



S.A.No.1677 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2023

CORAM :

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.1677 of 2008

1.Mohanraj,
2.Minor.Kalimuthu @ Prabhu.
(Minor second appellant herein rep. by his father's
next friend and natural guardian
K.Shanmugam)

...Appellants

Vs.

1.Sri Vanabatrakali Amman Temple,
Rep. by its Executive Officer,
Thekkampatti Post,
Mettupalayam Taluk,
Coimbatore.

2.The District Collector,
Coimbatore.

...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 31.10.2007, rendered in A.S.No.104 of 1992 on the file of the Second Additional Subordinate Court, Coimbatore, reversing the Judgment and Decree dated 02.04.1992 rendered in O.S.No.2218 of 1984 on the file of the Third Additional District Munsif Court, Coimbatore.



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For Appellants

: Mr.S.Mukunth, Senior Counsel,
for M/s. Sarvabhauman Associates.

For Respondent-1

: Mr.R.Bharanidharan

For Respondent-2

: Mr.C.Sathish,
Government Advocate(Civil Side)

J U D G M E N T

The instant second appeal has been filed at the instance of the plaintiff.

2. The parties will be referred to according to their litigative status as before the Trial Court.

The brief facts which give rise to this second appeal are as follows:

3. The suit property originally formed part of Nellimala Forest in Thekkampatty Village. According to the plaintiff, his father dug a well and reclaimed the suit property and also the surrounding lands. Further, he cultivated the same for his own purpose. The plaintiff's father has also constructed a Badrakaliamman Temple and was performing pooja till his death.



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4(a). The plaintiff further submits that he has been paying kist to the Government for the lands and paying property tax to the panchayat for the house. This plaintiff submits that in the course of time, the temple gained popularity and the Hindu Religious & Charitable Endowments Department brought the temple under their control about 10 years ago. It is the specific submission of the plaintiff that the plaintiff's family and the plaintiff himself have been in open, continuous and uninterrupted hostile possession of the Government land for over 100 years by exercising all acts of ownership, possession and enjoyment. Therefore, the plaintiff submits that he has perfected title by way of adverse possession.

4(b). While so, the Hindu Religious & Charitable Endowments Department instigated the Revenue Department to eject the plaintiff. All of a sudden, the Tahsildar, Mettupalayam, has issued a notice purporting to be under the Tamil Nadu Land Encroachment Act, to eject the plaintiff without regard to the plaintiff's title, possession and enjoyment over the suit property. Hence, the plaintiff has come forward for the relief of declaration and for consequential permanent injunction.



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5(a). The said suit was resisted by the District Collector,

Coimbatore, by contending that the suit lands are classified as temple poramboke and the total extent of land in S.F.Nos.974, 975/1, 976, 978/1B, 978/3 and 975/3 is recorded as temple poramboke in Revenue records.

5(b). The defendant further submits that the plaintiff has unauthorisedly encroached an extent of 3.30 acres of lands. As such the encroachments have been brought to the accounts under the Tamil Nadu Land Encroachment Act, 1905, and penalty had been levied. The defendant disputed the construction of the temple by the plaintiff's father. It is the further submission of the defendant that it is false to state that the plaintiff and his family have been in possession and enjoyment of the property for more than 100 years. Hence, he prayed to dismiss the suit.

Evidence and documents:

6. Before the Trial Court, on behalf of the plaintiff, the plaintiff himself was examined as P.W.1 and 61 documents were marked as Exs.A1 to A61. On behalf of the first defendant, Mr.Gopalakrishnan,



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VAO was examined as D.W.1 and on behalf of the second defendant,

Mr.Senthilvelan, Executive Officer of the said Temple was examined as

D.W.2 and one document was marked as Ex.B1.

Findings of the Courts below:

7. The Trial Court, after having considered the oral and documentary evidence and materials on record, has found that the plaintiff has not paid any property tax. However, the Trail Court held that the plaintiff submitted the documents to prove his possession since 1954. Hence, agreeing with the case of the plaintiff, the Trial Court found that the plaintiff has perfected his title by way of adverse possession, and decreed the suit.

8. Aggrieved by the same, the Executive Officer, Sri Vanabatrakaliamman Temple, has preferred an appeal suit and subsequently, the Collector, Coimbatore, was arrayed as second defendant and also the legal heirs of the plaintiff were arrayed as third and fourth defendants in the appeal. The First Appellate Court, however, reversed the finding of the Trial Court by holding that the plaintiff failed to prove the adverse possession.



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9. Aggrieved by the same, the plaintiff is now before this Court by way of this second appeal.

