



S.A.No.830 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.No.830 of 2004

1.U.P.K.Mohamed Hanifa (Died) ... Appellant/Respondent/Plaintiff

2.K.M.Hidayadullah

3.K.M.Jakir Hussain

4.M.Faritha Begam

5.K.M.Siddi Hunaiha

6.M.Jessima Yasmin

7.M.Fairose

... Appellants 2 to 7/

LRs of deceased sole appellant

[Appellants 2 to 7 are brought on record as LRs of the deceased sole appellant vide order dated 05.03.2013 made in M.P.(MD) Nos.1 and 2 of 2012 in S.A.No.830 of 2004 by BRJJ]

Vs.

1.Sri Selva Vinayagar Temple,

Rep., by its Fit Person

A.Kannan

Puthanatham Village and Post,

Manapparai Taluk, Trichy District.

(*Suo motu* amended Vide Court order dated 11.10.2022 made in SA.No.830 of 2004 and C.M.P(MD)Nos.5539 to 5541 of 2021 by NSSJ)

(Amended Vide Court order dated 20.10.2022 made in S.A.No.830 of 2004 by NSSJ)



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2.Subbaiah Pandaram(Died) ... Respondents 1 & 2/Appellants/Defendants

3. Solai

4. Sekar

5. Valliyammai

6. Gangadevi

7. Balamurugan ... Respondents 3 to 7/Lrs of the deceased
2nd respondent

*[R3 to R7 are brought on record as Lrs of
the deceased R2 Vide order dated
11.10.2022 made in SA(MD)No.830 of 2004
and C.M.P(MD)No.5539 to 5541 of 2022 by
NSSJ]*

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 29.10.2003 made in A.S.No.163 of 2003 on the file of the Principal District Court, Tiruchirappalli reversing the judgment and decree dated 31.03.2003 made in O.S.No.149 of 1999 on the file of the District Munsif Court, Manapparai.

For Appellants 2 to 7:

Mr.G.Prabhu Rajadurai
for M/s.Ajmal Associates
for appellants 2 to 7

For R1

:

Mr.V.Meenakshi Sundaram
for Mr.G.Gomathi Sankar for R1

For R2

:

Died

For R3, R5 & R6

:

Mr.G.Gomathi Sankar



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JUDGMENT

The plaintiff in O.S.No.149 of 1999 on the file of the District Munsif Court, Manapparai, is the appellant herein. The suit was laid for declaration of plaintiff's title and for a consequential injunction *vis-a-vis* two items of suit properties against Sri Selva Vinayagar Temple and its then Managing Trustee. The suit was decreed by the trial Court and in an appeal in A.S.No. 163 of 2003 filed by the defendants, the plaintiff was non-suited. Hence, the plaintiff is before this Court with this Second Appeal. For narrative convenience, the parties are referred to by their rank before the trial court.

2. The facts of the case are:

- There are two items of suit properties. They are agricultural lands in Puthanatham Village, Manapparai Taluk, Trichy District. Item 1 measures 1.23.0 hectares in Sy.No.359/1, and the 2nd Item measures 0.25.0 hectares in Sy.No.359/2. According to the plaintiff, this property has been in long continuous open and uninterrupted



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possession of his predecessors in title, that in due course, it devolved on his father Kamrudeen Rowther, that Kamrudeen Rowther died some four decades prior to the institution of the suit (should be around late 1950's or some time in 1950-1960) leaving behind him surviving his three sons. They are Abu Bakkar, Umarkathap and Mohamed Hanifa. All the three continued to enjoy the property since the demise of their father. While so, one of the three brothers viz., Abu Bakkar had passed away and his right devolved on his son Mustaffa. Thereafter, the plaintiff, Umarkathap and Mustaffa continued to enjoy the property jointly. Be that as it may, on 22.09.1995, vide Ext.A.6-partition deed, partition had taken place in the family of the plaintiff, in which the suit properties came to be allotted to the share of the plaintiff.

When faced obstruction to his title from the defendants, the plaintiff had laid the suit.

3. In the written statement filed by the then Managing Trustee of the first defendant-Temple (adopted by the first defendant-Temple), they dispute the



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entire narration of facts by the plaintiff and assert title in the Temple.

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4.1. The dispute went to trial and before the trial Court, the plaintiff examined himself as P.W.1. Besides, he examined two independent witnesses as P.W.2 and P.W.3 and he had produced Ext.A.1 to Ext.A.12. For the defendants, the second defendant had examined himself as D.W.1 and he had produced Ext.B.1 and Ext.B.2.

