

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.1858 of 2002, 849 & 61 of 2005

S.A.No.1858 of 2002

Sri Madhavaperumal Temple
Mylapore, Chennai.
Rep.by its Executive Officer.

... Appellant /1st Respondent/1st Defendant

Vs.

1.Dhanalakshmi
2.I.R.Narayanan
3.I.R.Venkatesan
4.I.R.Parthasarathy

5.Tamil Nadu Slum Clearance
Board, Chennai - 5,
rep.by its Chairman.

6.The Commissioner,
H.R & C.E.(Administration)
Department, Nungambakkam
High Road, Chennai - 34.

7.The State of Tamil Nadu
rep.by Commissioner and
Secretary to Government,
Housing and Urban Development,
Fort St. George, Chennai - 9.

... Respondents/Appellants 1 to 4
Respondents 2 to 4/ Plaintiffs 1 to 4 and
D2 to D4

S.A.No.61 of 2005

1.S.Sukumar (died)

2.Radha

3.Kavitha

4.Ravikumar

5.Sivakumar

... Appellants/Appellants /Plaintiff

(Appellants 2 to 5 brought on
record as LR's of the deceased
sole appellant vide order of

Court dated 18.02.2013 made
in CMP.Nos.568 to 570 of 2010
in S.A.No.61 of 2005.)

Vs.

1.Sri Madhavaperumal Temple
rep.by its Executive Officer,
Mylapore, Madras - 4.

2.Tamil Nadu Slum Clearance
Board, rep.by its Chairman,
Kamarajar Salai, Chennai - 5.

3.The Hindu Religious and
Charitable Endowments (Admn)
Dept., rep.by its Commissioner,
Nungambakkam High Road,
Chennai - 600 034.

4.State of Tamil Nadu,
rep.by its Commissioner and
Secretary to Govt., Housing and
Urban Development Dept.,
Fort St.George,
Chennai-600 009. ... Respondents/Respondents/Defendants

S.A.No.849 of 2005

P.Arumugam ... Appellant/Appellant/Plaintiff

Vs.

1.Sri Madhava Perumal Temple,
rep. by its Executive Officer
Mylapore, Chennai - 4.

2.Tamil Nadu Slum Clearance Board,
rep. by its Chairman, Kamarajar Salai,
Chennai - 5.

3.The Commissioner, HR & CE
(Admn.) having office at
Nungambakkam, Chennai - 34.

4.The State of Tamil Nadu,
rep.by its Commissioner & Secretary
to Govt., Housing & Urban Development
Department, Fort St.George, Chennai-9.
... Respondents/Respondents/Defendants

Prayer in 1858 of 2002 :- Second Appeal has been filed under
Section 100 of the Civil Procedure Code against the Judgement
and Decree dated 28.05.1999 passed in A.S.No.190 of 1997 on

the file of the III Additional Judge, City Civil Court, Chennai, reversing the judgement and decree dated 31.03.1997 passed in O.S.No.7012 of 1982 on the file of the XII Assistant Judge, City Civil Court, Chennai.

Prayer in 61 of 2005 :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 28.10.2003 passed in A.S.No.210 of 1997 on the file of the Additional District Judge, V Fast Track Court, Madras, confirming the judgement and decree dated 31.03.1997 passed in O.S.No.972 of 1983 on the file of the XII Assistant Judge, City Civil Court, Madras.

Prayer in 849 of 2005 :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 28.10.2003 passed in A.S.No.209 of 1997 on the file of the Additional District Judge, Fast Track Court No.V, Chennai, confirming the judgement and decree dated 31.03.1997 passed in O.S.No.7290 of 1982 on the file of the XII Assistant Judge, City Civil Court, Chennai.

S.A.No.1858 of 2002

For Appellant	: Mr.A.Muthukumar
For Respondent Nos.1 to 4	: Mr.T.V.Ramanujam for Mr.Tr.Krishnamachari
For Respondent No.5	: Mr.B.Kesavan
For Respondent No.6 & 7	: Mr.N.Manikandan Standing Counsel for TNSCB Government Advocate (CS)

S.A.No.61 of 2005

For Appellants	: Mr.T.V.Ramanujam Senior Counsel for Mr.T.V.Krishnamachari
For Respondent No.1	: Mr.A.Muthukumar
For Respondent No.2	: B.Kesavan Standing Counsel for TNSCB
For Respondent Nos. 3 & 4	: Mr.N.Manikandan Government Advocate (CS)

S.A.No.849 of 2005

For Appellant	: Mr.T.V.Ramanujam Senior Counsel for Mr.T.V.Krishnamachari
For Respondent No.1	: Mr.A.Muthukumar
For Respondent No.2	: B.Kesavan Standing Counsel for TNSCB

For Respondent Nos. 3 & 4: Mr.N.Manikandan
Government Advocate (CS)

COMMON JUDGMENT

Challenge in the second appeal No.1858 of 2002 is made to the Judgement and Decree dated 28.05.1999 passed in A.S.No.190 of 1997 on the file of the III Additional Judge, City Civil Court, Chennai, reversing the judgement and decree dated 31.03.1997 passed in O.S.No.7012 of 1982 on the file of the XII Assistant Judge, City Civil Court, Chennai.

2.Challenge in the second appeal No.61 of 2005 is made to the Judgement and Decree dated 28.10.2003 passed in A.S.No.210 of 1997 on the file of the Additional District Judge, Fast Track Court No.V, Chennai, confirming the judgement and decree dated 31.03.1997 passed in O.S.No.972 of 1983 on the file of the XII Assistant Judge, City Civil Court, Chennai.

