(1977) 10 MAD CK 0005

In the Madras High Court

Santhakula Sowmiyanarayana Kavaraya Community Endowments and Another — APPELLANT

Vs

Vellayappa Pillai and Others — RESPONDENT

Date of Decision : 26-10-1977

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 109

Citation : (1978) 91 LW 285 : (1978) 1 MLJ 354

Hon'ble Judges : N.S. Ramaswami, J

Bench : Single Bench

Judgement

N.S. Ramaswami, J.—The suit out of which this second appeal arises is for declaration of title and for possession of a building described as

''kavadi madam''. The suit is filed by the Santhakula Sowmiyanarayana Kavaraya Community Endowments through its trustees. The title is claimed

under Exhibits A-1 to A-3. The building was said to belong originally, to Ramalinga Pillai and that he mortgaged the property to a third party.

There was a suit on the mortgage and, in execution of the decree, it came to be sold in Court auction. Exhibit A-1 dated 24th July, 1923, in the

sale certificate issued to the auction purchaser, viz., Palaniappa Pillai, of the property. Delivery of possession was taken as evidenced by Exhibit

A-2, the certified copy of the delivery athakshi. The auction-purchaser sold the property to one Subba Naicker under Exhibit A-3 dated 22nd

November, 1923. It is the case of the plaintiff that Subba Naicker purchased the property not for his individual purpose but only for the community

as the property of a special kattalai, as he happened to be the mahimaidar of the community. It is the further case of the plaintiff that from the date

of the purchase under Exhibit A-3, the madam was being run in the building as part of a kattalai in Palaniandavar temple, and that one Arayee

Ammal who is the purchaser from the original owner, Ramalinga Pillai, was put in management of the madam.

2. The plaintiff claimed declaration of title and possession from the first defendant and the other defendants, who are said to be lessees under the

first defendant, on the ground that Arayee Ammal who was the manager of the plaintiff-community, had purported to sell the property to the first

defendant under Exhibit B-4 dated 27th December, 1951.

3. The defendants contended that the property did not originally belong to Ramalinga Pillai that it belonged to one Mahapuri Pandaram, that after

him, his daughter, Lakshmi, succeeded to the property and Arayee, the vendor of the first defendant, is the daughter of the above said Lakshmi.

According to the defendants, Arayee succeeded to her mother''s interest and she was in possession of the property in her own right and not as

manager on behalf of the community as claimed by the plaintiff.

4. The trial Court accepted the case of the plaintiff and decreed the suit. The lower appellate has non-suited the plaintiff practically on the ground

of the first defendant perfecting title by adverse possession.

5. The lower appellate Court has accepted the case of the plaintiff that Arayee, the vendor of the first defendant was in possession of the suit

property only as a manager under the plaintiff. At the end of paragraph 11 of its judgment, the lower appellate Court has categorically held that

Arayee was in possession of the property only on behalf of the community. It further held that, till 1951, when she purported to sell the property to

the first defendant, there was no question of adverse possession.

6. It was of the view that, from the date of Exhibit B-4 the sale deed executed by Arayee in favour of the first defendant, possession of the first

defendant was adverse to the plaintiff and that the plaintiff thereby lost title. This view is, obviously incorrect.

7. The lower appellate Court has not negatived the plaintiff''s case that the building which was purchased under Exhibit A-3 by Subba Naicker

became the Kavadi Madam belonging to the specific kattalai conducted by the community and, as I said, it has, in fact, accepted the plaintiff''s

case that Arayee, the vendor of the first defendant, was in possession of the property only as the manager under the plaintiff-community. On this finding, the further finding of the appellate Court that the plaintiff has lost title by adverse possession is clearly wrong. It had overlooked Section

109 of the Tamil Nadu Religious and Charitable Endowments Act (XXII of 1959). That section says that nothing contained in any law of limitation

for the time being in force shall be deemed to vest in any person the property or funds of any religious institution which had not vested in such

person or his predecessor-in-title before the 20th September, 1951. There can be no dispute that after 1923, the suit property has become a

religious institution because it became the property of a specific kattalai of the plaintiff-community. Therefore, unless the defendants can show that

they have perfected title by adverse possession prior to 30th September, 1951, there is no question of the plaintiff''s title to the property being lost

by the law of limitation.

8. In passing, the lower appellate Court has remarked that the plaintiff has not clearly shown that the property, originally belonged to Ramalinga

Pillai. But, it should be remembered that Ramalinga Pillai had mortgaged the property very much prior to 1923 and it was in execution of the

mortgage decree, the property came to be sold to Palaniappa Pillai. As far as the case of the defendants is concerned, there is no documentary

evidence to show that Arayee had any independent title. Exhibit B-4, dated 27th December, 1951, the sale deed executed by Arayee, is the

earliest document relied on by the defendants. It is true that in the Town Survey Register, the name of one Mohapuri Pandaram is shown as the

owner of the suit property. It is stated that the Town Survey was done prior to 1923. The case of the plaintiff has been that this Mohapuri

Pandaram had alias name viz., Arumuga Pandaram, and he is no other than, the father of Ramalinga Pillai. The appellate Court feels that the

plaintiff has not established clearly that Arumuga Pandaram and Mohapuri Pandaram are one and the same person. But, the fact remains that

Arayee Ammal had herself been impleaded as a party in the execution proceedings in the mortgage suit which ultimately resulted in the sale of the

property in favour of Palaniappa Pillai. An attempt had been made by the defendants that Arayee Ammal who had been impleaded as a party in

the said proceedings is a different person than Arayee Ammal, the vendor under Exhibit B-4. But, the Courts below have not accepted such a case of the defendants. The first appellate Court has given a clear finding that Arayee Ammal and her husband Maruthamuthu Pillai, had been in

permissive possession under the plaintiff. The vendor under Exhibit B-4 is the said Arayee Ammal, the wife of Maruthamuthu Pillai. Under such

circumstances, the plaintiff''s case that this Arayee Ammal is the sister of Ramalinga Pillai the judgment-debtor in the mortgage suit, and it is

because of such relationship she came to be impleaded in those proceedings appears to be probable. Whatever that be, on the finding of the lower

appellate Court that the plaintiff had been in possession of the suit property through Arayee Ammal and her husband, Maruthamuthu Pillai, till 1949

or so, it is not possible to accept the case of the defendants that the first defendant got title under the sale deed, Exhibit B-4 executed by the said

Arayee Ammal.

9. As I said, the lower appellate Court has non-suited the plaintiff mainly on the ground of adverse possession. It is of the view that from 27th

December, 1951, the date on which the first defendant purported to purchase the property front Arayee Ammal, possession was not permissive

and adverse and therefore the plaintiff''s title had been lost. I have already indicated that by virtue of Section 109 of Act XXII of 1959, the

plaintiff''s title cannot be lost by adverse possession. The result is the Second Appeal is allowed and the judgment and decree of the lower

appellate Court are set aside and those of the trial Court restored. However, under the circumstances of the case, I direct the parties to bear their

respective costs throughout.

