



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.664 of 2020  
and CMP.No.13821 of 2020

Tamilarasi

...Appellant

Versus

Sri Maya Mariyamman Temple,  
Kurukathi Village,  
Kizvelur Taluk,  
Nagapattinam District.

Rep. by its Hereditary Trustee,  
Ramalinga Mudaliar,  
S/o.K.V.Subbiah Mudaliyar.

... Respondent

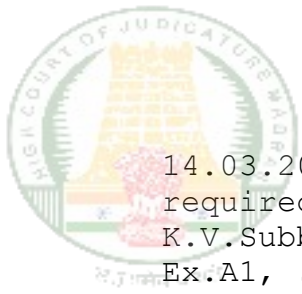
Second Appeal filed under Section 100 of Civil Procedure Code, Article 227 of the Constitution of India pleased, to set aside the Judgment and Decree passed in A.S.No.33 of 2017 dated 20.07.2020 on the file of the Subordinate Judge, Nagapattinam which confirmed the decree and judgment of the trial court passed in O.S.No.187/2012 dated 05.09.2017 on the file of the District Munsif, Nagapattinam and allow this appeal with costs.

For Appellant : Mr.R.Senthilkumar  
For Respondent : Mr.K.Suresh

#### J U D G M E N T

This Second Appeal has been filed to set aside the Judgment and Decree passed in A.S.No.33 of 2017 dated 20.07.2020 on the file of the Subordinate Judge, Nagapattinam which confirmed the decree and judgment of the trial court passed in O.S.No.187/2012 dated 05.09.2017 on the file of the District Munsif, Nagapattinam and allow this appeal with costs.

2.The learned counsel appearing for the appellant submitted that the appellant has been residing in the suit schedule property for more than 35 years. The respondent issued notice on



14.03.2011, to vacate the premises stating that the property is required for their own use. The suit property was settled by one K.V.Subbiah Mudaliar in favour of the respondent temple vide Ex.A1, settlement deed No.2238 dated 20.11.1959, Ex.A1 describes that the property situated in Survey No.59/1, whereas the appellant is residing in the Survey No.61/1. Therefore, the appellant contended that the respondent's claim that the property belonged to the temple and the temple obtained the possession of the property by virtue of the settlement deed is not correct. The court below has not considered this aspect and wrongly considered the fact of the case on the basis of the patta issued by virtue of Ex.A1 for the Survey No.61/1, whereas the Survey number for Ex.A1 property is 59/1. Ex.A7 Muchalika was not executed by the appellant herein. He further submitted that the signature in Ex.A7 was not signed by the appellant and the appellant had signed the blank papers and handed over the same for the purpose of getting electricity connection for the temple. Therefore, this aspect is also not considered by the trial court. Hence, the learned counsel submitted that the Judgment and Decree passed by both the courts below are perverse and the same is liable to be set aside.

3. Therefore, he requested this court to admit the second appeal on the following substantial question of law:

"a) When the defendant stoutly denied Ex.A7 and the plaintiff failed to examine anyone of the attesters to Ex.A7 as per section 68 of the Indian Evidence Act. Whether the lower Courts erred in law in granting the reliefs to the plaintiff?

b) Whether the court can grant the prayer of declaration to the plaintiff in the absence of any title deed except Ex.A2 patta?

c) Whether the court can decide the ownership of the property and grant prayer of declaration based on the Ex.A1, settlement deed which contains irrelevant survey number and extent to the suit property?

d) Whether the property tax receipts with door number is not sufficient to prove the defendant's possession on the suit property?

e) Whether the order of Assistant Commissioner of HR&CE appointing Takkar cannot bind over the plaintiff?"

4. However, this Court ordered notice before the admission and upon receipt of notice, the respondent appeared through its counsel.



5.The learned counsel appearing for the respondent submitted that the Ex.A7 was executed by the appellant. As per the Muchalika, the appellant is liable to pay a sum of Rs.500 to the respondent temple and she has also paid Rs.3,000/- advance. Subsequently, the temple has demanded the property for its own use. The respondent herein has taken steps to vacate the property, since the property is required for the temple purpose and for the reason that the appellant has not paid the rent as agreed in the Muchalika. For the same, the temple authorities has issued the legal notice which was marked as Ex.A5, to the appellant to vacate the suit schedule. As the appellant failed to vacate the suit schedule property, the suit was filed for eviction, both the Courts below decreed the suit. It is a well reasoned judgment by the Courts below, hence, any interference is unwarranted.

6.Heard the learned counsel appearing for the appellant and the respondent and perused the records.

7.On perusal of Ex.A1, it appears that one K.V.Subbiah Mudaliar settled the property in favour of the temple and the survey number of the property is 59. Ex.A2 is the patta issued in favour of the temple wherein it has stated that the survey number is 61/1. In the said S.No.61/1, the appellant is presently residing. As per Ex.A3 settlement register the survey number is 61/1 belongs to the temple and this court also perused the Ex.A7 Muchalika, by virtue of Muchalika, the appellant had given an undertaking to pay the rent of Rs.500/- to the first respondent temple and Rs.3,000/- as advance. Further the appellant also undertakes to vacate the premises.

8.The facts remains that the appellant executed Muchalika-Ex.A7 and as per the Muchalika the appellant agreed to pay a sum of Rs.500/- as rent. As the appellant failed to pay the rent and for the reason that the property required for the temple purpose, the suit was filed by the respondent for eviction and the same was decree by the Trial Court and the First appellate Court also confirmed the same.

9.The claim of the appellant was that the Muchalika was not executed and the respondent misused the blank signed paper handed over to the temple authorities for the purpose of getting electricity connection. According to the appellant S.No.61/1 is not the Temple property. If so, the necessity of the appellant to handover a blank signed stamp paper to the Temple Authorities is not known. As per Ex.A1-settlement deed, the property settled in favour of the temple is located in Survey No.59/1. The appellant is residing in the Survey No.61/1. Ex.A2-the patta for the Survey No.61/1 was also issued in the name of the



temple. The Village Administrative Officer was examined as P.W.3, he has deposed that the property in Survey No.61/1 belongs to the respondent temple.

10. Based on the oral and documentary evidence, both the Court below have rightly come to the conclusion that the property belongs to the temple. Therefore, this court is unable to trace any substantial question of law that arises for consideration. Hence, the second appeal deserves to be dismissed.

11. Accordingly, this Second Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ah/rst

To

1. The Subordinate Judge,  
Nagapattinam.

2. The District Munsif,  
Nagapattinam.

+2CCs to Mr.K.Suresh, Advocate, Sr.No.8375

+1CC to Mr.R.Senthilkumar, Advocate, Sr.No.8860

S.A.No.664 of 2020  
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GMI (CO)

K.RK. (29.10.2021)