(Title To Item 1 Property At The ... vs Palaniappa Pulipanipathira Swamigal ... on 1 March, 2024

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Bench: N.Seshasayee

S.A.(MD) Nos.589
and S.A.(MD) Nos.6

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

S.A.(MD) Nos.589, 590 of 2015 &
and S.A.(MD) Nos.652 & 653 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

CORAM : JUSTICE N.SESHASAYEE

Reserved on : 03.07.2023

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S.A.(MD) Nos.589, 590 of 2015 &

and S.A.(MD) Nos.652 & 653 of 2022

S.A(MD) Nos.589 & 590 of 2015 :

The Executive Officer,
A/M.Dhandayuthapaniswami Devasthanam,
Palani. ... Appellant in both appeals
3rd Respondent/3rd Defendant

Vs

Palaniappa Pulipanipathira Swamigal (Died)

1.Sri Sivanandha Pulipani Swamigal
S/o.Sri Palaniappa Pulipanipathira Swamigal
Pulipani Ashram, Giri Street, Palani.
... 1st Respondent in both A
Appellant/Plainti

2.The State of Tamil Nadu, Rep., by
The District Collector, Dindigul.

3.The Commissioner, HR & CE.,
(Administration) Department,
Holding his office at Nungambakkam,
Chennai-34. ... Respondents 2 & 3 in both Appeal
Respondents 1 & 2/Defendants 1 & 2

S.A(MD) Nos.652 & 653 of 2022 :

The Commissioner
Hindu Religious and Charitable Endowments
(Administration) Department
holding his Office at
Nungambakkam, Madras - 600 034. ... Appellant in both appe
2nd Respondent/2nd Defenda

Vs

Palaniappa Pulipanipathira Swamigal (Died)

1.Sri Sivanandha Pulipani Swamigal
S/o.Sri Palaniappa Pulipanipathira Swamigal
Pulipani Ashram,

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2.The State of Tamil Nadu, Rep., by
The District Collector,
Dindigul. ... 2nd Respondent in SA.(MD)No.652 of 20
... 3rd Respondent in SA.(MD)No.653 of 20
3rd & 1st Respondent / Defendants

3.The Executive Officer,
Arulmighu Dhandayuthapani Swami Devasthanam,
Palani. ... 3rd Respondent in SA.(MD)No.652 of 20
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S.A.(MD) Nos.58
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Prayer in S.A.(MD) No.589 of 2015: Appeal filed under Section 100 o
Civil Procedure Code to set aside the judgment and decree dated 23.
in A.S.No.78 of 2001 on the file of Additional District Court, Dind
partly allowing the judgment and decree dated 22.02.2001 made in
O.S.No.105 of 1999 on the file of Subordinate Court, Palani.

Prayer in S.A.(MD) No.590 of 2015: Appeal filed under Section 100 o
Civil Procedure Code to set aside the judgment and decree dated 23.
in A.S.No.79 of 2001 on the file of Additional District Court, Dind
reversing the judgment and decree dated 22.02.2001 made in O.S.No.1
1999 on the file of Subordinate Court, Palani.

Prayer in S.A.(MD) No.652 of 2022: Appeal filed under Section 100 o
Civil Procedure Code to set aside the judgment and decree dated 23.
made in A.S.No.78 of 2001 on the file of Additional District Court,
in partly allowing the judgment and decree dated 22.02.2001 made in
O.S.No.105 of 1999 on the file of Subordinate Court, Palani.

Prayer in S.A.(MD) No.653 of 2015: Appeal filed under Section 100 o
Civil Procedure Code to set aside the judgment and decree dated 23.
made in A.S.No.79 of 2001 on the file of Additional District Court,
in reversing the judgment and decree dated 22.02.2001 made in O.S.N
of 1999 on the file of Subordinate Court, Palani.

S.A.(MD) Nos.589
and S.A.(MD) Nos.65

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Advocate General
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In S.A.(MD) Nos.652 & 653 of 2022 :

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Advocate General
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Additional Government Pleader

For Respondents : Mr.V.Raghavachari, Senior Counsel
assisted by Mr.S.Madavan for R1

Mr.AR.L.Sundaresan, Senior Counse
for Mrs.A.L.Gandhimathi
for R3 in S.A(MD).No.652 of 2022
for R2 in S.A(MD) No.653 of 2022

Mr.R.Shunmuga Sundaram
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for R2 in S.A.(MD) No.652 of 2022
for R3 in S.A.(MD) No.653 of 2022

S.A.(MD)
and S.A.(MD

COMMON JUDGMENT

Introductory:

1. This batch of four-second appeals arises from two separate suits, viz.,

(a) O.S.105 of 1999 and (b) O.S.No.106 of 1999, both instituted by the same plaintiff before the Sub Court, Vedasandur. These suits were earlier instituted before the Sub Court, Dindigul as O.S.No.101 of 1982 and O.S.No.97 of 1983 respectively.

2. An outline of the disputes involved in the two suits is as follows:

a) The dispute in O.S. 101 of 1982 pertains to the title to certain property at the foothills of Palani Hills, where Pulippani Pathira Ashram is located. The controversy in O.S.97 of 1983 pertains to the right of management of the 'Bogar Samadhi' at the top of the Palani hill, located within the precincts of Dhandayuthapani Swami temple.

b) In both the suits, ancillary reliefs of prohibitory injunction were also sought against the officials of the Hindu Religious and Charitable Endowments (hereinafter HR & CE) Department, the defendants in the suits, from interfering either with the plaintiff's possession of the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 suit property as in O.S.No.101 of 1982 or with the right of management of 'Bogar Samadhi' as in O.S.No.97 of 1983.

3.1 Both the suits came to be tried jointly by the Sub Court, Dindigul, and these suits were dismissed on the ground that the plaintiff had not issued a pre-suit statutory notice under Sec. 80 CPC. The matter was taken in appeals by the plaintiff, which overturned the ground of dismissal of the trial Court, and remanded the matter for de novo consideration. 3.2 By now, a Sub Court was established in Vedasandur. These suits were remanded to the file of that Court, where they were taken on record as O.S.105 of 1999 and O.S. 106 of 1999. Both the suits were jointly tried by the learned Sub Judge, Vedasandur and were eventually dismissed vide a decree dated 22.02.2001. Promptly, the plaintiff preferred first appeals to the District Court in A.S.Nos.78 of 2001 and A.S.79 of 2001 respectively against the decree passed in O.S.Nos.105 of 1999 and 106 of 1999. On 23.06.2015, the first appellate Court allowed both the first appeals. The judgement and decree of the first appellate court are challenged in the instant appeals.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 3.3 The second appeals are preferred both by the Executive Officer of the Dhandayuthapaniswamy Devasthanam, Palani, and the Commissioner, H.R.&C.E., who were the

3rd & 2nd defendants in O.S.105 of 1999, and 1st and 2nd defendants in O.S.106 of 1999 respectively. The details are tabulated below:

Original Suit	First Appeal	Second Appeal	Appellant in S.A.
E.O of the Devasthanam O.S.No.105 of 1999	A.S.No.78 of 2001	S.A.(MD)No.589 of 2015	S.A.(MD)No.652 of 2022
The Commissioner (HR&CE) Department			
E.O of the Devasthanam, O.S.No.106 of 1999	A.S.No.79 of 2001	S.A.(MD)No.590 of 2015	S.A.(MD)No.653 of 2022
The Commissioner (HR&CE) Department			

Other than the question involving title to the property where the plaintiff's ashram is located and the right of management of Bogar samadhi, the appellants also have raised two other questions: (a) The jurisdiction of the civil court to entertain the dispute raised in O.S.106 of 1999 (relates to right of management of Bogar Samadhi) is barred under Sec.108 of the H.R. & C.E Act, and (b) the extent of authority which the officials of HR & CE Department assert vis-a-vis the rights claimed by the plaintiff under Sec.63 of the Act. They will be dealt with at appropriate places of this judgement. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Structure of the Judgement

4. Both suits have their distinctive features since the core fact constituting the cause for the respective actions are different. Hence this Court chooses to discuss both the suits separately. Part A will deal with the title suit in O.S.105/1999, whereas in Part B, the dispute raised in O.S.106/1999 will be considered. It is however, added that this compartmentalisation done for convenience is not straight-jacketed, and there may be occasional references to the suit in one part while considering the case dealt in the other part.

PART A O.S.105 of 1999 (Title to item 1 property at the foothills) Pleadings

5. This suit relates to the title to the suit property at the foot of Palani Hill, the abode of Lord Dhandayudhapaniswami. The suit properties and the reliefs claimed are now introduced:

There are four schedules of properties described in the plaint. They are either the whole, or part of the whole, and are said to be comprised in T.Sy.No.862/2 of Palani Town. The details are :

a) Item No.1 is a site measuring 198 ft x 140 ft (27,720 sq.ft.) with https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 thatched-roof constructions, within which 'Agadi Samathi', 'Thottichi Ammal Temple' and 'Asari Madam' are located;

b) Item No.3 is part of Item No.1 property, and it is described as a plot measuring 39.9 ft x18 ft (718.2 sq. ft);

c) Item No.4 is another part of Item No.1 property, and it measures 26.6 ft x 10 ft (266 sq.ft.);

d) Item No.2 is [Item 1 - (Item 3 + Item 4)].

There are three principal reliefs sought, and they are: (a) to declare that Item No.1 & 2 absolutely belonged to, and enjoyed by the plaintiff; and (b) for allied relief of prohibitory injunction not to interfere with their possession and enjoyment; the last set of reliefs pertain to the recovery of vacant possession of Items Nos.3 and 4. 6.1 The cause of action for the suit rests on the following facts:

a) The plaintiff is Palaniappa Pulippani Pathira Swamigal. He died pending the first appeal, and his successor is Sivanandha Pulippani Swamigal. The present Pulippani Pathira Swamigal, is currently in the management of Pulippanipathira Ashram established in Item No.1.

b) Some 5000 years ago, Bogar, a Siddhar1 brought into existence a 1 Siddha or Siddhar are spiritual masters gifted with immense spiritual and other intuitive powers and are also known to be masters in various branches of sciences and medicine.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 'Nava-pashaana Vigraham' or deity of Sri Dhandaythapaniswami and consecrated it at the Palani hills. He had a disciple named Pulipani or Adhi Pulipani. He (Adhi Pulipani) was performing pooja to the deity (Dhandayudhapani), which Bogar had consecrated. His descendants constituted a lineage of Pulipani Pathira Swamigal, and they were performing pooja to Dhandayudhapani. (Ext.A.4 is a publication of the Pulipani Ashram which provides a list of Pulipani Swamigal tracing their genealogical lineage to Adi Pulipani.

c) While so, the territory where the Palani hills are located came under the rule of the Naickar dynasty. A certain Dalavoy Ramappaiyer, a military general of Thirumalai Naickar (the prominent among the rulers of the Naickar dynasty and ruled Madurai), had arrived at the temple and decided to replace Pulipani Swamigal, a non-brahmin, with brahmin Adhi Saiva Sivachariya for officiating as priests of the temple. In exchange, he had granted three distinct privileges to the ancestors of the plaintiff, namely, (i) the right of general superintendence of the temple; (ii) certain annual emoluments; and

(iii) performing certain rituals viz., shooting the arrow, which symbolises the destruction of demon/rakshas Indumbasura by the presiding deity of the temple during Dusserah festival. This is https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 inscribed on a copper plate, dated the 16 th day of Tamil month Thai of Salivahana year 1399. (The contents of the copper plate inscription are reproduced in the publications of the appellant marked as Ext.A4 and Ext.A59). Ever since, the honours or privileges conferred by Dalavoy Ramappier are being continued to be enjoyed by every successive Pulipani Pathira Swamigal till date.

d) This apart, the plaintiff also has the right to officiate as priest of Bogar Samadhi (which is the subject matter of litigation in O.S.No.106/1999).

e) Within item 1 is situated a thatched-roofed accommodation for Pulippanipathira Swamigal who holds the office for the time being, and other family members. Besides, there is a madam which is known by the name Asari Madam where in are placed a few deities namely Thottiochi Amman, Thanjavur Amman, and Valliamman. (As referred to in paragraph 5 above, Item No.1 property is called the 'Agadi Samathi').

f) In a portion thereof, the mortal remains of the earlier Pulippani Pathira Swamigal and his family members had been interned. For interning the mortal remains of then Pulippani Pathira Swamigal, permission of the Municipality was sought, and the Commissioner of https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Palani Municipality had issued Ext.A17 proceedings dated 07.09.1938, for the purpose.

g) Long before this, on 15.11.1844, a certain Kumara Kondama Naicker, the then Zamindar of Ayakudi, had issued Ext.A-6 memorandum to the ancestor of the current Pulipanipathira Swamigal, who was then in charge of the affairs of the ashram, declaring that item No.1 property had been in the enjoyment and possession of the plaintiff's predecessor in interest from the day of Karnataka Rajas, and that Item No.1 was the absolute property of Pulippani Pathira Swamigal.

h) Be that as it may, the Tahsildar of Palani had issued Ext.A15, notice dated 06.08.1948 under Sec. 7 of the Land Encroachment Act to the plaintiff's predecessor to vacate the suit item No.1 and this was dropped by the Sub Collector, Dindigul vide Ext.A-18 proceedings.

i) Subsequently, the Palani Devasthanam had sent a notice to the predecessor of the plaintiff claiming title to Item No.1 and this was replied to by the plaintiff's predecessor, following which no action was taken by the Devasthanam (no documents pertaining to this allegation is marked).

j) The suit property has been assessed to property tax in the name of the plaintiff and his predecessors. Exts.A22 to A33 and Exts.A62 to 82 https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 (dated between 1899 and 1982) vouchsafe for this. 6.2 The plaintiff and his predecessors are thus in continuous possession of plaint Item No.1 for well over the statutory period, and even if it were considered that the plaintiff had no title over the property, Pulippani Pathira Swamigal and his successors-in-office are the absolute owners of Item No.1 by virtue of they holding the office.

6.3 While so, during 1975-1976, Palani Devasthanam, the third defendant, had illegally encroached into a portion of Item 1 property, and put up some construction and this portion is described as Item No.3. Again in April 1982, they put up a wire fencing to another portion in the remaining property, and this is described as Item No.4. The further details of the allegations made thereto are not very germane since the plaintiff has now given up their claim over Item Nos.3 and 4.

6.4 It is in these circumstances, to safeguard their title and possession of the property, the plaintiff had laid the suit, alleging as above and has sought declaration of title over Item 1 with associated ancillary reliefs, accompanied by an alternative relief for declaration of title by prescription. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653

of 2022 Pleadings of the Defendants:

7. The pleadings / written statements of the third defendant filed in both the suits can be consolidated. In refuting the plaintiff's claim of suffixing his name with 'Swamigal', the defendants would claim that neither the plaintiff nor his predecessors have ever lived the life of an ascetic, but lead a normal family life. The further allegations in defence of the cause of action in both the suits are:

> a) Neither the sthalapuranam, irrespective of who the publisher is, nor the copper-plate inscription relied on by the plaintiff has any relevance to the cause of action in both the suits. Indeed, the copper-

plate inscription cannot have any relevance after the temple was first taken over by the East India Company and then by the British Government, some 150 years and more, before the advent of the Hindu Religious and Charitable Endowment Act, 1959.

b) Item 1 property in O.S.105 of 1999 at the foothills is a poromboke.

Indeed the entire hill is classified as a temple poromboke.

c) The grant of certain emoluments or privileges in terms of the alleged copper-plate inscription is denied, and at any rate, neither the plaintiff nor its ancestors had anything to do with Saint Boghar. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

d) The plaintiff's claim of title by prescription is denied. The payment of property tax to the local body for the plaintiff's residence does not by itself enable him to claim title by prescription.

e) The plaintiff was put in possession of a portion of the property at the foot of the Palani hill by the temple administration to enable him to discharge his duties more efficiently. The burial of some of the plaintiff's ancestors has little relevance to the cause of action. It is surprising that the plaintiff now attempts to include even the surrounding temples and 'madams' as part of the 'Agadi Samadhi' and claims title to it. Indeed item 1 property is classified as temple- poromboke,

f) Ext.A.6, dated 15.11.1844 said to have been issued by the Zamindar of Ayakudi cannot confer any title to the plaintiff. The Zamindar at the best was only a manager of the temple, and as a trustee of the temple, he had no right to alienate or encumber the temple-poromboke to anyone. Indeed, there is no reference to Ext.A.6, memorandum in the publication made by the plaintiff in 1968.

g) So far as the survey of the property goes, the entire Palani Hills/ Sivagiri Hills has been set apart by the Government as temple https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 property, and it was originally assigned Old S.No.811. Its corresponding Re-survey No. is 862, and it always stood in the name of Dhandaythapani temple under the classification of 'temple poromboke'. It being a temple property, it will not fall within the

ambit of Land Encroachment Act. Indeed, even going by the statement of the plaintiff, till 1926, the property was held under the classification of Government-poromboke, and hence the plaintiff could not have acquired any title to the property prior to it.

h) It is true that sub-division was made to Sy.No:862, but it was made by the Tahsildar, and it was made behind the back of the defendants in 1935. This came to the knowledge of the authorities of the temple, who made efforts to cancel it and had it cancelled, vide proceedings of the Sub Collector. Thereafter, in 1949, the plaintiff had obtained an order for sub-division of the property and on coming to know of this, the defendant had presented a petition to the Tahsildar, which is marked as Ext.B19. Now, the latest Town Survey Extract Register produced by the plaintiff does not show any sub-division as S.No.862/2. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 The Trial:

8.1 The battle lines were drawn in both the suits: To paraphrase the pleadings in O.S.105 of 1999, the plaintiff case is found on a lineage commencing from Adhipulipani, the disciple of Siddhar Bogar, both of whom were believed to have lived some 5000 years ago (roughly about 3000 BC), based on which the plaintiff claims title to Item 1 through immemorial occupation of the same, with an alternative plea of prescription of title by adverse possession. In O.S.106 of 1999, he claims exclusive right to manage the Bogar Samadhi.

8.2 The quintessence of the defence in the former suit is that whatever material based on which the plaintiff claims title to item 1 property has zero value in establishing a case for declaration of title, as item 1 property was part of what is classified as (a) temple-poromboke; and (b) that the property was under the administration of the erstwhile East India Company, and then by the British, and none else could grant a right of occupancy. 8.3 In O.S.105 of 1999, the trial court framed 7 issues, whereas in O.S.106 of 1999, it framed 6 issues. As indicated earlier, both the suits were tried together and the evidence was recorded in O.S.105/1999 (Originally https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 O.S.No.101 of 1982 before Sub Court, Dindigul). 8.4 On the side of the plaintiff, the plaintiff examined himself as P.W.1 and also examined certain S.Balasubramanian as P.W.2, and produced Ext.A1 to Ext.A88 (of which up to Ext.A59 was marked before remand of the suits). Some of these documents have already been referred to in the narration on pleadings. For the defendants D.W.1 to D.W.4 were examined, and in all Exts.B1 to B 32 were produced and also Exts. X1 and X2. Of them, Ext.B1 to Ext.B14 were marked through the witnesses for the plaintiff during the cross examination, Ext.B29 to B32 and Exts.X1 and X2 came to be marked through D.W.2, D.W.3 and D.W.4. The trial Court also appointed a Commission for local inspection and the Commissioner's Report was marked as Ext.C1 to Ext.C87, and the Commissioner himself was examined as C.W.1 Findings of the Trial Court:

9. The trial court dissected the facts on which the plaintiff has rested his cause of action into the following heads: (a) Sustainability of the genealogy of the present Pulipani Pathira Swamigal, tracing the plaintiff to Adhi Pulipani who lived some 5000 years ago; (b) The believability of copper https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 inscription of Dalavoy Ramappier; (c) Lost Grant; and (d) Sustainability of the plea of

adverse possession.

