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IN THE HIGH COURT OF JUDICATURE AT MADRAS
JUDGMENT RESERVED ON : 31.03.2021

JUDGMENT PRONOUNCED ON : 28.06.2021

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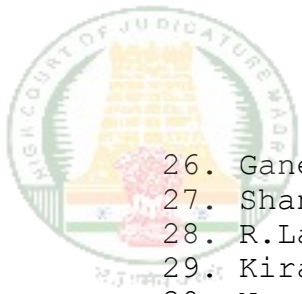
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.531 of 1997

1. The State of Tamil Nadu,
rep.by its District Collector,
Dharmapuri District.
2. The Tahsildar,
Krishnagiri.
... Appellants/Respondents 1 & 2/Defendants 1 & 2

...Versus...

1. L.Narasinga Rao
2. R.Krishnaji Rao
...Appellants 1 & 2/Respondents 1 & 2/Plaintiffs 1 & 2
3. E.V.Veeranan Chettiar
(Rep.Sri Veera Saiva Bagaveswara
Edn.Committee)
4. Kasinatha Rao
5. K.Vitta Rao (died)
6. Subramania Rao
7. K.Ganesh Rao
8. Amaravathi (Died)
9. Mahendra Rao
10. V.Gowri Sankar Rao
11. V.Heerendra Rao
12. Suseelabai
13. L.Ramarao
14. L.Subramania Rao
15. L.Thannoji Rao
16. L.Manjunatha Rao
17. L.Ragavendra Rao ...Respondents 3 to 17/Respondents 3 to 17/
Defendants 3 to 17
18. Sarjan Rao
19. Saraoja Bai
20. Sugundha Bai
21. Vasantha Bai
22. Mangala Bai
23. Ramachandra Rao
24. Gajendra Rao
25. Hem Abai



26. Ganesh Rao
27. Shanthi
28. R.Lakshmibai @ Baby Bai
29. Kiran Kumar
30. Narendra Kumar
31. Kalpanabai @ Shobabai
32. DEVARATHA
33. Devayani
34. Mahendra Rao
35. Usha Bai
36. Magesh

[RR18 to RR36 brought on record as L.Rs of the deceased R1 viz., R.Narasingha Rao vide Court order dated 06.11.2020 made in C.M.Ps 11543, 11547, 11561, 11563, 11564, 11570, 11571, 11576, 11587, 11590, 11591 & 11592/2020 in S.A.No.531/1997 (GJJ)]

37. K.Kalyani Bai
38. Janaki Bai
39. G.Geetha Bai
40. K.Srinivasa Rao
41. K.Subramani Rao
42. K.Gopinath Rao
43. K.Ramachandra Rao
44. Baby Bai
45. Bhavaneswari
46. G.Neela Bai
47. G.Sunil Kumar
48. G.Anil Kumar

[RR37 to RR48 brought on record as L.Rs of the deceased R2 viz., R.Krishnaji vide Court order dated 06.11.2020 made in C.M.Ps 11543, 11547, 11561, 11563, 1564, 11570, 11571, 11576, 11587, 11590, 11591 & 11592/2020 in S.A.No.531/1997 (GJJ)]

49. Sangeetha
50. Anitha
51. Vinoth
52. Santhosh

[RR49 to RR52 brought on record as L.Rs of the deceased R5 viz., K.Vittal Rao vide Court order dated 06.11.2020 made in C.M.Ps 11543, 11547, 11561, 11563, 11564, 11570, 11571, 11576, 11587, 11590, 11591 & 11592 of 2020 in S.A.No.531 of 1997 (GJJ)]

53. Mahendra Rao
54. Gowri Shankar V.
55. Vedavathi Bai
56. Hirendra Rao

[RR53 to RR56 brought on record as LRs of the deceased R8 viz., Amaavathi vide Court order dated 06.11.2020 made in C.M.Ps.11543, 11547, 11561, 11563, 11564, 11570, 11571,



11576, 11587, 11590, 11591 & 11592/2020 in
S.A.No.531 of 1997 (GJJ)]

... Respondents/LR's the deed RR1, 2, 5 & 8

PRAYER: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.140 of 1995 dated 07.01.1997 on the file of the III Additional District Judge, Krishnagiri reversing the judgment and decree made in O.S.No.784 of 1982 dated 31.01.1995 on the file of the District Munsif, Krishnagiri.

