

(2013) 07 MAD CK 0111

In the Madras High Court

Case No : SA (MD) No. 889, 890, 891 and 892 of 2010, MP (MD) No's. 1 of 2010, 1 and 2 of 2013

Kandasamy

APPELLANT

Vs

A/M. Ekambareshwarar and Kamatchiamman Deity and Temple
Kandasamy, Sellammal, Geetha and Natarajan
Vs The Commissioner and A/M. Ekambareshwarar and Kamatchiamman Deity and Temple

RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Evidence Act, 1872 — Section 116

Citation : (2013) 07 MAD CK 0111

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : V. Singan, for the Appellant; S. Parthasarathy, for Mr. T.V. Sivakumar in SA Nos. 889, 890 and 892/10 and for R - 2 in SA No. 891/10, for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—These proceedings are the textbook examples of as to how a landlord (Religious Institution) is being tormented by tenants

for the past two decades by way of raising paralogism, chop-logic and sophistry. The respondent in Second Appeal Nos. 889 of 2010, 890 of

2010 and 892 of 2010 as plaintiff has instituted Original Suit Nos. 253, 254 and 255 of 1998 on the file of the District Munsif Court, Thuraiyur for

the reliefs of recovery of possession and arrears of rent, wherein the appellant in Second Appeal No. 889 of 2010, appellant in Second Appeal

No. 890 of 2010 and appellants in Second Appeal No. 892 of 2010 have been shown as defendant(s). Likewise, the appellants in Second

Appeal No. 891 of 2010 as plaintiffs have instituted Original Suit No. 139 of 1999

on the file of the District Munsif Court, Thuraiyur for the relief

of mandatory injunction, wherein the respondents therein have been shown as defendants.

2. In the plaints filed in Original Suit Nos. 253 to 255 of 1998, it is averred as follows:

The suit property is the absolute property of the plaintiff and one Thangavel Asariyar has had served as a trustee of the plaintiff and subsequently as

per order passed in O.A. No. 198 of 1974 a scheme has been formed for the purpose of administering the plaintiff. The suit property has been let

out to the defendant on monthly rental basis. The defendant in each suit has filed a petition under the Chennai City Tenants Protection Act, 1921

and each defendant has filed a Suit for getting the relief of permanent injunction, wherein it is admitted to the effect that the suit property is the

absolute property of the plaintiff. The defendant has not paid rent properly. Under the said circumstances, a notice has been given to each

defendant and thereby terminated tenancy rights and even after termination, the defendant has failed to surrender vacant possession of the suit

property and therefore, these Suits have been instituted for getting the reliefs sought for therein.

3. In the written statements filed on the side of the defendant in each Suit it is averred that the present defendant(s) is not a party in O.P. No. 198

of 1974. The plaintiff has not filed any document for the purpose of showing that the suit property is the absolute property of the plaintiff. The suit

property mentioned in every plaint does not belong to Kammala Community as alleged in the plaints. It is true that the defendant(s) has become a

tenant of the suit property mentioned in the plaints. But the tenancy has commenced on mistaken impression. The community people mentioned in

the plaints are not having interest in the suit property. It is true that each tenant has filed a petition under the Chennai City Tenants' Protection Act,

1921 and due to subsequent legislation a memo has been filed for not pressing the same. It is also equally true that previous suits have been

instituted against the present plaintiff for getting the relief of permanent injunction. The order passed in the petition filed in Chennai City Tenants'

Protection Act, 1921 as well as the Judgments rendered in previously instituted Suits, will not be helpful to the plaintiff for ascertaining title to the

suit property. The defendant(s) is/are not liable to pay any rent at any point of time. For the notice issued by the plaintiff, a proper reply notice has been given. The suit property is in possession and enjoyment of the defendants for more than 30 years and thereby prescribed title to the same by adverse possession. The present Suits are not legally maintainable since relief of declaration has not been sought for and there is no merit in the Suits and the same deserve to be dismissed.

