



S.A.No.134 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.11.2022

PRONOUNCED ON: 03.01.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.134 of 2017
and C.M.P.No.2852 of 2017

1. S.Kalavathi
2. M.Srinivasan

...Appellants

Vs

Arulmighu Sri Grama Devi Mariamman Koil
Represented by

1. Kumar
2. Rajareswari
3. Vanithia
4. Branidharan

... Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree made in A.S.No.40 of 2016 on the file of the Principal Subordinate Judge at Cuddalore dated 07.11.2016 reversing the judgment and decree made in O.S.No.274 of 2013 on the file of the Additional District Munsif Court, Cuddalore dated 20.04.2016.



S.A.No.134 of 2017

For Appellants : Mr.V.Ayyadurai, Senior Counsel
for Mr.V.B.Perumal Raj

For Respondents : Mr.R.Gururaj

JUDGEMENT

The defendants are the appellants before this Court, challenging the judgment and decree of the learned Principal Subordinate Judge, Cuddalore in A.S.No.40 of 2016 in and by which, the learned Judge had reversed the judgment and decree of the Additional District Munsif, Cuddalore in O.S.No.274 of 2013. The facts are briefly set out herein below so as to appreciate the issue on hand and the parties are referred to in the same litigative status as before the trial Court.

2. Plaintiffs' case:

(i) The suit O.S.No.274 of 2013 has been filed by the plaintiffs for recovery of possession of the suit property within the time stipulated by the Court failing which to effect delivery through Court.



S.A.No.134 of 2017

WEB COPY

(ii) The property in question is a site measuring 1500 sq.ft in T.S.No.644, Mattupatti Street, Cuddalore Town (The building belongs to defendants) and is bounded on the:

South by : Drowpathi Amman Koil occupied by
Rathinasabapathi Pathar.

North by : Mattupatti Street.

West by : property of plaintiff temple occupied by Sekar

East by : Property of Nagaraj

(iii) The case of the plaintiffs is that the temple is over 150 years old and was founded by their ancestor one Kuppusamy Chettiar. The said Kuppusamy Chettiar had put up the temple and was living in a portion of the said property. The deity, which is installed in the temple is the Goddess Mariamman, who is locally known as "Grama Devi Mariamman". Kuppusamy Chettiar had one son Balu Chettiar, who in turn, had a son Vaithialinga Chettiyar, who once again had an only son, Arunachalam. The said Arunachalam had two children, a son, Velu and a daughter, Meenakshi



S.A.No.134 of 2017

WEB COPY

Ammal. The said Meenakshi Ammal had a daughter, Sakuntala and the plaintiffs are the sons of Sakuntala. The plaintiffs would submit that the said Meenakshi Ammal, though being a lady, was performing the poojas as her predecessors had done and after her demise, the plaintiffs are in possession of the property and the 2nd plaintiff is performing the pooja by himself. The property around the temple is also owned by it. Within the precincts of the temple, buildings are situate which are occupied by the plaintiffs 1 and 2. Apart from which, there are other houses, which have been let out to tenants.

(iv) The plaintiff would further submit that all the occupants of the buildings in and around the temple, except the plaintiffs were tenants of the plaintiffs' temple. The suit property was a vacant property, in which, the tenants had constructed the building. The houses, which are occupied by the defendants and one Sekar belonged to the temple. The suit property was originally tenanted to one Jaganathan. He had demolished the building thereon and put up a new construction. It is the further case of the plaintiffs that the said Jaganathan was paying rent in respect of the lands to the temple.



S.A.No.134 of 2017

WEB COPY

Thereafter, the defendants had purchased the suit property from Jaganathan under a Sale Deed dated 29.08.1988 and attorned tenancy in favour of the temple.

(v) While so, on 20.04.1992, the first defendant had a received a notice from Chinnaiyan, S/o.Lakshmi stating that the property belonged to his mother, Rajalakshmi Ammal and that the said Jaganathan was his tenant. Rajalakshmi Ammal had filed a petition for evicting the said Jaganathan in R.C.O.P.No.60 of 1998. The rent control petition was dismissed as against which an appeal was filed in R.C.A.No.61 of 1969, which was allowed by the appellate Authority. Thereafter, the tenant had filed C.R.P.No.2083 of 1973. This revision was ultimately compromised. In the aforesaid notice dated 20.04.1992, the plaintiff questioned the purchase by the first defendant. On 25.04.1992 the first defendant had sent a reply denying the title of Rajalakshmi and admitting the title of the temple. The plaintiffs would submit that they are totally unaware about the rent control proceedings initiated and they would seek to have this Court pass the decree as prayed for.



