

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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RESERVED ON :24.01.2023**PRONOUNED ON :15.03.2023****CORAM:****THE HONOURABLE MR. JUSTICE S.SOUNTHAR**S.A.No.1654 of 1998

and

C.M.P.(MD) No.257 of 2019

Tirunelveli Diocesan Trust
Association Palayamkottai
through its Secretary having
its Office at Palayamkottai.

... Appellant/ Defendant

Vs

1.S.Kanagaraj (died)
2.S.Balasundaravinayagam
3.Muthulakshmi
4.Muthu Usha
5.Arunkumar
6.Anusathya

... Respondents

[R3 to R6 are brought on record as LR's of the deceased R1 vide Court order dated 22.02.2021 made in C.M.P.(MD) Nos.1600, 1601 and 1603 of 2021 in S.A.(MD) No.1654 of 1998 by NSKJ]



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 17.09.1992 made in A.S.No.16 of 1977 on the file of the II Additional District Judge, Tirunelveli, confirming the judgment and decree dated 14.09.1976 made in O.S.No.628 of 1974 on the file of the Additional District Munsif Court, Tirunelveli.

For Appellant	:	Ms.Krishnaveni Senior Counsel for Mr.S.Chellapandian
For Respondents	:	Mr.K.Govindarajan for S.P.Maharajan for R2 to R6

J U D G M E N T

The defendant in the suit is the appellant. The respondent herein filed a suit for declaration of title and recovery of possession. The suit was decreed by the trial Court and on appeal filed by the appellant, the findings of the trial Court were confirmed. Aggrieved by the same, the appellant is before this Court.

2. According to the respondent/plaintiff, the suit property belonged to him as he purchased the same under sale deed dated



23.06.1962. The respondent claimed that from the date of purchase, he had been in possession and enjoyment of the suit property till 1972. It was further averred that the appellant trust owns a school on the western side of the suit property. It was further averred that in or about 1972, the appellant school authorities trespassed into the suit property. The respondent sent a pre-suit notice to the appellant's school Headmaster on 15.04.1974 and there was no reply by the appellant. In these circumstances, the respondent was constrained to file a suit for declaration and recovery of possession.

3. The appellant herein filed a written statement and denied the title of respondent over the suit property. The appellant claimed that the respondent had never been in possession of suit property. The appellant also claimed that the suit property was a poromboke land and the same was alienated in favour of appellant by Government under G.O.Ms.No.1830, dated 15.12.1923 . The appellant claimed that the respondent had no property on the eastern side of their school. It was also averred in the written statement that Inam Palayam Chettikulam Village, in which, the suit property is situated was taken over and it had been surveyed



by the Survey Department. The appellant also claimed that patta had been granted in favour of appellant in respect of the suit property. On these pleadings, the appellant sought for dismissal of the suit.

4. Before the trial Court, the respondent examined three witnesses namely PWs.1 to 3 and documents Exs.A1 to A3 were marked on his side. On behalf of the appellant, four witnesses were examined namely DW1 to DW4 and one document was marked on his side as Ex.B1. The Advocate Commissioner report and plan were marked as Exs.C1 and C2. The trial Court, on appreciation of oral and documentary evidence available on record, came to a conclusion that the respondent was entitled to declaration and recovery of possession as prayed for and decreed the suit. Aggrieved by the same, the appellant herein filed an appeal in A.S.No.16 of 1977 on the file of II Additional District Court, Tirunelveli.

5. The First Appellate Court came to the conclusion that the appellant perfected title by adverse possession and consequently, set aside the judgment and decree passed by the trial Court. Aggrieved by the



same, the respondent herein filed a second appeal in S.A.No.860 of 1979.

The second appeal was allowed by this Court on the ground that the First Appellate Court was not justified in rendering the finding on the question of adverse possession even without a plea to that effect by the appellant. This Court after observing so set aside the judgment and decree passed by the First Appellate Court and remanded the matter back to its file with an observation that if the appellant herein succeeds in showing that Ryotwari patta issued to it under Ex.B1 relates to the suit land then the effect of such patta on the question of title to the suit property had to be gone into by the first Appellate Court. After remand, the appellant herein filed an additional written statement and raised a plea of adverse possession. In the additional written statement, it was contended by the appellant that it had been in possession and enjoyment of the suit property from the year 1923 continuously and hence acquired title by prescription.

6. After remand, the First Appeal was taken up by the First Appellate Court again for hearing and four additional documents were marked on the side of the appellant and the same were marked as Ex.B2 to



B5. Again, the Advocate Commissioner visited the property, the report and plan filed by him were marked as Exs.C3 and C4. The First Appellate Court, on consideration of evidence available on record, came to the conclusion that the respondent was entitled to declaration of title and recovery of possession. Therefore, the First Appeal was dismissed by the First Appellate Court by affirming the findings of the trial Court. Aggrieved by the same, the appellant is before this Court.

