

(1999) 09 MAD CK 0047
In the Madras High Court
Case No : S.A. No. 1736 of 1987

Arulmighu Vedaranyeswaraswami Devasthanam	APPELLANT
Vs	
Haridas and two others	RESPONDENT

Date of Decision : 24-09-1999

Acts Referred:

Evidence Act, 1872 — Section 65, 66, 90, 92

Citation : (2000) 1 CTC 534 : (2001) 1 LW 206

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : S.K. Raghunathan, for the Appellant;

Judgement

A. Raman, J.—The plaintiffs filed a suit for declaration and injunction. The trial court decreed the suit and on appeal, the same was

confirmed by the sub-Judge and hence the 1st defendant has preferred this appeal.

2. The property belongs to the 1st defendant is admitted in emphatic terms by the plaintiff, when examined as P.W.1. The plaintiff witnesses

P.Ws.2 and 3 also admit that the suit property belongs to the 1st defendant temple viz, the appellant. The documents produced in this case, which

have been marked as Exs.A1, A3 and A4 to A32 would all go to show that the plaintiffs have accepted the title of the temple to the suit property.

The plaintiffs claimed to be the tenants of the suit property under the 1 st defendant. They have paid rent to the temple, accepting the temple's title

to the suit property. It is the case that the suit property was settled upon the temple by the plaintiffs grand father. But, it is not established.

3. The trial court as well as the lower appellate court has held that the Will executed by the grand father under Ex.A2 is true, valid and binding

upon the defendants. The Will is dated 27.6.1981. What is produced into Court is only a registration copy. The will does not make mention, of the

survey Number of the property dealt with under the will. It only, mentions patta number and the extent. The survey number of the property is

nowhere mentioned in the document and it is not correlated with reference to the suit property. Therefore, the premise that the suit property was

the one endowed by the grand-father in favour of the temple is not established. Further, the plaintiff has stated clearly in his evidence when about

the original of the will, in the course of cross-examination as follows:-

4. Thus it is not established that all the attestors to the will are dead. It is not established that the original has been lost or that it is in possession and

custody of a person, who is not subject to the jurisdiction of this Court. Nor it is the case that inspite of diligence the plaintiffs are not able to

produce the original. In such circumstances, the trial court as well as the lower appellate court erred in admitting the secondary evidence of the

same, u/s 65 of the Evidence Act, secondary evidence is permissible only when the conditions set out in the said section are satisfied. It is not the

plaintiffs' case that the original is in possession or power of person, against whom, the document is sought to be proved, or that it is in the

possession of a person out of reach. Nor it is stated that it is in the possession of the person who is not subject to the process of the Court. It is

also not stated that it is in the possession of a person who is not legally bound to produce it, and even after the notice mentioned u/s 66, such

person failed to produce it. It is also not the case that the original has been destroyed or lost. Nor it is the evidence of the plaintiff that the non

production is on account of any other reason not arising from his own default or neglect. When the conditions laid down in Section 65 of the

Evidence Act are not satisfied, in the face of the evidence of P.W.1, the courts below erred in accepting the secondary evidence of the said

document. Moreover, the courts below applied the presumption arising u/s 90 of the Act. The presumption will arise only when it is produced from

proper custody. As to the proper custody, the plaintiffs have not adduced any evidence. The evidence adduced does not advance the case of the

plaintiffs with regard to proper custody. Further, what is produced is only a certified copy. The presumption arising u/s 90 of the Act cannot be

applied to a certified copy. Therefore, both the courts erred in holding that the will has been proved and that it is binding upon the defendants.

5. I have already referred to the fact that the plaintiffs have admitted title of the temple to the property. Having admitted the title in the pleadings,

they have denied the title of the temple and asked for injunction. Injunction being an equitable relief and the plaintiffs having come forward with a

false case, allowing it to be false, are not entitled to an order of injunction. As regards possession, there is absolutely no evidence placed before

Court to prove that the plaintiffs are or were in possession of the suit property on the date of suit. On the other hand, P.W.1 admits that he knows

that ryotwari patta was granted to the temple even prior to 12 years and he opposed it or raised objections to the same.