10.1 The findings of the trial court on each of these heads may now be detailed. First, it disbelieved the plaintiff s claim of lineage to Adhi Pulpani, and its reasoning is:

> That P.W.1 in his testimony has admitted that Adi Pulipani is a Kannada Udayar, and has also admitted that the present Pulipani Pathira Swamigal belonged to the Mudaliyar community, and it is doubtful how a Canarese Udayar could become a member of Mudaliyar community. At any rate, Ext.A4 is a post litem motam document since it was published about three decades after the commencement of the dispute between the Devasthanam and the plaintiff in the mid-1930s, and it carried little evidentiary value. The trial Court first laid its hands on Ext.A4, a publication of the plaintiff in 1965, and has held that if the lifespan of the list of Pulipanis as given in this document were to be trusted, then each of the Pulipani should have lived on an average for 443 years, which is a biological impossibility.
>
> https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 10.2 So far the believability of the copper-plate inscription attributed to Dalavoy Ramappier, (whose contents are extracted in a few publications of the Devasthanam such as Exts.A59 (published in 1941), A3 (published in 1970), the trial court held:
>
> a) The extract of the copper-plate inscription refers to the year of its making as the year 1399 of the Salivahana calendar, and it corresponds to 1477 A.D. This copper plate inscription describes Dalavoy Ramappier as the General of Thirumalai Naickar. But Thirumalai Naickar s reign of Madurai was between 1623 and 1659 A.D, and hence it is improbable that a copper-plate inscription said to have been made in 1477 A.D. could be attributed to Dalavoy Ramappier during the reign of Thirumalai Naickar.
>
> b) Adding to the improbability of its authenticity is the fact that the said copper plate too was not produced.
>
> c) So far as the reference to the contents of the copper plate inscription in the publications of the Devasthanam referred to above goes, they are not conclusive evidence as to operate as an admission and that its evidentiary value depends on the circumstances of its making, and that it can be shown to be erroneously made.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 10.3 Turning to the possibility of the plaintiff acquiring title through the doctrine of lost grant, the trial court approached the issue with excessive reliance placed on S.Sundararaja Iyengar's 'Land Tenure', (first edition, 1916). The trial court held:

> a) A grant is but a gift. It is also referred to as inam in Arabic, or manyam in Tamil. Under the British Government, when a grant or a manyam is made for performing any religious service in the temple, it would enter the same in the Inam Register, which the Madras Inam Commission, established in 1858, had maintained. The information for making entries in the register would be made on a personal enquiry of the landholders. And, if only item 1 property were granted as an inam to the ancestors of Pulipaniswamigal for performing certain services in the temple (called devadayam), it would have been entered in the Inam Register. In Roman Catholic Mission Vs State of Madras [AIR 1966 SC 1457 (1464)], the Supreme Court has held that in the absence of any positive or proper evidence to the contrary, such declaration made in the Inam Register must possess supreme importance. There is no contra evidence to negate the probability which the Inam Register throws.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

b) This apart, in Ext.B.31, a photocopy of the original Settlement Register of the year 1886 (which is in the District Collectorate which the trial court appears to have accessed) it is seen that the Palani hill was assigned Sy.No:811, and it was stated to cover 90.31 acres. Its pattadar is shown to be 'Palani Sri. Dhandayudhapaniswami Rock temple', and it is classified as 'poromboke'. In the re-settlement register prepared in 1920, Palani Hill was brought under Sy.No:862. In the copy of the Re-Settlement Register (marked Ext.B.32), the extent is shown as 98 acres and 13,008 sq.ft, and was classified as Government Poromboke, and was registered as Sri Palani Dhandayudhapani temple. The plaintiff would rely on the revenue sub-division of Sy.No:862 into Sy.No:862/1 and 862/2 in 1936, but it was cancelled in 1938 as recorded in Ext.X2. Presently, this land is with the Palani Municipality. The facts showed that there never was a grant in favour of the plaintiff's ancestors, and communal lands such as temple lands could never be a subject matter of grant. For a lost grant to apply, facts must give rise to a situation where the court may have to presume that there might have been a grant, which might have been lost in antiquity.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 10.4 Turning to the plea of adverse possession, the trial court rejected the same, and its reasoning is:

> a) The plaintiff relies on the divine origin of Palani hills based on mythology. Even if the plaintiff's case is considered, Adhi Pulipani, the first disciple of Bogar could have been only an officiating priest of the temple. The issue is about the right of an archaka or a priest to claim adverse possession. The deity being a juristic person, can hold property. Going by Ext.B31 and B32, (the Old and the Re-Settlement Registers), the entire Palani hill is seen as vested in the deity, and hence a manager or a priest cannot hold it against the deity. Indeed, the plaintiff attempted to have a revenue sub-division made, and his attempts, though initially were successful when in 1936 Sy.No:862 was sub-divided into Sy.No:862/1 and 862/2 (with the latter representing item 1 property), but it was thwarted within two years time, when in 1938, the same

was cancelled. As such no part of the land belonging to the temple can be assigned. This is supported by Ext. B16, a correspondence from the then Pulipani Swamigal to the Devasthanam, that he had put up a compound wall only to protect the temple property. It may be that the plaintiff's ancestors might https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 have taken certain legal proceedings against the tenants vide Exts.A18, 19, 21 and 40, but very obviously they were done behind the back of the temple authorities. Even though the plaintiff has produced Exts.A60 to A80 and A22 to A33 house tax receipts, they are not adequate to extinguish the title of the true owner of the immovable property.

b) Ext.A6 is a memorandum of Ayakudi Zamindar, it is not a document of grant. He headed the temple Committee at the relevant time. The British Government passed Regulation XVII of 1817 in Madras to regulate and administer the Hindu and Mohammedan Religious Institutions and vested the power of superintendence in the Board of Revenue. In P. Ramanatha Iyer's 'The Madras Hindu Religious Endowment Act, it is mentioned that between 1839 and 1842, the Government severed its connection with the management of the temples, and no supervision was exercised over the temples, and the temples came to be under the management of honorary trustees who were there earlier. Ext.A6, therefore, had come into existence when there was no governmental supervision of the temples. And, if only it were a grant in favour of Pulipani Swamigal at the relevant time, it would https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 have been reflected in the Inam Register. In short, the Zamindar as the manager of the temple did not have any power to assign the land.

c) Thirdly, a plea of adverse possession cannot be sustained unless the plaintiff concedes the title of the deity.

The decision of the trial court is an obvious dismissal of O.S.105 of 1999. As will be seen in Part B, it also dismissed O.S.No.106/1999. The First Appeal & The Findings of the Court:

11. Aggrieved by the decree dismissing both his suits, the plaintiff preferred A.S. 78 of 2001 against the decree in O.S.105 of 1999 (The decree passed in O.S.106/1999 was challenged in A.S.79 of 2001 before the Additional District Court, Dindigul, and as mentioned earlier it will find a place in Part B). Vide its judgement and decree dated 23.06.2015, it reversed the trial court decree and decreed the suit.

12. It may have to be stated that the plaintiff appeared to have produced the copper plate inscription for the inspection of the first appellate court, but it was still not produced as an additional evidence under Order XLI Rule 27 CPC. The first appellate Court has recorded that it had compared the contents of the copper plate inscription (produced by the plaintiff under a https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 memo) with its purported reproduction in Exts.A3, A4 and A59 and found the same to be a

correct reproduction of the copper plate inscription. Its approach to the issue and findings are as below:

> a) Even though the original copper plate inscription was not produced, the fact remains that its contents are reproduced by the Devasthanam in its Exts.A3, A59, A86 and A87 publications, and hence, it is estopped from questioning the veracity of the contents under Sec.31 of the Evidence Act. The burden is on the Devasthanam to explain it, but it chose not to discharge it.
>
> b) The copper plate inscription details certain privileges or honours granted to Pulipani. Even today, one of the honours referred to there – shooting the arrow during the Navarathri/Dussehra festival is in vogue, and it is continued to be done by successive Pulipani Swamigal. The fact that it is performed as provided in the copper plate inscription itself supports the fact that the copper plate inscription is genuine.
>
> c) Ext.A2 provides the genealogy of the plaintiff, but the defendants have not challenged the names of the plaintiff's ancestors. Indeed, the service rendered by Adhi Pulipani to Boghar is admitted and is beyond challenge. There may be certain inaccuracies, but that will not https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 affect the status of the plaintiff as the successor of the Pulipani.
>
> d) Ext.A6, dated 15.11.1844, the memorandum of the Zamindar of Ayakudi, shows that an extent measuring 140' N-S x 200' E-W had been in possession of the Pulipani Ashram for a long time, and that it had been permanently assigned to it. This shows that the said plot was in possession of the Ashram even long before Ext.A6 document.

Further in Ext.A-87 (page 76-77) that in the 18th century, the Palani temple was patronised by the Palaiyagars of Ayakudi and Neiykkarapatti and others and that in 1792 Palani was taken over by Mysore and later it was ceded away to the East India Company. This lends credibility to Ext.A6.

e) Long thereafter, under Ext.A8, dated 29.02.1925, the Devasthanam had granted permission to the then Pulipani Swamigal to construct a compound wall, and it is recorded that it was granted only after verifying Ext.A6. This is followed by Ext.A9, a notice from the Palani Municipality requiring the matom to clear the bush around item

1. Thereafter, the Pulipanipani Swamigal had applied for the sub- division of item 1, and the Tahsildar had issued Ext.A13 notice to the plaintiff and Ext.A11 to the then Manager of the Devasthanam to appear for enquiry with relevant documents. After this enquiry, the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Tahasildar had passed Ext.A5 proceedings, sub-dividing Sy.No:862 into Sy.No 862/1 and 862/2, and assigned 862/2 to item 1. Even though in Ext.B18 dated 27.07.1936, there is an endorsement that this revenue sub-division was later cancelled by the Sub Collector vide his proceedings dated 18.11.1944, the said proceedings of the Collector were not produced. Attempts

however, were made to prove the cancellation of the sub-division through D.W.2 and D.W.3 along with Exts.X1, X2 and Exts.B31 and B32, but they cannot be countenanced in the absence of the order of the sub-Collector cancelling the sub- division.

f) This apart, Exts.A7, A21, A40, A42, A47 (between 1887 and 1971) show that the Pulipani Swamigal had at all points of time asserted right over item 1 property in their possession, have granted a lease of portion thereof to few tenants and have also initiated eviction proceedings in assertion of their title. Further, a residential building was constructed within the said property without any objection from the temple authorities and they were assessed to property tax. To cap it, vide Ext.A18, dated 12.10.1949, the Divisional Sub Collector had directed the Tahasildar to drop the eviction proceedings under the Land Encroachment Act.

g) The suit property was not shown as a property of the temple in the concerned register.

Ultimately it proceeded to hold that except item 3 and item 4 remaining portion of item 1, namely item 2 property has been in continuous possession and enjoyment of the plaintiff, and passed a decree declaring plaintiff s title to item 1 excluding the constructions made in item 3 and 4 by the Devasthanam.

Prelude to Second Appeals:

> 13. Challenging the aforesaid decree of the first appellate court the Executive Officer of Palani Devasthanam had preferred S.A.(MD) No.589 of 2015 and S.A.(MD) No.590 of 2015, while the Commissioner, H.R & C.E preferred S.A.(MD) No.652 of 2022 and S.A.(MD) No.653 of 2022. These four second appeals respectively are filed challenging each of the first appeals in A.S.No.78 of 2001 and A.S.No.79 of 2001 preferred by Palaniappa Pulipanipathira Swamigal. The details of the second appeal, the parties thereto, and its corresponding first appeals are tabulated in Para 3.3 above.

 Substantial Questions of Law:

> 14. The second appeals filed by Devasthanam in S.A.(MD) No.589 of 2015 and S.A.(MD) No.590 of 2015, are admitted on the following substantial questions of law :
>
> (a) Whether in law the appellate Court is right in coming to a conclusion that the first respondent is a lineal descendant of Pulipani Swamigal when Sidha Bogar was a sage and an ascetic?

(b) Have not the appellate Court committed an error in coming to a conclusion that when the Executive Officer failed to prove that the suit property was assigned as a maaniyam or grant or innam, the appellant cannot contend that the first respondent can enjoy the suit property only in lieu of the service rendered by them?

(c) Have not the appellate Court committed an error in granting the relief in favour of the plaintiff especially when there are evidence to establish that the averments in the so called pattayam also denotes only rights of receiving certain privileges assuming without admitting the pattayam is a genuine document?

(d) Whether in law the appellate Court is right in shifting the burden of proof on the appellant with respect to thamira sasanam, when the pattayam was not produced before the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Court but flashed before the Court on memo and the burden is only with plaintiff?

(e) Whether the appellate Court erred in coming into conclusion that the copper plate shown to the Court was original, devoid of any evidence on merits?

(f) Whether the appellate Court right in reversing the well said findings of the trial Court that the status of the respondent is nothing more than a poojari of Bogar Samathi which is a temple within the purview of the Hindu Religious and Charitable Endowment Act attached to the appellant Temple?

Since the second appeals filed by the Commissioner, HR&CE Department [S.A.(MD) Nos.652 & 653 of 2022] also challenge the decrees of the first appeals in A.S.No.78 of 2001 and A.S.No.79 of 2001 respectively, a learned Single Judge of this Court vide its order dated 10.10.2022, has admitted these appeals on the same set of substantial questions of law framed in S.A.(MD) No.589 of 2015 and S.A.(MD) No.590 of 2015. The Arguments :

15. Of these appeals, S.A.(MD) No.590 of 2015 and S.A.(MD) No.653 of 2022 would be considered in Part B. It may also be stated that if the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 substantial questions as framed are scrutinized, except the last one, the rest pertain to O.S.105/1999, the suit for declaration of plaintiff s title to item 1.

And, they alone will be considered in this part.

A. Arguments for the Appellants

16. For the Appellants in this batch of cases, the learned Advocate General argued for the Commissioner, H.R. & C.E., the appellant in S.A.(MD) 652 of 2022, and Thiru. AR.L Sundaresan, senior counsel argued for the appellant in the S.A.(MD) No.589 of 2015. Their submissions are as

below:

a) So far as the right claimed in O.S.No.105 of 1999 is concerned, the plaintiff claims title to 2 items of suit properties but it is covered under Section 63(c), 63(d) or 63(g) of the H.R. & C.E.Act. In other words, it implies that the Act has made provisions for deciding the dispute under Section 63 of the Act, and therefore the dispute raised by the plaintiff will fall within the 2 nd part of Section 108 of the Act and hence, O.S.No.105 of 1999 is not maintainable.

b) Alternatively, even if it is considered that the suit falls outside the purview of Sec.108 of the Act, still the plaintiff lacks locus standi to maintain the suits. The plaintiff asserts locus standi only based on his allegation or assertion that he is the 11 th Pulipani Swamigal. This https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 implies that since the time of Bogar, each of the Pulipani Swamigal should have lived for an impossible and inconceivable 433 years. The plaintiff therefore has not established that which he chose to allege. It is proof of this fundamental fact that will grant locus standi to maintain the suits.

c) The plaintiff s possession of item 1 property is not denied. But he is only a temple servant and is in possession of the same in lieu of his services.

d) Turning to the plaintiff's title to the item 1 suit property, he pivots it on Ext.A.6, a document purported to have been in the handwriting of the zamindar of Ayakudi. He introduces himself essentially only as the manager of Palani Devasthanam. This document can hardly assist the plaintiff s attempt to establish his title to the suit property. Firstly, the manager of the Devasthanam does not have the authority to give away any property belonging to it. Secondly, the content of Ext.A.6 shows that the possession of then Pulipani Swamigal over a small extent of the property alone was recognized, and it has not granted any heritable right to him.

e) Next, the plaintiff places excessive reliance on the copper plate inscription, but it has hardly seen the light of the day in the ongoing https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 judicial proceedings, except for a brief appearance before the First Appellate Court. The First Appellate Court was in error in relying on this document, when it is not made part of the record. If at all the plaintiff was interested, he should have produced the same under Order XLI Rule 27 C.P.C. It might be true that the content of the copper inscription has been published in the publication either of the plaintiff or the defendant. But it does not go to the advantage of the plaintiff, especially in a situation where the factum of the existence of the copper inscription and its genuineness themselves are under challenge.

f) If these two documents (Ext.A6 and the copper plate inscription) are eliminated from the line of consideration, there is hardly any material that can support the plaintiff s claim for title. That he may be in possession of item 1, but ipso facto it will not be adequate to establish title, for the plaintiff traces his title based on his claim that he is a lineal descendant of Adhi Pulipani. On the contrary, the defendant had produced Ext.B31 and Ext.B32, and they are the copies of Settlement Registers for the years 1886 and 1920 respectively, wherein item 1 is described as Government poromboke or temple poromboke. This has to be appreciated in the context of the fact that https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 since the turn of the 19th century, the property along with the temple came under the administrative control of the Board of Revenue and it then became part of the Madras Presidency. It was during the British rule the property came to be surveyed. If only the plaintiff had title to the property, it would have reflected in the Settlement Registers themselves, but it did not.

g) Notwithstanding the fact that the entire Palani hills, including item 1 property, was classified as temple poromboke, the plaintiff made a clandestine attempt to survey and sub-divide item 1 property and achieved it when in 1936 the Tahsildar ordered revenue sub-division of the property. But this was cancelled by the Sub Collector, and today in Ext.X1 and X2, this property is shown to fall within the Town survey field. This apart, the plaintiff had put up some construction in item 1 and might have produced property tax receipts, but they per se may be useful to prove possession, which at any rate is not disputed, but not his alleged title over item 1.

Summing up the arguments, it was submitted that subject to the contention on the maintainability of the suit when the entire Palani hill is classified as a temple poromboke, the plaintiff cannot assert title to a small portion thereof.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Arguments for the First Respondent / Plaintiff

17. In response Mr.V.Raghavachari, the learned counsel for the plaintiff/first respondent made the following submissions:

a) So far as the property which is the subject matter of O.S.No.105 of 1999 is concerned, it is a property which is in occupation of the plaintiff from time immemorial. The continuous possession of the plaintiff is also admitted by the appellant herein. Plaintiff s possession is traceable to Adhi Pulipani, the first disciple of Siddhar Boghar to whom the spiritual master had entrusted the maintenance and the management of the Palani temple, and it devolved hereditarily until Dalavoy Ramappier made his appearance and replaced Pulipani Swamigal with brahmin Sivacharya to officiate as the priest of the Palani temple. This is reflected in the copper plate inscription.

b) The copper plate inscription is recognised and accepted by the temple in their official publications in Exts. A-3 and A-59, and the appellants are estopped from challenging its correctness. The admission is the best piece of evidence unless it is proved to be erroneous. Here there is hardly any material forthcoming to prove the same is erroneous.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

c) Turning to the non-production of the original copper plate inscription of Dalavoy Ramappier during trial, it was brought to the first Appellate Court, and the Court itself compared it with the extract contained in the official publications of the defendant, in the presence of both the counsels and found them to be correct. It is now too late in the day to question the same.

d) This apart the zamindar of Ayakudi who was then in the management of the temple had recognized the continuous possession of the plaintiff's predecessor in respect of 200 ft x 140 ft at the foothills of Palani temple under Ext.A-6, 15.11.1844. Ext.A6 taken along with the copper plate inscription of Ramappier establish the plaintiff s continuous and uninterrupted possession.

e) The appellants try to portray that the plaintiff is a temple servant merely and attempts to treat his occupation of item 1 as if it is a servant-quarters and that he is a licensee. This position contradicts the fact that the Pulipani Swamigal of the time is entitled to perform shooting of the arrow event during the navarathri festival, not as a https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 servant of the temple, but under the privilege conferred on the Pulipani Swamigal under the copper plate inscription of Dalavoy Ramappier. The defendants/appellants too have referred to the plaintiff as Madathipathi in their own documents. DW1 during the cross-examination categorically admitted that the suit property is "Pulipani Swamigal Ashramam". In Ext.B-10 the defendant had addressed the plaintiff as Pulipani Pathira Swamigal. They establish that the plaintiff and his predecessors-in-office as the head of the Pulipani Ashram and are in possession of item 1 as a servant of the temple. It is demeaning to state the least.

f) The plaintiff exercised acts of ownership when it had the suit property sub-divided and brought it under Sy. No.862/2. So far as the argument that the plaintiff s predecessor in office had not challenged the cancellation of the revenue sub-division of item 1 is concerned, there is no proof that the cancellation of the sub-division was done after conducting due enquiry. Sy.No.862 is classified as "Hill Poromboke" and the temple is not having any independent right. This apart, the revenue records will neither vest nor divest any title. Reliance was placed on the ratio in Ajit Kaur alias Surjit Kaur Vs https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Darshan Singh (Dead) through Legal Representatives and others [(2019) 13 SCC 70]. The Palani Municipality also has sent various communications to the plaintiff's predecessors, recognising their possession. This is evidence of the recognition of the pre-existing right of the plaintiff and his ancestors, even long prior to the coming into force of the H.R.&C.E. Act. To this may be added evidence such as the house tax receipts and demand notice, besides various suits filed by the plaintiff against the tenants for eviction such as Ext.A21, Ext.A40 to Ext.A47.

g) During the cross-examination of DW1, he fairly admitted that the property in question at the foothills of the temple is not shown in the property register of the temple. During the cross-examination of DW4, he admits that during the navarathri festival, the special privilege of shooting the arrow is given to the plaintiff, an honour conferred upon the Pulipani Swamigal under the copper plate inscription of Dalavoy Ramappier. He also has conceded that Devasthanam never took any steps to recover possession of item 1 from the plaintiff.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

h) The book titled "The Historical Documents of Palani (in Tamil) written by S.Rasu, has a reference to the history of Pulipani Pathira Udayar and the copper plate inscription of Dalavoy Ramappier. The Gazetteer of India, Tamil Nadu State, Madurai District compiled by W.Francis in the year 1906 (reprinted in 2012 by the Department of Archaeology and Historical Research, Egmore, Chennai) also speaks about the temple and the puranic beliefs associated with Palani hills. After referring to Mackenize Collections, it also records the copper plate inscription of Dalavoy Ramappier, and how he replaced the Pulipani Swamigal with Brahmin Sivacharya for performing pooja and the honours which were conferred on the former. The book titled 'History of Kongu Mandalam' also details the history of the Palani temple. The Court can rely on all these literatures which provide the historical background to the cause of action as the same is permissible under Sec.81 read with Sec.35 of the Evidence Act. Reliance was placed on the ratio in M. Siddiq Vs Suresh Das [(2020) 1 SCC 1], Aliyathammuda Beethatheblyyappura Pookoya v. Pattakal Cheriyakoya [2019 (16) SCC 1], Bala Shankar MahaShanker Bhattjee Vs Charity Commr., Gujarat State [1995 (Supplement) 1 SCC 485], B.Shambu Kumar Vs M/s.Ragvendra Steels Ltd. [2001 https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 (4) CTC 399], Eesha Kumar v. Assistant Commissioner, Coimbatore City Municipal Corporation [2011 (5) CTC 620].

i) The appellants submission against the doctrine of lost grant is founded on their misconception about the very doctrine. Doctrine of lost grant is invoked to sustain the legitimacy of long possession whose origin is unknown by presuming the legitimacy of the origin of such possession.

j) The substantial questions raised are essentially that involve questions of facts, and the appellants have not established how the findings of the first appellate Court are perverse. Regarding the plea that the suit is barred under Sec.108 read with Sec.63(c),(d) and (g) of the H.R.&C.E. Act concerned, they are not applicable, since they do not authorise the authorities to decide any dispute relating to the title between a mutt and the temple. At any rate dispute regarding title to the property cannot be decided by a tribunal.

Appellant’s Reply:

18. Replying to the same, it was argued for the appellant that the literatures which includes the Madurai Gazetteer which the plaintiff has relied on are not worthy of being considered. Sec. 81 of the Evidence Act only enables https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 the court to presume the genuineness of the gazette and not a

gazetteer. There is a world of difference between a gazette and a gazetteer, and Sec. 81 of the Indian Evidence Act does not apply to a gazetteer. This implies, the plaintiff, if he intends to prove the facts stated therein, may have to prove it independently.

Discussion & Decision Preludial Statement:

19.1 The suit is one for declaration of the plaintiff's title based on immemorial possession, not an unusual lis to visit the civil court in this country. What however, differentiates this suit and takes it out of the ordinary is the plaintiff's pleading where he traced his possession to certain facts hidden partly in history and partly, perhaps in mythology. 19.2 The plaintiff's narrative is made absorbing by an intertwining of a set of tangible facts that could be proved through evidence, with certain originating facts whose existence, which a rational mind trained to accept a fact only on evidence, may struggle to accept. This court, however, needs to identify the invisible line separating the historical facts and the rest, and to understand how far the former could be accommodated as evidence, and the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 extent to which it might be allowed the space while appreciating the evidence.

20.1 A sedulous examination of the plaintiff's pleadings in its deeper layers enables the segregation of his case into the following parts:

> a) The facts which provide the reason or ground as to why and how the plaintiff and his ancestors came to be in possession of the suit property.

