



S.A.No.236 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28 .03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

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- 1.C.Kalyanasundara Nadar
- 2.K.Anandhan
- 3.K.Sumathi
- 4.K.Rajeswari
- 5.Chinnaiahsundara Nadar (died)
- 6.Ganesan (died)
- 7.G.Murugaian
- 8.C.Sugumaran
- 9.T.Natarajan
- 10.Ramasamy
- 11.Sivakami Ammal
- 12.C.Vellaithambi
- 13.Sarafoji
- 14.Arunadevi



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15.Kasthuri

16.Murugan

17.Rengarajan

18.Prakash

19.Chandra Ammal

20.Jaya Ammal

21.Thirupuram

22.Marimuthu ... Appellants/Respondents/Defendants

Vs.

Arulmigu Kayaroganaswamy Neelayathatchiamman Thirukoil,
Nagappattinam
Rep. by its
Executive Officer

... Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure to call for the records pertaining to the Judgment and Decree of allowing the Appeal in A.S.No.41 of 2006 dated 28.11.2011 passed by the learned District Judge, Nagapattinam by setting aside the decree against the plaintiff by the learned Subordinate Judge, Nagapattinam, in O.S.No.53 of 1986 dated 29.11.2002.

For Appellants : Mr.R.Ramanadhan

For Respondents : Mr.N.R.Arun Natarajan
Additional Government Pleader.



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JUDGMENT

WEB COPY The present second appeal arises out of the judgment and decree of the Court of the learned District Judge at Nagapattinam in A.S.No 41 of 2006 dated 28.11.2011 in reversing the judgment and decree of the Court of the learned Subordinate Judge in O.S.No.53 of 1986 dated 29.11.2002.

2. O.S.No.53 of 1986 is a suit which had been filed for recovery of possession. For the sake of convenience, the parties are referred as per their ranks in the suit.

3. The case of plaintiff is that the properties had been granted to the temple by the way of an 'Inam' and thereafter, a ryotwari patta was granted in favour of the temple. After the passing of the Madras Act 30 of 1963, *suo motu* proceedings were initiated by Settlement Tahsildhar in RP.No.99 of 1967 and ryotwari patta was granted in favour of the temple on 28.04.1969. To this proceeding, the predecessors in title of the appellants were made parties.

4. Against the said order of the Settlement Tahsildhar, an appeal was filed by Parmeshwari Ammal and Deivanai Ammal before



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the Inam Tribunal/Subordinate Judge at Nagapatinam. The appeal was allowed. Against the said order in appeal, a Special Tribunal appeal was preferred by the plaintiff in S.T.A No.49 of 1972. This Court, on 01.10.1974, allowed the appeal filed by the temple and directed the patta to be issued in the name of the temple.

5. The specific case of the respondent/plaintiff is that the defendants do not have any right, title, or interest over the properties and the properties are vested with it. It would state that Parameshwari Ammal and Deivanai Ammal are squatters and cannot claim any right, title or interest in the property. It would specifically plead that the suit, having been filed within 12 years from the date of grant of patta, the temple is entitled for recovery of possession and also for damages.

6. On entering appearance, the defendants filed a detailed written statement. According to them, the mere fact that patta had been issued in favour of the temple does not mean that the property belongs to it. They would state that they have a pre-existing right over the property. The area in which the suit property is situate was originally controlled by the Colonial Dutch Government.



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7. According to the defendants, the Dutch Government had granted Inam in favour of one of its employees, namely, one Jacoline Vansoma. The said Vansoma had alienated the property on 20.07.1770 in favour of one Thirumeni Chetti. Thirumeni Chetti was enjoying the property and two charities were being performed by Thirumeni Chetti with the said property. One Ponnu Kannu Ammal purchased the property on 02.02.1891 from one Ramasamy Chettiar. The said Ramasamy Chettiar is none else than the descendant of Thirumeni Chetti.

8. Under Ex.B1, sale deed dated 02.02.1891, Ponnu Kannu Ammal was given a larger extent than the suit property. Ponnu Kannu Ammal alienated the property in favour of one Janaki Ammal on 11.08.1902. Janaki Ammal had two daughters viz., Parameswari Ammal and Deivanai Ammal. The original first defendant is the son of Parameshwari Ammal and the 5th defendant is the son of Deivanai Ammal. The other defendants are either the sons of the 1st defendant or his lessees. It is on record that from 1902 till the filing of the suit, the property was in possession and enjoyment of the family of Deivanai Ammal and Parameshwari Ammal.



