

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2021

PRONOUNCD ON : 11.01.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 821 of 2008

A/M Karivaradaraja Perumal &
Venugopalaswamy Temples
through their Executive Officer
Kovilvalagam
Kovilpudur
Punjai Puliampatty Village
... Appellant

Vs.

1. President
Nochikuttai Panchayat
Nochikuttai
2. The Executive Engineer
Periyar Electricity Project
Tamilnadu Electricity Board
Gobi TK & District.
3. The Assistant Divisional Engineer
Periyar Electricity Project
Tamilnadu Electricity Board
P. Puliampatty
Sathy Taluk.
4. Junior Engineer
Periyar Electricity Project
Tamilnadu Electricity Board
P. Puliampatty
... Respondents

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree dated 26.11.2007 passed in A.S. No.40/2007 on the file of the Principal Sub Court, Gobichettipalayam, confirming the judgment and decree dated 26.06.2007 passed in O.S.No.276/2000 on the file of the District Munsif's court, Sathyamangalam.

For Appellant : Ms. R. Meenal

For Respondents

For R1 : Mr.IC. Vasudevan

For R2 to R4 : Mr. V. Viswanathan

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 26.11.2007 passed in A.S. No.40/2007 on the file of the Principal Subordinate Court, Gobichettipalayam, confirming the judgment and decree dated 26.06.2007 passed in O.S.No.276/2000 on the file of the District Munsif court, Sathyamangalam.

2. The Plaintiff in OS.No.276 of 2000 is the appellant in the Second Appeal.

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

4. Suit for mandatory injunction and possession.

5. Shorn of unnecessary details, the case of the plaintiff, in brief, is that the suit property belongs to the plaintiff's temple and the plaintiff has been issued with patta in respect of the suit property and the plaintiff's trustee had been enjoying the suit property by paying the kists and furthermore, the first defendant, in the suit laid by it in O.S. No.175 of 2000 on the file of the District Munsif Court, Sathyamangalam, has admitted the title of the plaintiff qua the suit property and in such view of the matter, the plaintiff is not necessitated to seek the relief of declaration of title in respect of the suit property. The suit property is styled as Nandavana Thottam and despite the plaintiff's title and enjoyment over the suit property, the first defendant, using its political influence and power, had unauthorisedly constructed the community hall in the suit property and furthermore, by putting up the construction of the community hall, the first defendant is endeavouring to secure the electricity service connection from the defendants 2 to 4. However, the first defendant is not entitled to obtain the service connection and the suit property is not the Government Poromboke land and the suit property belongs to the plaintiff's temple and the first defendant has also not obtained the sanction of the commissioner, HR & CE for the construction of the community hall in the suit property and the plaintiff is not necessitated to implead the Government as a party to the suit as the suit property belongs to the plaintiff's temple and even if the community hall is to be put up in the suit property, only after acquiring the suit property as per law, the first defendant, or for the matter, with the sanction of the Government, would be entitled to put up the community hall in the suit property and therefore, according to the plaintiff, it has been necessitated to lay the suit for the reliefs of mandatory injunction and possession of the suit property.

6. The first defendant resisted the plaintiff's suit contending that the suit property does not belong to the

plaintiff's temple and the suit property is the Government Poromboke land and by mistake the first defendant has averred in OS No.175 of 2000 that the suit property belongs to the plaintiff's temple and ipso facto, on that basis, the plaintiff would not be entitled to claim the title of the suit property. Only for the utility of the general public, the community hall has been put up in the suit property after obtaining the necessary sanction from the District Collector and the other Revenue Authorities as per law and the community hall has been put up under the Jawahar Employment Scheme after getting the approval of the Government and the community hall had been constructed in the year 1994-95 and at the time of the construction of the community hall in the suit property, the plaintiff has not put forth any objection and after the construction of the community hall, the same had been entrusted to the first defendant and the general public are benefited by the community hall and despite the claim of the plaintiff's temple that the patta had been issued in favour of the plaintiff's temple qua the suit property, the plaintiff has not filed any patta document to buttress its title to the suit property and in any event the patta cannot be a document of title and inasmuch as the community hall had been put up in the suit property after obtaining the necessary permission from the District Collector and the other Revenue Authorities and as per their directions, the first defendant has endeavoured to obtain the electricity service connection from the defendants 2 to 4 and therefore, according to the first defendant, the plaintiff is not entitled to obtain the reliefs prayed for in the suit and the suit is liable to be dismissed.

