

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4021 OF 2007

AMBIKAPATHI AMMAL & ANR. . . APPELLANTS

VERSUS

SRI KANDASWAMY KOIL BY ITS
EXECUTIVE OFFICER THIRUPORUR . . . RESPONDENT

WITH

CIVIL APPEAL NO.4590 OF 2007

CIVIL APPEAL NO.738 OF 2008

JUDGMENT

RANJAN GOGOI, J.

1. These three appeals seek to challenge the common order of the High Court of Judicature at Madras dated 29th January, 2007 passed in Second Appeal Nos.

543 to 545 of 1994 by which the decree of the dismissal of the suits filed by the plaintiff has been reversed by the High Court.

2. We have heard the learned counsels for the parties.

3. The common case of the plaintiff as pleaded in the suits filed is that the plaintiff is the owner of the suit properties by virtue of Patta No.1 granted to it and that the defendants are either lessees under the plaintiff or sub-lessees/sub-assignees under the lessees of the plaintiff. According to the plaintiff, the defendants had stopped rendering

service to the temple and had also not paid the rent due. Instead they had set up title to the suit properties. The leases were accordingly terminated by issuing notices under Section 106 of the Transfer of Property Act. Thereafter, the suits for declaration of title and recovery of possession were instituted.

4. The defendants in each of the suit contested the case of the plaintiff and filed their written statements. According to the defendants, the suit properties belonged to them by inheritance; the plaintiff is not the owner thereof. In any case, according to the defendants, they had acquired title to the suit

properties by prescription on account of their long possession. The defendants had filed additional written statements in each of the case contending that they were permanent ryots under the Tamil Nadu Estates Land Act, 1908 (hereinafter referred to as "the 1908 Act") and that the suit properties are included in an estate which was abolished under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter referred to as "the 1948 Act"). Hence, according to the defendants, the plaintiff had no locus to institute the suits in question.

5. The learned trial Court, as also the

first appellate Court, took the view that Patta No.1 on the basis of which the plaintiff had claimed title had not been exhibited. Thereafter, the learned trial Court and the first appellate Court went into the case pleaded by the defendants and held that the rent receipts issued by the plaintiff to the defendants (Exhibits B4, B5 to B8, B12 to B22 and B27 to B37) establish that the suit properties were an estate under the 1908 Act and further that by virtue of the 1948 Act the said estate stood abolished. On this additional ground also the learned trial Court as well as the first appellate Court decided against the plaintiff.

6. The High Court in Second Appeal framed the following substantial questions of law for adjudication.

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| "(1) | Whether the finding that Thiruporur is an estate taken over under Act 26/48 is based on no evidence? |
| (2) | Whether patta holders under EKABOGAM Mirasidar can claim title to the lands? |
| (3) | Whether the defendants can claim title by prescription?" |

JUDGMENT

7. In answering the aforesaid questions the High Court admittedly did not deal with the rights of the plaintiff under the Patta as claimed i.e. Patta

No.1. Instead, the High Court relying on the rent receipts issued by the plaintiff wherein the plaintiff had described itself as EKABOGAM Mirasidar proceeded to determine the status of Mirasidars and the special incidents of mirasi tenures relying on its own decision rendered in Ramalinga Mudali and another vs. T.S. Ramasami Ayyar [AIR 1929 Madras 529] and C.N. Varadappan vs. The State of Madras represented by the Collector of Chingleput at Saidapet, Madras and others [1963 (1) MLJ 405]. On such consideration, the High Court came to the conclusion that the title and ownership of the suit properties vested in the plaintiff as a Mirasidar.

The claim of the defendants to being permanent ryots under the 1908 Act on the basis of the rent receipts issued under Section 63 of the said Act was negatived by the High Court on the ground that the said receipts were printed receipts also covering another village which was a Inam village. Insofar as the 1948 Act (Abolition Act) is concerned, the High Court took the view that the notification required to be published under Section 1(4) of the 1948 Act was not brought on record by the defendants; neither the follow up steps as required under Sections 11 and 16 had been proved by the defendants. Accordingly it was held that

the defendants had failed to prove that the 1948 Act had any application. Similarly, on finding that the evidence on record failed to establish the continuous possession of the defendants, the claim of acquisition of title by prescription as set up by the defendants was dismissed.

8. Shri Jaideep Gupta, learned Senior Counsel appearing for the appellants in Civil Appeal No.738 of 2008, has strenuously urged that Patta No.1 on the basis of which the plaintiff had claimed title not having been proved the High Court ought not to have proceeded to consider the defendants' case at all. In

any view of the matter, even the adjudication of the defendants' plea is vitiated by apparent illegalities inasmuch as the rent receipts issued by the plaintiff to the defendants were under Section 63 of the 1908 Act. The said fact by itself, according to the learned counsel, had proved that the suit properties were included in an estate under the 1908 Act. Shri Gupta has further urged that even if the defendants can be understood not to have proved the abolition of the estate under the 1948 Act, the defendants had acquired the status of occupancy ryots under the 1908 Act which vested in them a permanent right

of occupancy besides heritable and transferable rights to the land. The above arguments have been adopted by the learned counsel for the appellants in the two other appeals under consideration.

