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S.A.No.448 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

S.A.No.448 of 2024
and CMP.No.13377 of 2024

R.Yamunabai

1.Sasikala

2.Thiyagamurthy

3.Mahadevan

4.Aruljothi

5.Sundari

6.Arulambikai

... Appellants

Vs.

1.The Assistant Commissioner,
H.R. & C.E. Department,
No.119, Uthamar Gandhi Road,
Thousand Light West,
Nungambakkam, Chennai – 600 034.

2.The Assistant Commissioner cum
Executive Officer,
Arulmigu Thiyagaraja Swamy Thirukovil,
Thiruvottiyur,
Chennai – 600 019.

... Respondents

PRAYER:--

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to



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allow this appeal and to set aside the Judgment and Decree dated 06.09.2018 passed by the learned Munsif Judge at Thiruvottiyur in O.S.No.221 of 2015 which has been confirmed by the first Appellate Court, learned Subordinate Judge, Thiruvottiyur in A.S.No.50 of 2022 by the Judgment and Decree dated 29.09.2023.

For Appellants : Mr.R.Karunakaran

For Respondents : Mr.T.Arunkumar
Additional Government Pleader
* * * * *

J U D G M E N T

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to allow this appeal and to set aside the Judgment and Decree dated 06.09.2018 passed by the learned Munsif Judge at Thiruvottiyur in O.S.No.221 of 2015 which has been confirmed by the first Appellate Court, learned Subordinate Judge, Thiruvottiyur in A.S.No.50 of 2022 by the Judgment and Decree dated 29.09.2023.

2.The parties will be referred to as per their rank in the trial Court.

3.It is the plaintiff's case that the suit property measuring to an extent of 3800 sq.ft. in S.No.269 B part belonged to her mother Jothikasambigai Ammal. According to the plaintiffs, she and her parents were enjoying the suit property which was a natham poromboke land for the part several years without any hindrance. The



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plaintiff's mother died on 29.06.1987 and after her demise the plaintiff inherited the suit property and was in enjoyment of the same. On 16.09.2015, the defendant issued a eviction notice to the plaintiff stating that the plaintiff was in illegal encroachment of its property. The plaintiff was therefore constrained to file the suit for permanent injunction restraining the defendant temple from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The defendant filed the written statement denying the plaintiff's title to the suit property. The defendant further claimed that the suit property belonged to it and that all the revenue records stood in the name of the defendant temple. According to the defendant, the plaintiff was an encroacher and therefore, the defendant initiated steps to vacate the plaintiff invoking the provisions of the Hindu Religious and Charitable Endowment Act. The plaintiff suppressed the said fact and approached the Court with unclean hands and so the suit deserved to be dismissed.

4.Before the trial Court, the plaintiff examined herself as PW1 and marked Ex.A1 to Ex.A9. The defendants examined one Santhanam, who was working as Assistant Maniyam in the temple. The defendants marked Ex.B1 to Ex.B6 on their side. The trial Court on an assessment of the entire evidence on record and on the basis of the plaintiff's admission found that the plaintiff failed to prove that the



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plaintiff was the owner of the suit property. The trial Court also found that the suit was not maintainable as eviction proceedings were already initiated by the Joint Commissioner, under Section 78 of the Hindu Religious and Charitable Endowment Act and an eviction order was also passed on 04.03.2016 vide Ex.B4. The trial Court therefore dismissed the suit. Aggrieved by the Judgment and Decree of the trial Court, the plaintiff preferred an appeal before the Subordinate Court, Tiruvottiyur in A.S.No.50 of 2022. The lower appellate Court held that the defendant temple had categorically established that the suit property belonged to the defendant temple. The lower appellate Court on the basis of Ex.B6 found that the defendant temple was the owner of the suit property. The lower appellate Court on the basis of the evidence of the plaintiff and also Ex.B4 found that the plaintiff defaulted in payment of rent and only as a counter blast to Section 78 eviction proceedings, the plaintiff had filed the suit. The lower appellate Court found that the suit was not maintainable in view of Section 79(3) of the Hindu Religious and Charitable Endowment Act. On the aforesaid grounds, the lower appellate Court confirmed the Judgment and Decree of the trial Court. Aggrieved by the concurrent judgments of the Courts below, the plaintiff and her legal heirs have filed the above second appeal.

5.At the time of admission, the learned counsel for the appellant submitted that



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the Courts below erred in dismissing the suit as not maintainable under Section 79(3) of the Hindu Religious and Charitable Endowment Act. The learned counsel further submitted that the Courts below failed to appreciate in proper prospective the documents filed by the plaintiff to establish her title. The learned counsel further submitted that the defendant failed to prove it's title to the suit property and therefore the injunction prayed for ought to have been granted.

6.I have heard the learned counsel for the appellant and I have perused the materials placed on record.

