

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.1137 of 2014

V.K.Usha @ Saraswathi ... Appellant/Appellant/  
Plaintiff

-vs-

Diety Shri Dhandayuthapani  
Swami Devasthanam Palani  
by Executive Officer. .... Respondent/Respondent/  
Defendant

Second Appeal filed under Section 100 of C.P.C. against the Decree and Judgment passed dated 22.08.2013 made in A.S.No.4 of 2012 on the file of the Court of the Subordinate Judge at Udumalpet confirming the Decree and Judgement passed in O.S.No.96 of 2004 dated 23.12.2011 by the District Munsif, Udumalaipet.

For Appellant : V.K.Usha  
Party in person

For Respondent : Mr.Dhalapathy Vigneshkumar  
for M/s.M.Sriram

J U D G M E N T

The appellant is the plaintiff in a suit for declaration to declare that the plaintiff and the defendants 2 to 6 are having kudivaram in existence as an immemorial grant in permanent posterity under inheritance and for recovery of possession.

2. The case of the plaintiff is as follows:-

a) The plaintiff and defendants 2 to 6 are the children of one K.K.Kulandaivel. One Chinnappa Naicker granted the suit inam lands to the fore-father of K.K.Kulandaivel, namely Kulandai Pandaram as a personal grant, and the said person enjoyed the suit properties as inam holder. The said personal grant was burdened with services to be rendered to the 1st

defendant namely Dhandayuthapani Swamy Temple, Palani. After the lifetime of the said Kulandai Pandaram, the plaintiff's grand father Ponnusamy Pandaram continued to occupy the suit lands, and he died leaving behind his only son, namely the said Kulandaivel as his legal heir.

b) When the Minor Inam Abolition and Conversion Act came to force, the father of the plaintiff approached the Assistant Settlement Tahsildar for issuance of ryotwari patta, and the same was granted to him. However, the 1st defendant preferred an appeal against the said order in CMA No.215 of 1970, and the Appellate forum confirmed the order of the Tahsildar. Further, an appeal preferred by the 1st defendant before the High Court of Madras in SA No.37 of 1973 was allowed. The petitioner's father preferred an appeal before the Supreme Court of India, which came to be dismissed.

c) The 1st defendant has not taken any steps to take possession of the suit lands. Therefore the present suit is filed for the relief as prayed for.

3. The 1st defendant contested the suit as follows:

The plaintiff and the defendants 2 to 6 have colluded and filed the suit. The suit lands were not given to the predecessor of the plaintiff and defendants 2 to 6 as personal grant. The grant was given only to the 1st defendant Diety and the defendants 2 to 6 were never in possession of the suit lands, which were leased out to third parties. The plaintiff has no right to file the suit.

4. The plaintiff marked Ex.A1 to A13 and examined herself as PW1. The defendants marked Ex.B1 to Ex.B6 and examined DW1 and DW2 as their witnesses. The Trial Court, after considering the facts and circumstances and the evidence let in by both the parties, dismissed the suit.

5. The plaintiff preferred an appeal before the lower Appellate Court. After considering the rival submission of the parties, the lower Appellate Court dismissed the appeal. Hence the present Second Appeal is filed before this Court.

6. This Court, while admitting the Second Appeal, has framed the following substantial questions of law:

"a.Whether the appellant is entitled to Kudiwaran rights in the suit property?

b.Whether the orders passed by the Hon'ble Supreme Court in C.A.970 of 1976 is conclusive?

c.Whether the jurisdiction of the Civil

Court is barred in view of the Tamil Nadu minor Inams Abolition and Conversion into Ryotwari Act?

d. When the claim of the appellant is that the suit property is an inam land, whether the defendant has got tile to the same?"

7. Heard the appellant as party-in-person and the learned counsel appearing for the 1st respondent.

8. The appellant as party in person, contended that the order passed by the Hon'ble Supreme Court on earlier round is not correct and that the inam is only service inam. Thus she contended that the 1st defendant cannot claim right over the suit properties as the exclusive one. It is further contended by her that inam register is different from temple register, and therefore both the Courts below have concurrently erred in considering all these said aspects.