S.A.No.134 of 2017

WEB COPY

3. Written statement of defendants:

(i). Per contra, the defendants had filed a written statement *inter-alia* contending that there was no cause of action for the suit. The name of the temple is Mariammal temple. It is their case that one Rajalakshmi, W/o.Lakshmana Naidu is the hereditary trustee for the temple and the suit temple was in the administration of Naidu Community people. One Jegannatha Reddiar was the tenant in the suit property under the said Rajalakshmi in the year 1960 and since there was a willful default on her part, the said Rajalakshmi filed a RCOP No.60/68 and the same was dismissed on 21.08.1969, against which, R.C.A.No.61/69 was preferred and the same was allowed on 28.08.1973. In CRP No.2085/1972, there was a compromise arrived at between the parties. Subsequently, the said Rajalakshmi died in the year 1977. Since there was a vacuum in the hereditary trustee, the H.R and C.E Department appointed Kannan, Pugazhendhi and Panneerselvam as the trustees.



S.A.No.134 of 2017

WEB COPY

(ii) The said Jegannatha Reddiar has put up a superstructure in the suit property after obtaining the plan approval from the Municipality on the Trustees recommendation. The said Jegannatha Reddiar obtained electricity service connection and water connection from the concerned authorities and he was enjoying the same. The said Meenakshi Ammal was doing service in the temple and doing the household work for the then Poojari Sivalingam who was permitted to occupy the said property. After his death, the said Meenakshi Ammal continued in possession of the property. As nobody was appointed as the trustee by the HR and CE Board, she continued to enjoy the property of the temple without any hindrance. Since the daughter of the said Meenakshi Ammal, Sakuntala was married and had moved to another place, her sons, the plaintiffs 1 and 2 were being taking care of by their grandmother, Meenakshi Ammal. The 2nd plaintiff started claiming himself to be the Poojari of the temple. He had collected the money in the name of the temple and misappropriated the money for his luxurious life. When the 1st defendant had objected to the act of the plaintiffs, they had set up a claim that the temple was built by their ancestor. They also attempted to change the



S.A.No.134 of 2017

WEB COPY

name of the temple to Arulmighu Grama Devathai Mariamman Temple. All these acts were done to misappropriate the temple funds. They had also created rent receipts and managed to get one signed by the 1st defendant in favour of the plaintiff which has been misused by him.

(iii) The 2nd defendant purchased the property in the name of the 1st defendant, his wife on 29.08.1988 from the said Jegannatha Reddiar. The revenue records and other public outgoings have been changed in the name of the 2nd defendant. They are remitting the municipality electricity charges and water charges. The defendants were paying Rs.50/- per month towards the maintenance of the temple. The plaintiffs have prepared the bogus receipts as if they are the owners of the temple properties. The 1st defendant has spent several lakhs of rupees for the maintenance of the house in the suit property. Since the 1st defendant is enjoying the suit property even from the year 1988, the 1st defendant has perfected title to the suit property by adverse possession. Even if there is any demand from the plaintiffs against the defendants, the plaintiffs are estopped from raising those claims, since the property belongs



S.A.No.134 of 2017

WEB COPY

to the HR & CE Department. The plaintiffs issued a notice dated 20.04.1992 to the defendants as if the suit property belonged to their mother and the defendants issued a reply to that effect.

(iv). The defendants would further submit that they are residing in the house of their son from the year 2013 to take care of their grandson, who is sick. Therefore, the house in the suit property was rented out for a sum of Rs.150/- per month. The 1st plaintiff has executed a forged sale deed in respect of 2400 sq.ft belonging to the temple in the name of his wife Thamizharasi. The ancestors of the plaintiffs were not concerned with the management of the temple. The said Meenakshi Ammal was never managing the temple. Hence, they sought for dismissal of the suit.

4. Trial Court and Appellate Court:

(i) The learned trial Judge on considering the evidence on record had framed the following issues:



S.A.No.134 of 2017

“1. Whether the suit property belongs to the plaintiff temple?

