Supreme Court of India
Tirumala Tirupati Devasthanams vs K.M. Krishnaiah on 2 March, 1998
Author: M J Rao.
Bench: S.P. Bharucha, M. Jagannadha Rao

PETITIONER:
TIRUMALA TIRUPATI DEVASTHANAMS

Vs.

RESPONDENT:
K.M. KRISHNAIAH

DATE OF JUDGMENT: 02/03/1998

BENCH:
S.P. BHARUCHA, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

Present Hon'ble Mr. Justice S.P. Bharucha Hon'ble Mr. Justice M.Jagannadha Rao Soli Sorabjee, Sr. Adv., K.Ram Kumar, Ms. Asha G. Nair, Advs. with him for the appellant A.T.M. Sampath, Adv. for the Respondent J U D G M E N T The following Judgment of the Court was delivered: M. JAGANNADHA RAO. J.

The Appellant (Tirumala Tirupati Devasthanams, hereinafter called the T.T.D. is the defendant in the suit O.S. No. 51 of 1968 filed by the respondent-plaintiff in the Court of the the District Munsif at Tirupati. The suit was filed by the respondent for grant of permanent injunction against the TTD in respect of AC 2.29 of land in Tirumala Hills.

The trial Court dismissed the suit holding that the plaintiff had proved neither title nor possession and that the plaintiff who had trespassed into the property in October, 1967, was not entitled to permanent injunction against the true owner, of the property, namely, the TTD.

The plaintiff filed an appeal and during the pendency of the appeal, the plaintiff had temporary injunction in CMP 319 of 1969 in his favour only upto 28.8.1969 and was dispossessed on 30.8.1969 by the TTD. The plaintiff then filed an application CMP No 289 of 1970 on 25.7.70 under order 6 Rule 17 CPC (beyond 6 months from the date of dispossession) for amendment of plaint and

converted the suit into one for possession. The appellate Court too held that the plaintiff had proved neither title nor possession to the suit property. The appeal was dismissed by judgment dated 5.8.1982. We may state here that both courts relied upon the judgment of the Sub-Court, Chittoor dated 15.6.1942 in an earlier suit filed by the TTD against the Hathiramji Mutt in 1937 (O.S. 51/1937) wherein that Court had declared the TTD's titled to this property. Such title was declared on basis of title deeds of 1887. Evidence of the Deity's possession from 1846 was adduced in that suit. Subsequent to the decree dated 15.6.1942, the TTD filed E.P. No. 1 of 1946 against Hathiramji Mutt and obtained delivery under Ex. B6 delivery receipt on 12.1.1946 through Court.

After failing in both Courts, the respondent plaintiff preferred second Appeal No 781 of 1982 in the High Court. The learned Judge allowed the appeal by judgment dated 24.4.1987 and passed a decree for possession in favour of the plaintiff observing that the suit was to be treated as one based on `possessory title, and that the plaintiff dispossessed on 30.8.1969 could recover possession from the appellant TTD unless the TTD proved title. The learned Judge held that the oral evidence adduced by both sides was to be rejected and that the TTD's title in respect of this extent of land of Ac 2.29 stood "extinguished" inasmuch as the delivery receipt dated 12.1.1946 showed that some `encroachers' were in possession of this piece of land. Such a finding as to extinguishment of plaintiff's title was given for the first time in second Appeal, even though there was no such issue in the courts below. Against the said judgment in Section Appeal, decreeing the suit for possession, this Civil Appeal has been preferred by the TTD.

Learned senior counsel for the TTD, sri Soli J. Sorabjee contended before us that it was not open to the second Appellate Court to reappreciate evidence and reject the oral or documentary evidence which was accepted by the courts below and that it was also not open to the Court in Second Appeal to hold that the TTD's title stood "extinguished" when there was no such issue framed in the lower courts. If the suit was to be decided only on the basis of possessory title, as even accepted by the Second Appellate Court and if section 6 of the Specific Relief Act 1963 was, even according to the said court, not available to the plaintiff,- because the application for amendment to convert the suit into one for possession was filed on 25.7.1970, beyond 6 months from the date of dispossession i.e. 30.6.69, -the suit for possession was liable to be dismissed as the TTD had proved titled and the said title was subsisting and was never extinguished.

