



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.08.2021

PRONOUNCED ON : 17.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A.No.585 of 2007

Sri Viruntheeswarar Temple,
represented by its Fit person
Kurudampalayam
(The Executive Officer,
Sri Ranganathasamy Temple,
Karamadai, Mettupalayam Taluk)
...Appellant/Appellant/Plaintiff

vs.

1.T.Shanmugasundaram
2.P.Maragatham
3.S.Sarojini
4.C.Dhanambigai
5.C.Muthuswamy
6.G.Geetha Parameswari
7.K.Mohanasundaram
8.G.P.Narayanswamy
9.H.Chandran
10.R.Chinnaswamy
11.S.Chandramani
12.N.Ramakrishnan
13.The Sub Registrar,
Sub Registrar's Office,
Periyanaickenpalayam
Coimbatore Taluk,
Coimbatore District.
14.Indirani ... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Cr.P.C,
against the Judgment and Decree dated 28.09.2006 made in
A.S.No.70 of 2006 on the file of the Appellate Court and
3rd Additional Subordinate Judge, coimbatore confirming
the Judgment and Decree dated 24.03.2006 made in
O.S.No.20 of 1997 on the file of the First Additional
District Munsif Court, Coimbatore.



WEB COPY

For Appellant : Mr.R.T.Doraisamy
For Respondents 3 to 9 : Mr.V.Balasubramanian
For Respondents 2 & 10 to 12 : No appearance
Respondent 1 : Not Ready in Notice

JUDGMENT
(Heard through Video Conferencing)

This Second Appeal has been filed challenging the concurrent findings of the Courts below.

2. The Appellant Temple is the plaintiff in the suit O.S.No.20 of 1997 on the file of the District Munsif Court, Coimbatore. The respondents are the defendants in the said suit.

3. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

4. The suit O.S.No.20 of 1997 was filed by the plaintiff Temple against the respondents seeking for the following reliefs:

a) For the relief of permanent injunction against the defendants 1 to 12 from in any way interfering or dealing with the suit property on the basis of the illegal sale deeds created by the third defendant.

b) for the relief of permanent injunction restraining the 13th defendant from registering the nine sale deeds as P-89, P-90, P-21, P-92, P-96, P-97, P98-, P-99 and P-100.

c) For the relief of declaration that the sale deeds created by the third defendant in favour of the defendants 4 to 12 pertaining to the suit property is null and void is not binding on the plaintiff.

5. The case of the plaintiff Temple is that they are the absolute owners of the property in Coimbatore Registration District in Periyanaickenpalayam Sub Registration District, in Coimbatore Taluk (North) in Kurudampalayam Villaaage Vadamadurai S.F.No.69 Extent 8.50 Acres (hereinafter referred to as the suit schedule property). According to the plaintiff, the suit schedule property was originally an inam land and subsequent to the passing of the Madras Minor Inam (Abolition and



WEB COPY

property was granted ryotwari patta in the name of the plaintiff temple represented by the then hereditary poojaries under an order of Settlement Tahsildar dated 26.08.1968 which has been marked as Ex.A1 before the trial court. According to them, the third defendant claiming to be an owner of the suit schedule property has fraudulently sold the same under nine different sale deeds to the defendants 4 to 12 on 20.04.1995 & 24.05.1995 which is not binding on them. In such circumstances, the plaintiff Temple has filed the suit for the aforementioned relief.

