Appu and ors. Vs. Raman and ors.

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Court : Chennai

Decided On : Jul-28-1891

Reported in : (1893)ILR16Mad425

Judge : Parker and ;Wilkinson, JJ.

Appellant : Appu and ors.

Respondent : Raman and ors.

Judgement :

1. The plaintiffs (respondents) are junior members of the Payyan Puthen Vittil tarwad, of which defendant No. 2 is the karnavan. Defendant No. 3 is also a member of this tarwad. Defendants Nos. 1 and 4 are members of Payyan Kandan Chirakal tarwad. All these were originally members of one tarwad, but at present there is only Ataladakkam right between the members of these two tarwads. Defendants Nos. 5, 6 and 7 (the appellants) are members of distinct tarwads who have obtained a decree awarding to them as uralers of the Parakoth devasom, the right to recover possession of certain devasom lands. The plaintiff's ask for a declaration that neither defendants Nos. 5 to 7 nor their tarwads have any uraima right in the Parakoth devasom, and that, if they ever had such right, they have lost it by lapse of time. They also seek a perpetual injunction to prohibit defendants Nos. 5 to 7 from executing the decree they have obtained.

2. The Subordinate Judge found that defendants Nos. 5 to 7 had not made out their uraima right, that if they ever had any such right, they have lost it by non-user for about 100 years, and that plaintiffs' family have had hostile possession since 1857. He, therefore, gave plaintiffs the declaration and injunction sought.

3. It will tend to elucidate matters if we first review the different suits between the parties. Admittedly, the management of the devasom has, for the last century or more, vested in the tarwad, of which plaintiffs and defendants Nos. 1 to 4 were members. The earliest suit was Original Suit No. 181 of 1854, which was filed by one Kamaran Nambiar to recover from the then karnavan of the plaintiffs' tarwad certain wet land which had been demised to a third party (the second defendant in the suit). The present defendant No. 1 and defendants Nos. 5 and 6 or their representatives came in as supplemental defendants. The karnavan of the plaintiffs' tarwad pleaded that the land was the jenm of the Parakoth devasom. The representatives of defendants Nos. 5 and 6 alleged that the land was the jenm of the devasom, but that defendant No. 1 (plaintiffs' karnavan) was not an uralan but a samudayam. The Court found that the land was the jenm of the devasom, dismissed the suit and referred the parties who disputed the uraima right to a civil suit. This was in March 1857. The next suit was Original Suit No. 663 of 1855 instituted by one Krishnan Nambudri to recover land demised to the devasom. Among the defendants were the representatives of all the parties to this suit, who were impleaded as uralers of the devasom. The representative of the present fifth defendant's tarwad denied the uraima right of the present plaintiffs' representative, and pleaded that the property was the jenm of the devasom. Plaintiffs' representative relying on the decree in the former suit (which had been passed before he put in his written statement) denied the uraima right of the present defendants Nos. 5, 6 and 7. The representative of the present sixth defendant also denied the uraima right of the plaintiffs' representative and asserted that the only uralers of the devasom were defendants Nos. 1, 5, 6 and 7. The Court found that the property sued for was the jenm of the then plaintiff; that the present plaintiffs' representative was the chief uralan of the devasom; that he managed the affairs and performed the ceremonies of the temple, and directed payment of the kanom amount to the plaintiffs' representative, and to the present first defendant as his direct karnavan. The other claimants, i.e., the present defendants Nos. 5, 6 and 7

were referred to a suit to establish their uraima right.

4. In 1882 the present defendants Nos. 1, 5, 6, and 7 instituted a suit (Original Suit No. 387) against the present second defendant for an account of the moneys due to the devasom for the years during which he had been in management under the present first defendant. The defendant (second defendant here) denied that the plaintiffs were uralers and asserted that he was the sole and absolute uralan. It was held both by the Court of First Instance and by the Appellate Court (Exhibits XLII and XLIV) that the present first, fifth, sixth and seventh defendants were uralers, and that the defendant (present second defendant) was a junior member of the present first defendant's tarwad and liable to account.

5. In 1886 defendants Nos. 5, 6 and 7 brought a suit (Original Suit No. 499, Exhibit XLI) to recover certain devasom lands and arrears of rent. The present first defendant was, along with the tenant, a defendant. There was an issue whether the plaintiffs were uralers of the devasom, and it was found by both Courts that they were, and they obtained a decree for possession and rent.

