

Sanmugam and ors. Vs. Trichy Thanjavur Diaseas of Church of South Indian Association Trust Represented by Its Treasurer and President and anr.

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Court : Chennai

Decided On : Aug-27-2001

Reported in : (2001)3MLJ572

Appellant : Sanmugam and ors.

Respondent : Trichy Thanjavur Diaseas of Church of South Indian Association Trust Represented by Its Treasurer an

Judgement :

A. Ramamurthi, J.

1. The unsuccessful defendant in O.S.Nos. 2977, 2973, 2975, 2976, 2978, 2979 and 2980 of 1982 on the file of Principal District Munsif Court, Trichy have preferred Second Appeal Nos. 1038 and 1176 to 1181 of 1991 respectively aggrieved against the judgment and decree made in A.S.Nos. 172, 169, 170, 171 and 173 to 175 of 1990 on the file of Principal District Judge, Trichy, confirming the judgment and decree of the trial Court dated 7.3.1990.

2. The case in brief for disposal of all the appeals is as follows:- Trichy Thanjavur Diaseas of Church of South Indian Association Trust represented by the President filed the suits as plaintiff against the respective defendants for delivery of possession of the suit property and also for past and future arrears of rent. The

plaintiff had purchased the right, title and interest of the suit property under two registered documents dated 27.9.1981 and 28.9.1981 from the legal heirs of Tmt. Man Singh. The respective defendants in the suits are tenants in the property under the father of the plaintiff on a monthly rent payable on the 5th of every succeeding month. The tenancy was oral. The plaintiff is a public charitable institution. After purchase by the plaintiff, they have duly communicated all the defendants, but they sent a reply containing false averments. Again another notice was also sent terminating the tenancy. Now, the plaintiff require the suit property for their own purpose and hence, the suits.

3. The defendants in the respective suits filed separate written statement as follows: Neither the plaintiff nor their vendor have got any right, title and interest in the property. The sale deed relied on by the plaintiff are not valid and binding on them. The suit properties are situate in Mutharasanallur Murungaipettai village in Survey No. 157 and it is a Government Natham poromboke. They were never tenants under the plaintiff's predecessor-in-interest. They never paid any rent to any of them. The superstructure in the properties was put up only by the defendants and they are residing for the last 15 years. There was flood in 1977 and thereafter, they have spent considerable amount for effecting repairs. The Court-fee paid by the plaintiff is also not proper and correct since there is no relationship of landlord and tenant. The plaintiff ought to have filed the suit for declaration. The plaintiffs are also prevented from instituting the suit in view of City Tenants Protection Act and Tamilnadu Buildings (Lease and Rent Control) Act. The defendants have also prescribed their title to the property by adverse possession and the suits filed by the plaintiff are also barred by time and, as such, no relief can be granted to the plaintiff.

4. The trial Court framed 11 issues in O.S.No. 2977 of 1982, 8 issues in O.S.No. 2963 of 1982, 12 issues in O.S.No. 2975 of 1982, 8 issues in O.S.No. 2976 of 1982, 12 issues in O.S.No. 2978 of 1982, 8 issues in O.S.No. 2979 of 1982, and 11 issues in O.S.No. 2980 of 1982. On behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A-1 to A-168 were marked. On the side of the defendants, D.Ws.1 to 8 were examined and Exs.B-1 to B-3 were marked. The report and plans filed by the Commissioner were marked as Exs.C-1 to C-3. The evidence

was recorded in O.S.No. 2978 of 1982 and it was treated as evidence in all the other suits. The trial Court decreed the suits and granted the relief of recovery of possession to the plaintiff and left open the arrears of rent for separate proceedings. One month time was granted for each defendant to vacate from the property. Aggrieved against this, the respective defendants preferred the aforesaid appeals and the learned Judge after hearing the parties, dismissed the appeals confirming the judgment and decree of the trial Court. Aggrieved against this, the defendants, have come forward with the present second appeals.

5. The parties and the subject matter of relief are one and the same in all the appeals and, as such a common judgment is pronounced. The parties will be hereinafter referred to as they are described in O.S.No. 2977 of 1982 to avoid confusion.

6. At the time of admission of S.A.No. 1038 of 1991, the following substantial question of law were framed by this Court for consideration:

(1) Whether the suit based on tenancy has to be summarily dismissed in the absence of a plea of relationship landlord and tenant between the plaintiff and the defendant?

