

(1997) 12 MAD CK 0178
In the Madras High Court

Subbuthai

APPELLANT

Vs

Sri Sundara Vinayagar Deity of Sundara Vinayagar Koil and
Another

RESPONDENT

Date of Decision : 15-12-1997

Acts Referred:

Citation : (1998) 2 MLJ 272

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Judgement

S.M. Abdul Wahab, J.—The appeal has been preferred by the unsuccessful defendant. The suit was filed for declaration of title and recovery of possession. According to the plaintiff, the suit property was alienated to a temple for lighting purposes in the year 1951 as per Will dated 29.8.1951. The defendant attempted to construct a building. Hence a telegram was sent. The defendant sent a reply claiming title as if the defendant and her husband were in possession and there was an arrack shop run by the family members. Thereafter a notice was sent to deliver vacant possession. As there was no compliance the suit was filed.

2. In the written statement the defendant claimed that her parents in law were in possession prior to 1970 and from 1970 onwards they put up two huts. In one of the huts, a liquor shop was run. In 1988 the hut was demolished and a regular construction was put up. The defendant has been in possession and enjoyment of the suit property for over 19 years. Therefore, adverse possession also has been accrued to them.

3. The trial court considered the evidence in detail and found that the case of the defendant that she has been in possession for several years adversely is unbelievable. Relying upon the documents filed by the plaintiff, viz., Exs.A-1, A-3 and A-4 the trial court came to the conclusion that the suit property belonged to the temple and therefore, the declaration and possession should be given to the temple. As against the judgment an appeal was also preferred. The appellate court also concurred with the findings of the trial court and rejected the appeal.

4. Now, in the second appeal, the learned Counsel for the appellant raised the following contentions. Firstly, the plaintiff has no locus standi to maintain the suit. There is also no evidence that Sivasubramania Pillai is the trustee of the temple. Secondly, assuming that he is the trustee, since he has alienated the property, he has no right to prosecute the appeal. And thirdly he contended that a falsehood has been uttered in the plaint. Therefore, the plaintiff should not be given any relief.

5. The learned Counsel for the respondents contended that there is no dispute with regard to the ownership of the plaintiff and even though there was alienation during the pendency of the suit, the alienee, who has been impleaded as a party to this appeal, has also filed an affidavit agreeing not to claim any right in the suit property.

6. As regards the first contention, it is true that the son of the trustee of the temple, who has been examined as P.W.1, has stated in his evidence that under Ex.A-1 the land was not given to the temple and the same was used by the villagers. But, however, during the cross-examination he has stated that it was not correct to state that his father was not the trustee and the land was not given to the temple. Apart from the oral evidence of P.W.1 we have the oral evidence of D.W.1. Her case is that she has been in possession for over 25 years and a liquor shop was run in the land. No documentary evidence has been produced about the same. Normally liquor business would have been conducted only with a licence. The failure to produce such a licence is very fatal and the same falsified the case. D. W.2 has admitted that D. W. 1 is related to her as sister. Therefore, the court below have not accepted the oral evidence of D. Ws. 1 and 2. The courts relied on Ex.A-1 Will dated 29.8.1951, under which the suit property, has been dedicated to the temple for the purpose of lighting. It is true that in Ex.A-4 there is no mention that the suit property belongs to the temple and it is stated that it belongs to Sivasubramania Pillai. When the plaintiff has not disputed that the suit property belongs to the temple, if the Municipality or the Panchayat Board has simply stated that the name of the assessee is an individual who claims to be the trustee, that would not mean that the person named therein should be taken to be the owner for all purposes. In Ex.A-3 it has been clearly mentioned that the suit property belongs to the temple. Ex.A-3 notice has been sent on behalf of Sivasubramania Pillai. In Ex.A-3 notice there is a reference to the Will dated 29.8.1951. A Commissioner was appointed by the trial court and the Commissioner has filed Exs.C-1 and C-2. In Ex.C-1, it is clearly mentioned that the defendant was not in possession of the suit property, Relying upon the Will Ex.A-1, the oral evidence given by P.W. 1 and the report of the Commissioner Ex.C-1 the courts below have rightly concluded that the suit property belongs to the temple.

7. Since the plaintiff has alienated the property during the pendency of the proceedings as is evidenced by a document dated 29.2.1996, which is sought to be filed as an exhibit before this Court now, an affidavit has been filed on behalf

of the alienee of the suit property. He is also a party as second respondent in the appeal. The second respondent has filed an affidavit stating that he purchased the property under a bona fide belief and without proper legal advice. It is also stated that he undertakes not to claim any right on the basis of the sale deed. It is further stated that he has no objection for the plaintiff Sri Sundara Vinayakar Deity of Sundara Vinayagar Koil, Vellore, to enjoy the fruits of the decree obtained from the courts below. From the above, it is seen that the alienee has no objection for the temple to recover the property from the defendant.

8. The learned Counsel contended that unless the registered sale deed is set aside, it will continue to be valid and by this Court's observation, the sale deed will not become invalid. The sale deed has been produced before this Court by the appellant along with the petition. An affidavit has been filed by the second respondent, to whom the property has been conveyed as already stated. A counter has also been filed to the said affidavit by the appellant herself. When these facts are placed before the court, the court can take notice of the circumstances and accept the contention of the alienee that he will not claim any right in the suit property.