6. However, it is the case of the third defendant who is the main contesting defendant that the suit schedule property was originally owned by her husband Swaminathan, as seen from the revenue records. According to the third defendant, she inherited the same from her husband and was enjoying the suit schedule property absolutely and only as an absolute owner, she has executed the sale deeds in the year 1995 in favour of the defendants 4 to 12. It is also pleaded in the written statement of the third defendant that a person by name C.S.Thangavelu Mudaliar had filed a suit in O.S.No.853 of 1995 on the file of the Principal District Munsif Court, Coimbatore against her and others including the Assistant Commissioner, HR & CE Department, Coimbatore seeking for the relief of permanent injunction restraining the third defendant from registering sale deeds presented for registration in respect of the suit schedule property. Thereafter, C.S.Thangavelu Mudaliar in that suit has filed a memo before the Principal District Munsif Court, Coimbatore on 31.07.1996 stating that he was not going to prosecute the said suit any further and thereafter, the said suit O.S.No.853 of 1995 came to be dismissed as not pressed. It is also pleaded in the written statement of the third defendant that the Assistant Commissioner, HR & CE Department had filed an interlocutory application I.A.No.2048 of 1996 in the said suit O.S.No.853 of 1995 to transpose himself as a plaintiff. According to the third defendant, only after due enquiry, the transpose petition namely I.A.No.2048 of 1996 filed by the Assistant Commissioner, HR & CE Department came to be dismissed on 20.12.1996. According to the third defendant, HR & CE Department has not preferred any appeal or revision against the dismissal order. According to the third defendant, the finding that HR & CE Department is not an interested party over the suit schedule property having attained finality in O.S.No.853 of 1995, the present suit O.S.No.20 of 1997 seeking for the very same prayer is barred by res judicata.



7. The following issues were framed by the trial court based on the pleadings of both the parties to the suit:

WEB COPY

1. Whether the suit property belongs to the plaintiff temple?
2. Whether the suit is barred by Resjudicata?
3. Whether the suit is maintainable without seeking the relief of declaration?
4. Whether the suit property administered by a trustee Thangavelu Mudaliar?
5. Whether the plaintiff temple is entitled for permanent injunction as prayed by it?
6. To what relief the Plaintiff is entitled?

Additional Issue:

1. Whether the Plaintiff temple is entitled for declaration that sale deeds executed by the this defendant are null and void are not binding on the Plaintiff?

8. Before the Trial Court, the plaintiff Temple filed 24 documents which were marked as Ex.A1 to Ex.A24 and two witnesses were examined namely PW1 (Seshadiri) and PW2 (Rajamani). On the side of the defendants, 16 documents were filed which were marked as Ex.B1 to Ex.B16 and two witnesses were examined namely DW1 - the third defendant herein and DW2-Chandran before the trial court.

9. The trial court has examined the exhibits namely

Ex.A1 - 26.08.1965 - Copy of settlement Tahsildar's order in S.R.No.694/1968 M.Act.

Ex.A2 - - copy of plaint in O.S.No.155/1995 (853/95 and Copy of Notice

Ex.A3 - 20.04.1995 - Copy of letter of Sub Registrar, Periyanaickenpalayam to Asst. Commissioner, HR & CE

Ex.A4 - 10.05.1995 - Copy of letter of Sub Registrar, Periyanaickenpalayam to Asst. Commissioner, HR & CE

Ex.A5 - 25.05.1995 - Letter by the Plaintiff Temple's Trustee to Assistant Commissioner, HR & CE, Coimbatore

Ex.A6 - 26.08.1968 - Copy of order of the Settlement Tahsildar - IV Gobichettipalayam in SR.No.694/68/M I Act/Coimbatore Taluk.



Chittur

Ex.A8 - 18.12.1996 - Proceedings of the Joint Commissioner, HR & CE Coimbatore

Ex.A9 - 05.03.199 - Copy of order as the Tahsildar Coimbatore North

Ex.A10 - 29.02.2000 - Copy of order of the RDO, Coimbatore

Ex.A11 - 20.02.2001 - Kist receipt paid by the plaintiff's temple

Ex.A12 - ---- - Kist receipt paid by the plaintiff's temple

Ex.A13 - 21.02.2003 - Kist receipt paid by the plaintiff's temple

Ex.A14 - 01.04.2002 - undertaking letter in respect of the ownership of the land

Ex.A15 - --- - Certified Xerox copy of plaint in O.S.No.351/1988.

