



S.A.No.82 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.82 of 2021
and
C.M.P.No.1829 of 2021

Ramasamy

... Appellant

Vs.

1. C.Vaidyanathan
2. Jayaraman
3. Nagammal
4. Subbarayan
5. Annamalai
6. Rasathi
7. Ammu @ Seventhi
8. Suganya
9. Gayathri
10. Minor Nagarajan
11. Rajamani
12. Mahalingam

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 19.11.2019 in A.S.No.22 of 2018 on the file of the II Additional Subordinate Court, Cuddalore, confirming the judgment and decree dated 11.09.2017 in O.S.No.274



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of 1996 on the file of the Principal District Munsif Court, Cuddalore.

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For appellant : Mr.R.Gururaj

JUDGMENT

The defendants 8 and 18 in a suit in O.S.No.274 of 1996 are the appellants before this Court.

2. The facts of the case which have given rise to the filing of the second appeal are hereinbelow set out. The parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S.No.274 of 1996 on the file of the Principal District Munsif Court, Cuddalore, seeking a declaration that the suit property belongs to Sri Pachaivazhi Amman Temple and for consequential relief of recovery of items 1 to 4 from the defendants 1,2 and 5 and item 5 from the defendants 3 and 4 and also



for a decree for Rs.9,300/- constituting the mesne profits against the defendants 2 and 5 and for recovery of a sum of Rs.5,580/- against the defendants 2 and 4 or in the alternative to direct the first defendant to account for a sum of Rs.14,880/- towards past profits.

2.2. The original plaintiff would submit that he is the Hereditary Trustee of Sri Pachaivazhi Amman Temple which is situate at Sanarapalayam Village, Cuddalore Taluk. The first defendant is the son of the plaintiff's paternal aunt. In view of the close relationship, the plaintiff had allowed the first defendant to administer the affairs of the temple. The first defendant however, abused the indulgence of the plaintiff and denied his title. This constrained the plaintiff to file a suit in O.S.No.269 of 1980 on the file of the Sub Court, Cuddalore. The suit was dismissed. However, in appeal in A.S.No.30 of 1984, the learned Judge had upheld the plaintiff's status as the Hereditary Trustee declaring his right to administer the temple and its properties.

2.3. The plaintiff would submit that the suit properties are



endowed to the temple as 'Kattalais'. Items 1 and 2 were settled in favour of the temple by one Sengamalam under a registered settlement deed dated 08.01.1919. Item 3 was settled by one Rajambal in favour of the temple under a registered document dated 04.06.1942. The fourth item belonging to the temple is evidenced by a registered lease deed dated 26.11.1926 executed by one Kuppusamy in favour of Narayanasamy. Similarly, the fifth item has been the subject matter of lease in favour of Narayanasamy by Raja Padayachi under a registered lease deed dated 11.10.1937. Since then, it was in the possession of the lessees. They were paying the lease rentals in the form of paddy regularly to the temple, till such time the plaintiff was in management. When the first defendant had assumed control of the temple and its properties in 1969, he had directed the Kattalaidarars to hand over the management of the suit items.

2.4. In the earlier suit in O.S.No.269 of 1980, the plaintiff had only included the properties which were personally cultivated by the first defendant. The plaintiff was under the impression that once his



title as Hereditary Trustee is established through Court, the lessees could execute the lease deed in his favour. The first defendant also surrendered the possession of the properties in writing on 24.02.1986. The plaintiff would submit that though he had obtained the decree for declaration, he was unable to secure the possession of the suit properties from the first defendant during the pendency of the earlier suit. The first defendant had inducted the second defendant as tenant in items 1 to 4 and the third defendant in respect of item 5. The third defendant, in turn, surrendered the possession to the fourth defendant.

2.5. The first defendant, has mismanaged the properties belonging to the Trust and misutilized the funds. The possession of the properties by the defendants 2 to 5 is without the consent of the lawful Trustee of the temple. Therefore, the plaintiff had issued a notice to the defendants 1 and 2 to surrender the possession. After the issuance of the notice, the fourth defendant had taken the possession of a portion of item 5 under some arrangement with the third defendant. Therefore, in the light of the above, the plaintiff has come forward with the suit in



question.

2.6. The first defendant had filed a written statement contending that the plaintiff is not a Hereditary Trustee and therefore, the suit filed by him was not maintainable. The first defendant would submit that the fourth defendant has nothing to do with the properties. He is neither a lessee nor a person in possession in any other capacity. He is an unnecessary party to the suit. The third defendant is in possession of item 5 to the suit as a lessee. The second defendant is not a lessee of any of the items of the suit properties. It is only the second defendant's mother-in-law Nagammal who is the lessee of items 1 to 4 of the suit and the second defendant is only offering her assistance for cultivation. Therefore, the second defendant is an unnecessary party to the suit.

2.7. The first defendant would submit that he has not mismanaged the properties of the Trust and the lessee has been paying the rents regularly. He would submit that the lessees are in lawful possession of the properties. He would submit that the defendants have not received any notice and even before the reply could be issued, the



plaintiff has rushed to the Court. Since the plaintiff is not a Hereditary Trustee, there is no necessity to hand over or surrender the possession to him. Therefore, he had prayed for the dismissal of the suit.

