

(1996) 09 MAD CK 0030
In the Madras High Court
Case No : S.T.A. No. 3 of 1985

Muthusamy Gounder and Others

APPELLANT

Vs

Arulmigu Varadaraja Perumal Temple and Others

RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 44

Citation : (1997) 1 CTC 410 : (1997) 1 LW 430 : (1997) 2 MLJ 340

Hon'ble Judges : Raju, J; Jagadeesan, J

Bench : Division Bench

Advocate : S. Gopalarathnam, A.K. Kumarasamy and S. Venkateswaran, for the Appellant; A. Arumugam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Raju, J.—The above appeal has been filed u/s 30 of the Tamil Nadir Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (30 of 1963).

2. The lands in question were granted for the support of the pagoda of Varadaraja Perumal at Nathakadayar and the grant was permanently

confirmed in T.D. No. 2478 so long as the pagoda was well kept up. After the coming into force of Tamil Nadu Act 30 of 1963, the Settlement

Tahsildar No. IV, Erode, took up enquiry and consideration of claims and by his proceedings dated 9.9.1970, passed an order allowing ryotwari

patta in favour of the 1st respondent temple. The appellants, who are present enjoyers, aggrieved by the said order, filed an appeal before the

Minor Inams Tribunal, Coimbatore (Sub Court) and the Tribunal, while setting aside the order of the Settlement Tahsildar, remitted the case for

fresh enquiry and disposal in the light of the observations contained in its order. It is seen from the proceedings of the Settlement Tahsildar,

Coimbatore, that the scope of enquiry was confined to consider the effect of the documents filed at the appellate stage and to pass appropriate

orders. The Settlement Thasildhar appears to have followed the procedure of issuing public notice, as also individual notice to all interested parties,

as required under the Rules. Oral evidence was let in by the claimants and after considering the evidence on record, the Settlement Tahsildar,

Coimbatore, by his order dated 4.7.1973, directed garnet of ryotwari patta in respect of the lands to the appellants in the manner set out in detail

in the schedule to the order, specifying the different extents in favour of different claimants. Aggrieved, the 1st respondent temple filed an appeal in

C.M.A. No. 23 of 1978 before the Minor Inams Tribunal, Erode (Principal Sub Court, Erode). The learned Tribunal, by his order dated

20.4.1983, has set aside the order of the Settlement Tahsildar and allowed patta in favour of the temple. In coming to such a conclusion, the

Tribunal placed reliance upon the judgment of this Court in Kalivaradaraja Perumal Koil, Pollachi v. K.S.J. Raju Chettiar, 1978 (91) L.W. 142.

Aggrieved, the party claimants have filed the above appeal.

3. Mr. S. Gopalaratnam, learned Counsel appearing for the appellants, placed strong reliance upon a latest pronouncement of the Supreme Court

in 1997 - 2 - LW 323 (SC) to contend that the presumption u/s 44 of the Act 30 of 1963 was a rebuttable one, and that being so, the appellants

have produced sufficient materials and substantiated their claims that they were always owners of kudivaram and the temple was only holding

melvaram interest and consequently the Tribunal ought not to have interfered with the orders of the Settlement Tahsildar and disturbed the ryotwari

patta granted in favour of the appellants. The 1st respondent temple, though was served with notice, has not chosen to engage any counsel to

contest the claim. Therefore, it becomes necessary to consider the legality and tenability of the submissions on behalf of the appellants and the

challenge made to the order of the Tribunal in this appeal.

4. We have carefully considered the submissions of learned counsel for the appellants. In 1997 - 2 - LW 323 (SC) , their Lordships of the Apex

Court were dealing with the claim of a temple, which was the appellant before

the Supreme Court under the very Tamil Nadu Act 30 of 1963, which is under consideration in this appeal. No doubt it was held therein that Section 44, though enacts a presumption that when it relates to the Inam granted for the benefit of the 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. It is only a rebuttable presumption that when the grant was in favour of the religious institution or the individual rendering service to the religious institution, the appellant Institution and the individual have both the melvaram and kudivaram interest therein. Their Lordships of the apex Court also observed that in spite of the same, the said presumption can be rebutted by contra evidence by the person claiming kudivaram interest in the land. As a matter of fact, in dealing with the merits of the claim in that case, it was held that the revenue and other records produced in the case before the Apex Court clearly indicated that the appellant Devasthanam had conferred kudivaram right in favour of the respondents and that what was collected from them was only a kist (revenue) and it is not by way of rent from them in exercising kudivaram right of the appellant Devasthanam.

5. The question that looms large for consideration in this appeal is as to whether the presumption enacted u/s 44 of the Tamil Nadu Act 30 of 1963 has been rebutted by the appellants by production of sufficient materials in support thereof. Learned counsel for the appellants in his endeavour to claim that such rebuttal has been made successfully would invite our attention to the materials adverted to in paragraph 3 of the order of the Settlement Tahsildar, Coimbatore and contend that the findings recorded by the Settlement Tahsildar, relying upon the recitals in the usufructuary mortgage deeds said to have been marked as Exs. A18 to A20 and A22 of the years 1900 and before, go to show that Kudivaram was with the present enjoyers and their predecessor-in-title. It is on that basis, learned counsel for the appellants by drawing inspiration from the findings of the Settlement Tahsildar, submitted that the grant in favour of the temple consisted only of melvaram. The Minor Inams Tribunal, per contra, was of the

view that the statutory presumption has not been successfully rebutted or dislodged by the appellants herein by showing that the appellants and their predecessor in interest owned or held kudivaram interest in the lands in question. As noticed earlier, in coming to such a conclusion, reliance has also been placed on an earlier Division Bench judgment of this Court and the learned counsel would strenuously urge that in the light of the latter decision of the Supreme Court, the order of the Tribunal cannot be sustained and that of the Settlement Tahsildar has to be restored.

6. The materials produced in the case before us and which carried conviction with the Settlement Tahsildar was the recitals in the usufructuary mortgage deeds said to have been executed between private parties. It is not the case of the appellants that the temple was party to or in any way connected with those documents. Merely because the mortgagors in those documents of the year 1900 and before, chose to assert that they were granted kudivaram interest by the Devasthanam, it cannot be readily presumed in the absence of production of any such patta, or record recognizing such interest in the appellants or their predecessors in interest. The Settlement Tahsildar, in our view, has considered the entire claim and readily chose to presume the grant of such interest to dislodge the statutory presumption for the mere asking without analysing the credibility of the materials or the binding nature of the same on the rival claimants, particularly the Institution. In our view, there can be no comparison of the facts of this case with the case, which was considered by the Apex Court, where as noticed earlier, there was a clear finding by the Tribunal and the Tahsildar that the occupants claimants were shown to have been granted by the appellant Devasthanam itself, kudivaram rights. The materials relied upon in this case, cannot, in our view be sufficient in law to draw an inference about the temple having parted with its kudivaram right or the valid acquisition of kudivaram right by the claimants appellants in this case. For all these reasons, we are of the view that the order of the Tribunal does not suffer from any infirmity, warranting our interference. The appeal shall, therefore, stand dismissed. No costs.

7. By now it is well settled that any person aggrieved is always entitled to project his claims and vindicate his rights before the competent civil court. Accordingly the appellants shall be at liberty to vindicate their rights, if any, in accordance with law, if they so desire.