Ex.A16 - 06.07.1950 - Sub Registrar's copy of lease deed

Ex.A17 - 10.06.1941 - Sub Registrar's copy of lease deed

Ex.A18 - 07.06.2005 - Copy of the Proceeding of the Coimbatore Revenue Divisional Officer

Ex.A19 - --- - Xerox copy of plaint in O.S.No.3940 of 2004

Ex.A20 - --- - Copy of plaint in O.S.No.1462 of 2004

Ex.A21 - --- - Certified xerox copy of plaint in O.S.No.538/1995

Ex.A22 - 15.09.1997 - Certified Xerox Copy of judgment in O.S.No.538/1995

Ex.A23 - 21.03.1996 - Certified Copy of fair order I.A.No.996/1995 in O.S.No.853/1995

Ex.A24 - 21.03.1996 - Certified copy of Final order in I.A.No.996/1996 in O.S.No.853/1995

Ex.B1 - 13.12.2001 - Notarised Xerox copy of miscellaneous receipt issued to the plaintiff's temple

Ex.B2- 20.12.1996 - Certified xerox copy of Decree in O.S.No.853/1995

Ex.B3 - 20.12.1996 - Xerox copy of Judgment in O.S.No.853/1995

Ex.B4 - 09.11.1998 - Certified Xerox copy of Judgment in A.S.No.19/97 passed by the II Additional



District Judge, Coimbatore.

Ex.B5 - 09.11.1998 - Certified copy of Decree in A.S.No.19/1997

Ex.B6 - 28.03.2001 - Proceeding copy of the Dharapuram Asst. Officer land Tax Department

Ex.B7 - 14.01.1997 - Copy of Adangal in receipt of the fasali 1384.

Ex.B8 - 12.03.1932 - Certified copy of document executed in between Rathnasabapathy Mudaliar and Krishnama Naidu

Ex.B9 - 23.05.1995 - Certified copy of sale deed executed by R.Balasundram in favour of H.Chandran

Ex.B10 - 26.09.2003 - Copy of High court order in writ petition No.26997/2003

Ex.B11- 08.08.1991 - Xerox copy of Legal heirship certificate

Ex.B12 - 26.09.1991 - Certified copy of plaint in O.S.No.853/1991

Ex.B13 - --- - Certified xerox copy of petition in I.A.No.2048/96 in O.S.No.853/1995

Ex.B14 - --- - Chitta extract in respect of the patta 541

Ex.B15 - --- - Xerox copy of Adangal extract in respect of Fassali 1384.

Ex.B16 - --- - Copy of the Memo in O.S.No.155/95

10. The trial court after examining the exhibits has given the following findings:

(a) Originally the suit schedule property was under the management of one Ekambara Easwara Mudaliar who had two sons namely Rathna Sabapathy Mudaliar and Shanmuga Mudaliar.

(b) After the demise of Ekambara Easwara Mudaliar, his son namely, Rathna Sabapathy Mudaliyar had been managing the suit schedule property as a hereditary trustee of the Temple.

(c) Shanmuga Mudaliar has got two sons namely Subramania Mudaliar and Thangavelu Mudaliar.

(d) The third defendant's husband Swaminathan is the only son of Rathna Sabapathy Mudaliar.

(e) Patta and Adangal for the suit schedule property were mutated from time to time in the names of the ancestors of the third defendant.



11. The trial court apart from giving the aforesaid findings, has also observed as follows:

(a) The plaintiff Temple contends that the ancestors of the third defendant were managing the suit property as the hereditary trustees of the suit Temple. On the otherhand, the third defendant contends that the suit schedule property absolutely belongs to her and she has absolute right over it.

(b) The third defendant contends that as an absolute owner of the suit schedule property, she alienated the same in favour of the defendants 4 to 12 through separate sale deeds.

(c) The plaintiff Temple contends that the suit property is in possession of tenants. Whereas, the third defendant contends that the Plaintiff Temple did not induct cultivating tenants into the suit schedule property.

(d) The plaintiff Temple did not produce any lease deeds said to have been executed by them in favour of the cultivating tenants. On the otherhand, the defendants have produced the lease deeds for having inducted the cultivating tenants in the suit schedule property by the ancestors of the third defendant.

(e) The third defendant has also executed registered sale deeds in favour of the defendants 4 to 12 in respect of the suit schedule property.

(f) The plaintiff Temple has not produced sufficient and necessary evidence to prove that the suit schedule property is in possession of its cultivating tenants inducted by them. Similarly, the defendants have also not produced necessary and sufficient evidence to substantiate their contention that they are in possession of the suit schedule property.

