



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.12.2020

Pronounced on: 11.12.2020

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CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.23 of 2010
and
M.P.No.1 of 2010

1.Mohammed Rafiq (died)

2.Ramzan Beevi

3.Nasrin Banu
D/o. Mohammed Rafiq

4.Shafrin Banu(Minor)

5.Minor.Mohammed Hashik
S/o Mohammed Rafiq
(Appellants 4 and 5 rep.by his mother Ramzan Beevi)

(Appellants 3 to 5 brought on record as Lrs of the
deceased 1st appellant viz., Mohammed Rafiq vide
order dated 08.10.2020 made in CMP.No.10979/20
in S.A.No.23 of 2010) ... Appellants/Defendants

/versus/

Arulmigu Pasupatheeswarar Swamy Koil
Avoor by its Executive Officer,
Temple premises, Avoor Village,
Valangaiman Taluk and Munsif ...Respondent/Plaintiff

Prayer : Second Appeal has been filed under Section 100 of the
Civil Procedure Code against the judgment and decree of the
learned Subordinate Judge, Mannargudi made in A.S.No.7 of 2009
dated 01.09.2009 reversing the judgment and decree of the
learned Principal District Munsif, Valangaiman, made in
O.S.No.135 of 2005 dated 31.08.2006.



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For Appellants : Ms.Rajalakshmi for
Mr.J.Ramakrishnan

For Respondent : No appearance

J U D G M E N T

(The case has been heard through Video Conference)

This Second Appeal is filed by the defendants against the judgment of the lower appellate Court reversing the judgment of the trial Court, which dismissed the suit filed for mandatory injunction and for recovery of possession.

2. The suit was filed by the Executive Officer of Arulmigu Pasupatheeswarar Swamy Koil, Avoor against one Mohammed Rafiq and his wife Ramzan Beevi. In the plaint, it was averred that, the suit property belongs to the temple classified as ryot manai and patta stands in the name of the temple. The vacant land was given to Singaram S/o.Jambulinga Klavar. After death of Singaram, the defendants under some arrangement with Muthulakshmi, wife of Singaram, have entered upon the suit property and put up construction over it. The tenancy was only between Singaram and temple. Neither Muthulakshmi nor any other persons were party to contract with temple. However, contrary to the provision of HR and CE Act and Rules, the defendants have hurriedly put up a structure pukka construction without any consent by the land owner. The defendants, who are the unauthorised person, taking advantage of the fact that the temple is the owner of the land, had put up compound wall on all four sides and let out the building for rent, after constructing eight shops. As the owner of the land, the plaintiff's temple is entitled to recover the land, after removing the super structure put up illegally. Hence, suit with prayer for mandatory injunction and permanent injunction filed before the District Court at Valangaiman, Kumbakonam.

3. The defendants, who are the husband and wife, filed written statement, wherein, it is specifically averred that the suit property does not belong to the plaintiff temple. It was used as flower garden and patta was issued to Muthulakshmi, wife of Singaram, on 26.09.1991. The temple has received the compensation for the said land and lost its right and title over the property bearing R.S.No.249/2-F. Patta issued in favour of Muthulakshmi is in force and not cancelled, without any proof of title, suit has been filed against the defendants who have valid title derived from Muthulakshmi. Since the suit site was originally in the name of the temple, the sale deed executed by



Muthulakshmi could not be duly registered, however the assignment of patta in favour of Muthulakshmi will disprove the plaintiff claim.

4. The land register maintained by the temple is the only document for the temple to claim right. After assignment of patta to Muthulakshmi and payment of compensation of land by the Revenue department to the temple, the temple has lost its right in the suit property, whatsoever, it had earlier to assignment of patta. The land in Survey No.249/11 is of the larger extend and patta has been given to several persons. Muthulakshmi, the vendor of the defendants, is one such person. The defendants, who are assignee of the original tenants are enjoying the property purchased in the year 1991. The thatched house existing for several years now been replaced with pukka construction in order to live safely.

5. The trial Court, on considering the rival submissions, framed the following issues:

- 1) Whether the plaintiff is entitled for relief of mandatory injunction?
- 2) Whether the plaintiff is entitled for relief of permanent injunction?
- 3) Any other relief the plaintiff is entitled?

6. Three witnesses were examined on behalf of the plaintiff and four exhibits were marked as Ex.A-1 to Ex.A-4. Two witnesses were examined on behalf of the defendants and one exhibit was marked. The Commissioner Report marked as Ex.C1 to Ex.C5. The witnesses of the plaintiff are the Executive Officer of the temple, the Accountant of the temple and the Village Administrative Officer of the locality. The house site patta in Survey No.249/2-F issued in the name of Singaram was marked as Ex.B-1. The rent register and the account register along with Natham Adangal extract were relied by the plaintiff.

7. The trial Court, after considering the evidence adduced by the plaintiff and the defendants, pointed out the discrepancy in the ocular evidence of PW.1 and PW.2 regarding the identification of property and its Survey No.249/11. Though the plaintiff admits that the portion of Survey No.249/11 was rented out to Singaram, the extend and location of the portion of land rented out to Singaram are not clearly identified. So, on the available documents produced by the plaintiff, the trial Court cannot arrive at conclusion that the present suit property, which is in possession of the defendants, is owned by the temple and therefore, negatived the prayer of the mandatory injunction and permanent injunction sought by the plaintiff. Aggrieved by that, the plaintiff temple preferred appeal before the Sub Court, Mannargudi.



