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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06-02-2026

PRONOUNCED ON : 22.06.2026

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

SA No. 732 of 1996

1. Karuppana Gounder S(died)

2. Muthusamy Gounder S (died)

3. Pongiyappan S(died)

4. Karuppuswamy S

5. Chinnamal S (died)

6. Govindammal D

7. Kuppusamy (minor)

8. Murthy (minor)

9. Nachappa Gounder K(died)

10. Veerappa Gounder S(died)

11. Senniappan Gounder K V (died)

12. Karuppanna Gounder P(died)

13. Palanisamy S(died)

14. Kartha Of Joint Hindu Family T.Kuppusamy(died)

15. Arusamy A (died)

16. Veerasamy (died)

17. Periammal

18. Thangammal

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19. Balasubramaniam (died)

20. Kumarasamy (died)

21. Nataraja (died)

22. Muthulakshmi Ammal

23. Nirmala Devi

24. K. Periyasamy(died)
(Appellant 24 is brought on record as LR of the deceased 1st appellant)

25. K.S. Palanisamy

26. Lakshmi
(Appellants 25 and 26 are brought on record as LRs of the deceased A11)

27. Karuppathal

28. Sivasubramani

29. Nallasenapathy
(A16 died, Appellants 27 to 29 are brought on record as LRs of the deceased A16, vide court order dated 22.01.2026 made in CMP.No.1600 of 2026 in SA.No.732 of 1996(VLNJ))

30. Viswanathan,
(A30 is brought on record as LR of the deceased A2 vide court order dated 22.01.2026 made in CMP.No.1605 of 2026 in SA.No.732 of 1996(VLNJ))

31. P.Valliammal

32. P.Dhanasekaran

33. Subbulakshmi
(Appellants 31 to 33 are brought on record as LRs of the deceased A3 vide order dated

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22.01.2026 made in CMP.No.1603 of 2026 in SA.No.732 of 1996(VLNJ))

34. S.Karuppasamy

35. D.Govindammal

36. Kuppusamy

37. D.Thirumurthi
(A5 died, A34 to A37 are brought on record as LRs of the deceased A5 vide court order dated 22.01.2026 made in CMP.No.1599 of 2026 in SA.No.732 of 1996(VLNJ))

38. N.Muthusamy

39. N.Subramaniam
(A9 Died, A38 and A39 are brought on record as LRs of the deceased A9 vide court order dated 22.01.2026 made in CMP.No.1610 of 2026 in SA.No.732 of 1996 (VLNJ))

40. Sarathamani

41. P.Sridhar Raja

42. Sudha
((A10 died, A13 died, A40 to A42 are brought on record as LRs of the deceased A10 and A13 vide court order dated 22.01.2026 made in CMP.No.1601 of 2026 in SA.No.732 of 1996(VLNJ))

43. K.Pushpathal

44. K.Arumugam
(A12 died, A43 and A44 are brought on record as LRs of the deceased A12 vide court order dated 22.01.2026 made in CMP.Nos.1608 of 2026 in SA.no.732 of 1996(VLNJ))

45. Govindathal

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46. Vanithasri

47. Silambarasan
(A14 died, A45 to A47 are brought on records as LRs of the deceased A14 vide court order dated 22.01.2026 made in CMP.No.1604 of 2026 in SA.No.732 of 1996(VLNJ))

48. A.Balasubramani

49. Thayathal

50. Karunathal
(A15 died, A48 to A50 are brought on records as LRs of the deceased A15 vide court order dated 22.01.2026 made in CMP.No.1611 of 2026 in SA.No.732 of1996(VLNJ))

51. Sulochana

52. K.B.Paramasivam

53. K.B.Krishnakumar
(A19 died, A51 to A53 are brought on record as LRs of the deceased A19 vide court order dated 22.01.2026 made in CMP.No.1606 of 2026 in SA.No.732 of 1996(VLNJ))

54. Shanta Devi

55. Shri Sivanandhan

56. Shri Palani Kumar Kangayan
(A20 died, (A54 to A56 are brought on record as LRs of the deceased A20 vide court order dated 22.01.2026 made in CMP.No.1598 of 2026 in SA.No.732 of 1996(VLNJ))

57. N.Nageswari

58. K.N.Gokul,
(A21 died, A57 and A58 are brought on record as LRs of the deceased A21 vide court order dated 22.01.2026 made in

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CMP.No.1602 of 2026 in SA.No.732 of 1996(VLNJ))

59. P.Baalasubramani

60. Leelavathi,

61. Baby,
(A24 died, A59 to A61 are brought on record as LRs of the deceased A24 vide court order dated 22.01.2026 made in CMP.No.1609 of 2026 in SA.No.732 of 1996(VLNJ))

..Appellants

Vs

Sri Sivanmalai Subramania Swamy Devasthanam Rep By Its Executive Officer Sivamalai

..Respondent

Prayer: Second Appeal preferred under Section 100 of the Code of Civil Procedure, against the judgment and decree passed by the District Judge, Periyar District at Erode in AS.No.48 of 1994 dated 24.11.1994 confirming the judgment and decree passed by the Subordinate Judge, Dharapuram, dated 11.1.1994 in O.S.No.84 of 1990.

For Appellants : Mr.Om Prakash, Senior Counsel, for Mr.C.Prakasam

For Respondent : Mr. N.R.R. Arun Natarajan
Learned Special Government Pleader

JUDGMENT

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

2. The plaintiffs are the appellants. O.S.No.84 of 1990 was presented for the relief of declaration and permanent injunction. The plaintiffs pleaded that the suit schedule mentioned property

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(hereinafter referred to as 'suit property') is situated in Sivanmalai Village in Kangeyam Taluk. The suit lands had been dedicated for the support of the pagoda of Sri Subramaniasamy Temple at Sivanmalai. The grant was permanently confirmed in T.D.No.2573 so long as the pagoda was well kept.

3. Between the plaintiffs and the defendant, proceedings had taken place under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. An enquiry was conducted by the Settlement Tahsildar of Gobichettipalayam, who, while granting patta in favour of the defendant temple, rejected the claims of the plaintiffs and their predecessors. This was in SR.No.40/67 dated 31.12.1967.

4. Aggrieved by the said order, one Kumarasamy Gounder, the 11th plaintiff herein and others, who had also made a claim for patta, preferred an appeal to the Minor Inam Abolition Tribunal cum Subordinate Court at Coimbatore. This appeal, in CMA.No.592 of 1969, was allowed and the matter was remanded to the Settlement Tahsildar for a fresh disposal.

5. Post the remand, the Settlement Tahsildar, Coimbatore conducted a fresh enquiry between the contesting parties. Thereafter, he passed an order in SR.No.4067/MT Act on 28.09.1973, granting

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patta to the private parties with respect to the suit properties. This time over, the temple preferred an appeal to the learned Principal Subordinate Judge cum Inam Tribunal, Erode in CMA.No.79 of 1977. This appeal was allowed by the Tribunal and patta was granted in favour of the defendant on 03.08.1982. Aggrieved by the grant of patta in favour of the temple, the plaintiffs preferred a statutory appeal to this Court, acting as the Tribunal under the Inam Abolition Act, in STA.No.10 of 1984.

6. STA.No.10 of 1984 was dismissed by this Court on 22.09.1989 with an observation that it is open to the appellants therein/plaintiffs herein, to go before the Civil Court for adjudication as to who, between the parties, would be entitled to title to the suit property. It was on the strength of this observation that the plaintiffs had presented the present suit.

