IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.573 of 2009
and
M.P.No.1 of 2009
and
C.M.P.No.11631 of 2019

1.Balkis Natciar
2.M.Saleem
3.Sithi Fareeda
4.M.Sahul Hameed
5.Haseena Fareeda

Appellants 1 to 5 are rep by.
Their Power Agent the 10th Appellant
T.Mohamed Ibrahim Maricar

6.S.A.Sara Ummal
7.H.Sithi Zubaira Begum
8.H.Yusuf Ansari

Appellants 6 to 8 are residing at
48, Mamathambi Maricar Street, Karaikal.

9.T.Ahamed Maricar(Died)
10.T.Mohamed Ibrahim Maricar
11.T.Mohamed Abubakar Maricar

12.Salma Natchiar
13.Sahira Banu
14.Farveen Mumtaz
(Appellants 12 to 14 brought on record
as Lrs of the deceased 9th appellant vide
Court order of Court dated 06.12.2019

made in CMP.Nos.10430, 10435 &
10439 of 2019 in A.S.No.573 pf 2009) ...Appellants

Vs.

1.Arulmigu Adheeswarar Thirukoil
represented by the Trustees
appointed by the Government under the
provisions of the Pondicherry Hindu
Religious Institutions Act.

2.Karumbayiram
3.Uthirapathy
4.Selvaganapathy
5.Pasupathy
6.Ramalingam
7.Sakthivel ...Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 31.10.2007 made in O.S.No.10 of 2004 on the file of the Court of the Additional District Judge, Pondicherry at karaikal.

For Appellants : Mr.T.P.Manoharan, Senior counsel
For Mr.K.P.Jotheeswaran

For Respondents : Mr.C.Prakasam[For R1 to R5]
No appearance [For R6]

JUDGMENT

The appeal suit is filed, challenging the judgment and decree dated 31.10.2007 passed in O.S.No.10 of 2004.

2. The brevity of the plaint is as under:

The ancestors of the plaintiffs had extensive agricultural properties garden lands, cultivable lands, house sites, etc., in Keezhakasakudi village of Kottucherry Commune. The ancestors and the lands were locally identified as 'Kasakudi Pannai' having more than 40 velis of land originally. They had a large Pannai House refers to Pannai Bungalow. This estate consisted amongst other things a number of houses and house sites. The Pannai Kariasthar and those who were associated with the Pannai work and the land owners were permitted to occupy the manaicuts and houses free of rent. Local people were permitted to put temporary shelters on the large extent of uncultivable lands. In one or two cases occupants refused to vacate the places put under their possession and the land owners had to take legal action to force them out.

Prior to the plaintiffs, one P.E.Mohamed Thaha Maricar and P.E.Mohamed Ali Maricar owned the lands together as inheritors from their father. These two brothers entered into a deed of partition on 7.9.61 executed and recorded in the Office of Notaire P.Srinivasan of Nedungadu. The properties were partitioned to metes and bounds and the parties to the partition took separate possession of the properties.

Those items of properties which could not be divided exactly and earmarked were allotted by directions. Two such properties which came to the share of P.E.Mohamed Thaha Maricar are described as item No.25 and 30 in Lot No.1 in the partition deed. They are the 'A' & 'B' Schedule properties. After the partition, P.E.Mohamed Thaha Maricar took separate possession of all the properties mentioned in Lot No.1 in the partition deed. The suit properties were pasture lands on those days. Now, that the lands were unused and remain uncultivated and the soil had become hardened. P.E.Mohamed Thaha Maricar died survived by his widow, sons and daughters. One of the sons Mohamed Yasin and the daughters released their interest in the property in favour of the sons. The plaintiffs 1 to 5 are the legal heirs and representatives of T.Mohamed Ibrahim one of the sons and the plaintiffs 6 to 8 are the legal heirs and representatives of T.Hameed, who died subsequently. The plaintiffs are the exclusive owners of those properties. They are in actual physical possession and enjoyment of the property. As per revenue records also, they are the absolute owners.

In the 'B' schedule, the patta is registered in the name of plaintiffs and there is one extension adding, கிராம பொது உடமை

தற்கால நிர்வாகி. The plaintiffs approached the concerned Department for deletion of this addition. But nothing happened. Many decades ago, the plaintiffs themselves have leased out these properties to various persons for various purpose and once for a toddy shop. This plot of land earned an ill repute as கள்ளுக் கடை திடல். However, certain vested interest in the village with ulterior motive of getting benefits for themselves set up the 1st defendant Devasthanam to claim falsely that the property belongs to 1st defendant and that the defendants attempt to make a public issue of this matter. The defendants No.4 to 7 made an attempt to break the existing fencing, put up fence in the 'B' Schedule property in July 2003, which was stopped by a police complaint. The Devasthanam represented by one Ramasamy replied to a notice that the plaintiffs have encroached upon the temple land which is false and frivolous. Neither the long usage by plaintiffs nor a little deed nor inventory taken by the Hindu Religious Institutions reveal or disclose that 'B'' Schedule property is a 'Village Common'. While the dispute is in respect of 'B' schedule property, the defendants are collectively making attempts to lay claim for 'A' schedule property as well. Hence, the suit.

3. The gist of the written statements is as follows:

The 1st defendant submits that the suit properties belongs to Arulmigu Adheepureeswarar Temple, Keezhakasakudy. The suit properties and other properties situate in Keezakasakudy are described in 'Kalvettu' (Epigraph) still embedded in the wall of Sri Adheepureeswarar Temple. It is an ancient document of the yea 1174 Ad. The said Epigraph is not changed. It is permanent and it is the foremost document. Such epigraph is considered as one of the authenticated document and up held by the Hon'ble High Court and Supreme Court. As per the epigraph embedded in the temple wall, 1¾ velies i.e 35 mahs situated around the temple and the temple premises. In the year 1227 AD, the III Raja Raja Cholan gave the property in favour of Sri Adheepureeswarar Temple as a gift without any tax. Therefore, there is no tax collected by the Revenue Wing of Raja Raja Chola and subseqently by the French Regime. Therefore, no patta even during Raja Raja Chola, French and by the Government of Pondicherry was issued. Chola King II Rajadhi Raja Chola in 11th year of his regime in the year 1174 AD measured the temple property and earmarked as “Kirama Sasanam”. The extent and boundaries are given in epigraph. Madavilagam around the temple viz., Thirugnanasambadar Vilagam, Thirukuriuppu Thondar vilagam, Aalalalsundar Vilagam, Thirukulam and Nandavanams are situate on

four veethis. Other than 35 mahs, the above said items are separate. The above said items are demarcated, confirmed and settled. In addition to the above said concrete document i.e Epigraph, there is a book published in the name. 'Kalvettukalail Karaikal Paguthi' at page 102 and 103 Kasakudy is mentioned as Kayakudy i.e Keezhakasakudy as follows: "A portion of Keelakasakudy viz. Udayachandra Sadurvedi Mangalam. 4 Mahs of property situate at Vilakku Paguthi "Sannathi" was donated by Santhana Narayana Pathar. The temple situate in the place called Serakuttanur and other items including "Nannikuli" (B-schedule). Other places mentioned in page 102 & 103 comes to 10,000 kulies = 5 velies. "Kirama Poduvidai" is equal to Sannathi Odai which is meant to Karumathi Thurai situate in Illuppaithoppu and also called Nannipallam. Hence, 'A' & 'B' schedule properties belongs to Sri Adeepureeswarar Temple. The plaintiffs have not produced any antecedent title deeds or the auction sale certificates and other documents to show that the suit properties belong to them. They have produced only a partition deed which come into existence between two brothers, Mohamed Thaha Maricar and Mohammed Ali Maricar without any valid basis. Still in the patta, the name is Kirama Podhu Udamai Tharkala Nirvaki. It is confirmed in the order of the Settlement Officer, Directorate of Survey and Land Records,

