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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2021

PRONOUNCED ON : 18.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A. NO.2132 OF 2003

1. Ganapathy Pandaram
2. Eswara Moorthy

... Appellants /
Defendants 1 & 2

versus

1. Arulmigu Mariamman and Vinayagar Temple,
Rep. by its Trustee A.Ramasamy
Kongal Nagaram,
Udumalpet Taluk,
Coimbatore District.

... 1st Respondent /
Plaintiff

2. Murugesan
3. Thangavel
4. Subramaniam
5. Palanisamy
6. Palaniappamudaliar

... Respondents 2 to 6 /
Defendants 3 to 7

(RR2 to 6 were set exparte before the
Courts below, and givenup)

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 29.10.2002 made in A.S.No.1 of 2000 on the file of the learned Subordinate Judge, Udumalpet, confirming the judgment and decree dated 16.09.1999 made in O.S.No.574 of 1993 on the file of the learned District Munsif, Udumalpet.

For Appellants : Mr.R.Venkatachalapathy
for Mr.S.Kadarkarai

For Respondent No.1 : Mr.K.Sukumaran

For Respondent Nos.2 to 6 : Given up



J U D G M E N T

Aggrieved over the concurrent findings made in A.S.No.1 of 2000 dated 29.10.2002 on the file of the learned Subordinate Judge, Udumalpet and in O.S.No.574 of 1993 dated 16.09.1999 on the file of the learned District Munsif, Udumalpet, the appellants, who are the defendants 1 and 2 in the suit, have preferred this Second Appeal, praying to set aside the dismissal order passed by the Court below and to grant a decree in favour of them.

2. For the sake of convenience, hereinafter, the parties, are referred to, as per their litigative status before the trial Court.

3. The laconic averments made in the plaint, are as follows:

(i). The Temple known as Arulmigu Mariamman and Vinayagar Temple situated at Kongalnagaram Village, Udumalpet Taluk, has been in existence from time immemorial. It is an ancient Temple. Way back in the 18th century, one Palayakarar of Madurai endowed the suit schedule properties, in favour of the above said Temple. The entries in Column Nos.8 to 11 of the Inam Register would show that, these properties described below in the schedule hereunder were granted for the support of plaintiff's Temple as "Devadayam". The word "Devadayam" itself means lands given to the Temple. The grant was of Kudivaram and not the kist as, is done in some cases. The fact that these entries are found in the Inam Register, which was prepared in the year 1890 would show that, these Temples were in existence even before that time and the grant was made in favour of the Temple long prior to that.

(ii). In the year 1963, after the enactment of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (hereinafter referred to as "Minor Inams Abolition Act") the Government wanted to abolish the inams tenures, taking into consideration of the fact that, in several cases, the inams property has been wrongfully alienated and the alienates were found to be in possession in several instances for a long time. The Government wanted to regularise the inam tenure by converting the same into a ryotwari tenure. Consequent to that, the Government appointed the Assistant Settlement Officer under the provisions of the said Act, who in turn delegated his powers to Special Tahsildar, constituted under the said Act, who conducted an enquiry into the inam property and issued patta, according to the provisions of the Minor Inam Abolition Act.



(iii). The suit Temple was not properly represented at that time. The H.R.&C.E. Department had not appointed any trustees at that time. The Temple was being managed only by a de facto trustee cum Poojari. The first defendant is a Poojari at the Temple. Taking advantage of his dual position, the first defendant started making misrepresentations to the Settlement Tahsildar, Gobichettipalayam and tried to set up the title in his name. The orders were passed on 06.06.1968 in S.R.No.581/1968/M.I.Act 30/1963, Udumalpet Taluk, recognising the title of the plaintiff's Temple.

(iv). In the said order, the Tahsildar has referred to the extract of the Inam 'B' Register relating to the Title Deed (T.D.No.485). The Tahsildar has noted the facts that, the lands in question are Devadayam inam lands granted for the support of the Temple. The grant was conferred permanently to the Temple by the Inam Commissioner. The Tahsildar has also noted the fact that, Kudivaram right in the village have been vested with the Temple. He has also pointed out that this is not a grant for any service holder. Therefore, the absolute rights to the Temple to get ryotwari patta were recognised and orders were duly passed.