7. The plaintiffs further pleaded that the defendant temple had only "மேல்வாரம்" (*melwaram*) right. The plaintiffs were liable to pay "படிதரம்" (*paditharam*) and that "படிதரம் குடிகள்" (*paditharam kudigal*) were issued with pattas by the temple. With the amounts so collected, the annual budgets of the temple were prepared. Hence, the plaintiffs urged that the temple was entitled only to "மேல்வாரம்" right, while the plaintiffs and

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their predecessors were entitled to "குடிவாரம்" (*kudiwaram*) right in the suit property. They conceded that the temple had collected "தரம்" (tharam) assessment till 1958 and thereafter, stopped collecting the same.

8. The plaintiffs further pleaded that they were paying kists for the suit properties till the date of presentation of the plaint and before them, kist was being paid by the plaintiffs' predecessors. The plaint referred to the statement made by the Village Karanam before the Settlement Tahsildar of Coimbatore to the effect that the temple did not enjoy the suit properties. Relying upon the original Register of Pattadhars and the original temple chitta, the plaintiffs pleaded that what was granted to the temple was only the assessment "தரம்" (tharam) due on "மணிகம்" (maniham) lands and that the occupancy ryots were required to pay "தரம் கந்தையம்" (tharam kandhayam) to the temple and that the temple had no right in the soil.

9. The plaintiffs further pleaded that their predecessors had dealt with the suit property in their own right by registering sale deeds as well as creating usufructuary mortgages. They relied upon the usufructuary mortgage dated 07.01.1877 and the sale deeds dated 15.12.1883, 14.12.1896 and 10.04.1910 to this effect. They urged that

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their predecessors, namely, Chidambaram Aiyer and others, had sold a portion of the suit property to one Subramania Iyer on 23.10.1885 and that, on 16.01.1959, the 11th plaintiff's brother, Palani Kangaya Gounder, sold a portion of the suit property to the plaintiffs 1, 2 and others, and on the same day, they got a re-conveyance deed. On these lines, it was further pleaded that the 11th plaintiff's father had taken a usufructuary mortgage from one Subbaraya Iyer on 09.07.1900 and this Subbaraya Iyer had purchased the property from Chidambaram Iyer on 17.08.1889. Thereafter, Subbaraya Iyer sold this property to the 11th plaintiff's father, Kumarasamy Gounder on 10.04.1910. The 11th plaintiff and his brothers had divided the properties and were enjoying the same.

10. In and about 1983, the 11th plaintiff filed a suit for partition before the Subordinate Judge at Dharapuram in O.S.No.202 of 1983. Preliminary decree was passed in this suit. Final decree application was taken out in I.A.No.373 of 1983 and the suit property was allotted to the share of the 11th plaintiff and his son. This property was allotted to them on 09.08.1983. The plaint set forth the dates on which the other plaintiffs purchased the property and spoke about the settlement deed executed in favour of the 13th plaintiff by his mother, Kaliammal on 13.09.1964.

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11. The plaintiffs also pleaded that they, as well as their predecessors, have been in possession of the property for more than 100 years. They alleged that the defendant temple, taking advantage of the patta granted in CMA.No.79 of 1977 dated 03.08.1982, attempted to lease out the suit property to third parties. They came to know, on 10.01.1990 and 20.01.1990, that the defendant was planning to take possession of the suit property with the assistance of the Kangayam Police. They pleaded that a lot of improvements have been made by the plaintiffs by levelling the land, putting fences all around their shares and that, they have planted 250 coconut trees, dug new wells, deepened old ones and also obtained electricity service connection to the houses constructed therein.

12. The plaintiffs further pleaded that the defendant, though fully aware of the improvements that had been made by the plaintiffs, did not object to the same. Consequently, the defendant is estopped from questioning the title of the plaintiffs in the suit property. All the improvements carried out by the plaintiffs had been asserted in the capacity of owners. On the strength of the liberty granted in STA.No.10 of 1984, they claimed that they have filed the suit for declaration of title to the suit property.

13. Summons were served on the defendant.

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14. The defendant filed a written statement. After denying in general terms the averments made in the plaint, the defendant pleaded that, after the disposal of the matter before the Inam Abolition Tribunal, the present suit is not maintainable. It added that the entire suit property belonged to the defendant deity and hence, the patta granted in the name of the defendant was valid. The defendant denied the right, title, and interest of the plaintiffs over the suit properties. Consequently, it sought for dismissal of the suit.

15. On these pleadings, the learned Trial Judge framed the following issues:

> *" 1. வாதிகளுக்கு விளம்புகைப் பரிகாரம் கிடைக்கத்தக்கதா?*
>
> *2. வாதிகளுக்கு நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் கிடைக்கத்தக்கதா?*
>
> *3. வாதிகளுக்கு வேறு என்ன பரிகாரங்கள் கிடைக்கத்தக்கதா?"*

One additional issue was framed by the court on 10.01.1994. It is as follows:

> "1. தாவா சட்டப்படி நிலைக்கத்தக்கதில்லையா?"

16. The plaintiffs examined three witnesses on their side and marked Ex.A1 to Ex.A117. On the side of the defendant, the Executive Officer to the temple examined himself as DW1 and he filed Ex.B 1.

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17. On a consideration of these issues, the learned Trial Judge dismissed the suit on 11.01.1994, *inter alia,* on the grounds that

(i) Ex.A1 to Ex.A7 concede to the title of the defendant;

(ii) Since the defendant is the owner of the property, no injunction can be granted against the owner; and finally,

(iii) The suit is untenable for the lack of notice under Section 80 of the Code of Civil Procedure.

18. Aggrieved by this judgment and decree, the plaintiffs preferred A.S.No.48 of 1994 to the file of the learned District Judge, Periyar District at Erode.

19. The learned District Judge, after a reconsideration of the entire facts and evidences, came to the following conclusions:

(i) Civil Court has the jurisdiction to deal with issues of title,, even after proceedings have concluded under the Minor Inam Abolition Act;

(ii) the findings of the learned Trial Judge on Section 80 of the Code of Civil Procedure cannot be sustained and hence, has to be set aside.

(iii) the Judgment of the learned Inam Abolition Tribunal under Ex.A16 in CMA.No.79 of 1977 dated 03.08.1982 had not been

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presented and therefore, the court was disabled from giving a finding on what ground patta had been granted to the temple.

(iv) in terms of Section 44 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, where the grant is in favour of a religious institution, the presumption is that both warams had been granted to the temple. The burden is on the plaintiffs to show that *melwaram* alone had been granted to the temple, but the plaintiffs had failed to let in satisfactory evidence to substantiate the said plea.

(v) the findings of the learned Trial Judge that Ex.A1 to Ex.A7 conceded to the title of the defendant temple was confirmed, and finally,

(vi) as the plaintiffs had not proved better title than the temple, the suit had to fail.

Consequently, he dismissed the appeal on 24.11.1994.

20. Aggrieved by the concurrent judgments and decrees, the plaintiffs carried the matter to this court by way of this second appeal.

21. This court admitted the second appeal and framed the following substantial questions of law.

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"i) Whether the Court below has misinterpreted the provisions of Section 8(1) and 8(2) of Minor Inams Abolition Act, 1963?

ii) Whether the Court below ought to have seen that provisions of Section 8(2) of the Abolition Act would apply only when there is a grant of both warams to the religious institutions?"

