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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2021
PRONOUNCED ON : 30.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.212 of 1995

Arulmigu Koppa Nachiamman Mathalai Nachiamman Temple,
represented by its Executive Officer,
Kappalankarai Village,
Pollachi Taulk,
Coimbatore District.

... Appellant / 10th Defendant

Vs.

- 1.Subramania Goundar (Died)
- 2.Peria Arusami Goundar (Died)
- 3.Chinna Arusami Goundar
- 4.Nachimuthu Goundar (Died)
- 5.Mayilsamy Goundar (Died)

...Respondents 1to5 / Plaintiffs 2to9

- 6.Rakhimuthu Goundar,
- 7.Deivanai
- 8.Bakkiyammal
- 9.Krishnasamy Goundar
- 10.Doraisamy Goundar
- 11.Nallamuthu Achari Alias Mottaiya Achari
- 12.Kalimuthu Achari
- 13.Somasundara Achari
- 14.Arumugha Achari
- 15.Velusami Achari
- 16.Poorannasami
- 17.Saminatha Achari
- 18.Valliammal
- 19.M.Kalimuthu
- 20.M.Kaliathal
- 21.M.Muthusamy
- 22.M.Aruchamy
- 23.M.Venkatachalam

(RR18 to 23 brought on record as legal heirs of the deceased R5 vide order of this Court dated 29.10.2020 made in CMP.No.1223 to 1225 of 2008 in S.A.No.212 of 1995)



24.Kanthasamy
25.Mayil Samy
26.Sivaraj
27.Deivanayagam

(RR24 to 27 brought on record as legal representatives of the deceased R1 viz., Subramaniya Goundar vide Court order dated 16.12.2020 made in CMP.No.260 to 268 of 2015 in S.A.No.212 of 1995)

28.Rangathal
29.Nataraj
30.Rukmani
31.Dhanalakshmi

(RR28 to 31 brought on record as legal representatives of the deceased R2 viz., Peria Arusami Goundar vide Court order dated 16.12.2020 made in CMP.No.260 to 268 of 2015 in S.A.No.212 of 1995)

32.N.Kuppusamy
33.N.Nataraj
34.Chellammal

... Respondents

(RR32 to 34 brought on record as LRS of the deceased R4 viz., Nachimuthu Gounder vide order dated 16.12.2020 made in CMP.No.260 to 268 of 2015 in S.A.No.212 of 1995)

PRAYER: This Second Appeal is filed under Section 100 of CPC against the judgment and decree of the learned First Additional District Judge, Coimbatore, dated 23.05.1991 and made in A.S.No.111 of 1990 on the file of the first Additional District Judge's Court, Coimbatore and reversing the Judgment and decree made in O.S.No.167 of 1986, dated 12.03.1990 on the file of the Subordinate Judge's Court, Udumalaipattai, Coimbatore District.

For Appellant	: Mr.R.T.Doraisamy
For R3, R6 to R8, R19 to R26, R28, R29, R32 to R34	: Mr.S.Parthasarathi, Senior Counsel for Mr.K.Muthu Kumarsamy

For R9 to R17	: No appearance
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JUDGMENT

(This case has been heard through video conference)

The tenth defendant in the suit is the appellant herein.

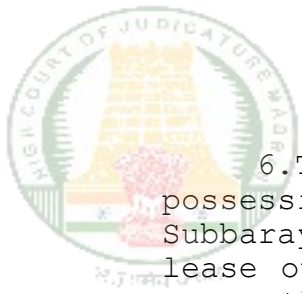
2.The respondents herein/plaintiffs have filed a suit in O.S.No.167 of 1986, before the Sub-Court, Udumalpet, seeking for permanent injunction against the defendants from evicting from the lease hold right without due process of law. Some other persons, who are also claims to be the lessee under the temple, have filed suits in O.S.Nos.185 of 1989, 179 of 1986 and 319 of 1989, on the file of the Sub Court, Udumalpet, as if they are the tenants in respect of the suit land.

