



S.A.No.2 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Second Appeal No.2 of 2022
and
Civil Miscellaneous Petition No.85 of 2022

L.Gunasundari

... Appellant

Vs.

Arulmighu Ekambaraswarar Thirukkoil
Rep. by its Executive Officer, Aminjikarai,
Chennai-600 029.

... Respondent

Prayer: Second Appeal filed under Section 100 r/w Order XLIII Rule 1 of the Civil Procedure Code against the Judgment and the Decree dated 29.07.2019 passed in A.S.No.67 of 2016, on the file of the III Additional Judge, City Civil Court, Chennai confirming the Judgment and Decree dated 22.07.2015 passed in O.S.No.7350 of 2008 on the file of the XIV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. E. Prabu
For Respondent : Mr. D. R. Sivakumar



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JUDGMENT

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This Second Appeal is filed challenging the concurrent finding wherein, the decree has been passed in favour of the plaintiff/respondent against the appellant herein for eviction and the delivery of possession, after removing the superstructure put up by the appellant herein.

2. The case of the plaintiff is that, the suit properties along with other properties are not belongs to the respondent/plaintiff Temple. The defendant is a tenant is in possession of Door No.302 in Block No.25, T.S.No.5 admeasuring 1575 sq.ft situated at Aminjikai, Poonamallee High Road, Chennai. Originally, the defendant was paying rent after putting up temporary shed and subsequently, the defendant has been paid Rs.9,660/- per month. Subsequently, the defendant has denied the plaintiff's right over the suit properties and claim ownership over the same.

3. The defendant case is that, property belongs to temple and earlier Temple was in possession and enjoyment of the same and Patta was also issued its favour. Hence, the plaintiff has no manner of right to continue the



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possession and liable to be evicted.

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4. The Trial Court after considering the evidence placed on record has held that the defendant is only a tenant, under the plaintiff. though, there is a ground rent patta was granted in his favour. He cannot claim any ownership since temple is issued with Patta, as per the Tamil Nadu Minor Inams Abolition and Ryotwari Patta Act, 1963, consequently, decreed the suit. Consequently, the appellant has filed the First Appeal before the Lower Appellate Court and the same was also dismissed by the Lower Appellate Court.

5. Aggrieved over the same, this Second Appeal has been filed by the Tenant.

6. This Court while admitting the Second Appeal, framed the following substantial questions of law.

1. Whether a plaintiff is entitled to the vacant possession of



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the suit property?

2. *Whether the plaintiff is entitled to the arrears of rent as prayed for?*
3. *Whether the plaintiff is entitled for a past damages as prayed for?*
4. *Whether the plaintiff is entitled to the future damages as prayed for?*
5. *To what other relief the plaintiff is entitled?"*

7. The learned counsel appearing for the appellant submits that the Lower Appellate Court, at the time of hearing the application filed under Order 41 Rule 27 of the Code of Civil Procedure, accepted the case of the defendant that, she is entitled to mark additional documents, more particularly, to mark the certified copy of order passed by the Settlement Tahsildar under the Minor Inams Abolition Act 2 of 1963, and the defendant ought to have been given opportunity to adduce oral evidence, for the purpose of proving additional document. He further submits that since she is having a ground rent Patta in her favour, the Temple is not entitled to evict her. Both the Courts have failed to appreciate the fact and since Patta has been issued in her favour, the suit filed by the plaintiff is ought to have been



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dismissed.

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8. Per Contra, the learned counsel appearing for the Temple submits that the nature of land and rights of parties, who have been issued ground rent Patta was already settled and recently, the Apex Court approves the Judgment of this Court in the case of ***L.Varalakshmi vs. The Commissioner (HR & CE)*** in ***Writ Appeal Nos.1294 & 1302 of 2021***. This Court, in its order dated 06.12.2023, considering the lands situated in the very same Survey Number and approved the right of the Temple to recover the possession and also to restore the land. He further submits that only remedy available to the defendant is that, she has to vacate the premises after removing superstructure and she is not entitled to continue in possession of the Temple's property.