Subsequently, an additional substantial question of law had been framed, which is as follows:

"Whether the claim of the appellants is barred by res-judicata under Section 43 of the Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963?"

22. This court, by a judgment dated 03.08.2009, allowed the second appeal and decreed the suit as prayed for.

23. The defendant temple preferred a Special Leave Petition to the Supreme Court in SLP.No.989 of 2010. Leave was granted and numbered as Civil Appeal No.1926 of 2010.

24. By a judgment dated 26.11.2025, the judgment and decree dated 03.08.2009 passed in SA.No.732 of 1996 was set aside and the appeal was restored on to the file of this Court. The relevant portion of the judgment of the Supreme Court is extracted hereunder:

"9. We have considered the arguments advanced by the learned senior counsel for the respective

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parties and we have considered the same in a juxtaposition with the impugned judgment and decree. In paragraph 9 as already noted, the substantial questions of law have been raised. It is necessary to mention that the High Court in exercise of its statutory appellate jurisdiction had reserved liberty to the respondents/plaintiffs to seek appropriate reliefs by filing a suit only after granting a patta and holding in favour of the appellant herein. Therefore, the question of reconsideration of those issues in the suit did not arise at all. No doubt, liberty was reserved by the High Court to the respondents/Plaintiffs to seek appropriate reliefs but de hors the orders which were passed by the High Court while granting the patta to the appellant herein.

10. We find that the High Court was not right in raising the aforesaid substantial questions of law besides under the provisions of the Act. They were not on the basis of what would have emerged on a reading of the judgment of the Trial Court which was upheld by the First Appellate Court. In the circumstances, we find that the High Court was not right in raising the aforesaid substantial questions of law. If that is so, we find that the impugned judgment and decree ought to be set aside and the matter ought to be remanded to the High Court so as to enable the High Court to raise the appropriate substantial questions of law by restoring the Second Appeal No.732 of 1996 on the file of the High Court.

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On such restoration being made, the High Court shall now consider the case of the respondents/plaintiffs for admission and if it so finds, raise appropriate substantial questions of law and dispose of the Second Appeal in accordance with law."

25. On remand, the appeal was posted before this court. It was pointed out that certain appellants had passed away pending the proceedings. Hence, applications were filed to bring on record their legal representatives. Those applications were ordered and the legal representatives were brought on record.

26. Since the Supreme Court had directed that the earlier questions of law did not arise for consideration, Mr.Om Prakash learned Senior Counsel appearing for Mr.C.Prakasam, suggested the following substantial questions of law for the consideration of this Court:-

1. Whether the issuance of Patta on the adjudication of Kudiwaram and Melwaram rights under the statutory scheme of Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963, will stand in the way of Civil Court deciding the title of parties on independent consideration of facts?

2. Whether the Courts below were right to completely overlook the documentary evidence in the form of Ex.A1 to Ex.A5 which demonstrate that the lands were alienated

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even prior to 01.04.1990 and as persons in possession of the lands for over a period of 60 years the Plaintiffs ought to have been declared title to the subject lands enabling for Patta U/s. 8(2)(i)(a) of the Act 30 of 1963?

3. Whether the decision under the statutory scheme on Kudivaram rights under the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963 take away the Civil Court's right to examine question of possession and declare title basis documents of possession?

4. Whether the collection of Paditharam by the Temple basis of the grant for such obligation amounts to vesting of title on the property in favour of the temple and deprive the right of title and possession to the owners of the property?

5. Whether declaration of title can be granted by way of adverse possession when the Temple stopped collecting Paditharam from the Appellants and the predecessors in interest?

6. Whether the conclusion of the courts below on the nature of grant as one consisting of both the warams could be justified on the facts and circumstances of the case?

7. Whether the Appellants are to be deprived right to the property, which they have been in possession and enjoyment for decades as the source of livelihood and being guaranteed as a constitutional right, on the finality under the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963?

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27. I heard Mr.Om Prakash, learned Senior Counsel appearing for Mr.C.Prakasam for the appellants and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader (HR & CE) for the respondent.

28. After taking me to the pleadings and judgments, Mr.Om Prakash submitted as follows:

(i) The temple only possessed "மேல்வாரம்" (*melwaram*).

(ii) Ex.A1 to Ex.A7 establishes the plaintiffs' pre- existing title.

(iii) The improvements that had been made by the plaintiffs over the property had not been properly appreciated by the courts below.

(iv) It is only the civil court which has the jurisdiction to deal with the issues of title and the patta granted by the Inam Abolition Tribunal does not bind the civil court.

(v) The defendant temple did not take any steps to prove its title to the property.

(vi) The plaintiffs, having filed voluminous documents, are entitled to the relief of permanent injunction.

(vii) Adverse inference should have been taken against the defendant temple for not producing the judgment of the learned Principal Subordinate Judge, Erode in CMA.No.79 of 1977 granting patta, instead of calling upon the plaintiffs to produce the same.

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(viii) Both the trial court as well as the lower appellate court did not look into the issues independently but were carried away by the findings rendered in the Settlement proceedings.

29. In particular, Mr.Om Prakash drew my attention to the judgment of the first appellate court holding that the judgment in CMA No.79 of 1977 and the Inam Fair Register had not been filed and particularly, the finding in paragraph 18 of the judgment that the plaintiffs had not let in any satisfactory evidence to prove that the temple had only *melwaram* right and the occupancy rights vested with the plaintiffs and their predecessors-in-title before the appointed date. He pleaded that these findings of the lower appellate court are erroneous. He urged that the Inam Fair Register and the judgment in CMA No.79 of 1977 are available with the plaintiffs presently and that, this court must receive the same by exercising its powers under Order XLI Rule 27 of the Code of Civil Procedure and render complete justice between the parties.

30. Rejecting these arguments, Mr.N.R.R.Arun Natarajan pleaded that, the findings of the Settlement Tahsildar that the temple is entitled only to *melwaram* right, had been set aside by the learned Inam Tribunal in CMA No.79 of 1977 and hence, this plea cannot be gone into by this court all over again. He drew my attention to

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Paragraph Nos.9 and 10 of the order of remand by the Supreme Court (extracted supra) to urge that the question of reconsideration of the issues settled by the Inam Abolition Tribunal cannot be gone into in this appeal at all. He stated that no explanation had been given by the plaintiffs for non-production of the judgment, of which the decree alone had been exhibited under Ex.A16, or for not producing the Inam Fair Register. He stoutly objected to this court invoking Order XLI Rule 27 of the Code, as no liberty to file additional documents had been granted by the Supreme Court at the time of remand and neither had the plaintiffs filed an application before this Court to receive the same under Order XLI Rule 27.

31. Mr.N.R.R.Arun Natarajan pleaded that an oral plea, at the time of final disposal, should not be entertained. He called upon this court to presume that the temple has both warams, since CMA No.79 of 1977 stood allowed in favour of the temple.

32. Insofar as the question of law on adverse possession is concerned, Mr.N.R.R.Arun Natarajan pointed out that no limitation can run against the temple, post the enactment of the Tamil Nadu Hindu Religion and Charitable Endowments Act. Moreover, no plea of adverse possession had been raised anywhere in the plaint. He credited this plea to the genius of Mr.Om Prakash's arguments but

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urged that the said plea has no factual or legal basis. Finally, he urged that, since the plaint conceded that assessment was paid to the temple till 1958, the plaintiffs have not established the plea of adverse possession to the property.

