

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 15-11-2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Second Appeal No.1258 of 1995

1.Krishnaswamy Gounder (Deceased) ...Appellants 1 &2/
Respondents 2 & 3/Plaintiffs 2,3
2.Swaminathan (Deceased)
3.Govindammal
4.Karunai Ammal
5.Nachammal
6.Kuppusamy
7.Govindasamy Gounder ...Appellants 3 to 7/Respondents7 to11
Plaintiffs 2,3
8.Lakshmi
9.Thangamuthu
10.Chinnasamy
11.Visalakshi
12.Kamalam
(Appellants 8 to 12 brought on record
as LRs of the deceased 1st Appellant
Vide Order of the Court, dated 18.8.2009,
made in C.M.P.Nos.917, 918, 919 of 2008
in S.A.No.1258 of 1995)
13.S.Thulasimani
14.Siva
(Appellants 13 and 14 brought on record as
LRs of the deceased 2nd Appellant vide
order of Court, dated 26.10.2016, made
in C.M.P.No.6876, 7794, 7795 and 7796 of 2016
in S.A.No.1258 of 1995. .. Appellants 8 to 14/Lrs of
deceased /Appellants1 & 2

सत्यमेव जयते
Versus

Muthusamy .. Respondent/Appellant/
Defendant

PRAYER: Appeal against the judgment and decree, dated 22.9.1994, made in A.S.No.18 of 1992, on the file of the Sub Court, Tiruppur, reversing the judgment and decree, dated 27.2.1992, made in O.S.No.60 of 1985, on the file of the District Munsif, Tiruppur.

For Appellants : Ms.P.T.Asha for
Sarvabhauman Associates

For Respondent : Mr.M.V.Venkateseshan

J U D G E M E N T

This second appeal has been filed against the judgment and decree, dated 22.9.1994, made in A.S.No.18 of 1992, on the file of the Sub Court, Tiruppur, reversing the judgment and decree, dated 27.2.1992, made in O.S.No.60 of 1985, on the file of the District Munsif, Tiruppur.

2. The plaintiffs in the suit O.S.No.60 of 1985 are the appellants in the present second appeal. The defendant in the suit is the respondent herein. The suit had been filed praying for the relief of permanent injunction against the defendant and others from, in any way, interfering with the plaintiffs possession and enjoyment of the suit properties. The plaintiffs had stated that the suit properties were, originally, inam lands before they were converted into ryotwari lands and before the Government had carried out the statutory regularisation of the same. The Government had granted ryotwari patta for the suit properties in favour of the plaintiffs, as well as to Palaniyammal and Muthammal in the year, 1966, when the suit lands were converted into ryotwari lands. The grantees, namely, Palaniyammal and Muthammal had died, leaving behind the fifth plaintiff, as their sole legal heir.

3. The ryotwari patta had been granted on the ground of long enjoyment of the suit properties by the plaintiffs' forefathers and by the plaintiffs, continuously, by paying the kist to the Government. The plaintiffs have been in possession and enjoyment of the suit properties for more than forty years. The plaintiffs had further stated that their names had been entered in the village accounts, including the chitta and the adangal. The revenue patta number, in respect of the lands in question, had been entered in the chitta, as 515/32. The adangal and the chitta extracts and the kist receipts produced by the plaintiffs would show that the plaintiffs were in possession and enjoyment of the suit properties.

4. While so, due to enmity, the defendant, along with certain others, who had no right or title or interest in the suit properties, had tried to obstruct the plaintiffs, on 21.1.1985, from entering the suit properties and they had also tried to cut the trees therein. The plaintiffs with the help of certain well-wishers had managed to restrain the defendant and

his men from committing the unlawful activities. However, the plaintiffs are apprehending that the defendant would disturb the plaintiffs peaceful possession and enjoyment of the suit properties. In such circumstances, the plaintiffs had filed the suit, in O.S.No.60 of 1985, praying for the relief of permanent injunction against the defendant and certain others.

5. In the written statement filed on behalf of the defendant it had been stated that the suit filed by the plaintiffs is false, frivolous and unsustainable, both in law and on facts. The defendant had stated that the suit properties were, originally, inam lands before they were converted into ryotwari lands and before the Government had carried out the statutory regularisation of the same. The defendant had further stated that even before such conversion and regularisation had taken place, the defendant's father Patte Gounder was in continuous possession and enjoyment of the suit properties, as a lessee. The ryotwari patta had been granted to the plaintiffs and it has been specifically mentioned in the said order that patte gounder, the father of the defendant, is in possession and enjoyment of the suit properties, as a tenant. Since Patte gounder, the father of the defendant is very old, the defendant has been assisting and helping him in cultivating in the suit properties, as a tenant. Since Patte Gounder is in actual possession of the suit properties, as a lessee, it is false to state that the plaintiffs are in possession of the properties. The kist had been paid by Patte Gounder and the defendant. Whereas the plaintiffs had not paid the kist. The defendant's father had also filed a suit, on the file of the District Munsif Court, Tiruppur, in O.S.No.675 of 1973, for a declaration to be in possession of the suit property, as a lessee. The said suit had been decreed after a serious contest. It has been further stated that the plaintiffs are not in possession of the suit properties, as it is the defendant's father, who is in actual possession of the properties concerned. Further, there is no cause of action for the suit. Since the suit has been filed by the plaintiffs, falsely, without any truth in the claims made by the plaintiffs, the suit is liable to be dismissed.

