



S.A.No.1754 of 1997

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1754 of 1997
and
C.M.P.No.17390 of 1997

- 1.Pachamal (died)
- 2.Narayana Vadivu Ammal (died)
- 3.S.A.C.Syed Mohammed (died)
- 4.N.K.Muthu Ashiya Ummal Haja

(Appellants 3 and 4 are impleaded vide court order dated 28.11.2017 made in M.P(MD) No.2 of 2011)

- 5.Nuskiya
- 6.Sajitha
- 7.Omer Abdul Kader
- 8.Mohamed Faizal

...Appellants

(Appellants 5 to 8 are brought on record as legal representatives of the deceased third appellant vide court order dated 16.02.2022 made in C.M.P(MD) No.6360 of 2021)

-Vs-



S.A.No.1754 of 1997

WEB COPY

Sri Balavinayagar (Deity),
Koil through its
Executive Officer,
Sivan Koil Street,
Tuticorin.

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the learned Principal District Judge, Tuticorin, passed in A.S.No.56/95 dated 15.09.1997 reversing the judgment and decree of the learned Principal District Munsif, Tuticorin passed in O.S.No.469 of 1993, dated 21.09.1994.

For Appellants : Mr.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates
For Respondent : Mr.M.Muthu Geethayan

JUDGMENT

The plaintiffs are the appellants 1 and 2. The suit is for declaration that the notice dated 29.09.1993 issued by the respondent is illegal and void and also for injunction restraining the respondent from taking any further action against the appellants 1 and 2 in respect of the suit property. The suit was decreed by the



S.A.No.1754 of 1997

WEB COPY

trial Court and the appeal filed by the respondent was allowed by the first appellate Court by reversing the findings of the trial Court. Therefore, the appellants are before this Court.

2. According to the appellants 1 and 2/plaintiffs, the suit property has been in possession and enjoyment of the first appellant from the year 1960 onwards. The first appellant is the husband of the second appellant. The second appellant had put up a house and two shops in the suit property. It was claimed by the appellants 1 and 2 that the patta for the suit property was issued in the name of the first appellant on 20.06.1981 under Ex.A.2. It was further averred that the notice mentioned above was issued by the respondent claiming right over the suit property and directing the first appellant to enter into a lease arrangement with the respondent temple and it was also mentioned in the notice that in case of first appellant failure to enter into a lease arrangement, eviction proceedings would be initiated against him. Therefore, the appellants 1 and 2 were constrained to file the suit for above said reliefs.



S.A.No.1754 of 1997

WEB COPY

3. The respondent temple filed a written statement and contended that the Commissioner of HR & CE Department directed it to take action against the persons, who had encroached the temple property and consequently, a notice was issued to the first appellant asking him to enter into a lease arrangement or otherwise, face eviction proceedings. It was specifically contended by the respondent that the respondent temple was under the administration of the first appellant till the appointment of Executive Officer and abusing his position as a trustee/administrator, the first appellants managed to get patta in his name. It was contended that the respondent temple has got right over 3912 square feet of land in T.S.No.1400/2 including the suit property.

4. Before the trial Court, the first appellant was examined as P.W.1 and the Municipal Surveyor of Tuticorin Municipality was examined as P.W.2. On behalf of appellants 1 and 2, 14 documents were marked as Ex.A.1 to Ex.A.14. The Executive Officer of the respondent temple was examined as D.W.1 and 7 documents were marked on behalf of the respondent as Ex.B.1 to Ex.B.7.



S.A.No.1754 of 1997

WEB COPY

5. The trial Court found that 3912 square feet of lands in Survey No. 1400/2, which was given to the respondent temple under Ex.B.1 was cancelled and the property was resumed by the Government in the year 1974 as per the remarks found in Ex.A.13 and subsequently, the Government assigned the suit property to the first appellant under Ex.A.2. Therefore, the trial Court came to the conclusion that the suit property had been in lawful possession of the appellants 1 and 2 and decreed the suit granting a decree for declaration and injunction as prayed for. Aggrieved by the same, the respondent temple filed the first appeal in A.S.No.56 of 1995, on the file of Principal District Munsif Court, Tuticorin. The first appellate Court reversed the findings of the trial Court and found that the first appellant by abusing his position and influence, created bogus documents, as if the Government cancelled Ex.B.1 and issued patta in the name of the first appellant after resuming the land. Therefore, the first appellate Court allowed the appeal and dismissed the suit. Aggrieved by the same, the appellants 1 and 2/plaintiffs are before this Court.

