



S.A No.654 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08 .2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

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T.Sathaya Narayanan

... Appellant

Vs.

- 1.M.Gnansekaran
- 2.Arulmigu Kariaperumal Temple,
Rep by its present Executive Officer,
Manickam S/o. Marimuthu
Annadhanapatti,
Kannankurichi,
Salem – 8.
- 3.Gopal

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 17.12.2018 made in A.S No. 52 of 2007 on the file of I Additional District Judge, Salem, confirming the judgment and decree dated 22.12.2003 made in O.S No. 127 of 1992 on the file of Principal District Munsiff, Salem.



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For Appellant: Mr.M.Sneha
For R2 :Mr.S.T.Barath Gowtham
for Mr.T.R.Rajaraman
For R1 : No appearance
For R3 : Addressee Cannot be located.

JUDGMENT

The appellant herein is the second respondent in A.S No. 52 of 2007 as per order in I.A No. 598 of 2015 and I.A No.976 of 2016 in A.S No. 52 of 2007, on the file of the 1st Additional District Judge, Salem. The said appeal was arising out of decree passed in O.S No. 1227 of 1990 by the Principal District Munsif, Salem, the said suit was filed by the Kaliaperumal Temple/first respondent herein against one Muthusami Pillai(died) for the relief of declaration and recovery of possession with other relief for damages, in which, he contending that the suit property as described in the plaint schedule in survey No. 4/1, 4/2 and 4/3 with an extent of 3.50 acres is situated in Annathanapatty Village, Salem District, with T.D No. 655 as belongs to the temple as Devadayam land as per the patta granted by the Enam Abolition Tahsildar order in S.R. 6/68 dated 05.02.1968, the defendant Muthusami Pillai claimed himself as alleged hereditary Trustee of the said temple who managed and enjoyed the



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properties. Though there is no hereditary trustee for the said temple, as per the new amendment Act, 46/1991 Hindu Religious and Charitable Act plaintiff was appointed as executive officer of the said temple on the strength of the said Act he demanded the defendant Muthusamy Pillai to deliver the Inam land to him, but the defendant refused and also he leased out the said land to various people. So the defendant was called upon to deliver the possession of the property through notice dated 10.07.1992 but in his reply he claiming right over the property by way of adverse possession and also denied the plaintiff's claim stated that he is not enjoyed the property as a trustee of the temple nor he managed the temple affair. Hence, suit was filed.

2. The first defendant Muthusamy Pillai filed written statement not accepted the extent of the property as described in the plaint schedule and stated that he enjoyed only 2.40 acres and remaining extent of 1.10 acre was enjoyed by one Rathinasamy Pillai and Patta also granted in his favour. Further, he contended that temple not raised objection for granting patta. Further the property was enjoyed by him and his ancestors for more than 60 years and his family prescribed the title by way of adverse possession



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against the temple. Adjacent to the suit land he has possessed his own patta land through it he used this land as pathway and all these years he enjoyed the suit property along with his property and claimed title by way of adverse possession and also denied that he is not trustee at temple affairs. During the pendency of the proceedings he was died and his son was impleaded as second respondent. Before the Trial Court issues were framed based on the oral and documentary evidence the Trial Court concluded that as per Ex.A1 in the year of 1968 as per the Inam abolition Tahsildar USR No. 6/1968 the suit property was assigned to the temple from that onwards temple is the owner of the property and as non fluoridated trustees the defendant has no independent right. Further Muthusamy Pillai as a Trustee managed the affairs of the temple so the copy of Patta was issued in the name of Kalia Perumal Samy Temple in S.F No. 57/2 Annathanapatty by Trustee Muthusamy Pillai Trustee. So the defendant has no independent right over the property and also in B Register property stands in the name of the Temple. Accordingly, the Trial Court declared plaintiff temple as absolute owner of the property, not accepted case of the defendant that the Muthusamy Pillai perfected title over the extent of 2.40 acres by way of adverse possession and also not accepted the contention that remaining



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extent is enjoyed by one Rathinaamy Pillai and suit decreed.

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3. Challenging the said findings A.S No. 52 of 2007 was filed before the I Additional District Judge, Salem, during the appeal proceedings the legal heirs of the Rathinasamy Pillai filed I.A No. 976 of 2016 and I.A No. 598 of 2010 praying to implead themselves as necessary parties to the appeal for the reason that Patta was granted in their favour by settlement Tahsildar on 27.03.2000 for an extent of 0.99 cents in S.F No. 4/3 thereby impleaded themselves as necessary party and the first appellate Court allowed the application and tried the issue along with main appeal and finally held that entire suit property belongs to the plaintiff's temple neither Muthusamy Pillai nor the newly added respondents 2 and 3 legal heirs of Rathinasamy has right over the property. Furthermore, order passed by the Settlement Tahsildar in the year 2000 has not binding in anyone for the reason that said order was passed during the pendency of the original suit filed by the plaintiff's temple. Accordingly, appeal was dismissed.