This includes tracing the plaintiff's lineage to Adhi Pulipani, and necessary appreciation of his association with Bogar. It requires a short time travel into the past by about 5,000 years, for appreciating the contextual relevance of certain literatures.

b) The facts which constitute the current physical possession of the suit property, (item 1 in O.S.105/1999) of the plaintiff and his ancestors belong to the last millennia.

c) The facts which fix the approximate duration of this possession. Here this Court will be concerned with the copper plate inscription attributed to Ramappier, the Dalavoy of Thirumalai Naickar (Dalavoy, also spelt Dalawai, is a post which is generally understood as a commander of the army) and Ext.A6, the memorandum of the zaminder of Ayakudi, dated in 1844.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 20.2 If the quintessence of the line of defence with which the defendants resist the plaintiff's claim is analysed, it nowhere disputes the plaintiff's physical possession of the suit property. Nor does it make a statement that the plaintiff is a recent encroacher or a trespasser. Its principal line of attack is on the plaintiff's right to be in possession of the suit property as of right, since according to them item 1 belongs to the Palani temple as per the original survey and settlement that took place in 1886 and the re-survey and settlement that took place in 1920. In this process, it has chosen to invest a sizeable portion of its defence denying the historical reason which the plaintiff pleads for

tracing his possession of the suit property. 21.1 In a civil dispute which this Court is required to decide on the rule of preponderance of probability, its prime focus will be on the plaintiff's possession of the suit property, a fact not disputed, and to endeavour to ascertain his claim of right to be in possession, and to evaluate the evidence to enter a finding if they are adequate enough to vest title to the suit property in him.

21.2 Given the nature of the cause for the present action, it may have to be https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 stated that even if the plaintiff is not found to be on a surer ground in establishing the historical reason which he pleads for entering possession (of the suit property), still the merit of plaintiff's claim for title based on his immemorial possession of the suit property can be tested by testing it on known and time-tested principles of jurisprudence. In other words, any failure of the plaintiff to bring in a direct connect between his right to be in possession of the suit property and the historical reason which he relies on for establishing the same need not be construed as consuming the entire cause of action for the suit. However, if he can establish the other facts, then the acceptability of these historical facts can serve to provide a backup force to strengthen the probability of the plaintiff's case. 21.3 Having made this preludial statement, this court is still constrained to embark on an enquiry of a sizeable portion of the arguments were directed at it. Indeed, the Court below has also engaged on it, more particularly the trial court, to which appropriate reference would be made later in this judgement. On Maintainability of the Suit:

22. Before considering the merit of the rival submissions, this Court is https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 required to decide on the maintainability of the suit. According to the appellants/defendants, the nature of the dispute falls within the ambit of Sec.63(c), (d) and (g) of the T.N. H.R. & C.E. Act, and hence the dispute can be decided exclusively only by the Joint Commissioner or the Deputy Commissioner of H.R. & C.E. and hence the suit is barred under the second part of Sec.108 of the Act.

23.1 The suit is laid for declaration of title to a piece of property by a mutt against the temple. Essentially both are religious institutions. The point is whether this dispute falls within the ambit of Sec.63 of the Act as to invite the bar under Sec.108 of the Act. Sec.63 reads:

> Joint Commissioner or Deputy Commissioner] to decide certain disputes and matters.— Subject to the rights of suit or appeal hereinafter provided, the Joint Commissioner or the Deputy Commissioner, as the case may be shall have power to inquire into and decide the following disputes and matters:—
>
> (a) & (b) ----
>
> (c) whether any property or money is a religious endowment;
>
> (d) whether any property or money is a specific endowment;

(e) & (f) ----

(g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses.

The defendants/appellants make an unconfusing, straightforward statement as their defence: That the suit property belonged to the temple and that the plaintiff has been put in possession for the service he has been rendering. If the plaintiff s stands are analysed, his cause of action is a negation of the above-stated line of defence offered by the defendants, as the former asserts the right to be in possession based on a title acquired through immemorial occupancy of the suit property – to be precise for about 5000 years. It could be easily derived that the plaintiff is in no mood to accept that he is the servant of the temple and claim independent title in him, in continuation of the title of his predecessors-in-office.

23.2 On the face of it, the dispute does not fall within Sec. 63(d) and 63(g) of the Act, for it does not raise any issue as to whether there is a specific endowment of the suit property, or if the endowment made is partial or not. Nor does it raise a question whether the suit property is a religious endowment as to attract Sec.63(c) of the Act. It is a simple suit on the title. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 The equation is immemorial occupancy versus entries in the settlement registers plus the administrative control of the suit property by the East India Company and the British earlier to it . Sec.63(c) in essence provides a remedial forum where the dispute pertains to the character of a property as to whether it is a religious endowment or not, but not title per se to the said property.

24.1 Turning to the maintainability of the suit, it should be underscored that the ouster of civil courts jurisdiction cannot be and should not be readily inferred. Since the soul of Sec.9 is the maxim □ubi just ibi remedium , the jurisdiction conferred on a civil court must be granted optimum elasticity to accommodate every dispute of a civil nature, unless the bar of jurisdiction is readily indicated through an express provision, or the exclusion of jurisdiction is self-evident by necessary implication. Sec.63 has not authorised the authorities stated therein to decide any intricate dispute of title. Bar of suits is provided for under Sec.108 of the Act, and it merely states that a civil court s jurisdiction is barred only as regards “matter or dispute for determining or deciding which provision is made” in the Act, and no more. As explained earlier, Sec.63(c) does not speak of a dispute on title to the land, and hence it cannot be decided by the authorities https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 constituted under the Act. In Periathambi Goundan v District Revenue Officer, [AIR1980 Mad 180], a Full Bench of this Court speaking through Ismail, J (as the learned Chief Justice then was) had the occasion to observe as under:

> " a suit or proceeding in a civil court may involve the determination of several matters, some of which may be within the jurisdiction of the authorities functioning under the Act and some others outside the jurisdiction. In such a case the suit or proceeding as such cannot fail unless it is of such a nature that it can be terminated solely on the determination of the matter falling within the jurisdiction of the authorities functioning under Act. Consequently, a suit cannot fail unless the determination of the prayers therein, in its entirety, falls within the exclusive jurisdiction of another authority. See also: Church of North India Vs Lavajbhai Ratanjibhai [(2005) 10 SCC 760], Dhulabhai Vs State of M.P [AIR 1969 SC 78], Vedagiri Lakshmi Narasimha Swami Temple Vs Induru Pattabhiram Reddi [AIR 1967 SC 781], Thirumalaisami Naicker Vs The Villagers of Kadambur [(1968)81 LW 342 (DB)], Sri Venkataramanswamy Deity of Kothur village Vs Vadugammbal [(1974)87 LW 481 (DB)], Sayarakshai Kattalai and Arthajama kattalai attached to Arulmigu Kayaroganaswamy & Neelayadakshi Amman Temple Vs R.Radhakrishnan & another [(2001)3 MLJ 73] Swaminathn Vs Subramaniaswamy Deity [(1999)1 MLJ 553]. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 24.2. To conclude on this point, this court has least difficulty in holding that the present suit is maintainable.

Outlining the Court's Approach

25. The stage is now set to consider the rival case on their merits. The appellants have spent considerable effort for restoring the decree of the trial court, exactly on the same line of reasoning which the trial court has entertained to non-suit the plaintiff. Therefore, this Court considers it appropriate to ascertain the justifiability of the reasoning of the trial court which in effect will enable this Court to pronounce on the correctness of the judgement of the first appellate court.

26. The cause of action for the suit is founded on a set of facts, part of which are as old as the temple and the deity whose origin is lost in the fog cover of time. The evidence made available is scanty, and is bound to be so. The plaintiff places reliance on a few bits and pieces of evidence on which he could lay his hands on, and they are pitted against certain recorded facts which emerged towards the closing stages of the 19 th century and the early part of the 20th century. The materials which the defendants rely on have https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 emerged about a decade after Sir James Fitzjames Stephen had designed the launching of the Indian Evidence Act. He had developed the rules on the burden of proof, according to which the plaintiff's case can reach ashore with safety, only if his evidence could pass the test of admissibility before garnering requisite strength to improbabilise the case of the defendant. Given the setting of the case, it would be a mind boggling achievement for a plaintiff, relying on the existence of 5,000 years old unrecorded historical facts to sustain his originating fact and to trace his ancestry through evidence, and to seek its acceptance through the filters of Sir. Stephens' creation.

27. The complexity of the facts poses obvious difficulty in proving every limb of the fact which may provide a complete coherence to the plaintiff's case. In that sense, this case is a rarity. And, finding a

solution is akin to solving a complex game of Sudoku – with more blank squares and few disclosed numbers. Still, it is not beyond solution if the right rules are picked from the Evidence Act for application. Hence, to make an easy appreciation of the Court s approach to the task before it, an outline is provided:

> a) Let it be explained from the most fundamental elements of civil https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 litigation. A cause of action for a suit (as well as the defence) rests on a certain right which law recognizes. It may be founded on a solitary fact or multiple facts, may be straightforward or layered, and confined to a specific time or spread over an expanse of time. It depends on how a litigant attempts to conceive his cause of action or the defence.

It is their prerogative. In the present batch of appeals, the facts are layered and stretched over a few millennium years.

b) The Court's focus, however, should not be on how a litigant conceives a right, but on ascertaining if the right as conceived is recognised in law as to qualify for sustaining the cause of action or defence. Tested on this plane, the plaintiff here claims a title to the suit property based on his immemorial possession. In other words, both the right as pleaded by the plaintiff and the manner of its conceptualisation are permissible in law.

c) The next aspect is the proof of the facts which a litigant may present.

Contextually, this court is more concerned with the evidence which the plaintiff relies on for establishing the cause for his action. Here the facts that he relies on can be divided into (a) those which are capable of proof through tangible evidence; and (b) those which https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 cannot be so proved. Most evidence that the plaintiff presents relate to his current possession, to be more specific, those which belonged to the turn of the 19th century and early part of the last century. Exts.A8, A9, A10, A11, A13, A16, A12, A5, A14, A17, A15, A18, A40, A21, A42, property tax receipts fall in this category.

d) There is another set of facts, which this court may term as composite facts of faith and history. If this court were to consider that walking through the familiar and well-accustomed evidentiary-lane of direct evidence is the only option, then it is up against a wall. Necessarily the Court may have to look to other methods for ascertaining the proof of the composite facts.

e) The composite set of facts on faith and history referred to earlier, can be further divided into two parts: (a)those facts which are purely historical; and (b)those which are purely in the realm of faith. In the case of historical facts there may be bits and pieces of tangible evidence, whereas in the case of faith, only its existence can be established.

f) In the process of understanding the evidence for appreciating the correctness of findings on facts (where the Courts below have https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 expressed their divergent views), this court encountered a few situations where the existence of certain facts needs to be inferred from a set of available evidence, nothing hitherto unknown, that goes to establish either the historical facts or faith or a combination of both. This requires a further classification of the historical facts into: (a) those facts whose existence or non-existence may be inferred based on any material which the court may choose to rely on and act upon; and (b) those facts whose existence can only be presumed from another fact so proved. This court considers it appropriate to term the second category of the fact falling within (b) as presumptive historical fact.

g) The bottom line in appreciating the evidence is that the Court cannot compel a litigant to prove that which is impossible for him to prove through direct evidence. The rule of best evidence readable in Stephen's document is associated with the capacity of a litigant to produce such evidence which is capable of being produced, for the law does not insist on seeking proof of a fact which is beyond the ability of a party to prove. It is hence, drawing the right inference from the right material, subject to the condition where both the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 material and the inference it produces earn acceptability within the scheme of the Evidence Act, becomes critical. After all, no court shall feel helpless to deal with a situation which the suitor presents.

h) To sum it up: It is the litigant's prerogative to decide how a cause for an action or defence must be conceived, and what evidence which are within his capacity and ability to produce for sustaining it. In the context of the case, the plaintiff traces the origin of his right to be in possession to a period some 5,000 years ago. Most of the facts whose existence might have been useful to prove their interconnection covering five millennium years to form a logical sequence had inevitably been lost in antiquity. And, the thumb rule is that the Court should not require a litigant to do the impossible – requiring him to produce such evidence which is beyond his ability to produce. And, the Court cannot shy away from negotiating the situation either.

i) The situation amply indicates a need for a space-walk in history and time, dark and void all around, with very few facts to guide. This Court's duty is to examine if the evidence, though limited and scanty in covering 5,000 years, is tested on the evidentiary rules and tools which are best suited for the purpose, produces the most probable https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 inference required for ascertaining the conceptualization of the cause of action for the suit. A Star Trek moment.

j) The challenge is more, when the litigants or the courts below, in the estimate of this Court, have missed a couple of rules or tools which the Evidence Act provides. A suitor is only required to plead his facts in aid of the remedy he seeks, and it is the Constitutional obligation of this Court to ensure that he is not denied a remedy if it is permissible in law, owing to the litigant's failure to find the right principle in law. To apply the right principle of law on a set of facts is the job of the Court after all.

What is outlined herein above has been let to influence this Court as it engages to discuss the few critical aspects of this case. Understanding the Plaintiff's evidence:

28.1 It is convenient to commence from here. The evidence on record can now be classified under two distinct time zones: (a) From the early origin and up to Ext.A-6; and (b) Evidence dated about the last quarter of the 19 th century and thereafter.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 28.2 The first part in (a) above deals with early origin, Ramappier's copper plate inscription upto Ext.A6. Since the original handwritten document of zamindar of Ayakudi in Ext.A6, is available on record, the immediate focus will be on the evidence up to Ext.A6, and its effect vis-a-vis the cause of action.

29. For proving the same the plaintiff relies on: Exts.A3, Ext.A4, Ext.A59, Ext.A86, and, Ext.A87 and A.88, besides the following literatures: (a) Mackenzie Manuscripts1 (b) The Government Gazeteer, Madurai District2

(c) Kongu Mandala Varalarukal3 in Tamil which is Palani Varalaatru Aavanangal4. The passages relevant are extracted below. Where the text is in vernacular, an English translation is provided. 1 A University of Madras Publication, 1972, (Summaries of the Historical Manuscripts in the Mackenzie Collection) VOLUME-I (Tamil and Malayalam) 2 1906 publication of the Department of Archives and Historical Research of the Government of Tamil Nadu, reprinted in 2012.

3 Publication of a collection of palm-leaf inscriptions by the Government Oriental Manuscripts Library and Research Institute.

4 By Mr.Rasu, formerly a Faculty of the Department of Archaeology, Tamil University, Tanjore, a publication of palm leaf inscriptions in the custody of the Government Archives. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 TABLE I (Extracts from Exts: A3, A4, A59, A86 to A88) Details of Page Information Literature No. 1 Ext.A3 6-7 Sthala Puranam. Mythological facts.

Devasthanam Publication in English 8 a) ☐Legendary accounts apart, we have quite a few (1970) pieces of recorded material pertaining to the origin of this temple. One of the principal sources of information has been a MS in the Mckenzie's collection which is confirmed by local accounts. It is believed that the consecration of the deity as Sri Dandayuthapaniswamy in the sanctum sanctorum of the temple was done by Siddha Bogar. It is likely that he had made his ashram on this hill and had attended to the needs of his devotees given them medical help as well as spiritual comfort. It is also believed that the image of the Lord in the sanctum sanctorum of the temple was made with an amalgam of Navapashanam, a compound of nine poisonous medicines under the expert guidance of Bogar.

b) ☐..... ..... It was with this stone image with unique chemical composition and miraculous curative properties that Sidha Bogar seems to have found a place of worship on the top of the Hill. Formal

worship at this shrine is said to have been started by a Kannada Udayar, a descendent of Pulipani, a disciple of Siddha Bogar." 9-10 a) ☐Pulipani's descendants are said to have been the officiating priests at the principal shrine from the time of its inception. With the advent of the Nayak rulers of Madurai who made many striking improvements over what had been done to the temple by the Cheras, there were some changes in respect of the priesthood. When, Ramappayyan, a General of Tirumalai Naik worshipped at this temple, he introduced the Adi-Saiva Sivacharyas as recognized official priests. At the same time he conferred on the older class of priests certain other rights and privileges such as the general superintendence of the temple, receiving certain amounts of money as annual emoluments and shooting off the arrow symbolising the destruction of Idumbasura by Muruga at the Dasra https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Details of Page Information Literature No. festival. Some of these time-honoured rights and privileges are retained by the successors to the Pulippani Matam even today and it is they who have the sanction to officiate as priests at the Bogar Samadhi.

b) ☐The sanctum of Siddha Bogar is now a small shrine in the south-western corner of the inner quadrangle of the Hill Temple. We find in this small shrine Nava Durga, in the guise of Sri Bhuvaneshwari and a Marakatha Linga. One is shown an underground passage just below the sanctum through which, it is said, Siddha Bogar went in and never came out. It is also said that this passage connects the Bogar Samadhi and the garbagriha of Lord Dandayuthapaniswamy. A successor of Pulippani in the person of Sri-la-Sri Boganatha Pulippani Patra Udayar is believed to be doing the Puja service at this shrine and to be presiding over the madam bearing his name in the Giri Veedhi".

2 Ext.A4 9, 10 Sivalingatheva Udayar from Kannada Desam meditated Plaintiff towards Bogar, and Bogar directed him to do pooja as Ashram had decided to go into deep meditation.

Publication (Tamil) Also, how Sivalingatheva Udayar came to be known as Pulipani Pathira Udayar (as he came on the back of a tiger ('Puli' in Tamil) with a vessel with water for abhishekam 3 Ext.A59 4 (a) Sthala-puranam – Mythological facts.

(English) Devasthanam 8 - 10 (b) "The consecration of the deity as Sri Dhandayudapani Publication in the central shrine on the hill is ascribed to the great Siddha Bogar. Possibly the hill was his ashrama at the time from where-in he cared for the spiritual and medical needs of his circle of votaries. The constituent image is said to be an amalgam of (nava-pashana) nine minerals. ..... A Kannada udayar descendant of Pulipani, a disciple of the Siddha Bogar is stated to have first set up the worship at this small shrine on the Siva-giri; and that he was conducting it for long time."

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Details of Page Information Literature No.

(c) "The temple has been improved upon gradually to the present proportions by succeeding Madura nayak rulers and local chieftains. Pulipani's descendants were the priests at the principal shrine from remote times, and, when Thirumalai Nayak's (A.C. 1623-59) general Ramappayyan visited the temple, he performed an ashta- bandana Kumbabisheka for the hill-temple and introduced the

adi-siava Sivachayyas to officiate in pooja services. He also seems to have bestowed on the former priests certain duties of superintendence, the right to receive certain annual emoluments, and at the Dasara festival to shoot off the arrow which symbolises Muruga's vanquishing the idumbasura. The present successors to the Pulipani mutt as such have this privilege as well to officiate at the sanctum of Bogar."

(d) "The siddha Bogar's sanctum is now a small shrine on the corner of the south-western corridor of the inner quadrangle of the temple. Nava-Durga, the goddess of Sri Bhuvaneswari is in worship here, also with the marakatha Linga. An under ground passage below the sanctum is pointed to as the place where the sage entered and never appeared again. The passage is also spoken of as leading to the garbha-griha of Sri Dhandayudhapaniswami. Sri-la-sri Boganatha Pulipani Patra Udayar Swami said to be a successor of sage Pulipani is doing service of Pooja at this shrine. He also presides over a mutt of the name at the foot of the hill." 41 Reproduction if Ramappier's copper plate inscription. 4 Ext.A86, A87 10 Bogar made nava-pashanam deity of Dhandayudapani (Tamil) Devasthanam Publication 5 Ext.A88 20 Bogar lived before 3000 B.C. He is a rare mathematical (English) prodigy and an expert in the field of medicine. He created the amalgam of nine chemicals (nava-

Devasthanam bhashanam) and installed the deity atop the hill and did Publication daily services.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 TABLE II (Mackenzie's Manuscripts§) § Colonel Colin Mackenzie is a distinguished member of this brilliant galaxy of Indologists on whom the unknown Orient exercised a strange fascination. A highlander by birth, he came to India in 1783 at the mature age of thirty. The remainder of his life, since then, he spent in India, Ceylon and Java, without even once crossing the seas to revisit the land of his birth and breeding, because of his unbroken1799 to 1806 and his survey of the Deccan earned him the coveted position of the Surveyor-General of Madras in 1810 and subsequently the most memorable position of the first Surveyor-General of India in 1815. .. Mackenzie's fascination for the 'Orient' coupled with his special interest in India and his quest for knowledge may have tempted Lord Napier to employ him as his assistant ...commended highly the statistical researches of Mackenzie and also "his super added enquiries into the history of the religion and the antiquities of the country, objects pointed out indeed in our general instructions to India, but to which, if he had not been prompted by his own public spirit, his other fatiguing avocations might have been pleaded as an excuse for not attending. Real history and chronology have hitherto been desiderata in the literature of India, and from the genius of the people and their past government, as well as the little success of the enquiries hitherto made by Europeans, there has been a disposition to believe that the Hindus possess few authentic records. Lieutenant- Colonel Mackenzie has certainly taken the most effectual way, tho' one of excessive labour, to explore any evidence which may yet exist of remote eras and events, by recurring to remaining monuments, inscriptions and grants preserved either on metals or on paper, and his success in this way is far beyond what could have been expected. ....Whether the grants, which are generally of lands to Brahmins, are all authentic . .or whether the whole of the materials shall be found to form a connected series of historical facts respecting a country which seems to have been always subject to commotions and changes, and unfavourable to the preservation of political records, still it must be allowed that this effort promises

the fairest of any which has yet been made to bring from obscurity any scattered fragments which exist of true history, and undoubtedly encourages the expectation of obtaining at length both considerable insight into the state of the country and its governments in more modern periods and some satisfactory indications of its original institutions and earlier revolutions." The Highlands too paid him a tribute by inscribing a memorial found near his sister's tombstone probably dictated by sisterly affection and admiration. It refers in glowing sentiments to his "indefatigable researches into the ancient history, literature and antiquities of India, through which he had "furnished to the world a mass of valuable information far surpassing the efforts of human industry". Colonel Colin Mackenzie achieved unique fame because he was primarily a man of action with a wide outlook. Though by birth a highlander, by breeding a European and by vocation an instrument of British Imperialism in India, he was a universal man. His vision was never clouded by prejudice and narrow sentiments and he understood human relationship as a delicate and sensitive flower, not to be crushed by fanatical zest. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 MANUSCRIPT No.2 Puranic account of the Palani hill. A Pulippanipatra Odaiyar built an ashrama and consecrated Section 4 Bhuvanesvari nava (vana) durga, a cakra and a meru of 43 konas and other objects of worship on the foot-stool of GENEALOGICAL ACCOUNT the Simhasana of Bogar. At his bidding wolf that ate his OF PARISPUTRA sheep is said to have rolled down the slope of the hill as (PANIPATRA) ODAIYAR, an expiation; hence the name Nayuruttiparai. Then SUPERINTENDENT OF Panipatra Odaiyar seeking his Mudaliyar disciple fit PALANIMALAI, to be a spiritual teacher asked him to take a wife, and DANDAYUDHASVAMI build a matha and after giving his blessings that he KOYIL IN PALANI and his lineal descendants should continue to be teachers with the title Lokaguru Nayinar. Lokaguru WILSON P.417, III-4. Nayinar Pulippanipatra Odaiyar entered into the cave for TAYLOR VOL.III, P.354. samadhi. The manuscript then traces the history of the SHELF No. 17-5-30 line.