3.Challenge in the second appeal No.849 of 2005 is made to the Judgement and Decree dated 28.10.2003 passed in A.S.No.209 of 1997 on the file of the Additional District Judge, Fast Track Court No.V, Chennai, confirming the judgement and decree dated 31.03.1997 passed in O.S.No.7290 of 1982 on the file of the XII Assistant Judge, City Civil Court, Chennai.

4.The second appeal No.1858 of 2002 has been admitted on the following substantial questions of law:

"(i).When the documents clearly describe the suit property as Madhavaperumal Temples Maniam and the plaintiffs and their predecessors have been paying rent, by way of quit rent, can the plaintiffs seek declaration that plaintiffs are the absolute owners?

(ii).Whether the learned Additional Judge erred in law in not drawing the presumption under Section 44 of Tamil Nadu Act 30 of 1963 and hold that the 1st defendant temple is the grantee of both the warams and corroborated by Exs.B9 to B15?"

5.The second appeal No.61 of 2005 has been admitted on the following substantial questions of law:

"(1).Whether the courts below have properly construed the oral and documentary evidence while deciding that the suit property is covered under the

provisions of Tamil Nadu Act 30 of 1963?

(2).Whether the Courts below are right in holding that the suit property is a 'melvaram' land?

(3).Whether the courts below have properly appreciated the oral and documentary evidence when they found that the appellant has failed to prove his title and possession?

(4).Whether the courts below are right in holding that the appellant is not entitled to the relief of declaration and consequential injunction, when he has proved his title and possession of the suit property in a manner known to law?"

6.The second appeal No.849 of 2005 has been admitted on the following substantial questions of law:

"(a).Whether the courts below have properly appreciated the meaning of the expression "quit rent" while deciding the matter in issue?

(b).Whether the courts below are right in law in assuming that merely because the temple has collected quit rent, it will become the owner of the soil?

(c).Whether the courts below have properly appreciated the oral and documentary evidence which clearly shows that the plaintiff's predecessors-in-title had pre-existing title and which cannot be taken away by any proceedings under the Tamil Nadu Act 30 of 1963?

(d).Whether the Courts below erred in applying the provisions of the Tamil Nadu Act 30 of 1963 when the defendants have not produced any orders of proceedings under the said Act?

(e).Whether the courts below have properly applied the law that any proceedings under the Tamil Nadu Act 30 of 1963 will not be a bar for claiming title in a suit based upon a pre-existing title?

(f).Whether the courts below have properly understood the meaning of the expression "quit rent" and whether they are right in law in equating the person paying the quit rent as "மேல்வாரம்தார் " when the temple was "குடிவாரம்தார் "?

(g).Whether the courts below have properly appreciated the interpretation of the term "quiet rent" which only means that instead of paying revenue to the Government by the owner of the soil, the owner of the soil pays the same to the temple, and as such, the ownership of the soil never came to the temple by receiving the quit rent?"

7. For the sake of convenience, the plaintiffs in O.S.No.7012 of 1982 are referred to as the plaintiffs in the present second appeals. The plaintiffs abovestated had laid the suit against Sri Madhavaperumal Temple hereinafter referred to as the temple in the second appeals for the reliefs of declaration, permanent injunction in respect of the plaint "B" schedule property, which according to the plaintiffs, forms part of the plaint "A" schedule property.

8.The Temple, in particular, resisted the plaintiffs' claim of title, possession and enjoyment to the plaint "A" schedule property or for the matter, the plaint "B" schedule property , as such, contending that they have no right, title or interest to the plaint "A" schedule property and according to the temple, it is only it, who has got the right, title and entitlement to the suit property and in such view of the matter, contended that the plaintiffs are not entitled to seek and obtain the reliefs prayed for in the suit.

9.The plaintiffs in O.S.No.972 of 1983 and the plaintiffs in O.S.No.7290 of 1982 in respect of which the second appeal Nos.61 of 2005 and 849 of 2005 have been preferred are stated to be the purchasers of the property in their possession and it is found that they had also claimed title to the property in their possession only through the plaintiffs in O.S.No.7012 of 1982 one way or the other i.e. their predecessors in interest are stated to have claimed title to the properties, the subject matter involved in the abovesaid suits from the plaintiffs and their predecessors in interest of O.S.No.7012 of 1982.

10.This is the second round of litigation in this Court as far as the parties to O.S.No.7012 of 1982 are concerned.

<https://hcservices.ecourts.gov.in/hcservices/> 11. Based on the materials placed on record and the

appreciation of the same, the trial court was pleased to dismiss the plaintiffs' suit in O.S.No.7012 of 1982. However, the appellate Court set aside the judgment and decree of the trial Court and granted the reliefs as prayed for in favour of the plaintiffs. Impugning the same, the temple has preferred the second appeal in S.A.No.1858 of 2002.

12.The main point that arises for consideration in this matter is whether the suit property involved in the lis belongs to the temple or the plaintiffs as put forth by them.