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9. Since the properties had been individual properties from 1770 i.e. from the time the Dutch Government gave the property to Vansoma, the defendants pleaded that the suit for recovery of possession is not maintainable. The other defendants more or less took the same defence taken by the defendants 1 to 4.

10. On the basis of these pleadings, the learned Trial Judge framed the following issues:

“1. Whether the plaintiff has not acquired title as per the Act 30 of 63?

2. Whether the plaintiff is not entitled to recovery of possession and damages without declaration of title?

3. Whether title of the temple under the ryotwari patta is affected as per the pleadings of the defendant as to the trust properties?

4. Whether the suit is bad for non-joinder of necessary parties?”

5. Whether the defendants are liable to get mesne profits for three years?

6. Whether Thirumeni Chetty trust has perfected the title by adverse possession?

7. To what other relief?”



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11. It is also on record that the temple filed another suit as against the tenants in O.S.No.60 of 1986. Both the suits in O.S.Nos. 53 and 60 of 1986 were disposed of by a common Judgment dated 29.11.2022.

12. On the side of the plaintiff, two witnesses were examined namely P.W1 and P.W2 and Exs.A1 to A19 were marked. On the side of the defendants D.Ws.1 and 2 were examined and Exs.B1 to B22 were marked.

13. The learned Trial Judge passed a common judgment in both the suits. He came to the conclusion that the possession of the property by the plaintiff had not been established and that, by virtue of the documents produced before the Court, title had not been passed on to the temple. He further stated that as the predecessors in title of the defendants have been in continuous possession and enjoyment of the property from 1770 onwards, it is a private property and a suit for recovery of possession is not maintainable.



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14. Aggrieved by the same, two appeals had been filed before the learned District Judge in A.S.No.41 of 2006 and A.S.No.11 of 2009.

By a common judgment dated 28.11.2011, the learned District Judge allowed both the appeals and decreed both the suits as prayed for. The respondents in A.S.No.41 of 2006 alone had filed the present appeal. Insofar as the other appeal suit, we are not concerned with that portion of the judgment since the present appellants are not parties to that suit. Therefore, it does not make a difference for them to agitate the rights in that suit in the present appeal.

15. Originally, this Court had not admitted the appeal and had called for the records on 18.03.2013. Thereafter, by an order dated 24.11.2022, the second appeal was admitted by my learned brother Mr. Justice Krishnan Ramasamy on the following substantial questions of law:-

“1. Whether self statement without any conveyance amounts to Dhanam?

2. Whether without any evidence that the provide Dhanam above to the absolute owner of the property acquired by succession from one Vansoma?

3. Whether there is any right without acceptance of



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Dhanam after giving right to the person attach thereby?

4. Whether the private property by registered convenience Deed not connected wither with the temple a state divested to be the Inam Property to claim of as property of the Act 30/1963.

5. Whether mere issuance of patta will establish title on the property?”

16. I heard Mr.Ramanadhan, the learned counsel in support of the appeal and Mr.N.R.Arun Natarajan, the learned counsel for the respondent.

17. Mr.Ramanadhan would submit that the mere grant of patta under Act 30 of 1963 does not mean title is divested from the predecessors in title of the defendant and the property would get vested with the temple. He would further argue that while the learned Appellate Judge has referred to a Thirumeni Chetty Dharmam, no evidence worth its name has been produced before the Court for the purpose of proving the existence of the gift in favour of the temple. He would rely upon the letters that have been written by the Executive Officer to Deivanai Ammal and Parameshwari Ammal under Ex.B6 to Ex.B8 and Ex.B19 to



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Ex.B22 to argue that all that the defendant's predecessors had to perform was 'சுவரட்சனை' and kattalais.

18. He relies on them to argue that the temple had never treated the suit property as its own property, but only treated it as a Kattalai. He would state that at no point of time, possession had been handed over to the temple and therefore, the question of property vesting with the temple does not arise. He would further urge that the purpose of the Dharmam, as seen under Ex.B2, is for "சுவரட்சனை" which basically means lighting of lamps in the temple and for performance of other charities. He would also point out that the sale under Ex.B1 in 1891 was for a sum of Rs.2,000/-, whereas Ex.B2 was for the performance of charity to the tune of Rs.50/-. What was directed to the purchasers was that they should perform charity for Rs.50/- per year and in case of default, the Vendor would perform the charity and recover the said amount from Ponnu Kannu Ammal with an interest at the rate of 1.5% per month.

19. He would state that all these facts would cumulatively point out that the property is not a property that belongs to the temple, but is a private property with a kattalai attached to it. He would also point out



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that there is no proof of gift and therefore, the suit for recovery of possession filed only on the basis of Inam proceedings is unsustainable.