(v). Challenging the said order, the first defendant preferred an appeal in C.M.A.No.62/1974, with a view to set up the title in his name. In the appeal, the matter was remitted back to the Settlement Tahsildar, for fresh consideration. Thereafter, the Settlement Tahsildar, took up the matter for fresh consideration and decided the case on 31.12.1974 in favour of the first defendant.

(vi). In the above circumstances, the first defendant, who bound to protect the interest of the Temple succeeded in getting the patta in his own name. The patta was granted to the first defendant in respect of the property described in schedule 'A' hereunder. Similarly, the patta was granted to defendants 5 to 7 and the father of the defendants 3 and 4 with regard to the properties both in A and B schedules described as suit properties. Now, the trustees appointed by H.R.&C.E. Department have filed the present suit. After they took charge in January 1993, they started making enquiries and find out the foul play committed by the first defendant. Since the Minor Inams Abolition Act does not confer any absolute title and also, the patta is not an evidence of title, the plaintiff is entitled to declaration that the suit property belonging to the plaintiff's Temple absolutely. Hence, the present suit has been filed for the relief of declaration, declaring that the plaintiff's Temple, is the absolute owner of the suit schedule property and for the recovery of possession.



4. The case of the defendants is as follows:

(i). The suit filed by the plaintiff, is totally misconceived and the trial Court, is having no jurisdiction to entertain such a suit. Under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "H.R.&C.E. Act"), specific procedure has been prescribed for recovery of Temple properties by the appointed trustees. Instead of following this procedure under Section 101 of the H.R.&C.E. Act, the present attempt by the trustees to circumvent this procedure, is totally unsustainable. Under Section 108 of the said Act, Civil Suits are barred from considering these matters.

(ii). Since the orders passed by the Tahsildar under Minor Inams Abolition Act is final, it cannot be questioned by the Civil Court. The defendants submit that, they are doing poojas in the Temple, by utilising the income derived from the landed properties for the past several decades. Such enjoyment and possession of the properties and management of the Temple was duly considered, at the time of the enquiry by the Settlement Tahsildar. If the plaintiff is aggrieved against the orders of the Settlement Tahsildar, appeals should be filed as contemplated under the said Act.

(iii). The defendants are the de facto trustees representing the Temple and also doing pooja hereditarily. In such a way, they are entitled not only to manage the Temple but also possess the lands. It is a well known fact that, due to monsoon failures, there has been no appreciable income from the lands. However, the villagers are happy that, these defendants are properly managing the Temple and the lands.

(iv). The plaintiff trustees are annoyed that these defendants are in possession of the said properties. With a view to grab the suit properties, the trustees have come forward with this malicious suit, without real fact. The possession of lands by these defendants, is lawful, as determined by the orders of the Settlement Tahsildar. So far as these defendants are concerned, they are in possession of only a portion of lands and therefore, the suit is not maintainable.

5. Based on the above said pleadings, the learned District Munsif, Udumalpet, framed necessary issues and tried the suit. On the side of the plaintiff a trustee, A.Ramasamy / plaintiff himself examined as P.W.1. Apart from that, one Nachimuthu Gounder was examined as P.W.2 and marked 8 documents, as Ex.A.1 to Ex.A.8. On the side of the defendants, first defendant Ganapathy Pandaram was examined as D.W.1 and marked 9 documents as Ex.B.1 to Ex.B.9.



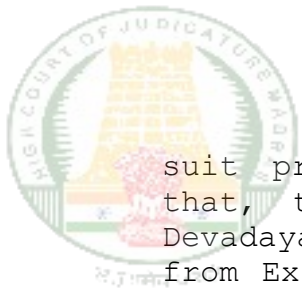
6. Having considered the materials placed before him, the learned District Munsif, Udumalpet, vide judgment and decree dated 16.09.1999, allowed the suit filed by the plaintiff. Aggrieved over the same, the defendants 1 and 2 preferred an appeal in A.S.No.1 of 2000. By judgment and decree dated 29.10.2002, the learned Subordinate Judge, Udumalpet, confirmed the findings arrived at by the trial Court and decreed the appeal.

7. Aggrieved over the said findings of the Court below, the defendants 1 and 2, are before this Court with the present Second Appeal. When the Second Appeal is taken up for admission, this Court formulated the following substantial questions of law;

"In the face of Ex.A3 a ryotwari patta issued under the Inams Act in favour of the appellant, have not the Courts below committed an error of law in ignoring it and decreeing the title suit and dismissing the injunction suit."

