

Sayarakshai Kattalai and Arthajama Kattalai Attached to Arulmigu Kayaroganaswamy and Neelayadakshi Amman Thirukoil, Nagapattinam Represented by Its Executive Officer Vs. R. Radhakrishnan and anr.

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Court : Chennai

Decided On : Mar-29-2001

Reported in : (2001)3MLJ73

Appellant : Sayarakshai Kattalai and Arthajama Kattalai Attached to Arulmigu Kayaroganaswamy and Neelayadakshi a

Respondent : R. Radhakrishnan and anr.

Judgement :

E. Padmanabhan, J.

1. The plaintiff, who is unsuccessful before the trial Court, is the appellant in this appeal. Pending the suit the first defendant died and the third defendant had been impleaded as his legal heir. This appeal which was originally dismissed for non-prosecution but restored, came up for hearing.

2. Heard Mr. R.N. Kothandaraman, learned Counsel appearing for the appellant and Mr. Ashok Viswanathan, learned Counsel appearing for the 2nd respondent. For convenience, the parties shall be referred as arrayed before the trial Court.

3. The plaintiff instituted the suit praying for a declaration that the Land Building and premises described in the suit 'A' Schedule belong absolutely to Sayarakshai Kattalai of Neeladayakshiamman Temple and uphold its title thereof, direct the 2nd defendant or defendants to deliver possession of the 'A' schedule premises, direct the 2nd defendant or defendants to pay past and future mesne profits, restrain the defendants from taking possession of suit 'A' Schedule building and premises and for costs.

4. According to the plaintiff, Sayarakshai Kattalai and Ardhajama Kattalai are among the specified endowments attached to Arulmigu Kayaroganaswamy and Neeladayakshiamman Temple and they are all public religious institutions governed by the provisions of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The Executive Officer of the said temple is authorised and entitled to represent the temple as well as the Kattalai attached thereof and to sue on behalf of the Kattalai.

5. The Kattalai are as ancient as the temple and six kala poojas are performed in the temple. The six kala poojas include Sayarakshai Kalam as well as Ardhajama. The suit properties have been dedicated to and endowed for sayarakshai service in the said temple. Hence, it is a kattalai attached to the temple. Although there is no deed of dedication as such, yet there are clinching materials to establish that the property has been endowed for the performance of Kattalai. The granite embedded plaque fixed on the suit property would show dedication and endowment of the said property for the performance of Kattalai attached to the

plaintiff temple. Even, father of the 2nd defendant executed a lease deed while accepting that the properties as dedicated and endowed for the performance of the sayarakshai kattalai. The registration copies of the said lease deed are dated 22.4.1917, 8.1.1933. As seen from the said documents, the property had been dedicated and endowed for the purpose of performance of kattalai and it is an absolute and total dedication. On the death of Rangabashyam Naidu, his only son, the 2nd defendant continued to occupy the said 'A' schedule buildings as a tenant thereof.

6. The first defendant while claiming to be the owner of the plaint 'A' schedule property, instituted R.C.O.P. No. 5 of 1980 against the 2nd defendant seeking for eviction on the ground of wilful default in the payment of rents. The 2nd defendant resisted the eviction petition contending that it is not the property of the first defendant, but it is an endowed property attached to the specific kattalai. It was however contended that the Rent Controller has no jurisdiction as its property owned by the religious endowment. Overruling the objections, order of eviction had been passed, which order, according to the plaintiff had cast a cloud on the plaintiff's title to the suit property. Hence, the suit.

7. According to the plaintiff, neither the first defendant nor the 2nd defendant have any title or right to the plaint 'A' schedule. The sayarakshai kattalai has no other property or income excepting the 'A' schedule property. The plaintiff temple issued a notice and thereafter had filed the present suit. Along with the plaint, the plaintiff produced two documents, namely, order of appointment of Executive Officer for the plaintiff temple and the proceedings of the Deputy Commissioner dated 7.1.1981.

8. The first defendant filed a written statement contending that the suit claim is false, frivolous and only at the instigation of the tenant, the 2nd defendant, the suit has been filed, by the Executive Officer, who is simply a puppet in his hands. There are no bona fides. The 2nd defendant had caused the suit to be filed with a view to perpetuate his possession even after passing of order of eviction. The plaintiff had come out with the present suit to support the false claim of the 2nd defendant by introducing a theory of various kattalais, as if it is an endowment or a religious institution.

