

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2015

DELIVERED ON : 09.06.2015

CORAM

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

S.A.No.1503 of 2008

&

M.P.No.1 of 2008

- 1) R.Venkatachalam
- 2) V.Veeramani
- 3) P.Manjan

.... Appellants/Defendants

vs.

- 1.S.R.Lakshmanan (Deceased)
- 2.L.Rajalakshmi
- 3.L.Sriram
- 4.L.Karthick

.... Respondents/Plaintiffs

(RR2 to 4 brought on record as Lrs of the deceased sole respondent vide order of Court dated 16.04.2014 made in M.P.Nos.1 to 3 of 2013 in S.A.No.1503 of 2008)

Second Appeal against the judgment and decree passed in A.S.No.15 of 2007 dated 31.03.2008 on the file of District Court, Nagapattinam confirming the judgment and decree passed in O.S.No.34 of 2006 dated 28.02.2007 on the file of Sub-Court, Mannargudi.

For appellants : Mr.A.Ilango

For respondent : Mr.A.Muthukumar

JUDGMENT

The defendants in the original suit are the appellants in the second appeal. S.R.Lakshmanan, the deceased first respondent was the sole plaintiff in the original suit filed by him on the file of Sub-

Court, Tiruvarur as O.S.No.170 of 2003 against the appellants for recovery of possession, mesne profits/damages (past and future) and for costs. Due to the constitution of a separate Sub-Court at Mannargudi, the said suit came to be transferred to the file of the Sub-Court, Mannargudi and re-numbered as O.S.No.34 of 2006.

2. The prayers in the suit were made on the basis of the averments found in the plaint, which are, in brief, as follows;

The suit properties belonged to the deceased first respondent/plaintiff, his family members and some of the third parties. The third parties were absentee landlords and they had entrusted their lands to the first respondent/plaintiff for cultivation. The first respondent/plaintiff did Pannai cultivation in the entire suit properties for several years. Due to his physical handicap (limping) and illness due to old age, he leased out the suit properties to the first appellant/first defendant in June 1993 with the understanding that the rent shall be paid in kind as follows:

- 1) One bundle of straw per mah for each year; and
- 2) 6 kalams of paddy per mah in case of single crop cultivation and 8 kalams of paddy per mah in case of double crop cultivation in a year.

It was a wholesale lease of the entire suit properties and the lease arrangement was oral. The first appellant/first defendant also agreed to handover possession as and when required by the first respondent/plaintiff to do so. The first respondent/first defendant who paid the rent till June 2000, left an arrears of rent to the tune of 100 bags of paddy at the end of June 2000. The first respondent/plaintiff wanted to resume possession to bring the suit properties under his own cultivation with the help of his brother and hence, he instructed the first appellant/first defendant not to commence the cultivation in June 2001. Pursuant to the instruction, the first appellant/first defendant along with appellants 2 and 3/defendants 2 and 3 filed a caveat in the Court of District Munsif, Mannargudi on 06.06.2001. Thereafter, the first respondent/plaintiff caused issuance of a registered notice to the first appellant/first defendant on 07.01.2002 calling upon him to surrender possession by 31.03.2002 and to pay arrears of rent inclusive of the arrears of 100 bags of paddy for the year 2000-2001. Upon receiving the said notice, the first appellant / first defendant sent a reply dated 23.01.2002 through his counsel contending that all the three appellants/defendants had entered into a lease arrangement with the first respondent / plaintiff and they were entitled to the benefit of the Tamil Nadu Cultivating Tenants protection Act and that they made applications to have their names recorded in the Record of Tenancy Register. The first appellant/first defendant also duck pits, sold the excavated earth to third parties and thereby committed acts of

waste. Thus, the first respondent/plaintiff was constrained to file the suit for recovery of possession, recovery of Rs.1 lakh as past arrears of rent and past mesne profits for the years 2000-2001, 2001-2002 and 2002-2003 and for future damages/mesne profits.

3. The first appellant/first defendant and second appellant/second defendant jointly filed a written statement. Though the third appellant/third defendant filed a separate written statement, the averments made in his written statement are same as found in the written statement of appellants 1 and 2/ defendants 1 and 2. The plea of defence taken by the appellants / defendants in their written statements can be briefly stated as follows:-

It is true that the suit properties belonged to the first respondent/plaintiff. But it is false to state that the entire suit properties were leased out to the first appellant/first defendant alone. On the other hand, items 1 to 6 and Items 8 to 19 of the suit properties described in the plaint schedule were leased out by the first respondent/plaintiff to the first appellant/first defendant, whereas items 20 to 22 and 35 to 38 were leased out to the second appellant/second defendant and items 34 and 39 to 48 were leased out to the third appellant/third defendant. The rent was agreed to be paid in kind and the quantum of rent as per the agreement was 6 kalams of paddy per mah in case of single crop cultivation and 8 kalams of paddy per mah in case of double crop cultivation in a year. However, there was no agreement to give straw as part of the rent. It is also not correct to state that the first appellant/first defendant agreed to hand over possession to the first respondent / plaintiff as and when required to do so. The appellants had taken steps to have their names recorded as cultivating tenants in respect of the respective items of the suit properties in the cultivation of each of the appellants/defendants. The Record Officer under the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 passed orders in favour of the appellants/defendants on 14.11.2003 in R.T.A.Nos.12/2003, 13/2003 and 14/2003 respectively. The appellants / defendants are entitled to the benefits of Tamil Nadu Cultivating Tenants Protection Act, 1955. The Civil Courts Jurisdiction to order recovery of possession stands barred by the provisions of the Tamil Nadu Cultivating Tenants Protection Act, 1955. The suit is also barred by the provisions of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969. No remission of rent was made till 2000-2001 and in 2001-2002, crops got damaged due to flood and hence the appellants/defendants had applied before the Revenue Court for remission of the rent. The arrears of rent claimed in the suit is not correct. Hence, the suit should be dismissed as not maintainable.