8. Originally, before the trial Court when at the time the suit pertains to this appeal was pending, the first appellant herein filed one another suit for the relief of permanent injunction against one Nachimuthu Gounder. The trial Court tried both the suits simultaneously and dismissed the said suit. Challenging the same, the first appellant Ganapathy Pandaram has preferred an appeal in A.S.No.4 of 2000 on the file of the learned Subordinate Judge, Udumalpet. The said appeal has also been dismissed. Against which, along with this Second Appeal, the said Ganapathy Pandaram preferred one another Second Appeal in S.A.No.2133 of 2003. Being the reason that the said Ganapathy Pandaram was passed away, this Court, by order dated 22.06.2021, dismissed the said Second Appeal, as abated as against the first appellant. Therefore, the present Second Appeal alone taken up for consideration.

9. Herein also, after the death of the first appellant Ganapathy Pandaram, steps have not been taken to implead the legal representatives of the first appellant. In otherwise, on going through the merits of this case, only on the strength of Devadayam inam granted by Palayakarar of Madurai in favour of the Temple vide A.R.I. Nos.223 and 220, the plaintiff's Temple praying the relief of declaration and recovery of possession. The fact that, the defendants were the service holders-cum-hereditary trustees of the plaintiff Temple, had been managing the affairs of the Temple and had been in possession and enjoyment of the properties belonging to the Temple and the properties granted by way of inam and also the



suit properties, are not denied. While the plaintiff claims that, the suit properties belongs to the Temple by way of Devadayam inam granted by Palayakarar of Madurai and as evident from Ex.A.1 copy of the Inam Fair Register extract, Ex.A.2 copy of the proceedings issued by the Settlement Tahsildar, Gobichettipalayam in S.R.No.581/1968/M.I.Act, 30/1963 dated 06.06.1968, the Settlement Tahsildar passed an order for issuing the ryotwari patta in favour of the Temple.

10. Challenging the same, the first appellant and others preferred Civil Miscellaneous Appeal in C.M.A.No.62 of 1974 wherein, the Minor Inams Tribunal, by order dated 10.07.1974, set aside the order dated 06.06.1968 and remanded the case for fresh enquiry. Thereafter, by order dated 31.12.1974, vide S.R.No.581/1968, the Settlement Tahsildar, Gobichettipalayam, allowed the petition filed by the defendants and directed to issue ryotwari patta to the defendants. Further, in the said order, the patta already issued in favour of Mariamman and Vinayakar Temple at Kongalnagaram under Section 8 (2)(ii) of the Act 30/63, stand cancelled. In turn, the defendants, are in possession and enjoyment of the suit properties.

11. Only in the said circumstances, the present suit pertains to this appeal has been filed by the first respondent in the capacity of trustee to the temple. After elaborate trial, the Courts below have accepted the plaintiff's claim for title solely based on Ex.A1 Inam Fair Register extract, in the absence of any other records relating to the grant by Palayakarar, such as, inam Title Deed. Both the Courts below placed more reliance on Section 44 of H.R.&C.E. Act held that, the Temple is having both Melvaram and Kudivaram grant.

12. The findings, so rendered by the Courts below based on oral and documentary evidence adduced therein are challenged in this second appeal on the following grounds: (i) as Ex.A1 Inam Fair Register, is a great act of State and its preparation and contents are the subject of much consideration under elaborately detailed reports and minutes and the entries contained therein are entitled to great weight and consideration in construing the nature and extent of the grant and has great evidentiary value. (ii) the possession and enjoyment of the property by the defendants was only on behalf of the temple as hereditary trustee-cum-poosari and not on their own manner, as admitted by them in some of the records; (iii) by virtue of Section 109 of H.R.&C.E. Act, the provisions of the Minor Inams Abolition Act, are not applicable to the suit for immovable property belonging to religious institution; (iv) the finding rendered by the Settlement Tahsildar, for issuing ryotwari patta



in favour of the first defendant on the aspect of nature or character of the land will have to be regarded as incidental to and merely for the purpose of passing the order to grant the patta and for no other purpose and the purpose of enquiry by him under the Act, is only for revenue purposes i.e., to effect settlement, to assess the land and to ensure payment of such assessment to the State.