4. Challenging the said findings newly added respondents second respondent in the first appeal filed this second appeal stating that first appellant judge failed to appreciate the documents adduced on the side



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of the defendant which were marked as Ex.B8, Ex.B9,Ex.B10 inspite of that allowing the appeal as such is totally unfair and liable to be set aside.

Further the first appellate Court erred in not considering the fact and law, nature of the land having been determined as Ryotwari without appreciating that decreed suit based on the order passed by the Inam Tahsildar in the year 1968 as such is totally misconception of law and facts. Besides, the Trial Court failed to appreciate the fact that the revenue officials who categorically stated that suit property is under the possession of the defendants uninterruptedly for more than 30 years and without appreciating that fact the Court below cocluded that suit property belongs to the temple as such is perverse in nature. Hence he prayed to set aside those findings by allowing the appeal.

5. By way of reply, the learned Counsel for the plaintiff submitted that appellant is third party to the suit proceedings but without considering that Court below added him as party as such is not valid in law. Further, submitted that he obtained order of patta during the pendency of the suit proceedings thereby he contended that appellant has no right to proceed with this appeal. Further he also argues that the Court below rightly appreciate Ex.A1 which was assigned by the Inam Tahsildar in the year



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1968 in favour of the temple thereby temple is the owner of the property and the claim of the defendant was rightly rejected by the Court below needs no interference. Hence prayed to dismiss the appeal as no merits. This Court admitted the second appeal with the following substantial questions of law:

I. Whether it is the duty of the plaintiff who seeks a declaration of title over the property to implead all the contesting rival claimants or not?

II. Whether a party to the proceedings under Tamil Nadu Minor Inams (Abolition and conversion in to Ryotwari) Act, 1963 having participated and allowed the proceedings, can be permitted to re-agitate the same before the civil Suit.

Iii. Whether the law permits a party to re-agitate the same issues in a civil suit which were raised, agitated and decided in the proceedings under the Tamil Nadu Minor Inams (Abolition and conversion into Ryotwari) Act, 1963, after allowing it to become final.

6. The fact reveals that plaintiff being the Arumigu Kaliaperumal Temple for sake of convenience referred to as "Temple" represented by Executive Officer filed the said suit against one Muthusamipillai for the relief of declaration and recovery of possession claiming that the suit property to an extent of 3.50 acres in S.No. 4/1 and 4/2 were granted in the name of the above Temple as per T.D No. 655 as



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Devadayam for the mainitance of the said Temple for which Patta also granted by the Inam Abolition Tahsildar as per order dated 05.02.1968 in S.R No. 6/68. The contention of the plaintiff is that at that time as a non heridatary trustee Muthusamipillai managing the temple affairs and enjoyed the property. As per New Amendment Act of 46/91 of Hindu Religion and Charitable Endowments Act, 1959, all non heridatary trustee holding office as non heridatary trustee ceased to be non trustees on the date of cominnng into force of the said Act and only Government Servants should alone take charge of the Temples. Hence, as per the said Act Executive officer of the said Temple assumes charge and demanded the defendant to deliver the possession of the suit property from that defendant but he denied, after giving notice there was no response from the defendant plaintiff filed a suit. On the other side, the defendant claimed that out of 3.50 acres he enjoyed only 2.50 acres uninterruptedly and before that his grand father enjoyed the property thereby he claimed the property by way of adverse possession against the Temple and also denied that he was not managed the temple affairs as non heridatary trustee. But during the evidence the witness examined on the side of the defendant as D.W.2 and D.W.3, who admits that Muthusamipillai was managed the temple affairs. In reply notice, Ex.A6 he



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admits that the Patta was assigned in the temple name representing by his name but he possessed and enjoyed the property only for an extent of 2.40 acres when there is no income derived from the land he utilised legal income from that land by giving salary to the Pujaries of the temple and also stated that he is willing to pay any amount as fixed by the HR&CE for the suit property and also suggested the authorities to pass resolution to sold as a agricultural land in his favour for valid consideration. Therefore, though the defendant Muthusamipillai claimed that had not managed the temple affairs but his own reply he admitted that he had paid salary to the pujaries from the income derived from the said land. Besides, he also confirmed that patta was assigned in the name of the temple representing by his name as (Dharma kartha) and also willing to purchase the land for the valid consideration which clearly proves that he admits the title of the temple. It is settled proposition that admission itself the best evidence accordingly to that effect court rightly appreciated all these aspects which needs no interference. Apart from that the plaintiff also proved the title of the suit property stands in the name of the temple by relying Ex.A1 which is order passed by the Inam abolition Tahsildar granting patta in the name of the Temple in S.R. No. 6/68 dated 05.02.1968. Furthermore, D.W.1 son of



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Muthusamipillai during the trial admits that patta was assigned in the name of the temple. Therefore, claim of Muthusamipillai is that he enjoyed 2.40 acres out of suit properties uninterruptedly for more than 60 years and perfected the title by way of adverse possession and also not be accepted for the reason that he himself admits that in his reply notice that he managed the affairs of the temple as a trustee and paid salaries to Pujaries. Therefore, while as a Dharma kartha (non-hereditary) he managing the temple affairs and possed and enjoyed the suit property but not possessed and enjoyed the same independently uninterruptedly as he claimed in the written statement. Therefore, the Court below rightly rejected claim of adverse possession which needs no interference.

