



A.S.Nos.423 & 925 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2023

PRONOUNCED ON : 08.01.2024

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

A.S.Nos.423 & 925 of 2012
and M.P.Nos.1 & 1 of 2012

A.S.No.423 of 2012 :-

1. The Government of Tamilnadu,
rep. by its Secretary to Government,
Hindu Religious & Charitable
Endowment Department,
Fort St. George,
Chennai – 600 009.

2. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

...Appellants

Vs.

1. G.Nanda
2. The Executive Officer,
Arulmigu Agastheeswara Prasanna
Venkateswara Perumal Devasthanam,
Nungambakkam,
Chennai – 600 034.



A.S.Nos.423 & 925 of 2012

3. The Corporation of Chennai,
Rep. by its Commissioner,
Ripon Buildings,
Chennai – 600 003.

4. Chokkattan Salai Kudiyiruppor
Nala Sangam,
Rep. by its President
Dheena Dayalan,
New No.7, Chokkattan Salai,
Nungambakkam,
Chennai – 600 034.

...Respondents

PRAYER: Appeal Suit filed under Section 96 of C.P.C., to set aside the judgment and decree passed in O.S.No.11029 of 2010 dated 04.10.2011 on the file of the Additional District Judge, Fast Track Court No.1, Chennai.

For Appellants : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR&CE)

For Respondents

For R1 : Mr.B.Divakaran
For R2 : Mr.A.K.Sriram, Senior Counsel
For M/s.A.S.Kailasam & Associates
For R3 : Mr.Bharath Gowtham
For Ms.K.Ashwini Devi,
Standing Counsel
For R4 : Mr.P.T.Perumal

A.S.No.925 of 2012 :-

The Executive Officer,
Arulmigu Agastheeswara Prasanna
Venkateswara Perumal Devasthanam,
Nungambakkam,
Chennai – 600 034.

...Appellant



A.S.Nos.423 & 925 of 2012

Vs.

1. G.Nanda

WEB COPY

2. The Government of Tamilnadu,
rep. by its Secretary to Government,
Hindu Religious & Charitable
Endowment Department,
Fort St. George,
Chennai – 600 009.

3. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

4. The Corporation of Chennai,
Rep. by its Commissioner,
Ripon Buildings,
Chennai – 600 003.

5. Chokkattan Salai Kudiyiruppor
Nala Sangam,
Rep. by its President
Deenadayalan,
New No.7, Chokkattan Salai,
Nungambakkam,
Chennai – 600 034.

...Respondents

PRAYER: Appeal Suit filed under Section 96 of C.P.C., to allow this appeal and set aside the judgment and decree passed in O.S.No.11029 of 2010 dated 04.10.2011 on the file of the Additional District Judge, Fast Track Court No.1, Chennai.



WEB COPY



A.S.Nos.423 & 925 of 2012

For Appellant : Mr.A.K.Sriram, Senior Counsel
For M/s.A.S.Kailasam & Associates

For Respondents

For R1 : Mr.B.Divakaran

For R2 & R3 : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR&CE)

For R4 : Mr.Bharath Gowtham
For Ms.K.Ashwini Devi,
Standing Counsel

For R5 : Mr.P.T.Perumal

COMMON JUDGMENT

Both the Appeal Suits have been filed as against the Judgment and Decree dated 04.10.2011, passed in O.S.No.11029 of 2010, on the file of the learned Additional District Judge, Fast Track Court No.1, Chennai, thereby allowed the suit for declaration and injunction with cost.

2. The first respondent in both appeals is the plaintiff and the appellants and other respondents in both appeals are defendants in the suit. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.



A.S.Nos.423 & 925 of 2012

3. The suit is filed for declaration and permanent injunction.

WEB COPY The case of the plaintiff is that she is an absolute owner of the property situated at Door No.206, (old No.63) Valluvarkottam High Road, comprised in C.C.No.485, O.S.No.185, R.S.No.451/7, Block No.28, Nungambakkam Village, Chennai (hereinafter called as “the suit property”). She purchased the said property from legal heirs of one Balakrishnan, by the registered sale deed dated 30.03.1995 vide document No.482/95. After purchase, the plaintiff obtained permission for demolition and reconstruction and also paid requisite fees. Just behind the suit property, there is a vast extent of land belonging to the third defendant temple. There was encroachment by several general public by putting up pucca construction. They have also unauthorizedly formed private passage therein called Chokkattan salai. It is a private passage and it is not maintained by the Corporation of Chennai viz., fourth defendant herein. The resident of Chokkattan salai used the unauthorized private passage to reach Valluvarkottam High Road.