6. It is first argued that the plaintiffs cannot maintain a suit for a declaration; that they cannot assert an uraima right unless they can prove fraud and collusion on the part of defendants Nos. 1 and 2, who were parties to Original Suit No. 387 of 1882, and reliance is placed on the decision in Kelu v. Paidel I.L.R. 9 Mad. 473. That case however is not on all fours with the present. There, a suit had been brought by a third party against all the uralers of the devasom, and property of the devasom had been sold. Certain anandravers of the uralers then brought a suit to set aside the sale, and the Court held that the decree was binding on all future representatives of the devasom unless set aside on the ground of fraud or collusion. That is a very different case from the present. The ground of decision in that case was that the property of the devasom is vested in the uralers. The question in the present suit is not as to the property of the devasom, but as to the real status of the respondents. It is stated in the plaint that, owing to the first defendant's incapacity and collusion and to the culpable negligence of the second defendant, who failed to set forth a true plea, a decree was passed in favour of the respondents as uralers. It seems to us that the interests of the respondents, as

reversioners, are sufficient to enable them to maintain the suit without proof of fraud or collusion on the part of defendants Nos. 1 and 2.

7. It is then argued that the decree of the Lower Court is contrary to law, inasmuch as it grants an injunction to stay proceedings in a Court not subordinate to the Court of the Subordinate Judge (Specific Relief Act, Section 56 (b). By the decree of the Lower Court, the appellants are prohibited from executing the decree in Appeal Suit No. 215 of 1887 on the file of the District Court. We do not consider that this can be held to be an injunction to stay proceedings in the Court of the District Judge. Clause (b) of Section 56 is apparently taken from Section 24 (5) of the English Judicature Act of 1873 which was as follows: 'No cause or proceeding at any time pending in the High Court of Justice, or before the Court of appeal shall be restrained by prohibition or injunction.' The object of the enactment appears to have been to do away with the use of injunctions as a means for controlling proceedings in other Courts, and it has been adopted in Act I of 1877 to prevent in the Courts of this country the use of any such jurisdiction. But the effect of the injunction granted by the Lower Court is to prevent the appellants from applying to the Court to execute its decree. No application for execution has yet been made, and so long as the injunction is in force none can be made, and therefore no pending proceeding of a Court is restrained by the injunction.

8. With reference to the merits, we are of opinion that the Subordinate Judge has rightly decided (1) that the appellants have not made out their uraima right, and (2) that the possession of plaintiffs' tarwad as uralers since 1857 has been adverse to the appellants.

9. No reliance can be placed on the temple pymash of 1818 (Exhibit XLIII), in which, moreover, only the representative of the fifth defendant's tarwad is to be found. This pymash is not signed by any responsible officer, nor is there anything to show by whose orders or in what manner it was prepared.

10. Now, this is the only document relied on by the appellants prior in date to the decree in Original Suit No. 663 of 1855, in which their claim to be recognized as uralers was not acknowledged. We have, however, been referred to a number of documents executed subsequent to the decree in the above suit as showing that

one or other of the appellants has exercised uraima right by paying the wages of a drummer of the devasom, (Exhibits XVI, XVII and XXV) and by dealing with land belonging to the devasom (Exhibits XIII, XXIV and XL). Admittedly, there is no evidence to connect the lands referred to in these exhibits with the devasom, and in the fifth defendant's written statement they are referred to as 'tarwad properties set apart for the devasom. 'It is not shown that Puthen Vittil tarwad has ever acknowledged the right of the appellants to deal with devasom lands, or to remunerate temple servants. The sole management has admittedly been from time immemorial in the Puthen Vittil tarwad, so that it is difficult to see what reliance can be placed on a few isolated transactions such as these, all of which took place after the alleged right of the appellants had been openly repudiated. Moreover, the evidence of the defendants' eleventh witness whose elder brother executed Exhibit XXIV and of the twelfth witness whose brother executed Exhibit XL shows clearly that these documents were not bond fide transactions. Defendant No. 6, who was examined as plaintiffs' sixth witness, admits that he has no documents to show that the lands which he asserts are held by him as uralan are devasom lands, or are held by him as such.

11. As to the performance of certain ceremonies, we concur with the Subordinate Judge that there is no reliable evidence to connect the performance of Kaliattom ceremonies with the rights of an uralan. There is evidence to show that such ceremonies are performed by many who have no claim whatever to the uraima right.

12. But even if it be admitted for the sake of argument that the tarwads of defendants Nos. 5, 6 and 7 once had the right claimed, it is clear that the plaintiffs' tarwad had been in adverse possession for more than 12 years, when Original Suit No. 387 of 1882 was instituted. Had Exhibits A and B (the judgments in Original Suit No. 181 of 1854 and Original Suit No. 663 of (1855) been filed in that suit by the present first or second defendants, the Court would have seen that the appellants' claim to be regarded as uralers had been openly repudiated by the only managing uralan nearly 30 years before and that the respondents were in no sense agents of the appellants.

13. The decree of the Lower Court must be confirmed, and this appeal dismissed with costs.