

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.02.2020

Date of Verdict : 02 .06.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.Nos.1101 & 1102 of 2005 and
CMP.No.15111 of 2005

SA.No.1101 of 2005

Rajendran ...Appellant/Appellant/Plaintiff

Vs.

1. Ramalingam
2. Ekambaram
3. Shanmugam
4. Murugesan
5. Manivel

...Respondents/Respondents/Defendants

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.07.2004, in A.S.No.45 of 2000 on the file of the District Court, Perambalur, confirming the judgment and decree dated 30.08.1996 in O.S.No.134 of 1993 on the file of the District Munsif Court, Perambalur.

सत्यमेव जयते

For Appellant : Mr.C.Ravichandran

For Respondents

For R1, R3 & R5: Mr.U.Karunakaran

R2 & R4 : Notice served

SA.No.1102 of 2005

Rajendran ...Appellant/Appellant/Defendant

Vs.

Idol Arulmigu Vinayagar Temple,
Palaiyur Village, Thondapadi Majra,
Perambalur Tk - Rep. by its Trustee
and President - Thirupani Committee
and Kariyasthar for Decendants of
Veerammayee Palaiyur Village,
Thondapadi Majra, Perambalur, Tk.

...Respondent/Respondent/Plaintiff

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.07.2004, in A.S.No.100 of 2000 on the file of the District Court, Perambalur, confirming the judgment and decree dated 30.08.1996 in O.S.No.265 of 1993 on the file of the District Munsif Court, Perambalur.

For Appellant : Mr.C.Ravichandran

For Respondent : Mr.U.Karunakaran

COMMON JUDGMENT

These second appeals are directed as against the judgment and decree dated 26.07.2004, in A.S.No.45 of 2000 on the file of the District Court, Perambalur, confirming the judgment and decree dated 30.08.1996 in O.S.No.134 of 1993 on the file of the District Munsif Court, Perambalur and the judgment and decree dated 26.07.2004, in A.S.No.100 of 2000 on the file of the District Court, Perambalur, confirming the judgment and decree dated 30.08.1996 in O.S.No.265 of 1993 on the file of the District Munsif Court, Perambalur.

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

3. The case of the plaintiff in O.S.No.134 of 1993 in brief is as follows :-

3.1. The suit is filed for permanent injunction. The plaintiff owned a house comprised in survey No.146/1 situated at Palaiyur Village. His house was also assessed to house tax. Adjacent to his house, there is a land belongs to Vinayagar Temple comprised in survey No.135/21. The temple is situated on the western side. On the eastern side of the temple, there is a vacant place, in which electric post and electric wires are there. Adjacent to the said electric post, there is a vacant land admeasuring 0.00.5 ares, which is occupied by the plaintiff

and constructed compound wall. Only after objection raised by the Village Administrative Officer, the plaintiff came to know about the encroachment of the temple property. In fact, the plaintiff was issued 'B' memo and he is paying fine to the Government for occupation of the Government land. In fact, his encroachment is recorded in the village account. Therefore, the defendants have no title or right over the suit property to remove the plaintiff without due process of law. Since the plaintiff and the defendants had previous enmity and as such the defendants are trying to remove the compound wall put up by the plaintiff. Hence, the suit.

4. Resisting the same, the first defendant filed written statement and stated that admittedly the plaintiff had encroached 0.00.5 ares of land and he raised compound wall. The total extent admeasuring 0.06.0 hectares, namely 0.15 cents comprised in S.F.No.135/2a of Palaiyur Village Thondapadi Majra, Perambalur Taluk belong to Arulmigu Vinayagar Temple, Palaiyur Village. The entire land measuring east to west 117 $\frac{1}{2}$ feet, north to south 141 $\frac{3}{4}$ feet on the west and north to south 125 $\frac{1}{2}$ feet on the east. In that area, there was a neem tree and banyan tree and thereafter both the trees had fallen down. Under those trees, Idol Vinayagar was placed and was worshiped by all the villagers and remaining area was vacant. The said temple was consecrated by one, Veerammayee and after her demise, her descendants are in management of the said Vinayagar Temple. The pooja is performed by the trustees and kariasthar among them. The first defendant is the trustee of the temple and kariasthar of the descendants of Veerammayee of Palaiyur Village. While being so, when the defendants were measuring the temple property comprised in S.F.No.135/21 for designing and doing earth work, it has come to light that the plaintiff has encroached about 14 feet north to south, 7 feet east to west on the eastern side of the temple property admeasuring 0.06.0 hectares in SF.No.135/21 and also has constructed compound wall. Therefore, the management of the temple filed a suit in O.S.No.265 of 1993 for mandatory injunction and recovery of possession against the plaintiff herein. Hence, prayed for dismissal of the suit.

5. At the same time, the management of the above said temple filed a suit in O.S.No.265 of 1993 against the plaintiff in O.S.No.134 of 1993 seeking mandatory injunction directing the defendant to remove the unlawful construction in the 'B' schedule of suit property and recovery of possession, stating that the above said land admeasuring 0.15 cents belongs to the Vinayagar Temple, however the defendant, namely Rajendran encroached the same and constructed a compound wall.

