

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF AT CHIDAMBARAM

Present: Tmt V.Geetha, B.A., M.L.,
Principal District Munsif,
Chidambaram.

Friday, the 12th day of March 2021

Original Suit No.177/2016

Thavaguru

... Plaintiff

/Vs/

Thanusu @ Balakrishnan

... Defendant

This suit is coming on 11.02.2021 for final hearing before me in the presence of Thiru.N.Rajendiran, Advocate for the plaintiff, Thiru. K.Ramadosh Advocate for the defendant, the defendant called absent and set exparte and having stood over for consideration till this day this court delivered the following:

JUDGMENT

Suit for permanent injunction restraining the defendant, his men, agents and persons claiming right under him from in any manner putting up any construction in the suit property and for mandatory injunction directing the defendant to demolish the construction put up by him and also the hut in the suit property and if he fails to do so directing the plaintiff to remove or demolish the superstructure in the suit property through court and for costs.

2. Brief averments of amended plaint are as follows:

Originally the Trust was created with 40 acres of lands by way of a Registered Partition Deed among the ancestors of the plaintiff in the year 1886. In that line of ancestors, one Sivakolundu Pillai became the trustee for the lands and he possessed them and had been performing the Trust. Whiles, the said Sivakolundu pillai has executed a registered will on 17.11.1907 in respect of the undivided joint family

properties. Since his sons were also pious and religious minded, the said Sivakolundu Pillai has constructed Kothandarama swamy Temple at Pinnathur. For the management of the temple, he has appointed his four sons Rajagopal Pillai, Ethiraju Pillai, Ramanujam Pillai and Chidambaram Pillai and he has also prescribed the lien of succession. He has intended that only male members should perform the charities. The said Sivakolundu Pillai has created the said Trust by adding other items about 60 acres which he acquired. Nearly 40 acres were exclusively dedicated for the "Masi Maham Kattalai" for Govindaraja Swamy Temple at Chidambaram. The said Sivakolundu Pillai was performing the Poojas and Utsavams for Sri Kothandarama Swamy Temple at pinnathur from out of the 60 acres of properties referred to above, till his life. After the death of Sivakolundu Pillai, his sons were performing the charity. Rajagopal Pillai's son Ramakrishnan Pillai came to manage and perform the charity, as the senior most male member since Ethiraju Pillai had no male issues and Chidambaram Pillai having gone out of the family on account of his adoption. Ramakrishna Pillai became disqualified due to acts of misfeasance and malfeasance and acts of fraud and cheating and was removed.

Thereafter, Ramanujam Pillai's son Seethapathi, the father of the plaintiff, came to perform the charity, being the senior most male member and had been performing the trust. His Trusteeship was also recognized by the H.R. & C.E. Department, he has been in possession of the properties as a trustee till his death. After the death of Ramanujam Pillai, his son Seethapathi Pillai became the Hereditary Trustee. The said Seethapathi pillai, on 15.04.1987, has executed a Registered will thereby appointed the plaintiff as

the Hereditary Trustee and also bequeathed his personal properties to him. Thus, the plaintiff, as hereditary Trustee, has been in possession and management of the properties as well as temple Sri Kothandarama Swamy Temple, and had been performing the Poojas and “Masi Maham Kattalai” of Sri Lord Govindaraja Swamy Temple, till this date. His possession as Hereditary Trustee is also recognized by the H.R. & C.E. Department and he has also been paying the contribution amount under the Act. There is a Mandapam in the property R.S.No.242/1—0.36 Cents. Ever year, during the festivals of Masi Maham, Chidambaram Sri Lord Govindaraja Swamy used to come and stay in the said Mandapam. To the East and South of the said Mandapam, there are row of shops.

