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C.S.No.931 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2023

PRONOUNCED ON :27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S No.931 of 2009

A/M Pathala Poniamman Temple
Attached to Arulmigu Gangadareswarar Temple
Purasawalkam
Rep. by its Executive Officer

... Plaintiff

..Vs..

1.Daniel Kalaiselvan

2.A V.Doraisamy (deceased)

3.D. Philip Selvakumar

4. Parimala Paul

5.Priseilla Madhavi

.. Defendants

Prayer: Civil Suit has been filed under Order IV Rule 1 of O.S Rules read with Order VII Rule 1 CPC under Section 26 CPC, praying to pass the following judgment and decree against the defendants:



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a) Directing the Defendants to quit and deliver vacant possession of the suit schedule property after removing the superstructure thereon;

(b) Permanent injunction restraining the Defendants, his men, agents or assignees or any other person claiming under or through his from putting up further construction in the schedule mentioned property;

(c) Mandatory injunction to remove the unauthorised construction put up by the Defendants in the schedule mentioned property;

(d) Future damages at the rates of Rs.895/- per day for use and occupation of the suit property from the date of plaint to till the date of handing over the possession.

(e) Directing the Defendants to pay costs of the suits;

(f) Such other relief as deem fit and necessary.

For Plaintiff : Mr.S. Rajendra Kumar
(For M/s.Norton & Grant)

For Defendants : Mr.V. Ayyathurai (Senior Counsel)
(For M/s.A.S.Thambuswamy)

J U D G M E N T

This Civil Suit has been filed, praying to pass the following judgment and decree against the defendants:

(a) Directing the Defendants to quit and deliver vacant possession ; of the suit schedule property after removing the superstructure thereon;



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(b) Permanent injunction restraining the Defendants, his men. agents or assignees or any other person claiming under or through his from putting up further construction in the schedule mentioned property;

(c) Mandatory injunction to remove the unauthorised construction put up by the Defendants in the schedule mentioned property;

(d) Future damages at the rates of Rs.895/- per day for use and occupation of the suit property from the date of plaint to till the date of handing over the possession.

(e) Directing the Defendants to pay costs of the suits;

(f) Such other relief as deem fit and necessary.

2. The case of the Plaintiff, as set out, in the plaint is as follows:-

(a).The Plaintiff A/m. Pathala Poniamman Temple is attached to Arulmigu Gangadareswarar Temple, Purasawalkam, Chennai-84 and is governed by the Hindu Religious and Charitable Endowment Department and the Execution Officer of the Plaintiff Temple is authorised to represent the Temple in all legal proceedings as per Clause 9 of the Scheme Decree passed by the Hon'ble High Court in C.S.No.553 of 1949 read with Section



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6(9) of the H.R.C.E Act. The Plaintiff temple is one of the ancient temples and it has vast extent of properties in and around Purasawalkam. The entire land comprised in Survey No.3155 is also owned by the Plaintiff temple. Likewise the property bearing Door No.47 & 48, Kuttiappa Giramani Street, Kilpauk, Chennai-10, comprised in Survey No.3155 measuring of an extent of 4 Grounds 887 sq.ft. more fully described in the Schedule in the suit, also belonged to the Plaintiff Temple.

(b).The said property and the other adjoining properties were let out to Arumuga Naicker and others. Since they were performing "Polichetty" during festival times, they have been permitted to remain in the property in lieu of the service rendered. The said Arumuga Naicker and others had in turn let out the property to third parties and were collecting the rents for them. For a very long period the "Polichetty" was not performed, the properties let out to the said Arumuga Naicker and others has been resumed by the Temple itself. The tenants under the said Arumuga Naicker have also been informed about the same and they were directed to pay the monthly land rent directly to the Plaintiff Temple, and also sent letter to Arumugam Naicker and others and directing them to vacate and deliver vacant possession of the said property. Aggrieved by the