For Appellants	::	Mr.Aravind Pandiyan Additional Advocate General assisted by Mr.Aravind Gosh Additional Government Pleader
For R6, 18 to 21, 23	::	Mr.V.Raghavachari
For R7	::	Mr.G.Govinda Rajan
For R9	::	Mr.K.Jaganadha Rao
For R11,14 to 17	::	Mr.V.Manohar
For R37 to 48	::	Mr.AR.L.Sundaresan, Senior Counsel For Mrs.AL.Gandhimathi
For R1,2,3,4,5,8,53,54	::	Died
For 24 to 33	::	No appearance
For R51, 56	::	No appearance
For R10,22,49,50,52,55	::	No appearance
For R12,13,34,35,36	::	No appearance

J U D G M E N T

The defendants 1&2 are the appellants herein.

2. For the sake of convenience the parties are referred as per ranking before the trial Court.

3. The brief facts of the case are as under:-
Plaintiff's case:-

(a) The suit in O.S.No.784 of 1982 was filed by the plaintiffs on the file of the District Munsif, Krishnagiri against the State of Tamil Nadu rep.by the District Collector, Dharmapuri District and the Tahsildar, Krishnagiri praying for a declaration of the plaintiffs title to and ownership and possession of the suit schedule lands; for permanent injunction to restrain the defendants from in any manner interfering with the peaceful possession and enjoyment of the said lands and from in any way dealing with the said lands and for costs.

(b) The case of the plaintiffs is that the suit property originally belonged to one Neelakanda Rao and Vittal Rao and others who were inamdars of Kothapetta Inam village in Krishnagiri Taluk. They were private lands of the Inamdars.



Vittal Rao sold items 1 to 4 of schedule 1 and item 1 of schedule 2 to one Eswara Rao under a registered sale deed dated 22.11.1950. (Marked as Ex.A1). The said Eswara Rao subsequently sold the said lands in favour of the plaintiffs viz. R.Narasinga Rao and R.Krishnaji Rao for consideration under a registered sale deed dated 19.05.1952 (Marked as Ex.A2). Item 5 of the 1st schedule and item 2 of the second schedule were sold to the plaintiffs by Kuppani Bai and her sons Baroji Rao and Narasinga Rao, the legal representatives of the other Inamadar Thiru Neelakanda Rao for considerable by registered sale deed dated 01.11.1952. The said lands being private lands of the Inamdars was under cultivation of the predecessors in title and of the plaintiffs ever since the purchase.

(c) Kothapetta village was notified by the Government of Tamil Nadu under the provisions of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 26 of 1963. Even though the lands and the said village was notified under the Inam Estates (Abolition and Conversion into Ryotwari) Act, the property does not become the property of the Government and does not vest absolutely in the State but is liable for being granted as Ryotwari Patta under the provisions of Act 26 of 1963.

(d) As the predecessors in title of the plaintiffs and the plaintiffs have been in continuous cultivation of the said lands as private lands, they are entitled for patta under section 9 or section 11 of the Act.

(e) The Settlement Officer who conducted the enquiry under Act 26 of 1963 erroneously rejected the claim of the plaintiffs for patta under the Act but the said order was not communicated to the plaintiffs and they came to know of the rejection only on 18.11.1982 when there was an inspection carried out by the officials of 1st defendant and the 2nd defendant in respect of the suit lands.

(f) As the defendants were attempting to utilize the plaintiffs' property for some of the purposes of their departments, cause of action had arisen and hence a suit was filed for declaration of title and permanent injunction.

Defendant's case:

(g) The Tahsildar, Krishnagiri had filed a written statement denying the title pleaded by the plaintiffs and raising a contention that once the village is notified under Act 26 of 1963, the entire village vests in the Government and all pre existing title in respect of the lands in the Village gets wiped off and that the order passed by the Settlement Officer rejecting the patta has become final and that the Civil Court does not have jurisdiction to go into the question of title and possession in respect of the properties as the village was notified under the Tamil Nadu Act 26 of 1963.

(h) The trial Court by judgment and decree dated 31.01.1995 held that the Civil Court has jurisdiction to go into the question of title and possession, but however, held that the plaintiffs and their predecessors in title had not proved possession of the suit properties for the period of 12 years prior to the cut off date viz., 12 years prior to 01.04.1960 or



12 years prior to 26.09.1955.