The plaintiff filed suit OS.No.27 of 1992 as against Manimegalai for declaration that the plaintiff is the Hereditary Trustee and for Permanent Injunction. That suit went to the Honbournale High Court, Chennai, wherein it is declared that the plaintiff Thavaguru Pillai is the Hereditary Trustee and Permanent Injunction is also granted. When the suit is pending before the Court, at the instigation of Manimegalai the defendant put up a small hut in a portion of the said R.S.No.242/1—0.36 Cents, and it is the suit property. In the front portion of the hut, the defendant is doing business by putting up a plumber shop. In the 1st week of October 2016, the defendant dug the earth to lay foundation for the construction of a building. The plaintiff prevented the defendant stating that the suit property belongs to “Masi Maham Kattalai” and plaintiff is the Hereditary Trustee. Without heeding the words of the plaintiff, the defendant continued construction work and laid foundation. The defendant has raised the foundation up to the

ground level, The defendant has neither title nor legal right to put up any construction in the suit property. His action is high handed and illegal. He has no right to put up any construction in the suit property. He is only an encroacher. He has no legal right to be in possession of the suit property. The defendant has encroached approximately 0.10 Cents in the said survey Number. He has put up hut and now laid the foundation to the North of his hut. The construction is an illegal construction and he has no right to do so. Hence the plaintiff has filed the suit for mandatory injunction directing the defendant to remove the hut and foundation laid by the defendant and for other reliefs as against the defendant.

3. Brief avernments of Written statement filed by defendant are as follows:

The suit filed by the plaintiff is false, vexatious, not maintainable and is liable to be dismissed with cost. One Krishnasamy chettiar S/o Narayanasamy chettiar was the owner of southern 0.08 cents out os 0.36 cents in Natham R.S.No.242/- in Killai village. In the said property Krishnasamy chettiar constructed a thatched house and he was residing there along with his family member. One Mahalakshmi ammal W/o Munusamy Nadar purchased the above said property from Krishnasamy chettiar under a registered sale deed dated 20.01.1964 for Rs.400/-. From the date of purchase, Mahalakshmi ammal was in possession and enjoyment of the property covered under the sale deed dated 20.01.1964. Mahalakshmi ammal again purchased 0.04 cents out of southern 0.12 cents out of 0.36 cents in R.S.No.242/1 from Ganesam pillai S/o Narayanasamy pillai under a registered sale deed dated 04.07.1964. The sale deed is tru, valid and supported by consideration. Mahalakshmi ammal took possession and was in enjoyment of the

property covered under the aforesaid sale deeds totaling 0.12 cents.

This defendant purchased northern 0.12 cents out of 0.36 cents in R.S.No.242/1 from Munusamy Nadar S/o Duraisamy Nadar and his wife Mahalakshmi ammal under a registered sale deed dated 11.03.1996 for Rs.50,000/-. Even on the date of sale, possession was handed over to this defendant and this defendant is in peaceful possession and enjoyment of the property as absolute owner thereon.

The vendor of Mahalakshmi ammal viz. Krishnasamy chettiar was in possession and enjoyment of 0.12 cents in R.S.No.242/1 for very many years from time immemorial. This defendant's vendor was in possession and enjoyment of the property for over the statutory period and had prescribed title. Eversince 11.03.1996 this defendant is in peaceful possession and enjoyment of property.

Plaintiff nor his ancestors never enjoyed the property at any point of time much less on the date of suit. As true owner, this defendant is in peaceful possession and no injunction will lie as against the true owner. This defendant is not an encroacher. This defendant is in lawful possession and enjoyment of the property ever since the date of his purchase. Prior to him his vendors were in peaceful possession and enjoyment of the property for long number of years and they have prescribed title by adverse possession. Hence question of encroachment will not arise.

There is no cause of action for this suit and the alleged cause of action is false and invented for the purpose of filing this false suit. Court fee paid is wrong and incorrect. The suit is bad for non-joinder of necessary parties. Without admitting but for argument sake, plaintiff is the owner of the suit property, right to file the suit is also barred by law

limitation. The description of property as mentioned in the plaint is wrong and incorrect. This defendant therefore prays that the suit may be dismissed with cost.