4. The averments made in the plaint filed in Original Suit No. 139 of 1999 can be stated like thus:

The suit property is comprised in Survey No. 357/2. The plaintiffs have been enjoying the suit property by way of putting up constructions and they are enjoying the suit property as absolute owners. The suit property does not belong to Hindu Religious Charitable Endowment Board. Under the said circumstances, the present Suit has been instituted so as to direct the first defendant for collecting house tax in the names of the plaintiffs.

5. In the written statement filed on the side of the first defendant it is averred that the plaintiffs have used to raise contra pleadings in various proceedings. The plaintiffs have already admitted that the suit property is the absolute property of Arulmigu Kamatchi Amman and Ekambareshwarar temples. The plaintiffs are not having any right, title and interest over the suit property and there is no merit in the Suit and the same deserves to be dismissed.

6. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence has decreed Original Suit Nos. 253 to 255 of 1998 as prayed for and dismissed Original Suit No. 139 of 1999. Against the common Judgment rendered by the trial Court, the defendant(s) as appellants have preferred Appeal Suit Nos. 154, 155, 156 and 157 of 2004 on the file of the first appellate Court.

7. The first appellate Court after hearing both sides and upon reappraising the available evidence on record has dismissed all the Appeals. Against the concurrent Judgments and decrees passed by the Courts below, these Second appeals have been preferred at the instance of the defendant(s) in Original Suit Nos. 253 to 255 of 1998 and plaintiff in Original Suit No. 139 of 1999 as appellant/appellants.

8. At the time of admitting these Second Appeals, the following common substantial questions of law have been settled for consideration:

(i) Whether the framing of issue regarding the title and rendering a decision on the issue by the trial Court and the confirmation of the same by the

appellate Court are legally sustainable without the Government being made a party to the Suit, when the property itself has been classified as

Government poramboke?

(ii) Whether the plea of estoppel preventing the appellant from denying the title of the respondent/plaintiff was erroneously entertained and decided

by the Courts below without framing necessary issue?

(iii) Whether the suit in the Civil Court is barred by the provisions of HR and CE Act?

9. The consistent case of the plaintiff in Original Suit Nos. 253, 254 and 255 of 1998 is that the plaintiff is the absolute owner of the suit property

and the respective suit property has been let out to the defendant in Original Suit No. 253 of 1998, defendant in Original Suit No. 254 of 1998

and first defendant in Original Suit No. 255 of 1998 on monthly rental basis. But some of the defendants have instituted Original Suits and also

petitions under the Chennai City Tenants' Protection Act, 1921 wherein it has been clearly admitted to the effect that the present plaintiff/defendant

therein is the absolute owner of the suit property and since the concerned defendant has failed to pay monthly rent, tenancy right has been

terminated by way of giving legal notice dated 23.06.1998 and even after receipt of the same, the concerned defendant has failed to surrender

vacant possession of the suit property. Under the said circumstances, the present Suits have been filed for the reliefs sought for therein.

10. The defence put forth on the side of the defendant in each suit is that the plaintiff is not the owner of the suit property and each defendant has

been enjoying the respective suit property as absolute owner and even though in previous proceedings initiated by some of the defendants it has

been stated that the suit properties are the absolute properties of the present plaintiff, the same would not confer title upon the plaintiff with regard

to suit property and since the plaintiff has not filed relevant documents for the purpose of proving its title over the suit property and since these

Suits have been instituted without adding the relief of declaration, the same are

liable to be dismissed.

11. The Courts below have concurrently rejected the defence put forth on the side of the defendant(s).

12. Before analysing the rival submissions made on either side, the Court has to narrate the previous proceedings and the definite stand taken by the present defendant/defendants with regard to ownership of the suit property mentioned in each Suit.

13. It is an admitted fact that the defendant in Original Suit No. 253 of 1998 as plaintiff has instituted Original Suit No. 322 of 1993; the defendant in Original Suit No. 254 of 1998 as plaintiff has instituted Original Suit No. 217 of 1994; the defendants in Original Suit No. 255 of 1998 as plaintiffs have instituted Original Suit No. 327 of 1993. In all the Suits, the present plaintiff has been shown as sole defendant. Certified copies of the complaints filed in Original Suit Nos. 322 of 1993, Original Suit No. 217 of 1994 and Original Suit No. 327 of 1993 have been marked as Exs.