33. I have carefully considered the submissions of both sides. I have gone through the records.

34. Though seven questions of law have been proposed by Mr.Om Prakash, I should point out questions of law Nos.1, 3 and 7 speak about the jurisdiction of the civil court to entertain a suit for declaration of title, post conclusion of the proceedings under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act. I should point out that these are not questions of law which arise for consideration in this appeal. This is because, though the trial court had framed an issue whether the suit was maintainable, it had not gone into this issue. It dismissed the suit on several grounds, including that a notice under Section 80 of the Code of Civil Procedure had not been issued. On the issue of jurisdiction of Civil Court, the lower appellate court agreed with the appellants. I have already pointed out that the lower appellate court had set aside the finding of the trial court on Section 80 of the Code. It had further held, following the judgment of this Court in ***Jumma Mosque, Salavakkam v.***

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Sulaiman Sheriff & another, 1977 TLNJ 151, that the civil court has jurisdiction to decide the question of title, as well as, incidentally go into questions relating to the character of land.

35. The learned First Appellate Judge had concluded in paragraph No.14 of the judgment that the civil court is competent to decide the question of title. When this finding has been rendered in favour of the plaintiffs, I am of the view that framing a question of law as to whether the civil court has the jurisdiction or not, for the purpose of an answer from this court, does not arise at all. Had the lower appellate court held that the civil court does not have jurisdiction, only then this court should frame a question of law as to whether civil courts have the jurisdiction or not.

36. Substantial questions of law, for the purpose of entertaining a second appeal, should be one which substantially affects the rights of parties before the Court. I would usefully refer to the judgment of the Supreme Court in ***Hero Vinoth (Minor) v. Seshammal, AIR 2006 SC 2234***. Dr. Justice Arijit Pasayat, speaking for himself and Mr.Justice R.V.Raveendran, laid down the tests that a court must adopt while deciding if the case involves any substantial questions of law. The summary of the same is set forth hereunder:

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(i) The issue of law must be a debatable one and not one already settled either by any specific provisions of law, or by way of a binding precedent of the same High Court or the Supreme Court.

(ii) The interpretation of evidence or documents in the suit must directly and substantially affect the rights of the parties.

(iii) A substantial question of law would arise where the legal position is clear, either on account of express provisions of law or binding precedents, but the courts below have decided the matter, either ignoring or acting contrary to such legal principles.

37. The normal rule is that, a court should not interfere with the concurrent finding of facts. Yet, it is not a total bar. As to what are the exceptions have been indicated by the Supreme Court in ***Hero Vinoth***'s case. They are:

(i) the courts below should have ignored the material evidence or acted on no evidence,

(ii) the courts below had drawn wrong inferences from the proved facts by applying the law erroneously, or

(iii) the courts had wrongly cast the burden of proof.

38. In this case, the lower appellate court had agreed with the appellants that the civil court has the jurisdiction to entertain the suit for title, even after the conclusion of the proceedings under the Minor

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Inam Abolition Act. When the court has agreed with a party, the said question or issue cannot be raised as a question of law at the instance of that party. This is because, it will be merely academic. Interpreting a provision similar to Section 100 of the Code of Civil Procedure, namely under Section 125 of the Electricity Act of 2003, the Supreme Court held that a purely academic question will not fall within the meaning of substantial questions of law. (See, ***BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission in Civil Appeal No.4324 of 2015 dated 18.10.2022***).

39. I should point out here that in paragraph 10 of the order of remand dated 26.11.2025, the Supreme Court had suggested to this Court that only those substantial questions of law that arise between the parties must be entertained. As to the issue whether the civil court has the jurisdiction to entertain a suit for declaration of title after the proceedings have been concluded before the Inam Abolition Tribunal had been settled by the Full Bench of this Court in ***Srinivasan and Others v. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally, (1998) 2 MLJ 722***. I have to hold that questions of law 1, 3 & 7 do not arise for consideration in the present second appeal.

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40. Insofar as the question of law nos.2, 4, 5, and 6 are concerned, I will answer each of them separately.

Discussion on Question of law No.2

41. It is the plea of Mr.Om Prakash that on the basis of Ex.A1 to Ex.A5, this court should come to a conclusion that, as the plaintiffs and their predecessors had been in possession of the property for over 60 years, they are entitled for declaration of title. It requires this court to go into each of these documents, in order to arrive at a conclusion.

42. Ex.A1 is a usufructuary mortgage dated 07.01.1877. In the said mortgage, I will now extract the relevant portion of the recitals to point out that this plea is without any basis:

> *"... யென்னவென்றால் கோயமுத்துர் ரிஸ்தரேஷன் டிஸ்திரிகட்டு காங்கயம் டிவிஜனைச் சார்ந்த பட்டாலி கிராமத்தில் சிவன்மலை சுப்பிரமணிய சுவாமி தேவஸ்தானப்படித்தற பூமியில் இதற்கு முன் சுந்தரய்யற் குமாரன் சுப்பய்யன் அனுபவித்து வந்து அவனால் எயங்கள் தகப்பனார் செங்காளியப்ப கவுண்டர்க்கு கிறயத்துக்கு வாங்கி அனுபவித்து வந்து இப்போது நாங்கள் அனுபவித்து வருகிற காலைக்கு செக்குபந்தி"*

43. Ex.A2 is the certified copy of the sale deed executed by Perichi Gounder and others in favour of Kumarasamy Gounder. This sale deed was executed on 15.12.1883.

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"கோயமுத்துர் டிஸ்ரிக்ட் காங்கயம் சப்டி ரிஜிஸ்ட்திரேசன்கட்டு தாராபுரம் தாலுகா காங்கயம் டிவிசனைச் சேர்ந்த சிவன்மலை கிராமத்தில் சிவன்மலை சுப்பிரமணிய சுவாமி தேவஸ்தானபடித்தறம் இதற்கு முன் எங்கள் தகப்பன் அனுபவித்துவந்து இப்போது நாங்கள் அனுபவித்து வருகிற பீ லெட்டா 37 நெம்பர் பட்டா தாக்கல் 855 நெம்பரில் தாச்சான்காட பைக்கி ஏக்கர் 12.44 ... 12.7.6 இந்த தீர்வையுள்ள பூமியில் எங்கள் பங்காச்சாரம் பாதி பூமியை நாளது தேதியில் ரூ.200க்கி சுத்தக்கிறயம் தீர்த்து கொடுத்து விட்ட படியினாலே மூபலகு ரூபாய் இருநூறும் நாங்கள் பெத்திக் கொண்டதற்கு விபரம்."

44. Ex.A3 is the certified copy of the sale deed executed by Sengaliappa Gounder in favour of Kumarasamy Gounder. This sale deed was executed on 14.12.1896. The relevant portion is extracted hereunder:

"நீங்களே புத்திர பௌத்திர பாரம்பரியமாய் ஆண்டு அனுபவித்துக் கொள்ள வேண்டிய தென்றும் இன்றிலிருக்கும் பட்டயத்தை சிவன்மலை சுப்பிரமணிய சுவாமி தேவஸ்தான தர்மகர்த்தாவிடத்தில் ராசிநாமா குடுத்து உங்கள் பெயருக்கு பட்டயம் செய்து கொள்ள வேண்டியது."

