



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 08.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 &
W.P.No.28472 of 2010

In S.A.No.838 of 2016

R.C.Church

... Appellant

-Versus-

Seeranga Gounder

2.Nallammal

3.Pannerselvam

4.Parthiban

5.Anbalagan

6.Thangaraju

... Respondents

(R2 to R6 brought on record as legal heirs of the deceased R1 vide order of this Court dated 08.04.2022 made in CMP.No.4177 of 2022 in S.A.No.838 of 2016)

Appeal filed under Section 100 of C.P.C. against the judgement and decree dated 02.09.2016 passed in A.S.No.3 of 2016 on the file of the Principal District Judge, Namakkal by confirming the decree and the judgment dated 01.12.2015 passed in O.S.No.87 of 2012 on the file of the Subordinate Judge, Namakkal.



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Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

For Appellant : *Mr.S.Subbiah, Senior Counsel,*
for Ms.Elizabeth
For Respondents : *Mr.M.Sriram,*
for Mr.A.Saravanan

In S.A.No.839 of 2016

R.C.Church ... Appellant

-Versus-

Palaniammal ... Respondent

Appeal filed under Section 100 of C.P.C. against the judgement and decree dated 02.09.2016 passed in A.S.No.4 of 2016 on the file of the Principal District Judge, Namakkal by confirming the decree and the judgment dated 01.12.2015 passed in O.S.No.48 of 2014 on the file of the Subordinate Judge, Namakkal.

For Appellant : *Mr.S.Subbiah,Senior Counsel,*
for Ms.Elizabeth
For Respondent : *Mr.M.Sriram,*
for Mr.A.Saravanan

In W.P.No.28472 of 2010

Salem Diocese Society,
(Registration No.53/87),
Rep. by its Vicar General,
I.Mariya Susai,
S/o.Innasimuthu,
No.2, Court Road,
Maravanery,
Salem – 636 007

... Petitioner



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

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-Versus-

1.The District Collector,
Namakkal District,
Namakkal

2.The Revenue Divisional Officer,
Namakkal

3.The Superintendent of Police,
Namakkal District,
Namakkal – 637 001

4.S.Anbalagan

5.K.Seeranga Gounder

6.The President,
Vallipuram Panchayat,
Vallipuram – 637 003.
Namakkal District.

... Respondents

Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the proceedings in Rc.No.4016 of 2010 dated 21.09.2010 on the file of the second respondent herein and to quash the same and direct the respondents 2 to 5 herein to restore the possession of land to an extent of 0.572.0 hectares situated in Survey Nos.322/5 and 322/6A in Vallipuram Village, Namakkal Taluk and District to the petitioner after removing all the fences and poles planted by them within a timeframe.



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Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

For Petitioner : *Mr.S.Subbiah, Senior Counsel,*
for Ms.Elizabeth

For Respondent : *Mr.G.Ameedius,*
1 to 3 Government Advocate

For Respondents : *Mr.A.Saravanan*
4 & 5

COMMON JUDGEMENT

S.A.No.838 of 2016 is presented against the judgment and decree of the court of Principal District Judge at Namakkal in A.S.No.3 of 2016 in confirming the judgment and decree of the Court of Subordinate Judge, Namakkal in O.S.No.87 of 2012 dated 01.12.2015.

2. S.A.No.839 of 2016 is presented against the judgment and decree of the court of Principal District Judge at Namakkal in A.S.No.4 of 2016 in confirming the judgment and decree of the Court of Subordinate Judge, Namakkal in O.S.No.249 of 2012 which was renumbered as O.S.No.48 of 2014 dated 01.12.2015.

3. In both the appeals, the appellant before me is the defendant in the respective suits.



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

4. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

5. The case of the plaintiff/Seeranga Gounder is that the property bearing S.No.322/6A to an extent of 0.572 hectares originally belonged to one Nallyammal. She had alienated the property by the way of a registered sale deed on 25.11.1940 in favour of one Komara Gounder. The plaintiff/Seeranga Gounder is the son of Komara Gounder. The plaintiff for the purpose of his vocation, went abroad and therefore, he was not available in the country. Taking advantage of his absence, the revenue department had mutated the patta, stating it as “Madha Koil” Poramboke.

6. The plaintiff/Seeranga Gounder would further plead that between Komara Gounder and other co-sharers namely Sellappa Gounder and Mariyayeeammal, a suit for partition was filed in O.S.No.8 of 1941 on the file of the learned District Munsif at Namakkal. The said suit did not go for trial, but ended in a compromise.

7. As per the compromise decree, the property situated in the north of the road was allotted to the defendant and the property to the south of the road was



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

allotted to Komara Gounder. Subsequently, in order to have an equitable arrangement between themselves, the defendants in that suit exchanged their property with the property allotted to Komara Gounder. By virtue of this exchange, the property situated in the north of the road fell to the share of Komara Gounder. In other words, the first item of the suit schedule property in O.S.No.8 of 1941 fell to Sellappa Gounder and the second item fell to Komara Gounder.

8. The plaintiff/Seeranga Gounder pleaded that Komara Gounder was in possession and enjoyment of the property. It is an admitted case that the property belonged to Vallipuram Mittadhar and due to the enactment of the Land Reforms Laws 1948, in particular, The Estates Abolition Act, 1948, the mitta was abolished. On the survey being done during that time, the property, bearing S.No.322/6A, was given S.No.322.

9. In 1993, finding that the property had been reclassified as Poramboke, the plaintiff gave a representation to the Revenue Tahsildar for sub division of the property and for grant of patta. The property was subdivided and patta to an extent of 0.572 hectares was assessed. Since it was treated as Madha Koil Poramboke and the plaintiff/Seeranga Gounder attempted to fence the property,



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

the defendant herein interfered with the possession of the plaintiff. Therefore, the plaintiff/Seeranga Gounder filed a suit for permanent injunction in O.S.No.600 of 1996 on the file of the Additional District Munsif at Namakkal.

10. The learned Additional District Munsif, Namakkal, partly decreed the suit holding that as per the sale deed dated 25.11.1940, the father of the plaintiff/Seeranga Gounder had purchased a half share of the property measuring a total extent of 90 ft. x 75 ft. and therefore, he was entitled to that part of the property measuring an extent of 45 ft. x 37 ½ ft. under the sale deed.

11. Aggrieved by the same, the plaintiff/Seeranga Gounder and the defendant filed appeals before the learned Principal District Judge, Namakkal in A.S.No.183 of 2002 & A.S.No.184 of 2002 respectively. The appeal filed by Seeranga Gounder was allowed and the suit was decreed as prayed for. Consequently, the appeal filed by the defendant was dismissed.

12. Challenging the same, the defendant preferred two second appeals to this Court in S.A.Nos.952 & 953 of 2011. In and by way of a common judgment dated 27.09.2011, both the second appeals were allowed. The ground, on which the second appeals were allowed was that since the title of the



plaintiff/Seeranga Gounder had been denied, he ought to have filed a suit for declaration of title and a suit for bare injunction is not maintainable. However, the second appellate court granted liberty to the plaintiff/Seeranga Gounder to file a suit for declaration of title and this is how, the second round of litigation commenced with the presentation of the plaint in O.S.No.87 of 2012 on the file of the learned Subordinate Judge, Namakkal.

13. The defendant entered appearance in the suit and filed the written statement *inter alia* alleging that

(i) the oral exchange was not permissible under the provisions of the Transfer of Property Act and therefore, the plea of the plaintiff should not be countenanced.

(ii) By virtue of Section 64 of the Minor Inams Abolition Act 26 of 1963, the suit is barred.

(iii) The property is admittedly a mittha property and since the same has been abolished, the Revenue Divisional Officer cum Sub Collector has no jurisdiction to pass an order for transfer of patta.

(iv) The suit in O.S.No.600 of 1996 on the file of the Additional District Munsif Court at Namakkal, having been dismissed by this Court under the S.A.Nos.952 & 953 of 2011, the present suit is barred by the principles of *res*



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

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(v) Vallipuram Panchayat had laid down a road over the suit schedule property and since the Vallipuram Panchayat has not been impleaded as a party, the present suit is not maintainable.

