

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1776 of 1997

Sri Kumarakattalai
Subramaniaswamy Devasthanam Mayuram
by its Hereditary Trustee
Sri.La.Sri.Subramania Desika Gaanasambanda
Pandarasannadhi Avergal,
Adheenakartha, Dharmapuram Mutt,
Dharmapuram,
Mayuram. ... Appellant/Plaintiff in Trial Court

Vs.

1.Meenambal (deceased)
2.Ranganayaki (deceased)
3.Velusamy ... Respondents/Defendants 2 to 4 in Trial Court

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C., to set aside the Judgment and Decree in A.S.No.52/1995 on the file of Subordinate Judge, Mayiladuthurai dated 17.07.1996 confirming the Judgment and Decree in O.S.No.1029/1993 on the file of District Munsif Court, Mayiladuthurai dated 24.01.1995.

For Appellant : Mr. S. Sounthar

For Respondents : R1 & R2 died (Memo recorded)
M/s.S.Rajasekar (for R3)

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The unsuccessful appellant/plaintiff filed the second appeal, who lost the case before the courts below.

2. The averments contained in the plaint, in brief, are as follows:

a)The appellant/plaintiff Devasthanam owns and is entitled to the suit property among other house sites, nanja and

punja lands. The suit property was a minor inam, now converted into Ryotwari and for which after dispute plaintiff Devasthanam is granted patta.

b) The defendant's predecessors-in-interest belonging to Isaivellalar community were rendering service to the temple both as Devasasi and as skilled musician playing on musical instruments like Mridangam, Thaval and were skilled papers and they were tenants of the said Devasthanam as they were tenant rendering service either as Devadasi or as skilled musician.

c) The defendant and his predecessors-in-title never refused to render service to the plaintiff Devasthanam and when they originally occupied the suit site as tenant recognising the title of the plaintiff Devasthanam continue to occupy it as tenant and they are either rendering service or they make small payment towards rent and otherwise they continue to recognise the title of the plaintiff Devasthanam to the suit site. Such rendering of service was as per well-known and judicially recognised Tanjore custom.

d) After the abolition of the Minor Inams, the Government issued Gazette Notification regarding the conversion of Tamil Nadu Minor Inams into Ryotwari Act 1963 (30/63). The defendant for the first time claimed the site as its owner by claiming patta in his name. But the concerned Officer went into the question and decided that patta should be issued to the temple alone.

e) The suit is based on title to the property by way of abundant caution and the market value of the site is about Rs.5000/- from the date of institution of suit and court fee affixed for the same and the amount claimed is Rs.108/- as damages for use and occupation.

f) The cause of action for the suit arose on 09.12.1966 when the defendant claimed patta against the rights of the plaintiff/Devasthanam. Thereby the appellant filed a suit for recovery of possession of the site from the defendant and claiming damages for use and occupation.

3. The averments contained in the written statement, in brief, are as follows:

The defendant denies that the plaintiff had title to the suit property and the plaintiff is put to strict proof of the same. Again the plaintiff is bound to show that the suit property was in a minor inam and even if it is so, the plaintiff was not entitled to the patta, as there is a building on the suit site and title of such a site has become vested in the defendant who is the owner of the building. Plaintiff has vaguely stated that patta had been granted to him after dispute. The defendant denied the patta granted by the concerned officer since no enquiry was held by the plaintiff and if it is so, it is behind the back of the defendant. In any event, the said patta will not and cannot clothe the plaintiff

with title to the suit property. Neither the defendant nor his predecessors- in-interest rendered any service to the plaintiff and the suit site was not occupied in law by such service. No rent was paid by anyone, recognising or admitting title of the plaintiff in the suit site. The allegations of service and rendition of service are all invented for the purpose of filing the suit.

4. In fact after abolition of Inams Act came into force, defendant applied to the concerned officer for issue of patta to him on the ground that he is the owner of the building, but the said officer after receiving the application did not send any further communication or held any enquiry. The defendant has not been communicated with his decision.