13.Inasmuch as the plaintiffs have come forward with the suit claiming the reliefs of declaration in respect of the suit property in their alleged possession and enjoyment and the same is being challenged by the temple, in particular, it is for the plaintiffs to establish their valid claim of title, possession and enjoyment of the suit property in their possession and enjoyment. In this connection, the plaintiffs seem to have mainly relied upon the sale certificate dated 03.05.1940 stated to have been issued in favour of their predecessor in interest viz., I.M.Mudaliyandaan Pillai, the grandfather of the plaintiffs 2 to 4 and father-in-law of the first plaintiff marked as Ex.A2. It is stated that I.M.Mudaliyandaan Pillai had got the suit property by way of a registered sale deed dated 25.11.1907 as well as in the court auction held in C.S.No.884 of 1925 and in this connection, the sale certificate dated 03.05.1940 has been issued in his favour. The sale deed dated 25.11.1907 has been marked as Ex.A3 and the certified copy of the same has been marked as Ex.A1. In all, it is found that the plaintiffs mainly relied upon Exs.A2 and A3 for claiming title to the suit property as such. On a perusal of Ex.A2, it is found that in the proceedings involved in C.S.No.884 of 1925, whereunder, when the suit property is brought for sale, I.M.Mudaliyandaan Pillai has been declared as the purchaser of the same. Admittedly, the temple is not a party to the abovesaid proceedings. That apart, even in the abovesaid sale certificate, the property involved therein is described only as Sri Madhavaperumal Maanyam, and therefore, it is found that inasmuch as the temple had Maanyam right over the property involved in the abovesaid proceedings, the same had been underlined in the sale certificate issued in favour of I.M.Mudaliyandaan Pillai and no doubt, by way of the same, the Kudivaram interest seems to have been conveyed in favour of I.M.Mudaliyandaan Pillai in respect of the property referred to therein. That apart, even in Ex.A3 sale transaction as well as the other transactions said to have been effected by the plaintiffs' predecessor in interest as well as the plaintiffs marked in the proceedings, the properties comprised in the various sale transactions had been described only as Sri Madhavaperumal Maanyam and accordingly, it is very obvious that inasmuch as the property involved in the suit comprised in old survey No.958, R.S. No.3814, as the same had been granted as Maanyam to the temple, the same had

been so described in all the documents. The plaintiffs and their predecessors in interest had effected various transactions projected in the matter. Even in Ex.A3 also, the same has been referred to as abovenoted. If according to the plaintiffs, the temple has no interest whatsoever in the suit property comprised in R.S.No.3814, there is no need on the part of the plaintiffs and their predecessors in interest to refer about the Maanyam right granted in favour of the temple in respect of the abovesaid survey number. Inasmuch as the temple is not a party to Ex.A2 proceedings, Ex.A3 sale transaction and other sale transactions/conveyances effected by the plaintiffs and their predecessors in interest in respect of R.S.No.3814, the said transactions would not in any manner bind the temple as such.

14. In the light of the abovesaid factors alone, it is seen that the plaintiffs and their predecessors in interest were made fully aware that the Maanyam right had been conferred on the temple in respect of the property comprised in R.S.No.3814 and subject to the said right only, the various transactions had been entered into by the plaintiffs and their predecessors in interest. The Plaintiffs cannot deny and easily turn around and contend that the temple had no right whatsoever in respect of R.S.No.3814 and that it is only the plaintiffs, who have acquired absolute right in respect of the property comprised in R.S.No.3814.

15. To establish that in respect of the property comprised in old survey No.958 R.S.No.3814, it is only the temple, which had been granted the right, the temple had produced the extract from the Register of land alienated/exempted from assessment in Madras Taluk marked as Ex.B1, wherein, it has been clearly mentioned that the property comprised in R.S.No.3814 had been granted only in favour of the temple and accordingly, the assessment had also been made only in the name of the temple and accordingly, by way of Ex.B1 record extract, it is made clear that the Maanyam right had been granted to the temple and accordingly, under Ex.B1, it has been clearly mentioned that the property comprised in R.S.No.3814 is given to the temple rent free so long as income derived is used for the benefit of the temple. Therefore, Ex.B1 document strongly clinches that it is only the temple, which had been granted the right in respect of the property comprised in R.S.No.3814. Ex.B2 is the survey plan of R.S.No.3814. Ex.B3 is the proceedings of Board of Revenue, wherein, in respect of the property belonging to the temple in R.S.No.3814 as well as the other lands belonging to the temple, the exemption had been granted from the payment of Urban Land Tax and the abovesaid document would fortify the claim of right and title of the temple in respect of the property comprised in R.S.No.3814. The records maintained by the temple had also been marked as Exs.B4 & B5, wherein also reference is found about the property comprised in R.S.No.3814 and the other properties belonging to the temple.

Exs.B6 & B7 are the counterfoils of the receipts of the temple. Considering the above documents in toto in conjunction with the reiteration of the Maanyam right of the temple in respect of the property comprised in R.S.No3814 in the plaintiffs' documents as above pointed out, particularly, the documents of title on which the plaintiffs' claim right, title to the suit property viz., Exs.A2 & A3, in all, it is found that inasmuch as the Maanyam right had been conferred on the temple obviously, as put forth by the counsel appearing for the temple, the temple has been granted Iruvaaram right in respect of the suit property comprised in R.S.No.3814 and accordingly, the plaintiffs and their predecessor in interest subject to the abovesaid right of the temple had been effecting various transactions in the abovesaid survey number and merely because such transactions had been effected by the plaintiffs and their predecessor in interest the said right being only in the nature of enjoyment rights of the property comprised in R.S.No.3814, the same would not in any manner hinder or militate against the absolute right of the temple in respect of the property comprised in the abovesaid survey number.

16.As abovenoted, this is the second round of litigation in the High Court in so far as the parties in O.S.No.7012 of 1982 are concerned.

