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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM

THE HONOURABLE MR. JUSTICE T. RAVINDRAN

S.A.No. 1062 of 2008

and

M.P. No.1 of 2008

1. M. Pandian

2. M. Panchatcharam

3. Saroja

... Appellants/Defendants

Vs.

R. Pasupathy

... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S. No.356/2004 dated 17.02.2005 on the file of II Additional Judge, City Civil Court, Chennai and also against the judgment and decree in O.S.No. 805/97 dated 30.09.2003 on the file of the III Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr. C.T. Mohan

For Respondent : Mr. P.B. Ramanujam

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 17.02.2005 passed in A.S. No.356/2004 on the file of II Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 30.09.2003 passed in O.S.No. 805/97 on the file of the III Assistant Judge, City Civil Court, Chennai.

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

3. The defendants in O.S. No.805 of 1997 are the appellants in the Second Appeal.

4. Suit for Permanent Injunction.

5. Shorn of unnecessary details, the case of the plaintiff, in brief, is that the Madurai Veeran temple formerly known as Sri Meenakshi Amman temple situated at No.11, Madurai Veeran Street, T.Nagar, Madras 600 017 was founded and established by one Bhoopathy Naicker, the paternal grand father of the plaintiff and after the demise of Bhoopathy Naicker, his two sons, namely, Rangaraja Naicker, the plaintiff's father and, Munusamy Naicker, the father of the defendants 1 and 2 were the trustees of the said temple and they were in charge of the administration of the temple by performing the daily poojas and festivals. On 13.08.1994, the



plaintiff's father died and after his demise, Munusamy Naicker took over the charge of the temple and after the demise of Munusamy Naicker, the plaintiff took over the charge and administration of the temple and the possession of the temple is with the plaintiff. The defendants, who are the sons of the deceased Munusamy Naicker, have not participated in the temple affairs and the defendants preferred a suit in O.S.No.2592/1986 for permanent injunction restraining the plaintiff as if they are in the possession of the temple property and that they are performing the daily poojas of the temple. The suit was decreed exparte. The plaintiff has preferred an application to set aside the exparte decree with the petition to condone the delay in filing the petition to set aside the exparte decree. While so, the defendants forcibly broke open the temple doors on 03.05.1994 and took the possession of the temple and also the temple land. The application preferred by the plaintiff to condone the delay in I.A. No.5799/1994 has also been dismissed. The plaintiff is taking steps to prefer a civil revision petition against the order passed in the said application. The plaintiff is in the possession of a portion of the property bearing No.11, Madurai Veeran Street, T. Nagar, Madras 600 017 and the defendants are in the possession of another portion. Even in the suit laid by the defendants against the plaintiff in O.S. No.2592/1986, the plaintiff's possession has been clearly admitted by the defendants. The decree obtained by the defendants in the above suit is only with reference to the portion in the occupation of the defendants and not with reference to the portion occupied by the plaintiff. The plaintiff's possession is lawful. The plaintiff has been paying the tax to the corporation for their occupation of the portion in their possession and in the guise of the exparte decree obtained by the defendants, the defendants are attempting to disturb the plaintiff's possession and enjoyment of the portion in their occupation and hence, according to the plaintiff, he is necessitated to lay the suit for the relief of permanent injunction.

6. The defendants resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable. The plaintiff has no right, interest or claim over the suit property and the Madurai Veeran temple situated at No.11 Madurai Veeran Street, T. Nagar, Madras 600 017 was founded by the maternal grand father of the defendants and the plaintiff, namely, Boopathy Naicker and after his demise, it is only the defendants' father Munusamy Naicker, who became the trustee of the temple and looking after the entire administration of the temple and after his demise it is only the defendants who are in the possession and enjoyment of the temple and the property including the conduct of the daily poojas and the festivals. When the plaintiff made attempts to interfere with the possession and enjoyment of the defendants, the defendants preferred the O.S.No.2592/1986 against the plaintiff and in the abovesaid suit, the plaintiff remained exparte. Even the application preferred by the plaintiff to



set aside the exparte decree has been dismissed. It is false to state that after the death of Munusamy Naicker, the plaintiff has taken charge of the temple. Neither the plaintiff nor his father has been in the possession and enjoyment of the temple at any point of time. There is a room to an extent of 10' x 10' and in the said room, articles, vessels belonging to the temple are kept. The third defendant permitted the plaintiff to use that room till her sons became majors. Therefore, the occupation of the plaintiff in the abovesaid portion is only a permissive one and liable to be vacated at any time. The plaintiff cannot claim any right over the same. Infact, the plaintiff had agreed to vacate the abovesaid portion at any time when demanded by the defendants. Even, before the panchayatars, the plaintiff had agreed to vacate the portion, however, without doing so, the plaintiff has come forward with the false case for the relief of permanent injunction. Therefore, according to the defendants, there is no cause of action for the suit and the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.W.1 was examined, Exs.A1 to A8 were marked. On the side of the defendants, D.Ws.1 and 2 were examined and Exs.B1 to B4 were marked.

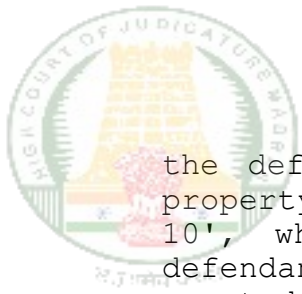
8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the courts below were pleased to grant the relief sought for by the plaintiff. Aggrieved over the same, the second appeal has been preferred by the defendants.