20. Per contra, Mr.Arun Natarajan drew the attention of this Court to Section 6(19) of Tamil Nadu Hindu Religious and Charitable Endowments Act to argue that this is a case of specific endowment and that the property had been endowed to the plaintiff Temple. He would state that by virtue of the judgment in S.T.A.No.49 of 1972, the plaintiff had become the owner of the property and therefore, the lower Appellate Court was correct in coming to the conclusion that the property belongs to the temple. He would argue that the present matter does not require any interference in the hands of this Court.

21. I have carefully considered the arguments on either side.

22. The title deed of the property, which the plaintiff has averred as T.D.431, has not been produced in the suit. Therefore, in order to fill that gap, the plaintiff has produced the order of the Settlement Officer under Ex.A15. A perusal of the order under Ex.A15 makes it clear that the Inam Fair Register was produced before the Settlement Officer. The



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Settlement Tahsildhar had come to the conclusion that the property, which was originally granted to one Jacoline Vansoma by the Dutch Government, was alienated in favour of Thirumeni Chetti on 20.07.1770. The only document in order to prove the gift in favour of the temple is Ex.A2. This would state that the Inam granted in favour of Vansoma is personal property, but the nature of the properties underwent a change when the properties were alienated as a gift from Thirumeni Chetti to the temple. From this very fact, the lower Appellate Court concluded that, since the Inam Fair Register speaks about the gift, Thirumeni Chetti had gifted the properties to the temple. A gift of an immovable property must have been reflected by way of a written document.

23. In the present case there is no document which had been produced by the plaintiff in order to substantiate the gift. In fact, this appeal suffered several adjournments in order to enable the learned Special Government Pleader appearing for the HR & CE to produce the document. Unfortunately, the same is not forth coming.

24. The High Court, sitting as a Special Tribunal in S.T.A.No. 49/72 had come to the conclusion that though the Inam is personal in



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nature, by virtue of the other entries, the personal grant has been neutralised and it became one for the performance of kattalais. The relevant portion is as follows:

“In the instant case, though the inam was described as personal, column 14 showed that as early as 1809, in accordance with the Revenue registers, the lands were enjoyed by Kayaroganaswami Temple by gift from one Thirumeni Chetti, the name of the original grantee being on H.J.Vansoma. What is contended before us in that the respondents and their predecessors were in continuous possession. Assuming it so, that would not confer them a right of trusteeship, as it were, and we are not able to accede to such a contention. The word 'personal' in the description of the inam, when read with the entries in the rest of the columns, is neutralised. We are of opinion, therefore, that the patta should be granted to the pagoda as the land was gifted originally for its benefit and it had been in its enjoyment. Accordingly, the appeal is allowed. No costs”

The Meaning and Nature of Kattalai

Kattalai, by the very nature of the thing, is a charge over the property which can be utilised by the temple for recovering the money from the person who is in occupation of the property. In other words, if the property is charged with the kattalai of performance of certain charities in



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the temple, and the charities are not performed by the person in occupation of the property, the Trustee or the Executive officer in charge of the temple can perform the charity and recover the charges from the person who is in occupation of such property. However, the fact that there is a charge over the property cannot be treated as transfer of title from a private holding to an institution.

Complete Dedication Vs. Partial Dedication

25. Mr.Arun Natarajan would rely upon the classic judgment of the Supreme court in ***Menakuru Dasaratharami Reddi and Another vs. Duddukuru Subba Rao and Others, AIR 1957 SC 797*** to argue that this is the case of dedication of the property and not a case of kattalai. This submission, apart from running contrary to the Judgment of the High Court in S.T.A.No.49/72, is also contrary to the specific finding by the Trial Court as well as by the first appellate Court.

26. In fact, a careful reading of the judgment in ***Menakuru Dasaratharami Reddi and Another vs. Duddukuru Subba Rao and Others, AIR 1957 SC 797*** would show that the ratio does not go in favour of the plaintiff, but would go in favour of the defendant. The



relevant paragraph is extracted hereunder:

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*“5. The principles of Hindu law applicable to the consideration of questions of dedication of property to charity are well settled. Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication to charity. On the other hand, in many cases Courts have to deal with grants or gifts showing dedication of property to charity. Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. **If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character.**”*

27. The principle laid down in ***Dasaratharami Reddi case*** was followed by this Court in ***S.P.Kailasha Bhattar V. Secretary to Government and Anr, (1968) 81 LW 33***, and the Supreme Court in ***Idol of Sri Renganathaswamy V. P.K.Thoppur Chettiar and Ors, (2020) 17***



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SCC 96. Applying the said principle to this case, in order to claim that the property belongs to the temple, the temple should have shown a complete dedication in favour of the public charitable trust, namely the temple itself. In this particular case, as I have already pointed out, though the Inam Fare Register states, as found in the S.T.A. Proceedings, that the property belongs to Thriumeni Chetti Dharmam, the questions of when the Dharmam was created and what are the terms of the Dharmam had not been answered through evidence.