6. Based on the averments made on behalf of the plaintiffs, as well as the defendant, the trial Court had framed the following issues for consideration:

"1. Whether the plaintiffs are entitled to the relief of permanent injunction, as prayed for in the plaint?

2. Is there any other relief?

7. The additional issue framed by the trial Court, on 8.1.1992, is as follows:

"1. Whether the suit is barred by the principle of res judicata due to the decree passed in O.S.No.675 of 1973?"

8. Three witnesses had been examined and six documents had been marked on behalf of the plaintiffs. Three witnesses had been examined and four documents had been marked on behalf of the defendant.

9. From the averments made on behalf of the plaintiffs and the defendant and in view of the evidence adduced on their behalf, the trial Court had found that, originally, the suit properties were inam lands. They had been converted into ryotwari lands, in accordance with the provisions of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. Thereafter, the patta had been granted to the plaintiffs. The plaintiffs had marked the tax receipts and the adangal accounts to prove that they have been in continuous possession and enjoyment of the suit lands. Even though the defendant had claimed that no ryotwari patta had been given to the plaintiffs and that the lands had been given to the temple poosari, he had not been able to prove that he had been in possession of the suit properties, after the death of Patte Gounder. The trial Court had also found that when Patte Gounder was alive the defendant had filed a suit, in O.S.No.675 of 1973, stating that the plaintiffs were interfering with the possession of the suit properties by Patte Gounder. In the said suit it had been declared that Patte Gounder was in possession of the suit properties. Therefore, according to the defendant the present suit filed by the plaintiffs is barred by the principle of res judicata.

10. The trial Court had also noted that Ex.A-1, marked on behalf of the plaintiffs is the ryotwari patta granted in their favour. The said fact had not been refuted by the defendant. As such, the claim of the defendant that the temple poosari had been given the patta, stands falsified. In fact, after the plaintiffs have been given the ryotwari patta, they have been in continuous possession of the suit properties. The plaintiffs had marked Exs.A-2 to A-6, as evidence of the said fact. The witnesses examined on behalf of the plaintiffs had also stated that the defendant had no right in respect of the suit properties. Thus, the plaintiffs could show that they have been in possession of the suit properties, continuously, for a long time.

11. The trial court had also found that a decree had been passed in O.S.No.675 of 1973, declaring that Patte Gounder was in possession of the suit properties. Even if such a fact was accepted, there is nothing to show that the defendant was in

occupation and possession of the suit properties after the death of Patte Gounder. The defendant had not filed any documents to show that he has been in possession of the suit properties. There is nothing to show that Patte Gounder has been a tenant under the temple priest. No receipt had been filed by the defendant to show that he had paid the rent to the temple, as a tenant. Even though the defendant had claimed that he has been helping his father Patte Gounder to cultivate the lands in question, there is no oral or documentary evidence to support such a claim. Further, the defendant had stated in his evidence that the suit properties had come to him, by way of a Will. However, no such document had been filed by the defendant. Even though the defendant had claimed that his father Patte Gounder had been in possession of the suit properties the defendant has not been in a position to prove that he has been in occupation and enjoyment of the suit properties after the death of Patte Gounder. Further, the cause of action in the earlier suit, in O.S.No.675 of 1973 and in the present suit are different. Further, the defendant was not a party to the earlier suit. As such, the suit filed by the plaintiffs is not barred by the principle of res judicata. The trial Court had also found that the defendant had not taken any action to record himself as a cultivating tenant. In such circumstances, the trial Court had decreed the suit filed by the plaintiffs, as prayed for, by its judgment and decree, dated 27.2.1992, made in O.S.No.60 of 1985.

12. Aggrieved by the judgment and decree of the trial Court, dated 27.2.1992, made in O.S.No.60 of 1985, the defendant in the suit had filed a first appeal on the file of the Sub Court, Tiruppur, in A.S No.18 of 1992.

13. The first Appellate Court had framed the following points for consideration:

"1. Whether the plaintiffs are entitled to the relief of permanent injunction, as prayed for in the suit?

