



S.A.(MD) Nos.756,757 & 758 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A. (MD) Nos.756, 757 & 758 of 2008

S.A.(MD) No.756/2008 :

1.G.Muthusamy (died)

2.G.Rajendran

3.G.Indira

4.M.Rajani

5.M.Varun Kumar

... Appellants

-vs-

The Executive Officer,
Katheer Narasingaperumal Koil,
Reddiar Chatram Post,
Dindigul Taluk & District.

... Respondent

(Appellants 4 & 5 are brought on record
as L.Rs.of deceased first appellant)



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S.A.(MD) No.757/2008 :

- 1.G.R.Rajendran
- 2.G.Muthusamy (died)
- 3.M.Rajani
- 4.M.Varun Kumar

... Appellants

-vs-

The Executive Officer,
Katheer Narasingaperumal Koil,
Reddiar Chatram Post,
Dindigul Taluk & District.

... Respondent

(Appellants 3 & 4 are brought on record
as L.Rs.of deceased second appellant)

S.A.(MD) No.758/2008 :

Thangammal @ Thangam

... Appellant

-vs-

The Executive Officer,
Katheer Narasingaperumal Koil,
Reddiar Chatram Post,
Dindigul Taluk & District.

... Respondent



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PRAYER: S.A.(MD) No.756 of 2008 is filed against the judgment and decree, dated 30.11.2004, passed in A.S.No.9 of 2003 on the file of Principal Sub-Court, Dindigul, confirming the judgment and decree, dated 20.12.2000, passed in O.S.No.2155 of 1990 on the file of II Additional District Munsif Court, Dindigul.

PRAYER: S.A.(MD) No.757 of 2008 is filed against the judgment and decree, dated 30.11.2004, passed in A.S.No.277 of 2004 on the file of Principal Sub-Court, Dindigul, confirming the judgment and decree, dated 20.12.2000, passed in O.S.No.531 of 1994 on the file of II Additional District Munsif Court, Dindigul.

PRAYER: S.A.(MD) No.758 of 2008 is filed against the judgment and decree, dated 30.11.2004, passed in A.S.No.276 2004 on the file of Principal Sub-Court, Dindigul, confirming the judgment and decree, dated 20.12.2000, passed in O.S.No.532 of 1994 on the file of II Additional District Munsif Court, Dindigul.

For Appellants in all Appeals : Mr.B.Vijay Karthikeyan

For Respondent in all Appeals : Mr.K.Govindarajan



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COMMON JUDGMENT

The plaintiffs in the suits are the appellants. The appellants in S.A. (MD) Nos.756 and 758 of 2008 have filed a suit for declaration of title and injunction against the respondent. The appellant in S.A.(MD) No.757 of 2008 filed a suit for bare injunction against the respondent. All the suits were tried together and dismissed by the trial Court. Aggrieved by the same, the appellants preferred separate appeals and the first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings of both the Courts below, the appellants have come by way of these Second Appeals.

2. According to the appellants/plaintiffs, the suit properties were originally Minor Inam lands. The respondent temple was given only Melvaram right to collect *theervai* and Kudivaram right belonged to one Kuppuswamy Reddiar and his predecessor in title. After coming into force of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act,1963, the right of the defendant to collect *theervai* was abolished and, under the settlement proceedings, patta was granted in the name of Kuppuswamy Reddiar and Karuppanna Kudumban, who are the predecessors in interests of the plaintiffs.



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3. The defendant temple filed an appeal, challenging the settlement patta issued in the name of the plaintiffs' predecessors in C.M.A.No.139 of 1979 and the said appeal was allowed and the patta granted in favour of the plaintiffs' predecessors was set aside. The predecessors of the plaintiffs filed an appeal in S.T.A.No.140 of 1983 on the file of High Court of Madras. Taking into consideration the dispute between the parties, the S.T.A., filed by the plaintiffs' predecessors, was dismissed with liberty to establish their rights before the Civil Court. The present suits have been filed, based on the liberty granted in the said order, by claiming that the plaintiffs and their predecessors in interests have been enjoying the Kudivaram right in the suit property from times immemorial. The plaintiffs, by denying the right of the defendant temple over the suit properties, filed the present suits, based on the liberty granted to them in the order passed by the High Court in S.T.A.

4. The respondent temple filed its written statement and claimed that the suit properties were Devadayam Iruvaram lands, belonged to it. It was also claimed that in the appeal filed by the respondent temple in C.M.A.No. 139 of 1979 on the file of Inam Abolition Tribunal, it was held that the temple was the owner of minor inam lands and hence the settlement patta issued in favour of the plaintiffs' predecessors was set aside. The respondent also



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claimed that the plaintiffs were the lessee of the suit property under the defendant and hence they were estopped from claiming title over the suit property. The allegation in the plaint as if the suit property was dealt with by the plaintiffs as private property and the defendant had been receiving only *theervai* was specifically denied.