A9, A17 and A27, wherein it has been stated that the present plaintiff is the owner of the suit property.

14. It is also equally an admitted fact that CTOP Nos. 1 to 3 of 1993 have been filed by the present defendants, wherein also it has been clearly admitted to the effect that the property mentioned in each petition is the absolute property of the present plaintiff and the petitioners therein have been enjoying the same as tenants.

15. It is seen from the records that Original Suit No. 322 of 1993, Original Suit No. 217 of 1994 and Original Suit No. 327 of 1993 have been dismissed. Likewise, CTOP Nos. 1 to 3 of 1993 have also been dismissed. In the light of the documents mentioned supra, it is made clear that the title of the present plaintiff to the suit property has already been admitted by the present defendant(s).

16. The learned counsel appearing for the appellant/appellants has made abortive attempts so as to topsy-turvy the concurrent Judgments and decrees passed by the Courts below on the following grounds:

(a) The alleged tenancy in between the plaintiff and defendant/defendants has not been created in accordance with the Rules mentioned in the

Religious Institutions (Lease of Immovable Property) Rules 1963, and therefore, tenancy alleged to have been created betwixt the plaintiff and

defendant/defendants is not legally valid and the Courts below have failed to look into the same.

(b) Even though in previous proceedings initiated by the defendant/defendants, it has been admitted to the effect that the present plaintiff is the

absolute owner of the suit property, the same has been made on mistaken impression. Under the said circumstances, each defendant is not

estopped from questioning the alleged title of the plaintiff over the suit property.

(c) The trial Court has not at all framed proper issue with regard to title of the plaintiff over the suit property and the first appellate Court has also

failed to look into the same.

17. As a repartee to the contentions raised on the side of the appellant/appellants, the learned Senior counsel appearing for the respondent/plaintiff

has befittingly contended that the first point raised on the side of the appellant/appellants has not been raised in the written statements filed in the

present Suits and also in previous proceedings and further the first point raised on the side of the appellant/appellants is nothing but a mixed

question of law and facts and the same should be pleaded so as to enable the plaintiff to controvert the same. Further, even in previous

proceedings, each defendant has clearly admitted to the effect that the plaintiff is the absolute owner of the present suit property and he or she is

enjoying the same as a lessee of the plaintiff and the Courts below after considering the insubstantiable contentions raised on the side of the

appellant/appellants, have rightly rejected the defence put forth on their side and therefore, the concurrent Judgments and decrees passed by the

Courts below are perfectly correct and the same do not warrant interference.

18. Basing upon the divergent submissions made on either side, the Court has to look into the first point put forth on the side of the

appellant/appellants.

19. As rightly pointed out on the side of the respondent/plaintiff, the first point raised in these Second Appeals has not been averred in the written

statements filed by the defendants in Original Suit Nos. 253 to 255 of 1998. For the first time, the learned counsel appearing for the

appellant/appellants by way of using his brainwave has advanced the first point. Under the said circumstances, the Court has to look into as to

whether the first point raised by the learned counsel appearing for the appellant/

appellants is purely a question of law or mixed question of law and facts.

20. It is an admitted fact that in the year 1963, the Religious Institutions (Lease of Immovable Property) Rules, 1963 have come into existence,

wherein in Rule 2, method of lease by public auction is mentioned. In Rule 3, provision with regard to term of lease is found place. Rule 4, deals

with auction notice; Rule 5 deals with essential ingredients of auction notice and Rule 6 deals with authority to conduct auction.

21. The unacceptable endeavor made on the side of the appellant/appellants is that the lease alleged to have been created in between the plaintiff

and defendant/defendants is not inconsonance with the Rules mentioned supra.

