



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2021

PRONOUNCED ON : 23.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.NOS.437 & 438 OF 2000

AND

CMP.NO.3590 OF 2000

- 1.Sreeranga Gounder
- 2.Selvakumar
- 3.Umapathi Sekar
- 4.Muruga Mohan Kumar

... Appellants 1 to 4/
Appellants 1 to 4/Defendants 2 to 5/
Plaintiffs 2 to 5 in both appeals

(The first appellant died. The appellants 2 to 4 are recorded as Legal representatives of the deceased first appellant viz., Sreeranga Gounder vide memo dated 17.03.2021 made in S.A.No.438 of 2000)

Vs.

S.A.No.437 of 2000

1. Palani Arulmighu Dhandayuthapani Temple,
by its Joint Commissioner and Executive Officer,
A.Mayandi, S/o.Andi Ambalam,
Palani, Anna District.

... 1st Respondent/1st Respondent/
Plaintiff

2. Muthulakshmi
3. Sivaprakasam
4. K.R.Rangaraj
5. R.Krishnaveni
6. R.Sandhiyavalli

... 2 to 6 Respondents/
3 to 7 Respondents/Nil

SA.No.438 of 2000:-

Palani Dhandayutha Subramaniaswami Temple,
Palani, Rep.by the Deputy Commissioner,
HR & CE and Executive Officer,
Palani, Anna District.

... Respondent/Respondent/Defendant



COMMON PRAYER:

These Second Appeals are filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.Nos.165 of 1994 & 15 of 1995, dated 10.08.1999, on the file of the learned II Additional District Court, Erode, confirming the judgment and decree made in O.S.No.133 of 1988 & 89 of 1994, dated 14.09.1994, on the file of the Subordinate Court, Dharapuram.

In S.A.No.437 of 2000:

For Appellants	: Ms.J.Ananda Valli
For R1	: Mr.M.Sriram
For R2	: Died
For R3 & R6	: Batta Due
For R4 & R5	: No appearance

In S.A.No.438 of 2000:

For Appellants	: Ms.J.Ananda Valli
For Respondent	: Mr.M.Sriram

COMMON JUDGMENT

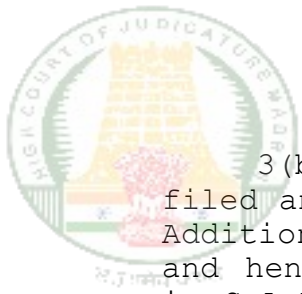
(The case has been heard through video conference)

The defendants in the suit in O.S.No.133 of 1988 are the appellants in S.A.No. 437 of 2000 and the plaintiffs in O.S.No.89 of 1994 are the appellants in S.A.No.438 of 2000.

2.On a perusal of the docket sheet, the above Second Appeals were admitted on 23.03.2021 and the following substantial question of law was framed:

"a)Whether the judgment and decree of the Lower Appellate Court is vitiated as the learned District Judge failed to consider the legal effect and bearing which Ex.A10 produced by the appellants has on the crucial issue regarding title to the suit properties?

3(a).The Temple has filed a suit in O.S.No.133 of 1988 and the defendants have filed a suit in O.S.No.89 of 1994. The suit filed by the Temple was decreed, while the suit filed by the defendants was dismissed and hence, they have filed appeal suits in A.S.No.165 of 1994 and A.S.No.15 of 1995 respectively. On dismissal of the appeal suits, second appeals viz., 437 of 2000 and S.A.No.438 of 200 were filed before this Court.



3(b).The defendants in the suit in O.S.No.133 of 1988 have filed an appeal suit in A.S.No.164 of 1994 before the learned II Additional District Judge of Erode and the same was dismissed and hence, they have preferred second appeal before this Court in S.A.No.983 of 2001. The arguments of the parties having been heard, orders are passed separately in the respective second appeals however on the same day ie., 23.03.2021.