5.1 Resisting the same, the defendant in O.S.No.265 of 1993 filed written statement stating the same averments in the plaint in O.S.No.134 of 1993, and prayed for dismissal of the suit.

6. The trial court clubbed the above two suits together and conducted joint trial. In support of the plaintiff in O.S.No.134 of 1993 and the defendants in O.S.No.265 of 1993, P.W.1 was examined and were marked Ex.A.1 to Ex.A.4. On the side of the defendants in O.S.No.134 of 1993 and the plaintiff in O.S.No.265 of 1993, D.W.1 to D.W.4 were examined and was marked Ex.B.1 The witness documents were marked as Ex.X.1 and Ex.X.2. On considering the oral and documentary evidences adduced by the respective parties and the submissions made by the learned counsel, the trial Court dismissed the suit in O.S.No.134 of 1993 and decreed the suit in O.S.No.265 of 1993. Aggrieved over the judgment and decree of the trial Court, the plaintiff in O.S.No.134 of 1993 and the defendant in O.S.No.265 of 1993 preferred appeal suits in A.S.Nos.45 & 100 of 2000 before the District Court, Perambalur. The first appellate Court on appreciating the materials placed on records, dismissed both the appeals and confirmed the judgment and decree passed by the trial Court. Challenging the same, the present second appeals have been filed.

7. At the time of admission of the second appeals, the following substantial questions of law were framed :-

SA.No.1101 of 2005

(i) Has not the courts below committed error apparent on the face of the record in not giving specific finding with regard to maintainability of the suit filed by unregistered body being represented by so called Chairman Shri.Ramalingam

(ii) Has not the lower appellate court has committed error on relying upon the deposition of DW.1 to DW.3 with regard to the alleged management of the temple without any documentary proof must less legal documentary proof such as Trust Deed etc.,

(iii) Has not the court below erred in construing Ex.X1 which clearly mentions that the larger extent of land including encroached portion as 'G.P' means Government Poramboke which has been accepted by DW4.

(iv) Has not courts below committed error in conferring title on the respondent temple based on Ex.X-1 and Ex.X-2 which clearly show that the land in question is Poramboke land which belongs to Government and therefore in the absence of Documentary proof such as 'B' memo or Patta in favour of the temple.

SA.No.1102 of 2005

(i) Has not the courts below committed error apparent on the face of the record in not giving specific finding with regard to maintainability of the being represented by so called Chairman Shri.Ramalingam

(ii) Has not the court below erred in construing Ex.X1 which clearly mentions that the larger extent of land including encroached portion as 'G.P' means Government Poramboke which has been accepted by DW4.

(iii) Has not courts below committed error in conferring title on the respondent temple based on Ex.X-1 and Ex.X-2 which clearly show that the land in question is Poramboke land which belongs to Government and therefore in the absence of Documentary proof such as 'B' memo or Patta in favour of the temple.

8. The learned counsel appearing for the appellant and defendants are present and they reiterated the averments set out in the plaint and the written statement.

9. Heard, Mr.C.Ravichandran, learned counsel appearing for the appellant and Mr.U.Karunakaran, the learned counsel appearing for the respondents.

10. The suit property is one and the same in both the suits. The suit in O.S.No.134 of 1993 has been filed for bear injunction and the suit in O.S.No.265 of 1993 has been filed for mandatory injunction and recovery of possession. Even according to the plaintiff in O.S.No.134 of 1993, he occupied the land belongs to the defendant's temple admeasuring 0.00.5 ares and constructed compound wall. The suit property is situated adjacent to his property comprised in survey No.146/1. Admittedly, the suit property is classified as Government Poramboke and occupied by the temple. Ex.X.1 and Ex.X.2 proved that the suit property is occupied and in possession of the temple. At the same time, title deed of the plaintiff's house was marked as Ex.A.1 and house tax receipts were marked as Ex.A.2 and Ex.A.3.

11. There is no dispute about the house constructed by the appellant and the suit property is situated adjacent to his house, namely eastern side of the defendant's temple. The plaintiff also categorically admitted that the suit property belongs to the temple and the suit itself is filed for injunction and not to evict him without due process of law. Therefore, the defendants also filed suit in O.S.No.265 of 1993 for mandatory injunction and recovery of possession. As such, the admission of the plaintiff is the best evidence and need not be proved by the defendants. Therefore, both the courts below

rightly dismissed the suit in O.S.No.134 of 1993 and decreed the suit filed by the defendants in O.S.No.265 of 1993.

12. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit in O.S.No.134 of 1993 and decreed the suit filed by the defendants in O.S.No.265 of 1993. Accordingly, this Court is of the considered opinion that no substantial questions of law are involved in these appeals. Be that as it may, all the substantial questions of law, formulated by this Court in these Second Appeals, are answered in favour of the respondents and as against the appellant.

13. In the result, these Second Appeals stand dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The District Judge,
Perambalur
- 2.The District Munsif Judge,
Perambalur.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

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