(2) Whether with respect of a Natham poromboke land the plaintiff without pleading the acquisition of title by adverse possession by his vendor for that land can be permitted to adduce evidence regarding the same specially when the Government is not a part to the suit, and whether on such evidence the title of the plaintiff could be upheld in respect of that land?

The abovesaid substantial questions of law alone were framed for S.A.Nos. 1176 to 1181 of 1991.

7. The points that rise in all these second appeals are:

(1) Whether the plaintiff is entitled to get delivery of possession?

(2) Whether the respective defendants have prescribed the title to the property by adverse possession?

(3) Whether the suits filed by the plaintiff are maintainable under law?

(4) Whether the Court-fee paid by the plaintiff is proper and correct?

(5) To what relief?

8. Points: There is no dispute that the suit properties are in Mutharasanallur Murungaipettai Village in Survey No. 157. It is the specific case of the plaintiff that these properties originally belonged to Tmt. Man Singh and on their death, her legal heirs enjoyed the properties and ultimately conveyed the same to the plaintiff under Exs.A-17 to A-21. The earlier title deed relating to the suit properties were also filed and marked as Exs.A-46 to A-72 and A-164. These documents prima facie established that the plaintiff's vendor alone have dealt with the properties as their own. After purchase, admittedly the plaintiff sent notices under Exs.A-22 to A-29 and called upon them to deliver possession of the properties since they are required for their own use. The defendant sent reply under Exs.A-30 to A-37 denying that title of Tmt.Man Singh and also the sale deeds in favour of the plaintiff. They further stated that the suit property are Government Poromboke land there is no relationship of landlord and tenant at any point of time and the hardship that would be caused to the defendants would be much more than to the plaintiff. Subsequently, the plaintiffs sent Exs.A-1 to A-16 terminating the tenancy of the defendants and for which also, they sent apply under Exs.A-38 to A-45 alleging that they are owning the property.

9. Learned Counsel for the appellants/ defendants mainly contended that the subject matter of the suit is in S.No. 157 and it is a Natham poromboke land. Ex.B-1, the settlement register clearly proved the same. There is also no plea in the plaint as to how and in what matter Tmt.Man Singh acquired title to S.No. 157. The plaintiff has valued the suits under Section 43 of the Court-fees Act on the basis that the suit is in between the landlord and tenant. The suit is not based on title and it has not been valued accordingly. The plaintiff has also not pleaded any attornment of tenancy by the defendants. The suits ought to have been dismissed on the ground that no relationship of landlord and tenant was in existence between the parties. The lower appellate Court also failed to properly appreciate the decision cited by the counsel for the appellants.

10. Learned Counsel for the appellants/ defendant further contended that when the land is a Government poromboke as per the entries in the Settlement Register, neither the plaintiff nor their vendors have got any title in the same. The plaintiffs have not filed any records to show that the appellants paid any rent either to the vendors or to the plaintiff. In short, the title has not been properly established by the plaintiff. Moreover, the question of title cannot be gone into the suit when the suit is based on the alleged relationship of landlord and tenant. As adverted to, the plaintiff has not filed any suit for declaration to establish their title to the property.

11. The burden is upon the plaintiff to establish that they are entitled to get delivery of possession and they should establish either title to the property or the relationship between the parties as that of landlord and tenant. Exs.A-73 to A-78 are the counterfoils in the receipt books to pinpoint the payment of rent by the defendants. The defendants were examined as witnesses and they denied their signature in some of the documents and contended that one Krishna Rao alone informed them that the suit property is a poromboke and the superstructure was put up at their own cost. Even after 1977 flood, repairs and improvements were made to the property at their own costs.

12. P.Ws.2 and 3 were examined by the plaintiffs to prove their title and enjoyment of the properties. They also spoke about the receipts signed by the defendants and collection of rent from them. The Courts below have correctly come to the conclusion that there was no reason to discard the testimony of P.Ws.2 and 3. The evidence of D.Ws.1 to 8 are only parrot like version and not supported by any independent testimony or valid documents. It appears that they deliberately denied their signatures in some of the documents only to create a cloud about the title of the plaintiff. The lower appellate Court after comparison of the signatures and evidence of D.Ws.1 to 8 came to the positive conclusion that their evidence cannot be believed.

