



S.A.Nos.600, 601, 602,
603, 604 & 136 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos.600, 601, 602, 603,
604 & 136 of 2017
and
CMP.Nos.2883 of 2017, 15066, 15067,
15068, 15069, 15070 & 15213 of 2017

1.Syed Ahmed Hussain

2.S.K.Hamidunnissa

... Appellants in S.A.No.600/2017

B.Lalitha

... Appellant in S.A.No.601/2017

R.Jayachandran

... Appellant in S.A.No.602/2017

1.R.Mahendran

2.R.Gunaseelan

... Appellants in S.A.No.603/2017

V.Kantha (deceased)

1.Vatsala

2.Suryaprakash

3.V.Sudha

... Appellants in S.A.No.604/2017

1.N.Nammalwar (died)

2.N.Badrinathan

3.N.Raghunathan

4.K.Kalaivani

5.K.Venkatramana



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6.V.Loganathan

... Appellants in S.A.No.136/2017

(A1-Died, A3 to to A6 B/R as LR's
of the deceased A1 vide Court order
dated 09.11.2023 made in CMP.No.
25751/2023 in S.A.No.136/2017)

Vs.

Arulmighu Ekambareswarar Thirukoil
Represented by its Executive Officer
having its office at the temple premises
Aminjikai,

Chennai 600 029. ... Respondent in S.A.Nos.600, 601, 602, 604 &
136/2017

1.Arulmighu Ekambareswarar Thirukoil
Represented by its Executive Officer
having its office at the temple premises
Aminjikai,
Chennai 600 029.

2.R.Surendran

... Respondents in S.A.No.603/2017

Prayer in S.A.No.600/2017: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.08.2016 made in A.S.No.488 of 2008 on the file of XVIII Additional City Civil Court, Chennai, confirming the judgment and decree dated 22.01.2008 made in OS.No.4913 of 2005 on the file of the II Assistant City Civil Court, Chennai.



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Prayer in S.A.No.601/2017: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.08.2016 made in A.S.No.558 of 2008 on the file of XVIII Additional City Civil Court, Chennai, confirming the judgment and decree dated 06.10.2007 made in OS.No.4912 of 2005 on the file of the II Assistant City Civil Court, Chennai.

Prayer in S.A.No.602/2017: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.08.2016 made in A.S.No.593 of 2008 on the file of XVIII Additional City Civil Court, Chennai, confirming the judgment and decree dated 06.10.2007 made in OS.No.4768 of 2005 on the file of the II Assistant City Civil Court, Chennai.

Prayer in S.A.No.603/2017: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.08.2016 made in A.S.No.594 of 2008 on the file of XVIII Additional City Civil Court, Chennai, confirming the judgment and decree dated 06.10.2007 made in OS.No.4736 of 2005 on the file of the II Assistant City Civil Court, Chennai.



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Prayer in S.A.No.604/2017: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.08.2016 made in A.S.No.597 of 2008 on the file of XVIII Additional City Civil Court, Chennai, confirming the judgment and decree dated 06.10.2007 made in OS.No.4910 of 2005 on the file of the II Assistant City Civil Court, Chennai.

Prayer in S.A.No.136/2017: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.08.2016 made in A.S.No.495 of 2008 on the file of XVIII Additional City Civil Court, Chennai, confirming the judgment and decree dated 06.10.2007 made in OS.No.4767 of 2005 on the file of the II Assistant City Civil Court, Chennai.

For Appellants in
all S.A.Nos. : Mr.E.Ganesh
for Ms.K.C.Muthulakshmi

For Respondent in
S.A.Nos.600, 601, 602
604 & 136/2017 : Mr.D.R.Sivakumar

For Respondents in
S.A.No.603/2017 : Mr.D.R.Sivakumar for R1
Mr.Adi Narayana Rao for R2



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COMMON JUDGMENT

The unsuccessful defendants in the suit for recovery of possession are the appellants. The suit filed by the respondent temple was decreed by the trial Court and the First Appeal filed by the appellants was also dismissed. Aggrieved by the concurrent findings against them, the defendants have come up with these Second Appeals.

2. According to the respondent temple, the suit property belonged to it and the same was let out to the appellant on monthly basis. The appellant was allowed to put up a temporary structure in the suit site and as per understanding the appellant should not put up any permanent super structure in the suit site. It was averred by the respondent temple that the appellant was in arrears of rent from October 2002 to 2004 and hence, the respondent temple issued a notice terminating tenancy by end of October 2004. The notice was acknowledged by the appellants and they came out with untenable reply. It was also averred by the respondent that the appellant who entered the property as tenant of site was not entitled to deny the title of the respondent. On these



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pleadings the respondent sought for recovery of possession of vacant site after removal of the super structure put up by the appellants. The respondent sought for recovery of arrears of rent and recovery of damages for use and occupation.