2.8. The plaintiff has filed a reply statement rebutting the contentions made in the written statement. The plaintiff reiterated that the first defendant had surrendered the possession of the properties which were the subject matter of the suit in O.S.No.269 of 1980 and the surrender was reduced into writing. The first defendant by handing over possession had conceded the plaintiff's status as the Hereditary Trustee of the temple. The first defendant had also undertaken not to prosecute the appeal in S.A.No.1890 of 1985 against the judgment made in O.S.No.269 of 1980.

2.9. That apart, the tenants / lessees viz., the defendants 2 to 4 have chosen to remain *ex parte* and the first defendant who had handed over the possession cannot canvass their rights. However, it is only the second defendant who was in possession and enjoyment of other



properties. The plaintiff would further contend that the suit in O.S.No.269 of 1980 was with reference to the properties which have been specifically endowed to the temple and the relief claimed was for declaration of the plaintiff's title as a Hereditary Trustee and the character of the properties is different from the properties that are the subject matter in this suit. Therefore, this suit is not barred by Order II Rule 2 of C.P.C.

2.10. The 16th defendant, who is the legal heir of the first defendant and who had been brought on record after his death, had filed a written statement *inter alia* contending that the plaintiff is estopped from disputing the possession of the first defendant which has been now handed over to the defendants 6 to 16 and the defendants would contend that the plaintiff has no right to interfere with their legal possession in the suit properties and hence, prayed for the dismissal of the suit.

TRIAL COURT:



3. The Trial Court has framed the following issues on 24.03.1988, and further issues on 12.02.1990 and thereafter, on 13.06.2011, additional issues were framed. Thereafter, the issues framed on 24.03.1988 and on 12.12.1990 were deleted and the Trial Court has re-framed the following issues.

“1.Whether the 2nd plaintiff is entitled to the relief of declaration and recovery of possession against the defendants?

2.Whether the 2nd plaintiff is entitled to the past and future mesne profits as prayed for?

3.Whether the 2nd plaintiff is entitled to the alternative relief of past profits from the legal heirs of the first defendant?

4.To what other reliefs?”

4. The learned Judge held that the plaintiff's right as Trustee has also been declared in the earlier proceedings and the dispute had attained its finality. After the death of the plaintiff, his son has been impleaded as Trustee being the Hereditary Trustee. Since much



argument has been made about the *locus standi* of the second plaintiff to continue the proceedings, the Trial Court had observed that once the second plaintiff has been impleaded in the place of the first plaintiff not only as a legal heir but as the Hereditary Trustee, the same cannot be further challenged by the defendants and held that the second plaintiff has *locus standi* to continue the proceedings.

5. As regards the non impleadment of Jayaram Padayachi, the Trial Judge has taken note of the allegations made by the defendants in this regard pending the suit and held that his non impleadment would not affect the suit as he is not a necessary nor proper party to the suit and the suit is not bad for non-joinder of necessary parties.

6. Ultimately, the Trial Judge, on considering the evidence on record, decreed the suit and the defendants, who are in occupation of the premises were directed to hand over the possession.



LOWER APPELLATE COURT:

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7. Challenging the said judgment and decree, the defendants 8,11 and 18 had filed an appeal in A.S.No.22 of 2018 on the file of the II Additional Subordinate Court, Cuddalore.

8. The Lower Appellate Court observed that the second plaintiff is the Hereditary Trustee who could continue the *lis* instituted by his father (the earlier Trustee). The defendants had also taken a plea that they cannot be evicted as contemplated under Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. A mere perusal of Exs.B2 and B3 would clearly show that the plea of the 8th defendant for recognizing him as a cultivating tenant has been rejected. The learned Judge also held that the title of the property has been found to be with the suit temple and therefore, the defendants cannot be allowed to retain their possession, particularly, when they failed to establish their possession.

9. Aggrieved by the said judgment and decree, the 8th and 18th



defendants are before this Court.

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10. Heard the learned counsel for the appellant and perused the materials available on record.

DISCUSSION:

11. The 8th defendant is none other than the son of the first defendant and his claim to recognize him as the cultivating tenant has been rejected. Therefore, the 8th defendant is not entitled to the protection under the Tamil Nadu Cultivating Tenants Protection Act. The 8th defendant was inducted into the possession of the properties only after the instant suit has been instituted. The same appears to be a ploy to ensure that although the first defendant had handed over the possession and the handing over had been reduced to writing, he has, by inducting these defendants 2 to 18, attempted to retain the possession. Therefore, their possession is not valid. The Courts below have rightly termed them as trespassers. Therefore, I see no reason to



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interfere with the concurrent judgment and decree of the Courts below.

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Accordingly, this second appeal stands dismissed since it does not make out any substantial question of law. Consequently, the connected C.M.P. stands closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

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To

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



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P.T.ASHA, J.,

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