



S.A.No.376 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.376 of 2005

1.Srinivasan (Died)

2.S.Maheswari (Died)

3.S.Vijaya

4.J.Jayanthi

(appellants 2 to 4 brought on record as
LR's of the deceased first appellant viz.,
Srinivasan vide Court order dated
11.01.2012 made in CMP.No.876/2011
in S.A.No.376/2005)

5.Venugopal

6.Kuppammal

7.Kannappan

(A2-Died, A5 to A7 are brought on record as
LR's of the deceased A2 vide Court order dated
24.04.2023 made in CMP.No.7384/2022 in
SA.No.376/2005)

...Appellants

Vs.

Arulmigu Thiruvallieswarar
Devasthanam, Padi, rep.,
by its Executive Officer.

...Respondent



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Prayer: Civil Revision Petition filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed by the Subordinate Judge, Poonamallee in A.S.No.3 of 2003 on 26.04.2004 reversing the judgment and decree passed by the District Munsif-cum-Judicial Magistrate, Ambattur in OS.No.203 of 1996 on 13.08.2002.

For appellants : Mr.P.Athiveerarama Pandian

For Respondent : Mr.S.Surya
M/s.A.S.Kailasam & Associates

JUDGMENT

The appellants herein are the defendants before the trial Court.

The respondent herein is the plaintiff before the trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

3. The brief facts which give rights to the instant Second Appeal is that:



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The plaintiff Temple is the owner of the suit property and that they have leased out the suit property to the first defendant as per the lease deed dated 15.05.1973. The first defendant is in possession and enjoyment of the 'A' Schedule property as a lessee and he has put up construction thereon. The plaintiff further submits that the defendants has to construct building as per the building Rules and Regulations. While so, about 6 years back, the defendants left the 'A' Schedule property as a vacant land, and started construction in the 'B' Schedule property. Thereby, he obstructed the plaintiff to use the said land as a road. Hence, the plaintiff has come forward with the suit for mandatory injunction in respect of the 'B' Schedule property and for restraining the defendants herein from not to put up any further construction in the 'B' Schedule property.

4. The said suit was resisted by the defendants stating that SF.No.303/1 is Gram Natham land and the total extent is 6.75.5 hectares and there are more than 1000 families in occupation and enjoyment of the said survey number. It is the submission of the defendants that they have been served with a notice under Section 7 of Act 3/1903. Therefore, it is the



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contention of the defendants that the plaintiff has to prove that the suit schedule property belongs to them.

5. Before the trial Court, an official of the plaintiff was examined as PW1 and Ex.A1 to Ex.A11 were marked. On behalf of the defendants, the second defendant was examined as DW1 and 7 documents were marked as Ex.B1 to Ex.B7. The Advocate Commissioner report and plan were marked as Ex.C1 and Ex.C2.

6. The trial Court after considering the oral and documentary evidence has framed five issues and ultimately found that the plaintiff is not the owner of the property and eventually, dismissed the suit. Aggrieved by the same, the plaintiff Temple preferred the first appeal. The first Appellate Court on re-appreciation of the evidence has found that though the land was classified as Gram Natham by virtue of Ex.A2 and Ex.A6, the defendants cannot dispute the title of the plaintiff and ultimately reversed the findings of the Trial Court and decreed the suit as prayed for.



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7. At the time of admission of the second appeal, on 18.06.2005

the following substantial question of law has been framed by this Court:

“Whether the First Appellate Court is correct in applying the principle that Gramanatham does not vest with the Government in a suit under Specific Relief Act.”

8. The learned counsel for the appellants/defendants by relying upon Ex.B6 would vehemently submit that according to the settlement register, the 'B' Schedule property is classified as “Grama Natham” and that the plaintiff did not submit any record to show that this Survey Number has been in their possession and enjoyment, and that they are the owner of the property. Therefore, when the plaintiff himself has not established the title over the suit property, the order of granting mandatory injunction and permanent injunction is contrary to law. Hence, prayed to interfere with the same.