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same the said Arumuga Naicker and others have filed suit in O.S.No.8268 of 1982 on the file of the XII Asst. Judge, City Civil Court at Chennai praying for permanent injunction restraining the Plaintiff herein from interfering with their peaceful possession and enjoyment of the said property. The said suit has against the property comprised in Survey No.3155 was dismissed on merits by the Judgment and Decree dated 19.02.1987. The said Arumuga Naicker and others had not filled any appeal as against the said Decree and the same as become final. The Defendants are in occupation of the suit property without regularising their tenancy or paying any rent. The Defendants are neither a permissive occupier nor a tenant under the Plaintiff Temple but only a rank trespasser. Hence, the Defendants has no right to remain in the Plaint Schedule property. Moreover, on 01.11.2006 when the collection clerk of the Plaintiff Temple visited the suit premises, he found that the first Defendant herein is trying to put up a new construction in the suit Schedule mentioned property. Immediately, the 1st Defendant herein was orally instructed not to proceed with any unauthorised construction. But the 1st Defendant and his men have not heeded to such oral demands. On being reported, the Executive Officer of the Plaintiff Temple had issued a



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Telegraphic notice on 01.11.2006 to the 1st Defendant herein to stop the construction forthwith. Even after the visit of the telegraphic notice, the 1st Defendant herein has not stopped the ongoing illegal construction. The Plaintiff Temple has also informed the Asst. Engineer, Corporation of Chennai. All the steps taken by the Temple authorities to stop the construction have ended in vain. Hence the Plaintiff is constrained to file the present suit.

c). The Defendants is liable to be evicted from the suit premises. On 01.11.2001, the fair rent fixation committee constituted by the H.R.&C.E Department has fixed fair rent at the rate of Rs.2.56/-per sq.ft. for the suit premises. If the said property is let out, the Temple will easily get Rs.25,847/- as fair rent for the said premises as fixed by the fair rent fixation committee for that locality and hence the Defendants is liable to pay a sum of Rs.895 per day as damages for the use and occupation of the said premises. Therefore, the Plaintiff seeks the relief as prayed for. Hence, the suit.



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2. The case of the Defendants, in a nutshell, as set out in their written statement, is as follows:-

In the Written Statement of the 1st Defendant:

a) The suit filed by the plaintiff is neither maintainable in law or on facts and hence it deserves to be dismissed in limine. The land comprised in S.No. 3155 is not an extent of 4 grounds and 887 sq. ft. and defendants have not owned and possessed Door No. 47. The Door No. 48 alone owned and possessed by the defendant. The Door No. 47 have been owned and possessed by [1] Thiru A.V. Doraisamy, [2] D. Philip Selva Kumar [3] Tmt. Parimala Paul [4] D. Perisulla Madhavi. Hence the suit is mis-joinder of the parties and it suffers to infirmity and hence deserves to be dismissed with cost.

b) Originally the land have been given as a inam for the service render by the defendant pre-deceasor as called polichetty, while so on 07-04-1920 one Mr. Rathina Chettiar has raised the super structure thereon. The legal heirs of one Mr. Rathina Chettiar have sold the lease hold rights along with the super structure to one Mr. Samarapuri Mudaliar and thereafter on 01-09-1932 one Mr Samadhanam Daniel then thereafter



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on 25-4-1933 the above said person has made on a joint agreement for a period of 45 years for leasing out as a tenant the land and super structure from one Mr. Kanniappan Naicker, Sio. Munusamy Naicker. Further on 14-2-1957 the said Samadhanam Daniel have bequeathed the said property under a registered will as document No. 57 of 1963, Book No. 3. Volume No.94 Page No. 34 to 37 to his sons and daughters accordingly the Will has been probated by the Hon'ble High Court of Judicature at Madras in O.P. No. 210 of 1963. Since after the said Will the defendant and other co-sharer have been in possession and enjoyment of the said property. It is not true when the Arumuga Naicker and others have let out the property to the defendant from collecting the rents, it is totally untrue and concocted one as alleged in the plaint.

c).Further, the Judgment and Decree passed by the XIII Asst. City Civil Judge on 12-02-1987 in the O.S. No. 8268 of 1982, is not relevant to this case. Since the plaintiff in the above case viz. one Mr. Arumuga Naicker and others are not the Pre-deceasor of the defendant nor they are the land owners who let the defendant pre-deceasor in the suit schedule



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property. The land in S.No.3155 have been exempted from the taxation, once the taxation have been exempted then the land belongs to inam land.