5. In fact the suit site and the building thereon belong to the defendant, his father Pakkiriswami Pillai has purchased the same on 30.10.1933 in court auction held in execution of the Decree granted in O.S.No.130/1932 against the then owners- Kandaswami and his minor son Sellathurai who owned and enjoyed the suit property. The said sale was confirmed by the District Munsif of Mayuram on 02.12.1993. Thereafter the suit site was allotted to the Pakkiriswami Pillai as per order in E.P.No.28 of 1934 in O.S.No.139/1932 by the District Munsif, Mayuram and thereby defendant's father Pakkiriswami Pillai took delivery of the suit site and the building thereon through court on 14.06.1935. Thereafter plaintiff's father owned and enjoyed the said property exclusively as his own, After the death of Pakkiriswami Pillai, the defendant, his only son, inherited the property from his father. The defendant specifically denies that his father did not do any service to the plaintiff/temple or paid any rent to the plaintiff admitting or recognising the title of the plaintiff in the suit site.

6. The suit site was never leased out by the plaintiff nor is the plaintiff entitled to any rent. Hence, the claim of Rs.3/- a month is untenable and unfounded. The lease deed dated 23.09.1949 alleged to be executed by one Lakshmi Ammal was not real and further was not enforced at all.

7. Though the lower court examined that there is no evidence on either side, on perusal of the material records, the lower court dismissed the suit. No witnesses were examined by both sides. Resultantly, the lower court has dismissed the suit and the same was confirmed by the lower appellate court. As against the concurrent findings, the present second appeal is filed.

8. At the time of entertaining the second appeal, this court has framed the following substantial questions of law as

follows:

(i) Whether the lower appellate court was right in holding that the decision in STA.22/77 dated 16.07.1982 in Ex.B1 would divest the title of the plaintiff to the suit property and hence he is not entitled to declaration and recovery of possession?

(ii) Whether the lower appellate court was right in saying that the decision in 1995 II MLJ 121 (Manicka Nayagar Vs. Ezhumalai) is not applicable to the facts of the case especially when the Supreme Court has held that the landlord would be entitled to the possession from the tenant irrespective of the grant or refusal of patta?

9. Learned counsel for the appellant, Mr. S. Sounthar submitted that admittedly the suit property belonged to the appellant temple and there was a pre-existing right. After the Inam Abolition Act, the appellant filed a petition before the concerned officer appointed under the Inam Act and the respondent has also raised the claim before the concerned officer. Both were examined. Thereafter the patta was granted in favour of the appellant/ temple. After obtaining patta from the concerned Tahsildar, the appellant filed a suit for recovery based on the title of the property which resulted in the dismissal of the suit. However, the lower court as well as the lower appellate court dismissing the suit without considering the pre-existing title, is not sustainable.

10. Learned counsel for the appellant, in support of his contention has relied upon the decision in the case of Srinivasan and six others Vs. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District by its Executive Officer at Pettavaithalai Devasthanam and five others reported in 1998

(1) CTC 630. The relevant paragraphs are extracted as follows:

"14. We have carefully considered the submissions of learned counsel appearing on either side in the light of the catena of cases noticed supra by us and the principles laid down therein. A comparison of the provisions contained in the Abolition Act, the Inam Abolition Act as also the Minor Inams Act would go to show that the ultimate object of one or the other of these legislations is the introduction of ryotwari settlement in the areas covered and notified under the respective enactments, after abolishing existing land tenure and acquiring the rights of the landholders or inamdars concerned, who, under the system of land tenure which was in vogue in these areas, were considered to be intermediaries in between the actual tiller of the

