

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2019

PRONOUNCED ON: 19.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
S.A.No.1985 of 2003
and
CMP.No.17989 of 2003

R. Srinivasan ... Appellant/4th defendant

Vs.

Kollapalle Village Mattam Raja Temple
rep by its Hereditary Trustees

1.Lakshmi Ammal

2. Munirathinam

3. Rajendran

4. Srinivasan

... Respondents/plaintiffs

5. Chinnannan Mandiri (deceased)

6. Munilakshmi Ammal

7. Kasthuri

8. Lakshmi Ammal

... Respondents/Defendants 1 to 3

(R8 brought on record as L.R of deceased

5th respondent as per order dated

21.12.2016 made in CMP.Nos.273 to 275 of 2015

in SA.No.1985 of 2003)

(Amended the CT vide order this court

dated 27.11.2019 made in CMP.No.25320/19 in

SA.No.1985/03 as per Memo dated 27.11.2019 are
recorded)

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the judgment and decree made in A.S.No.3 of 2001 on the
file of the Subordinate Judge, Ranipet, Vellore District, dated
29.01.2002 reversing the judgment and decree made in O.S.No.378
of 1995 on the file of the District Munsif-cum-Judicial
Magistrate No.1, Walajapet, dated 31.08.2000.

For Appellant

: Mr.M.Ravi

For Respondents

: Mr.P.Jagadeesan

(for R1 to R4)

set exparte (for R5 to R8)

by an order dated 28.11.2019

JUDGMENT

This second appeal has been filed by the fourth defendant against the judgment and decree passed by the Sub-Judge, Ranipet, Vellore District in A.S.No.3 of 2001 dated 29.01.2002 reversing the judgment and decree passed by the District Munsif-cum-Judicial Magistrate No.1 Walajapet, Vellore District in O.S.No.378 of 1995 dated 31.08.2000.

2. The respondents 1 to 4 herein had filed a suit in O.S.No.41 of 1995 on the file of the vacation court of Vellore District and subsequently, the said suit was transferred to the District Munsif, Ranipet and re-numbered as O.S.No.220 of 1995 and thereafter it was again transferred to the District Munsif-cum-Judicial Magistrate No.1, Walajapet and re-numbered as O.S.No.378 of 1995. The learned District Munsif-cum-Judicial Magistrate No.1, Walajapet by the judgment dated 31.08.2000 had dismissed the said suit without costs. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.3 of 2001 on the file of the Sub-Judge, Ranipet, Vellore District. The learned Sub-Judge, Ranipet by the judgment dated 29.01.2002 had allowed the said appeal without costs and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for. Feeling aggrieved, the fourth defendant has filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are, in brief, as follows:

a) The suit properties are belonging to the Kattam Raja Temple at Kollapalle village. The plaintiffs are the hereditary family Trustees of the said temple along with the first defendant. The suit properties are being enjoyed for the benefit of the family temple, by the plaintiffs along with the first defendant. The suit properties are ancestral in character owned by them for the benefit of the said temple. The patta also issued in the name of the temple. The suit properties are inalienable in nature, since the character of the property is family Trust of the aforesaid temple. The properties were enjoyed in the same manner by the ancestors of the plaintiffs along with the first defendant. No encumbrance can be created either by the plaintiffs or by the defendants. The character of the properties can be gauged by the order copy issued by the Deputy Commissioner of Hindu Religious and Charitable Endowment Board of Madras dated 15.10.1974 which was issued in favour of the first plaintiff who is the mother of the other plaintiffs.

b) The first defendant is the paternal uncle of the plaintiffs 2 to 4. From 01.04.1995 onwards, the first defendant was trying to ignore the plaintiffs' right and he wanted to deal with the property in his own manner in collusion with the fourth defendant. The defendants 1 and 4 are trying to create documents

to defeat the right of the plaintiffs' temple and also try to disturb the plaintiffs' possession. Hence, the plaintiffs were constrained to file the above suit for the relief of permanent injunction to restrain the defendants 2 to 4 not to interfere with regard to the management of the suit properties on behalf of the plaintiffs' temple by the plaintiffs along with the first defendant.

