

(2011) 09 MAD CK 0010

In the Madras High Court

Case No : S.A. No. 1071 of 2011 and M.P. No. 1 of 2011

M. Kabali and Others

APPELLANT

Vs

Arulmighu Shri Ellaiaimman Koil

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Succession Act, 1925 — Section 213

Citation : (2011) 09 MAD CK 0010

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

**Advocate : K.S. Gnanasambandam for Mr. R. Vivekananthan, for the Appellant;
S. Ponnarasi, for the Respondent**

Final Decision : Dismissed

Judgement

The Honourable Mr. Justice R.S. Ramanathan

1. The unsuccessful 2nd defendant and the Legal Representatives of the 1st defendant are the appellants.

2. The respondent/ plaintiff filed the suit for recovery of possession of the suit property from the appellants and for damages for use and

occupation. The case of the respondent/ plaintiff was that the suit property originally belonged to one Pandurangan and he bequeathed the suit

property in favour of the Temple and the deceased 1st defendant was the tenant of the suit property and agreeing to pay the rent at the rate of

Rs.40/- per month and he committed wilful default and even after the Temple became the owner of the property by virtue of the Will executed by

Pandurangan. The 1st defendant did not pay the rent and therefore notice to quit was issued terminating the tenancy of the 1st defendant and even

after the receipt of notice the 1st defendant failed to vacate and also questioned

the right of the plaintiff/ respondent in respect of the suit property

and also denied the relationship between the parties and therefore the suit was filed for eviction.

3. The 1st defendant contested the suit stating that he was not a tenant under Pandurangan as claimed by the plaintiff and the suit property is a

Government Poramboke and the 1st defendant is in possession and enjoyment on his own right and he never admitted or acknowledged the title of

Pandurangan or the title of respondent herein over the suit property and therefore he cannot be evicted by the respondent Temple. Further, the

Government also attempted to evict him by issuing eviction notice and that would also prove that the property is a Government Poramboke and

later the eviction notice issued by the Government was not pursued further.

4. The Courts below decreed the suit holding that the 1st defendant was the tenant under Pandurangan and Pandurangan bequeathed the suit

property in favour of the Temple and though the Will Ex. A2 was not probated that would not affect the right of the respondent Temple. As the

appellant /1st defendant admitted that he is a tenant under the respondent Temple, he cannot question the title of the respondent Temple and

decreed the suit. Hence the Second Appeal.

5. The Learned Counsel for the appellants submitted that except one letter alleged to have been written by the 1st defendant, no document was

produced by the respondent Temple to prove their title in respect of the suit property and admittedly, the suit property belonged to one

Pandurangan and the respondent Temple derived title under a Will Ex. A2 alleged to have been executed by Pandurangan and the said Will was

not proved and the Will cannot be also looked into as the Will was not probated and as per Section 213 of the Indian Succession Act, no one can

claim any right under a Will which is liable to be probated as per the provisions of Indian Succession Act and therefore the respondent Temple

failed to prove their title and hence they cannot file the suit for recovery of possession. The Learned Counsel for the appellants further submitted

that taking advantage of the illiteracy of the deceased 1st defendant, his signatures were obtained in blank papers and that was used as a document

as if the 1st defendant accepted the tenancy in favour of the Temple and contended that in the absence of any title to the suit property the

respondent Temple cannot maintain the suit for eviction. He further submitted that the Government has issued notices to the appellant/ 1st

defendant as evidenced by Exs. B1 to B4 and that would prove that the property is a Government Poramboke and without appreciating that both

the Courts below granted the decree in favour of the respondent Temple and it is liable to be set aside.

6. On the other hand, the Learned Counsel for the respondent submitted that admittedly the property belonged to one Pandurangan and as

evidenced by Ex. A1 the deceased 1st defendant was put in possession of the property as a tenant under Pandurangan and the said Pandurangan

executed a registered Will in favour of the Temple bequeathing the suit property and the Will was marked as Ex. A2. As per the Will the Temple

became the owner of the property and after issuing proper notice the action was taken and therefore the appellants are liable to be evicted and

having admitted the title of the Temple by writing a letter Ex. A4, it is not open to the appellants to contend that the respondent Temple has no title

to the suit property.

7. On the basis of the submissions made by both the counsel, the following substantial questions of law are framed:

(1) Whether the respondent Temple is entitled to claim title to the suit property under a Will which is admittedly not probated ?

(2) Whether the appellants admitted the title of the respondent Temple ?