4(a).The first respondent viz., Palani Arulmighi Dhandayuthapani Temple (in short temple) has filed a suit in O.S.No.133 of 1988 before the Sub Court, Dharapuram, for eviction of the defendants 1 and 2 along with their family members from the suit property on the ground that the temple has been declared as the owner of the property by virtue of proceedings and hence, after issuance of legal notice for eviction, as they failed to deliver the vacant possession, filed suit for ejectment and the said suit was decreed by the Sub Court, Dharapuram.

4(b).During the pendency of the suit, the second defendant has filed a suit before the Dharapuram Munsif Court, which was transferred to Sub Court, Dharapuram and re-numbered as O.S.No.89 of 1994 and thereafter, common trial was conducted and common judgment was pronounced on 14.09.1994, whereby, the suit for ejectment filed by the temple was decreed, while the suit for injunction filed by the second defendant was dismissed.

4(c).Aggrieved against the said judgment and decree passed in O.S.Nos.133 of 1988 & 89 of 1994, the second defendant viz., Sreeranga Gounder, has filed appeal suits in A.S.Nos.165 of 1994 & 15 of 1995 and the first defendant viz., Ramasami Gounder has filed A.S.No.164 of 1994. All the three appeals viz., A.S.Nos.164 of 1994, 165 of 1994 & 15 of 1995 were tied together and by a common judgment, the learned II Additional District Judge, Erode, has dismissed all the three appeals and hence, the original first defendant viz., Ramasamy Gounder has filed the Second Appeal in S.A.No.983 of 2001, while the second defendant in O.S.No.133 of 1988, the plaintiffs in O.S.No.89 of 1994, who are the appellant in A.S.No.165 of 1994 & A.S.No.15 of 1995, had filed the Second Appeals in S.A.Nos.437 & 438 of 2000.

5(a).These Second Appeals viz., S.A.Nos.437 & 438 of 2000 are relating to A.S.Nos.165 of 1994 & 15 of 1995 before the II Additional District Judge, Erode, were preferred by the second defendant viz., Sreeranga Gounder and others.

5(b).The plaintiff/temple/first respondent herein has filed the above said suit in O.S.No.133 of 1998, on the ground that the suit property belongs to Arulmighu Dhandayuthapani Temple. The British Government had given this property as GRANT. Both



WEB COPY

kudiwaram and melvaram were granted to the temple. After abolition of Inam, there was a patta proceedings and patta was granted in favour of the Temple. After the settlement proceedings have ended in favour of the Temple, by virtue of the judgment of the Hon'ble Supreme Court, thereafter, on 07.07.1998, the respondent herein (plaintiff) had issued a legal notice to the appellant (second defendant) calling upon them to handover the possession to the plaintiff. The defendants/appellants herein have received the notice, however failed to hand over the possession to the plaintiff. Since, the title of the respondent/plaintiff was declared by the Hon'ble High Court and confirmed by the Hon'ble Supreme Court, the appellants/defendants have to surrender the possession to the respondent/plaintiff/temple and hence, the Temple has filed the above said suit in O.S.No.133 of 1988 for recovery of possession with means profit.

6.After filing the written statement in the above suit, the appellants, who are the defendants in the above O.S.No.133 of 1988 have filed O.S.No.1 of 1992, before the District Munsif Court, Dharapuram, by alleging that they are in possession of the suit property and they are perfected title by adverse possession and therefore, permanent injunction restraining the temple from the distributing their possession. Thereafter, the said suit viz., O.S.No.1 of 1992 was transferred to the Sub Court, Dharapuram and renumbered as O.S.No.89 of 1994, and both the suits in O.S.No.133 of 1988 and O.S.No. 89 of 1994 were tied together and by a common judgment, on 10.08.1999 the suit filed by the temple was allowed and the suit filed by the individual was dismissed and hence, the defeated parties have filed respective A.S.Nos.164 of 1994 & 15 of 1995 before the learned Second Additional District Judge, Erode. And thus, all the appeal suits preferred by the other defendants were taken together and a common order has been passed on 10.08.1999. In respect of the second respondent viz.,Sreeranga Gounder, these two second appeals have filed.