On the other hand, it was contended by Sri A.T.M. Sampath, learned counsel for the respondent-plaintiff that the earlier judgment in OS 51/1937 - Sub-Court, Chittoor was rendered in a suit by the TTD against the Hathiramji Mutt and that the present plaintiff was not a party thereto and hence any declaration as to title in favour of the TTD given therein in respect of the suit property was not admissible or binding in the present suit. He also contended that the delivery receipt Ex.B6 dated 12.1.1946 in the earlier suit OS 51/1937 in favour of the TTD showed that the TTD was given possession of 0.06 cents in S.No. 669/2 and 0.39 cents in S.No.669/1 only and that so far as Ac 2.29 in S. No. 669/2 was concerned, it was stated in the said receipt that extent of land was being cultivated by `encroachers'. He, therefore, contended that TTD was not put in possession of the suit property on 12.1.1946. According to him, the plaintiff's family from the time of his grandfather Chengaiah was in possession of the Ac 2.29 for over 60 years right up to the filing of the present suit on 14.2.1968 and hence the learned Judge was right in holding that TTD's title to this

extent of Ac 2.29 stood `extinguished'. It stood extinguished, in any event, between 12.1.1946 and 30.8.1969 when TTD dispossessed the plaintiff. The suit of the plaintiff, as amended, based on possessory title was therefore rightly decreed by the second Appellate Court. The plaintiff who was dispossessed on 30.8.69 could, even if the 6 months period prescribed in section 6 of the Specific Relief Act expired, maintain a suit for possession and recover possession on the basis of possessory title, as held by this Court in Nair Service Society Ltd. Vs. K.C. Alexander [AIR 1968 S.C. 1165], which judgment was relied upon by the learned Judge in the High Court. In view of the above contentions, the following three points arise for consideration:

> (1) Whether the judgment in OS 51 of 1937, Sub-Court, Chittoor dated 15.6.1942 declaring the title of the TTD, was admissible and could be relied upon by the TTD as evidence in the present case, even though present plaintiff was not a party to OS 51 of 1937? (2) Whether it was open to the Second Appellate Court to reappreciate the evidence and hold that the oral evidence adduced by the parties was not acceptable and that in view of the recitals in Ex B6 delivery receipt dated 12.1.1946, the title of the TTD was to be deemed `extinguished'. and whether this could be done when there was no such issue raised in the courts below? (3) Whether, in case we should hold on Point 2 that the Second Appellate Court could not hold that the TTD's title stood extinguished, the decree for possession based on possessory title as granted by the Second Appellate Court, could be sustained?

Point 1:

It was argued by the learned counsel for the plaintiff respondent that the earlier judgment in O.S. 51 of 1937 dated 15.6.1942 was rendered in favour of the TTD against Hathiramji Mutt, that plaintiff was not a party to that suit and hence any finding as to TTD's title given therein is not admissible as evidence against the present plaintiff in this suit.

In our view, this contention is clearly contrary to the rulings of this Court as well as those of the privy Council. In Srinivas Krishna Rao Kango vs. Narayan Devji Kango & Others [AIR 1954 SC 379], speaking on behalf of a Bench of three learned Judges of this Court, Venkatarama Ayyar, J. held that a judgment not inter parties is admissible in evidence under section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. A contention that judgments other than those falling under sections 40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected. Again B.K. Mukherjea, J. (as he then was) speaking on behalf of a Bench of four learned Judges in Sital Das vs. Sant Ram & Others [AIR 1954 SC 606] held that a previous judgment no inter partes, was admissible in evidence under section 13 of the Evidence Act as a `transaction' in which a right to property was `asserted' and `recognised'. In fact, much earlier, Lord Lindley held in the Privy Council in Dinamoni vs. Brajmohini [1902] [ILR 29 Cal. 190 (198) (PC)] that a previous judgment, not inter partes was admissible in evidence under Section 13 to show who the parties were, what the lands in disputer were and who was declared entitled to retain them. The criticism of the judgment in Dinamoni vs. Brajmohini and Ram Ranjan Chakerbati vs. Ram Narain Singh [1895 ILR 22 Cal 533 (PC)] by sir John Woodroffe in his commentary o the Evidence Act (1931, P 181) was not accepted by Lord Blanesburgh in collector of Gorakhpur vs. Ram Sunder [AIR 1934 PC 157 (61

IA 286)].