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9. Per contra, the learned counsel for the plaintiff/respondent

would submit that, by virtue of lease deed, the defendants had admitted that the plaintiff is the owner of SF.No.303/1, and that the register maintained by the plaintiff under Section 29 of the Hindu Religious and Endowments Charitable Act would also further vindicate that SF.No.303/1 is the property of the Temple. Therefore, it is the contention of the plaintiff that the judgment of the first Appellate Court is based on evidence and there is no perversity in the same, hence, prayed to dismiss the appeal.

10. The substantial question of law that arises in this matter is in respect of classification of suit property as Grama Natham. The First Appellate Court has elaborately dealt with various precedence and also the definition of the law lexicon and had given its finding in favour of plaintiff. According to the law lexicon “Grama Natham” has been defined as follows:

“Ground set apart on which the house of a village may be built.”



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Therefore, as rightly held that by the First Appellate Court, the Grama Natham land is not vested with the Government to attract Section 2 of the Land Encroachment Act. In support of the findings, the trial Court also relied upon the judgment of *Palani Ammal Vs. L.Sethurama Aiyangar, reported in Laws (MAD)-1949-1-9*. This Court has also held that the Grama Natham is not the communal property and on the other hand, the Grama Natham land is the property of an individual who have been in possession and occupation of the said land.

11. The trial Court also relied upon Section 18(1) of Madras Act XXVI of 1948 and under the Madras Land Encroachment Act (III of 1905). As per the above Act, the Grama Natham land has also been protected from transfer to Government by the operation of Madras Act III of 1905. Therefore, the findings recorded by the First Appellate Court that the Grama Natham land never vested with the Government is well merited and this Court does not find any ground to interfere with the same. In this regard it is useful to refer



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the judgment of this Court reported in **2014 (1) LW 430** (K.

Ilangoan vs. The District Collector and Others) and
**MANU/TN/8804/2022 (Sivasanmugam Vs. The District Collector,
Tiruppur District and Ors).**

12. It is pertinent to mention that under Ex.A1, SF.No.303/1 is referred to as Templepoojai (ஆலய பூஜை). Further more, the lease agreement Ex.A2 and Ex.A6 would also vindicate that the suit property belongs to the Temple. This Court is of the view that the first defendant himself had admitted that he entered into lease agreement with the plaintiff, who according to the plaintiff is the owner of the property, situated in SF.No.303/1. Therefore, as found by the First Appellate Court, the defendant now cannot turn around and say that the suit property is not belongs to the plaintiff, by simply taking advantage of the classification of land as Grama Natham. In view of the same, the defendants estopped to dispute the right of the plaintiff over the suit property.



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13. While looking at the defence of the appellants/defendants, it

is seen that they pleaded that they did not made any encroachment and the plaintiff is not the owner of the property. In respect of the defence of no encroachment, on going through the commissioner's report Ex.C1, it would clearly reveal that there was a structure in the 'B' Schedule property. Therefore, the defence put forth by the defendants that they have not put up construction is evidentiary falsified through the Commissioner's report. On coming to next defence of the ownership over the property, as rightly found by the first Appellate Court that the Grama Natham land is not the Government property as pleaded and presumed by the defendants. Further such right has been categorically manifested through the registers maintained by the plaintiff under Section 29 of the Hindu Religious and Endowments Charitable Act.

14. Therefore, this Court is of the firm view that there is no ground to interfere with the well merited finding of the First Appellate Court. Therefore, in view of the above detailed discussions, the substantial question of law is answered in favour of the respondent.



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C.KUMARAPPAN,J.

Dna

15. In the result, this Second Appeal is dismissed. There shall be no order as to costs.

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Index : Yes / No
Internet : Yes / No
dna

To

- 1.The Subordinate Judge, Poonamallee
- 2.The District Munsif-cum-Judicial Magistrate, Ambattur.

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