



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.680 & 450 of 2009

S.A.No.680 of 2009

Arulmighu Manthakarai
Drowpathi Amman Temple,
Cuddalore O.T., Rep.by its
Managing Trustee -P.Palaniyandi
Selliamman Kovil Street,
Cuddalore Port.

...Appellant

Vs.

1. Sri.Vilvavinayagar Koil
Cuddalore O.T. - Rep.by its
Trustee-cum-Worshipper,
S.Palani Ananda Gurukkal
S/o.Subramania Gurukkal,
6/31, Mohan Singh Street,
Cuddalore O.T.

2. P.Venkatesan

3. P.Durairaj

...Respondents

S.A.No.450 of 2009

1.P.Venkatesan

2.P.Durairaj

...Appellants

Vs.

1. Sri.Vilvavinayagar Koil
Cuddalore O.T - Rep.by its
Trustee -cum-Worshipper,
S.Palani Ananda Gurukkal.

2. Arulmighu Manthakarai
Drowpathi Amman Temple,
Cuddalore O.T., Rep.by its
Managing Trustee - P.Palaniyandi

...Respondents

Common Prayer: The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 26.11.2008 passed in A.S.No.24 of 2006 on the file of the Second Additional Judge, Subordinate Court, Cuddalore, reversing the judgment and



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decree dated 05.12.2002 passed in O.S.No.465 of 1993 on the file of the Principal District Munsif Court, Cuddalore.

For Appellant in : Mr.S.Vijaykumar
S.A.No.680 of 2009

For Appellants in : Mr.K.A.Ravindran
S.A.No.450 of 2009 &
Respondent No.2 & 3
in S.A.No.680 of 2009

For Respondent No.1 : Mr.R.Gururaj
in both the SAs.

Respondent No.2 : No appearance
in S.A.No.450 of 2009

COMMON JUDGMENT

Challenge in the second appeals are made to the judgment and decree dated 26.11.2008 passed in A.S.No.24 of 2006 on the file of the Second Additional Judge, Subordinate Court, Cuddalore, reversing the judgment and decree dated 05.12.2002 passed in O.S.No.465 of 1993 on the file of the Principal District Munsif Court, Cuddalore.

2.The second defendant in O.S.No.465 of 1993 is the appellant in the second appeal No.680 of 2009 and the defendants 3 & 4 in O.S.No.465 of 1993 are the appellants in the second appeal No.450 of 2009

3.Both the second appeals have been admitted on the following substantial questions of law:

"a.Whether the Lower Appellate Court is right in decreeing the suit based on the alleged weakness in the case of defendants?

b.Is it correct on the part of the Lower Appellate Court to rely upon the revenue records to prove the title?"

4.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

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

6.The suit has come to be laid by the plaintiff against the



defendants for declaration, possession and future mesne profits.

7.The plaintiff's temple claiming title to the suit property put forth the case that the suit property had been leased out to the first defendant for 10 years by way of a lease agreement on 12.12.1971 and the first defendant failed to pay the rent after March, 1989 and hence, according to the plaintiff, termination notice dated 19.03.1992 had been issued to the first defendant calling upon him to surrender the vacant possession of the suit property. To the same, the first defendant sent a reply dated 03.04.1992 containing false allegations and in the reply notice, the first defendant had repudiated the title of the plaintiff's temple qua the suit property and set up that the title of the suit property is resting on the second defendant and therefore, according to the plaintiff, it has been necessitated to institute the suit against the defendants for appropriate reliefs.

8.Further, according to the plaintiff, the decree passed in O.S.No.844 of 1971 on the file of the District Munsif Court, Cuddalore, is not binding upon the plaintiff as the plaintiff is not a party to the abovesaid suit proceedings. Further, it is put forth by the plaintiff that inasmuch as the defendants 3 & 4 are in the possession of the suit property by claiming that they are the legal heirs of the deceased first defendant, they had also been impleaded as parties to the suit after the demise of the first defendant.