7. Another objection raised by the defendants is that Muthusamy Pillai enjoyed 2.50 acres and the remaining 1.10 acre was enjoyed by the Rathinasamy Pillai who is non other than close relative of Muthusamy Pillai. Now, the respondent 2 and 3 in first appeal and the appellant herein claiming that as per the order passed by the settlement Tahsildar Patta was granted in their name by considering Muthusamy Pillai possession and right over the property for an extent of 0.99 cents in S.No.



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4/3 an extent of 0.99 cents by its order dated 27.03.2000 therefore he claimed that he is owner of the said extent and denied the temple's right over the said land. On perusal of order passed by the settlement Tahsildar dated 27.03.2000 it was issued during the pendency of suit proceedings pertaining to the possession of the suit property. Before the settlement Tahsildar one Chennikrishan filed an application claiming patta for an extent of 2.40 acres of land. During the suit proceedings one Thaalaimai Iyeer son of Narasima Iyer filed an application to implead himself as party to the proceedings. In that enquiry both the said petitioners claiming that Rajammal who is close relatives of the said petitioner was given the said land as monetary benefit in order to perform the pooja for said temple till date the said property was enjoyed by the petitioners and the patta also granted in favour of the said Rajammal. Thereafter, the said Rajammal died, she was maintained by the petitioner since she has no legal heirs before her death she executed unregistered Will dated 15.08.78. Hence, after demise of the Rajammal the petitioners as legal heirs enjoyed the property based on the legal heir certificate the said fact was proved. Further they claimed that Muthusamy Pillai has no right over the suit property. In fact, Rajammal alone heridatary Pujari for the said Temple from the year 1966 onwards in



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order to grab the property, Muthusamy Pillai filed suit in O.S No. 1227 of 1992 thereby petitioners prayed to issue patta in their favour. On the other side, Temple authorities submitted their objections stating that O.S No. 1227 of 1992 pending before the Civil Court land also stated that property was classified as Devyam the petitioner has no right over it. But, during the enquiry nobody appeared on the side of the temple authorities despite giving several opportunities only on hearing petitioners and their objections other records Settlement Tahsildar granted patta by considering the possession of the petitioner as well as the legal heirs of the Muthusamy Pillai also not raised any objection to grant patta in favour of the petitioner. Accordingly patta was granted holding that one Rajammal was hereditary trustee to the Temple and as per the Will present petitioners perfected right over the property. Accordingly, Survey No. 4/3 for the extent of 0.99 cents Ryot wari patta was issued in favour of the legal heirs of the Chennikrishnan, One of the legal heir Sathyanarayanan is first appellant herein.

8. On perusal of order passed by the Settlement Tahsildar dated 27.03.2000, which was marked before the first appellate court along with impleading applications, it clearly reveals that during the pendency of the suit proceedings and in the absence of the temple authorities the Revenue



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authorities passed order in spite of that objection raised by the temple authorities in the said enquiry proceedings. Furthermore, temple authorities filed a suit to declare the title over the suit property and Civil court only having right to decide title of the property. While that being so, the Settlement Tahsildar granted patta in favour of the one Sathanarayanan and Gopal as such is non est in law. Thereby issuance of the patta dated 27.03.2000 is null and void. It is settle proposition that revenue authorities have no right to declare title of the property only civil Court alone having jurisdiction. Furthermore, during the pendency of the suit proceedings the patta was granted which clearly shows that both were colluded together and going against the interest of the temple which was rightly appreciated by the Court below. Furthermore, Rajammal Will was not proved before any of the Court of law without which said Sathiyarayanan and Gopal has no right to claim over the property. Even there was alleged Will said to be executed by the Rajammal but she has no right over the said property. Further it reveals that property was assigned in favour of the Temple and one Muthusamy Pillai who manage the Temple affaris as non-heridatary trustee, after new amendment Act Executive Officer taken over the temple affairs and



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Muthusamy Pillai is bound by the Act. During the pendency of suit, present appellants obtained patta who have neither title nor their predecessor in title, after the new Act, temple is entitled to re-agitate the matter afresh cause of action of the present case arose after amendment. Accordingly, questions of law 1, 2 and 3 are answered.

9. Accordingly, appeal is dismissed. Further, the patta issued by the Tahsildar dated 27.03.2000 is liable to be set aside since because during the pendency of suit proceedings appellants illegally obtained patta. Therefore, Patta dated 27.03.2000 granted in favour of the appellants is set aside in respect of S. No.3, 4/1 and 4/2 and they are deemed to be an encroacher's thereby Temple is entitle to proceed against the defendant's as well as respondents 2 and 3 in first appeal through E.P proceedings. No cost. Consequentially, connected miscellaneous petitions are closed.

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T.V.THAMILSELVI,J.



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To

1. The I Additional District Judge, Salem.
2. The Principal District Munsiff, Salem.
3. The Section Officer,
V.R Section,



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