(vi) The suit is barred by Limitation Act. It ought to have been presented within a period of three years and the suit having been presented after the second appeal was allowed on 27.09.2011, the suit is barred.

14. Above all, the main contention which was urged in the written statement was that the High Court having held that Seeranga Gounder is not in possession of the property, the appropriate relief that the plaintiff ought to have sought for a declaration of title and recovery of possession, and not a declaration of title and a permanent injunction.

15. On the basis of these pleadings, on 08.10.2014, the trial judge framed the following issues:

- “1) Whether the suit is barred by res judicata?*
- 2) Whether the plaintiff is entitled for declaration?*
- 3) To what other relief?”*

16. On 10.07.2014, on the basis of the additional written statement filed



by the defendant, the trial court framed the additional issues:

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1) *Whether the plaintiff has title to the suit property?*

2) *Whether plaintiff is in possession of the property?*

3) *Whether the oral exchange pleaded by the plaintiff is true?*

4) *Whether the alleged oral exchange is valid?*

5) *Whether the clarification of the suit land as natham poramboke is valid and in accordance in the law?*

6) *Whether the patta granted in 1996 in favour of plaintiff is valid?*

7) *Whether the suit is bad for non-joinder of the plaintiff?*

8) *Whether the sub-collector has the authority to change or alter the clarification of the suit land for Madha koil poramboke to natham poramboke?*

9) *Whether the sub-collector has the authority to grant patta in a land classified by settlement authorities as Madhakoil poramboke?*

10) *Whether the suit is barred by res judicata in view of the findings in O.S.No.600/1996 and S.A.No.952/2011 and 953/2011?*

11) *Whether the suit is bad for non-joinder of the villagers of Vallipuram?*

12) *Whether the suit is bad for non-joinder of*



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Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

Vallipuram Panchayat?

13) Whether it is true that the plaintiff was not in possession on 19.09.1996 or any subsequent date?

14) Whether the suit is barred by limitation?

15) Whether the defendant has perfected title by adverse possession?

16) Whether the suit has not been valid properly for jurisdiction?

17) To what other relief or reliefs the plaintiff is entitled?

17. Subsequently, the trial court recast the issues in O.S.No.87 of 2012 just before the pronouncement of judgement as follows:

1) Whether the suit is barred by limitation?

2) Whether the suit is bad for non-joinder of necessary parties?

3) Whether the suit is affected by res judicata?

4) Whether the defendant is affected by estoppel?

5) Whether the patta granted in the year 1996 in favour of the plaintiff is valid?

6) Whether the oral exchange pleaded by the plaintiff is true?

7) Whether the plaintiff is entitled for declaration as prayed for?

8) Whether the plaintiff is entitled for permanent



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

WEB COPY

injunction as prayed for?

9) To what other relief?

18. The other suit had been presented by Palaniammal/the wife of Seeranga Gounder in O.S.No.249 of 2012 on the file of the Principal District Munsif Court, Namakkal. This suit was subsequently transferred to the file of the learned Subordinate Judge, Namakkal and was renumbered as O.S.No.48 of 2014. This suit was also for declaration of title and for injunction.

19. The case of the plaintiff/Palaniammal is that the property belonged to one Hanima Bi, who had secured patta from the Government. She had put up a thatched shed and was living therein. Palaniammal had purchased the property from Hanima Bi on 06.12.1996. Owing to the obstruction caused by the defendant vis-a-vis her peaceful possession of the property, she presented the suit in O.S.No.218 of 2001 and the same was decreed as prayed for. Aggrieved over the same, an appeal was filed by the defendant in A.S.No.75 of 2009 which came to be allowed. The said appeal was allowed on the ground that no relief of declaration of title was sought for. Hence, she filed the present suit O.S.No.249 of 2012. The same was subsequently renumbered as O.S.No.48 of 2014.



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

20. On entering appearance, the defendant filed his written statement. In the written statement, the possession of Hanima Bi was admitted, but it was pleaded that Hanima Bi was in possession of the property under a licence from the defendant and therefore, she could not have conveyed a proper title to the plaintiff/Palaniammal. In other words, the plaintiff/Palaniammal has not proved the pre-existing title of Hanima Bi and therefore, she is not entitled to claim the relief.

21. An additional written statement was filed in the said proceedings, wherein the same plea that was taken in the suit filed by the husband in O.S.No.87 of 2012 was raised in the suit filed by the wife as well.

22. On these pleadings, on 06.11.2012, the learned trial judge framed the following issues:

- “1.வாதியின் வழக்கு நிலைக்கத்தக்கதா?
2. தாவாச் சொத்து வாதிக்குப் பாத்தியப்பட்டதா?
3. தாவாச் சொத்து வாதியின் அனுபவத்திலிருநக்கிறதா?
4. வாதிக்கு கிடைக்கக்கூடிய பரிகாரம் என்ன?
5. இதர பரிகாரம் என்ன?



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23. On the basis of the draft issues submitted by the defendant, on 10.07.2014, the trial court framed the following issues:

“1) Whether the plaintiff is having title to the suit property?

2) Whether the plaintiff's vendor had title to the suit property?

3) Whether the plaintiff is in possession of the suit property?

4) Whether the land classified as temple poramboke can be granted as patta to the plaintiff?

5) Whether the plaintiff was at any time in possession of the suit property?

6) Whether the suit is bad for non-joinder of Vallipuram Panchayat?

7) Whether the suit is bad for non-joinder of the villagers of Vallipuram?

8) Whether the suit is barred by limitation?

9) Whether this suit is saved by judgment in A.S.No.75/2001?

10) Whether the grant of patta in respect of plaintiff belonging to the temple is valid?

11) To what other relief or reliefs the plaintiff is entitled?



24. Subsequently, the learned trial judge recast the issues in O.S.No.48 of 2014 subsequently, just before the pronouncement of judgement as follows:

“1) Whether the plaintiff in O.S.No.48 of 2014 is entitled for the relief of declaration as prayed for?

2) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

3) To what other relief the plaintiff is entitled to?”

25. By consent of the parties, the trial judge recorded the evidence in both the suits in common and O.S.No.87 of 2012 was treated as the lead case.

26. On the side of the plaintiffs in both suits, two witnesses were examined and Ex.A1 to Ex.A12 were marked. On the side of the defendant, the pastor of the church examined himself as DW1 and only one document was marked as Ex.B1 namely the judgment of the second appellate court in S.A.No.952 of 2011 and S.A.No.953 of 2011

27. On consideration of the pleadings and the oral and documentary evidence, the trial judge came to the conclusion that the respective plaintiffs have proved their title to the property and therefore, decreed the suits as prayed for. Aggrieved by the same, the defendant preferred two regular appeals before



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

the learned Principal District Judge at Namakkal in A.S.No.3 of 2016 and
A.S.No.4 of 2016

28. The learned Principal District Judge, in and by way of a common Judgment dated 02.09.2016 confirmed the judgment of the trial court. Against which, the present second appeals.

29. These appeals were admitted by this Court on 07.10.2016 on the following substantial questions of law:

“1. When the earlier suit for permanent injunction alone, filed by the plaintiff was dismissed by the appellate court as one not maintainable on account of the plaintiff not in possession of the suit property, is not the later suit again for declaration and permanent injunction barred by res judicata?

2. When if it is to be held that the plaintiff was not in possession of the suit property by reason of the earlier judgment operating as Res judicata, whether the subsequent suit for declaration of title and permanent injunction is maintainable under Section 34 of the Specific Relief Act?

3. Whether the fresh suit filed after 12 years from the date of cause of action arising is not barred by limitation



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

under Articles 59 and 65 of the Limitation Act?”

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30. I heard Mr.S.Subbiah, learned Senior Counsel for the appellant and Mr.M.Sriram for the respondents.