9.The plaintiff's suit had been resisted by the defendants 2 to 4 by contending that the suit property belongs to the second defendant's temple and the first defendant had taken the suit property on lease only from the second defendant and disputed the plaintiff's entitlement to the suit property as well as the claim of S.Palani Ananda Gurukkal as the hereditary trustee of the plaintiff's temple and therefore, put forth the case that the suit laid by the plaintiff is devoid on any cause of action and the suit is liable to be dismissed.

10.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A19 were marked. On the side of the defendants, DWs 1 & 2 were examined and Exs.B1 to B47 were marked.

11.On an appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, the trial Court after holding that neither the plaintiff nor the second defendant having established any valid claim of title to the suit property, resultantly, declined to grant the reliefs sought for by the plaintiff, as such. Further proceeded to hold that the defendants 3 & 4 are not entitled to put up any further construction in the suit property and with that condition, dismissed the plaintiff's suit.



Aggrieved over the judgment and decree of the trial Court, the plaintiff alone had preferred the first appeal. The first appellate Court, on an appreciation of the materials placed on record, both oral and documentary, set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, granted the reliefs of declaration, possession and future mesne profits in favour of the plaintiff as prayed for, directing the determination of the future mesne profits by way of a separate proceeding and accordingly, allowed the appeal preferred by the plaintiff.

12.It is found that in the first appeal, the second defendant as well as the 4th defendant had remained exparte and not contested the first appeal preferred by the plaintiff and only the third defendant alone contested the first appeal laid by the plaintiff.

13.Considering the materials placed on record, as rightly determined by the first appellate Court, for establishing its claim of title to the suit property, the plaintiff's temple has produced the patta book in favour of the plaintiff's temple marked as Ex.A7, the cultivation Adangal accounts marked as Ex.A15 and the Chitta extract marked as Ex.A17 and all the abovesaid documents viewed cumulatively, as rightly determined by the first appellate Court, prima facie, it is found that the plaintiff has established its valid claim of title to the suit property. Furthermore, to sustain that it is only the plaintiff's temple, who had leased out the suit property to the deceased first defendant, Ex.A6 lease deed, which had been entered into between the parties concerned for a period of 10 years, has been filed.

14.Inasmuch as the deceased first defendant had failed to pay the rent properly to the plaintiff, the plaintiff's temple had terminated the tenancy of the first defendant by way of the legal notice and thereafter, as the first defendant had disputed the claim of the plaintiff's temple to the suit property and set up the title in favour of the second defendant, it is found that the suit has come to be laid by the plaintiff for the appropriate reliefs.

15.To sustain the plaintiff's case that Subramania Gurukkal S/o. Kalyana Sundara Gurukkal had been appointed as the hereditary trustee, the order passed by the appropriate authority under the Tamil Nadu HR & CE has been marked as Ex.A16. Considering the same, it is found that, as contended by the plaintiff, Subramania Gurukkal has been declared as hereditary trustee of the plaintiff's temple.

16.The abovesaid documents projected on the part of the



plaintiff would go to disclose that, as held by the first appellate Court, in the preponderance of probabilities, the plaintiff has established its claim of title to the suit property and that the suit property has been recorded in the revenue records only in the name of the plaintiff's temple and as above pointed out, from Ex.A16, it is found that S.Palani Ananda Gurukkal's father Subramania Gurukkal had been declared as the hereditary trustee of the plaintiff's temple by the appropriate authority.

17.To sustain the case projected by the defendants that the second defendant is the owner of the suit property, absolutely there is no material forthcoming on the part of the defendants. As above pointed out, the second defendant has not even contested the first appeal laid by the plaintiff. The only document relied upon by the defendants is the decree passed in O.S.No.844 of 1971 on the file of the District Munsif Court, Cuddalore marked as Ex.B8. The abovesaid decree is found to have been obtained by the first defendant and the second defendant by way of a compromise and found to be a submissive decree obtained by the first defendant and particularly, when the plaintiff is not a party to the abovesaid suit proceedings, as rightly determined by the first appellate Court, the decree passed in O.S.No.844 of 1971 marked as Ex.B8 would have no legal sanctity and binding nature as far as the plaintiff is concerned. Thus by way of Ex.B8, it cannot be safely concluded that the second defendant has a valid right and title to the suit property.