2. Whether the suit is hit by Order 2, Rule 1 CPC?

3. Whether the plaintiff is entitled to the relief as prayed for?

4 Whether the plaintiff is entitled to the enquiry into future damages?

The following additional Issues were framed:

(1) Whether the plaintiffs are having locus-standi to file the suit?

(2) Whether the suit is maintainable?

(3) Whether the plaintiff temple is a private temple belongs to the plaintiffs' family?

(4) Whether the defendants are estopped from denying the plaintiffs' title as landlord?

(ii). On the side of the plaintiffs, 5 witnesses were examined as P.W1 to P.W5 were examined and Exs.A1 to 24 were marked and on the side of the defendants, the 2nd defendant was examined as D.W1 and Exs.B1 to B22 were marked.



S.A.No.134 of 2017

WEB COPY

(iii). On verifying the evidence and hearing the arguments, the learned Additional District Munsif, Cuddalore was pleased to dismiss the suit. Aggrieved by which, the plaintiffs had filed an appeal in A.S.No.40 of 2016 on the file of the Principal Subordinate Court, Cuddalore. The lower Appellate Court had considered the evidence and relying upon the cross examination of D.W1 come to the conclusion that the defendants have admitted the ownership of the plaintiff's temple and also that the administration of the temple belongs to the plaintiffs. The learned Judge had considered the evidence of D.W1 that the temple was taken over by the H.R and C.E Department, after the death of Rajalakshmi in the year 1977. The learned Judge had further observed that the defendants have clearly and categorically admitted that the tenants around the suit property were all paying their rents to the temple. The learned Judge held that the defendants have not been able to establish the defense that the property belonged to H.R. and C.E Department, particularly, when the defendants have themselves paid the rents to plaintiffs' temple. Ultimately, the lower appellate Court had reversed the judgment and decree passed by the trial Court and allowed the



S.A.No.134 of 2017

first Appeal. Challenging the same, the defendants have preferred this appeal.

5. Substantial questions of law:

This second appeal has been admitted on the following substantial questions of law:

“(i). Whether the reversing judgement and decree of the lower Appellate Court without considering the conclusion of Trial Court that the suit has framed is not maintainable for want of seeking declaratory relief and evidentiary value of festival phamplets marked as Ex.A7 to Ex.A17 cannot establish title and right of plaintiff over the suit temple and its properties including the suit premises constitute error of law warranting exercise of power U/s.100 of CPC?

(ii). Whether the Judgment and decree of the Lower Appellate Court suffer from serious legal infirmities such as wrongly throwing entire burden of proof of the defendants. Presumption as to official proceedings and previous litigation etc., constitute error of law rendering the same invalid and unsustainable?



S.A.No.134 of 2017

WEB COPY

(iii). *Whether the reversing Judgment and decree of the Lower Appellate Court amount to failure to exercise Appellate power for want of considering the finding and conclusion of Trial Cou recorded on the issue of Order II Rule 1; oral evidences of PW1 to PW5; Maintainability of suit etc?*

6. Submissions:

(i) Mr.V.Ayyadurai, learned Senior Counsel for the appellants at the outset would submit that the suit filed only for recovery of possession and damages without seeking the relief of declaration is not maintainable and in support of the said argument, he would rely upon the judgments reported in ***(2008) 4 SCC 595 [Anathula Sudhakar Vs.P.Buchi Reddy (Dead) by Lrs. and others*** with particular reference to paragraph No.21 and ***2021 SCC Online SC 674 [T.V.Ramakrishna Reddy Vs M.Mallappa and Another].*** The learned senior counsel would submit that the plaintiffs have come forward with the contention that the property had been leased out on a monthly rent of Rs.50/-. The learned senior counsel would submit that the plaintiffs have not established that the temple belongs to the plaintiffs and is a