4. Brief avernments of Additional Written statement filed by defendant are follows:

The suit filed by the plaintiff is false, vexatious, not maintainable and is liable to be dismissed with cost. This suit is for recovery of possession without seeking declaration of title is not legally maintainable. Even in the original written statement this defendant has stated that he had purchased the property from Munusamy and his wife Mahalakshmi under a register sale deed date 11.03.1996. This defendant denies the title of plaintiff. As per the settled authorities of our High Court, suit for recovery of possession without seeking the relief for declaration of title is not maintainable. Plaintiff has not taken steps to amend the plaint. The court fee paid is wrong and incorrect. If the suit property is properly valued, it exceeds the pecuniary jurisdiction of this Honourable Court. This court has no pecuniary jurisdiction to decide the suit.

By affixing a court fee of Rs.151/- plaintiff wants to take delivery of the suit property. Even in 1996 this defendant purchased the suit property for Rs.50,000/-. Now this defendant has demolished the old building in the suit property and had put up a R.C.C. terraced building in the suit property worth Rs.20/- lakhs. If the court decrees the suit then this defendant will suffer serious loss and damages which cannot be compensated on any account. Hence the suit may be dismissed without costs.

5. The following issues are framed for trial:-

1. வாதி வழக்குரையில் கோரியுள்ளபடி நிரந்தர உறுத்துக்கட்டளை மற்றும்
செயலுறுத்துக்கட்டளை பரிகாரம் கிடைக்க வேண்டுமா?

2. தாவா சொத்துக்களில் பிரதிவாதிக்கு கிரயம் கொடுத்தவரும் அதன் பின்னர் பிரதிவாதியும் சுவாதீன அனுபவத்தில் இருந்து வந்ததாக கூறுவது உண்மையா?
3. உண்மையான உரிமையாளரான பிரதிவாதிக்கு எதிராக உறுத்துக்கட்டளை பரிகாரம் வழங்க இயலாதா?
4. வாதிக்கு கிடைக்கத்தக்க இதர பரிகாரங்கள் என்ன?

5. On the side of Plaintiff, the Plaintiff herself was examined as PW1, Ex.A1 to A7 were marked. On the side of defendant, no oral and documentary evidence produced On the side of Court, Ex.C1 and C2 were marked.

7. Issues no. 1 to 3:-

Plaintiff side submitted that the suit property is the trust property. Trust was created with 40 acres of lands by way of registered partition deed in the year of 1986. In the lien of ancestors, one Sivakolundu Pillai become the trustee for the lands and he has executed a registered will on 17.11.1907 in respect of the undivided joint family properties. The said Sivakolundu has constructed Kothandarama swamy Temple at Pinnathur. He has created the said trust by adding others items by 60 acres which occurred . After the death of Sivakolundu, his sons were performed the charity. Thereafter Seethapathi, the father of the plaintiff came to perform the charity being senior most male member. His trust ship was recognized by the H.R. & C.E. Department, The said Seethapathi Pillai has executed a registered will on 15.4.1987 thereby appointed the plaintiff as the Hereditary Trustee. The plaintiff has been performing the Poojas and “Masi Maham Kattalai” of Sri Lord Govindaraja Swamy Temple, till this date. There is a Mandapam in the suit property R.S.No.242/1—0.36 Cents. The plaintiff filed suit OS.No.27 of 1992 as against Manimegalai for declaration

that the plaintiff is the Hereditary Trustee and for Permanent Injunction. That suit went to the Honbournle High Court, Chennai, wherein it is declared that the plaintiff Thavaguru Pillai is the Hereditary Trustee and Permanent Injunction is also granted. When the suit is pending at the instigation of Manimegalai, the defendant put up a small hut in a portion of suit property in the front portion of the hut. The defendant is doing business by putting up a plumber shop and the defendant dug the earth to lay down for the construction of the building. Now the defendant has raised the foundation upto the ground level. The defendant has not legal right to put up any construction in the suit property. Hence this suit is filed.

