

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.Nos.536, 543 & 544 of 2017
and C.M.P.Nos.13048, 13266 and 13267 of 2017

Orders reserved on 25.04.2018	Orders pronounced on 28.06.2018
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S.A.No.536 of 2017

The Executive Officer,
A/m. Subramaniaswamy Thirukovil,
Sivan Malai Village,
Kangayam Taluk,
Tiruppur District. Appellant/Plaintiff

Vs.

- 1.P.Subramaniam
- 2.S.Kumar
- 3.M.Nalli Krishnan
- 4.S.Muthulakshmi
- 5.S.Ganesh Babu
- 6.S.Kannan
- 7.S.Murugesan
- 8.S.Rajendran
- 9.K.S.Arumugam
- 10.P.Subramaniam
- 11.B.Khaja Mohideen
- 12.S.Pappathi
- 13.V.Gopalakrishnan
- 14.Priya
- 15.P.Baranikumar
- 16.S.Pappathi,
- 17.D.Neeladevi
- 18.R.Padmavathi
- 19.Prasath @ T.Amirdha Sivaprasath
- 20.K.Sivabalaji
- 21.S.Gnanasekaran
- 22.S.Sivakumar
- 23.K.M.Mohammed Sait
- 24.S.Noorjahan Begam
- 25.S.Batchha B.Meerabanu
- 26.K.P.Velusamy

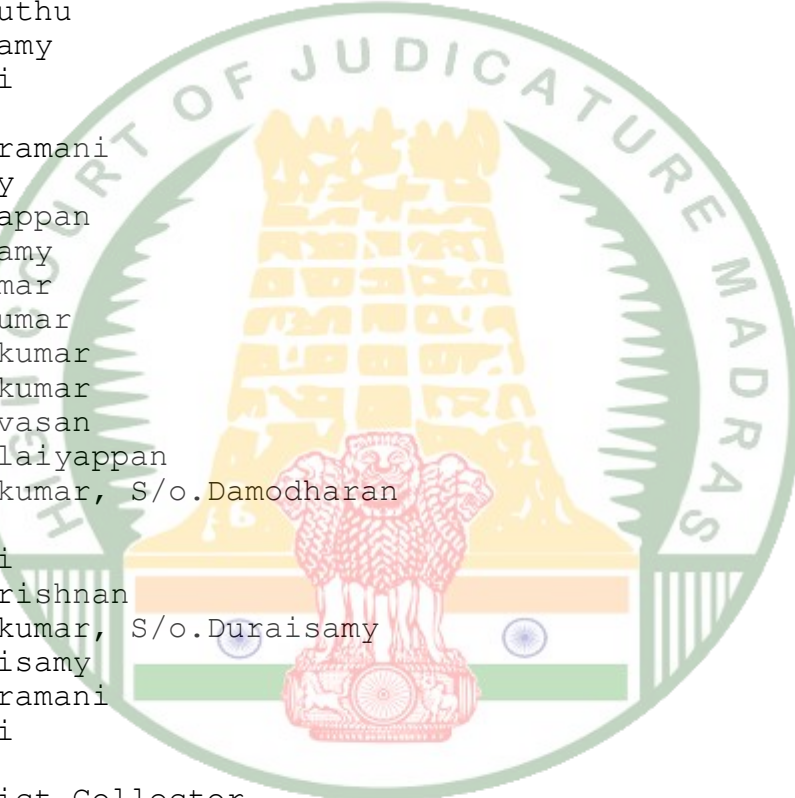
27.M.Govindaraju @ Govindaraj
28.Duraisamy Gounder
29.Shanmuga Devi
30.S.Gowri
31.V.Santhi
32.S.Sasikala
33.S.E.Sampathkumar
34.M.Gopalsamy
35.K.M.Ravi
36.P.Arumugam
37.P.Palanisamy
38.K.S.Rajendran
39.P.Thangamuthu
40.P.Mohanasamy
41.P.Sivasami
42.Manjula
43.D.Balasubramani
44.V.Velusamy
45.M.Semalaiappan
46.K.P.Velusamy
47.V.Muthukumar
48.R.Nandhakumar
49.C.Senthilkumar
50.M.Chandrakumar
51.K.S.Seenivasan
52.D.Sivanmalaiyappan
53.D.Senthilkumar, S/o.Damodharan
54.M.Karthik
55.M.Usharani
56.V.Gopalakrishnan
57.D.Senthilkumar, S/o.Duraisamy
58.M.S.Palanisamy
59.N.Balasubramani
60.Rishbadevi

61.The District Collector,
Tiruppur District, Tiruppur.

62.Tahsildar,
Kangayam Taluk,
Kangayam.

63.The Sub Registrar,
Sub Registrar's Office,
Kangayam.

64.The Revenue Inspector,
Kangayam.



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65.The Village Administrative Officer,
Sivanmalai.

... Respondents/
Defendants 1 to 23 & 26 to 65

PRAYER : Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 07.04.2017 made in A.S.No.16 of 2016 on the file of the Additional District Court No.3, Dharapuram, reversing the judgment and decree dated 10.03.2016 made in O.S.No.3 of 2010 on the file of the Sub Court, Dharapuram.

For Appellant : Mr.N.Manokaran

For R2, 3, 6, 7,9, 18 TO 22, : Mr.S.Parthasarathy,
25, 26, 29, 32, 33, 35, 36, Senior Counsel
38, 43, 46, 49, 51, 52, 56, 59 for Mr.C.Prakasam

For R61 to R65 : Ms.A.Madhumathi
Special Government Pleader (CS)

R1, 4, 5, 8, 10 to 17, 23, 24, : No Appearance
27, 28, 30, 31, 34, 37, 39 to
42, 44, 45, 47, 48, 50, 53 to
55, 57, 58, 60

The Executive Officer,
A/m. Subramaniaswamy Thirukovil,
Sivan Malai Village,
Kangayam Taluk,
Tiruppur District.

... Appellant/Plaintiff
Vs.

1.M.Nallikrishnan
2.S.Muthulakshmi
3.S.Ganesh Babu
4.S.Kannan

5.S.Murugesan
6.S.Rajendran
7.K.S.Arumugam
8.P.Subramaniam
9.B.Khaja Mohideen
10.S.Pappathi
11.V.Gopalakrishnan
12.Priya
13.P.Baranikumar
14.S.Pappathi, W/o.Marimuthu
15.D.Neeladevi

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- 16.R.Padmavathi
- 17.Prasath @ T.Amirdha Sivaprasath
- 18.K.Sivabalaji
- 19.S.Gnanasekaran
- 20.S.Sivakumar
- 21.K.M.Mohammed Sait
- 22.S.Noorjahan Begam
- 23.S.Batchha B.Meerabanu
- 24.P.Subramaniam
- 25.S.Kumar
- 26.K.P.Velusamy
- 27.M.Govindaraju @ Govindaraj
- 28.Duraisamy Gounder
- 29.Shanmuga Devi
- 30.S.Gowri
- 31.V.Santhi
- 32.S.Sasikala
- 33.S.E.Sampathkumar
- 34.M.Gopalsamy
- 35.K.M.Ravi
- 36.P.Arumugam
- 37.P.Palanisamy
- 38.K.S.Rajendran
- 39.P.Thangamuthu
- 40.P.Mohanasamy
- 41.P.Sivasami
- 42.Manjula
- 43.D.Balasubramani
- 44.V.Velusamy
- 45.M.Semalaiappan
- 46.K.P.Velusamy
- 47.V.Muthukumar
- 48.R.Nandhakumar
- 49.C.Senthilkumar
- 50.M.Chandrakumar
- 51.K.S.Seenivasan
- 52.D.Sivanmalaiyappan
- 53.D.Senthilkumar, S/o.Damodharan
- 54.M.Karthik
- 55.M.Usharani
- 56.V.Gopalakrishnan
- 57.D.Senthilkumar, S/o.Duraisamy
- 58.M.S.Palanisamy
- 59.N.Balasubramani
- 60.Rishbadevi

61.The District Collector,
Tiruppur District, Tiruppur.

62.The Tahsildar,
Kangayam Taluk,
Kangayam.

63.The Sub Registrar,
Sub Registrar's Office,
Kangayam.

64.The Revenue Inspector,
Kangayam.

65.The Village Administrative Officer,
Sivanmalai. ... Respondents/Defendants

PRAYER in S.A.No.543/2017: Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 07.04.2017 made in A.S.No.28 of 2016 on the file of the Additional District Court No.3, Dharapuram, reversing the judgment and decree dated 10.03.2016 made in O.S.No.3 of 2010 on the file of the Sub Court, Dharapuram.

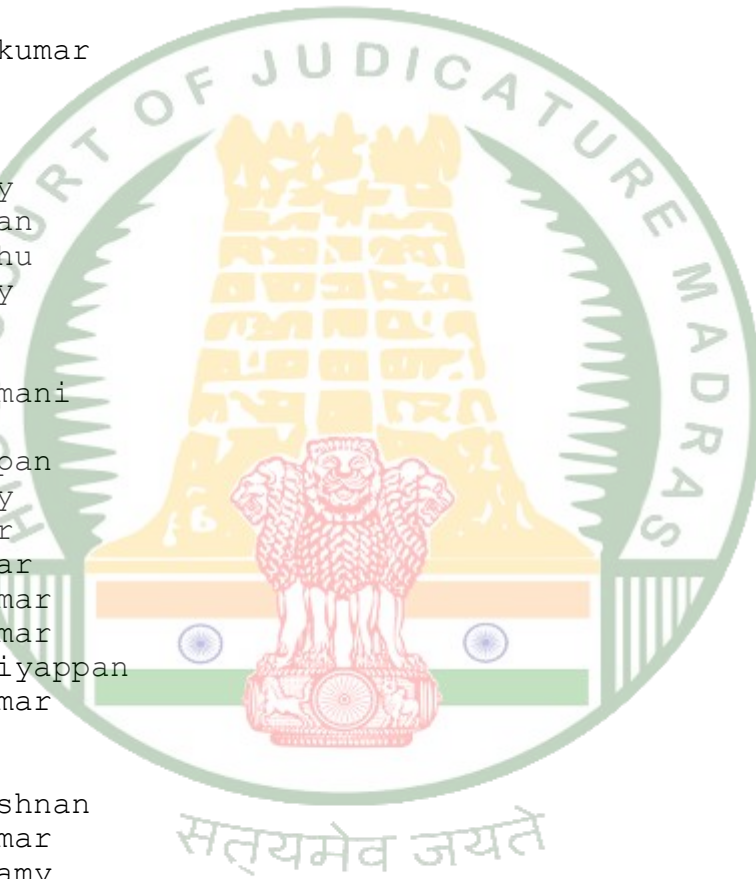
S.A.No.544 of 2017

The Executive Officer,
A/m. Subramaniaswamy Thirukovil,
Sivan Malai Village,
Kangayam Taluk,
Tiruppur District. ... Appellant/Plaintiff

Vs.

