

(2015) 07 MAD CK 0343

In the Madras High Court

Case No : S.A. (MD). No. 563 of 2009 and M.P. (MD). Nos. 1 of 2009 and 1 of 2014

K.G. Kannan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(7),
63(c), 69, 70, 70(1)

Citation : (2015) 07 MAD CK 0343

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : K. Sree Kumaran Nair, for the Appellant; V.R. Shanmuganathan,
Special Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J—The unsuccessful plaintiff, who suffered a dismissal of the suit in O.S. No.64 of 2004 on the file of the Additional District Munsif Court, Eraniel has approached this Court with the second appeal, after suffering a set back in the lower appellate Court also, when he filed and prosecuted an appeal in A.S. No.52 of 2005 on the file of the Sub-Court, Padmanabhapuram.

2. The second appeal was admitted on 12.08.2009 identifying the following to be the substantial questions of law involved in the second appeal.

"1. Whether the finding of the Courts below that the Civil Court has no jurisdiction to try the suit under Section 79(A) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, is correct, when the case of the plaintiff falls under Sections 78 and 79(2) of the said Act?

2. Whether the lower Court, is right in dismissing the suit on the ground that the plaintiff did not file co-relation statement of Survey Number when all the tax

receipts tax for R.S.NO.40/4 have been produced?"

3. The arguments advanced by Mr. Sree Kumaran Nair, learned counsel for the appellant, by Mr.T.Murugan, learned counsel appearing for the second respondent and Mr.V.R. Shanmuganathan, learned Special Government Pleader appearing for the respondents 1, 3 and 4 are heard. The materials available on record are also perused.

4. Though the second appeal came to be admitted identifying the above questions to be the substantial questions of law that have arisen for consideration in this second appeal, the consideration of the 2nd question will arise only in case the finding regarding the first substantial question of law goes in favour of the appellant herein. It is for the simple reason that when the very jurisdiction of the forum is challenged for attacking the decree passed by it and the Court comes to the conclusion that the forum in which the suit was instituted did not have the jurisdiction to entertain it, the challenge made to the decree on merits need not be gone into.

5. The appellant/plaintiff claims to be the owner of the suit property. On the other hand, the Executive Officer of Arulmigu Ramar Thirukovil, Kalpadi, Kalkulam Taluk, Kanyakumari District, the second respondent claims that the suit property is the property of the said temple. In fact, proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959) came to be initiated by the third respondent, namely the Joint Commissioner of Hindu Religious and Charitable Endowments Department, Palayamkottai, Tirunelveli-2, for eviction of the appellant from the suit property. The proceeding ultimately resulted in an order passed by the Joint Commissioner directing eviction of the appellant from the suit property. Purporting to file a suit challenging the said order of the Joint Commissioner, the appellant chose to file the above said suit in O.S. No.64 of 2004 on the file of the Court of the District Munsif, Eraniel. The order of the Joint Commissioner is sought to be challenged on the ground that proceeding for eviction was initiated, not on the complaint of the Assistant Commissioner as contemplated under Section 78 of the Act, but by the Executive Officer of Arulmigu Ramar Thirukovil and that hence, the proceeding was an irregular proceeding, if not illegal.

6. The learned Trial Judge, holding that a challenge to the order of the Joint Commissioner for eviction of encroacher can be made in a statutory suit under Section 79(2) of the Act, before a Sub-Court and the suit filed in the District Munsif Court not as a statutory suit was not maintainable. On appeal also, the learned Lower Appellate Judge concurred with the finding of the trial Court that the trial Court did not have the jurisdiction to try the suit. The first proviso to Section 79(2) mandates that no Civil Court can take cognizance of any suit instituted after six months from the date of receipt of the order. A comprehensive procedure is contemplated for eviction of encroachers in respect of the lands belonging to the Charitable or Religious Institutions or Endowments. When a question arises as to whether a particular property is a religious endowment, the

power is conferred on the Joint Commissioner or Deputy Commissioner to decide the said question under Section 63(c) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. A right of appeal against such an order of the Joint Commissioner or Deputy Commissioner is also provided under Section 69 and the Appellate Authority is the Commissioner. The Commissioner's order passed in the appeal shall be subject to a statutory suit filed under Section 70(i) of the Act. As against the decree passed in such a statutory suit, an appeal to the High Court is provided under sub-clause 2 of Section 70 of the Act. Section 79(2) shall be in pari materia to the decision made under Section 63(c) with the explanation that in case of an order passed under Section 78 for removal of encroachment, the aggrieved party can file a suit straight away in the Court, without approaching the Commissioner, by way an appeal to establish the fact that religious institution or endowment has no title to the property. Excepting the said deviation, procedures contemplated are similar in case of an order passed under Section 63(c) and an order passed under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act., 1959.