4.2. During trial, the case appeared to have taken a different turn. While the plaintiff resisted his cause of action on a plea of adverse possession, during trial, he produced few documentary evidences to show that he has subsisting title to the property. The critical documents before the trial Court were Exts.A.1, A.2, A.3 and A.6. On an appreciation of evidence, the Court acted more on the documentary evidence produced and sidelined the plea of adverse possession and granted a decree as sought for.

5. The defendants promptly approached the appellate Court. As indicated earlier, the first appellate Court had reversed the finding of the trial Court



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and it's reasons are that the suit properties are inam properties to which the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (hereinafter referred to as “Act 30 of 1963” for brevity) apply. It provided for grant of patta to one who is in possession of the property for 60 years next prior to 01.04.1960. Notwithstanding the fact, the plaintiff has produced Ext.A.3-settlement register to show that a settlement patta indeed had been granted to the plaintiff under Section 8(2)(i)(b) of Act 30 of 1963.

6. Before the appellate Court, the plaintiff had produced yet another document which came to be marked as Ext.A.13. The sequence of documents for the plaintiff would now be Exts.A.13, A.2 and A.1 followed by Exts.A.3 and A.6. The appellate Court has held that the earliest of the documents is Ext.A.13 (marked before the first appellate Court which is dated in 1924). This would imply that the plaintiff had not shown possession from 01.04.1900 which is the cut of date for invoking Act 30 of 1963 and refused to act on Ext.A.3. It is in these circumstances, the plaintiff is before this Court with this second appeal.



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7. The appeal was admitted for considering the following substantial question of law:

“When the appellant had established continuous possession of property from 1926, whether the lower appellate Court is justified in ignoring the sale deeds?”

8. Mr.G.Prabhu Rajadurai, learned counsel for M/s.Ajmal Associates, for the appellants submitted the following:

- When once patta is granted to the plaintiff's father in terms of settlement proceedings by the Assistant Settlement Officer under Section 8(2)(i)(b) read with Section 11 of Act 30 of 1963, then that attains finality unless the same is challenged as provided under the said Act. Therefore, the first appellate Court has travelled into the correctness of Ext.A.3 proceedings without any jurisdiction to enquire into the Act.
- Even on facts it can be established that the property has continuously been in occupation of predecessor in title of the plaintiff as could be seen from the very settlement proceedings of the Assistant Settlement Officer that led to Ext.A.3. This document is dated 30.11.1968 and is



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now produced before this Court under Order 41 Rule 27 C.P.C. vide C.M.P.(MD) No.8933 of 2022.

9. Turning to the defendants, there is some difficulty. This Court is informed that the first defendant-temple comes under the administration control of the Hindu Religious and Charitable Endowments Department and that the Board of Trustees is no more there for the Temple. It is further informed that only a Fit Person is appointed under Section 45 of the Hindu Religious and Charitable Endowments Act and he is now in administration of the Temple. However, when the second defendant had died, his legal representatives were impleaded.

10. It may be mentioned here that even before the first appellate Court, a plea was taken that the second defendant had no *locus standi* to represent the first defendant-temple, since he ceased to be a Trustee of the Temple. But the first appellate Court has allowed him to represent the temple as a worshipper of the temple.



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11. As noted earlier, this is a dispute against the property belonging to the first defendant temple without proper representation. Since the first defendant has come to be represented legitimately only now, it is only appropriate to remand back the matter to the trial court to enable the first defendant to file written statement. The Joint Commissioner, Hindu Religious and Charitable Endowment Department is required to have a tab in defending the suit effectively. The parties are directed to appear before the trial court on 12.12.2022. The first defendant is required to file written statement within a period of one months time from 19.12.2022.

12. The other defendants, who are already in the party array and who have been permitted by this Court to participate in the proceedings as worshippers, will continue to have their participation before the trial court. The pleadings are directed to be completed within a period of two months from 19.12.2022, whereinafter the trial court shall dispose of the matter within the next 6 months. All the parties to the proceedings will have their opportunity to produce additional evidence in the matter.



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13. The additional documents produced by the appellant herein may be considered by the trial court when it takes evidence. The Registry is required to forward the additional documents now produced along with the records to the trial court.

14. In fine, this Second Appeal is allowed. Accordingly, the judgment and decree dated 29.10.2003 made in A.S.No.163 of 2003 on the file of the Principal District Court, Tiruchirappalli, is set aside. The matter is remanded back to the trial court for considering the directions herein above given. No costs.

10.11.2022

Index : Yes/No
Internet : Yes/No
Abr/CM

To,
1. The Principal District Judge, Tiruchirappalli
2. The District Munsif, Manapparai.
3. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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abr/CM

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