



SA.(MD)Nos.202 and 203 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 14.03.2022

Pronounced on : 12.08.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

S.A(MD)Nos.202 and 203 of 2017

S.A.(MD)No.202 of 2017

Arulmighu Thayumanasami

Rep. by its Assistant Commissioner/

Executive Officer,

Rockfort, Trichy – 2.

... Appellant / 1st Respondent/

Plaintiff

Vs

1.Siragireesan

... 1st Respondent / Appellant /

1st Defendant

2.Nallammal

... 2nd Respondent /2nd Respondent/

2nd defendant

PRAYER :- This Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree of the lower Appellate Court, dated 29.11.2016, passed in A.S.No.31 of 2013 on the file of II Additional Subordinate Judge, Tiruchirappalli, reversing the judgment and decree of the trial Court, dated 20.11.2012, passed in O.S.No.2500 of 2004, on the file of I Additional District Munsif, Tiruchirappalli.



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For Appellant : Mr.M.Saravanan
For Respondents : Mr.S.R.Ragunathan
for Mr.G.Thalaimutharasu

S.A.(MD)No.203 of 2017

The Idol of Arulmighu Thayumanaswamy
Rockfort, Trichy,

By its Executive Officer /
Assistant Commissioner

... Appellant / 1st Respondent/
Plaintiff

Vs

1.Nallammal

... 1st Respondent / Appellant /
2nd Defendant

2. Siragireesan

... 2nd Respondent / 2nd Respondent/
1st defendant

PRAYER :- This Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree of the lower Appellate Court, dated 29.11.2016, passed in A.S.No.93 of 2014 on the file of II Additional Subordinate Judge, Tiruchirappalli, reversing the judgment and decree of the trial Court, dated 20.11.2012, passed in O.S.No.2500 of 2004, on the file of I Additional District Munsif, Tiruchirappalli.

For Appellant : Mr.M.Saravanan
For Respondents : Mr.S.R.Ragunathan
for Mr.G.Thalaimutharasu



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COMMON JUDGMENT

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S.A.(MD)No.202 of 2017 is filed against the order in A.S.No.31 of 2013 on the file of the learned II Additional Subordinate Judge, Trichirappalli, reversing the judgment and decree in O.S.No.2500 of 2004 on the file of the learned I Additional District Munsif, Trichy. The appellant herein is the plaintiff in the original suit and the respondents 1 and 2 herein are the defendants 1 and 2 in the original suit.

2. S.A.(MD)No.203 of 2017 is filed against the order in A.S.No.93 of 2014 on the file of the learned II Additional Subordinate Judge, Trichirappalli, reversing the judgment and decree in O.S.No.2500 of 2004 on the file of the learned I Additional District Munsif, Trichy. The appellant herein is the plaintiff in the original suit. The first respondent herein is the second defendant and the second respondent herein is the first defendant in the original suit.

3. Brief substance of the plaint in O.S.No.2500 of 2004 is as follows:



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The suit property belonged to the temple. Ryotwari patta is in the name of the plaintiff. Originally, possession of the suit property was given to the predecessor of the first defendant viz., Naganatha Gurukkal for his service as Temple Archagar. But, the said Naganatha Gurukkal has no right to sell or mortgage the property. The first defendant is still working as Archagar in the plaintiff temple. The first defendant and his mother illegally sold the suit property to the second defendant. The second defendant has no right over the property. The second respondent is liable to pay compensation for the plaintiff for illegal occupation from 18.06.1984. The suit was filed for the recovery of possession and for mean profits.

4. Brief substance of the written statement filed by the first defendant in O.S.No.2500 of 2004 is as follows:

The suit is not maintainable. The suit property belonged to the first defendant and his paternal aunt one Pitchaiammal. Ryotwari patta is not a document of title. The suit property belonged to Pitchaiammal as her independent property. On 28.11.1967, settlement patta was issued in the name of Pitchammal. The plaintiff is not having any right over the suit



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property. The first defendant is the adopted son of Pitchammal and the sale deed executed in favour of the second defendant is valid. The plaintiff has not taken any steps against the issuance of patta in the name of Pitchammal. The plaintiff is estopped from claiming the property. Until the date of sale, the said Pitchammal was in enjoyment of the property. After the date of sale, the second defendant is enjoying the property and prayed the suit to be dismissed.

5. Brief substance of the written statement filed by the second defendant, in O.S.No.2500 of 2004, is as follows:

It is wrong to state that Ryotwari patta was granted to the ancestors of the defendants. The grant is a service grant. It is wrong to state that the first defendant is having only a right to enjoy the property and not an absolute right. Naganatha Gurukkal was the absolute owner of the property and the property was sold to the second defendant. The plaintiff failed to question the same for the past 20 years. Only when the second defendant tried to change the patta in his name, the plaintiff has come forward with this suit. The suit is barred by limitation. Naganatha



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Gurukkal was in possession of the property. Then the first defendant was in possession and now the property is in the possession of the second defendant. The defendants and the predecessors were in possession of the property for the past 50 years and they are entitled for title through adverse possession. Without a prayer of declaration for title, the suit for recovery of possession is not maintainable.