8. The lower appellate Court, after re-appreciating the evidence has held that Survey No.249/11 is of the large extent and the ground and the property belongs to the temple as per revenue records as well as the record maintained by the temple. While the parties admits that the suit property is located within Survey No.249/11, and part of the said Survey number the trial Court finding that there is no detail measurement of the property let out by Singaram and therefore, the plaintiff is not entitled for the relief is against the evidence and law.

9. The lower appellate Court, relying upon the Commissioner's report marked as Ex.C1 to Ex.C5, held that the patta in favour of Singaram in Survey No.249/2-F, does not relates to the land in Survey No.249/11. The suit property is now in occupation of the defendants and has put up pukka construction is in Survey No.249/11. When it is admitted by the defendants, the land belongs to the temple and that is the reason why the sale deed executed by Muthulakshmi could not be registered. In the absence of proof that Survey No.249/2-F from part of Survey No.249/11, the defendants have no right in the suit property to occupy or to put up construction without permission of landlord temple. The lower appellate Court reversed the finding of the trial Court and granted the decree in the suit.

10. Aggrieved by the reversal judgment rendered by the lower appellate Court, the present Second Appeal is filed. Pending second appeal, the 1st appellant died and his legal heirs were brought on record as the appellants 3 to 5.

11. The learned counsel for the appellants submitted that the suit itself is not maintainable, in view of the judgment delivered by the Hon'ble Division Bench of this Court in Sri Arthanareeswarar of Tiruchengode by its Present Executive Officer Vs. T.M.Muthuswamy Padayachi etc & others reported in 2003 1 LW 386. The suit filed by the Executive Officer, without specific authorisation from the Commissioner, is not maintainable. The Executive Officer is not a competent person to institute the suit as he was not assigned the authority for filing of the suit. That apart, when patta was assigned to Singaram, who was the originally lessee under the temple, purchase of land by the defendants from the wife of Singaram, after demise of Singaram is valid. Suit cannot be instituted for declaration in respect of the property where the plaintiff has no title over the property. The learned counsel would also further submit that the first appellate Court, without properly appreciating the well considered judgment of the trial Court, reversed the judgment, without assigning proper reasoning.



12. On perusing the judgment relied by the learned counsel for the appellants, this Court finds that in that case the defendants had taken a specific plea in their written statement regarding the locus of the Executive Officer filing the suit, when there was a competent board to represent the temple. Therefore, specific issue was also framed by the trial Court regarding the maintainability of the suit. In the case in hand, for the first time, the appellant is challenging the locus of the Executive Officer and argument is placed. As far as the locus of the Executive Officer vis-a-vis Section 45 of the Hindu Religious and Charitable Endowment Act, the temple being the juristic body and the Executive Officer appointed by the State is vested with the power to administer the temple. A combined reading of Sections 6(2) and 45 of HR & CE Act, the Executive Officer by statute provided with the power and duties to administer the religious issues of the temple. For appertaining to the powers and duties of the administration of the temple properties, Executive Officer has to be assigned by the Commissioner.

13. In this case, the defendants without question the locus of the Executive Officer, who filed the suit for mandatory injunction, contested the suit on question of title. The defence taken by them is that the property belongs to them. The land has been assigned to their predecessor-in-title and patta issued. The temple has already been adequately compensated for the land. Contrarily, the temple has placed evidence from the records maintained by them in the normal course of transaction. The Advocate Commissioner, who has visited the field had submitted his report indicating the property which is presently in possession of the defendants, where they have put up pukka construction, falls within the Survey No.249/11. The patta relied by the defendants is for Survey No.249/2-F and it is not part and parcel of the larger extend of land in Survey No.249/11. Therefore the lower appellate Court has rightly held that the property in possession of the defendants and the documents relied by the defendants does not co-relate. It is not picking the holes of the defendants, but only proper appreciation of given evidence relied by the defendants.

14. The temple has placed records of its own and of the revenue department further physical inspection of the property had established that portion on which the defendants have constructed building belongs to the temple and they also candidly admit that the registration department refused to register the sale deed, since the land belongs to the temple.

15. There can be no doubt over the ownership of the suit property and the plaintiff is entitled to recover the possession



from the trespasser. In the absence of proof that the temple land was taken away and assigned to third parties after paying due compensation to the temple. The Division Bench judgment of this Court, where the defendants have questioned the locus of the Executive Officer, who has laid the suit at the inception does not akin to the facts of the case in hand. Any person, who are interested in the temple, is entitled to initiate law into motion. Further, the Court itself as parens patriae is bound to protect the interest of idol. In this case, when no plea was taken regarding locus of the Executive Officer for filing suit for mandatory injunction and no opportunity given to Executive Officer to show that he, on authorisation from the Commissioner initiate the legal proceedings, it is to be presumed that he had been authorised by the Commissioner to initiate proceedings.

16. For the said reason, this Court finds that there is no merit in this second appeal. Hence the Second Appeal is dismissed. Consequently, connected miscellaneous petition is also closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl
To:

- 1.The Subordinate Judge,
Mannargudi .
- 2.The Principal District Munsif,
Valangaiman. Kumbakonam.

Copy to

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

+1cc to Mr.T.Ramakrishnan, Advocate Sr.40992

S.A.No.23 of 2010
and M.P.No.1 of 2010

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