3.The main ground on which the suit in O.S.No.167 of 1986 filed is that, originally there was a trustee of the temple and the plaintiffs have obtained tenancy under the trustee. Subsequently, they are in possession and enjoyment of the suit property belonging to the temple as lawful leasee and one Subbaraya Asari, was the Poosari to the Temple. While things be so, due to the instigation of the local politicians, the Executive Officer had granted unregistered documents as if the family members of the MLA were given lease and they are the tenants and cultivating the lands. Based upon the unregistered alleged lease deed document, they have also filed counter suit as stated supra. The suit was dismissed and the counter suit filed by the contesting defendants was decreed.

4.Thereafter, the plaintiffs in the above said suits have filed an appeal in A.S.No.111 of 1990, on the file of the learned First Additional District Judge, Coimbatore and the learned Judge has allowed the appeal filed by the plaintiffs and decreed the suit, subsequently dismissed the counter suit filed by the contesting defendants. As aggrieved against the same, the Executive Officer of the Temple has filed the present second appeal. The Second Appeal was admitted on the following substantial question of law:

"Whether the Lower appellate Court is right in granting injunction in favour of the plaintiffs, when their possession has not been satisfactorily established by the evidence?"

5.Heard Mr.R.T.Doraisamy, learned counsel for the appellant and Mr.S.Parthasarathy, learned Senior Counsel representing for Mr.K.Muthukumarasamy, appearing for the respondents and perused the materials placed on record.



6.The learned counsel for the appellant on the point of possession, has relied upon the finding of the Trial Court that Subbaraya Asari was only the poosari and he has no right to lease out the land to the plaintiffs and the plaintiffs did not prove their possession after 16.04.1993 till filing of the suit and hence, prayed for allowing the second appeal.

7.Per contra, the learned Senior Counsel appearing for the respondents would rely upon the decision of the Hon'ble Supreme Court reported in 2009 7 SCC 614 [Ram Pat and others Vs. State of Haryana] on the point of settled possession of property.

8.After hearing the rival submissions made on either side and after perusing the documents filed by both parties, this Court finds that

(a).The appellant herein is the 10th defendant in O.S.No.167 of 1986 on the file of Sub-Court, Udumalpet and the respondents 1 to 8 in this appeal are the plaintiffs 2 to 9 in O.S.No.167 of 1986. Respondents 6 to 8 herein (Plaintiffs 7 to 9 in O.S.No.167 of 1986) are the legal representatives of the 1st plaintiff viz., Nachimuthu Goundar, who died during the pendency of the suit. Pending the second appeal, the respondents 1, 2, 4 & 5 died and their respective legal representatives were brought on record as respondents 18 to 34.

(b).The plaintiffs' suit filed for permanent injunction in O.S.No.167 of 1986 on the file of Sub-Court, Udumalpet was dismissed by a judgment and decree, dated 12.03.1990. Against which, the plaintiffs have filed an appeal in A.S.No.111 of 1990 before the learned 1st Additional District Judge, Coimbatore. After consideration of both oral and documentary evidence, the learned 1st Additional District Judge, Coimbatore, by a common judgment dated 23.05.1991, reversed the judgment and decree of the Sub-Court, Udumalpet and decreed the suit holding that the plaintiffs are entitled for permanent injunction till they are evicted by following due process of law.

(c).The decree for permanent injunction granted in other suits filed by the other set of plaintiffs in O.S.Nos.179 of 1986, 185 of 1989 and 319 of 1989 were reversed and those suits came to be dismissed in the said common judgment of the learned 1st Additional District Judge, Coimbatore (Lower Appellate Court). The suit property belonging to the temple is punja land, bearing Survey Nos.275/1 (63 cents), 275/1 (4.22 Acres), 275/3 (41 cents), 275/3 (23 Cents) and Survey No.282 (13.17 Acres) totally 30.66 Acres and well in S.No.282 with Motor Pump set having electricity service connection 244 in Kappalankarai Village.