Government of Pondicherry. The police complaint given by the plaintiffs against the defendants 4 to 7 was numbered as STR 2339 of 2003 on the file of J.M.II of Karaikal u/s 447 & 506 (I) IPC r/w 34 IPC and on 15.4.2004, the J.M II acquitted all the accused holding that there is no iota of truth regarding the ownership of the suit properties by the plaintiffs. The defendants issued a reply notice on 29.7.03 to the suit notice dt.21.07.03. The plaintiffs valued the suit property at Rs.200/- per kuzhi where the market value is Rs.8,000/- to 10,000/- The plaintiffs have to affix necessary court fees. There is no cause of action for the suit. Hence, the suit is not maintainable and that the relief of declaration and permanent injunction cannot be granted. The suit in toto is infructuous and has to be dismissed.

4. The trial Court framed the issues as to whether the suit has not been property valued and correct Court fee has not been paid; whether the suit properties were not available for partition as absolute properties to the ancestors of the plaintiffs; whether the 1st defendant temple alone owns the suit property as a grant made to it by the Chola Ruler; whether the plaintiff is entitled for the declaration of title and the consequent injunction in respect of the suit properties as prayed for.

5. Issue No.2 was recasted as to whether the plaintiffs are the absolute owners of the suit properties.

6. P.W.1 was examined and Ex.A1 to Ex.A16 were marked by the plaintiffs. On the side of the defendants, D.W.1 to D.W.4 were examined and Ex.B1 to Ex.B7 were marked.

7. The trial Court, with reference to Issue Nos. 1 & 2, arrived a conclusion that the claim of D.W.1 that the lands around the defendant Temple belonged to the Temple is acceptable one and the trial Court further held that the plaintiffs have not proved their title to their suit property by filing their antecedent documents.

8. The trial Court further found that in the patta, the Theervai is stated as 14.70. But the suit is not assessed based on the Theervai. In the absence of documents for the valuation, the trial Court arrived a conclusion that the suit valued for the market value is not correct.

9. With reference to Issue No.4, the trial Court arrived a conclusion that the plaintiffs have not filed the antecedent documents

of their fore-fathers. The land is situated around the 1st defendant temple, those lands were given to the temple during the period of Cholas and were administered by the family of the plaintiffs. Therefore, in the absence of title deeds, merely executing a partition deed before a Notaire between the two brothers of the family would not confer any right. Accordingly, the suit was dismissed.

10. The plaintiff filed the first appeal and the learned Senior counsel appearing on behalf of the appellants mainly contended that the trial Court has not appreciated the documents filed by the plaintiffs as Ex.A1 to Ex.A7 and the evidence of P.W.1, P.W.2, P.W.3 would establish that the ancestors of the appellants and thereafter, the appellants as of now are the absolute owners and in possession of suit 'A' & 'B' schedule properties.

11. The learned Senior counsel reiterated that the respondents defendants had not produced any clear direct evidence to prove their claim regarding title and possession and the very claim set out by the 1st respondent / 1st defendant temple is vague and untenable.

12. The learned Senior counsel appearing on behalf of the

appellants relied on the Government of Puducherry Gazette, which was published on 07.12.1990, bearing No.168, Ex.X2 document.

13. Relying on the said document, the learned Senior counsel for the appellants states that the details of the properties owned by the 1st respondent Temple is notified in the Puducherry Government Gazette and in the said document, the land belongs to the appellants are not found and therefore, the trial Court has committed an error in arriving a conclusion that the properties in and around the Temple belong to the Temple.

14. The learned Senior counsel referred Ex.X2 document, which is Government of Puducherry Gazette dated 07.12.1990 and showed the properties of the 1st defendant as per the said Government Gazette and the same is as follows:

S.No	Cadastre Number	Resurvey Number	Nature of land
1	219/3D pt. 206 Bis 219/4 pt. 219/3B1 pt. 219/3C pt. 219/3B2 pt.	80/4	Temple is situated
2	121 115 pt.	113/1	Nanjai Land

S.No	Cadastre Number	Resurvey Number	Nature of land
3	119 Bis/1 ..15 pt.	113/2	Nanjai Land
4	121 Bis/2	113/4	Punjai Land

15. Ex.A1 partition deed dated 11.09.1961 was executed and came into effect about 45 years prior to the filing of the present suit. In the said partition deed, Ex.A1, all the previous title deeds commence from the year 1924 including the judgment dated 24.10.1930 passed by the then Court of First Instance, Karaikal have been specifically referred to and further, confirmed the title and the possession of the ancestors of the appellant over the suit 'A' and 'B' schedule properties. Therefore, Ex.A1 partition deed is sufficient to ascertain the title of the appellant and the trial Court has not appreciated the said partition deed Ex.A1 in the right perspective.

16. With reference to the authenticity of the partition deed, Ex.A1 document, the learned Senior counsel for the appellants made a submission that the partition deed was a Notarial partition.

17. As per the law existing during the relevant point of time in the French Era, the Notarial partition deeds were considered as a valid

document for all purposes including the title of a person.

18. The learned Senior counsel for the appellants states that the Notarial partition deeds or any such deeds, signed in the presence of the Notaire is considered as a valid document for all purposes in view of the fact that the Notarial documents are signed after ascertaining the title and other factors regarding the immovable properties. Therefore, the sanctity attached to the Notarial partition deed in respect of the Notaire recognized by the French Government, the trial Court has not considered the authenticity of the Notarial partition deed, Ex.A1.

