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S.A.No.32 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 16 / 08 / 2024

JUDGMENT PRONOUNCED ON : 18 / 10 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.32 OF 2019
AND CMP NO.571 OF 2019

R.Surendran

S/o. late Rose Gramani

... Appellant /
2nd Appellant

Versus

1.Arulmighu Ekambareswarar
Thirukoil, represented by its
Executive Officer, having its office at
the temple premises, Aminjikaiarai,
Chennai – 600 029.

... 1st Respondent /
Respondent /
Plaintiff

2.R.Mahendran

S/o. late Rose Gramani

... 2nd Respondent /
1st Appellant

3.R.Gunaseelan

S/o. late Rose Gramani

... 3rd Respondent /
3rd Appellant



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PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, 1908, praying to set aside the Judgment and Decree dated August 23, 2016 passed in A.S.No.594 of 2008 on the file of XVIII Additional City Civil Court, Chennai, confirming the Judgment and Decree dated October 6, 2007 passed in O.S.No.4736 of 2005 on the file II Assistant Judge, City Civil Court, Chennai, and thus allow the Second Appeal with cost.

For Appellant : Mr.Adhinarayana Rao

For Respondent-1 : Mr.D.R.Sivakumar

For Respondents

2 and 3 : Mr.Asif Ali

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated August 23, 2016 passed in A.S.No.594 of 2008 by the 'learned XVIII Additional Judge, XVIII Additional City Civil Court, Chennai' ['First Appellate Court' for short] whereby the Judgment and Decree dated October 6, 2007 passed in O.S.No.4736 of 2005 by the 'learned II Assistant Judge, II Assistant City Civil Court, Chennai' ['Trial Court' for short] was confirmed.



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2. Originally, one Rose Gramani was the sole defendant.

During the pendency of the first appeal under Section 96 of the Code of Civil Procedure, 1908, he passed away and hence, his three sons were brought on record as his legal heirs / representatives, as Appellant Nos. 1 to 3 before the First Appellate Court. For the sake of convenience, hereinafter, the 1st Respondent herein - Temple will be referred to as the 'plaintiff', the said 'Rose Gramani' will be referred to as the 'sole defendant'.

Plaintiff's case

3. The Suit Property is the land admeasuring approximately 2500 sq.ft., located at Plot No.116, Door No.305, Poonamallee High Road, Aminjikarai, Chennai-600 029, and comprised in Survey No.70/2, Town Survey No.2. The Suit Property is owned by the plaintiff - 'Arulmighu Ekambareswarar Thirukoil', which is a Hindu religious temple under the control of the 'Hindu Religious and Charitable Endowments Department' ['HR & CE Department' for brevity]. The Suit Property was originally



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leased out to one Audilakshmi Ammal on the condition that no permanent structure shall be put up in the land nor any additions or alteration be executed, without written approval from the plaintiff and the HR & CE Department.

3.1. During inspection, the plaintiff discovered that the sole defendant - Rose Gramani was in occupation of the Suit Property and that the tenant - Audilakshmi Ammal had passed away, which the sole defendant failed to inform the plaintiff about. Even if the sole defendant claims to be the legal heir of the tenant - Audilakshmi Ammal, he has not applied to the HR & CE Department to transfer the tenancy rights into his name. Therefore, according to the plaintiff, the sole defendant is illegally occupying the Suit Property and has no right to remain in possession of it.

3.2. The tenant - Audilakshmi Ammal was irregular in paying rents and there are arrears of rent amounting to Rs.1100/- for the period from January 2003 to October 2004. In spite of repeated demands, the amount was not paid. The sole defendant, being in occupation of the Suit



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Property, is liable to pay the arrears of rent payable by the deceased tenant

- Audilakshmi Ammal.