4. Based on the above said pleadings, the learned trial Judge framed five issues to the following effect: 1) Whether the plaintiff was entitled to the relief of recovery of possession?, 2) Whether the plaintiff was entitled to the recovery of past mesne profits? 3) Whether the trial Court did not have the jurisdiction to try the suit? 4) Whether the defendants were entitled to the benefits of the Tamil Nadu Cultivating Tenants Protection Act? And 5) To what relief the plaintiff was entitled?

5. Two witnesses were examined as Pws 1 and 2 on the side of the deceased first respondent/plaintiff and 17 documents were marked as Exs.A1 to A17. On the side of the appellants/defendants, four witnesses were examined as Dws 1 to 4 and three documents were marked as Exs.B1 to B3. Fifteen documents produced by the witnesses were marked as Exs.X1 to X15.

6. The learned trial Judge, after hearing the arguments advanced on both sides, considered the evidence and on an appreciation of evidence, found all the issues in favour of the first respondent/plaintiff and decreed the suit as prayed for directing the appellants/defendants to handover possession of the suit properties within two months from the date of passing of the decree and to pay a sum of Rs.1 lakh towards pre-suit mesne profits and directing payment of costs. So far as the damages/mesne profits for the future from the date of filing of the suit is concerned, the trial Court relegated the same to a separate proceeding to be initiated under Order XX Rule 12 CPC.

7. As against the said judgment and decree of the trial Court dated 28.02.2007, the appellants herein/defendants preferred an appeal in A.S.No.15 of 2007 on the file of the District Court, Nagapattinam. The learned District Judge, Nagapattinam, after hearing both sides, confirmed the judgment and decree of the trial Court and dismissed the said appeal with costs by a judgment and decree dated 31.03.2008. As against the said decree of the lower appellate Court dated 31.03.2008, made in A.S.No.15 of 2007, confirming the decree of the trial Court dated 28.02.2007 made in O.S.No.34 of 2006, the appellants have preferred the present second appeal on various grounds set out in the memorandum of grounds of second appeal.

8. As the sole plaintiff, who got the decree was alive, he figured as the sole respondent in the second appeal filed by the appellants. Subsequent to the filing of the second appeal, the first respondent/sole plaintiff passed away and his legal heirs have been impleaded as respondents 2 to 4.

9. Without formally admitting the second appeal, notice before admission was sent and records from the lower appellate Court were also summoned. Since the records were made available, the counsel for the parties came forward to argue the second appeal on merits.

10. At the time of hearing of arguments, the following questions were found to be involved in the second appeal and they were formulated and recorded as the substantial questions of law involved in the second appeal:

- 1) Whether the Courts below have committed an error in holding that the Civil Court had jurisdiction to decide the question as to whether the appellants /defendants were cultivating tenants and whether they were entitled to the protection under the Tamil Nadu Cultivating Tenants Protection Act, 1955?
- 2) Whether the Courts below committed an error in holding that the Civil Court had jurisdiction to entertain a suit for recovery of possession in respect of a property leased out for cultivation?
- 3) Whether the Courts below have committed an error in upholding the claim of Past mesne profits / arrears of rent?
- 4) Whether the Courts below committed an error in holding that future mesne profits could be decided in a separate proceedings under Order XX Rule 12 CPC?

11. Based on the formulation of the above said substantial questions of law, the learned counsel for the appellants and the learned counsel for the respondents advanced their arguments. Their arguments were heard and this Court gave its consideration to the same. The materials available on record submitted by the Courts below for reference in the second appeal were also taken into consideration.

12. Admittedly the suit properties are agricultural lands. The deceased first respondent/plaintiff filed the suit contending that the suit items comprised of properties owned by him, properties owned by his family members and properties owned by third parties who are absentee landlords and that those properties owned by third parties/absentee landlords had been leased out to him for cultivation and he was doing pannai cultivation in the suit properties for several years prior to 1993. Though the deceased first respondent / plaintiff would have stated in his plaint that the suit properties comprised not only the properties owned by him and his family members, but also properties owned by third parties which had been leased out to him for cultivation, he did not specify the items which were his own and his family members and the items which were leased out to him by third party/absentee landlord.

13. Be that as it may, it is an admitted fact that the deceased first respondent/plaintiff was the landlord entitled to receive rent from the lessees / tenants in respect of the suit properties. According to the stand taken by the first respondent/plaintiff, the entire suit properties were leased out to the first appellant/first defendant R.Venkatachalam as a composite lease. Though the appellants 1 to 3/defendants 1 to 3 admit that the first respondent/plaintiff leased out the properties and he was the landlord of the lessees in respect of those properties, they denied the averment that the lease was a composite lease and the first appellant/first appellant was the sole lessee. On the other hand, they contend that different items of suit properties were leased out to the first appellant/first defendant, second appellant/second defendant and third appellant/third defendant. Both the parties claimed that the lease arrangement was oral and there was no document to evidence the terms of lease and the payment of rent. There is no difference of opinion regarding payment of rent. The rent has to be made in kind. 6 kalams of paddy per mah in case of single crop cultivation and 8 kalams of paddy per mah in case of double crop cultivation was agreed to be given as rent for each year. The first respondent/plaintiff would have contended that apart from the aforesaid quantity of paddy, there was an agreement that the tenant should deliver one bundle of straw per mah per year, but the same was disputed by the appellants/defendants. Though the first respondent/plaintiff would have made such an averment in the plaint, while calculating the money value of the arrears of rent in kind, he had not chosen to take into account the price of straw and the quantity of straw. Therefore, it can be inferred that the first respondent/plaintiff did not press and gave up his stand that in addition to paddy, one bundle of straw per mah had also been agreed to be given as part of the rent.