6. On the above said pleadings, the trial Court framed the following issues:

- i) whether the plaintiff is entitled for the prayer of recovery of possession?
- ii) whether the plaintiff is entitled for mean profit?
- iii) what are the other relief available to the plaintiff?

7. One witness was examined and 12 documents were marked on the side of the plaintiff. One witness was examined and 5 documents were marked on the side of the defendants. The trial Court, after considering both sides, decreed the suit. Against the judgment and decree, the first defendant filed an appeal in A.S.No.31 of 2013. The



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second defendant filed an appeal in A.S.No.93 of 2014 on the file of the

IInd Additional Subordinate Judge, Trichirappalli.

8. The grounds of the first appeal filed by the first defendant / appellant, in A.S.No.31 of 2013, is as follows:

8.1. The trial Court is wrong in placing reliance upon Ex.A1 and Ex.B3 and the proceedings of the Revenue Court which took place after the filing of the suit. The property was alienated in the year 1984 with the knowledge of the plaintiff and a subsequent suit after 20 years, is not maintainable. The properties are not “service Manyam”. Even on the date of examination of P.W.1, the first defendant was rendering service in the temple. A suit, without seeking declaration of title, is not sustainable.

8.2. The trial Court failed to appreciate Ex.A1 and Ex.B1. The grant is a personal grant, burdened with an obligation to do service and the same is not a service grant. The trial Court failed to note that the claim of the plaintiff in respect of the remaining portion of the suit property, was rejected by the settlement officer. The proceedings of the



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Revenue Court which took place after the institution of the suit ought not have been considered.

8.3. The grounds of the first appeal filed by the second defendant / appellant, in A.S.No.93 of 2014, is as follows:

The trial Court failed to appreciate the oral and documentary evidence properly. The lower Court erroneously observed that the property belonged to the temple by placing reliance upon Ex.A1 and Ex.B3. The proceedings of the Revenue Court, which had taken place after the institution of the suit ought not to have been considered. The trial Court failed to consider that the property was alienated long back in the year 1984 to the knowledge of the plaintiff and the suit was filed only after a lapse of 20 years. The trial Court erroneously come to a wrong conclusion that the properties are “pooja maniyam”. P.W.1 has admitted that the first defendant is still rendering service in the temple. The suit properties are not “service maniyum”. The suit filed by the plaintiff, without seeking a relief for declaration of title is unsustainable. The trial Court failed to consider the entries found in Ex.B1, which is an extract of Inam fair register, wherein, patta has been granted to the ancestors of the



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first defendant, under Section 8(2)(ii) of the Act. The grant in this case is a personal grant burdened with the obligation to do service and is not a service grant. The trial Court failed to consider that the claim made by the plaintiff temple in respect of the remaining portion of the suit Survey number has been rejected by the settlement officer.

9. On the above pleadings, the first Appellate Court has framed the following issue in both the appeals:

i) whether the appeal suit deserves any admittance after hearing both sides?

10. After considering both sides, the first Appellate Court allowed the appeals and set aside the decree and judgment of the trial Court. Against that order, the appellant has filed both the present Second Appeals on the following grounds:

10.1. The lower appellate Court erred in reversing the well considered judgment and decree of the trial Court. The first appellate Court exceeded its jurisdiction in holding that the defendants have right



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over the property. The lower Appellate Court failed to see that the suit property belong to the plaintiff temple and that patta - Ex.A1 was in the name of the temple. In the settlement patta, the grant has been made in favour of “Sri Thaayumanavar Rock Fort”.

10.2. The service holder was permitted to be in enjoyment till he continues the service. Under Section 8(2)(ii) of the Tamil Nadu Minor Inam Abolition Act, 1963, the individuals rendering service shall be entitled to a Ryotwari patta in respect of the land. If the service holder failed to render service, then his right to occupy the land shall permanently seized and the institution shall be at liberty to make alternative arrangements.

10.3. When the temple is the original grantee, the service holder cannot set up any title. When the original grant has been made in favour of the temple, the service holder is only a lessee, he cannot claim title on the basis of a service inam patta. The assignment is in the nature of remuneration for the service rendered by the service holder. Ex.A3 shows the name of the temple as the pattathars and Ex.A4 also proves that the



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temple is the owner. The first Appellate Court over looked Ex.A8, the register maintained by the plaintiff and failed to consider that the defendants have not filed any documents to prove their title.

10.4. The first Appellate Court failed to consider that in Ex.B1, there is a reference to Devadhayam. The grant is not a personal grant. No such document was filed on the side of the defendant to prove personal grant. The service inam holder was in possession in lieu of the remuneration from the temple and once they discontinue the service, they have no right to be in possession. The first appellate Court has failed to consider that the service holder sold the property to the second defendant and that the plaintiff was constrained to file this suit for recovery of possession.

11. This Court, by its order, dated 25.04.2017, has admitted both the second appeals and has framed the following substantial questions of law in both the appeals:-

(i) Whether in law has not the lower Appellate Court mis-construed Ex.A1, A3 and B1, which have resulted in perverse findings?