9. I have considered the submissions made on both sides and also perused the records.



10. The rights of the parties, who were issued ground rent patta i.e., building owner and an Inamdar is no longer *res integra* and it is settled way back in ***Sri Kumara Kattalai Subramanyaswami Devasthanam vs. K.S.Sundaram Chelliyar (1 LR 1975 (1) mad 501*** and the same was approved by the Division Bench of this Court in ***R.Manicka Naicker and Ors vs. E.Elumalai Naicker (1995) 4 SCC 156.***

11. The suit land herein is part of the settlement proceedings taken under ***Tamil Nadu Minor Inam (Abolition and Conversion into Registration) Act, 1963.*** Recently, the Division Bench of this Court in ***W.A.Nos.1294 and 1302 of 2021 dated 06.12.2024*** has considered another part of land, which is subject matter of settlement proceeding in which similar claim for eviction and possession claimed by the Temple, has observed as follows:

“14.Section 12 of the Act provides for the liability to pay land revenue to the Government by persons to whom Ryotwari Patta is issued under the Act. Section 13 of Act provides for vesting of the buildings within the inam land on the person who owned it and it is relevant to extract Section



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13 which reads as follows:-

“13.Vesting of building.- (1) Every building situated within the limits of an inam land shall, with effect on and from the appointed day, vest in the person who owned it immediately before that day; but the Government shall be entitled for each fasli year commencing with the fasli year in which the appointed day falls, to levy the appropriate assessment thereon.

(2) In this section, “building” includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto.”

.....

17. In this context, on a perusal of the above order, more specifically paragraph No.4, it would be clear that the second respondent temple is granted ryotwari patta. It is held that it possessed both melvaram and kudiwaram. Considering the fact that individuals like the appellant who are either lessees or encroachers, have put up superstructures on their own and are living there, a joint ground rent patta is given. That is, the building is vested in them as per Section 13 of the Act as they are the owners of the superstructures. But however, the land on which the



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building is situated will not vest in them because they were not owners/holders of the land immediately before the appointed day and it is only the temple which was. As such, the joint ground rent patta is given. The meaning of the joint ground rent patta would be that the temple is the owner of the land and the appellant's father will be owner of the superstructure. Such dual ownership is recognised law of our country and is very much part of the scheme of things under the Act.

18.Further, the statement 'The schedule lands are building sites and they are liable to non-revisable manai rate with reference to the settlement notification' will only relate to the levy of land revenue payable to the Government. The purpose of the Act is also to levy tax as per Section 12 of the Act. The above statement cannot be interpreted to mean 'lease rent'. The same could not be read as relatable to 'rent' as the quantum of rent to be paid between the landlord and tenant in an inam land is not at all within the purview of the Act. The Assistant Settlement Officer is in no way concerned with the same. Even if it had mentioned anything about the rent, the same would be without jurisdiction and had to be ignore.

19.Our above views can be fortified by the findings of



*the Hon'ble Supreme Court of India in **R.Manicka Naicker and Ors. Vs. E.Elumalai Naicker**” which arose under the same Act and it is necessary to extract paragraph Nos.10 to 14 which read thus:-*

10.The purpose of the said Act is introduction of ryotwari settlement in the place of the rights of inamdars in Minor Inams with the exception of certain types of public lands set out in Section 10 such as forests, irrigation channels, lands which are set apart for the common use of the villagers, rivers, streams etc. which vest in the Government and in respect of which no ryotwari patta can be granted.

11.The Assistant Settlement Officer is required under Section 11 to enquire into the claims of any person to, a ryotwari patta in respect of any Inam land and to decide it. This enquiry has to be conducted by the Assistant Settlement Officer in the manner set out in Section 11. Under Section 12, every person who becomes entitled to a ryotwari patta is required to pay land revenue to the Government as set out therein. The grant of ryotwari patta is for the purpose of collection of land revenue. By eliminating Minor inams any intermediaries for the collection of land revenue are eliminated. In the case of buildings situated within an Inam land, Section 13 provides that the building shall vest in the



person who owned k immediately before the appointed day but the Government shall be entitled to levy appropriate assessment on it. As the object of the enquiry by the Settlement. Officer is the grant of a ryotwari patta as a revenue settlement, the grant of a patta cannot be equated with an adjudication of title to the lands in question.