3. The appellants herein filed a written statement denying the right of the respondent temple over the suit site. It was their case that the superstructure in the suit site was put up on the property for the past 70 years ago and they have been in possession and enjoyment of the same. It was also averred that the suit site was an inam and after coming into force of Tamil Nadu Minor Inam Abolition Act, the Settlement Thasildar issued a joint patta in the name of the appellants as well as the respondent temple, as the superstructure in the suit land was put up by the appellant or his predecessor in interest.

4. The appellants also claimed that as per request of hereditary trustee of temple, the appellant used to pay some amount towards maintenance of the temple for the purpose of pooja articles etc., as they have put up superstructure in the land adjoining the temple. It was specifically averred by the appellant that the amount collected by the respondent was only a voluntary



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contribution by the appellant for maintenance of the temple and the same could not be treated as rent in pursuance of tenancy agreement.

5. It was also averred by the appellant that the settlement Thasildar in exercise of his powers available under the Tamil Nadu Minor Inam Abolition Act granted a patta in favour of the temple and occupants jointly and hence, the respondent temple was not entitled to maintain a suit for recovery of possession as it was not the exclusive owner of the suit property.

6. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the respondent temple proved that the appellants were the tenant of the suit site and hence, after valid termination of lease arrangement, the appellants were not entitled to occupy the suit property and as a necessary consequence, the trial Court granted a decree for possession as prayed for. Aggrieved by the same, the appellants preferred first Appeals in A.S.No.488, 558, 593, 594, 597 & 495 of 2008 on the file of the XVIII Additional City Civil Court, Chennai. The first Appellate Court also on appreciation of oral and documentary evidence available on record came to the conclusion that the appellant paid the rent to the



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respondent/Devasthanam even after issuance of joint patta by the settlement Officer. Therefore, they were not entitled to deny the title of the temple over the suit site and consequently, dismissed the appeals and hence, the appellants are before this Court.

7. The learned counsel for the appellants submitted that the suit for recovery of possession filed by the respondent temple represented by the Executive Officer was not maintainable. In support of the said contention, the learned counsel for the appellants relied on the judgment of this Court reported in **2003 (1) LW 386**. The learned counsel for the appellants further submitted that the Settlement Officer under the Minor Inam Abolition Act proceedings issued a joint patta in respect of the suit property in the name of appellants as well as the respondent's temple. Therefore, the respondent temple was not entitled to maintain a suit for recovery of possession.

8. The learned counsel for the appellants further submitted that by virtue of joint patta issued in favour of appellant, a cloud had been created over the title of the respondent temple. Therefore, the suit for recovery of possession without declaration of title is not maintainable. In support of his contention, the



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learned counsel for the appellants relied on the following judgments:

1) *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs. and others*, reported in (2008) 4 SCC 594.

2) *Vedaranyeswaraswami Devasthanam by its Executive Officer, Vedaranyam, Nagar Q.M. District Vs. A.C.Dharma Devi and others*, reported in (2003) 1 LW 663.

3) *State of Tamil Nadu Vs. Ramalingaswamigal Madam*, reported in 1985 (4) SCC 10.

4) *Srinivasa & others Vs. Sri Madhar Juneswara Swamy Pattavathalai*, reported in 1998 (2) LW 189 (FB).

5) *Manicka Naicker Vs. Elumalai Naciker*, reported in 1995 (4) SCC 156.

6) *Sri Kumarakattalai Devasthanam Vs. K.S.Sundararajulu*



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Chettiyar, reported in 1975 ILR MAD 501.

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9. As far as contention of learned counsel regarding incompetency of Executive Officer to maintain suit on behalf temple, I had an occasion to consider this question in ***S.M.Devi Vs. The Idol of Sri Jambukeswarar Akilandeswari Devasthanam, Thiruvanaikovil*** reported in ***2023.1.L.W P.825***, wherein it was held that when a worshiper of temple is entitled to maintain a suit to protect interest of temple, the Executive Officer who is in charge of day-today affairs of temple is also a person interested in the welfare of temple and hence he can maintain a suit on behalf of temple. The relevant observation in the above mentioned case law reads as follows:

“12.14...In the present case, the suit was filed by an idol. Since an idol cannot act on its own, it is represented by a human being viz., the Executive Officer. So long as the Executive Officer acts in conformity with the interest of the temple as a person interested in the temple, he can be allowed to represent the Idol in order to protect the interest of the temple. In the case on hand, the appellants herein admittedly committed default in paymnet of rent. Therefore, notice to quit was issued against them and the present suit



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was filed for recovery of possession after termination of the lease. In these circumstances, the Executive Officer by filing the suit for possession is acting in the interest of the idol. Therefore, nothing wrong in allowing him to continue the suit as a person interested in the religious institution. Therefore, the first additional substantial question of law is answered in favour of the respondent and against the appellants.”

