



S.A. No.587 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM:

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

S.A. No.587 of 2024
and
C.M.P.No.18403 of 2024

Shantha Duraisamy

... Appellant

Vs.

1. Arulmigu Bashyakar Adi Chenna
Kesava Perumal Temple,
rep. by its Executive Officer

T.V.Gowri (since deceased)

2. M/s. Alsa Investments Pvt.

3. M/s. Alsa Properties Pvt. Ltd.

4. The Official Liquidator,
High Court, Madras.

5. C.Ramani

6. C.Kalyani

7. Girija Natarjan

8. Saraswathi

.. Respondents



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PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 28.06.2023 made in A.S.No.25 of 2021 on the file of XXII Addl. City Civil Court at Chennai, upholding the judgment and decree dated 14.02.2020 passed in O.S.No.1734 of 1996 on the file of I Asst. Judge, City Civil Court, Chennai.

For Appellant : Mr.K.V.Babu

For Respondents : Mr.A.V.Arun for R1

JUDGMENT

The appellant viz., Shantha Duraisamy, who is the daughter of original 1st defendant viz., T.V.Gowri had preferred this Second Appeal. Challenging the concurrent findings of the courts below rendered in A.S.No. 25 of 2021 arising out of trial court findings in O.S.No.173 of 1996 on the file of I Asst. Judge, City Civil Court, Chennai, this Second Appeal was preferred by daughter of original 1st defendant.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.



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3. Challenging the concurrent findings of courts below, the learned counsel for appellant raised the following main grounds :-

(i) The courts below failed to appreciate the fact that the appellant had been in peaceful possession and enjoyment of suit schedule property for many years from 1936.

(ii) The courts below ought to have appreciated the fact that after the appellant denied the title of 1st respondent through reply notice dated 05.07.1971, the 1st respondent had neither made any attempt to collect rent nor interrupted the peaceful possession of the appellant for more than two decades.

(iii) The lower appellate court ought not to have concluded that the order of the Settlement Tahsildar holds good when the appellant had been paying the land tax and patta was granted in the year 1985 itself.

(iv) The courts below ought not to have concluded that the appellant's mother was only a tenant in the suit property, when the fact was that, even consequent to the order of Settlement Tahsildar dated 25.05.1971, the appellant's mother has been in uninterrupted peaceful



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possession of the said property for more than 20 years.

(v) The courts below ought not to have granted the relief of injunction, when there is a cloud over the title of the suit property.

(vi) The courts below have erroneously come to the conclusion that the survey number of the suit property is 9270 and not 9276, neglecting the evidence produced by the defendant by way of Ex.B4, viz., the Certificate of extract from the Permanent Town Survey Land Register.

(vii) The courts below ought to have considered that the suit itself is barred by limitation for the reason that having been aware of the appellant's possession in the suit property for 22 long years, the respondent never approached this court seeking for recovery of possession.

(viii) The courts below ought to have considered the fact that the appellant has been in possession even prior to the amendment to Sec.109 of the Hindu Religious and Charitable Endowments Act, 1959 and when prior to the amendment, the law of limitation shall apply to properties before 30.09.1951, both the courts below ought to have considered the same and rendered a finding in favour of the appellant.

(ix) The courts below have failed to appreciate that having received



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the reply notice of the deceased 1st defendant denying the ownership of plaintiff/1st respondent, the plaintiff/1st respondent has not made any attempt to claim possession until 1996.

(x) The Courts below ought to have appreciated the evidence of the appellant in Ex.B5 and B6, where Urban Land Tax Notice was issued in the name of appellant's mother as an assessee and not as an occupant. The payment receipt of Urban Land Tax by the appellant's mother in the year 1987 is bound under Ex.B6.

(xi) The Courts below ought not to have concluded that the appellant's mother is a tenant and lease got expired by efflux of time in the year 1986. But, in reality, after introduction of Minor Inam (Abolition and Conversion to Ryotwari) Act, 1963, the lease agreement was terminated and direct relationship is created with Government by repudiating the title of respondent.

4. The learned counsel for appellant also submitted the following substantial question of law for consideration :-

(a) Whether the relief sought by the plaintiff for delivery of vacant possession of suit property is maintainable when there is



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no landlord-tenant relationship between the parties?

(b) Whether the lower appellate court was right in concluding that the title of the plaintiff was not affected as per the provisions of the Tamil Nadu Minor Inams (Ablition and Conversion into Ryotwari) Act, 1963?