22. As rightly pointed out by the learned Senior Counsel appearing for the respondent/plaintiff, no mention has been made in all the written

statements filed in Original Suit Nos. 253 to 155 of 1998 with regard to absence of the Rules mentioned supra. Further, the Rules referred to

earlier, is not a pure question of law and the same is nothing but a mixed question of law and facts. Since the same is nothing but a mixed question

of law and facts, definitely the same should be pleaded in the pleadings. Further a party to legal proceeding, cannot be placed in a state of surprise

by opposite party by way of raising a new plea which is purely a mixed question of law and facts.

23. The learned counsel appearing for the appellant/appellants has drawn the attention of the Court to the decision reported in Indian Commerce

and Industries Pvt. Ltd. Vs. Swadharma Swarajya Sangha, wherein this Court has held that "legal plea can be raised at any stage of proceedings.

24. It is an archaic and also pristine principle of law that a plea itself purely legal, can be raised at any time of proceedings, even though the same

has not been pleaded.

25. In the instant case, as enunciated earlier, so many previous proceedings have been instituted by the present defendant/defendants against the

respondent/plaintiff, wherein it has been clearly admitted that the respondent/plaintiff is the absolute owner of the present suit property and each

defendant has been enjoying the respective suit property as a tenant of the plaintiff. In the previous proceedings as well as in the present

proceedings, no mention has been made to the effect that the alleged tenancy in

between the plaintiff and defendant/defendants has not been created in accordance with the Religious Institutions (Lease of Immovable Property) Rules, 1963. Since the Rules mentioned therein are nothing but mixed questions of law and facts and the same have not been specifically pleaded in the written statements, the appellant/appellants is/are not entitled to raise the same in the present stage and further, the respondent/plaintiff cannot be forced to meet out the said point without necessary plea and therefore, the first point raised on the side of the appellant/appellants is sans merit and the same cannot be accepted.

26. The learned counsel appearing for the appellant/appellants has also endeavored to contend the admission made in the previous proceedings by the defendant/defendant to the effect that the respondent/plaintiff is the owner of the suit property. The so-called admission would not create any embargo on the part of the defendant/defendants to contend that the respondent/plaintiff is not the owner of the suit property and the rule of estoppel is not at all applicable to the facts and circumstances of the present cases.

27. In support of his contention, he accepted the decision reported in 1985 TLNJ 301 [Sri - la - Sri Desika Gnana Sambanda Paramachariyar

Swamigal, Adheenakartha, Dharmapuram Mutt, Thanjavur District, vs. M. Lakshmana Pillai], wherein this Court has held that "a lease has been created by a person, not having title and subsequently the property in question has been assigned by the Government in favour of tenant. Under the said circumstances, the so-called tenant is not estopped from denying title of the erstwhile landlord.

28. The second contention put forth on the side of the appellant/appellants is based upon Ex. B1. Ex. B1 is a true copy of "A" Register relating to Survey Nos. 357/103 and 104. In Ex. B1, old Survey No. 357/2 and ground rent sub Division Nos. 357/103 and 104 are found place. Further in Ex. B1, it has been clearly stated that the plaintiff is the registered owner of Sub division Nos. 357/103 and 104. In column No. 4, it has been mentioned as "r". The learned counsel appearing for the appellant/appellants has emphatically contended that the letter "r" denotes, Sarkar and therefore, the suit property belong to Government and the present respondent/plaintiff has no locus standi to institute the present Suits.

29. On the side of the respondent/plaintiff, a patta has been marked as Ex. A5, wherein it has been clearly stated that the plaintiff is the owner of

Survey Nos. 357/103 and 104. If really, the said Survey Numbers are the absolute properties of Government, definitely Ex. A5 would not have

been issued in the name of the respondent/plaintiff and definitely in Ex. B1, the plaintiff would not have been shown as registered owner. Therefore,

it is quite clear that the second contention put forth on the side of the appellant/appellants is also equally sans merit.

30. At this juncture, the learned Senior Counsel appearing for the respondent/plaintiff has drawn the attention of the Court to the following

decisions:

(a) In E. Parashuraman (D) by LRs. Vs. V. Doraiswamy (D) by LRs., ., the Hon''ble Apex Court has held that ""entry made in revenue record is

not a conclusive proof"".

