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IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON :20.06.2019
PRONOUNCED ON: 27.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.Nos.194 and 195 of 2016
and
C.M.P.No.4195 of 2016

S.A.No.194 of 2016

Sundarambal

...Appellant/appellant/Plaintiff

Vs.

1. The Kudavasal Thasildar,
Taluk Office,
Kudavasal Taluk,
Nanilam Munsif,
Thiruvarur District.
2. The District Collector, Thiruvarur,
Thiruvarur District Collectorate Office,
Thiruvarur District.
3. A/M. Padaikarasi Amman Alayam,
Rep by its Managing Officer,
having Office at
Thippanampettai,
Kudavasal Taluk,
Nanilam Munsif
Thiruvarur District.

...Respondents/Respondents/
Defendants

S.A.No.195 of 2016

Sundarambal

...Appellant/appellant/defendant

Vs.

A/M. Padaikarasi Amman Alayam,
Rep by its Managing Officer,
having Office at
Thippanampettai,
Kudavasal Taluk,
Nanilam Munsif
Thiruvarur District.

...Respondent/Respondent/
Defendant



Prayer in S.A.No.194 of 2016: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Subordinate Judge, Thiruvarur in A.S.No.22 of 2013 dated 19.02.2015 against O.S.No.81 of 2004 dated 21.06.2010 on the file of the District Munsif cum Judicial Magistrate, Nannilam.

Prayer in S.A.No.195 of 2016: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Subordinate Judge, Thiruvarur in A.S.No.23 of 2013 dated 19.02.2015 against O.S.No.63 of 2006 dated 21.06.2010 on the file of the District Munsif cum Judicial Magistrate, Nannilam.

For Appellant : Mr.M.Thamizhavel in both appeals

For RR1 and R2 in : Mr.N.Manikandan
S.A.194 of 2016 Government Advocate (CS)

For R3 in S.A.194 of 2016: Mr.K.V.Dhanapalan
and
For Respondent in
S.A.No.195 of 2016

C O M M O N J U D G M E N T

The Second Appeal Nos.194 and 195 of 2016 are directed against the judgment and decree dated 19.02.2015 passed in A.S.Nos.22 and 23 of 2013 on the file of the Subordinate Court, Thiruvarur, confirming the judgment and decree dated 21.06.2010 passed in O.S.No.81 of 2004 and O.S.No.63 of 2006 on the file of the District Munsif cum Judicial Magistrate Court, Namakkal.

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

3. The suit in O.S.No.63 of 2006 has been laid by the plaintiff for possession and mense profits.

4. Briefly stated the case of the plaintiff is that the plaintiff's temple owns the properties including the suit property as described in the plaint schedule and the suit property is comprised in S.F.No.159/21 and the same belongs to



the plaintiff's temple and the defendant owns the property in S.F.No.159/15 and without any authority, the defendant had encroached the portion of the property in S.F.No.159/21 and put up illegal construction and hence according to the plaintiff, it has been necessitated to lay the suit against the defendant for recovery of possession and other reliefs.

5. The defendant resisted the abovesaid suit laid by the plaintiff contending that the suit property does not belong to the plaintiff's temple and the property lying in S.F.No.159/21 was purchased by the defendant for a valid consideration by way of a registered sale deed dated 08.06.1988 from one Ramadoss Udaiyar, and since then, it only the defendant who has been in the possession and enjoyment of the suit property and whileso, the Tahsildar of Kudavasal issued notice on 28.05.2004 claiming that the suit property is a Government Promboke land belonging to the State and the defendant should vacate and hand over the same and hence the defendant was necessitated to prefer the suit in O.S.No.81 of 2004 against the Tahsildar, Kudavasal and the state for the relief of permanent injunction and the same had been suppressed by the plaintiff's temple. The property in S.F.No.159/21 is a Government Poramboke belonging to the State Government and hence the State Government is a necessary party to the present litigation and the defendant and her predecessors in interest has been in the possession and enjoyment of the suit property for more than 100 years and accordingly became the owner of the suit property by way of adverse possession and the suit laid by the plaintiff is barred by limitation and the suit is liable to be dismissed.