- 1.K.S.Arumugam
- 2.K.S.Seenivasan
- 3.M.Nalli Krishnan
- 4.S.Muthulakshmi
- 5.S.Ganesh Babu
- 6.S.Kannan
- 7.S.Murugesan
- 8.S.Rajendran
- 9.P.Subramaniam
- 10.B.Khaja Mohideen
- 11.S.Pappathi
- 12.V.Gopalakrishnan
- 13.Priya
- 14.P.Baranikumar
- 15.S.Pappathi, W/o. Marimuthu
- 16.D.Neeladevi
- 17.R.Padmavathi
- 18.Prasath @ T.Amirdha Sivaprasath
- 19.K.Sivabalaji
- 20.S.Gnanasekaran

- 21.S.Sivakumar
- 22.K.M.Mohammed Sait
- 23.S.Noorjahan Begam
- 24.S.Batcha B.Meerabanu
- 25.P.Subramaniam
- 26.S.Kumar
- 27.K.P.Velusamy
- 28.M.Govindaraju @ Govindaraj
- 29.Duraisamy gounder
- 30.Shanmuga Devi
- 31.S.Gowri
- 32.V.Santhi
- 33.S.Sasikala
- 34.S.E.Sampathkumar
- 35.M.Gopalsamy
- 36.K.M.Ravi
- 37.P.Arumugam
- 38.P.Palanisamy
- 39.K.S.Rajendran
- 40.P.Thangamuthu
- 41.P.Mohanasamy
- 42.P.Sivasami
- 43.Manjula
- 44.D.Balasubramani
- 45.V.Velusamy
- 46.M.Semalaiappan
- 47.K.P.Velusamy
- 48.V.Muthukumar
- 49.R.Nandhakumar
- 50.C.Senthilkumar
- 51.M.Chandrakumar
- 52.D.Sivanmalaiyappan
- 53.D.Senthilkumar
- 54.M.Karthik
- 55.M.Usharani
- 56.V.Gopalakrishnan
- 57.D.Senthilkumar
- 58.M.S.Palanisamy
- 59.N.Balasubramani
- 60.Rishbadevi
- 61.The District Collector,
Tiruppur District,
Tiruppur.
- 62.The Tahsildar,
Kangayam Taluk,
Kangayam.
- 63.The Sub Registrar,
Sub Registrar's Office,
Kangayam.



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64.The Revenue Inspector,
Kangayam.

65.The Village Administrative Officer,
Sivanmalai.

.. Respondents/Defendants
7 & 51, 1 to 6 & 8 to 50 & 52 to 65

PRAYER in S.A.No.544/2017: Second Appeal filed, under Section 100 of C.P.C against the judgment and decree dated 07.04.2017 made in Cross Appeal in A.S.No.28 of 2016 on the file of the Additional District Court No.3, Dharapuram, reversing the judgment and decree dated 10.03.2016 made in O.S.No.3 of 2010 on the file of the Sub Court, Dharapuram.

For Appellant in both SAs : Mr.N.Manokaran

For RR1,2 to 6,16 to 20, 23 to : Mr.S.Parthasarathy
26,29,32,35,36,40,43,44,49,53,5 Senior Counsel for
9,60 in SA.543/17 abd Mr.C.Prakasam

For
RR1,3,6,17,18,19,20,21,24,27,30
,33,36,37,44,50,52,53,59 in
SA.544/17

For R1 to R60 : Ms.A.Madhumathi
Special Government Pleader (CS)

R7 to 15, 21, 22, 27, 28, 30, : No Appearance
31, 33, 34, 37, 38, 39, 41, 42,
45 to 47, 50, 51, 52, 54, 55,
56 to 58 in SA.543/17

R2, 4, 5, 7, 8 to 16, 22, 23,
28, 29, 31, 32, 34, 35, 38, 39
to 43, 45 to 48, 51, 54 to 58 &
60 in SA.544/17

C O M M O N J U D G M E N T

S.A.Nos.536 and 543 of 2017 have been filed to set aside the judgment and decree dated 07.04.2017 made in A.S.Nos.16 and 28 of 2016 on the file of the Additional District Court No.3, Dharapuram, reversing the Judgment and Decree dated 10.03.2016 made in O.S.No.3 of 2010 on the file of the Sub Court, Dharapuram.

S.A.No.544 of 2017 has been filed to set aside the judgment and decree dated 07.04.2017 made in Cross Appeal in A.S.No.28 of 2016 on the file of the Additional District Court No.3,

Dharapuram, reversing the judgment and decree dated 10.03.2016 made in O.S.No.3 of 2010 on the file of the Sub Court, Dharapuram.

2.The issues and the parties involved in all the three Second Appeals are one and the same and therefore, they are disposed of by this common judgment.

3.The appellant in all the three Second Appeals is plaintiff and respondents are defendants in O.S.No.3 of 2010 on the file of the Sub Court, Dharapuram. The appellant filed the said suit for declaration that the suit properties are Devadayam-Temple service inam lands; for possession of the suit properties from respondents 1 to 61 and if the respondents 1 to 61 fail to deliver vacant possession, for mandatory injunction for delivery of vacant possession through the Court and for permanent injunction restraining the respondents 1 to 61 from creating any encumbrance and for other reliefs. The Trial Court granted relief of declaration and permanent injunction and dismissed the suit for possession. Challenging the same, the appellant filed First Appeal A.S.No.28 of 2016. In the said Appeal, the defendants 7 and 51 filed Cross Appeal in A.S.No.28 of 2016. The defendants 24 and 25 filed First Appeal A.S.No.16 of 2016 against the decree of declaration and permanent injunction. The First Appellate Court dismissed A.S.No.28 of 2016 and allowed Cross Appeal in A.S.No.28 of 2016 and A.S.No.16 of 2016. Against the said common judgment and decree dated 07.04.2017 made in A.S.Nos.16 and 28 of 2016 and the Cross Appeal in A.S.No.28 of 2016, reversing the judgment and decree dated 10.03.2016 made in O.S.No.3 of 2010 on the file of the Sub Court, Dharapuram respectively, the present three Second Appeals are filed by the plaintiff/appellant.

4.According to the appellant, the suit property was granted to the appellant in the year 1863 in T.D.2360 as Devadayam-Temple service land. The said lands will be handed over to the employees of the temple for rendering service to the temple and they can be in possession till they render service to the temple. For the suit property and another property measuring 1 Acre 10 cents, Ryotwari patta was issued to Mada Naicken by settlement Tahsildar, Gobichettipalayam, by proceedings dated 28.02.1969 bearing S.R.No.54/69/M.I.Act/Darapuram Taluk. This Ryotwari patta was granted as per abolition of Tamil Nadu Minor Inams (Abolition and conversion into Ryotwari) Act, 1963 (30 of 1963) (hereinafter called as 'Act 30 of 1963'). The said patta was granted with certain conditions. One Nachimuthu Gounder and others filed Appeal before the settlement Tahsildar, Coimbatore, claiming perpetual lease. The settlement Tahsildar, Coimbatore, by the order dated 30.06.1972, bearing S.R.No.54/68 ,/r/No.589/C2, granted Ryotwari patta for an extent of 1.10 Acres

to Nachimuthu Gounder, Thangammal, Naachammal and Samathal. The Ryotwari patta was confirmed in respect of the suit property in the name of Mada Naicken. No appeal was filed against the said order. Mada Naicken did not pay any amounts as per the above orders, but was doing service and was enjoying the suit property. After his death, his three sons were doing service to the temple and enjoying the property. After the death of Semmalai, his three sons/defendants 4 to 6 and one of the sons of Mada Naicken partitioned the property among themselves after leaving 2 Acres and 61 cents for road and each were enjoying 83 cents. Only the 6th defendant/Rajendran was doing ukkiranam service to the temple. The legal heirs of Mada Naicken, including the 6th defendant violated the conditions of service inam land and without having any right, sold the property and created encumbrance. The legal heirs of Mada Naicken and purchasers are impleaded as defendants 1 to 60. The sale deeds in respect of defendants 1 to 60 are void. The appellant is ignoring the said document, as the respondents have no right and they have not purchased the property from the true owner. As per the provisions of the Act 30 of 1963 and orders passed therein, an employee can enjoy the property only till he render service to the temple. When the employee does not render service, the land will be taken from him and it will be under the control and possession of the temple. From and out of the proceeds of the land, the salary will be paid to the employees who render service. When the appellant came to know about the execution of the sale deed, the appellant issued objection on 28.08.2008 to 64th defendant, the Sub Registrar, Kangayam. The appellant also gave a publication in the newspaper. The defendants 24 and 25 gave a reply publication. The defendants 3 to 7 filed Writ Petition Nos.22329, 22330, 22331, 22332 and 22545 of 2008 in this Court. This Court, by order dated 23.07.2009, permitted the defendants 3 to 7 to give a reply publication, if they aggrieved by the publication issued by the appellant and directed the appellant to follow the procedures as per the law to take possession from the respondents. Mada Naicken and his legal heirs violated the conditions of Ryotwari patta granted to them and they are entitled to the possession and enjoyment of the suit property only till they render service to the temple. The alienations by respondents are not binding on the appellant. With the above averments, the appellant has filed the suit for the reliefs stated above.

5.The defendants 7, 24 & 25 and 62 filed three separate written statements. The written statement filed by the 62nd defendant was adopted by the defendants 61, 64 and 65. The defendants 1, 29 to 32, 57 to 59 & defendants 2 and 3 filed a memo adopting the written statements filed by the defendants 4, 9 and 44. According to the above defendants, the suit as framed is not maintainable. The Executive Officer, in his individual

capacity has no right to file suit after abolition of inam. There is no inam survey No.708 for 7.82 Acres and new Survey No.1071 as mentioned in the plaint in the patta Nos.2696 and 2693, dated 19.05.2006, Survey Nos.1071/2A, 1071/2B, 1071/2C, 1071/2D and 1071/2E. They denied that Mada Naicken or his legal representatives failed to comply with the conditional order for issue of Ryotwari patta. On the other hand, there was an interim stay from 1972 to 1990 and after interim stay was raised, notice was issued on 14.12.1990 by the Revenue Inspector, Kangeyam, informing that stay was vacated and if they fail to pay the fair rent as per FR.25/1972, Ayan patta (mad; gl;lh) issued would be cancelled. The fair rents fixed were paid to the Government and the Government received the same. The lay out was formed and the same was approved. The defendants 24 and 25 donated the land for formation of road, playground, common well and water pipes etc. One Velusamy, who purchased plot No.10 has constructed house bearing Door No.11/678 and the property tax was assessed and he paid property tax to the Panchayat, Sivanmalai. The said Velusamy filed W.P.No.27281/2008 for a direction to the Electricity Board to give electricity connection and obtained orders. The suit is barred by limitation. It is not correct to state that the suit properties are temple service inam lands. After abolition of inam, Mada Naicken became absolute owner of the property and it is not correct to state that fair rent was not paid. The appellant has not properly valued the suit. The appellant has stated that the suit property is agricultural land, but he has not mentioned the amounts of kist payable. If it is an agricultural land, the Court has no jurisdiction to entertain the suit. The respondents have filed document to show that suit property has been converted into house site and it is not an inam or agricultural land and the value of the property is several lakhs of rupees and the Court has no pecuniary jurisdiction to entertain and decide the issue.

