



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13/12/2019
Delivered on	03/02/2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1234 of 2019 &
C.M.P.No.26746 of 2019

1.D.Thulasi
2.R.Devaraju

... Appellants/Plaintiffs

Versus

1.The Assistant Commissioner,
Hindu Religious Charitable and
Endowment Department,
Villupuram, Villupuram District.

2.Agastheeswarar Temple,
Rep. by its Trustee,
Ramalingam,
S/o.Narasappa Chettiar,
Reddikuppam Road,
Vikkravandi,
Villupuram District.

... Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 25.09.2019 made in A.S.No.20 of 2017 on the file of the learned Additional District Court (Fast Track Court), Villupuram, confirming the judgment and decree dated 21.03.2017 made in O.S.No.18 of 2008, on the file of the learned II Additional Sub Court, Villupuram.

For Appellants : Mr.N.Manokaran

JUDGMENT

The plaintiffs, in O.S.No.18 of 2008 on the file of learned II Additional Sub Judge, Villupuram, are the appellants in the present appeal. The plaintiffs are mother and son. The prayer in the suit is to declare the plaintiffs right to be in possession and enjoyment of the property, unless evicted by the Government under due process of law and for permanent injunction restraining the defendants their men and agents from interfering with the plaintiffs' possession and enjoyment of the property.



2. It is the case of the plaintiffs that the suit property is a piece of Government natham poramboke, abetting the main road of Vikravandi. The Agastheeswarar Temple and its property lie on the west of the said poramboke land. The first plaintiff encroached upon the suit site about 15 years ago and has been in possession and enjoyment of the same, since then. The Government has been collecting penal charges initially from the first plaintiff and thereafter, from the second plaintiff. They have built a house and it is being used for residential and also for running a tea shop. While so, a notice was received by the second plaintiff, dated 27.02.2001 from the Inspector, HR & CE, Tindivanam, calling upon him to attend enquiry, failing which, a report would be sent to the Joint Commissioner for eviction.

3. It is alleged that the second plaintiff sent a petition to the Revenue Officials for grant of patta in respect of the suit property. In similar circumstances, in pursuance of the order passed in W.P.No.10755 of 1996, the Government has re-issued patta in favour of the legal-heirs of the deceased Rathinasabapathi. Even if it is the Temple property, the second defendant cannot, on his own, take eviction proceedings and hence, the suit.

4. In the written statement filed by the second defendant, the locus standi of the plaintiffs to maintain the present suit was raised. It is contended that the second defendant filed the suit in O.S.No.367 of 1977 on the file of District Munsiff, Villupuram, for declaration and for recovery of possession of the Temple property against Ramalingam Pillai, who is none other than the husband of the first plaintiff and father of the second plaintiff. There were three items in O.S.No.367 of 1977. The said Ramalingam Pillai was concerned with item No.1 of the property, while the other defendants Govindarajulu and Rathinasabapathy were interested in other two items. The suit was decreed, after a period of 14 years, i.e., on 16.10.1990. One of the defendants Rathinasabapathy filed A.S.No.130 of 1991 and the same was dismissed on 23.03.2004. The first appeal in A.S.No.115 of 1991 preferred by the other defendants came to be dismissed on 07.08.2000 and thereupon, the defendants taken possession of the properties. Hence, the suit is liable to be dismissed.

5. On the basis of the above pleadings, the trial Court framed necessary issues. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 to A37 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B6 were marked.



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6. The trial Court, after analyzing the entire evidence, decreed the suit. On appeal preferred by the plaintiffs, the II Additional Subordinate Judge, Villupuram, dismissed the Appeal Suit No.20 of 2017. Assailing the findings, the present appeal has been filed.