31. Mr.S.Subbiah would contend that the issues were recast just before the pronouncement of judgment, which is the procedure not contemplated under Order XIV of the Civil Procedure Code. He would plead that the trial judge had returned a finding on adverse possession, when the same had not even been pleaded by the defendant. He would state that the finding under Ex.B1, namely the judgment of the High Court, is that the plaintiff/Seeranga Gounder was not in possession of the property and therefore, that issue could not have been tried by the courts below afresh.

32. Mr.S.Subbiah would invite my attention to the written statement and plead that the Government should have been made as a party to the proceedings as the property is a mitta land, which had been abolished, and therefore, there is a bar under Section 64-C of the Minor Inams Abolition Act. He would further argue that no schedule to property had been given in the document and since the plaintiff/Seeranga Gounder had not proved his title to the property, the courts



below erred in decreeing the suit and dismissing the appeal filed by the Church.

Therefore, he would plead that the second appeal in S.A.No.838 of 2016 should be allowed and the suit in O.S.No.87 of 2012 should be dismissed.

33. Insofar as S.A.No.839 of 2016 is concerned, the point urged by Mr.S.Subbiah is that the prior title of Hanima Bi has not been proved and therefore, the plaintiff/Palaniammal has not proved her possession and title over the property.

Applicability of Order XIV Rule 5 of the Code of Civil Procedure

34. Insofar as the first plea of Mr.S.Subbiah is concerned, under Order XIV Rule 5, the issues framed have to be re-cast only after issuing a notice to the parties. It is pertinent here to see, whether the issues were actually recast. He relied upon the judgment of this Court in ***Himayam Engineers and Builders v. S. Ravichandran, (2014) 4 LW 474***. He invited the attention of this Court to paragraph 5.5 of the said judgment, which reads as follows:

“ 5.5. In the case on hand, admittedly, the parties have not been heard before the framing of the additional issue. The additional issue framed goes to the root of the matter. It has got the effect of making the appellant disentitled to get a relief on merits. Such an issue cannot be framed and decided



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

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by the Court without hearing the parties. Therefore, we are of the view that the procedure adopted by the learned single Judge cannot be sustained in the eye of law. Our view is also fortified by a decision of the Karnataka High Court in Perikal Malappa v. T. Venkatesh Gupta, (AIR 2007 (NOC) 12 (KAR)) wherein the facts involved are identical.”

Relying upon the said judgment Mr.S.Subbiah would submit that since the issues were recast without issuing notice to the parties, the same is bad and the order has to be set aside.

35. Mr.Sriram would draw my attention to the draft issues that were filed by the defendant in the suit and submitted that the said draft issues were framed as additional issues by the trial court in both the suits. At the time of pronouncing the judgment, in order to have a clear and categorical manner of answering the judgment, the learned trial judge had not framed fresh issues, but had merely rearranged the issues that had been suggested by the learned counsel for the defendant.

36. Order XIV Rule 5 of the Code of Civil Procedure permits the court to recast the issues at any time before pronouncement of the judgment. In this



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

particular case, the learned trial judge has not recast the issues, but as pointed out by Mr.M.Sriram, has merely rearranged the issues. For rearrangement of issues, which is entirely within the jurisdiction of the learned trial judge, while dictating the judgment, no notice is necessary to the parties. The judgment cited by Mr.S.Subbiah does not apply to the facts of this case as that was a case where an additional issue was framed and it was not a case of rearrangement of the issues already framed. It will be too much on the part of a litigant to expect that even for rearrangement, he must be put on notice by the Court.

The plea of Adverse Possession

37. On the second aspect that the parties have not pleaded adverse possession, as rightly pointed out by Mr.Sriram, two paragraphs in the written statement filed by the defendant loom large. They are paragraphs 34 and 38 of the additional written statement filed by the defendant in O.S.No.87 of 2012. For the sake of ready reference, I am extracting it for consideration:

34. காலாவதி சட்டம் 1963 ல் உள்ள பிரிவு (Article) 65 ன் படி தான் தாக்கல் செய்திருக்க முடியும், ஆனால் வாதியானவர் சொத்தை கைப்பற்றவும் அனுபவத்தை திரும்பப் பெறவும் தான் தாக்கல் செய்ய முடியும், அவ்வாறு தாக்கல் செய்வதற்கு உள்ள அவகாசம் 12 ஆண்டுகள். அந்த 12 ஆண்டும் பிரதிவாதியின் அனுபவம் வாதிக்கு எதிர்நிலை உடமை என்ற முறையில் பார்த்தால், குறைந்த பட்சம் 19.09.1996 அன்றே ஆரம்பமாகிவிட்டது.



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

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அவ்வாறு உள்ள நிலைமையில் இந்த தாவாவானது 17 ஆண்டுகள் கழித்து
தாக்கல் செய்துள்ளது சட்டப்படி நிலைநிற்கத்தக்கதும், தடைப்பட்டதும் ஆகும்.

38, இந்த வாதிக்கு அவருடைய கூற்றின் படியே 1971 ல் அவர் வெளிநாடு
சென்று திரும்பி வந்தபின் இந்த தாவா சொத்து அவருடைய சொத்து என்று
தெரிய வந்துள்ளதாக கூறப்படும் நிலைமையில், அந்த சமயத்திலேயே இந்த
பிரதிவாதியானவர் தாவா சொத்தில் அனுபவத்தில் இருந்து வந்து அந்த
அனுபவமும் வாதிக்கு தெரிந்துள்ள காரணத்தினால் குறைந்த பட்சம் 1971
லிருந்தே இந்த பிரதிவாதியானவர் வாதிக்கு தெரிந்தே தாவா சொத்தை
எந்தவிதமான ஒரு இடைஞ்சலும் இல்லாமல் அனுபவித்து வருகின்ற
காரணத்தினாலும், இந்த பிரதிவாதியானவருக்கு தாவா சொத்தில் எதிர்நிலை
உடமை (adverse possession) சித்தித்து விடுகின்றது.”

38. This makes it clear that the defendant had specifically pleaded
adverse possession and because of such a plea, the trial court went into the issue
and rejected the same. Therefore, the argument that the defendant had not taken
a plea of adverse possession is without any substance.

39. Adverse possession is a plea, which is easily taken, but extremely
difficult to prove. In this case, not once, but twice, the defendant had pleaded
that the suit had to fail on the grounds of it being barred under Article 65 of the
Limitation Act.



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40. Third column of Article 65 makes it clear that a suit should be filed within a period of 12 years from the period, the possession becomes adverse. There are a line of judgments which state that if the defendant takes such a plea, the burden is on him to prove the date from which he had dispossessed the plaintiff. He further has to prove, he had been in open, continuous and hostile possession of the property. The plea of adverse possession also requires that some evidence be let in by the defendant. It also presupposes that the defendant admits the title of the plaintiff. In expansion of the plea of adverse possession, the defendant has also pleaded that it has prescribed title by virtue of Section 27 of the Limitation Act. Therefore, heavy burden lies on the defendant to substantiate its contentions that it has been in possession and enjoyment of the property in open, continuous and hostile manner to the knowledge of the owner.

41. When I scan through the evidence and document filed by the defendant, I find that the defendant has not even let in any evidence to show that it has been in possession and enjoyment of the property. In fact, the only document that has been filed by the defendant is the previous judgment of the High Court in S.A.No.952 of 2011 and S.A.No.953 of 2011. The previous judgment of the High Court between the very same parties does not find the



defendant to be in possession of the property. All that was done in the earlier second appeal was that the learned Single Judge held that the suit for bare injunction without seeking the relief of declaration is not maintainable and therefore, dismissed the suit.

42. The plea of adverse possession not having been proved insofar as O.S.No.87 of 2012 is concerned, it shows that the defendant had admitted to the title of the plaintiff/Seeranga Gounder.

43. Mr.S.Subbiah would contend that the judgment of the High Court has found that the plaintiff/Seeranga Gounder is not in possession of the property. In order to substantiate that he would reply upon paragraph 12 of the judgment under Ex.B1.