18.After the demise of Subramania Gurukkal, his son S.Palani Ananda Gurukkal has been appointed as the hereditary trustee of the plaintiff's temple which could also be gathered from the order passed by the appropriate authority marked as Ex.A19.

19. The Will dated 19.06.1976 said to have been executed by the first defendant is pressed into service for contending that the suit property belongs to the second defendant, and the abovesaid Will has been marked as Ex.B45. When the abovesaid Will is found to have come into existence, after the lease arrangement entered into between the plaintiff's temple and the first defendant, as rightly held by the first appellate Court, no safe credence could be attached to Ex.B45 Will to sustain that the second defendant has a valid claim of title to the suit property.

20.Barring Exs.B8 & B45, no other acceptable and reliable materials is forthcoming on the part of either the second defendant or on the part of the defendants 3 & 4 to hold that the suit property belongs to the second defendant and that the first defendant had taken the suit property on lease only from the second defendant. In the light of the abovesaid factors, considering the available materials placed on record, as rightly



concluded by the first appellate Court, in view of the patta, cultivation Adangal extract, Chitta extract marked as Exs.A7, A15 and A17, all put together, coupled with the lease arrangement entered into between the plaintiff's temple and the first defendant, the determination of the first appellate Court that it is only the plaintiff, who has the valid claim of title to the suit property, in my considered opinion, does not warrant any interference and accordingly, the further determination of the first appellate Court that the first defendant had taken the lease of the suit property only from the plaintiff's temple by way of Ex.A6 lease arrangement and thereby, the grant of the reliefs in favour of the plaintiff by the first appellate Court, do not warrant any interference as such.

21.In the light of the abovesaid factors, when the plaintiff has claimed the title to the suit property and having established the same on the basis of Exs.A7, A15 & A17, all put together, when the defendants have failed to establish in any manner that the second defendant has any claim of title to the suit property and when the first defendant is found to have taken the suit property on lease only from the plaintiff's temple under Ex.A6 and failed to establish that he had taken the lease of the suit property from the second defendant and as above pointed out, Ex.B8 decree would not be in any manner binding upon the plaintiff, particularly, when the plaintiff is not a party in the proceedings connected with the same, all put together, the first appellate Court is justified in setting aside the judgment and decree of the trial Court and granting the reliefs in favour of the plaintiff as determined by it.

22.In view of the abovesaid factors, it is seen that the first appellate Court has not based its determination that the plaintiff is the owner of the suit property and entitled to recover the possession of the suit property from the defendants on the weakness of the defence version of the defendant but on the proper appreciation of the materials placed on record on the part of the plaintiff, which clearly establish that it is only the plaintiff, who has right and title to the suit property. Accordingly, the contention put forth that the first appellate Court has relied upon the revenue records exclusively for upholding the plaintiff's claim of title also cannot be accepted. When the plaintiff's temple claim title to the suit property and accordingly, upholding the plaintiff's claim of title to the suit property, the revenue authority had issued the patta in favour of the plaintiff and when the claim of the title set up by the second defendant, to fortify the same, no material whatsoever has been put forth on the part of the defendants and as above pointed out, the second defendant having also not contested the first appeal laid by the plaintiff and also not independently preferred any appeal against the judgment and decree of the trial Court,



all put together, the determination of the first appellate Court that it is only the plaintiff, who has title to the suit property needs no interference. The substantial questions of law formulated in the second appeal are accordingly, answered in favour of the plaintiff and against the defendants.

In conclusion, the judgment and decree dated 26.11.2008 passed in A.S.No.24 of 2006 on the file of the Second Additional Judge, Subordinate Court, Cuddalore, reversing the judgment and decree dated 05.12.2002 passed in O.S.No.465 of 1993 on the file of the Principal District Munsif Court, Cuddalore, are confirmed and resultantly both the second appeals are dismissed. Considering the fact and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Second Additional Judge, Subordinate Court,
Cuddalore.
2. The Principal District Munsif Court,
Cuddalore.
3. The Section Officer,
V.R.Section,
High Court, Madras.

S.A.Nos.680 & 450 of 2009

RLD(CO)
RGA(07/10/2021)