9. Per contra, the learned counsel appearing for the 1st respondent contended that this is second round of litigation initiated by the plaintiff when her father himself, on earlier round in respect of the suit properties, which went up to Supreme Court, lost the battle.

10. The plaintiff claims right over the suit properties, which is measuring to an extent of 56.97 acres at Myvadi Village, Udumalpet Taluk, Coimbatore District.

11. According to the plaintiff, the suit properties originally given by Chinnappa Naicker in favour of the plaintiff's fore-father are only by way of service grant, with which the 1st defendant cannot have any exclusive claim. To file the present suit the plaintiff relied upon the Will said to have been executed by his father under Ex.A4, bequeathing these properties in her favour.

12. On careful consideration of facts and circumstances, it is seen that the present claim of the plaintiff has to be rejected at the threshold for the very simple reason that her father already lost the battle before this Court and the Apex Court by raising the very same contention and therefore the plaintiff claiming through her father, can not have any independent right to raise the very same ground once again. This Court on the earlier round held that the grant was not made to the Manager or to his predecessor as claimed by the plaintiff herein, and on the other hand it was made in favour of the Deity represented by the Manager. For proper appreciation, the findings rendered by this Court in STA No.37 of 1973 dated 11.09.1975 is extracted hereunder.

"This appeal coming on for hearing on this day, up perusing the grounds in appeal the Judgement and decree of Lower Court and the material papers in the case, and upon hearing the arguments of Mr.D.Raju, Advocate for the appellant and of Mr.T.R.Rajagopalan, Advocate for the respondents, 4 and 6 and the other respondent not appearing in person or by advocate for the Court made the following order. Support of the Pagoda of Dhandayuthapani at Palani. It accounts namely, Chita of Pasili 1233, the predecessor describe as Dhandapani in Columns 16, 17 and the then owner in the name proceedings in 1861 was described as Palani Dhandayuthapani by Manager Venkateswamy Naicker. In Column 221, the direction of the Inam Commission was that the inam must be permanently in the name of Dhandayuthapani so long as the service was well kept up. In Column 22, we find the inam was confirmed under rule 2 clause(1) tax free. It is therefore clear that this is a case of religious Devadayam inam granted to deity Dhandayuthapani at Palani and not to any other individual in any capacity whatever. It is argued before us that the patta should be granted in the name of Manager, who is said to be in possession so long as he did the service. But the grant was not to Manager or to his predecessor and this mention of the Manager in Column 16, 17 and 18 of the Inam fair extract only to show that the deity was represented by the Manager, the deity itself being the grantee. The terms of the inam extract are so clear that. It is impossible to hope the view that the grant was to anyone other than the deity. That being. So, we direct the patta to be issued in the name of Dhandayuthapani at Palani."

13. The said order was challenged before the Apex Court by the father of the plaintiff and the Apex Court has dismissed, the appeal in C.A.No.920 of 1976. There is no dispute about the said fact. When such being the categorical finding rendered by this Court, confirmed by the Apex Court, I do not think that the plaintiff is justified in making a claim over the suit properties reiterating the contentions raised by her father earlier which were rejected as stated supra. Needless to say that she cannot have better title, even if her father executed a Will in her favour in respect of the suit property. The Courts below have concurrently found against the plaintiff, based on

the facts and circumstances, and also by taking note of the order passed by this Court, confirmed by the Supreme Court of India and rejected her claim. Therefore, I find no ground to interfere with the concurrent findings of the Courts below.

14. Accordingly, the substantial questions of law raised in this appeal are answered against the plaintiff. Consequently, the Second Appeal is dismissed. No costs.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub-Judge, Udumalpet.

2. The District Munsif, Udumalpet.

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

1 cc to Mr.M.Sriram, Advocate sr. 52236

1 cc to M/s.V.K.Usha, Party in Person, sr.52030

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kra 06.10.2016

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