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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.11.2021

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.850 of 2021
and C.M.P.No.16303 of 2021

1)Seetharama Reddiar

2)Padmavathy ...Appellants/Appellants/Defendants 1 & 2

Vs.

1)Sri Sengazhani Vinayagar Koil

Represented by its trustee Pavadai Chettiar,
S/o Masilamani Chettiyar
55, Vadamalai Ramasamy Chetty Street,
Panruti

... 1st Respondent/1st Respondent/
Plaintiff

2)Dhayanidhi ...2nd Respondent/2nd Respondent/3rd Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 19.03.2021 made in A.S.No.03 of 2017, passed by the Subordinate Judge, Panruti, confirming the judgment and decree dated 11.08.2016 made in O.S.No.386 of 2005, passed by the District Munsif, Panruti.

For Appellants : Mr.M.Balasubramanian for S.Ganesh

JUDGMENT

This second appeal is filed challenging the judgment in A.S.No.3 of 2017 passed by the learned Subordinate Judge, Panruti, confirming the judgment of the learned District Munsif, Panruti in O.S.No.386 of 2005.

2. The first respondent/plaintiff filed a suit against the appellants and third respondent, seeking the relief of declaration of title, recovery of possession and for future mesne profits.



3. The plaint averments shows that first respondent is Sri Sengazhani Vinayagar Temple. It is an ancient temple and it is more than 150 years old. It is managed by Trustee/Manager Arumugha Chettiyar. The suit property belongs to first respondent temple and it has been in possession and enjoyment of third parties on lease on varam basis. It was leased out to Konda Reddiar on 12.12.1935 and it is evidenced by a registered lease deed. The lease was for the period of five years and annual lease amount was Rs.35/- payable on or before 26th Aipasi of every year. On failure to pay the lease amount the lessor is entitled to take possession. Even after the expiry of the lease, Konda Reddi continued in possession as lessee by holding over and continued to pay the lease amount. After the death of Konda Reddiyar, his sons Ramalinga Reddiar and Seetharaman (First Defendant) became tenants. It is evidenced by a lease deed executed by Ramalinga Reddiar on 18.01.1967. The annual lease payable was Rs.750/- per month. Ramalinga Reddiar and first defendant had been in possession as lessees. They had been paying lease amount till 2003. First appellant/defendant is the second son of Konda Reddiar. Second appellant/defendant is the wife of the first appellant. First defendant had executed a settlement deed in favor of his wife. He has no right to execute a settlement deed. Second defendant executed sale agreement to the third defendant. Defendants colluded together and attempting to grab the property of the temple. Therefore the suit.

4. Defendants 1 and 2 filed written statement and it is contended that there is a temple known as Sengazhani Vinayagar Temple and the claim that it is 150 years old is not correct. It is also not correct to say that Arumuga Chettyar was the Trustee and the Manager of the temple. The truth and contents of the alleged lease deed dated 12.12.1935, the lease amount Rs.35/- are denied. The averment that Konda Reddiar was in possession and enjoyment of the suit property is denied. The alleged increase of lease amount Rs.750 is also denied. It is the specific case of the defendants that the suit property belong to first defendant's mother Dhanalakshmi. It was held and enjoyed by her parents, and they permitted her to enjoy the properties. Thus, Dhanalakshmi was in possession and enjoyment of the suit property as her absolute property. After her death in 1962, there was a family partition between the brothers of the first defendant in or about 1974. The patta of the suit property was in the name of first defendant's brother. After partition the first defendant was in exclusive possession of the suit properties as its absolute owner. Thus, he acquired title by possession also. Therefore the suit has no merits and it is liable to be dismissed.



5. On the above pleadings, the learned District Munsif, Panruti framed the following issues:

i) Whether the suit property belongs to the plaintiff's temple?

ii) Whether the first defendant is estopped from denying the title of the plaintiff in the suit property?

iii) Whether the lease deed dated 12.12.1935 is true and came into force?

iv) Whether the claim of the defendants 1 and 2 that suit property belongs to Dhanalakshmi is true?

v) Whether the claim of the defendants 1 and 2 that they acquired title to the suit property by adverse possession is true?

vi) Whether the plaintiff is entitled for the relief of declaration?

vii) Whether the plaintiff is entitled for the relief of recovery of possession?

viii) to what other reliefs, the plaintiff is entitled for?