soil and the State and that the other provisions pertaining to the constitution of authorities, their powers, jurisdiction and the finality given to the orders passed, or incorporation of a provision in the nature of res judicata providing for the binding nature of the orders on the parties to the same and persons claiming under them in any suit or proceeding in a civil Court insofar as such matters are in issue between the parties or persons in such suit or proceeding, are almost identical and similar, except certain differences which, in our view, may not be that much relevant for the issue before us. Even while dealing with this aspect of the matter, the Supreme Court in the decision reported in *State of Tamil Nadu v. Ramalinga Swamikal Madam*, AIR 1986 SC 794 observed that the powers of the statutory authority constituted under the Act are exercised in a summary manner and the claims of occupants comes to be determined only incidentally and they cannot be equated with the civil Courts in respect of what they could do or the nature of relief that they could grant. A careful analysis of the scheme underlying these Abolition laws would go to show that the vesting on abolition under everyone of these legislations are subject to the pre-existing rights of the occupants, except in respect of what are known as public or communal properties, meant for common use and the grant of patta has been always considered and held to be in recognition of their pre-existing rights. The provisions relating to abolition and vesting of the properties do not have the effect of obliterating or destroying such pre-existing rights, if any, except in respect of public or communal properties and the rights which inhere are the basis and fundamental rights which entitle a person to preferentially get patta under these legislations and the same could not be equated to the grant of patta by way of assignment under the Revenue Standing Orders or under rules of assignment outside the scope of the statutory enactments. 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*, *R. Manicka Naicker v. E. Elumalai Naicker*, and *Sayyed Ali v. A.P. Wakf Board, Hyderabad*, 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." Another decision cited by the learned counsel is in the case of *R. Manicka Naicker Vs. E. Elumalai Naicker* reported in (1995) 4 SCC 156. The relevant paragraph is extracted as follows:

"In the case of *Sri Kumarakattalai Subrahmanyaswami Devasthanam v. K.S. Sunderarajulu Chettiar*, ILR (1975) 1 Mad., 501, a learned Single Judge of the Madras High Court considered the provisions of Section 13 of the said Act and held that unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of sub-section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him. An inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. We respectfully agree with these findings of the learned Single Judge. "

11. Learned counsel for the appellant would submit that even without patta granted by the concerned settlement Tahsildar, the appellant had a pre-existing right with respect to the suit site. Admittedly, the suit sites are land and the defendants are the occupier of the same. They constructed a superstructure on the site for which the defendants may have a right to a superstructure. However, they did not have right in the suit site. The defendants are the owner of the property and without any acquisition of patta, the appellant/temple have a

right to claim rent from the respondents based on the pre-existing right.

12. The learned counsel for the appellant further contended that even the settlement Tahsildar denied the patta in favour of the appellant/Temple, the temple have right to agitate before the competent civil court for their title. The decision of both the lower court as well as the lower appellate court, in concurrently holding against the appellant, without considering the categorical decision rendered by this court and the Hon'ble Apex court, is not sustainable and the same is liable to be interfered with.

13. Per contra, learned counsel for the respondent would submit that admittedly the defendants are the occupier of the land by putting up construction therein in the year 1934 onwards. The suit property was purchased by the defendants through court auction by his father Pakkirisami Pillai. Thereafter, the defendants are in occupation and enjoyment of the property and the defendants never admitted the appellant temple to have right over the property. The appellant filed a petition claiming patta under the Minor Inam Act before the Settlement Tahsildar, who heard the parties and initially granted patta in favour of appellant temple and the same was confirmed by the appellate authority. However, both the authorities decisions were challenged before this court. The Division Bench of this court cancelled the patta by its order dated 16.07.1982 in STA.No.22 of 1977 and the same was marked as Ex.B1 before the lower court.

14. After considering the order of the Division Bench of this court, the lower courts have concurrently held in favour of the defendant. As against the Division Bench order, the appellant did not file any appeal or any fresh claim before the civil court claiming right of title over the property. Hence, the order of the Division Bench of this court has become final. The Hon'ble Division Bench of this court granted liberty to the respondent to approach concerned Thasildar for patta. Thereafter, the defendant made an application before the competent authority for regular patta. After considering defendant's application, the Tahsildar granted patta in favour of the defendant, thereby the defendant prescribed the title of the land as well as the building.

15. In support of his contention, learned counsel for the respondents has relied upon the decision in the case of K. Vellappa Gounder and others Vs. K.S.Thirugnansambandam Chettiar & Others reported in 1980 93 LW 707. The relevant paragraphs are extracted as follows:

"4. There was a similar provision in Madras Act XXVI of 1948 in Sections 18(4) and 18(5). On a

construction of these provisions a Division Bench of this Court in Silambani Sri Chidamabara Vinayagar Swami Devasthanam v. Duraiswami Nadar held that the provisions will be attracted only to cases where the building as well as the site on which it stands belong to the same person on the date of notification and it will not apply to a case where the building and the site are owned by different persons.