7.The plaintiff in O.S.No.133 of 1988, viz., Palani Arulmigu Dhandayuthapani Temple, through his Executive Officer has admitted the factual matrix chequered case as under:

Admitted factual Matrix:

7(a).The suit property is a Inam property, Inam was granted by the British Government in TD.No.243 on 28.07.1863. After abolition of Inam, the Settlement Officer held enquiry. In the said enquiry, Kudiwaram Patta was granted in favour of the appellants. Against the said order of the Settlement Officer, the temple filed an appeal before the Tribunal and the Tribunal remanded the matter back to the Settlement Officer to hold



enquiry properly. Again the Settlement Officer granted patta in favour of the appellants. The Temple had to file appeal again before the Tribunal and the Tribunal set aside the order of the Settlement Officer and granted Patta in favour of the Temple. Not satisfied with that, the appellants have filed a revision before the High Court and the High Court passed an order, which is marked as Ex.A1. Against the said order, again the appellants preferred Special Leave Petition before the Hon'ble Supreme Court and the same was dismissed as seen from Ex.A2.

7(b).Based upon Exs.A1 & A2, the order passed in the settlement proceedings by the Competent Authority as confirmed by the Division Bench of this Court and the orders of Hon'ble Supreme Court, the plaintiff/temple has laid the suit for eviction against the defendants.

8.The sum and substance of the contention of the learned counsel for the appellants herein/defendants is that the appellants and their predecessors have been in enjoyment of this property for several years and therefore, they have prescribed title by adverse possession.

9.Further contention is that the Patta was granted to Mumoorthy Temple, which is situated on the foot of the Palani Hill. This property was not given to Dhandayuthapani Swami Temple, situated at the top of the hill and that the respondents have no right to recover possession from these appellants.

10.Before the Trial Court necessary issues were framed and on behalf of the Temple, Executive Officer was examined as PW1 and marked Exs.A1 & A2 and on behalf of the defendants, first defendant was examined as DW1 and second defendant was examined as DW2 and villager was examined as DW3 and marked Exs.B1 to B109.

11.The Trial Court on consideration of both the oral and documentary evidence, has come to the conclusion that the Temple is entitle for recovery of possession and also dismissed the suit filed by the second defendant in O.S.No. 89 of 1994. As aggrieved against, same the parties have preferred Appeal Suits as stated supra and the same have been dismissed. Hence, Second Appeals.

12.The above second appeals were admitted on the following substantial questions of law:

"a)Whether the judgment and decree of the Lower Appellate Court is vitiated as the learned District Judge failed to consider the legal effect and bearing which Ex.A10 produced by the



appellants has on the crucial issue regarding title to the suit properties?"

13. Heard Mrs.J.Ananda Valli, learned counsel appearing for the appellants and Mr.M.Sriram, learned counsel for the first respondent/Temple and perused the materials placed on record.

14. The suit property is situated in Periyakumarapalayam Village, Dharapuram Taluk in Erode District, lands in survey number to the extent of 60.43 acres in Survey Nos.400, 401, 404/2, 412/2, 413/2 as mentioned in the schedule of the plaint.

15. On a perusal of the records, it is seen that the first defendant is the brother of the second defendant, the defendants 3, 4 & 5 are the sons of the second defendant. After the suit in O.S.No.133 of 1988 [temple suit] was decreed for the eviction, first defendant and the second defendant family had filed separate appeal suits and on its dismissal, they have filed separate Second Appeals.

16. At the risk of repetition, however for the sake of clarity, the common contention of the defendants 1 and 2 is that their predecessor and ancestor have been enjoying property for more than 150 years, so they have perfected the title by adverse possession.

17. Next contention is that the Patta was granted to Mumoorthy Temple which is situated on the foot of the Palani Hill and this property was not given to Dhandayuthapani Swami Temple, which is in top of the hill and hence, the suit is not maintainable. Further contended that the temple has no right to recover the possession from the appellants.