12. Since there is a cloud over the title of the suit schedule property, the trial court dismissed the suit filed by the plaintiff Temple on the ground that without seeking the relief of declaration of its title over the suit schedule property by properly valuing the suit by paying necessary court fees based on the market value of the suit schedule property, the suit for bare injunction as the one sought for is not maintainable. The trial court held that in the absence of prayer for relief of declaration of title in favour of the plaintiff Temple, the sale deeds executed by the third defendant in favour of the defendants 4 to 12 cannot be declared as null and void. The trial court without going into the title of the suit schedule property, has come to the conclusion that when there is a cloud over the title, the plaintiff Temple ought to have sought for a declaratory



WEB COPY

relief and they having not sought for the same, a bare injunction suit is not maintainable and therefore, a relief of permanent injunction cannot be granted and the trial court under the judgment and decree dated 24.03.2006 passed in O.S.No.20 of 1997 dismissed the suit filed by the plaintiff Temple.

13. Aggrieved by the judgment and decree dated 24.03.2006 passed in O.S.No.20 of 1997 by the first Additional District Munsif Court, Coimbatore, the plaintiff Temple preferred a regular appeal before the Third Additional Subordinate Judge, Coimbatore in A.S.No.70 of 2006. By its judgment and decree dated 28.09.2006, the lower appellate court also confirmed the findings of the trial court and dismissed the appeal filed by the plaintiff. Aggrieved by the same, this second appeal has been filed by the plaintiff Temple.

14. This Court on 26.07.2006, while admitting this Second Appeal has formulated the following substantial questions of law:

"1. Whether the courts below are correct in holding that the suit is not maintainable without seeking for a relief of declaration while the plaintiff Temple's title over the suit property has already been declared by the Settlement Tahsildar in S.R.No.694/68, dated 26.08.1968 and Ryotwari Patta issued in its favour.

2. Whether the courts below are correct in holding that the plaintiff Temple, the true owner of the property cannot question the illegal transaction made by the third defendant."

15. Mr.R.T.Doraisamy, learned counsel for the Appellant/plaintiff would submit that the plaintiff's title over the suit schedule property has already been declared by the proceedings of the Settlement Tahsildar dated 26.08.1968 which has been marked as Ex.A1 before the trial court and Ryotwari patta has also been issued in favour of the plaintiff Temple in terms thereof. Having proved the title over the suit schedule property, there is no necessity for the plaintiff to seek the relief of declaration of title as erroneously held by the courts below. According to him, even as per the settlement proceedings dated 26.08.1968 (Ex.A1), the third defendant's husband Swaminathan acted only as a hereditary trustee of the plaintiff Temple and therefore, the wife of the hereditary trustee who is the third defendant in the suit cannot claim ownership of the suit property. According to him, the sale deeds



WEB COPY

executed by the third defendant in favour of the defendants 4 to 12 will not bind the plaintiff as it has been executed fraudulently by the third defendant who does not have any title over the same. According to him, the courts below by total non-application of mind to the order dated 26.08.1968 of the Settlement Tahsildar (Ex.A1) erred in holding that the patta has been issued in favour of the poojaries namely Swaminathan, (the third defendant's husband) and Subramani Mudaliar. He would submit that only after proper enquiry, the Settlement Tahsildar has come to the conclusion that the suit lands are inam lands endowed in favour of the Temple and only thereafter Ryotwari patta was issued in favour of the temple. According to him, the order dated 26.08.1968 issued by the Settlement Tahsildar (Ex.A1) having attained finality as the same has not been challenged by the legal heirs of the poojaries mentioned therein including the third defendant, the necessity to file a suit for declaration will not arise. According to him, however, by total non-application of mind to the evidence available on record, the courts below have erroneously come to the conclusion that there is a cloud over the title and that the plaintiff Temple will have to seek declaratory relief with regard to its title.

16. Mr.R.T.Doraisamy would further contend that the sale deeds executed by the third defendant in favour of the defendants 4 to 12 has to be declared as null and void, since the third defendant did not have any title over the suit schedule property. However, according to him, by total non-application of mind, the courts below have erroneously held that such a relief cannot be granted when the plaintiff has not filed a suit for declaration.