9.The crux of the respondents/plaintiffs case is that

(a).The plaintiffs' predecessors viz., Palani Goundar and Subbaraya Goundar were cultivating the lands in the suit property for many years under lease from the Trustees of the appellant Temple. After the death of the said Palani Goundar and Subaraya Goundar, their legal representatives were cultivating the same under lease from the Trustees of the appellant Temple. The plaintiffs 1 to 4 are the sons of Palani Goundar and the plaintiffs 5 & 6 are the sons of Subbaraya Goundar. During the pending of the suit, the 1st plaintiff viz., Nachimuthu Goundar, son of Palani Goundar died and therefore, his legal representatives were brought on record as the plaintiffs 7 to 9.

(b).Originally, one Swaminatha Goundar was Trustee of the Temple and administered the Temple properties and leased out the lands (Suit Property) to Palani Goundar and Subbaraya Goundar and after the death of Swaminatha Goundar, his son Amanalingeswara Vanavaraya Goundar became the Trustee of the Temple and administered the temple and the suit property belonging to the temple and the plaintiffs and their predecessors were the lessees under him.

(C).Subbaraya Asari, once Poosari of the Temple, claimed to be the Trustee of the temple, asked the plaintiffs to pay the rent to him in or about May 1983. Accordingly, the plaintiffs started to pay the rent to him and he issued the rental receipt in favour of the 1st plaintiff and others on 15.5.1983. Thereafter, on 15.05.1986, the said Subbaraya Asari executed a registered lease deed leasing out the suit property in favour of the plaintiffs 1 to 6, wherein, it is stated that Subbaraya Asari is the hereditary Poosari and the Manager of the Appellant Temple. The suit property had already been in possession of the plaintiffs 1 to 6. The rental receipt dated 15.5.1983 and the registered lease agreement dated 15.5.1986 are marked as Exs. A25 and A22 respectively in the suit.

10.The plaintiffs are heavily placed reliance upon the documentary evidence viz., Exs.A25 & A22, rental receipt dated 15.05.1985 and registered lease agreement in favour of the plaintiff on 15.05.1986 respectively.

11.Since the contesting defendants, on the instigation of the politicians of the locality, trying to interfere with the possession and enjoyment of the suit property, seems to have been filed the suit in O.S.No.167 of 1986, on that day, the said Subbaraya Asari died and hence, his legal representatives Velusamy Asari, Porana Asari and Swaminatha Asari viz., the sons of the Subbaraya Achari were impleaded as defendants 7, 8, 9 for an effective adjudication and the appellant herein was added as a 10th defendant. Initially, an order of ad-interim injunction was granted in their favour.



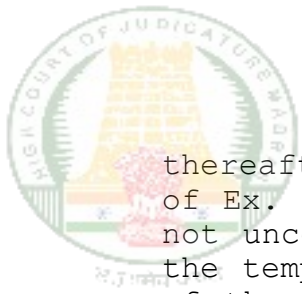
12. At this juncture, one Bhuvaneshwari claims to be the tenant under the Executive Officer of the temple, based upon the alleged lease agreement (unregistered document) dated 05.08.1984 in respect of the suit property and she has also filed a counter suit in O.S.No.179 of 1986 and also another suit in O.S.No.185 of 1989. All the suits were tied together and as stated supra, the suit filed by the plaintiffs was originally dismissed, however, the same was allowed at the appellate stage.