5. Before the trial Court, all the suits, out of which the present Second Appeals are filed, were tried together along with other connected suits and 6 witnesses were examined on behalf of the plaintiffs. The plaintiffs also marked 42 documents as Exs.A-1 to A-42. On behalf of the defendant temple, its Executive Officer was examined as D.W.1 and Inam Register was marked as Ex.B-1. Exs.X-1 and X-2 were marked as Court documents.

6. The trial Court, on appreciation of oral and documentary evidence available on record, came to a conclusion that the suit properties were inam lands, belonging to the respondent temple, and the plaintiffs failed to prove their kudivaram rights over the suit property and dismissed the suit. Aggrieved by the same, the plaintiffs preferred separate appeals before the Sub-Court, Dindigul, and all the appeals were dismissed, by confirming the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiffs have come by way of these Second Appeals.



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7. The learned counsel for the appellants submitted that both the Courts below committed an error in relying on Inam Register, marked on the side of the temple, wherein the name of the grantor was not mentioned. The learned counsel further submitted that the respondent temple issued kist receipts in the name of the predecessor of the appellant and the said fact would establish that the temple had only Melvaram right to collect tax. The learned counsel, by relying on Exs.A-1 to A-42, marked on the side of the appellants, submitted that the statutory presumption available under Section 44 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, got rebutted by the evidence let in by the appellants.

8. In order to prove that the suit properties are Inam lands granted in support of the respondent temple, Ex.B-1, Inam Register, was marked. A perusal of the same would suggest that the suit properties are devadayam lands, granted in support of the respondent temple. The entry in column 8 of Ex.B-1 would prove that the suit properties were granted in support of Katheer Narasimhaperumal at Kottapulli. The entries in columns 21 and 22 of Ex.B-1 would suggest that it is a permanent grant confirmed in favour of the respondent temple.



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9. Both the Courts below, taking into consideration the entry in Inam Register, Ex.B-1, and the statutory presumption under Section 44 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act,1963, came to the conclusion that the suit properties are Iruvaram Inam lands, granted in favour of the respondent temple. Section 44 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act,1963, reads as follows :

"44. Presumption in the case of service inam.- In proceedings under this Act relating to any inam granted for the benefit of any religious, educational or charitable institution or granted to any individual for rendering service to a religious, educational or charitable institution or for the purpose of rendering any other service, it shall be presumed, unless the contrary is proved, that the inam consists not merely of a grant of the melvaram in the land but also the kudivaram therein."

10. A perusal of Section 44 of the above said Act would suggest that when it is proved by a religious institution that particular property is Inam land granted for its benefit, there is a presumption that both the Varams are



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granted in favour of the religious institutions, unless the contrary is proved.

Therefore, the Courts below are justified in presuming that the respondent is the owner of both the Varams of the suit lands in the light of Ex.B-1. In view of the presumption under Section 44 of the Act, it is incumbent on the appellants/plaintiffs to prove that the respondent is not the owner of both the Varams and that the appellants are the owners of Kudivaram.

11. In order to prove that the appellants are owners of Kudivaram of the suit land, the learned counsel for the appellants relied on Exs.A-1 to A-42. The Courts below, taking into consideration Exs.A-1 to A-42, came to the conclusion that nowhere in the exhibits marked on behalf of the plaintiffs it was mentioned that they were the owners of Kudivaram. In fact, in Paragraph 26 of the first appellate Court judgment, the first appellate Court specifically mentioned that there is no mention in Exs.A-1 to A-42 regarding the alleged Kudivaram right of the plaintiffs. The first appellate Court also recorded that the said fact was admitted by the learned counsel, who appeared for the appellants. When the plaintiffs miserably failed to lead any evidence to show that their predecessors owned Kudivaram right in respect of the suit property, by virtue of the statutory presumption available under Section 44 of the Act, the Courts below, by relying on Ex.B-1, came to the conclusion that the suit



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properties were Iruvaram Inam lands, granted in support of the respondent temple. The said factual conclusion is based on proper appreciation of evidence available on record and the same requires no interference from this Court.

12. Finding no substantial question of law, this Court is unable to concur with the arguments advanced by the learned counsel for the appellants. As a consequence, the findings of the Courts below are confirmed and these Second Appeals are dismissed. No costs.

10.06.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:

- 1.Principal Subordinate Judge,
Dindigul.
- 2.II Additonal District Munsif,
Dindigul.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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