3.3. The Suit Property is situated in one of the busiest localities in the Chennai City having all the locational advantages and if it is let out in public auction, it would fetch not less than Rs.2,000/- per month as rent. The land value shot up and the plaintiff has to get a fair return from the Suit Property. Taking those into consideration, fair rent for the Suit Property was fixed by the HR & CE Department at Rs.11,715/- per month from November 1, 2001 onwards, and the same was communicated to the tenant - Audilakshmi Ammal through Letter dated November 29, 2002 and again through another Letter dated August 23, 2003. One R. Gunaseelan acknowledged the receipt of the said Letter dated August 23, 2003 for which a Reply dated September 20, 2003 containing false allegations was sent by the sole defendant. Following this, the plaintiff sent a Notice of Termination dated October 5, 2004 to the sole defendant, terminating the tenancy with effect from the expiry of October 2004 and



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calling upon the sole defendant to pay arrears of rent as well as damages

for wrongful use and occupation. The sole defendant received the said

Notice and sent a Reply dated October 25, 2004 containing false allegations.

3.4. Since the sole defendant had been paying rent until November 28, 2002 in the name of the tenant - Audilakshmi Ammal to the plaintiff, the sole defendant is estopped from denying the plaintiff's title over the Suit Property. After the termination of the tenancy, the sole defendant has no right to remain in possession of the Suit Property or to claim title over it. Hence the Suit praying to direct the sole defendant to quit and deliver vacant possession of the Suit Property after removing the superstructure put by them; to remit the arrears of rent for the period between January 1, 2003 and October 31, 2004, totalling to Rs.4,400/-; and to pay future damages for wrongful use and occupation from the date of Plaintiff till the date of handing over possession at the rate of Rs.11,750/- per month, and for Costs.



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Sole Defendant's case

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4. Sole defendant's case is that the plaintiff is not the absolute owner of the Suit Property. The Suit land is a Government *poramboke* land, and the ancestors of the sole defendant had occupied the Suit land and put up a superstructure thereupon long before it was taken over by the Government under the 'Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963' [in short 'Minor Inams Act']. Therefore, the land is vested with the Government. Further, the Settlement Tahsildar vide his Order dated March 31, 1971 had issued a Joint Patta in favour of the plaintiff, and the sole defendant's mother - Audilakshmi Ammal who had put up the superstructure on the Suit land and in whose name Urban Land Tax was assessed. Therefore, the plaintiff cannot claim exclusive ownership over the superstructure in the Suit Property.

4.1. The plaintiff was originally under the control of Hereditary Trustee up to the year 1956. Since there was no sufficient income for maintaining the temple, the Hereditary Trustee requested the



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occupants, who had put up superstructures on the lands adjoining the temple, for contribution. The amount collected from the sole defendant and his predecessor in title were only contributions towards the maintenance of the plaintiff - Temple. Even before the administration was taken over by HR & CE Department, the sole defendant's ancestors and other occupants had been in possession and enjoyment of the Suit land and lands adjacent to the Suit land by putting up superstructures, paying property tax, letting out the same to the tenants, thereby exercising all acts of ownership over the Suit Property.

4.2. The Settlement Tahsildar in his Order dated March 31, 1971 has clearly stated that the occupants had put up superstructures on the land and had been in occupation for more than 40 years prior to 1971. The issuance of Joint Patta clearly proves the entitlement of the sole defendant to the Suit land. The plaintiff did not let out the land to the sole defendant's predecessor in title. Hence, there was no necessity for the sole defendant or his predecessor in title to obtain any permission from the



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plaintiff or pay any arrears of rent or damages, especially when the

plaintiff is not the absolute owner of the land. There is no written or oral

agreement between the plaintiff and the sole defendant or his predecessor

in title. The plaintiff is not entitled to claim any damages much less a sum

of Rs.11,750/- per month from the date of Plaint. For the Letter dated

August 23, 2003 sent by the plaintiff claiming rent of Rs.11750/-, the sole

defendant has sent a reply on September 20, 2003. The rent claimed by the

plaintiff in its Letter dated August 23, 2003 is not as per the provisions of

the HR and CE Act, and the Executive Officer has no power to enhance the

rent unilaterally. Hence, the Suit is liable to be dismissed.

Trial Court and First Appellate Court

5. At trial, on the side of the plaintiff, one T.Sampath,

Executive Officer of the plaintiff - Temple was examined as P.W.1 and

K.Kasivelu, Deputy Surveyor attached to Egmore - Nungambakkam

Tahsildhar Office was examined as P.W.2 and Ex-A.1 to Ex-A.11 were

marked. On the side of sole defendant, one R.Mahendran, one of the sons



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of sole defendant was examined as D.W.1 and Ex-B.1 to Ex-B.6 were marked.