3.1. While being so, the encroachers have also attempted to encroach the suit property. One of the encroachers called Shanmugam



A.S.Nos.423 & 925 of 2012

filed suit before the City Civil Court, Chennai, in O.S.No.3893 of 2001 for permanent injunction as against the plaintiff thereby restraining her from putting up construction in the suit property alleging that the suit property is a temple land. Subsequently, the said suit was withdrawn by the said Shanmugam and the same was dismissed. However, they didn't allow the plaintiff to put up construction as per the planning permission. Therefore, the plaintiff lodged complaint and also approached this Court seeking police protection in CrI.O.P.No.5570 of 2002.

3.2. The encroachers also formed an association in the name and style of Chokkattan Salai Kudiyirupor Nala Sangam, who is arrayed as fifth defendant, with intention to grab the property of the plaintiff. The fifth defendant also filed writ petition in W.P.No.21231 of 2001 before this Court alleging that the suit property belongs to the third defendant temple. Further the said writ petition was dismissed as withdrawn with liberty to file suit. Even then, the plaintiff could not put up construction and filed a suit in O.S.No.6102 of 2001 as against the encroachers for injunctions. Though, the plaintiff obtained interim injunction, she could not proceed with construction and as such the plaintiff filed police



A.S.Nos.423 & 925 of 2012

protection petition in the same suit. However the concerned jurisdictional police failed to give any police protection to proceed with the construction.

3.3. Thereafter, the encroachers submitted representation before the District Collector to cancel the patta issued in favour of the plaintiff. Without considering the explanation submitted by the plaintiff, the District Collector cancelled the patta issued in favour of the plaintiff. Aggrieved by the same, the plaintiff filed writ petition before this Court in W.P.No.43723 of 2002. In pursuant to the cancellation of patta, the compound wall put up by the plaintiff was also demolished by the defendants. The fourth defendant also issued show cause notice to stop the construction. Hence the suit for declaration and permanent injunction. Originally, the suit was filed before this Court in C.S.No.110 of 2003 and thereafter by transfer, the suit was renumbered in O.S.No.11029 of 2010 by the trial Court.

4. Resisting same, the second defendant filed written statement stating that the suit property was leased out to one Rajammal by the third



A.S.Nos.423 & 925 of 2012

defendant. Thereafter, ejectment suit was filed in S.No.235 of 1927 for recovery of possession by the third defendant. By an order under Section 9 of the Tamil Nadu City Tenants Protection Act, the said land was sold to the said Rajammal and in turn, she sold out the property by two registered sale deeds. Now one Ravi and Saraswathy are the owners of the property ad measuring 857 sq.ft., in S.No.451/1 present R.S.No.451/1 and the property to an extent of 865 sq.ft., in S.No.451/1 present R.S.No.451/3, was purchased by one Ramu Chettiar and now it devolved on his son R.Krishnan. Further, the suit property is shown as Chokkattan salai and it is an access for the residents to reach Valluvarkottam High Road. Therefore, the third defendant is the owner of the suit property and the plaintiff is only encroacher.

5. The third defendant filed separate written statement stating that the temple owns large extent of land in various survey numbers in and around Nungambakkam and other areas, among which the suit property has been used as road called Chokkattan salai. There are many tenants on both sides of the road occupying the temple lands. They had constructed superstructure on temple land several years ago and are



A.S.Nos.423 & 925 of 2012

paying rent to the temple. The suit land has been used by the resident as private street and it belongs to temple. It is not under the maintenance of the Corporation of Chennai, since it is a private street belonging to the temple.