19. In this regard, the learned Senior counsel cited the judgment of the High Court of Madras in the case of ***Pandurangan Vs. Sarangapani and another, reported in (1982) 95 LW 318***, wherein this Court made an observation as follows:

> "**11.** Learned counsel for the respondent submitted that in the case of a document executed before a Notaire, it must be presumed that the document is a valid one. He went to the extent of submitting that the validity of such a document is conclusive It is true that a Notaire is not in the same position as Registering authority under the Indian Registration Act, and that he combines in himself certain other functions as shown by the

decision of this Court in *Mourougaessa Mudeliar* v. *Aguilandammanalle (died) and others*2, by a Bench of this Court consisting of Ismail, J. as he then was, and Natarajan, J. The functions of a Notaire are not strictly identical with those of the officials empowered to register the documents under the Indian Registration Act. However, as brought out in an article by L. Neville Brown of the University of Lyons in Volume II 1953, of the International and Comparative Law Quarterly, it is possible to impeach the transaction on the score of falsity by appropriate evidence. The impeachment for falsity is a very involved and costly procedure under the French Law. In terms of the Indian conditions, the impeachment could be by a suit supported by proper evidence to show that the transaction was a false one. In the present case, there is no such convincing proof that the transaction was in any manner false. It appears as if he transaction is being challenged as a kind of nominal transaction not supported by consideration. The court below has pointed out that the document was executed before a Notary Public who had the duty to examine personally the parties and to ascertain that they are fit and able to give their consent to the transaction. The burden of proof that lay on the plaintiff to show that the Notaire's duty had not been properly performed in the present case has not been discharged. The result is that the validity of the alienation is not assailable on any grounds taken by the plaintiff. The court below rightly dismissed the suit."

20. The High Court of Madras in the case of ***Gnanasoundary @ Gnasoundaram & 6 others Vs. Vaithianatha Sivacharyar,***

reported in (2009) 2 L.W. 773, observed the genuinity and sanctity attached to the Notarial deeds and the relevant paragraphs of this judgment are extracted hereunder:

> "**19.** Under the French regime, Notaires are not mere notaries as understood in the rest of India under the Notaires Act. But, French Notaires are French law graduates having the power of justice of peace and their office is a sanctified and responsible one, as French law attaches much importance to them and they were responsible for drafting the sale deeds in accordance with law and they were expected to get themselves satisfied about the recitals recorded by them on the instigation of parties in the deeds. With this background, it is just and necessary to analyse the French deeds here. Wherefore, it is obvious that the recitals in Ex. A26 cannot simply be slighted or discarded as mere unilateral versions of the executants of the mortgage deed. The clauses found in Ex. A26 would exemplify that the ancestors of Pattu Gurukkal, the propositus of the plaintiffs here acquired title over the suit property and they exercised right of ownership over it and on the strength of the same, Pattu Gurukkal and his relative mortgaged the suit property as evidenced by Ex. A26. In these circumstances, it is really strange to hear from the defendant certain statements as though his own ancestors are not the owners of the suit property and that some third party is the owner.
>
> **24.** It is therefore crystal clear that the trial Court without au fait with French law and ignoring the aforesaid important and significant features involved in this case, simply misdirected

itself as though the plaintiffs are trying to get partition, quite against the interest of the Devasthanam. In paragraph 28 of the lower Court judgment, the discussion without au courant with facts proceeds on the footing as though the Temple authorities were protesting as against the plaintiffs' claim, by taking steps against the transfer of patta etc. To the risk of repetition, without being tautologous, I would like to highlight that my above discussion would indicate that merely because the said Devasthanam petitioned the parties for getting corrected the patta etc., would not in any way hamper or prevent the plaintiffs from proceeding with their suit for partition, which is based on their own ancient French documents. The suit has been filed in the year 1997, whereas, Ex. B24, Ex. B25 and Ex. B26, which are ancient documents within the meaning of Section 90 of the Indian Evidence Act emerged during 1959, so to say, even 30 years before the filing of the Suit. As such those documents are not only authentic, but they are French documents having sanctity of their own and on their ancient documents."

21. With respect of Notarized document, the Hon'ble High Court of Madras in the case of ***Mourougaessa Modealiar Vs. Aguilandammalle(died) and 5 others, reported in (1995) 1 L.W. 72 J.S***, held as follows:

"French lawyers do not admit of the neat division between solicitors and barristers which exists so clearly in England. In France the division is threefold; The French barrister (avocat) is contrasted with both the avoue and the notaire."

"It is now possible to return to the definition given in Article 1

of the Law of 25 ventose and XI. In the first few words this speaks of the notaries as the public officials. It follows that they have a monopoly of their particular functions, which cannot be usurped by other professions, officials or individuals.....This description (public officials) should be understood in the sense that the notary holds his attributes directly from the sovereign power and that he may give to his actes executory force in the name of such power.....he is then under an obligation to lend his services to those who request them.....With the important qualification that he is not free to reject a client, the position of the notary is thus similar to that of the solicitor....Subject to his liability to this body (local chamber of Discipline) in the event of a breach of the professional code of conduct and etiquette and to his client in the event of his negligence, the notary may practise within his resort with almost as much freedom as the solicitor."

"By virtue of his functions, whether they be assumed or be attributed to him as a monopoly by the law, the notary occupies a place of great dignity and honour in French life. The disinterested counsellor of the parties, the protector of the interest of the inexperienced and legally incapable, the trusted sharer of the innermost secrets of the family and often the peacemaker in its disputes, he has a high legal and moral responsibility which generations of notaries have faithfully discharges."

"Having regard to the powers and duties of a notary contained in the portions extracted above and the high status afforded to him by law, we certainly think that the consultation Deivanayagam Pillai had with the Notary before purchasing the suit property and having the sale deed drawn up by him, will manifestly indicate good faith on his part. As a lay man, he has sought the counsel and advice of a man well versed in law and who was under an obligation to give correct

and honest advice in respect of the subject matter of consultation. We are, therefore, clearly of the opinion that the trial Judge was fully justified in holding that Deivanayagam Pillai had purchased the suit property in good faith and therefore, it was for the plaintiff to prove that the sale was not actuated by good faith. We are unable to sustain the view of the appellate judge that the consultation Deivanayagam Pillai had with the Notary was of no consequence for determining the question whether the sale had been entered into in good faith. On this finding alone, the appeal deserves to be allowed."

22. With reference to the other grounds raised by the appellants, the learned counsel cited the judgmnet of the Hon'ble Supreme Court of India in the case of ***Union of India Vs. Ibrahim Uddin and another, reported in (2012) 8 SCC 148***, Wherein the Hon'ble Supreme Court of India held as follows:

"47. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed.

48. To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an

evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.

Stage of consideration

49. An application under Order 41 Rule 27 CPC *is to be considered at the time of hearing of appeal on merits so* as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court. (Vide *Arjan Singh* v. *Kartar Singh* [AIR 1951 SC 193] and *Natha Singh* v. *Financial Commr., Taxation* [(1976) 3 SCC 28 : AIR 1976 SC 1053] .)"