(i) Aggrieved against the same, the plaintiffs had preferred First Appeal in A.S.No.140 of 1995 on the file of the District Court, Dharmapuri in Krishnagiri.

(j) The Appellate Court accepted the case of the plaintiffs that they were in possession of the property by themselves and through their predecessors in title for the period of 12 years prior to the cut off date and hence they were entitled to Ryotwari Patta under Section 10 and 11 of the Act.

(k) The defeated defendants have preferred the Second Appeal before this Court as against the said judgment of the First Appellate Court.

4. At the time of admission only notice of motion was ordered on 10.07.1997. On 24.03.2021, the above Second Appeal was admitted and the following Substantial Questions of Law were framed.

(i) Whether the Lower Appellate Court has not committed error in upholding that the Civil Court jurisdiction is not outside, on facts and circumstances of the case.

(ii) Whether the Lower Appellate Court has not committed error in granting declarative relief to the plaintiff/respondent by ignoring the provisions of Tamil Nadu Act 26/1963.

(iii) Whether the Lower Appellate Court was right in holding the factum of possession in favour of plaintiff in the absence of evidence.

5. The main contention of the appellants are that the jurisdiction of the Civil Court is ousted and finality is attached to the order passed by the Settlement Officer negavitng patta. The appellants further contended that the plaintiffs had not proved their possession to the property during the crucial date. The appellants also contended that the suit was barred by limitation.

6. The respondents submitted that the contention of the appellant that the civil Court does not have the jurisdiction on account of the fact that the village has been notified under Act 26 of 1963 and finality is attached to the orders passed by the Settlement Officer under Section 64 C of the Act deserves to be rejected.

7. Perused the records of Lower Court. The defendants 1&2 in the suit in O.S.No.784 of 1982 is the appellant herein.

8. The original plaintiffs/respondents herein viz., Narasinga Rao and Krishnagi Rao have filed a suit in O.S.No.784 of 1982, on the file of the District Munsif Court, Krishnagiri, seeking relief of declaration of their title to the suit property and for permanent injunction restraining the Government from interfering with the peaceful possession and enjoyment of the suit property and they have impleaded third defendant on the promise that the Government is proposed to take the land and to assign them, as prospective assignee he was impleaded as third defendant. The trial Court has rendered a categorical finding that they are not necessary party.



9. Be that as it may, before the trial Court, the specific case of the plaintiffs is that the suit land is originally belonging to one Neelakanta Rao and one Vittal Rao and some other Inamdars of Kothapetta Inam village, Krishnagiri Taluk. The said village was declared as an Inam village under the Tamil Nadu State Government under the provisions of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) act 26 of 1963, in Gos.No.1199. From the said Inamdars, there was a sale deed in favour of Easwara Rao under Ex.A1, dated 22.11.1950. Subsequent to the sale deed, in the year 1952, the plaintiffs have purchased the property from Neelakanta Rao's wife viz., Kuppani bai and her sons viz., Baroji Rao and Narasinga Rao for valuable consideration. Though the plaintiffs were applied for patta under settlement proceedings, the same was rejected. Ex.A21/settlement Tahsildar proceedings declared it as Inamdars land and it is not ryot land. Subsequently, the plaintiffs have filed a suit in O.S.No.784 of 1982, before the District Musif, Krishnagiri, for the above relief.

10. Before the Trial Court, during the course of trial, on the side of the plaintiffs, the first plaintiff viz., Narasinga Rao was examined as P.W.1, Beeson was examined as P.W.2 and Vusappan was examined P.W.3, who is the Karnam of the village and marked Exs.A1 to A20 and on the side of the defendants one Aragopal was examined as D.W.1 and marked Exs.B1 to B40.

11. Exs.A1, A2 & A3 are the sale deeds, dated 22.11.1950, 19.05.1992, 01.11.1952 respectively and Ex.A4 to A20 are the various kist receipts paid for the different periods. While Ex.B1 is the register for Adangal extract for the fasli No.1381, Ex.B2 is the land tax revenue register for the year 1959 in respect of revenue village No.124 Kottapetta, Ex.B3 is the land register for survey No.19, Ex.B4 is the land register for survey No.44/3 and 4 and Ex.B5 is the other documents are the office of the Adangal accounts.