5.1. Further stated that at the eastern end of Chokkattan salai abutting village road, a piece of land measuring 1772 sq.ft., was leased out to one Rajammal by the temple and collecting rent from her. Thereafter, ejectment suit was filed in S.No.235 of 1927 as against the said Rajammal for deliver of possession. Thereafter, an application was filed under Section 9 of the Tamil Nadu City Tenants Protection Act, and ordered to sold the land to the said Rajammal. Accordingly, a registered sale deed vide document No.1552/1932 was executed to her favour. In turn, she sold out the said property by way of two sale deeds in favour of one Sivagnanambal, in respect of 857 sq.ft., vide document No. 365/1935 and another sale deed in favour of one Ramu Chettiar in respect of 865 sq.ft., registered vide document No.460/1949. The property which was purchased by Sivagnanambal was sold out to one Raju Pillai on 26.10.1953, vide document No.850/53. In turn, the said Raju Pillai sold



A.S.Nos.423 & 925 of 2012

out the property in favour of one N.Ravi and Saraswathi by the registered document No.355/99. Another portion, which was purchased by Ramu Chettiar, after his demise, his son R.Krishnan derived title over the property and he is the owner of the portion of property ad measuring 865 sq.ft.

5.2. Therefore, the land belongs to the third defendant and the patta issued in favour of the temple. The plaintiff obtained patta by relying on the patta issued to one Balakrishnan. The said Balakrishnan claimed title over the property comprised in R.S.No.451/1 by virtue of a partition deed and it is false. The suit property was used as road for the resident of Chokkattan salai. The documents relied upon by the plaintiff are false and no way connected to the suit property. The plaintiff attempted to put up construction, obstructing the resident of Chokkattan salai from using it as road and connecting it to Valluvarkottam High Road.

5.3. In fact, the fourth defendant had constructed a public convenience in the suit property and necessary amenities are provided to



A.S.Nos.423 & 925 of 2012

the residents of Chokkattan salai. Therefore, the general public submitted representation to remove the encroachment of the plaintiff and also filed writ petition before this Court in W.P.No.21231 of 2001. However, it was dismissed as withdrawn with liberty to file suit. Thereafter, the statutory authority cancelled the patta in respect of the suit property granted in favour of the plaintiff. Therefore, the plaintiff has no title or any right over the suit property, since her vendor had no title over the property and the plaintiff had mistakenly purchased the suit property. Therefore, any construction put up by the plaintiff in the suit property is unauthorized and liable to be removed.

6. The fourth defendant filed separate written statement and stated that the plaintiff obtained a sanction plan based on the false documents for the suit property. However, by the proceeding dated 26.11.2001, the District Collector of Chennai, cancelled the patta issued in favour of the plaintiff. Therefore, the plaintiff was issued show cause notice dated 05.12.2002, for revocation of planning permission. Basic amenities were provided by the fourth defendant to the resident of Chokkattan salai and the road was laid in the suit property. On receipt of



A.S.Nos.423 & 925 of 2012

the representation from the general public as well as the temple authorities, the fourth defendant had taken action in accordance with law.

7. On the above pleadings the following issues have been framed by this Court :-

“(i) Whether the plaintiff is entitled to a declaration that the suit property absolutely belongs to her?”

“(ii) Whether the plaintiff is entitled to a permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property?”

“(iii) Whether the suit property belongs to Arulmighu Agastheeswara Prasanna Venkateswaran Perumal Devasthanam namely, the third defendant and whether the temple has permitted the public to use it as an access to reach the main road?”

“(iv) To what relief, the plaintiff is entitled?”

On transfer, the trial Court has framed the following issues :-

“(i) Whether the suit property derives from Mr.Madurai Naicker and Mr.Munusamy Naicker under O.S.No.561/51 or out of Mrs.Rajammal under Ejectment Suit No.241/27?”



A.S.Nos.423 & 925 of 2012

WEB COPY

(ii) *Whether the suit property is a private street owned by Arulmighu Agatheeswara Prasanna Venkateswara Perumal Devasthanam or a patta property of the plaintiff connecting Chokattan Salai and Village Road?*

(iii) *Whether the suit is bad for non issuance of notice u/s.80 CPC to third defendant?*

(iv) *Whether the suit is bad for non joinder of necessary parties?*

(v) *Whether the plaintiff is entitled the relief of declaration as prayed for ?*

(vi) *Whether the plaintiff is entitled the relief of permanent injunction as prayed for?*

(vii) *What relief parties entitled?"*

8. After framing issues, the plaintiff has examined P.W.1 & P.W.2 and marked documents in Ex.A.1 to Ex.A.29. On the side of the defendants, they examined D.W.1 & D.W.2 and marked documents in Ex.B.1 to Ex.B.24. While passing judgment, the trial Court re-casted the issues as follows :-

“(i) Whether the suit property has been used as Street by the residents of “Chokkattan Salai”?



