

(2013) 07 MAD CK 0172
In the Madras High Court
Case No : S.A. No. 209 of 2013

Molasiyar Nattugounder Samugham

APPELLANT

Vs

The Commissioner, The Deputy Commissioner and The
Assistant Commissioner Cum Executive Officer

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 108, 63, 69, 70

Citation : (2013) 4 LW 532 : (2013) 6 MLJ 381

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : P. Sathish, for the Appellant;

Final Decision : Disposed Off

Judgement

G. Rajasuria, J.—This second appeal is focussed by the plaintiff, inveighing the judgment and decree dated 31.01.2012 passed by the learned Subordinate Judge, Tiruchengode in A.S. No. 29 of 2011 in confirming the judgment and decree dated 03.12.2010 passed by the learned Principal District Munsif, Tiruchengode in O.S. No. 21 of 2005. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court.

2. Compendiously and concisely, the relevant facts absolutely necessary and germane for the disposal of this second appeal would run thus:

a] The plaintiff filed the suit seeking the following reliefs:

To pass a decree in favour of the plaintiff and against the defendants by

a) granting permanent injunction against the defendants and their supporters restraining them from in any way interfering or disturbing the peaceful possession and enjoyment of the suit property by the plaintiff or constructing shed in the suit property or alternatively direct the defendants to deliver the

possession of the suit property to the plaintiffs within a specific time, failing which effect the delivery of the suit property through process of court to the plaintiff

b) directing the defendants to pay a sum of Rs. 10,000/- as damage to the plaintiff; and

c) to award costs plaintiff amended as per order in I.A. No. 315/2010 dated 21.07.2010.

(extracted as such)

b] The warp and woof of the averments as found exemplified in the plaint would run thus:

The suit property described herein belongs to the plaintiff community known as Molasiyar Nattugounder Samugham comprised of more than 5000 families, residing in Namakkal, Salem and Erode Districts. Tiruchengodu Arthanareeswarar Temple is a famous one and the aforesaid community people from time immemorial have been performing poojas and kattalai during annual Vaikasi festival. The worshippers of the plaintiff community keep on staying in the suit property and doing pooja to Lord Arthanareeswara and other deities. The plaintiff community people are doing fifth day Kattalai during Vaikasi festival at the suit property. At that time, Urchavamoorthi of the Lord Arthanareeswarar, Arulmigu Sengottuvelavar and Arumighu Athikesava Perumal would be brought to the suit property and poojas are being performed. While so, at one time the Dharmakartha of the said Arthanareeswarar Temple requested the plaintiff to permit him to store the cement bags and other materials for constructing temple Gopuram and magnanimously that was agreed to. [Other details set out in the plant are not germane for deciding this second appeal]. However, D3 tried to disturb the possession and enjoyment of the plaintiff over the suit property and he attempted to demolish the compound wall of it. In view of the disturbance given by D3, the suit was came to be filed.

c] Per contra, refuting and contradicting the averments/allegations in the plaint, the Executive Officer of D3 temple filed the written statement, the warp and woof of the same would run thus:

The plaintiff community is not in possession of the suit property, but it is in the possession of D3 Temple. The suit filed, as such, is not maintainable.

Accordingly, D3 would pray for the dismissal of the suit.

d] Issues were set down for trial, wherein on the plaintiff's side, P.Ws. 1 and 2 were examined and Exs. A1 to A7 were marked. On the defendants' side, on behalf of D3's temple, one Gurusamy examined himself as DW1 and marked Exs. B1 to B18.

e] Ultimately, the trial court partly decreed the suit upholding the right of the plaintiff community to perform fifth day Kattalai during the festival at the suit

property and the rest of the claim was dismissed. As against which, the appeal was filed; whereupon the first appellate court confirmed the judgment and decree of the trial court; however, giving liberty to the plaintiff to file the suit for declaration and for consequential reliefs.

f] Challenging and impugning the judgment and decree of the first appellate court, the plaintiff has preferred this second appeal on various grounds and also suggesting the following substantial questions of law:

1. Whether the court below are right in dismissing the suit for the relief of recovery of possession on the ground that there is no relief of declaration of title to suit property when the plea of adverse possession was raised by the defendant?
2. Whether the court below has properly appreciating the oral and documentary evidence in relation to the possession of the suit property?
3. Whether the court below was right in not placing reliance on Exs. A1 and A2, municipality tax receipts issued in favour of the plaintiff?

(extracted as such)

3. Heard the learned counsel for the appellant.

4. It is as thoroughly settled as any proposition of law could be that in respect of title dispute over an immovable property between an individual and the temple authorities, with regard to the issue as to whether the property is the temple property or not, the proper course open for the party concerned, is to approach the authority concerned u/s 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. If such an adjudication by the authority concerned is not satisfactory, then the aggrieved party could take it on appeal before the Commissioner u/s 69 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Any person aggrieved by such order passed u/s 69 of the Act by the Commissioner, could file statutory suit as contemplated u/s 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

5. Here, the plaintiff claiming to be Molasiyar Nattugounder Samugham, would contend that the suit property is meant for religious purpose undoubtedly. However, they would hasten to add that it is purely for the purpose of conducting the fifth day Kattalai during the festival when the deity, viz., Arulmigu Arthanareeswarar is brought and placed there. However, D3, the temple authority would contend that such a claim is reparative and that only D3 temple is having exclusive right over that suit property. In such a case, it is quite obvious and axiomatic, palpable and pellucid, that there exists a dispute within the meaning of Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

6. No doubt, the learned counsel for the appellant/plaintiff would invite the attention of this court to the proceedings passed by the Deputy Commissioner

and contend that even as early as in the year 1980 itself the authority concerned held that the suit property belongs to the plaintiff community and that the community should be given the liberty to put up separate entrance.

7. There is no clarity that the said order was implemented and the exact status also could not be understood. Whatever be the grievance of the plaintiff, they ought to have approached the authority under the Hindu Religious and Charitable Endowments Act, 1959 and got the matter adjudged. But instead of doing it, straightaway the suit for injunction was filed with an alternative prayer/alternis visibus for possession. In fact, filing of the suit straightaway is barred in view of Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The first appellate court gave a finding to the effect that the suit was bad for want of a prayer for declaration and the first appellate court itself could have very well with regard to the provisions set out supra directed the plaintiff to seek remedy appropriately. As such, this court, though not willing to interfere with the findings of both the fora below, would like to observe that it is for the plaintiff to approach u/s 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 for appropriate relief and thereupon get the matter processed as per law. If at all the plaintiff is not satisfied with the adjudication u/s 63 or 69 of the Act, it is open for them to invoke Section 70 of the Act and file a statutory suit. With the above direction, this second appeal is disposed of. However, there shall be no order as to costs.