



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.11.2020

Pronounced on: 23.11.2020

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CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.1313 of 1993

- 1.A.Raju(deceased)
- 2.Sundari
- 3.Sugumaran

(appellants 2 and 3 are brought on record as LRS of the deceased 1st appellant as per the order of Court dated 08.06.2001 made in C.M.P.Nos.19561 to 19563 of 1999) .. Appellants / Plaintiffs

/versus/

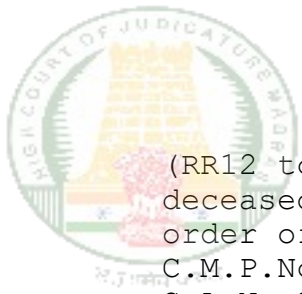
- 1.A.Kuppannan
- 2.Masthappa gounder(died)
- 3.Subbiah gounder (deceased)
- 4.Rani
- 5.Gomathi
- 6.Gunaranjitham

(RR4 to 6 are brought on record as LRS of the deceased 1st appellant as per the order of Court dated 08.06.2001 made in C.M.P.Nos. 19561 to 19563/1999)

- 7.S.Duraisamy
- 8.S.Vikiraman
- 9.Surajkumar
- 10.Prabhukumar
- 11.Venmathi

(RR7 to 11 brought on record as LRS of the deceased 3rd respondent vide order of Court dated 16.06.2014 made in C.M.P.nos.9410 to 9412/2006)

- 12.M.Nataraj
- 13.Marannan
- 14.Nagarathinam



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(RR12 to 14 brought on record as LRS of the deceased R2 viz., Masthappa Gounder vide order of Court dated 13.10.2020 made in C.M.P.Nos.4388, 4393 and 4394/2020 in S.A.No.1313/1993)

..Respondents

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the judgment and decree dated 29.06.1993 in A.S.No.111/90 on the file of Subordinate Judge's Court, Gobichettipalayam preferred against the judgment and decree dated 12.09.89 made in O.S No.39/1987 on the file of the District Munsif's Court, Sathyamangalam.

For Appellants : Mr.C.R.Prasanan

For Respondent's : No appearance

JUDGMENT

(The case has been heard through video conference)

The Appellants are the legal heirs of the sole plaintiff in the original suit. Claiming title over 0.38 cents of land more fully described in the plaint schedule, the suit was filed for declaration of title and injunction. Later, the plaintiff amended his prayer for the additional relief of mandatory injunction to remove the superstructure put up by the defendants on the suit land and to deliver the possession. The trial Court dismissed the suit and the first appellate Court confirmed it. Hence, this second appeal is filed against the concurrent findings of the Courts below. Pending appeal, the sole appellant died and his legal representatives are Appellants 2 and 3. Like wise, pending appeal, the second and third defendants died. Their legal representatives were brought on record. The first defendant remained ex-parte throughout, hence given up.

2. The facts necessary to decide this second appeal are as below:-

A.Raju(plaintiff) laid a suit claiming that under Ex.A-1 dated 24/04/1958, he purchased 1/3rd share out of 1.66 acres of land in S.No.32-A and 1/3rd share out of 1.52 acres of land in S.No.32-B at Doddampalyam Village, Sathyamangalam Taluk. He sold 32 cents to one Sundaram who in turn sold it back to the plaintiff vide sale deed dated 20/03/1970 Ex.A-2. The said property is in his possession being re-surveyed and assigned S.No.22/1. The Patta for this property is issued in his name and others. When the plaintiff attempted to put up construction in his property, the defendants, who have no right or title in any manner threaten to interfere his possession. Hence, apprehending forcible trespass, the suit initially filed for declaration and injunction. Pending suit, the defendants trespassed and forcible took possession of the suit land and started putting up



construction. Hence, the prayer amended to declaration, mandatory injunction, recovery of possession and permanent injunction.

3. The first defendant remained exparte. The second and third defendants contested the suit, claiming that neither the plaintiff nor his predecessors in title had any right over the suit property. Atleast for 50 years the possession is not with them. The Mahaliyamman temple is in the suit land. The said temple is in existence for more than 100 years. The portion mentioned as foundational construction is part of the temple. The temple belongs to a particular community of the village. Open and hostile to the real owner the temple and the land around is under their administration. Recently, the villagers formed a committee to renovate the temple and from the donations collected from public, the committee had renovated the existing temple and conducted Kumbabiseham. The yaga gundam and bothi stone are in the suit land. Idol installed and daily worship is carried on by the villagers.

4. In the additional written statement it was contended, the sale deed dated 24/04/1958 is not a genuine transaction. The Mahaliyamman temple, its Gundam, Pulpit and Flag pole are in the lay for more than 100 years in an extent of 21 cents. In respect of this 0.21 cents the temple had perfected the title by adverse possession. Therefore, any transfer of title in respect of this 0.21 cents is non-est, in view of the fact that the title holder has knowingly lost the possession to the temple for more than period prescribed. These defendants are the third parties to the suit property. The silence in the plaint about the existence of the temple in the suit property and non-joinder of the temple renders the plaint bad and deserved to be dismissed for non-joinder of necessary party and as well as mis-joinder of parties. Further, the suit is grossly under valued. The suit property is worth more than Rs.40,000/-. The suit is liable to be dismissed for not paying the correct Court fees.