14. The suit has been filed for the following reliefs;

- 1) Recovery of possession;
- 2) Recovery of arrears of rent (even though called damages for mesne profits)
- 3) Recovery of future mesne profits; and
- 4) Costs.

So far as the first relief is concerned, it must be borne in mind that the first respondent / plaintiff did not deny the fact that the suit properties had been leased out for the purpose of cultivation and the sole lessee, according to him, namely first appellant/first defendant was cultivating the suit lands till the filing of the suit. The appellants/defendants also contended that the lands were under the cultivation of the lessees. But, it was their contention that the first appellant was not the sole lessee and on the other hand,

each one of the appellants was a lessee in respect of separate items of suit properties. In fact, they had filed applications before the Record officer under the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 to have their names entered in the record of Tenancy Rights Register in respect of the respective suit properties in their possession and cultivation and the said applications were taken on file by the Record Officer as R.T.A.No.12/2003, 13/2003 and 14/2003 respectively. In fact all those three applications were allowed by the Record Officer by orders dated 14.11.2003, copies of which have been marked as Exs.B1 to B3, directing the names of the appellants to be recorded in respect of the respective items of the suit properties as cultivating tenants. The orders passed by the Record Officer in R.T.A.No.12/2003, 13/2003 and 14/2003 came to be set aside by the appellate authority, namely the Deputy Collector by his order dated 24.03.2006 made in Appeal Nos.5/2004, 6/2004 and 7/2004 as evidenced by Ex.A4. After setting aside the order of the Record Officer, the matter was remitted back to the Record officer for passing a fresh order after issuing notice to the lands owners and giving opportunity to both the parties to make their representations. Exs.A5 to A17 are various petitions filed by the appellants separately before the Revenue Court seeking remission of the arrears of rent.

15. It is obvious from the said documents that though the Record Officer under Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 passed orders for entering the names of the appellants in respect of the suit items separately in the names of appellants 1 to 3 as cultivating tenants in respect of separate items of suit properties, the said orders were set aside on appeal and the record of tenancy applications were remitted back to the Record Officer for fresh disposal. Meanwhile, the petitions filed before the Revenue Court for remission of the arrears of rent are also pending. Exs.X1 to X15 are the case files relating to the said petitions filed before the Revenue Court seeking remission of rent. It is obvious from the said documents that the appellants had applied before the Revenue Court under Section 5(2) of the Cultivating Tenants (payment of fair rent) Act, 1956 for remission of rent and that the same are pending.

16. Citing his physical handicap, the first respondent/plaintiff did not figure as a witness on his side. He chose to lead evidence through his brother Suresh as PW1 and by examining one Mani as PW2. PW1 in his evidence has not disputed the fact that the appellants/defendants had filed petitions before the Revenue Court for remission of rent for the year 2001-2002 under Section 5(2) of the Cultivating Tenants (payment of fair rent) Act, 1956. Therefore,

the evidence of PW1 is projected towards showing that the appellants/defendants had not contributed their personal labour for cultivating the suit lands. On the other hand, the first appellant/first defendant, who figured as DW1, deposed in line with the stand taken by the appellants in their written statements. However, the appellants 2 and 3 did not choose to figure as a witness on their side. Relying on the fact that the appellants 2 and 3/defendants 2 and 3 did not enter the witness box to substantiate their contention that they are also lessees in respect of specific items of suit properties, both the Courts below chose to arrive at a conclusion that the lease was a composite lease and it was granted to the first appellant/first defendant alone as contended by the first respondent/plaintiff. While doing so, as rightly contended by the learned counsel for the appellants, both the courts below have not adverted to the specific provisions of the Tamil Nadu Cultivating Tenants Protection Act and Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 to arrive at a conclusion whether the Civil Court had jurisdiction to try the case.

17. Section 16-A of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 reads as follows:

16-A: Bar of jurisdiction of Civil Court.- No civil Court shall have jurisdiction in respect of any matter which the Record officer, the District Collector or other officer, or authority empowered by or under this Act has to determination and no injunction shall be granted by any court in respect of any action taken or to be taken by such officer or authority in pursuance of any power conferred by or under the Act.