6. After analyzing the oral and documentary evidence, the Trial Court decreed the Suit mainly on the finding that the sole defendant, being the tenant, is estopped from denying the plaintiff's title over the Suit land.

7. Feeling aggrieved by the same, the sole defendant preferred an appeal in A.S.No.594 of 2008 before the First Appellate Court. The First Appellate Court, after hearing both sides, concurred with the aforesaid finding of the Trial Court and dismissed the appeal confirming the Judgment and Decree of the Trial Court.

Substantial Questions of Law

8. Feeling aggrieved, the Appellant No.2 before the First Appellate Court preferred this Second Appeal. This Second Appeal was admitted on January 11, 2019 on the following substantial questions of law:



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"(1) Whether the suit filed by the 1st Respondent represented by its Executive Officer is maintainable. Since the very appointment of the Executive Officer is unsustainable in view of judgment of The Hon'ble Supreme court reported 2014 [5] SCC 75 and judgment of the Hon'ble Madras High court in 2014 [2] TNLJ 423?

(2) Whether joint Patta had been issued in the name of Appellants father and respondents by the Settlement Thasildhar by Order dated 31.03.1971 as per Ex.B-2 in the suit?

(3) Whether 1st Respondent can be the absolute owner of the suit property after the order passed by the Settlement Thasildhar dated 31.03.1971?

(4) Whether the procedure laid down under Section 34-B of the Tamil Nadu H.R.&C.E. Act, 1959 has been followed by the respondent before issuing a termination notice?

(5) Whether the unilateral fixation of fair rent by the respondent is in violation guidelines issued by the Commissioner, H.R.&C.E Department in Na.Ka.No.40651/2008/M3 dated 02.02.2009?"



Discussion and Decision

9. This Court has heard the arguments advanced on either side and perused the materials available on record in light of the Substantial Questions of Law.

Substantial Question of Law No.1:

10. As regards Substantial Question of Law No.1, *Mr. Adi Narayana Rao*, learned Counsel for the appellant would argue that the plaintiff - Temple is not the owner of the Suit Property. Joint Patta was issued in the names of the plaintiff - Temple and the sole defendant's mother - Audilakshmi Ammal under Minor Inams Act. By virtue of the Joint Patta issued in favour of the sole defendant's mother, a cloud has been cast on the title of the plaintiff. Hence, the Suit is not maintainable.

10.1. Further, the appointment of the Executive Officer by the HR & CE Department to the plaintiff - Temple is bad in the eyes of law in view of *Subramanian Swamy's Case (infra)*. Hence, equally on this ground also, the Suit for recovery of possession filed by Temple



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represented by its Executive Officer, that too without due permission from

the HR & CE Department, is not maintainable. In support of the above

submissions, he would rely on the following Judgments:

- (i) ***Subramanian Swamy's Case*** - Judgment of the Hon'ble Supreme Court in *Dr. Subramanian Swamy - vs - State of Tamil Nadu* and others, reported in (2014) 5 SCC 75;
- (ii) ***Vaithianathaswamy Devasthanam's Case*** - Judgment of this Court in *Arulmigu Vaithianathaswamy Devasthanam represented by its Hereditary Trustee -vs-The Government of Tamil Nadu* and others, reported in 2014 SCC Online Mad 946.

11. Per contra, *Mr. D.R. Sivakumar*, learned Counsel for the 1st respondent / plaintiff would contend that the Executive Officer representing the plaintiff - Temple has filed the Suit only after getting due permissions from HR & CE Department. Inviting the attention of this Court to Sections 6 (9), 34 B, and 45 of the 'Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959' ['HR & CE Act' for brevity] as well as Rule 10 (1) of the Conditions for Appointment of Executive Officers Rules, 2015, he would argue that the Executive Officer can sue or be sued



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on behalf of the plaintiff - Temple. Further, the appellant did not raise the question of validity of appointment of the Executive Officer as well as the plea of maintainability of a Suit on the ground that Suit filed by the Executive Officer on behalf of the temple before the Trial Court. Hence, the Suit is perfectly valid and maintainable. In support of the above contention, learned counsel for the 1st respondent / plaintiff would rely on the following Judgment:

- (i) ***Syed Ahmed Hussain's Case*** - Judgment of this Court in *Syed Ahmed Hussain and Others - vs - Arulmighu Ekambareswarar Thirukoil represented by its Executive Officer* made in S.A.No.600 of 2017 on November 9, 2023, bearing the Neutral Citation - 2023 MHC 5293].