12. The trial Court after formation of necessary issues has held that following the judgment of the Hon'ble Supreme Court, reported in 1985 (4) SCC Page No.10 [State of Tamil Nadu Vs.Ramalinga Samigal Madam], the suit is maintainable. However, the trial Court has held that the plaintiffs are not entitled for the declaration as they are not satisfied the conditions contemplated under Sections 9, 10 & 11 of the Tamil Nadu Act 26 of 1963 and accordingly dismissed the suit.

13. (a) Aggrieved against the said judgment and decree passed in O.S.No.784 of 1982, the plaintiffs have preferred an appeal in A.S.No.140 of 1995, before the III Additional District Court, Krishnagiri, Dharmapuri District. During the trial, the plaintiffs have filed a petition under Order 41 Rule 27 for receipt of additional documents and accordingly, the same was



allowed and Ex.21 was marked, which is the proceedings of the settlement Tahsildar.

(b) The Lower Appellate Court has rendered a finding that the plaintiffs are entitled for the benefit under provisions 3

(d) of the Act and the suit is maintainable and the exhibits marked on behalf of the plaintiffs as well as the defendants/Government also supports the case that the plaintiffs are in possession and cultivation of the suit property. Accordingly, allowed the appeal and consequently decreed the suit, except in respect of survey No.19/2, where the land was acquired by the Government for laying Road. As against the judgment and decree passed in A.S.No.140 of 1995, the Government has preferred the Second Appeal in S.A.No.51 of 1997. The third defendant is the proforma party and he has not agitated the claim against the plaintiffs.

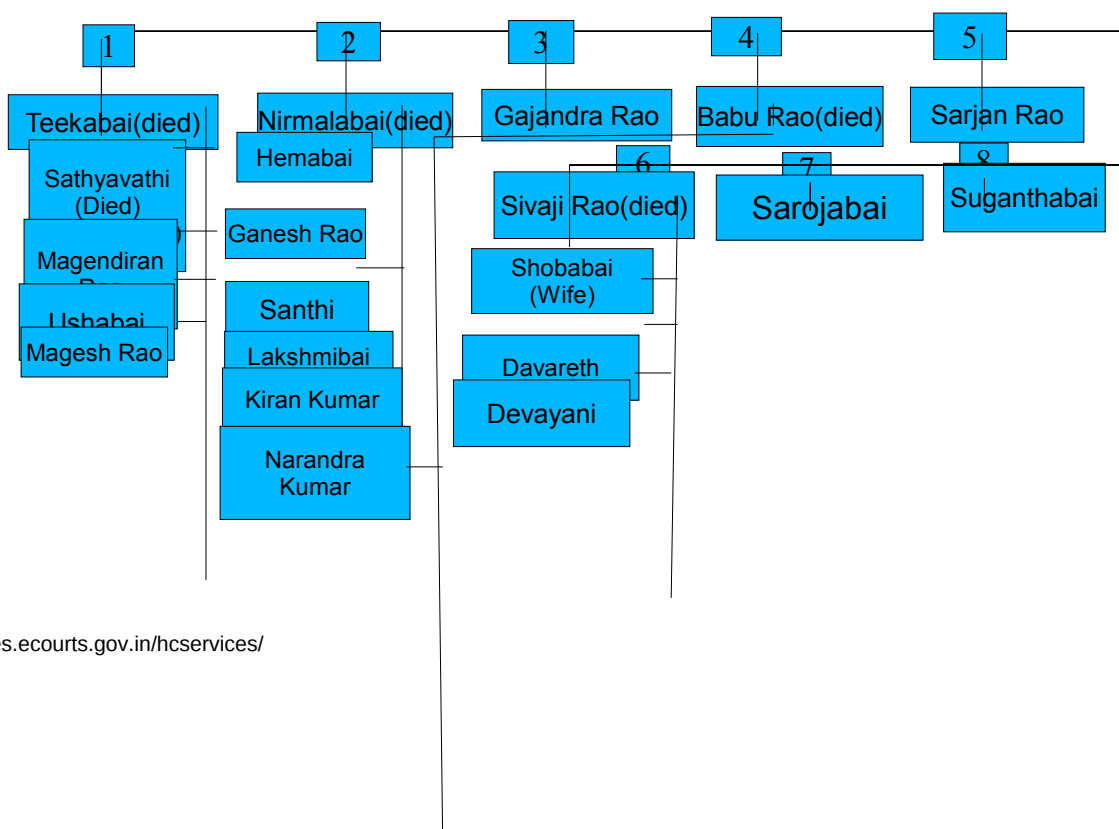
14. The Second Appeal was admitted on the above Substantial Questions of Law.