(b) In Bansraj Laltaprasad Mishra Vs. Stanley Parker Jones, the Hon''ble Apex Court has held that ""a person who comes upon any immovable

property by the licence of the person in possession thereof, shall not be permitted to deny that such person has title to such possession at the time

when such licence has been given.

(c) In State of A.P. and Others Vs. D. Raghukul Pershad (D) by L.Rs. and Others, the Hon''ble Apex Court has held that ""as per Section 116 of

the Indian Evidence Act, 1872, tenant in possession of demised premises is estopped from questioning title of landlord so long as tenant does not

surrender possession to landlord. Further in an eviction Suit, relief of declaration need not be sought for and question of title need not be decided.

31. In fact, this Court has perused the common Judgment rendered by the trial Court, wherein an issue has been explicitly framed to the effect as

to whether the plaintiff is having title to the suit property mentioned in every suit. The trial Court after having elaborate discussion and by way of

relying upon relevant documents exhibited on the side of the respondent/plaintiff, has come to a definite conclusion to the effect that the plaintiff is

the owner of the suit property mentioned in every Suit. Therefore, from the foregoing narration of both the factual and legal aspects, this Court is of

the considered view that the defendant/defendants is/are estopped from denying title of the plaintiff over the suit property by virtue of Section 116

of the Indian Evidence Act, 1872.

32. As a residual attempt, the learned counsel appearing for the appellant/appellants has drawn the attention of the Court to the following decision:

(a) In *Silambani Sri Chidambara Vinayagar Devasthanam Vs. Duraisamy Nadar and Another*, this Court has held that ""as per Section 18 of

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), the person who is in occupation of building, after notified date,

need not pay rent to the ground.

33. In fact, this aspect has also been newly raised in the present Second Appeals and the same cannot be entertained.

34. The plaintiff in Original Suit No. 139 of 1999 has instituted the same for getting the relief of mandatory injunction so as to direct the first

respondent therein to levy house tax in their names in respect of the property mentioned therein. The present plaintiff has been subsequently added

as second defendant. The first defendant is the Commissioner of Thuraiyur Municipality and his specific statement is that the suit property

mentioned therein is the absolute property of the present plaintiff. The trial Court as well as the first appellate Court after considering the available

evidence on record have rejected the relief of mandatory injunction sought for therein.

35. It has already been discussed in detail that the present appellant/appellants have been enjoying the suit property as tenants and their denial of

title is not bona fide. Further they are estopped from denying title of the plaintiff over the suit property. Therefore, the relief sought for in Original

Suit No. 139 of 1999 cannot be granted.

36. As stated earlier, Original Suit Nos. 253 to 255 of 1998 have been instituted for the reliefs of recovery of possession as well as arrears of rent.

It is not an adulation to say that on the side of the respondent/plaintiff, exponential evidence (both oral and documentary evidence) have been let in

for the purpose of proving title of the plaintiff over the suit property and also for the purpose of proving that the defendant/defendants is/are

enjoying the suit property as tenant(s). The alleged tenancy right of the defendant/defendants has been terminated by way of giving legal notice on

23.06.1998 and after issuance of the same, the defendant/defendants is/are not enjoying the suit property as tenant(s). Under the said

circumstances, the reliefs sought for in Original Suit Nos. 253 to 255 of 1998 are factually and legally acceptable and the Courts below after making elaborate discussion have rightly rejected the defence put forth on the side of the appellant/appellants and in view of the foregoing elucidation of both the factual and legal aspects, this Court has not found any trustworthy/acceptable force in the contentions put forth on the side of the appellant/appellants and whereas, the argument put forth on the side of the respondent/plaintiff is really having subsisting force and the substantial questions of law settled in the present Second Appeals are not having substance at all and altogether, these Second Appeals deserve to be dismissed. In fine, these Second Appeals deserve dismissal and accordingly are dismissed without cost. Connected Miscellaneous Petitions are also dismissed. The concurrent Judgments and decrees passed by the Courts below are confirmed.