18. On a perusal of the written statement filed by the defendants before the Trial Court, it is seen that a Patta for the suit lands was given to Palani Dhandayuthapani Subramania Swami and Thirumoorthy Samy Temple in the year 1863. As per defendants version, the appellants were paying rent to the said Temple Gurukkal and they were enjoying the property continuously and Palani Dhandayuthapani Temple is different from Palani Dhandayuthapani Subramania Swamy and Thirumoorthy Temple. In short, the case of the appellants herein/defendants before the Courts below was that the Patta was given to Palani Dhandayuthapani Temple and it is different from Palani Dhandayuthapani Subramania Swamy and Thirumoorthy Temple and further, they have raised the plea of adverse possession.

19. It remains to be stated that the Inam in favour of the Temple was granted by the British Government in T.D.No.243 on 28.07.1863, it was not in dispute. After the abolision of Inam,



settlement proceedings ended were initiated and concluded and the settlement proceedings in favour of the Temple, were confirmed by the Hon'ble Division Bench of this Court as well as by the Hon'ble apex Court as mentioned supra.

WEB COPY

20. The case of the defendants/respondents 2 to 6 herein as projected in the trial is that they have perfected the title by adverse possession. In the written statement as well as in the oral evidence of PW1 & PW2 it is stated that the defendants are paying rent to the said Temple Gurukkal and they were enjoying the property continuously, it is a trait in law that the plaintiff has to plead and prove his case, failing which, he has to fall. The plaintiff cannot rely upon the weakness of the defendants' case or loopholes in the defendants' case. However, it remains to be stated that when the plaintiff can take advantage of the stand of the defendant, as per pleadings in the written statement, he has been lucidly enumerated in several of the decisions that when the defendants admit in the written statement as to the fact touching upon the pleadings of the plaintiff, the plaintiff can rely upon such pleadings of the defendants to his advantage. In the instant case, the respondents 2 to 6 herein/defendants, while denying the title of the Temple, has admitted both in the pleadings and in the evidence that they have paying rent to the Temple Gurukkal, which according to the Temple is their are the prime tenant. In the sense, they admitted the ownership of the Temple.

21. It remains to be stated that initially Kudiwaram Patta alone was granted in favour of the Temple. However, on appeal to the higher forum appeal was allowed and the matter was remitted back to the Settlement Tahsildhar and after due enquiry, had granted both Kudiwaram and Melwaram to the Temple and thereby, Iruwaram was given to the temple, which assumes significance. Once both waram belong to the Temple, the respondents 3 to 6 cannot claim any Patta to the suit property. The respondents 3 to 6 had filed several documents on their side and even they are all considered to be true, the respondents 3 to 6 can never say that they have perfected the title to the property because of Exs.A1 & A2/copy of the judgment of the High Court and the Hon'ble Supreme Court.

22(a). According to the learned counsel for the appellants, Exs.A4, A5 & A6 are the receipts issued by the Temple Priest for receiving the rent as to the agricultural produce and in respect of the same, the Settlement Tahsildhar has given a categorical finding that they are not binding or not genuine and such a finding that those receipts are not genuine document are confirmed by the High Court and the Hon'ble Supreme Court.



22(b).Hence, the Trial Court has given a categorical finding that in view of the orders passed in the settlement proceedings as confirmed by the Hon'ble Division Bench of this Court in STA.Nos.340 of 1978 & 38 of 1986, under Ex.A1, wherein, the Kudiwaram and Melwaram was given to the Temple, which has been confirmed by the Hon'ble Apex Court under Ex.A2, goes to show that the exhibits marked by the defendants cannot be looked into as it lacks evidentiary value and hence, the plea of adverse possession raised by the defendants has not been proved in the manner known to law. Accordingly, similar findings rendered by the both the Courts below are hereby confirmed.

23.Based upon Exs.A1 & A2, both the Courts below have come to the conclusion that the Idol viz., Lord Subramania Swamy at Palani Temple is entitle to recover the possession of the land and the defendants have not established the plea of adverse possession against the true owner of the land namely idol of the temple. In the absence of any positive evidence to demonstrate the hostile title of the defendants as against the idol of the temple both the Courts below have rightly come to the conclusion that the plea of adverse possession claimed by the defendants is only after thought and accordingly, the findings rendered by the both Courts below are hereby confirmed.