5. The trial Court framed the following issues for consideration:-

1. Whether the plaintiff is entitled for the relief of declaration and permanent injunction as prayed ?
2. What relief the plaintiff is entitled ?

Additional issues (20/04/1988):

1. Whether the plaintiff and his predecessor in title enjoy title and possession in respect of 1.06 acres of land ?
2. Whether the plaintiff is entitled for the relief of mandatory injunction ?
3. Whether the plaint as drawn is maintainable ?
4. Whether the suit is properly valued and



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stamped ?

5. Whether the plaintiff lost his right by adverse possession ?

Second additional issues (25/10/1988):-

Whether the suit is bad for non-joinder of necessary and proper party ?

6. The plaintiff was examined as PW-1. Exhibits A-1 to A-30 were marked. On behalf of the defendants, 4 witnesses were examined and 4 documents were marked.

7. The trial Court on appreciating the evidence dismissed the suit, holding that the plaintiff, who purchased a total extent of land ad-measuring 1.06 acres under Ex.A-1 from Marakkal and Nagappan, admits he did not measured the land before he purchased. He is not aware of the boundaries of his property. He admits the existence of a temple in the land but claims it as the abandoned private temple of his vendors, which was in wholly dilapidated condition without any idol in it. He demolished it and started constructing his house. Whereas, DW-1 claims that the said structure was part of the old temple building which was repaired and idol reinstalled at the same place. The temple belongs to Okkilga community worshipped by general public. DW-2, who is the son of Marakkal and brother of Nagappan had deposed that when his mother and brother sold the suit property to the plaintiff, the Mahaliyamman temple was there and the Gowda (okkiliga) community people were worshipping. The evidence of DW-3 corroborates the evidence of DW-2.

8. The trial Court on examining the boundaries mentioned in Ex.B-2 to Ex.B-4, noticed that, Mahaliyamman temple is shown as one of the boundary for the properties transferred under Ex B-2, the sale deed executed by the plaintiff in favour of Venkatarama chettiar on 09/02/1959, Ex B-3 the sale deed executed by the plaintiff in favour of Thirumalai Chettiar on 17/02/1959 and Ex.B-4 the sale deed executed to Sundaram on 11/06/1970. Hence, concluded that Ex.B-2 to Ex.B-4 proves the existence of the temple in the property purchased by the plaintiff under Ex.A-1. From the report of the Advocate Commissioner marked as Ex.C-3, the existence of religious structure in 21 cents of the suit property been ascertained.

9. The aggrieved plaintiff went on appeal before the Sub Court, Gopichettipallayam. The first appellate Court, after formulating the point for determination, re-appriated the evidence and concurred the judgement of the trial Court. The first appellate Court held that, through evidence the existence of Mahaliyamman temple to an extent of 0.21 cents of the suit land is proved. Though the temple is not a party to the proceedings and no title deed is in the name of temple, its existence for more than 20 years is prima facie established. Therefore, the suit is bad for not impleading the temple, which



has perfected the title by adverse possession.

10.The second appeal was admitted on 07/10/1993 and the following Substantial Questions of Law were formulated:

(1)Whether in law, the Courts below have not erred in dismissing the suit on the wrong assumption that the plaintiff's title, even if it is proved on the basis of Ex.A1 and Ex.A5 is lost in view of the temple's prescription of title by adverse possession overlooking that the defendants, being trespassers, have no locus standi to raise a plea of adverse possession behalf of the temple, which is a private temple?

(2)Whether in law the Courts below have not committed a grave error in not at all considering Ex.A12 to Ex.A25 which would clearly establish the plaintiff's possession of the suit property conclusively?

11.The learned counsel for the appellants submitted that, the Courts below erred in holding that the plaintiff was not put in possession of entire suit property. The portion of the suit property to an extent of 0.21 cents were never in his possession. The boundaries mentioned in Ex.B-2 to Ex.B-4 are not proof for existence of a pacca temple or it is a public temple. The Courts below failed to grant injunction against the defendants, who have expressly conceded that they no right by any manner in the temple. When there is no adequate proof for existence of a temple and even assuming there was a temple, in the suit land, there is no proof to show, it was a public temple. When the revenue records Ex.A-5 to Ex.A-9 does not whisper about the existence of a temple in the suit survey land and the Advocate Commissioner had noted a mechanic shop in the suit land constructed by the defendants, the conclusion of the Courts below that a temple is in existence at the suit property is contrary to evidence and a perverse finding warrants interference. In any event, the dismissal of the suit in entirety without considering the fact that even according to the defendants, the temple is in 0.21 cents of land and there is no claim in respect of the remaining extent, requires reconsideration.