17.In the earlier round of litigation, the claim of title of the temple has been negatived. Accordingly, aggrieved over the same, the temple has preferred the second appeal No.1397 of 1986 before this Court and this Court, after considering the rival contentions put forth by the respective parties in the abovesaid matter and furthermore, the temple also having preferred an application for the reception of additional evidence, deemed it fit that the additional evidence projected by the temple should be received for enabling the temple to project its case in a sound manner, accordingly, this Court in the abovesaid second appeal, had admitted the reception of the additional evidence projected by the temple and in fact, proceeded to mark the same as Exs.B9 to B16 on the side of the temple and accordingly, finding that the parties should be afforded an opportunity to adduce further evidence with reference to the same as well as their rival contentions in respect of their claim of title to the suit property comprised in R.S.No.3814, accordingly, chose to remand the matter back to the trial Court after setting aside the judgment and decree of the Courts below and by way of the abovesaid judgment rendered in the abovesaid matter, also further directed that the connected litigations involving R.S.No.3814 should also be tried along with O.S.No.7012 of 1982 and accordingly, it is seen that the matter had been remitted back to the trial Court and in the trial Court as above noted, the documents on behalf of the temple had been marked as Exs.B9 to B16 and furthermore, the plaintiffs had also chosen to mark certain

documents and after analysing the evidence on both sides with reference to their respective cases, the trial Court is found to have dismissed the plaintiffs' suit, however, the first appellate Court had chosen to set aside the same and granted the reliefs in favour of the plaintiffs as prayed for and impugning the same, the present second appeal No.1858 of 2002 has been preferred.

18. In my considered opinion, the reasons adduced by this Court for remitting the matter back to the trial Court for a fresh adjudication of the rival claims of title to the suit property involved in R.S.No.3814 in the light of the reception of the additional evidence marked as Exs.B9 to B16, the same are required to be considered in detail in the present lis, as by way of the same, while the matter was remitted back to the trial Court, the questions of law involved in the present lis have also been detailed in the abovesaid remittal order of this Court passed in the second appeal No.1397 of 1986 and the said decision had also been reported in 1996 2 LW 231, (Sri Madhavaperumal Devasthanam, Mylapore, Madras - 4 represented by Executive Officer Vs.Dhanalakshmi and six others) and the relevant paragraphs are extracted below for the appreciation of the issues involved in the matter in a more detailed manner.

"10. A perusal of the judgment of the lower appellate court shows that it has placed reliance on three circumstances to uphold the claim of the plaintiffs. The first is that there is overwhelming evidence to prove that the plaintiffs are paying quit rent to the temple. According to the appellate judge, the very fact that quit rent is being paid to the temple shows without any doubt that the temple is having only melwaram right (see paragraph 12). There is no warrant or justification in law for taking such a view. The mere use of the expression "quit rent" will not by itself prove that the person who collects quit rent is the owner of melwaram only. In Mozley and Whiteley's Law Dictionary "'quit rent' has been defined as 'fixed rent paid by the freeholders and copyholders (especially the latter) of a manor in discharge or acquittance of other services'. A 'copyhold' is defined in the same dictionary as 'signifying a tenure by copy of court roll at the will of the lord of a manor according to the custom thereof. It is stated that it is in manors only that copyholds are to be

found, and it is by the immemorial custom of the particular manor that the copyholder's interest must be regulated and originally copyholders were villeins or slaves, permitted by the lord, as an act of pure grace or favour, to enjoy the lands at his pleasure; being in general bound to the performance of certain services.

11. In Ramanatha Aiyar's Law Lexicon, "Quit-Rent" is defined as "A certain small rent, payable by the tenant in token of subjection, by which the tenant goes quiet and free. (Tomlins Law dictionary); Chief rent. This is a small yearly payment made by owners of land to a more or less nominal landlord (2 Blackstone, 42.)" There is nothing in Indian Law to show that quit rent is payable only to a melwaramdar by a kudiwaramdar. The question as to the extent of ownership of the person who pays the quit rent and of the person who receives the same has to be decided only on the basis of the entire evidence on record. Hence, that reasoning of the Appellate judge is erroneous.

12. The second reason given by the Appellate Judge is that the temple has not proved its case by producing the Inam Register or the Inam Title Deed. No action has been taken under the legislations abolishing inams and patta has not been obtained under the said Acts by the temple. Hence, the temple has no right to the land. The reasoning is obviously erroneous. The Appellate judge has forgotten that the expression 'manyam' has a significance. In the book 'Land Tenures in the Madras Presidency' by S. Sundararaja Iyengar, 1st Edition, it is said in page 92:-

"The existence of beneficial grants, known originally by the Sanskrit name, manyams, and latterly by the Arabic term, inams, after the Mahomedan conquest, can be traced to a very remote antiquity in India. It was the custom of the Hindu Government to grant assignments of lands, revenue free, or at low quit rents, for the payment of troops and civil officers, for the support of temples and their servants,

and charitable institutions, for the maintenance of holy and learned men, or for rewards for public service."