In this regard, without referring to the provision, simply extracting an observation made by the High Court in (1982) 2 MLJ 57 [Krishnamoorthy Thondaman Vs. D.Ramanathan], the learned trial judge held that both the Civil Court and the Revenue Courts do have concurrent jurisdiction and that the question as to whether a person is a cultivating tenant or not can be considered by the Civil Court as well as the statutory authorities. Relying on yet another judgment of the high Court in 2000-2- LW 794 [Saraswathi Ammal Vs. Ponnammal and another], the learned trial Judge held that even if the Record Officer had rendered a finding that the tenant was a cultivating tenant and his name came to be entered in the Register, since step for entering his name in the Register were taken subsequent to the filing of the suit and it was made without proper service of notice, the order of the Record Officer would stand vitiated and that therefore the question as to whether the defendants, against whom the suit for recovery of possession has been

filed, are a cultivating tenants can be considered and decided by the Civil Court. The said case is also not applicable to the facts of the case. In the above case decided by a learned single Judge of this Court, the suit was filed in the Court on the basis of the plea that the possession of the property was usurped with the help of the village Munsif, who was a close relative of such usurper, claiming to be a tenant of the property and thus, the order obtained from the authorised officer under the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 was one obtained by playing a fraud and that hence, the civil Court did have the jurisdiction to entertain the suit. Without going into the controversy as to whether the suit can be converted into an appeal against the order passed by the competent authority by the above said Act, this Court hereby holds that the said judgment does not render any help to the appellants/defendants since it is not a case wherein the first respondent had taken a plea that the appellants had played a fraud upon him in securing the land on lease. Admittedly, the lease was granted for the purpose of cultivation. Hence, the said judgment does not get attracted to the case on hand.

18. The learned lower appellate Judge also, without referring to the specific provisions and without making any reference to the decided cases, simply assumed that the suit was maintainable and proceeded with rendering a finding on merit as to whether the defendants were able to prove that they were the cultivating tenants in respect of the suit lands in accordance with the definition of the term. The relevant provisions of the Act, namely Section 16-A and Section 4 of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 deals with the case of lease of agricultural land for cultivation subsequent to the publication of the final record of tenancy in the official Gazette. Since it has been admitted even by the first respondent/plaintiff admitted that the tenancy was created in the year 1993, the same is covered by Section 4 of the Act. Section 4 reads as follows;

" 4. Inclusion of lands in the approved record of tenancy rights. -

(1)(a) Where subsequent to the publication of the approved record of tenancy rights any land has been let for cultivation, the landowner, intermediary or the tenant having interest in such land shall make an application to the Record Officer for inclusion of particulars relating to such land in the approved record of tenancy rights.

(b) Where any land has been let for cultivation before the publication in the approved record of tenancy rights for any reason, the landowner, the intermediary or the tenant shall make an application to the Record Officer for

inclusion of particulars relating to such land in the approved record of tenancy rights.

(2) An application under the sub-section (1) shall contain such particulars as may be prescribed and shall be accompanied by the documents, if any, relied on by the applicant as evidence in support of his claim.

(3)(a) Before passing an order on an application under sub-section (1) the Record Officer shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representation either orally or in writing. If the Record Officer decides that the particular of the land specified in the application should be included in the approved record of tenancy rights he shall pass an order accordingly and shall make the necessary entries in the approved record of tenancy rights.

(b) If the Record Officer decides that there is no case for inclusion of particulars of the land in the approved record of tenancy rights, he shall reject the application.

(c) An order under clause (a) or clause (b) shall contain the reasons for such order and shall be communicated to the parties concerned in such manner as may be prescribed."

A conjoint reading of Section 4 and Section 16-A will make it clear that the question whether the lessee claiming to be cultivating the land is a cultivating tenant or not is determinable by the Record officer, of course, subject to appeal, revision etc.,. In such cases, the civil Court shall not have jurisdiction to decide the question, whether a person in possession of the land is a cultivating tenant or not. The learned counsel for the respondents placed reliance on the following judgments;

- 1) AIR 1980 Madras 180(1), Periathambi Goundar Vs. The District Revenue Officer, Coimbatore and others;
- 2) 2010 (1) MWN (Civil) 524, Sampooram and 8 others Vs. Annachi Ammal and 5 others;
- 3) AIR 1999 Supreme Court 1441 (1), Vidhyadhar Vs. Mankikrao and another
- 4) AIR 2003 Supreme Court 649, C.V. Rajendran and another vs. N.M. Muhammed Kunhi; and
- 5) 1999 (5) SCC 590, Hope Plantations ltd., Vs. Taluk land Board, Peermade and another.

19. In Periathambi Goundar Vs. The District Revenue Officer, Coimbatore and others reported in AIR 1980 Madras 180(1), a Full Bench of this Court, after referring to the fact that Section 16-A of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act,

1969 providing bar of jurisdiction of Civil Court came to be inserted in the year 1972 held that Section 16-A did not affect the jurisdiction of the Civil Court in respect of suits or proceedings instituted validly before the said section coming into force and were pending on the date on which the said section came into force. To be precise, the Full Bench of the High Court held that Section 16-A of Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 providing bar of jurisdiction of Civil Court to determine the question whether a particular person is a cultivating tenant or not was not given retrospective operation and it was only prospective. In the said case observing that there may be cases involving determination of civil matters, some of which may be within the jurisdiction of the authorities functioning under the Act and some other outside their jurisdiction and in such a case, the suits or proceedings 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 the Act. There cannot be any controversy over the preposition that if the issues involved in the suit included issues for deciding which authorities under the Act are not competent, then suit shall not fail.

20. The judgment of a three judge Bench of Hon'ble Supreme Court in Hope Plantation Ltd., Vs. Taluk Land Board, Peermade and Another reported in (1999) 5 Supreme Court Cases 590 is not applicable to the facts of the case. The judgment of the Supreme Court in C.V.Rajendran and another Vs. N.M.Muhammed Kunhi reported in AIR 2003 Supreme Court 649 relied on by the learned counsel for the respondent deals with the Kerala Buildings (Lease and Rent Control), Act, 1965. The said judgment deals with the question of res judicata in Rent Control Proceedings and the same is not relevant to the case on hand. The learned counsel for the respondent also relied on a judgment of Supreme Court in Vidhyadhar Vs. Mankikrao and another reported in AIR 1999 SC 1441 (1). It simply states that the concurrent findings of the Courts below shall not be disturbed by the High Court, unless the finding on fact is proved to be perverse. The same is also not relevant to the issue on hand.