6.The suit in O.S.No.81 of 2004 has been laid by the defendant for the relief of permanent injunction. The case of the defendant in brief is that she had purchased the suit property from one Ramadoss Udaiyar on 08.06.1988 for valuable consideration by way of a registered sale deed and constructed a house therein and enjoying the same, and at the instigation of the villagers ill disposed of against the defendant, the Tahsildar, Kudavasal came to the property on 28.05.2004 and threatened to demolish all the portion of the house standing in the suit property, on the footing that the portion of the suit property is the Chathiram belonging to the Government and the defendant cannot be dispossessed from the property except under due process of law and the third defendant namely the plaintiff in O.S.No.63 of 2006 has been added as per the order of the Court and hence the suit for necessary relief.

7.The defendants 1 and 2 in O.S.No.81 of 2004 resisted the defendant's suit contending that the property in S.F.No.159/15 belongs to the defendant and the same is the punja land and the defendant encroached into a portion of the



property in S.F.No.159/21 belonging to the Government and the trees standing in S.F.No.159/21 belong to the Government and the encroachment made by the defendant in the Government Poramboke land has to be removed and only to prevent the defendants 1 and 2 from taking action against the encroachment, the defendant has laid the false suit without any cause of action and the suit is therefore liable to be dismissed.

8. The third defendant namely the plaintiff in O.S.No.63 of 2006 resisted the abovesaid suit laid by the defendant contending that within the four boundaries described in the plaint schedule, the property in S.F.No.159/21 is situated and the same belongs to the third defendant's temple and the defendant has encroached the temple's property in the year 2003 and put up the house therein and the defendant has not approached the Court with clean hands and liable to remove the encroachment and hence the suit is liable to be dismissed.

9. On the basis of the joint memo filed by the parties concerned and considering the issues involved in both the suits are one and the same, they were taken up for trial jointly and common evidence had been recorded.

10. In support of the plaintiff's case, P.Ws.1 to 4 were examined. Exs.A1 to A9 were marked. On the side of the defendants, D.Ws.1 to 4 were examined. Exs.B1 to B17 were marked. Exs.C1 to C4 were also marked.

11. 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 suit laid by the defendant in O.S.No.81 of 2004 and decreed the suit laid by the plaintiff in O.S.No.63/2006. Aggrieved over the same, the defendant has preferred the appeals and the first appellate court, on a consideration of the materials placed on record and the submissions made, was pleased to dismiss both the appeals preferred by the defendant and thereby confirmed the judgment and decree of the trial court in both the suits. Aggrieved over the same, the present second appeals have been preferred by the defendant.

12. At the time of admission of the second appeals the following substantial questions of law were formulated for consideration.

(a) Whether the Courts below are correct in decreeing the suit in O.S.No.63 of 2006 filed by the respondent/plaintiff for recovery of possession.



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(b) Whether the Courts below are correct in decreeing the suit for recovery of possession since the respondent/plaintiff himself has admitted during his cross examination that lands in S.No.159/21 are Government Poramboke lands.

13.The plaintiff's temple claims the property comprised in S.F.No.159/21 as belonging to it. As rightly found by the Courts below, considering the documents projected by the plaintiff's temple, particularly Ex.A8, the register maintained by the temple, it is found that the suit property comprised in S.F.No.159/21 belongs to the temple and as rightly determined by the Courts below, the recitals in Ex.A8 go to reveal that the property in S.F.No.159/21 has been classified as Chathiram belonging to the plaintiff's temple and the abovesaid register had also been certified by the appropriate authority and in addition to that the plaintiff's temple had also placed the documents marked as Exs.A1 to A6, A7 and A9 and considering the abovesaid documents in toto in conjunction with Ex.A8 register, in all, the Courts below are found to be totally justified in determining that the property comprised in S.F.No.159/21 only belongs to the plaintiff's temple and therefore the claim of the defendant, in particular or the claim of the Government that the property comprised in S.F.No.159/21 belongs to the defendant or classified as Poramboke land, as such, cannot be accepted and rightly rejected by the Courts below.

14.In the light of the abovesaid factors, the determination of the Courts below concurrently based on the proper appreciation of the materials placed on record that the property in S.F.No.153/21 belongs to the plaintiff's temple needs no interference.