S.A.No.134 of 2017

WEB COPY

private Trust. Ex.B8 is the Sale Deed under which, the defendants had purchased the suit land. The suit land has been described as the property of the temple and not the property of the plaintiffs. The learned senior counsel would further submit that the trial Court had clearly opined that the ownership cannot be decided on the basis of the tax receipts-Ex.B22, which have been submitted. The plaintiffs have not been able to establish that they are in management of the temple and therefore, the very locus for filing the suit was questioned. Further, although the defendants had categorically denied that the temple belongs to the plaintiffs' family and it is their ancestral property, the plaintiffs have not proved the same. The learned senior counsel would further submit that the lower appellate Court has not given any reasons as to why they disagreed and overturned the judgment and decree of the trial Court, which is *sine qua non* as per the provisions of Order 41 Rule 31 of C.P.C. He submit that this is a procedural illegality, which goes to very root of the matter. He would rely upon the judgment of the Hon'ble Supreme Court reported in **2017 (1) MWN (Civil) 104 [Laliteshwar Prasad Singh and Ohters Vs.S.P.Srivastava]**. He would further submit that the lower



S.A.No.134 of 2017

appellate Court has failed to appreciate that the defendants have perfected title by adverse possession, particularly, when it is an admitted fact that the building, which is constructed upon the land belongs to the defendants. Therefore, he would seek to have the judgment and decree of the trial Court reversed.

(ii). Per contra, Mr. R.Gururaj, learned counsel appearing on behalf of the plaintiffs would submit that admittedly, the defendants are only tenants and a tenant cannot question the title. The defendants cannot also plead an adverse possession, since they have come into possession of the property only as tenants, even according to their case. In support of the said contention that a tenant cannot question title, he would rely upon the judgment of the Hon'ble Supreme Court reported in *AIR 1966 SC 629(1) [Atyam Veerraju and Others Vs Pechetti Venkanna and Others]*. *AIR 1976 SC 2335 [Sri Ram Pasricha Vs Jagannath and Others]*. He would further submit that there is no record to show that Rajalakshmi Ammal was the title holder of the suit properties. Although the defendants would plead that the temple and the



S.A.No.134 of 2017

WEB COPY

property belonged to the Naidu Community, there is no explanation as to how the rent control proceedings were initiated by Rajammal in her individual capacity. That apart the land has been sold to Jaganathan under Ex.B8 only by the plaintiffs' temple. He would further submit that a perusal of D.W1's cross examination would clearly prove that the plaintiffs are in administration of the temple. He would also submit that in one of the rental receipts marked as Exs.B7 the signature of the defendants is affixed and the defendants are therefore estopped from denying that he is not tenant under the plaintiffs' temple. In this regard, he would rely on the judgment reported in *AIR 1971 SC 2548 [Dattatraya Vs.Rangnath Gopal Rao Gopalrao Kawathekar and Others]*

7. Discussions:

(i) The suit in question is filed by the temple represented by its Trustees to recover the possession of the property from the tenant. There is absolutely no quarrel about the fact that the land on which the superstructure is constructed belongs to the plaintiff-Temple. It is only the management of



S.A.No.134 of 2017

WEB COPY

the temple, which is in question. The trustees of the plaintiff-Temple would submit that the suit temple is a private temple and is in their possession for several decades. The defendants on the other hand would submit that the temple was founded by one Kuppusamy Chettiar. The maternal great grandfather of the trustees one Arunachalam was the descendant of the said Kuppusamy Chettiar. Arunachalam had a son and a daughter. His daughter, Meenakshmi Ammal is the maternal grandmother of the trustees and her daughter, Sakuntala is the mother of the trustees. They would contend that Meenakshi Ammal though being a woman had managed the temple and get the poojas done, after her, the plaintiffs were taking charge of the temple's property and are in possession and enjoyment of the same. They would further submit that the site on which the suit building is constructed was leased out to one Jegannatha Reddiar, who had thereafter constructed a house upon the said land. The 1st defendant is the purchaser from the said Jaganatha Reddiar. The plaintiffs would submit that the 1st defendant had initially paid the rents and thereafter had committed default from the month of April 2013 onwards, which constrained to file the suit.



S.A.No.134 of 2017

WEB COPY

(ii). The defense of the defendants to the suit is that the suit temple belonged to the Naidu Community and one Rajalakshmi was the hereditary trustee of the temple, who had inducted the said Jaganatha Reddiar as the tenant. It appears to be a contention that the said Rajalakshmi had initiated the rent control proceedings which went in her favour and in the appeal filed, the parties had compromised their disputes which has been filed as Ex.B4. Therefore, both the parties however would not contend that the property belongs to the H.R and C.E Department, although the defendants would submit that since there was a vacuum regarding the trusteeship, the Board had appointed a “Fit Person”. The defendants would submit that they have perfected title to the property, as they have been in possession for the same for very long time. Therefore, the crux of the arguments is that

- a) *The site belongs to the plaintiff-temple.*
- b) *The plaintiffs had leased the property to Jaganatha Reddiar, the vendor of the defendants and even the vendor paid the rent for the months of March 2013 and*



S.A.No.134 of 2017

April 2013 and signed the rent receipts filed as Ex.A16.