12. The contention of the appellant that by virtue of Section 13, the land underneath the building also vests in him must be rejected. Section 13 does not vest any property in a person in whom that property did not vest prior to the appointed day. It merely sets out that a building shall vest in the person who owned it immediately before the appointed day. Section 13(2) merely provides that the site on which the building stands will also be covered by section 13(1). Hence the site on which the building stands will vest in the person who owned it immediately before the appointed date.

*13. In the case of **Sri Kumarakattalai Subrahmanyaswami Devasthanam v. K.S. Sunderarajulu Chettiar**, ILR (1975) 1 Mad., 501, a learned Single Judge of the Madras High Court considered the provisions of Section 13 of the said Act and held that unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of sub-section (2) is not to make a*



statutory transfer of the land to the owner of the building where it had not formerly belonged to him. An inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. We respect-fully agree with these findings of the learned Single Judge.

14.Moreover, in the present case, the patta granted expressly provides that the appellant has been granted a ground rent patta only in respect of the building, while the patta for the site has been granted to the respondent. A joint patta seems to have been granted in the names of both the appellant and the respondent because of the claim of the appellant to the building and the claim of the respondent to the site on which the building stands. Therefore, looking to the nature of the grant of the patta also it cannot be said that by virtue of the patta, the site on which the building stands has been, in any manner, transferred to the appellant or vests in him. The appellant cannot,therefore, claim that the decree for possession cannot be executed against him because he has become the owner of the site.”(emphasis supplied).

12. It has been categorically declared that the person who is having ground rent Patta jointly holding property with the Temple, the person who is



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in possession as tenant claim a decree to continue his possession. It is also declared that, the temple inamdars continues to be in constructive possession of the site even, they are entitled to recover possession from his tenant.

13. In this case, the Lower Appellate Court has allowed the petition filed by the appellant for marking additional documents and on careful perusal of the prayer only shows that, the defendant has come forward to mark the certified copy of order passed by the Settlement Tahsildar, for issuance of Patta. Similarly, she filed another petition to adduce oral evidence in support of proving the issuance of joint Patta. The plaintiff has not denied the issuance of ground rent Patta to the defendant. The specific case of the defendant is that she is a tenant having ground rent patta.

14. That being the case, adducing oral evidence at this stage is not necessary and the Lower Appellate Court was rightly allowing the petition filed under Order 41 Rule 27 to mark the additional document and if at all, any deviation was committed by the Lower Appellate Court for not following Order 41 Rule 27, the plaintiff/respondent, who is entitled to



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challenge the same whereas, in this case, the plaintiff has not challenged the same and has agreed for the marking of documents alone without adding oral evidence. In the said circumstances, the Lower Appellate Court has not committed any error in marking the documents. Accordingly, this Court finds that there is no infirmity in the said finding and the same is liable to be dismissed.

15.As discussed in earlier paragraphs, rights of parties who was holding ground rent patta as Inamdar, are already settled by this Court in citation referred supra, accordingly, the question of law is answered in favour of the plaintiff Temple that, they are entitled to collect rent, revise rent and also for possession of the land.

16.Accordingly, the Second Appeal is dismissed. The Judgment and Decree dated 29.07.2019 in A.S.No.67 of 2016, passed by the III Additional Judge, City Civil Court, Chennai confirming the Judgment and Decree dated 22.07.2015 in O.S.No.7350 of 2008 passed by the XIV Assistant Judge, City Civil Court, Chennai is hereby confirmed. There shall be no order as to



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costs. Consequently, the connected miscellaneous petition stands closed.

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Index : Yes / No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

1. The III Additional Judge, City Civil Court,
Chennai.
2. The XIV Assistant Judge, City Civil Court,
Chennai.
3. The Section Officer,
VR Section,
High Court of Madras

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K.RAJASEKAR,J.,

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