17. Learned counsel for the Appellant relied upon a decision of a learned Single Judge of the Madras High Court in the case of K.S.Raja Shanmugavel vs. The State of Tamil Nadu and Others reported in 2011-1-L.W.626 and would submit that since ryotwari patta has been issued in favour of the plaintiff temple by the proceedings of the settlement Tahsildar dated 26.08.1968 (Ex.A1), the defendants have no right and interest over the same. According to him, the plaintiff temple has proved that Devadayam Grant with Iruvaram rights were vested with them even prior to the passing of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari), (Act 30 of 1963).

18. Learned counsel for the Appellant also relied

<https://hcservices.ecourts.gov.in/hcscservices/> upon a decision of Hon'ble Supreme Court dated 22.09.1995



WEB COPY

passed in Civil Appeal Nos.2476 to 2748 in the case of A.T.S.Chinnaswami Chettiar etc vs. Sri Kari Varadaraja Perumal Temple and Another and would submit that inam granted in favour of the plaintiff temple is permanent in character as seen from the proceedings of the Settlement Tahsildar dated 26.08.1968 (Ex.A1) and therefore, the temple has proved its absolute right over the suit schedule property and there is no necessity for them to file a suit for declaration.

19. Per contra, Mr.V.Balasubramanian, learned counsel for the respondents 3 to 9/defendants 3 to 9 would submit that the courts below have rightly held that when there is a cloud over the title of the suit schedule property, without seeking the relief of declaration of title, the suit filed by the plaintiff for a bare injunction is not maintainable. Learned counsel drew the attention of this Court to the documents filed by the defendants which have been marked as Ex.B1 to Ex.B16 before the trial court and would submit that it will clearly reveal that the third defendant is the owner of the suit schedule property. He would submit that no title deed as to how the plaintiff Temple was granted inam of the suit schedule property by the Government, has been produced by the plaintiff before the trial court to establish its title. He would also submit that in an earlier suit filed by C.S.Thangavelu Mudaliar against the third defendant in O.S.No.853 of 1995, the said suit was dismissed as not pressed by C.S.Thangavelu Mudaliar and in the said suit, the Assistant Commissioner, HR & CE Department filed an interlocutory application I.A.No.2048 of 1996 in O.S.No.853 of 1995 which also came to be dismissed and no appeal was filed by HR & CE Department. Therefore, the finding that the HR & CE Department is not a necessary party with regard to the suit schedule property has attained finality and therefore, the present suit O.S.No.20 of 1997 is barred by res judicata. He would also submit that the sale deeds executed by the third defendant in favour of the defendants 4 to 12 are registered sale deeds and are valid documents. He also drew the attention of this Court to the registered lease deed dated 12.03.1932 (Ex.B8) executed by Rathna Sabapathy Mudaliar, the ancestor of the third defendant's husband and would submit that at no point of time, the plaintiff Temple was the owner of the suit schedule property. According to him, since the third defendant has traced her title over the suit schedule property ever since 1932, the courts below have rightly rejected the claim of the plaintiff Temple.

20. Mr.V.Balasubramanian would further contend that the civil court jurisdiction is not ousted by reason of grant of patta under the Tamil Nadu Minor Inams



(Abolition and Conversion into Ryotwari) Act 1968. In support of his submissions, learned counsel for the respondents 3 to 9 has relied upon the following authorities:

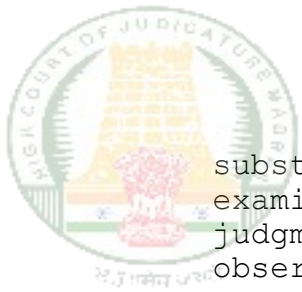
(a) A Division Bench Judgment of the Hon'ble Supreme Court in the case of R.Manicka Naicker vs E.Elumalai Naicker reported in (1995) 4 SCC 156;

(b) The Full Bench Judgment of Madras High Court in the case of Srinivasan and six others vs. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District by its Executive Officer and five others reported in (1998) 1 CTC 630;

(c) A decision of Madras High Court in the case of K.S.Raja Shanmugavel vs. State of Tamil Nadu and others reported in 2011-1-LW-626.

