



S.A.(MD)No.730 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.730 of 2010

V.Shankar

... Appellant / Appellant / Plaintiff

Vs.

1.The State of Tamil Nadu,
Represented by its District Collector,
Tiruchirappalli.

2.The Settlement Officer,
Thanjavur.

3.The Idol of Arulmighu Mariyamman Koil,
Samayapuram represented by its Executive Officer /
Joint Commissioner, Samayapuram,
Mannachanallur Taluk,
Tiruchirappalli District.

... Respondents/Respondents/Respondents

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 09.02.2010 in A.S.No.166 of 2009 on the file of the learned Principal District Judge, Tiruchirappalli confirming the judgment and decree dated 19.06.2009 in O.S.No.196 of 2022 on the file of the learned Principal Subordinate Judge, Tiruchirappalli.



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For Appellant : Mr.K.S.Sankhar Murali

For Respondents : Mr.R.Ragavendran,
Government Advocate for R1 & R2.
Mr.K.Govindarajan for R3.

JUDGEMENT

Heard the learned counsel on either side.

2.The appellant herein filed O.S.No.196 of 2002 on the file of Principal Sub Court, Tiruchirappalli seeking the relief of declaration and permanent injunction against the third respondent / temple. The suit was dismissed vide judgment and decree dated 19.06.2009. Questioning the same, the plaintiff filed A.S.No.166 of 2009 on the file of the Principal District Court, Tiruchirappalli. The first appellate Court confirmed the decision of the trial Court and dismissed the appeal on 09.02.2010. Challenging the same, this second appeal came to be filed.

3.Only notice of motion was ordered and till date, the second appeal has not been admitted.



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4.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds. He took me through the pleadings as well as the evidence on record and also the impugned judgment and decree passed by the Courts below. He called upon this Court to admit the second appeal and frame substantial questions of law and thereafter dispose of the matter.

5.The learned counsel for the temple submitted that no substantial question of law arises for consideration and that the second appeal deserves to be dismissed.

6.I carefully considered the rival contentions and went through the evidence on record. The case of the appellant is that he became owner of the suit property vide sale deed dated 05.05.1999 (Ex.A1). According to him, the suit property was the ancestral property of one Rengapillai. After his demise, it devolved on his legal heirs namely, Velupillai and Karuppannan @ Karpagam Pillai. Velupillai and Karpagam Pillai entered into a partition deed (Ex.A2) dated 12.05.1937. Karpagam Pillai was then a minor. After attaining majority, he filed O.S.No.476 of 1969 in which a compromise decree was passed on 29.11.1950 (Ex.A4). In the meanwhile, Velupillai had executed a Will dated



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17.08.1946 (Ex.A3). One Saravanan obtained power of attorney from the legal heirs of Velupillai as well as wife of Karpagam Pillai. From the said power agent, the appellant purchased the suit property. Since the appellant came to know that behind the back of his predecessors in title, the third defendant / temple had obtained settlement patta (Ex.A25) dated 31.09.1970, he was constrained to file O.S.No.196 of 2002 for the relief of declaration and permanent injunction.

7.On the side of the plaintiff, the plaintiff examined himself as P.W.1 and Gandhimathi, the wife of Karpagam Pillai was examined as P.W.2 and Exs.A1 to A25 were marked. On the side of the temple, an official was examined as D.W.1 and Exs.B1 to B3 were marked.

8.The maintainability of the suit was never an issue. The Hon'ble Supreme Court in the decision reported in AIR 1986 SC 794 (The State of Tamil Nadu v. Ramalinga Swamigal Madam) had held that notwithstanding the character of finality attached to order passed by the settlement authority, the Civil Court will have jurisdiction to declare the pre-existing rights of the parties. But in this case, the Courts below have concurrently rendered findings against the appellant. It is true that the plaintiff has relied on antecedent



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documents such as deed of partition deed, registered Will, compromise decree etc. But it has not been shown as to how Rengapillai acquired title over the suit property. On the other hand, the third defendant / temple had convincingly demonstrated that the suit property is actually an inam property. The plaintiff's predecessors in title were allowed to remain in enjoyment of the land so long as they rendered service to the third defendant / temple. They were required to perform what is known as “Thirumalai Kattu” service. In other words, the person in enjoyment of the land was to grow flowers for the deity and make garlands to be offered to the idol. Ex.B1 is the copy of inam fair register (T.D.No.1112). Ex.B2 dated 31.01.1970 is the copy of the order passed by the Settlement Tahsildar. Ex.B3 is the copy of the property register maintained by the temple.

9.The Hon'ble Supreme Court in the decision reported in 1993 Supp (4) SCC 519 (Subramania Gurukkal (Dead) through Muthusubramanis Gurukkal Vs. Patteswaraswami Devasthanam, Perur by its Executive Officer) held that the service holder when in possession as derivative holder of the temple cannot set up an individual title. The learned trial Judge rightly observed that though the plaintiff's predecessors in title were in possession of the suit property and had also dealt with the property, it was the plaintiff's duty to prove that the suit



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property was owned by them. It was also noted that if they had been enjoying the suit property as owners, patta would have stood in their names. There would have been corresponding entries in the revenue records. In fact, the plaintiff had admitted in his evidence that his vendor's ancestors were receiving perquisites and honours for the purpose of doing “Thirumalai Kattu” service for the temple. The learned trial Judge also noted that the plaintiff's case was not internally consistent. The plaintiff made a claim that under Section 9(1)(i) of Tamil Nadu Act 30 of 1963, since a person cultivating an inam land for a continuous period of 12 years prior to 01.04.1960 was entitled to get patta and that therefore, the plaintiff's predecessors in title should have been given patta. This claim is not in consonance with the other plaint averments. On the one hand, the plaintiff would assert that the suit property absolutely belonged to Rengapillai. In passing, the plaintiff would project the theory of adverse possession. To succeed on the strength of adverse possession, the plaintiff must concede the temple's title and come out with a definite case as to when the possession became hostile. Pleadings are not clear on this point. The evidence is awfully insufficient. Ex.B1 / settlement patta dated 31.09.1970 was not challenged by the plaintiff's predecessors in title. The Tamil Nadu Act 30 of 1963 contains a mechanism for challenge.



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10.The view taken by the learned trial Judge was endorsed by the first appellate Court. Against these concurrent findings, this second appeal has been filed. Since it has not been shown as to how the Courts below have erred, I am not in a position to interfere. The Courts below have applied the correct principles of law to the facts of the case. No substantial question of law arises for consideration and the second appeal stands dismissed. No costs.

10.03.2022

Index : Yes / No
Internet : Yes/ No
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To:

- 1.The Principal District Court,
Tiruchirappalli.
- 2.The Principal Sub Court,
Tiruchirappalli.
- 3.The District Collector,
Tiruchirappalli.
- 4.The Settlement Officer,
Thanjavur.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

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