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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.673 of 2009

and

M.P.No.1 of 2009

Arulmighu Theekulipaintha Moondru Kundathu Amman
Parambarai Uravinmurai Vazhipattu Manram
Rep. by its President and Secretary
Mohanur Road, Namakkal ...Appellant/ Respondent/ Plaintiff

Vs.

1. The State of Tamilnadu
Rep. by the District Collector,
Salem.
2. The Assistant District Collector
Namakkal
3. The Assistant Divisional Engineering
Highways & Rural Works
Namakkal. ...Respondents/Appellants/ Defendants

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 15.12.2008 passed in A.S. No.97 of 2000, on the file of the Additional Subordinate Judge, Namakkal, reversing the decree and judgment dated 26.10.1999 passed in O.S. No.162 of 1995, on the file of the Additional District Munsif, Namakkal.

For Appellant	:	Mr. P. Mathivanan
For R1 to R3	:	Dr. S. Suriya, Government Advocate.

JUDGMENT

The appellant is the plaintiff in O.S. No.162 of 1995 on the file of the Additional District Munsif, Namakkal. He filed the suit for a permanent injunction restraining the defendants, namely, (1) State of Tamil Nadu represented by District Collector, Salem, 2. the Assistant Collector, Namakkal District, 3. the Additional Divisional Engineer, Highways and Rural Works Department, Namakkal, from interfering with the plaintiff's peaceful possession and enjoyment of the suit



properties. The suit properties as described in the plaint are as follows:-

1. Item No.1 - Land measuring 42 feet X 20 feet in S.No.495/3 of Namakkal Town with a temple and other buildings.
2. Item No.2 - Land measuring 80 feet X 20 feet in S.No.495/3 with a building connected with the temple.

The plaintiff, Arulmighu Theekulipaintha Moondru Kundathu Amman Parambarai Uravinmurai Vazhipattu Manram represented by its President and Secretary, has contended that the suit temple is in existence for more than 400 years and that it is not causing any hindrance for the free flow of traffic in any way. The further contention of the plaintiff is that the defendants wanted to remove all the constructions on the suit properties and on 20.03.1995 the officials of the Revenue Department picked up quarrel with the Secretary of the plaintiff Mandram (Society). According to the plaintiff, the plaintiff and their predecessors have been in possession of the suit properties for more than 400 years and thus they have prescribed title by adverse possession and prescription. They have, therefore, prayed that the defendants should be permanently enjoined from interfering with the plaintiff's possession and enjoyment of the suit properties.

2.The third defendant filed a written statement and the same was adopted by the defendants 1 and 2. In the written statement the possession of the plaintiff over the suit properties was denied. It is further contended that the plaintiff had encroached upon the suit properties belonging to the Tamil Nadu Highways Department and causing nuisance to the general public. According to them, the plaintiff Mandram (Society) was created very recently and no injunction can be granted against the Tamilnadu Highways Department who is the true owner of the suit properties.

3. The trial Court, after framing necessary issues and after full contest, decreed the suit filed by the plaintiff on the ground that though the plaintiff had contended that the suit temple is in existence for more than 400 years and requested the defendants to produce the documents in respect of the suit properties, the defendants did not adduce any documentary evidence to rebut the contention of the plaintiff and therefore it has to be held that the plaintiff has prescribed title to the suit properties by adverse possession and prescription. On an appeal by the defendants in A.S.No.97 of 2000 before the Subordinate Court, Namakkal, the learned Subordinate Judge held that the suit filed by the plaintiff is barred under Section 15 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. It is further held that the plaintiff did not prove their long, continuous and uninterrupted possession over the suit properties and thus has not established either possession or adverse possession over the same.



4. Aggrieved by the decree and judgment passed in A.S. No.97 of 2000, the present second appeal is filed by the plaintiff.

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5. Notice of motion was ordered in the second appeal and after several adjournments the matter is posted today for final hearing.

6. Admittedly, the suit properties are Government lands belonging to the Tamilnadu Highways Department. The plaintiff filed a suit for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit properties by demolishing the buildings on the lands including the temple. According to the plaintiff, the temple is in existence for more than 400 years and that they have been in possession of the entire suit properties. In order to establish the same, the plaintiff relied on Ex.A1 to Ex.A3 as well as the oral evidence of P.W.1 to P.W.3. Ex.A1 is an invitation card for kumbabishekam of the suit temple on 02.09.1995. Ex.A2 is the Registration of the plaintiff mandram under the Societies Registration Act, and it is dated 12.07.1993. EX.A3 is the bye laws of the plaintiff society. Based on these three documents, the plaintiff claim possession over the suit properties and also contended that they have prescribed title over the same by adverse possession and prescription. Ex.A1 to Ex.A3 do not prove the possession of the plaintiff over the suit properties as claimed by them. The oral evidence of P.W.1 to P.W.3 are not also useful to the case of the plaintiff to prove any of their contentions.

7. Adverse possession is a legal principle that states that a person can acquire legal ownership of someone else property. In order to prove adverse possession the plaintiff must prove the following:

- (1) Actual possession of the property.
- (2) Such possession should be open, continuous, hostile or adverse to the true owner without any interruption.
- (3) The possession above stated should be understood to mean dispossession of the true owner.
- (4) Mere non user by the owner of the land is not dispossession.

Since the plea of the adverse possession is not a pure question of law but blended one of fact and law, a person who claims adverse possession should plead and prove the following:

- a) On what date he came into possession.
- b) What was the nature of his possession.
- c) Whether the factum of possession was known to the other party?



d) how long his possession has been continuous and

e) if possession was open and uninterrupted.

Absolutely there is no pleading in the plaint on the above aspects.

8. The burden of proof in respect of the adverse possession is on the person who claims title by way of adverse possession. In the instant case, P.W.1 during the course of cross examination admitted that the suit properties absolutely belong to the Tamilnadu Highways Department, though there is no reference about the ownership of the land in the plaint. The Limitation Act, 1963 lays down the limitation period of 12 years for a suit of possession of immovable property or any interest based on the title. The period of limitation for the Government, however, is 30 years by virtue of Article 112 of the Limitation Act. The First Appellate Court had properly analysed the oral and documentary evidence adduced on the side of the plaintiff and the defendants, and had come to a definite conclusion that the plaintiff has not established either possession or adverse possession over the suit properties. Cogent reasons have been assigned by the first appellate Court for dismissing the suit filed by the plaintiff. Moreover, when it is admitted by the plaintiff that the suit properties belong to the Government, no relief of permanent injunction restraining the defendants from demolishing the construction put up in the suit properties can be granted especially when the plaintiff has not proved either possession or adverse possession over the same. Since no substantial question of law is involved in the present appeal, the second appeal deserves to be dismissed.

9. In the result,

- i. the second appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. the decree and judgment dated 15.12.2008 passed by the Additional Subordinate Judge, Namakkal, in A.S. No.97 of 2000, are upheld.
- iii. the decree and judgment dated 26.10.1999 passed by the Additional District Munsif, Namakkal, in O.S. No.162 of 1995, are set aside.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

To

1. The Additional Subordinate Judge,
Namakkal.



2.The Additional District Munsif,
Namakkal.

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

+1CC to the Government Pleader, Sr.No.50214

S.A.No .673 of 2009

PL(CO)
SB(16/11/2021)