At pages 94 and 95 of the same book it is said:-

"These beneficial grants are now known as inams, an Arabic term introduced into India after the Mahomedan conquest, the term in use before that date being manyams. The term manyam is now applied in South India to land held either at a low assessment or altogether free, in consideration of services done to the State or Community, as in the case of the officers and servants of the village. This is the definition of that word given in Wilson's Glossary, 330, which represents the later signification of the term after the introduction of the Arabic term inam. The word inam literally means a gift. Wilson's Glossary, 217, defines it thus: "In India and especially in the South, and amongst the Mahratas, the term was specially applied to grants of land held rent-free, and in hereditary and perpetual occupation; the tenure came in time to be qualified by the reservation of a portion of the assessable revenue, or by the exaction of all proceeds exceeding the intended value of the original assignment; the term was also vaguely applied to grants of rent-free land, without reference to perpetuity or any specified conditions. The grants are also distinguishable by their origin from the ruling authorities, or from the village communities, and are again distinguishable by peculiar reservations, or by their being applicable to different objects." In former times the distinction between a jagir grant and an inam grant was that the former was a larger political grant implying conditions of service and the latter, a small personal grant with no condition of service."

13. It is well settled that only if the inam is granted by the sovereign and confirmed by the British Government, it would fall within the scope of the

legislation abolishing inams. There can be grants by private owners or villagers in lieu of wages for services etc., which cannot be treated as inams, for, there is no grant of revenue either in whole or part by the Government. It can only be treated as the right of the person concerned to remain on the lands under an arrangement entered into between the grantors on the one hand and the grantees on the other. One such instance of grant made to the artisans of the village by the villagers has been considered by a Division Bench of this Court in *Uthira Somasundareswarar v. Rajanga* (AIR 1965 Madras 355). After referring to the fact that the terms of the original grant were not available, the Bench said that the grant in that case was one by the villagers, which did not carry with it a grant of the assessment on the land and it cannot be regarded as an inam. The above passages from the book on Land Tenures have been extracted by the Bench in its judgment. Then the Bench observed:-

"It is true that the respondents at an earlier stage admitted that the lands were held by them as manyam, but the fact the party calls it a manyam cannot invest it with a character which it does not possess, that is, a grant of revenue".

It is a settled proposition that in this part of the country there can be a grant by persons other than the Sovereign and such grants will not be inams falling within the scope of the Abolition legislation. Hence, the second reason given by the Appellate Judge is also erroneous.

14. The third reason is that the documents filed by the plaintiffs showing their dealings used the expression "kudiwaram" and therefore, they are entitled to kudiwaram as against the melwaram owned by the temple. The expression 'kudiwaram' literally means, 'the share of the cultivator in the produce raised' and in that sense, it belongs to the cultivating tenant whether he has permanent occupancy rights or is a mere

lessee from year to year or even a tenant at will, long as he is in possession of the land. (See: Naina Pillai Markayar v. Ramanathan Chettiar (33 M.L.J 84) and Suryanarayana v. Patanna (I.L.R 41 Madras 02)).

15. In this connection, the Appellate judge has failed to consider the admission contained in paragraph 10-A of the plaint that the temple has issued pattas to the plaintiffs' predecessors for the extents enjoyed by them as well as to various other persons surrounding and adjacent to the suit property. Exs. A-39 to A-41 are photo copies of some such pattas. They show that these pattas have been issued by the trustees of the temple. They mention the extent of the land as well as the amount to be paid to the temple. In Column 8 of the patta, the nature of the property is mentioned as "hut". The said documents are copies of pattas issued in 1953. They show that even at that time, the lands had ceased to be ryoti lands. There are other documents in evidence and in particular Exs. A-12 and A-13 which prove that as early as in 1936-1937, the Corporation of Madras had made assessments and issued tax demands on the footing that the properties were house properties. The question whether the lands were ryoti lands at the time when the Abolition Acts came into force has not at all been adverted to by the Courts below. In Vedaranyeswaraswami Devasthanam v. State of Madras (1965-I-M.L.J 1), a Division Bench of this Court has traced the history of 'inams' in this State and pointed out that an inam by Sovereign authority need not necessarily consist merely of transfer of its right to revenue, but it may also include the grant of the soil, the extent of the grant depending in each case on the construction of the terms thereof and that the dictum in the concept of beneficial interest in land is and can be only with reference to cultivated lands in a village and the possession in regard to uncultivated and uncultivable lands will be with the Sovereign or the State alone, as an

entire interest. If they were not ryoti lands, the payment of rent to the temple by the occupants, be it called quit rent or by any other name, will have much significance in this case. The lower Appellate Court has also not adverted to the fact that the land had always stood registered in the name of the temple as 'temple manyam' as is evident from the documents produced by the parties.

16. It is contended that the entries in Ex. B-4 prove that the temple is the owner of only the melwaram and the kudiwaram is owned by the plaintiffs and other occupants. There is a fallacy in the contention. Reliance is placed on the note at the end of Ex. B-4. But that note only relates to T.S No. 1338, which is shown as item No. 6. The suit property is shown as item No. 2 R.S No. 3814/1. The entry in the remarks column is that it is not known whether the lands have been sold by the temple and that the lands were assessed for urban land tax. But, Ex. B-3 dated 21.10.1978 proves that the lands were exempted from payment of Urban Land tax on the ground that they belonged to temple. Ex. B-1 also shows that the lands are to be held rent free so long as the income derived is used for the benefit of the temple.

