SUPREME COURT OF INDIA

Chokalingaswami Idol thr. R.N. Pillai

Vs.

Gnanapragasam

C.A.No.3879 of 2001

(Tarun Chatterjee and H.S.Bedi,JJ.)

13.03.2008

JUDGMENT

Harjit Singh Bedi, J.

1. The plaintiff is the appellant in this appeal. It arises out of the following facts.

2. The appellant idol was installed by one Mirasu Nainar Pillai, the great grandfather of the trustee R.Nambla Pillai in the year 1872. After the death of Mirasu Nainar Pillai his son Sattanatha Pillai and after his demise his son Ramalingam Pillai was performing the ritual pooja. Ramalingam Pillai executed a registered settlement deed dated 21st September 1930 creating a charge over the property mentioned in the deed for meeting the expenses of the pooja for the deity. In this settlement deed Ramalingam Pillai clearly recited that the idol had been installed by his grandfather and that the family had been carrying on the pooja as trustees. It also appears that Ramalingam Pillai had constructed two houses in the land in question, one for his residence and the other for rent and that he was maintaining the temple and idol as per requirement from the income received from the properties. The appellant also claimed that as per the record, the land belonged to the temple and that the respondents were taking steps to assign the vacant land to a society of ex-servicemen which was bent upon encroaching on the suit land. The appellant accordingly filed a suit for declaration and permanent injunction claiming title to the property as belonging to the idol and that the respondents were not justified in seeking to encroach upon it. The first defendant i.e. the State of Tamil Nadu represented by the District Collector in its written statement controverted the plea of the appellant and alleged that the land did not belong to the idol and that the appellant had no right to occupy the same as it was poramboke land belonging to the Government. The plea of the appellant that it was in possession of some of the vacant land was also controverted by the second and third defendants Gnanapragasam Kombiah Thevar respectively whereas the fourth defendant, Shanmugathammal, took the plea that he was in possession of the land in question on payment. The Second Additional District Munsif, Thirunelveli decreed the suit as prayed. Aggrieved thereby the second defendant Gnanapragasam alone preferred an appeal in the sub-court, Tiruveneli. The appeal was allowed, and the suit dismissed holding that the suit property was Government poramboke

land and as such the idol had no right over the suit property. Aggrieved thereby the plaintiff-appellant went before the High Court in second appeal. The High Court in its judgment dated 10th January 2001 observed that the finding of the first appellate court that the suit property was Government poramboke and as such the plaintiff-appellant had no right over the suit property and that that there was no evidence to show that the land was indeed the land covered by the settlement deed and concluded that the finding recorded by the appellate court was fully justified. The High Court also noted the argument raised by the appellant that as defendant No. 1 i.e. the State Government had not preferred any appeal against the order of the Munsif, the first appellate court was not justified in interfering in the matter at the instance of the private defendants and dealt with this apparent anomoly by observing:

> "Even though the first defendant, the Government has not preferred any appeal, it is the duty of the Court to find out, on analysis of oral as well as documentary evidence, whether the plaintiff has got title to the suit property. The plaintiff has come forward with the suit for declaration of title and injunction. So, the burden is heavily on the plaintiff to establish the title. The documents produced prove that only the Government is the owner of the suit property and the plaintiff has no manner of right. On analysis of such documentary evidence, the first appellate court has come to the conclusion that the plaintiff has no manner of right over the suit property. The Court is bound to analyse the evidence and decide the case of the plaintiff when the plaintiff has sought for the relief of declaration and injunction. So, it cannot be stated that since the first defendant, Government did not prefer any appeal, the first appellate court was not bound to decide the title in respect of the suit property. The first appellate court, on analysis of the evidence has clearly found that the documents filed by the plaintiff did not establish that the plaintiff is entitled to the suit property and as such the finding of fact on analysis by the first appellate court is perfectly justified."

3. Having held as above, the High Court then went on to consider the evidence on record and concluded that the land in question was Government poramboke land and that the other defendants were mere tenants thereon and that it had no hesitation in holding that the "suit property is a Government poramboke land and the plaintiff has no manner of right over the suit property and the finding of the first appellate court is perfectly justified." The appeal was accordingly dismissed.

4. The only issue raised by the learned senior counsel for the appellant is that in view of the findings of the trial court with regard to the ownership of the land against the defendant No. 1 i.e. the State Government, no appeal had been filed by the State Government and an appeal had been prepared by only one of the private co-defendants who was allegedly a lessee of the land in question and in the light of this situation it was not permissible for the first and second appellate courts to hold in favour of the State Government and against the plaintiff-appellant. We find merit in this plea. In paragraph 16 of the judgment that we have quoted above, the High Court was cognizant of the fact that it was perhaps over stepping its jurisdiction in the matter but chose to circumvent the requirement of law in the belief that it was justified in doing so as the plaintiff-appellant was attempting to swallow Government property. We are of the opinion, however, that the State Government had accepted the

judgment of the trial court as no appeal had been filed by it. We accordingly allow the appeal, set aside the judgments of the first appellate court and the High Court dated 21st November 1988 and 10th January 2001 respectively and restore the judgment of the trial court. There will be no order as costs.