(ii) Is not the lower Appellate Court wrong in holding that the grant is personal grant in favour of the first defendant, after admitting that the temple is the original grantee and under Ex.A1 service holder has been granted patta on condition of continuance of service?

(iii) Are not the judgment and decree of the lower Appellate Court overlooked the Section 21 of Act 30 of 1963, which mandates that when the service holder fails to render service, he has no right to continue in possession?

(iv) Is not the lower Appellate Court wrong in holding that the Civil Court has jurisdiction to decide the nature of grant overlooking that only when these persons claiming independent title, the Civil Court has jurisdiction to decide the issue and not in a case where a person claim title under the Patta issued under the Act?

12. The matter to be decided in both the appeals are the same. Both the present appeals originated from the same suit and hence a common judgment is passed. For the sake of convenience, the parties will be identified by the same cadre as that of the trial Court.



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Issue No.I:

13. Though this issue is not a question of law, the documents are discussed, the matter in issue cannot be decided. In view of the same, this issue is taken up for consideration.

14. On the side of the appellant, it is stated that the appellant is the owner of the property and the property was given in possession of the Archaga for rendering service to the temple and the Archaga is not having any right to alienate the property. The claim of the appellant is that the first defendant sold the property to the second defendant and the appellant prayed for a relief of recovery of possession.

15. Ex.A1 is the proceedings of the settlement Thasildar, in Tri.No. 673/67, dated 28.11.1967, under Section 11 (2) (b) of the Inam Abolition Act, under Act 30 of 1963. A portion of Ex.A1 was marked as Ex.B3. The first defendant is claiming title to the property through Ex.B3. The settlement Thasildar has issued patta for Survey No.108/2 with an extend of 60 cents in favour of Thayumanaswami temple by its executive and



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rejected the claim of the others, as no records are produced and patta was granted in favour of the Deity, under Section 80(2)(ii) of the Act. In the proceedings in Ex.A1, Survey No.108/2, an extend of 1 Acre 98 cents, out of total extend of 2 Acres 58 Cents given in the name of Pitchammal and it was mentioned as Service holder patta allowed under Section 8(2)(ii) of the Act, on condition of continuation of service.

16. Ex.A3 is the description memo of Elakkudi Villge. Re-settlement was introduced in the village in Fasli year 1335 (1924-1925). In the re-settlement register, Malaikottai Thayumanaswami was mentioned as the pattadhar for Survey No.108A with a extend of 2 Acres 58 Cents. Ex.A4 is the UDR patta for survey No.108/2 an extend of 1.04.5 in patta No.8, was granted in the name of Thayumanaswami, Hectres. A copy of this patta was also marked as Ex.A10.

17. Ex.A5 is a notice, dated 07.05.2004 issued by the Assistance Commissioner/ Executive Officer, Thayumanaswami temple, to one Chinnayan, calling upon him for enquiry regarding the transfer of grant from the name of M.Naganathagurukkal. Ex.A6 is the notice issued by



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the Revenue Divisional Officer calling upon the plaintiff for enquiry regarding Survey No.108/2.

18. Ex.A8 is a register maintained by the H.R. & C.E. Department, under Section 25 of the H.R.&C.E. Act. The Executive Officer has made entries in the register on 04.09.1957, wherein, it is mentioned that Survey No.108/2, named as Sangadi Eastern portion was in the possession of Seshagurukkal, Sadhasivagurukkal, Sons of Naganathagurukkal and that the Western portion of the same land was in the possession of Dharmuammal. In the register, it is mentioned that Inam service maniyam was given to some of the temple servants including the above said Archagas.

19. Ex.A9 is the proceedings of the Special District Collector, dated 23.02.1976. In the proceedings, it is mentioned that the petition mentioned property belonged to the temple. One Seshagurukkal, and the respondent, Naganathagurukkal were cultivating the land as tenants and they were paying annual rent of 12 kalams and 21 ½ measures of paddy each to the plaintiff's temple. Seshagurukkal died about 2 years ago and



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that the respondent Naganathagurukkal was cultivating the entire lands and the last two years he has measured 25 Kalams of paddy, but, in the year 1974-1975, he has failed to pay the rent.

20. On the side of the respondents, it is stated that the suit filed by the Temple is not maintainable. Ex.B3 is the proceedings of the settlement Tahsildar. The settlement Tahsildar is empowered to conduct an enquiry and he can issue Ryotwari patta. A suo-motu enquiry was conducted by the settlement Tahsildar and he has decided the title of the property and he has granted patta for 60 cents of land in the name of the temple and has granted patta for One Acre and 92 cents, in the name of the predecessor of the first respondent.

21. On the side of the respondents, it is stated that under Section 44 of the Minor Inams Act, unless the contrary is proved, both Melvaram and Kudivaram, rest with the person for whom Ryotwari patta was granted. The patta was granted in favour of the predecessor of the defendant and there was no necessity for the defendant or his predecessor to file an appeal against the patta. The Temple failed to file an appeal



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and that though the patta was granted in the year 1967 itself, the temple has failed to file a civil suit.