TELUGU SUMMARY15-3-1 Later on, during the time of Arumuka Pulippanipatra Odaiyar, there came from Uttiradi (north) 163 families of the Veda (Cencu) community led by the Kosala Cinnoba Nayaka and settled at the foot of the Varahagiri after Kali

48. Cinnoba Nayaka became a disciple of Pulippanipatra Odaiyar and a devotee of the God of Palani, and founded the Palani palayapattu. One Vairavi who tried to rob the deity of its divinity was murdered by the Nayaka. At the instance of his Acarya Ramappayyan, who visited the temple, he appointed four Bhattars (Brahmin priests) in the place of Pandarams who were till then officiating as priests, performed astabandhanam and effected other changes in the worship and administration of the temple.

Details of the celebration of the Navaratri festival in the Palani hill and of the installation of Acaryas in the hierarchy of Panipatra Odaiyar are given. Sixteen Acaryas are mentioned from Arumukha Pulippanipatra Odaiyar to Harikrsna Pulippanipatra Odaiyar who took sacrament as Acarya on 28th Arpisi, Srimukha and wrote the kaifiyat on the 4th April, 1816, corresponding to 18th Cittirai, Dhatu. All of them ruled over the matha in succession during the period of the polegars. When worship in the temple was done by Pandara priests, there was only one matha namely, that of Pulippanipatra Odaiyar. The Palliyyar matha and Paccakandayyar matha were also established when Palani came under the rule of Polegars. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and

S.A.(MD) Nos.652 & 653 of 2022 TABLE III (Gazetteers of India - Madurai District) Page Contents 305 Sthala Puranam 306 “MS in the Mackenzie collection, which is confirmed by local accounts, states that a Canarese non-Brahman Udaiyar first set up a small shrine on Sivagiri, and that for some time he conducted worship in it. Eventually, in the time of Tirumala Nayakkan, he was induced by that ruler's general Ramappayya, who visited this town, to hand over to the brahmans the actual performance of the puja, and was given in return certain duties of superintendence and a right to receive certain annual presents and to shoot off, at the Dasara festival, the arrow which symbolises Subrahmanya's victory over Idumban. His descendants have ever since performed this rite. Many of them are buried at the foot of the steps leading up to the hill. The present heir of the family, Bhoganatha Pulipani Patra Udayar, is a minor.” 307 Reference to Mackenzie MSS TABLE IV (Palani Varalatru Aavanangal (in Tamil) OR (Historical Documents of Palani) Page No. Nature of Note of Original version Note on Translated Date / Year document and version source Page 47 & 48 Gift of income Kandaswamy Arasi from 1632 A.D. from seven villages Palani has written this for performing (Charitable)gift pattaiyam puja, festival etc. and gave it to Shree to Palani temple by Pulipani Paathira https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Page No. Nature of Note of Original version Note on Translated Date / Year document and version source Velayudha Swamy, with a direction Chinnobha that this Charity should be Naicker. performed without break and should continue till the moon, grass and earth, stone and Kaveri ceases to exist.

Following the order, if the persons have performed any help would get the benefits from the pooja of lord Shiva on the shores of Ganga, Kasi. Anyone who doesn t comply would be subjected to the disgrace of killing a holy cow.

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Page 63/	Now stated to be available at Museum run by Tamil Nadu Govt. Archaeological Dept. at Ramalingavilasam Palace, Ramanathapuram)	V d c i C T K K N P P P G c
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available at Government Oriental Manuscripts Library, Chennai	(28.04.1816) copied by Nittal Narayana Iyer from the palm leaf inscription of Arikrishna Pulipani Pathira Udayar	

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Page 120 Time of the copper inscription does not reconcile but states that it was a Madam formed as per the copper plate inscription made during the reign of Thirumalai Naicker. 172 & 175	The District Judge, Madurai handed over the copper plate inscription to ASI (No.15, 1911)	

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Page No. Date / Year	Nature of document and source	Note of Original version
	This copper plate is available in the Metropolitan Museum situated in New York City, America.	
	Dedication to Afternoon pooja at Palani temple	
Page 223 & 224		
(1727)		
Page 259 & 260		
	An article by T.A.	

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(1923)	Muthusamy Konar, a Tamil Scholar (1858 - 1944). Published in the magazine 'Kongu Mandalam' in 1953.		Bhu Nav Pho Bra of wor The acc if app for Nav the res per 10t wil thr awa arr con on Bra wor God Tha was app per 165 Thi Aiy

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TABLE V

(Kongu mandala Varalarukal) (Tamil)

It reproduces the palm leaf inscription dated 22.04.1816 of Nittala Narayana Iyer at. Page 98 of “Palani Varalatru Avanangal” in Table IV above. Delayering the Historical Facts of the Plaintiff's case:

> 30. This enquiry will now commence with the delayering of the historical facts which the plaintiff relies on:
>
> a) The early origin, the sthala purana of Palani hills as could be https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 gathered from the literature above is more mythological. According to this, rishi Agastya, directed Idumban, an asura, to lift the Sivagiri hills (which is now known by the name Palani hills) along with Idumban-malai or hills and to take it to Pothigai (now in Tenaksi District), and that while Idumban could lift the Idumban hills, he could not lift the Sivagiri hills. Later, he discovered that the mountain could not be removed because Balasubramanya was there in the hills.

This puranic history says that Lord Subramanya, when as a child, was upset with his parents - Lord Shiva and Goddess Parvathi in sharing a fruit ('pazham' in Tamil), and chose to stay in the Sivagiri

Hills, This part of the mythological narrative stricto senso may not be relevant in the context of the case. This Court, however, hastens to add that this belief is deeply ingrained in the social consciousness, and for reasons to be stated herein below, this court cannot reject wholesomely either.

b) Next in the chain of early facts is that which is found in Ext.A4. It lists those who had worshipped Dhandayudhapani. It starts in Ktreta Yug, and moves to Kali yug and lists 12 Pulkipani as having worshipped the deity from the year 205 of Kali Yug. The trial court has delved deep into this and concluded that if this statement were to https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 be true, then each of these Pulkipani Swamigal should have lived for 443 years on an average, and doubted the plaintiff's claim of lineage to them due to its biological impossibility.

Bogar, Adhipulipani and Palani hills – Fact or Fiction? 31.1 The curtain raises. Time was about 3000 B.C., some five thousand years from now, when Bogar and Adhi Pulipani, had walked on this planet. Still, none has seen them. Neither has anyone seen Bogar making his nava- paashana deity of Dhandayudapani and consecrating it, nor has Adhi Pulipani serving him as his disciple. No Chinese traveller had visited then to write about them in his travelogue. And, little would they in their life as an ascetic – as a Siddha and disciple, have contemplated that five millennium years later, there would arise a day in the history of the world when a certain entity, now known by the name the Hindu Religious and Charitable Endowment Department, would be guarding the affairs of the nava-paashana image of Dhandayudapaniswami that the former had made and installed at the Palani hill, and that there might arise a litigation such as the one now before this court, where certain aspects of their life and existence might be litigated, which the law of the day might insist in proving. Their quest was not worldly, earthly or secular, and hence they left https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 no records of their life and existence and their purposes, to be used for proving them before a court of law some 5,000 years later. If only these Siddha gurus were distracted into contemplating the possibility of this litigation, they might have possibly recorded it for the benefit of the posterity, and more particularly for the benefit of the Court, and left them safe beneath the layers of 5000 years old rocks and soil, for some archaeologists to arrive in future to dig it up and discover. In that sense, Ram Janambhoomi case, despite its own complications, had an advantage:

> There is at least a report of the ASI indicating the existence of a temple at the disputed site. But nothing of that sort here. 31.2 But they lived; they existed; and today they continue to live and exist in the human consciousness as an aspect of social, religious and spiritual faith, and that will be seen shortly. Until then the existence of the faith in their existence may be presumed.
>
> 32. Faith ordinarily opts to roam beyond the reach of any rational enquiry which constantly seek proof of its truth or correctness, and if it assumes the character of a religious faith, it essentially stays beyond any rational scrutiny. It can only be accepted if one does not choose to deny it, and https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 hence faith

always seeks its acceptance for its sustainability. The Constitution indeed, acknowledges its acceptance of every religious faith through Article 25, when it avows to protect it as an aspect of the fundamental right to conscience. Unlike Article 14, the fundamental right to faith and/or conscience under Article 25 does not require a citizen or a group of citizens who hold a certain faith to support it with any justification in reason for holding it. That Jesus was born to the virgin Mary, and that he was resurrected after his crucifixion are biological impossibilities to a rational mind, but if the belief in his immaculate conception is disturbed, then Christianity will be devoid of any reason for its existence. It is this belief, no matter whether it is rooted in reason, or founded on pure irrationality, the Constitution protects as a facet of fundamental right to conscience. The Constitution has never ceased to amaze its seekers with its ability to blend and balance reason with its opposite. Where a religious faith has earned the acceptability of the Constitution, it no longer can be dismissed as a mythological story in the folklore of the country. 33.1 Before taking forward this discussion, this court intends to steer clear of one aspect: In the beginning of the discussion this Court did indicate that the proof of the cause of action for the suit does not depend on the proof of https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 the faith and that it may chiefly have a corroborative force. But why a discussion on it should be undertaken?

33.2 The necessity to delve into it has arisen since the trial court was appeared to have been absorbed and consumed by the historical narrative of the plaintiff's ancestry as well as the reason for his possession of the suit property, and had engaged in a meticulous evaluation of the evidence to seek proof of the plaintiff's case beyond reasonable doubt, when ascertaining the probable existence of a fact is adequate in law. It may have to be stated that it is precisely here that the trial Court appears to have lost its way. And, in the process, it has also embarked to enter an ancillary finding that Adhi Pulipani was a mere priest or an archaka who performed pooja to Dhandayudapani swamy of Palani; and because he was a priest, even if the plaintiff is a lineal descendant of Adhi Pulipani, still he cannot claim prescriptive title to the suit property by adverse possession, on the principle that a priest cannot claim adverse possession against the deity. (These aspects, as to be expected, have engaged the first appellate court as well, where the Court was seen trying to steer clear of some of the findings of the trial court. However, it may have to be stated that the first appellate could have articulated its views with greater clarity).

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Faith As an Evidentiary Fact:

34. Reverting to the discussion on faith, can faith, though an aspect of the fundamental right, be accepted as a guiding evidence in a civil litigation?

When faith forms an ingredient of the cause of action or defence in a suit, unless it is receivable as an evidence by conforming to some rule of relevancy and admissibility as provided in the Evidence Act, the Courts in this country will struggle to accommodate it and act on it. In other words, what may appear to be the most obvious to the society may still have to be proved before a Court of law.

35.1 For a faith to be accepted by the Court, it may have to be a fact within Sec. 3 of the Evidence Act. The definition of a fact under Sec.3 includes 'any mental condition of which a person is conscious.' Faith is a state of mental condition within the human consciousness. It thus qualifies to be considered as a fact for being treated as a piece of evidence. And, since faith as an evidentiary fact is a Constitutionally protected fundamental right under Article 25, it only requires to be accepted, where Sir Stephen may have to take a back seat to let the framers of the Constitution to lead the way. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 35.2 Accordingly, once the existence of a faith is established, then the truth of the facts which form the soul of the faith cannot be questioned before the Court. It must, however, be added that while faith as a fact can be an evidence, its evidentiary value still depends on the facts that constitute the cause of action or defence in a litigation.

Proof of faith as a fact – Sec.57 of the Evidence Act:

36. Faith as a fact still needs to be proved. And, the existence of Bogar and his siddhic powers, and he making the navapashana deity of Dhandayudapani, and his disciple Adhipulipani today lives and exists in human consciousness essentially as an aspect of faith. Otherwise, why should even the Devasthanam publish this fact in its publications? And, the evidence made available are from the literatures, both exhibited in the case, as well as those listed in paragraph 29. How far can they be acted upon as proof of existence of faith?

37. Sec.57 of the Evidence Act enables the Court to take judicial notice of certain facts, which inter alia includes facts of history and further enables the court to resort “for its aid to appropriate books or documents of https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 reference, ” in matters inter alia of public history. In M. Siddiq Vs Suresh Das, [the Ram Janambhoomi case, (2020)1 SCC 1], the Supreme Court had an occasion to consider the relevancy of historical literature for proving historical facts. It held (from page 605) :

> □859. Section 57 of the Evidence Act, of 1872 elucidates facts of which judicial notice must be taken by the court. After delineating 13 categories of fact of which judicial notice may be taken, it stipulates that □in all these cases, and also on all matters of public history, literature, science and arts, the court may resort to appropriate books or documents for reference . The above provision enables the court to resort □for its aid to books and reference documents inter alia on matters of public history.
>
> 860. While extensive reliance has been placed on the gazetteers by the counsel representing the plaintiffs in Suit No. 5 and by other counsel appearing for the Hindu parties, it is necessary to read them in the context of the principles of law which govern the reliance on gazetteers.

861. Section 81 of the Evidence Act, of 1872 requires the court to □presume the genuineness of every document purporting to be...any Official Gazette". Section 81 raises a presumption of the genuineness of the document and not of its contents. When the court has to form an opinion on the existence of a fact of a public nature, Section 37 of the Evidence Act indicates that any statement of it in a Government Gazette is a relevant fact. While gazetteers have been https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 noticed in several decisions of this Court, it is equally important to note that the reliance placed on them is more in the nature of corroborative material.

862. In Muttu Ramalinga Setupati Vs Perianayagum Pillai [Muttu Ramalinga Setupati v Perianayagum Pillai, 1874 SCC OnLine PC 8 :

(1873-74) 1 IA 209], the Privy Council dealt with an objection to the judgment of the High Court on the ground that excessive weight had been given to the reports of Collectors. In that context, the Privy Council held : (SCC OnLine PC) □Their Lordships think it must be conceded that when these reports express opinions on the private rights of parties, such opinions are not to be regarded as having judicial authority or force. But being the reports of public officers made in the course of duty, and under statutable authority, they are entitled to great consideration so far as they supply information of official proceedings and historical facts, and also insofar as they are relevant to explain the conduct and acts of the parties in relation to them, and the proceedings of the Government founded upon them. (emphasis supplied) The Privy Council cautioned against the use of the report of the Collector when it opined on matters relating to private rights. But as records of official proceedings or historical facts, and to explain the conduct of parties in relation to them, they would provide useful material.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

863. In Ghulam Rasul Khan Vs Secy. of State for India in Council [Ghulam Rasul Khan v Secy. of State for India in Council, 1925 SCC OnLine PC 12 : (1924-25) 52 IA 201] , the Privy Council held : (SCC OnLine PC) □..statements in public documents are receivable to prove the facts stated on the general grounds that they were made by the authorised agents of the public in the course of official duty and respecting facts which were of public interest or required to be recorded for the benefit of the community : Taylor's Law of Evidence, 10th Edn., S. 1591). In many cases, indeed, in nearly all cases, after a lapse of years, it would be impossible to give evidence that the statements contained in such documents were in fact ture, and it is for this reason that such an exception is made to the rule of hearsay evidence. (emphasis supplied)

> 864. In Sukhdev Singh v. Maharaja Bahadur of Gidhaur [Sukhdev Singh v Maharaja Bahadur of Gidhaur, 1951 SCC 408 : 1951 SCR 534 : AIR 1951 SC 288] , this Court explored the nature of a zamindari and examined the District Gazetteer in that context. The Court observed : (AIR p. 291, para 10) □10. ... The statement in the Gazetteer is not necessarily conclusive, but the Gazetteer is an official document of some value, as it is compiled by experienced officials with great care after obtaining the facts from official records.

As Dawson Miller, C.J. has pointed out in the Fulbati case [Fulbati Kumari v Maheshvari Prasad Singh, 1923 SCC OnLine Pat 271 : AIR 1923 Pat 453] there are a few https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 inaccuracies in the latter part of the statement quoted above, but so far as the earlier part of it is concerned, it seems to derive considerable support from the documents to which reference is made. In the above extract, the Court carefully calibrated its reliance on the gazetteer, noting that it was not □necessarily conclusive , but of □some value . The portion, which was relied upon by the Court, as it noted, derived considerable support from documents and was hence grounded in them. The rest was not relied upon. The Court independently assessed its corroborative value. It rejected one part and the part which it accepted was found to derive support from other documentary material. In other words, the contents of the gazetteer, even insofar as they were acceptable, were corroborative

865. In Srinivas Ramanuj Das Vs Surjanarayan Das [Srinivas Ramanuj Das v Surjanarayan Das, 1966 Supp SCR 436: AIR 1967 SC 256], RaghubarDayal, J. while dealing with the contents of O'Malley's Puri Gazetteer of 1908, which had elucidated the history of a Math observed : (AIR p. 263, para 26) □26. It is urged for the appellant that what is stated in the Gazetteer cannot be treated as evidence. These statements in the Gazetteer are not relied on as evidence of title but as providing historical material and the practice followed by the Math and its head. The Gazetteer can be consulted on matters on public history. The above observations indicate that the statements in the gazetteer were not relied on as evidence of title but as providing a historical https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 background including on matters relating to the practice followed by the Math. A clear distinction must be drawn between relying on a gazetteer to source a claim of title (which is impermissible) and as reference material on a matter of public history (which the court may consult to an appropriate extent with due circumspection).

866. In Vimla Bai Vs Hiralal Gupta [Vimla Bai v Hiralal Gupta, (1990) 2 SCC 22], the issue was whether a female Bandhu was entitled to succeed to the estate of the male holder through her mother's side within five degrees of the male holder. On the issue of the inam register, this Court observed that it had □great evidentiary value but its entries had to be considered in the context of other evidence on the record. On the evidentiary value of an Official Gazette, the two-judge Bench of this Court dealt with the provisions of Section 37 and Section 57(13) of the Evidence Act, 1872 in the context of migration and observed : (SCC pp. 27- 28, paras 4-5) □4. ...Thus, it is clear that migration cannot be presumed but it must be established by adduction of evidence. The question then arises is whether the recital in Indore State Gazette relied on, at the appellate stage, can form the sole base to

establish that the plaintiff's family were the migrants from Mathura in U.P. Section 37 of the Evidence Act, 1872 postulates that any statement made in a government gazette of a public nature is a relevant fact. Section 57(13) declares that on all matters of public history, the court may resort for its aid to appropriate books or documents of reference, and Section 81 draws a https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 presumption as to the genuineness of gazettes coming from proper custody. Phipson on Evidence, the Common Law Library (13th Edn.) at p. 510 Para 25.07 stated that the government gazettes ... are admissible (and sometimes conclusive) evidence of the public, but not of the private matters contained therein. ...

5. The statement of fact contained in the Official Gazette made in the course of the discharge of the official duties on private affairs or historical facts in some cases is best evidence of facts stated therein and is entitled to due consideration but should not be treated as conclusive in respect of matters requiring judicial adjudication. In an appropriate case where there is some evidence on record to prove the fact in issue but it is not sufficient to record a finding thereon, the statement of facts concerning the management of private temples, or historical facts of the status of private persons, etc., found in official gazette may be relied upon without further proof thereof as a corroborative evidence. (emphasis supplied)

867. A statement of fact contained in the Official Gazette made in the course of the discharge of official duties on private affairs or on historical facts in □some cases is the best evidence of facts and is entitled to □due consideration . However, it should not be treated as conclusive on matters requiring judicial adjudication. Questions of title raise issues for adjudication. Conflicting claims of title require judicial adjudication. Statements contained in a text of history or in a gazetteer cannot conclude the issue of title. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

868. In other words, the gazette was not treated to be independent evidence of a conclusive nature in itself. The Court has a caution in the above extract. The contents of the gazetteer may be read in conjunction with other evidence and circumstances. They may be taken into consideration but would not be conclusive evidence

869. The historical material which has been relied upon in the course of the proceedings before the High Court must be weighed in the context of the salutary principles which emerge from the above decisions. The Court may have due regard to appropriate books and reference material on matters of public history. Yet, when it does so, the Court must be conscious of the fact that the statements contained in travelogues as indeed in the accounts of gazetteers reflect opinions on matters which are not amenable to be tested by cross-examination at this distant point of time. Consequently, where there is a dispute pertaining to possession and title amidst a conflict of parties, historical accounts cannot be regarded as conclusive. The Court must then decide the issue in dispute on the basis of credible evidentiary material. The above-extracted passage from the Ram Janambhoomi case in the last preceding paragraph is instructive of the fact that the Court may resort to appropriate books or documents for aiding it. Relying on Sec.57, the Court has taken the aid of several interpretive texts. [See: In Annakumaru Pillai v Muthupayal, ILR 27 Mad 551 where the

Division Bench placed reliance on https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 “Nelson‘s ☐Manual of the Madura Country”; In Ramaswami Aiyar v VengudisamiAyyar [(1898) 22 Mad 113] the Court had relied on Dubois ☐Hindu Manner, Customs and Ceremonies‘. In Secretary of State v ShunmugarayaMudalier [20 I.A 84 (1893)], the Court placed reliance on Fergussons ☐History of Architecture ; and in Subramanian Chettiar v KumarappaChettiar [AIR 1955 Mad 144 (DB)] the Court had placed reliance on Edgar Thurston‘s “Castes and Tribes of Southern India.”]