Discussion:

21. As seen from the evidence available on record, both the parties have filed documents which have been marked as exhibits for the purpose of proving title. The plaintiff Temple has relied upon the order of the settlement Tahsildar dated 26.08.1968 (Ex.A1) which discloses the name of the third defendant's husband as a hereditary trustee. However, the third defendant claims that the ancestors of her husband Swaminathan are in enjoyment of the suit schedule property for very long period of time. In support of the third defendant's stand, she has claimed that Rathna Sabapathy Mudaliar is her husband's ancestor who has executed the registered lease deed dated 12.03.1932 (Ex.B8) in favour of the Krishnama Naidu. Admittedly, the sale deeds have also been executed by the third defendant in favour of the defendants 4 to 12 on 20.04.1995 and 24.05.1995 in respect of the suit schedule property. Before the trial court, Ex.B2 & Ex.B3 have been marked as exhibits on the side of the third defendant to prove that the suit O.S.No.853 of 1995 filed by C.S.Thangavelu Mudaliar claiming to be the hereditary trustee was dismissed as not pressed and the application filed by HR & CE Department to transpose itself as the plaintiff in that suit also came to be dismissed and admittedly, no appeal has been filed by the plaintiff Temple or by HR & CE Department against the order rejecting the HR & CE Department' application to transpose itself as plaintiff in O.S.No.853 of 1995. It is also not in dispute that the third defendant is the wife of Swaminathan, but the plaintiff Temple claims that he was only one of the hereditary trustees representing the Temple in Ex.A1 proceedings (Settlement Tahsildar Proceedings dated 26.08.1968) along with Subramania Mudaliar.



substantiate their respective rights. Only after examining all those documents, the trial court has in its judgment dated 24.03.2006 passed in O.S.No.20 of 1997 has observed as follows:

(a) The plaintiff Temple contends that the ancestors of the third defendant were managing the suit schedule property only as hereditary trustees of the suit Temple. On the otherhand, the third defendant contends that the suit schedule property absolutely belongs to her and she has got absolute right over it. She further contends that as an absolute owner of the suit schedule property, she has alienated the same to the defendants 4 to 12 through separate sale deeds.

(b) The plaintiff Temple contends that the suit property is in possession of its cultivating tenants. Whereas, the third defendant contends that the Plaintiff Temple did not induct cultivating tenants into the suit schedule property.

(c) The plaintiff Temple did not produce any lease deeds said to have been executed by them in favour of its cultivating tenants. On the otherhand, the third defendant had produced a registered lease deed for the purpose of establishing that their ancestors have inducted cultivated tenants over the suit schedule property.

(d) The third defendant has already executed sale deeds in favour of the defendants 4 to 12 in respect of the suit schedule property which are registered sale deeds.

(e) Both the plaintiff and the third defendant have not produced sufficient documentary evidence to prove their possession of the suit schedule property.

23. The decision relied upon by the learned counsel for the respondents 3 to 9 in the case of R.Manicka Naicker vs E.Elumalai Naicker reported in (1995) 4 SCC 156 referred to supra as well as in the case of Srinivasan and six others vs. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District by its Executive Officer and five others reported in (1998) 1 CTC 630 referred to supra also make it clear that the jurisdiction of the civil court is not barred in respect of adjudication of claim of title under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1968.

24. The relevant paragraph of the judgment referred to supra in R.Manicka Naicker's case is extracted hereunder:



WEB COPY

"15. It is also not possible to accept the contention of the appellant that jurisdiction of the civil court to determine title to the said land has been ousted by the said Act. Section 43 provides that the decision of a Tribunal or the Special Appellate Tribunal in any proceeding under the said Act shall be binding on the parties insofar as such matter is in issue between the parties in a suit or proceeding. The decision of a Tribunal, or the Special Appellate Tribunal is in respect of the grant of ryotwari pattas. It is only in respect of matters which are covered by the said Act that the decision of the Tribunal or the Special Appellate Tribunal is binding on the parties. Obviously, matters which are not the subject-matter of decision before such a Tribunal, cannot be considered as final or binding between the parties. Sub-section (2) of Section 43 expressly provides that the decision of the civil court (not being the Court of a District Munsif or a Court of Small Causes) on any matter falling within its jurisdiction shall be binding on the parties thereto in any proceedings before a Tribunal under the said Act. Therefore, there is no question of ouster of the jurisdiction of the civil court in respect of matters falling within its jurisdiction and which are outside the purview of the said Act. Section 46 also provides for finality only in respect of decisions of the Tribunal in respect of matters which are required to be determined by it for the purposes of the said Act. The jurisdiction of the civil court, therefore, to determine title to the lands in question or to determine whether the lessor has a right to evict the lessee from the lands in question is not ousted in any manner by the said Act."