13. After completion of pleadings in all the suits and framing issues, the joint trial in all the four suits were held. The evidence was recorded in O.S.No. 167 of 1986 filed by the plaintiffs. On the side of the plaintiffs in O.S. No. 167 of 1986, one Mayilsamy Goundar (6th Plaintiff) was examined as PW-1 and one Muthusamy Goundar was examined as PW-2 and the documentary evidences were marked as Exs.A1 to A44. The defendants 1 & 2 in O.S.No. 167 of 1986 were examined as DW-1 and DW-2; the plaintiffs in O.S.No.185 of 1989 and O.S.No.319 of 1989 were examined as DW-4 and DW-5. The Power of Attorney of Bhuvaneshwari, the plaintiff in O.S. No. 179 of 1986 was examined as DW-3. The 8th Defendant Poorna Asari, legal heir of Subbaraya Asari was examined as DW-6. The Executive Officers were examined as DW-7 and DW-8. On behalf of DW-1 to DW-5, Exs.B-1 to B-57 were marked. On behalf of 8th Defendant (DW-6), Exs.B-58 to B-88 were marked. On behalf of DW-7 and DW-8, Exs.B-89 to B-104 were marked.

14. In the Common Judgement dated 12.03.1990, the Trial Court had dismissed the suit in O.S.No.167 of 1986, filed by the plaintiffs and the suits in O.S. No. 179 of 1986, O.S. No. 185 of 1989 and O.S. No. 319 of 1989 filed by Bhuvaneshwari, K.V.P. Somasundaram and K.V.K. Natarajan were decreed.

15. The Lower Appellate Court has held that no document has been produced by the Executive Officer that he has empowered to lease out the suit property and no document was produced to show that the possession of the suit property was taken over by the Temple after issuance of Ex.A27. As per Ex.A27 notice issued by the learned Standing Counsel for the Temple, the plaintiffs were in possession of the property till 16.04.1983. In the absence of any document to show that the possession was taken over from the plaintiffs by the temple in the manner known to a law, the alleged stand of the contesting defendants that there was a lease agreement in their favor from the Executive Officer, has no legs to stand and further, no document has been produced to that effect also assumes significance.

16. On a perusal of documentary evidence viz., Exs.A22 & Ex.A25, it is seen that the plaintiffs herein became the lessees under the Trustee Amanalingeswara Vanavaraya Goundar and



thereafter, he became the lessee from Subbaraya Asari, in view of Ex. A-22 and A-25. Subbaraya Asari was not the stranger and not unconnected with the temple and the suit lands belonging to the temple. The HR & CE Department recognised him as a Trustee of the temple at the relevant point of time under Exs. B-64 to B-87. The Exs. B-64 & B-87 are the receipts, notices, letters by HR & CE Department in the name of Subbaraya Asari in respect of the demand for contribution from the year 1982 to 1986. In these documents, HR & CE Department described Subbaraya Asari as "Trustee or Manager". Therefore, the claim of the Plaintiffs that they are the lessees under Subbaraya Asari cultivating the suit lands cannot be faulted in any manner. The Lower Appellate Court has elaborately considered this aspect.

17. Furthermore, Ex. B-61, Ex. B-62, Ex. A-26, Ex. A-27, Ex. B-90, Ex. A-28, Ex. A-25, Exs. A-3 to A-9, Exs. A-10 to A-11, Exs. B-64 to B-87 are relevant to show that previously, Swaminatha Goundar and Swaminatha Asari were the Trustee and poosari respectively and after the death of Swaminatha Goundar, his son Amanalingeswara Vanavaraya Goundar was the Trustee and thereafter, Subbaraya Asari, son of Swaminatha Asari was the Trustee and the Plaintiffs were in possession of the suit property.

18. Further more, it is clear

(i). From Ex. B-61/certified copy of the decree in O.S.No. 505 of 1920 dated 14.07.1920, it can be seen that there was a suit filed by Swaminatha Asari against Swaminatha Goundar and three others for possession of the suit property and there was a compromise in the said suit. Under the said compromise decree, it was ordered that Swaminatha Asari would conduct the pooja in kovil; that Swaminatha Goundar would administer the temple properties and that Swaminatha Goundar would pay Rs.150/- per annum to the said Swaminatha Asari towards expenses for the temple pooja.

