# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 27.06. 2024**

**CORAM:**

**THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI**

**<u>SA. No. 626 of 2008</u>**

Arulmighu Tulukanathamman Koil
Rep. by managing Trustee
Having office at No.10, Appavu Gramani
1st Street, Robsersonpettai,
Chennai - 600 028.

... Appellant

Vs.

1.Sarasu
2.E.kala
3.Santhanamma
4. R.Sarala
R4 is impleaded as a 4th respondent in the second appeal No. 626 of 2008 vide order of Court dated 13.09.2019 made in CMP 12618, 12619 of 2018 CMP 3189/19 in S.A 626/2008(GJJ)

...Respondents

**PRAYER** : This Second appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 13.12.2007 made in A.S No. 157 of 2007 on the file of the Court of the Additional District Judge, (Fast Track Court-V) confirming the judgment and decree dated 24.08.2006 made in O.S No. 5463 of 2002 on the file of the Court of the VIII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.Kowser Nissar

For Respondent : Mr. V.Ravi

**JUDGMENT**

Challenging the concurrent findings of the Additional District Judge, (Fast Track Court-V), Chennai and VIII Assistant Judge, City Civil Court, Chennai, the appellant preferred this appeal.

2. The appellant Arulmighu Tulukanathamman Koil, Rep. by managing Trustee (herein after referred to as "Temple") filed the the suit in O.S No. 5463 of 2022 before the Additional District Judge, (Fast Track Court-V), Chennai, for the relief of recovery of possession and for permanent injunction.

3. The brief facts of the case:

The suit property is situated at Door No. 10, Appavoo Gramani Street, Chennai 28, was originally belonged to one Javathamull Sowcar son of Navamal Sowcar and he executed a registered sale deed dated 13.10.1936 in favour of Arulmighu Thulukananthammam Koil Trustees. From the date of registration, the plaintiff Temple is doing all poojas, celebrations and other adi festivals etc., throughout the year and all the important festivals were performed in a grand manner till date. The encumbrance certificate dated 26.09.2002 issued by the Sub-Registrar Office, Mylapore, shows that the schedule mentioned property was sold in the name of the Temple authorities and the question purchase of property by one Periya Thambi Gramani as alleged by the defendants does not arise at all. The Defendant with an ulterior motive in order to grab the property made a false averments. The trustees of the temple have only power to maintain the title documents administer to do or to perform all the Kaala poojas adi festival., important festivals to maintain accounts etc., and not to use the schedule property by the trustees for their own use or occupation. The defendants herein living adjacent to the temple and now trying to encroach the temple property by erecting thatched hut which has obtained patta and absolute sale deed in favour of Temple. Thereafter, Revenue authorities surveyed the suit property which shows that the defendants have extended the thatched huts slowly on the southern boundary of the temple property with an intention to grab the Temple property. The encroachment made by the defendants have caused great hindrance to the Temple authorities to park Temple Rathas and

Vimanam's. Hence, after issuing notice the Temple authorities filed the suit.

4. The second defendant filed the written statement and the same was adopted by the third defendant:

The property in which the second defendant was residing along with her mother and others, which was originally purchased by her grand father late Pariathambi Gramani from the plaintiff temple authorities. After the death of her grandfather, the property devolves upon the second defendant and his brother and sister and are residing in a hut put up by her. The property is under their possession and enjoyment for more than 60 years. Previously her grand father was residing there. Further, the property in which she is residing is not belonged to the temple and Door No. 10 was allotted to the second defendant's property and not to the plaintiff temple. Further, the second defendant never and at any point of time put up any superstructure and extend the same towards the southern boundary of Temple and the second defendant is residing adjacent to the Temple and not having any intention to grab the temple property. The property in which the temple is situated is different from the second defendant's property and the claim of Temple is incorrect. Further, the second defendant paid property tax, water tax, current charges to the concerned authorities without any default. so the question of delivering vacant possession to the Temple authorities does not arise. Hence, the Temple have no legal rights to file the present suit and they are not entitled to any relief as prayed by them. He prays to dismiss the suit.

5. After considering the oral and documentary evidence the Trial Court held that the defendant residing at Southern side of the Temple and also relied Ex.B2/ photographs which shows that there is 2 feet distance between the Temple and defendant's property. Besides, the plaintiff not produced any document to show that door No. 10 was assigned to the suit property. On the other hand, the defendant proved that Door No.10 was assigned to the defendant's property where they are residing. Considering all the materials and also the Trial Court made observation that in respect of title the plaintiff and the defendant not taken any steps to claim relief of declaration and dismissed the suit. Against which, the plaintiff' preferred as appeal in A.S No.157 of 2007, wherein the first appellate court independently analysed the oral and documentary evidence dismissed the appeal by confirming the findings of the Trial Court. Challenging the concurrent findings of the Court below, the plaintiff Temple filed this second

appeal.