5. The averments made in the written statement filed by the fourth defendant and adopted by other defendants are, in brief, as follows:

a) No doubt, it is true that the first defendant herein is the hereditary Trustee of Kattam Raja temple, Kollapalle, but it is absolutely false and incorrect to state that the suit properties are the properties of the said temple and they are inalienable in nature. It is also false to state that the patta in respect of the suit properties stand in the name of the plaintiffs and that they are in possession and enjoyment by paying kist, etc., The suit properties and other properties originally belonged to one Peria Munisamy Mandiri and Chinna Munisamy Mandiri, sons of Munisamy Mandiri of Kollapalle Village. The said Peria Munisamy Mandiri and Chinna Munisamy Mandiri jointly purchased the said properties from one Bodi Ammal under a registered sale deed dated 06.07.1908. Ever since the date of purchase, the said persons had been in continuous possession and enjoyment in their own right and they entered into oral partition between themselves even prior to 1955. The Chinna Munisamy Mandiri was in possession and enjoyment of his share and after his demise, his two sons viz., Gopal Mandiri (husband of the first plaintiff) and Chinnanan Mandiri (first defendant) orally partitioned their father's share of property. The suit properties were allotted to the first defendant and he has been in possession and enjoyment of the same and he sold the same to the fourth defendant under a registered sale deed dated 26.09.1955 and handed over the possession to the fourth defendant and hence he is in possession and enjoyment of the same in his own right. सत्यमेव जयते

b) Similarly in the year 1955, Periya Munisamy Mandiri also sold his share of properties to one Ayilu Mandiri under a registered sale deed dated 26.09.1955 and that the said Ayilu Mandiri had been in possession and enjoyment of the said property. After his demise, his wife Lakshmi Ammal sold the said properties to the first plaintiff - Lakshmi Ammal W/o. Gopal Mandiri under a registered sale deed dated 07.05.1986 and the first plaintiff is in possession and enjoyment of the same. Therefore, the averments that the suit properties are belong to the temple and they are inalienable are not correct. As per the oral partition, the suit properties are absolute properties of the first defendant and from him, the fourth defendant had

purchased the land comprised in S.No.66/1 an extent of 0.25 acres, S.No.150 an extent of 0.97 acres and 2/10 share in the well situated in S.No.67 for valuable consideration and hence, the plaintiffs herein have no manner of right, title or interest whatsoever nor they are in possession and enjoyment of the suit properties at any point of time. The suit is bad for non-joinder of necessary party as the Hindu Religious and Charitable Endowment Board is a necessary party to the suit. The suit as framed is not at all maintainable as the plaintiffs do not seek the relief of setting aside the sale in favour of the fourth defendant. There is no cause of action for filing this suit and therefore, the defendants prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned District Munsif-cum-Judicial Magistrate No.1, Walajapet, framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, the second plaintiff was examined as PW1 and one more witness was examined as PW2. They had marked Exs.A1 to A11 as exhibits on their side. On the side of the defendants, the fourth defendant was examined as DW1. They had marked Exs.B1 to B3 as exhibits on their side.

7. The learned District Munsif-cum-Judicial Magistrate No.1, Walajapet, after considering the materials placed before her, found that the suit properties are not belonging to the said Kattam Raja Temple. On the contrary, they belong to the families of the plaintiffs and the first defendant. She further found that the fourth defendant had purchased the suit properties under Ex.A3 on 22.05.1995, but the contention of the defendants that the entire suit properties were allotted to the share of the first defendant, cannot be accepted. She further found that the suit is bad for non-joinder of necessary party viz., Hindu Religious and Charitable Endowment Department. She further found that the first defendant and the plaintiff are co-owners, as such, the plaintiffs cannot seek injunction against the co-owner. Finally, she dismissed the suit without costs.

8. Aggrieved by the dismissal of their suit, the plaintiffs had filed an appeal in A.S.No.3 of 2001 on the file of the Sub-Judge, Ranipet. The learned Sub-Judge, Ranipet had allowed the said appeal and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for. Feeling aggrieved, the fourth defendant has filed the present second appeal.

9. This court at the time of admitting the second appeal has formulated the following substantial questions of law:

"1. Has not the first appellate court erred

in allowing the appeal on merits in exparte in the absence of the appellant/fourth defendant?

2. When the properties are in possession of the appellant/fourth defendant, has not the first appellate court erred in granting the relief of permanent injunction?"

10. Heard Mr.M.Ravi, learned counsel for the appellant and Mr.P.Jagadeesan, learned counsel for the respondents 1 to 4.

11. Substantial Questions of Law 1 and 2:

The learned counsel for the appellant/fourth defendant has submitted that the first appellate court erred in reversing the well considered judgment and decree of the trial court. He further submitted that the first appellate court failed to see that in Ex.B1 sale deed, no endowment has been created in favour of Kattam Raja temple with regard to the suit properties. He further submitted that the first appellate court failed to see that in the oral partition, the first defendant got the suit properties and he sold the same to the fourth defendant under a registered sale deed dated 22.02.1995 and from that date onwards, the fourth defendant is in possession and enjoyment of the same. He further submitted that the first appellate court failed to see that no condition has been imposed in Ex.B1 sale deed as the properties should not be alienated. He further submitted that the first appellate court failed to see that the first plaintiff herself has alienated a portion of the property to a school and further already one of the original owners viz., Periya Munisamy Mandiri had sold his share to one Lakshmi Ammal and subsequently, from the said Lakshmi Ammal, the first plaintiff had purchased the said property and therefore, the findings of the first appellate court that the properties are inalienable are perverse and therefore, he prayed to allow the second appeal and set aside the judgment and decree passed by the first appellate court and restore the judgment and decree passed by the trial court.