(ii). From Ex. B-62/copy of the compromise decree in O.S.No. 211/1923 dated 2.12.1925, it can be seen that the suit was filed by Puravipalayam Jamindar Jaganandalapathi Koppanna Mandradiyar and another for declaration and other reliefs regarding the Trustees of the Temple and the said suit was decreed by stating that the suit property belongs to the temple; that Swaminatha Goundar would administer the Kovil and his properties; that the 1st Defendant Swaminatha Asari would conduct the pooja by receiving Rs.127/- per annum. From Exs. B61 & 62, it is clear that Swaminatha Goundar was the Trustee of the temple and after the death of Swaminatha Goundar, his son Amanalingeswara Vanavaraya Goundar became the Trustee and administered the suit properties.



(iii).Ex.A-26/notice from the then Executive Officer of the Shree Kannika Parameshwari Devasthanam, Periya Nagamam to the Plaintiffs 5 & 6, dated 3.4.1965, stating that he was appointed as new Trustee in the suit temple by HR and CE Department by order dated 22.10.1964 and required the Plaintiffs 5 & 6 Nachimuthu Goundar and Mayilsamy Goundar to attorn the tenancy in favour of the Executive Officer of the temple, pay the rent and get receipt from him. In this document, it is very much seen that Amanalingeswara Vanavaraya Goundar was the existing Trustee and the Plaintiffs are the lessees under him.

(iv).Ex.B-90 is the letter/order from HR & CE Department to the Executive Officer, wherein it is stated that K.R.Subramaniam was appointed as Executive Officer with effect from 22.10.1964. In this letter, Executive Officer is required to get the charge and management from the existing Trustee Amanalingeswara Vanavaraya Goundar and send the list taking charge from the existing Trustee to the Department.

(v).Ex.A-27/notice issued to Amanalingeswara Vanavaraya Goundar and the plaintiffs herein by the Advocate on behalf of the Executive Officer of the temple, dated 16.4.1983, seeking possession of the suit property, wherein, it is admitted that the plaintiffs are in possession and enjoyment of the suit property as lessees through Amanalingeswara Vanavaraya Goundar and he was collecting Rs.7,000/- per annum towards rent from the plaintiffs.

(vi).From Ex.A-28/reply from the plaintiffs, it is seen that the plaintiffs have clearly stated that they are cultivating the lands under the lease originally from Amanalingeswara Vanavaraya Goundar and thereafter, they are giving rent to Subbaraya Asari. The plaintiffs have expressed their readiness and willingness to execute the lease agreement in favour of Subbaraya Asari and the Executive Officer.

(vii).Ex.A-25 dated 15.5.1983 is the rental receipt issued to the plaintiffs side by Subbaraya Asari.

(viii).Ex.A-22, dated 15.05.1986 is a registered lease agreement between Subbaraya Asari - hereditary poosari and Manager for the temple and the plaintiffs herein regarding the suit property.

(ix).Ex.A-3 to Ex.A-9 are the receipts in the name of Amanalingeswara Vanavaraya Goundar towards electricity consumption charges.



(x).Ex.A-10 to Ex.A-21 (from 1982 to 1986) are the receipts in the name of 6th plaintiffs towards electricity consumption charges.

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(xi).Ex.B-64 to B-87 are the receipts, letters and notices from the HR & CE Department, Coimbatore, in the name of Subbaraya Asari for the contribution to the Government.

19.Thus, the above documents filed both by the plaintiffs as well as by the defendants would go to show that the case of the plaintiffs that they are in possession of the suit property pursuant to the lease executed by the erstwhile trustee Amanalingeswara Vanavaraya Goundar, thereafter from Subbaraya Asari and furthermore, the respective capacity of the respective persons to execute the lease in favour of the plaintiffs is also stands substantiated and hence, the finding rendered by the Lower Appellate Court that the lessor Amanalingeswara Vanavaraya Goundar and Subbaraya Asari, who had executed lease in favour of the plaintiffs had accepted to do so and further, they are in possession of the property is well founded and well merited and it does not suffer from any irregularity or illegally warranting interference at this second appellate stage.