5. This Court admitted the appeal with the following substantial questions of law:

i. Are the Courts below correct and justified in dismissing the suit, which is filed on the basis of title and which is admitted by the defendants?

6. The learned counsel for the appellant submitted that while pending appeal the Advocate commissioner was appointed and his report clearly shows that the suit property described in the schedule is assigned with door No. 10 and surveyor number also identified the door No. 10 and with respect of block map of Mylapore division area. Accordingly, suit property was properly identified through Ex.A1. Therefore, the title of the property is proved hence, the plaintiff is entitled for recovery of possession since door No. 10 is under the occupation of the defendant. Further, the learned counsel for the appellant submitted that mere submitting tax statement on the side of the defendant without producing any title as such he has no right to claim right over the property based on the alleged revenue records, tax receipts to that effect he relied the judgement of the Apex Court in the case of H.lakshmaiah Reddy Vsl L.Venkatesh Reddy reported in AIR 2015 Supreme Court 2499 :

9. As rightly contended by the learned senior counsel apearing for the appellants, 1st defendant did not relinquish or release his right in respect of the half share in the suit property at any point of time and that is also not the case pleaded by the plaintiff. The assumption on the part of the High Court that as a result of the mututation, 1st defendant divested himself of the title and possession of half share in suit property is wrong. The mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. The observations of this Court in Balwant Singh's case (supra) are relevant and are extracted below :

"21. We have considered the rival submissions and we are of the view that Mr Sanyal is right in his contention that the courts were not correct in assuming that as a result of Mutation No. 1311 dated 19-7-1954, Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In Sawarni vs. Inder Kaur (1996) 6 SCC 223, Pattanaik, J., speaking for the Bench has clearly held as follows: (SCC p. 227, para 7) "7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

7. Further, he relied the judgment of the Court reported in 2012 (2) TLNJ 577(Civil) in the case of Muddasani Venkata Narasaiah Vs. Muddsani Sarojana:

12 In the aforesaid background of facts, we come to the question whether it was necessary to seek relief or declaration

of title. In our opinion, the plaintiff has filed the suit for possession on the strength for title and not only on the basis of prior possession. It was not a summary suit for ejectment filed under Section 6 of the Specific Relief Act, 1963. Thus, plaintiff could succeed in suit for possession on the strength of the title. The issue had been framed on the question of title of the plaintiff as well as on the question of adoption of defendant no.3. On the basis of title claimed in the suit, both the parties have adduced their evidence in support of their respective cases. The main plea of defendant no. 3 that she was an adopted daughter of Yashoda has not been found to be established by the trial Court, the first Appellate Court or by the High Court. Thus, in our opinion, there was no serious cloud on the title of the plaintiff so as to force him to seek the relief for declaration of title in the instant case which was in fact based on the strength of the sale deed executed by Buchamma, who was the sole surviving heir of Balaiah as such succeeded to the property and had the right to execute the sale deed in favour of the plaintiff.

15. It is settled law that denial for want of knowledge is no denial at all. The execution of the sale deed was not specifically denied in the written statement. Once the execution of the sale deed was not disputed it was not necessary to examine Buchamma to prove it. The provisions contained in Order 8 Rule 5 require pleadings to be answered specifically in written statement. This Court in Jahuri Sah & Ors. v.

Dwarika Prasad Jhunjhunwala AIR 1967 SC 109 has laid down that if a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of existence of fact, not even an implied denial. Same decision has been followed by Madhya Pradesh High Court in Dhanbai D/o Late Shri Cowash v. State of M.P. & Ors. 1978 MPLJ 717. The High Court of Madhya Pradesh in Samrathmal & Anr. v. Union of India, Ministry of Railway & Ors. AIR 1959 MP 305 relying on P.L.N.K.L. Chettyar Firm v. Ko Lu Doke AIR 1934 Rang 278 and Lakhmi Chand v. Ram Lal AIR 1931 All. 423, had also opined that if the defendant did not know of a fact, denial of the knowledge of a particular fact is not a denial of the fact and has not even the effect of putting the fact in issue.

8. By way of reply, the learned counsel for the contesting respondent submitted that the commissioner report is based upon the presumption without any material evidence and in the absence of the any material to co-relate the description of the property the advocate commissioner give the findings that property purchased by the fourth defendant from the second defendant are the same which is contrary to the findings given by the Court below. Further, he would submits that direction given to the Advocate commissioner is only to measure and submit the report in terms of Ex.A1/sale deed and under sale deed executed by the second respondent.