13. As far as the entry made in Ex.A1 Inam Fair Register is concerned, it is well settled law that the entries contained in Inam Fair Register, are great acts of the State made after elaborate enquiry and have great weight and consideration in construing the nature and extent of the grant. However, it is equally well settled law that Inam Fair Register, is not conclusive with regard to title, when there is other evidence bearing on the question.

14. As far as the issuance of ryotwari patta granted under Section 8(2)(ii) of the Minor Inams Abolition Act is concerned, it is well settled in catena of decisions that, the same will not oust the jurisdiction of the Civil Court for deciding the question of title. The Hon'ble Division Bench of this Court in the judgment reported in 1988-2-L.W.513 (T.K.RAMANUJAM KAVIRAYAR AND OTHERS vs. SRI LA-SRI SIVAPRAKASA PANDARA SANNADHI AVARGAL, HEREDITARY TRUSTEE OF VILAPOOJAI KATTALAI attached to Sri Courtalanathaswami Temple) by following the ratio of the earlier Hon'ble Division Bench decision reported in 1982-T.N.L.J.-490 (UDIAPPAN AND ANOTHER vs. KARUPPAN AND ANOTHER) held that, the finality conferred by Section 46 of the Minor Inams Abolition Act on the orders passed by the authorities constituted under the Act, will not oust the jurisdiction of the Civil Court to decide the question of title.

15. It is further held therein that the decision by the authorities under the Act, is only 'for the purpose of the Act', because the machinery is provided under the Act to decide certain matters and it does not mean that the jurisdiction of the Civil Court to decide the question of title to the land, is excluded. The Hon'ble Supreme Court in the decision reported in (1985) 4 SCC 10 (STATE OF TAMIL NADU vs. RAMALINGA SAMIGAL MADAM) observed that, any decision impliedly rendered on the aspect of nature or character of the land on that occasion will have to be regarded as incidental to and merely for the purpose of passing the order of granting or refusing to grant the patta and for no other purpose. It is further observed therein that the Settlement Officer has no power to do what Civil Court would normally do in a suit and it is therefore difficult to imply ouster of Civil Court's jurisdiction simply because finality has been accorded to the Settlement Officer's order.



16. The Hon'ble Division Bench of this Court in the same judgment, by applying the observation of the Hon'ble Supreme Court (cited supra) is of the view that, in the absence of any provision, for deciding any dispute between two rival claimants, who claim to be the inamdars or two rival claimants, who claim to be lawfully entitled to Kudivaram on the date of the notification, any decision of such authorities cannot conclude the matter and exclude the jurisdiction of the civil court. Accordingly, it was decided that the Courts below is having the jurisdiction to try the issue raised in respect to the orders passed under Section 8(2)(ii) of the Minor Inams Abolition Act.

17. Now, it is the contention raised by the appellants that, after issuing patta in favour of some of the defendants, they made some encumbrance over the said land and also, they are in possession for the statutory period thereby after the lapse of so many years filing the suit before the trial Court, is not maintainable. Now, on considering the said submission with the relevant records, it appears that the trial Court while at the time of deciding the suit discussed about the incidents happened before the Settlement Tahsildar. It is not in dispute before the Settlement Tahsildar particularly in the application filed before him the Temple, is not a party. The appellants herein are appeared on either side and after giving evidence as the entire property, is their possession obtained a patta.

18. In the said circumstances, it is the case of the plaintiff that after appointing P.W.1 as trustee of the Temple, he came to know some fraud had happened and therefore, immediately, he filed the suit for recovery of possession. Now, on considering the same, Ex.A.4 to Ex.A.6 are the orders dated 18.12.1992 appointing the plaintiff as trustee, through which, the plaintiff was appointed as trustee. Thereafter, immediately in the year 1993 itself, the suit has been filed. Therefore, within one year immediately after came to the knowledge that a fraud has been committed, the plaintiff filed the suit and therefore, the question of limitation, is also not applicable to the present case on hand.

19. One another submission made by the learned counsel for the appellants is that, as a hereditary trustee, the plaintiff is in possession of the suit schedule property and accordingly, he is having the Melvaram rights and only upon considering the same in favour of the plaintiff, the Settlement Tahsildar had issued a patta but the Court below, without considering the same, decided the suit in favour of the plaintiff, which is erroneous in law.