45. Ex.A4 is the certified copy of the sale deed executed by Chidambara Iyer and others in favour of Subramania Iyer. This sale deed was executed on 23.10.1895. The relevant portion is extracted hereunder:

"... சிவன்மலைக் கிராமத்தல் சிவமலை சுப்பிரமண்ணிய ஸ்வாமி படித்தரம் இனாம் எங்களில் சிதம்பர அய்யர் வகையராப் பேரில் 34 நெம்பரில் பட்டயமாய் நாங்கள்

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அனுபவித்து வருகிற பூமிகளின் இனாம் சர்வை 855 நெ பீ லெட்டர் தோட்டம்கிணத்து வெள்ளியங்காடு ...''

46. Ex.A5 is the certified copy of the sale deed executed by Chidambara Iyer in favour of Subbaraya Iyer. This sale deed was executed on 17.10.1889. The relevant portion is extracted hereunder:

> *''... இப்போது நீர்அனுபவித்து வருகிற சிவமலை சுப்பிறமணிய சுவாமி படித்தரம் 4 நெம்பரில் பட்டயம் தாக்கல் சர்வை 929 நம்பர் மார்க்கண்டுண்டு ஏக்கர் 4.0 க்கு தர 4.0. ''*

47. All these documents refer to Sivanmalai Koil Paditharam. *Paditharam*, also spelt as *Padithara*, which refers to a daily allowance or a scale of expenditure allocated for a temple's routine maintenance and rituals. It covers the expenses for daily rituals such as *Nitya Neivedya Deepaaradhana* i.e., the offerings and lightings of the temple.

48. The scope and content of the term "*Paditharam*" has been gone into in detail in ***Sree Veerabhadraswamivari Temple, Nangagadda by its Trustee v. Penumudi Venkateswarlu and Others, 1965 SCC Online AP 240***. A reading of this judgment makes it clear that *Paditharam* means an allowance for an expenditure that has been incurred. This allowance is intended to be an important expenditure incurred for the daily rituals of the temple.

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49. The aforesaid decision of the Andhra Pradesh High Court is a precedent for the proposition that *Paditharam* is not a *melwaram* or a personal profit of the servants of the temple. It represents the actual expenses incurred by the temple.

50. Another judgment that this Court will refer to is ***K.Lakshmi Venkatrama Rao v. Commissioner, HR & CE, Madras, 1971 SCC Online Mad 185.*** Though the judgment is on whether the temple, which was the subject matter of appeal, is a public or private institution, it would throw some light to this case. The court relied upon the term "*Paditharam*", in order to determine its public character. The court found that the temple in that case, had been receiving regular *Paditharam* by way of money and emoluments like rice, oil from the Rajah of Sivaganga, who undertook to create endowments in various temples, for pointing out the public character of the temple rather than it being held as private. This shows that *Paditharam* is not paid to private individuals but is paid to the temple for its daily expenses.

51. Having paid *paditharam* or daily expenses to the temple from and out of the income from the lands, it is not open to the plaintiffs to plead that the property was held by them in their individual

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capacities. The plaintiffs and their predecessors-in-title, as is clear from Ex.A1 to Ex.A5, have conceded that not only *Paditharam* was being paid to the temple but also that the purchasers had to approach the manager of the temple in order to secure patta. Such a course would not have been necessary had they been private and individual holdings. Hence, Ex.A1 to Ex.A5, instead of assisting the case of the plaintiffs, goes against them, as the documents clearly evidence the recognition of the title of the property to the temple and that any person enjoying under the said documents was liable to pay *Paditharam* to the temple. Had the plaintiffs filed the original of the Inam Fair Register, it would have been clear as to what was the purpose of the grant. Even without that document, a reading of the plaint itself shows that the plaintiffs have conceded that the suit property is dedicated to Sri Subramaniasamy Temple and the grant so made was confirmed even during the British period. Paragraph 3 of the plaint is extracted for the said purpose:-

> *"3. The lands mentioned in the schedule situates in Sivanmalai Village at present Kangayam Taluk. The grant was to support the pagoda of Sri.Subramaniasamy at Sivanmalai and the grant was permanently confirmed in T.D.NO.2573 so long as the Pagoda was well kept-up."*

It is not in dispute the Pagoda is still in existence and managed by the Hindu Religious and Charitable Endowments Department,

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Government of Tamil Nadu. Hence, this question of law is answered against the appellants.

Discussion on Question of Law No.4

52. It is the plea of Mr.Om Prakash that the collection of *Paditharam* by the temple does not vest the title of the property in favour of the temple and thereby, does not deprive the plaintiffs of their right of title and possession to the property.

53. It is the duty of the plaintiffs to prove pre-existing title or a better title than the defendant in a suit for declaration of title or permanent injunction. In ***Srinivasan***'s case cited above, the Full Bench had laid down that the decisions of the authorities under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act of 1963 are binding only for the specific purpose of the Act, namely, for granting of patta under the said legislation.

54. Insofar as the relief of declaration of title is concerned, the provision with which this court has to deal with is Section 34 of the Specific Relief Act and the established principles that deal with burden of proof. Under Section 34 of the Specific Relief Act, it is the duty of the plaintiff(s) to demonstrate before the court that they have a specific right to the property on the date of filing of the suit. The

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plaintiffs must show that they have clear and lawful chain of ownership over the property. The standard of proof that the court applies in civil cases is preponderance of probabilities. If the evidence let in by the plaintiffs shows that they have a better title than the defendant, then the plaintiffs are entitled to succeed. The court is concerned with the quality of evidence rather than the quantity. It is also settled that the plaintiff should succeed on the strength of his or her evidence and cannot rely upon the weakness or lacuna in the case of the defendant. (See, ***Union of India and Others v. Vasavi Co-operative Housing Society Ltd. and Others, (2014) 2 SCC 269***).

55. The temple has not filed a detailed written statement. The manner in which the suit had been conducted on behalf of the Temple Idol, which is treated as minor in law, leaves much to be desired. In fact, the learned Trial Judge has expressed his anguish that the learned counsel appearing for the temple did not give much of assistance to the court to enter upon judgment. Yet the courts below, applying the right test that the plaintiffs have not proved better title than the temple, had concluded that the plaintiffs are not entitled to succeed.

56. I have already pointed out from the plaint and documents filed by the plaintiffs that they have conceded that the grant had been

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made in favour of the temple and the grant had been confirmed by the British Government during the Inam proceedings as early as 1860s. The documents also point out that the plaintiffs and their predecessors-in-title, who have been in possession of the suit property, had accepted that their continued occupation of the property was based on the payment of *Paditharam* and that purchasers would have to approach the temple in order to obtain a patta to continue their possession.

57. If the plaintiffs' predecessors had independent rights over the suit property, the question of approaching the temple to obtain the patta to continue in possession would not arise. This shows that the plaintiffs' possession of the property was not independent but pursuant to the recognition of the pre-existing title of the temple. As there are no documents which point out to the pre-existing rights of the predecessors of the plaintiffs, when placed in juxtaposition to the admission in paragraph 3 of the plaint, I am not in a position to conclude that the plaintiffs have shown their entitlement to the suit property as required under Section 34 of the Specific Relief Act. Hence, this substantial question of law is answered against the appellants.

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Discussion on Question of Law No.5

58. It is the plea of Mr.Om Prakash that as the temple had stopped collecting *Paditharam* from the appellants and their predecessors in interest, the plaintiffs are entitled for declaration of title by adverse possession.

59. At the outset, I should point out that this is a suit for declaration of title based on a pleading that the plaintiffs have title and possession to the property on the basis of several documents that were presented by them. It is to be noted that the plea of title by adverse possession has been raised for the first time in this second appeal. Such a plea cannot be entertained by this court at this stage and that too, after the same has been restored onto the file of this court by the Supreme Court. During remand, no liberty had been secured by the appellants from the Supreme Court to raise such a plea.