9. It is pointed out that it is for the plaintiff to move the concerned Deputy Commissioner and seek for a declaration that the suit properties are endowed and no suit is maintainable. The Civil Court, according to the defendants, has no jurisdiction to give a finding in respect of the alleged nature of the trust. The present suit is barred by the provisions of Section 108 of the Hindu Religious and Charitable Endowments Act. The plaintiff cannot maintain the suit and the plaintiff is not entitled to any of the reliefs prayed for without exhausting the remedies provided under Sections 63 and 64 of the Hindu Religious and Charitable Endowments Act.

10. It is pleaded that the plaintiff is a puppet in the hands of the 2nd defendant, who has unlawfully gone over to the plaintiff to file the suit even after an order of eviction has been passed by the rent controller against the 2nd defendant, tenant. There is no kattalai, nor there is anything to show that the property had been dedicated for the performance of the kattalai. It is pointed out that there is no trust deed, or deed of dedication or muchless a deed of instrument to prove the plaintiff's case. On the other hand, the first defendant pleaded that the suit is a speculative venture with full knowledge that there are no merits and that the first defendant is entitled for exemplary costs. The suit property had never been an endowed property or a trust property at any point of time, but it is the separate property of the defendant.

11. The 2nd defendant filed a written statement pleading that the suit property belong to the trust called Sayarakshai and Ardhajama Kattalai attached to the plaintiff temple. The suit property does not belong to the first defendant and the first defendant is not performing the trust and therefore the Executive Officer is well justified in initiating action. The 2nd defendant further pleaded that he is prepared to attorn tenancy to whomsoever the Court declared as the owner of the suit property and pay rent. The plaintiff is not entitled to actual possession as the 2nd defendant is a statutory undertaking who is entitled to the benefits of Tamil Nadu Act 18 of 1960. The 2nd defendant could be evicted only by due process of law and the plaintiff is not entitled to possession. The 2nd defendant resisted the eviction petition contending that the first defendant is

not competent to institute the eviction proceedings as the property belongs to the trust. The eviction proceedings are pending by way of revision on the date of filing of the written statement. The 2nd defendant had further pleaded that he had deposited all the arrears of rent into Court and no rent is due. The 2nd defendant, while denying the first defendant's plea as false, contended that the plaintiff is not entitled to the suit property.

12. The 3rd defendant filed a separate written statement, but his stand is that of the first defendant and the 3rd defendant claims that he is the absolute owner of the suit property having inherited the same from his ancestors and the 3rd defendant prayed for dismissal of the suit.

13. The plaintiff filed a reply statement denying the averments set but in the written statement filed by the defendants 1 and 3 and reiterating its stand. The plaintiff filed a genealogical tree, and also reiterated its stand in the reply statement.

14. On the said pleadings, the trial Court framed the following issues:

(1) Whether the suit properties have been endowed for the Sayarakshai Kattalai?

(2) Whether the suit properties are endowment properties?

(3) Whether the first defendant and after him the 3rd defendant are the exclusive owners of the suit property?

(4) Whether the present suit is barred under Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act?

(5) Whether the plaintiff is entitled to recovery of the suit property?

(6) Whether the plaintiff is entitled to recovery of mesne profits both past and future, if so from whom, if so, how much?

15. The trial Court framed the following three additional issues:

(1) Whether the 3rd defendant had prescribed title to the suit property?

(2) Whether the 3rd defendant has a right to be in possession as an intermediary?

(3) Whether the 3rd defendant has a right to be in possession and collect the rents?

(4) To what relief the plaintiff is entitled to?

16. The plaintiff marked Exs.A-1 to A-18 while the defendants marked Exs.B-1 to B-9. The plaintiff examined P.Ws.1 to 4 while the 3rd defendant alone examined himself as D.W.1. The trial Court dismissed the suit holding that there is no proof of dedication of the suit property for the Sayarakshai kattalai, that the suit is not maintainable and it is barred under Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, that the plaintiff is not entitled to relief of past and future mesne profits. The trial Court also held that the 3rd defendant is exclusively entitled to the suit property and adverse to the interest of the plaintiff. Ultimately, the trial Court dismissed the suit with costs to the 3rd defendant. Being aggrieved, the plaintiff has preferred the present appeal.

17. The following points arise for consideration in this appeal:

(1) Whether the present suit is barred by Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act?

(2) Whether the suit property is dedicated and endowed for the purpose of sayarakshai kattalai and ardhajama kattalai?

(3) Whether the suit properties are the separate properties of the first defendant and after him the third defendant?

(4) Whether the 3rd defendant had prescribed title to the suit property?

(5) Whether the 2nd defendant is entitled to be in possession?

(6) To what relief, the appellant/ plaintiff is entitled to?

