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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.NO.1546 OF 2001

Arulmighu Punyakoteswarar Koil Devasthanam,
represented by its hereditary Trustee,
S.Kachapeswara Gurukkal (Deceased),
Jayanthi, W/o.S.Kachapeswara Gurukkal.

(the name of the appellant Jayanthi was
substituted in the place of the deceased
S.Kachapeswara Gurukkal, vide order of
this Court dated 24.02.2020 made in
CMP.No.4443 of 2020 in S.A.No.1546 of 2021)

... Appellant/Respondent/
Plaintiff

.Vs.

1. A.Krishnaswamy Chettiar (deceased)
2. D.Arumugam Chettiar (deceased)
3. K.Natarajan

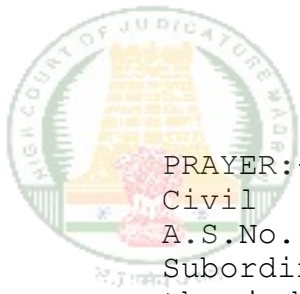
... Respondents 1 to 3/Appellants/
Defendants 3 to 5

4. K.Namachivayam
5. K.Arunachalam
6. A.S.Rajesh
7. A.S.Satish

... Respondents 1 to 3/Appellants

(RR 4 & 5 brought on record as legal
representatives of the deceased R1 vide
order of Court dated 11.09.2018 made in
CMP.No.11200 to 11202 of 2018 in
S.A.No.1546 of 2001)

(RR 6 & 7 brought on record as legal
representatives of the deceased R2 vide
order of Court dated 11.09.2018 made in
CMP.No.11203 to 11205 of 2018 in
S.A.No.1546 of 2001)



PRAYER:- This Appeal has been filed under Section 100 of Code of Civil Procedure against the judgment and decree made in A.S.No.69 of 1995 on the file of the Court of the learned Subordinate Judge, Kancheepuram dated 15.03.2001 in modifying the judgment and decree made in O.S.No.1000 of 1986 on the file of the District Munsif's Court, Kancheepuram dated, 13.02.1995.

For Appellant : Mr.A.Muthukumar

For R1, R2 : Died

For R3 to R7 : No appearance

JUDGMENT

The plaintiff in the suit in O.S.No.1000 of 1986 is the appellant herein.

2. For the sake of convenience, the parties are referred to as per the ranking in the suit.

3. Brief facts of the case are as follows:

3(a).Arulmighu Punyakoteswarar Koil Devasthanam, represented by its hereditary trustee has filed a suit in O.S.No.1000 of 1986, before the District Munsif Court, Kancheepuram, to declare the title over the suit property and for injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property. The defendants have filed written statement alleging that the subject matter of the suit land is belong to one Vinayakar Temple situated at Punniyakotteswarar Koil Street on the Western side and resisted the claim.

3(b).The Trial Court has formulated the following issues as to

(i)whether the plaintiff is a hereditary trustee?

(ii)whether the plaintiff is entitled for declaration of title and for permanent injunction?

(iii)whether the suit property belongs to the plaintiff's temple?

(iv)whether the suit is maintainable in view of the earlier suit in O.S.No.535 of 1982?

(v)whether the suit is barred under Order 2 Rule 2 and Order 23 Rule 1 and 2 of CPC?



(vi) whether the plaintiff is entitled to conduct the suit on behalf of the plaintiff?

(vii) whether the suit is bad in non-joinder of necessary parties.

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3(c). Before the Trial Court, during the course of the examination, on the side of the plaintiff PW1 was examined and marked Exs.A1 to A10 and on the side of the defendants, RW1 was examined and marked Exs.B1 to B24 and after trial, the Trial Court has decreed the suit in toto.

3(d). Aggrieved against the same, the defendants have filed an appeal in A.S.No.69 of 1995, before the Subordinate Court, Kancheepuram and the same was partly allowed and the decree granted by the Trial Court is modified to the limited extent that the plaintiff temple is entitled only for an injunction and not for relief of declaration of title. Hence, the Second Appeal by the plaintiff.

4. The above Second Appeal is admitted on the following substantial questions of law:

1. Whether the lower appellate court not erred in law in holding that plaintiff has no title to the suit property despite overwhelming documentary evidence and in the absence of any documentary evidence in favour of the defendants to prove their title to the suit property, as admitted by D.W.1?

2. When the courts below have found possession in favour of the plaintiff, whether lower appellate court not erred in law in not considering the possessory title of the plaintiff to the suit property?

3. Whether the lower appellate court misconstrued and misappreciated the evidence on record in reversing the findings of the trial court with regard to plaintiff's title to the suit property?