60. Even otherwise, to succeed on the plea of adverse possession, the Supreme Court in ***Ravinder Kaur Grewal and others v. Manjit Kaur and others, (2019) 8 SCC 729*** held that the plaintiffs must prove three classic legal requirements that is, '*nec vi, nec clam, nec precario* – without force, without secrecy and without permission'. The plaintiffs and their predecessors should have

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demonstrated before the trial court that they have intended to occupy the property as owners, denying the rights of the temple.

61. In the earlier portion of the judgment, I have pointed out that under Ex.A1 to Ex.A5, such an assertion was absent. At all points of time, the predecessors of the plaintiffs had conceded to the title of the temple. There is no plea in the plaint claiming adverse possession. When there is no plea, there is no question of evidence. Keeping this apart, no evidence had been placed before the courts below in order to show that the possession of the plaintiffs had been open and notorious to the aforesaid effect.

62. All the documents filed by the plaintiffs indicate the payment of *Paditharam*. When a person has been paying *Paditharam* – the routine expenses of the temple, it cannot be held that there is a clear and unequivocal evidence let in by the plaintiffs in order to show the *animus possidendi* of holding the property adverse to the temple.

63. As rightly contended by Mr.Arun Natarajan, by virtue of Section 109 of the Tamil Nadu Hindu Religious Charitable and Endowments Act, Limitation Act stands excluded for recovery of immovable property belonging to any religious institution. This section

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effectively renders the plea of adverse possession as one raised only for the purpose of its rejection.

64. I should also point out that, as held by the Supreme Court in ***Karnataka Board of Wakf v. Government of India and Others, (2004) 10 SCC 779***, a person claiming adverse possession must specify exactly from when he or she took possession and the nature of such possession. Having failed to raise and prove the claim of title by adverse possession, this question is answered against the appellants.

Discussion on Question of Law No.6

65. On this question of law, Mr.Om Prakash urged that the courts below did not consider that the nature of grant in favour of defendant temple is not consisting of both the warams (*melwaram* and *kudiwaram*) and hence, it ought not to have been concluded as against the plaintiffs.

66. Mr.N.R.R.Arun Natarajan states that this court cannot go into the said issue, since the Supreme Court, while remanding the matter had specifically pointed out that the High Court, while dealing with STA No.10 of 1984, had granted a liberty to the plaintiffs to seek appropriate relief *de hors* the orders passed by the High Court, while granting patta in favour of the temple.

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67. The plaintiffs in paragraph 6 of the plaint had specifically pleaded that the defendant temple is possessed only of *melwaram* rights and that *kudiwaram* rights continue to vest only with the predecessors of the plaintiffs. It is here that I have to consider Section 44 of the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963. For ready reference, the said provision is extracted hereunder:

> *"44.Presumption in the case of service inam.*
>
> *In proceedings under this Act relating to any inam granted for the benefit of any religious, educational or charitable institution or granted to any individual for rendering service to a religious, educational or charitable institution or for the purpose of rendering any other service, it shall be presumed, unless the contrary is proved, that the inam consists not merely of a grant of the melavaram in the land, but also the kudivaram therein."*

68. A reading of this provision shows that there is a presumption that in any Inam granted for the benefit of the religious institutions, the Inam granted consists of both the warams and not *melwaram* alone. The payment of *Paditharam* draws with it a presumption that the income from the properties covered under such a grant was intended to meet the actual day-to-day expenses incurred in rendering

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services to the religious institution. Section 44 directs a presumption that the inam lands granted to the religious institutions consists of both warams, unless proven otherwise. Hence, the burden of proof lies heavily upon the plaintiffs to prove that the grant given in favour of the temple was only *melwaram* and not *kudiwaram*.

69. No evidence had been let in by the plaintiffs to substantiate that the grant was only of a *melwaram*. This burden is on the plaintiffs, since Section 44 states that it "***shall*** be presumed, unless the contrary is proved". Section 4 of the Indian Evidence Act defines the phrase "shall presume". Unlike, "may" presume which gives a lot of discretion to the court, under "shall" presume, the court has to commence with an assumption that the fact had been proved but awaits any evidence from the opposite party to disprove such presumption. Applying this evidenciary rule to the facts of this case, by virtue of Section 44 extracted above, the presumption that the court commences with is that the temple was given *iruwaram* grant, but it is left open to the plaintiffs to demonstrate before the court that such a presumption cannot be drawn in the facts and circumstances of the case.

70. The plaintiffs have not produced any other documents to show that the grant was only a *melwaram* grant. It is on account of

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failure of the plaintiffs to produce the original of the judgment in CMA.No.79 of 1977 on the file of the Minor Inam Abolition Tribunal at Erode that the lower appellate court concluded that the plaintiffs had withheld a vital document, which would have thrown much light on the nature of grant, as well as, the basis on which patta had been granted under the Inam Abolition Act. It is only after being satisfied with the fact that the temple is entitled to patta, the appeal filed by the temple had been allowed in CMA.No.79 of 1977. Unfortunately, the said document had not been produced before the courts below or before this Court, by way of an application under Order XLI Rule 27 of the Code.

71. Mere pleading that the grant is only of *melwaram* grant does not displace the presumption that the court has to draw under Section 44 of the Minor Inam Abolition Act. Even keeping Section 44 aside, as the plaintiffs had asserted that the grant was only a *melwaram*, the burden lies on them to prove the same. Sadly, the plaintiffs did not let in any evidence for this court to conclude that the presumption of *iruwaram* stood rebutted.

72. Pleading is not a substitute for evidence. A plaint merely identifies the issues and is to be treated as a notice to the defendant of the case that he or she has to meet. Unless and until oral and

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documentary evidences are produced before the court to substantiate the assertion, the assertions made in the plaint remain unproved and unsubstantiated. An assertion in the pleading, unsupported by documentary evidence, renders the pleading valueless. Hence, this court is of the view that the plaintiffs have failed to rebut the statutory presumption which is in favour of the temple, namely of the *iruwaram* grant, when the grant has been given for the payment of *Paditharam* and the grant, as admitted in paragraph 3 of the plaint, stood confirmed during Inam enfranchisement proceedings.

73. The judgment was reserved in this Second Appeal on 06.02.2026. Thereafter, on 12.02.2026, Mr.Om Prakash circulated a typed set of papers containing the following judgments:

(i) ***Murugesam Pillai v. Manickavasaka Desika Gnana Sambandha Pandara Sannadhi and Ors., 1917 SCC Online PC 1***;

(ii) ***Gopal Krishnaji Ketkar v. Mohamed Haji Latif and Others, 1968 SCC Online SC 63***;

(iii) ***State of Tamil Nadu v. Ramalinga Samigal Madam, (1985) 4 SCC 10***;

(iv) ***TK Ramanujam Kavirayar v. Sri La Sri Sivaprakasa Pandara Sannadhi Avargal, 1984 SCC Online Mad 201;***

(v) ***Srinivasan and Others v. Sri Madhyarjuneswaraswami Devasthanam, (1998) 1 CTC 630***;

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(vi) ***Bawa Magniram Sitaram v. Kasturbhai Manibhai and Another, 1921 SCC Online PC 95***; and

(vii) ***Mahammad Mazaffar Al Musavi v. Jabeda Khatun, 1930 SCC Online PC 2***.