15. The defendant would claim that she had purchased the property from one Ramadoss Udaiyar by way of a registered sale deed dated 08.06.1988 and put up the house construction thereon and thereby it is she who is having the title, possession and enjoyment of the suit property. However absolutely there is no material on the part of the defendant to hold that her predecessor in interest namely Ramadoss Udaiyar had title to the property in S.F.No.159/21 and on the other hand it is found that the defendant has got the property only in S.F.No.159/15, but on the strength of the abovesaid sale deed, encroached into the property in S.F.No.159/21 and also put up the construction thereon. Accordingly, it is found that the plaintiff's temple had been necessitated to seek the relief of possession from the defendant after removing the unlawful construction put up her in S.F.No.159/21. Even the Commissioner's report and plan



projected in the matter go to disclose, as determined by the Courts below, that the construction put up by the defendant also falls within S.F.No.159/21 and as regards the abovesaid features noted by the Advocate Commissioner, the same has not been objected by the defendant and in this connection, the defendant examined as D.W.1 has also admitted that the Commissioner had noted the construction put up by her is lying in S.F.No.159/21 and with reference to the abovesaid observation of the Advocate Commissioner, she has not preferred any objection. Particularly when the defendant has not established that her predecessor in interest had a valid title qua S.F.No.159/21, in such view of the matter, on the strength of the sale deed projected by the defendant dated 08.06.1998 marked as Ex.B1, the defendant cannot be allowed to lay any claim of title or valid possession and enjoyment as regards the property comprised in S.F.No.159/21.

16. The Courts below had also assessed the case of the Government and found that the Government had also failed to establish that the property in S.F.No.159/21 has been classified as Poramboke and vested with the Government. The abovesaid determination of the Courts below also do not warrant any interference.

17. The only plea that has been raised by the defendant for sustaining her possession and enjoyment of the encroached property in S.F.No.159/21 is that she and her predecessor in interest has been in the possession and enjoyment of the same for more than 100 years and thereby they had prescribed title to the same by way of adverse possession. However, the defendant has not come forward with any specific case as to when from her possession had become adverse to the encroached portion as against the plaintiff's temple. In addition to that the defendant had not placed any acceptable and convincing materials to show that she and her predecessor in interest had been enjoying the portion in S.F.No.159/21 openly, continuously and uninterruptedly by exercising hostile title to the knowledge of the plaintiff's temple with Animus possidendi beyond the statutory period and when the documents projected by the defendant, as rightly determined by the Courts below, do not in any manner advance the abovesaid plea of adverse possession projected by the defendant, in such view of the matter, the plea of adverse title as put forth by the defendant for sustaining her unlawful possession and enjoyment of the property in S.F.No.159/21 has been rightly turned down by the Courts below and in such view of the matter, it is found that the defendant has failed to establish her title, possession and enjoyment of the property in S.F.No.159/21.



18. The plea of acquiescence and the estoppel projected by the defendant also would not be applicable to the case at hand and when it is found that the plaintiff's temple had come forward with the suit immediately on noting the illegal construction put up by the defendant in its property comprised in S.F.No.159/21, in such view of the matter, as determined by the Courts below, the defendant is liable to hand over the same to the plaintiff's temple as prayed for.

19. In the light of the abovesaid discussions, the Courts below are justified and correct in accepting the plaintiff's case in O.S.No.63 of 2006 and rightly granted the relief of possession as prayed for and the Courts below are found to have assessed and analysed the materials placed on record, both oral and documentary, in the right perspective and held that it is only the plaintiff's temple who has title to the property in S.F.No.159/21 and not the defendant or the Government and in such view of the matter, in my considered opinion, the abovesaid determination of the Courts below being founded on factual matrix, no substantial question of law is involved in the second appeals. Be that as it may, the substantial questions of law formulated in the second appeals are accordingly answered in favour of the plaintiff's temple and against the defendant / appellant.

20. In conclusion, both the second appeals fail and are accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The Subordinate Judge,
Subordinate Court,
Thiruvavur.
2. The District Munsif cum Judicial Magistrate,
District Munsif cum Judicial Magistrate Court,
Nannilam.



Copy to

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

+1 cc to Government Advocate sr53632
+1 cc to Mr.M.Thamizhavel Advocate sr5333o
+1 cc to Mr.K.V.Dhanapalan Advocate sr53080

S.A.Nos.194 and 195 of 2016
and
C.M.P.No.4195 of 2016

ssi(co)
aa30/10/2019