2. To what relief the appellant in the present appeal is entitled to?"

14. Based on the contentions raised on behalf of the appellant, as well as the respondents, the first Appellate Court had found that the defendant had not disputed the fact that the properties in question belong to the plaintiffs. The plaintiffs in the suit, who are the respondents in the first Appeal, had claimed that they had been in possession of the suit properties for over forty years and that the defendant in the suit, who is the appellant in the first appeal, is attempting to illegally interfere with the peaceful possession and enjoyment of the suit properties by the respondents. It had been stated, on behalf of the appellant in the first Appeal, that his father Patte Gounder took possession of the suit properties, as a tenant, even before

the abolition of Inam lands and the conversion of such lands into ryotwari lands, in accordance with the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963.

15. It had been further stated that the claim of the respondents that they have been in possession of the suit properties for over forty years is false. Since Patte Gounder, the father of the appellant, was an old person his son, who is the appellant had been helping him in cultivating the lands. The first Appellate Court had found that D.W.1, in his evidence, had stated that the suit properties belonged to the plaintiffs. The first Appellate Court had found that the defendant had marked the judgment in O.S.No.675 of 1973, as Ex.B-3 and the decree in the said suit as Ex.B-2. By the said judgment and decree, patte Gounder had been declared to be in possession of the suit properties, as a tenant.

16. The first Appellate Court had found that the defendants, in O.S.No.675 of 1973, who are the plaintiffs in the present suit, in O.S.No.60 of 1985, had not filed any appeal against the judgment and decree marked as Ex.B-3 and B-2, respectively. Therefore, in accordance with the judgment of the concerned Court, made in O.S.No.675 of 1973, dated 18.12.1974, the claim of the plaintiffs, that they have been in possession of the suit properties for over forty years, are to be false. Further, the plaintiffs had not claimed that they had taken possession from Patte Gounder. Further, no other suit had been filed by the plaintiffs claiming that they have been in possession of the suit properties, to establish their rights.

17. Therefore, the first Appellate Court had come to the conclusion that Patte Gounder had not been removed from the suit properties, in accordance with law. In fact, P.W.1 had not categorically denied that Patte Gounder had been cultivating the suit properties, as a tenant. In fact, the plaintiffs had only relied on Exs.A-3 to A-6, which are adangals, in respect of the suit properties, to claim that they have been in possession of the said properties, continuously, for a long period of time. However, the fact that Patte Gounder had taken the suit properties on lease, by way of an oral agreement, had been accepted by the plaintiffs by way of a notice, marked as Ex.A-2, in the suit, in O.S.No.675 of 1973.

18. The explanation given by the defendant that Patte Gounder had not registered himself as a cultivating tenant, in the relevant registers, is only due to the fact that his tenancy had been declared by a judgment and decree, made in O.S.No.675 of 1973, dated 18.2.1974. In view of the oral and documentary evidence available on record the first Appellate Court had come to the conclusion that the defendant had been in possession of the suit properties contrary to the claims made by the

plaintiffs. Hence, the first Appellate Court had set aside the judgment and decree of the trial Court, dated 27.2.1992, by a judgment and decree, dated 22.9.1994, made in A.S.No.18 of 1992.

19. Aggrieved by the judgment and decree of the first Appellate Court the plaintiffs in the suit had filed the present second appeal before this Court. This Court had admitted the second appeal on the following substantial question of law:

"Whether the judgment in O.S.No.675 of 1973, on the file of the District Munsif Court, Tiruppur, precludes the appellant from claiming lawful possession on the date of present suit."

20. The learned counsel appearing for the appellants in the present appeal had submitted that the lower Appellate Court had erred in reversing the well considered judgment of the trial Court, by refusing to grant a decree for injunction, without appreciating the points in issue in its proper perspective. When, admittedly, the plaintiffs are the owners of the suit property and when the defendant had not produced any revenue records to establish the possession, as on the date of the filing of the suit, the first appellate Court ought to have confirmed the judgment and decree of the trial Court.

21. Even though the learned Subordinate Judge had referred to Exs.A-1, the ryotawari patta, A-2, the Chitta, A-3 to A-6 the adangal accounts and A-7 to A-9 the kist receipts, he had erred in law in not concluding that the plaintiffs had established a prima facie case of possession and that the balance of convenience was in favour of the plaintiffs. The first Appellate Court ought to have seen that the defendant had not produced any record to show that he was in possession, on the date of the suit. The first Appellate Court had failed to consider that Ex.B-2, the decree in O.S.No.675 of 1973, would not operate as res judicata, as the defendant was not a party to the said suit.