A.S.Nos.423 & 925 of 2012

(ii) Whether the plaintiff is entitled to the relief of declaration as prayed for?

(iii) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

(iv) Whether the suit is bad for non-joinder of necessary parties?

(v) Whether the suit is bar for want of notice u/s. 80 C.P.C?

(vi) To what relief the plaintiff is entitled to?"

On considering the oral and documentary evidences, the trial Court decreed the suit as prayed for. Aggrieved by the same, the third defendant filed appeal suit in A.S.No.925 of 2012 and the defendants 1 & 2 filed appeal suit in A.S.No.423 of 2012.

9. The learned Senior Counsel and the learned Special Government Pleader (HR&CE) appearing for the appellants in both Appeal Suits submitted that the suit itself liable to be dismissed on the sole ground that the plaintiff failed to issue any notice to the third defendant, under Section 80 of the Civil Procedure Code, which is mandatory in nature, since the third defendant is a public servant. Therefore, to file suit, the notice under Section 80 of C.P.C., is



A.S.Nos.423 & 925 of 2012

mandatory. Though the plaintiff was granted leave to file suit without issuance of notice, it is only as against the first and second defendants.

The plaintiff obtained interim injunction only as against the private defendants and not as against the appellants. Therefore, the said order would not bind on the appellants in any manner.

9.1. In fact, the writ petition filed by the plaintiff in W.P.No.43723 of 2002 was disposed by this Court, thereby directed the plaintiff to approach the civil Court with regard to cancellation of patta. The plaintiff has to succeed on her own case and cannot pick up holes in the case of the defendants. Unfortunately, the trial Court found fault in the case of the defendants and decreed the suit in favour of the plaintiff. The Chokkattan salai is in existence from a long time as a private lane and there is no material produced by the plaintiff to show to the contrary. Therefore, the trial Court ought not to have shift the onus of proof on the defendants, which had ended in miscarriage of justice.

9.2. They further submitted that the plaintiff herself admits that some of the encroacher filed suit in O.S.No.3893 of 2001 on the file of



A.S.Nos.423 & 925 of 2012

the City Civil Court, Chennai, challenging the title of the plaintiff.

Therefore, there is cloud on the title over the suit property and as such the plaintiff ought to have filed comprehensive suit instead of suit for injunction in O.S.No.6102 of 2001 on the file of the City Civil Court, Chennai. When the earlier suit for injunction is very much pending, without seeking any leave under Order II Rule 2 of C.P.C., the plaintiff filed suit before this Court in C.S.No.110 of 2003. Subsequently, it was transferred to the City Civil Court, Chennai and re-numbered as O.S.No.11029 of 2010. Therefore, the present suit is barred and directly hit by under Order II Rule 2 of C.P.C.

9.3. They also submitted that in fact, the plaintiff categorically admitted that her predecessors in title have been in possession and enjoyment of the suit property from the time immemorial. But she had given documents only from the year 1951 and claimed title by prescription. Though the plaintiff had knowledge about the ejectment suit in O.S.No.241 of 1927, she failed to produce any documents. The plaintiff also failed to implead her predecessor to prove the title over the property. Therefore, the non-joinder of plaintiff's vendors and



A.S.Nos.423 & 925 of 2012

predecessor in interest is fatal to the suit. They also submitted that the plaintiff is failed to implead the District Collector and revenue officials as parties to the suit, since they had cancelled the patta issued in favour of the plaintiff in respect of the suit schedule property. She also failed to produce any documents to show that her vendors predecessors viz., father of Balakrishnan is the legal heir of one Kannaiyammal.

10. Per contra, the learned counsel appearing for the plaintiff submitted that the suit property derives its title from one Mohambra Naicker and after his demise, his properties were inherited by his two sons viz., Munuswamy Naicker and Madurai Naicker. The said Munuswamy Naicker instituted a partition suit in O.S.No.561 of 1951 on the file of the II Additional City Civil Court, Madras. A compromise was entered between the parties and compromise decree was passed by the judgment and decree dated 28.04.1954, thereby allotting the schedule mentioned property to the legal heirs of Madurai Naicker viz, Balakrishnan Naicker and Arunachala Naicker.