10. In the case on hand also there is no dispute with regard to title of temple over suit site. The same has been recognized in the dual patta issued in favour of appellant and respondent temple. Further admitting title of respondent temple over site, appellants paid rent to temple even after issue of dual patta under settlement proceedings. Hence Executive Officer as a person interested in welfare of temple can very well maintain the suit and recover the possession on behalf of temple.

11. It is the specific case of the appellants that the buildings stand in the suit site were put up by either by the appellant or their predecessor in interest. Though the appellants/defendants denied the averments of the respondent in the plaint that the suit site was let out to them on monthly rent,



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the documents marked on behalf of the respondent temple namely counter foil of rental receipts would unambiguously establish that the appellants paid the rent to the respondent/Devasthanam even subsequent to grant of joint patta by the Settlement Officer. Rental receipts produced by the respondent temple are relevant to the years 1995 to 2002. After perusing the rental receipts produced by the respondent, both the Courts below came to the conclusion that the documents produced by the respondent temple were counter foil of rental receipts and the same were signed either by the appellants or their predecessor in interest. When the appellants paid the rent to the respondent temple admitting it's title over the suit site even after grant of joint patta by the Settlement Officer, it is not open to the appellants to deny the title of the respondent temple. Both the Courts below rightly came to the conclusion that the appellants were estopped from denying the title of the respondent over the suit property.

12. The Town Survey Register has been marked by the respondent's temple as Ex.A11 in S.A.No.601 of 2017 and the Competent Officer was also examined as PW2 in S.A.No.601 of 2017. He clearly deposed that till date the name of the respondent temple is found in Town Survey



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Register extract. Therefore, the title of the respondent temple over the suit site is not only admitted by the appellants, it is also corroborated by the Town Survey extract. In such circumstances, the respondent is entitled to maintain the suit for recovery of possession after termination of lease arrangement with the appellants.

13. As far as the contention raised by the learned counsel for the appellants that in view of grant of dual patta by the Settlement Officer under Ex.B2 in S.A.No.601 of 2017 the respondent is not entitled to maintain the suit for recovery of possession is concerned, a perusal of the copy of Ex.B2 in S.A.No.601 of 2017, the order passed by the Settlement Officer would make it clear that the land in question was Iruvaram land. The respondent temple was held to be owner of both the warams. The land was let out to the appellants and various occupants and the respondent temple was collecting rent for their occupation. The Settlement Officer has clearly stated that the respondent temple was entitled to both waram land in question and consequently entitled to Ryotwari patta under Section 11 r/w Section 8 of the Act, 30 of 1963. Since the land in question were let out and buildings were put up by tenants, the Settlement Officer by exercising his power under the Act granted dual patta in



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favour of the respondent temple and the appellants under Section 13 (1) of the Act 30 of 1963. The grant of dual patta under the Tamil Nadu Minor Inam Abolition Act and its implication came for consideration before the Hon'ble Apex Court in ***Manicka Naciker Vs. Elumalai Naicker*** reported in **1995 (4) SCC 156**.

14. While considering said question, the Hon'ble Apex Court observed as follows:

“11...As the object of the enquiry by the Settlement Officer is the grant of a ryotwari patta as a revenue settlement, the grant of a patta cannot be equated with an adjudication of title to the lands in question

13...An inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. We respectfully agree with these findings of the learned Single Judge.

14... Moreover, in the present case, the patta granted



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expressly provides that the appellant has been granted a ground rent patta only in respect of the building, while the patta for the site has been granted to the respondent. A joint patta seems to have been granted in the names of both the appellant and the respondent because of the claim of the appellant to the building and the claim of the respondent to the site on which the building stands...”

15. In fact the Hon'ble Apex Court in the above mentioned judgment affirmed the view expressed by the learned Single Judge of this Court in ***Sri Kumarakattalai Devasthanam Vs. K.S.Sundararajulu Chettiyar***, reported in ***1975 ILR MAD 501***.

