

CASE NO.:
Appeal (civil) 2038-2041 of 2008

PETITIONER:
JAITHOON BI AND ORS

RESPONDENT:
P.A. KANNISAMY REDDIAR AND ORS. ETC

DATE OF JUDGMENT: 12/03/2008

BENCH:
S.B. SINHA & P.P. NAOLEKAR

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NOS. 2038-41 OF 2008
[Arising out of SLP(C) Nos.8593-8596/2004]

Delay condoned.
Leave granted.

Heard the learned counsel appearing on behalf of the appellants. Learned counsel for the appellants very fairly states that his client is interested only in the 8 cents out of 48 cents of land in Survey No.224 qua the 1st respondent in the civil appeal arising out of S.L.P.(C) No.8593/2004 and not in other matters.

Kannisamy Reddiar - the first respondent herein filed a suit, which was marked as O.S. Nos. 711/82, against one Sheikh Mehboob and others, claiming title in respect of the land in question. Another suit was filed by Sheikh Mehboob which was marked as O.S. No. 146/86 wherein the said Kannisamy Reddiar, the first respondent herein was the defendant.

Although we are not directly concerned but keeping in view the stand taken by the learned counsel appearing on behalf of the appellants, we may notice that the said Sheikh Mehboob also filed a suit against one Mariam Bi and another. The appeal against the judgment passed therein, however, does not survive as the appellant has accepted the judgment of the First Appellate Court deciding the same in favour of Mariam Bi.

Appellants claimed title through the said Sheikh Mehboob who is the son of John Bi.

The properties in suit is said to be belonging to Moongali Ammen Temple Devasthanam. It filed a suit against John Bi, mother of Sheikh Mehboob and four others, praying for eviction from the suit land. A compromise was entered into therein in terms whereof the defendants became entitled to continue to possess the suit land on payment of Rs. 336 to the Devasthanam. Allegedly, it was John Bi alone who paid the entire amount and it was on that basis that she, and through her Sheikh Mehboob, had been claiming the ownership of the entire 48 cents of the land.

The learned Trial Judge noticed that Respondent No.1 purchased 8 cents of land from one Wahab Sahib by a Deed of Sale dated 29.12.1960, who in turn had purchased the same from one Sheikh Ameer Sahib on or about 1.2.1956.

The learned Trial Judge, however, found that the said Deeds of Sale do not appear to have any bearing on the suit property. The said finding was affirmed by the High Court. However, the High Court, in our opinion, rightly came to the conclusion that even in the said O.S. No.43/62 not only the 48 cents of land but the claim of the Devasthanam Temple was in respect of 10 acres of land. However, the said O.S. No. 43/62 was confined to 48 cents of land which had been in possession of John Bi, Ameer Sahib and three others.

There appears to be some demise of the temple properties by the trustees in favour of various persons. The said lessees started asserting titles in thereabout.

However, even if the claim of the lessees that they had acquired title by adverse possession had not found favour by the Trial Judge, evidently, in view of the fact that John Bi alone had signed the compromise and not others, the only course open to her was to file an Execution Application for execution of the said decree.

The High Court noticed that even if the title of the temple had been accepted, having regard to the fact that the First Appellate Court, as noticed hereinbefore, found that Mariam Bi was entitled to 12 cents of land because her predecessor was a party to the previous suit in O.S. No. 43/62. But despite the fact that the first respondent and his vendor also claimed independent title, his suit was dismissed.

The High Court, therefore, in our opinion rightly held:
No doubt if Jan Bi has taken such a stand at the time of passing of the decree in O.S. No. 43 of 1962 she could have stepped into the shoes of the plaintiff and executed the decree by recovering remaining 28 cents from other defendants in the suit. She could have also immediately filed a suit for recovery of balance of 28 cents from other defendants in the suit of it was open to her to insist upon the contribution for the payment made by her to the decree holder, namely the temple from other defendants. But, she has not chosen to do any of these things. Therefore, the result is John Bi's possession for 20 cents is legitimized by virtue of the compromise decree and so also the possession of other defendants in the suit. Therefore, Jan Bi could not claim any extent other than 20 cents claimed by her in the suit because she has not recovered possession from other defendants. Other defendants continued to be in possession and the temple never asserted its titled in respect of other defendants also and it has recognized and legitimized the possession of other defendants by virtue of the compromise decree. Therefore, it is rightly pointed out by the appellants that Jan Bi has become entitled only to 20 cents out of 48 cents and therefore, the remaining extent continued to be in possession of other defendants under whom Kanniswamy Reddiar and Mariam Bi have claimed.

Apart from the fact that Mariam Bi's title in respect of 12 cents of land stands accepted now, we do not see any reason as to why the same yardstick should not have been applied in the case of the first respondent.

We may also place on record that on a query made by us, learned counsel categorically stated that since 1962, John B. or for that matter Sheikh Mehboob had not taken any steps to take possession of the properties in question from respondent No.1 or his vendor.

For the reasons aforementioned, we do not find any merit in this appeal which is dismissed. However, since nobody has appeared on behalf of the respondents, there shall be no order as to costs.