Substantial questions of law:

10. At the time of admission of this second appeal, this Court has framed the following substantial questions of law:

“a) When the decree had declared the plaintiff as the owner of the suit property as against the Government and when the Government itself has not preferred any appeal as against the decree of the Trial Court, whether the decree as against the Government has become final?

b) Where, the real owner Government has not preferred any appeal whether the temple is said to be an aggrieved person so as to confer him with a right to prefer the appeal under Section 96 of the Code of Civil Procedure?

c) When the Government itself has not taken any action to resume possession either by invoking under the provisions of Tamil Nadu Land Encroachment Removal Act, 1905 or by instituting a proper suit within 30 years, as contemplated under Article 149 of the Limitation Act, 1908 or within 30 years under Article 112 of the Limitation Act, 1963, is not the possession of the suit property by the



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person in occupation is deemed to be an adverse as against the Government?”

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Submissions on both sides:

11. The learned Senior Counsel for the appellant/plaintiff would submit that the finding rendered by the Trial Court is based on evidence and upon the receipts issued by the Government. It was also contended by the learned Senior Counsel that though the ‘B’ Memos have been issued by the Government, no action was taken by the Government against the plaintiff and his predecessors-in-title, which is nothing but an act adverse to the interest of the second respondent.

12. It is the further contention of the learned Senior Counsel that there are abundant materials to show that the plaintiff was in possession of the property for more than 100 years. Therefore, the order passed by the First Appellate Court, by reversing the well-considered finding of the Trial Court, is erroneous. Hence, he prayed to allow this second appeal.

13. Per contra, the learned counsel for the respondents/defendants would vehemently submit that the case of the



plaintiff is based upon the possessory title. However, they did not let in any evidence to satisfy the legal *maxim, nec vi, nec clam and nec pecario* i.e., peaceful, open and continuous possession. The learned counsel for the respondents would further contend that the proof of long possession and enjoyment is not sufficient to derive the possessory title and what is essential is his continuous and uninterrupted possession, adverse to the interest and knowledge of the real owner. Therefore, the learned counsel for the respondents would submit that the judgment passed by the First Appellate Court is well merited. Hence, he prayed to dismiss the suit.

14. I have given my anxious consideration to the submissions made by the both sides.

Analysis of the submissions:

15. As rightly submitted by the either side, the plaintiff's case is rest upon the defence of the adverse possession. In order to prove the adverse possession, the plaintiff has pleaded that his father has constructed a temple and reclaimed the surrounding areas and also has been in possession over the same for more than 100 years by doing agricultural operations in the land and also by putting up some



construction. To substantiate such contention, the plaintiff is very much relied upon Ex.A2 to A15/‘B’ Memos of the period of 1955 to 1983, and the plaintiff has also relied upon the notice issued under the Tamil Nadu Land Encroachment Act, 1905.

16. In this regard, the First Appellate Court has rightly observed that the long possession is not sufficient, and what is essential is his continuous and uninterrupted possession, adverse to the interest of the real owner, more importantly, with the knowledge of the real owner. Here, Exs.A1 to A15/‘B’ Memos and Exs.A16 to A19/the land encroachment notices, which are relied on by the plaintiff would exemplify the fact that the plaintiff has been in possession of the suit property as an encroacher admitting that the property belongs to the Government. To put it in other words, these documents are not sufficient to establish the plaintiff’s possessory title over the suit property.

17. It is the finding of the First Appellate Court that those ‘B’ Memos would unequivocally establish the hegemony of the defendants over the suit property, which was rightly accepted by the plaintiff. So, in that context, the First Appellate Court has arrived at a conclusion that the



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alleged long possession has never turned out to be adverse to the interests of the defendants and ultimately, found that the plaintiff has miserably failed to prove their possessory title.

18. This Court is in full agreement with the finding recorded by the First Appellate Court. Further, the appellant could not put forth any ground so as to find fault with the judgment of the First Appellate Court or to deviate from the said finding. In view of above discussions, all the substantial questions of law are answered in favour of the respondents.

19. In the result, the second appeal is dismissed by confirming the judgment and decree of the First Appellate Court passed in A.S.No.104 of 1992, thereby the suit in O.S.No.2218 of 1984 is dismissed. There shall be no order as to costs.

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Internet : Yes/No

Index: Yes/No

apd

To

1.The Second Additional Subordinate Judge, Coimbatore,

2.The Third Additional District Munsif, Coimbatore,



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3.The Section Officer, V.R.Section, High Court, Madras.

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C.KUMARAPPAN,J.
apd

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