9. Opposing, Shri K. Ramamoorthy, learned Senior Counsel appearing for the respondent-plaintiff, has urged that the Patta No.1 being a century old document could not have been legitimately placed before the Court as an exhibit in the case. Shri Ramamoorthy, in this regard, has drawn the attention of the Court to Exhibit A-21, the Thiruporur Village Resettlement Register, which, according to him, would establish the existence of

Patta No.1 in favour of the respondent-plaintiff. Shri Ramamoorthy by relying on the decision in Ramalinga Mudali and another vs. T.S. Ramasami Ayyar [AIR 1929 Madras 1929] has urged that under the land tenures legitimized during the British regime the plaintiff acquired the status of Mirasidar which vested ownership rights in the suit land in favour of the plaintiff. Insofar as the applicability of the 1908 Act is concerned, Shri Ramamoorthy has drawn the attention of the Court to the findings recorded in this regard by the High Court. It is contended that the rent receipts were issued in a printed format both for Thiruporur Village

as well as for Thandalam village and the latter village was Inam estate. No positive conclusion, therefore, can be drawn with regard to the status of the defendants under the 1908 Act. In any case, according to Shri Ramamoorthy, the defendants had failed to establish that the estate, even if assumed to exist, was abolished under the 1948 Act.

10. The plaintiff's case was based on Patta No.1. Admittedly, the said Patta was not exhibited. According to the respondent-plaintiff, Exhibit A-21 establishes the grant of the aforesaid Patta No.1 in favour of the plaintiff. We have perused the said exhibit which is a

Land Resettlement Register. Undoubtedly, the said exhibit, *inter alia*, shows that Patta No.1 is in favour of Singaravelu Mudali Manager for the time being of Sri Kandaswamiyar Devasthanam. Beyond the above, Exhibit A-21 does not throw any further light on the nature and extent of the rights conferred on the plaintiff by Patta No.1. There is also no oral evidence on record to explain the nature of the rights granted under Patta No.1. In such a situation, the materials on record do not permit any conclusive determination of the title of the plaintiff on the basis of Patta No.1. As the existence of Patta No. 1 had been

proved but the nature of the rights under the Patta was not clear, one cannot find any fault with the exercise undertaken by the High court to determine the claims of the parties on the basis of preponderance of probabilities and in this regard by seeking to examine the status of the plaintiff as Mirasidar. However, the High Court appears to have acted a little hastily in accepting the status of the plaintiff as Mirsadars solely on the basis of the description contained in the rent receipts and further in accepting the position that as Mirsadars the plaintiff had been vested with title to the suit land. In C.N. Varadappan vs. The State of

Madras represented by the Collector of Chingleput at Saidapet, Madras and others

[1963 (1) MLJ 405] it was held and in our opinion correctly that a mere recital in a document that a person was a ekabogam mirasdar or the mere fact that he was the sole owner of kaniachi manyam at a given time would not necessarily show that he was the owner of the entire kudiwaram in the village at the time of a shrotriem grant to him. The meaning of all such expressions have been clearly elaborated in the judgment of the High Court and would not need a recital again. Furthermore, a reading of the judgment in Ramalinga Mudali and another vs. T.S.

Ramasami Ayyar (supra) would go to show that the status of Mirasdar differs from village to village and the exact status of a Mirasdar is best determined on the basis of the evidence that may come on record. In the present case, the High Court proceeded to recognize the status of the plaintiff as a Mirasdar and the right/title of the plaintiff to the suit land on that basis without there being any evidence of such status (Mirasdar) of the plaintiff the nature and extent of the right held and enjoyed by the plaintiff, even if its status as Mirasdar is assumed.

11. Insofar as the question raised by the defendants with regard to the suit

land being included in an estate under the 1908 Act is concerned, we find that the High Court had not given any specific finding in this regard but has proceeded to answer the question from an entirely different standpoint, namely, that the rent receipts issued were printed both for Thiruporur Village and Thandalam village and that Thandalam village was Inam estate which was taken over under the 1948 Act. On the above basis, the High Court had concluded that the abolition of the estate under the 1948 Act was not proved by the defendants.

12. Even if the abolition of the estate under the 1948 Act had not been

proved by the defendants, if the suit land is included in an estate under the 1908 Act and the defendants were tenants under the plaintiff the same would confer certain specific rights on the defendants under Section 6 of the 1908 Act. Such rights which would flow from their status as occupancy tenants would entitle the defendants to remain in possession with heritable and transferable right in respect of the land. The issue before the High Court therefore needed to be resolved on more surer foundation that what has been done.

13. The foregoing discussions lead us to the conclusion that the findings with

regard to the title of the plaintiff on the basis of Patta No.1 (Exhibit A-21); whether the plaintiff was Mirasdar and, if so, the extent of their rights and further whether the suit properties were included in an estate under the 1908 conferring the defendants the status of occupancy ryots; all would require a fresh determination. In the above situation it will not be proper and appropriate to maintain the findings of the High Court as recorded in the impugned order. We, therefore, set aside the order of the High Court and remand the matter for fresh decision on the issues indicated above. The High Court, if it so requires, may permit the

parties to adduce additional evidence for the purpose of full and complete adjudication of the issues indicated in the present order. Consequently and in the light of the discussion that has preceded, we allow these appeals to the extent indicated above.

....., J.
(RANJAN GOGOI)

....., J.
(N.V. RAMANA)

NEW DELHI JUDGMENT
MARCH 10, 2015.