For the aforesaid reasons, we reject the contention of the learned counsel for the respondent-plaintiff and hold that the TTD could rely on the judgment in OS 51/37 as evidence to prove its title in regard to the suit property, even though the present plaintiff was not a party to that suit. Point No. 1 is held accordingly against the respondent.

Point 2:

It was argued for the appellant that the Second Appellate Court could not have rejected the oral and documentary evidence which was accepted by the Courts below on the question of possession. It was also argued that in Second Appeal, it was not open to the High Court to hold that the title of the TTD stood `extinguished' when there was no such issue raised in the courts below.

It is obvious that under section 100 CPC in Second Appeal it was not open to the Second Appellate Court to reappreciate the evidence and reject the evidence accepted by the courts below on the question of possession. We may here refer briefly to the reasoning of the trial court and of the first appellate court on the question of possession.

The respondent-plaintiff, in proof of his contention that his family from his grandfather's Chengaiah's time for over 60 years was in possession of this property, examined himself as PW1 and four other witnesses of PW2 to PW5. As pointed out by the learned District Munsif, the plaintiff did not produce a scrap of paper - either the cultivation accounts maintained by the government (called the Adangals or Rule 10(1) and 10(2) accounts), or any tax receipts in token of payment of land revenue. Now the TTD auctioned the lease hold interest in this property annually. This land was leased to PW2 for the fasli year 1372 (1962 to 1964) and to PW3 for the fasli year 1375 (1965-66). These leases would, in fact, be proof of TTD's possession during these years, i.e. after it took delivery on 12.1.1946 under Ex B6. Curiously the plaintiff examined these tenants on his side to say that the plaintiff was in possession during this period and not the TTD. The evidence of PWs 2 and 3 was, upon a through discussion, rejected by the learned District Munsif as well by the first appellate court. The evidence of the watchman PW4 and of the milk vendor PW5 put forward by the plaintiff was also rejected by the said courts for good reasons. At the same time, the said Courts held that the plaintiff had trespassed into the suit property in October, 1967 when one P. Subrahmanyam, another lessee of the TTD for the year 1967-68 was in possession pursuant to auction held by the TTD in that year. The trial court held that the suit land was known as Kaki Chowk Thota and was never known after the plaintiff's paternal grand father as Chengaiah Thota. It was the Nandavanam of the Deity. The Court pointed out that the plaintiff had deliberately not mentioned the S.Nos of the suit land in the plaint and tried to confuse the issue by stating at the time of evidence that said land bore S. No. 592 and not 669. The Court held that S.No. 592 was the old S.No. for the same land now covered by S.No. 669/1 and 669/2. The Court observed that inasmuch as the TTd had filed a criminal complaint against the plaintiff alleging trespass, the plaintiff, with a view to ward off criminal proceedings, filed the present suit for injunction one day later.

In the Courts below, the TTD had relied upon Ex. B6 delivery receipt dated 12.1.1946, the oral evidence of DWs 1 to 5, and the governmental survey report of 1914. It also relied upon the annual auctions of the lease-hold interest of these lands by the TTD to PW2, PW3 and P. Subrahmanyam during 1962 to 1967, till plaintiff trespassed into the property in October, 1967. The TTD filed the cultivation accounts Ex. B8, Ex. B9 for S.No. 669 (old S.N. 592), Ex. B10 list of kist paid for the lands of TTD for fasli 1378 (1968), Ex. 14, the Muchalka dt. 26.6.1967 executed for 1967-68 by P. Subrahmanyam who was the highest bidder for the year 1967-68. The said oral and documentary evidence was accepted by the Courts below as proof of TTD's possession after 12.1.1946 and upto October, 1967 when the plaintiff trespassed into the property. When the trial court and the first appellate court have thus based their finding as to possession on the above material, the learned Judge in Second Appeal was not right in stating that:

"No reliance can be placed upon the interested oral evidence adduced by the parties in support of their respective claims."