5(a). Mr.A.Muthukumar, learned counsel appearing for the appellant would make his submissions in support of the substantial questions of law and also draw my attention to Exs.A1, A2, A3 & A4. Ex.A1 is the patta pass book, issued in the year 1974, Exs.A2 & A3 are tax receipts issued by the concerned Municipality and Ex.A4 is the Xerox copy of the land survey register of the year 1983.

5(b). On a combined reading of all the documentary evidences, it is seen that, earlier occasion, when the Municipality wanted



to convert the suit property as a lay out for house sites by plots with a plan for the interest of petitioner's family deities called Kanniamman living at Kannikoil Thottam situated nearby and south of suit property, Punniyakotteswarar Koil Street, therefore, the very same temple had filed O.S.No. 535 of 1982, before the District Munsif Court, Kancheepuram, wherein, the Kancheepuram Municipality had filed written statement that subsequent to the institution of that suit, the Municipality came to know about the ownership of the temple and accordingly, withdrawn the project of converting the suit property as lay out for house sites situated at the southern row of the street, Punniyakotteswarar Koil Street and thus, the judgment and decree passed in O.S.No.535 of 1982 were marked as Exs.A9 & A10.

5(c).The learned counsel for the appellant herein would further draw my attention to the finding of the learned Subordinate Judge, the Appellate Court, Kancheepuram, that the plaintiff has successfully demonstrated possession of the suit property and hence, the appeal is now confined only to whether the plaintiff temple is entitled for decree of declaration declaring that title to the suit property?

6. On a perusal of the records, it is seen that the suit property is measuring about 58 cents in Survey No.1152, in Patta No.288, standing in the name of Sri Punniyakotteswarar Swamy, first division at Kancheepuram. After elaborate consideration, the Lower Appellate Court has rightly come to the conclusion that a case projected by the defendants that the suit property belongs to the Vinayakar Temple, situated on the western side of the Punniyakotteswarar Koil Street, is not proved in the manner known to law. Further, on a perusal of the documents filed by the defendants, it does not exhibit either the possession or title as claimed by them in the written statement.

7. The Lower Appellate Court has given a categorical finding at Paragraph No.13 of its Judgment in A.S.No.69 of 1995 that "no documents produced for their right over the suit properties for the Vinayagar Temple".

8. Furthermore, Exs.B16, B17 & B18 were marked as the mortgage deeds and in those documents, there is a mention that the properties mortgaged are in the south of Samudhaya Koodam and that there is no specific mention that the property in those documents are North of S.No.1152. Hence, based upon the Exs.B16, B17 & B18, the Trial Court has rightly come to the conclusion that the defendants have no title to the suit property. On the point of possession of the plaintiff, the Trial Court has accepted Exs.A1 & A4 coupled with Exs.A2 & A3 support by Exs.A9 & A10, has come to the conclusion that temple is in possession of the property.



9. After going through Exs.A1 & A3, it is seen that the name of the temple is duly reflected in the land survey register as a owner of the property, a person, who is cultivating the land for flowers namely Nandhavanam (temple land), for doing pooja was duly reflected in Ex.A4/Xerox copy of the land survey register and the Kancheepuram Municipality also appears to have conduct an enquiry and come to the conclusion that the suit property belongs to the temple and accordingly withdrawn the proposal for lay out for house sites as could be seen from Exs.A9 & A10/judgment and decree copy in O.S.No.535 of 1982.

10. Hence, I find that on a combine reading of Exs.A1 & A3 coupled with Exs.A2 & A3 and supported by Exs.A9 & A10, the plaintiff has adduced necessary evidence to show that they are purported title by long possession and in other words, possessory title has been conferred upon the plaintiff since, the suit was filed in the year 1986 and as per Ex.A1/Patta is of the year 1974.

11. In the judgment reported in 1996 (2) LW 231 - (A.S.Sethurathnammal Vs. The Deputy Commissioner, HR & CE (Admn.) Department, Madras 600034), this Court has held as follows:

"It should not be forgotten that an idol is in the position of a minor. It has been held in Bishwanath v. Radha Ballabhji (AIR 1967 S.C. 1044) that an idol is in the position of a minor and when the person representing it leaves it in lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interests." Further, it is held that

"Courts should be astute to protect the interest of an idol in any litigation."

12. Hence, I find that all the substantial questions of law based upon the evidence are answered in affirmative in favour of the appellant and consequently, the suit is decreed in respect of title also.

13. In view of the above, this Second Appeal stands allowed to the limited extent as indicated above. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



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To

1. The Subordinate Judge,
Kancheepuram.

2. The District Munsif's,
Kancheepuram.

Copy To:

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.15008

S.A.NO.1546 OF 2001

RR(CO)
PBS/01/10/2021