7. The defendants 2 to 4 remained ex-parte both in the trial court and the first appellate court.

8. In support of the plaintiff's case P.W.1 was examined, Exs. A1 to A12 were marked. On the side of the first defendant, D.Ws.1 to 4 were examined and no document has been marked and Exs.X1 to X4 were marked.

9. On an appreciation of the materials placed on record, both oral and documentary, and the submissions put forth by the respective parties, the courts below were pleased to dismiss the plaintiff's suit and aggrieved over the judgment and decree of the courts below, the Second Appeal has been preferred by the plaintiff.

10. At the time of admission of the Second Appeal, the following Substantial question of law was formulated for consideration.

"Whether the judgment and decree of the court below is perverse on account of its misconstruction of documents in Exs.A10 & A11?"

11. The plaintiff claims title to the suit property based on the patta. However, as rightly held by the courts below, the plaintiff has not pleaded as to when the patta had been issued in favour of the plaintiff qua the suit property by the Government. Furthermore, the plaintiff has also not endeavoured to produce the patta said to have been issued in its favour qua the suit property. The plaintiff would also claim that the plaintiff's temple trustee had been enjoying the suit property by paying the kists. However, no document has been placed by the plaintiff evidencing that the plaintiff has been enjoying the suit property based on the patta said to have been issued in favour of the plaintiff. No kist receipts had been produced by the plaintiff showing its enjoyment over the suit property.

12. With reference to the above position, the plaintiff would contend that inasmuch as the first defendant has admitted the title of the plaintiff in respect of the suit property in O.S. No.175 of 2000 on the file of the District Munsif Court, Sathyamangalam, the plaintiff is not required to seek the relief of declaration of title in respect of the suit property. The plaint copy in O.S. No.175 of 2000 has been marked as Ex.A3. According to the first defendant, by mistake, it had admitted the title of the plaintiff qua the suit property in O.S. No.175 of 2000 and would further contend that the suit property does not belong to the plaintiff's temple and the suit property is the Government poramboke land and only after obtaining the sanction of the Government, i.e., the District Collector and the other Revenue Authorities as per law, the first defendant had put up the community hall in the suit property and after the completion of the community hall, the same had been entrusted to the first defendant and the general public are benefited by the construction of the community hall in the suit property and therefore, according to the first defendant, the plaintiff's temple is not entitled to seek the reliefs prayed for in the suit.

13. As rightly contended by the counsel appearing for the first defendant, the mere averment made by the first defendant in O.S. No.175 of 2000, by itself, would not confer the title of the plaintiff qua the suit property. On a reading of the plaint averments in O.S. No.175 of 2000, it is found that the first defendant has claimed the right of roadway in the suit property and inasmuch as the plaintiff attempted to disturb the enjoyment of the general public qua the usage of the road put up in the suit property, it is noted that the first defendant has laid the abovesaid suit against the plaintiff for the relief of permanent injunction. Even in the said suit, the first defendant has averred that it had put up the community hall in the suit property and the same had not been objected to by the plaintiff when the construction of the community hall was made in the suit property and the community hall is maintained by the first defendant panchayat.

Therefore, considering the entire averments put forth in O.S. No.175 of 2000, it is seen that though at one place, the first defendant had averred that the suit property belongs to the plaintiff's temple, however on a reading of the entire averments contained in the plaint, it is evident that the first defendant, in defiance of the plaintiff's alleged claim of title to the suit property, had put up the community hall as well as the road for the benefit of the general public and accordingly enjoying the suit property as such.