21. Of course, a judgment of a learned single Judge of this Court in Sampooram and 8 others and 2010 (1) MWN (Civil) 524 deals with the question whether 16-A of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 oust civil Court's jurisdiction conclusively. Referring to the earlier judgments of this Court, the learned single judge made the following observations:

"....., it is now well settled that 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 the Act. ..."

The above said observation seems to be one borrowed from the Full Bench judgment of this Court in Periathambi Goundar Vs. The District Revenue Officer, Coimbatore and others referred to above. In the case dealt with by the learned single Judge, the plaintiff therein had filed the suit for an injunction not to interfere with his peaceful possession and enjoyment of the suit property. The factual finding was that the plaintiff proved his title prima facie and had also proved his possession of the suit property as on the date of filing of the suit. The same was the reason why the learned single judge held in the said case that the plaintiff therein was entitled to the relief of injunction. On the contrary, here is a case before this Court in which the admitted land owner / intermediary did not deny the fact that he parted with possession by letting out the property to the first defendant for cultivation. It is also an admitted fact that the first respondent/plaintiff did not have possession of the suit properties at the time of filing of the suit. It is also pertinent to note that the main relief sought for is for recovery of possession on the premise that the lease was terminated by issuing a notice under Ex.A1 calling upon the first appellant/first defendant to hand over possession and pay the arrears of rent. The very fact that the first respondent/plaintiff called upon the first appellant/first defendant to surrender possession and pay the arrears of rent makes it clear that the tenancy is an admitted one and it was made for the purpose of cultivation and that the rent was payable in kind in terms of paddy.

22. Per contra, the learned counsel for the appellants relied on a judgment of a learned single Judge of this Court in K.Nachimuthu Vs. A.Natarajan, reported in 1998 (II) MLJ 613 wherein, following the full Bench Judgement of this Court in Periathambi Goundar Vs. The District Revenue Officer, Coimbatore and others, cited supra, it was held that the suit, after Section 16-A was brought into force, against the defendant who claim to be a cultivating tenant was barred by Section 16-A of the Act as the competent authority, namely Tahsildar and the Superior Officers were empowered to adjudicate upon the said question.

23. The Courts below seem to have proceeded on the assumption that unless the question whether the defendants were cultivating

tenants entitled to the protection of the Tamil Nadu Cultivating Tenants Protection Act was determined finally by the competent authorities, the civil Court's jurisdiction to entertain a suit involving the said question does not stand barred and that parallel proceedings can be conducted before the competent authority under the Act and in the Civil Court. The same happened to be the reason why the Courts below have been misdirected themselves without even considering the prima facie nature of the claim made by the appellants/defendants and the admission made by the first respondent/plaintiff.

24. As pointed out supra, the lease arrangement was oral and the lands were leased out for cultivation on the understanding that the lease shall be paid in kind, namely a particular quantity of paddy which would vary according to the fact whether single crop or double crop cultivation was made in a particular year. It is also an admitted fact that even on the date of filing of the suit, the first respondent/plaintiff was not in possession and the suit properties were in the possession of the lessees. When the landlord and tenant relationship has been admitted and the purpose of lease is also admitted, then the question of recovery of possession will solely depend upon the decision as to whether such tenant is a cultivating tenant and is entitled to the protection under the provisions of the Tamil Nadu Cultivating Tenants Protection Act, 1955. Besides there being a specific provision for such a determination by the Record Officer, subject to appeal and revision, Section 4 and Section 16-A of the Act bar the jurisdiction of the Civil Court in respect of such a matter, to decide the question whether the appellants were cultivating tenants. There is also a clear bar provided under Section 6 of the Tamil Nadu Cultivating Tenants Protection Act, 1955 which reads as follows:

"Section 6. Bar of jurisdiction of Civil Courts.- No Civil Court shall, except to the extent specified in Section 3(3), have jurisdiction in respect of any matter which the Revenue Divisional Officer is empowered by or under this Act to determine and no injunction shall be granted by any Court in respect of any action taken or to be in pursuance of any power conferred by or under this Act."

25. Section 3 of the Tamil Nadu Cultivating Tenants Protection Act says that no cultivating tenant shall be evicted from his holding or any part thereof by or at the instance of his landlord, whether in execution of a decree or order of a Court or otherwise and it provides for the eviction of the cultivating tenants under certain

contingencies. For better appreciation Section 3 is extracted hereunder:

"3. Landlords not to evict cultivating tenants.- (1) Subject to the next succeeding sub-sections, no cultivating tenant shall be evicted from his holding or any part thereof, by or at the instance of his landlord, whether in execution of a decree or order of a Court or otherwise.

