

(1988) 08 MAD CK 0032

In the Madras High Court

Case No : S.T. Appeal No's. 88 to 92 of 1979 and 51 of 1981

A. Jalini Ammal (died), A.C. Dharma Devi and A.J.
Anantharajayan Mudaliar (died)

APPELLANT

Vs

Sri Vedaranyaswami Devasthanam and The State of Tamil
Nadu

RESPONDENT

Date of Decision : 09-08-1988

Acts Referred:

Citation : (1988) 08 MAD CK 0032

Hon'ble Judges : S. Mohan, J;P.K. Sethuraman, J

Bench : Division Bench

Advocate : R. Sundaravaradan for Mr. K. Ramachandran, for the Appellant; K. Srinivasan for the 1st Respondent and Mr. K.V. Munuswamy, Government Advocate on behalf of the 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Mohan, J.—In the appended tabular statement (omitted Ed.) we have under various columns stated as to the property involved and the basis of the claim of the parties. In these S.T.A. Nos. common ground of attack by the appellants-claimants is as follows: (1) Column 7 of Inam Fair Register clearly indicates the various payments to be made by the occupants of the land. From that it is evident that Kudiwaram right has to be conferred on the appellant's predecessors-in title;

(2) There had been transactions including alienations right from 1894. Therefore, even assuming that what was granted was with reference to the large extent of sites and superstructures which consisted of both the Warams and the statutory presumption under Sec. 44 of the Tamil Nadu Act 30 of 1963 would apply, that has been successfully rebutted by transactions beyond 60 years reckoned from 1.4.1960;

(3) Kudiwaram right was brought to sale in Court auction by the respondent-

Devasthanam itself in prior litigation and that had come to be purchased. Therefore, even assuming both the Warams were granted in favour of the respondent-temple, the rights of Kudiwaram got separated, and

(4) There are several receipts issued by the temple in which Kudikani rights have been specifically mentioned.

Lastly it is urged that Hijara Patta had been issued by the temple itself, which reiterates Kudiwaram in favour of the predecessors-in-title of the appellants. Therefore, the order of the Settlement Tahsildar and the confirmatory order of the Tribunal below cannot be supported in law and it requires to be set aside.

2. In meeting these arguments, the learned counsel for the respondents would urge that in column 21 it has been specifically stated that the grant has been made in favour of Devasthanam and to be confirmed in the name of the Devasthanam.

3. Mere issue of Hijara Patta will not militate against the grant of both Warams. Even assuming that Hijara Patta had been issued to Jaliniammal, no such patta has been produced.

4. Much reliance cannot be placed on the kist receipts, as laid down in *Nainapillai Marakayar v. Ramanathan Chettiar* (19 L.W. 259 P.C.). These receipts, in which Kudiwaram rights are claimed, can have no value to claim such a right.

5. As regards Kudiwaram being brought to sale in Court auction, that will not apply to all cases. It will apply to only one case. Therefore, there cannot be any generalisation. It is contended that, in any event, the concurrent orders do not require any interference. If at all, the matter has to be re-examined.

6. We will now take up each of the contentions in seriatim. Ex. R1 is the certified extract of Fair Inam Register for Title Deed No. 724 etc. That shows the lands in question formed part of Devadayam, tax free, permanent grant in favour of Vedaranyaswami Devasthanam of Vedaranyam. It is not the whole inam grant. Placing reliance on the various entries including columns 8 and 21, it was held that the grant consisted of both the Warams. In such an event, the statutory presumption under Sec. 44 of the Act would apply. But at this juncture we would like to point out that the various payments which the occupants were required to pay like 10 annas and 2 paise, 11 annas and 8 paise, 3 annas and 5 paise and 2 annas and 10 paise etc. do have the bearing to show that straightway one cannot invoke the presumption in disregard of all these entries. By" no means, we are to be understood that we (sic) at once concluding the issue. It is our endeavor to point out that it is a matter for which due regard shall be given.

7. Ex.P1 is of the year 1894. What is stressed on behalf of the respondents is that it is Sarvamanyam of land on Vedaranyaswami Devasthanam. Here again the fact that there has been a dealing of the property covered by the Title deed as early as 1894 is of immense value.

8. Then again, at least in one case the Devasthanam, in execution of a decree obtained by it against one of the occupants, brought Kudiwaram to sale in Court auction. If certainly Devasthanam is the grantee of both the Warams, it is inconceivable as to how it could bring Kudiwaram to sale in Court auction. Hijara Patta as evidenced by Ex.P.6 is also of immense value, because unless the occupant had Kudiwaram right, we are unable to see as to how such Hijara Patta came to be issued by the temple. Therefore, we are unable to accept the case of the respondents that the issue of Hijara Patta will be of no use.

9. Ex.P7 is the receipt issued by Devasthanam for payment of kist of Jelini Ammal. As Settlement Tahsildar himself says, in this receipt it is mentioned that the nature of enjoyment is Kudikani. No doubt, in *Nainapilla Marakavar v. Ramanathan Chettiar* (21 L.W. 259 P.C.) it has been held as follows:

"From the fact that in some receipts given by servants of the Temple tenants of endowed lands in the village were described as "Kudimiras", it cannot be presumed that the defendant had a right of permanent occupancy in the endowed lands."

Here again, it is necessary to point out that we are not resting our conclusion purely on Ex.P7 receipt. But this is one of the factors to be taken into consideration. No doubt, in S.T.A. Nos. 91 and 92 of 1979 we do not have Hijara Patta issued. The various aspects which we have mentioned above do have a bearing in this case as well. For all these reasons we are unable to support the concurrent orders of the Settlement Tahsildar and the Tribunal, because one cannot ignore all these hard realities and come to a conclusion merely on one entry or the other of Fair Inam Register. Precisely that is what had been done by the authorities below. Therefore, we find great difficulty in accepting these conclusions.

10. Turning to S.T.A. No. 51 of 1981, inasmuch as admittedly the property consists of a building, it is impossible for the respondents before us to have recourse to the Tribunal by way of an appeal under Sec. 11(4) of the Act. The proper remedy would be to seek a revision. Therefore, holding that the appeal filed by the present respondent before the Tribunal is misconceived, this S.T.A. will have to be allowed. In the result, S.T.A. Nos. 88 to 92 of 1979 will stand allowed in favour of the claimants, while S.T.A. No. 51 of 1981 will stand allowed in favour of the appellant, Sri Vedaranyaswami Devasthanam. There will be no order as to costs.