6. At the time of admission, the following substantial question of law was framed by this Court:



S.A.No.1754 of 1997

WEB COPY

“Whether the finding of the lower appellate Court is vitiated by reason of the erroneous view that Ex.A.13 cannot be relied upon in the absence of production of the original order as mentioned in Ex.A.13?”

7. Elaborating the substantial question of law framed at the time of admission, the learned Senior Counsel appearing for the appellants submitted that the respondent temple claimed right over the suit property only as per the order passed under Ex.B.1, wherein a larger extent of land in the suit survey number including the suit property was given to the respondent temple for a specified purpose. In the year 1974, the order passed in favour of respondent temple under Ex.B.1 was cancelled for violation of the condition mentioned in the order and the Government resumed the lands. After resuming the lands, the classification of the property was changed to natham and in the year 1981, patta for the suit property was given to the first appellant, under Ex.A.2. The learned Senior Counsel by relying on the endorsement found in Ex. A.13, submitted that the order alienating the property in favour of the respondent temple was cancelled by the Government for violation of the condition mentioned in the order and therefore, after 1974, the respondent temple had no title over suit property and



S.A.No.1754 of 1997

WEB COPY

consequently, issuing notice directing the first appellant to enter into the lease arrangement, is invalid in the eye of law.

8.The learned Senior Counsel further submitted that the possession of the appellants over the suit property is an admitted fact and therefore, the respondent shall not be allowed to interfere with the possession of the appellants except by due process of law in pursuance of the notice challenged in the suit. The learned counsel by relying on the judgment reported in **(2020) 11 Supreme Court Cases 242**, in the case of **Partap Singh(dead) through Legal Representatives and others vs Shiv Ram (dead) through Legal representatives** submitted that there is a general presumption in favour of the Revenue documents and the same can be rebutted only in case of fraud entry or surreptitious entry or without following the procedures prescribed for entry. In the case on hand, the appellants by producing Ex.A.13 proved before the Court that the alienation made by the Government in favour of the temple was cancelled and the property was resumed by the Government. The same is presumed to be correct unless the respondent temple proved that the alleged cancellation order was vitiated by fraud or it was passed surreptitiously or it was passed without following the procedures



S.A.No.1754 of 1997

prescribed under law. It is submitted by the learned Senior Counsel that in the absence of any evidence on the part of the respondent temple that the cancellation order against the respondent temple was passed surreptitiously without following the procedures, the appellants are entitled to succeed.

9. The learned counsel for the respondent would submit that the first appellant acted as a trustee of the temple for nearly 30 years before appointment of the Executive Officer to the respondent temple in the year 1993 and he, by misusing his fiduciary capacity as a trustee, obtained certain entry in his favour and the same is not binding on the temple. The learned counsel has taken this Court to the evidence of P.W.1 to substantiate his contention that the first appellant acted as a trustee of the temple for nearly 30 years before the appointment of the Executive Officer in the year 1993.

10. Heard the arguments of the the learned Senior Counsel for the appellants and that of the learned counsel for the respondent. Perused the typed set of papers and other records.