23. The Apex Court in the case of ***S.V.R.Mudaliar Vs. Rajabu***

F.Buhari and Others, reported in (1995) 4 SCC 15, held as follows:

> "**11.** The trial Judge has dealt with this aspect in detail and to find out the truth as to whether M.H. Kamal had signed Ex. P-1, he even wanted to examine this Kamal as a court witness; but, according to him, Kamal was kept out by the defendants, because of which some adverse inference has been drawn against them by him.
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> **12.** Mr Parasaran, appearing for the appellants, fully supports the finding of the trial Judge in this regard and, according to him, law permits an adverse inference to be drawn, where a party in possession of best evidence withholds the same, even if the onus of proving the fact in question were not to be on him. To support him on the legal submission, the learned counsel has relied on a three-Judge Bench decision of this Court in *Gopal Krishnaji Ketkar* v. *Mohamed Haji Latif* [AIR 1968 SC 1413 : 71 Bom LR 48 : 1969 Mah LJ 310] . In that case this Court while stating as above observed that a party cannot rely on abstract doctrine of onus."

24. The Hon'ble High Court of Madras, in the case of ***S.N.Hasan Abubucker Vs. Kottikulam St. Mohideen Pallivasal Therkku Mohindeen Pallivasal, Nirvagi Mutheru Committee through its Secretary M.S.Buhari and another reported in 2000 (III) CTC 193***, held as follows:

> "**15.** Therefore, in the present case, the nature of the additional evidence placed before the Court is such that receiving them would be in the interest of justice to clear up the obscure areas of evidence and it would be undoubtedly a ground on which the appellate Court ought to have permitted reception of such evidence instead of having adopted a hyper-technical approach. The appellate Court having commented and rejected Ex. B.I, rental receipt as being appellate Court ought to have

entertained the said additional evidence instead of rejecting it in the same breath.

16. Therefore, on an overall consideration I am inclined to feel that the appeal requires to be remanded not only for proper appreciation of evidence, but also to enable both the parties to adduce additional evidence for which purpose the appellate Court shall also permit the examination of witnesses. Both the parties are at liberty to adduce evidence in support of the mutual contentions on the basis of which the lower appellate Court would dispose of the appeal on merits. C.M.P. No. 3835 of 1994 is closed with liberty to the appellant to file documents in evidence before the appellate Court subject to their relevancy and admissibility. The originals of the documents filed by the appellant shall be returned to the counsel for the appellant."

25. Regarding the inscriptions relied on by the 1st respondent temple before the trial Court, the learned Senior counsel is of the opinion that the inscriptions as relied on by the 1st respondent before the trial Court itself is untenable for the reason that the inscriptions do not contain any particulars regarding the suit schedule property. In the absence of any details, regarding the suit properties in the inscriptions, the reliance placed on behalf of the 1st respondent is untenable.

26. In order to substantiate the said grounds, the learned Senior counsel appearing on behalf of the appellants relied on the judgment of the Hon'ble Supreme Court of India in the case of

Rahasa pandiani Vs. Gokulananda Panda and others, reported in (1987) 2 SCC 33, wherein the Hon'ble Supreme Court of India held as follows:

> "**5.** In the present case a very significant circumstance which creates a serious doubt about the genuineness of the claim of adoption has come to light. Syamosundar, the natural father of the plaintiff had given his eldest son Narasinga in adoption to Hira, the widow of Godavari in 1942 by a registered document. So also when defendant Rahasa had adopted her husband's sister's son Gangapani in 1942 it was by a registered document. Admittedly, therefore, Rahasa, the alleged adoptive mother, had resorted to adoption by a registered document as early as in 1942 and she was aware of the importance of the adoption being evidenced by a registered document. So also Syamosundar, the father of plaintiff Gokul was fully aware of the importance of having adoption evidenced by a registered document in order to avoid any future controversy. He had been a party to the adoption of his eldest son Narasinga by a registered document in 1942. And yet there is no registered document to evidence the alleged adoption of Gokul by Rahasa in 1956 (it is alleged that the adoption took place on March 22, 1956). The evidence of Syamosundar shows that even at the time of the alleged adoption of Gokul he was aware about the importance of having the adoption made by a registered document. His evidence furthermore shows that he had discussed the

matter about execution of a registered deed of adoption with Rahasa but according to him Rahasa had put it off. The trial court disbelieved this version. Rahasa herself stated on oath that no such adoption had taken place. It was not even suggested to her in her cross-examination that there was any talk about the adoption being evidenced by a registered document. There was no reason to disbelieve Rahasa. If Rahasa had really adopted Gokul having felt the need for doing so there would have been no occasion on her part to be reluctant to execute a registered document as was done by herself earlier when she adopted Gangapani in 1942. So also Syamosundar who was giving his natural son in adoption would have in the normal course of things insisted upon the adoption being evidenced by a registered document, he himself having resorted to this mode way back in 1942 when his eldest son Narasinga was given in adoption. According to the plaintiff his age was about 11 years at the time when the adoption took place and he left the school in order to live with and look after his adoptive mother after some time. Syamosundar in his evidence has clearly admitted that the name of Gokul's father was not changed after the adoption. He subsequently gave the explanation that the name was not changed because after some time Gokul left the school. Anyway this circumstance also creates a doubt about the genuineness of the adoption as alleged by the plaintiff. Another circumstance which creates a serious doubt in our mind is that no reliable evidence has

been adduced to show that Gokul had started living with Rahasa since 1956 till the dispute arose in 1962. If the version of adoption had been true and the evidence of Syamosundar and Gokul that Gokul had started living with his adoptive mother Rahasa was true, Gokul would have lived with his adoptive mother from the age of 11 till the age of 17. At least, one neighbour could have been found to prove that Gokul was living with Rahasa. No such evidence has been adduced. On the other hand, Rahasa says that adoption never took place and Gokul never came to live with her. The whole purpose of the adoption presumably was to have someone to look after her in her old age (she was about 61 at the time when the alleged adoption took place in 1956). Under the circumstances, absence of satisfactory evidence to show that the adoption had been acted upon and the absence of subsequent conduct supporting the version of adoption are circumstances which create serious doubts. Yet another very important circumstance which has not been accorded sufficient importance is that Syamosundar and Ram Krishna Sabat, the maternal uncle of Gokul who acted as next friend when the suit was instituted, had in terms mentioned the names of three respectable persons as having remained present at the adoption ceremony at the time of adoption. None of these three persons was examined. No explanation has been offered as to why these three persons who admittedly were present according to the plaintiff, and whose names were mentioned in the plaint, were not

examined. The trial court rightly drew the inference that if they had been examined, they would not have supported the plaintiff. What is more the priest who is supposed to have performed the adoption ceremony has also not been examined. A convenient explanation has been found by naming a person who was dead. This is another suspicious circumstance. So also, none of the near relatives or prominent persons of the village have been examined to show that such an adoption had taken place. It was not even suggested to defendant Rahasa that the giving and taking ceremony had taken place. Nor was it suggested to her that a particular person had acted as priest. In this state of evidence the trial court rightly dismissed the suit. The High Court attached little or no importance to this catena of significant circumstances and reversed the findings recorded by the trial court by the simplistic method of accepting the evidence adduced by plaintiff without analyzing or testing it on the touchstone of probabilities. In fact, the finding of the High Court can be said to be a finding which is not supported by any evidence worth the name. Too much importance was attached to an alleged inscription made in the Puri temple. There was no reliable evidence to establish that the said inscription was made at the instance of defendant Rahasa. No temple records were forthcoming. There was nothing to show that it was an authentic inscription made in order to evidence the adoption at the instance of Rahasa. In any case, the dark clouds of suspicious circumstances have

not been dispelled by the plaintiff. Taking an overall and cumulative view of all the relevant circumstances we are not at all satisfied that the plaintiff has established that such an adoption had really taken place. Under the circumstances, we allow the appeal, set aside the judgment and decree of the High Court and restore the judgment and decree passed by the trial court. There will be no order as to costs throughout."