24.The next issue is to whether the plaintiff/temple and Idol, in whose favour settlement proceedings was granted is the one and the same. In short, the appellants herein/defendants have raised the point that Palani Dhandayuthapani Temple is different from Palani Dhandayutha Subramania Swamy and Tirumoorthy Temple.

25(a).At the out set, in the written statement no such plea was taken. However, in the suit filed by the second defendant in O.S.No.89 of 1944, he has taken the plea as stated supra. In this regard, the grant of Patta as disclosed in the document is in favour of Palani Dhandayutha Subramania Swamy and Tirumoorthy Temple, PW1/Executive Officer deposed that both the names rendered to the same temple. DW1/Rangaraj and DW2/Seerengayan in the joint trial could stated that Thirumoorthy Temple is in the bottom of Palani mountain and it is a separate Temple. At the same time, they would also depose that there is no Temple by name Dhandayuthapani Subramania Swami Temple in Palani Devasthanam.

25(b).In support of the plea, the defendants have filed I.A.No.154 of 1998 for receiving additional document and submitted a book let which was written by one J.M.Somasundaram Pillai, who was retired Deputy Commissioner of Murugan Temple, Palani and in this book let contains all the names of the Temple, which were under the control of Palani Murugan Temple



are enumerated in appendix A and all the properties that are owned by this Temple were listed out in appendix B. The said IA was allowed and Ex.B10 was marked. So also the respondent/plaintiff to counter the same, has filed an application in I.A.No.201 of 1988, which are the memorandum of Arulmighu Dhandayuthapani Temple, Palani, dated 23.02.1975 and list of Temples in Palani Taluk, which are not under the control of HR&CE and after allowing the said IA, they are taken as documents viz., Exs.A3 & A4.

26.On a perusal of Exs.A3 & A4, which were filed at the appellate stage by the plaintiff/Temple through its Executive Officer, it is seen that the genuineness was not disputed since the same was attested by the notary public compared with original by the Executive Officer. In this document it is stated that the suit property was found in the list of properties given to lord Mumoorthy of Palani Temple and also that there is no Temple by name Palani Dhandayutha Subramania Swami and Thirumoorthy Samy Temple and accordingly, the Lower Appellate Court has rightly held that the name of the Temple in the grant given by British Government, it is mentioned as Palani Dhandayutha Subramania Swami and Thirumoorthy Samy Temple, which is one and the same as that of the plaintiff/Palani Dhandayuthapani Temple.

27.Now coming to the substantial question of law as to the evidentiary value of Ex.B10, that the book was published by a private author by name J.M.Somasundara Pillai.

28(a).Mrs.J.Ananda Valli, learned counsel for the appellants would draw my attention to the copy of the Ex.B10 and would contend that the book was published in the year 1963 and it is presumed as to his contents.

28(b).According to the appellants herein/defendants, the suit property does not shown as a Temple property of the Palani Temple, which was published by the Executive Officer. This Court takes judicial notice of the fact that the Executive Officer, who worked in the Temple, has published the book and it is regular and normal practice not to show the property, when there was settlement proceedings pending before the Competent Court at the relevant point of time for the grant of Patta, based upon the GRANT given by the British Government.

28(c).Admittedly, in the year 1960 settlement proceedings under the Tamil Nadu Inam Abolition was under process and four cases have been there and the same was concluded only on 11.12.1992, as could be seen from Ex.A2 order passed by the Hon'ble Supreme Court. Hence, in order to avoid legal issues, the Executive Officer has thought it fit not to show the



property since the title of temple was in dispute when the matter is lis pendence before the Hon'ble High Court.

29. Furthermore, as to the contents whether the presumption could be raised with an aid of Section 87 of the Evidence Act. In AIR 1952 Madhya Bharat 146 (Brajraj Singh v. Yogendrapal singh) it is held that under Section 87 of the Evidence Act, a Court can only presume that the History was written or published by person and at the time and place, by whom or at which it purports to have been written or published. The presumption is only with regard to publication, authorship etc., but not with regard to accuracy. Thus, the presumption is only with regard to publication, however, the accuracy of the document cannot be presumed and hence, it cannot be stated that contents of the document is proved.