(c) Whether the courts below have failed to consider Sec.109 of Hindu Religious and Charitable Endowments Act, 1959 prior to its Amendment and the application of Limitation Act when the appellant has been in possession prior to 30.09.1951?

(d) Whether the protection given to the plaintiff under Sec.109 of Tamil Nadu Hindu Religious and Charitable Endowments Act will hold good when the plaintiff had knowledge of the possession for two decades?

5. Furthermore, In support of his arguments, the learned counsel for appellant relied the following authorities :-

(i) Reported in *Manu/TN/1087/2004* in the case of **Raghavendra Swami Mutt vs. Panchapakesa Iyer**, wherein this Court held in para 6 as follows :-

“Limitation :-



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6. *The first question that arise for consideration is whether the suit is bared by limitation. The deed of lease was executed on 16.02.1946. Admittedly, Sri Raghavendra Swamy Mutt is a Hindu Religious Institution and the properties belong to the said religious institution. Sec.109 of the HR & CE Act 1959, as it stood when the suit was instituted, saved from the operation of the law of limitation for a suit for the recovery of property belonging to the religious institution which did not vest in a person before 30.09.1951. In other words, Sec.109 of HR & CE Act provided that it is not open to a person to claim adverse possession against the property belonging to the religious institution unless he has pleaded and proved that the property belonging to the religious institution was in his possession adverse to the claim of the said religious institution and the property also vested in him prior to 30.09.1951. The deed of lease admittedly was entered into on 16.02.1946 and even the present defendant or his predecessors-in-title could not have claimed adverse possession in the suit property as he was in the property for less than five years as on 30.09.1951 and the present suit is not barred by the provision of Limitation Act. A similar view was taken by a learned judge of this court in **Rajanarayanaperumal Temple vs. Rethinam Pill** *Manu/TN/0486/1977 : (1979) 1 MLJ 159* where the*



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learned judge held that Sec.109 of the HR & CE Act is a special provision regarding the law of limitation and that would prevail over the general provisions contained in the Limitation Act and by 30.09.1951 if twelve year period had not elapsed from the date of transfer of the property belonging to the religious institution and the property did not vest in the defendant, the provisions of the Limitation Act would not apply and the religious institution is entitled to file a suit for recovery of possession of the property belonging to the said religious institution. We hold that the suit instituted by the plaintiff is not barred by limitation.”

(ii) Reported in ***Manu/TN/2211/2008*** in the case of ***Arulmigu Kolavizhi Amman Temple vs. R.Shanmugham***, wherein this Court held in para 38 as follows :-

“38. As per the original provision under Sec.109 of the H.R.& C.E. Act, 1959, a party cannot set up a plea as against the religious institution on the ground of prescription and adverse possession when the properties had vested in him after 30th September 1951. If the property had vested in such a person or his predecessor before the 30th September 1951, the person vested with the property of any religious institution can validly set up a plea of prescription and adverse possession.”



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6. By way of reply, the learned counsel for 1st respondent temple appeared and submitted that lands located in various survey numbers in the area known as Burkit Road, T.Nagar, Madras-17 including the suit property, wherein inam lands belong to 1st respondent temple, who entitled to both “Warams” in respect of the said land. Initially, the temple leased out the lands to various third parties and lessees were paying the rent. In respect of the land leased out to the plaintiff, the 1st respondent temple collected the rent with the introduction of Minor Inam Abolition Act, 30/1963. But, various lessees in occupation of land claimed ground rent patta in respect of lands in their occupation. There was a proceedings initiated before the Settlement Tahsildar, in which order was passed after hearing lessees and the 1st respondent temple, by which, the 1st respondent temple was declared to be a owner of the suit land and the respective occupants of the lands are owners of the building alone and the ground rent patta was allowed in favour of temple under Sec.13(1) of the Act 30/1963.