27. Relying on the said judgments, the learned Senior counsel made a submission that the inscriptions speaks about the Temple and other details. However, the details regarding the suit schedule property are not found and therefore, the said inscriptions is of no avail to the 1st respondent and the trial Court has erroneously considered those inscriptions.

28. Relying on the above judgments as well as the grounds raised on behalf of the appellants, the learned Senior counsel reiterated that the 1st respondent Temple has not established their title and therefore, the appellants/plaintiffs are entitled for the relief of declaration and permanent injunction.

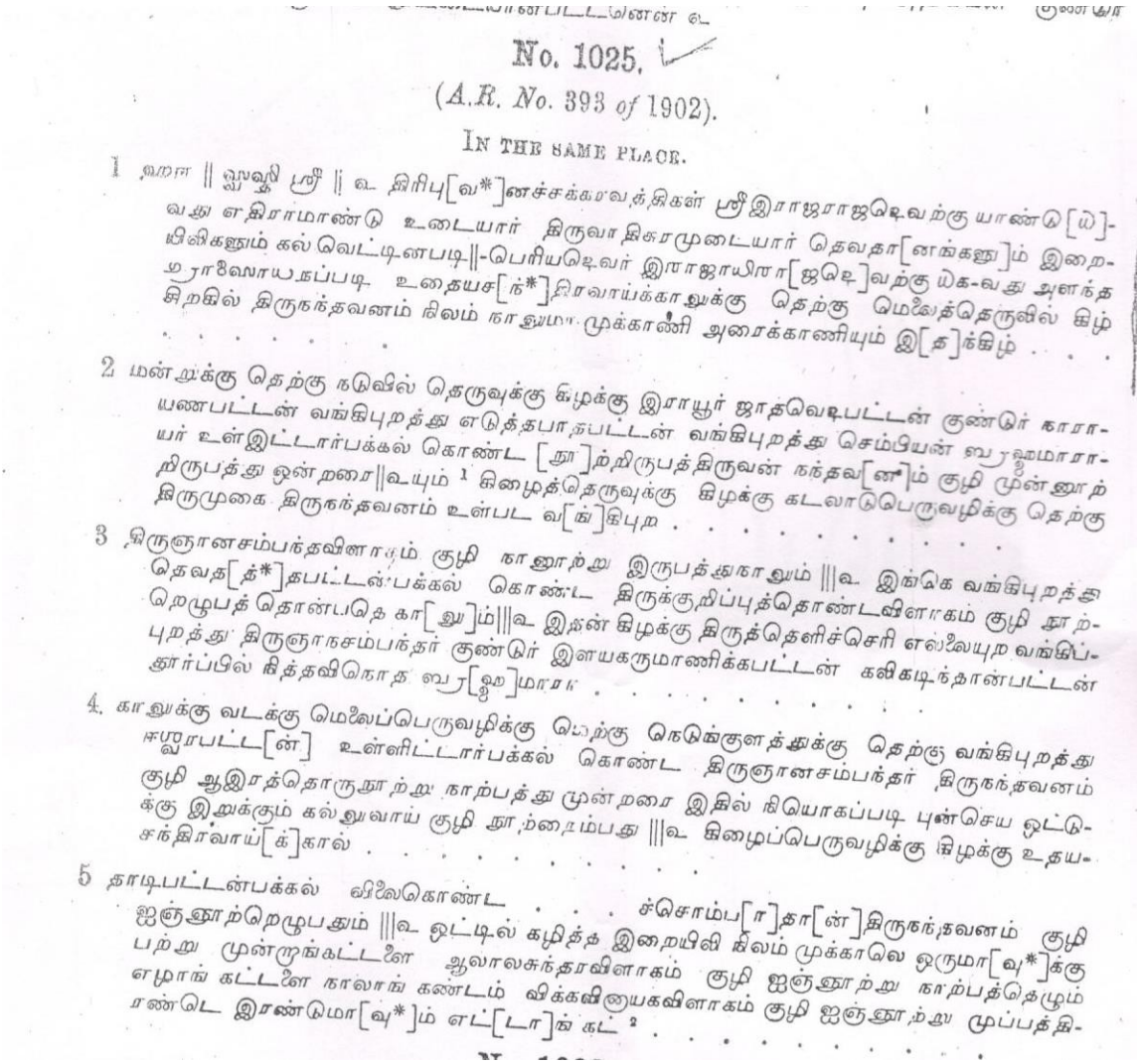
29. The learned counsel appearing on behalf of the 1st

respondent strenuously disputed the contentions raised on behalf of the appellants. The learned counsel for the 1st respondent mainly contended that the trial Court has considered all the documents in the right perspective and placed strict proof on the side of the plaintiff, who instituted the suit for declaration and permanent injunction. It is for the plaintiff to establish his case at the first instance and when the plaintiff is unable to establish the title with reference to the documents, which all are reliable, then the trial Court arrived a conclusion that the plaintiff has not proved their title and consequently, dismissed the suit.

30. The contentions of the learned Senior counsel for the appellants that the defendant has not proved the title and therefore, the plaintiff is entitled for the relief of declaration and permanent injunction is unacceptable in law.

31. The learned counsel for the 1st respondent placed reliance with reference to the South Indian Inscriptions, Volume VII, Miscellaneous Inscriptions in Tamil, Malayalam, Telugu and Kannada issued by the Director(Epigraphy), Mysore on behalf of the Director General, Archaeological Survey of India.

32. The text of South Indian Inscription reveals that No.1025 (A.R.No.393 of 1902) deals with the Temple property and the said inscriptions is extracted hereunder:



No. 1025.

(A.R. No. 393 of 1902).

IN THE SAME PLACE.

1 ஸ்வஸ்தி ஸ்ரீ ॥ ஸ்வஸ்தி ஸ்ரீ ॥ ஸ்ரீ கிரிபு[வ*]னச்சக்கரவத்திகள் ஸ்ரீ இராஜராஜதெவற்கு யாண்டு [ய]-
வது எகிராமாண்டு உடையார் திருவாதிகரமுடையார் தெவதா[னங்களு]ம் இறை-
யிலிகளும் கல்வெட்டினபடி॥-பெரியதெவர் இராஜாயிரா[ஜதெ]வற்கு யக-வது அளந்த
உராவோயகப்படி உதையச[ந்*]திரவாய்க்காலுக்கு தெற்கு மெலைத்தெருவில் கிழ்
கிறகில் திருநந்தவனம் நிலம் காலுமா முக்காணி அரைக்காணியும் இ[த]ங்கிழ் . . .