Nor could he state, in the face of the above evidence in the case, the TTD had not filed a "single deed of lease" in support of its claim for possession. We have on record the auction notices issued by the TTd for the lease-hold rights. They were marked on plaintiff's side when he examined PW2 and PW3. Ex. A3 dt. 13.6.65 was issued by the Executive Officer, TTD, Ex. A4 dated 6.8.62 in the duplicate challan issued to PW2 for Fasli 1372 and Ex. A5 dated 20.7.68 is the receipt issued to PW2 by the TTD. Ex. A6 dated 10.11.65 is the receipt for leasing Kaki Chowk Thota for Fasli 1375 and Ex. A7 contains the proceedings relating to confirmation of sale of lease-hold rights for Fasli 1375. TTD produced Ex. B14 dated 26.7.67 as the Muchalka executed by the lessee P. Subrahmanyam for the year 19067-1968 in favour of the TTD. In the face of the above material, the learned Judge erred in stating that the TTD did not produce any documentary evidence to prove its leases after the delivery under Ex. B6 on 12.1.1946.

The plaintiff's case that he and his predecessors were in possession for more than 60 years was therefore found against him. If that be so, the plaintiff could not claim that the must be taken to be one of the `encroachers' referred to in Ex B6 delivery receipt dated 12.1.1946. Therefore, there was no scope for the learned Judge to hold that the plaintiff was in possession before or after 12.1.1946 so as to prescribe title by adverse possession against the TTD resulting in extinguishment of the title of the TTD. In any event; when there was no issue on the question of adverse possession in the Courts below, the Second Appellate Court could not, for the first time, have giving a finding that the title of the TTd stood extinguished. The following finding in Second Appeal that, for the TTD:

> ".....no physical possession of the property was obtained till 12.1.1946 or thereafter. The defendants' title to the suit property was thus extinguished"

Is, therefore, unsupportable. We accordingly set aside the same and hold that the TTD continues to have absolute title to the property of Ac 2.29 in S.N. 669/1 and 669/2 and that its title never stood `extinguished'. Point 2 is decided accordingly against the plaintiff and in favour of the appellant.

Point 3:

We have already state that after the plaintiff filed the first appeal, the temporary injunction expired on 28.8.1969 and the TTD dispossessed the plaintiff on 30.8.1969. The plaintiff did not claim any relief within six months under Section 6 of the specific Relief Act, 1963 but applied on 25.7.1970, beyond 6 months from date of dispossession, for amendment of plaint converting the suit into one for possession. The point is, if the title of the TTD to the suit property, as held by us on Point 2, was never extinguished but continued to be absolutely subsisting, whether the plaintiff, claiming to be a person dispossessed by the TTD on 30.8.69, could recover possession? In our opinion, the judgment of this Court in Nair Service Society Ltd. vs. K.C. Alexander [AIR 1968 SC 1165] answers this point squarely. The facts of the case before us and in that case are quite close but for a small distinction, to which we shall refer at the appropriate stage.

In that case the respondent was the plaintiff and he was dispossessed. He sued for possession but the suit was filed more than one year after dispossession. Under the specific Relief Act, 1877 section 9 permitted a dispossessed plaintiff to sue for possession within one year and if he so sued, question of title of the defendant was immaterial. Now under section 6 of the new Specific Relief Act, 1963 the said period of one year has been reduced to six months. Question arose whether the suit by the dispossessed plaintiff, after expiry of the 1 year period, was maintainable. It was held by this court that even if the time for filing a summary suit under Section 9 the specific Relief Act, 1877 expired, the dispossessed person could still file a suit for possession on the basis of prior possession. Such a suit is described as one based on `possessory title'. But in such a suit filed by the dispossessed plaintiff beyond the period specified in section 9 of the Specific Relief Act, 1877 (or Section 6 of the 1963 Act) defendant who dispossessed the plaintiff could defend himself by proving title and if he proved title, he could remain in possession. After an exhaustive examination of the law on this aspect, Hidayatullah, J. (as he then was) observed as follows (p 1173):

> "When, however, the period of 6 months has passed, questions of title can be raised by the defendant and if he does so, the plaintiff must establish a better title or fail."

The difference between the right to possession in summary suit under the specific Relief Act and a regular suit based on `possessory title' was explained further as follows (p.1173) "....the right is only restricted to possession only in a suit under Section 9 of the specific Relief Act but does not bar a suit on prior possession within 12 years and title need not be proved unless the defendant can prove one".