12.The learned counsel for the appellants relying upon the judgment of this Court reported in [2001(2) LW 774 (Commissioner, H.R. & C.E. Admn. Dept., Nungambakkam, Madras-34 v. N.Sundaraswamy Gounder and another) submitted that, mere presence of Gundam, Pulpit and a flag pole is not sufficient to hold the structure a public temple in the absence of proof regarding regular pooja and rituals. Sporadic participation in worship with permission will not make a temple a public one. Therefore, without prejudice to the other merits of the appeal, even assuming that there was a temple in the land purchased by



the plaintiff, it being the private temple of the vendor, the Courts below ought to have granted the relief sought. Further, if assuming that it is a public temple, it is proved and admitted fact that the temple is located within the extent of 0.21 cents and remaining 0.17 cents from and out of 0.38 cents the relief ought to have been given.

13. Heard the learned counsel appearing for the appellants and records perused.

14. The suit property is 0.38 cents of land in new survey No.22/1 at Thottampalayam Village. Out of this 0.38 cents, the disputed portion is 0.21 cents in which the structures of Mahaliyamman temple located. The evidence placed before the Court and also admitted by the defendants show that under Ex.A-1 the plaintiff had purchased 1/3rd right, out of 1.66 acres land in S.No.32 A which later became part of R.S.No.22/1. He had purchased this property along with 1/3rd share out of 1.52 cents in old S.No.32 A from one Marakka and her son Najappan in the year 1958. Thus, totally he had purchased 1.06 acre land under Ex.A-1 dated 24/04/1958. Ex.B-1 sale deed dated 28/11/1962 indicates that the plaintiff had sold 0.38 cents of land to one Sundaram, which is the now the subject matter. In the year 1970, he has repurchased it from Sundaram under Ex.A-2 dated 20/03/1970. Admittedly, between the execution of Ex.B-1 and repurchase under Ex.A-2, the plaintiff was not in possession of the suit property. The sale deeds executed between 1959 and 1970, which are marked as Ex.B-2 to Ex.B-4 refers the Mahaliyamman temple as one of its boundaries. This will not confer any title to the temple, but it is an inferential fact that a temple is in the lay and location.

15. The defendants plea that the in the suit land at about 0.21 cents, a temple located and the public of the Thottampalayam village have consecrated after demolishing the existing structure ample proved through documents and through oral evidence of Defendants 2 and 3. Under these circumstances, without impleading the idol of the temple, which is a juristic person, the suit laid against 3 individuals, who have expressly pleaded that they are not part of the temple administration and they have never attempted to trespass into the plaintiff property and the temple portion, which is in existence for more than 100 years, had lead the Courts below to dismiss the suit claim.

16. The relief in the suit is for declaration the entire 0.38 cents and mandatory injunction to remove the superstructure put on the suit property. Further, injunction restraining the defendants from interfering the enjoyment of the suit property by the plaintiff. The evidence placed before the Court had lead to the conclusion that in 0.21 cents the Mahaliyamman temple is located and the superstructure sought to be removed through



mandatory injunction are the temple structure, pulpit and flagpole. The Advocate Commissioner has noted the physical feature on the suit property. Since the defendants are not the necessary parties in this suit and the temple, which is the proper and necessary parties to the suit, for not impleading the necessary party and for contesting against unnecessary party, the appellants who are the legal representatives of the deceased plaintiff have to suffer.

17.The documents Ex. A-1 and Ex. A-2 though confer title to the plaintiff over the suit property in which, the temple is located, the possession over it is not established by the plaintiff. Ex.A-12 to Ex.A-25-kist receipts are for the entire extent inclusive of the portion where the temple is located. To decide the plea of the plaintiff that the temple was a private temple of his vendors and it does not carry any character of public temple, the temple is a necessary party. Without hearing the representative of the temple, its character cannot be ascertained.

18.In the light of the above findings, the Substantial Questions of Law are answered against the appellants. The Second Appeal is dismissed confirming the judgment and decree of the trial Court as confirmed by the first appellate Court.

19.While dismissing the second appeal, this Court add as a clarification that, the dismissal of the second appeal for non-joinder of necessary party no way to be understood as a permission to disturb the possession of the appellants remaining extent of 0.17 cents, ie beyond the 0.21 cents land upon which the Mahaliamman Temple and its structures located.

20.In the result, the Second Appeal dismissed with the observation as above. No order as to costs.

Sd/-

Assistant Registrar(AR I)

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Sub Assistant Registrar

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To:-

- 1.The Subordinate Court, Gobichettipalayam.
- 2.The District Munsif Court, Sathyamangalam.
- 3.The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.C.R.Prasanan, Advocate SR.No.37510

S.A.No.1313 of 1993

GMR (CO)

B.VC(19.07.2021)

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