15. Discussion on Substantial Question of Law:-

During the pendency of the Second Appeal, the original plaintiffs died and the respective legal heirs were added as respective respondents and they are represented by the learned counsel has stated above.

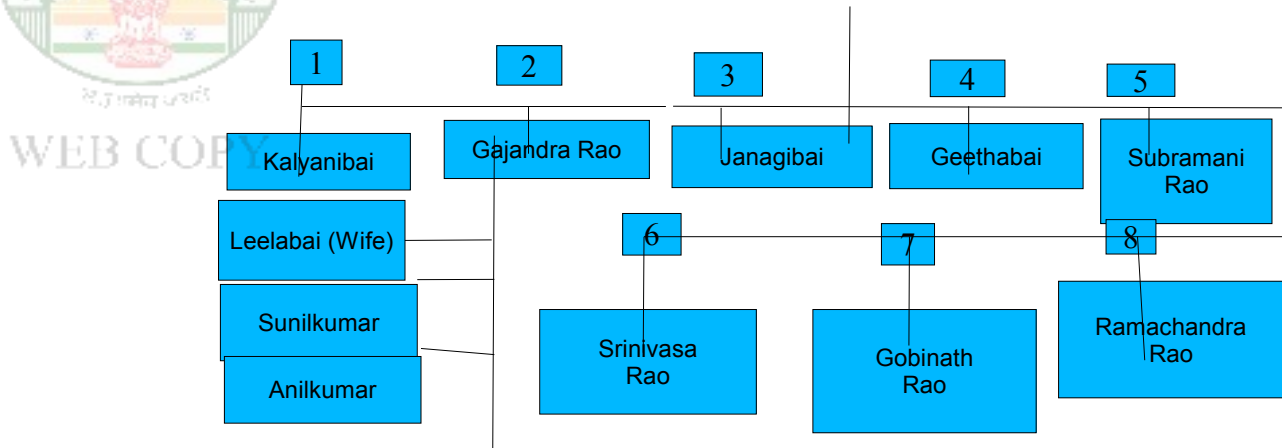
16. The Genealogical tree of the present respondent are as under:

R. NARSINGA RAO. (DIED : 2001)





R. KRISHNAJI RAO.(DIED : 2007)



17. Mr.Aravind Pandiyan, learned Additional Advocate General assisted by Mr.Y.T.Aravind Gosh, learned counsel for the appellants would contend that the Settlement Tahsildar proceedings as per Ex.A21, dated 31.12.1968, there is a specific provision for appeal under the said Act and the plaintiffs have not filed any appeal as provided under the said enactment and hence, non filing of appeal under Section 12 of the Tamil Nadu Act 26 of 1963 against the order of the settlement is a bar, indirectly they cannot challenge the said order without filing independent appeal as provided under the statute.

18. The Additional Advocate General further contended that non filing of the statutory appeal has provided to Section 12 of the Act, they cannot invoke Section 9 of the CPC by way of independent suit and in this angle, the suit is not maintainable. Furthermore, he also contended that the documents filed before the Trial Court are subsequent to the suit and hence, the same cannot be relied upon.

19. On the point of entitlement of the plaintiffs either under Section 9 or under Section 10 if not under Section 11 of the Act, the plaintiffs have to plead and prove that there tracing of the title to the point that the land are private lands as defined under the Act and they have to prove the title to the satisfaction of the Court in the manner known to law. In order to claim benefit under Section 10 of the Act, the plaintiffs have to prove the cultivation failing which they have to fall. In respect of benefit under Section 11 of the Act, they have to claim that and to prove 12 years prior to the commencement of the Act, they are in cultivation de-horse her title right status of cultivating tenant failing which they are not entitled for any patta under the Act.