A.S.Nos.423 & 925 of 2012

10.1. Accordingly, a partition deed was registered vide document No.621/1954 dated 13.08.1954 executed between Munusamy Naicker as one party and Balakrishnan Naicker and Arunachala Naicker as other party. The house & ground No.11, situated at Appu Naicken Street, Nungambakkam and the house & ground No.41, situated at Village road, (old door No.22), Nungambakkam, Madras, were divided equally between the plaintiff and the defendants in the said suit. Accordingly, door No.41, Village Road, Nungambakkam, Madras, was divided into two shares and one share on the northern side, which is the suit property herein, was allotted to the share of Balakrishnan Naicker and Arunachala Naicker. Thereafter, they entered into partition deed registered vide document No.622/1954.

10.2. In fact, the said Balakrishnan had mortgaged the suit property with Nungambakkam Saswatha Dhana Rakshaka Nidhi Ltd., vide document No.936/1981 dated 06.04.1981. Thereafter by the registered lease deed vide document No.587/1986 dated 28.11.1986, the suit property was leased out to the tenant. Therefore, the said Balakrishnan was in possession and enjoyment of the suit property. After



A.S.Nos.423 & 925 of 2012

demise of Balakrishnan, the suit property was purchased from his legal heirs by the plaintiff on 30.05.1995. Since the building therein was more than 80 years old, the plaintiff applied permission for demolition and reconstruction. Accordingly, the plaintiff obtained planing permission to put up new construction in the suit property. Therefore, the trial Court rightly decreed the suit in favour of the plaintiff.

10.3. He further submitted that while being so, the encroachers of the temple land in the Chokkattan salai attempted to forcibly entered into the property. One of the encroachers also filed suit in O.S.No.3893 of 2001 for permanent injunction as against the plaintiff not to put up any construction. Further, the said suit was dismissed as withdrawn. Though the patta was cancelled by the revenue authority, it was challenged before this Court and obtained interim stay. Therefore, the suit property is not a road and never ever it had been utilized as a road, except for the highhanded trespass made by the encroachers. In fact, the plaintiff demolished the existing superstructure and attempted to put up new construction as per the planning permission granted by the fourth defendant. Hence, he prayed for dismissal of both the appeals.



A.S.Nos.423 & 925 of 2012

WEB COPY 11. Heard the learned counsel appearing on either side and perused the material placed before this Court.

12. Having regard to the pleadings, evidence and the submissions made by the learned counsel appearing on either side, the following points arise for consideration in these appeals:-

(i) Whether the suit property is a private street owned by the temple and used by the fifth defendant's residents?

(ii) Whether the suit is bad for non issuance of notice under Section 80 of C.P.C., to the third defendant?

(iii) Whether the suit property belongs to the third defendant and third defendant had permitted the general public to use it as access to reach the Valluvarkottam High Road?

(iv) Whether the suit is barred under Section 180 of Hindu Religious and Charitable Endowment Act or whether the suit against the temple is maintainable or not?



A.S.Nos.423 & 925 of 2012

13. The plaintiff claimed title over the suit property by deriving its title from one Mohambra Naicker. After his demise, it was derived by his two sons. The said two sons had partitioned the property by the compromise decree in O.S.No.561 of 2051 on the file of the II Additional City Civil Court, Madras, dated 28.04.1954. The legal heirs of one son viz., Madurai Naicker, had partitioned the property by the partition deed dated 13.08.1954 vide document No.622/1954 and the suit schedule property was allotted one of its sharer viz., Balakrishnan. After his demise, his legal heir derived title over the suit property. From the legal heirs, the plaintiff had purchased the suit property on 30.05.1995.

14. Per contra, the temple viz., the third defendant claimed title over the property that at the eastern end of Chokkattan salai, abutting village road, a piece of land ad measuring 1772 sq.ft., was leased out to one Rajammal by the third defendant. The third defendant had collected rent from her. The third defendant also filed ejectment suit in S.No.235/1927 as against the said Rajammal for delivery of possession. However, in the application filed under Section 9 of the Tamil Nadu City Tenants Protection Act, it was ordered to sell the said land in favour of



A.S.Nos.423 & 925 of 2012

Rajammal. Accordingly, a sale deed was executed vide document No.1552/1932 in favour of the said Rajammal. In turn, she sold the said property in two portions by two registered sale deeds in favour of one Sivagnanambal in respect of 857 sq.ft., vide document No.365/1935 and another sale deed in respect of 865 sq.ft., in favour of Ramu Chettiar, vide document No.460/1949.

