



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2021

PRONOUNCED ON : 30.03.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.385 of 2012

and

M.P.No.2 of 2012

G.Jayaraman

... Appellant / Plaintiff

Vs.

1.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Cuddalore-1.

2.The Inspector,
Hindu Religious and Charitable
Endowment Department,
Panruti, Cuddalore.

... Respondents / Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment, dated 24.11.2010 passed in A.S.No.26 of 2010 by the learned Subordinate Judge, Panruti, reversing the decree and judgment dated 05.03.2010 passed in O.S.No.49 of 1999 by the learned District Munsif, Panruti.

For Appellant	:	Mrs.Hema Sampath Senior Counsel for Mr.B.Sundarapandiyan
For Respondents	:	Dr.S.Suriya Additional Government Pleader (CS)

J U D G M E N T

The plaintiff is the appellant herein.

2.For the sake of convenience, the parties are referred to as per the ranking before the trial Court.



3. The plaintiff/appellant filed suit in O.S.No.49 of 1999 before the District Munsif Court, Panruti for declaration of his title over four items of land and for injunction restraining the defendants and their men from bringing the lands to public auction for leasing them out.

4. The suit was decreed as prayed for. The defendants filed A.S.No.26 of 2010 which was partly allowed by the Sub Court, Panruti, by confirming the title of the plaintiff for items 1 and 2 and dismissing the suit with respect to items 3 and 4. Aggrieved over the same, the plaintiff has filed the present second appeal and the defendants did not prefer any second appeal.

5. The above second appeal is admitted on the following Substantial Questions of Law:

"1. Whether the first appeal allowed by the learned Sub-Judge is tenable under law when the respondents have not filed any documents to prove their title item III, IV of the schedule mentioned property?

2. Whether the first Appellate Court is right in brushing aside the admission given by DW1 stating that he did not know exactly whether there is any document to prove the title by temple?

3. Whether the first Appellate Court is right in their legal inference drawn from the documentary and oral evidence that property in schedule item III, IV belongs to respondents?

4. Whether the first Appellate Court is right in their construction of documents ie., Exs.B1 to B3 filed by the respondents which are inadmissible both under law and facts?"

6. Heard the learned Senior Advocate Mrs.Hema Sampath appearing for the appellant/plaintiff and the learned Additional Government Pleader Dr.S.Suriya appearing for the respondents/defendants and perused the materials available on record.

7. Ms.Hema Sampath, learned Senior Counsel appearing for the appellant/plaintiff would contend that as against the judgement and decree passed in O.S.No.49 of 1999, the HR&CE department has filed an A.S.No.26 of 2010, wherein they have not raised and disputed the finding rendered by the lower Appellate Court with regard to item No.3. Before this Court Senior Counsel would contend that the appellant/plaintiff relying upon the derivative of title based upon Exs.A2, A5, A6 and A4 while Exs.A2, A5 and A6 are prior title deeds in favour of the family members of the



appellant/plaintiff while Ex.A4 is the partition deed wherein, the property was allotted to the share and these documents are unassignable documents of title to the plaintiff. Per contra, the HR & CE department has not filed any document and title in their favour in respect of item No.3.

8. Dr.S.Suriya, learned Additional Government Pleader (CS) would contend that the specific plea of the plaintiff is that there was an exchange by an unregistered exchange deed in respect of item No.4. Since item No.4 was not contested, the same is hereby recorded.

9. The learned Additional Government Pleader drew my attention to the plaint copy at paragraph No.2, wherein, the suit property is described as originally belong to Mazhuvanthi Amman Koil, Thiruperu Village and also contend that item No.3 that is the subject matter of this appeal is measuring 2.86 cents and drew my attention to the findings given by the lower Appellate Court.

10. On perusal of the grounds of appeal filed before the lower Appellate Court against the judgement and decree passed in O.S.No.49 of 1999, it appears that the defendants have filed appeal only against item No.4 not item No.3. However, the lower Appellate Court has considered re-appreciation of evidence, has also held that items 3 and 4 as a whole are temple properties.

11. The plaint schedule reveals that the property is item No.4 in particular, 21 cents in S.No.37/4 in patta 74 , 43 cents in S.No.23/8 in patta 74, 2.86 acres in S.No.37/3 in patta 297 and 60 cents in S.No.37/3 in patta 297.

12. During the arguments, learned Senior Advocate Mrs.Hema Sampath appearing for the appellant/plaintiff has given up his claim for item No.4. As observed earlier items 1 and 2 are already declared to be the property of the plaintiff. In the absence of any appeal by the temple authorities, the same is hereby confirmed and hence, the scope of the second appeal is now confined to item No.3 alone.