In spite of the said decree and judgment, the plaintiff have taken the undue advantage by filing this vexatious suit in order to disturb the defendant's possession and ownership. Moreover it is no need to file an appeal by the defendant or his pre-deceasor. The land have been gifted as inam to the pre-deceasor of the defendant and they have been in absolute possession and enjoyment of the suit schedule property. The judgment and decree rendered by the Hon'ble Small Causes Court at Madras, in [O.S.No. 6025](#) of 1947, exempted for payment of taxes to the defendant pre-deceasors and it is crystal clear that the said lands have been inam lands and pre-deceasors of the defendant are the inam holders of the property. Their possession and right in title have not been questioned for the past 77 years while so the present fictitious suit have been filed by the plaintiff is untenable in law. Since neither the defendant nor the pre-deceasor of the defendant are parties to the above suit and the suit is not sustainable on the strength of the above said decree and judgment of the suit in [O.S.No 8268](#) of 1982, the present suit deserve to be dismissed.



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In the Written Statement of the 2nd Defendant:

a) The Executive Officer has no power or authority to represent the temple and the suit is not maintainable. He cannot sign and verify the plaint on behalf of the plaintiff temple. The allegation that as per Clause (8) to the Schedule of the Scheme Decree dated 12-08-1953 passed by the Hon'ble High Court in C.S. NO. 553 of 1948 read with Section 6 (9) of H.R.& C.E. Act 1959, the Executive Officer has power to represent the Temple is baseless and the Executive Officer cannot derive powers by Provisions of Scheme Decree when the same is contrary to the Provisions of the Act. As per Sections 45 and 118 of H.R. & C.E. Act the Executive Officer cannot represent the Temple in Civil Suits. Sec 118(2)(b)(i) reads as follows.

"if any provision contained in any scheme settled or deemed to have been settled under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1926 (Tamil Nadu Act II of 1927), including a scheme settled under Sec 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908), and in force immediately before the 30 September 1951 in repugnant to any provision contained in this Act or the rules made thereunder, the latter provisions shall prevail, and the former provision shall, to the extent of repugnancy be void;"



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The Executive Officer appointed under Section 45 of the Act is to assist the Trustees and he cannot usurp their Powers. As per provisions of Tamil Nadu Act No. XIX of 1951 and Act XXII of 1959 only Deputy Commissioner or Joint Commissioner can frame or modify a Scheme.

b)The above suit is barred by limitation and Sec 109 of H.R. & C.E. Act, 1959 as amended by Tamil Nadu Act 28 of 2003 has no application to this case. The Tamil Nadu Act 28 of 2003 is ultra-vires and is unconstitutional. These Defendants are entitled to take the Plea of Limitation, since the predecessor in title of suit property had perfected title long before September 1951. The Plaintiff had not taken any steps to resume the property before September 1951 or taken any steps to establish its right subsequent to September 1951 till the institution of the present suit. Mr. Samadhanam Daniel, Father-in-law of 2nd Defendant and Grand Father of other Defendants was in possession and enjoyment of the suit



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property from the year 1932 and was enjoying the suit property as absolute owner to the knowledge of the Plaintiff. He was paying Property Tax and was dealing with the property in his own right as owner and he perfected title by adverse possession prior to H.R. & C.E. Act, 1951. He died on 09-10-1962 leaving his last Will Dated 14-02-1957. As per his Will which was probated in the Hon'ble High Court in O.P. No. 210 of 1963 his daughter Mrs. Lalitha Daniel / Duraisamy inherited the property and was in possession and enjoyment of the property till her death on 04-02-2000. After her death the defendants herein inherited the suit property and are dealing with the property as owners. Therefore the above suit is barred by Limitation.

c)The Plaintiff is put to strict proof of said allegations that the entire land comprised in Survey No.3155 is owned by the Plaintiff Temple and property bearing Door Nos.47 and 48 Kuttiappa Gramani Street, Kilpauk, Chennai - 10 comprised in Survey No. 3155 measuring an extent of 4 Grounds, 887 Sq.Ft. more fully described in the Schedule to the Plaint also belonged to the Plaintiff Temple. Further, Survey No.3155 consists of very vast extent and the Plaintiff granted Inam or Lease to various parties. The Defendants and their predecessors in title had perfected title to the suit