5. A similar provision in Act XXVI of 1963 was considered by another Division Bench in Somasundaram Pillai v. Durairaj (1979) 1 M.L.J. 444 : 92 L.W. 366. It was held in that case that in a case where the superstructure is owned by a person other than the landholder the site over which the building stands will not vest in the landholder and that Section 3(b) will vest the site also in the Government. To hold that the landholders continue to own the site over which the buildings have been built by the tenants notwithstanding the notification, will be against the teeth of the general vesting contemplated in Section 3(b). He can avoid that vesting of the site only if he, had put up the building himself and not when someone else had put up a building thereon. The landholder cannot take advantage of the existence of the buildings put up by somebody else to claim that the site continues to vest in him. The Bench also held Section 3(b) contemplates the vesting of all lands including gramanatham. But, an exception has been made in Section 18 in respect of poromboke lands on which buildings had been erected, by treating such lands as part of the buildings and vesting them in the person owning the buildings.

6. In another Bench decision reported in Natarajan v. Rani Kannuthai alias Muthathal Nachiar 86 L.W. 577 : (1973) 2 M.L.J. 330, considering the scope of vesting under Section 3(b), and the provisions of section 18 of Madras Act XXVI of 1948, this Court held that the effect of Section 18(4) is to recognise the pre-existing owner of the building in the persons concerned and if the land and the building are not owned by the same individual, vesting under Section 3(b) will not be affected. The provisions of Section 3(b) and Section 13 of the Minor Inams Act (sic) are similar to Sections 3(b) and 18(4) and 18(5) of Madras Act XXVI of 1948. The ratio of the judgments is clearly applicable for the interpretation of Sections 3(b) and 13 of the Minor

Inams Act. Therefore, unless a person owns both the building and the site, on which the building is situate, it will not vest in him so as to enable him to obtain a ground rent patta under Section 13. The decision in Ramachandra Pillai v. Shanmugha Pillai S.A. No. 1139 of 1969 S.A. No. 1139 of 1969 and Srikumara Kattalai Subramania-swami Devasthanam, Mayuram rep. by its hereditary Trustees v. Sundaram Chettiur I.L.R. (1975) 1 Mad. 501 were rendered by Mr. Justice Ramanujam. Though there were certain stray observations which may lead to an argument that in the case of sites in which there are buildings, Section 3(b) would not be operative those decisions cannot be taken as authorities for that position in view of the Division Bench judgment in Somasundaram Pillai v. Durairaj (1979) 1 M.L.J. 444 to which the learned Judge was a party and in fact, the judgment was written by the same learned Judge. As already noted, in Somasundaram Pillai v. Durairaj (1979) 1 M.L.J. 444 the Bench held that in cases where the buildings have been built by parties other than the landholder, the vesting contemplated under Section 3(b) cannot be affected and the site is vested in the Government and not in the landholder.

7. It is, therefore, clear from the provisions of the Act and decided cases that in order to enable a person to get a ground rent patta under Section 13, he must be the owner of the site and the building, and if the owner of the building is anybody other than the landholder, the land will be vested in the Government under Section 3(b). Section 3 specifically saves only the express provisions in the Act."

16. On perusal of the entire material records admittedly no witness were examined on either side. However, the documents were marked to decide the case. On perusal of findings of the courts below, the appellant marked 12 documents in order to establish his case and the name of patta or Inam title-deed and name of the registered holder was marked as Ex.A1 and other revenue records were marked in order to prove that the suit site belongs to the appellant. Apart from the above Exs.A7 & A8 relates to patta granted by the Settlement Officer under the Inam Abolition Act and Ex.A11 relates to application moved by the defendants intended to purchase suit site land from the Devasthanam under the City Tenants Protection Act.