28. On the contrary, the defendants have been able to show, by virtue of Ex.B2, Ex.B6 to Ex.B8 and Ex.B19 to Ex.B22, that they are performing the following charities:

- 1) Annabhishegam at the Kayaroganaswamy temple at the rate of Rs.35/-
- 2) Ubayam for Appar Swamy Utsavam at the rate of Rs.50/-

The festival receipts that have been filed before the Court, and the letters written by the temple authorities to Deivanai Ammal and Parameshwari Ammal clearly show that the predecessors in title of the defendants had been performing only kattalais during their life time. In view of the same, there is no complete dedication of the property in favour of the temple.



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Patta and Ownership

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29. In view of the fact that patta had been granted in favour of the temple in the S.T.A proceedings, the present second appeal is triggered. It is no longer *res integra* that grant of patta does not mean that the temple becomes the owner of the property and there is no bar on the Civil Court to go into the issue of title independently. This issue has been settled by several judgments, but I refer to two of them alone, namely *State of Tamil Nadu vs. Ramalinga Swamy Madam, (1985) 4 SCC 10* and *T.K.Ramanujam Kavirayar (died) vs. Sri-la-Sri Sivaprakasa Pandara Sannadhi Avergal, 1988 (2) LW 513*. These judgments make it very clear that patta granted under the Inam Abolition Act is for the purpose of collection of revenue by the Government. This is by virtue of the fact that the words “for the purpose of this Act” are found under Section 64 C of Act 30/63.

30. An order passed by a Settlement Officer either granting or refusing to grant patta under Section 11 of the said Act has been interpreted by the Supreme Court that it is only for the purpose of achieving the objective of the Act, namely, fastening the liability for the payment of assessment and other dues that the land is liable for, by the



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person whose name is found in the patta proceeding. In other words, by virtue of the order passed in S.T.A., the respondent temple becomes answerable to the Government for payment of the revenue charges that the Government is entitled to receive for the land. This does not mean that the temple becomes owner of the property. The grant of patta or any decision rendered thereto must be regarded as incidental for the purpose of granting or refusing to grant patta and cannot be stretched to the extent of conferring ownership on the religious institution.

31. I would hasten to add here that it was always open to the religious institution to produce the evidence before the Civil Court to defeat the claim of the person who is in occupation of the property and who claims title to the property. All that I have to conclude is that *ipse dixit* the grant of patta will not grant a right to the temple to file a suit for recovery of possession and if inadvisably such a suit is filed, it is always open to the person in possession to contend that he has a pre-existing right over the property.



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Kattalai and Recovery of Possession

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32. In the facts of this case, the alleged gift executed by the Thirumeni Chettiar in favour of the temple has not been proved. On the contrary as stated above Ex.B1, Ex.B2, Ex.B6 to Ex.B8 and Ex.B19 to Ex.B22 point out that it is only a kattalai. If it is only a kattalai, then a suit for recovery of possession is not maintainable. The temple, having spent money towards the performance of the kattalai, is always entitled to recovery of the amount spent together with interest from the person in occupation of the property charged with kattalai. This position was accepted by the Division Bench of this Court in *Nellaiyappa Pillai V. Thangama Nachiyar and Ors, (1898) 8 MLJ 119*.

33. In fact till the patta was granted in the Inam proceedings, it had been the practice of the temple to call upon Deivanai Ammal and Parameshwari ammal to perform the kattalai. In obedience to the letters that had been sent by the temple authorities, the aforesaid persons also performed the charities. The learned first Appellate Judge had been carried away by the description of the property under Ex.B1 and therefore, he concluded that the property vested with the temple. When the Dharmam itself had not been proved, I am not in a position to agree



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with the learned first Appellate Judge especially in the light of the documents, which have come *inter se* between the temple and the predecessors in title, of the defendants. These documents show that the amounts were demanded from the predecessors only towards the performance of kattalais as persons in occupation of the property, by virtue of Ex.B1 and Ex.B2, and not on account of the fact that properties belonged to the temple.

34. The learned Trial Judge had appreciated the position of law correctly and had dismissed the suit for recovery of possession. Unfortunately, the lower Appellate Court did not look into the aspect as to whether the “Dharmam” had in fact been proved or not.