20. Now, on going through Ex.A.1 Inam Fair Register, it seems that, the grant is in favour of the Temple. Therefore, under Section 44 of the H.R.&C.E. Act is presumed that the said grant was iruvaram grant. In this regard, it is relevant and useful to see the judgment of this Court in the case of THE IDOL OF SRI RANGANATHASWAMY vs. MAVADIAN AND OTHERS reported in (1984) 1 MLJ 43 wherein this Court has held as follows;

"4. A reading of the Inam Fair Register and the other relevant documents clearly establish that the grant is in favour of the temple. Section 44 makes it clear that such a grant has to be presumed as iruvaram grant. Since both counsel appearing for the respective parties in this case have accepted that the grant is in favour of the temple and such a grant is of both the warams, they have not adverted to this aspect in detail even though there is enough evidence to establish this fact."

21. Further, in the case of SRI VARADARAJA PERUMAL TEMPLE vs. K.RAMACHANDRAN AND OTHERS reported in (1997) 2 LW 881, this Court has observed as follows;

"11. Strong reliance has also been placed on the decision of the Apex Court reported in the case of A.T.S.Chinnaswami Chettiar v. Sri Kari Varadaraja Perumal Temple (1995 Supp. (3) SCC 724 = 1996-1-L.W. 63) to contend that the grant in the nature of a devadayam religious inam of permanent nature would carry both melvaram and kudivaram, particularly in view of the statutory presumption incorporated under Sec.44 of the Act."

22. Here, it is a case, while at the time of issuing patta in favour of the defendants vide Ex.A3, Settlement Tahsildar observed in para 2 as, the Temple never enjoyed the Kudivaram over the lands and that the Temple was only entitled to Melvaram. After observing as above, he has granted ryotwari patta in favour of the plaintiff. Therefore, the said order directing to issue ryotwari patta, in view of Section 44 of H.R.&C.E. Act, not having any merits and therefore, the said decision rendered by the Settlement Tahsildar, is nothing but erroneous one.

23. The trial Court further examined the veracity of the documents Ex.B.1 to Ex.B.8 and it came to the conclusion that none of the documents it has not been mentioned how the executant of Ex.B1 to Ex.B.8 came to be entitled to deal with the suit properties and on that basis, the Trial Court held that



the defendants were not entitled to Kudivaram. In so far as the application under Section 8(1) and Section 8(2) of the Minor Inams Abolition Act to the case on hand, after considering the judgments rendered by this Court in 1997 (2) MLJ 340 and 1997 (2) LW 881, the trial Court came to the conclusion that, in so far as the suit properties are concerned, both the Varams have been granted in favour of the Temple, Temple is a religious institution and if at all any patta, is relied by the appellants, the said patta ought to have been obtained under Section 8(2) of the Minor Inams Abolition Act. It is not the specific case of the appellants that the suit lands were transferred by means of sale either in favour of the appellants or their ancestors and under these circumstances on the factum of mere possession by the appellants, a ryotwari patta under Section 8(2) cannot be obtained by the appellants.

24. Moreover, pending appeal, the first appellant Ganapathy Pandaram died and despite the opportunities given by this Court for impleading the legal representatives of the first appellant, no steps were taken by the appellants and consequently, this Court dismissed the Second Appeal in so far as the first appellant is concerned.

25. In view of the said dismissal order, against the said Ganapathy Pandaram, the second appellant, who claims right only through the said Ganapathy Pandaram has no locus standi to prosecute the above appeal for the simple reason that, it is the case of the Temple that only Ganapathy Pandaram inducted the second appellant Eswara Moorthy in possession of 7 acres and Ganapathy Pandaram was the person, to whom Ex.A.2 and Ex.A.3 were issued, which has been nullified by the decree passed by the Courts below.

26. Accordingly, in the light of the above said discussions, I am of the considered opinion that, there is no substantial question of law arisen in this Second Appeal and the judgment and decree dated 29.10.2002 passed in A.S.No.1 of 2000 on the file of the learned Subordinate Judge, Udumalpet, is hereby confirmed. The Second Appeal is dismissed. However, there is no order as to costs.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

sri



To

1.The Subordinate Judge, Udumalpet.

2.The District Munsif, Udumalpet.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras - 600 104.

+lcc to Mr.K.Sukumaran, Advocate, S.R.No.59183

S.A. No.2132 of 2003

EV(CO)
RLP(03/12/2021)