12. The learned counsel for the appellant/fourth defendant in support of his contention, relied upon the following decisions:-

1) V. Manakkan and five others Vs. Veera Perumal 1995 (II) CTC 157.

2) Anathula Sudhakar Vs. P. Buchi Reddy (dead) by LRs and Others (2008) (4) SCC 594.

13. Per contra, the learned counsel for the respondents 1 to 4 has submitted that in Ex.B1 sale deed, it is clearly mentioned that the purchasers viz., Periya Munisamy Mandiri and Chinna Munisamy Mandiri have to perform poojas to the Kattam

Raja temple from and out of the income derived from the suit properties and thereby created an endowment in favour of the said temple and as such, the parties are not entitled to alienate the said properties. He further submitted that Ex.A1 would show that the patta was granted in the name of the said temple and that the Exs.A2, A3 and A4 would show that the kist has been paid in the name of the said temple only. He further submitted that Ex.A5 would show that the first defendant himself has admitted that the vendor of the endowment created a charge. The founder of the endowment namely Bodi Ammal had created a charge over the suit properties and hence he estopped from denying that no endowment has been created. He further submitted that the defendants failed to prove that any partition took place between the plaintiffs and the first defendant and that the suit properties were allotted to the share of the first defendant. He further submitted that the trial court itself has held that the fourth defendant failed to prove that he is in exclusive possession of the suit properties. Taking into consideration of the said facts, the first appellate court has rightly allowed the appeal filed by the plaintiffs and decreed the suit as against the defendants 2 to 4 as they are strangers to the suit properties and in the said factual findings, this court cannot interfere and therefore, he prayed to dismiss the second appeal.

14. It is an admitted fact that the suit properties and other properties originally belonged to one Periya Munisamy Mandiri and Chinna Munisamy Mandiri, who are the sons of Munisamy Mandiri of Kollapalle village by virtue of the sale deed dated 06.07.1908. A registration copy of the said sale deed has been produced by the defendants and marked as Ex.B1. A perusal of the said document would show that on 06.07.1908, Periya Munisamy Mandiri and Chinna Munisamy Mandiri had purchased the suit properties and other properties from one Bodi Ammal. In the said document, the vendor Bodi Ammal had stated that she sold the aforesaid properties for Rs.50/- She further stated that the purchasers can enjoy the said properties absolutely. She also stated that the purchasers themselves can perform the pooja as per her rights to Kottam Raja temple. For proper appreciation, the relevant portion of the recitals of Ex.B1 are extracted hereunder :

' 'இன்றைய தினம் நான் உங்களிடத்தில் ரொக்கமாய் வாங்கிக் கொண்டு ரூபா 50.00 யெழுத்தால் ரூபா அன்பதும் உங்களிடத்தில் நான் பொருளாக பெற்றுக்கொண்டு மேற்படி சொத்துகளையும் மேற்படி கிராமத்தில் இருக்கும் ராஜா கோவில் பூஜையை யெனபாகம் முறைதப்பால் நீங்களே பூஜை செய்து கொண்டு சாகுபடி செய்து கொண்டு சர்கார் தீர்வை செலித்தி பத்திரபவத்திர பாரம்பரியமாய் தானாதி விளிமிய விக் கிரயங்களுக்கு

யோக்கியமாய் நீங்குளே அனுபவித்துக் கொள்ளவும் ; ' '

15. From the aforesaid recitals, it is clear that the vendor Bodi Ammal had sold the properties absolutely to Periya Munisamy Mandiri and Chinna Munisamy Mandiri. It is not stated that the purchasers cannot alienate the property. Even if any restriction is imposed by the vendor that it will not bind upon the purchaser. In this case, since the vendor sold the properties for valid consideration, she cannot impose any restriction with regard to the enjoyment of the properties by the purchasers. If the original owner gave the properties by way of gift, or through a Will, he can impose a condition as to how the properties have to be enjoyed by the beneficiaries, but in this case, it was an outright sale. In such a case, the vendor cannot impose any condition as to how the purchasers have to enjoy the properties. Further, the aforesaid recitals would show that no endowment was created in favour of the aforesaid temple with regard to the suit properties. On the other hand, the vendor Bodi Ammal had transferred her right of performing pooja to the said temple and that does not mean that she created any endowment.