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property by adverse possession. It is not correct to state that the Schedule mentioned properties and other adjoining properties were let out to Arumuga Naicker and others, since they were performing "Polichetty" during Festival times, they have been permitted to remain in property in view of service rendered. On the other hand the various properties were given as Personal Inam to Munusamy Naicker for carrying out "Polichetty" a ritual to be carried out in the Plaintiff Temple even before the year 1909; that the said person had to do the said ritual on behalf of the Plaintiff, that he was not liable to pay any amount to the Plaintiff but was permitted to lease out the property to Third Parties and enjoy the amounts collected by him. In fact in the year 1909 the properties were given as Inam to Mr. Munusamy Naicker father of Mr. Kanniappa Naicker who leased out the same to Mr. Rathna Chettiar by a Lease deed dated 01.07.1909 who put up a superstructure now in possession of first Defendant bearing Door No. 48, after obtaining necessary permission from the Competent persons. After the death of the said Munusamy Naicker his son Mr. Kanniappa Naicker leased the property to Rathna Chettiar by registered Deed of Lease dated 07.04.1920 bearing Document No. 683 of 1920. After the death of the said Ratha Chettiar his son Mr. Duraisamy Chettiar sold the leasehold right as



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well as the superstructure to Mr. Samarapuri Mudaliar by Lease-cum-Sale Deed dated 12.02.1926 bearing Document No. 618 of 1926. Mr. Samadhanam Daniel, the Grand Father of the Defendant-1,3 to 5 and Father-in-law of second Defendant purchased the lease hold right and the superstructure from the said Mr. Samarapuri Mudaliar by the Deed of Sale dated 01.09.1932 bearing Document No.1832 of 1932. Further after the expiry of lease in favour of Mr. Samarapuri Mudaliar, Mr. Samathanam Daniel took on lease the land in question from Kanniappa Naicker by the Deed of Lease dated 25.04.1933 bearing Document No. 864 of 1933. From the year 1932, Mr. Samadhanam Daniel was in possession and enjoyment of the property. The Trustees of Plaintiff issued a notice dated 01.07.1938 through their Advocate Mr. P. K. Janaki Ram stating that Kanniappa Naicker had no right or title to the site, that the lease had been granted by him to Samadhanam Daniel of the site fraudulently and the lease was illegal, invalid and not binding on the temple; and calling upon Mr. Samadhanam Daniel to pay the rent only to the Plaintiff and not to anybody else. On receipt of the said notice Mr. Samadhanam Daniel stopped paying rent to the lessor and did not pay any amount to the Plaintiff also. He started enjoying the property as an Owner to the



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knowledge of the Plaintiff from July 1938 onwards. He was assessed to property Tax as Owner from the year 1932 and he was paying Tax in his capacity as Owner. The said Mr. Samadhanam Daniel and his predecessors were in possession and enjoyment of the Schedule mentioned property adversely as Owner to the knowledge of the Plaintiff over the statutory period from 1909. Further, in the year 1945, Mr. Samadhanam Daniel put up an additional Superstructure after obtaining necessary permission from Competent Authority which is now in possession of Defendants 2 to 5 bearing Door No. 47. The Plaintiff has not furnished any details as to when the property was leased to Arumuga Naicker and when the same was resumed. The Plaintiff could not have resumed the suit property from Arumuga Naicker and others as Mr. Samadhanam Daniel was in possession and enjoyment of the Schedule mentioned property. Samadhanam Daniel was not a Party to the Suit in OS. NO. 8268 of 1982 on the file of XII Assistant City Civil Court, and therefore the Judgement and Decree is not binding on Mr. Samadhanam Daniel and his successors in interest. To the knowledge of these defendants, there was no resumption proceedings under Sec 41 of the HR & CE Act 22 of 1959. Section 108 prohibits suits in respect of relief for which provisions are made under the



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Acts. Further, Survey No.3155 consists of vast extent of land. Different portions were leased out or Inams were granted to various third parties.