38. It may be added here that in Omkarnath Vs Delhi Administration [AIR 1977 SC 1108], the Hon'ble Supreme Court has held that Sec.57 is not exhaustive of the facts of which the Court may take judicial notice. This dictum was followed by the Constitutional Bench of the Supreme Court in the Ram Janambhumi case. Accordingly, in appropriate cases, with the aid of appropriate books, even faith can be taken judicial notice of as a fact. 39.1 Given the contextual setting of this case, where evidence is scanty, and part of which needs an understanding on a plane of faith, this Court deems it appropriate to rely on the Gazetteers and other literature which includes the renowned Mackenzie Manuscripts, though, as the Supreme Court has held may not be conclusive of the facts that they state. To this may be added two https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 other books of certain significance:

> The first is, Ext.A59, a 1941 publication of the Palani Devasthanam (at a time which the trial court has considered as a period post the arising of the dispute between the parties herein which it observed when it dealt with Ramappaier's copper plate inscription, to be dealt with later). That book was published some 47 years before the present batch of cases were instituted. This book is in English, and it not only has captured the faith associated with Palani temple, Bogar and Pulipani but also makes the statement that the descendants of the Canarese Udayar – read it as Adhi Pulipani, were performing pooja for deity Dhandayudapani.
>
> The second book is “Palani Varalatru Avanangal (in Tamil, translated into English, 'The Historical Documents of Palani'). It is a collection of historical documents such as palm leaf inscriptions and copper plate inscriptions. The book also discloses the source and material and also where they are preserved. All the literature referred to provides composite information on,
>
> (a) mythological facts founded on pure faith;
>
> (b) historical facts on tangible evidence; and https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022
>
> (c) historical facts whose existence could be deduced from the other two.

This treasure of information which the Gazetteer of the Government, or the famed Mackenzie Manuscripts along with the other books – Ext.A59 (which refers to Mackenzie Manuscripts) and “Palani Varalatru Avanangal' provide are of invaluable assistance to this Court in forming its

opinion regarding the historical facts relvant for the current purpose. 39.2 It may, however, have to be added that the reliability of these books for forming an opinion largely depends on the quality of submissions against their credibility. The defendants, however, though show a single-minded focus in non-suiting the plaintiff, yet have not come out with any credible information rendering the reliability of these books suspect. To re- emphasise, barring one book (Palani Varalatru Avanangal), others are either a Government publication, or the publication of the Madras University, or its publication – Ext.A59. The defendants appear to have been caught in an embarrassingly awkward position, as they would be compelled to negotiate severe moments of discomfiture if they have to now speak against the reliability of these literatures. Turning to the other book (Palani Varalatru Avanagal), as earlier mentioned the editor of the book is a https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 former faculty of the Department of Archaeology of Tamil University, and it discloses the source of information, most of which are predominantly in the custody of the Government museum or its library of manuscripts. The defendants did have the advantage of verifying the source, yet they did not make a statement that the information that these books disclose is contrary to the source material, nor chose to produce their certified copies before the court.

39.3 Thus, the various books listed in paragraph 29, more particularly the four books herein above referred to are found to be reliable enough for this Court to seek assistance and to act upon.

40. Keeping the plaintiff's claim of lineage to the Adhi Pulipani aside for the present, the rest of the narration as could be found in the literatures referred to above, reflects a belief which the people of this territory and elsewhere have held for few thousand years, perhaps long before the society had ever contemplated on the need for geographical borders, which, to borrow Tagore's poetical idea, for building narrow domestic walls to fragment the world and the human race. The belief that Bogar and Adhipulipani lived and that Bogar made the nava-paashana deity of Dhandayudapani and https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 consecrated it in the Palani hills are inseparably ingrained in the consciousness of the society, more significantly in those who believe in Dhandayudapani of Palani hills. The origin of this belief may have been lost in antiquity, yet it has transcended to stay as a reigning faith in the consciousness of those who hold it.

41.1 Now, it is this faith, the existence of which this Court has taken judicial notice of as a fact within the meaning of Sec.3 of the Evidence Act, the Constitution has avowed to protect as an aspect of the fundamental right to conscience under Article 25 of the Constitution. Should this Court disturb it now? Or, can it? That which the Constitution protects, the Courts shall not hazard a scrutiny to discredit. This, now peg-marks the contours of this court's approach to the dispute before it: this court does not propose to engage in any over-enthusiastic extravaganza to imperil the social belief associated with Bogar and Adhipulipani and the Palani temple, while engaged in the process of resolving an ordinary dispute of title over a piece of land. And, the Indian jurisprudential minds, long trained in the Evidence Act, its semantics and principles, are also required to be told that for deciding the issue of the plaintiff's title to the suit property, there is hardly a need to intervene with the social beliefs, more so when all those who hold https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 the belief are not before the Court.

41.2. It now implies that this court will retain the faith associated with Bogar, Adhi Pulipani and Palani hills is now a fact and is no more a matter of presumption. Accordingly, it records its disagreement with the trial court and holds that Adhi Pulipani was not a temple priest, an insulting description which the trial court has unmindfully entered, and holds that Adhi Pulipani was a revered disciple of the Siddha guru – Bogar. The Pulipani Swamigal might have been performing pooja before and after the advent of the H.R. & C.E. Act, but they are principally madathipathis of the ashram, and not ordinary temple priests.

42. A word of caution, however, is required to be made. The Supreme Court did point out the inadvisability of relying on texts on history to decide private disputes on title, but that will be an aspect which this court may have to remember when the discussion moves on to consider the plaintiff's claim of title to the suit property.

Plaintiff's lineage to Pulipani.

43. For proving his lineage, the plaintiff, in essence, has relied on Ext. A4 a https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 book titled □Palani Sthala Varalaatrin Adhi kodi vazhi Vivaram', (which when translated to English will read as 'Historical Details of the Lineage of Palani'), which the plaintiff's Pulipani Ashram had published in 1965. At page 33 the book lists those who worshipped Sri Dhandayudapani swami of Palani. It states that:

> (i) In Kreta Yug (also known as Satya Yug), Brahma worshipped;
>
> (ii) In Treta Yug, Indra worshipped;
>
> (iii) In Dwapara Yug, Boghar consecrated the deity for Dhandayudapani, and worshipped till the year 204 of Kaliyug;
>
> (iv) From the year 205 of Kaliyug, Adhipulipani worshipped.
>
> (v) Thereafter the book lists 11 Pulipani Pathira Udayar, commencing with Naina Pulipani Pathira Udayar and ending with Boganatha Pulipani Pathira Udayar (and he is now succeeded by the present plaintiff) as those who had worshipped the deity Dhandayudapani.

44. The trial court dismissed the plaintiff's claim of lineage to Adhi Pulipani on the following grounds:

> a) That Ext.A4 was published only in 1965 after dispute had arisen between the parties (between 1936 and 1938 over the revenue sub-

division of the Palani hills) and hence it is unreliable. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

b) That Adhi Pulipani was a Canarese Udayar, but the plaintiff belongs to the Mudaliyar community;

c) That going by the information provided in Ext.A4, each of the Pulipani Pathiraswamigal should have lived, on an average, for 443 years, which is unbelievable. (For reckoning it, it fixed the commencement of Kaliyug, and appeared to have divided the number of years since then with the number of Pulipani Pathira Swamigals listed in Ext.A4).

45. In paragraph 39.3 above, this Court has already held that the literatures on the Palani temple, Bogar, Adhi Pulipani can be received in evidence under Sec.57 of the Evidence Act. Some of them may now be referred to ascertain the lineage of the plaintiff to Adhi Pulipani. (The keenly interested are advised to flip on a few paragraphs backwards, and may re-ascertain)

46. Before dealing with the issue, it needs to be underscored that the trial court had walked into a conceptual error. When the plaintiff seeks lineage to some revered soul who lived 5,000 years ago, evidentiary facts may not be complete, and few links are bound to be missing. Here, it is required to be re-emphasised that courts cannot seek proof of those facts which are beyond https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 the capacity of the parties to produce, for law does not demand the impossible. And, where evidence which a logical mind seeks is beyond human ability to produce, then the Court is duty-bound to read the evidence on either side to draw necessary inferences on the probable existence or non- existence of a fact. This would now imply that the defendants/appellants cannot stop by merely spotlighting certain missing links in the plaintiff's claim of lineage to Adhi Pulipani, but may have to produce evidence credible enough to improbabilise the plaintiff's claim of lineage to Adhi Pulipani. If the life of the law is not logic but experience, it is imperative that the court's demand for evidence must not border on illogicality. That precisely is the point where the trial court had misdirected its analysis in entering its finding on the average life span of Pulipani Swamigal. 47.1 Is there a proof of the probable existence of the lineage which the plaintiff claims to Adhi Pulipani? There are at least three/two references in the following literatures (which have been already extracted in the Tables II, I, and IV in paragraph 29 above):

> a) Mackenzie Manuscripts based on local accounts that the □hen Panipatra Odaiyar seeking his Mudaliyar disciple fit to be a spiritual teacher asked him to take a wife, and build a matha (a madam or https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 mutt) and after giving his blessings that he and his lineal descendants should continue to be teachers with the title Lokaguru Nayinar .
>
> b) Pulipani's descendants were the priests at the principal shrine from remote times, and, when Thirumalai Nayak's (A.C. 1623-59) general Ramappier visited the temple, he performed an ashta-bandana Kumbabisheka for the hill-temple and introduced the adi-saiva Sivacharyas to officiate in pooja services (Ext.A.59, Table I paragraph 29).

c) The palm leaf inscription of Nittala Narayana Iyer, dated 28.04.1816 records that Nayinaththai Mudaliyar had become the disciple of Adhi Pulipani Pathira Udayar and that he later came to be known as Nayinar Pandaraththar. This Nayinar Pandaraththar subsequently came to be known as Pulipani Pathira Udayar. (page 87, Palani Varalatru Aavanangal, Table IV in paragraph 29 above) 47.2 Since this Court has decided to act on these books and the historical facts they provide, it could now be derived:

a) That Adhi Pulipani, though a Canarese Udayar, his disciple belonged to the Mudaliyar community. (This instantly clarifies the confusion https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 which the trial judge had entertained).

b) That the disciple and the descendants of the Adhi Pulipani were also known by the name Pulipani Pathira Udayar.

c) That these Pulipani Pathira Udayar were also called Pulipani Pandaraththar.

d) And, these pandaraththars were replaced by the brahmin priests by Ramappier.

These facts preponderates the probability that the plaintiff has established his lineage to Adhi Pulipani Pathira Swamigal. And, there are couple of evidentiary materials aided by a rule of evidence that will render the claim of lineage most probable. It will be considered in the next section. Substantial Question (a) is thus held against the appellants. Plaintiff's possession of the suit property & its antiquity:

48. Here the relevant evidences are: (a) Evidence prior to Ext.A6 dated 15.11.1884. This will comprise again the literature referred to above plus the copper plate inscription attributed to Dalavoy Ramappier; and (b) Ext. A6 itself.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 A. Ext. A6, the Memorandum of Zamindar of Ayakudi

49. Ext.A6 is the original memorandum under the hand of zamindar of Ayakudi, dated 15.11.1844. Arguments were heard that this zamindar was the manager of the temple, and as a manager, he had no authority to assign the suit property to anyone. And, this argument was but a reiteration of the findings of the trial court which it pivoted on the Regulation VII of 1817 of the East India Company. The trial court s line of reasoning is:

a) Under this Regulation, the superintendence of Hindu and Mohammedan religious institutions was vested in the Board of Revenue, though it was later withdrawn between 1839 and 1842.

b) Ext.A6 was executed when there was no effective supervision of the temple by the British sovereign, and that this document indicates that the hill promoboke was granted in favour of the plaintiff's predecessor.

c) And, if it was so granted then it would have been entered in the Inam Register by the Inam Commission, which came to be established on 16.11.1858. And, since this grant was not entered in the Inam Register, there is no grant.

d) The Ayakudi zamindar was only a custodian of the temple and he had no power to make the grant.

50. What does Ext.A6 state? It reads as below:

Original Tamil Version English Translation (to the extent possible) Sri Palani Devasthanam Manager Ayakudi zamindar Kumara Kondama Nayakkar Account for land with Pulipani Pathira Udayar Agadi madalayam.

At the foot hills of the hills, a plot measuirng 200 feet East-west x 140 ft.

north-south, that lies to the south of the pathway leading to the hill, to the west of samiyar madom, to the east of the way to the temple, to the north of 18 stepped temple..

Palayapattu, from Karnataka time till date, for a very long time, being enjoyed by Pulipani Pathira Udayar hereditarily, and since it is the Agadi Samadhi Swamigal, and since this place absolutely belonged to Pulipani Pathira Swamigal and that he was in absolute enjoyment of the Swamigal, its account is informed to the Swamigal.

Nowhere the zamindar of Ayakudi had recorded that the plot referred to in Ext.A6 belonged to the temple, and that he, as the manager of the temple, had granted it in favour of the then Pulipani Pathira Swamigal. On the other hand, he had acknowledged that:

 Pulipani Swamigal was in occupation or possession and enjoyment of the plot referred to (item 1) for a long time, and had been holding it hereditarily; and that the plot described therein absolutely belonged to him.

51. When the Court is invited to understand the contents of a document, it must be cautious not to travel beyond the words expressly employed in the document, unless there is a compulsion on it to construct it for removing any ambiguities. This is an unshakeable statement embedded firmly within

the scheme of the Evidence Act as well as in law of construction of documents, and it hardly requires an authority to fortify it. When this rule is applied, this Court does not find any ambiguity in Ext.A6, warranting its construction and to substitute any of the express words of the document. What, therefore, does Ext.A6 convey?

That even in 1844, some 144 years before the institution of the suit, Pulipani Swamigal had been in possession.

That his possession had been in continuation of the hereditary possession of the property (reference was also to Agadi Samadhi), and for a considerable length of time.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 That Pulipani Swamigal's title to the plot was acknowledged in unequivocal terms even in 1844.

52. Since the plaintiff's title to item 1 suit property is now in dispute, this Court chooses to concentrate more on his immemorial possession as has been recorded in Ext.A6. As stated earlier, the defendants do not dispute the genuineness of Ext.A6 but import a construction on it as if it discloses a grant, when it is not.

53. The contextual significance of Ext.A6 however, is that it describes the state of affairs that was in existence then. To make it more specific, it informs:

> That the office of Pulipani Pathira Swamigal was unassailably in existence even in 1844.
>
> That even in 1844, the possession of the item 1 property was with the then Pulipani Swamigal.
>
> This document in essence describes the state of affairs at the relevant time, and explains the existence of the office of Pulipanipathira swamigal, and his https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 possession of the item 1 property in 1844. However, it still does not trace them to the time of Adhi Pulipani. It will be eventually ascertained. A. Edict of Dalavoy Ramappier (The Copper-plate inscription) :

54.1 That Ramappier was the Dalavoy of Thirumalai Naickar was a historical fact which the Gazetteer and the Macanzie Manuscripts have recorded. And, it is never in dispute. Before introducing the contents of the copper plate inscription, it is necessary to provide a background to it. 54.2 Initially, Adhi Pulipani (referred to as the Canarese Udayar in the Gazatteer, Macanzie Manuscripts and Ext.A59), started worshipping Dhandayudapani swami in the Sivagiri hills. The Devasthanam had also adopted this belief which it had recorded in Ext.A59 that the descendants of Pulipani were performing pooja from 'remote time. All the literature, which includes the Gazetteer and the Mackenzie Manuscripts informs that Dalavoy Ramappier had replaced the pandaram who

was hitherto offering pooja with brahmin Sivacharya.

55.1 The copper plate inscription of Ramappier reads as below (from page 41 of Ext.A59):

> https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Original Version in Tamil English Translation (***) (Operative Portion) Edict of Ramappier, Dalavoy of Thirumalai Naickar made on Monday, 16th day of Thai, Srimugha year (as per Tamil caldender), the 4578 year of Kaliyuga and 1366th Salivahana year, poorva paksha, sapthami thiti., As it is proposed to hold ashtabhandhanam for Lord Dhandayudapani and since Ramappier did not incline to receive Prasad from Pulipani Pathiraswamiyar who was hither to offering pooja to the said deity, Ramappier along with Poligers persuaded Pulipaniswamil and appointed 1. Saraswathi Ayyan of Kodumudi, 2. Thambaavaiyyan of Maruthur, 3. Subbaiyan of Nattara Ayyan Kovil, 4 Muthaiyyan of Karur and 5 Akiladaiyan of Kadambakovil brought by Polygar, from Kongu Region for conducting pooja.
>
> Pulipanipathira Udayar who had been perfoming pooja to Dhadayudapani from time immemorial are to be give ¼ portion of the „nirmalya swarna pushpam' to be given to the nambi now appointed. Besides the Pulipanipathira Udayar are required to perform pooja to durgainamman, maragatha lingam, valapuri shankhu, navarathiri pooja and shooting the arrow with all the protocols reserved to the deities from prathamai to dhasami and to perpetually serve all the 24 servants (Pandarams),who were granted special privileges, with services such as Tirumanjanam, Maalai Santhanam (preparation of sandal paste for making garland), vilvam etc., Palliyarai Kattiyam, https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Original Version in Tamil English Translation (***) (Operative Portion) Oduvar (minstrel), Kandha Puranam, Tirupugazh (recital of these liturgies), Tiruvalagu, Sattakkaal, Thoopakkaal, washing of parivattam cloth, Kolla sevagam, Upaya Tirumanjanam, Vagaiyara Kattalai (rotational representation for each of the communities).
>
> Whereas, the hereditary title of ownership of this holy place / shrine is devolved on Pullippani Pathira Udayar, since this shrine turns out to be 'Kaaranasthalam' of all the five Saivite Brahmins, four of them having been re-christened as Viruma Nambi, Vijaya Nambi, Vaala Nambi and Kosala Nambi, while Kodumudi Saraswathy having been rechristened as Kalachthambitham Sthavarasa Pandithat, with grant of privileges like Kayaasamara (Ochre color dress), Pancha Kothu (five vessels) and Thaavadam and a few special treatments of Aarukaal Peedam, Abisheka Mariyaathais, which are being performed to Pullipanni Pathira Udayar Aadheenam, we having brought Pandarams and Nambimaars before Pullippani Pathira Udayar, having obtained their loyalty so as to ensure that the affairs of God suffers no deviation, appointed Pullipani Pathira Udayar to supervise them and the temple servants and thiking devised and framed a scheme whereby Pullipani Pathira Udayar

is enjoined to Nivedhanam and Punyaasanam by engaging Brahmins and 24 sovereigns of gold and 12 salagai (80/60 padi / measures) of paddy along with provisions required therefore are https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Original Version in Tamil English Translation (***) (Operative Portion) supplied to Pullippani Pathira Udayar all supplied from the temple. The Parivattam for Sathupadi to Goddess at Malaikovil and silk skirts for goddess at Village templeare to be procured after shooting of Ambu, on goddess at Village temple are to be procured after shooting of Ambu, on presentation of Asmanagiri, Kuthuvilakku, Saravilakku, Manithattam and Deepa Musthidis.

We have ordered for sustenance of this scheme as long as the moon, the sun, the stone and river Cauvery, the grass (vegetation) and the earth exists.

Whoever render assistance to this Charity (Dharmam), through words, thinking, labour and material will get the benefits / blessings of installation of a crore of Siva Linga on the banks of Ganges at Kasi. Those who imperil this arrangement would be obliged to suffer a curse of cow slaughter in the banks of Ganges.

Drafted by Kandasamy Achari of Palani.

(***) As near a translation as possible is made. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 The trial court, however, disbelieved the copper plate inscription fundamentally on two scores:

That the original copper plate inscription was not produced; and The Salivahana year in which it was purported to have been made does not reconcile with the reign of Thirumalai Naickar. (Here, it must be stated that in the book 'Palani Varalatru Avananangal', the editor had indicated that the time referred to in the copper plate inscription is wrong. He makes a similar reference to some other copper plate inscriptions as well).

55.2 It first needs to be stated that the contents attributed to the copper plate inscription, on its face, do not deal with Pulipani Swamigal s occupancy of item 1 property, nor does it disclose that item 1 property had ever been given by Ramappier to the former, for this court to engage excessively on the consequence of its non-production as evidence. On the other hand, it was more exproprietary in character, as it records the taking away of the right which the Pulipani Pathiraswamigal hitherto had vis-a-vis the offering pooja to the principal deity of Boghar s consecration. Hence, notwithstanding the fact that the trial court has suspected the genuineness of the copper plate https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 inscription, even de hors this document, what remains as an unimpeachable historical fact is that Ramappier was the general of Thirumalai Naickar, and it was he who had replaced

> the non-brahmin Pulipani Pathiraswamigal with brahmin Sivacharyas for performing pooja in the temple. And, all the literatures on the topic discloses that till it happened, Pulipani Pathiraswamigal was performing pooja, and going by Mackenzie Manuscripts the descendants of Adhi Pulipani were performing it.

Therefore, even in the absence of the original copper plate inscription, the historical facts of which this Court has taken judicial notice, guide it to conclude that the Pulipani Swamigal was there until Sivacharyas, the brahmin priests, were appointed for the temple during the reign of Thirumalai Naicker. Substantial Questions (c) to (e) are answered accordingly.

55.3 Turning to the genuineness per se of the copper plate inscription, it particularly refers to granting Pulipani the right to shoot arrows during the „navarathri or dussera festival as part of the 'pari vettai' event. And, Ext.A59, the Devasthanam publication candidly states that this right is being exercised annually by the Pulipani Swamigal who hold the office for the time being, a fact which D.W.4 admits, and the first appellate court has https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 pointedly captured to trust the copper plate inscription. Its line of reasoning is logical: If this copper plate inscription of Ramappier is not genuine, then there is no way that the shooting of the arrow by the Pulipani Swamigal can be explained.

56. To sum up, two facts emerge out of the discussion in this segment:

> That in 1844, Pulipani Swamigal was there, and till date this office is in existence;
>
> During the reign of Thirumalai Naickar (between 1623 and 1659), Pulipani Pathira Swamigal was there.

57. The disclosure in the Mackenzie Manuscripts about the existence of the belief that the descendants of the Adhi Pulipani were performing the pooja till they were replaced by brahmin priests notwithstanding, there is an equally efficacious rule of evidence which enables to establish the same conclusion. It is enabled by Illustration (d) of Sec.114 of the Evidence Act. It reads:

> Sec.114. Court may presume existence of certain facts: The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 the facts of the particular case.
>
> Illustration (d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist is still in existence. This provision with the illustration provides the most commonsensical solution in presuming the continued existence of a state of affairs, by providing the proof of its existence at any point of time which common course of natural events and human conduct may guide a rational mind. This implies

that where the existence of a fact can be proved, till the contrary is proved, its continued existence can be presumed.

