
(1949) 02 MAD CK 0039

In the Madras High Court

Case No : Appeal No. 645 of 1945

Sree Bhagavathi Amman Temple by Pujaris and Trustees and
Others

APPELLANT

Vs

Krishna Goundar and Others

RESPONDENT

Date of Decision : 18-02-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Limitation Act, 1908 — Article 142, 144

Citation : AIR 1951 Mad 788

Hon'ble Judges : Rajamannar, C.J;Raghava Rao, J

Bench : Division Bench

Advocate : B.V. Viswanatha Aiyar, for the Appellant; T.V. Ramanathan, for the Respondent

Final Decision : Dismissed

Judgement

Raghava Rao, J.—The appellants here--Sri Bhagavathi Amman Temple represented by three of its pujari trustees--used in the Court of the

Subordinate Judge of Coimbatore for recovery of the lands described in the plaint A schedule and for profits in respect thereof. The three trustees

representing the temple alleged that defts. 1 to 11 were tenants at will liable to be evicted and that defts. 13 to 15 were their co-trustees who not

having joined them in suing were impleaded as pro forma defts. Defendant 12 was the Madras Hindu Religious Endowments Board who like defts.

13 to 15 supported the case of the pl'tfs.-trustees that the suit lands which had been originally granted by a Mysore King and were later confirmed

by the East India Co. and later still by the British Indian Govt. at the time of the Inam Settlement belonged to the deity in both the warams. It was

also part of the plaint case that the decree of the Diat. Munsif's Court of

Dharapuram in O. S. No. 225 of 1939 on its file dated 27-9-1940 was null and void, in so far as it wrongly held in confirmation of the appellate order of the District Collector in certain proceedings for resumption of the suit lands u/s 44-B, Madras Hindu Religious Endowments Act, that the grant was only of the melwaram. The contesting defts. maintained inter alia that the grant was only of the melwaram as, according to them, rightly held by the learned Dist. Munsif of Dharapuram in the former suit, that the former decision operated as res judicata in the way of the present action, and that they and their ancestors had been in possession of the suit land from time immemorial and in any event acquired a right to the kudiwaram by prescription. The learned Subordinate Judge in the Court below found against the plea of res judicata, but otherwise upheld the defence and dismissed the suit. The pltfs. have accordingly appealed.

2. Mr. B. V. Viswanatha Aiyar, the learned advocate for the applts. argued before us that the grant ought to have been, on the material available, chiefly furnished by Exs. P-1, P-2, extracts of Inam Statement and the Inam Fair Register relating to the suit inam, held to cover both the warams and that the finding of the learned Subordinate Judge that the defts. are entitled to the kudiwaram by adverse possession is erroneous in law as well as on the facts. On the other hand, Mr. Ramanatha Aiyar, the learned advocate for the resps. has not only maintained that the conclusions of the learned Subordinate Judge on these two points are correct but also urged that the learned Subordinate Judge ought to have accepted the plea of res judicata.

3. With the first contention of the applts". learned advocate we agree. What is disclosed by the inam documents is that the grant was to the temple of a Sarvadumbala inam of lands specifically described by boundaries, in respect of which the assessment payable to Govt. but for the rent free character of the grant would have been Rs. 31-8-2 and which at the time were under letting by the pujari in charge to the cultivators on a kandayam basis and were fetching produce which the pujari utilised for naivedyam to the deity. The description of the income in Ex. P-1 as Rs. 31-8-2 which is shown in Ex. P-2 as in fact the assessment payable to the Govt. on the land but for the grant does not, in our opinion, warrant the inference that the grant was in the nature of a mere remittance to the inamdar,

the temple of the rent payable to the Govt. by tenants already in occupation. There is no reference in either Ex. P-1 or Ex P-2 to any such tenants. On the other hand, the only reference to tenants, which is to be found only in Ex. P-1, is to tenants to whom the pujari himself leased out the lands on a kadayam basis and from whom he was in perception of profits which were however used "for distribution to the deity." For the applts. it is further pointed out that there were permanent leases, "Exs. P-4, P-5 and P-G of 6-5-1890 each in respect of one-third share of the suit lands granted by the pujaries in their respective shares on the footing that the original grant was of the land covering both the warams and that under Ex. P-3. Guruvayee, the widow of Vaduharandi, one of the members of the pujari family executed a debt of relinquishment in favour of the lessors under Exs. P-4 to P-6, her pangatis abiding by the leases granted by them. The evidence furnished by the inam papers being unequivocal in its nature we are, even quite apart from EXS. P-8 to P-6, clearly of opinion that the original grant was of the land itself. The conduct evidence furnished by the actings of the contesting defts. & their predecessors which begins only in 1899 is even less pertinent than Exs. P-3 to P-6 to the determination of the question of the nature & scope of the original grant. We accordingly reject the conclusion of the learned Subordinate Judge based upon such conduct evidence that the grant originally made was of the melwaram only.

4. The second contention of Mr. Viswanatha Aiyar has not, after all the careful consideration that we have bestowed on it, commended itself to our acceptance. There is indubitable testimony furnished by the documents on record of enjoyment of the suit lands by the defts. & their predecessors in their own right beginning certainly as early as 1899. Exhibit D-3 of the 23rd of May of that year evidences a partition amongst members of the family of defts. 1 to 11 of S. No. 119, the suit property, amongst others. There is a subsequent division on 1-11-1909 between deft. 9 minor represented by his mother & guardian, Govindammal, & his paternal uncle one Muthuswami Goundan, which is evidenced by Ex. D-4. There have been dealings with the suit property by way of sales effected by members of the family of the defts. under Exs. D-5 to D-8 ranging from 1918 to 1926. From 1932 to 19-8 it is shown by Exs. D-11 series that the

defts, have been paying the kist on the suit land. Exhibit D-12 is the patta issued to the defts. for Fasli 1349, & Ex. D-12 (a) is an encumbrance certificate filed by the defts. for showing the dealings with the suit property by themselves & their predecessors-in-title from the year 1865 to 1900.

