SUPREME COURT OF INDIA

Subramaniaswamy Temple, Ratnagiri

Vs.

V. Kanna Gounder (Dead) by LRs.

C.A.Nos.7135-7136 of 2000

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

14.05.2008

JUDGMENT

S.B. Sinha, J.

1. This appeal is directed against a judgment and order dated 26.3.1999 passed by the High Court of Judicature at Madras in Second Appeal Nos.752/87 and 800/94 whereby and whereunder the appeals preferred by the respondent herein from a judgment and order dated 13.04.1994, passed by the First Appellate Court in AS 16 of 1983, were allowed.

2. The basic fact of the matter is not in dispute. Appellant is a temple. It is of ancient origin. It was in possession of a vast tract of land. It runs a school as also a charitable hospital. It adopted the practice of feeding the poor people. It has also been performing various other activities in relation to the temple. The temple was in possession of a vast tract of land and in particular land in survey No.370/1 admeasuring 32 acres. Survey number 370 was classified into three different categories, namely, (1) Survey No. 370/1 (32 acres) classified as "Sri Subramanya Swamy Temple Poramboke"; (2) Survey No.370/2 (1 acre 44 centrs) as "High Ways Road"; and (3) Survey No.370/3 (68 cents) as "unassessed waste".

3. The classification of 32 acres of land of Survey No.370/1 was made as "Sri Subramanya Swamy Temple Poramboke". The said classification of temple `Poramboke' in the revenue record of right indicates the reason for which it has been set apart as also its occupation and use. Temple Poramboke consists of unassessed waste land by the temple. It may also include common passage, water ponds, thrashing floor etc. etc.

4. For the purpose of effectuating the aforementioned purpose, the Government of Madras issued GO No.3333 on or about 25.8.1960 permitting the temple to lease out the said lands for the purpose of augmenting its revenues subject of course to the conditions laid down therein, which are:

> "1. The temple authorities before applying for assignment of the porambokes found in excess of the requirements of the temple and worship should obtain the consent of the H.R. & C.E. ADMN
>
> 2. Such lands should be granted for cultivation only if they are cultivable and only if they are not cultivable they should be to other uses for the benefit of the temple and
>
> 3. The land should be used only for the purposes for which it is assigned."

5. By reason of such classification, the appellant-temple obtained full right to possession and exercise right to transfer of the lands assigned in its favour. The right of the appellant to hold and possess the said land was noticed by a Bench of the Madras High Court in 2001 (2) Law Weekly 723 in the following terms:

> "Such a land does not cease to be a poramboke property over which the Government will have control subject only to the rights of the temple."

6. Respondent herein was a licensee in respect of a shop situated in Suvey No.370/1. A suit for an eviction was initiated. A decree was passed. Respondent was evicted from the said shop. However, he is said to have encroached upon 300 sq. ft. of land in the said survey later on. The defence taken by the respondent was that the land occupied by him pertains to Survey No.144 and not to Survey No.370/1. A suit was instituted for his eviction. In the said suit, the possessory title of the temple was affirmed but it was dismissed on the ground that respondent had already taken possession and, therefore, the remedy of the appellant would only be to file a suit for recovery thereof.

7. An appeal suit was preferred. At the same time, pursuant to the observations made by the District Court in its judgment dated 20.11.1985, a suit was instituted. The suit was decreed. An appeal preferred thereagainst was also dismissed. Respondent filed a second appeal which was marked as Second Appeal No.800 of 1994 which was tagged with the second appeal preferred by the appellant being Second Appeal No.752 of 1997. Both the appeals were taken up for hearing together. By reason of the impugned judgment whereas the Second Appeal filed by the appellant was dismissed, that of the respondent was allowed holding that appellant had failed to prove any title over the said land by way of patta or otherwise as also the fact that possession had been delivered in its favour by the State.

8. Mr. S. Balakrishnan, learned senior counsel appearing on behalf of the appellant, would submit that the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration the concept of possessory title.

9. Mr. Ramakrishna Reddy, learned counsel appearing on behalf of the respondent, however, supported the impugned judgment.

10. The High Court, in its impugned judgment proceeded on the basis that there had been no assignment in favour of the temple by the State. It committed an error in relation thereto. The

paramount title of the State is not disputed. It remains vested in the State. The State, however, having regard to the possession of the appellant over 32 acres of land classified the same as `temple poramboke'. It, by reason of the said classification, not only permitted the appellant to continue to possess the land but also granted a superior right, namely, to make constructions as also to grant lease thereof subject of course to the conditions laid down as noticed hereinbefore. The principle of possessory title was, thus, completely overlooked by the High Court.

11. It is now well settled that in India, nobody can take possession of an immoveable property except in accordance with law. Respondent was a licensee under the appellant. He was evicted from the shop which was allotted in his favour. If he had encroached upon a portion of the Poramboke land, he could have been evicted by the temple on the basis of its possessory title.

12. If, thus, the temple was in prior possession of the land which would be evident from the classification made by the State Government and recognition of its right there over, it also had right to initiate proceedings in a civil court for eviction of a rank trespasser. In a case of this nature, the court was required to consider as to who was in prior possession. Only in the event the respondent was in a position to show that he had a better title, he could continue with the possession. The only defence taken by him was that the suit land pertains to Survey No.144 and not Survey No.370/1. Such a contention has been negatived by the trial court as also by the first appellate court. A finding of fact had been arrived at. Having regard to the concurrent finding of fact as regards the possession of the parties, vis-`-vis, their respective title in and over the suit land. The High Court, while exercising its jurisdiction under Section 100 of the Code of Civil Procedure, was required to formulate a substantial question of law which might have arisen for its consideration. No question of law was framed far less any substantial question of law relating to identification of the property. The High Court, therefore, in our opinion completely misdirected itself in passing the impugned judgment.

13. The law operating in this connection having been noticed by this Court in *Rame Gowda (D) by Lrs. v. M. Varadappa Naidu (D) by Lrs. and Anr.*[1], we need not enter into a deeper probe. Therein it was held:

> "8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title,

possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

> 9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions."

14. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. Appeals are allowed. No costs.