16. It is also to be pointed out that the second plaintiff while examining himself as PW1 has admitted that the first plaintiff and the first defendant had gifted a portion of the property to a school in the year 1987. He also admitted that the said Periya Munisamy Mandiri had sold his share to one Ayilu Mandiri and after the death of the said Ayilu Mandiri, the first plaintiff had purchased the said property from the wife of the said Ayilu Mandiri under a registered sale deed dated 07.05.1986. Since he admitted that her mother (first plaintiff) had purchased the said property from the wife of Ayilu Mandiri, a registration copy of the said sale deed has been marked through him as Ex.B2. So, it is clear that already one of the original purchasers under Ex.B1 sale deed viz., Periya Munisamy Mandiri had sold his share to one Ayilu Mandiri and subsequently, the first plaintiff had purchased the said property from the wife of the said Ayilu Mandiri under the original of Ex.B2. Further, the first plaintiff and the first defendant had gifted a portion of the property to a school. Under the said circumstances, the plaintiffs cannot contend that the properties belonged to the temple and hence they cannot be alienated.

17. A perusal of Ex.A5 shows that the first plaintiff and the first defendant had jointly filed an application in O.A.No.15 of 1974 before the Deputy Commissioner of Hindu Religious and Charitable Endowment (A) Department, Madras, for a declaration that they held the office as hereditary Trustees of the specific endowment created by Bodiammal attached to Arulmigu

Kattamaraja Kollapalle village, Walajapet Taluk, North Arcot District. In that petition, they have stated that the vendor of the endowment created a charge on the property of 6.05 acres of wet and dry lands by the sale deed dated 02.07.1908 and out of that extent, 3 acres were sold and in the remaining 3 acres of land, only a charge for performance of Kattalai was created. As already pointed out that in the sale deed dated 06.07.1908 (Ex.B1), the vendor Bodi Ammal had not created any endowment in favour of the said temple with regard to the properties which were sold under the said documents. On the contrary, she transferred only her right of performing the pooja to the said temple. As per Section 31 of the Indian Evidence Act 1872, admissions are not conclusive proof of the matters admitted but they may operate as estoppel. So, the first defendant is entitled to prove that the earlier admission made by him in Ex.A5 is not true. As already pointed out that in Ex.B1, it is not stated that endowment has been created in favour of the said temple with regard to the said properties. Further, as already pointed out that one of the purchasers under Ex.B1 viz., Peria Munisamy Mandiri had sold his share to one Ayila Mandiri and subsequently, the first plaintiff herself had purchased the said property from the wife of the said Ayilu Mandiri under the original of Ex.B2. Therefore, the contention of the plaintiffs that an endowment has been created by the original vendor Bodi Ammal in favour of the temple in respect of the suit properties cannot be accepted.

18. It is also to be pointed that the trial court has held that the suit properties belonged to the family of the plaintiff and the first defendant and that the first appellate court also confirmed the findings of the trial court that the suit properties belonged to the plaintiffs and the first defendant as joint family properties. That being so, the first defendant is entitled to sell at least in respect of his share. Though the first defendant had executed a sale deed (Ex.B3) in favour of the fourth defendant that in the oral partition, the suit properties were allotted to his share, the trial court has held that there is no evidence that there was an oral partition between the plaintiffs and the first defendant and in the said oral partition, the suit properties were allotted to the share of the first defendant. The said findings have been confirmed by the first appellate court also. Under the said circumstances, the fourth defendant will step into the shoes of the first defendant.

19. In V. Manakkan and five others Vs. Veera Perumal (cited supra), this court has held that the plaintiff should stand or fall on the strength of his own case and not rely on the alleged weakness of defendant's case.

20. In Anathula Sudhakar Vs. P. Buchi Reddy (dead) by LRs and Others, (cited supra) the Hon'ble Supreme Court has held that where the plaintiff is in possession, but his title to the property is in dispute or where the defendant asserts title thereto, the plaintiff will have to sue for declaration of title. In this case, the defendants raises a cloud on the title of the plaintiff temple and in such a case, the plaintiffs should have asked for the relief of declaration as the properties belonged to the temple but they have not asked any such declaratory relief. So, on that ground, the plaintiffs must fail. Under the said circumstances, this court is of the view that the judgment and decree passed by the first appellate court are liable to be set aside. Accordingly, the substantial questions of law are answered.

21. In the result, the second appeal is allowed. Consequently, connected miscellaneous petition is closed. The judgment and decree passed by the first appellate court are set aside and that the judgment and decree passed by the trial court are restored. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gv

To

1. The Subordinate Judge, Ranipet, Vellore District,

2. The District Munsif -cum-Judicial Magistrate No.1
Walajapet,

Copy to:

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

+1 cc to Mr.P.Jagadeesan Advocate sr14113/2020

S.A.No.1985 of 2003
and

CMP.No.17989 of 2003

aa25/02/2021