17. The judgment of the Appellate Court thus suffers from many infirmities and the matter requires fresh consideration.

19. After remand, it is found that mainly on behalf of the plaintiffs, the document Ex.A54 has been projected to nullify the impact of the document marked on the side of the temple as Ex.B16. On a perusal of Ex.B16, this Court in the second appeal No.1857 of 1986 has pointed out, that in the abovesaid extract of the Madras Town Survey Register for the period from 1895 to 1896, R.S.No.3814 has been shown as 'private' as opposed to Government Inam or poramboke and the owner of the same is stated as Perumal Maanyam and in the grant column, there is a reference about the exemption from the quit rent and accordingly, opined the same is a necessary document for deciding the question which arises for consideration in the present lis, accordingly, on a perusal of Ex.B16, it is evident that the property comprised in R.S.No.3814 has been declared to be the private property and belonging to the

temple marked as Madhavaperumal maanyam and also detailed that the property abovestated should be enjoyed by way of cultivation and as the property had been granted as Maanyam to the temple, the same is found to have been exempted from quit rent by the Government. However, as abovenoted, the plaintiffs have come forward with Ex.A54, the same extract of the Madras Town Survey Register with reference to R.S.No.3814 as well as other survey numbers and as against R.S.No.3814 old survey No.958 part, under the column Government, Private, Inam or Poramboke in Ex.A54, it is shown as Inam and as far as under the column, the names of the owners, as against R.S.No.3814, it has been clearly mentioned as Madhavaperumal Maanyam and even in the grant column in Ex.A54, the said property is found to be exempted from quit rent. Therefore, when Exs.B16 and A54 are read in conjunction, the inescapable conclusion that could be arrived is that the property comprised in R.S.No.3814 old survey No.958 part has been entrusted only to the temple as Maanyam for the purpose of the benefit of the temple and in Ex.A54, the nature of the entrustment has been shown as Inam whereas in Ex-B16, it is shown as private. Be that as it may, when Madhavaperumal Maanyam is declared to be the owner of the property comprised in R.S.No.3814 old survey No.958 part both in Exs.B16 and A54, in such view of the matter, even as per the documents projected by the plaintiffs, after remand, it is found that the suit property is only shown as the Inam property of the temple and not as the property belonging to the plaintiffs. Accordingly, it is found that unable to suppress the same, in all the documents projected by the plaintiffs, the various transactions referred to thereunder are only made subject to the Maanyam right of the temple in respect of the property involved in the said transactions and in such view of the matter, to say that the plaintiffs had acquired a valid title to the property comprised in R.S.No.3814 by way of Exs.A2 & A3 and other transactions, as such, cannot be accepted in any manner.

20.As abovenoted, by way of remittance, this Court had ordered the parties to adduce further evidence and accordingly, the parties had also chosen to adduce some evidence. Exs.B9 to B15 have also come to be marked on behalf of the temple. No doubt, the witnesses examined on behalf of the temple are unable to correlate the documents marked as Exs.B9 to B15 as referring to the suit property. However, it is seen that the staff examined on behalf of the temple viz., DW2, as he was not personally acquainted with the suit property, he was unable to speak about the same and on the basis of the same, we cannot hold that the abovesaid documents are not connected with the property comprised in R.S.No.3814. Even the appellate Court has accepted the memorandum attached to the abovesaid documents which reads that the quit rent payable is exempted from payment to the Government as long as the proceeds thereof are appropriated for the use of Madhavaperumal temple and this grant is neither saleable, transferrable or mortgageable. Therefore, the above memorandum attached to the said documents marked as Exs.B9 to B15

reinforces the position that the property comprised in R.S.No.3814 had been entrusted to the temple as maanyam and accordingly, the temple had been exempted from paying the quit rent so long as proceeds received from the said property are being utilised towards the object of the temple as such and accordingly, the property having been entrusted to the temple only for the abovesaid purpose, it is evident that even the temple has not been granted the permission to sell, transfer or mortgage the same and in such view of the matter, when, as such, the right to enjoy the property without paying the quit rent to the Government has been conferred on the temple in all those documents and when the same had also been referred to in the documents projected by the temple marked as Exs.B1, 3 to 6 as above referred to and the same is also reiterated in Ex.B16 as well as in Ex.A54, it is evident that it is only the temple, which had been granted the right. The nomenclature styled as Maanyam or Inam, whatsoever, it is seen that the right had been conferred only on the temple as such and not to the plaintiffs and their predecessors in interest as sought to be made out by the plaintiffs and accordingly, only subject to the abovesaid right, it is found that the plaintiffs and the predecessor in interest had been enjoying the property comprised in R.S.No.3814, thereby recognising the right of the temple to the suit property.

21.This fact could also be gathered from the fact that the plaintiffs have clearly admitted the title of the temple in respect of R.S.No.3814 and in fact, they had been clamouring for the obtainment of patta from the temple in respect of the property comprised in R.S.No.3814 and in this connection, it is found that the plaintiffs had also produced the patta and the patta also seems to have been granted by the temple to certain persons, which documents have come to be marked as Exs.A39 to 41. Accordingly, it is found that as the temple had been exercising the right over the property comprised in R.S.No.3814, accordingly, in recognition of the same at one point or the other, affirmed the said claim by the issuance of pattas and the pattas are also found to have been issued to certain persons marked as Exs.A39 to 41. Thus, the abovesaid documents would also go to lend support to the temple's claim of title to the property in R.S.No.3814 and accordingly, the occupants are found to have been endeavouring to claim patta from the temple one way or the other.