18. It is proper to take up the issue regarding the maintainability of the suit and thereafter the other points could be taken up for consideration. Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments act, which is being heavily relied upon by the counsel for the 3rd defendant to hold that the suit is barred and not maintainable. The legal position or principle as to exclusion of jurisdiction of the Civil Court is provided under Section 108 of the Tamil Nadu Act 22 of 1959. By now the legal position is well settled. If the dispute arise or suit relates to the administration or management of a religious institution, or any other matter for determination of which a provision has been made under the Act, a bar under Section 108 will apply or gets attracted. If the question that arises for adjudication in the present suit falls outside the scope and ambit of Section 108 of the Act, then the Civil Court definitely has the jurisdiction to entertain the suit and such a suit is not barred under Section 108 of the Act.

19. It is also well-settled that if in a suit any matter in respect to which a provision is made under the Act has to be incidentally decided, the jurisdiction of Civil Court is not excluded. If a question in respect of which the bar is conferred on the Deputy Commissioner to decide under Section 63 of the Act, arise incidentally for consideration in a suit, jurisdiction of the Civil Court will not be excluded.

20. Notwithstanding Section 108 of the Act, where the dispute relates to a temple is only between two private parties and the Endowments Department is not directly concerned, yet the Civil Court has jurisdiction to try the suit as has been held by this Court in Kailasa Mudaliar and Ors. v. Anandavadivelu Mudaliar and Ors. a Division Bench of this Court in the said judgment held thus:

The principle on which the jurisdiction of the Civil Court is excluded under Section 108 of Tamil Nadu Act XXII of 1959 are now well settled. If the dispute raised in the suit relates to the administration or management of a religious institution of which a provision has been made in the Act, the bar under Section 108 of the Act will be attracted. On the other hand if the question arising for adjudication falls outside the scope and ambit of Section 108 of the Act, then the Civil Court will have jurisdiction to entertain the suit and the bar of exclusion of jurisdiction provided for under Section 108 cannot be invoked.

It is equally settled that if, in a suit, any matter in respect of which a provision is made under the Act had to be incidentally decided the jurisdiction of the Civil Court will not be excluded. To be more specific if any other question in respect of which the power is conferred on the Deputy Commissioner to decide under Section 63 of the Act, arises incidentally, for consideration in the suit, the jurisdiction of the Civil Court will not be excluded. Notwithstanding Section 108 of the Act, where the dispute relating to a temple is only between two private parties and the board is not directly concerned, the Civil Court has jurisdiction to try the suit.

In the instant case it is clear that the jurisdiction of the Civil Court was not excluded. The suit proceeded definitely on the basis that the first defendant had been clearly appointed as trustee and subsequently plaintiffs 1 to 4 had been appointed trustees by the Board. There was a clear statement that the first defendant had been directed to hand over charge of all the records and properties of the trust to the newly appointed trustee viz., plaintiffs 1 to 4. The alienees from the first defendant were in possession of the suit properties. The alienees were strangers so far as the Devasathanam was concerned and naturally therefore, the plaintiffs had to recover possession of the properties from the strangers who are in the wrongful possession, according to the plaintiff, of the suit properties. This is the main and substantial relief asked for in the suit.

21. It is also equally well-settled so far as the present suit is concerned, the suit claim as to title of a religious endowments has not been excluded nor it is vested with any other authority so as to limit the jurisdiction of Civil Court to decide the question of title and declare any conveyance void and therefore it is obvious that the Civil Court has the jurisdiction to decide such issues.

22. The preponderance of judicial authority is that a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner and that in such a suit the Civil Court has jurisdiction to decide all incidental issues which are within the jurisdiction of the Deputy Commissioner as has been held by a Division Bench of this Court in Sri Venkataramana Swamy Deity v. Vadugammal . The Division Bench in the said pronouncement held thus:

