defendants have a valid title to the suit property, particularly, when the defendants have failed to establish as to when the superstructure had been put up in the suit property and by whom, it had been put up and when there is no material on their part that it is only their predecessor in title viz., Arumugham, who had put up the superstructure on his own and enjoying the same and on the other hand, when from Ex.A8 as well as Ex.A3, it is only the plaintiff's temple, which is found to be owning the suit property as forming part and parcel of the property belonging to the plaintiff's temple and when the factum that the defendants' predecessor in title viz., Arumugham had been serving as the Poosari of the temple is not in dispute, in the preponderance of probabilities as determined by the first appellate Court, it is evident that the defendants are in the occupation of the suit property as claimed by the plaintiff through their father and when the defendants' predecessor in interest is found to have been accommodated in the suit property only by the plaintiff's temple in his capacity as the Poosari of the plaintiff's temple and when other than the tax receipts, the defendants have not placed any other acceptable material for sustaining their claim of title to the suit property, particularly, in defiance to the documents projected by the plaintiff marked as Exs.A3, A8 & A9 put together, in all, it is found that the first appellate Court has appreciated the available materials placed on record and rightly determined that it is only the plaintiff, who has the title to the suit property and entitled to obtain the reliefs prayed for and inasmuch as the defendants had failed to surrender the possession of the suit property to the plaintiff's temple and contrary to the assurance given by them, are endeavouring to obtain the service connection to the suit property in their own names without any entitlement as per law, it is seen that the plaintiff had been necessitated to lay the suit against the defendants for appropriate reliefs. In such view of the matter, the first appellate Court is wholly justified in granting the reliefs in favour of the plaintiff as prayed for and in my considered opinion, no interference is called for with reference to the same. The substantial questions of law formulated in the second appeal are, accordingly, answered in favour of the plaintiff's temple and against the defendants.

In conclusion, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar



WEB COPY

1.The Principal Sub Judge,  
First Additional Subordinate Court,  
Coimbatore.

2.The Third Additional District Munsif Court,  
Coimbatore.

3.The Section Officer,  
V.R. Section, High Court, Madras.

+1cc to Mr.P.Valliappan, Advocate, S.R.No. 44560  
+2cc to Mr.S.R.Sundaram, Advocate, S.R.No. 44523

S.A.No.864 of 2006

CA(CO)  
GN(11/10/2019)