30. Hence, after taking note of all the factual grounds, as discussed supra, I find that the finding rendered by the Trial Court regarding evidentiary value of Ex.B10, for the discussions supra, has rightly rejected as the contents of the documents are not proved and the interpretation given by the Lower Appellate Court on Exs.A3 & A4 that both the Palani Dhandayutha Subramania Swami and Thirumoorthy Samy Temple are one and the same and both Kudiwaram and Melwaram are belonged to the same plaintiff/ Executive Officer and as such, the suit is maintainable.

31. At the appellate stage, the temple has also filed Ex.A3/Memorandum of Arulmighu Dhandayuthapandi Swamy temple Palani(Xerox), dated 23.02.1975 and Ex.A4/list of temples under Palani Taluk which are not under the control of HR & CE, dated 25.06.1998 and hence, this Court finds that Ex.B10/Xerox copy of the article pertaining to Palani Murugan Temple, has no evidentiary value and hence, the same cannot advance the arguments of the defendant.

32. On the point of want of prayer of declarative relief, this Court finds that during the proceedings before the settlement Tahsildhar under the Tribunal, the original defendant has made an endorsement for grant of patta in favour of the Temple by stating that he has "no objection" as could be seen at the paragraph No.60 in the order passed in CMA.No.201 of 1975 as reflected in Ex.A1/order in STA.No 340/1978 and the said endorsement to that effect has also been taken note of by the Hon'ble Division Bench of this Court as could be seen from Ex.A1/Order.

33. Further, this Court finds that the defendants for generations squatting over the temple property though a GRANT was granted by the British Government followed by the settlement Tahsildhar proceedings under the Tamil Nadu Inam Abolition Act



and in view of the various proceedings. As this was third round of litigation, the temple land, Palani Arulmighu Dhandayuthapani Temple, deprived of the enjoyment of the property for more than 60 years and as this litigation between the parties are being gone for a period of 60 years.

34.It remains to be stated that it is trite in law that idol of the temple is akin to minor child. The Court is guardian of minor child both for person and property. Likewise, the Court is guardian of properties of Idol of the temple. The Court has to protect the properties of the Idol like as that of minor child. According to the Hindu Methology at Palani, the Lord Subramaniya Swamy alias Karthick, abode as minor child and hence, the Court has to protect the property of the Idol as that of minor child. Being a guardian of the property of the Idol, this Court feels that the appellants/defendants, who are enjoying the property for generations by adopting dubious method and hence, this Court hereby direct the Commissioner and Secretary of HR &CE Department, to give suitable instructions to the plaintiff/executive officer to take possession as per the decree within a period of four weeks after the expiry of the four weeks time granted to the defendant to hand over the possession, failing which, the Commissioner has to supervise that the decree is executed at the earliest.

35.Hence, the substantial question of law is answered in negation against the appellants and S.A.Nos.437 & 438 of 2000 are dismissed and the judgment and decree passed in A.S.Nos.165 of 1994 & 15 of 1995, dated 10.08.1999, on the file of the learned II Additional District Court, Erode, by confirming the judgment and decree made in O.S.No.133 of 1988 & 89 of 1994, dated 14.09.1994, on the file of the Subordinate Court, Dharapuram are hereby confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dua

To

1. The II Additional District Judge,
Erode.
2. The Subordinate Court,
Dharapuram.



Copy To

1. The Commissioner and Secretary of HR & CE Department,
Secretariat, Chennai-9.

WEB COPY

(To give instructions to the Plaintiff/Executive
Officer to take possession as per the decree)

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

+2cc to Mr.M.Sriram, Advocate, Sr.No.29154, 29155

S.A.Nos.437 & 438 of 2000
and CMP.No.3590 of 2000

GPL (CO)
CS/20/09/2021