12. In ***Subramanian Swamy's Case***, the validity of appointment of Executive Officer to Chidambaram Sri Sabanayagar Temple was challenged by the Podu Dikshidars. The Hon'ble Supreme Court held that the Temple therein is a denominational temple and Podu Dikshidars, who are having the management rights secured in them by an



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earlier Court Decree and have been managing the Temple as well as

Temple's properties for time immemorial, constitute a religious denomination in themselves, and therefore, their rights are to be preserved and protected from invasion of the State as guaranteed under Article 26 of the Constitution of India.

13. In *Vaithianathaswamy Devasthanam's Case*, the challenge was to the validity of show cause notice issued by HR & CE Department calling upon the petitioner therein to explain why an Executive Officer should not be appointed for a period of one year. A learned Single Judge of this Court, after referring to *Subramanian Swamy's Case*, held therein that unless rules are framed by the government and conditions / circumstances prescribed therein are satisfied, the Commissioner of HR & CE Department shall have no power to appoint any Executive Officer irrespective of whether it is a religious denominational temple or not.

14. There is no quarrel with the above views. However, the sole defendant being a tenant has no *locus standi* to question the same in



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this Second Appeal, that too without any pleadings, and Trustees are the competent persons to question the validity of appointment of the Executive Officer. To be noted, the sole defendant did not deny the validity of appointment before the Trial Court. Further, in Paragraph No. 6 of the Written Statement filed by the sole defendant, he himself has admitted as follows:

“6. This Defendant states that the Plaintiff's temple was under the control of Hereditary Trustees before 1956 and since there was no sufficient income for day to day maintenance of the temple then Hereditary Trustee has requested the occupants who has put up superstructure on the land adjoining the temple to pay some amount for the purpose of maintenance of the temple. The amount so collected from, the occupants was used for purpose of buying oil, pooja articles and other day to day maintenance of the temple. Since the temple has no sufficient income and there was some dispute between the occupants and hereditary trustees of the temple. The Hereditary Trustee has handed over the Plaintiff's Devasthanam to H.R & C.E. Board in the year 1956.”

(emphasis supplied by this Court)



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15. Thus, according to the sole defendant, the Hereditary

Trustees had already handed over the management of the plaintiff - Temple to the HR & CE Department. Accordingly, the plaintiff - Temple is now being managed by the HR & CE Department through Fit Person / Assistant Commissioner & Executive Officer, and this Court does not find any irregularity with the same.

16. Further, the plaintiff filed Ex-A.8 - Resolution dated May 6, 2005 passed by the Fit Person / Assistant Commissioner, which shows that the Executive Officer has filed the Suit only after due authorization from the HR & CE Department. Further, in **Syed Ahmed Hussain's Case**, a learned Single Judge of this Court after referring to *S.M. Devi - vs - Idol of Sri Jambukeshwarar Akilandeshwari Devasthanam, Thiruvanaikovil*, reported in (2023) 1 LW 825, has held thus:

“9.As far as contention of learned counsel regarding incompetency of Executive Officer to maintain suit on behalf temple, I had an occasion to consider this question in S.M.Devi Vs. The Idol of Sri Jambukeshwarar Akilandeswari Devasthanam, Thiruvanaikovil reported in 2023.1.L.W P.825, wherein it was held



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that when a worshiper of temple is entitled to maintain a suit to protect interest of temple, the Executive Officer who is in charge of day-today affairs of temple is also a person interested in the welfare of temple and hence he can maintain a suit on behalf of temple. The relevant observation in the above mentioned case law reads as follows:

“12.14....In the present case, the suit was filed by an idol. Since an idol cannot act on its own, it is represented by a human being viz., the Executive Officer. So long as the Executive Officer acts in conformity with the interest of the temple as a person interested in the temple, he can be allowed to represent the Idol in order to protect the interest of the temple. In the case on hand, the appellants herein admittedly committed default in payment of rent. Therefore, notice to quit was issued against them and the present suit was filed for recovery of possession after termination of the lease. In these circumstances, the Executive Officer by filing the suit for possession is acting in the interest of the idol. Therefore, nothing wrong in allowing him to continue the suit as a person interested in the religious institution. Therefore, the first additional substantial question of law is answered in favour of the respondent and against the appellants ””



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17. As stated *supra*, the HR & CE Department is in

management of the plaintiff - Temple. The Suit has been filed only after

due authorization from the Fit Person / Assistant Commissioner. On the

strength of the **Syed Ahmed Hussain's Case**, this Court is of the

considered view that the Suit for recovery of possession filed by the

Executive Officer acting in the interest of the Temple is maintainable.

Substantial Questions of Law No.1 is answered accordingly in favour of

the plaintiff and against the appellant.

Substantial Question of Law No.2:

18. Learned Counsel for the appellant would argue that the

Settlement Tahsildar appointed under Minor Inams Act allowed Ground

Rent Patta jointly in favour of the plaintiff - Temple and the occupant -

Audilakshmi Ammal under Section 13 (1) of Minor Inams Act vide Ex-B.2

- Order.

19. Per Contra, Learned Counsel for the plaintiff would invite

the attention of this Court to the evidence of P.W.2 and Ex-A.11 - Extract



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of Town Survey Register, and argue that the Adangal relating to the Suit

Property stands in the name of the plaintiff. Hence, the plaintiff - Temple is the owner of the Suit Property.

20. This Court has perused Ex-B.2 - Order of the Settlement Tahsildar dated March 31, 1971, relevant portion of which reads as follows:

'3.The Executive Officer of Shri Ekambareswarn Devasthanam of 76. Aminjikarai, Madras.29 has appeared as claimant on behalf of the temple and deposed that the schedule lands mentioned in the notice in S.R.No.55/70 dated 4-1-71 are the inam lands given to the temple, that they are in their possession and enjoyment and these lands were leased out to the occupants for construction of houses and rents are being collected regularly from them. He requests that patta may be given in the name of the temple.

Seventy three witnesses were examined for the claimants as occupants in the lands. Most of them say that they have taken the sites in their occupation on lease and paying rent to the temple and some of them built up huts on their own accord and they are living there for over 40 years. They are neither paying any rent to the temple nor any tax to Corporation or Urban Land Tax to Government.



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4.The schedule lands are religious inam granted for “Shri Ekambaraswarar Devasthanam” of 76. Aminjikai Village, Madras.29 and confirmed in T.D.No.1650. The lands correlate to R.Survey No.70/2pt. The inam in question is iruvaram minor inam. The claimant temple has leased out to the lands to the occupants and collecting rents from them. The claimant temple is lawfully entitled to both warams in the schedule lands and consequently entitled to ryotwari patta under sec.11 read with sec.8(2)(ii) of the Act 30/63. The schedule lands are building sites and they are liable to non-revisable manai rate with reference to the Settlement Notification. Most of the occupants have put up pucca buildings and are residing there. Therefore in exercise of the powers delegated to me in G.O.P.No.401, Revenue dated 15-2-65. I hereby allow ground rent patta in favour of the temple and the occupants jointly under sec.13(1) of the Act 30/63 appended to this order. “

21. Column No.17 titled “Adangal” in Ex-A.11 - Extract of Town Survey Register shows that Adangal pertaining to the Suit Property stands in the name of plaintiff. Column No.18 thereof, which is titled “how the holding is used” shows that the Suit Property is a tiled house. Column No.19, which is the remarks column, bears the name of Audilakshmi Ammal, wife of Nadesa Gramani. Conjoint reading of Ex-B.2 and Ex-A.11



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would show that Ground Rent Patta has been issued jointly in the names of the plaintiff and Audilakshmi Ammal, who is none other than the sole defendant's mother. Accordingly, Substantial Questions of Law No.2 is answered in favour of the appellant and against the plaintiff.