(2) Subject to the next succeeding sub-section, sub-section (1) shall not apply to a cultivating tenant-

[ (a) who, in the areas where the Tanjore Tenants and Pannivayal Protection Act, 1952 (Tamil Nadu Act 14 of 1952), was in force immediately before the date of coming into force of the Tamil Nadu Cultivating Tenants Protection (Amendment) Act, 1956, if in arrear at the commencement of this Act, with respect to the rent payable to the landlord does not pay such rent within six weeks after such commencement or who in respect of rent payable to the landlord after the commencement of this Act, does not pay such rent within a month after such rent becomes due; or

(aa) who, in the other areas of the State of Tamil Nadu, if in arrear at the commencement of this Act, with respect to the rent payable to the landlord and accrued due subsequent to the 31<sup>st</sup> March 1954, does not pay such rent within a month after such commencement, or who in respect of rent payable to the landlord after such commencement, does not pay such rent within a month after such rent becomes due; or]

(b) who has done any act or has been guilty of any negligence which is destructive of, or injurious to, the land or any crop thereon or has altogether ceased to cultivate the land; or

(c) who has used the land for any purpose not being an agricultural or horticultural purpose; or

(d) who has willfully denied the title of the landlord to the land.

Explanation.- [I:] A denial of the landlord's title under a bonafide mistake of fact is into wilful within the meaning of this clause.

[Explanation II.- In relation to areas where the Tanjore Tenants and Pannaivayal Protection Act, 1952 (Tamil Nadu Act XIV of 1952) (was in force) immediately before the date of coming into force of the Tamil Nadu Cultivating Tenants Protection (Amendment) Act, 1956, the expression 'commencement of this Act' wherever it occurs in this Act shall be construed as referring to the date aforesaid].

[Explanation III.- In relation to the added territories, clause (aa) of this sub-section shall have effect as if the following clause has been substituted namely:

(aa) who, if in arrear on the date on which the Tamil Nadu Cultivating Tenants Protection and Payment of Fair Rent (Extension to Added Territories) Act, 1963, is first published in the Fort St. George Gazettee, with respect to the rent payable to the landlord and accrued due during a period of one month before such date does not pay such rent within a month after such date, or who in respect of rent payable to the landlord after such date, does not pay such rent within a month after such rent becomes due; or"]

[Explanation IV.- In relation to Kanyakumari District, Clauses (aa) of this sub-section shall have effect as if the following clause had been substituted namely:-

(aa) who, in arrear on the date on which the Tamil Nadu Cultivating Tenants Protection and Payment of Fair Rent (Extension to Kanyakumari District) Act, 1972, is first published in the Tamil Nadu Government Gazettee with respect to the rent payable to the landlord and accrued due during a period of one month before such date does not pay such rent within a month after such date, or who in respect of rent payable to the landlord after such date, does not pay such rent within a month after such rent becomes due; or]

(3) (a) A cultivating tenant may deposit in Court, the rent or, if the rent be payable in kind, its market value on the date of deposit, to the account of the landlord-

(i) In the case of rent accrued due subsequent to the 31<sup>st</sup> March 1954, within a month after the commencement of this Act:

(ii) in the case of rent accrued due after the commencement of this Act, within a month after the date on which the rent accrued due;

(b) The Court shall cause notice of the deposit to be issued to the landlord and determine, after a summary enquiry, whether the amount deposited represents the correct amount of rent due from the cultivating tenant. If the Court finds that any further sum is due, it shall allow the cultivating tenant such time as it may consider just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing such further sum inclusive of such costs as the Court may allow. If the Court adjudges that no further sum is due, or if the cultivating tenant deposits within the time allowed such further sum as is ordered by the Court, the cultivating

tenant shall be deemed to have paid the rent within the period specified in the last foregoing sub-section. If, having to deposit a further sum, the cultivating tenant fails to do so within the time allowed by the Court, the landlord may evict the cultivating tenant as provided in sub-section (4).

(c) The expression "Court" in this sub-section means the Court which passed the decree or order for eviction, or where there is no such decree or order, the Revenue Divisional Officer.

[Explanation I.- In relation to the Shencotah Taluk of the Tirunelveli District the expression 'commencement of this Act' wherever it occurs in clause (a) of this sub-section shall be construed as referring to the date on which the Tamil Nadu Cultivating Tenants Protection and Payment of Fair Rent (Amendment) Act, 1961, is first published in the Fort St. George Gazette.]

[Explanation II.- In relation to the added territories, the expression 'rent accrued due subsequent to the 31<sup>st</sup> March 1954' occurring in sub-clause (i) of clause (a) of this sub-section shall be construed as referring to 'rent accrued due during a period of one month before the date on which the Tamil Nadu Cultivating Tenants Protection and Payment of Fair Rent (Extension to Added Territories) Act, 1963, is first published in the Fort St. George Gazette.]

(4) (a) Every landlord seeking to evict a cultivating tenant falling under sub-section (2) shall, whether or not there is an order or decree of a Court for the eviction of such cultivating tenant, make an application to the Revenue Divisional Officer and such application shall bear a Court-fee stamp of one rupee.

(b) On receipt of such applications, the Revenue Divisional Officer shall, after giving a reasonable opportunity to the landlord and the cultivating tenant to make their representations, hold a summary enquiry into the matter and pass an order either allowing the application or dismissing it and in a case falling under clause (a) or (aa) of sub-section (2) in which the tenant had not availed of the provisions contained in sub-section (3), the Revenue Divisional Officer may allow the cultivating tenant such time as he considers just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing the arrears of rent payable under this Act inclusive of such costs as he may direct. If the cultivating tenant deposits the sum as directed, he shall be deemed to have paid the rent under

sub-section (3) (b). If the cultivating tenant fails to deposit the sum as directed, the Revenue Divisional Officer shall pass an order for eviction:

[Provided that the Revenue Divisional Officer shall not direct the cultivating tenant to deposit such arrears of rent as have become time barred under any law of limitation for the time being in force]."