5. On these facts it seems to us obvious that the defts. have established their title by prescription to the kudiwaram interest in the land. But says Mr. Viswanatha Aiyar, they have been all through asserting an animus pertinent to their absolute ownership of the land & not the animus relevant to or requisite for the acquisition of a kudiwaram interest only in the land in question. The distinction is, in our opinion, even if the oratically real, much too thin to all practical interests & purposes to affect the proper inference to be drawn from the facts disclosed by the evidence. It is common knowledge that in zamindari areas where in respect of ryoti land the tenant is only a kudiwaramdar, as well as in ryotwari areas where the ryotwari pattadar is, alike in popular & legal parlance, the full owner, the ryots describe themselves as the owners of the land. That means nothing more than that they have a right of permanent occupancy in the land which carries with it the liability to pay rent to the zamindar, even as the ryotwari pattadar is under an obligation to pay the assessment to the Govt. Likewise, where in respect of inam land persons in occupation assert their right to the lands themselves in a course of dealings otherwise sufficient to fulfil the requirements of a prescriptive title there is nothing, in our opinion, to prevent the Ct. from upholding such a title merely because they have described themselves in such course of dealings as the owners of the property. Mr. Viswanatha Aiyar also urges in answer to this point of view of prescriptive title that the defts. could not, in view of the P. B. ruling of this Ct. reported in *Brahmayya v. Sundaramma*, I. L. R. (1948) Mad. 757 : A. I. R. 1948 Mad. 275 acquire any occupancy right by prescription.

But, far from supporting any such contention, the P. B. ruling does assume the possibility of the acquisition of such a prescriptive right by persons in the position of the present defts. In the P. B. case the facts as found were that the tenant did not establish the occupancy right set up by him, but still contended that the pltf. had to fail against him unless he proved that the tenancy between himself & the pltf. was in the nature of a terminable tenancy which had been validly terminated. All that the F. B. case decided was

that if such a defence of occupancy right set up by the defts, failed, the landholder could very well succeed in an action for eviction without proving more and that it was no answer to the suit that there had been a mere non-payment of rent for over the statutory period. Such non-payment of rent, the learned Judges of the P. B. held, does not by itself put an end to the tenancy admittedly in existence between the parties or convert the possession of the tenant into adverse possession against the landlord. In the present case the defts are not proved by the pltfs. to have been inducted into possession of the suit property at any time as their tenants. It is no doubt the case of the pltfs. that defts. 1 to 11 are the pangalis of the lessees let into possession under the three permanent leases of 6-5-1890 (Exs. P-4 to P. 6); but the defts. deny their relationship with the original lessees. It cannot on the evidence on record be held that such relationship stands clearly established. There being therefore no evidence of any letting of the defts. or their predecessors-in-title by the pltfs. or their predecessors-in-title at any time, it seems to us that it is perfectly competent to the defts. to prove by necessary evidence that they have acquired a right by prescription to the kudiwaram interest in the land. The onus probandi in regard to prescriptive title is, of course, on the defts., but they have in our opinion sufficiently sustained it. The learned Subordinate Judge has discussed the evidence in regard to this matter in paras. 12 & 13 of his judgment & given reasons, with which we agree, in support of his conclusion in favour of the defts. The learned Advocate for the applts. has in this connection, no doubt rightly pressed on our attention the fact, that there is no clear or cogent proof of any payment of a uniform rate of rent by the defts. or their predecessors-in-title to the pltfs. or their predecessors-in-title. But D. W. I in his evidence says that the defts. have been paying the Andis Rs. 31 per year, & there is no proof that there has been any variation of that amount of rent at the instance of the temple. The learned Subordinate Judge accepted this evidence, & we cannot say that he was in error in so doing.

6. Such being the conclusion that we have reached in concurrence with the learned Subordinate Judge on this part of the case, it is unnecessary for us to deal with the question of res judicata on which the applts have a finding in their favour from the learned Subordinate Judge. We may however

observe that in view of the finding of the learned Subordinate Judge en issue 10 which stands unquestioned, the valuation of the suit on the file of

the Ct. of the Dist. Munsif of Dharapuram, O. S. No. 225 of 1939, must be regarded as an under valuation. & that the suit, if properly valued,

would have been beyond the jurisdiction of that Ct. The present suit which has been correctly valued & brought in the Ct. of the Subordinate

Judge of Coimbatore cannot be regarded as a suit which could have been lawfully tried by the Dist. Munsif's Ct. of Dharapuram. The plea of res

judicata cannot therefore, in our opinion, avail the defts. In this conclusion we are supported by the decision of the Allahabad H. C. reported in

Hazari Singh Vs. Jhunna Singh and Others to which our attention has been drawn by the learned advocate for the applts. The learned advocate for

the applts. also tried, in order to get over the plea of res judicata to show that the former litigation was conducted by the pujaris, not exclusively as

trustees in which capacity they have instituted the present suit but in their own personal capacity as pujaris as well which would be in conflict with

their capacity as trustees. We wish to say nothing in regard to the merits of this contention, as we are inclined to hold against the plea of res

judicata anyhow for the reason already given, & as in fact a finding on the question of res judicata is, as already pointed out by us, not strictly

necessary for the disposal of this appeal in view of our conclusion on the merits which goes against the applts. with reference to the question of

prescriptive title on the part of the defts.

7. In the result the appeal fails & is dismissed with costs. The applts. will pay the c.f. due on the appeal to the Govt.