6.The 62nd defendant filed written statement, which was adopted by the defendants 61, 64 and 65 and denied all the averments made in the plaint. He stated that inam was abolished and Ryotwari patta was issued in the name of Mada Naicken. Now patta Nos.2693, 2694, 2695 and 2696 are issued, showing the persons in whose name Ryotwari patta is registered. The Ryotwari pattas were issued and the names of the pattadhars were mentioned and Inam Survey No.708 was converted to Ryotwari patta and registered in the names of the persons referred in the written statement filed by the 62nd defendant. Inam Survey No.708 is now Re-Survey Nos.1071/2A, 1071/2B, 1071/2C, 1071/2D1, 1071/2D2 and 1071/2E. The 62nd defendant denied that he is aware of violation of any condition by Mada Naicken or the sale deeds mentioned in the plaint. He also stated that no relief is sought against the defendants 61, 62, 64 and 65 and no cause of action

has arisen. He further stated that these defendants are not necessary parties and prayed for dismissal of the suit.

7.The defendants 4, 8 to 19, 22 to 31 and 33 to 56 remained exparte.

8.Based on the pleadings, the Trial Court framed necessary issues. Before the Trial Court, one K.Pasavarajan was examined as P.W.1 and 14 documents were marked as Exs.A1 to A14. One S.Kumar @ Magesan/25th defendant was examined as D.W.1, Velusamy was examined as D.W.2 and one K.S.Arumugam was examined as D.W.3 and marked 140 documents as Exs.B1 to B140.

9.The learned Trial Judge considering the pleadings, oral and documentary evidence and arguments of the counsel for parties, decreed the suit granting the relief of declaration and permanent injunction and dismissed the suit for possession.

10.Against the said judgment and decree dated 10.03.2016, the appellant filed First Appeal A.S.No.28 of 2016 and defendants 7 and 51 filed I.A.No.75 of 2017 under Order XLI Rule 27(1)(aa)(b) and Section 151 C.P.C and defendants 24 and 25 filed I.A.No.568 of 2017 under Order XLI Rule 27 C.P.C for filing additional documents.

11.The learned I Appellate Judge considered both I.A.Nos.75 and 568 of 2017 as well as the First Appeals A.S.Nos.16 and 28 of 2016 and Cross Appeal filed by the defendants 7 and 51 together and after considering all the materials, pleadings and judgments of Trial Court as well as the arguments of the learned counsel for the appellant and respondents, allowed both I.A.Nos.75 and 568 of 2017 and marked Additional documents as Exs.B141 to 146. The learned I Appellate Judge dismissed A.S.No.28 of 2016 filed by the appellant, allowed Cross Appeal in A.S.No.28 of 2016 and A.S.No.16 of 2016 filed by the defendants 24 & 25 and dismissed the suit in entirety.

12.Against the said common judgment and decree dated 07.04.2017 made in A.S.Nos.16 and 28 of 2016, reversing the judgment and decree dated 10.03.2016 made in O.S.No.3 of 2010, S.A.Nos.536 and 543 of 2017 have been filed by the appellant. Against the common judgment and decree dated 07.04.2017 made in Cross Appeal in A.S.No.28 of 2016, reversing the judgment and decree dated 10.03.2016 made in O.S.No.3 of 2010, S.A.No.544 of 2017 has been filed by the appellant.

13.At the time of admission, following Substantial Questions of Law were framed:

"a) Whether the suit filed by the Executive Officer is maintainable in view of the dictum laid in

2003 (1) Law Weekly 386?

b) Whether the suit is maintainable. When Section 21 of the Act provides for the appropriate procedure to be followed?

c) Whether the judgment and decree passed by the First Appellate Court is perverse and vitiated for overlooking the conditions imposed in Ex.A1 and Ex.A2 issued under Sec. 8(2)(ii) r/w. Sec. 21(3) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, by giving undue credence to the mutation entries?

d) When the service holder/watchman Mada Naicken has committed default in complying with the twin conditions imposed under Ex.A1 (28.06.1969) and Ex.A2 (30.06.1972), is it permissible in law for the First Appellate Court to accept the claim of the legal heirs who belatedly paid the rent to the revenue authorities in the years 1991 and 1994, so as to deprive the title of the temple?

e) Has not the First Appellate Court erred in upholding the claim of the appealed defendants on the basis of the mutation entries which would not confer any title on them, in the absence of any modification of the conditions imposed in the orders dated 28.08.1969 and 30.06.1972 (Ex.A1 and Ex.A2)?"

14.The learned counsel for the appellant argued on 23.04.2018 and made his submissions on merits. After he concluded his arguments, the learned Senior Counsel for the respondents contended that the two substantial questions of law have been framed with regard to maintainability of the suit and pointed out that the learned counsel for the appellant has not made any submissions with regard to the said substantial questions of law. Therefore, the learned counsel for the appellant took time for making his submission with regard to the maintainability on 25.04.2018.

15.On 25.04.2018, the learned counsel for the appellant contended as follows:

(1) The suit properties are Devadayam lands and dedicated to God. In the Inam Fair Register, it is mentioned that grant was "confirmed permanently". This means that performance of service has to be continued and service holder cannot claim title over the temple land. The word "permanent" is relevant to decide the issue in Appeals. The suit properties being Service Inam lands, the service holder has to render service to the temple to be in possession and enjoyment of the suit properties. For this proposition, he relied on the following judgments:

(i) 1993 Supp. (3) SCC 519 (Subramania Gurukkal (dead) through Muthusubramanis Gurukkal and others v. Shri

Pattesaraswami Devasthanam, Perur by its Executive Officer and others);

"32.Ex.B1 is dated July 14, 1802 which is a certified copy of the Sanad given to Perur Devasthanam. The salient features of Ex.B1 are :

(a) it indicates that the lands in Perur village form the 'manyam' of the temple from a long lime; (b) it lists out the oozhams to which the lands were assigned;

(c) it was slated that as the possession in the land was taken over by those doing service there need not be further cultivation by the sarkar kudigal;

(d) it mentions that any alienation will be illegal;

(e) it further mentions "without any defect in the service, the possession shall be made." This should obviously mean, in our opinion, so long as the service was rendered the land will continue to be in possession of those rendering service;

(f) with reference to each oozhiam the word 'isum' is mentioned which means 'permanent';

(g) should there be any alienation by the particular service holder the land was liable to be resumed.

.. ..
.. ..

42. In the light of these principles we will now examine the various entries in the Inam Fair Register. Column 8 says; "Devadayam granted for the samamdham in Paroda of Pattesaraswami at Perur and it is continued". This by itself is by no means conclusive or decisive that it was a grant to the temple or to an office attached to the temple. In Ayya Nadar v. Sri Vaidyanathaswami Koil Devasthanam (1970) 2 Mad L.J. 129 and 132, it was observed:

"In Subramania v. Kailasanatha I.L.R. 1955 Mad. 35, it has been pointed out that the word 'devadayam' is used in inam registers not only in connection with religious grants strictly so called but also where the ultimate purposes are religious. It is clear from the decision that the test to be applied in distinguishing a grant to an institution from a grant to an individual is the intention and that each case depends upon its own facts. In

Sami Ayyangar v. Venkataramana, it was held that devadayam in a grant does not necessarily import that the grant is made to the temple. It was further held that where a grant contains the clause that it is to be confirmed to party as long as he continues the performance of the service, it is a grant to the party burdened with service and not to the deity even though the word devadayam is used as the inam register disclosed that the land was continuously held at least for two generations by the family of the party. It appears from page 260 of Sundararaja lyengar's Land Tenures that the mere description of an inam as devadayam is not conclusive that the grant is in favour of a religious institution, though it is a strong proof that the institution is a public one."

46. Coming to the entries in column 10, the Inam Fair Register states 'permanent so long as it is continued'. The description in column (10) referring to the inam as permanent instead of hereditary is more consistent with the inam, being a service inam, rather than a personal grant burdened with service.

47. Therefore the word 'permanent' signifies the grant in favour of the temple."

(ii) AIR 1968 SC 1489 (T.K.Lakshmana Iyer and others v. State of Madras and others etc.)

8. The inams were originally granted to the temple for the performance of services connected therewith. The trustees of the temple appointed persons to perform those services and placed the inams in their possession to be enjoyed by them as remuneration for the services to be rendered by them. The Inam Commission confirmed the grants of the inams in favour of the hereditary office-holders then rendering the services. Where there were several holders of the office, the inams were shown to be in their enjoyment in equal shares. It is quite clear that the inams were granted to the holders of hereditary offices as remuneration for services to be rendered by them in connection with the temple.

(iii) 2003 (3) L.W 839 (DB) (Dr.Natesan (died) and others v. Pandari Narayanan (died) and others

"11. ... He was appointed by the Manager of the temple in 1863 for the performance of the services. The grant was confirmed by the office of 'Bhandari' and noted as 'Permanent' in Column 10 to Ex.B.1. If the inam were to have been made to an individual burden with service, it would have been noted as 'hereditary in Column 10. The office bearer Ponnu Pandari was appointed by the Manager of the temple. Under Section 8(2)(ii) of the Act, the institution or the person rendering the service is entitled to patta. According to the officer, the plaintiffs/claimants are the persons rendering the service and therefore, they are entitled to patta subject to the provisions of Section 21. The trial Court found that the plaintiffs are service inamdars and that D.W.1 had admitted that the suit lands are temple Maniba Service lands given for rendering the service of providing flowers and garlands to the Alagarkoil. Thus, from the document, viz. the coule deed, the findings of the Settlement Tahsildar and the evidence, it is seen that the suit lands are service inam lands. This is in contra distinction with personal inams, inams granted to persons which are hereditary and alienable. The parties have proceeded on the admitted stand that the lands are service inams and that the plaintiffs are service holders for the purpose of rendering service to the temple."

(2) Admittedly, Mada Naicken is Ukkiranam service holder. On abolition of minor inam lands as per the Act 30 of 1963, the Ryotwari patta was issued to him, giving him an option either to pay 20 times of fair rent or continue to render service. This order was passed on 28.02.1969. The fair rent fixed by the Special Tahsildar, Kangayam, by order dated 15.09.1972 (Ex.B84). As per the provisions of the Act 30 of 1963, the said Mada Naicken has to pay 20 times of fair rent within a period of six months. The said Mada Naicken did not pay 20 times of the fair rent within the time limit. As per Section 21(1), (2), (6) and (7) of the Act 30 of 1963, if fair rent is not paid, service holder has to render service and Inamdar i.e., the temple can hold the land.