2 மன்றுக்கு தெற்கு நடுவில் தெருவுக்கு கிழக்கு இராயூர் ஜாதவெடிபட்டன் குண்டர் காரா-
யணபட்டன் வங்கிபுறத்து எடுத்தபாதபட்டன் வங்கிபுறத்து செம்பியன் வரகுமாரா-
யர் உள்இட்டார்பக்கல் கொண்ட [நூ]ற்றிருபத்திருவன் நந்தவ[ன்]ம் குழி முன்னூற்
றிருபத்து ஒன்றரை॥வயும் 1 கிழைத்தெருவுக்கு கிழக்கு கடலாடுபெருவழிக்கு தெற்கு
திருமுகை திருநந்தவனம் உள்பட வ[ங்]கிபுற . . . . . .

3 திருஞானசம்பந்தவினாலும் குழி நானூற்று இருபத்துநாலும் |||வ இங்கெ வங்கிபுறத்து
தெவத[த்*]தபட்டன்பக்கல் கொண்ட திருக்குறிப்புத்தொண்டவிளாகம் குழி நூற்-
றெழுபத்தொன்பதெ கா[லு]ம்|||வ இதன் கிழக்கு திருத்தெளிச்செரி எல்லெயுற வங்கிப்-
புறத்து திருஞானசம்பந்தர் குண்டர் இளயகருமாணிக்கபட்டன் கலிகடிந்தான்பட்டன்
தார்ப்பில் நித்தவிநொத வர[ஓ]மாச . . . . . .

4. காலுக்கு வடக்கு மெலைப்பெருவழிக்கு தெற்கு நெடுங்குளத்துக்கு தெற்கு வங்கிபுறத்து
ஈஸ்வரபட்ட[ன்] உள்ளிட்டார்பக்கல் கொண்ட திருஞானசம்பந்தர் திருநந்தவனம்
குழி ஆயிரத்தொருநூற்று நாற்பத்து முன்றரை இதில் நியொகப்படி புன்செய ஒட்டு-
க்கு இறுக்கும் கல்லுவாய் குழி நூற்றைம்பது |||வ கிழைப்பெருவழிக்கு கிழக்கு உதய-
சந்திரவாய்[க்]கால் . . . . . .

5 தாடிபட்டன்பக்கல் விலைகொண்ட . . . . ச்சொம்ப[ர]தா[ன்]திருநந்தவனம் குழி
ஐஞ்ஞூற்றெழுபதும் |||வ ஒட்டில் கழித்த இறையிலி நிலம் முக்காலெ ஒருமா[வ*]க்கு
பற்று முன்றுங்கட்டளை ஆலாலசுந்தரவிளாகம் குழி ஐஞ்ஞூற்று நாற்பத்தெழும்
எழாங் கட்டளை நாலாங் கணடம் விக்கனிஞயகவிளாகம் குழி ஐஞ்ஞூற்று மூப்பத்தி-
ரண்டெ இரண்டுமா[வ*]ம் எட்[டா]ங் கட் 2 . . . . . .

33. The learned counsel for the 1st respondent further made a submission that the appellants/plaintiffs mainly relied on the patta.

Mere patta would not confer any title on the appellants/plaintiffs. This apart, the said patta was cancelled in an appeal filed by the 1st respondent Temple before the Director of Settlement in Appeal No.6/2009 Puducherry dated 27.12.2013. The Patta relied on before the trial Court by the appellant plaintiff were cancelled by the Director of Settlement in Appeal No.6/2009 and the said order has not been challenged by the appellant and therefore, the Appellate order dated 27.12.2013 became final. The conclusive texts of the Appellate order in Paragraph 29 is extracted hereunder;

> "29. I am of the opinion that a bonafide mistake has been committed while preparation of the Revenue Records after Resurvey / Town Survey and an erroneous entry has been made in respect of R.S.No.80/3 Apt (Ward 'H' Block-7, T.S.No.5/1) and R.S.No.80/10 (Ward 'H' Block – 7, T.S.No.14) of 14-Keezhakasakudy Revenue Village. Therefore, the proceedings of the Settlement Officer, Karaikal in No.56/ST/KKL/08 dt.23.10.2009 and the proceedings in S.P.No.1874/ST-I/E-4/2002 dt.18.06.2003 **is set aside and quashed** and it is ordered that the name of the temple namely **Arulmigu Adipureeswarar Thirukoil** be substituted as the only Registered Holder in respect of the land bearing Ward 'H' Block -7, T.S.No.5/1 R.S.No.80/3A pt of 14-Keezhakasakudy Revenue Village and Ward 'H' Block – 7, T.S.No.14, R.S.No.80/10 of 14-Keezhakasaudy Revenue Village of Karaikal District of Union Territory of Puducherry and all the earlier entries be deleted and thus the Appeal filed by the President, Arulmigu Adipureeswara Swamy Devasthanam is allowed. The Appellant/Respondents or any other interested parties shall be at liberty to apply for change of Registry after the title is decided by the

Competent Court."

34. The learned counsel for the 1st respondent, at the outset, contended that mere Notarial Partition deed is insufficient to establish title of a person regarding the immovable property. The partition deed was executed between the brothers, who all are the plaintiffs and such a document cannot be relied upon for the purpose of granting the declaration of title. Secondly, the suit schedule properties are situated around the Temple and now under the encroachment of all these persons. The Temple properties were encroached and now the appellants/plaintiffs are attempting to grab the property belongs to the Temple. The Inscriptions maintained by the Government of India categorically reveals that the suit schedule property was given by 'Cholas' for the benefit of the Temple and now, the plaintiffs are attempting to grab the property by creating a partition deed and admittedly no ancestral documents were filed to establish the title of the appellants plaintiffs. Thus, the findings arrived by the trial Court is in accordance with law and there is no infirmity and consequently, the appeal suit is liable to be dismissed.

35. The learned Senior counsel for the appellant, in reply, reiterated that it is the 1st respondent Temple based on the

inscriptions, attempting to take away the property belongs to the appellants/plaintiff and the 1st respondent Temple, at no point of time, has established their title with reference to the suit schedule property and therefore, the appeal is to be allowed.