25. The same view has also been taken by the Full Bench of the Madras High Court in the case of Srinivasan and six others vs. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District by its Executive Officer and five others reported in (1998) 1 CTC 630 referred to supra and the Full Bench has also followed the decision of the Hon'ble Supreme Court in R.Manicka Naicker's case referred to supra.



WEB COPY

26. The decision of the Hon'ble Supreme Court in the case of Anathula Sudhakar vs. P.Buchi Reddy reported in (2008) 4 SCC 594 has also made it clear that where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession with or without consequential injunction is the remedy. Paragraph 21a of the said judgment is the proposition laid down by the Hon'ble Supreme Court which is extracted hereunder:

"21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter."

27. In the case on hand also, both the parties have filed documents which have been marked as exhibits before the trial court and both the parties claim based on those documents that they are the owners of the suit schedule property. The courts below have also not gone into the title of the property and have rejected the claim of the plaintiff only on the ground that when there is a cloud over the title, the remedy for the plaintiff is only to file a suit for declaration and since they have sought only for the relief of permanent injunction, they have been directed to file a civil suit for declaration to declare their title over the suit schedule property. The proposition laid down by the Hon'ble Supreme Court in Anathula Sudhakar's case referred to supra is squarely applicable to the facts of the instant case also. The decision of the learned single judge of this Court in the case of K.S.Raja Shanmugavel vs. The State of Tamil Nadu and Others reported in 2011-1-L.W.626 relied upon by the learned counsel for the appellant has no bearing for the result of this second appeal since the plaintiff temple has not produced any parent title deed to prove that they were in possession of the suit schedule property by virtue of Devadayam Grant with Iruvaram rights over the suit schedule property. The Courts below have also not



WEB COPY

gone into the title of the respective parties but have only rejected the claim of the plaintiff temple on the ground that since there is a cloud over the title, the only remedy available to the plaintiff temple is to file a suit for declaration and a bare suit for injunction is not maintainable.

28. The decision relied upon by the learned counsel for the Appellant in the case of A.T.S.Chinnaswami Chettiar etc vs. Sri Kari Varadaraja Perumal Temple and Another in Civil Appeal Nos.2476 to 2748 has also got no bearing to the facts of the instant case as in that case, the parties were not disputing in a suit but the proceedings were before the Authorities under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 and the temple in that case was able to conclusively prove through documents including the Inam Fair Register that they were granted Devadayam Religious Inam of a permanent character given rent-free for the support of the temple. In the case on hand, there are disputed questions of fact and the terms and conditions of the alleged inam in favour of the temple have not been produced by the plaintiff temple and further the Courts below have rightly not given any finding as to the title of the suit schedule property since the plaintiff temple has filed a suit only for a bare injunction and has not sought for a declaratory relief by paying the requisite court fee under the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

29. This Court is of the considered view that the courts below have rightly appreciated the evidence available on record and have rightly come to the conclusion that the plaintiff will have to seek a declaratory relief to declare them as the absolute owner of the suit schedule property and without seeking such a declaratory relief, a bare injunction suit is not maintainable and consequently, the sale deeds executed by the third defendant in favour of the defendants 4 to 12 also cannot be declared as null and void in a bare injunction suit. This Court does not find any infirmity in the said finding as it is only in accordance with the settled law and that too, when the civil court jurisdiction is not barred under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1968, when the question of title is involved.

30. For the foregoing reasons, the substantial questions of law formulated by this Court at the time of admission of this second appeal are therefore answered against the plaintiff Temple. There is absolutely no



WEB COPY

merit in this second appeal. Accordingly, this second appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

nl

To

1.The 3rd Additional Subordinate Judge,
Coimbatore.

2.The First Additional District Munsif Court,
Coimbatore

+3ccs to Mr.V.Balasubramanian, Advocate SR.No.40954

+1cc to Mr.R.T.Doraisamy, Advocate SR.No.41210

S.A.No.585 of 2007

PL(CO)
GMY(20/09/2021)