(3) G.O.Ms.No.90 (Commercial Taxes & Endowments Department), dated 03.02.1987 (Ex.B141) has no application to the facts of the present case. The said G.O relates to

collection of consideration for the land value in exercise of power under Section 8(4) of the Act 30 of 1963. Further, the said G.O was issued only to get report from the Commissioner of Land Administration to find out a way to collect the consideration for the land value by exercising the power under Section 8(4) of the Act 30 of 1963. In the present case, only fair rent has to be paid by the service holder and sale consideration is not an issue.

(4) In the Act 30 of 1963, time limit for payment of the fair rent is fixed. The time limit cannot be extended by issuing G.O or Circular, because they are only subordinate legislation. In the present case, the fair rent was fixed in the year 1972 and the same was paid to the Tahsildar only during the years 1990 and 1994. As per the orders dated 28.02.1969 and 30.06.1972 (Exs.A1 and A2), the fair rent should have been paid to the appellant i.e., "Religious Institutions" and not to the "Revenue Authorities". The legal heirs of Mada Naicken had paid the amounts to the Tahsildar without knowledge and consent of the appellant. Such payment will not confer any right or title on the respondents. The conditions imposed under Exs.A1 and A2 had attained finality and the said orders were not challenged by the service inamdar, Mada Naicken or his legal heirs. In support of his contentions, the learned counsel for the appellant relied on the following judgments:

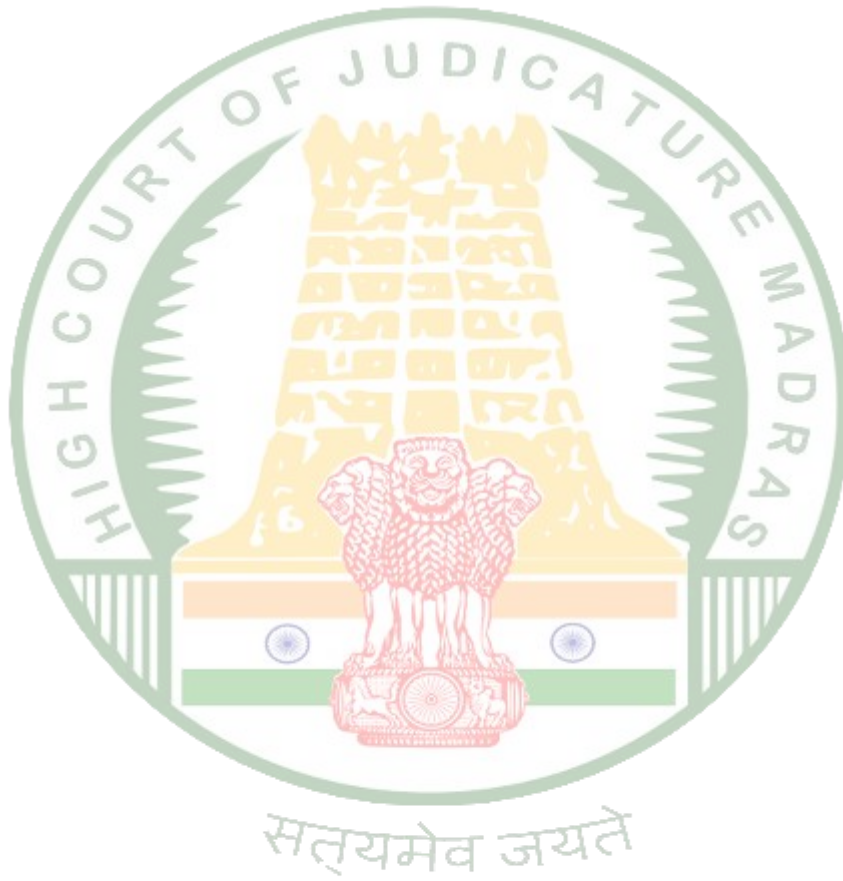
(i) 1996 (1) CTC 217 (DB) (Palaniappa Pandaram and 10 others vs. The Special Commissioner & Commissioner Land Administration & 3 others);

"4. ... If the inam is really a service inam, Patta would have been granted only in favour of the service holders subject to the condition of performance of the service. It is only in such cases, there is scope for having recourse to Section 21 and not a case like the one concerned before us. That apart, the Regular Tahsildar of the Taluk under the Revenue side has no power to deal with claims under the special enactment in question. The patta granted in favour of the temple cannot be interfered with by the Tahsildar or any of the ordinary revenue authorities exercising their powers under the Revenue Standing Orders and that the patta granted under the said Special enactment under a particular provision can, if at all, be interfered or modified only by the statutory authorities provided under the statute itself in the manner and the extent provided therein. ... "

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

"12. Now turning to the question raised in these appeals for our determination, it is true that Section 64-C of the Act gives finality to the orders passed by the Government or other authorities in respect of the matters to be determined by them under the Act and sub-section (2) thereof provides that no such orders shall be called in question in any court of law. Even so, such a provision by itself is not, having regard to the two propositions quoted above from Dhulabhai's case, decisive on the point of ouster of the Civil Court's jurisdiction and several other aspects like the scheme of the Act, adequacy and sufficiency of remedies provided by it etc., will have to be considered to ascertain the precise intendment of the Legislature. Further, having regard to the vital difference indicated above, in between the two sets of provisions dealing with grant of ryotwari pattas to landholders on the one hand and ryots on the other different considerations may arise while deciding the issue of the ouster of Civil Court's jurisdiction to adjudicate upon the true nature of character of the concerned land. Approaching the question from this angle it will be seen in the first place that Section 64-C itself in terms provides that the finality to the orders passed by the authorities in respect of the matters to be determined by them under the Act is "for the purposes of this Act" and not generally nor for any other purpose. As stated earlier the main object and purpose of the Act is to abolish all the estates of the intermediaries like Zamindars, Inamdars, Jagirdars or under-tenure holders etc. and to convert all land-holdings in such estates into ryotwari settlements which operation in revenue parlance means conversion of alienated lands into non-alienated lands, that is to say, to deprive the intermediaries of their right to collect all the revenues in respect of such lands and vesting the same back in the Government. 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.....



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13. Secondly, the principle indicated in the second proposition enunciated in Dhulabhai's case requires that the statute, when it creates a special right or liability and provides for its determination, should also lay down that all questions about the said right or liability shall be determined by the Tribunal or authority constituted by it, suggesting thereby that if there is no such provision it will be difficult to infer ouster of the Civil Court's jurisdiction to adjudicate all other questions pertaining to such right or liability. Since from the notified date all the estate vests in the Government free from encumbrances it must be held that (all the lands lying in such estate including private land of land-holder and ryoti land cultivated by a ryot would vest in the Government and the Act could be said to be creating a new right in favour of a land-holder (re: his private lands) and a ryot (re: ryoti land) by granting a ryotwari patta to them under Sections 12 to 15 and Section 11 respectively, and the Act provides for determination of such right by the Settlement Officer.....

14. Thirdly, having regard to the principle stated by the Supreme Court while enunciating the first proposition in Dhulabhai's case, it is clear that even where the statute has given finality to the orders of the special tribunal the civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of Civil Court's jurisdiction. "

(iii) 1998 1 CTC 630 (FB) (Srinivasan and others);

"14. Similarly, a meticulous analysis of the scheme underlying the provisions of the Act dealing with the nature of rights dealt with by the various authorities, the manner in which such authorities adjudicate such rights and the consequences of such adjudication, disclose that they do not mean and even intended to be a

substitute or alternate mode of resolution of the ordinary civil right of a citizen or for that matter persons asserting competing claim, in their attempt to project a claim for patta. Consequently, in our view, the ratio of the decisions of the Apex Court reported in State of Tamil Nadu v. Ramalinga Swamigal Madam, AIR 1986 SC 794, R. Manicka Naicker v. E. Elumalai Naicker, 1995 (4) SCC 156 and Sayyed Ali v. A.P. Wakf Board, Hyderabad, 1998 (2) SCC 642 and that of a Division Bench of this Court in Ramanujam Kavirayar, T.K. v. Sri-La-Sri Sivaprakasa Pandara Sannathi Avargal, 1988 (2) L.W. 513 and of a learned single Judge of this Court in Samsuddin Rowther and another v. Avvammal and 2 others, 1992 (1) L.W. 207 would squarely apply and govern the case and consequently, it has to be necessarily held that the jurisdiction of the civil Courts cannot be held to have been completely ousted or barred at any rate in respect of adjudication of claims of title and questions or issues which are not obliged or required to be adjudicated for the purposes of enforcement of these laws which has, as their objection and aim, to implement ryotwari settlement in the areas governed by them.

15. Further, the mere fact that the orders passed or decisions rendered under these Acts were given finality for the purposes of those Acts or that the issues, which they are obliged or required to be decided, when so decided are ordained to bind the parties to the proceedings or their privies and successors-in-interest applying the principles of res judicata, does not have the effect of ousting the jurisdiction of the Civil Court once and for all.....

(iv) 2017 (2) SCC 69 (Dokiseela Ramulu v. Sri Sangameswara Swamy Varu and others);

"19..... It is not necessary for us to deal in any detail, with the provisions relied upon by the learned counsel, because the precise submission advanced on behalf of respondent no.1, was examined in State of Tamil Nadu v. Ramalinga Samigal Madam, (1985) 4 SCC 10, wherein this Court held as under:

"12. Now turning to the question raised in

these appeals for our determination (it is true that Section 64-C of the Act gives finality to the orders passed by the Government or other authorities in respect of the matters to be determined by them under the Act and sub-section (2) thereof provides that no such orders shall be called in question in any Court of law. Even so, such a provision by itself is not, having regard to the two propositions quoted above from Dhulabhai's case (1968) 3 SCR 662, decisive on the point of ouster of the Civil Court's jurisdiction and several other aspects like the scheme of the Act, adequacy and sufficiency of remedies provided by it etc., will have to be considered to ascertain the precise intendment of the Legislature. Further, having regard to the vital difference indicated above, in between the two sets of provisions dealing with grant of ryotwari pattas to landholders on the one hand and ryots on the other different considerations may arise while deciding the issue of the ouster of Civil Court's jurisdiction to adjudicate upon the true nature or character of the land concerned. Approaching the question from this angle it will be seen in the first place that Section 64-C itself in terms provides that the finality to the orders passed by the authorities in respect of the matters to be determined by them under the Act is "for the purposes of this Act" and not generally nor for any other purpose. As stated earlier, the main object and purpose of the Act is to abolish all the estates of the intermediaries like Zamindars, Inamdars, Jagirdars or under-tenure holders etc. and to convert all land-holdings in such estates into ryotwari settlements which operation in revenue parlance means conversion of alienated lands into non-alienated lands, that is to say, to deprive the intermediaries of their right to collect all the revenues in respect of such lands and vesting the same back in the Government. 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. 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.

(emphasis supplied)

For reason of the above legal position declared by this Court, it is not possible to accept that the judgment and decree dated 31.10.1977, was not binding on Sri Sangameswara Swamy Varu."