44. A perusal of Ex.B1 shows that the court had rejected the argument of the learned counsel for the respondent therein that, by virtue of the order passed by the Tahsildar, Seeranga Gounder was in possession of the property. It was in the light of this rejection, the court went on to hold that the party cannot rely upon the said document for the purpose of his possession. In that regard, the following words in the said judgment can be considered "*the admission of the*



respondent/plaintiff in the cross examination would prove that he was not in possession of the property and when he attempted to take possession, he was prevented.”

45. Placing strong reliance upon the aforesaid statement in the said judgment, Mr.S.Subbiah would argue that this finding is sufficient to hold that the court had already concluded that the plaintiff/Seeranga Gounder is not in possession.

46. A judgment cannot be read as a statute and the words of the judgment cannot be split and read from the remaining portion. Next line of the very same judgment reads as follows:

“Therefore, merely because patta had been issued in favour of the respondent/plaintiff, it cannot be contended that the respondent/plaintiff is deemed to be possession. ... I hold that in this case, having regard to the admission of the respondent/plaintiff, the grant of patta will not prove the possession of the respondent/plaintiff.”

47. The latter portion of the judgment makes it very clear that in a suit for injunction, it had been brought out in the cross examination that the plaintiff had attempted to take possession of the property. Unfortunately, for the



defendant in this case, the said evidence that had been stated by the plaintiff was not brought before the court either during the chief examination of the defendant or any attempt was made during the cross examination of the plaintiff to confront him with the previous statement.

48. It is settled that the admitted facts need not be proved, but at the same time, the statement that has been made, even if I were to treat it as an admission, can always be explained. Mere fact that a statement had been recorded in the previous proceeding does not mean that I cannot look into the said evidence in this particular case. It was the duty of the defendant to exhibit the evidence/statement, which had been in his favour in the previous suit. Having failed to do the same, he cannot claim certain words in the judgment to show that Seeranga Gounder is not in possession of the property.

49. I should recollect, that the previous suit for bare injunction was based on possession alone. The finding rendered by the court in that proceedings cannot be a one based on title. However, I am dealing with a case, where the suit is based on title and the settled position of law insofar as the vacant land is concerned, possession always follows title.



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

50. The title of the plaintiff/Seeranga Gounder having been admitted by the defendant by virtue of the fact that he took a plea of adverse possession, the onus falls on the defendant to prove that he had been in possession, after having dispossessed the plaintiff/Seeranga Gounder over the statutory period. As pointed above, no such evidence has been forthcoming from the defendant. On the contrary, as recorded by the learned District Judge, the defendant has stated as follows in his written statement:

“ஜமீன் ஒழிப்பு சட்டத்திற்கு முன்பாக இந்த இடத்தில் சர்வே எண். 218 ஆகும். அதன் விஸ்தீரணம் தெரியாது. சர்வேக்கு பின்பு அதன் சர்வே எண். 322. இதன் பரப்பளவு தெரியாது. சர்வே எண். 366, சர்வே எண்ணின் விஸ்தீரணம் தெரியாது. ஆனால் மாதா கோவிலுக்கு பட்டா கொடுக்கப்படவில்லை. மாதா கோவிலுக்கு பாத்தியப்பட்ட இடம் என்பரை காட்டி ஆதாரம் எதுவும் தற்போது இல்லை. மாதா கோவிலுக்கு பட்டா கொடுக்க நடவடிக்கை எடுக்கவில்லை. தேவாலயத்துக்கு பாத்தியப்பட்ட நிலம் எவ்வளவு என்றும், அதில் எவ்வளவு கையகப்படுத்தப்பட்டுள்ளது என்றும் என்னால் குறிப்பிட்டு கூறமுடியாது.”

This would show that the defendant was unable to prove that he was in possession of the property or displace the presumption that possession follows title and thereby, the argument that the plaintiff/Seeranga Gounder was dispossessed of the property has to fail.

51. In any event, a finding in a suit for injunction would not be a *res*



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

judicata on the suit for declaration of title and for injunction. This takes me to the next question of law that has been framed to be answered by this Court on the lines that a finding by the second appellate court on the judgment and decree arising out of O.S.No.600 of 1996 would operate as *res judicata* in this proceedings.

The plea of *Res Judicata*

52. In order to establish the plea of *res judicata* as held by the Supreme Court in ***Syed Mohd. Salie Labbai v. Mohd. Hanifa, (1976) 4 SCC 780***, it is the duty of the party raising the plea of *res judicata* to file the pleadings in the subsequent suit. Mere filing of the second appellate judgment and subsequently marking it as an evidence on the side of the defendant does not mean, I have to presume the plea of *res judicata* stands established. *Res judicata* means the issues in the subsequent case, must have been heard and finally decided in the previous case by the court of competent jurisdiction.

53. All I am able to discern from the second appellate court judgment is that the plea of the plaintiff/ Seeranga Gounder is that he is in possession of the property as per the proceedings of the revenue department and therefore, the suit should have been decreed. The court took note of the fact that dehors the



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

proceedings before the revenue department, the plaintiff, during the time of evidence, had stated that he attempted to take possession of the property and therefore, the suit for injunction is not maintainable. The issue of title was never gone into by the second appellate judge.

54. On account of the fact that the pleadings, issues and judgments of the previous proceedings had not been filed in the present proceeding, I am not in a position to see whether the court had in fact framed the issue of title and had rejected the same.

55. In a suit for injunction, the court is concerned only with the possession. I hasten to add that it can incidentally go into the question of title. Even if such a finding is incidentally gone into, it might operate as *res judicata* in certain cases, but in this particular case, as none of the conditions required for *res judicata* had been complied with, I am not in a position to agree with the submission of Mr.S.Subbiah.

Possession follows title

56. The next plea is a continuation of the previous two issues, i.e.,



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

possession and *res judicata*.

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57. It is agreed by both sides that the property is a vacant land. In case of vacant land, the settled position of law is that possession always follows title to the property. In order to substantiate that the plaintiff/Seeranga Gounder has title to the property, he has filed original sale deed of his father Komara Gounder dated 25.11.1940. Apart from this, the defendant has specifically admitted to the title of the plaintiff/Seeranga Gounder by raising the plea of adverse possession. Owing to the same, I am satisfied that the plaintiff's predecessor in title is the owner of the suit schedule mentioned property.

58. Once the plaintiff/ Seeranga Gounder has proved his title, he is deemed to be in possession of the property till some evidence is shown that he had been dispossessed of the same. Such evidence is woefully lacking in this case. In fact, the evidence of DW1 would go on to show that he had accepted that the patta had been granted in favour of the plaintiff/Seeranga Gounder and yet, he had not even lift a little finger to set aside the same.

Validity of patta proceedings

59. Mr.S.Subbiah would contend that since this Court in the second



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

appeal had held that the patta proceedings would not be binding on the defendant, he need not take steps to set aside the same. The learned judge had merely observed, while discussing the manner in which patta was granted, as follows:

“According to me when the order passed by the Sub Collector under Ex.A2 appears to be an exparte order, it is not binding on the appellant and therefore, that would not prove the possession of the respondent/plaintiff”.

This shows that Ex.A2 marked therein had been projected for the purpose of possession alone and it was in that light, the learned judge came to the conclusion that it is not binding on the defendant.

60. It has been settled by a series of judgments of Supreme Court starting from ***Krishna Devi Malchand Kamathia & Others vs. Bombay Environmental Action Group & Others, (2011) 3 SCC 363*** that even a voidable order or void order has to be treated as valid by the court, till it is set aside by a competent proceeding. It is on record that right from 1996 till today, the order that had been passed by the Sub Collector, had not been challenged.

61. The reasons for not challenging the proceeding is not far to see. The



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

revenue department did not decide *inter se* claims between the plaintiff/Seeranga Gounder and the defendant. It is a case where the plaintiff/Seeranga Gounder approached the revenue department to rectify the error that had been caused by the defendant stating that his patta land had wrongly been classified as poramboke land during the natham survey proceedings.