Substantial Question of Law No.3:

22. Learned Counsel for the appellant would refer to Section 3 of the Minor Inams Act and argue that with effect on and from the appointed day, the Minor Inams Land (Suit Property) is vested with the Government and thereafter, the plaintiff - Temple has no title over the same. Referring to Exs-B.4 to B.6, he would argue that Urban Land Tax was assessed in the name of Audilakshmi Ammal and ground rent to the Government was also remitted in her name. Considering the possession and enjoyment of the Suit Property, Notice was issued to her under Section 9 of 'Tamil Nadu Surveys and Boundaries Act, 1923' ['TNSB Act' for short] vide Ex-B.3. The aforementioned documents prove Audilakshmi Ammal's title over the Suit Property.



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23. Per contra, learned Counsel for the plaintiff would refer to

Exs-A.1 and A.9 and argue that ground rent for the Suit Property has been paid in the name of Audilakshmi Ammal until 2002. Adangal entries in Ex-A.11 - Extract of Town Survey Register stand in the name of the plaintiff. Hence, the plaintiff is the absolute owner of the Suit land. Since the ground rent was remitted in the name of the sole defendant's mother in favour of the plaintiff - Temple till 2002, the defendant side is estopped from denying the title of the plaintiff.

24. The Minor Inam Act was enacted to facilitate the acquisition of rights held by Inamdars in Minor Inams within the State of Tamil Nadu and to introduce Ryotwari settlements for those Inams. In other words, the purpose of Minor Inam Act is introduction of Ryotwari settlements in the place of the rights of Inamdars in Minor Inams, except for certain types of public lands outlined in Section 10 of the Minor Inams Act. In this case, the Settlement Tahsildar found that the plaintiff has both *warams* and hence entitled to Ryotwari Patta under Section 11 read with



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Section 8 (2) (ii) of the Minor Inams Act. Further, Settlement Tahsildhar

found that a building was erected by Audilakshmi Ammal on the Suit land that belongs to the plaintiff-Temple. Hence, the Settlement Tahsildhar allowed Ground Rent Patta jointly in favour of the plaintiff and the occupant, namely Audilakshmi Ammal under Section 13(1) of the Minor Inams Act. The effect of Ground Rent Patta issued jointly to the Inamdar and the occupant under Section 13 (1) of the Minor Inams Act came up for consideration before the Hon'ble Supreme Court in ***R.Manicka Naicker's Case [R.Manicka Naicker - vs - E.Elumalai Naicker*** reported in (1995) 4 SCC 156], wherein the Hon'ble Supreme Court has held as follows:

“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



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buildings situated within an inam land, Section 13 provides that the building shall vest in the person who owned it 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. Sundararajulu 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 subsection (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged.



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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 respectfully 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 by this Court)

25. In view of the above authoritative pronouncement, this Court is of the view that even though Audilakshmi Ammal was the owner



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of the Suit building on the notified day viz., February 15, 1965, she was not

owner of the Suit land. She does not become the owner of the Suit land by

virtue of Section 13(1) of the Minor Inams Act. Though Ground Rent Patta

is issued jointly, the plaintiff-Temple having both *warams* is the owner of

the Suit land. There is no vesting of the Suit land along with the

superstructure in the hands of the tenant - Audilakshmi Ammal. The

plaintiff-Temple, who continues to be in constructive possession of the Suit

land even after the issuance of Ground Rent Patta would be entitled to

recover its possession from its tenant. Needless to mention that, Ground

Rent Patta under the Minor Inams Act does not oust the jurisdiction of

Civil Court to determine Title between the parties. [See ***R. Manicka***

Naicker's Case (supra)]

25.1. As regards Ex-B.3 - Notice under Section 9 of TNSB

Act, mere Ex-B.3 - Notice is not sufficient to disrupt the title of the

plaintiff over the Suit Property. The purpose behind the Notice is that all

the interested parties are informed and presented with an opportunity to be



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heard while ascertaining boundaries. For ready reference, Section 9 of

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“9. Power of survey officer to determine and record an undisputed boundary - (1) The survey officer shall have power to determine and record as undisputed any boundary in respect of which no dispute is brought to his notice.