9. Considering the submissions on either side and on perusal of

records, based on Ex.A1/sale deed the plaintiff claiming absolute right over the property. According to the plaintiff - temple the defendant is the adjacent land owner and encroached the Southern side of the Temple. Hence, the Temple filed the suit for recover of possession. But the description of the property is not tallied with the property described in Ex.A1/Sale Deed. In fact, there is no Door Number is mention in the sale deed contrarily the plaintiff claiming door No.10 assigned with suit property as per suit schedule. Further, the defendant also claiming that the property which was purchased by her grand father was assigned with Door No. 10. Hence, the defendant contended that her grand father purchased the suit property from Temple authorities more than 60 years ago and herself and her predecessor were in possession and enjoyment of the property. Now, the second defendant along with her Mother residing in Door No. 10, Appavoo Gramani Street, Chennai 28. Therefore, her claim is that door No.10 was allotted to her property and she never occupied in the southern side of the property nor put up any superstructure and also not extend the same towards the southern boundary of the Temple and her only contention is that she is residing adjacent to the Temple both the Court below totally disagreed with the claim of the plaintiff for the main reason that the alleged encroachment not been proved by the plaintiff nor established that the property purchased by the temple through Ex.A1/Sale deed and the suit property are one and the same. Besides, Door No. 10 was allotted to the defendant's property not belongs to the plaintiff. Accordingly, the plaintiff's relief was rejected. On the side of the appellants/plaintiff the foremost argument advanced by the Counsel is that the plaintiff proved the title through Ex.A1/Sale deed no door number is mentioned in the sale deed but the revenue records proves that suit property assigned with Door No. 10 and the same also established through commissioner report. Therefore, he prayed to allow the appeal by setting aside the findings of the Court below. Further, the learned counsel for the appellant pointed out that there is no title deed produced on the side of the defendant in order to establish that their great grandfather purchased the property.. Admittedly, no such document was produced on the side of the defendant. Further, they relied the sale deed Ex.A1 dated 26.06.2013 which was executed by the second defendant in favour of the Sarala wherein the suit property is described as old No. 10 new No. 10, Appavoo Gramani Street, Mandaveli with specific four boundaries as described as follows:

North by : land Survey No. 4206 & Lane

South by : S.No. 4214

East by : S.No. 4230/78, 4230/11 & 4230/69 of Block No. 90

West by : Land Survey No. 4209/2

**10.** As per the plaint schedule Temple is claiming right in S.No. 4209 / 23. As per the sale deed relied by the plaintiff Ex.A1 dated 13.10.1936 purchased the property with scheduled description on Eastern Appavoo Gramani second street in R.S No. 4209 with old door No. 5 with an extent of 1320 square feet. Therefore, no door number was not mentioned . But as per A register certificate verified by the Advocate commissioner reveals that in survey No. 4209/3 there is a thatched house and the name of the owner is mentioned as plaintiff Temple but those document not been perused on the either side at the time of the Trial. Further, the learned advocate commissioner relied the said document and measured the property with the help of the surveyor who identified the property with help of block map of Mylapore Division, the report shows that there is narrow lane on the

North, East and the southern side of the temple to that effect map also produced which shows the physical structure of the temple. On the southern side there is a way to the Temple and the demolished compound wall was marked as E and few feet space separating temple from the Door No. 10 property at Appavoo Gramani Street, and also there is passage to the Temple is closed by Tin sheets marked as F in the sketch. Further, Door No. 10 is situated in R.S 4209 which was marked as G immediate to the right of G. On the Western Side there is pucca superstructure with tin roof. But the learned commissioner made an observation that there is a discrepancy in the street number and description of lane might have happened subsequently. Thereby, he attempted to equate description found in Ex.A1 whether the property description as situated in respect of the said Temple as such presumption is not been acceptable. As rightly pointed by the learned counsel for the defendant for the reason to identify the property in dispute, boundaries mentioned in Ex.A1 document are unverifiable at present. Further, they claimed that door Number R Appavoo Gramani street belongs to the plaintiff Temple but as per the case of the Temple the defendant is the adjacent land owner who encroached the southern side portion of the Temple. The commissioner report clearly shows that Temple surrounded with lane and also there is no specific extent mentioned by the plaintiff about the encroachment and also not produced any material evidence to prove the same. Hence, the plaintiff is not entitled for recovery of possession. Accordingly, question of law in answered.

11. The rough sketch attached with the commissioner plan also clearly indicates that suit Temple is surrounded with lane and the wall of the structure also erected by the defendant only on the compound wall of the suit Temple therefore the plaintiff failed to prove the alleged encroachment made by the defendant on the southern side of the Temple. Those authorities relied by the appellant is not support the case of the plaintiff for the aforesaid reasons. The Court below rightly held that the plaintiff failed to prove his claim which needs no interference. Accordingly question of law are answered. Consequently, suit is dismissed. Further, the parties are directed to pay a sum of Rs.20,000/- as remuneration to the Advocate Commissioner on or before 27.07.2024 and both parties shall bear the cost equally.

12. In the result, the second appeal is dismissed. No Costs. Consequentially connected miscellaneous petition is closed.

**27.06.2024**

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**T.V.THAMILSELVI,J.**

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To

1. The Additional District Judge, (Fast Track Court-V).
2. The VIII Assistant Judge, City Civil Court, Chennai.
3. The Section Officer,
   V.R Section.

**SA. No.626 of 2008**

27.06.2024