19. In effect, the aim of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 is not to exclude the jurisdiction of the Civil Court, but to facilitate proper administration of religious institutions by following the procedure prescribed to pursue the remedy before the Deputy commissioner and the Commissioner before filing a suit, under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (XXVI of 1948), in proceedings relating to the grant of patta under Sections 12 to 14, Section 15 provides that the decision of the tribunal regarding claims under Sections 12, 13 and 14 by the landholder is final and not liable to be questioned in any Court of law. The provision excluding the jurisdiction of the Civil Court is more specific. Though Section 64(c) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, provides that any order passed by the Government or any of the authorities under the Act shall, subject only to any appeal or revision provided by or under Act, be final, it had been held that the finality is only in respect of the matters to be determined for the purpose of this Act and that there is no machinery in the Act to determine whether a land in the estate is a ryoti land or a communal land and a decision as to the question of title by the statutory authorities is only an incidental matter which would not preclude a Civil Court independently enquiring into title in a properly constituted suit. Thus in the special enactments, the jurisdiction of the Special Tribunals under the Act is confined only to the purposes of the Acts. As already pointed out, the procedure prescribed under the Act regarding the matters specified in Section 57 should be followed before the Deputy Commissioner and in the appeal or revision before the Commissioner, before a suit is filed. A relief which cannot be granted by the Deputy Commissioner can be asked for in a Civil Court. If, in deciding whether the plaintiff is entitled to the relief asked for, the Civil Court also has to decide certain issues which may fall within Section 57 of the Act, the Civil Court's jurisdiction is not barred. There is no provision for reference by the Civil Court of a particular issue which is within the scope of Section 57 to the Deputy Commissioner for determination. Equally, the plaintiff who seeks relief from a Civil Court cannot be asked to get adjudication of an incidental question from the Deputy Commissioner before he filed a suit. Therefore, the preponderance of authority of our Court is that a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner and that in such a suit, the Civil Court has jurisdiction to decide incidental issues which are within the jurisdiction of the Deputy Commissioner.

23. Section 63 of the Act provides that a Deputy Commissioner shall have power to enquire into and decide the following dispute and matters:

(1) Whether an institution is a religious institution?

(2) Whether any property or money is a religious endowment?

(3) Whether any property or money is a specific endowment?

(4) Whether any institution or endowment is wholly or partly of a religious or secular character, besides other matters.

24. The proceedings under Section 63 are summary. What is the dispute in the present suit is that whether the suit properties are the separate properties of the first defendant or that of the third defendant and whether they have or not have been dedicated? Whether the properties are not the kattalai properties? In

other words, the title of the plaintiff in the suit property is disputed. There is no dispute as to the nature of kattalai, to be performed by the plaintiff, but what is claimed is the claim of title or right to the suit property and it is a rival claim to title by the defendants 1 and 3 who set up title in themselves as if there had been no endowment or dedication of the property. The suit predominantly relates to dispute relating to the title or right or claim relating to the suit property. In the light of the abovesaid Division Bench judgments, this Court is of the considered view that the present suit is not barred under Section 108 of the Act and this point is answered in favour of the plaintiff/ appellant.

25. The next two points could conveniently be clubbed together and taken up for consideration. Admittedly there is no separate document or deed of dedication. But what is sought to be established is that the owner of the property had endowed the suit property for the performance of kattalai as seen from the various documents. The plaintiff had marked documents. Exs.A-1 to A-18 to support its claim besides examining P.Ws.1 to 4.

26. This Court has to examine the plaintiff's claim of title to the suit property eschewing the evidence or the plea of the 3rd defendant, a tenant against whom an order of eviction has been passed. If the plaintiff succeeds in establishing that the suit property had been dedicated for the performance of kattalai and the property vests in the kattalai, then the plaintiff has to succeed, if not the plaintiff has to fail. Ex.A-2, dated 13.6.1979, Ex.A-15, dated 8.1.1933 and Ex.A-16, dated 22.4.1917 are the documents which are heavily relied upon by the plaintiff to establish the endowment or dedication of the suit property for the performance of kattalai attached to the plaintiff temple. Exs.B-1 and B-2 also, according to the appellant, would advance the case of the plaintiff to a larger extent. Under Ex.A-1, Will, dated 13.6.1879, one Muthukumara Chettiar dedicated the three shops for the performance of sayarakshal kattalai. As seen from the recital, the executor had purchased the suit property, set the property for the purpose of the very kattalai. The kattalai is the owner of the property. The Will also provides as to how the property has to be managed and also prohibits any alienation or sale of the endowed property. Ex.A-16, dated 22.4.1917 is a deed of lease executed by the lessor in favour of the lessee.

27. The recital in Ex.A-16 which is dated 22.4.1917 clinchingly establish that the suit property had been dedicated for the performance of kattalai. The recital reads thus:

28. Ex.A-15 is a copy of the document executed by one Rangabashyam Naidu in favour of Muthukumara Chettiar and the recital in this document, which is relevant, reads thus.