22. On the side of the respondents, it is stated that in Ex.A1 Inam Fair Register, the title deed No.1800 was mentioned and the same was reflected in Ex.B1. In Column No.5, in Ex.B1, it is stated that the Government has purchased 2 acres and 58 cents and 1 acre and 92 cents was granted in favour of the predecessor of the first respondent with a condition to continue to render service. In Ex.B1, nothing was mentioned to show that the temple is having any right over both the Varams. On the side of the respondents, an adoption deed executed by one Pitchammal was marked as Ex.B2. Ex.B4 is a partition deed between Naganathagurukkal and his sons, viz., Seshagurukkal and Sadhasivagurukkal, dated 23.08.1921. Ex.B5, dated 17.01.1955, is a partition deed between Seshagurukkal and Sadhasivagurukkal.

23. Ex.B3 is only a portion of Ex.A1. Ex.A1, dated 28.11.1967, is an extract of the register of Inams in the village. In the description of the Inam, it was mentioned as “for service in the Rock Fort Temple of



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Thayumanaswami Services rendered”. Name of the original grantee was mentioned as “Rockfort Pagoda of Thayumanaswami for the benefit of service performers”. In Column No.20, it was mentioned that the lands were handed over to the temple servants. In column No.21, it was mentioned that the lands were in the enjoyment of the temple service performer of the Pagoda as long as the service continues.

24. Ex.A7 is a statement given by the predecessor of the first defendant, namely, Naganathagurukkal, wherein, he has admitted the property as a temple Maniyam and he has undertaken to pay 25 Kalams of paddy that and as per the compromise decree in O.S.No.30 of 1899, he is enjoying the 'Magasool' as 'Othithar' and he undertakes to set right the lease on or before 31.10.1917.

25. Ex.A8 is the extract of the property Register maintained by the temple under Section 25 of the H.R. & C.E. Act. The entries were made on 04.09.1957. Under Section 25 of the H.R.&C.E. Act, for every religious institution, a register shall be maintained and under section 35 of the evidence Act, that register may be considered for deciding the title.



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26. In a judgment reported in **1965-AIR-SC-516 (Periyaswami Goundan and others V. Sundaresa Iyer and others)**, the Hon'ble Supreme Court has held that under Section 35 of the Evidence Act, 1872, Inam register, entries made after elaborate enquiry, oral evidence and spot inquiry and recitals in the Inam Register can be considered in evidence, it is stated as follows:-

“Long enjoyment of the temple lands by the Archakas is not a peculiar feature of this case. The authorities concerned have made suitable arrangements for remuneration in the case of other temples and we have no doubt that they would make a reasonable provision for the Archakas in the present case also for their remuneration in accordance with law. Under the Evidence Act, 1872, Section 35, the presumption of official records and Inam register, the entries made after elaborate enquiry, oral evidence and spot inquiry and recitals in the Inam Register can be considered.

The preparation of this register was a great act of state and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes. It is to be remembered that the Inam Commissioners, through their officials, made enquiry on



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the spot, heard evidence and examined documents, and, with regard to each individual property, the Government was put in possession not only of the conclusion come to as to whether the land was tax free, but of a statement of the history and tenure of the property itself.

The title deeds and the entries in the inam register are evidence of the true intent and effect of the transaction and of the character of the right which was being recognized and continued. The entries in the inam register and the description of the inamdar therein were accepted as indications of the nature and quantum of the right and the interest created in the hand. “

27. The first appellate Court failed to consider Ex.A8, which is a register maintained under Section 28 of HR & CE Act, which can be treated as a document of title. Ex.A8 was dated 04.09.1957, which is prior to Ex.A1 and Ex.B3.

28. In Ex.A3, it is mentioned that the entire property measuring 2.58 acres in Survey No.108/2 was in the name of the temple, during Fasli year 1335 (1924-1925). In Ex.A1, dated 28.11.1967. it is clearly stated that a service holder patta was allowed on condition of continues



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of service. A portion of Ex.A1 was marked as Ex.B3. From Ex.B4 and Ex.A10 it is clear that during UDR also, the entire property was in the name of the temple and patta No.8 was issued in favour of the temple.

29. A perusal of Ex.A7, reveals that the predecessor in title of the first defendant admitted the title of the temple and he undertook to pay 25 Kalams of paddy as rent and had given a statement to that effect.

30. In Ex.A7 and Ex.B4 and B5, a judgment of the District Munsif, Trichy, in O.S.No.30 of 1899, was mentioned. Copies of the judgment and decree in O.S.No.30 of 1899 were marked on the side of the plaintiff as Ex.A11 and A12. In Ex.B4 and Ex.B5, A11 and A12, it is clearly mentioned that the predecessors of the first defendant has to pay 25 kalams paddy to the temple and that paddy to be handed over to the temple before the Tamil Month of Masi 30.