7. Accordingly, the 1st defendant T.V.Gowri, is one such lessee, who also participated in the Settlement Tahsildar enquiry in respect of Block



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No.134, T.S.No. 9276 and on hearing both sides, the Settlement Tahsildar passed an order on 25.05.1971. Against which, appeal was preferred before the Inam Appellate Tribunal by various occupants including 1st defendant T.V.Gowri and the same was dismissed by the Land Tribunal, II Asst. City Civil Court, Chennai by an order dated 18.09.1974. All those orders were produced before the trial court, which were marked as Exs.A1 and A2. Thereafter, the 1st defendant and other occupants preferred S.T.A. before the Division Bench of this court and the same was withdrawn and the copy of the order was marked as Ex.A2, thereby the order passed by the Settlement Tahsildar became final and accordingly, the plaintiff temple was declared as owner of the land located in various survey numbers at Burkit Road, including the suit property measuring 1 ground and 2201 sq.ft. in T.S.No.9276 and the superstructure put up in the suit land belongs to 1st defendant, who is lessee of the land and now she is bound to pay the rent to plaintiff temple as per the lease deed entered with the temple on 05.03.1996 marked as Ex.A7. Accordingly, 50 years lease period was granted, which ends in the year of 1986 on payment of rent of Rs.1.75 per month. While so, the 1st defendant attempted to alienate the property and entered into a



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joint venture agreement with the 2nd and 3rd defendants, who have advised for the construction of flats and a shopping complex over the suit property and a superstructure has also been demolished, for which neither the 1st defendant nor defendants 2 and 3 are entitled. Since the lease period came to end in the year of 1986, the 1st defendant bound to deliver vacant possession of property to the plaintiff temple. Hence, the plaintiff filed a suit for recovery of possession of the suit property and for a permanent injunction not to make any encumbrance. Before the trial court, the plaintiff temple proved its right and title over the suit property and also established that the 1st defendant is only a tenant and lease period came to end in the year 1986. So, she is bound to hand over the vacant possession, since already superstructure also been demolished. To prove the right and title, the plaintiff relied Ex.A1 to A7 documents, which were rightly appreciated by the courts below and decreed the suit and the same was upheld by the first appellate judge. Accordingly, the 1st respondent temple is entitled for recovery of possession.

8. Furthermore, the learned counsel for plaintiff temple would also submit that as per the lease agreement Ex.A7 dated 05.03.1936, 50 years



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lease period was given to 1st defendant, which came to end in the year of 1986. Hence, the lease of immovable property is terminated by granting efflux of time and thereafter, separate notice is not required under Sec.106 of T.P. Act, so, she is bound to deliver the possession, but she attempted to alienate the property in favour of 2nd defendant. Hence, the cause of action arose and the suit was filed in the year of 1996. Both the evidence on record and facts were rightly appreciated by the courts below and granted the relief in favour of plaintiff, which needs no interference. Hence, there is no substantial question of law involved nor it is fit case for admission. In respect of authorities submitted by the learned counsel for appellant, those are not applicable to the facts of instant case that from the year of 1936 onwards, as per the lease agreement Ex.A7, the 1st defendant T.V.Gowri was a tenant of the suit property belongs to the temple nor she enjoyed the same uninterruptedly adverse to the temple/true owner of property for the reason that she had paid the rent to the temple authority and the same was admitted by her daughter when she was examined as P.W.1. Therefore, the authorities are not applicable to the facts of the case.

9. Considering both side submissions, it reveals the facts that in the



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year 1996, the 1st respondent/plaintiff temple filed a suit for recovery of possession as well as for the relief of permanent injunction restraining them from putting up any construction in the suit property against defendants 1 to 3. The 1st defendant T.V.Gowri claimed as a tenant under the suit property belong to plaintiff temple. The case of plaintiff temple is that lands in various survey numbers at Burkit Road, T.Nagar, Chennai were inam lands belongs to plaintiff temple and the same was leased out to various third parties including 1st defendant by collecting rent after the introduction of Minor Inam Abolition Act 30 of 1963. Various lessees in occupation of the lands claimed ground rent patta in respect of their lands in their occupation. So, the proceedings were initiated before the Settlement Tahsildar and on hearing the temple as well as occupants, the Settlement Tahsildar passed an order on 25.05.1971, which was marked as Ex.A1. On perusal of that order, it would clearly reveals that ground rent patta under Sec.13(1) of the Act 30.1963 was granted in favour of temple and lessees jointly. Provided, it also declared that lessees are owners of the building alone and in the said order, the suit property comprised in T.S.No.9276 Block No. 134 stands in the name of 1st defendant T.V.Gowri ammal as



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lessee. It is an admitted fact that the settlement order was challenged by her in the appeal and the same was dismissed. Against which, they preferred S.T.A. before the Division Bench of this Court in S.A.Nos. 128, 149 to 158, 176 to 179 of 1975 by the occupants including the 1st defendant and the same was also been withdrawn by the occupants in the year of 1995. Therefore, the order passed by the Settlement Tahsildar reached finality and as on date, it is in force.