d) Mr. Samadhanam Daniel by the Will dated 14.02.1957 bequeathed the Suit property to his daughter Mrs. Lalitha Daniel/ Duraiswamy, wife of the 2nd Defendant and mother of the other Defendants. He died on 09.10.1962. The Executors of the Will filed O.P. No. 210 of 1963 before this Court and Probate was granted to the Executors by the order dated 30.01.1964. From the date of death of Mr. Samadhanam Daniel, Mrs. Lalitha Daniel/Lalitha Duraiswamy wife of 2nd Defendant and mother of other Defendants with the Defendants was in possession and enjoyment of the suit property as absolute owner. She continued to pay the Property Tax. The Plaintiff through its Executive Officer, issued a notice dated 07.08.1998 through its Advocate Mr. Sivamani to her calling upon her to pay the lease amount. She sent a reply dated 20-08-1998 through her Advocate denying her liability to pay any rent. The Plaintiff did not take any further action. She died on 04.02.2000 leaving behind the Defendants herein as Legal Heirs. After her death as per family arrangement Door No. 47 was allotted to defendants 2 to 5 and Door No. 48 was allotted to the 1st Defendant. From 04.02.2000 the



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defendants are in possession and enjoyment of their respective shares as owners. The first defendant has nothing to do with Door No.47 of which Defendants 2 to 5 are owners. The Plaintiff had lost its right in the suit property and predecessor in Title of the defendants had perfected his title in July 1950 long before September 1951 when Tamil Nadu Act XIX of 1951 came into force and the Plaintiff did not take any steps to resume the property from the predecessor in title of the defendants at any point of time. The Plaintiff had lost its right, interest and title. Therefore, the defendants are in possession and enjoyment of the property as owners and the Plaintiff is not entitled to seek a relief of eviction of the defendants from the Suit property. The Plaintiff has not followed the provisions of the Act for instituting a suit for eviction. The defendants are not trespassers and they are not in occupation without any regularisation. In fact the defendants are occupation and enjoyment of the Suit property as Owners. Hence, the Suit is devoid of merits and is liable to be dismissed with cost.

In the Written Statement of the Defendants 3 to 5:

a) All the allegations contained in the Plaint are denied except those that are specifically admitted herein. The Plaintiff is put to strict proof of



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various allegations made in the plaint. The Executive Officer has no power or authority to represent the temple and the suit is not maintainable. He cannot sign and verify the plaint on behalf of the plaintiff temple. The allegation that as per Clause (8) to the Schedule of the Scheme Decree dated 12-08-1953 passed by the Hon'ble High Court in C.S. No. 553 of 1948 read with Section 6 (9) of HR & CE. Act 1959. As per Sections 45 and 118 of H.R.& C.E. Act, the Executive Officer cannot represent the Temple in Civil Suits. These Defendants are entitled to take the Plea of Limitation, since the Pre-decessor in title of suit property had perfected title long before September 1951. Mr. Samadhanam Daniel, Father-in-law of 2nd Defendant and Grand Father of other Defendants was in possession and enjoyment of the suit property from the year 1932 and was enjoying the suit property as absolute Owner to the knowledge of the Plaintiff. He was paying Property Tax and was dealing with the property in his own right as owner and he perfected title by adverse Possession prior to H.R. & C.E. Act, 1951. He died on 09-10-1962 leaving his last Will Dated 14-02-1957. As per his Will which was probated in the Hon'ble High Court in OP.No. 210 of 1963, his daughter Mrs. Lalitha Daniel/Duraisamy inherited the property and was in possession and enjoyment of the property till her



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death on 04- 02-2000. After her death the defendants herein inherited the suit property and are dealing with the property as owners. Therefore the above suit is barred by Limitation. Survey No.3155 consists of very vast extent and the Plaintiff granted as Inam or Lease to various parties. The Defendants and their predecessors in title had perfected title to the suit property by adverse possession. The Plaintiff has deliberately suppressed the fact that the land in question was an Inam land but has come out with the false Plea that the properties were let out to Arumuga Naicker and others. In fact in the year 1909, the properties were given as Inam to Mr. Munusamy Naicker, father of Mr. Kanniappa Naicker who leased out the same to Mr. Rathna Chettiar by a Lease deed dated 01.07.1909 who put up a superstructure now in possession of first Defendant bearing Door No.48, after obtaining necessary permission from the Competent persons. After the death of the said Munusamy Naicker his son Mr. Kanniappa Naicker leased the property to Rathna Chettiar by registered Deed of Lease dated 07.04.1920 bearing Document No. 683 of 1920. After the death of the said Rathna Chettiar his son Mr. Duraisamy Chettiar sold the leasehold right as well as the superstructure to Mr. Samarapuri Mudaliar by Lease-cum-Sale Deed dated 12.02.1926 bearing Document No. 618 of 1926.