26. A conjoint reading of Sections 3 and 6 of the Tamil Nadu Cultivating Tenants Protection Act will make it clear that from the date of the said Act coming into force, the Revenue Divisional Officer was the competent authority to pass an order of eviction and that even though an order of eviction had already been passed by a civil Court, the protection given under the Act would continue and that only in such cases wherein order of eviction had been obtained prior to the date of the Act coming into force, the question of arrears of rent can be decided either by the Court which passed the decree or order for eviction prior to the Act coming into force. Where there is no such decree or order, then the question of arrears of rent and direction has to be decided by the Revenue Divisional Officer. Either the Court or the Revenue Divisional Officer can determine the arrears of rent and allow the cultivating tenant to deposit the arrears of rent within a reasonable time. The Court or the Revenue Divisional Officer, as the case may be, may decide whether the cultivating tenant has paid the rent within the time specified or not and consequential order of eviction has to be passed under Section 3(3) (b) of the Act in case of tenant's failure to deposit the sum as directed. However, in the proviso it has been stated that the Revenue Divisional Officer shall not have power to direct the cultivating tenant to deposit such arrears of rent which has become time barred by law of limitation.

27. A comprehensive code is inbuilt in the said provision. As such, it is quite obvious that the power to order eviction of a cultivating tenant is with the authority prescribed under the Act and that by virtue of Section 6, the Civil Courts' jurisdiction to go into the matter stands barred. However, it must be kept in mind that Section 3 deals with the deposit of the arrears of rent so that the cultivating tenant can continue to get the protection from eviction and in case of default in depositing the rent, the authority under the Act shall have the power to pass a consequential order of eviction and that there is no provision empowering the competent authority under the Act to pass an order directing payment of arrears of rent, which is capable of being executed. That is the reason why the proviso states that the Revenue Divisional Officer cannot issue a direction for depositing the arrears of rent which is time barred by

any law relating to limitation for the time being in force. Hence, it will make it clear that for recovery of arrears of rent, the landlord has to approach the civil Court and the remedy available to the landlord before the competent authority under the Act is to seek a consequential order directing eviction.

28. If all these aspects are taken into consideration in proper perspective, the only conclusion that can be arrived at is that the main issue involved in this case is whether the appellants or any of the appellants is a cultivating tenants in respect of the suit properties entitled to the protection of the Tamil Nadu Cultivating Tenant Protection Act, 1955. As pointed out supra, it has been admitted that the properties had been leased out for cultivation and the rent was agreed to be paid in kind, namely agricultural produce. Therefore, it is not case of a stranger or trespasser coming with a plea that he is a cultivating tenant, in which event the question of prima facie nature of his contention may be relevant. In the case on hand, the first respondent/plaintiff, who is admittedly the landlord, was out of possession and even as on the date of suit, the properties were in the possession of the tenants. The suit itself has been filed for recovery of possession. A prayer for eviction has been camouflaged into a prayer for recovery of possession. The question whether the first appellant or all the three appellants are in possession as cultivating tenants is a matter on which the Record Officer has got power to decide under Section 4 of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969. Hence the bar provided under Section 16-A of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 stands attracted. The main relief sought for by the first respondent/plaintiff is one for eviction regarding which power is conferred on the Revenue Divisional Officer under Section 3(4)(b) of the Tamil Nadu Cultivating Tenants Protection Act, 1955. Section 6 of the Tamil Nadu Cultivating Tenants Protection Act 1955 bars the jurisdiction of the Civil Court in respect of the matter which the Revenue Divisional Officer is empowered to decide under the Act. Therefore, the suit for recovery of possession filed by the first respondent/plaintiff is not maintainable as the suit is barred by Section 16-A of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 and Section 6 of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969. Question Nos.1 and 2 are answered accordingly in favour of the appellants.

29. The suit has been filed not only for eviction camouflaging the prayer as one for recovery of possession, but also for recovery of arrears of rent for the periods 2000-2001, 2001-2002 and 2002-2003. The money equivalent of the paddy to be paid as rent for the

said years have been calculated as follows:

| Year      | Quantity of Bags | Rupees<br>(@ Rs.300/- per bag) |
|-----------|------------------|--------------------------------|
| 2000-2001 | 100              | Rs. 30,000.00                  |
| 2001-2002 | 270              | Rs. 81,000.00                  |
| 2002-2003 | 270              | Rs. 81,000.00                  |
| Total     |                  | Rs.1,92,000.00                 |

So far as the claim of damages for the alleged excavation and sale of earth is concerned, there is no concrete evidence and hence the first respondent/plaintiff cannot succeed in getting the amount of Rs.30,000/- as damages on the said heading. So far as the arrears of rent is concerned, though according to the plaintiff's calculation it came to Rs.1,92,000/-, he had restricted the same to Rs.1,00,000/- alone. It is not the case of the appellants/ defendants that they had paid the rent for the years 2000-2001, 2001-2002 and 2002-2003. On the other hand, it is their contention that they filed petitions under Section 5(2) of the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 before the Revenue Court for remission of the rent for those years. Till today, no order granting such permission has been passed. Apart from the power to grant remission, it seems there is no provision for recovery of arrears of rent. Therefore, the Civil Court shall have the power to decide the question as to the quantum of arrears of rent. So far, no order of remission has been passed. Hence, the respondents are entitled to a decree for recovery of arrears of rent which is not barred by limitation.