29. This Court on a consideration of Exs.A-1, A-15 and A-16 clinchingly prove that the suit property had not only been dedicated for the purpose of performing kattalai as claimed by the plaintiff but also been given effect and treated as such. All these documents are more than 30 years old and they have been marked with the consent by the trial Court. The recitals in the above documents would show that the said properties have been dedicated for the kattalai and all the documents being ancient and came into existence when there was no controversy with respect to the property. The documents establish not only dedication but also performance and being acted or held as such. The testator under Ex.A-1 was performing the kattalai during his life time as seen from the said documents. The evidence of P.W.3 who is an elderly person aged 65 years who had deposed that for the past four generations, the family is residing in the suit property. His father and grandfather were lessees and he had also spoken about the contents of Exs.A-15 and A-16. It is also not disputed that there is a stone inscription with the following letters:

30. The said Muthukumara Chettiar died without issues. The existence of stone inscription would clinchingly prove that this property had been dedicated for the purpose of kattalai and the property vests with kattalai. The existence of stone inscription is not denied by the contesting defendants. The cumulative effect of the above documents establish that there had been a dedication of the suit property for the purpose of performing sayarakshai kattalai in the said temple and the said dedication had been given effect to and acted upon as seen from lease out of the property in favour of tenants as deposed by P.W.2, who are in occupation

for the past four generations.

31. Hence, it is clear that there had been dedication of the suit property for the performance of the kattalai attached to the plaintiff temple and the defendants claim that the property had not been endowed or dedicated for the purpose of kattalai has to be rejected. The finding recorded by the trial Court in this respect in paras. 5 to 6 cannot be sustained as the approach of the Court below cannot be appreciated.

32. There are clinching documentary evidence to show the dedication and the very inscription which is available in the suit property, which admitted existence would show that there had been a dedication of the suit property for the performance of the kattalai. The oral evidence let in by the plaintiff also are overwhelming, apart from the documentary evidence such as Letters, Deed, Will and other documents of proof. Hence, on the 2nd and 3rd points also this Court holds that the suit property had been endowed for the purpose of performing kattalai in the plaintiff temple and the plaintiff is entitled to manage the suit properties, collect rents, etc. This Court has to necessarily declare that the suit properties are owned by the kattalai and the plaintiff is entitled to manage the kattalai, utilise the income for the performance of the kattalai for all time to come.

33. As regards the rest of the points, though the defendants attempted to show that they are the exclusive owners, there is no documentary evidence to sustain the defendants claim of title to the suit property. Defendants 1 and 3 have neither title nor any other legal claim. If so happens that the original owner was alive for a considerable time after dedication and he had been leasing out the property as seen from the above referred documents and had been utilising the income for the performance of kattalai. It being an endowed property, owned by a religious endowment, or it being a trust property, it is rather strange and extraordinary on the part of defendants 1 and 3 to claim exclusive title. The evidence advanced in this respect by the defendants 1 and 3 cannot be accepted at all and the Court below had proceeded as if the defendants 1 and 3 are the owners when there is no document to prove such a claim nor the said defendants are the descendants of the Testator of Ex.A-1, Will and in respect of which property the defendants 1 and 3 cannot claim title merely because they have been in enjoyment of the suit property and collecting rents for quite some time.

34. In the present case, as the entire documentary evidence would show that this property had been dedicated for the purpose of kattalai and the income is being utilised for the purpose of performing Kattalai from time immemorial. Hence, the remaining points are also answered against the defendants 1 and 3 and in favour of the plaintiff.

35. The plea that the defendants 1 and 3 have perfected title by adverse possession cannot be sustained as spoken to by P.W.2 when it is only the lessee who has been in possession as a lessee and enjoyment of the suit property for four generations and they have been paying rents to the trust for the time being in office, which rental income had been utilised for the performance of kattalai. The plea of limitation had not been raised, but what is sought to be contended is the prescription of title by adverse possession. This Court holds that there is no material to substantiate such a plea on the facts of the case as the income from the suit property which had been dedicated for the performance of kattalai, was being collected and being used for the performance of kattalai. Hence, the plea of defendants 1 and 3 has to necessarily fail.

36. The question whether the plaintiff is entitled to recover possession has to be answered in favour of the plaintiff as the plaintiff is a public temple and the kattalai attached to the temple is also a religious institution and the property is owned or held by the religious institution are exempt from the provisions of the Rent Control Act. Hence, the present suit to recover possession is maintainable with respect to the suit property which is a Religious and Charitable Endowment as defined under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

37. Hence, all the pleas put forward by the defendants 1 and 3 have to be negated. The suit deserves to be decreed as prayed for.

38. In the result, the judgment and decree of the trial Court are set aside and the suit is decreed as prayed for with costs while directing that the ascertainment of mesne profits be relegated under Order 20, Rule 12 of the Code of Civil Procedure. The appeal is allowed with costs throughout.

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