31. Ex.A8, property register maintained by the temple can be considered as title deed and the same is admissible under Section 35 of the Evidence Act. Ex.A8, dated 04.09.1957, reveals that the temple is the



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original grantee. Ex.A8 is prior to Ex.A1 and B3. The defendant claim title only through Ex.B3 to Ex.B5. The first Appellate Court failed to consider all these documents and has decided the case against the plaintiff, which is perverse.

Issue No.II:

32. On the side of the appellant, it is stated that there is a difference between a personal grant and a service inam. A property which was dedicated to the temple and was handed over to a service doers is only a service inam. The service doer can enjoy the property and that the ownership is only with the temple. If the service doer discontinues the service, the temple can appoint some other person who can enjoy the property and do the service and that who ever doing service is entitled for enjoying the property. A temple Archakar cannot sell the property. He can enjoy the property as a remuneration to his services.

33. On the side of the appellant, it is stated that Ex.A8 is a Register maintained under Section 25 of the Hindu Religious and Charitable Endowment Act, which is admissible as an evidence under section 35 of



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the Evidence Act and that Ex.A1 and Ex.B3 and Ex.A8 clearly reveals that the property is a Devadhayam in favour of the Thaayumanavar swamy of Rock Fort. On the side of the appellant, it is stated that Minor inam patta will be granted to a service holder on condition of continuation of service. The patta in the name of the enjoyers Pitchammal W/o.Saminatha Gurukkal is a service holder patta under Section 8(2)(ii) of the Act.

34. On the side of the respondents, it is stated that it is a personal grant burden with service covered under Section 8(2)(ii) of the Tamil Nadu Minor Inam Abolition Act, 1963 and not covered under Section 41 of the Tamil Nadu Act 22 of 1959. It is further stated that grant of Ryotwari patta in favour of Pitchammal was not at all challenged or questioned by the appellant. Since Ryotwari patta in favour of Pitchammal was not at all challenged, the presumption under Section 45 of the Tamilnadu Minor Inams Act, is that Inams consist of both Melvaram and Kudivaram and that the principles of res-judicata mentioned in Section 43 of the Act is applicable and the suit is barred.



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35. A judgment of this Court reported in **2017-5-LW-246**

[Ramasamy and others V. Tamilvel and others] is cited on the side of the respondents, wherein, it is stated as follows:-

“13.....A combined reading of Section 21 as well as Rule 19 rules framed under the Act would show that the Act contemplates a particular procedure for arriving at a decision as to the right of the service holder to be in occupation of the lands if the patta had been granted to him with the condition of performance of service. For the present, I am not going into the truth or otherwise of the claim of the defendants that they had paid the money payable under sub Section (4) of Section 21 and therefore, the land vested them absolutely. Since, it is the plaintiff's who plea that the defendants had not exercised their right to pay the amount or performed the service to the religious institution, I am proceeding on the assumption that the plaintiff's pleadings are correct. When a particular procedure is provided under particular enactment in deciding a particular issue, it is settled law that it can be done only in such a manner as contemplated. Section 46 of the Act provides for finality of the orders passed by the authorities.



14. *The Lower Appellate Court, in my considered opinion, has not adverted to the provisions of Section 21 of the Act. The Lower Appellate Court has relied upon the full Bench of this Court Srinivasan and six others .Vs. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District by its Executive Officer at pettavaithalai and five others reported in 1998 (1) CTC 630. The said full Bench decision dealt with Sections 43, 46 & 47 of the Act and held that Civil Court has jurisdiction. The issue that was before the full Bench was as to whether the rival claimant can seek declaration of his title after the grant of patta under the enactment by the settlement officer. While answering the said question, the full Bench relying upon the decision of the Hon'ble Supreme Court in [Sri Lal Sri Sivaprakasa Pandara Sannadhi Avargal .V. Smt.T.Parvathi](#) ammal & Others had concluded that such a suit will be maintainable. But, in the case on hand, the plaintiffs are not claiming any rival title, the plaintiffs are admitting the grant of patta as well as the nature of patta, but it was claimed that view of the non performance of the service the land will vest in the Temple. Unfortunately for the plaintiffs such vesting is not automatic. It is dependent on a decision being rendered by an officer authorised under the Act to go into the question of non performance of the service as well as the disqualification incurred by the service holder to hold the*



land due to non-performance. Therefore, in my considered opinion, the Lower Appellate Court was not right in holding that the suit is maintainable. Unless the non performance is held to have resulted in the service holders being dis-entitled to hold the property and their right is declared to cease and determine as provided under Section 21(7)(b) of the Act by the Authorised Officer, after an enquiry conducted as per the Rule 19 of the rules, the patta granted on 02.11.66 will continue to be valid and the plaintiffs cannot seek declaration of the title of the religions institutions on the assumption that the non performance of the service had resulted in the right of the service holders being determined. Therefore, the trial Court was right in dismissing the suit is not maintainable.”