7. Section 70 as well as 79(2) simply refer to a suit to be instituted in a Court. The meaning of the term "Court" is provided under Section 6(7) of the Act, which reads as follows:

"(i) In relation to a math or temple situated in the Presidency town, the [Chennai] City Civil Court;

(ii) in relation to a math or temple situated elsewhere, the Subordinate Judge's Court having jurisdiction over the area in which the math or temple is situated, or if there is no such Court, the District Court having such jurisdiction;

iii) in relation to a specific endowment attached to a math or temple, the Court which could have jurisdiction as aforesaid in relation to the math or temple;

iv) in relation to a specific endowment attached to two or more maths or temples, any Court which would have jurisdictions as aforesaid in relation to either or any of such maths or temples;

A conjoint reading of Section 6(7), the Section 70(1) and 70(2) and Section 79(2) will make it clear that the suit to be filed under Section 79(2) shall be instituted only in the Sub-Court and not the District Munsif Court.

8. The Courts below have not committed any error or mistake in holding that the Trial Court, namely the District Munsif Court did not have the jurisdiction to try the suit. The Courts below have rightly held that the Civil Court has no jurisdiction to try the suit. Further, the Order of the Joint Commissioner of the Tamil Nadu Hindu Religious and Charitable Endowments, assailed by the appellant in the suit filed by him, is one purported to have been passed under Section 79(A) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Section 79(A) is a special provision introduced in 1996 to prevent mass encroachment of properties belong to the religious institutions and for their

eviction of such mass encroachment. For the sake of convenience, Section 79(A) is reproduced hereunder:

"[79-A. Encroachment by group of persons on land belonging to charitable religious institutions and their eviction:

(1) Where the Joint Commissioner knows or has reason to believe that a group or groups of persons without any entitlement and with the common object of occupying any land, which is the property belonging to a charitable or religious institution or endowment, are occupying or have occupied any such land and if such group or groups of persons have not vacated the land on demand by the Joint Commissioner or any officer authorised by him in this behalf, the Joint Commissioner shall, notwithstanding anything contained in this Act, order after giving due notice, the immediate eviction of the encroachers from the land and the taking of possession of the land and thereupon, it shall be lawful for any officer authorised by the Joint Commissioner in this behalf to evict the encroachers from the land by force, taking such police assistance as may be necessary and take possession of the land. Any police officer whose held is required for this purpose shall be bound to render the necessary help to the Joint Commissioner or to such officer authorised by him.

2) Where, in any proceedings taken under this Section, or in consequence of anything done under this Section, a question arises as to whether any land is the property of the charitable or religious institution or endowment, such land shall be presumed to be the property of the charitable or religious institution or endowment until the contrary is proved by the encroacher.

3) Any order of eviction passed by the Joint Commissioner under sub-section (1) shall be final and shall not be questioned in any Court.]"

9. Sub-section 3 makes it clear that if an order is passed by the Joint Commissioner under Section 79(A)(1), the order of eviction shall be final and shall not be questioned in any Court. When the provision makes the order of the Joint Commissioner final, the remedy open to the alleged encroacher, affected by the eviction order, shall be to challenge such an order under Article 226 of the Constitution of India and the remedy by way of a suit is totally barred. Only in case of an order passed under Section 78, a suit will lie under Section 79(2) and such suit shall be instituted in the Sub-Court and not in the District Munsif Court.

10. Hence, this Court is not in a position to find any error or infirmity in the finding of the Trial Court, which was confirmed by the Lower Appellate Court, that the Trial Court did not have the jurisdiction to try the suit. The very foundation of the suit itself has been demolished and hence, there shall be no scope for going into the merits of the case. The first substantial question of law is answered accordingly in favour of the appellant. Accordingly, no answer need be given to the other question formulated as the second substantial question of law.

11. In the result, this second appeal fails and the same is dismissed. However,

there shall be no order as to costs. Consequently, connected M.P. (MD).No.1 of 2009 is also dismissed.

12. It is brought to the notice of the Court by the learned counsel appearing for the parties that the impugned order of the Joint Commissioner dated 26.06.2002 made in Ex.A.9 was challenged in W.P.(MD).Nos.30012 and 30027 of 2002 and this Court, quashed the same by an order dated 23.07.2002. It is also brought to the notice of this Court that as against the said order, the Department has also preferred W.A.(MD).Nos.391 and 392 of 2002 and the same are pending. If the appellant is so advised, he may approach the Division Bench, dealing with the writ appeals, by filing a petition for getting him impleaded as a party to the proceedings.