



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.NO.648 OF 2017

AND

C.M.P.NO.16041 OF 2017

1. N.Padmavathi
2. K.Pankajavalli
3. D.Santhanakrishnan
4. Janakam
5. D.Jayakumar

.. Appellants/Defendants

Vs.

A/m Marundeeswarar Thirukoil,
Represented by its Executive Officer,
Thiruvanmiyur,
Chennai - 600 041.

.. Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree passed in A.S. No.250/2016 dated 27.04.2017 by the XVI Additional City Civil Court, Chennai, confirming the judgment and decree in O.S. No.6413 of 2014 dated 01.08.2016 by the VIII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.E.Vinoth Kumar

For Respondent : No appearance

JUDGMENT

The appellants are the defendants in the suit in O.S. No.6413 of 2014 on the file of the VIII Assistant City Civil Court, Chennai. The respondent as plaintiff filed the suit in O.S. No.6413 of 2014 for permanent injunction restraining the appellants from in any manner putting up construction in the suit schedule property and for mandatory injunction directing the appellants to demolish the illegal construction put up by the defendants on the suit schedule property.



2. The suit property is a land and building bearing New Door No.115, Pillayar Koil Street, Thiruvannamipur, Chennai, with reference to specific boundaries mentioned in the suit schedule.

WEB COPY

3. The case of the respondent as plaintiff in the plaint is that the suit property is the absolute property of plaintiff which is a public temple governed by the provisions of Hindu Religious and Charitable Endowments Act. The suit itself is filed by the Executive Officer representing the temple known as A/m. Marundeeswarar Thirukoil. It is the specific case of the respondent that the suit property was leased out to a third party and one Indirani purchased the superstructure that was put up in the suit property under a sale deed dated 24.05.1969 and that she was recognised as a tenant in respect of the land as she was paying rent to the temple. It is further stated that the legal heirs of said Indirani did not pay rent after the death of original lessee. Since the defendants entered into a regular partition under a deed dated 29.06.2012 claiming title to themselves, the temple had to take action. Even during the lifetime of Indirani, she did not comply with the demand for fixing fair rent. Therefore, the plaintiff issued a termination notice dated 31.12.2008 to the original lessee. When the defendants started claiming right, the plaintiff also inclined to initiate the proceedings for recovery of possession by invoking Section 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. Since the tenant wanted to put up new superstructure without getting permission from the plaintiff, it is stated that the plaintiff was constrained to file a suit for the relief prayed for in the suit.

4. The suit was decreed by the trial Court after holding that the defendants cannot erect any permanent structure on the lease hold property without the consent of the lessor. Even though the defendants disputed the title of plaintiff, the trial Court accepted the case of plaintiff as the evidence adduced by the plaintiff and the acknowledgment of title by the predecessor's in interest of the defendant would show that the temple is the absolute owner of the suit property.

5. Aggrieved by the findings of the trial Court decreeing the suit in O.S. No.6413 of 2014, the appellants preferred an appeal in A.S. No.250 of 2016 before XVI Additional City Civil Court, Chennai. The lower appellate Court also dismissed the appeal after holding that the defendants have no defense in view of the established facts that the temple is the absolute owner and the appellants are only entitled to have their lease hold right.



6. Aggrieved by the concurrent findings of the Courts below, the defendants have preferred the above second appeal by raising the following Substantial questions of law:

" a) Without suit for declaration of title how the suit for a permanent and mandatory injunction is maintainable ?

b) Whether respondent temple proved ownership in respect of suit property by producing oral and documentary evidence ?

c) Whether the respondent temple proved that the appellants and their mother are tenant in respect of suit property by producing their independent document ?

d) Whether the suit property is a Sarkar Poramboke land as per Exs.B1 to B10 revenue records as contemplated in the written statement ?

e) Whether the claim of ownership in respect of suit property supported by their independent documents without establishing the title for convincing evidence and documents how the temple claims ownership ?

f) How the respondent / temple obtained ownership of property ?"

7. Learned counsel for the appellants submitted that the suit for permanent and mandatory injunction is not maintainable without a prayer for declaration of title. Learned counsel further submitted that the suit property is not the property of temple in as much as the property has been classified as Grama Natham. Stating that the property is classified as Grama Natham vest with Government, the appellant's counsel contended that the suit for permanent injunction as against the appellants is not maintainable and the Courts below have committed a serious error in decreeing the suit as prayed for. Since the suit property is a Government Poramboke as per revenue records, the appellants cannot be evicted or their possession cannot be disturbed by the respondent.

8. This Court is unable to sustain any of the submission of the learned counsel for the appellants. First of all, the predecessor's in interest of the appellants have recognised the title of the temple by paying the lease amount. It is admitted that the lease was granted by the temple in respect of the vacant land and the appellant's predecessor's in interest came into possession after purchasing the superstructure put up by the previous lessee. Even in the written statement, it is admitted that the mother of defendant was paying rent regularly. The sale deed relied upon by the defendants is in respect of superstructure and the title of plaintiff was admitted by the



vendor of defendants' mother. In the said circumstances, it is not open to the appellants to deny the ownership of temple after getting assignment of lease of lands from the plaintiff temple. Hence, this Court is unable to agree with the contention that the suit property is not the property of the temple. Assuming that the property is classified either as a Grama natham or as Government poromboke land, the appellants who have taken the property under the temple are estopped from disputing their obligation as a tenant or the right of plaintiff landlord.

9. Section 116 of Indian Evidence Act, 1872 reads as follows:

"116. Estoppel of tenant; and of licensee of person in possession.-

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

10. It is submitted by the learned counsel for the appellants that the property neither belongs to the temple nor belongs to the defendant / appellant. Learned counsel appearing for the appellants submitted that the plaintiff cannot ask for injunction without a relief of declaration as to the title of plaintiff. The submissions have no factual or legal basis. The suit property is held to be the property of temple and it has absolute right to deal with the property. The appellants who are only tenants are expected to get prior permission from the respondent if they have to put up a construction for their purposes. It is admitted that the tenancy is also terminated by the respondent after issuing notice. While the respondent is entitled to evict the appellants either by resorting to Section 78 and 79 Tamil Nadu Hindu Religious and Endowments Act, or by filing a civil suit, is also entitled to protect the property from being subjected to 'Act of Waste' by any tenant. Therefore, it is expected from the tenants to get permission before alternating superstructure to their convenience. In the absence of any written permission, the appellants are not supposed to put up new construction or alter the existing structure without the actual permission from the paramount owners. Since the appellants have indulged in new construction activity, it is always open to the respondent to prevent the same in order to



keep their property under their control. It is also the duty of the Executive Officer to protect the property of the temple within his jurisdiction. Hence the submission that suit for injunction is not maintainable has no substance.

WEB COPY

11. Having regard to the factual findings rendered by the Courts below on the basis of available material, this Court finds no irregularity or illegality in the findings of the Courts below. In view of the foregoing discussions and the position that there is no substance in any of the question of law raised, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

bkn

To:

1. The XVI Additional Judge,
City Civil Court, Chennai.
2. The VIII Assistant Judge,
City Civil Court, Chennai.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to M/s.E.Vinoth Kumar, Advocate, S.R.No.22288

S.A.No.648 of 2017

GPL(CO)
RLP(28/04/2022)