36. A judgment of this Court reported in **2012-1-MWN(Civil)-99**

[P.S.Chandrasekaran Raja V. Sankaranarayana Swamy Devasthanam]

is cited on the side of the respondents, wherein, it is stated as follows:-

“2. The Defendants 1 to 6 did not contest the suit. The contesting 7th Defendants in his written statement raised the defence that the lands are not Iruvaram Devadayam Inam lands granted to the plaintiff temple, but the lands are allotted to the ancestors of the First Defendant by the Government as personal grant with Iruvaram rights burdened



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with condition to render service to the temple and the same was also confirmed by issuing ryotwari patta in the name of the First Defendant and the First Defendant and thereafter her two sons had been regularly rendering poojas and there was no violation of the condition subject to which the grant was allotted to the First Defendant and this Defendant is the bonafide purchaser of valid sale consideration without notice of inam in favour of the Plaintiff temple, but the grant is in favour of the individuals, as such, the plaintiff cannot claim any right to resume possession of the same which is vested with the Government who issued patta to the First Defendant. As the Plaintiff has no legally vested right, the Suit is not maintainable for the relief as stated above. Even otherwise, the Suit is filed much after the completion of the construction, as such if the plaintiff has any right, he should have claimed his right before the construction on the principle of equity, he cannot entitle to claim any right.....

8. Generally the grants may of three classes. It may be (i) to an Institution such as temple or mutt, (ii) the grant may be to an office to serve as emoluments attached to that office, or (iii) the grant may be personal in favour of an individual burdened with service and which cannot be resumed so long as the grantee is ready and willing to render service. Whether the grant in fact falls under one or the other of the other categories mentioned above is a matter to be



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determined on a consideration of the evidence of the particular case and such evidence consists of the Sanad, if one is available the Inam statement, Inam fair register extract and the title deed. Though the initial burden is upon the Plaintiff to prove that the grant in respect of the suit property falls within the first category , as claimed by the temple, the same is not substantiated by any of the documents as mentioned above. The same PW1 has in the course of his cross-examination categorically admitted that the property is Iruvaram Devadayam Inam lands, granted in favour of 11 individuals who are the ancestors of the First Defendant and others and after the abolition the Inam lands.”

37. Another judgment of this Court reported in **2002-3-CTC-164** **[M.Liaquat Ali V. Sri Brahadambal Temple, Thirugokarnam]** is cited on the side of the respondents, wherein, it is stated as follows:-

“17. Though the learned counsel for the respondent-temple to sustain the judgment of the lower appellate court has submitted that in view of Sec.41 of the Tamil Nadu Act 22 of 1959, the sale in favour of the defendants are null and void, the said submission cannot be sustained in view of the above judgment of the Apex Court, as Sec.41 of the Act 22



of 1959 has no control over the personal inams though burdened with service.

22. From the above, it is clear that so long as the service holders were rendering services, they are entitled to occupy permanently the lands in respect of which they are entitled to patta under Sec.8 of the Act. If they fail to render service, "the prescribed officer" has to notify such failure and thereafter he has to declare that service holders' right to occupy the lands shall cease, and determined. After such determination, the institution shall be at liberty to make such arrangements as it thinks fit for the performance of the service and shall be entitled to hold the lands as specified and as absolute property, subject to the payment of assessment. Without resorting to this procedure, the plaintiff cannot come forward with the plea that they have determined the services and so they took possession thereafter by themselves, for which the plaintiff has no right under the provisions of the Act. Even if the services are not being rendered by the service holders, remedy is not before the civil court but only before "the prescribed officer" under the abovesaid provision. So the trial court is correct in holding that it has no jurisdiction. But unfortunately, the lower appellate court has not appreciated the provisions properly while reversing the judgment of the trial court in this regard. So the Lower Appellate Court is not correct in



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holding that civil court has jurisdiction to try the suit, even the service holders did not continue their service.”

38. Another judgment of the Hon'ble Supreme Court reported in ***AIR-1961-SC-1350 [Bheemsena Rao V. Sirigiri Pedda Yella Reddi]*** is cited on the side of the respondents, wherein, it is stated as follows:-

“4. The question for consideration is whether a personal inam burdened with service to a temple can be said to come within the meaning of the words "any inam granted for the performance of a service connected with a temple". It is urged that the words used in Section [.44-B \(1\)](#) are of very wide import and any personal grant of land howsoever large, if it is burdened with some service to a temple howsoever small, would be within the meaning of these words and would therefore come within the terms of s.44-B (1). The High Court has repelled this wide construction of the words used in Section [.44-B \(1\)](#), and we think rightly. The distinction between a grant for an office to be remunerated by the use of land and a grant of land burdened with service is well known in Hindu law. The former is a case of a service grant and is resumable when the service is not performed. The latter is not a service grant as such but a grant in favour of a person though burdened with service and its resumption will



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depend upon whether the circumstances in which the grant was made establish a condition that it was resumable if the service was not performed: ([Shrimant Lakhamgouda Basavprabhu Sardesai v. Raosaheb Baswantrao](#) alias Annasaheb Subedar and Others). The question therefore is whether Section [44-B](#) covers only the first type of grant, (namely, a service grant) and not a personal grant burdened with service.”