8. It is admitted by the respondent Temple that the suit property originally belonged to one Pandurangan and the deceased 1st defendant became a

tenant under Pandurangan and that is evidenced by Ex. A1. It is seen from Ex. A1, it is a letter written by Pandurangan to the deceased 1st

defendant and from that letter one cannot come to the conclusion that the deceased 1st defendant admitted the title of Pandurangan in respect of

the suit property. There is no evidence that the letter was received by the deceased 1st defendant and he accepted the title of the respondent

Temple. Further, it is seen from Ex. A1 that it is an intimation given by Pandurangan to the deceased 1st defendant informing that he has

bequeathed the property to the Temple and directed the deceased 1st defendant to pay future rent to the Temple. Therefore, in the absence of any

acknowledgment of tenancy by the deceased 1st defendant in favour of

Pandurangan, the tenancy cannot be inferred from the letter written by Pandurangan to the deceased 1st defendant. Further, there is no proof adduced by the respondent Temple that the letter was accepted and acted upon by the deceased 1st defendant and the deceased 1st defendant thereafter was paying the rent to the Temple.

9. The Courts below relied upon Ex. A4 alleged to have written by the deceased 1st defendant wherein he has stated that he is residing in the property belonging to the Temple by paying ground rent and thanked the Temple Authorities for permitting him to take electricity connection. The said letter was disputed by the deceased 1st defendant and it was the specific case of the 1st defendant that his signature was obtained in blank papers by the Temple Authorities by force and that was misused to create Exs.A3 and A4. Further, the notice sent by respondent Temple Ex. A6 would also support the case of the appellants in respect of letter alleged to have been written by the deceased 1st defendant to the Temple. As per Ex. A6 notice sent by the Temple, it was stated that the 1st defendant was the tenant and he has put up construction without the permission of the Temple and he has also committed default in payment of rent and warned the deceased 1st defendant not to put up construction in the suit property. That notice was dated 22.3.2004 and as per the notice the 1st defendant was attempting to put up construction and that was sought to be prevented by the respondent Temple. Therefore, when there is no building in the suit property in the year 2004, it is unlikely that the deceased 1st defendant would have written Ex. A4 letter dated 26.9.2001 thanking the Temple Authorities for giving permission to get an electricity connection. Further, the 1st defendant sent a reply under Ex. A8 questioning the title of the Temple to the suit property and also claimed that the suit property is a Government Poramboke and he is in possession of the same not as a tenant under the Temple but on his own and only in the rejoinder to the reply notice given by the deceased 1st defendant, the respondent Temple has stated that the deceased 1st defendant sent a letter admitting the tenancy and the letter was dated 3.5.2000 and marked as Ex. A3. In the rejoinder the respondent Temple did not mention the notice dated 26.9.2001 Ex. A4. In Ex. A3 there is no reference to tenancy and it was only stated that the deceased 1st defendant was residing in the land

belonging to the Temple. Therefore, Exs.A3 and A4 will not prove the tenancy as held by the Courts below and the Courts below without

properly appreciating the notice and rejoinder notice sent by the respondent Temple wherein there was no reference to Ex. A4 erred in holding

that under Ex. A4 the deceased 1st defendant admitted and acknowledged the tenancy in favour of the Temple.

10. Further, admittedly, the respondent Temple claims title to the suit property under a Will Ex. A2 executed by Pandurangan and admittedly the

said Will is not probated. Therefore, as rightly contended by the Learned Counsel for the appellants the respondent Temple cannot claim any right

or title in respect of the property under Ex. A2 an unprobated Will and when the respondent Temple has no title, the respondent Temple cannot

maintain a suit for eviction against the appellants. The Courts below even after holding that Ex. A2 cannot be relied upon to claim title, granted

decree on the basis of the acknowledgment of tenancy by the appellants. As stated supra, there is no acknowledgment of tenancy by the deceased

1st defendant and the Courts below without properly appreciating Exs.A1, A3 and A4 erroneously held that the deceased 1st defendant

acknowledged the tenancy and therefore he cannot question the title of the respondent Temple. Hence, the Judgement and Decree of the Courts

below are liable to be set aside and the substantial questions of law Nos.1 and 2 are answered in favour of the appellants and I hold that the

respondent cannot claim any right or title in respect of the suit property under Ex. A2 which is unprobated and the deceased 1st defendant never

acknowledged the title of the respondent Temple in respect of the suit property.

11. In the result, the Judgement and Decree of the Courts below are set aside and the Second Appeal is allowed. No order as to costs.

Consequently, the connected Miscellaneous Petition is closed.