58. In Ambika Prasad Vs Ram Ekbal Rai [AIR 1966 SC 605], the Supreme Court has held that this presumption operates both forward and backwards in point of time. Accordingly, where the facts point to the existence of a state of affairs at a particular point in time, a presumption arises in law that the state of affairs had existed prior in point of time. This principle is explained by K.T Thomas, J (as he then was) in Saleem v. A.R. Rajeswary, [(1990) 2 KLJ 245], wherein it was held as under:

> Presumption of fact is usually drawn by court when it has the assurance of its existence of the fact or thing is in issue, prior https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 existence of it, in human experience is inferable from proof of its existence at a particular point of time, in the way as its continued existence for some length of time. But the degree of proximity of this prior existence as well as continuity depends on facts and circumstances of each case .
>
> The learned judge then went on to observe:
>
> 8. Presumption of fact is usually drawn by the court when it has the assurance of its existence with a reasonable degree of certainty. When existence of the fact or thing is in issue, prior existence of it, in human experience is inferrable from proof of its existence at a particular point of time, in the same way as its continued existence for some length of time. But the degree of proximity of this prior existence as well as continuity depends on facts and circumstances of each case. If there is evidence that a mountain was in existence at a particular time, the inference that the mountain remained like that for a century before also is perfectly permissible in the realm of presumption. Instead of a mountain, if the subject is a hillock the presumption backward can be stretched upto, say a few years. But if the subject is a soap bubble it would be inept to presume that the bubble remained like that even half an hour prior to the time. Hence there cannot be any inflexible rule of presumption regarding the space of time during which it would have existed earlier. (emphasis supplied)

59. Sec 114 with Illustration (d) coupled with an understanding of its functional utility in appreciating evidence, when applied to the facts of this https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 case, two factual inferences can be instantly derived:

> That the office of Pulipani Pathira Swamigal is there now, and was there in 1844 and was also there in the 16th century. Since there is no contra evidence, the lienage of this office continued till the date of Adhi Pulipani. Therefore, this contention of the plaintiff is not only a statement which the Court could take judicial notice of, aided by the books and literatures, but is also sustainable through a rule of evidence.

Similarly, Pulipani Pathira Swamigal is in possession of the suit property now, that he was in possession of the suit property in 1844 (as evidenced by Ext.A6), and this possession, in the absence of evidence to the contrary (where the defendants neither strain themselves nor this court), has to be presumed backwards in point of time till Adhi Pulipani. And, in the process it affirms the statement in Ext.A6 that the Puplipani Pathira Swamigal had been in possession of the suit property hereditarily for a long time. In the absence of a dispute as to the existence of the office of Pulipani Pathira Swamigal till now, with no contra evidence to challenge his possession till the first survey and settlement in 1886, (and even thereafter till date) this Court has least difficulty in holding that the plaintiff, the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 present Pulipani Pathira Swamigal has established his lineage to Adhi Pulipani and that the successive Pulipani Pathira Swamigal since the time of Adhi Pulipani have been in possession of item 1 suit property till now. The point however is, does it confer title over item 1 property on the plaintiff? Acquisition of title by the First Occupant:

60. This Court has just drawn presumptive inferences from an existing fact under Sec.114 of the Evidence Act to conclude that Pulipani Swamigal s possession of item 1 might have to be traced to the days of Adhi Pulipani. This was made possible through time travel into the past from the present day with stopovers in 1844 and the 17th century. The point which has now arisen for consideration is whether the possession of item 1 since about 3000 BC provides a legal possibility of conferring title over it on the plaintiff. To state it differently, whether occupancy of item 1 for a few millennium years mature into ownership? In its engagement with this question, this Court intends to summon the doctrine of pedis possessio and res nullius for developing its solution.

61. Res nullius is a Latin expression derived from the Roman Law. It means „nobody s property, or a property without an owner. Pedis possessio is https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 another concept or theory in the ancient Roman law. In the Institutes of Justinian, Chapter 41, it is stated thus:

> What does not belong to anyone by natural law becomes the property of the person who first acquires it. From the Roman civil law, the concept transplanted itself to the common law of England which understands it as occupation of a property to establish ownership as the first occupant of the land. Oliver Wendell Holmes, The Common Law (1881, Lecture VI, 216) describes it as below:
>
> To gain possession, then, a man must stand in a certain physical relation to the object and to the rest of the world, and must have a certain intent. These relations and this intent are the facts of which we are in search. In his treatise on Evidence (12th Edition), Best has set out the position thus:
>
> $366. The presumption of right in a party who is in the possession of property, or of that quasi possession of which rights only occasionally exercisable are susceptible, is highly favoured in every system of jurisprudence, and seems to rest, partly on

principles of natural justice, and partly on public policy. By the law of England, possession or quasi possession, as the case may be, is prima facie evidence of property " Melior/potior est conditio possidentis"; and the possession of the real estate, or the perception of the rents and https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 profits from the person in possession, is primâ facie evidence of the highest estate in that property; namely, seisin in fee. But the strength of the presumption, arising from possession of any kind, is materially increased by the length of the time of enjoyment, and the absence of interruption or disturbance from others who, supposing it illegal, were interested in putting an end to it. The rule is, that where the facts show the long-continued exercise of a right, the court is bound to presume a legal origin, if such be possible, in favour of the right. And in such cases, the courts have presumed not only that the right had a legal origin, but many collateral facts, so as to render the title of the possessor complete, according to the maxim, □Ex diuturni temporis omnia praesumuntur rite et solemniter esse acta'. The jurisprudential basis for possession and the root of title was explained by Richard A. Epstein, in a seminal article titled „Possession as the Root of Title,' [Georgia Law Review 13, No. 4 (Summer 1979): 1221-1244] in the following passage:

□Within this viewpoint, it is possible to show the unique place of first possession. It enjoyed in all past times the status of a legal rule, not only for the stock examples of wild animals and sea shells but also for unoccupied land. □..In essence, the first possession rule has been the organizing principle of most social institutions, and the heavy burden of persuasion lies upon those who wish to displace it. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 This has been recognised in Indian law. In Thayarammal (Dead) by LRs Vs Kanakammal and others [(2005) 1 SCC 457], there is a reference to it. See also, Meenugu Mallaiah and others Vs Ananthula Rajaiah and another [(2016) SCC OnLine Hyd 318], it is held as below:

"45. Jurisprudentially there are many modes of acquiring ownership.

On the principle of occupation, a person may become the owner of a res nullius by taking possession of it. The thing concerned did not belong to anybody. But, the early case of Welb v Fox [7 T.R 397], contains the statement of the rule that a person in possession is presumed to be the owner unless the contrary is proved. Such a rule existed in the common law as well as the civil law of other European systems (See: Rules 549 and 550 of the Code Napoleon). The real treatise on the principle is contained in the seminal work titled Ancient Law [10th (1908) Edition] Sir Henry Maine writes in the Chapter titled „Early History of Property' (extracted portions between pages 217 to 228] "Occupancy is the advisedly taking possession of that which at the moment is the property of no man, with the view (adds the technical definition) of acquiring property in it for yourself. The objects which the Roman lawyers called res nullius - things which have not or have never had an owner - can only be https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 ascertained by enumerating them. Among things that never had

an owner are wild animals, fishes, wild fowl, jewels disinterred for the first time, and lands newly discovered or never before cultivated. Among things which have not an owner are moveables which have been abandoned, lands which have been deserted, and (an anomalous but most formidable term) the property of an enemy. In all these objects the full rights of dominion were acquired by the occupant, who first took possession of them with the intention of keeping them as his own - an intention which, in certain cases, had to be manifested by specific acts." (Page 218) ☐..It was once universally believed that the proceeding implied in occupancy was identical with the process by which the earth and its fruits, which were at first in common, became the allowed property of individuals. The course of thought which led to this assumption is not difficult to understand if we seize the shade of difference which separates the ancient from the modern conception of Natural Law. The Roman lawyers had laid down that occupancy was one of the natural modes of acquiring property, and they undoubtedly believed that were mankind living under the institutions of Nature, occupancy would be one of their practices..... but they certainly do seem to have the conjecture, which has at all times possessed much plausibility, that the institution of the property was not so old as the existence of mankind. Modern jurisprudence, accepting all their dogmas without reservation, went far beyond them in the eager curiosity with which it dwelt on the supposed state of nature. Since then it had received the position that the earth and https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 its fruits were once res nullius, and since its peculiar view of nature led it to assume without hesitation that the human race had actually practised the occupancy of res nullius long before the organisation of civil societies, the inference immediately suggested itself that occupancy was the process by which the 'no man's goods' of the primitive world became the private property of individuals in the world of history." (Pages 222-223) Occupancy first gave a right against the world to an exclusive but temporary enjoyment, and afterwards, this right, while it remained exclusive, became perpetual. Their object in so stating their theory was to reconcile the doctrine that in the state of Nature, res nullius became property through occupancy, with the inference which they drew from the scriptural history that the Patriarchs did not at first permanently appropriate the soil which had been grazed over by their flocks and herds." (Page 225) ☐.. Occupancy is the advised assumption of physical possession; and the notion that an act of this description confers a title to 'res nullius', so far from being characteristic of very early societies, is in all probability the growth of a refined jurisprudence and a settled condition of the laws. It is only when the rights of property have gained a sanction from long practical inviolability, and when the vast majority of the objects of enjoyment have been subjected to private ownership, that mere possession is allowed to invest the first possessor with dominion over commodities in which no prior proprietorship has been asserted. The sentiment in which this https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 doctrine originated is absolutely irreconcilable with the infrequency and uncertainty of proprietary rights which distinguish the beginnings of civilisation. Its true basis seems to be, not an instinctive bias towards the institution of Property, but a presumption, arising out of the long continuance of that institution, that everything ought to have an owner. When possession is taken of a 'res nullius', that is, of an object which is not or has never been, reduced to dominion, the possessor is permitted to become proprietor from a feeling that all valuable things are naturally the subjects of an exclusive enjoyment and that in the given case there is no one to invest with the right of property except the Occupant. The Occupant, in short, becomes the owner, because all things are presumed to be somebody's property and because no one can be pointed out as having a better right

than he to the proprietorship of this particular thing." (Page 227-228) In between Maine also quotes Blackstone which reads:

> "... by the law of nature and reason he who first began to use it acquired therein a kind of transient property that lasted so long as he was using it, and no longer, or to speak with greater precision, the right of possession continued for the same time only that the act of possession lasted. Thus the ground was in common, and no part was the permanent of any man in particular; yet whoever was in the occupation of any determined spot of it, for rest, for shade,or the like, acquired for the time a sort of ownership, from which it would have been unjust and contrary to the law of nature to have driven https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 him by force, but the instant that he quitted the use of occupation of it, another might seize it without injustice.' He then proceeds to argue that "when mankind increased in number, it became necessary to entertain conceptions of more permanent dominion and to appropriate to individuals, not the immediate use only, but the very substance of the thing to be used. (Page 223-224) In State of U.P. Vs I Additional District Judge & Others [(2013) 6 All LJ 316 : 2013 SCC OnLine All 13736] Sudhir Agarwal J has dealt with extensively on the topic, and refers to Brihaspati Smriti (after citing Maines), which inter alia states (from paragraph 71 of SCC OnLine):
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> 7. He whose possession has been continuous from the time of occupation, and has never been interrupted for a period of thirty years, cannot be deprived of such property.
>
> 9. He who does not raise a protest when a stranger is giving away (his) landed property in his sight, cannot again recover that estate, even though he be possessed of a written title to it.
>
> 26. When possession extending over three generations has descended to the fourth generation, it becomes legitimate possession, and a title must never be inquired for.
>
> 27 . When possession undisturbed (by other) has been held by three generations (in succession), it is not necessary to produce a title;

possession is decisive in that case.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 30 . He whose possession has passed through three lives and has been inherited from his ancestors, cannot be deprived of it unless a previous grant should be in existence (in which the same property has been granted to a different person by the king) 62.1 Was Palani Hill res nullius in 3000 BC?. At least for Bogar and Adhi Pulipani, it was. Bogar chose to install the deity he made with navapashaana atop the hill. No political government of whatever size and authority had ever appeared to have taken an objection to it then and thereafter. Otherwise, how to explain its

continued existence for 5000 years? At least prior to the sarasen invasion, the society would have been a large, homogenous society of Hindus with their political governance rested with the Hindus. Those might have been the times when saints and sages, rishis and the Siddha were revered, and the political government of the times might not have interfered with the Siddha Boghar occupying a piece of hillock, then called Sivagiri hills, with his Canarese disciple Adhi Pulipani. But millenniums of years later, no political government at any points of time had chosen to disturb Pulipani occupying a piece of land at the foothills of Palani – neither the Moghals, nor the East India Company, nor the British. Even during the reign of Thirumalai Naickar, Dalavoy Ramppier, had snatched the right to perform pooja to Dhandayudapani from Pulipani https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Swamigal and granted it to the brahmins, yet he did not harm the Pulipani Swamigal s possession over a small plot of land at the foot hills – now described as item 1 in the plaint. It is hence this Court considers that in its search for a legal philosophy to ascertain the ownership of Pulipani over item 1, it finds that the doctrine of res nullius coupled with pedis possessio offers an unimpeachable explanation.

62.2 Be it the pedis possessio of the Roman law, or our own texts, the smirits as extracted above, provide a preponderating probability, nay, possibility, that the plaintiff has acquired title to the item 1 property founded on its uninterrupted occupancy for five millennium years. 62.3 If the passage of Richard A. Epstein (quoted in paragraph 61) is revisited, he has observed:

> ☐..In essence, the first possession rule has been the organizing principle of most social institutions, and the heavy burden of persuasion lies upon those who wish to displace it. This statement in essence is an aspect on the burden of proof, which under the Evidence Act is embodied in Sec.110. It reads:
>
> The burden of proof as to ownership: When the question is whether any person is owner of anything of which he is shown https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. Epstein returned to the subject in another article titled ☐Past and Future: The Temporal Dimension in the Law of Property ". The learned author has proceeded to state as follows:
>
> ☐In Anarchy, State and Utopia, Robert Nozick offers a historical account of justice, which is consistent with his theoretical perspective, but which is in no way sensitive to questions of temporal degree: rights are strictly determined by temporal priority. The older the title, the better the title-period. Sequence is everything; the magnitude of the interval is nothing. Dealing with Sec.110 of the Evidence Act, the Supreme Court in Ram Janmabhumi case [(2020) 1 SCC 1] has held:
>
> ☐193.... Section 110 deals with the burden of proof. Where the provision applies, the burden of proving that another person who is in possession is not the owner lies on the person who affirms against the ownership of that other person. But, for Section

110 to be attracted, there must be a question as to whether any person is the owner of anything and the ownership claimed must be that of which he is shown to be in possession. Section 110 is based on the principle that title follows possession. That is why the provision postulates that where a person is shown to be in possession, and a question arises as to whether that person is the owner, the law casts the burden of https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 disproving ownership on the individual who affirms that the person in possession is not the owner. So far as the precondition for invoking Sec.110 goes, first, there is no dispute here that the plaintiff is in possession, and it has been explained that this possession is no less than 5,000 years old, and hence when the plaintiff asserts his title based on immemorial physical occupancy and seeks declaration of his title, the burden is on the defendants to disprove the effect of the evidence which the plaintiff has produced. To state it differently, when drawing an inference on the plaintiff s possession traceable to Adhipulipani has become both compulsive and inevitable for this court, then there must be a possibility for an alternative inference of greater persuasive value to dislodge the former. After all civil disputes are decided on the basis of preponderance of probability.

63. This takes forward the ongoing discussion on the plaintiff s title based on possession to the quality of defence offered. However, this court intends to make a statement on why it did not prefer to test the plaintiff s case for its sustainability as per the doctrine of lost grant (on which the trial court had invested its focus) and opted for res nullius and pedis possessio. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

64. The doctrine of lost grant intends to grant legitimacy to a grant whose origin is lost in time. Its objective is to protect the current status quo of the existence of a certain right whose origin is lost in antiquity, and is largely founded on a presumption of the legitimacy of its origin, which Courts are required to make. And in a dispute-situation, it helps in shifting the burden on the one who opposes its application to prove the contrary to dislodge the possibility of applying the doctrine. While the intent and purpose of the doctrine will remain safe its application to the facts of a case may be affected by contra evidence. If the doctrine of lost grant is analysed for its finer nuances, it enables the court to make a set of presumption and not just the presumption of the legitimacy of the origin of a grant. If analysed in its deeper layers it reveals that there is presumption of a grantor and that the grantor has made a grant. In the case now before this court, the facts as pleaded and evidentially established defy the possibility of presuming the existence of a grantor and a grant. It is hence this Court chose to apply the doctrine of res nullius and pedis possessio backed by Sec.110 of the Evidence Act as the most appropriate course in preference to lost grant.

65. During the course of the arguments, this Court did provide few cues to the counsel on either side about the appropriateness of testing the evidence https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 on the basis of the doctrine of acquisition of title by the first-occupant, but in their passionate engagement with their arguments (which they may have painstakingly prepared), both failed to capture it. As earlier mentioned in

paragraph 27(j) above, the parties responsibility stops with pleading their case and producing the evidence in support of them, and the advocates role stops with presenting what they consider the best for their clients, but it is the court s duty that matters in the end. This Court has an obligation to stay awake to preserve the public confidence in the institution of courts. It is earned and not gifted. In Fathima Vs Rahamutullah [(2021) 1 CTC 499], I had an occasion to hold that courts are doctors of bleeding rights. I maintain it. It therefore, has become obligatory for the court to decide which medicine – contextually which doctrine, is best suited to address the issue before it when the facts and evidence necessary for its application are available.

Defendants' case on its title and Plaintiff's title:

66. It is now time to test the quality of the defendants case opposing the plaintiff s claim of title to item 1. If the plaintiff s strategy is assessed, he falls back on documents and those literatures which provide the historical setting for creating a strong possibility in aid of his case. The latest document that he relies on – Ext.A6, is at least about a century before the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 very creation of the H.R. & C.E. Department. Therefore unless the defendants are on a surer plane that the item 1 property at all times has been the property of Dhandayudapani, the presiding deity of the Palani hills, and are also able to establish that this property has been enjoyed by the Pulipani Swamigal only as a service inam, or a specific grant, the defendants may find themselves on a tricky wicket.

67. The pleadings of the defendant commence with the assertion that the Palani temple along with the suit property was under the administrative control of the East India Company, who managed it through the Board of Revenue as per the Regulation XVII of 1817, and it then came under the British. And, this was followed by the Survey and Settlement proceedings. So far as the plaintiff s possession goes, according to the defendants the plaintiff and his predecessors are mere temple servants and that they are given possession of item 1 property in view of the service they have been performing. It is perhaps this plea which appeared to have over played in the mind of the trial court excessively that it proceeded to presume that the the plaintiff s possession of the suit property is the same as that of an inamdar, and delved deeply into the significance of Inam Register, and read the absence of any entry in the said register as a circumstance to reject the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 the plaintiff s claim of title. It may have to be added here that an entry in the Inam Register may create a presumption in favour of its correctness (as per AIR 1966 SC 1457), but absence of an entry does not mean anything. A presumption can be drawn from the existence of a fact but not from its non- existence.

68.1 Let the basic core contention of the defendants case – their basic premise be now considered:

> a) The first contention is that the Palani temple, including the suit property, was under the administration of the Board of Revenue as per the Regulation XVII of 1817 of the East India Company. This is hardly about two hundred years from now, but this Court is considering the history of the title to the suit property since 3000 BC.

And, the defendants have no evidence to offer before Regulation XVII of 1817, more particularly anything that may render the evidence of the plaintiff during this period suspect. The defendants case plus evidence, therefore, do not overlap the case of the plaintiff, both in terms of their content and time.

b) Secondly, while there was Regulation XVII of 1817, still it is not established if the Palani temple along with the suit property had https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 actually come under the administration of the Board of Revenue. And, the history also records that by 1839, the East India Company itself had realised the futility of administering the religious institutions, and post 1842 it allowed the trustees thereof to take over. (It is now the Ayakudi zamindar had arrived on the scene and authored Ext.A6 memorandum in 1844). And the formal death of Regulation XVII of 1817 was officially declared vide the Religious Endowment Act, 1863. Principally, there is no evidence to establish what the defendants had pleaded.

c) Thirdly, the defendants are deliberately silent as to who was in the management of the Dandayudhapani temple and the hill including the suit property from Bogar s time till 1817 Regulation. If there should be a grantor who ought to have granted item 1 to the plaintiff s predecessors-in-office in terms of the defendants case, then they should have been there during this 4500 years period. The defendants are silent on it. (It is hence this Court preferred the doctrine of res nullius and pedis possessio in preference to lost grant). While the proof in aid of the plaintiff s case makes it demonstrably evident that the case of the plaintiff had preponderating probability about it leading to an inference that he and his predecessors had acquired title https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 even prior to 1817, the quality of resistance offered by the defendants appears too weak to disturb it. Why should this court presume that the plaintiff s title has been disrupted when it is admitted that the plaintiff is in possession even to this day?

68.2 It is in this setting, the Settlement Register comes into existence in 1886. Ext.B31 is the extract of this document. According to it, the Palani hill is stated to cover 98.13 acres and is assigned S.F.No:811/D. It further shows the classification as „poromboke , and, in the remarks-column it was recorded as 'Subramania Rock Temple'. The next survey was in 1920, presumably under the Survey and Boundaries Act, 1897. In this settlement, the S.F.811D in the earlier survey was seen as correlated to S.No862. And, in remarks column it is mentioned as Palani Sri Dhandayudapani swami temple. And, the property is classified as Government poromboke. 68.3 Except to the extent covered and described as item 1 property, the plaintiff is least worried about the classification of the entire Palani hills as temple poromboke or revenue poromboke, or what is mentioned in the remarks-column of the Settlement register. If the plaintiff has created a strong probability, if not possibility of his case, then an entry in the settlement register regarding the classification of the property – a unilateral https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 statement by the survey official or his statement made in the remarks-column of the Settlement register, can hardly acquire the potency to upset the probability of the plaintiff s title and his case. 69.1 This court holds the statement in the settlement register as regards the title to the property is not conclusive and cannot bind the court. The reasons are:

a) A wrong classification of a property in the revenue or survey records cannot affect the title vested in law. See: Ajit Kaur alias Surjit Kaur Vs Darshan Singh (Dead) through Legal Representatives and others [(2019) 13 SCC 70], and N.S.Kuppusamy Odayar & another Vs The Panchayat Narthangudi [(1971) 1 MLJ 190]

b) A survey operation, by its very nature may be useful for fixing the boundaries of a particular survey field, and to ascertain the extent of property that falls within the field. A statement of a surveyor on the title to the property has zero consequence since the survey official does not have the authority either to vest or divest title to a property.

In other words, no surveyor can ever decide on title, and even if a survey official ventures to make a statement on it, it can never be conclusive. It is plainly one of jurisdiction and it belongs to the civil https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 court See: Periasamy Goundan Vs District Revenue Office, Coimatore [AIR 1980 Madras 180 (FB)], Rukkaiah Natchiar Vs P.M.S. Mohammed Aamina Beevi & Others [2020(6) CTC 390].

c) Thirdly, beyond the call of his duty, a survey official is not expected to be an expert in law and he cannot be presumed to know the law to decide on title. Whether the title of Pulipani mutt vis-a-vis item 1 with its historical basis and roots in an originating faith could have been noticed or appreciated by the survey officials itself is suspect when the legal plane on which the plaintiff s right is required to be appreciated is intricate and complex.

