

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
S.A.No.174 of 2014

M/s.Thirumazhisai Azhwar &
Jagannatha Perumal Devasthanam,
Thirumazhisai Village,
Rep. by its Executive Officer,
having his office at Temple Premises,
Thirumazhisai Village & Post,
Chennai 600 124. ..Appellant/ Appellant /Plaintiff

Vs.

1. Parvathiammal
2. Govinda Achari @ Govindarajan
..Respondents/ Respondents/ defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned Subordinate Judge, Poonamallee, dated 17.07.2013 in A.S.No.37 of 2012, confirming the judgment and decree of the Principal District Munsif, Poonamallee, dated 28.11.2011 in O.S.No.413 of 1996.

For Appellant : Mr.P.Wilson for
Mr.A.S.Kailasam

For Respondents: Mr.R.Subramanian

J U D G M E N T

The plaintiff in O.S.No.413 of 1996 whose suit for declaration and recovery of possession was dismissed by the Courts below, has come up with this second appeal.

2. According to the plaintiff, the suit property belonged to the plaintiff temple and was let out to Adainchan Mudaliar who died leaving behind his son Othandi Mudaliar. After the death of Adainchan Mudaliar, Othandi Mudaliar continued as a tenant on a site rent of Rs.0.38 paise per month and subsequently the same was enhanced to Rs.5.00/- per month. It is further claimed that Othandi Mudaliar transferred the possession of the site to the 2nd defendant's father Kishtappa Achari. After the death of

Kishtappa Achari, the defendants had not taken possession of the suit site and lying vacant. According to the plaintiff, on 21.12.1991, the defendants trespassed into the site and started putting up construction. Upon being questioned, the defendants asserted the title of the property and denied the title of the plaintiff temple. Hence, notice was issued on 23.12.1991. The defendants did not comply with the demand notice dated 23.12.1991. But replied setting up a false claim of title dated 22.01.1992. Hence the present suit.

3. The suit was resisted by the defendants contending that the suit property does not belong to the plaintiff temple. According to the defendants, the suit property was classified as Grama Natham. Originally Adainchan Mudaliar purchased the property from one Perumal Naidu under a Sale deed dated 23.10.1939. After the death of Adainchan Mudaliar, on 09.07.1964, his only son Othandi Mudaliar become the absolute owner of the property. Othandi Mudaliar and his children conveyed the property to Kishtappa Achari under a Sale deed dated 02.03.1988 which is marked as Ex.B5. The defendants being the descendants of Kishtappa Achari are in possession of the property in their own right and not as tenants of the plaintiff temple. On the above contentions, the defendants sought for dismissal of the suit.

4. At trial, the plaintiff, Executive Officer of the temple was examined as P.W1 and Exs. A1 to A3 were produced. On the side of the defendants, the 2nd defendant Govinda Achari @ Govindarajan was examined as D.W.1 and Exs.B1 to B 36 were produced.

5. It was also contended that the plaintiff-Temple filed a suit in O.S.No.47 of 1971 against the Othandi Mudaliar for recovery of rent due. The said suit was withdrawn, with liberty to the plaintiff-Temple to file a fresh suit.

6. The Courts below upon consideration of the evidence on record concluded that the documents in Exs.A1 to A3 will not prove the title of the plaintiff temple to the suit property. No doubt, Exs.A1 to A3 are certain receipts which would demonstrate that Othandi Mudaliar had paid rent to the Temple and that by itself, according to the Courts below, would not confer title on the Temple. The Courts below also found that the defendants have produced the original Sale deed dated 23.10.1939, Ex.B4 which would show that Perumal Naidu had sold the property in Survey No.169/2 in favour of Adainchan Mudaliar. His son Othandi Mudalair and his legal heirs had sold the property purchased by Adainchan Mudaliar under Ex.B4 to Kishtappa Achari, the predecessor-in-interest of the defendants under Ex.B5 dated 02.03.1998. The description of the property

in all these documents shows that Survey No.169/2 classified as Grama Natham. Ex.B7 is the patta issued to the 1st defendant Parvathiammal under the Natham Land Tax Scheme. This document would demonstrate that the suit property classified as Grama Natham, does not belong to the temple. Relying upon the documents produced, the Courts below concluded that the plaintiff temple is not the owner of the property and as such, is not entitled to declaration and recovery of possession sought for by it. On the above conclusions, the Courts below dismissed the suit.