20. Per contra, Mr.ARL.Sundaresan, learned Senior Advocate representing for M/s.A.L.Ganthimathi, learned counsel for the respondents 37 to 48, would contend that the Lower Appellate Court has given a categorical finding at paragraph No.21 and 22, wherein there is a clear finding that as to the non speaking order said to have been passed under Ex.21



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[documents marked before Lower Appellate Court] and further stated that the documents are sufficient enough to conclude their cultivation of the land and Ex.A1 and A3 are registered documents having registered documents of the year 1950 they are ancient documents comes within the scope of Section 30 of the Evidence Act and it is to be accepted as proved. Having been purchased those lands from the above said Neelakanta Rao and Vittal Rao, who are the inamdars of the Kothapetta Inam village, Krishnagiri Taluk, the right of the plaintiffs stands established and as such they have entitled for declaration as they satisfies ingredients of Section 9 of the C.P.C is found to have force and acceptance.

21. Mr.V.Raghavachari, learned counsel for the respondents 6,18 to 21 &23 would contend that the findings rendered by the trial Court are specifically reversed by the Lower Appellate Court and further contended that, they are entitled to patta, non filing of statutory appeal will not bar invoking the jurisdiction of the Civil Court since the declaration of pre-existing right is squarely falls within the Section 9 of the CPC. Furthermore, it is also brought to my notice about the para No.16 and 17 let in evidence with regard Exs.A1, A2 and A3 assumes significance on the entitlement of declaration title.

22. The contention of the learned counsel is that de-horse the entitle under Section 10 and 11 by virtue of the oral evidence of P.W.1 and P.W.2 and the evidence of village karnam/P.W.3 coupled with the documentary evidence Exs.A1 to 3 they falls within the scope of Section 9 of the C.P.C is found to have force.

23. In the decision reported in 1985 (4) Supreme Court cases Page No.10 [State of Tamil Nadu Vs.Ramalinga Samigal Madam] with Civil Appeal No.1633 of 1971 [State of Tamil Nadu Vs. K.L.M.Ramamurthy and others] has held that the Civil Court's jurisdiction when not barred or excluded despite finality given to the orders of statutory authority and prohibition imposed against questioning of such order before the Civil Court.

(ii) 1998 (1) CTC 630 [Srinivasan and six others Vs.Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirappally District by its Executive Officer at Pettavaithalai Devasthanam and five others] has held that the Tamil Nadu Minor Inams (Abolition and conversion into Ryotwari) Act, 1963, Jurisdiction of Civil Court and injunction such suit is not barred by reason of grant of patta under provisions of Tamil Nadu Act XXX of 63 and jurisdiction of Civil Court is not totally and completely ousted or barred in respect of adjudication of claims of title, questions or issues which requires to be decided for implementing ryotwari settlements in areas governed by legislation abolishing minor inams.

(iii) 2010 (2) CTC 860 [B.Jayachandran Vs. Vasanthamani and others] has held that the Code of Civil Procedure, 1908 (5 of 1908), Section 9 and Tamil Nadu Minor Inams (Abolition and



Conversion into Ryotwari) Act, 1963 (T.N.Act 30 of 1963) and Civil Court is entitled to nullify an order of conversion into Ryotwari) Act, 1963 and jurisdiction not ousted and ratio in Full Bench decision, Srinivasan V. Sri Madhyaruneswaraswami, Pattaviathalai, 1998 (1) CTC 630 has also held that Settlement Officer cannot decide title to suit properties and same can be decided only by a competent Civil Court.

24. In view of the settled preposition of law, this Court has no hesitation to hold that the suit as filed by the plaintiff is maintainable and the contention raised by the learned Additional Advocate General that non-availing of statutory appeal is not no longer bar for invoking the jurisdiction of this Civil Court has held by the full Bench judgment of this Court, as referred above and based upon the Exs.A1 to A3, the lower Appellate Court has rightly granted the relief of declaration.

25. The contention of the learned counsel is that de-horse the entitle under Section 10 and 11 of the Act by virtue of the oral evidence of P.W.1 and P.W.2 and the evidence of village Karnam /P.W.3 coupled with the documentary evidence Exs.A1 to 3 they comes within the scope of Section 9 of the C.P.C is found to have force.

26. Based upon the arguments of the learned Senior Advocate and the Advocate on record for the respondents, it is seen that as per Ex.A21, the order passed by the Settlement Tahsildar under the Special Act is crept in nature and the same is a non-speaking order and the order for negating the relief under the Act is due to the non production of the Sale Deeds before the Tahsildar in the said enquiry. However the same has been marked as stated supra during the trial before the trial Court as Exs.A1, A2, A3 (originals) and the evidence of P.W.3 Karnam duly substantiate the documentary evidence and they are entitlement for declaratory and possessory relief. It is also seen from Ex.A2 wherein it is specifically stated that due to the non production of the Sale Deed by the plaintiff the lands have been declared as anadhinam.