(5) At the time of filing of the suit, the suit property was a vacant land. Pending suit only, the respondents who are the predecessors have put up construction. As per Exs.B77 to B79, it is clear that constructions were put up subsequent to filing of the suit. This fact was not taken into account and the learned Trial Judge erroneously dismissed the relief of possession on the ground that appellant has not mentioned superstructure existing in the suit property.

(6) The sale deeds executed by the defendants 1 to 6 in favour of the defendants 7 to 61 are collusive sale deeds brought out by playing fraud. These documents were executed only with a view to deprive the rights of the temple in respect of

the suit property. In view of collusion and fraud, these sale deeds are void ab-initio. In support of his contentions, the learned counsel for the appellant relied on the following judgment reported in 2010 (8) SCC 383 (Meghmala and others v. G.Narasimha Reddy and others);

"34. An act of fraud on Court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the Court."

(7) The suit property belongs to deity. The property of the deity must be protected and it is the duty of the Court to safeguard the interest of the deity, which is held to be minor. The provisions of the limitation Act are not applicable for the properties belonging to the deity and temple and principle of resjudicata is also not applicable to protect the properties of the temple land i.e., suit properties.

(8) The Executive Officer of the temple has power and is entitled to initiate legal proceedings on behalf of the temple. The trustees of the temple have power either to initiate legal proceedings or authorise any other person to initiate legal proceedings on their behalf. The trustees have passed the resolution authorizing Executing Officer to file a suit. But the same was not marked. The respondents ought to have taken steps under Order XVI C.P.C. to send for the documents to prove their defence. Both the Courts below have held that the suit filed by the Executive Officer is maintainable. To substantiate this contention, the learned counsel for the appellant relied on the following Division Bench judgment of this Court reported in 2011 (2) MWN (Civil) 801 (Thomas Educational & Charitable Trust, represented by its President, No.22, Marshals road, Egmore, Chennai-600 008 v. Arulmigu Ekambaranathar Thirukoil, Kancheepuram, represented by its Executive Officer, Kancheepuram, Kancheepuram District);

"8. The ejectment sought for against the Appellant was purely due to the efflux of time of the tenancy which ended on 17.11.1997. The

Execution Officer of the Respondent Temple filed the suit on behalf of the temple and the appellant/defendant has questioned the same on its maintainability that the Executive Officer was not having authority to file the suit. Per contra, it is contended by the respondent that the Executive Officer was competent to file a suit on the direction given by the Commissioner of HR & CE on the basis of an order passed on 10.7.1995. However, it has been contended by the appellant that there was no specific power given to the Executive Officer to sue against the appellant, since the alleged power was given on 10.7.1995, even prior to the completion of the lease period. When we peruse the order of the Commissioner dated 10.7.1995, we could see that the Executive Officer was given a specific direction to take appropriate action for recovery of possession of the properties including the plaint mentioned property. The further contention of the Appellant would be that the Board of Trustees have not passed any resolution prior to the filing of the suit authorising the Executive Officer to file a suit on behalf of the temple. However, the Board of Trustees themselves have chosen to pass a resolution as early as on 20.11.1998 wherein it was resolved to proceed with the cases already filed for eviction and also initiate steps to issue notice and to take further action in respect of the others. Even though an attempt is made on behalf of the learned counsel for the appellants that in the said resolution, it is not specifically indicated that the action should be initiated by filing a suit represented by the Executive Officer, the implementation of the said resolution has to be considered in the light of Rule 14 of the functioning of the Board of Trust Rules, which reads as follows:-

"14. All matters relating to the administration of the religious institution shall be decided at the meetings of the Board of Trustees. The Executive Officer or the Chairman of the Board of Trustees, as the case may be, shall carry into effect the decisions of the Board of Trustees after obtaining the orders of the competent authority on individual subjects."

The above Rule makes it clear that the

Executive Officer shall carryout the effect of the decision of the Board of Trustees after obtaining orders of the competent authority. In the present case, inasmuch as a resolution is passed by the Board of Trustees to continue with the legal proceedings initiated already as well as to initiate further action in respect of others, the said authorisation given by the Board of Trustees would ratify the action taken by the Executive Officer in filing the suit against the appellant."

AIR 1971 Madras 253 (S.N.Pachamuthu Nadar v. Tiltaiyadi pillayar temple charity and anr.

"17. There was a final argument on behalf of the appellant that the plaintiff has no authority to maintain the suit relying upon his appointment as interim trustee. This contention too appears, in our opinion, to be without substance. Under S. 20 of the Hindu Religious and Charitable Endowments Act, 1951, the Commissioner has general superintendence and control over religious endowments and such superintendence and control will include the power to pass any orders which may be deemed necessary to ensure that the endowments are properly administered and their income duly they were founded. The present is a clear case where the trust had been rejected and its prepurting misappropriated by a stranger. The High Court in its earlier judgment has directed the Commissioner to take proper steps for recovery of the properties of the trust. It was in accordance with the power conferred under Section 20 of the Act that the plaintiff was appointed as an interim trustee to take action to recover the suit properties and look after the management of the trust. So far as the present suit is concerned, there is no impediment, therefore, to the plaintiff being granted the reliefs asked for."

(9) The Courts have widened the scope with regard to initiation of legal proceedings by Executive Officer. The Courts are in position of the parent patriarch, as the property of the idol is that of minor, it is the duty of the Court to protect the interest of the idol. The learned counsel for the appellant relied on the following judgments to substantiate his contentions:

(i) AIR 1961 Allahabad 73 (Behari Lal v. Thakur Radha Ballabh Ji and another);

"14. In Mukherjee's Hindu Law of Religious and Charitable Trust (1952 Ed.) at p.265, it is stated as follows:

"The deity as a juristic person has, undoubtedly, the right to institute a suit for the protection of its interest. So long as there is a shebait in office, functioning properly, the rights of the deity, as stated above, practically the dormant and it is the shebait alone who can file suits in the interest of the deity. When, however, the shebait is negligent or is himself the guilty party against whom the deity needs relief, it is open to worshipper or other persons interested in the endowment to file suits for the protection of the Debutter. It is open to the deity also to file a suit through some person as the next friend for recovery of possession of property improperly alienated or for other relief. Such a next friend may not unoften be a person who as a prospective shebait or a worshipper is personally interested in the endowment.

(ii) 2007 (3) MLJ 85 (Subramaniam and others v. Sri Devanathaswami Devasthanam, represented by its Executive Officer Sri.S.Veerappan and anr.

"18. Admittedly, the suit property belongs to Religious Institutions. As per the principle of 'parent patriarch' Court is the custodian of the idol property. The disputed land belongs to the idol. The documentary evidence would show that the suit property belongs to the idol. So, the decision relied on by the counsel for the respondent/plaintiff squarely applicable to the case on hand. Since, the cases referred in decisions cited by the counsel for the appellants/defendants are not related to the facts on hand, I am of the view that the said decisions are not applicable to the case on hand. Hence, this point is in favour of the plaintiff."

(iii) 2003 (1) CTC 519 (Basha Sahib v.Valikandapuram village, Kasi Visvanathaswamy koil, represented by its villagers of Sellamuthu and 5 others);

The lower Appellate Court relying upon these judgments has held that the suit as filed is

maintainable. There is no reason to set aside this finding. Hence, this finding that the suit is maintainable is legally correct."

(10) The respondents have not filed any appeal against the findings of the Courts below that the suit filed by the Executive Officer is maintainable. In such circumstances, as per the Order XLI Rule 21 C.P.C., the respondents are not entitled to challenge the findings of the Courts below and contend that the suit is not maintainable.

(11) The conclusion of the First Appellate Court in para-34 of the impugned judgment is totally perverse and impermissible in law. The said finding is not supported by any pleadings, evidence and arguments and the same is without any legal basis.

(12) The Courts below failed to see that none of the legal heirs of Mada Naicken were examined as witnesses to prove the case of the respondents. The Courts below ought to have drawn adverse inference against the respondents.

(13) No notice was issued to the appellant before issuing patta, chitta, adangal register and FMB register. These documents are non-est in the eye of law as the same were issued without notice to the appellant and behind their back.

(14) The First Appellate Court failed to consider the documents filed and relied on by the appellant and failed to see that Exs.B16, B137 to B140, B78 to B126 have been fraudulently created to deprive the right and title of the temple. The First Appellate Court failed to comply with the mandatory provisions contained in Order XLI Rules 31 and 33 C.P.C.

(15) In view of the above contentions, the learned counsel for the appellant prayed that all the Second Appeals may be allowed and the suit may be decreed as prayed for.

16. Per contra, the learned Senior Counsel appearing for the respondents has made the following submissions:

(1) The suit property is 7.82 Acres in Old S.No.708 and it was an inam land granted for ukkiranam service in the temple and inam i.e. ukkiranam service was abolished by the Act 30 of 1963. By the Act 30 of 1963, inam lands were taken over by the Government free from all encumbrances as per Sections 3(b) and 3 (c) of the Act 30 of 1963. By the Act 30 of 1963, Ryotwari patta can be granted to the eligible persons, who were in possession on the notified date. Mada Naicken, predecessor of the defendants 1 to 6 was rendering service i.e., ukkiranam service (Store Keeper) in the temple and he was in possession of the suit properties on the notified date. In view of such

possession, the Settlement Tahsildar, Gobichettipalayam, by order dated 28.02.1969 made in S.R.No.54/69/M.I.Act/Dharapuram Taluk (Ex.A1) and the Settlement Tahsildar, Coimbatore, by order dated 30.06.1972 made in S.R.No.54/68/M.I.Act/Dharapuram Taluk (Ex.A2), granted Ryotwari patta to Mada Naicken under Sections 8 (2)(ii), 8(5) and 21(3) of the Act 30 of 1963. As per the said orders, the condition imposed is that Mada Naicken can continue to render service and be in possession and enjoyment of the suit property or he can exercise his option to pay the consideration amount i.e. fair rent to the Government as per Section 21(3)(i) (a) of the Act 30 of 1963. Mada Naicken exercised his option to pay the fair rent in five annual instalments. The fair rent was fixed at Rs.3,020/- to be paid in five equal annual instalments as per the order of the Special Tahsildar, Kangeyam, dated 15.09.1972 (Ex.B84). The said Mada Naicken died due to his illness on 26.10.1973. When the legal heirs of Mada Naicken went to pay the amounts, the revenue authority refused to receive the same on the ground that there was a stay of collection by the Government vide G.O.Ms.No.20, Revenue Department, dated 03.01.1974. Subsequently, by G.O.Ms.No.90 (Commercial Taxes & Endowments Department), dated 03.02.1987, stay granted was vacated. The Revenue Inspector, Kangeyam, informed by notice dated 14.12.1990/Ex.B87 to the legal heirs of Mada Naicken about the vacation of stay and called upon them to pay the fair rent of Rs.3,020/- together with interest at Rs.9,459/- totalling Rs.12,479/- as per Section 8(3) of the Act 30 of 1963. The legal heirs of Mada Naicken were directed to pay the said amount within five years from the year 1990. The legal heirs of Mada Naicken paid the amount together with interest totalling Rs.12,479/- within time limit granted by the revenue authorities. When Ryotwari patta was granted to Mada Naicken and when he was called to pay the fair rent, there is no condition that if the said amount is not paid, Ryotwari patta granted to Mada Naicken will be cancelled. On the other hand, it has been stated that any arrears would be collected as though this is the arrears of land revenue. The moment the inam lands were taken by the Government, the appellant ceased to be the inamdhar and he has no title and right over the suit properties.