10. It is also pertinent to note that during the cross-examination of D.W.1, daughter of T.V.Gowri Ammal viz., D.W.1 also admits that her mother was a tenant under the temple and her mother entered into a lease agreement with the temple in the year of 1936. Subsequent to that, T.V.Gowri died and her legal heirs contested the suit. Now, one of her daughter, 8th defendant preferred this Second Appeal. During the pendency of the proceedings, the Commissioner was appointed and as per the report of Commissioner, now the suit property is a vacant site and the superstructure was also been demolished. Admittedly, she has not produced original patta, but had produced the xerox copy of the same. D.W.1 relied Ex.B4 extract of land register certificate stating that patta was granted in



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favour of her mother in the year of 1995, but on perusal of the documents, she has not produced any original patta nor examined any revenue officials and the same was rightly observed by the courts below, which needs no interference of this court. Therefore, the demand notice claiming urban land tax from the 1st respondent would not support her case for the reason that already the plaintiff temple was exempted from collecting urban land tax as per the proceedings passed on 05.02.1983 by the Commissioner of Land Reforms marked as Ex.A3, since the temple is the owner of land. Accordingly, the demand notice relied on by the defendants would not confer any right or title over the suit property and the same was rightly concluded by the courts below. To that effect, one of the question of law raised on the side of appellant is considered.

11. Furthermore, the 1st defendant claimed that her mother had occupied the land, thereby she became absolute owner after abolition of Inam land as such is unsustainable one for the reason that as on date, the order of Settlement Tahsildar granting ground rent patta in favour of plaintiff temple is in force, wherein she is also one of the party to the proceedings. Therefore, the 1st defendant has no right to enter into Joint



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Venture Agreement with the 2nd defendant nor put up a commercial complex in the suit property as she has no right and title over the suit property and the same was rightly observed by the courts below, which needs no interference of this court.

12. Moreover, the facts involved in the authorities relied on by the appellant's counsel is totally differs from the facts of the instant case for the reason that on 30.09.1951 i.e. prior to the enactment of H.R. & C.E. Act, 1959, if the property belong to a religious institution was in partial possession adverse to the claim of the said religious institution, it is open to a person to claim adverse possession. But, the case in hand, admittedly, from the year of 1936 onwards, the 1st defendant being a tenant under the plaintiff's temple entered into a lease agreement for 50 years, which ends in the year of 1986 and she also paid ground rent to the temple and the same was admitted by her daughter during evidence. Therefore, the suit property is not vested with the 1st defendant adverse to the claim of temple. So, those authorities would not support the appellant's case. To that effect, the plaintiff temple relied the ratio laid down in the case of *Arulmighu Kallalagar Thirukoil, Alagarkoil, by its Executive Officer vs.*



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S.S.Rajaram and 9 others reported in **2008 (2) L.W. 617**, which is supporting the case of plaintiff. In the said authority, this Court held in para 32 as follows :-

“32. Even though voluminous documents filed on the side of defendants, yet they emerged subsequent to 1951. Had they produced any document anterior to 1951 and also established that anterior to 1951, they enjoyed the property over the statutory period of prescription, then the matter would have been different. But, here there is no iota or shred of evidence to prove that anterior to 1951, the defendants have been enjoying the property as their own property.....”

13. In the said circumstances, the contentions of appellant is that her mother was in uninterrupted peaceful possession for more than 50 years is unsustainable as such till 1986, the period of lease was in force and thereafter, the 1st defendant attempted to alienate the property by entering into a Joint Venture Agreement of the suit property. As per the terms of lease, after completion of 50 years, it would automatically terminated. Therefore, the 1st defendant, since died, her legal heirs bound to hand over the possession of the property to the plaintiff temple. The courts below also



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rightly granted recovery of possession in favour of plaintiff temple, which needs no interference of this court. Therefore, I do not find any merit in this Second Appeal as there is no question of law involved for consideration as claimed by the appellant. Accordingly, this Second Appeal is dismissed as no merit and findings of courts below in A.S.No. 25 of 2021 on the file of XXII Addl. Judge, City Civil Court at Chennai upholding the judgment and decree passed in O.S.No.1734 of 1996 is confirmed. Suit is decreed as prayed for. Time is granted to hand over vacant possession for the period of three months from the date of receipt of copy of this judgment. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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

XXII Addl. Judge, City Civil Court, Chennai.

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T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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