Murugayya Udayar and Another

Vs

Kothampatti Muniyandavar Temple by Trustee Pappathi Ammal

Civil Appeal No. 2588 of 1977

(L. M. Sharma, M. M. Punchhi JJ)

10.01.1991

JUDGMENT

M. M. PUNCHHI, J. –

1. This appeal by special leave is directed against the judgment and decree of the High Court of Madras in Second Appeal No. 2170 of 1972, upsetting the concurrent judgment of the courts below.

2. Facts giving rise thereto, when digested, appear to be within a narrow compass. The plaintiff-respondent set up a case that being the widow of one Nangu Odayar, she was the successor trustee of a temple situated in her village Kottampatti and within the Vattam [Ed. : 'Vattam' or 'Wattam' or 'Wuthum' as per Witson's Glossary means "a small tract or district comprising three or four villages under one head man".] of Ariyaripatti (for short to be called "village A"), her husband being the erstwhile trustee, and the suit lands situated in Manjapattai Vattam (for short to be called "village M"), were owned by the said temple. And further, since the defendant-appellant had been successful in proceedings under Section 145 of the Code of Criminal Procedure in establishing his possession over the suit lands, it had become necessary for her to safeguard the interests of the temple and to seek possession of the suit lands.

3. The defence of the defendant-appellants was that there was no temple in village Kottampatti or its Vattam known as village A. It was cross-asserted by him that there rather was a temple in village M to which belonged the suit lands and he was in possession thereof as a trustee of the said temple.

4. The trial court in the first instance dismissed the suit and the appeal of the plaintiff-respondent was dismissed. The High Court, however, on second appeal viewed that additional evidence sought to be brought on record by the plaintiff-respondent be permitted and this caused remittal of the case to the file of the first appellate court. On adduction of additional evidence the plaintiff again remained unsuccessful before the first appellate court which gave rise to the second appeal in which the decision presently under appeal was given. The High Court took the view that the finding of the courts below that there was no temple in Kottampatti village was perverse, which existed in village A, which village was within the limits of Kottampatti village. Significantly, the High Court did not disturb the finding that there existed a temple within the area of village M, as well.

5. It would be apt to cover (sic) up at this stage that both the temples are alleged and proved to be of the same deity known as Muniandavar and respective idols of different sizes stand on the respective places where the temples are situated. The suit lands thus belong in a sense to the same deity though separately templed.

6. The High Court then went on to examine as to who was in possession of the suit property over and above the finding of the courts below that it was the defendant-appellant who as a trustee of temple in village M was in possession thereof. To conclude the High Court held that the courts below had erred in law in not accepting the evidence led on the side of the plaintiff about the possession of the suit lands which established they must have belonged only to the temple of Kottampatti village. To justify substitution of the finding for that of the courts below the High Court termed the finding of the courts below to be perverse entitling it to interfere in second appeal.

7. Mr. K. Ram Kumar, learned counsel for the appellant has taken us through the judgment under appeal, as also the relevant evidence which has been commented upon, to vehemently urge that the High Court was in error in upsetting a finding of fact and thus to have grossly violated Section 100 of the Code of Civil Procedure. It is idle to elaborate the well known domain within which the High Court can exercise power in second appeal under Section 100 of the Code of Civil Procedure. One may go with the High Court, with some reservation though with its finding that there existed a temple in village A as right, and that the finding to the contrary recorded by the courts below confining literally to village Kottampatti (leaving village A unconnected) was an omission. But be that as it may, the finding could in no event be perverse as termed by the High Court. Important evidence, if ignored from consideration by a court below can be a good ground for the High Court to interfere in second appeal. Here what we find is that the courts below were of the view that there existed no temple in village Kottampatti and rightly so because the temple in village A was found. All the same, we wish not to stretch this matter any further and are prepared subject to the above reservation, to go with the High Court that there existed a second temple in village A, the situs of which was connected with village Kottampatti.

8. The upsetting of the other finding of fact, however, that the suit property belonged to the temple in village A cannot be ignored. We find no perversity involved therein. Significantly, there was no document of title on either side to establish as to which temple did the suit lands belong. It was oral evidence predominantly on either side which had been re-weighed by the High Court. The only documentary evidence was in the nature of some revenue receipts known as Melwaram receipts produced by the plaintiff-respondent which showed that the defendant-appellant and the predecessor of the plaintiff-respondent Nangu Odyar were co-tillers or co-pattadhars of the land in dispute. Since both the parties claimed possession of the suit lands individually or mutually on the basis of being trustees of the temple of the deity, it was apt to lean towards the reading of the evidence in such a way so as to hold that the suit lands belonged to the temple of the village in which the suit lands were situated, unless there was something substantial available to hold to the contrary. As said before, no documentary evidence of title was available to prove that the suit lands belong to the deity of the temple of the other village A and the mere fact that one of the co-trustees, i.e., the plaintiff-respondent belonged to village A or held trusteeship of the temple in her own village A was no ground to interfere with the finding that the lands belonged to temple of the village M in which they were situated. In this view, we fail to see how the High Court could term the finding recorded by the courts below on the question of ownership of the said land to be perverse and on that basis treat it as if there was an error of law. We are firmly of the view that the High Court was in error in that regard. What follows is that the judgment under appeal must be upset.

9. Accordingly this appeal is allowed. The judgment and decree of the High Court is set aside and that of the Subordinate Judge, Thanjavur is restored. Since the parties had no individual interest to clash in the instant litigation and fought for their respective temples, we leave the parties to bear their own costs throughout.

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