15. The property which was purchased by Sivagnanambal admeasuring 857 sq.ft., was subsequently sold in favour of one Raju Pillai, vide document No.850/1953. In turn, he sold out the said property in favour of Ravi and Saraswathi in document No.355/1999 and they are the owners of the land ad measuring 857 sq.ft., in Survey No.451/1 present R.S.No.451/4. Another portion of the land owned by Ramu Chettiar and after his demise, his son R.Krishnan derived title over the property in respect of the property ad measuring 865 sq.ft., in S.No.451/1 present R.S.No.451/3.

16. Further the plaintiff obtained patta for the suit property which belonged to the temple by relying on the patta issued in favour of



A.S.Nos.423 & 925 of 2012

one Balakrishnanan. Even according to the plaintiff, by the compromise decree passed in O.S.No.561 of 1951, the suit property was allotted in favour of Balakrishnan viz., the father of the plaintiff's vendors. However, the plaintiff failed to produce any document before 1951. Further, the plaintiff attempted to construct building in the subject property by obstructing the general public of Chokkattan salai from using it as road. It is connecting to the Valluvarkottam High Road. In fact, the fourth defendant constructed a public convenience in the land and necessary amenities are provided to the residents of Chokkattan salai. Therefore, the residents of Chokkattan salai filed writ petition in W.P.No.21231 of 2001. However, it was dismissed as withdrawn with liberty to file civil suit. Subsequently, the patta issued in favour of the plaintiff was also cancelled by the District Collector. Though it was challenged before this Court, it was not set aside and the patta has not been restored in favour of the plaintiff.

17. In fact, one of the resident viz., M.Shanmugam filed suit in O.S.No.3893 of 2001 on the file of the City Civil Court, Chennai, as against the plaintiff for permanent injunction. He also filed interim



A.S.Nos.423 & 925 of 2012

injunction application praying for restraining the plaintiff from put up any construction and disturbing the residents from enjoying the suit property as road. In the said application, an Advocate Commissioner was appointed and the Advocate Commissioner visited the suit property and filed his report. On the basis of the Advocate Commissioner's report, the suit was dismissed as withdrawn.

18. Thereafter, the plaintiff filed suit in O.S.No.6102 of 2001 as against the said Shanmugam and others including the Chennai Corporation for permanent injunction and the same was allowed. In the said suit, the appellants were not the parties. Without any documents to trace out title, except the sale deed, the trial Court concluded that there is no common passage as claimed by the fifth defendant. When the defendants traced out the title of the suit property from the year 1927, the plaintiff failed to produce any documents.

19. Further, the plaintiff categorically deposed that their predecessors have been in possession and enjoyment of the suit property in time immemorial. But she had given documents only from the year



A.S.Nos.423 & 925 of 2012

1951 onwards. Though the plaintiff made such evidence with regard to documents prior to the year 1951, no documents have been produced by the plaintiff. Further, the plaintiff failed to produce any document and evidence to prove his predecessor's title and subjecting them to give evidence with regard to their title over the property. Though the plaintiff had knowledge about the ejectment suit, she failed to produce any documents. Therefore, the plaintiff is a encroacher on the third defendant's land. Though the plaintiff and her predecessors are in possession of the suit property, when the encroachment over the temple land will not confer any title over the encroachers and they shall be removed in accordance with law. Hence, the claim of the plaintiff's possession by description cannot be accepted.

20. It is also seen that the plaintiff filed application to grant leave to file suit without issuance of notice under Section 80 of C.P.C., as against the defendants 1 & 2 and the same was ordered. However, the plaintiff failed to file any application to dispense with, for issuance of notice under Section 80 of C.P.C., as against the third defendant. The third defendant is an Executive Officer of Arulmigu Agastheeswara



A.S.Nos.423 & 925 of 2012

Prasanna Venkateswara Perumal Devasthanam, Nungambakkam,
Chennai. The Executive Officer is appointed by the second defendant.

Though the Hindu Religious & Charitable Endowments Department represented by its Commissioner, the Commissioner is appointed by the first defendant. Therefore, the third defendant, the Executive Officer is a public servant.

21. It is relevant to extract the provisions under Section 80 of C.P.C., as follows:-

“80. Notice:- [(1)] Save as otherwise provided in sub-section (2), no suits shall be instituted against the Government (including the Government of the State of Jammu & Kashmir) or against a public officer in respect of any act purporting to be done by such officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;



A.S.Nos.423 & 925 of 2012

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;

(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at this office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu & Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit :

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief



A.S.Nos.423 & 925 of 2012

need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice -

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.”