7. Mr.N.Manokaran, learned counsel for the appellants would urge that the Judgment and Decree passed by the Courts below are against law. The suit property is a natham poramboke, in which, the plaintiffs are in possession and enjoyment like many others, for the past 3 decades. In order to prove their settled possession, they have marked Exs.A1 to A37, but those documents have not been considered by the Courts below. It is the submission of the learned counsel that the suit schedule property in the present suit and the earlier suit in O.S.No.367 of 1977, are totally different. The appellants / plaintiffs have not withheld any material facts and the non disclosure of the earlier litigation cannot be characterized as suppression of material fact and the present suit is not hit by resjudicata.

8. I have considered the submissions of the learned counsel for the appellants and perused the materials available on record.

9. In the case on hand, the plaintiffs have approached the civil Court, contending that the suit property is a Government natham poramboke land, in which, the second defendant, has no right. Exs.A1 to A37 have been produced to show that the plaintiffs are in possession of the property, since 1996, and hence, they are entitled for permanent injunction sought for in the suit. Whereas, the case of the second defendant is that a suit was already instituted against the Ramalingam Pillai and two others to declare the land in dispute belongs to the temple and for recovery of possession and the Temple succeeded in the suit.

10. It is not disputed that the first defendant in O.S.No.367 of 1977 is the husband of the first plaintiff and the father of the second plaintiff. It is relevant to note that the suit was instituted in the year 1977 and after contest, the suit came to be decreed on 16.10.1990. It is stated that the judgment and decree passed in O.S.No.367 of 1977 is under challenge in S.A.No.64 of 2006.

11. According to the second respondent, pursuant to the decree passed in O.S.No.367 of 1977, the Temple had taken possession of the suit property and to prove their case, Exs.B5 and B6 were marked. Admittedly, after the said Ramalingam Pillai passed away, the second plaintiff was impleaded in the Execution Petition and he was also party to the documents



referred supra. Though an attempt was made by the plaintiffs that the suit property in O.S.No.18 of 2008 is different from the suit property in O.S.No.367 of 1977, the trial Court in paragraph No.16 and the appellate Court in paragraph Nos.28 and 29 had extensively dealt with the issue and came to the conclusion that both the properties are one and the same.

12. It is not disputed that the predecessor of the appellants preferred a Second Appeal in S.A.No.64 of 2006 against the judgment and decree passed in A.S.No.115 of 1991 and O.S.No.367 of 1977. When the appeal was taken up for admission, this Court sought response from the learned counsel for the appellants with regard to the maintainability of the second suit, but he was not in a position to clarify the same. He pleaded to take up both the appeals for hearing. But this Court was not inclined to keep the matter pending.

13. It is pertinent to note that in ground No.8, it is stated that in view of the pendency of the Second Appeal in S.A.No.64 of 2006, the principles of resjudicata has no application to the present case. Indisputably, the second respondent-Temple had instituted the suit in the year 1977 to declare their right over the suit property, in which, the husband of the first appellant and the father of the second appellant was a party and unless, the case is reached finality, the present suit ought not to have been filed. It is the case of the appellants that the property is different and they are in possession of the property, but these contentions were rejected by the Courts below. The way in which the proceedings were initiated and are being prolonged at the instance of one party forever is a classical example how the process of law can be abused or misused. It is evident from the records that after an adverse order was passed against the predecessor of the appellants, they created documents and instituted the suit as if they are in possession and enjoyment of the suit property.

14. Both the Courts below on proper appreciation of evidence adduced by the parties, in my view, rightly came to the conclusion that the plaintiffs are not entitled for the decree sought for in the suit. I find no illegality or perversity in the concurrent finding of fact reached by the Courts, warranting interference in this appeal.



15. In fine, the Second Appeal fails and the same is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

- 1.The Assistant Commissioner,
Hindu Religious Charitable and
Endowment Department,
Villupuram, Villupuram District.
- 2.The Additional District Court (Fast Track Court),
Villupuram,
- 3.The Second Additional Sub Court,
Villupuram.

+1cc to M/s.N.Manokaran, Advocate Sr.8473

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C.M.P.No.26746 of 2019

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