16. The relevant observation found in ***Sri Kumarakattalai*** case reads thus:

“...4. The scope of Section 13 of Madras Act XXX of 1963 came up for consideration before a Division Bench of this Court in P.S. Veerappa Chettiar Vs. Thiruthuraipoondi Sri Bav Oushadheeswaraswami Devasthanam (Second Appeal No.369 of 1966.) The learned Chief Justice, speaking for the Bench, expressed as follows:



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On the other ground rested on Section 13, we are of opinion that the effect of a combined reading of the two Sub-Sections of that Section 13 of Madras Act XXX of 1963 is that, unless the owner of the building is also the owner of the site, the building inclusive of the site will not vest in the owner of the building. In other words, the effect of Sub-Section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him.

The said decision has been followed in Ramachandra Pillai and Anr. Vs. Shanmugham Pillai (Second Appeal No.1139 of 1969 of this Court) wherein it has been held that the owner of the building does not become the owner of the site by virtue of Section 13(1) of the Act, that there is no vesting of the site as part of the superstructure and that, in the absence of the Government asserting any title u/s 3 (b) of the Act, an inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant...”(Emphasis Supplied).



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17. Therefore, it is clear that under Section 13(1) of the Tamil

Nadu Minor Inam Abolition Act, the owner of the building cannot become owner of the site and inamdar who continues to be in constructive possession of the site even after the notified date, would be entitled to recover possession from his tenant. In the case on hand, joint patta relied on by appellants would make it clear that the site was owned by the temple and the same was let out to various tenants like appellants and they also put up building in the site. Taking into consideration the said fact a dual patta was issued in the name of the appellants as well as respondent temple. Hence, following the ratio laid down in *Manicka Naicker Vs. Elumalai Naicker* (cited supra), I hold that the respondent temple is entitled to maintain a suit for recovery of possession against the tenant who committed default in payment of rent. Therefore, the objection raised by the learned counsel for the appellants that by virtue of joint patta issued in favour of the appellants, the respondent temple is not entitled to maintain a suit for recovery of possession of site is not acceptable to this Court.

18. The learned counsel for the appellants also submitted that the joint patta issued in favour of the appellants and the respondent temple created



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a cloud over the title of the respondent temple and hence, the respondent is not entitled to maintain a suit for recovery of possession without declaration of title. The Hon'ble Apex Court as well as this Court in the decisions (cited supra) held that the inamdar or owner of site who continues to be in constructive possession of the site even after notified date would be entitled to recover possession from his tenant. Therefore, the respondent temple is deemed to be in constructive possession of site even after issuance of dual patta and in the case of default of rent by tenant, the temple is entitled to maintain a suit for recovery of possession.

19. In any event, in the case on hand, the Courts below came to the conclusion that even after issuance of dual patta by settlement Officer, the appellants continue to admit title of temple over site and paid the rent up to the year 2002. Therefore, they are estopped from questioning the title of their landlord namely, the respondent temple. In view of the discussions made earlier, no substantial question of law arises for consideration and consequently, these Second Appeals are dismissed.

20. The appellant in S.A.No.601 of 2017 filed an application in CMP.No.15213 of 2017 seeking leave of the Court to raise additional evidence.



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Along with the petition, the appellant filed 10 documents. The documents 1 to 3 & 5 to 10 are relating to tax demand raised by the Corporation in the building. The present suit has been laid for recovery of possession of the suit site and the removal of the superstructure. Hence, the Corporation's tax demand or tax payment receipt in respect of the building put up by the appellant will not be useful to decide the appeal because the respondent temple has not claimed any right over the superstructure. Therefore, the documents 1 to 3 and 5 to 10 filed along with the petition to raise additional evidence will not advance the case of the appellant in any way and the same will not be useful as additional evidence in the Second Appeal. Document No.4 is the patta issued by the Settlement Officer. In the said document the owner of the property is mentioned as respondent temple represented by Hereditary Trustee and one Radhakrishnan. As we discussed earlier, the dual patta issued by the Settlement Officer will not in any way affect the right of the temple to recover possession of the site. Therefore, the fourth document filed by the appellant therein would not be useful to advance the case of the appellant. Further, document Nos.1 to 8 were dated between 23.07.1941 to 13.09.2005 and those documents are very well available with the petitioner/appellant at the time of trial. Reasoning given by the appellant for his failure to produce those



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documents before the trial Court or at least before the First Appellate Court is not acceptable to this Court. In the absence of acceptable explanation and failure of the appellant to produce those documents before the Courts below, the appellant is not entitled to produce those documents in the Second Appellate stage by way of additional evidence. Therefore, CMP.No.15213 of 2017 in S.A.No.601 of 2017 filed for reception of additional evidence is dismissed.

21. a) In the result, the Second Appeals stand dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, other connected Miscellaneous Petitions are closed.

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Index : Yes
Internet : Yes
Neutral Citation Case : Yes
dna

To



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