69.2 It would, therefore, be too dangerous to rely on a classification in the settlement register as the conclusive proof of what it states on title. In the instant case what is more significant, if not intriguing is that, notwithstanding the said classification, the possession of the plaintiff or his predecessor (at the relevant time when the survey operation took place) was never attempted to be disturbed, and a couple of occasions when the plaintiff s title faced some threat in the first half of the last century were also not taken to their logic end. These circumstances are as below:

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

a) On 29.02.1925, the Managing Trustee of the Palani Devasthanam passed Ext.A8 poceedings enabling the then Pulipani to put up a compound wall. This document refers to Ext.A6 memorandum of the Zamindar of Ayakudi. However, ten years a notice dated 29.01.1935 was appeared to have been issued by the Devasthanam about the compound wall built by the plaintiff, to which Ext.A16 reply dated 30.01.1935 was sent by the plaintiff, where it asserted that the compound wall had been constructed only as per the boundaries mentioned in Ext.A6. Nothing was done thereafter.

b) It seems that the Pulipani swamigal had approached the Municipality for fixing the boundary stones for the plot which the Pulipani ashram occupies. Under Ext.A10, dated 04.12.1934, the Municipality required the Pulipani to approach the Tahasildar. This was appeared to have been

done, pursuant to which Ext.A13 notice of enquiry dated 30.08.1935 was issued by the Tahasildar, both to the plaintiff and the Devasthanam. Vide Ext.A11, dated 01.02.1936 Tahasildar invited objections from the Devathanam. Ultimately, it resulted in the revenue sub-division of Sy. No 862 into Sy.No.862/1 and 862/2, with the former representing the Palani hill other than item 1, and the latter relating to item 1. These facts could be gathered from Ext.A18, dated https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 27.07.1936 and Ext.A12 dated 06.08.1936 proceedings of the Tahasildar. This revenue sub-division of S.F.862/2 was later stated to have been cancelled by the proceedings of the Sub-Collector, but there are two versions about it: (i) In Ext.B18, there is an endorsement that it was cancelled on 11.03.1938, and (ii) in Ext.X-1 & Ext.X-2, it gives the date as 23.12.1938. The first appellate court has taken exception to the non-production of the very proceedings of the Sub-Collector, but irrespective of the same, the plaintiff continued to be in possession of item 1 even as the Devasthanam was put on notice that the former was asserting independent title over item 1.

c) Another intriguing feature on this aspect is that in the written statement of the 3rd defendant, it is alleged that sometime in 1949 the plaintiff s predecessor-in-office had again clandestinely had item 1 sub-divided, and that the defendants have taken steps to have the same rectified to restore status quo ante. This implies that the 3rd defendant Executive Officer of the Devasthanam, after the alleged cancellation of sub-division of S.No:862/2 in 1938, there was a subsequent sub- division of S.No:862 in 1949, but he did not choose to produce any records pertaining to it. What evidentiary value should now be https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 assigned to the alleged cancellation of subdivision by which S.No:862/2 was created in 1938?

d) An allied issue to the one discussed in (b) above is the argument that that when there is no survey field as S.F.862/2, the plaintiff has described item as one falling in Sy.No:862/2. The utility of a survey number for describing the property in dispute in terms of Order VII Rule 3 CPC is only to avoid ambiguity in identifying the subject matter in dispute. However, there is hardly any confusion or dispute regarding identity of the item 1 property in this case.

e) The next fact is that the Tahasildar had issued Ext.A.15 notice, dated 06.08.1948, under Sec.7 of the Land Encroachment Act, 1905, as if the Pulipani Swamigal was an encroacher of poromboke land. However, on 12.10.1949, the Sub Collector directed the Tahasildar to drop the proposed eviction proceedings Vide Ext.A18. If the property was a poromboke, then why the proceedings initiated under the Land Encroachment Act was dropped?

f) On 30.06.1938, vide ext.A14, the Palani Municipality had granted permission to Boganatha Pulipani Swamigal, who was the Pulipani Swamigal of the time, to bury the mortal remains of his family in item https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

1. And, when Boganatha Pulipani Swamigal died, his mortal remain was buried only there. The Devasthanam did not raise any objection.

70. While it may be true that leasing a portion of item 1 property in 1877 or obtaining a decree for his suits for eviction of tenants or paying property tax may not affect the true owner of the property, the defendants are still on the backfoot to establish that the Devasthanam has a better title than the plaintiff.

71.1 And to the final limb of the defendant s case: The plaintiff is granted possession of item 1 since he and his predecessors-in-office are servants of the temple. It may be stated that there is a Durgai Amman temple of which the plaintiff is the officiating priest. For this he was paid salary as seen in Ext.B2 acquittence register dated 02.06.1935. This Durgai Amman temple is also known as "Bhuvaneswari amman, and is at the hill top, in the Bogar Samadhi. Vide, Ext.B3, dated 07.10.1948, the then Pulipani swamigal had authorised his son, the plaintiff in the suit, to receive the salary payable to the former for the Durgaimman temple, and this is seen done under Ext.B4. Then there are certain departmental proceedings suspending him etc., which are referred to in the discussion in Part B. But can this allowed to https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 characterise plaintiff and his predecessors-in-office holding continuous possession of item 1 for 5000 years now as an aspect of their service to Durgai amman? This Court finds that it cannot, and the reasons are:

a) Historically Pulipani Swamigal had been performing pooja to the principal deity Dhandayudapani until he was replaced by Brahmin Sivacharya by Dalavoy Ramappier at the turn of 17 th century. As found earlier, despite the fact that they had lost their right to perform pooja to the principal diety, successive Pulipani Swamigal continued to be in possession of item 1. If only item 1 was given as a perquisite for officiating as the priest, then they should have lost possession of item 1 simultaneously when they lost the right to perform pooja to Dhandayudaswami. That however, did not happen. Indeed, Ext.A6 provides a different story, which has not been adequately explained.

b) D.W4 examined on behalf of the defendants categorically admitted that the plaintiff is not a temple servant and that his name does not find a place in the temple records as a servant of the Dhandayudapani temple. They further admitted the fact that the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 suit property is not shown as temple property in the temple register maintained under Sec.29 of the HR&CE Act.

c) The mortal remains of previous Pulippani Pathira swamigals were interned in the suit property and it is also known by the name Agadi Samadhi.

d) Both in Ext.A3 publication of the Devasthanam, at pages 4 and 10 it is stated that there are a number of ashrams around the Giri veedhi, and that □a successor of Pulipani in the person of Sri-la-

Sri Bhoganatha PulipaniPatra Udayar is believed to be presiding over the matam bearing his name in the Giri Veedhi." There is no whisper about any service inam of the kind which the Devasthanam

now contends is seen even remotely made in this passage. (But the Devasthanam is in denial mode and has even gone to extent of making insulting statements about the plaintiff in its written statement)

e) As would be seen later, the discussion in Part B throws up a possibility that the Pulipani Swamigal might be a priest of Durgaiamman, and despite this judgement, it is likely to continue in the realm of a possibility for some more time. (The curious kinds may have to read the result of Part B to know it). Even if it https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 is ulmitately found that the plaintiff is a priest and hence servant of the temple, it could have arisen only after the H.R. & C.E. has begun exercising its administrative control over the deity to which the Pulipani Swamigals have been offering pooja. The situation is nascent, hardly few decades old, and is more akin to Ramappier taking away the right of the Pulipani Swamigal to perform pooja to deity Dhandayudapani. The only difference is that in the place of Ramappier, it was the H.R. & C.E. that may have taken control over the administration of Durgaiamman, and may have reduced the Pulipani Swamigal to a temple priest. But it has little to upset the title which the plaintiff has established based on the doctrine of res nullius and pedis possessio.

The inferences that now emerge from the entire discussions thus for made hardly support any possibility that the plaintiff and his predecessors-in- office have been in possession of item 1 only because they were servants of the temple. There is nothing on record to even suggest that a case of a service inam as is attempted to be canvassed by the defendants/appellants could be a remote possibility. Necessarilly this argument too fails. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 71.2 It may be added here that the problem of the H.R. & C.E. Department appears to be that it has failed to realise that it had come into existence only in 1951, and that it has no authority to re-write history to suit its present day convenience. It is advised to better accept the reality that it has merely inherited a certain legacy with the solitary purpose of managing the affairs of the Palani temple, and not to manipulate facts to stake claims to that which it is not entitled to in law. 71.3 Turning to Substatial Question (b), in the face of overwhelming evidence aided by the law on the topic, establishing the case of the plaintiff vis-a-vis the claim of his title over item 1 property, the burden to prove the contra necessarily is on the defendants/appellants. Therefore the first appellate court cannot be faulted for fixing the burden on them. The question is decided against the appellants. Conclusion:

72.1. This court is informed that the plaintiff had given up its entitlement to recover the portions occupied by the constructions made by the Devasthanam which are described as item 3 and item 4 in the plaint. The https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 appellate court has also granted a decree except the portions occupied by the constructions made by Devasthanam.

72.2 This Court finds that the plaintiff has established the preponderating possibility of his title to item 1, though based on a different set of doctrines. Necessarily these appeals must fail, and accordingly the decree of the first appellate court in A.S.No.78 of 2001 stands confirmed. No costs.

PART B O.S.106 of 1999 (Suit for management of Bogar Samadhi) Pleadings in O.S.No.106/1999:

A. The case of the plaintiff:

73.1 The dispute relates to plaintiff s right to exclusive management of Bogar Samadhi, or the burial place of Bogar. Both the main temple – the Dhandayudapani temple and Bogar Samadhi are situated within the same compound. The compound has a single entry point. Within the compound the main shrine for Dhandayudapani is situated on the east where the deity faces the west. Outside the main temple, but in the inner corridor (and https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 within the compound) and to the south-west of the main temple, is situated the Bogar Samadhi.

73.2 According to the plaintiff the deity of Dhandayudhapani was consecrated and worshipped by siddha Bogar, that Bogar "entered samadhi at the moolasthanam" (the sanctum sanctorum of Dhandayudapani), which, as earlier indicated is separated by a fair distance from the subject of this suit – the Bogar Samadhi.

73.3 The outer compound has its separate lock and key and so also the main temple. Bogar Samadhi has its separate keys. The dispute arose only with regard to the custody of the keys of Bogar Samadhi. This is the setting.

74. As in the earlier case discussed and decided in Part A, the plaint in this case also rests the cause of action for its institution on the foundation of the same set of historical facts. In particular, the plaintiff refers to Bogar, Adhi Pulipani and also plaintiff s lineage to the latter, and then proceeds to allege that Bogar Samadhi at all times has always been managed by the plaintiff and his predecessors Pulipani Pathira Swamigal. The plaintiff further alleges:

a) The keys of the main entrance (at the compound) are with the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Executive Officer of the Palani temple, but the keys of Bogar Samadhi are with the plaintiff.

b) While so, on 07.11.1982, Vide Ext.A52, the Executive Officer of the temple, (the appellant herein) had communicated the decision of the Board of trustees of the temple to share the custody of the keys of Bogar Samadhi – one with the Peshkar of the temple and another with the plaintiff for protecting the invaluable „maragatha lingam', (emerald shiva-lingam). On 10.11.1982, the plaintiff had issued his Ext.A53 reply, informing that he is entitled to retain the custody of the keys of both the locks of Bogar Samadhi. While so, the Peshkar of the temple demanded the plaintiff to hand over the keys ostensibly for providing greater security.

c) On principle the plaintiff is not averse to the idea of providing adequate security, but that should not interfere with the plaintiff s right of management over the Bogar Samadhi.

And, the suit is duly laid for declaration that the plaintiff alone would be entitled to the sole management of Bogar Samathi and for consequential injunction.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Pleadings of the Defendants:

75. The Executive Officer of the Devasthanam (the first defendant in this suit) had filed his written statement. (He was arrayed as the 3 rd defendant in O.S.105/1999. Part of his pleadings is also found in his written statement in that suit). The defence raised is:

> a) The plaintiff and his ancestors are mere officiating poojari or priests of Goddess Bhuvaneshwari and Bogar shrine in the south western corner of the inner corridor of the temple, and they were holding office at the pleasure of the Mirasi Pandarams before the temple came under statutory regulations. They are mere temple servants and no more. Indeed, even the pandarams to whom the plaintiff and his ancestors owe their appointment to are only the servants of the temple.
>
> b) Bhuvaneshwari and Bogar temples came under the administrative control of the Palani Devasthanam. Indeed for the services which the plaintiff renders, he receives paditharam in cash, besides 1/8th measure of ghee per day and 'pattai satham', or the 'neivaidhyam' offered to the deity. He also receives a cash payment called 'Navarathri Sudantram'. These are the perquisites of a temple priest, and are attached to the office.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

c) On 11.12.1947 vide Ext.B22, the predecessor of the plaintiff was placed under suspension for acts of indiscipline and misbehaviour. He was relieved of his office and the responsibility was handed over to one Kaliappa Pandaram, and this was challenged by the plaintiff's ancestor before the Commissioner, H.R. & C.E. Board, and this came to be dismissed vide Ext.B23 order, dated 24.01.1949.

d) Again there was another proceedings vide Ext.B24 dated, 09.01.1953. against the plaintiff's predecessor and it was challenged rather futilely. Indeed, the plaintiff s predecessor was fined Rs.15/-for certain damages to a tamarind tree, which led to the initiation of action under Ext. B25.

e) So far as the present suit is concerned, at the place where Bogar Samadhi is situated, a double-lock system was introduced, and accordingly notice dated 07.11.1982 (Ext.B.52) was issued for the purpose. It is essentially intended to protect the emerald Shivalingam at Bogar Samadhi. The plaintiff has twisted the meaning of double lock system to suit his own convenience. Bogar Samadhi contains very ancient emerald sivalingam and other statues and jewelleries. The decision to have double lock system is essentially based on the resolution dated 30.10.1982 passed by the Board of Trustees of the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD)

Nos.652 & 653 of 2022 temple. The double lock system enables neither the plaintiff nor the temple authority to have access to the Bogar samadhi alone. The plaintiff is merely a custodian of jewelleries and other valuables in Bogar Samadhi, which he is holding in his capacity as the temple-servant, and it has little to do with his claim of exclusive right of management of Bogar Samadhi. The plaintiff has no exclusive right to manage the Samadhi.

Issues and the findings of the Trial Court:

> 76.1 The trial court had framed six issues, of which only the 3 rd issue is critical to the case. It reads: “Whether the management maintenance and custody remain only with the first defendant? In other words, the nature of the pleadings on which the parties chose to litigate does not involve a dispute seeking a decision as to whether the Bogar Samadhi constitute a religious institution within the meaning of Sec.6(18) of the H.R. & C.E. Act.

The defendants did not raise any dispute on the maintainability of the suit before the civil court under Sec.108 of the Act either, and hence no issue as to whether Bogar Samadhi constitutes a temple or a religious institution was ever framed by the trial court. Notwithstanding the same, arguments were still heard on the maintainability of the suit in the second appellate stage, https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 and they will be considered later.

76.2 Having stated thus, it may have to be added that the trial court did examine the character of Bogar Samadhi and whether it qualifies to be termed as a religious institution. For supporting its view, the trial court had drawn inspiration from a passage from the judgement of Viswanatha Sastri J in T.R.K.Ramaswami Servai and another Vs The Board of Commissioners for the Hindu Religious Endowments, [(1950) 2 MLJ

511)], as well as the observation of the Supreme Court in Nagu Reddiar & Others Vs Banu Reddiar & Others [AIR 1978 SC 1174 . It then proceeded to reject the contention of the plaintiff that he and his predecessors-in-office have been in the exclusive management of Bogar Samathi and held that the plaintiff is only a temple priest and no more. Its line of reasoning is:

> a) While the plaintiff claims that he is the adheenakarta of Dhandayudapaniswami temple, Ext. B2 and B4 acquittance roll show that the plaintiff and his father had received remuneration for the services rendered by them as archaka or poojari (temple-priest). Ext.B20 is a communication from the plaintiff s predecessor, dated 25.07.1955, authorising his son, the plaintiff herein, to receive the remuneration.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

b) Ext.B5 is a revision petition, dated 01.05.1953 given by the predecessor-in-office of the plaintiff, wherein he had complained that the Executive Officer of the temple (the first defendant herein) did

not pay the remuneration for the services rendered.

c) Ext.B6 is the Order of the Commissioner of Hindu Religious Endowment, dated 10.08.1953 suspending the then Pulipani Swamigal (father of the plaintiff).

d) Exts.B11, B12, and B13 are counterfoils of the archana tickets sold by the Devasthanam vis-a-vis the Bogar samathi. Findings of the First Appellate Court:

77. As observed elsewhere in this judgement (in Part A), the first appellate court s style of articulating its idea in reversing the findings of the trial court lacks clarity, but what could be gathered is that it has granted a decree in favour of the plaintiff based on its finding that the plaintiff and his predecessors in office have been continuously in the management of the affairs of the Bogar samathi.

The Second Appeals:

78. Challenging the said decree of the first appellate court, the present batch https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 of second appeals are filed. As stated in paragraph 14 above (refer Part A), substantial questions were framed in common, and the only substantial question (f) is relevant to this case. It reads:

> Whether the appellate court right in reversing the well said findings of the trial court that the status of the respondents is nothing more than a poojari of the Bogar Samadhi which is a temple within the purview of the Hindu Religious and Charitable Endowments Act attached to the appellant temple? The Arguments For the Appellants:

79. Broadly, the learned Advocate General as well as Mr. AR.L. Sundaresan adopted the line of reasoning of the trial court while advancing their argument in aid of the appellants. But they made a marked deviation from it when they argued on the maintainability of the suit. Their submissions are summed up as below:

> a) The suit is not maintainable on a combined reading of Sections 108, and 6(18) and 6(20) of the Hindu Religious and Charitable Endowments Act. In terms of Section 108 of the Act, civil suits are barred in respect of any dispute relating to administration or management of a religious institution and the same may have to be https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 decided only under Sec.63(a) of the Act. Inasmuch as the cause of action in the suit falls within Sec.63(a) of the Act, civil court jurisdiction is expressly ousted under Sec.108 of the Act. More so when samadhi is brought within the definition of a religious institution under Sec.6 (18) of the Act vide T.N.Act 26/2012 (which came into force on 27.06.2012).

b) The plaintiff s case is ambivalent. While in paragraph No.6 of plaint in O.S.No.105 of 1999, he claims that he is a priest of Bogar Samathi, whereas in paragraph 10 of O.S.No.106 of 1999, he claims himself to be in management of the Bogar Samadhi, a religious institution.

Indeed, even in his evidence as P.W.1, the plaintiff introduces himself as a priest performing poojas at Bogar Samadhi. If Bogar Samadhi falls within the definition of Sec. 6(18) of the Act, then its management can only be with the H.R. & C.E. Department and not with any individuals.

c) The plaintiff's predecessor was suspended by the H.R.&C.E. Board, and the documents pertaining to his suspension and subsequent revocation by the H.R.&C.E. Board proved that he is only a temple servant.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

d) Exhibits B11, B.12 and B.13 are the archanai tickets, and were issued by the Devasthanam for the Bogar Samadhi. Indeed, P.W.2 had categorically admitted it. He has also admitted that the Devasthanam would share the portion of the income from the sale of archanai tickets with the plaintiff.

e) The maintenance of the Bogar Samadhi has been undertaken by the Devasthanam. P.W.1 in his cross examination has admitted that the flooring of the Bogar Samadhi was laid by the Devasthanam, and so was the electricity charges. This apart, he has also admitted that all the items necessary for performing pooja at Bogar Samadhi too are being provided by the Devasthanam. Hence the plaintiff's claim that Bogar Samadhi is under his management is false on the very face of the documents.

For the first respondent / plaintiff:

80. In response, Mr. V. Raghavachari, the learned counsel for the plaintiff argued:

a) The appellant/ the first defendant Executive Officer contends that the plaintiff was only a temple servant and that he has been allowed to https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 stay in the property at the foothills only as a servant of the temple.

The plaintiff has given letter dated 27.10.1984, marked as Ext.P56, in which he had sought the production of the property register of the temple and other documents. The appellant had failed to produce the documents sought and hence adverse inference necessarily has to be drawn against it.

b) D.W.4, admitted that the plaintiff's name is not recorded in any of the registers maintained by the temple either as servant or mirasi pandaram.

c) The belief is that there is a tunnel that connects the Bogar samadhi with the sanctum sanctorum of Dhandayudapani, and Bogar had entered the tunnel and attained nirvikalpa Samadhi beneath the sanctum sanctorum, or thereabouts, and he never returned. He is still believed to live, and at any rate he has never left his mortal remains for it to be interned. Therefore, notwithstanding its name as Bogar Samadhi, the body of Bogar was not interned at the place where his Samadhi is. Hence, Bogar Samadhi does not fall within the definition of „samadhi within the meaning of the Explanation (1) of Sec.6 (18) of the Act. This would imply that Bogar Samadhi cannot be termed as a religious institution, and hence does not qualify for the H.R. & C.E. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 to exercise its administrative jurisdiction over it. Therefore, unless a samadhi, including Bogar samathi falls within the definition of Sec.6(18) of the Act, no Samadhi can qualify to be treated as a religious institution within the meaning of the Act, and consequently, the H.R. & C.E. cannot wield administrative control over any samadhi including the Bogar Samadhi.

d) So far as the main temple of Dhandayudapani is concerned, the temple is not closed in the afternoon, whereas „nadai, or the door of the Bogar Samadhi is closed every afternoon. This is admitted by D.W.4. It may appear inconsequential, but it is significant in the context of the right of management of the Bogar Samadhi, for if only it were to be under the management of the Devasthanam, it would not have been closed during the afternoons.

e) So far as Exts.B11 to B13, the counterfoil of the archanai tickets are concerned, Exts.B11 and B13 relate to the Danadayudapani temple, and only Ext.B12 purports to relate to Bogar Samathi. However, it is dated from 14.10.1984, which is after the institution of the present litigation. Hence, it does not merit consideration. Turning to sharing the income from the sale of archanai tickets about which P.W.2 has spoken to in his cross examination, this has to be considered in https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 conjunction with Exts. B2 and B4 which show that they pertain to Durgaiamman temple and not Bogar Samadhi. And merely because Durgaiamman (also known as Bhuvaneswari amman) is in the Bogar samathi, it should not be considered as referring to Bogar samadhi.

f) So far as the alleged suspension of the earlier Pulipani Swamigal by the Executive Officer is concerned, it was later cancelled by the Executive Officer himself and this is noted in Ext.B23 Order of the Commissioner, dated 24.01.1949. There was a second suspension of then Pulipani Pathira Swamigal by the Executive Officer vide Ext.B24 dated 09.01.1953, for the alleged cutting down of a tamarind tree in which the latter had also framed charges on 09.02.1953, and also forcibly handed over the Bogar samadhi and the articles there under Ext.B8 through the temple Peishkar to one Kuppusamy Pandaram. The plaintiff however, challenged the authority of the Executive Officer to suspend him as could be seen from Ext.B5 Revision Petition before the Commissioner, in which he had contended that he was not a mirasi pandaram, or a temple priest and hence he was not amenable to the administrative control of the Executive Officer. This revision might have been dismissed by the Commissioner vide Ext.B6 order, dated 10.08.1953, but the fact https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 remains that the plaintiff had raised his exclusive right to manage the Bogar Samadhi even in 1953, which is a relevant fact under Sec.13 of the Evidence Act.

g) D.W.1 further admitted the possession of the plaintiff and also the fact that the plaintiff has been doing poojas at Bogar Samadhi for more than 30 years prior to the date of his examination.

h) Under Sec.107 of the Tamil Nadu HR&CE Act, right granted under Article 26 of the Constitution of India is insulated from the application of the Act as it is not meant to affect any pre-existing rights of the citizen.