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Mr. Samadhanam Daniel, the Grand Father of the Defendant-1,3 to 5 and Father-in-law of second Defendant purchased the lease hold right and superstructure from Mr.Samarpuri Mudaliar by the Deed of Sale dated 01.09.1932 bearing Document No. 1832 of 1832. Further after the expiry of lease in favour of Mr. Samarapuri Mudaliar, Mr. Samathanam Daniel took on lease the land in question from Kanniappa Naicker by the Deed of Lease dated 25.04.1933 bearing Document No. 864 of 1933. From the year 1932, Mr. Samadhanam Daniel was in possession and enjoyment of the property. The Trustees of Plaintiff issued a notice dated 01.07.1938 through their Advocate Mr. P.K.Janaki Ram stating that Kanniappa Naicker had no right or title to the site, that the lease had been granted by him to Samadhanam Daniel of the site fraudulently and the lease was illegal, invalid and not binding on the temple; and calling upon Mr. Samadhanam Daniel to pay the rent only to the Plaintiff and not to anybody else. On receipt of the said notice Mr. Samadhanam Daniel stopped paying rent to the lessor and did not pay any amount to the Plaintiff also. He started enjoying the property as an Owner to the knowledge of the Plaintiff from July 1938 onwards. He was assessed to property Tax as Owner from the year 1932 and he was paying Tax in his



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capacity as Owner. The said Mr. Samadhanam Daniel and his predecessors were in possession and enjoyment of the Schedule mentioned property adversely as Owner to the knowledge of the Plaintiff over the statutory period from 1909. Further in the year 1945 Mr. Samadhanam Daniel put up an additional Superstructure after obtaining necessary permission from Competent Authority which is now in possession of Defendant 2 to 5 bearing Door No. 47. Samadhanam Daniel was not a Party to the Suit in O.S. NO. 8268 of 1982 on the file of XII Assistant City Civil Court, and therefore the Judgement and Decree is not binding on Mr. Samadhanam Daniel and his successors in interest. Mr. Samadhanam Daniel by the Will dated 14.02.1957 bequeathed the Suit property to his daughter Mrs. Lalitha Daniel / Duraiswamy, wife of the 2nd Defendant and mother of the other Defendants. He died on 09.10.1962. The Executors of the Will filed O.P. No.210 of 1963 in the Hon'ble High Court Madras. By the order dated 30.01.1964, Probate was granted to the Executors. From the date of death of Mr. Samadhanam Daniel, Mrs. Lalitha Daniel / Lalitha Duraiswamy wife of 2nd Defendant and mother of other Defendants with Defendants was in possession and enjoyment of the suit property as absolute owner. She continued to pay the Property Tax. The Plaintiff through its Executive



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officer, issued a notice dated 07.08.1998 through its Advocate Mr. Sivamani to her calling upon her to pay the lease amount. She sent a reply dated 20-08-1998 through her Advocate denying her liability to pay any rent. The Plaintiff did not take any further action. She died on 04.02.2000 leaving behind the Defendants as Legal Heirs. After her death as per family arrangement Door No. 47 was allotted to defendants 2 to 5 and Door No.48 was allotted to the 1st Defendant. From 04.02.2000, the defendants are in possession and enjoyment of their respective shares as owners. The Plaintiff had lost its right in the suit property and predecessor in Title of the defendants had perfected his title in July 1950 long before September 1951 when Tamil Nadu Act XIX of 1951 came into force and the Plaintiff did not take any steps to resume the property from the predecessor in title of the defendants at any point of time. Therefore, the defendants are in possession and enjoyment of the property as Owners and the Plaintiff is not entitled to seek a relief of eviction of the defendants from the Suit property. Therefore, there is no substance or merit in the above suit and the same is liable to be dismissed.