22.In addition to that, it is further seen that though the property comprised in R.S.No.3814 had been subject matter of various transactions effected by the plaintiffs and their predecessors in interest and also the subject matter of partition effected amongst the family members of the plaintiffs, in fact, from the letter dated 27.09.1958 marked as Ex.A21 issued by the plaintiffs' predecessors in interest to the temple, it is found that the predecessors in interest have claimed that there had been some partition in respect of the properties amongst the family members comprised in

R.S.No.3814 as well as the other R.S numbers and after apprising the same to the temple, requested the temple to demand the quit rent from the respective members thencefrom and accordingly, informed that the original partition documents would be placed for the consideration of the temple and also in addition to that prayed for necessary arrangement to be effected for the transfer of patta to the various family members to whom the properties had been given under the partition document. Therefore, Ex.A21 would clinchingly establish that the predecessors in interest had asserted the right of the temple to the property comprised in R.S.No.3814 and other properties and accordingly, prayed for the collection of the quit rent from the respective family members to whom the properties had been granted and also prayed for the transfer of the patta to the respective family members. In response to the same, it is also found that the temple had issued the letter to the plaintiffs' predecessor in interest, which document, has come to be marked as Ex.A22, wherein also, the temple had called for the production of the partition documents for further consideration in the matter.

23.In the light of the above factual matrix, when the plaintiffs and their predecessors in interest had been acknowledging the right of the temple to the property in R.S.No.3814 one way or the other and when as could be seen from the documents, as above discussed, it is only the temple, who had been granted the Maanyam /Inam right to the said property, hence to say that it is only the plaintiffs, who had got the Kudiwaram right and in respect of Melwaram, the temple had been collecting the quit rent and accordingly, it is seen that the claim of the plaintiffs that they have title to the suit property, as such, cannot be accepted particularly without any valid material on the side of the plaintiffs to establish as to how they had acquired title to the suit property as per law.

24.When even as per the case of the plaintiffs, as could be seen from Ex.A54, it is only the temple, which had been granted the Inam right in respect of the property comprised in R.S.No.3814 and when the plaintiffs and their predecessors in interest have not been shown to have acquired any right from the temple / Inamdhar and on the other hand, acknowledging the right of the temple to the property concerned they had been paying the quit rent and also praying for the issuance of patta in their favour one way or the other and when the plaintiffs have not placed any document whatsoever to show that the temple had conveyed the Kudiwaram right in respect of the property involved in the lis to them one way or the other and on the other hand, the temple is found to have been asserting its right to the said property by collecting the quit rent from the plaintiffs and their predecessors in interest, in such view of the matter, Exs.A2 & A3 as well as the other transactions projected by the plaintiffs involving the property comprised in R.S.No.3814 one way or the other

would not enable them to claim title to the property, as such, as per law and therefore, the determination of the first appellate Court that the plaintiffs without knowing the nature of the right over the the suit property had been paying the quit rent to the temple on a misconception and it is only the plaintiffs, who have title to the suit property, as such, cannot be countenanced, particularly, sans any material pointing to the same on the part of the plaintiffs.

25.The counsel for the temple contended that when as per the case of the plaintiffs that it is only the temple, which had been granted the inam right in respect of the property comprised in R.S.No.3814 and the same has also been buttressed by the documentary evidence projected in the matter and hence according to him, the presumption under Section 44 of the Tamil Nadu Act 30/63 would hold and accordingly, the said presumption not having been disturbed by the plaintiffs in any manner, it is his argument that it is only the temple, which has got the melwaram and Kudiwaram right in respect of the property comprised in R.S.No.3814 and not the plaintiffs. The abovesaid argument seems acceptable.

26.When the plaintiffs have failed to establish that they had acquired any valid document of conveyance in respect of the suit property from the temple as such, when they claim to have acquired acquisition to the property comprised in R.S.No.3814 from others, who are not established to be the lawful title holders and when in the abovesaid proceedings, the temple is not a party and not associated with the same in any manner and on the other hand, in all the abovesaid transaction, the Maanyam right of the temple had been explicitly affirmed without any ambiguity and accordingly, when the documents projected by the temple marked as Exs.B1 to B16 are read in toto coupled with the documents projected on the side of the plaintiffs as above discussed, in all, it is found that it is only the temple, which has got Iruwaram right in respect of the property in R.S.No.3814 and accordingly, it is found that the plaintiffs had been approaching the temple one way or the other for transferring the said right in their favour, however, unable to secure the said right from the temple, had chosen to come forward with the suit on the basis of certain transactions as above discussed, which would not confer valid title to the plaintiffs, particularly, when the source of title of the plaintiffs has not been established in any manner as per law.

27.The argument that has been put forth by the plaintiffs' counsel that the quit rent has been paid on a misconceived presumption of the title of the temple and further, according to him, the payment of quit rent alone would not entitle the temple to assert title to the property as according to him, the quit rent should be construed only as the nature of regular rent tax and not as acknowledging the right of the temple as such and accordingly, contended that