On the question whether the defendant, inspite of dispossessing the plaintiff, could, by proving title, remain in possession, it was held that the defendant could, in such a situation, be permitted to retain his possession if he proved title. It was stated that the law was so laid down in Asher vs. Whitcock [1865 (1) QB 1] and was accepted by the House of Lords in Perry vs. Clissold [1907 AC 73], that was also the law applicable in our country and it was this principle that was engrafted into Articles 64 and 65 of the Indian Limitation Act, 1963. The said articles were, it was held, declaratory of the law. The following observations of Hidayatullah, J. (as he then was) place the matter beyond any shadow of doubt, (p.1175, Col.1):

> "1865 (1) QB 1. (Asher Vs. Whitcock) lays down that a person in possession of land has a good title against all the world except the true owner and it is wrong in principle for any one without title or authority of the true owner to dispossess him and relying on his position as defendant in ejectment to remain in possession"....A defendant in such a case must show in himself or his predecessor a valid legal title or...."

(name of case in brackets supplied) On the facts in Nair Service Society, the said Society which was the defendant raised a plea that it has not dispossessed the plaintiff-respondent but that the plaintiff was dispossessed by the State which was the real owner. it contended further that the State had put the society in possession, after dispossessing the plaintiff. The High Court however, held that it was the Society that had dispossessed the plaintiff and not the State. This finding was accepted by the supreme Court. It was therefore held that the suit for possession by the dispossessed plaintiff was maintainable even though the one year period under section 9 of the old specific Relief Act. 1877 had expired, that the suit would then be one where title could be pleaded by the Society to remain in possession, but that the Society failed to prove title in itself. Nor did the Society prove any authority from the true owner to dispossess the plaintiff. The Society could not, therefore, remain in possession. However, in this Court, the Society set up a different root of title under a second Kuthaka - pattam (see para 33) and with a view to shorten further litigation, an amendment to the written statement of the Society was allowed by this Court and the matter was remanded.

In the present case before us the principles laid down in Nair Service Society's case are squarely applicable with this difference namely that inasmuch as, - in view of our finding in point 1, - title of the defendant TTD has not been extinguished and is subsisting as of today in respect of the suit property, the plaintiff respondent who was dispossessed on 30.8.69 - but who applied for possession on 25.7.70 beyond 6 months from date of dispossession - would not be able to recover possession. The TTD could remain and retain its possession. We hold accordingly Point 3 in favour of the appellant.

In the result the Civil appeal is allowed and the judgment of the learned Judge in Second Appeal is set aside and the suit of the plaintiff for possession (as per the amended plaint) is dismissed with costs. the stay granted in favour of the appellant on 27.7.1987 is confirmed and consequent to the appeal being allowed, the appellant will be entitled to recover, by way of restitution, any mesne profits deposited by it pending this appeal and withdrawn by the plaintiff. Such recovery by the appellant can be made either by encashing any subsisting bank guarantee furnished by the plaintiff as directed by this Court in its order dated 27.7.1987 or in any other manner whatsoever by way of restitution.

Before parting with the case, we must also state that the respondent-plaintiff has filed certain additional documents in this appeal in IA 1 of 1991 purporting to be certified copies of Inam Fair Register, Inam B Register, Resettlement Register, Inam Title Deed etc. said to have been obtained from the office of the District Collector, Chittoor bearing dates 10.4.90 and 4.5.90 etc. In that IA, a detailed counter has been filed by the Department of Survey and Land Records, TTD stating that on enquiry in the office of the District Collector, Chittoor it was learnt that no such certified copies were issued by that office to the plaintiff and that the copies are false documents and appear to have been

obtained with the help on his close relative one Mr. Kumaraswamy, worker in the Record Room of the Collector's office, who was closely related to the plaintiff . These copies are said to be not true copies of the originals but contain false recitals showing a grant by the Government in favour of the plaintiff's maternal grandfather instead of the Deity. The counter filed by the Department says that the copies filed are not genuine and are forged documents. No doubt, plaintiff filed a rejoinder stating that he had applied for copies and got them but he does not know who prepared them and that Kumaraswamy is not related to him.

Be that as it may, be make it clear that the plaintiff's counsel did not choose to rely on those documents filed in IA 1 of 1991 before us. If he had relied upon them, we would have considered if it was a fit case for ordering an inquiry into the genuiness of these documents. The IA, in the circumstances, is dismissed.

In the result, the Civil appeal is allowed as stated above and the IA 1 of 1991 is dismissed.