13. The next question that has to be considered is whether the suits have been filed by the plaintiffs properly and whether Court-fee paid under Section 43(2) of the Court Fees and Suit Valuation Act is proper and correct. It is seen from the records that the defendants sent a reply denying the title of the plaintiff and their

vendors in the property and they have also denied the giving of any rent, etc. The suits have been filed as if the defendants are tenants in the property and the Court-fee also was paid on that basis only. The lower appellate Court has clearly considered the decisions cited on either side and came to the conclusion that even if proper Court fee was not paid by the plaintiff, it is always open to the Court to collect the same and this cannot be used as a ground to dismiss the suits. There is no record to show that the plaintiff had attorned the defendants as tenants and similarly the defendants have not attorned the plaintiff as their landlord. Immediately after the purchase the plaintiff sent a notice informing the purchase and called upon the defendants to vacate and deliver possession and again sent a notice terminating the tenancy. Incidentally the question of title also has to be gone into and the plaintiff has filed many documents to prove their case. Compared to that, the defendants have filed only Exs.B-1 to B-3. Ex.B-1 is the copy of Settlement Register relating to S.No. 157 and Exs.B-2 and B-3 are the adangal extracts for faslis 1388 and 1391. It is pertinent to state that the defendants have put up superstructure in the property and for which, no document has been filed. If the defendants are in occupation and enjoyment of the property on their own for over 15 years, they should have paid the property tax and not even a single receipt was filed. No one was examined to show that the construction was put by the defendants in the property. In the circumstance, it is apparently clear that the stand taken by the defendants is one of denial and they have taken the stand only for the purpose of defeating the valuable right of the plaintiff in securing the possession.

14. The next question that has to be considered is whether the classification of S.No. 157 as Natham poromboke would affect the right of the plaintiff. From 1938 to 1979, the plaintiff's vendor alone have enjoyed the property and treated as their own. They have also paid kist as per Exs.A-8- to A-92. They have also paid the property tax to the panchayat as per Exs.A-106 to A-131. Electricity charges were also paid as per Exs.A-132 to A-159. The aforesaid documents would clinchingly establish the manner in which the plaintiff's predecessors enjoyed the property. Simply because this property was classified as Government Natham poromboke, the right of the plaintiff or their predecessors would not be affected.

15. The classification of the land as Natham poromboke is no legal evidence of title in the Government and utmost it is evidence only of an assertion of title. A mere fact that in the Resettlement Register, a particular piece of land is described as poromboke, will not establish title of the Government to the land in question. It is also settled position of law that the revenue records are not documents of title. A ryotwari patta is nothing more than a bill and the grant of it is not a conferment of title. Even assuming that the stand of the defendants is correct, they have not chosen to file any B memo showing the payment made by them. The absence of service of any B memo on the defendants and the non payment of any amount would clearly establish that the case of the plaintiff is more probable. It is no longer open to the defendants to deny the right, title and interest of the plaintiff and their predecessors in the property. There is also nothing in the written statement to pinpoint from which year the defendants are in possession and enjoyment of the property to claim adverse possession.

16. It has been held in *S.M. Kareem v. Beevi Saheena* that adverse possession must be adequate in continuity in publicity and extent and a plea is required at least to show when possession becomes adverse possession so that the starting point of limitation against the party affected can be found.

17. Reliance is also placed in *Karmega Kone v. Udayar Kone* 1979 M.L.J. 419, that the time from which adverse possession should be deemed to have commenced should also be specific and public.

18. It has also been held in *Anand Filial v. Rathinaababathi Mudaliar* that the concept of adverse possession contemplates a hostile possession and the animus of the person doing those acts is the most crucial factor.

19. It is, therefore, clear from the aforesaid decisions and discussion that the Courts below have rightly appreciated the contentions of the parties. There is concurrent finding by the Courts below and when there is a clear finding relating to the fact in issue, it cannot be interfered with in the second appeal unless the finding is perverse or the finding is not based on any legal evidence. Each and every point raised by the appellants had been properly considered by the lower appellate Court and it is a well considered judgment. There is no illegality or

infirmity in the judgment of the lower appellate Court calling for interference and hence, the points are answered accordingly.

20. For the reasons stated above, all the second appeals fail and accordingly dismissed. The appellants are granted two months time to deliver possession of the property.

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