7.The plaintiff claims possession and enjoyment of the suit property on the basis of title. The defendant claims that the suit property belongs to it and that as the plaintiff was an encroacher, proceedings were initiated under Section 78 of the Hindu Religious and Charitable Endowment Act and the eviction order was also passed against the plaintiff and hence the suit was not maintainable. To establish the plaintiff's title, the plaintiff relies on the property tax receipts, EB card and Town Survey Field Register Extract. The plaintiff also relies on the proceedings issued by the Madhavaram Tahsildar dated 14.03.2012 and other revenue records to prove her title. In my considered view the above said documents cannot establish the plaintiff's



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title to the suit property. It is settled law that revenue records are not documents of title. Reliance is placed on Ex.A5, the certificate issued by the Tahsildar stating that Yamunabai W/o. Radhakrishnan, was the owner of the property to an extent of 0.0375 sq.mt. on the basis of the patta RPT No.796/1997. The said Certificate was issued on the basis of patta entries in the register maintained in his office. In my view the said document cannot confer any title on the plaintiff as it was issued on the basis of patta entries and not on any document of title.

8.The learned counsel appearing for the plaintiff submitted that the defendant did not establish it's title to the suit property. The plaintiff having approached the Court for the relief of permanent injunction, the burden was on the plaintiff to establish her case. It is also pertinent to note here that when the defendant specifically denied the title of the plaintiff and set up title in itself, the plaintiff ought to have sought for the relief of declaration also and so the suit for bare injunction without the prayer for declaratory relief is not maintainable. On this ground also the suit was rightly dismissed.

9.It is further seen that under Ex.A9 dated 16.09.2015, notice of eviction was issued to the plaintiff by the Deputy Commissioner, Hindu Religious and Charitable



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Endowment. The same is admitted by the plaintiff in the plaint. Only after the receipt of the said notice, the plaintiff filed the suit on 30.11.2015 for bare injunction. During the pendency of the suit on 04.03.2016, an eviction order under Ex.B4 was passed by the Joint Commissioner, Hindu Religious and Charitable Endowment under Section 78 of the Hindu Religious and Charitable Endowment Act. In view of the said facts, the lower appellate Court rightly held that the suit for injunction was not maintainable under Section 79(3) of the Hindu Religious and Charitable Endowment Act. The plaintiff as stated above has filed the suit for the relief of injunction and therefore in terms of Section 79(3) of the Hindu Religious and Charitable Endowment Act, the Civil Court is barred from granting any injunction in respect of eviction order passed by the Joint Commissioner under Section 78 of the Hindu Religious and Charitable Endowment Act. Further in my view, the suit filed by the plaintiff is also barred by Section 108 of the Hindu Religious and Charitable Endowment Act. Section 108 of the Hindu Religious and Charitable Endowment Act bars the jurisdiction of the Civil Court in the matters of the temple administration. Section 108 of the Hindu Religious and Charitable Endowment Act read as follows:

“No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which



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provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act.”

10.The Hon'ble Division Bench of this Court in the case of A.N.Kumar Vs. Arulmighu Arunachaleswarar Devasthanam Thiruvannamalai and others reported in 2011 (2) Law weekly 1 held in paragraph No.49 as follows:

“49. We summarise our conclusions as under: So far as the suits filed by the temple for eviction of tenants/licensees/lessees/mortgagees for filing of the ejectment suit, the Civil Court's jurisdiction is not barred. The decision to approach Civil Court or invoke the provisions of H.R. & C.E. Act vests with the Temple.

In cases of encroachers, temple authorities can either resort to the provisions under [Sections 78, 79, 79-A, 79-B](#) or to approach the Civil Court. The decision to elect a particular procedure lies with the owner of the property, being the Temple.

In view of the express bar under 2nd proviso to [Section 79](#),



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*in so far as the suits by the encroachers/lessees/
licensees/mortgagees, the bar under [Section 108](#) will get attracted
excepting in instances specifically stated in the 1st proviso to
[Section 79](#).”*

11. Therefore, it is clear that the suit filed by the plaintiff is not maintainable. Though the plaintiff claimed title to the suit property, in her evidence, she admitted that she was remitting rent to the defendant for more than 40 years and that she stopped paying rent after 2015 because of the high handed attitude of the defendant. In view of the admission of the plaintiff that she was a tenant under the defendant temple the suit is barred under the Second proviso to Section 79 of the Hindu Religious and Charitable Endowment Act and also under Section 108 of the Hindu Religious and Charitable Endowment Act.

12. Before parting with the case, this Court would remind itself of its duty to protect the temple properties. The Hon'ble Supreme Court in the case of A.A.Gopalakrishnan Vs. Cochin Devaswom Board and Others reported in 2007 (7) SCC 482 held as follows:

*“The properties of deities, temples and Devaswom Boards,
require to be protected and safeguarded by their Trustees/Archaks/*



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Sebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

In view of the above discussions I find that no substantial questions of law arise for consideration in the second appeal.

13. Accordingly, this second appeal is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

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NCC : Yes /No

Index : Yes / No

Speaking Order/Non-speaking order

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To

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2. The Subordinate Judge,
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H.R. & C.E. Department,
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Chennai – 600 019.

5. The Section Officer,
Vernacular Records,
High Court,
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N.MALA, J.
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