22. Further, the first Appellate Court ought to have noted that the plaintiffs had sufficiently established their claim that they were in possession of the suit properties, at the time of the filing of the suit, in O.S.No.60 of 1985, despite the finding, in O.S.No.675 of 1973. Since the parties to the suit, in O.S.No.675 of 1973, were not the same, the principle of res judicata will not be applicable to the present suit, filed by the plaintiffs. Even though the father of the defendant, namely, Patte Gounder, had been declared as a tenant in respect of the suit properties, in Ex.B-2 and B-3, it would not automatically follow that the defendant can claim tenancy rights and possession, at the time of the filing of the present suit.

23. The learned Subordinate Judge ought to have held that the defendant should, independently, establish his lawful possession as a tenant, at the time of the filing of the present suit. Since no record had been filed by the defendant to establish his claim that he was in possession of the suit properties, as a tenant, the first Appellate Court ought not to have denied the reliefs sought for by the plaintiffs. Further, D.W.1 had admitted, in his oral evidence, that he had not recorded himself as a cultivating tenant in the relevant records. Even though the defendant had claimed that his father had executed a Will in his favour, giving him the right of tenancy in respect of the suit properties, he had not produced the Will to establish his claim. Further, he did not have any adangal accounts to prove his possession. The first Appellate Court ought to have noted that the defendant had not paid any rent to the plaintiffs, even though he had claimed that he was a tenant in respect of the suit properties. The first Appellate Court had also failed to consider the finding of the trial Court that the defendant had not been in a position to show, either by documentary or oral evidence, as to how he had got the right in the suit properties, after the death of his father, Patte Gounder. In such circumstances, the first Appellate Court had erred in reversing the well considered judgment and decree of the trial Court, dated 27.2.1992.

24. The learned counsel appearing on behalf of the defendant/respondent had submitted that the first Appellate Court was right in coming to its conclusion that the appellants in the second appeal, who were plaintiffs in the suit, had failed to establish that they were in possession of the suit properties, at the time of the filing of the suit. The first Appellate Court had rightly held that the declaration made by the District Munsif Court, Tiruppur, in O.S.No.675 of 1973, that the father of the defendant/respondent namely, Patte Gounder, was in possession of the suit properties, as a tenant, was binding on the plaintiffs, since they had not challenged the judgment and decree, dated 18.12.1974, made in O.S.No.675 of 1973, by filing an appeal. Further, the plaintiffs had not shown, by acceptable evidence, that they had taken possession of the suit properties after the death of Patte Gounder. The plaintiffs had not adduced sufficient evidence to show that they were in possession of the suit properties, except based on the exhibits marked as Exs.A3 to A9. The present suit filed by the plaintiffs, in O.S.No.60 of 1985, is barred by the principle of res judicata. Further, there is no cause of action for the plaintiffs to prefer the suit, praying for the relief of permanent injunction.

25. In view of the submissions made by the learned counsels appearing on behalf of the appellants, as well as the respondent and in view of the evidence available on record, it is found that the first Appellate Court had reversed the findings of the trial Court, by its judgment and decree, dated 22.9.1994, made in A.S.No.18 of 1992. However, the first Appellate Court had reversed the findings of the trial Court, without properly appreciating the evidence available on record in favour of the plaintiffs/appellants. Even though the defendant's father, namely, Patte Gounder, had been declared to be in possession of the suit properties, as a tenant, in the judgment and decree, made in O.S.No.675 of 1973, the defendant had not shown as to how he had got the right, in respect of the suit properties, after the death of his father. Further, he had not registered himself as a cultivating tenant, in the relevant records, nor had he adduced sufficient evidence to show that he was a cultivating tenant, in respect of the suit properties, as defined under Section 2 of the Tamil Nadu Cultivating Tenants Protection Act, 1955.

26. Further, the fact that the suit properties belonged to the plaintiffs is not in dispute. While so, it is clear that the plaintiffs had substantiated their claims, by filing Exs.A-1, the ryotawari patta, A-2, the Chitta, A-3 to A-6, the adangal accounts and A-7 to A-9, the kist receipts. On the other hand the defendant had not produced any document to show that he has been recognised as a tenant by the plaintiffs, in respect of the suit properties, nor had he shown sufficient evidence to substantiate his claim that he was in possession of the suit properties, as a tenant, at the time of the filing of the suit.

In such circumstances, this Court is of the considered view that the findings of the first Appellate Court is erroneous and liable to be set aside. Accordingly, the judgment and decree of the first Appellate Court, dated 22.9.1994, made in A.S.No.18 of 1992 is set aside and the judgment and decree of the trial Court, dated 27.2.1992, made in O.S.No.60 of 1985, is restored. Accordingly, the second appeal stands allowed. No costs.

-s/d-

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1) The Sub Judge, Tiruppur.

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