13. The appellant/plaintiff claims that it is his private property as per the title deeds Exs.A2 to A6 and Ex.A7-partition deed, dated 12.10.1981. Further, admittedly, no documents to evidence the claim of the defendants that the item No.3 belonged to the temple assumes significance.

14. A close perusal of Exs.A2 to A6, I find that the sale deed, dated 02.02.1955 (Ex.A2) is in favour of the plaintiff's brother Sabapathi Gounder by Sabapathi Nainar measuring an extent of 2.20 acres in S.No.65/4. Item No.3 of the present suit



property. Earlier this property has been purchased by the vendor of the said Sabapathi Gounder under Ex.A4 dated 26.11.1947. It appears that the sale deed dated 06.06.1956 under Ex.A3 the plaintiff's brother has acquired another 1.8 acres in S.No.65/6, item No.3 of the suit property. The vendor of the person had purchased the property under Ex.A5-sale deed dated 20.05.1955 from Vaithialinga Iyer, who had purchased the property under Ex.A6, dated 17.12.1942. At this juncture it remains to be stated that in pursuance to the sale deed effected under Ex.A6- of the year 1942, Ex.A5- of the year 1955 and Ex.A3 of the year 1955 and Ex.A4- of the year 1947, the plaintiff has established his title through Ex.A3 item No.3 of the schedule of the property. On the other hand, no document of title was filed by the temple assumes significance.

15(a). I have perused Ex.A7-partition deed dated 12.10.1981. Admittedly, it is a partition among the plaintiff and his parents and brothers in which 'B' schedule property (in that deed) was allotted to the plaintiff and thus items 1 to 3 in the suit property belongs to the plaintiff.

15(b). It is a specific case of the plaintiff that the plaintiff's father exchanged his land to an extent of 72 cents wet land in S.No.18/11 with the temple land-item No.4 and reliance is placed upon Ex.A19. According to the defendants/respondents the entire extent in S.No.37/3 with 3.46 acres belongs to the temple, but admittedly, no documents has been produced assumes significance. As stated supra, in respect of the item No.4 of the suit property, the plaintiff is not pressed the second appeal. At the risk of repetition, for the sake of clarity, it is stated that Ex.A8 is the document confirming the exchange of lands in possession of the plaintiff and the temple witnessed by village elders.

16. It appears that in the year 1999, The trustee/the third defendant filed O.S.No.348 of 1999 against the plaintiff restraining the plaintiff from cutting the trees thereon. The present suit in O.S.No.49 of 1999 was filed by the plaintiff for declaration of the title. In O.S.No.348 of 1999 filed by the temple was dismissed for non-prosecution. While the said suit filed by the appellant is decreed, as observed earlier, the temple authorities preferred A.S.No.26 of 1999, which was allowed and hence the present second appeal.

17. For the purpose of ascertaining the right of the plaintiff in respect of item No.3, this Court finds that admitted facts are as under:

The defendants disputed the title to items 1 and 2 of the property. The suit filed by the defendants was dismissed for non-prosecution while the petition filed by the plaintiff, the



present suit is decreed in part. As against the judgment of the lower Appellate Court in respect of items 1 and 2, the temple authorities has not filed any second appeal. This second appeal is filed only in respect of items 3 and 4. As against item No.4, the appellant has not pressed the same and hence, the scope of second appeal is confined to Ex.A3. As extracted supra, the title deeds of the plaintiff for item No.3 of the suit property is Exs.A2 to A6. Under partition among the plaintiff and his parents under Ex.A7, item No.3 was allotted to him. The plea of exchange was disputed by the defendants. Since the item No.4 was not pressed by the plaintiff it is not necessary for this Court to discuss about the same. As per Ex.A7, family partition, item No.3 of the suit property was allotted to the plaintiff and all the documents filed by the plaintiff as mentioned above are registered documents proving the plaintiff's title while the defendant temple has produced only revenue records and not adduced any title deeds.

18. On perusal of Exs.A5 and A6, the parent document which is of the year 1955 and 1942 respectively, I find that they are ancient documents and hence attract the presumption under Section 90 of the Indian Evidence Act and besides under Ex.A7-partition deed, item No.3, which was the joint family property of the plaintiff, his father and brother, was allotted to the plaintiff in the year 1981. As stated supra, the defendants has not filed any documents to show item No.3 belonged to the temple. At this juncture, it is pertinent to note that DW1 is admitted that they are not filed any document schedule to prove item No.3 of the property.