(2) Notice to registered holders of lands affected. - Notice of every decision of the survey officer under Section 9(1) shall be given in the prescribed manner to the registered holders of the lands the boundaries of which may be affected by the decision.”

26. As regards Ex-B.4 to Ex-B.6, mere fact that Urban Land Tax Assessment Records and Quit-Rent Receipts stand in the name of tenant -Audilakshmi Ammal, they do not confer title to Audilakshmi Ammal nor do they disrupt the title of the plaintiff.

27. The sole defendant, who is a tenant under the plaintiff-Temple cannot deny the title of the plaintiff merely because Ground Rent Patta has been granted under Section 13(1) of the Minor Inams Act jointly



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in favour of the plaintiff and Audilakshmi Ammal. As stated *supra*, Ground

Rent Patta was issued jointly only because the Suit land belonged to the plaintiff while the superstructure was put up by the Audilakshmi Ammal.

The sole defendant is estopped under Section 116 of Indian Evidence Act, 1872 from denying the title of the plaintiff since he has paid ground rent in his mother's name in favour of the plaintiff - Temple till 2002, especially when the Ground Rent Patta was issued in the year 1971, that is to say especially when he has been paying ground rent for around 30 years even after the issuance of Ground Rent Patta. Thus, the 1st Respondent / plaintiff is the absolute owner of the Suit Property (land). Accordingly, Substantial Question of Law No.3 is answered in favour of the plaintiff and against the appellant.

Substantial Question of Law No.4:

28. As stated *supra*, until 2002, rent was remitted in the name of Audilakshmi Ammal. Ex-A.1 is the counter-foil of one of the rent receipts whereby the sole defendant has paid the ground rent in the name



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of Audilakshmi Ammal. Further, D.W.1 in his evidence has admitted that

the defendant side had been paying rent in favour of the plaintiff - Temple

and admitted that the signature found in Ex-A.1 is the sole defendant's

signature. Relevant extract is as follows:

“என்னுடைய இடத்தின் விஸ்தீரணம் 2500 சதுரடிகள். மெயின் ரோட்டில் உள்ளது. என் பாட்டி இறந்த பிறகு வாடகை என் தகப்பனார் பெயருக்கு மாற்றப்பட்டதா என்றால் இல்லை. கோவிலுக்கு பணத்தை என் பாட்டி பெயரில் தான் கட்டிவருகிறோம். அதற்கு ரசீது கொடுத்திருக்கிறார்கள். வா.சா.ஆ. 1ன் அசல் ரசீது என்னிடம் தான் உள்ளது. அதில் உள்ளது என் அப்பா கையெழுத்து தான். கோவில் கொடுக்கப்பட்ட ரசீதுகளின் அடிக்கட்டைகள் வா.சா.ஆ.9 வரிசை. . .”

29. Ex-A.9 contains photocopies of rent receipts marked through D.W.1 in his cross examination after verification with originals.

Ex-A.1 and Ex-A.9 would clearly show that the sole defendant paid ground rent to the plaintiff, and not maintenance charges as alleged by him.

Notably, the sole defendant has signed as remitter in Ex-A.1, which recites that Rs.200/- has been paid as ground rent for the month of June 2001 in



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respect of the Suit Property. The plaintiff has pleaded that the sole

defendant paid the rent till November 28, 2002. The plaintiff fixed the

ground rent at Rs.11,715/- from November 1, 2001 as fixed by the Fair

Rent Fixation Committee, and Ex-A.2 - Notice was issued to the

Audilakshmi Ammal in this regard, and the same was received by one R.

Gunaseelan. Again another Notice (Ex-A.3) was issued in this regard on

August 23, 2003 warning the sole defendant that on failure to reply or

remit the rent due, the sole defendant would be considered as an

encroacher and accordingly, appropriate actions would be initiated under

Section 78 of HR & CE Act. Thereafter, Ex-A.4 - Reply dated September

20, 2003 was sent by the sole defendant, denying the title of the plaintiff

with the support of the Ex-B.2 - Order of the Settlement Tahsildhar under

Minor Inams Act. Ex-A.5 is the Letter dated September 4, 2006 addressed

by the Executive Officer to the Sub Registrar, Anna Nagar, whereby he

sought for the guideline value for the Suit Property along with that of some

of other properties. The plaintiff then sent Ex-A.6 - Notice of Termination



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dated October 5, 2004 to the sole defendant terminating his tenancy with the expiry of October 2004 and calling upon the sole defendant to pay arrears of rent as well as damages for wrongful use and occupation. The sole defendant received the said Notice and sent Ex-A.7 - Reply dated October 25, 2004 denying the title of the plaintiff.