8. Per contra, the defendant has stated that OS.27/1992 on the file of Sub Court Chidamabaram will not bind this defendant. Since he is not the party to the proceedings and defendant denies each and every allegation in the plaint and further defendant submitted that one Krishnasamy chettiar was the owner of southern 0.08 cents out of 0.36 cents in Natham R.S.No.242/1. Further one Lakshmi ammal has purchased the said property from Krishnasamy chettiar through a registered sale deed on 20.1.1964. The Lakshmi Ammal has again purchased 0.4 cents out of southern 0.12 cents out of 0.30 cents in R.SNo.242/1 from Ganesan Pillai through a registered will dated 4.7.1986. This defendant has purchased northern 0.12 cents out of 36 cents in R. S.No. 242/1 from Munusamy and his wife Lakshmi ammal through a registered sale deed on 11.3.1986. Since 11.3.1986 this defendant is in the possession and enjoyment of the suit property. Hence the suit is not maintainable and suit may be dismissed.

9. After hearing the plaintiff side arguments, this court has carefully perused the averments of plaint, written statement, additional written statement filed by the defendant and entire case bundle. On the side of plaintiff, the plaintiff was examined as PW1, Ex.A1 to A7 were marked. On the side of defendant, no oral and documentary evidence marked. On the side of court, Ex.C1 and Ex.C2 marked. The plaintiff has examined as PW1 and he deposed as is stated in the plaint.

10. On perusal of evidence of PW1 and documents were marked by the plaintiff side. It shows that the plaintiff is the owner of the suit property. Even though the defendant has denied the title of the plaintiff and submitted that he is the owner of the suit property through a registered sale deed dated 11.3.1996, the sale deed dated 11.3.1996 and its parent deeds were not produced by the defendant side to prove his case. Further at the stage of defendant witness, the defendant side counsel reported "No Instruction" before this court. Based on the report this court issued court notice to the defendant. But after receiving the court notice the defendant is not turned up. Hence this court passed exparte order against the defendant. The Plaintiff has adduced oral evidence in line with pleadings and the evidence of Plaintiff's side witness is not impeached by the cross examination made by defendant. The defendant also has not produced any evidence to disprove th case of plaintiff. The plaintiff has established his lawful possession on the basis of lawful title and plaintiff having established the above is entitled to the claim made by him.

11. In these circumstances, this court is come to conclusion that the plaintiff has clearly proved his case through oral and documentary evidence. On the contrary the defendant has miserably failed to prove his contention stated in

the written statement. Therefore this Court has carefully perused the evidence of PW1 along with the exhibits of Ex.A1 to Ex.A7 and Ex.C1 & Ex.C2 and the firm view of this Court is that the plaintiff is proved his case and plaintiff is entitled to get the decree for permanent injunction and mandatory injunction as prayed for.

Issue No.4:- The plaintiff is not entitled any other relief except relief given in issues No.1 to 3. This issue is answered accordingly.

In the result, the suit is decreed without costs that the defendant, his men, agents and persons claiming right under him are hereby restrained by way of permanent injunction from in any manner putting up any construction in the suit property and defendant is hereby directed to demolish the construction put up by him and also the hut in the suit property by way of mandatory injunction, if defendant fails to do so, the plaintiff is hereby directed to remove or demolish the superstructure in the suit property through court.

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 12th day of March 2021.

(Sd/-V.Geetha)
Principal District Munsif,
Chidamabaram

List of exhibits on plaintiff' side:

Ex.A1	-	3.7.1886	Partition deed - Xerox copy
Ex.A2	-	17.11.1907	Certified copy of Will
Ex.A3	-	15.04.1987	original copy of sale deed
Ex.A4	-		OS. 27/1992 Decree copy
Ex.A5	-	29.6.2001	Judgment copy of 27/1992
Ex.A6	-		Decree copy of 94/2002
Ex.A7	-	27.4.2015	Judgment of SA. No. 2122/2003

List of exhibits on Court side:

Ex.C1	-	Advocate Commissioner report
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Ex.C2 - Rough plan filed by the Advocate
Commissioner.

List of witness on plaintiff' side:

PW1 - Thavaguru (plaintiff)

List of exhibits and witnesses on defendant' side:

.....NIL.....

(Sd/-V.Geetha)

PDM/CDM.