30. The suit came to be filed on 09.09.2003. The rent for later part of 2000-2001 was payable within three years prior to the filing of the suit. It seems the first respondent/plaintiff claimed arrears of rent for part of 2000-2001 which would fall within the period of limitation prior to the date of filing of the suit. The rent payable for 2001-2002 and 2002-2003 are very much within the period of limitation. Therefore, the claim made in respect of the rental arrears, even though inappropriately called as mesne profits, is well within time and it is not barred by limitation. Though the total arrears of rent upto the date of filing of the suit comes to Rs.1,92,000/-, the plaintiff has fairly restricted the same to Rs.1,00,000/- alone. Hence, that part of the decree of the trial Court, which was confirmed by the appellate Court directing the appellants herein/ defendants to pay Rs.1,00,000/- as arrears of rent within two months, has got to be confirmed.

31. So far as the rent for the period after the filing of the suit is concerned, the decree of the trial Court as confirmed by the lower appellate Court cannot be sustained. The learned trial Judge as well as the lower appellate Judge chose to proceed on the assumption that the first respondent/plaintiff was entitled to mesne profits and not rent. The same was reason why the decision regarding the same was relegated to a separate proceedings to be initiated under Order XX Rule 12 CPC. The cause of action for recovery of rent for the period subsequent to 2002-2003 had not arisen as on the date of filing of the suit and hence, no relief can be granted in respect of the same. Accordingly, the said part of the decree, namely clause (4) of the decree of the trial Court, as confirmed by the appellate Court, has got to be interfered with and set aside.

32. In view of the finding that suit for recovery of possession is not maintainable and on the other hand the suit in respect of prayer for recovery of Rs.1,00,000/- towards arrears of rent for the periods 2000-2001, 2001-2002 and 2002-2003 alone is maintainable, the award of full costs by the trial Court and the appellate Court requires modification by directing the parties to bear their respective costs in all the three Courts.

33. In the result, the second appeal is partly allowed and the decree of the lower appellate Court dated 31.03.2008 made in A.S.No.15 of 2007 confirming the decree of the trial Court dated 28.02.2007 made in O.S.No.34 of 2006 is set aside. The decree of the trial Court dated 28.02.2007 is modified as follows:

i) The suit shall stand dismissed in respect of the prayer for recovery of possession and for future mesne profits. The respondents / legal heirs of the plaintiffs shall be entitled to a decree directing the appellants/defendants to pay a sum of Rs.1,00,000/- towards arrears of rent for the years 2000-2001, 2001-2002 and 2002-2003.

ii) The parties shall bear their respective costs in all the three courts.

Connected miscellaneous petition M.P.No.1 of 2008 is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

gpa

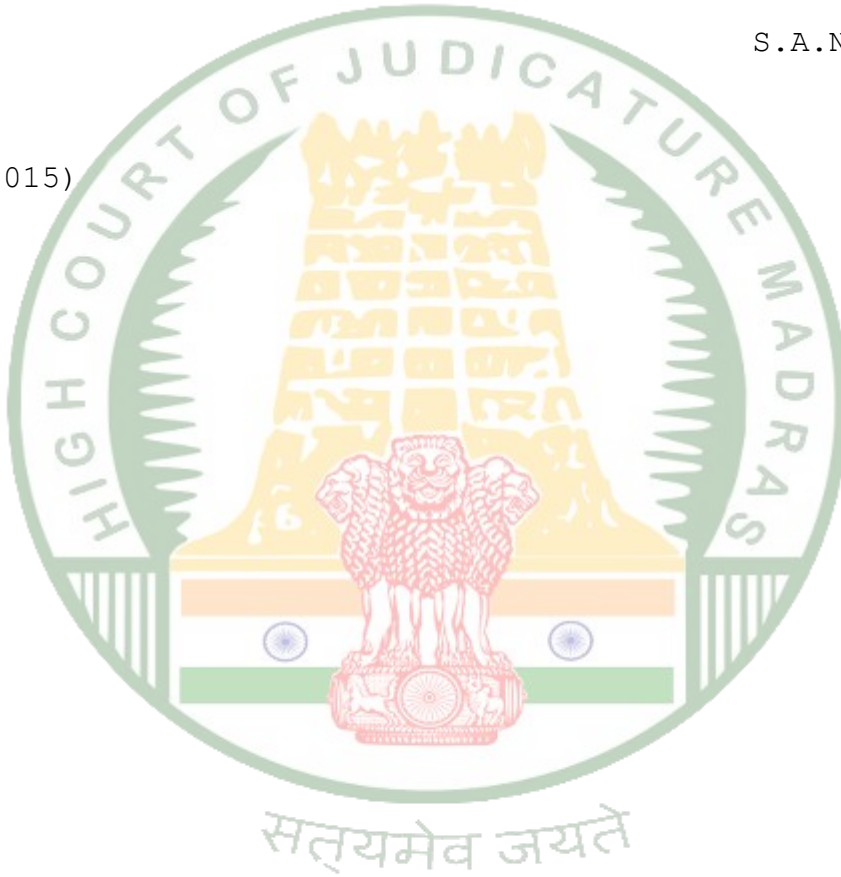
To

- 1) The District Judge,  
Nagapattinam
- 2) The SubOrdinate Judge,  
Mannargudi.

+1cc to M/s.A.Ilango, Advocate, S.R.No.27846  
+1cc to Mr.A.MuthuKumar, Advocate, S.R.No.27416

S.A.No.1503 of 2008 &  
M.P.No.1 of 2008

JSV(CO)  
CA(29/06/2015)



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