62. Records are regularly updated by the revenue department in order to identify the person from whom they have to demand kist or other revenue charges payable for the property. The name of the person in occupation is recorded and it is he who pays the Government, its dues. It has been seen during such a survey that a person whose name is totally unconnected to the property is recorded as a person not liable to pay tax to the Government. These errors can always be corrected by an application made to the appropriate authority. It is this correctional method that was adopted by the plaintiff/Seeranga Gounder in the present case.

63. The fact that the property in the present case has been classified as poramboke land does not mean it belongs to the Government. This is a misconception, which is running in the mind of a few. Poromboke means “புறம்” “போக்கு”, that which is outside the scope of revenue assessment or to say in



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

colloquial language, “Waste Land”. It is classified as a “waste land” because the land is absolutely useless, insofar as the Government is concerned, the property does not generate any revenue.

64. During the time of updating the records by the defendant through a natham survey, the plaintiff had not claimed entry of his name in the register of the revenue record, therefore, it was treated as a poramboke land. Coming to know of this mistake, he had given a petition to the Sub Collector to correct the error. The Sub Collector did not correct the error immediately. He chose to receive a report from the concerned registration department, as to whether the land had actually been purchased by Komara Gounder, the plaintiff's father on 25.11.1940. On such verification, finding that the sale deed was true and genuine, the Sub Collector ordered for correction of the revenue record of the Government. In other words, by virtue of the correction, the plaintiff/Seeranga Gounder became liable to pay tax for the land registered under his name. Therefore, the argument that EX.A3 need not be set aside as this Court treating it as an exparte proceeding, is contrary to the law.

65. In fact in the previous proceedings, the argument before the Court



was that by virtue of the revenue records, the plaintiff's father/Komara Gounder is in possession of the property. It was that argument, which had been rejected.

The court did not hold that the proceeding of the Sub Collector is so contrary to law that it has to be set aside. The option was always open to the defendant to challenge the proceedings, but unfortunately the defendant did not do so.

66. To conclude this issue, as the title deed of the father of the plaintiff/Seeranga Gounder has been filed before the court, I necessarily have to come to the conclusion that the plaintiff's father had purchased the property in the year 1940 and had exchanged the same with his co-owner under Ex.A2, the decree of the court in O.S.No.8 of 1941.

Non-Registration of oral exchange

67. The next plea of Mr.S.Subbiah is that the oral exchange between the plaintiff's father and the other co-owners, not having been registered, cannot be relied upon. In order to substantiate this argument, he relied upon the judgment of Supreme Court in the case of *Shyam Narayan Prasad vs. Krishna Prasad & Others, (2018) 7 SCC 646* wherein it was held that by virtue of Section 17 of the Registration Act, if there were to be any exchange in terms of Section 118 of the Transfer of Property Act, then it necessarily has to be registered. This is



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

because there is a creation of a right in one and an extinguishment of a right in the other by virtue of the exchange.

68. A reading of Transfer of Property Act and Registration Act together would state that unless and until the value of the property is above Rs.100/-, it does not require registration. If we look into the value of the property that had been given under Ex.A2, it is clear that it was only Rs.55/- on the date of presentation of the suit in O.S.No.8 of 1941. Therefore, it certainly falls below the threshold limit of Rs.100/- that has been fixed by the Transfer of Property Act and Registration Act. In fact, the judgment of the Supreme Court itself makes it clear in paragraph 17 that registration would be necessary only if the value of the property exceeds Rs.100/-. That not being the situation in the present case, the argument that the plaintiff's father could not hold title to the property by virtue of oral exchange has been raised only for its rejection.

Proper and necessary parties

69. The next argument of Mr.S.Subbiah is that the Panchayat and the Government of Tamil Nadu should have been made as proper and necessary parties to the suit and having failed to implead the proper and necessary parties, the suit should have been dismissed.



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70. The plea of proper and necessary parties having been raised in the written statement, have been effectively answered by the courts below. Looking at it from the first principles, the plaintiff/Seeranga Gounder is the *dominus litis*. He need not invite litigation against the entire world in order to obtain a satisfactory decree. He apprehends trouble from certain quarters and presents the suit only against those quarters. The plaintiff did not apprehend any issues from the Government or from the Panchayat and therefore, he did not implead them as parties to the proceedings.

71. In a suit for title, as in the present case, the plaintiff/Seeranga Gounder feared the defendant, who was making untenable claims on the basis of certain corrections in the revenue records, and had presented the suit against the church. He feared that the church would dispossess him from his property and in fact, his plea was that while trying to fence his property, elements who supported the claim of the church had prevented him from doing so. He feared interference from the church and therefore, filed a suit only against the church.

72. I feel that he need not implead the Government because the



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

Government itself realised the error that had been committed at its end in converting a patta land into a poramboke land and had corrected its records under Ex.A3. This shows that there is no dispute between the Government and the plaintiff. The panchayat too did not interfere with the possession of the plaintiff/Seeranga Gounder. It had not laid a road over the plaintiff's property upon knowing that the property belonged to the plaintiff/Seeranga Gounder. It is an admitted fact that a road had been laid over a portion of the property of the plaintiff/Seeranga Gounder, when the records classified the said property as a poramboke land. There is no evidence on record to show that after the correction had been made in the revenue records by the Sub Collector under Ex.A3, the panchayat staked a claim over the property.

73. A necessary party is one without whom the court cannot give an effective decree. In this particular case, the person, who threatened the plaintiff/Seeranga Gounder with dispossession, is the church and hence, the suit had been presented against it and its manager. The Government had accepted the title of the plaintiff/Seeranga Gounder and had corrected the revenue records and the Panchayat did not interfere with the plaintiff's property after 1996. Hence, the presence of the Government and Panchayat in this proceeding is totally irrelevant.



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

choose the title deed over a revenue record. Revenue records are not documents of title, but merely record the name of the assessee in order to come to the conclusion as to who should pay taxes to the Government. A poromboke land as already pointed out is a waste land or a non-revenue generation land. There was no name provided in the register of the Department from the date of the Natham survey till the correction was made by the Sub Collector. The defendant has not taken any steps to show that it had attempted to get patta for the property during the settlement proceedings.

77. Under the provisions of the Minor Inams Abolition Act, the settlement proceedings had been initiated and ryotwari patta had been granted in favour of the persons in possession of the property. Had the church been in possession of the property during the time of introduction of the Minor Inams Abolition Act, it would have certainly gotten a ryotwari patta for the same. This shows that from 05.10.1943, when the final decree proceedings were passed in O.S.No.8 of 1941 in I.A.No.692 of 1943 till the presentation of the plaint, it was the plaintiff/Seeranga Gounder and before him, his father Komara Gounder, who had title to the property and therefore, he is deemed to be in possession of the vacant land. In pursuance of the same, I am unable to hold in favour of the defendant, since there is no document that had been filed by the defendant



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

including a settlement patta or even a revenue patta to prove that it had taken possession of the property.

78. Mr.S.Subbiah would then refer to the judgments in *Union of India and others vs. Vasavi Cooperative Housing Society Limited and others, (2014) 4 CTC 471* and *M.Narayanasamy Munthadi & Others vs. N.Kuppan and others, (2022) 4 MLJ 1* for the proposition that the plaintiff has to stand or fall on his case and cannot rely upon the weakness of the defendant. As discussed above, from Ex.A1 and A2, I am able to come to the conclusion that the plaintiff's father/Komara Gounder had purchased the property and had obtained exclusive possession of the property as against his co owners by presentation of the suit and obtaining a final decree in O.S.No.8 of 1941. In addition, I also rely upon the fact that the defendant has pleaded adverse possession and, thereby, has accepted the title of the plaintiff/Seeranga Gounder. Therefore, I am of the view that the plaintiff/Seeranga Gounder is entitled to succeed on the strength of his case and not on the weakness of the defendant.