36. Considering the arguments as well as the grounds raised and the documents relied on by the parties, this Court is of the considered opinion that the appellants/plaintiffs admittedly have not produced any ancestral documents to establish their title over the suit schedule property. Contrarily, the appellants/plaintiffs have produced the Notarial partition deed, dated 11.09.1961 admittedly between the brothers and relying on the said partition deed, they have made an attempt to establish the title regarding the suit schedule property. The appellants/plaintiffs have taken an effort to disprove the case of the defendants by stating that the Government Gazette of Puducherry bearing No.168 reveals that the suit schedule properties are not added in the Government Gazette, wherein the properties belong to the Temple are notified, in view of the fact that the property details are not available. It is to be understood that the appellants/plaintiffs are holding title over the suit schedule property. The appellants have relied on the patta Ex.A6 & Ex.A7. Based on the patta, it is contended

that the patta was granted subsequent to the partition deed and the appellants/plaintiffs are in possession of the suit schedule property and therefore, they are entitled for the relief of declaration and permanent injunction.

37. This Court is of the considered opinion that mere patta would not confer any title in respect of an immovable property. The revenue records alone cannot be the basis for grant of declaration of title. The patta, which is a revenue record, is issued based on certain particulars provided by the person, who seeks patta before the revenue authorities and therefore, the same cannot be construed as a conclusive proof for grant of title. Thus, the trial Court has rightly arrived a conclusion that the patta will not confer any title and therefore, the plaintiffs are not entitled to claim title based on the patta issued by the revenue authorities.

38. With reference to the Notarial partition deed, the appellants relied on certain judgments by stating that the Notaires appointed by the French Government, in normal circumstances, verify the title of the person and thereafter, signed the deeds. Therefore, the genuinity attached to the Notarial deeds are to be considered by the trial Court.

This Court considered that even assuming that the Notarial partition deed is a valid document, it is not sufficient to arrive a conclusion that the appellants/plaintiffs are entitled for a declaration of title only based on such partition deed. Beyond such partition deed, the other documents establishing title, are certainly imminent and based on a mere partition deed, no person can claim title in respect of an immovable property. Admittedly, the partition deed is between the brothers. While so, no sanctity can be attached with reference to the claim regarding title. The title of an immovable property is to be proved with acceptable documents. Partition deed though between the parties are genuine, the same would not constitute as a valid record to establish the title regarding an immovable property. Except partition deed, Ex.A1 & Ex.A2, the appellants/plaintiffs have not produced any document before the trial Court for the purpose of establishing their title with reference to the suit schedule property. When there is no other document except the partition deed and patta is produced, this Court is of the considered opinion that the doubt raised by the trial Court is genuine and the same would be confirmed as a right perception with reference to the appreciation of the documents and there is no infirmity as such.

39. The contention of the learned Senior counsel appearing on behalf of the appellants that the Notaire in French Government, used to verify the title, cannot be taken as an conclusive evidence, so as to grant the relief of declaration of title. Even in case, the appellant claims that the partition deed was executed in the presence of the Notaire and the Notaire also has verified the documents relating to the title deeds, the Court cannot come to the conclusion that the Notaire would have done title verification and thereafter, signed the partition. Such a presumption is inadmissible in law. Based on such presumption, the declaration of title cannot be granted. Declaration of title regarding an immovable property is to be granted only with reference to certain definite documents to establish the title.

40. In the present case, the partition deed, which is attested by the Notaire of French Government, cannot be a valid one for the purpose of granting the relief of declaration of title regarding an immovable property. Thus, the trial Court has made a finding, which is in consonance with the legal principles.

41. The learned Senior counsel appearing on behalf of the appellants is of an opinion that the 1st defendant has not established

their title and therefore, the plaintiffs are entitled for the relief of declaration. By shifting the burden of proof on the side of the 1st respondent, the plaintiff cannot get the relief. Such a negative relief is inadmissible in law. The plaintiff, who instituted the suit for declaration is expected to prove his case at the first instance. Non production of the title documents by the 1st respondent Temple would not be a ground for the appellant plaintiff to seek for the relief of declaration of title. Therefore, the very contention made by the appellants in this regard deserve no merit consideration. However, the 1st respondent Temple solicited the attention of this Court regarding the South Indian Inscriptions, maintained by the Director General, Archaeological Survey of India. As per the inscriptions, the properties were given by 'Cholas' in favour of Arulmigu Adipureeswarar Thirukoil, Keezhakasakudy Revenue village of Karaikal District.

42. The inscription reveals that the properties were given to the Temple during the Chola Period and when such a document is produced before the trial Court, the trial Court has rightly considered those documents and rejected the relief of declaration sought for by the appellants/plaintiffs. When the plaintiffs have not proved their title beyond any pale of doubt, the plaintiffs cannot claim title by drawing

certain inferences. Inferences cannot be a ground for grant of the relief of declaration of title. Inferences can be drawn, if corroborative evidences are available and not otherwise. Thus, the Courts are to be cautious, while drawing factual inferences and under these circumstances, the rejection of partition deed for grant of the relief of declaration by the trial Court is in accordance with law. Even the inscriptions produced before the trial Court was well considered by the trial Court in Paragraph 13 and the said findings are extracted hereunder:

> "13.The defendants claimed the properties that it belong to the defendant temple, Adheepureeswarar Thirukoil. With the consent of the parties, Ex.B8, South Indian Inscription Volume VII 1986 Edition Archaeological Survey of India edited by K.V.Subramania Iyer, Superintendent for Epigraphy marked at Page 484 & 485 contained in Ex.B8 is marked as Ex.B9. The same inscription is also published in Pudhucherry Inscription Part I Collection of Indologie – 83.1 by the Institute Francaise de Pondichery Ecole Francaise d' Extreme – Orient in the year 2006 is marked as Ex.B3 & B4 .The inscription on the Northern Wall of the Athiappan Shrine at Keezha Kasakudy is translated as follows:
>
> 511. கீழ்காசாக்குடி–ஆதியப்பர் கோயில், மேற்குச் சுவர், அடிப்பகுதி சோழர், இரண்டாம் இராசராசன். 10 மேஷம். அபரபட்சம்,

அஷ்டமி, அவிட்டம் செவ்வாய்கிழமை (கி.பி.1156).....

கஆ 392/1902 தெஇக 7/1024, கல்வெட்டின் தொடக்கப்பகுதிகளின் மேல் கட்டடம் கட்டப்பட்டுள்ளது.....

சேரகுட்டனூர் திருவாதீஸ்வரமுடைய நாயனாருக்குத் தீருநந்தாவிளக்குப் புறமாக நிலம் விடப்பட்ட செய்தி குறிப்பிடப்படுகிறது.

The above inscription explains that one Narayana Pattan given the land for lighting stand Thiru Nanda Vilakku to the temple situate at Sera Kuttanur named Thiruvadhi Udaya Nayanar with the description of four boundaries as follows:

கீழ்பாற்கெல்லை துர்ப்பில் முத்த நாராயன பட்டன் உள்ளிட்டார் கொல்லைக்கு மேற்கும், தென்பாற்கெல்லை கடலாடு பெறுவழிக்கு வடக்கு, மேற்பாற்கெல்லை துற்பில் எல்லைக்கு கிழக்கும், வடபாற்கெல்லை புன்செய் வாய்க்காலுக்கு தெற்கும் ஆக இசைத்த பெருநான்கெல்லையுள் நடுவுபட்ட.....நிலம் 4 மா.