7. This Court, at the time of admitting the second appeal, formulated the following substantial questions of laws:

1. *Whether the suit is maintainable?;*
2. *Whether the plea of prescription of title by adverse possession could be sustained on the facts of the case?.*

8. Ms.Krishnaveni, learned counsel appearing for the appellant elaborated the substantial questions of laws formulated at the time of admission by submitting that the jurisdiction of the Civil Court to decide the correctness of the patta issued under Inam Abolition Act is barred under



Section 71 of Act 26 of 1963. Therefore, it is the submissions of the learned Senior Counsel when patta for the suit property is issued in favour of the appellant Trust under Ex.B1, the suit filed by the respondent is not at all maintainable.

9. The learned Senior Counsel submitted that the Advocate Commissioner appointed by the Court below found that the survey number of the suit property is 157. She further submitted that Ex.B1-patta was issued in favour of appellant for 41 cents in S.No.157. Therefore, it is the contention of the learned Senior Counsel that Ex.B1 is relating to suit property and in view of the fact that patta was issued to the appellant under Inam Abolition Act, the appellant's right over the suit property was proved and the same was overlooked by the first Appellate Court.

10. The learned counsel appearing for the respondent by drawing the attention of this Court to the Full Bench decision in ***Srinivasan and six others Vs. Sri Madhyarjuneswaraswami reported in 1998 (1) CTC***



630 equivalent to (1998) II MLJ 722 submitted that merely because patta was granted to a person under Inam Abolition Act, the jurisdiction of the Civil Court to entertain a suit for declaration of title is not at all barred. The learned counsel further submitted that the respondent succeeded in proving pre-existing right of his vendor over the suit property and the same was found in favour of the respondent by the Courts below. In the absence of any evidence available on record to show the pre-existing right of the appellant over the suit property, the appellant cannot claim any right over the suit property merely because patta issued under Inam Abolition Act.

11. In nutshell, it is the contention of the learned counsel for the respondent that by taking into consideration the pre-existing right of the respondent vendor, the Courts below rightly granted a decree for declaration and possession.

12. The first question that has to be decided in the second appeal is with regard to the maintainability of the Civil Suit. The learned Senior Counsel for the appellant by relying on Section 71 of Tamil Nadu



Inam Estates and Conversion into Ryotwari Patta Act, 1963, submitted that jurisdiction of Civil Court to entertain the suit got ousted. The relevant provision of Act 26 of 1963 reads as follows:

71. Finality of orders passed under this Act:-

Any order passed by any officer, the Government or other authority or any decision of the Tribunal or the Special Appellate Tribunal under this Act in respect of matters to be determined for the purposes of this Act shall, subject only to any appeal or revision provided by or under this Act, be final.

(2) No such order or decision shall be liable to be questioned in any Court of law.

13. The bar created under the provision of minor Inam Abolition Act (Act 30 of 1963) came up for consideration before the Full Bench of this Court in ***Srinivasan and six others Vs. Sri Madhyarjuneswaraswami reported in 1998 (1) CTC 630 equivalent to (1998) II MLJ 722.*** In the above said decision, the Full Bench of this Court after referring to the various decisions of the Apex Court, came to the conclusion that the jurisdiction of the Civil Court to entertain a suit for



declaration of title was not at all barred by reason of grant of patta under the provisions of Inam Abolition Act. The said decision can also be pressed into service in respect of patta granted under Tamil Nadu Act 26 of 1963, as provision relating to finality attached to order passed by Officers appointed under both acts are similar. The Section 45 of Tamil Nadu Minor Inam Abolition Act (Act 30 of 1963) is similar to Section 71 of Tamil Nadu Inam Estates and conversion into Ryotwari Act (Act 26 of 1963). Hence, notwithstanding patta granted under the Act, Civil Court can go into question of title.

14. Reading of Section 71 of Act 26 of 1963 would make it clear that it only declares finality to the orders passed under the Act, subject to any appeal or revision as provided under the Act. The correctness or otherwise of the same cannot be questioned in any Court of law. However, the jurisdiction of the Civil Court to entertain a suit for declaration of title based on the pre-existing right of the parties was not at all ousted. Hence, I hold that the present suit for declaration of title and recovery of possession filed by the appellant is maintainable and the question of law No.1 is answered, accordingly.