20.It is seen from Exs.B61 & 62 that Swaminatha Goundar was trustee and under Ex.A26 & A27, the plaintiffs are the lessee under the existing trustee Amanalingeswara Vanavaraya Goundar and they are in possession till 16.04.1983 and it is a concurrent finding of both the Courts below. In the absence of any positive evidence to show that tenancy in favour of the plaintiffs was cancelled as required under the law and the possession was taken over by Executive Officer as projected by them in the written statement, the Lower Appellate Court has rightly come to the conclusion that the alleged lease deed in favour of the contesting defendants, as stated by the defendants, cannot be countenanced.

21.It remains to be stated that no documents were filed to demonstrate that pursuant to Ex.A26 & B10, the appellant/Executive Officer taken charge of the administration of the temple and the suit land and tenancy was not attorn by the Executive Officer of the temple. Without obtaining possession of the suit property from the plaintiff in the manner known to law, this Court is unable to accept the stand projected by the Executive Officer that he had executed a lease agreement in favour of the defendants under Exs.B7, B34 & B35.

22.Yet another issue is that if the Subbaraya Asari was not a trustee, there is no necessity for the temple authorities to



demand contribution from the Subbaraya Asari under Section 92 of the HR&CE Act and collected the contribution under Ex.B17. Even after the appointment of the Executive Officer to the temple under Ex.A20, Subbaraya Asari was recognized as a trustee as per the document under Exs.B64 to B87 and thus, this Court finds that the case as projected by the defendants and the documentary evidence, are appears to be diametrically opposite.

23.Furthermore, the plaintiffs have proved their possession both by oral and documentary evidence and it is duly substantiated by the documentary evidence of Exs.A10 to A22.

24.On the risk of repetition, however for the sake of clarity, in the absence of any document to show that the possession of the plaintiffs was taken over by the Executive Officer, the action of the Executive Officer to create the documents in favour of the defendants 1 & 2 as if they are the lessee of the suit property cannot be countenanced under the law. Furthermore, all those documents were proved and they are unregistered documents. Before the Trial Court, the plaintiffs have taken objection to mark the documents also assumes significance.

25.On the Contrary, the plaintiffs' lease agreement in their favour was duly registered and they were paying the amount originally to Swaminatha Goundar and their son, subsequently to the poosari viz., Subbaraya Asari and his legal heirs.

26.Accordingly, this Court finds that the finding rendered by the Lower Appellate Court that the lease deed executed by the Swaminatha Gounder and after his life time, by Amanalingeswara Vanavaraya Goundar had capacity to execute the lease in favour of the plaintiff. Pursuant to the lease, the plaintiffs were in possession and enjoyment of the suit property and paying the Kist to the authorized person viz., Subbaraya Asari and they are in possession of the property. Further, the alleged lease deed projected by the Executive Officer in favour of the contesting defendants is unregistered document. In the absence of any positive documents to show taking over of possession from the plaintiff when their possession is lawful and in the absence of any positive document to show such taking out possession of the property and also for other then reasons as stated supra, the lower Appellate Court has rightly rejected the case of the defendants and decreed the suit in favour of the plaintiffs and hence, in this view of the matter, substantial questions of law is answered in negation against the appellant.

27.Accordingly, the Second Appeal is devoid of merits and dismissed. The order passed in A.S.No.111 of 1990 on the file of the learned I Additional District Judge, Coimbatore, dated



23.05.1991 by reversing the judgment and decree passed in O.S.No.167 of 1986, dated 12.03.1990, on the file of the Subordinate Judge's Court, Udumalaipattai, Coimbatore District, is hereby confirmed. No costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The First Additional District Judge,
Coimbatore.
2. The Subordinate Judge,
Udumalaipattai, Coimbatore District.

Copy to

The Section Officer,
VR Section,
High Court, Madras - 104.

+lcc to Mr.V.Sanjeevi, Advocate, S.R.No.30481
+lcc to Mr.R.T.Doraisamy, Advocate, S.R.No.30534

S.A.No.212 of 1995

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