The inscription given in No.7/1025 is translated as follows:

512. கீழ்க்காசாக்குடி–

ஆதியப்பர் கோயில்– வடக்கு, கிழக்கு, மேற்குச் சுவர்கள், அர்த்தமண்டபம், கருவறை அடிப்பகுதிகள் (அதிஷ்டானத்தின் ஜகதிப்பகுதியிநிருந்த கல்வெட்டுப் பகுதிகள் இன்று காணப்படவில்லை.

முதல் வரியில் கிழக்கு சிறுத் தொண்டர் விளாகம், இரண்டாம் வரியில் எடுத்த பாதபட்டன் நள்ளாறு தேவபட்டன், மூன்றாம் வரியில் உள்ளிட்டார் பக்கல் விலை கொண்ட, நான்காவது வரியில் வடக்கு குண்டூர் பசுபதிபட்டன் உள்ளிட்டார், ஐந்தாம் வரியில் கட்டளை இரண்டாம் கண்டத்து திருஞானசம்பந்தர் விளாகம், ஆகிய தொடர்கள் புதிதாகக் கண்டறியப்பட்டு ஏற்கனவே அறியப்பட்டனவோடு சேர்க்கப்பெற்றன. இவை இரண்டு அஃடானத்தின் மேற்கு, தெற்கு, ஜகதிப்பகுதிகளில் காணப்படுகின்றன. முடிவுப் பகுதிகள் புதிதாகக் கட்டப்பெற்ற சுவருக்குள் மறைந்துள்ளன.)

சோழர். இரண்டாம் இராசராசன், 10+1, கி.பி. 1157

கஆ 393/1902, தெஇக 7/1024 (இக்கல்வெட்டின் ஒரு பகுதி மட்டும் வெளியிடப்பட்டுள்ளது)

அரசனின் 11 ஆவது ஆட்சியாண்டில் தேவதான, இறையிலி நிலங்கள் அளக்கப்பட்டமையைத் தெரிவிக்கிறது. மேலும் அன்று விளங்கிய நந்தவனங்கள், பிற முக்கியமான இடங்கள் ஆகியவற்றின் பெயர்கள் குறிப்பிடப்பெற்றுள்ளன. தேவார முதலிகளுக்கிருந்த செல்வாக்கினை இவை காட்டுகின்றன.

It is translated giving a meaning that the king, Raja Raja donated the land for park (Thirunandavanam) 4 Mas within the boundaries of:

உதய சந்திர வாய்க்காலுக்கு தெற்கு,

மேலைத் தெருவில் கீழ்சிறகில் திருநந்தவனம் நிலம்.

And also a land situated on the South of கடலாடு பெறுவழி;
On the east of Keezha Theru for part to an extent of 321 ½ Kuzhy.
And also a land measuring 179 ¼ kuzhi for Thirukurippu Thondar Vilagam.
And a land for Thirugnana Sambandar Park comprised within the boundaries of:
North of Kalukku Vadakku, West of Mela Peruvazhi, South of Nedungulam measuring 1143 ½ Kuzhi.

புன்செய் ஒட்டுக்கு இருக்கும் கல்லுவாய் குழி 150. This land is situated to the East of Keezha Vaikal and another boundar for that land is Sankara Vaikal. Another land also given for park(Nandavanam) named Aalala Sundara Vilagam measuring 547 Kuzhies; another land named Vigna Vinayagar Vilagam measuring 532 Kuzhies, 2 Mas. In all the properties described in Ex.A2, the Vaikal taken a permanent role for identifying the lands. Here also, the boundaries given in these lands and the lands named with a specific ancient name was available around the temple of the defendant."

43. Perusal of the evidence of P.W.1, who deposed before the trial Court that "Our family is the descendants of Chola Dynasty. Our

ancestors were managing the properties of Chola Dynasty in Karaikal". The deposition made by P.W.1 is not trustworthy as there is no possibility of claiming descendants of Chola Dynasty without any evidence to establish the same. Thus, mere statement stating that the family of the plaintiff is the descendants of Chola Dynasty is unacceptable and cannot be trusted upon.

44. This being the categorical findings of the trial Court and the 1st defendant is able to establish that the properties in and around the Temple are belonging to the Temple and the appellants/plaintiffs and few other persons are in illegal possession of the suit schedule property.

45. The learned counsel for the 1st respondent brought to the notice of this Court that some other persons were also in illegal possession of the Temple properties and authorities are initiating steps to evict all those illegal occupations made in the property belong to the 1st respondent temple. Undoubtedly, the Temple properties are to be used for the welfare of the Temple and its development. Encroachments or illegal possession are to be evicted by following the procedures as contemplated. Thus, there is a force in the argument

and this Court is of the considered opinion that the appellants/ plaintiffs cannot made an attempt to derive title by stating that the 1st defendant has not proved their title. When the appellants/plaintiffs have not proved their title at the first instance before the trial Court, they are estopped from saying that the 1st defendant has not established their title. However, the fact remains that the 1st respondent Temple established their title through various documents including the inscriptions available in the Temple. When the inscriptions are very much available and such inscriptions are recorded in South Indian Inscriptions, Volume VII, maintained by the Director General, Archaeological Survey of India and there is a clear version regarding the gifting of the property in favour of the Temple by the Dynasty of Raja Raja Cholan.

46. Thus, this Court has no hesitation in arriving a conclusion that the 1st respondent has established their title with reference to the suit schedule property and the appellants/plaintiffs has not placed any record to establish their title and the trial Court also considered all the documents in the right perspective and in consonance with the legal principles for grant of the relief of declaration of title of an immovable property, and there is no perversity or infirmity in arriving a

conclusion for the dismissal of the suit instituted by the appellants/plaintiffs.

47. The facts and circumstances placed before this Court reveals that there are many encroachments of Temple land, more specifically, adjacent to the Temple itself. The Temple administration under the Hindu Religious and Charitable Endowments Act [HR & CE Act] is duty bound to prevent all such encroachments by following the procedures as contemplated under the said Act. It is needless to state that it is the duty mandatory on the part of the authorities to ensure that the Temple properties are protected and utilized for the welfare of the Temple and Devotees as well as for the public at large. This being the spirit of the Hindu Religious and Charitable Endowments Act, the authorities cannot commit any violation or lapses in the matter of removing encroachments and implementing the said Act scrupulously.

48. Consequently, the judgment and decree dated 31.10.2007 passed in O.S.No.10 of 2014 is confirmed and the appeal suit in

A.S.No.533 of 2009 stands dismissed. No costs. Connected miscellaneous petitions are closed.

25.02.2020

Index:Yes
Internet:Yes
Speaking order
Kak

To

The Additional District Judge,

Pondicherry at karaikal.

S.M.SUBRAMANIAM, J.

Kak

A.S.No.573 of 2009

25.02.2020