14. From the materials placed on record, particularly based on the evidence adduced by D.Ws.1 to 4 and the documents projected by them marked as Exs.X1 to X4, it is noted that the community hall had been put up in the suit property under the Jawahar Employment Scheme and the first defendant after obtaining the necessary sanction from the District Collector and as per the proceedings of the Deputy Block Development Officer and the Additional Block Development Officer, which could be gathered from Exs.X1 to X4 coupled with the evidence of D.Ws.1 to 4, it is seen that the community hall had been put up in the suit property and following the construction of the same, the community hall had been entrusted to the first defendant panchayat on 17.11.1998 and on a conjoint assessment of the abovesaid materials placed on the side of the first defendant, based on the G.O. of the Government, it is noted that the community hall had been put up in the suit property and after the entrustment of the community hall to the first defendant, the first defendant had been enjoying the community hall for and on behalf of the general public. Despite the position being above, till date, the plaintiff, as held by the first appellate court, has not endeavoured to challenge the G.O. under which the community hall had been put up in the suit property based on the sanction given by the District Collector and the other Revenue Authorities. On a reading of the entire averments contained in the written statement filed by the first defendant, it is found that the first defendant has not admitted the claim of the plaintiff's title to the suit property. Despite the above position, the plaintiff has not endeavoured to seek the relief of declaration of title to the suit property for obtaining the reliefs of mandatory injunction and possession claimed by it in the suit. Merely because the first defendant has admitted the claim of the plaintiff's title to the suit property in O.S. No.175 of 2000, that by itself, would not confer the title of the plaintiff qua the suit property. When, as above noted, the first defendant has, tooth and nail, disputed the claim of the plaintiff's title to the suit property and also averred that by mistake it has recognised the plaintiff's title to the suit property in O.S. No.175 of 2000 and when the plaintiff's temple has not taken the plea of estoppel, in particular, in the present suit as such and when according to the plaintiff it has acquired the suit property based on the patta said to have been issued by the Government, the particulars thereof having not been mentioned in the plaint as well as during the

course of evidence by the plaintiff, as rightly contended by the first defendant's counsel, the plaintiff should have endeavoured to establish its claim of title to the suit property by producing the necessary documents as claimed by it. Though the plaintiff would claim that it had been issued with the patta by the Government qua the suit property and enjoying the suit property by paying the kists, etc., pointing to the same, no material worth acceptance has been projected by the plaintiff in support of the same. On the other hand, the plaintiff would only mark the copy of the RSR extract marked as Ex.A10, wherein, according to the plaintiff, against the suit property, the plaintiff's name has been mentioned. On a perusal of Ex.A10, it is noted that it has come to be issued by the Village Administrative Officer. It has not been explained by the plaintiff as to how the Village Administrative Officer would be competent to issue the RSR Extract projected in the matter. As rightly held by the first appellate court, only the Tahsildar would be the competent authority to issue the RSR Extract and therefore, the plaintiff's claim to the suit property based on the entries contained in Ex.A10 issued by the VAO would not merit acceptance. No doubt, there is a reference about the plaintiff's temple in Ex.A10, RSR extract. Equally there is also a reference that the suit property is only the Government poramboke in Ex.A10. With reference to the abovesaid entries, the plaintiff has not endeavoured to examine the author of Ex.A10 or the competent authority for upholding its claim of title to the suit property. As above noted, though the plaintiff would claim that it had been issued with the patta by the Government qua the suit property, the plaintiff, for the reason best known to it, has not endeavoured to mark the patta in support of its case. Other than Exs.A3 and A10, the other documents projected by the plaintiff would be of no use to sustain its claim of title to the suit property. When as above discussed, Exs.A3 and A10, by itself would not confer the title to the plaintiff over the suit property and the plaintiff having also not established its enjoyment over the suit property at any point of time and on the other hand, considering the materials placed on record, when it is noted that in defiance of the plaintiff's claim of title to the suit property, the first defendant had put up the road and the community hall in the suit property and the public are enjoying the same over a long period of time, in all, as rightly held by the courts below, the plaintiff would not be entitled to seek the reliefs prayed for in the suit without prima facie establishing its title to the suit property by placing acceptable and reliable materials.