35. I can also take note of the fact that the sale of the property was for a sum of Rs. 2000/- in the year 1891 under Ex.B1 and the amount which was called upon for the performance of சவரட்சனை was a paltry sum of Rs.50/-. There is no parity between the amount for which the property had been purchased and the amount for which the burden had been created over the property. This is another distinction which makes me to conclude that Ex.B1 and Ex.B2 only create a kattalai in and over



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the property and do not result in the transfer of title in favour of the temple so as enable the temple to file a suit for recovery of possession.

36. In a suit for recovery of possession, the plaintiff stands or fails on the basis of his pleading. The specific pleading of the temple is that the property had been gifted in favour of the temple. The gift not having been proved, the plea of the temple should have failed. However, relying upon Ex.B1, the lower Appellate Court granted a decree in favour of the temple. When two documents are executed on the same day, they have to be read contemporaneously. They have to be read together as they are contemporaneous documents. This is a principle on construction of deeds. Ex.B1 and Ex.B2 were both executed on the same day, namely 2nd February 1891 and upon reading them together, I am able to come to the conclusion that a kattalai had been created over the property and therefore, the appeal has to succeed.

The Charge of Kattalai runs with the Land

37. Mr.N.R.Arun Natarajan apprehends that if the property goes out of the hands of the present appellants, then, the purchasers will not perform the “kattalai”. He states that by virtue of this judgment, a charge



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is created over the property for the performance of the சுவரட்சனை in the Temple as well as Annabhishegam and Appar Swamy Utsavam. He argues that if the property is alienated to some third-party, the temple will be unable to realise the amounts due under the said kattalai.

38. As held by me in the aforesaid paragraph, the kattalai is a charge running with the land. Therefore, it will not only bind the present appellants, even if they were to sell the property in favour of a third party, such third party will be duty bound to pay the expenses incurred by the Temple for the performance of the charities set forth above.

39. There is another reason why I feel Mr.N.R.Arun Natarajan's apprehension is unfounded. If the decree of the Court is registered by the Executive Officer before the jurisdictional Sub-Registrar, then, a purchaser of the property will have notice of the kattalai. He cannot resile from his duty to perform the charity or to pay the expenses that is incurred by the Temple towards the performance of the charities.

40. The solution in my view lies in the registration of the decree by the Executive Officer of Arulmigu Kayaroganaswamy



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Neelayathatchiamman Temple and not in granting an order of injunction as sought for by Mr.N.R.Arun Natarajan restraining the appellants from alienating the property.

Decision

41. I will be failing in my duty if I merely allow the appeal and dismiss the suit without finding what other benefits the temple can derive by the virtue of the two documents. Under Order VII Rule 7 of the Code of Civil Procedure, the Court is entitled to grant a lesser relief when a higher relief has been sought for. The temple has sought for a higher relief of recovery of possession, but by virtue of the documents produced by the defendants themselves, I am able to see a kattalai/charge over the property.

42. Consequently, while allowing the appeal, I will grant a decree of charge over the property. A charge to the effect that the persons in occupation of the property proportionately would have to bear the expenditure towards the performance of the aforesaid ubayam and சுவரட்சனை for Kayaroganaswamy temple at Nagapattinam. This is a covenant running in the land. I would read Ex.B2 as a covenant running



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in the land and therefore, even there is a transfer from the existing defendants to any 3rd party, the temple will continue to have a charge over the same. Further I desire to add that the income from the said property must be used only for the purpose of the said ubayam and சுவரட்சனை. The same does not per se belongs to the temple or the deity, it solely belongs to the kattalai and it can only be used for that purpose, see ***Manicka Vachaka Desika Gyana Sambanda V. A.Vaithilinga Mudaliar and Ors, (1923) 18 LW 247.***

43. In the light of the above discussion, the questions of law are answered in favour of the appellants and against the respondent. The judgment and decree in A.S.No.41 of 2006 dated 28.11.2011 on the file of the District Judge at Nagapattinam in reversing the judgment and decree of the Court of the Subordinate Judge at Nagapattinam in O.S.No.53 of 1986 dated 29.11.2002 is set aside. A charge for the performance of the kattalai as created in the property under Ex.B2 is granted. The relief of recovery of possession is denied.



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44. Considering the fact that a religious institution has been litigating for its rights, I am not inclined to impose any costs.

28.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
dpa

To:

1. The District Judge, Nagapattinam.
2. The Subordinate Judge, Nagapattinam.
3. The Section Officer,
Vernacular Section,
High Court of Madras.



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V.LAKSHMINARAYANAN, J.

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