Operation of the Law of Limitation

79. Mr.S.Subbiah would argue that the suit for the declaration of title that



had been filed in the year 2012 is barred by limitation, since the cause of action for the suit arose in the year 1996. He would submit that the liberty granted by the Court cannot give a cause of action for the presentation of the suit. Mr.S.Subbiah would rely upon the judgment in ***Shiv Kumar Sharma vs. Santosh Kumari, (2007) 8 SCC 600*** to substantiate his submission. There is no quarrel with respect to the legal proposition that a suitor cannot rely upon a judgment of the court for the purpose of cause of action.

80. While scanning the plaint in O.S.No.87 of 2012, I am able to see that the plaintiff/Seeranga Gounder had not relied upon the liberty granted by the court alone for the purpose of filing the suit for declaration and injunction. He had originally approached the court stating that he is in possession of the property and the court held that since the defendant had raised a dispute on title, the plaintiff/Seeranga Gounder had to file a suit for declaration of title and for injunction. Title was never the subject matter of the previous suit. It was a suit based on possession. However, this is a suit based on pre-existing title. Therefore, the authority relied upon does not help the appellants.

81. Insofar as the period of limitation that had been framed as seen from the additional written statement as well as from the grounds of appeal and the



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

substantial questions of law is concerned, the suit is barred by virtue of Article 65 of the Limitation Act. In order to apply Article 65 of the Limitation Act, the defendant will have to prove that he is in possession of the property and that too, the possession must be adverse to the right of the plaintiff.

82. As discussed earlier, the defendant has failed to prove adverse possession and therefore, Article 65 would not apply.

83. Though Mr.S.Subbiah has taken the plea of Article 65 of the Limitation Act before the courts below and before me, he would state that the suit is also barred under Article 58 of the Limitation Act.

84. I am afraid that it is not open to a party to cherry pick the Article under which he wants to choose to contest the case of the plaintiff/Seeranga Gounder. Having taken a clear and categorical stand that the suit is barred under Article 65, which presupposes his possession, today it is not open to the defendant to raise a new plea that though he is not in adverse possession of the property, still he can have the suit dismissed under Article 58.



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

85. A new plea in second appeal, that too, without foundational base is unacceptable. However, since the plea has been made, I decided to go through the same. Article 58 applies for suits seeking “any other declaration” that has been sought for by a party. This grants a period of limitation of three years from the date on which the cause of action first arises. It comes under Part IV of the Limitation Act. Insofar as immovable properties are concerned, the specific provision that deals with such suits is Part V - the suit relating to immovable property.

86. When there is a specific provision under the Limitation Act to obtain a declaration with respect to immovable property, I cannot apply general provisions under Part IV. Even otherwise, having chosen to raise the plea of adverse possession, the defendant had admitted to the title of the plaintiff/Seeranga Gounder and therefore, the question of cause of action arising as against the defendant would only be governed by under Article 65, and not under Article 58. Even otherwise, if there is no specific provision, the provision that will apply is Article 113. Under Article 113, the provision states that every time the plaintiff's right is interfered with, the right to sue accrues under 113.

87. Comparing Article 113 with Article 58, the term “first accrues” is not found under Article 113. It is only found under Article 58, which deals with



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

“other declarations”. Article 58 applies for suits touching upon the movable property or those not covered under other provisions. It is a general catch-all provision for declaration and not specific to immovable properties. Therefore, the suit is not barred by limitation.

Bar of the suit under the Minor Inams Abolition Act

88. Mr.S.Subbiah would then contend that the suit is barred by virtue of Section 64 of the Minor Inams Abolition Act. He would rely upon the classic judgment of the Supreme Court in *State of Tamil Nadu Vs. Ramalinga Swamigal Madam, (1985) 4 SCC 10*.

89. Section 64C of the Minor Inam Abolition Act reads as follows:

"64-C. Finality of orders passed under this Act.-

(1) Any order passed by the Government or other authority under this Act in respect of matters to be determined for the purpose of this Act shall, subject only to any appeal or revision provided by or under this Act, be final.

(2) No such order shall be liable to be questioned in any Court of law."

90. A careful reading of the judgment in **(1985) 4 SCC 10** would lead me



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

to the conclusion that the suit is not barred and therefore, the argument relying on Section 64C deserves to be rejected.

91. This very issue was considered by the Supreme Court in the said judgment and the court had held that the Minor Inams Abolition Act does not bar the jurisdiction of the civil court to decide the disputes on title. The Supreme Court held that even if a patta is granted or refused under the said Act, it is always open to a litigant to approach the civil court for the purpose of obtaining the relief of declaration of title.

92. In the case at hand, the plaintiff/Seeranga Gounder had sought not patta under the Minor Inams Abolition Act and the same had not been refused. It is the specific case of the plaintiff that Komara Gounder had been in possession of the property right from the time of purchase in the year of 1940 and after obtaining a final decree in the suit in O.S.No.8 of 1941 on the file of the District Munsif at Namakkal till his death. Subsequently, after the death of his father, the plaintiff had been in possession of the property by the virtue of succession.

93. The purpose of the Minor Inams Abolition Act was to remove the



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

intermediary between the Government and the ryot. The idea being that the Zamindari system, being contrary to the tenants of the constitution especially Articles 39-B and 39-C, must be abolished. Having abolished the Zamindhari system, the Government decided to find out from whom it had to recover the taxes for tilling the land. The purpose of enactment was only to that end.

94. The Supreme Court in paragraph 12 of the said judgment had clearly and categorically laid down the purpose for which the enactment had been made. The object of granting ryotwari patta was to identify and register the person in the revenue records, from whom the revenue has to be recovered and also to enable the patta holder to cultivate the land. The relevant portion are extracted hereunder:

“12. The enactment and its several provisions are thus intended to serve the revenue purposes of the Government, by way of securing to the Government its sovereign right to collect all the revenues from all the lands and to facilitate the recovery thereof by the Government and in that process, if necessary, to deal with claims of occupants of lands, nature of the lands, etc. only incidentally in a summary manner and that too for identifying and registering persons in the revenue records from whom such recovery of revenue is to be made. The object of granting a ryotwari patta is also to enable holder thereof to cultivate the land specified therein directly under the Government on payment to it of such assessment or cess that may be lawfully imposed on the land.



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

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Section 16 is very clear in this behalf which imposes the liability to pay such ryotwari or other assessment imposed upon the land to the Government by the patta-holder. The expression “for the purposes of this Act” has been designedly used in the section which cannot be ignored but must be given cogent meaning and on a plain reading of the section which uses such expression it is clear that any order passed by the Settlement Officer either granting or refusing to grant a ryotwari patta to a ryot under Section 11 of the Act must be regarded as having been passed to achieve the purposes of the Act, namely, revenue purposes, that is to say for fastening the liability on him to pay the assessment or other dues and to facilitate the recovery of such revenue from him by the Government; and therefore any decision impliedly rendered on the aspect of nature or character of the land on that occasion will have to be regarded as incidental to and merely for the purpose of passing the order of granting or refusing to grant the patta and for no other purpose.”

Therefore, the suit for declaration of title being independent of the provision under Section 64-C, the present case is not barred by the operation of Minor Inams Abolition Act.

The plea of consequential relief and recovery of possession

95. Mr.S.Subbiah would then cite (i) *Union of India v. Ibrahim Uddin*, (2012) 8 SCC 148, (ii) *Saravanan Pillai v. A.S. Mariappan*, (2002) 1 MLJ 419 and (iii) *Venkataraja v. Vidyane Doureradjaperumal*, (2013) 3 CTC 4402 to show that the suit for declaration without consequential relief and recovery of possession is bad in law.



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96. Suit for recovery of possession would be necessary only if the plaintiff is not in possession of the property. In order to show that the plaintiff/Seeranga Gounder is not in possession of the property, Mr.S.Subbiah would refer to the finding of this court in paragraph 12 of S.A.Nos.952 & 953 of 2011. As already discussed, in the said judgment, the court had only held the suit for injunction is not maintainable. The court had never recorded a clear and categorical finding that the plaintiff is not in possession of the property. As already discussed, the court held that patta will not prove the possession of the plaintiff and has not entered a finding that the plaintiff himself is not in possession of the property. In any event, a finding given in a suit, after it had been held as not maintainable cannot be held to be binding, see, **(1973) 89 LW 355 (DB)**.