39. The first defendant is claiming that the property was given to the predecessor of the first defendant as a personal grant burdened with service. It is stated that as long as the first respondent is rendering service, his right over the property cannot be questioned, and that even if service was not done, he may be liable to pay 20 times of the difference between the fair rents.

40. On the side of the appellant, it is stated that the first defendant/DW-1 has deposed that he was not in possession of any document to prove how the property belong to his predecessors. He has admitted that he has no documents to prove that the property is a personal grant. He has admitted that there is no document to show that the property is the



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absolute property of his predecessor, he has also admitted that in Ex.A1 and Ex.A2, the property was mentioned as Devathanam and in Column No.13, it was mentioned as Rockfort Pagoda of Thayumanavarswami for the benefit of the service performers. He has also admitted that for rendering Archaga duty, the property of the temple was given as maniyam and he has admitted that in Ex.B3, survey No.108/2, with an extend of 1 Acre 98 Cents was in the name of Devasthanam Thayumanavar Rock fort.

41. On the side of the second defendant, it is stated that the trial Court failed to consider that the claim made by the plaintiff temple before the settlement officer in respect of the remaining portion of the property, was rejected by the settlement officer.

42. A verification of the records reveals that the settlement officer has not rejected the claim of the temple. The settlement officer has rejected the claim of other persons, who claimed possession over the 60 Cents of the land in Survey No.108/2 and granted patta in the name of the temple.



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43. On the side of the second respondent, it is stated that the trial Court erred in observing that the property belonged to the temple by placing reliance upon Ex.A1 and Ex.B3 and that the proceedings of the Revenue Court which had taken place after the institution of the suit ought not to have been considered.

44. Ex.A1 is dated 28.11.1967. Ex.B3 is an extract of a portion of Ex.A1. In the above circumstances, the contention raised by the second respondent is not valid.

45. Ex.A1 is an extract of the register of Inams in the village. The description of the Inam is mentioned as “for service in the Rock Fort Temple of Thayumanaswami Services rendered”. Name of the original grantee is mentioned as “Rockfort Pagada of Thayumanaswami for the benefit of service performers”. In Column No.20, it is mentioned that the lands were handed over to the temple servants. In column No.21, it is mentioned that the lands were in the enjoyment of the temple service performer of the Pagoda as long as the service continues.



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46. The first Appellate Court has decided that the patta was a personal grant in favour of the first defendant. D.W.1 has admitted that there is no document to prove that they were given the property as a personal grant, he has also admitted that in Ex.B1 and B2, the property was mentioned as Devathanam. The first appellate Court failed to consider that in Ex.A1, only service holder patta was issued in the name of the predecessor of the first defendant.

47. The respondent claimed title only through Ex.B1, B4 and B5. Ex.B1 is a portion of Ex.A1. In Ex.A1, it is clearly stated that only service holder patta was given to the predecessor of the first defendant. In Ex.B4 and Ex.B5, it is clearly stated that the predecessor of the first respondent were bound to pay rent to the temple. The recitals in Ex.B4 and B5 was confirmed by Ex.A7, A11 and A12. All the judgments referred to by the respondents are with regard to personal grant and they are not applicable to the facts of this case. Hence, it is decided that there was no personal grant in favour of the predecessors of the 1st Respondent and the original grantee is only the plaintiff.



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Issue No.III:-

48. On the side of the respondents, it is stated that as long as the service holder is in service, he is having the right to continue in possession. It is stated that the first defendant is still rendering service and he is in possession and the plaintiff is not entitled for recovery of possession, under Section 21 (7) (a) of the Act 30 of 1963.

49. On the side of the respondents, it is stated that the first defendant is the adopted son of Pitchammal and that he is still continuing service. The grant in favour of Pitchammal was admitted. Under Section 41 of the HR and CE Act on breach of condition, the land can be taken by the Government or by the subsequent grantee. If the service is not done, it is for the Government to take action and not the temple. The Minor Inam Act, rides over the other enactments. Even the condition for service can be set aside on payment of 20 times of the compensation amount, under Section 21(3)(i)(a) of Service Inam Act. The respondent herein has not committed any breach of service and the suit for possession is not maintainable.



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50. On the side of the first respondent, it is stated that the trial Court failed to consider column No.7 of Ex.A1 and failed to consider sub Section 7(b) and Section 21(7) (b) of the Inam Act, where as, the first appellate Court has considered all these points in detail. It is further stated that admittedly, the first defendant is in service and even if the service is to be discharged, the respondent has to pay only 20 times of the compensation. Section 21 is applicable, only when the service is not done. Since the respondent is still in service, there is no remedy available to the temple for recovery of possession.

51. On the side of the second defendant, it is stated that the plaintiff filed the suit, only after the lapse of 20 years. After the sale, which was in the year 1984, to the knowledge of the plaintiff.

52. Section 44(B) (1) of the earlier Act is over looped by the HR and CE Act. Even if the temple is having any right, the temple cannot sought for title, after the lapse of 40 years and the temple could not question the Ryotwari patta in favour of the respondent. A judgment of



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the Hon'ble Supreme Court reported in 1993 *Supplementary- 4- SCC - 519 [Subramania Gurukkal (dead) V. Shri.Patteswaraswami Devasthanam]* is cited.