74. I will now turn to the authorities cited by Mr.Om Prakash.

75. Mr.Om Prakash relies upon the judgments cited (i) and (ii) for the proposition that the temple ought to have produced the Inam Fair Register and the detailed judgment in CMA.No.79 of 1977 and the courts below ought to have held against the defendant for non-production of the said documents.

76. The position of law has been settled for a century and more. In India, the parties who are before the court are duty bound to produce all the relevant records and evidences in their possession which can throw light on the controversy, even if the burden of proof does not lie on them. This proposition that had been laid down by Lord Shaw of Dunfermline in ***Murugesam Pillai***'s case and by Justice V.Ramaswami in ***Gopal Krishnaji Ketkar***'s case. I am not in a position to understand as to how these two judgments can be of assistance to Mr.Om Prakash's clients.

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77. Let us now analyse each of the judgments in order to appreciate the circumstances under which the observations have been made.

78. ***Murugesam Pillai***'s case arose from a suit for recovery of money advanced under a mortgage and in case of default thereof, for the sale of the hypothecated properties forming a part of Dharmapuram Adhinam. It was presented before the Subordinate Judge at Mayavaram. The defendants pleaded that the loan covering the mortgaged properties was not granted in respect of any necessity of the mutt itself and hence, the suit was invalid. It was on record that the Mutt had been embroiled in several litigations between 1875 and 1879 and consequently, had incurred very heavy expenses. Subsequent to this period, further litigation had taken place, due to which the Mutt had incurred expenses to the tune of Rs.80,000/-. It was during that period, the then head of the Mutt, one Manickavasaka Desika Gnana Sambandha Pandara Sannadhi had executed promissory notes and documents for garnering funds towards the expenses of the Mutt. His successors, Sivagnana Pandara Sannadhi and Manickavasaka Pandara Sannadhi - II recognised these deeds and made payments towards the same. The recognition of the pre-existing loans incurred by the Mutt was in execution of the mortgage deed for a sum of Rs.20,000/- in the year 1897.

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79. As the plaintiff had not received the amounts due under the mortgage, he sued for recovery of the same. As pointed out earlier, in order to defeat the claim of the plaintiff, the defendants took a plea that the loans were not necessary for the expenses of the Mutt and since it was not for the legal necessity, the mutt cannot be mulcted with this liability.

80. The learned Subordinate Judge at Mayavaram decreed the suit as prayed for. Aggrieved by the same, an appeal was preferred before this court. This court reversed the decree and dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal before the Privy Council.

81. The Board pointed out that it is the habit of the heads of religious institutions to maintain books of accounts and the entries made therein are done so with much elaboration. It pointed out that the Mutt had not produced this evidence before the court, by relying upon the doctrine of onus of proof. The Privy Council rejected this practice by holding that the ledgers and day books were in possession of the defendants, and they had been kept away from the court. The Privy Council pointed out that it is the duty of the parties to produce

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evidence in their possession before the Court, irrespective of the burden of proof.

82. In a suit for recovery of money against religious institutions, it is the duty of the plaintiff to prove that the debt had been incurred for legal necessity. The documents, which would have indicated the lack of legal necessity or otherwise, were available with the defendant. The defendant, for reasons best known, had not produced the same before the court under the guise of burden of proof lying on the plaintiff. It was in that light, the Privy Council criticized the defendants for relying upon the principle of burden of proof and not producing the original records available in its possession before the court.

83. It is not in dispute in this case that CMA.No.79 of 1977 was a litigation inter se the plaintiffs and the defendant. The judgment of the court could have been produced by the plaintiffs as well as the defendant. It is not a document that was exclusively within the possession of the defendant alone, as in the case of accounts books and ledgers in ***Murugesam Pillai***'s case. Hence, this authority cannot be cited as a precedent for the proposition urged by Mr.Om Prakash.

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84. The case in ***Gopal Krishnaji Ketkar*** arose on account of the dispute with respect to a property in which the Peer Haji Malang Dargah near Kalyan in Mumbai was situated. Mr.Ketkar claimed that the property was his personal property and did not belong to the public trust. He had filed an application before the Deputy Charity Commissioner, Greater Bombay Region, invoking Bombay Public Trust Act for registration of Peer Haji Malang Dargah, without prejudice to his claim that the Dargah is not a public trust to which the Act is not applicable.

85. The Deputy Charity Commissioner passed an order declaring the Dargah as the Public Trust and registered it as such. He left it open to the parties to move to the jurisdictional court for framing a scheme and appointment of trustees. Mr.Ketkar preferred an appeal against the order to the Charity Commissioner, Bombay. The appeal was dismissed. Thereafter, Mr.Ketkar presented a petition before the District Court to set aside the orders.

86. Mr.Ketkar contended that the property situated in S.No.134 was not the property of the trust and that, he was a hereditary trustee. This application was opposed by the respondents. The learned District Judge held that the Dargah was a public trust but he left open the issues whether Survey plot No.134 belonged to the Dargah or not

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and whether Mr.Ketkar was a trustee or only a de-facto manager of the Dargah to be decided separately.

87. Aggrieved by this order, the Charity Commissioner preferred an appeal to the Bombay High Court. The High Court confirmed the finding of the learned District Judge regarding the nature of trust as a public trust and insofar as the issues left open by the learned District Judge, it disagreed with him and remanded the matter to the learned District Judge for a decision on these two issues.

88. On remand, the learned District Judge agreed with Mr.Ketkar and held the property in S.No.134 was not a property of the Dargah and that, Ketkar was the hereditary trustee of the trust.

89. Yet again, the parties approached the Bombay High Court. On this occasion, the High Court held that Mr.Ketkar was the hereditary trustee, but disagreed with the learned District Judge that the property in S.No.134 belonged to Mr.Ketkar. The High Court concluded that S.No.134 belonged to the Dargah. Against this judgment, Mr.Ketkar approached the Supreme Court.

90. The issue presented before the Supreme Court revolved around the title to S.No.134 as to whether it belonged to Mr.Ketkar or

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to the Dargah. After an analysis of the evidence, the Supreme Court found that Mr.Ketkar had the records of the Dargah's income and that accounts were kept separately but he had not produced his personal accounts or the Dargah accounts before the court. The court concluded that, even if the burden of proof did not lie on the party, the court may draw adverse inference, if a litigant withholds important documents in his possession, which can throw light on the facts at issue. Having reached this conclusion, the Supreme Court approved the view taken by Lord Shaw in ***Murugesam Pillai***'s case. This judgment too, is the law for the proposition that if a party is in possession of the documents, he cannot rely upon the concept of burden of proof and keep the documents away from the court.

91. I have already pointed out that the judgment in CMA.No.79 of 1977 was not exclusively within the domain of the defendant, but was the result of the dispute which had arisen inter se the parties in this case. In fact, it was the plaintiffs who were aggrieved by the order of the Inam Abolition Tribunal and had preferred an appeal to this court in STA.No.10, 23, and 50 of 1954. Unless and until the copy of the order of the Inam Abolition Tribunal had been presented before this Court, the STAs would have not even been numbered. Instead of blaming the defendant for not producing the documents, the plaintiffs could have produced the same and convinced the court that the grant

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was only of *melwaram* and not *kudiwaram* and thus, could have succeeded in the suit. Opportunity was available to produce the document before the first appellate court or at least before this court. Even then, the plaintiffs did not do so. Hence, relying upon these judgments to plead that the defendant ought to have produced the documents does not improve the case of the plaintiffs.