(2) The contention of the learned counsel for the appellant that the service provider after exercising the option to pay twenty times of fair rent, must pay the same within six months from the date of order is not correct. The service provider to whom Ryotwari patta was granted, has to exercise his option to pay twenty times of fair rent within six months. The service provider can pay the amount so fixed in annual instalments granted by the authorities. In the present case, the legal heirs of Mada Naicken paid the amount within the time limit granted by the revenue authorities. On payment of such amount, the legal heirs have become absolute owners of the suit property and

contention of the learned counsel for the appellant that the legal heirs of Mada Naicken have violated the service condition and therefore, the appellant terminated the service and is entitled to possession, is without merits. The fair rent together with interest had been paid by the legal heirs of Mada Naicken.

(3) The suit filed by the appellant is not maintainable as the appellant had not challenged the order passed by the Settlement Tahsildar granting Ryotwari patta to Mada Naicken. Any person aggrieved by the order of the Settlement Tahsildar passed under the Act 30 of 1963, must file an appeal to the Settlement Tahsildar within 90 days and if still aggrieved, he must approach this Court for further proceedings. The Executive Officer has no right to file a suit on behalf of the temple and as per H.R. and C.E. Act, he can only maintain the property of the temple. The trustees only have power to initiate civil proceedings representing temple. The Executive Officer can file suit only after obtaining special permission from the Commissioner of H.R. and C.E. Department. In the present case, the Executive Officer without obtaining permission from the Commissioner, H.R. and C.E. Department or authorisation from the trustees, filed the suit and therefore, the suit is not maintainable. In support of his contention, the learned Senior Counsel for the respondents relied on the following decisions of this Court:

(i) 2003 (1) L.W. 386 (Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy v. T.M.Muthusamy Padayachi);

"19. Maintainability of the suits : The Executive Officer's suit is filed by the then Executive Officer. The case of the Executive Officer is that after his appointment in the year 1970, he came to know, after enquiry, that the suit property is a trust property and that the various registered documents obtained are colourable and not binding on the temple. Though the question as to the competency of the Executive Officer to file the suit was not raised in the written statements, the question was raised in the course of argument that under the H.R. & C.E. Act, the Board of Trustees alone have been empowered to sue and be sued and that before filing the suit, enquiries have been made by the authorities of the H.R. & C.E. Department and it was found that there was no Nandavanam in the suit property. Rejecting the objection of the plaintiffs, the trial court proceeded to consider the question of

maintainability as the question of law and found that the Executive Officer had no authority to file the suit and that he cannot invoke Article 96 of the Limitation Act. The Supreme Court, in State of Rajasthan Vs. Rao Raja Kalyan Singh (A.I.R. 1971 S.C. 2018), has held that the plea of maintainability of a suit is essentially a legal plea. If the suit, on the face of it, is not maintainable, the fact that no specific plea was taken or no precise issues were framed is of little consequence. Therefore, it is open to the parties to raise the plea of maintainability of the suit as a legal plea without there being a specific plea in the written statement or the issues.

20. Insofar as the Executive Officer's suit is concerned, it is seen that 'Executive Officer' has been defined under Section 6(2) of the H.R. & C.E. Act. According to this definition, Executive Officer is a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under the Act or the Rules framed thereunder. 'Trustee' has been defined under Section 6(22) of the Act as any person or body in whom the administration of a religious institution is vested. Section 45 of the Act deals with the appointment and the duties of an Executive Officer. Sub-section (2) to Section 45 says that the Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner. The proviso says that only such powers and duties as appertaining to the administration of the properties of the religious institution shall be assigned to the Executive Officer. The powers and duties of the Executive Officer shall be defined by the Commissioner. Section 28 of the Act empowers the trustee of every religious institution to administer its affairs and to apply the funds and properties of the institution. He shall be entitled to exercise all powers incidental to the provident and beneficial administration of the religious institution.

21. In this case, the Executive Officer, in his chief-examination as P.W.1, has stated that for the purpose of filing the suit, he sought permission from the Commissioner and got the order

under Ex.A.12. On a perusal of Ex.A.12 dated 24.6.1970, it is seen that instructions were issued to the Executive Officer and the Board of Trustees to obtain legal opinion to enforce the charges mentioned in the settlement deed dated 1.11.1897 executed by one Thiru Venkatachala Gounder and his wife. A copy of these instructions was issued to the Executive Officer as well as to the Chairman, Board of Trustees. The above instructions did not authorise the Executive Officer to file a suit. As a matter of fact, the instructions were addressed to both the Executive Officer as well as to the Chairman, Board of Trustees in order to obtain legal opinion in reference to the enforcement of the settlement deed. Thereafter, the Inspector, H.R. & C.E. Department held an enquiry on 1.10.1971 on the petition by T.P. Ardhanari Padayachi (the first plaintiff in the Community's suit). Ex.B.107 is the report of the Inspector dated 24.1.1972 wherein he has stated that he found on his enquiry, that from the date of the gift/settlement deed dated 1.11.1897, no such Nandavanam and its performance was conducted. It was further noted that in reference to this property, there was already an enquiry by the Commissioner on 26.5.1970 and an order dated 24.6.1970 had been passed directing the concerned to take legal opinion. From the above, it is clear that the Executive Officer is not the authority competent to initiate legal proceedings and that he had not been assigned with the power of filing a suit. It is only the Board of Trustees in existence at that time which was competent to initiate the legal proceedings. The trustees are not made parties to the suit and therefore, the finding insofar as the Executive Officer's suit is concerned, that it is filed without authority has to be upheld."

(ii) Order of this Court (Myself) dated 01.11.2017 passed in C.R.P.(NPD)No.2112 of 2014 (V.Kuppusamy v. A/M.Prasanna Vinayagar Thirukoil);

"12.In the present case, it is admitted by the respondent that the Joint Commissioner has not granted permission to the respondent to file the suit. On the other hand, the respondent has stated in the counter affidavit that he has passed a resolution to file the suit against the petitioner and forwarded the same to the Joint Commissioner.

In such circumstances, the Division Bench judgment of this Court relied on by the learned counsel for the petitioner is squarely applicable to the facts of the present case. The learned Judge having held that the respondent has not obtained permission from the Joint Commissioner to file the suit erred in holding that it is not a ground for rejection of plaint and it can be cured at any point of time. The learned Judge failed to consider that the Executive Officer has no authority to file the suit except when the Commissioner grants permission to file the suit. The contention of the learned counsel for the petitioner that cause of action for the Executive Officer to file the suit arises only when the Commissioner specifically empowers the Executive Officer to file the suit and in the absence of such permission, no cause of action has arisen, has considerable force and is acceptable. For the above reason, the order of the learned Judge is liable to be set aside and it is hereby set aside. "

(4) The contentions of the learned counsel for the appellant that fair rent ought to have been paid to the temple and amount paid to the revenue authority is not binding on the temple and the legal heirs of Mada Naicken failed to comply with the conditions, are without merits. The legal heirs of Mada Naicken were directed to pay the amount to the revenue authority and as per such direction, the amounts were paid to the revenue authority. The learned Senior Counsel for the respondents contended that the judgment relied on by the learned counsel for the appellant reported in 2011 (2) MWN Civil 801 is not applicable to the present case. In the said judgment, according to the learned Senior Counsel for the respondents, this Court distinguished and held that the Commissioner has given authorisation to file the suit and therefore, suit is maintainable.

(5) In the present case, the Executive Officer was not authorised either by the trustee or by the Commissioner, H.R. and C.E. Department, to file the suit. The appellant has come out with a new case that the trustees have passed a resolution authorising the Executive Officer to file the suit. On the other hand, the Executive Officer as P.W.1 deposed that he can independently maintain the suit and he does not require anybody's permission.

(6) As per Order XLI Rules 21 and 22 C.P.C., the respondents have right to sustain the decree passed by the Courts below on the ground that the suit is not maintainable.

The respondents have an option either to file appeal or cross-appeal or make submissions with regard to validity of the decree passed by the Courts below.

(7) The appellant is not entitled to maintain the suit especially for the relief of declaration that the suit property is Devadayam property. As per the Act 30 of 1963, minor inams have been abolished and Ryotwari patta was granted to Mada Naicken by the orders under Exs.A1 and A2. By these orders, the appellant has lost interest and title in the suit property. The suit in the Civil Court is maintainable only when there is pre-existing right. In the present case, as per the orders in Exs.A1 and A2, option exercised by Mada Naicken and payment made by the legal heirs of Mada Naicken, they have become absolute owners of the suit property. The appellant has not challenged any of the orders passed by the revenue authority and failed to prove that such orders are passed without notice to them.

(8) After exercising option by Mada Naicken, the son of Mada Naicken namely, Subramaniam in his statement dated 25.08.1972 given before the Special Tahsildar, Kangeyam, reiterated their option to pay the fair rent fixed and sought five annual instalments to pay the amounts. The said request was accepted and Mada Naicken was permitted to pay the amounts in five equal annual instalments. By the said order, Tahsildar, Dharapuram, was directed to collect the amounts as per the provisions of Section 20 of the Act 30 of 1963 and pay to the appellant temple. The judgments reported in 1968 SC 1489, 2003 (3) LW 839, 1996 (1) CTC 217 (DB), 1985 (4) SCC 10, relied on by the learned counsel for the appellant are not applicable to the facts of the present case. The issues in all the above judgments and decrees are entirely different and there is no relevance to the issue involved in the present case.

17. Heard the learned counsel for the appellant as well as the learned Senior Counsel appearing for the respondents and perused the materials available on record.

18. Substantial Question of law : (a)

"Whether the suit filed by the Executive Officer is maintainable in view of the dictum laid down in 2003(1) L.W. 386 (Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy v. T.M.Muthusamy Padayachi) ?"

The issue is whether the suit filed by the Executive Officer is maintainable? The learned counsel for the appellant contended that the respondents are not entitled to raise this issue as both the Courts below have held that the suit filed by the Executive Officer is maintainable. The respondents have not filed any appeal challenging the said finding or filed any cross-appeal. The learned counsel for the appellant contended

that as per Order XLI Rule 22 C.P.C., the respondents without filing any cross-appeal are not entitled to challenge the findings of the Courts below that the suit filed by the Executive Officer is maintainable. The learned Senior Counsel for the respondents relied on the very same Order XLI Rule 22 C.P.C. and contended that the respondents are entitled to support the decree challenging the findings rendered against them in the Courts below even without filing any cross-appeal. Order XLI Rule 22(1) C.P.C. is extracted hereunder for better appreciation:

Order XLI Rule 22(1) C.P.C.