Thus it is clear that no suit shall be instituted as against the public officer in respect of any act purporting to be done by such officer in his official capacity, until the expiration of two months notice. Admittedly, no notice was issued under Section 80 of C.P.C., to the third defendant. In fact, the third defendant is looking after the temple administration and day to day affairs.



A.S.Nos.423 & 925 of 2012

22. Admittedly the plaintiff filed suit in O.S.No.6102 of 2001 on the file of the learned City Civil Court, Chennai. Subsequently, the plaintiff filed the present suit before this Court in C.S.No.110 of 2003, without any leave from the City Civil Court, Chennai or from this Court, to file this comprehensive suit. It is relevant to extract the provision under Section Order II Rule 2 of C.P.C., as follows :-

“Order II

.....

2. Suit to include the whole claim— (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.



A.S.Nos.423 & 925 of 2012

Explanation—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

Thus, the present suit is barred by Order II Rule 2 of C.P.C., since the plaintiff failed to obtain any leave from the earlier suit in O.S.No.6102 of 2001, filed for bare injunction in respect of the very same suit property.

23. Insofar as the maintainability of the suit under Section 108 of the Hindu Religious and Charitable Endowments Act is concerned, it is relevant to rely the judgment of this Court dated **22.04.2008** made in **A.S.No.449 of 1998**, in the case of **Mothi V.Arumugham vs. Commr HR&CE (Admn), Chennai-34.**, which held as follows :-

“7. It is not in dispute that the land in which 'Ramar Bajanai Koodam' is situated was owned by Sadasivam Chetty, grandfather of the plaintiff. The case of the plaintiff is that it is a private property of the plaintiff's family for their exclusive worship and there is no public worship and it does not come under the purview of the Act 22 of 1959. It is needless to say that the burden is on the plaintiff to prove the case pleaded by him. In the present suit, the plaintiff has filed only three documents on his side. Exs.A1 is the Advocate's notice



WEB COPY



A.S.Nos.423 & 925 of 2012

dated 19.02.1996 issued by the plaintiff to the defendant and Exs.A2 and Exs.A.3 are the order and decreetal order of the Appellate Authority viz., the defendant, dated 26.02.1990 in A.P.No.56 of 1987 respectively. In Ex.A2 order, the Appellate Authority considered the document filed by the plaintiff herein, which is of the year 1926 and held that the Bajan Koodam was in existence as early as on 1926 and was managed by five trustees, of whom, the grandfather of the plaintiff, namely, Sadasivam Chetty was one of the trustees and he had dedicated some properties purchased by him in favour of 'Ramar Bajana Koodam' by specifically mentioning in the document that the properties were dedicated for charitable purposes to 'Ramar Bajana Koodam' and he and his descendants have no right whatsoever on the said properties gifted by him and relying on the above recitals, the Appellate Authority has concluded that 'Ramar Bajana Koodam' is a 'religious institution' as defined under the Act. Therefore, the subject property belongs to the temple and thus, the suit itself is not maintainable under Section 108 of the HR and CE Act. In view of the fact that the suit schedule property belongs to temple, no suit is maintainable, in view of the express bar under Section 108 of the HR&CE Act."



A.S.Nos.423 & 925 of 2012

Since, the suit property belongs to third defendant, the suit itself is not maintainable as per Section 108 of the Hindu Religious and Charitable Endowment Act.

24. In view of the above discussions, all the points are answered as against the plaintiff and the suit is liable to be dismissed. Accordingly, the judgment and decree dated 04.10.2011, passed in O.S.No.11029 of 2010, on the file of the learned Additional District Judge, Fast Track Court No.1, Chennai, is hereby set aside and the suit in O.S.No.11029 of 2010 stands dismissed.

25. In result, both the Appeal Suits are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

08.01.2024

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order

rts



A.S.Nos.423 & 925 of 2012

To

WEB COPY

1. The Additional District Judge,
Fast Track Court No.1, Chennai,

Copy to
The Section Officer,
V.R. Section,
High Court,
Madras.



WEB COPY



A.S.Nos.423 & 925 of 2012

G.K.ILANTHIRAIYAN, J.

rts

Common Judgment in
A.S.Nos.423 & 925 of 2012
and M.P.Nos.1 & 1 of 2012

08.01.2024