S.A.No.1754 of 1997

WEB COPY

11. It is seen from Ex.B.1 that a larger extent of land in suit survey number was given to the respondent temple in the year 1937. From the remarks entered in Ex.A.13, Town Survey Field Register, it is seen that the alienation made by the Government in favour of the respondent temple was cancelled for violation of condition mentioned in the alienation order and the property was resumed by the Government in the year 1974. Subsequently, the portion of the said land, namely the suit property was assigned to the first respondent, under Ex.A.2. Even though the appellants have not produced the original cancellation order, dated 28.04.1973, cancelling the alienation in favour of the respondent temple by the Government dated 24.08.1937, the entry made in Town Survey Field Register, which is marked as Ex.A.13, would make it clear that the alienation of the property in favour of the respondent temple was cancelled by the Government. Ex.A.13 is a public record certified by the Commissioner of Municipality and general presumption as to its genuineness, is available. Though it is not clear whether the cancellation was done after issuing proper notice to the respondent temple, in view of the general presumption attached to the official acts, there cannot be any impediment in presuming cancellation of the alienation in favour of the respondent temple. Therefore, when notice was issued by the respondent



S.A.No.1754 of 1997

WEB COPY

temple directing the first appellant to enter into lease arrangement with the temple, in the light of Ex.A.13 and Ex.A.2, the temple did not possess any right to issue such a notice. Therefore, the appellants are entitled to succeed in his prayer for a declaration that the notice issued by the respondent temple, is invalid.

12. As far as possession of the suit property is concerned, even as per the admitted case of the respondent temple, the appellants are in possession of the suit property by putting up construction thereon. When the appellants are in settled possession of the suit property, their possession is to be protected and they are entitled to get a limited injunction restraining the respondent from disturbing their possession except by due process of law. It would be appropriate to refer to the observation of Apex Court in this regard in Rame Gowda Vs M.Varadappa Naidu reported in 2004(1) CTC 769, where it was held as follows:-

“8.It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner, who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the



S.A.No.1754 of 1997

WEB COPY

rightful owner, the rightful owner shall have to take recourse of law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram v. Delhi Admn., Puran



S.A.No.1754 of 1997

WEB COPY

Singh V.State of Punjab and Ram Rattan v. State of U.P. The authorities need not be multiplied. In Mushi Ram case it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner.”

13. In view of authoritarire pronouncement by Apex Court, it is settled law, in India, even the original owner cannot take law into his own hands and try to dispossess the person in settled possession of the property forcefully. Therefore, the appellants are also entitled to limited injunction to protect their possession.

14.In view of the discussion made earlier, the question of law raised at the time of admission is answered in favour of the appellants by applying general presumption available to the official acts. Hence, I hold that the appellants are entitled to declaration that notice issued by the respondent temple is not valid,



S.A.No.1754 of 1997

WEB COPY

when there is a cloud over its title. The appellants are also entitled to limited injunction restraining the respondent from interfering with their possession except by due process of law. Though I hold that the appellants are entitled to succeed, the said conclusion is reached based on the entry found in Ex.A13-Town Survey Field Register regarding the cancellation of the alienation in favour of the respondent temple. It is always open to the respondent temple to challenge the said cancellation order on any valid grounds acceptable to law. It is also open to the respondent temple to establish their title and recover the possession from the appellants by following due process of law. With these clarifications, this second appeal stands allowed.

15. In nutshell,

(i) The second appeal is allowed by setting aside the judgment and decree dated 15.09.1997 passed by the learned Principal District Judge, Tuticorin;

(ii) The judgment and decree passed by the learned Principal District Munsif, Tuticorin, in O.S.No.469 of 1993, dated 21.09.1994 is restored with a modification that the respondent temple is restrained from taking any action



S.A.No.1754 of 1997

WEB COPY

pursuant to the notice dated 29.09.1973 except by due process of law;

(iii) It is made clear that it is always open to the respondent temple to establish its title and recover possession from the appellants by following due process of law; and

(iv) In the facts and circumstances of the case, there will be no order as to costs.

(v) Connected Civil Miscellaneous Petition is closed.

09.01.2023

NCC : Yes/ No
Index : Yes / No
Internet : Yes / No
cp

To

- 1.The Principal District Judge, Tuticorin,
2. The Principal District Munsif, Tuticorin
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.No.1754 of 1997

S.SOUNTHAR, J.

CP

S.A.No.1754 of 1997

09.01.2023