7. Aggrieved, the plaintiff is on appeal.

8. The following substantial questions of law were framed at the time of admission:

a) Whether the Courts below are correct in not advertng to the plea in the written statement regarding adverse possession due to which the plaintiff's title is admitted?

ii) Whether the Courts below were correct in holding that the plaintiff has not proved its title in view of the plea of adverse possession?

9. No doubt true, in para 11 of the written statement, the defendants claimed that they have perfected title by adverse possession. But the said plea has taken as alternative plea in Paragraph Nos. 3,5, and 8 of the plaint, the defendants have traced their title with reference to the Sale Deeds of the years 1939 and 1988 as wells as the revenue documents. Even at trial, the claim of adverse possession has not been pressed into service. The Courts below have gone into the title of the plaintiff as well as the defendants, concluded that the plaintiff has not made out its title. Mere issuance of the receipts for payment of rent which are self generated documents, cannot confer title to the property on the temple. The Courts below have considered the entire evidence and have come to the conclusion that the plaintiff has not established its title.

10. The mere fact that the defendants have raised an alternative plea of adverse possession which is entitled to will not amount to an admission of title of the plaintiff, more so when the defendants have pleaded independent title also in their written statement. Hence, the questions of law are answered to the effect that the plea of adverse possession would not amount to admission of title of the plaintiff by the defendants and in the absence of proof of title, the plaintiff will not be entitled to the relief of declaration and recovery of possession.

11. In view of the above, the questions of law are answered against the appellant. The appeal fails and it is dismissed. However, in the circumstances, there will be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

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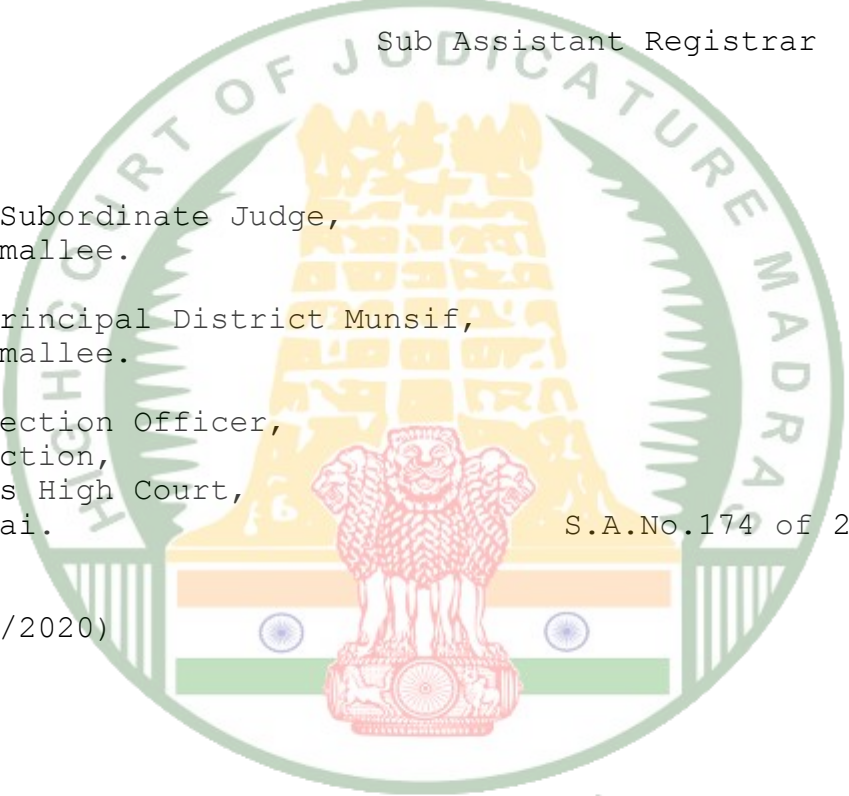
Sub Assistant Registrar

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To

1. The Subordinate Judge,
Poonamallee.
2. The Principal District Munsif,
Poonamallee.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.

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