(1991) 03 MAD CK 0013

In the Madras High Court

The Church of Christ King APPELLANT

Vs

Mohammed Muthaliff Rowther RESPONDENT

Date of Decision : 15-03-1991

Acts Referred:

Citation : (1992) 2 LW 141 : (1993) 1 MLJ 43

Hon'ble Judges : Bellie, J

Bench : Division Bench

Judgement

Bellie, J.—The plaintiff church is the appellant. The suit for declaration of title, consequential injunction and for mandatory injunction for

removal of superstructure in the suit property has been dismissed.

2. As the learned trial Judge has pointed out most of the facts in the case are admitted ones. The suit property is 29 cents of land in Survey No.

15/1 in Aranthangi Thottam village. Originally it belonged to an independent landholder of the village, Sulochanambalpuram Chathiram. This land

and other lands of the land-holder was in the management of the District Board. On 7.9.1929 the District Board has given a lease of the said lands

in favour of the plaintiff church. The plaintiff church has been periodically leasing out the lands to various tenants. Thus on 9.2.1946 the plaintiff

church leased out a portion of the suit property to Krishnaswami Thevar under Ex.A-5 and then on 1.1.1962 it executed a lease deed in respect of

another portion in favour of one Sathan under Ex.A-7. Then on 8.8.1962 the remaining portion of the property was leased out in favour of

Meiyappa Konar under Ex.A-8. It appears Krishnaswamy Thevar and Sathan have assigned their rights in favour of Velusamy and Natarajan.

Then Meiyappa Konar, Veluswamy and Natarajan have subsequently under

Exs.A-27, dated 12.3,1966, A-28, dated 25.4.1966, A-29, dated

26.4.1966, sold the superstructure put up by them to the defendant. In the meanwhile the village was notified on 9.4.1965 under Act 26 of 1963.

Settlement proceedings were taken and the Assistant Settlement Officer granted patta in favour of the plaintiff in respect of both the superstructure

and the site. On appeal by the defendant the Settlement Officer dismissed the appeal. But in the further appeal to the Director of Settlements, he

holding that the superstructure belongs to the defendant, and the site viz., 29 cents belongs to the plaintiff church, issued joint patta. The revision

preferred before the Commissioner of Land Revenue was dismissed as time barred, but however the Commissioner observed that it is open to the

parties to establish their rights in the civil court. Therefore the suit.

3. The Church pleaded that both the site and the superstructure belong to the Church, and on the other hand the defendant contended inter alia that

he or his predecessors-in-title having put up the superstructure, under the provisions of the Act 26 of 1963, he is entitled to both the superstructure

and the site.

4. The trial court framed as many as 9 issues and answering all the issues, ultimately dismissed the suit. The main finding of the trial court is that the

defendant or his predecessor-in-title having put up the superstructure, under Sections l5(4) and 15(5) of Act 26 of 1963, he will be entitled to both

the superstructure and the site on which it stands and therefore the suit property belongs to the defendant. It is this finding alone which is now

challenged in this appeal and therefore/it is not necessary to go into the other points that were decided by the learned trial Judge.

5. Now, admittedly the superstructure has been put up either by the defendant or his predecessor-in-title before Act 26 of 1963 was notified.

Now, Section 15 of the Act viz., Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act 26 of 1963, reads as follows:

15. Vesting of buildings situated in Inam estates : - (1) Every building situated within the limit is of an inam estate, which immediately before the

notified date, belonged to any landholder thereof and was then being used by him as an office in connection with its administration and for no other

purpose, shall vest in the Government, free of all encumbrances, with effect on and from the notified date.

(2) Every building so situated which, immediately before the notified date belonged to any such landholder and the whole or principal part thereof

was then in the occupation of any religious, educational or charitable institution shall also vest in the Government, free of all encumbrances, with

effect on and from the notified date:

Provided that when such institution ceases to exist, the building shall revert to such landholder or if he is dead, to his heirs or legal representatives.

(3) where any building so situated-

(a) which belonged to any such land-holder on the 1st day of July, 1960; and

(b)(i) which on that date was being used by him as an office in connection with the administration of the inam estate, and for no other purpose, or

(ii) the whole or principal part whereof was on that date in the occupation of any religious, educational or charitable institution, has, after the 1st

day of July, 1960 and before the notified date, been sold or made a gift of by the landholder or ceased to be used by him as an office as aforesaid,

or ceased to be in the occupation of such institution, the value of the building shall be assessed by the Tribunal in such manner as may be

prescribed; and the Tribunal shall pay to the Government such value cited in its office under Sub-section (1) of Section 36.

(4) Every building other than a building referred to in Sub-sections (1), (2) and (3) shall with effect on and from the notified date, vest in the person

who owned it immediately before that date; but the Government shall be entitled, for each fasli year commencing with the fasli year in which the

inam estate in notified.

(i) in every case to levy the appropriate assessment thereon; and

(ii) in the case of a building which vests in a person other than a land-holder, also to the payments which such person was liable immediately before

the notified date to make any land-holder in respect thereof, whether periodically or not and whether by way of rent or otherwise, in so far as such

payments may accrue due on or after the notified date.

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

(6)...

It is clear from a reading of Sub-section (4) of Section 15 that a building owned by a person immediately before the notified date shall vest in that

person. Then as per Sub-section (5) building includes the site on which the superstructure stands and any adjacent premises occupied as an

appurtenance thereto. Therefore, the owner of the building in whom the building vests u/s 15(4) will also be the owner of the site as well as the land

appurtenant thereto. It is therefore manifest that the tenant who owned the building before the notified date becomes the owner of both the building

as well as the site with the appurtenant land.

6. From this it can be easily concluded that the suit land of 29 cents belongs to the defendant as per the provisions of the Act. The learned trial

Judge has also relied on K. Somasundaram Pillai and Others Vs. R. Dorairaj and Others, , in which case the facts are similar to the present case,

and it has been held clearly therein that as per Sub-section (4) of Section 15 the person who is owning the building before the notified date will get

that building vested in him, and in view of the definition of the building given in Sub-section (5) he will also be entitled to the site of that building and

also the appurtenant land thereto. That decision has been followed in a subsequent decision in K. Vellappa Gounder and Sons by partner K.

Vellappa Gounder v. K.S. Thirugnanasambandam Chettiar and Ors. 93 L.W. 707. Thus I find no merit in the appeal. Accordingly the judgment

and decree of the trial court are confirmed and the appeal is dismissed. There will be no order as to costs.