97. Mr.S.Subbiah would then rely upon ***Sennimalai Gounder (Died) and Others vs. Additional District Magistrate & District Revenue Officer and Others, 2019 4 CTC 341*** to argue that the Sub Collector does not have the power of cancellation of ryotwari patta granted under the Minor Inams Abolition Act. I am flummoxed as to how the judgment is applicable to the facts of the case.



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

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98. In *Sennimalai Gounder's* case (2019) 4 CTC 341 referred *supra*, the Sub Collector had cancelled the patta granted under the Minor Inams Abolition Act. The patta granted under the Minor Inams Abolition Act is one granted by the Settlement Tahsildar and to set aside the same, the aggrieved person has to go only before the Inams Abolition Tribunal, (ie) the Jurisdictional Sub Court. Instead of doing so, the Sub Collector himself cancelled the patta. Therefore, this Court had held that the patta granted under the Minor Inams Abolition Act cannot be cancelled by the Sub Collector. In this case, there was a wrong classification during the natham survey. Natham survey is not done either under the provisions of Minor Inams Abolition Act, be it Act 30 of 1963 or Act 26 of 1963, but by the virtue of Government Order issued from time to time to update the records. These updations are not done under the statutory provisions as stated above.

99. The classifications were done by the Village Administrative Officer or by officer above his rank, till the rank of Tahsildar. Under the standing orders of the Board of Revenue as well as the general instructions given by the Government for correction of records, the Sub Collector possesses the jurisdiction to correct the revenue records that are being maintained by the



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

authorities who report to him. It is in exercise of that power, the Sub Collector had corrected the revenue records. To reiterate the updation, the reclassification of the land from Natham to poramboke was not done under the aforesaid statutory enactments but by the order of revenue authorities and therefore, the said judgment is not applicable to the present case.

100. Mr.S.Subbiah would then cite *Vellaiamma and another vs. Subbulakshmi and Others, (2024) 1 MLJ 686* to argue that the suit for declaration is barred by time. The period of limitation for a suit for declaration is three years.

101. I carefully went through the judgement and found that it was a case where declaration was sought for in consequence to a declaration that a settlement deed is null and void. The Division Bench held that since the first relief is barred by time, then the consequential relief also barred by time. In the facts of this case, since Article 65 does not bar the suit, this judgement is inapplicable.

102. In *Vellaiamma's case* apart from the major grounds on which the court proceeded, the previous suit that had been presented, had been withdrawn



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

without liberty and therefore, the court held the subsequent suit on the same cause of action as not maintainable. Hence, the case referred *supra* is absolutely inapplicable to the facts of the present case.

103. Mr.S.Subbiah would rely upon the judgment in *The District Collector Collectorate, Kancheepuram & Others vs. S.Guhan, (2022) 3 LW 94* to argue that since the revenue records show the property as Madha Koil Poromboke, the church has to be treated in possession of the property.

104. I have gone through the judgment. In paragraph 24 of the said judgment, the learned Judges after referring to the 'A' register came to the conclusion that the name of the temple had been included in the 'A' register as early as 1951. It was in the light of the 'A' register of the 1951, the court came to the conclusion that the temple and the lake attached to the temple therein belonged to the temple.

105. It is not the case of the plaintiff/Seeranga Gounder and certainly not the case of the defendant that 'A' register carries the name of the defendant. On the contrary as seen from Ex.A3, it was the revenue authority, which had made



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

a mistake while updating the revenue records and has wrongly classified a patta land as a Poromboke one. 'A' register, on the basis of which the judgment was rendered in **The District Collector & Others vs. S.Guhan, (2022) 3 LW 948** is absent in the present case.

106. Similarly in *Arulmigu Subramaniaswamy koil, Kurumbur-represented by its Hereditary Trustees 1.Dharmambal and 2. Thamaraiselvan vs. V.Karuppiah & others, (2021) 1 LW 595*, the learned Single Judge came to the conclusion that in the A-register, the name of the temple was found therein. As stated above, A-register was not produced in this case to show that the name of the church was included as the owner of the land. Hence this judgment too is inapplicable to the facts of the case.

107. In the light of the above discussion, I am of the clear view that the plaintiff/Seeranga Gounder has proved his right, title and interest over the suit schedule mentioned property.

Discussion on S.A.No.839 of 2016

108. Insofar as S.A.No.839 of 2016 is concerned, I have to refer Ex.A3, which is a crucial document in this case. Ex.A3 reads as follows:



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

“மேற்படி மனுதாரர் ஆஜர்படுத்திய ஆவண எண்.3934 நாள் 25.11.1940,

உண்மையானது தானா என்பதைக் கண்டறிய நாமக்கல் ஜாயிண்ட் 2 சார்பதிவாளருடன் தொடர்பு கொள்ளப்பட்டது. இவர் தனது 26.3.96 தேதியிட்ட கடிதத்தில் மேற்கண்ட ஆவணங்களை ஒப்பிட்டு பார்த்து சரியானது என்று கூறியுள்ளார்.

மனுதாரர் மற்றும் வள்ளிபுரம் கிராமநிர்வாக அலுவலர் ஆகியோர்களை இது சம்பந்தமாக விசாரணை செய்யப்பட்டது. மனுதாரர் தனது வாக்கு மூலத்தில் பிரஸ்தாப நிலம் நாமக்கல் ஜாயிண்ட் 2 டாக்குமெண்ட் எண்.3934 நாள் 25.11.1940 மூலம் தனக்கு பிதுரார்ஜிதமாக பாத்தியப்பட்டு அனுபவத்தில் உள்ளதாகவும், பிரஸ்தாபநிலத்தில் வடபுறம் நாமக்கல் பரமத்தி ரோடின் தென்புறம் ஒரு முஸ்லீம் குடும்பத்தை வாடகைக்கு அமர்த்தி வாடகை பெற்று வந்ததாகவும், 1993ல் நத்தம் சர்வே செய்தபோது, உடலிமாபீ என்பவர் பேருக்கு 0.0053.5 ஹெக்டர் நிலத்தை தவறான தகவல் கொடுத்து பட்டா பெற்றுக் கொண்டதாகவும், மீதி நிலத்தை பக்கத்தில் உள்ள மாதாகோவில் புறம்போக்கு என்று கிராமக் கணக்குகளில் தாக்கல் செய்துள்ளதாகவும், இதன் விவரம் மனுதாரருக்கு தெரிந்து பஞ்சாயத்து செய்து, மேற்படி உடலிமாபீ வகையறாவிடமிருந்து 648 சதுரஅடி மனைவிலத்தை தனது மனைவி பழனியம்மாள் பேருக்கு கிராமம் பெற்றுவிட்டதாகவும், மீதம் உள்ள 6750-648-6102 சதுரஅடி நிலத்தை தன்பேருக்கு பட்டா வழங்கும்படியும் கூறியுள்ளார். கிராம நிர்வாக அலுவலரின் வாக்குமூலம், மனுதாரரின் வாக்குமூலத்தை ஊர்ஜிதம் செய்தே கூறப்பட்டுள்ளது.

கிராமநிர்வாக அலுவலரின் வாக்குமூலம் மனுதாரரின் வாக்குமூலம் முதலியவைகளின்பேரில் பிரஸ்தாப நிலத்தை 1.4.96ல் தணிக்கை செய்யப்பட்டது. மனுதாரருக்கு மேற்கண்ட டாக்குமெண்ட் படி கீழ்க்கண்ட மனைநிலம் பூர்வீகமாக பாத்தியப்பட்டது.

பரமத்தி ரோட்டிற்கு - தெற்கு.