53. On the side of the second defendant, it is stated that the suit for declaration of title, though no limitation is said to have been applicable under 109 HR and CE Act, a reasonable limitation has to be considered, the sale can be questioned only by the subsequent grantee, who entered into the service and not by the temple. The suit for recovery of possession for the temple is not maintainable and prayed the appeals to be dismissed.

54. On the side of the appellant, it is stated that in Ex.A1 and A3 various services were mentioned in the grant which was in favour of the deity. Out of the various services 5 service doers already surrendered their right. Only the defendants are denying the right of the temple. The name of the predecessors of the defendant No.1 was mentioned only as the temple servant. Ex.A1 is clear to prove that it is only a service grant. Though a sale deed was registered in the name of the second defendant in



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the year 1994, the second defendant did not take any steps to transfer the patta in his name. This itself reveals that the transaction is only sham and nominal. The defendants are trying to grab the temple property.

55. On the side of the appellant, it is stated that only after the proceedings were initiated under Ex.A5 and Ex.A6, the second respondent has filed a petition for transfer of patta and hence, the suit was filed, subsequently. It is further stated that there is no limitation for recovery of the properties that belong to a religious institution or a Deity. A Deity has to be legally presumed as a Minor and it is the duty of the Court to safe guard the rights of the Deity.

56. From Ex.A5 and Ex.A6, it is clear that the first respondent had alienated the property in favour of the second respondent and that recovery proceedings were initiated. Only after the proceedings, the second respondent has filed a petition for transfer of patta.

57. It is Admitted that the first defendant is still rendering service to the plaintiff's temple. In the Written statements of both the defendants,



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it is specifically admitted that the property is in the possession of the second respondent. The second respondent is not rendering any service in the temple. Since the possession is now with the second defendant, the temple is having every right for recovery of possession from the second defendant. As the possession is not in the hands of the first respondent, the contention of the first respondent is not sustainable.

Issue No.IV:-

58. On the side of the respondents, it is stated that Pitchammal, in whose name the patta was granted was not made as a party in the suit, eventhough in the written statement, it was clearly mentioned that Pitchammal was alive.

59. In the written statement of the first respondent, it is stated that the first respondent was in possession and after the sale, the second respondent is in possession. The suit is for recovery of possession. When possession is not with Pitchammal, there is no necessity to implead her as a party to the Suit.



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60. On the side of the appellant, it is stated that the first respondent is claiming title only on the basis of a patta issued under this Act and hence, the civil Court has no jurisdiction to decide the nature of the grant and the findings of the first Appellate Court regarding the nature of the grant, is erroneous and that the civil Court has jurisdiction only when a person is claiming independent title and not against a person claiming title through the temple.

61. The first respondent claimed title only as a Archaga of the temple. The question involved here is whether the predecessor of the first defendant was having a personal grant. Under the Tamilnadu Regulations, Estates and Inams Abolition and Ryotwari Settlement Act, 30 of 1963, Section 21, there is a bar of suit in civil Court. Section 21 of the Act, reads as follows:-

“21. Bar of suits in Civil Courts:- (1) No suit shall lie in any civil Court to set aside or modify any ryotwari assessment made under this Act.

(2) Except as otherwise provided in this Act, the decision of any authority or officer under this Act shall be



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final and no Civil Court shall have jurisdiction to decide or deal with any question which by or under this Act is required to be decided or dealt with by the authorities or officers under this Act.”

62. The entire judgment of the first Appellate Court is based on the nature of the grant. The jurisdiction of the civil Court is barred under Section 21 of the Act 30 of 1963. Hence, the question of law raised by the appellant is sustainable.

63. In Issue No.1, it is decided that the decision of the first Appellate Court is perverse. In issue No.2, it is decided that there was no personal grant in favour of the predecessor of the first respondent and that the original grant is in favour of the plaintiff and that only service inam was given to the predecessors of the first respondent as long as they continue service. In issue No.3, it is decided that the possession is not with the first defendant and the possession is now with the second defendant and that the second defendant is not rendering any service in the temple and under Section 21 of the Act, the temple is having the right



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to recover the possession. In issue No.4, it is decided that Civil Court has no jurisdiction under Section 21 of the act.

64. In view of the above discussion, it is decided that the appeals are to be allowed and the judgment and decree of the first Appellate Court are to be set aside.

65. Both the Second Appeals are allowed and the judgment and decree of the first Appellate Court are hereby set aside, there by confirming the judgment and decree of the Trial Court. No costs. The respondents are hereby directed to hand over the possession of the property within a period of one month from the date of receipt of copy of this order.

12.08.2022

Index : Yes / No

Internet : Yes / No

Ls

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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To

1. The II Additional Subordinate Judge,
Tiruchirappalli

2. The I Additional District Munsif,
Tiruchirappalli.

3. The Record Clerk,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.THARANI,

Ls

Judgments made in
S.A(MD)Nos.202 and 203 of 2017

12.08.2022