Reply Arguments of the Appellants:

81. In response Mr. Sundaresan, the counsel for the appellant argued that the contention of the plaintiff that because the mortal remains of Bogar was not interned at Bogar Samadhi, notwithstanding its name as Bogar samadhi and hence it will not fall within the definition of a religious institution within the meaning of Section 6(18) of the Act. But, this is a rearguard action in desperation. This is because the Act has been amended to include 'Samadhi' within the definition of Sec. 6(18) of the Act. Therefore, when once Bogar Samadhi comes within the definition of Sec. 6(18) of the Act, https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 necessarily, the claim of administration or management of Bogar Samadhi, a religious institution by definition, will be hit by Section 108 of the Act. Alternatively, even if it is considered that it is not a 'Samadhi' as claimed by the plaintiff, then, it will constitute a temple within the meaning of Section 6(20) of the Act, and again, it will be hit by Section 108 of the Act. Discussion & Decision On Maintainability of the suit 82.1 The substantial question as framed is directed at establishing or, to be precise, re-establishing the findings of the trial court that the plaintiff is no more than a priest of the Bogar Samadhi and that he is only a servant of the Devasthanam. But, it is adjunct on two supplementary issues: (a) Whether Bogar Samadhi is a temple or a religious institution as per the definition of H.R & C.E. Act; and (b) has Bogar Samadhi been under the management of H.R. & C.E. or to be more specific under the Palani Devasthanam? The trial court addressed the first, but did not pointedly address the second (based on the evidence which the rival parties herein have relied on to build their respective arguments now). And, when the dispute reached the first appellate court, it oversimplified its approach to the issue. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 82.2 To this now a third issue is required to be added: Whether Bogar Samadhi will fall within the definition of a „Samadhi within the meaning of Explanation (1) to Sec. 6(18) of the Act as to constitute a religious institution. This has become necessary owing to the amendment of Sec.6 (18) by which „Samadhi was included in the definition of a religious institution.

83. It has therefore become necessary to understand the law on the subject before and after the amendment of Sec.6(18). As stated earlier, the trial Court has relied on the ratio in Nagu Reddiar & Others Vs Banu Reddiar & Others [AIR 1978 SC 1174] to support its finding that Bogar Samadhi is a place of worship, since its judgement was delivered before the 2012 amendment to the H.R. & C.E. Act.

84.1 In T.R.K.Ramaswami Servai and another Vs The Board of Commissioners for the Hindu Religious Endowments [(1950)2 MLJ 511(FB) : AIR 1951 Madras 473], the Court was considering a challenge to the validity of an order passed by the Board constituted under the Madras Religious

Endowment Act, 1927, on the ground that it lacked jurisdiction under Sec.84 of the said Act. The question was whether a temple under https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 construction with an idol of Alargarsamy to be installed and consecrated under a certain deed of endowment, would fall within the definition of a temple and whether the Board had jurisdiction to decide a dispute viz-a-viz its character. In his separate judgement Viswanatha Sastri J has opined that:

> "43. It is common knowledge that there are in this Presidency many institutions of a mixed character, whose exact place among religious and chatitable foundations is likely to be a matter of doubt or dispute. There are some samadhis or tombs and sepulchres of holy men, where an image of Siva is usually installed and worship, regular or occasional, is offered. Some of them have come to be considered as public temples by reason of the sanctity of the persons interred. There are private mausoleums where idols are installed and pooja offered, but which are not temples or temples as defined in the Act, becuase the public either do not care or not allowed to worship at such places; ....
>
> 45. .... If the public or that section of the public who go for worship consider that there is a divine presence in a particular place and by offering worship at that place, they are likely to be the recipients of the bounty or blessings of God, then, you have got the essential features of a temple as defined in S.9, cl.(12) of the Act. ...."

In C.Ratnavelu Mudaliyar Vs Commissioner for the H.R. & C.E. [(1953) II MLJ 574 : AIR 1954 Madras 398], this court has held that a samadhi or a https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 tomb of a certain Apparswami is a place of religious worship, because it was come to be recognised as temple for over a century. 84.2 The above view of Viswanatha Sastri. J in T.R.K.Ramaswami Servai came to be considered by this court in Ramanasramam by its Secretary Vs The Commissioner, H.R &C.E. [(1960) II MLJ 121], where Anathanarayan.J (at page 133) has held that, “Divorced from their contexts, such observations ought not to be interpreted as supporting a theory or thesis which would be opposed to the very purpose and scheme of the Hindu Religious and Charitable Endowments Act.”. Having observed thus, the learned Judge has also held in the opening of the same paragraph that, a “Samadhi over on who comes to be regarded as of the Illumanati or even the tombs of heroes, may evolve in course of time as a shrine of Hindu public religious worship.” In Ramanasramam case the issue was whether the Ramanasramam with the Samadhi of Bhagwan Ramana Maharishi would fall within the dentition of a temple under Sec.6 (17) of the Madras Hindu Religious and Charitable Endowments Act, 1951. 84.3 All the above mentioned judgements of this Court came to be referred to by the Hon ble Supreme Court in Nagu Reddiar case [AIR 1978 SC https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 1174]. That was a case which arose from a suit for removing a trustee and for framing a scheme for certain charity. And, the Hon ble Supreme Court embarked to enquire what constitutes a charity in Hindu law. The Supreme court has observed that:

> ☐The samadhi of saint Pattinathar is considered as a place of worship in Tiruvottiyer near Madras. According to tradition great saints have attained Yoga Samadhi in well known pilgrim centres: Saint Tirumoolar attained Samadhi at Chidambaram, Saint Konganavar at Tirupathi, Saint Valmiki at Srirangram and Bhogamuni at Palani Now, notwithstanding the fact that the list of examples given by the Hon ble Supreme Court, includes the Bogar Samadhi which could qualify for being treated as a place of worship, the same cannot be considered as a finding, since the Supreme Court was not required to decide an issue as to whether Bogar Samadhi was a temple or a religious institution. But this required to be done in this case based on the pleadings and evidence provided before this court, more significantly in the context of the amendment of Sec.6(18) of the Act.

85. It is evident from the context in which the Hon ble Supreme Court has cited the Samadhi of Bogarmuni in Nagu Reddiar case, that it was not intended to be a finding on the character of Bogar Samadhi since it was not https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 in issue before the Supreme Court. However, in the present case this has arisen as a specific point to be considered, and it is required to be probed based on the law on the subject. Here, it appears that even the defendants/appellants appear to have joined hands with the plaintiff as they did not object to the maintainability of the suit in terms of the embargo under Sec.108 of the Act even though they had an opportunity to plead that inasmuch as Bogar Samadhi is a place of public religious worship within the meaning of Sec.6(20) of the Act, it is a temple, and hence will fall within the definition of a religious institution under Sec. 6(18) (as it was before its amendment in 2012), and therefore, any dispute over its management would fall within Sec.63(a) of the Act.

86.1 Now that Sec.6 (18) has undergone an amendment vide Act 26 of 2012, and since the issue vis-a-vis the character of Bogar Samadhi is still pending consideration, this court is under an obligation to take note of the change in law and is required to evaluate the merit of the issue on the basis of amended Sec. 6 (18). It reads:

> ☐Religious institution means a math, temple or specific endowment and includes,: —
>
> (i) a samadhi or brindhavan; or https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022
>
> (ii) any other institution established or maintained for a religious purpose.
>
> Explanation.- For the purpose of this clause-
>
> (1) ☐samadhi means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;

(2) □brindhavan means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious worship, but does not include the samadhi;

86.2 The likely implications of the amended Sec. 6 (18) of the Act are:

(a) Prior to the amendment, the question whether a samadhi will qualify for being termed as a religious institution must satisfy the parameters prescribed for ascertaining a temple under Sec.6(20) of the Act, more specifically, if it constitutes a place of public religious worship of the Hindus or any section thereof. All the judicial pronouncements that were delivered prior to the amendment have attempted to test the issue only on this criterion.

This had an advantage, for whether a Samadhi is a place of public worship within the meaning of Sec.6 (20) will be a question of fact and may have to be decided on the facts of each particular case. Not any more, since under the amended Sec. 6(18) „samadhi forms a separate class of religious institution, and is distinguished https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 from a temple with a special definition under Explanation (1) of the Act.

(b) Sec.6 (18) is an inclusive definition as it opens with the phrase “Religious institution means a math, temple or specific endowment and includes, a Samadhi. The legislative intent here does not appear to stretch the definition of a temple to include a samadhi, but only aims to expand the definition of a „religious institution to include a samadhi as a separate class.

(c) Thirdly, it erased the space available to the judiciary to examine every case to ascertain if a samadhi constitutes a temple, and hence a religious institution, as it has now provided a different test-kit for its identification vide Explanation (1) to Sec. 6 (18). The criterion provided are: (a) that it must be a place where the mortal remains of a guru, sadhu or saint is interned; and (b) that it must be used as a place of public religious worship.

(d) While the word „includes in the opening line of Sec. 6(18) made the definition of a „religious institution broad and wide, the expression „means employed by the legislature in Explanation (1) of Sec. 6 (18) made the definition of a „samadhi narrower, and consequently it demands a strict adherence to this definition for https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 any samadhi to be considered as a religious institution. This would mean that it may not be adequate that a samadhi is a place of public religious worship, but it must also be a place where the mortal remains of a saint or a guru or a sadhu is interned or buried. In other words, to term a samadhi as a religious institution under the scheme of the H.R. & C.E. Act, it may be necessary to satisfy the twin criteria prescribed in the Explanation (1) to Sec. 6 (18) simultaneously and not in the alternative. This is evident from the use of the conjunction “and” between the two conditions stipulated therein.

(e) An allied issue that now arises is, should the conjunction „and used in Explanation (1) of Sec. 6(18) to link both the criteria must be read as „or ? It is least likely, for it then obviates the felt need of the legislature to identify „samadhi as a separate class of religious institution, and reduces the amendment to a meaningless legislative exercise. And, it also goes against the narrow definition given to a „samadhi under Explanation (1) of Sec. 6 (18).

87. Is then the Bogar samadhi a religious institution? This has to be tested on the backdrop of the understanding of amended Sec.6(18) of the Act. It https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 may be that Bogar samadhi may be a place of public religious worship. But that may satisfy only one of the two requirements as envisaged in the Explanation (1) of the Act. The point therefore required to be investigated is whether Bogar s mortal remains was buried or interned at the place which is now known by the name as „Bogar samadhi ?

88. The question may appear ridiculous, but not when one appreciates the legend that goes with the Bogar s end. There exists a belief that Bogar Samadhi, and the sanctum sanctorum of Dhandayudapani temple, which are separated by a fair distance, is connected by a tunnel, and that Bogar had walked into the tunnel and had attained „nirvikalpa samadhi beneath the sanctum sanctorum. To state it differently Bogar had not left his mortal remains for anyone to intern or bury at the Bogar Samadhi. This belief finds some expression in some of the materials available on record:

> a) In Ext.A3, (a 1970) publication of the Devasthanam, it is mentioned that Bogar entered the tunnel connecting the place where Bogar Samadhi is now located and the sanctum sanctorum and never returned and is believed to have attained nirvikalpa Samadhi.

(However, in Ext.A87, another publication of the Devasthanam in 1975, it is said that Bogar was buried at the place). https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022

b) Ext.A4 (a 1965 publication of the plaintiff) also speaks about the belief that Bogar went into the tunnel and attained Samadhi.

c) In the plaint, the plaintiff makes a similar allegation, but it was not denied by the defendant.

89.1 This Court does not consider it fair to rely on these materials to enter a finding at this stage, when the need for it itself has arisen pendent lite – during the pendency of the first appeal. Unlike the suit on title to a piece of land at the foot hills (discussed in Part A), this Court cannot presume that the aforesaid material have been produced by either side with the consciousness of leading evidence on the point. Indeed there was no occasion for the parties to lead evidence on this specific point when they went to trial. This therefore, requires to be investigated. 89.2 It may be nigh difficult for any parties herein to produce any direct evidence of a certain fact said to have taken place some 5,000 years ago. This may have to be again tested as a belief, something that has formed

the foundation of this court s approach in Part A. This belief may have found expressions in literatures, and the Court may have to consider these literatures. But not today, not on the basis of the material which are https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 before this court, for it will be plainly unfair to both the parties. This implies that this case has to be remanded back. This is required to be read along with paragraph 93 below.

90.1. There are still two points which remain to be discussed. The first relates to the jurisdiction of the civil court to entertain the issue in view of the bar under Sec. 108 read with Sec. 63(a) of the Act. The other one pertains to certain evidence which the defendants have managed to load against the plaintiff.

90.2 First to the issue on maintainability of the suit. The defendants/appellants contend that the suit is not maintainable, and the issue now raised can be considered only by the authorities who are empowered to do it under Sec.63 (a) of the Act. This literally begs the question, since the issue itself has arisen only during the pendency of the first appeal. And, it is a jurisdictional fact. For ascertaining if Sec. 63 of the Act will apply at this stage, the civil court may have to test whether the dispute raised can be considered only exclusively in terms of Sec.63. And it depends on the finding whether Bogar s mortal remains were interned at the samadhi. If it is found that it was not interned at the https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Bogar s samadhi, then the answer to the issue will be known. Jurisdiction is determined by the question/issue to be answered, and not by the answer. However, if the answer is known, then inductively there does not arise a need for a question for a tribunal or a quasi-judicial authority to answer. This court therefore, holds that the jurisdictional fact raised can be considered by the civil court. On Evidence 91.1 This Court now turns to the evidence which echoed in the high amplitude arguments of the defendants/appellants. As rightly argued by the plaintiff's counsel, of the counterfoils of the archanai tickets produced (Ext.B11 to B13) only B12 states it pertains to Bogar Sannathi (and not Samadhi). And, it is dated after the institution of the present suit, and hence it may not command substantial evidentiary value. However, it may have to be appreciated alongside the testimony of P.W.1 and P.W.2 and also Exts. B 14. Ext.B14 is the „Register for Return of Deposit for Archanai Tickets . Its relevancy in the context of this case could not be adequately ascertained.

91.2 The next set of documents is Exts.B2 to B4 and B15. Of these https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 documents Exts. B3 and B15 inform that they relate to „paditharam for Durgaiamman temple. As per the Madras University Lexicon „paditharam (in Tamil) means „daily allowance to a temple . This necessarily implies that Exts.B3 and B15 relate to the daily allowance payable to Durgai amman, and not to the priest.

91.3 Ext.B2 and B4 are the acquittance register of the servants of the temple. Are they relate to Durgai amman or Bogar Samadhi? 92.1 It is gatherable from evidence that the idol of Durgai amman (also known as Bhuvaneswari) along with „maragatha lingam, or emerald sivalingam, (the legend is that they were worshipped by Bogar himself) are kept atop the Bogar Samadhi (presumably at the mouth of the tunnel that connects it to the sanctum sanctorum of the principal deity Dhandayudapani) and that they are not permanently installed. Now, if Bogar s mortal

remains were not interned at the Bogar Samadhi, then it can be deduced that it may not possibly fall within the definition of Sec. 6(18), and hence the remuneration stated to have been paid to the Pulipani Swamigal can only relate to Durgai amman. And, it may then mean that the plaintiff might be a priest of the Durgai amman temple, but https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 it goes against the testimony of D.W.4 where he has deposed that the plaintiff s name does not find a place in the register of temple servants at all. In Exts. A 59 (page 9) and Ext.A 86 (page 10) publications Devasthanam concedes that those who are in the lineage of Pulipani are performing pooja at Boghar Samadhi. Still there are orders of suspension of the plaintiff by the Executive Officer of the Devasthanam, and also the handing over the charge vide Ext..24 read with Ext.B8 etc., They may have to be now fitted in the context of above facts – do they indicate that the H.R. & C.E. authorities had acted within their powers or in excess of their powers in suspending Pulipani swamigal, and even if it were to be found that the authorities were within their powers to initiate disciplinary action against the Pulipani swamigal, was it relatable to Durgai amman or Bogar Samadhi? Parties have produced some documents before this court, but neither side cared to provide a logical link to their line of the contention based on the evidence for this court to evaluate the probable strength of their respective case. 92.2 And there is a last issue. In the context of the prayer in the suit, what if the Bogar Samadhi had already come under the administrative control of the H.R. & C.E., even long prior to the 2012 amendment to Sec. https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 6(18)? If Durgai amman is under the control of H.R. & C.E., and if its idol is on the top of Bogar Samadhi, could it be possible that H.R. & C.E. had administrative control over Durgai amman and not Bogar Samadhi? Therefore, in addition to the need for ascertaining whether Bogar Samadhi falls within the definition of a samadhi within the meaning of the Explanation (1) to Sec. 6(18), it is also necessary to ascertain if it has already come under the control of H.R. & C.E. within the meaning of Sec. 6 (20) even earlier to 2012 amendment. It definitely throws a possibility that investigating into the issue as to whether it is a Samadhi within the meaning of Sec. 6 (18) may become unnecessary. But it is unavoidable. Here, both the trial court and the first appellate courts efforts are not adequate.

Conclusion

93. Remanding the case back to the first appellate court now emerges as an automatic choice for this Court. But it intends to record that this court is painfully disturbed by this prospect, since it is more likely to delay the final conclusion of this 40 years old case further. But that appears inevitable when this court notices the significance of the issue raised. This issue cannot hang in eternal suspense, nor can it be short circuited https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 by showing delay as the cause. It is not adequately fathomable if parties have realised it, for if only they had, the issue could have been raised and sorted out even at the first appellate stage, since the line of argument now presented, was available to them even in the first appellate stage. No court can afford to gamble on the rights involved merely because it may delay the disposal of the case.

94. To conclude this court is now constrained to set aside the judgement and decree of the first appellate court, and remands the suit back to it for determining the following:

a) Whether Bogar Samadhi qualify to be termed as a Samadhi within Sec. 6(18) of the H.R. & C.E. Act.

b) What do Exts. B14, read along with B2 and B4 and other documents pertaining to the disciplinary action initiated against the plaintiff read along with the oral testimony of the witnesses suggest? Do they relate to Durgaiamman temple, or Bogar Samadhi, or both?

c) Whether Bogar Samadhi had come under the administrative control of the H.R. & C.E. even before the institution of the suit?

d) How far the amendment to Sec.6 (18) will impact the cause of https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 action of the suit?

e) What is the status of the plaintiff in the context of the prayer sought in the suit?

95. Whether Bogar s mortal remains were interned, or is Bogar Samadhi a mere symbolistic representation of reverence to Bogar may not be proved by any direct evidence today, but can still be established as an aspect of belief associated with siddha Bogar. This implies what has been done in Part A, may have to be repeated here, but to a different contextual setting. Parties are therefore granted liberty to lead both oral and documentary evidence in aid of the above points. They may relate to historical facts and those necessary to establish any belief associated with the cause of action, and other relevant facts. And, if they are on historical facts, or on aspects of belief associated with Bogar samadhi, it is needless to remind the first appellate court that it has to weigh them within the meaning of Sec. 57 of the Evidence Act. For a greater understanding, the first appellate court may refer to Part A where it is discussed at length.

96. In conclusion the appeals are allowed, and the judgement and decree of the first appellate court in A.S.No.79 of 2001, dated 23.06.2015 is set aside https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 and the matter is remanded back to the first appellate court to determine the aspects herein above delineated in paragraph 94. Till it is decided, the present status quo shall continue. No costs.

RESULT :

A] S.A.(MD) No.589 of 2015 and S.A.(MD) No.652 of 2022 (Title suit):

In the result these appeals are dismissed and the decree of the first appellate court declaring the plaintiff s title to item 1 less the portions occupied by the constructions made by the Devasthanam (described as item 3 and item 4) is hereby confirmed. The appellants and its officials are further injuncted from interfering with the peaceful occupation and enjoyment of the property over which the plaintiff s title is hereby declared in any manner whatsoever. No costs. B] S.A.(MD) No.590 of 2015 and

S.A.(MD) No.653 of 2022 (Bogar Samadhi) The Appeals are allowed, and the judgement and decree of the first appellate court in A.S.No.79 of 2001, dated 23.06.2015 is set aside and the matter is remanded back to the first appellate court to determine the aspects herein above delineated in paragraph 94 above. Till it is decided, the present status quo shall continue. No costs.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 Note: The judgement in this case is delivered beyond the six months period prescribed by the Hon ble Supreme Court. But this is a sui generis case that belongs to an absolutely unfamiliar genre. It demanded considerable effort, reading of historical documents, intense focus and lot of legal research and analysis on my part. Hence the delay.

01.03.2024 https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 To:

1.The District Collector, Dindigul.

2.The Section Officer VR Section Madurai Bench of Madras High court.

https://www.mhc.tn.gov.in/judis S.A.(MD) Nos.589 and 590 of 2015 and S.A.(MD) Nos.652 & 653 of 2022 N.SESHASAYEE.J., ds/CM Pre-delivery Judgment in S.A.(MD) Nos.589, 590 of 2015 & and S.A.(MD) Nos.652 & 653 of 2022 01.03.2024 https://www.mhc.tn.gov.in/judis