19. On perusal of the lower Court records, it reveals that only revenue records Ex.B1-patta, Ex.B2-'A' Register and Ex.B3-lease receipt is filed. As per the admission of PW1, in the joint patta issued in the year 1997 only the temple name was included. It remains to be stated that on a close perusal of Ex.B1-patta No.297 filed by the temple, I find that it is a joint name of the temple, plaintiff's brother and Sabapathi, thereby, the possession of the plaintiff and his brother in the S.No.376/3 stands established. Consequently, the finding rendered by the lower Appellate Court that item No.3 does not belong to the plaintiff stands demolished. So also, Ex.B2 shows the names of the plaintiff and his brother. The plaintiff is paying rent for item No.3 which is admitted by the defendants. I find that the lower Appellate Court has interferred findings of the trial Court on the ground that the plaintiff has not proved on what date the HR&CE department took over the temple. The burden of the proof cast upon the plaintiff is unsustainable in law since HR&CE department claims that they have taken over the temple which was originally private temple. The burden of proof of showing the date of taking over of the possession by the



HR&CE department is on the defendants only. It is for the defendants to prove on what date the exchange of properties, ie., the temple was under the management of the department and admittedly no document has been produced to show on what date the HR&CE department has took over the temple. Admittedly, item No.3 is not in dispute which is covered by the various sale deeds as stated supra running from 1942. The defendants claim that the exchange deed is misused by the previous temple authorities. Hence, it is for them to show there was some manipulation. In the absence of any documents to show on what date the temple came under the HR&CE Department, it is for them to show that on the date of alleged handing over the temple was, within the administration of HR&CE department.

20. The learned first Appellate Court has reversed the judgment of the lower Court based upon the revenue records Exs.B1 to B3. I find that the learned first Appellate Court failed to appreciate Ex.B3 and Ex.A23. Because on 21.03.1970 wet land to an extent of 72 cents comprising S.No.18/11 were given to the temple administration in exchange of dry land to an extent of 60 cents comprising S.No.37/3 given to the appellant, if the Ex.B3 and Ex.A23 were carefully seen, it will show the lease amount was paid in respect of wet land comprising S.No.18/11 which has been given to temple by means of exchange deed, which go to show that after the aforementioned exchange, the appellant was under the enjoyment of wet land to the extent of 72 cents comprising S.No.18/11 as a lessee and for that alone appellant has paid the lease amount as shown in the Exs.B3 and A23. The exchange deed dated 21.03.1970 was much prior to the date the temple has come under the administration of HR&CE department. The land comprising S.No.37/3 ie., item No.3 of the schedule mentioned property is the accumulation of land purchased through Ex.A2 and Ex.A3 and naturally once the new land was added to the land, then ultimately, the four boundaries will get altered. The appellants have filed Exs.A1 to A6 to prove how the property in item No.3 of the schedule mentioned property has come under their joint ownership and also filed Exs.A7 and A8 to prove how item No.3 has come under the enjoyment of the plaintiff/appellant. The trial Court in its findings have stated that for fasli years from 1372 to 1414 the appellant's father had paid the revenues for the joint family property. The respondent have not filed any document to prove their title except revenue receipts ie., Exs.B1 to B3. But the appellant had filed Exs.A1 to A22 which includes sale deeds, fasli receipts, exchange deed, partition deed to prove that the appellant title over the schedule petitioned property. Besides in fasli year 1392, there was an order in T.R.No.470 of 1991. Accordingly the plaintiff's/appellant's name has been added and joint patta had been issued for the schedule mentioned property, which includes the plaintiff's/appellant's name among the other



members of the joint family. Ex.B3 shows that the plaintiff/appellant has made a payment of sum of Rs.4,900/- to the temple wet land (ie., the land given to the temple in exchange of dry land) as lease amount for the years from 1981-1995 ie., upto the fasili year 1404.

21.Thus, this Court finds that the finding of the lower Appellate Court with respect of item No.3 is erroneous and liable to be vacated, accordingly the same stands vacated. All the substantial questions of law are answered in favour of the appellant/plaintiff. The judgment and decree of the trial Court as modified by the lower Appellate Court is hereby stands modified in respect of item Nos. 1, 2 and 3 to the extent indicated above and stands dismissed in respect of item No.4.

22. In fine, this second appeal is partly allowed. The suit in O.S.No.49 of 1999 stands decreed in respect of item Nos.1, 2 and 3 and stands dismissed in respect of item No.4. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

PJL

To

1. The Subordinate Judge,
Panruti.

2. The District Munsif,
Panruti.

Copy to:

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

+2 ccs to Mr.B.Sundarapandiyan, Advocate Sr.NO. 21603

+1 cc to Spl.Government Pleader Sr.NO. 22090

S.A.No.385 of 2012

ssi(CO)

A.SK(14/06/2022)