92. As already pointed out, the judgment in CMA.No.79 of 1977 (Ex.A16) was available with the plaintiffs and is not one exclusively within the possession and control of the defendant alone. An appeal to an abstract principle of law which does not apply to the facts of the case, does not assist the plaintiffs.

93. Turning to the next three judgments namely,

(iii) ***State of Tamil Nadu v. Ramalinga Samigal Madam, (1985) 4 SCC 10***;

(iv) ***T.K.Ramanujam Kavirayar v. Sri La Sri Sivaprakasa Pandara Sannadhi Avargal, 1984 SCC Online Mad 201***; and

(v) ***Srinivasan and Others v. Sri Madhyarjuneswaraswami Devasthanam, (1998) 1 CTC 630***;

They have been cited for the proposition that civil courts have the jurisdiction to declare title to a property, notwithstanding the patta

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granted under the Inam Abolition proceedings. In other words, grant of patta does not oust the jurisdiction of the civil court to declare title.

94. I have already concluded that this issue had, in fact, been found in favour of the appellants. They need not have laboured in citing these judgments for the settled proposition that the civil court has the jurisdiction to deal with the issue.

95. The next judgment relies upon is ***Bawa Magniram Sitaram v. Kasturbhai Manibhai and another, 1921 SCC Online PC 95.*** Mr.Om Prakash relies on this judgment for the proposition that after a long lapse of time, the parties to the original transaction having passed away, it becomes impossible to ascertain what were the circumstances which caused the original grant to be made. Hence, he urges that the policy that has been developed by the court that, persons in quiet possession of the property are apparently in lawful holding of an estate, should be adopted by this court.

96. The case arose due to a dispute with respect to a possession of 5 ½ acres of land near the Delhi Gate in Ahmedabad. It was the claim of the respondents that they were in possession of the property as permanent tenants. The plaintiff claimed that the possession of the defendants as tenants were from year to year and hence, determinable

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by a notice. Consequently, after the issuance of notice, he filed the suit for recovery of possession. The defendants urged that a permanent lease had been granted in 1824 in favour of their predecessors. The trial court decreed the suit. On appeal, the learned District Judge reversed the findings and held that the document issued in 1824 indicated permanent tenancy. The Second Appeal to the Bombay High Court at the instance of the plaintiff came to be dismissed, holding that no question of law arose for consideration. Aggrieved by the same, the plaintiff preferred a further appeal to the Privy Council.

97. A reading of the judgment, as reported in Indian Appeals Reports, indicates the arguments that had been set forth before the Privy Council. It was argued by the plaintiff that the true construction of the document of tenancy dated 22.02.1824 was a tenancy from year to year and not a permanent tenancy. The defendants argued that, having regard to the long interval of time which had elapsed since the grant of lease, it must be presumed that the lease was granted for legal necessity and was in the nature of a permanent one. It was in those circumstances, the Privy Council held that, when every party to the original transaction was no more, it is difficult to ascertain the circumstances under which the original grant had been made.

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98. Prior to coming to this conclusion, the Privy Council found that the rent was low but was never changed over a long period of time. Apart from that, the property had been sub-leased for a substantial period of time by the lessees and though this sub-lease would have come to the knowledge of the lessors during the relevant time, no dispute arose between the parties. The conclusion arrived at in paragraph 2 of page 59 (Indian Appeals Reports) is not a stand alone finding but one based on the factual aspect found at page 58. The Privy Council, by an analysis of the evidence, had concluded that the relationship between the original lessors and lessees was in the nature of permanent tenancy. It merely pointed out the lack of evidence, since several years have gone by.

99. The presumption of lawful origin, for a long standing unchanged alienation, cannot be pressed into service in this case. This is because as discussed earlier, Ex.A1 to Ex.A5 point out that the predecessors-in-title of the plaintiffs had conceded that they were holding the land subject to payment of *Paditharam* in favour of the defendant temple. The payment of *Paditharam* is not disputed even in the Second Appeal. This is not a case of lost grant. It is a case of title. When the plaintiffs assert a pre-existing or a better title than the defendant temple, they ought to have let in unimpeachable evidence to

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substantiate the same, rather than relying upon an inter se document which, as discussed above, concedes the title of the temple.

100. The last of the judgments referred to by Mr.Om Prakash is ***Mahammad Mazaffer Al Musavi v. Jabeda Khaton, 1930 SCC Online PC 2***. The law decided by the Privy Council in this case too, is similar to the judgment in ***Bawa Magniram Sitaram***'s case, as discussed earlier. In fact, the Privy Council followed the said verdict. The plaintiff, who was the hereditary Muthavalli of a waqf, claimed that the defendants were in possession of the property of the waqf and that he was entitled to recover the property from them. The defendants pleaded that they were in possession of the property under an ancient *istimrari* tenure, which was perpetual, permanent and uninterrupted and hence, they were entitled to continue to be in possession of the property without any disturbance independently.

101. The Trial Court invoked the presumption available under the Islamic law that the alienation of the property by the Muthavalli, without the leave of *Kazi*, is invalid. Consequently, it decreed the suit. On appeal to the Calcutta High Court, Justice Greaves, speaking for himself and Mr.Justice Mukerji, held that as the lease had remained unchanged, at least from 1843 till the presentation of the suit sometime in 1920s, and the rents having remained unchanged, the

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presumption is that the grant was lawful in its origin. This view was confirmed by the Board, following the judgment in ***Bawa Magniram Sitaram***'s case. The Privy Council held that, as a long time had lapsed from the date of the original *Istamrari* grant till the suit was presented, a presumption must be raised that the grant given in their favour was lawful and that there cannot be a presumption of absence of approval by the *Kazi*. I am not in a position to apply the said judgment to the facts of this case, as no antecedent document has been produced by the plaintiffs to show that they have a better title than the defendant.

102. The conclusions I arrive at are:

(i) The plaintiffs have not let in any evidence to show that there was a *kudiwaram* grant in their favour.

(ii) The burden lies on them to prove that the grant in favour of the temple was not an *iruwaram* grant but only a *melwaram* grant.

(iii) The Inam Fair Register, which would have thrown much light on the issues, had not been produced before the court. This is because, the courts have consistently held that the Inam Fair Registers are of much evidentiary value, since they are not mere administrative notes, but official declarations made after thorough enquiry, bordering on quasi judicial nature.

(iv) The plaintiffs, though in paragraph 3 of the plaint, have shown that the grant was a permanent one as long as the pagoda

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(temple) exists, they have not let in any evidence to show that the grant was only for *melwaram*.

(v) No contrary records were produced before the court for me to presume that the possession of the plaintiffs to the property was under a better title than the temple and consequently, entitled to be recognised as a sufficient proof of title to decree the suit.

(vi) As adverse possession had neither been raised nor proved, the plaintiffs are not entitled for a declaration that they have crystallised their right to the property by prescription.

103. In the light of the above discussions, I am not in a position to disturb the concurrent findings of the courts below. The plaintiffs have failed to prove their title to the satisfaction of the courts below. The courts below have applied the correct position of law to the facts placed before them. I concur with the views taken by them. Consequently, the second appeal stands dismissed. Costs throughout.

22-06-2026

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The District Judge, Periyar District, Erode

2.The Subordinate Judge, Dharapuram.

3.The Section Officer, VR Section,
Madras High Court

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V.LAKSHMINARAYANAN, J.

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