Thereafter, there is no payment, which constrained the plaintiffs to approach the Court.

c) The defendants claimed to have purchased the superstructure from the said Jaganatha Reddiar in the year 1988.

d) The defendants would claim that the said Rajalakshmi Ammal was the trustee and would rely upon the rent control proceedings and compromise to substantiate the same.

(iii). A perusal of the compromise which has been marked as Ex.B4 would show that the document has not been signed by any party. Therefore, no credence can be given to the same. The original of the said alleged compromise has been marked to prove that they have been in management of the temple, however none of the parties to the proceedings or their counsels' have signed the same. Further, the plaintiffs have marked Exs.A7 to A17,



S.A.No.134 of 2017

WEB COPY

no doubt, the documents have been filed subject to objections, however, the said documents have not been rebutted by the defendants. These documents are public notices for the various temple functions. Exs.A9 to A12 are the public notices issued for the Kumbabishekam, Aadi Thiruvizha etc., they are of the years, 1995, 1997, 2008, 2011, 2013 and 2014 respectively. In all these documents, Kannappan and Kumar, the 1st plaintiff are shown as the hereditary trustee and poojari. No such document had been filed on the side of the defendants. Further, as rightly pointed out by the learned counsel for the plaintiffs, the defendants who admit the fact that the property belongs to the plaintiff-Temple cannot plead adverse possession. Therefore, the argument that the 1st defendant had perfected title has to necessarily be rejected. That apart, the plaintiffs have been able to show proof of their managing the property and Ex.A16 which is no doubt marked subject to objections would still contain a receipt signed by the 1st defendant which would clearly go to show that the 1st defendant was a tenant under the 1st plaintiff-temple. Admittedly, the plaintiffs have not been paying the rents from the year 2013 onwards. Therefore, the plaintiffs having proved their

20/24



S.A.No.134 of 2017

WEB COPY

management of the temple are entitled to the relief of recovery of possession.

The argument that the plaintiffs have to declare their title cannot be pressed into service, since the 1st defendant admittedly is only a tenant and a tenant cannot question the title of the landlord.

(iv). In the judgment of the Hon'ble Supreme Court reported in ***AIR 1976 SC 2335 [Sri Ram Pasricha Vs Jagannath and Others]***, the learned Judges had held as follows:-

“15.....The tenant in such a suit it estopped from questioning the title of the landlord under [section 116](#) of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such.”



S.A.No.134 of 2017

The signature in Ex.A6 would also reinforce the claim of the plaintiffs that the defendants had attorned tenancy in favour of the plaintiffs.

(v). Therefore, the substantial question of law (i) has to necessarily be answered in favour of the plaintiffs, since the suit framed is one of a landlord seeking recovery of possession from the tenant, who has committed a default in payment of rents. The substantial question of law No.(ii) has to also be answered against the defendants, since the appellate Court had considered the documents filed on the side of the plaintiffs to set aside the judgment and decree of the trial Court and while doing so had also held that the defendants, who had come forward with the specific case have not been able to prove the same. The plaintiffs in the instant case have not succeeded on the basis of the defendants' evidence being lacking but on the ground that they have failed to prove the management of the temple and the plaintiffs have proved their management of the temple to which the site belongs. The appellate Court had also given reasons for setting aside the judgment and decree of the trial Court. Therefore, I see no reason to interfere with the



S.A.No.134 of 2017

WEB COPY

judgment and decree of the Appellate Court. Accordingly, the second appeal is dismissed and the judgment and decree of the appellate Court is confirmed.

No costs. Consequently, connected miscellaneous petition is closed.

03.01.2023

Index : Yes/No

Speaking order/non-speaking order
srn

To

1. The Principal Subordinate Judge at Cuddalore
2. The Additional District Munsif Court, Cuddalore
3. The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



S.A.No.134 of 2017

P.T.ASHA, J.,

srn

S.A.No.134 of 2017
and C.M.P.No.2852 of 2017

03.01.2023

24/24