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15. The appellant herein by filing additional written statement raised a plea of adverse possession and in order to prove his possession, the appellant filed Ex.B1 patta, dated 15.05.1971 issued to it under the provisions of Inam Abolition Act. The suit was filed in the year 1974. The other documents filed by the appellant are also not useful to prove possession of appellant for more than statutory period. In fact, in the original written statement filed by the appellant it claimed title over the suit property under alienation made by the Government in the year 1963. However, the appellant was unable to lead any evidence regarding alleged alienation in favour of appellant. Though, the appellant claimed that the suit property was a Government Poromboke, the Courts below concurrently based on the evidence of DW.4-Village Munsiff that the suit property was Inam land registered in the name of Kumarasami/vendor of respondent. Therefore, the evidence of appellant's own witness DW.4 established beyond doubt that the suit property was Inam land originally registered in the name of respondent's/vendor viz.,Kumarasami.



16. The respondent by producing Ex.B1-sale deed proved

that he purchased the suit property from said Kumarasami. The Tamil Nadu Inam Abolition Act 26 of 1963 came into force, subsequent to purchase of property by respondent. Therefore, the pre-existing right of the appellant over the suit property was proved beyond any doubt. The appellant is a Trust it cannot be a ryot of the suit property and therefore, the appellant certainly would not have had any pre-existing right as a ryot of the suit property. The appellant failed to produce any document to show either it had title over the suit property or it had possession over the suit property on the date of coming into force of Act 26/1963. The evidence of appellant's own witness DW.4 established that the respondent's vendor was owner of the suit property prior to coming into force of the Act. Therefore, if at all the appellant can only claim right over the suit property as a ryot under respondent's/vendor. However, the appellant is not an individual. It is a Trust and hence it cannot claim any right as a ryot under appellant's vendor. Further, as stated earlier, there is no evidence available on record to prove any semblance of right of appellant over the suit property prior to coming into force of Inam Abolition Act. In such circumstances, by virtue of



evidence available on record, the Courts below came to the conclusion that the respondent proved his pre-existing right and consequently, entitled to declaration of title and possession. In view of the same, the question No.2 is also answered against the appellant.

17. In view of the discussions made earlier, the second appeal is dismissed by confirming the judgment and decree passed by the Court below.

18. Along with the above second appeal, the appellant also filed an application for reception of additional evidence in CMP.No. 257 of 2019. The appellant in his written statement relied on G.O.Ms.No. 1830, dated 15.12.1923 and claimed under the said G.O., the suit property was alienated by the Government in favour of the appellant. However, the said Government order was not produced by the appellant before both the Courts below, either before remand or after remand. Now, the xerox copy of the said G.O extract was filed by the appellant along with CMP.No.257 of 2019 with the prayer to receive the same as additional evidence.



(ii). In the affidavit filed in support of said application, it was

stated by the appellant that though the witness examined on its behalf deposed that the copy of the said G.O was available in his office, the same could not be produced due to misplacement and the appellant is managed to get copy of such G.O and filed it as additional document. First of all, the appellant filed only the xerox copy of the said G.O and the original or certified copy has not been produced. A reading of the affidavit would make it clear that the said document was in possession of the appellant, even at the time of trial and the same was not produced. Now the appellant filed an affidavit, as if, the same could not be produced at the the time of trial as it was misplaced at the relevant time. The appellant has not given any reason for his failure to produce the G.O before the First Appellate Court, after order of remand by this Court. The reasons assigned by the appellant for its failure to file the copy of the said document even after remand is not acceptable to this Court. Further a cursory look at the documents would make it clear that under the order dated 15.12.1923, 11.45 acres of Government Poromboke land in T.S.No.229 in Palamoottan Village in Tirunelveli Taluk was assigned in favour of appellant. The suit property



in the present plaint was described as 1.35 acres of land Inam Punjai in Ponnirandalkulam hamlet, Inam Palayamchattikulam Village. Therefore, the name of the village mentioned in additional documents is something different from the name of the village found in the plaint description.

(iii). According, to the submissions made by the learned senior counsel for the appellant, the Advocate Commissioner appointed by the Court below found that the Survey Number relevant to the suit property was 157. The additional documents now produced by the appellant is relating to T.S.No.229, there is no evidence to correlate the Survey Number found in the additional document with Survey Number found by the Advocate Commissioner by local inspection.

(iv). In such circumstances, it is not safe to come to the conclusion that the additional documents now produced by the appellant is relating to the suit property. Therefore, even if the additional documents is received in second appeal by way of additional evidence, the same would not help the appellant in any way. When the documents is not useful for



disposal of the second appeal in a better way, the prayer for production of additional evidence is liable to be rejected as ingredients of Order 41 Rule 27 are not satisfied.

(v). Accordingly, the petition for receipt of additional evidence is dismissed.

19. In nutshell:

(i) The second appeal is dismissed;

(ii) In the facts and circumstances of the case, there will be no order as to costs; and

(iii) Connected miscellaneous petition is dismissed.

15.03.2023

NCC : Yes / No

Index : Yes / No

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To

1. The II Additional District Judge,
Tirunelveli.
2. The Additional District Munsif Court,
Tirunelveli.



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S.SOUNTHAR, J.

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