He admits that he did not apply for any declaration that they are trustees. He also admits that all the properties were handed over to the fit person,

and Gopala Krishnan, his brother is alive and he is the 1st plaintiff. He further admits that he does not know about the recitals in Ex.A5. The record

produced by the defendants is to the effect that all the properties have been handed over to the temple by Gopala Krishnan. But conveniently, the

plaintiff would say that he does not know about the recitals. The said Gopala Krishnan is not examined, though he is a plaintiff. Further P.W.1

admits that they have not paid the lease amount to the temple after 1976. He admits thus:-

When he was specifically asked whether the fit person had surrendered all the properties of the temple on 29.4.1980, P.W.1 has only stated that

he does not know about the same. He did not deny the said fact as untrue. P.W.3, who is the Village Administrative Officer has stated clearly that

there is a Karnam for the Devasthanam and the Devasthanam owns 170 acres in a single patta and he does not know as to who are the lessees of

the Devasthanam. He admits that all the lands of the Devasthanam are comprised in S. No. 110 and he used to raise a common demand for kist in

respect of the properties belonging to Devasthanam. He admits that whenever kist is paid, he would, receive it and credit it to the Devasthanam

account. He admits that he never called upon the plaintiffs to pay kist due for the suit property. He also admits that he did not obtain any list from

the Devasthanam to find out as to who are the lessors to raise demand against them. It is admitted by him that the suit property is a coconut thope.

He further states that there are no accounts to show that the suit properties are in possession of the plaintiff. He also contends that he does not

know whether the lands were surrendered to the temple and the temple took possession of the property.

6. P.W. 2 has stated in the course of cross-examination that during the relevant point of time, he was the Revenue Inspector of the village. He

admits as follows:-

7. It is to be pointed out that the plaintiffs did not apply to the Tahsildar to have their names registered as "Kuthagaidars" of the property. On the

other hand, we find that when certain trees fell down, it is the Devasthanam which auctioned the same. The appreciation by the courts below is

very rusty. The above admissions by the plaintiff and his witnesses have been thoroughly overlooked by the courts below. It is also too much to

contend that this appellant Devasthanam have gone to the extent of fabricating the documents. It is really strange to hold that Ex.B-12 has been

prepared after suit for the purpose of the case. Exs.B-10 to B-14 are all auction notices. Therefore, from an analysis, I am satisfied that the

plaintiffs have failed to substantiate their case. They are neither entitled to any declaration nor injunction. They have come forward with a false

case. They claimed title knowing fully well that they are not entitled to claim any such right against the temple. It is the plaintiffs, who with the help

of the village officials, have concocted the documents. Therefore, I am satisfied that the plaintiffs have failed miserably to substantiate their case.

8. The courts below have erred on the question of law with regard to Section 90 of the Evidence Act. In fact the lower appellate court would refer

to Section 92. It can hardly apply to the facts of this case. The courts below erred in admitting the Will in evidence, when no basis has been made

out for admitting secondary evidence. The admissions of P.W.1 and the witnesses examined on the aspect of possession, the fact that it is

categorically admitted that in the adangal extract it stands registered in the name of Devasthanam alone and the plaintiffs' name are not mentioned,

have all been completely ignored by the courts below. An apparent error on the question of law has been committed. The courts below failed to

consider the fact that the plaintiffs have come forward with an inconsistent case. Plaintiffs knew that they cannot put forward any claim and yet put

forward such a case and finding that they persist with the case, they have abandoned it in the course of evidence. Thus they have not come to court

with clean hands. Hence, I am of the opinion that this is a fit case, where the judgment and decrees of the courts below have to be set aside.

9. In the result, this appeal is allowed with costs. The judgment and decrees of the courts below are hereby set aside. The suit will stand dismissed with costs, throughout.