27. In the decision reported in 2020 SCC Madras online 8240 [K.Lakshmanan Vs.District Collector Erode District and others] wherein the Division Bench of this Court has held that:-

"9. Having considered the submissions raised at length, we find that the claim of the appellant is that the land is, as a matter of fact, not Government Poramboke land, but is Anadhinam land. Anadhinam is a category of land under the Madras Estate Land Act [1 of 1908], Section 3(16) whereof has been dealt with by the Andhra Pradesh High Court in the case of Dhullpalla Ramayya V. Kota Brahmayya, AIR 1958 AP 100, to hold that Anadhinam land is not private land, and it merely means unoccupied land."



and hence I hold that the classification mentioned under the revenue records as "Anadhinam" does not as a Government land but unoccupied land also assumes significance and the oral evidence of the village Karnam under P.W.3 clearly lends support to the case of the plaintiff has rightly held by the lower Appellate Court.

28. The learned Appellate Judge by judgment and decree dated 07.01.1997 held that the Civil Court jurisdiction is not ousted by the provisions of the Tamil Nadu Act 26 of 1963 and that the plaintiffs had established title to the property by producing Ex.A1 to A3 sale deeds; that the order passed by the Settlement Officer though not produced before the trial Court, was a necessary document and having been produced before the Appellate Court was accepted as additional evidence and marked as Ex.A21 and on perusal of the same shows that it was a cryptic order and a summary disposal by which the plaintiffs were non suited by the Settlement Officer on the ground that the original title deeds were not produced before him. The Appellate Court further held that the original title deeds has been produced before the Civil Court and hence the reason which was given by the Settlement Officer did not survive any more. In view of the above, substantial question of law (i) and (ii) has been stands negatived.

29. On the question of possession, the learned Appellate Court on appreciation of the Exs.A4 to A20 and the documents filed on the side of the defendants in Ex.B1 to B40 found that the documents shows the plaintiffs are in occupation of the properties in question even during the subsequent period. The records relating to the period prior to the Notification under the Act was available with the defendants but the defendants had not produced the same before the Court, despite the issuance of notice to produce revenue records which is admittedly in the custody of the defendants and hence an adverse interference has to draw against the defendant as its non-production.

30. As the defendants had not produced the same, the Lower Appellate Court has rightly drawn an adverse inference and the same does not suffer from any irregularity or illegality warranting interference at this appellate stage. The Substantial Questions of Law (i) and (ii) are stands negatived in view of the discussion as above.

31. As stated supra, the Lower Appellate Court had also rightly placed reliance upon the notice to produce documents issued by the plaintiffs to the defendants and due to factum of non production of documents by the defendants has rightly drawn adverse inference against the defendants/appellants. The lower Appellate Court has found that prior documents have not been produced by the defendants, as sought for the plaintiffs/defendants whereas the subsequent documents produced



shows the possession and enjoyment by the plaintiffs/respondents and hence has rightly held that plaintiffs were in possession of the property more than for the statutory period and such finding rendered by the Lower Appellate Court not suffer from any irregularity and illegality interference by this Court at this Second Appeal stage.

32. In view of the above discussion in the preceding paragraphs, the Substantial Question of Law (iii) is also stands negatived and no Substantial Questions of Law arises for consideration.

33. In the result,

(i) The Second Appeal is dismissed. No costs.

(ii) The judgment and decree granted by the lower Appellate Court in A.S.No.140 of 1995 dated 07.01.1997 is hereby confirmed.

Sd/-

Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

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To

1. The III Additional District Judge,
Krishnagiri

2. The District Munsif, Krishnagiri.

Copy To

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

+1cc to Mr.V.Raghavachari, Advocate SR.No.29587

+1cc to Mr.V.Manohar, Advocate SR.No.30013

+1cc to Mrs.A.L.Gandhimathi, Advocate SR.No.29979

+1cc to Government Pleader SR.No.29873

S.A.No.531 of 1997

AJS(CO)

GMV(26/08/2021)