6. During the trial PW1 and PW2 were examined and Exhibits P1 to P5 were marked on the side of the plaintiff. DW1 was examined and Exhibits B1 to B12 were marked on the side of the defendants.

7. On considering the rival submissions, the learned District Munsif, Panruti, found that first defendant's brother admitted the title of the plaintiff in the suit property and that he came as a lessee in the suit property and the defendants have not produced any evidence to show that the suit property belongs to Dhanalakshmi. In this view of the matter, the learned District Munsif, Panruti, dismissed the suit in O.S.No.386 of 2005. Appellants filed appeal in A.S.No.3 of 2017 before the learned Subordinate Judge, Panruti. The learned Subordinate Judge, Panruti on considering the evidence, confirmed the judgment of the learned District Munsif, Panruti and dismissed the appeal. Challenging the said judgment and decree, this Second Appeal is preferred.

8. The learned counsel for the appellants submitted that except the lease deeds, the plaintiff has not produced any documents of title to show that plaintiff owns the suit property. It is further submitted that in the lease deed dated 18.10.1967, the first defendant is not a signatory and therefore this lease deed will not bind him. Defendants are in possession and enjoyment of the suit property for several long years and therefore they acquired title to the suit property by adverse



possession. The suit for declaration of title and recovery of possession is not filed within time and it is barred by limitation. On these grounds, the judgments of the Courts below are challenged.

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9. There are two lease deeds filed in the form of Exhibit A1 and A3. Exhibit A1 lease deed dated 12.11.1935 executed between Arumugha Chettiar and Konda Reddiar. Konda Reddy is the father of the first defendant and his brother Ramalinga Reddiar. When one enters into a lease agreement, it goes without saying that the title of the lessor is admitted. Subsequently on 18.10.1967 there was another lease deed executed between Ramalinga Chettiar and Ramalinga Reddiar, the brother of the first defendant. It reinforces the claim that the lessor namely Sri Sengazhani Vinayagar temple is the owner of the suit property. Defendants set up independent claim to the suit property. It is specifically pleaded in the written statement that first defendant's mother Dhanalakshmi was given this property by her parents. After death, there was a partition in the family and the suit property came into the hands of the first defendant. It appears that there is absolutely no material produced in support of this case of the defendants. When the first defendant denies the lease deed dated 18.10.1967, he should have examined his brother Ramalinga Reddiar. Ramalinga Reddiar is alive. However, the defendants have not chosen to examine Ramalinga Reddiar.

10. There appears some mutation in the revenue records in the name of the defendants. Mere change of name in the revenue records will not confer any title, in the absence of there being a clear evidence to prove the title. The evidence available in this case clearly shows that Konda Reddiar, after him his sons Ramalinga Reddiar and the first defendant have been enjoying the suit property only as lessees under the plaintiff's temple. When they are enjoying the suit property as lessees, they cannot set up any title on the basis of claim of adverse possession in the suit property. A lessee's possession will not become adverse possession contrary to the interest of true owner. That apart, there is no specific pleadings in the written statement required to establish plea of adverse possession. Thus, this Court finds that both the Courts below have properly analyzed the evidence and rightly decreed the suit. There is no substantial question(s) of law involved in this Second Appeal to entertain. Therefore, the judgment of the learned Subordinate Judge, Panruti in A.S.No.3 of 2017 confirming the judgment of the learned District Munsif, Panruti in O.S.No.386 of 2005 are confirmed.



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

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Panruti.

2.The District Munsif,
Panruti.

Copy to:

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

+1cc to Mr.S.Ganesh, Advocate SR.No.61164

S.A.No.850 of 2021
and C.M.P.No.16303 of 2021

SSI(CO)
CB(20/01/2022)