3.On the pleadings of the parties and hearing the learned counsel



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on either side, the following issues were framed for determination:-

- (i) Whether the Executive officer is competent and has power to file suit representing the Temple?*
- (ii) Whether the plaintiff is the owner of the Suit property?*
- (iii) Whether the plaintiff leased out the property to Arumuga Naicker and, subsequently, resumed the suit property from Arumuga Naicker?*
- (iv) Have not the predecessors of defendants became owners by purchasing the property?*
- (v) Have not the predecessors or defendants perfected their title by adverse possession in July 1950?*
- (vi) Whether Section 109 of HR & CE Act is applicable to the fact of this case?*
- (vii) Whether the suit is barred by limitation?*
- (viii) Whether documents 1 to 3 filed along with plaint are valid in the eye of law?*
- (ix) Whether the Civil Court has power to fix rent for suit property awarding damages to plaintiff for use and occupation by defendants treating them as trespassers?*
- (x) To what relief of the parties are entitled?*

4. On the side of the Plaintiff, PW1 was examined and Ex.P1 to



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Ex.P3 were marked. On the side of the Defendants, DW1 was examined and Ex.D1 to D15 were marked.

5. Heard both sides and perused the material available on records.

Issue Nos.1, 2, 3 and 8:

6.The learned counsel for the plaintiff would submit that the survey No.3155 is owned by the Temple and it was let out to Arumuga Naicker and others since they were performing Bolichetty during festivals. They had been permitted to remain in the property in lieu of the service rendered by them. Accordingly, Arumuga Naicker intended let out the properties to various thirds Parties and had collecting rents from them. When Bolichetty Manyam could not be performed, the Temple informed the tenants to pay rent directly to them. Arumuga Naicker and others filed suit in [O.S.No. 8268](#) of 1982 on the file of the 12th Assistant Judge, City Civil Court for permanent Injunction restraining the Temple from interfering with their right to collect rents from Survey. Nos.3162, 3182 and 3155. The said suit was dismissed on 19.02.1987 and no appeal has been filed. The Defendant is neither a permissive occupier nor a tenant but only a rank trespasser.



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7. It has been further submitted by the learned counsel for the plaintiff that the person in possession can utmost be a permissive occupier and cannot have a right to continue to be in possession against the temple and the service holder having abandoned the service has no right in respect of the land. Therefore, the defendant who is claimed to be the transferee, can have no right in respect of the land at all. Further, mere possession by any other person against the temple cannot have a right to claim. Therefore, the transferee from the permissible occupier (Inamdar) cannot be constructed to have adverse possession against the religious institution.

8. It has been further submitted by the learned counsel for the plaintiff that on 01.11.2006, the Collection Clerk found that the Defendants were putting up a new construction in the Suit Schedule Property. The Executive Officer issued a telegraphic Notice dated 01.11.2006 to the 1st Defendant to stop the unauthorized construction. However, the 1st Defendant did not stop the construction, therefore the Executive Officer complained to the Assistant Engineer Corporation Chennai about the illegal construction. Under such circumstances, the



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present suit has been filed before this Court seeking the relief as prayed for.

9.The learned counsel for the defendants would submit that the plaintiff is not the owner of the suit property. The Defendants traced out his right from Munusamy Naicker from the year 1909 to whom the suit lands were granted as personal inam who had let out the same to Ratna Chettiar by registered lease deed dated 07.04.1920 who had raised the superstructure. His legal heirs sold the lease hold rights along with the superstructure to one Mr.Samarapuri Mudaliar and thereafter on 01.09.1932, one Mr.Samanadhanam Daniel. The said Samanadhanam Daniel executed registered Will dated 14.02.1957 bequeathing the said property in favour of his sons and daughters and the said will was probated in O.P.No.210 of 1963 by this Court as per which the 1st defendant has been in continuous possession and enjoyment of the said property as owner. Since the 1st Defendant was not party in O.S.No.8268 of 1982 filed by Arumugha Naicker for bare injunction, the dismissal of the said suit is no way bind upon the 1st defendant nor can it be a valid basis for establishing the title of the plaintiff temple.



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10.It has been further submitted by the learned counsel for the defendants that the property tax was levied on the predecessor in title of the defendants as owner since 1932 and that additional super structure was put-up in 1945 after obtaining necessary permission from the statutory authorities in 1945 by Mr.Samanadhanam Daniel on his own right. In this regard, the documents D1 to D15 were marked on the side of the defendants to prove their adverse possession and enjoyment of the suit property. As there is no cause of action for maintaining the said suit, the suit is liable to be dismissed.

11.On a perusal of paragraph No.9 in the Ex.P1, it shows that the Executive Officer of the plaintiff Temple has the power to file the present suit. Hence, the Issue No.1 is answered in favour of the plaintiff and against the defendants.