வாழவந்தி ரோட்டிற்கும் - மேற்கு.

ஆதிதிராவிடர்கள் காலனிக்கும் - வடக்கு.

மாதாகோவில் காலநிலத்துக்கும் - கிழக்கு.

மேற்கண்ட சக்குபந்தியில் கிழமேல் 60 முாம் அல்லது 90 அடி, தென்வடல் 50 முழம் அல்லது 75 அடி ஆக கூடுதல் 6750 சதுரஅடி மனை நிலம் இந்த மனை நிலம் பூராவும் கீழ்க்கண்டவாறு 1993ல் நடந்த சர்வேயில் நத்தம் நிலவரித் திட்ட தூய அடங்கலில் தாக்கல் செய்யப்பட்டுள்ளது.



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

ச.எண். மற்றும் உட்பிரிவு தன்மை பரப்பு பட்டா எண்ணும் குறிப்பு பெயரும்

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322/5	மனை	0.0053.5	21	உடலிமாபீ
326/6 புறம்போக்கு	0.1620.0	-	மாதாகோவிலீ	

மனுதாரர் சம்மத்தின் பேரில் குடியிருந்த முஸ்லீம் குடும்பத்தார் தவறாக பிரேரேபனை செய்து பட்டா பெற்ற பாகத்தை பஞ்சாயத்து செய்து மனுதாரர் தனது மனைவி பேரில் 648 சதுரஅடி நிலம் நாமக்கல் எண் 2 இணைசார்பதிவாளர் அலுவலக டாக்குமெண்ட் எண்.279, நாள் 6.2.96 மூலம் கிரயம் பெற்றுள்ளார். மீதமுள்ள 6740-649-6102 சதுரஅடி மனை நிலமாகும்.

மனுதாரருக்கு பிரஸ்தாப ஆவணங்கள் பேரிலும், சுவாதீனத்தின் பேரிலும் மேற்கண்ட 6102 சதுரஅடி மனைநிலம் பாத்தியப்பட்டது என்பது ஊர்ஜிதமாகிறது. எனவே, மேற்படி கிராமம், சர்வே எண்.322/6 புறம்போக்கு விஸ்தீ.0.1620.0 ஷெட்க்டர் நிலத்திலிருந்து 6102 சதுரஅடி மனைநிலத்தை மனுதாரர் திரு.சீரங்க கவுண்டர், த/பெ.கொமரகவுண்டர் பேரில் நத்தம் நிலவரித்திட்ட தூய அடங்கல் பதிவேட்டில் தாக்கல் செய்யும்படி நாமக்கல் வட்டாட்சியருக்கு இதன் மூலம் உத்தரவிடப்படுகிறது.”

109. A perusal of Ex.A3 shows that during the time of updating the revenue records, the party to be found in possession of the property was one Hanima Bi. She had also been granted patta by the Government. The defendant has also admitted to the fact that Hanima Bi was in possession of the property. However, it took a plea that Hanima Bi was a licensee under the defendant. The said licence had not been proved.

110. On the contrary, Ex.A3 shows that patta had been granted in recognition of possession of the property. It was this possessory title that has



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

been transferred by Hanima Bi and others in favour of the plaintiff/Palaniammal. Therefore, as antecedent title deeds have not been filed, I am not inclined to reject the suit as a whole, but I am inclined to modify the decree of the courts below by holding that Palaniammal is entitled for a decree of possessory title by virtue of Ex.A9. The said Palaniammal has proved that she is in possession of the property by virute of Ex.A10. A cumulative reading of Ex.A9 and Ex.A10 makes one arrive to the conclusion that Palaniammal is in possession of the property. Therefore, while rejecting the larger prayer of declaration of title sought for by the plaintiff, I am inclined to grant a declaration of possessory title of the suit schedule mentioned property.

Discussion in CMP.No.17807 of 2016

111. C.M.P.No.17807 of 2016 has been filed under Order 41 Rule 27 of CPC to receive the records that have been produced by the defendant in W.P.No.24872 of 2010.

112. In order to satisfy the requirements of Order 41 Rule 27, the primary test is that the party producing this document should not have had the opportunity to produce the same before the trial court and due to the failure of the opportunity, the said document must not be filed. The second test is that these documents are necessary for the purpose of adjudicating the appeal.



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113. The records that have been produced before the court in the petition under Order 41 Rule 27 CPC were very much available with the petitioner/defendant at the time of trial in O.S.No.87 of 2012 and also at the time of filing the appeal in A.S.No.3 of 2016. At both these points of time, the said documents were not filed. These documents are now being sought to be introduced for the first time in the second appeal.

114. This court thus has the power to admit the additional documents by virtue of powers conferred on it under Order 41 Rule 27 read with Sections 103, 107 & 108 of CPC. However, a look at these documents would go to show that these are the proceedings which have been initiated by the revenue department on the application that had been filed by the son of the plaintiff. These documents require oral evidence that ought to have been put to the witness PW1 at the time of examination.

115. I have already discussed the case of the defendant who had pleaded the aspect of adverse possession and thereby had accepted the plaintiff as the owner of the property in possession of the same. None of these records that have been produced before me point out to the said fact of adverse possession.



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

All of them commenced in the year 2010. Furthermore, the documents require oral evidence and cross examination to substantiate the same.

116. Mr.S.Subbiah would refer to the recent judgment of ***Sanjay Kumar Singh v. State of Jharkhand, (2022) 7 SCC 247*** to argue that the filing of additional evidence is maintainable in second appeal. I am entirely with Mr.S.Subbiah on the power of the court. However, whether I want to exercise this power in the particular facts of the case, is my discretion. As held by the Supreme Court in paragraph 8, it is for the appellate court to decide, whether it can pronounce the judgment without taking into consideration the additional evidence sought to be adduced.

117. As seen above, I find that the evidence already adduced are sufficient to point out to the title of the plaintiff/Seeranga gounder especially in the light of the plea of adverse possession taken by the petitioner in the additional written statement. That is why, I proceed further and pronounce the judgment. Consequently, I do not find any necessity to go through the additional evidence.

118. Another aspect which looms large in my mind is that, if I were to receive the additional evidence, I have to necessarily remand the suit either to



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

the first appellate court or to the trial court. Doing so would only increase the agony of the parties, who have been facing the litigation from the year 1996. I am not inclined to add fuel to the agony. Hence CMP.No.17807 of 2016 stands dismissed.

Decision in W.P.No.28472 of 2010

119. Insofar as writ petition No.28472 of 2010 is concerned, as I have already held that Seeranga Gounder is the owner of the property in S.A.No.838 of 2016, no further orders are necessary in the writ petition. In fact the order passed by the civil court will bind the writ court. I have held that Seeranga Gounder is in possession and enjoyment of the property. Consequently, the writ petition filed prior to the commencement of this litigation is unnecessary to be adjudicated. Consequently writ petition stands closed. No costs.

Decision in both Second Appeals

120. In fine, **S.A.No.838 of 2016 stands dismissed** and the judgment and decree of the court of Principal District Judge at Namakkal in A.S.No.3 of 2016 dated 02.09.2016 in confirming the judgment and decree of the court of Subordinate Judge in O.S.No.87 of 2012 dated 01.12.2015 stands confirmed.

S.A.No.839 of 2016 stands partly allowed. The judgment and decree of the



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

court of learned Principal District Judge in A.S.No.4 of 2016 in confirming the judgment and decree of the Subordinate judge at Namakkal in O.S.No.48 of 2014 dated 01.12.2015 is modified. Decree for declaration of title is rejected. The decree of possessory title is granted in favour of Palaniammal. Costs throughout.

08.03.2024

nl

Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

To

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- 1.The Principal District Judge, Namakkal
- 2.The Subordinate Judge, Namakkal



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Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

V.LAKSHMINARAYANAN, J.

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Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 &
W.P.No.28472 of 2010



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Second Appeal Nos.838 & 839 of 2016 &
C.M.P.No.17807 of 2016 & W.P.No.28472 of 2010

08.03.2024