9. At the time of the admission of the second appeal, the following substantial question of law was formulated for consideration.

"Are the courts below right in granting the decree of injunction against a co-owner ignoring the documents filed by the defendants (appellants herein) establishing their possession?"

10. From the materials placed on record, it is found that the plaintiff on the one hand and the defendants on the other hand are vying with each other with reference to the claim of right, interest and possession of the property belonging to the Madurai Veeran temple formerly known as Sri Meenakshi Amman temple. It is also seen that the defendants have preferred a suit against the plaintiff in O.S.No.2592/1986 against the plaintiff and his brother before the city civil court, Chennai, for the relief of permanent injunction in respect of the property belonging to the Madurai Veeran temple @ Sri Meenakshi Amman temple and the said suit ended in an exparte decree in favour of the defendants. The said exparte decree has become final as the efforts taken by the plaintiff to set aside the exparte decree ended in vain.

11. Considering the pleas put forth by the respective parties and the materials placed on record, it is admitted by



the defendants that the plaintiff is in one portion of the property belonging to the temple measuring an extent of 10' x 10', which is the suit property. Now according to the defendants, at the request of the plaintiff, the defendants granted permission to the plaintiff to occupy the same and further the plaintiff had promised to vacate the said portion at any time as and when demanded by the defendants. That the occupation of the abovesaid portion i.e, 10' x 10' by the plaintiff has been admitted by the defendants even in the suit laid by them in O.S.No.2592/1986.

12. In addition to that, as rightly held by the courts below, D.W.1 has admitted during the course of cross examination that the suit property is in the portion of the plaintiff. In the light of the abovesaid factors, as rightly concluded by the courts below, the suit property is found to be in the possession and enjoyment of the plaintiff and the same is also admitted by the defendants as above stated. Therefore, the only plea that has to be considered in the second appeal is as to whether the possession of the suit property by the plaintiff is based on the permission granted to him by the defendants or in his own right. But, with reference to the alleged permission said to have been granted to the plaintiff to occupy the suit property on the part of the defendants, absolutely there is no valid material projected by the defendants worth acceptance. On the other hand, from the copy of the ration card, tax receipt, tax demand card projected by the plaintiff marked as Exs. A4 to A6, it is seen that, as rightly held by the courts below, the abovesaid documents also probabilise and reinforce the claim of the plaintiff that the possession and the occupation of the suit property by the plaintiff is in his own right and not based on the permission said to have been granted by the defendants.

13. The defendants have marked the letter said to have been given to the panchayat on the part of the plaintiff dated 03.05.1994 as Ex.B2. The same has been marked subject to the objection put forth by the plaintiff. As rightly held by the courts below the defendants has not whispered about the abovesaid letter in the written statement. Furthermore, D.W.2 examined on behalf of the defendants to substantiate the panchayat held in the matter has deposed that he is not aware as to when Ex.B2 was written and as to who are the other signatories of the document. He would only state that he has affixed his signature in the document as requested by others. Therefore, as rightly concluded by the courts below, the evidence of D.W.2 would be of no use to sustain the case of the defendants that the plaintiff had agreed to vacate the portion in his occupation before the panchayat. Therefore, Ex.B2 would be of now use to sustain the defence version. Furthermore, the copy of the judgment passed in O.S. No.700 of 1983 dated 02.02.1995 marked as Ex.A8 would go to show that the plaintiff's father, the defendants' father, the plaintiff's brother, the plaintiff and the defendants are all



the hereditary trustees of the Madurai Veeran temple. The abovesaid document would also substantiate the case of the plaintiff that they also have some interest, right and claim over the property belonging to the Madurai Veeran temple.

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14. Considering the abovesaid factors in toto, it is noted that the courts below had rightly upheld the possession of the plaintiff qua the suit property particularly when there is no material worth acceptance forthcoming on the part of the defendants to evidence that the portion in the occupation of the plaintiff is only based on the permission accorded by them to the plaintiff. In such view of the matter, the plaintiff, admittedly being in the possession of the suit property and also established his case of possession and enjoyment of the suit property as above pointed out, resultantly, the plaintiff's possession and enjoyment is not to be disturbed except under due process of law and therefore, it is found that the courts below are found to be justified in granting the relief of permanent injunction as prayed for by the plaintiff.

15. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial question of law formulated in this second appeal is accordingly answered against the defendants and in favour of the plaintiff.

16. In the light of the abovesaid discussions, the judgment and decree dated 17.02.2005 passed in A.S. No.356/2004 on the file of II Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 30.09.2003 passed in O.S.No. 805/97 on the file of the III Assistant Judge, City Civil Court, Chennai, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bga

To

1. The II Additional Judge,
City Civil Court, Chennai
2. The III Assistant Judge,
City Civil Court, Chennai



Copy To

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

+1cc to Mr.R.Vijayakumar, Advocate, S.R.No.1983
+1cc to Mr.P.B.Ramanujam, Advocate, S.R.No.1877

S.A.No.1062 of 2008

CNR (CO)
GN (29/09/2021)