12. Even though the plaintiff contended that the Survey No.3155 in the suit property is belonged to the Plaintiff Temple, neither related title deeds nor statutory receipts relating to the properties have produced before this Court to prove its title, right and interest over the suit property. Hence,



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the plaintiff cannot be considered that it has the title, right and interest over the suit property. Accordingly, Issue No.2 is answered against the plaintiff. Further, the plaintiff temple has not produced any lease agreement to prove that the suit property was leased out to Arumuga Naicker. Hence, Issue No.3 is answered against the plaintiff. In so far as the documents Ex.P1 to Ex.P3 are concerned, they have not been considered as valid document for the deciding the present case in favour of the plaintiff. Hence, Issue No.8 is answered against the plaintiff.

Issue No.4 & 5:

13. Even though on the side of the defendants, Ex.D1 to Ex.D15 have been produced before this Court to prove their adverse possession and enjoyment over the suit property, they have not produced any valid documents to prove their adverse possession. The defendants would not entitle any relief as to the rights being claimed by them since the plaintiff has not proved its title. Further, the defendants have not sought any relief independently on their contention in the suit and hence, the plea of the defendants is not considered in any manner, more particularly, the claim of title to the property on the alleged grounds of adverse possession. Hence,



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Issue Nos.4 and 5 are answered against the defendants.

Issue Nos.6 & 7:

14.Any evidence has not been adduced on the side of the defendants in this regard. Hence, issue No. 6 and 7 are answered against the defendants.

Issue No.9:

15.Issue Nos.1, 2, 3 and 8 are answered against the plaintiff. Hence, at this stage, Issue No.9 does not arise.

Issue No.10:

16. The plaintiff is not entitled to any relief in the suit. Accordingly, Issue No.10 is answered.

17. Accordingly, the suit is dismissed. No costs.

27.03.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Lbm



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1. List of Witnesses examined on the side of the Plaintiff and Defendants:-

PW.1 – Mr.M. Bhaskaran

2. List of Witnesses examined on the side of the Defendants:-

D.W.1 – Mr. D.Philip Selvakumar

1. List of Exhibits marked on the side of the Plaintiff:-

1. Ex.P1 is certified copy of the scheme decree dated 12.08.1953.
2. Ex.P2 is the certified copy of the Extract from permanent land register in respect of Survey No.3155/1.
3. Ex.P3 is the office copy of the complaint dated 06.11.2006 given to the Assistant Engineer, the Corporation of Chennai.

2. List of Exhibits marked on the side of the defendants:-

1. Ex.D1 is the communication letter dated 30.06.2008
2. Ex.D2 is the communication letter dated 30.06.2008
3. Ex.D3 is is the letter dated 28.07.2017.
4. Ex.D4 is Suit No.7678/2000 passed by City Civil Court at Chennai
5. Ex.D5 is the certified true copy of judgment OS. No7678 of 2000 on the file of 5th Assistant Judge City Civil Court, Chennai dated 08.12.2008.
6. Ex.D6 is the original Permission for Additional Construction granted by the Corporation to Samarapuri Mudaliar dated 18.09.1931.
7. Ex.D7 is the original Sale Deed vide Document No.1832 of 1932 dated 01.09.1932.
8. Ex.D8 is the original letter sent by Samathana Daniel to the Revenue Officer, Corporation of Madras dated



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25.01.1937.

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9. Ex.D9 is the original Death Certificate of B.E.D.Chelladurai dated 11.03.1975.
- 10.Ex.D10 (Series) are the original Tax Receipts issued by the Corporation from 1932 to till date.
- 11.Ex.D11 is the original Death Certificate of Mrs.Lalitha Duraiswamy dated 01.03.2000.
- 12.Ex.D12 is the original Legal Heirship certificate of Mrs.Lalitha Duraiswamy dated 06.04.2000.
- 13.Ex.D13 is the original Exemption granted for paying Urban Land Tax vide L.Dis (II) 7612/77 dated 25.06.1979.
- 14.Ex.D14 is the death certificate of A.V. Duraisamy (DOD 19.01.2020)
- 15.Ex.D15 is the Legal Heirship Certificate of A.V. Duraisamy.

27.03.2024



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A.A.NAKKIRAN, J.

lbm

Pre-Delivery Judgement in
CS.No.931 of 2009

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