inasmuch as the plaintiffs are found to have engaged in various transactions in respect of the property in R.S.No.3814, according to him, on that score alone, the presumption, which could arise under Section 44 of the Tamil Nadu Act, 30/63 in favour of the plaintiffs had been rebutted and accordingly, the plaintiffs' case should be accepted. However, the above argument does not merit acceptance. Even assuming that the quit rent cannot be construed as acknowledgement of the title on the part of the plaintiffs in favour of the temple, the fact remains that all along, the plaintiffs and their predecessors had been paying the quit rent one way or the other to the temple. As could be seen from the documents, as pointed out supra, it is only the temple, which had been granted the right in respect of the property comprised in R.S.No.3814 for the upkeep of the temple and accordingly, it is seen that exemption had been granted in favour of the temple from paying the quit rent, Urban Tax etc., so long as the property is utilised for the temple purpose. Therefore, when the temple is found to be the Maanyamdhar or Inamdhar of the property in R.S.No.3814 and the said right had not been shown to have been transferred in favour of the plaintiffs and their predecessors in interest in the manner known to law by the temple, in such view of the matter, the plaintiffs cannot be allowed to lay a claim of right to the property involved in the suit on the basis of the transactions projected by them, wherein, as above pointed out, the temple is not a party and the temple being granted the Maanyam/Inaam right in respect of the property in R.S.No.3814, it is found that the plaintiffs are not entitled to seek and obtain the reliefs prayed for against the true owner, viz., the temple and the first appellate Court is found to have not appreciated the abovesaid facts in the correct perspective both documentary wise as well as legal wise and erred in disturbing the judgment and decree of the trial Court and in such view of the matter, the judgment and decree of the first appellate Court, the reasonings and conclusions of the first appellate Court for upholding the plaintiffs' case suffers from perversity and also found to be totally illogical and irrational in all aspects, having failed to construe the import of the documents projected by the temple in the matter as well as the position of law surrounding the same, in all, it is seen that the judgment and decree of the first appellate Court are liable to be set aside.

28.The temple being found to be the owner of Iruwaram right in respect of the property comprised in R.S.No.3814 and accordingly, the plaintiffs in O.S.No.7012 of 1982 and the plaintiffs in O.S.No.7290 of 1982 having failed to establish that they have acquired any valid right from the temple in respect of the suit property involved in the abovesaid litigations and on the other hand, found to have acquired rights from the persons, who have no semblance of right to the suit properties and furthermore, when in all the transactions, the right of the temple had been asserted in one way or the

other and when the presumption that would arise in favour of the temple under the Act as above discussed, having not been disturbed in any manner and further more, when all along, the plaintiffs and their predecessors in interest have been acknowledging the right of the temple one way or the other by paying quit rent whether it be in the nature of regular rent or tax whatsoever and also claiming right for the obtainment of the patta from the temple, in all, it is found that it is only the temple, which has got the right to the properties involved in the litigations concerned and not the plaintiffs and accordingly, the plaintiffs in O.S.No.7012 of 1982 and the plaintiffs in O.S.No.7290 of 1982 are not entitled to obtain the reliefs prayed for in the suit and the substantial questions of law formulated in the second appeals are, accordingly, answered in favour of the temple and against the respective plaintiffs.

29.The counsel for the plaintiffs in respect of his contentions has placed reliance upon the decisions reported in 2010 (1) CWC 124 (Arulmighu Thiruvateeswarar Devasthanam, Triplicane, Madras - 5, rep. by its Executive Officer Vs. The State of Tamil Nadu, rep.by its Secretary, Land Administration Department, Fort St. George, Chennai - 9 and 4 others), AIR 1981 MADRAS 318 (G.N.Venkataswamy Vs. Tamil Nadu Small Industries Development Corporation Ltd., and others) and the judgment of this Court dated 11.07.1996 passed in S.A.No.1397 of 1986 (Sri Madhavaperumal Devasthanam, Mylapore, Madras - 4 repletd., by Executive Officer Vs. Dhanalakshmi and six others). Similarly, the counsel for the temple placed reliance upon the decisions reported in (1997-I-L.W.430) (Muthusamy Gounder & 13 others Vs.Arulmigu Varadaraja perumal Temple at Nathakadaiyur, rep.by its fit person K.Chinnasami and 10 others), 1996-2-L.W.231 (Sri Madhavaperumal Devasthanam, Mylapore, Madras - 4 represented by Executive Officer Vs.Dhanalakshmi and six others) and 1995 Supp (3) Supreme Court Cases 724 (A.T.S.Chinnaswami Chettiar and others Vs. Sri Kari Varadaraja perumal Temple and another). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

30.S.A.No.1858 of 2002.

For the reasons aforesaid, the judgment and decree dated 28.05.1999 passed in A.S.No.190 of 1997 on the file of III Additional Judge, City Civil Court, Chennai are set aside and the judgment and decree dated 31.03.1997 passed in O.S.No.7012 of 1982 on the file of XII Assistant Judge, City Civil Court, Chennai are confirmed. Accordingly, the abovesaid second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

31.S.A.Nos.849 & 61 of 2005:

For the reasons aforesaid, the Judgement and Decree dated 28.10.2003 passed in A.S.No.210 of 1997 on the file of the Additional District Judge, Fast Track Court No.V, Chennai, confirming the judgement and decree dated 31.03.1997 passed in O.S.No.972 of 1983 on the file of the XII Assistant Judge, City Civil Court, Madras are confirmed and the Judgement and Decree dated 28.10.2003 passed in A.S.No.209 of 1997 on the file of the Additional District Judge, Fast Track Court No.V, Chennai, confirming the judgement and decree dated 31.03.1997 passed in O.S.No.7290 of 1982 on the file of the XII Assistant Judge, City Civil Court, Chennai, are confirmed and accordingly, the abovesaid second appeals are dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sms

To

1.The III Additional Judge,
City Civil Court, Chennai.

2.The XII Assistant Judge,
City Civil Court, Chennai.

3.The Additional Judge,
V Fast Track Court, Madras.

4.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.A.Muthukumar, Advocate, S.R.No. 44569
+1cc to Mr.T.V.Krishnamachari, Advocate, S.R.No.44732
+1cc to the Government Pleader, S.R.No. 44599

S.A.Nos.1858 of 2002, 849 &
61 of 2005

MR (CO)

GN (18/12/2019)

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