9. When the party voluntarily gives up his right, a court administering justice and equity cannot ignore the same. Justice has to be rendered from the evidence available and from the admissions. An affidavit is filed before this Court duly attested by an advocate of this Court after having served a copy to the party giving a chance to file his objections. The court can take notice of the same. The court cannot close its eyes and decide a case blindly. It is true that courts are bound to be blind to certain matters and facts which are not relevant and are alien to the case and which attempt to influence the decision of the court. When some facts are brought to the notice of the court voluntarily and in the interests of justice, it is the duty of the court to take note of the same. Therefore, in my view when a genuine offer is made by the second respondent disclaiming his rights over the suit property, the same can be taken note of and can be recorded by this Court. Therefore, when the alienee, the second respondent has no objection for the plaintiff temple to enjoy the fruits of the decree, the decree can be executed to the advantage of the plaintiff and merely because during the pendency of the suit the property has been alienated, that does not mean that the suit becomes infructuous and another proceeding should be initiated.

10. Another contention raised by the learned Counsel for the appellant is that the plaintiff has come to this Court with unclean hands by uttering falsehood. He has also cited the authority reported in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, . In the said decision it is laid down that a person whose case is based on falsehood, has no right to approach the court and he can be summarily thrown out at any stage of the litigation.

11. In this case, even though the plaintiff's son has stated that as per Ex.A-1 the property is not dedicated to the temple, later on he has stated that it is not correct to state that his father is not a trustee to the temple and the property

was not dedicated to the temple. It is also a fact that during the pendency of the suit, the property has been alienated by Sivasubramania Pillai describing himself as the owner of the property, ignoring the Will. But, as I have stated above, the alienee of the property, the second respondent, has filed an affidavit disclaiming his rights and giving up all his rights in the property.

12. If the suit is filed by the plaintiff in his individual or personal capacity and if he comes to court with falsehood, and unclean hands, the relief claimed by him for his personal benefit can be definitely rejected. But, here, the relief claimed is not for his personal benefit but the relief is in favour of the temple. In the circumstances, the beneficiary is not the person but the temple as such. Of course the averments and the acts made done by him during the pendency of the suit can be taken note of by the public or the authorities concerned with reference to his continuing as a trustee. On account of his uttering some falsehood and bad conduct, a relief that has accrued to the temple, a public religious institution cannot be deprived of. The case cited by the learned Counsel for the appellant is entirely different. The relief claimed in the said case is for the person himself and not for public religious institution.

13. The next contention raised by the learned Counsel for the appellant that there is no evidence to show that the plaintiff has been appointed as a trustee and acted as a trustee, is also not acceptable. On that ground the suit cannot be dismissed. As per the concurrent finding of the courts below the suit property belongs to the temple and the relief is claimed for the benefit of the temple only. Temple is a public religious institution. Even a person interested in the temple, for example, a worshipper can file a suit for recovery of the property belonging to the temple. It is true that when there is a lawful authority, it is for that authority to take possession of the property belonging to the temple, but that does not mean that in all the circumstances invariably only such person in office has to file a suit and Ors. cannot approach the court. In certain circumstances, as mentioned above, suit can be filed by a person other than the trustee in office. But, here in this case, as I have already stated, the suit has been filed by Sivasubramania Pillai, who has signed as the trustee of the plaintiff temple. In evidence also P.W.1, his son, has admitted that his father is the trustee. As rightly pointed out by the learned Counsel for the appellant in the memorandum of appeal before the lower appellate court, in ground No. 8 there is a clear admission on the part of the appellant that Sivasubramania Pillai is the trustee of the temple. In such circumstances, I do not find any justification in the contention raised by the learned Counsel for the appellant that the suit is not maintainable, since there is no evidence that Sivasubramania Pillai has been appointed as the trustee or lawfully acted as a trustee.

14. For the foregoing reasons, I am not in a position to interfere with the concurrent findings of the courts below. Hence, the second appeal has to be dismissed and accordingly it is dismissed.

15. As regards C.M.P.No. 17943 of 1997, this is a " petition for reception of the

document dated 29.2.1996 under which Sivasubramania Pillai has alienated the suit property in favour of the second respondent. The appellant has filed this petition. As it would show that Sivasubramania Pillai has become disqualified or acted against the interest of the temple, he cannot maintain the suit. As I have stated in the judgment in the second appeal his acts cannot bar the temple from recovering the property when the alienee himself has readily offered to distance himself from the property. The second respondent has filed an affidavit referring to the said alienation and giving up his title in the suit property obtained by him under the said document. The same can be received and taken as an additional evidence in this Court. I have also referred to the above document already. The respondent have also not filed any counter for the said petition. In the circumstances, the said petition is allowed. The document is marked as Ex.B-1. However, taking note of the conduct of the respondent/the trustee there will be no order as to costs.

16. Consequently, the injunction petition C.M.P.No. 2594 of 1997 is also dismissed.