"22. Upon hearing respondent may object to decree as if he had preferred separate appeal—
(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

[Explanation—A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is wholly or in part, in favour of that respondent. "

19. The above issue was considered by the Calcutta High Court, Madhya Pradesh High Court and Andhra Pradesh High Court and all the three Courts have held that after 1976 amendment to C.P.C., filing of cross-appeal is purely optional and not mandatory. The respondents/defendants in an appeal without filing cross-appeal can attack the adverse finding passed against them. This issue was also considered by the Hon'ble Apex Court and in the judgment reported in 2007 (11) SCC 75 (S.Nazeer Ahmed v. State Bank of Mysore and others). The Hon'ble Apex Court in the said judgment held that the respondent/defendant can sustain the decree passed in his favour by challenging the adverse finding rendered against him without filing cross-appeal. The respondent/defendant is challenging the adverse

finding and is not seeking the relief, which was rejected by the Trial Court. Only when the respondent/defendant seeks the relief rejected by the Courts below, he has to file cross-appeal. The relevant portion of the said judgment reads as follows:

"7. The High Court, in our view, was clearly in error in holding that the appellant not having filed a memorandum of cross-objections in terms of Order 41 Rule 22 of the Code, could not challenge the finding of the trial court that the suit was not barred by Order 2 Rule 2 of the Code. The respondent in an appeal is entitled to support the decree of the trial court even by challenging any of the findings that might have been rendered by the trial court against himself. For supporting the decree passed by the trial court, it is not necessary for a respondent in the appeal, to file a memorandum of cross-objections challenging a particular finding that is rendered by the trial court against him when the ultimate decree itself is in his favour. A memorandum of cross-objections is needed only if the respondent claims any relief which had been negatived to him by the trial court and in addition to what he has already been given by the decree under challenge. We have therefore no hesitation in accepting the submission of the learned counsel for the appellant that the High Court was in error in proceeding on the basis that the appellant not having filed a memorandum of cross-objections, was not entitled to canvass the correctness of the finding on the bar of Order 2 Rule 2 rendered by the trial court."

20. In view of the above judgment of the Hon'ble Apex Court and judgments of the Calcutta High Court, Madhya Pradesh High Court and Andhra Pradesh High Court, I hold that the respondents are entitled to raise the issue of maintainability in these Second Appeals. The said issue in the facts of the present case is question of law and this Court has framed the said issue as substantial question of law to be decided at the time of final hearing. For the above reason, I proceed to decide this substantial question of law on merits.

21. The suit is filed by the Executive Officer of the temple. The Executive Officer is appointed by the Commissioner of H.R. and C.E. Department as per the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Section 6(9) of the Act defines 'Executive Officer' and Section 45 of the Act deals with 'appointment and duties of Executive

Officers'. Both Sections are extracted hereunder:

"Section 6(9) " executive officer " means a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under this Act or the rules made thereunder or by any scheme settled or deemed to have been settled under this Act.

Section 45. Appointment and duties of Executive Officers._(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math.

[Explanation :- In this Section 'math' shall not include a temple under the control of a math].

(2) The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner:

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in sub-section (1) shall be assigned to the executive officer.

(3) The Commissioner may define the powers and duties which may be exercised and discharged respectively by the executive officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive officer. "

22. A plain reading of the above two sections makes it clear that the Executive Officer has powers to discharge such duties relating to administration of religious institutions assigned to him by or under the Act or the rules or scheme framed therein. The Executive Officer shall exercise such powers and discharge such duties assigned to him by the Commissioner under Section 45(2) of the H.R. and C.E. Act with regard to the administration of the properties of the religious institution. These two sections make it very clear that the Executive Officer has power to file the suit on behalf of the temple only with the specific permission granted by the Commissioner of H.R. and C.E.

Department.

23. In the present case, admittedly no permission was granted to the Executive Officer by the Commissioner of H.R. and C.E. Department. This has been admitted by the Executive Officer in his evidence as P.W.1. He has deposed that he has independent power to file the suit and there is no necessity to obtain any permission from anybody to file the suit. Contrary to the said evidence of the Executive Officer, the learned counsel for the appellant has contended that the trustees have power to file the suit representing the temple or authorise any other person to file the suit and that in the present case, the board of trustees have passed resolution authorising Executive Officer to file the suit. The said resolution was not marked by the appellant and the respondents ought to have taken steps under Order XVI C.P.C. to call for the said resolution to prove their case. These contentions of the learned counsel for the appellant are without merits. When the plaintiff comes with a specific case, it is for the plaintiff to prove the same by acceptable evidence. The issue whether the Executive Officer can file the suit without obtaining permission from the Commissioner or can file the suit only after obtaining permission from the Commissioner, is no longer res-integra. This issue had been considered by the Division Bench of this Court in the judgment reported in 2003 (1) L.W. 386 (Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy v. T.M.Muthusamy Padayachi), wherein the Division Bench of this Court held that the suit filed by the Executive Officer without obtaining permission from the Commissioner is not maintainable. The Division Bench of this Court came to the conclusion, after considering the earlier judgments on this issue. I had an occasion to consider this issue in Order dated 01.11.2017 passed in C.R.P.(NPD)No.2112 of 2014 (V.Kuppusamy v. A/M.Prasanna Vinayagar Thirukoil) and held that the suit filed by the Executive Officer without obtaining permission from the Commissioner is not maintainable by following the ratio laid down in the judgment reported in 2003 (1) L.W. 386 (Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy v. T.M.Muthusamy Padayachi).

24. The learned counsel for the appellant contended that the judgment relied on by the learned Senior Counsel appearing for the respondents reported in 2003 (1) L.W. 386 (Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy v. T.M.Muthusamy Padayachi) is not applicable in view of the another Division Bench judgment of this Court reported in 2011 (2) M.W.N. 801 and judgments of the Hon'ble Apex Court reported in AIR 1967 SC 1044, AIR 1971 Madras 253, AIR 1961 Allahabad 73 (DB), 2007 (3) MLJ 85, 2003 (1) CTC

519, 1996 (1) LW 231, 1984 Allahabad 55, AIR 1971 Mad 278 and 1970 (2) MLJ 639. The above judgments are not applicable to the facts of the present case. The facts and issues involved and decided in the above judgments are different and have no relevance to the issue involved in the present case. The Division Bench judgment of this Court relied on by the learned Senior Counsel for the respondents reported in 2003 (1) L.W. 386 (Sri Arthanareeswarar of Tiruchengode by its present Executive Officer, Sri Sabapathy v. T.M.Muthusamy Padayachi) is squarely applicable to the facts of the present case. Applying the ratio laid down in the said judgment, I am of the opinion that the suit filed by the Executive Officer without obtaining permission from the Commissioner is not maintainable.

The substantial question of law (a) is answered accordingly.

25. The learned counsel for the appellant in addition to the contention made in respect of the substantial questions of law framed, also made submissions stating that the suit filed by the appellant is not barred by provisions of Act 30 of 1963. In view of the above contention, the following substantial question of law is framed.

(i) Whether the suit filed by the appellant is maintainable in a Civil Court in view of the orders in Exs.A1 & A2 passed by the settlement officer ?

25 (a) The learned counsel for the appellant contended that the suit filed by the temple for declaration and possession is maintainable as orders passed by the settlement officer are not acting as a Civil Court and exercising powers of the Civil Court. To substantiate this contention, the learned counsel for the appellant relied on the judgments reported in 1985 (4) SCC 10 & 2017 (2) SCC 69 cited supra.

26. Per contra, the learned Senior Counsel for the respondents contended that Act 30 of 1963 is a special enactment, a beneficial legislation and self-contained Act. The Act provides appeal to the Tribunal if a party is aggrieved by the order passed by the settlement officer and further appeal to this Court. The appellant has not exercised the said appeal provisions and orders passed by the settlement officer has become final. Appellant is not challenging the grant of Ryotwari patta to the service provider, but they are contending that 20 times of fair rent was not paid within the time limit granted in Exs.A1 & A2 and therefore the Ryotwari patta granted to the service provider has become invalid and his legal heirs have no title over the suit properties. In view of such stand, the suit filed by the appellant is not maintainable.

27. From the judgments relied on by the learned counsel for the appellant, it is seen that the Courts have held that the jurisdictions of the Civil Courts are not ousted even if settlement officer passed order as per provisions of the Act 30 of 1963 and if aggrieved person has not challenged the said order. The said ratio is on the ground that the settlement officer does not act as a Civil Court. In view of the above judgments, the Appellant is entitled to file the suit for the reliefs sought for but the suit as framed namely filed by Executive Officer is not maintainable.

28. Substantial question of law : (b)

"Whether the suit is maintainable, when Section 21 of the Act 30 of 1963 provides for the appropriate procedure to be followed?"

The learned counsel for the appellant contended that even after grant of Ryotwari patta, service holder rendered service and after his death, his three sons were rendering service. Subsequently, one Rajendran/sixth defendant herein, grand son of Mada Naicken was rendering service. Subsequently, he violated the condition of service. Therefore, the same was determined/terminated and appellant is entitled to possession of the suit property.

29. Per contra, the contention of the learned Senior Counsel for the respondents is that the service holder Mada Naicken exercised his option to pay the fair rent, the suit property became his absolute property and no service was rendered subsequently either by Mada Naicken or his legal heirs. The legal heirs of Mada Naicken paid fair rent together with interest within the time limit granted to them. In addition to the above, the learned Senior Counsel for the respondents contended that the appellant failed to follow the procedure as contemplated under Section 21(6) and 7(b) of the Act 30 of 1963. Unless the appellant follows the procedure as contemplated under the above Sections, he cannot declare that the right of the service holder to occupy the land shall cease and the same is determined. In support of his contention, the learned Senior Counsel appearing for the respondents relied on the following judgments:

(i) 2017 (5) CTC 804 (Ramasamy and others v. Tamilvel and others)

"14.The Lower Appellate Court, in my considered opinion, has not adverted to the provisions of Section 21 of the Act. The Lower Appellate Court has relied upon the Full Bench of this Court Srinivasan and six others Vs. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District by its Executive Officer

at pettavaithalai and five others reported in 1998 (1) CTC 630 (FB). The said Full Bench decision dealt with Sections 43, 46 & 47 of the Act and held that Civil Court has jurisdiction. The issue that was before the Full Bench was as to whether the rival claimant can seek declaration of his title after the grant of patta under the enactment by the Settlement Officer. While answering the said question, the Full Bench relying upon the decision of the Hon'ble Supreme Court in Sri-La-Sri Sivaprakasa Pandara Sannadhi Avargal V. Smt.T.Parvathi ammal & Others, 1998 (1) CTC 585 (SC), had concluded that such a suit will be maintainable. But, in the case on hand, the plaintiffs are not claiming any rival title, the plaintiffs are admitting the grant of patta as well as the nature of patta, but it was claimed that in view of the non-performance of the service, the land will vest in the Temple. Unfortunately for the plaintiffs, such vesting is not automatic. It is dependent on a decision being rendered by an officer authorised under the Act to go into the question of non-performance of the service as well as the dis-qualification incurred by the service holder to hold the land due to non-performance. Therefore, in my considered opinion, the Lower Appellate Court was not right in holding that the suit is maintainable. Unless the non-performance is held to have resulted in the service holders being dis-entitled to hold the property and their right is declared to cease and determine as provided under Section 21(7)(b) of the Act by the Authorised Officer, after an enquiry conducted as per the Rule 19 of the Rules, the patta granted on 02.11.66 will continue to be valid and the plaintiffs cannot seek declaration of the title of the Religions Institutions on the assumption that the non-performance of the service had resulted in the right of the service holders being determined. Therefore, the trial Court was right in dismissing the suit is not maintainable."