17. Admittedly this court in STA.No.22 of 1977 proceedings cancelled the patta granted by the Settlement

Thasildar under the said Act. After cancellation of patta, the appellant did not take any steps to file an appeal or a suit before the competent court to establish title over a property. On perusal of the decision of the Full Bench, this court had held that even the Settlement Tahsildar granted patta and the aggrieved party may file a suit before the competent forum for establishing the title. In the present case, the appellant did not take any steps before the competent forum for cancellation of patta either by way of an appeal or by way of a fresh suit. However, this court granted liberty to the respondent, to approach the government for patta and the specific direction is extracted as follows:

"2) That the Appellants 2 to 4 herein (Lrs. Of the claimant appellant and the owner of the building) be and is hereby directed to approach the government, if they so choose."

18. On perusal of the decision of this court, this court in STA.No.22/1977 proceedings granted liberty to the respondents to approach the Government for patta. Accordingly, they approach the Government and obtain regular patta. However, the appellant/plaintiff, did not take any steps to cancel the patta or file a fresh suit before the competent forum as held by the Full Bench of this court reported in 1998 (1) CTC 630 in the case of Srinivasan and six others Vs. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District by its Executive Officer at Pettavaithalai Devasthanam and five others.

19. In the decision relied upon by the learned counsel for the appellant reported in 1998 (1) CTS 630 (Srinivasan and six others Vs. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District by its Executive Officer at Pettavaithalai Devasthanam and five others), this court has held that statutory authority constituted under the Inam Abolition Act, are exercised in a summary manner and the claims of occupants comes to be determined only incidentally by the statutory authority and they cannot be equated with the civil courts in respect of the relief that they are entitled. Accordingly, patta issued under the Inam Act could not be equated to the patta granted by way of assignment. The competence of civil court cannot be ousted or barred. In the present case, after the division bench of this court cancelled the patta granted in favour of the appellant, the appellant did not take any steps to file a suit before the competent court. In terms of the decision cited supra, in the absence of any fresh claim before the competent civil court, this Court cannot arrive at a conclusion that the appellant/plaintiff prescribed title. The pre-existing right is subject to approval either

under the Inam Abolition Act or by the competent civil court.

20. In the decision relied upon by the learned counsel for the respondent/defendant in the case of K. Vellappa Gounder and others Vs. K.S.Thirugnansambandam Chettiar & Others reported in 1980 (93) LW 707, this court has held that if the building have been built up by the parties other than land holder, the vesting contemplated u/s.3 (b) cannot be affected and the site is vested with the Government and not with the land holder. While being so, in the present case, acquiring the said particulars initially authority under the Inam Act granted patta in favour of the plaintiff/Devasthanam. Subsequently, the patta was cancelled by the Division Bench of this court in STA proceedings initiated by the respondent/defendant. Therefore, once the land is vested with the Government, Government is the competent authority to grant patta, admittedly the patta is cancelled by this court. However, no action was taken by the appellant/plaintiff based on the pre-existing rights and this court, also granted liberty to the respondent/defendant to approach the Government for patta. Subsequently, the respondent/plaintiff acquired the patta.

21. In the present case, admittedly the defendant is the owner of the building and the appellant is claiming only land based on the pre-existing right. However, the said patta cancelled by this court in STA.No.22 of 1977 proceedings. Unless the Division Bench order is set aside, the appellant has no right to file a suit claiming the rent or recovery of site.

22. In view of the above, I do not find any error in the order passed by the courts below. Accordingly, the substantial questions are answered against the appellant.

In the result, the second appeal is dismissed and the Judgment and Decree in A.S.No.52/1995 on the file of Subordinate Judge, Mayiladuthurai dated 17.07.1996 confirming the Judgment and Decree in O.S.No.1029/1993 on the file of District Munsif Court, Mayiladuthurai dated 24.01.1995, is confirmed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

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Assistant Registrar (CO)

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Sub Assistant Registrar

gv
To

1. The Additional Subordinate Judge,
Mayiladuthurai
2. The District Munsif Court,
Mayiladuthurai.

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+1cc to Mr.S.Rajasekar, Advocate SR.No.13768
+1cc to Mr.S.Soundhar, Advocate SR.No.13779

S.A.No.1776 of 1997

SVI (CO)
GN(28/03/2018)



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