30. In other words, the plaintiff issued Exs-A.2 and 3 - Notices to the sole defendant and despite the sufficient opportunities given, the sole defendant failed to remit the rent due. On the other hand, he denied the title of the plaintiff. Bare perusal of Ex-A.2 and Ex-A.3 would show that the plaintiff has only after following the due procedures fixed the fair rent. The appellant failed to remit the rent after November 28, 2002. Hence, the plaintiff issued Ex-A.6 - Notice of Termination calling upon the sole defendant to quit and deliver the vacant premises. The plaintiff has the option to elect for eviction either under the HR & CE Act or as per the Common Law remedy. [See *A.N.Kumar Vs. Arulmighu Arunachaleswarar Devasthanam, Tiruvannamalai represented by its*



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Executive Officer (Assistant Commissioner) Tiruvannamalai and Others

reported in (2011) 2 LW 1]. Hence, there is no infirmity or irregularity in the process of termination of lease adopted by the plaintiff. Substantial Question of Law No.(3) is answered accordingly in favour of the plaintiff and against the appellant.

Substantial Question of Law No.5

31. The Suit has been filed in the year 2005. Whereas the guidelines of the Commissioner of H.R.&C.E Department in Na.Ka.No.40651/2008/M3 were issued in the year 2009. It is not possible to follow guidelines issued in 2009 for actions taken in or before 2005. As stated *supra*, the rent has been fixed only after giving sufficient opportunity to the sole defendant. There is no infirmity with the same. Hence, Substantial Question of Law No.5 does not arise at all in this case.

32. The Suit Property being Temple property, the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 would not be applicable. Further, Chennai City Tenants Protection Act, 1921 would also not be



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applicable in view of the amending Act thereto viz., Tamil Nadu Act No.2

of 1996 which exempted religious institutions from the purview of the

Chennai City Tenants Protection Act, 1921. Hence, resort has to be made

to Transfer of Property Act, 1882, Section 108 (h), (p) and (q) whereof

reads thus:

“108.Rights and liabilities of lessor and lessee- In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

(h)the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards, all things which he has attached to the earth: provided he leaves the property in the state in which he received it:

(p) he must not, without the lessor's consent, correct on the property any permanent structure, except for agricultural purposes:



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(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.”

33. The plaintiff has pleaded that originally the Suit Property was leased out to Audilakshmi Ammal with the conditions that no permanent superstructure shall be erected thereupon without prior written approval of the plaintiff and HR & CE Department. The sole defendant has not denied the same specifically. The case of the plaintiff is that the sole defendant erected the superstructure without any such prior written approval. The case of the sole defendant is that the plaintiff is not entitled to raise any such question as he has no title over the Suit Property. However, as decided *supra*, the plaintiff's title over the Suit Property (land) holds good. In such a scenario, now that the lease has been terminated vide Ex-A.6, the defendant side is bound to handover the vacant possession of the Suit Property after the termination of lease, and they are not entitled to any compensation. However, they may remove the superstructure put up on the Suit Property by them even after termination



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of lease, but before handing over possession of the Suit Property in terms

of Section 108 (h) of the Transfer of Property Act, 1882. [See

S.P.Dhakashinamoorthy and Others - vs - Sri Kamakshi Amman Temple represented by its Trustees reported in (1996) 1 LW 502].

34. Trial Court and the First Appellate Court concurrently held that the 1st respondent / plaintiff is entitled to a decree of recovery of possession and decreed the Suit accordingly. This Court is of the view that there is no warrant to interfere with the same.

Conclusion:

35. In view of the foregoing narrative, the Second Appeal is devoid of merits and deserves to be dismissed and accordingly, dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK



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To
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- 1.The XVIII Additional City Civil Court
Chennai.
- 2.The II Assistant City Civil Court
Chennai.



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R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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