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(ii) 2002 (3) M.L.J.296 (M.Liaquat Ali, Proprietor, M.C.Packaging, Pudukottai v. Sri Brahadambal Temple, Pudukottai Devasthanam);

"22. From the above, it is clear that so long as the service holders were rendering services, they are entitled to occupy permanently the lands in respect of which they are entitled to patta under Sec.8 of the Act. If they fail to render service, "the prescribed officer" has to notify such failure and thereafter he has to declare that service holders' right to occupy the lands shall cease, and determined. After such determination, the institution shall be at liberty to make such arrangements as it thinks fit for the performance of the service and shall be entitled to hold the lands as specified and as absolute property, subject to the payment of assessment. Without resorting to this procedure, the plaintiff cannot come forward with the plea that they have determined the services and so they took possession thereafter by themselves, for which the plaintiff has no right under the provisions of the Act. Even if the services are not being rendered by the service holders, remedy is not before the Civil Court but only before "the prescribed officer" under the above said provision. So the trial Court is correct in holding that it has no jurisdiction. But unfortunately, the lower appellate Court has not appreciated the provisions properly while reversing the judgment of the trial Court in this regard. So the Lower Appellate Court is not correct in holding that Civil Court has jurisdiction to try the suit, even if the service holders did not continue their service."

30. Sections 21(6) and (7) of the Act 30 of 1963 are extracted hereunder for better appreciation.

"Section 21(6) (a) : For so long as the service-holder renders the service, the institution shall pay to the service-holder the tasdik allowance paid by the Government under Section 20.

(b) If the service-holder fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder as may be prescribed in this

behalf, notify such failure in such manner as may be prescribed. He shall then declare that the tasdik allowance payable to the institution in respect of the period subsequent to the failure shall be the absolute property of the institution and the institution shall be at liberty to make such arrangement as it thinks fit for the performance of the service.

Section 21(7) (a) - For so long as the service-holder renders the service, he shall be entitled to occupy permanently the lands in respect of which he is entitled to a patta under Section 8, subject, however, to the payment of the assessment fixed (under Section 16 or under Section 16-A as the case may be) in respect of such lands.

(b) If the service-holder fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder as may be prescribed in this behalf, notify such failure in such manner as may be prescribed. He shall then declare that the service-holder's right to occupy permanently the land under clause (a) shall cease and determine, and the institution shall be at liberty to make such arrangement as it thinks fit for the performance of the service and shall be entitled to hold the land as its absolute property subject, however, to the payment of the assessment fixed therefor (under Section 16 or under Section 16-A, as the case may be)".

31. As per this Section, if the service holder fails to render service, the prescribed officer, after inquiry and after notice to the service holder as prescribed in the Act, shall notify the service holder about his failure to render service and then only he can declare that his service ceased and determine the same. In the present case, the appellant has not furnished any details from when the sixth defendant was rendering service and when he violated the conditions. Admittedly, the appellant has not issued any notice to the sixth defendant, who was alleged to have rendered service and has not held any enquiry. Further, the appellant has not produced any materials to show that they informed the sixth defendant about such determination.

For the above reason, the substantial question of law (b) is answered against the appellant holding that the appellant

failed to follow the procedure as contemplated under Section 21 of the Act.

32. Substantial questions of law (c), (d) & (e):

"(c) whether the judgment and decree passed by the First Appellate Court is perverse and vitiated for overlooking the conditions imposed in Ex.A1 and Ex.A2 issued under Sec. 8(2)(ii) r/w.Sec.21(3) of the Tamil Nadu Minor Inams (abolition

(d) when the service holder/watchman Mada Naicken has committed default in complying with the twin conditions imposed under Ex.A1 (28.06.1969) and Ex.A2 (30.06.1972), is it permissible in law for the First Appellate Court to accept the claim of the legalheirs who belatedly paid the rent to the revenue authorities in the years 1991 and 1994, so as to deprive the title of the temple?

(e) Has not the First Appellate Court erred in upholding the claim of the appealed defendants on the basis of the mutation entries which would not confer any title on them, in the absence of any modification of the conditions imposed in the orders dated 28.08.1969 and 30.06.1972 (Ex.A1 and Ex.A2)?"

32(a) The Act 30 of 1963 is enacted to remove the intermediators by abolishing the inams. As per the Act, the Ryotwary pattas were granted to the persons who were in occupation of the said lands and fulfilled the conditions imposed by the Act. When Ryotwary patta is granted in respect of service lands, two options are given to the persons in occupation i.e. either he can continue to render service or pay 20 times of fair rent fixed by the authority. The service provider has to exercise his options within six months. If he prefers to render service, he can be in possession and enjoyment of the land only till he renders services. He does not get interest or title over the said property. If he exercises the option to pay 20 times of fair rent, on payment of such fair rent, he becomes absolute owner of the property and he is discharged from rendering any services.

32(b) As per Rule 9-A of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Rules, 1965, the service provider has an option to pay the fair rent fixed in one lumpsum or in 20 equal instalments to be fixed by the Tahsildar. The annual instalment shall be paid to the Tahsildar of Taluk in the first kist month of every year together with interest @ 5% per annum. In the present case, the service provider by Exs.A1 & A2, dated 28.02.1969 and 30.06.1972 respectively was granted Ryotwary patta with condition either to render service or to pay

20 times of fair rent fixed by the authority. Subramanian, the first son of service provider by his statement dated 25.08.1972 Ex.B143 exercised the option to pay the amount in five annual equal instalments. On such option, the Special Tahsildar (fixation of fair rent - I, Kangeyam) in Ex.B84, fixed the fair rent and granted five equal annual instalments to pay the said amounts. The Tahsildar informed the service holder that if he fails to pay the amount, arrears will be calculated as if it were arrears of land revenue as per Section 8(3) of the Act. When the legal heirs of Mada Naicken tendered fair rent, it was not received by the revenue officials on the ground that there was stay of collection of fair rent.

32(c) The respondents have produced G.O.Ms.No.90 (Commercial Taxes & Endowments Department) dated 03.02.1987, wherein the Special Commissioner, Land Administration Reforms was called upon to send a report with regard to collection of amounts due. Based on this G.O., the Revenue Inspector, Kangeyam by letter dated 14.12.1990 marked as Ex.B87 called upon Tmt. Soundaram w/o Semmalai Naicker (daughter-in-law of Mada Naicken) to pay the amounts. As per this notice, the legal heirs of Mada Naicken paid the amounts together with interest on 15.12.1990, 20.12.1990 and 28.11.1994, marked as Exs.B97 to B99 respectively. This clearly shows that legal heirs of Mada Naicken, original service provider have paid fair rent together with interest as determined by the Revenue officials within the time limit granted to them. In view of the same, it cannot be said that legal heirs have paid 20 times of fair rent belatedly. On such payment, the legal heirs of Mada Naicken have become absolute owners of the suit property and as per the provisions of Act 30 of 1963, the Ryotwary patta issued to the occupier/service provider after abolition of inam is the document of title. The Courts are bound by the provisions of the Act which is the beneficial legislation brought into force to bring the occupier who cultivated the land directly under the control of the Government.

32 (d) The contention of the learned counsel for the appellant is that the land in question is service land allotted to the service provider to render ukkiranam service. This confirmed permanent service and service holder is bound to continue to render service after the appointed date. To decide the issue, the relevant Sections are Sections 21(1)(2)(3)(4) of Act 30 of 1963 which read as follows:

21. Service inams (1) The provisions of this Section shall apply in respect of any minor inam which was held immediately before the appointed day by an individual (hereinafter referred to in this Section as the service-holder) on condition of rendering service to a religious, educational or

charitable institution.

(2) The service-holder shall, subject to the provisions of sub-section (3), be bound to continue to render the service after the appointed day.

(3) (i) Where a service-holder is entitled to a ryotwari patta under Section 8 in respect of any land, he shall have the option -

(a) either to pay to the religious institutions the amount specified in sub-section (4) and on such payment, the land shall, notwithstanding anything contained in sub-section (7), be discharged from the condition of the service; or

(b) to hold the land and continue to render service subject to the provisions contained in sub-sections (1) (2) (6) and (7).

(ii) The option referred to in clause (i) shall be exercised within such time from the appointed day, and in such manner as may be prescribed.

(4) The amount referred to in sub-section (3) shall be twenty times the difference between the fair rent in respect of such land determined in accordance with the provisions contained in the Schedule and the land revenue due on such land.

32(e) In the present case, as per Exs.A1 and A2, the Ryotwari patta was granted to the service holder, Mada Naicken. He exercised the option imposed in the said order to pay 20 times of the fair rent. The same was accepted and Mada Naicken was permitted to pay the amounts fixed in five annual instalments. Before the amounts could be paid, Mada Naicken died and when his legal heirs tendered the amount, the Revenue Officials did not receive the amount on the ground that the interim stay has been granted to collect the amount. After interim stay was vacated by the Court, the Revenue Inspector, Kangeyam, issued notice to the legal heirs of Mada Naicken in the year 1990, calling upon them to pay the fair rent together with 5% interest within five years. The legalheirs of Mada Naicken paid the same within the time limit granted to them. In view of the above Sections of Act 30 of 1963 and payment of amounts, the above contention of the learned counsel for the appellant is without merit.

32(f) In view of the provisions of Act 30 of 1963, the

learned First Appellate Judge has rightly accepted the mutation entries which would confer title on the Ryotwary patta holder. The service provider or the legal heirs have not violated the conditions imposed under Exs.A1 & A2.

Substantial questions of law (c), (d) and (e) are answered accordingly.

In the result, all the Second Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gsa/kj/rgr

To

1.The Additional District Court No.3,
Dharapuram.

2.The Sub-Court,
Dharapuram.

+3cc to Mr.MANOKARAN, Advocate, S.R.No.41709 TO 41711

+3cc to Mr.C.PRAKASAM, Advocate, S.R.No.41233

+1cc to the Addl. Government Pleader, S.R.No.41545 to 41547

Pre-delivery Common Judgment made
in S.A.Nos.536, 543 & 544 of 2017

TM(CO)
TR(17/07/2018)

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