15. In addition to that, from the materials placed on record, it is found that the community hall had been put up in the suit property during the year 1994-95. If really, the plaintiff's temple had any semblance of right over the suit property and enjoying the same by paying the kists, etc., as rightly contended by the first defendant's counsel, when the

community hall was endeavoured to be put up in the suit property, the plaintiff would have objected to the same immediately. The plaintiff cannot feign ignorance about the construction of the community hall in the suit property during the year 1994-95. The construction of the community hall cannot be done overnight. Even as per the case put forth by the first defendant, after getting the sanction from the necessary authorities, the community hall had been put up in the suit property during the year 1994-95 and after the completion of the construction, the community hall had been entrusted to the first defendant on 17.11.1998. Therefore, right from the inception of the construction of the community hall and till the handing over of the same to the first defendant, the plaintiff had not raised its little finger objecting to the construction in the manner known to law. On the other hand, it is found that the plaintiff has come forward with the present suit only on 16.11.2000. As above pointed out, the plaintiff has laid the suit claiming the reliefs of mandatory injunction and possession. As far as the relief of mandatory injunction is concerned, the plaintiff having not raised any objection regarding the construction of the community hall put up in the suit property right from 1994-95 and having laid the suit only on 16.11.2000, it is obvious that the relief of mandatory injunction sought for by the plaintiff is barred by limitation. No doubt, the first defendant has not raised the plea of limitation in the written statement. As per Section 3 of the Limitation Act, even though the limitation has not been set as a defence, if the suit is laid beyond the prescribed period as fixed in the limitation Act, the suit shall be dismissed. The above factors would also undermine the plaintiff's case as such.

16. The courts below had properly assessed and appreciated the materials placed on record, particularly, Exs.A3, A10 and A11, coupled with the oral evidence adduced on behalf of the respective parties in the right perspective, both on factual matrix as well as on the point of law. As rightly held, the abovesaid materials by themselves would not confer any valid title qua the suit property in favour of the plaintiff. Therefore, by no stretch, the judgment and decree of the courts below could be held to be perverse and on the other hand, it has to be held that the courts below had properly considered and appreciated the materials projected by the plaintiff as well as the defendants in the right perspective and rejected the plaintiff's case and no interference is warranted with reference to the same. The substantial question of law formulated in the Second Appeal is accordingly answered against the plaintiff and in favour of the defendants.

17. The first defendant having put up the community hall in the suit property after obtaining the necessary sanction from the District Collector and the other Revenue Authorities, accordingly the first defendant is also found to have

endeavoured to seek the electricity service connection as per the direction of the Government Authorities and as above discussed, the plaintiff having miserably failed to establish its claim of title qua the suit property, in all, it is seen that as contended by the first defendant, it is entitled to seek the service connection from the defendants 2 to 4 and the plaintiff is not entitled to injunct the same as claimed by it.

18. In the light of the abovesaid discussions, the judgment and decree of the courts below under challenge do not warrant any interference.

19. In the conclusion, the judgment and decree dated 26.11.2007 passed in A.S. No.40/2007 on the file of the Principal Subordinate Court, Gobichettipalayam, confirming the judgment and decree dated 26.06.2007 passed in O.S.No.276/2000 on the file of the District Munsif's court, Sathyamangalam, are confirmed and consequently, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal Subordinate Court, Gobichettipalayam.
2. The District Munsif's Court, Sathyamangalam.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.1997.
+1cc to Ms.R.Meenal, Advocate, S.R.No.1782.
+1cc to Mr.V.Viswanathan, Advocate, SR.No.1519.

S.A.No.821 Of 2008

AD(CO)
CSR 31.03.2021