

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2017

PRONOUNCED ON: 01.02.2017

CORAM

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

S.A.No.1112/1999

Sundarambal

..Appellant/1st Appellant/  
1st defendant

..Vs..

1.M.M.Esabai

..1st Respondent/Respondent/  
Plaintiff

2.Govindammal

3.Kumar

..Respondents/Respondent/  
Appellant 2 & 3/  
Defendant 2 & 3

Prayer: Appeal filed Under Section 100 C.P.C. against the Judgment and Decree passed in A.S.No.8/199 dated 17.03.1999 on the file of the Court of Additional District Judge, Pondicherry at Karaikal confirming the judgment and decree dated 25.09.1998 in O.S.No.306 of 1997 on the file of the Court of Principal District Munsif, Karaikal.

For Petitioner : Mr.A.Muthukumar  
For Respondents : R.Siddharth for  
Mr.T.R.Rajaraman

JUDGMENT

The first defendant in the suit is the appellant herein. Aggrieved by the concurrent finding against the defendant in the suit for eviction, the present appeal is filed.

2.The case of the plaintiff is that she is the absolute owner of the suit property and the first defendant is a tenant under the plaintiff paying a monthly rent of Rs.5/- (Rupees five only), since there was default of the payment of rent, quit notice was given on 05.02.1997 terminating the lease agreement and calling upon the defendants to vacate possession after removing the superstructure. Since the defendants did not comply with the demand suit for ejectment.

3.The suit was contested by the defendants on the ground that the father of the 1<sup>st</sup> defendant was allowed to occupy the suit land by its original owner in the year about 1984 and from that date onwards they are in a possession of the enjoyment of the property. The original owner Ranganatha Iyer allowed the father of the defendants to construct the thatched house in the suit property and they were working under Ranganatha Iyer as agricultural labourer, so they are protected under Pondicherry Kudiyiruppudar Act. The said Ranganatha Iyer alienated the property to the plaintiff who attorned the tenancy and was receiving natural manure in lieu of rent from the defendants.

4.The trial Court examined PW-1, DW-1 and DW-2 and Exs.A-1 to A-6 and Ex.B-1. After appreciating the evidence let in by the respective parties held that there is no evidence to show that the defendants are protected under the Pondicherry Kudiyiruppudar Act., and defendants were lessee and the plaintiff is entitle to vacate the suit property and hand over the vacant possession since lessee has been terminated as per law. Aggrieved by the said finding, the defendants have preferred the appeal and the First Appellate Court after formulating point for determination as held that the plaintiff has proved the lessor and lessee relationship and had legally terminated the lease by issuing notice under Section 106 of Transfer of Property Act. Since, the revenue records is not in support of the defendants plea that they are protected under the Kudiyiruppudar Act, there is no reason or ground to interfere with the finding of the trial Court.

5.Aggrieved by the concurrent finding, the defendants have preferred the present Second Appeal and this Court at the time of admission has formulated the following Substantial Question of Law:

1)Whether the Court below erred in decreeing the suit for possession, when the first defendant is not agricultural labourer entitled to the evidence of Kudiyiruppudar Act.

6.The learned counsel for the appellant submitted that the Court's below failed to appreciate the evidence that the first defendant and her predecessor in interest were paying manure to the plaintiff as rent which clearly show that the first defendant is an agriculturist. Since the first defendant is doing agricultural work he is entitled for the benefits and protection under Kudiyiruppudar Act.

7. Per contra, the learned counsel for the respondents submitted that the defendant except marking Ex.B-1 dated 25.03.1985 the communication to the plaintiff has not produced any document to substantiate his plea that he is tenant under the plaintiff and was producing natural manure and paying the rent by way of manure to the

plaintiff. Further, there is no evidence to show that he is a registered Kudiyiruppudar as per law for being protected under the said Act. Contrarily, the plaintiff has examined the Revenue Authority as D.W-2, who is working as Tahsildar in the jurisdiction of the suit property and he has categorically deposed that there is no proceedings pending before the Revenue Authority regarding registering the defendants as Kudiyiruppudar under the plaintiff the fact being so, the defendants has no case to agitate and they are liable to vacate the premises and hand over the vacant possession as decreed by the Court's below.

8. After a close scrutiny of the evidence and the judgments, of the Courts below it is clear that the plaintiff who is the owner of the suit property has attorned the tenancy in favour of the defendants and on default of payment of rent he has issued termination notice under Section 106 of the Transfer of Property Act and the same has been received by the defendants and has replied under Ex.A-5. In the reply itself the defendants has contended that after the purchase of the suit property by the defendants from the erstwhile owner Ramanatha Iyer they were supplying natural manure to the plaintiff as rent as they were supplying to the erstwhile owner. Even to this plea, the defendants have not produced any evidence to show that they are capable of producing natural manure and some was supplied to the landlord/plaintiff. Thus none of the facts have been proved by the defendants though pleaded. Above as pointed out by the trial Court, DW-1 during the cross examination has gone to the extent of saying that the erstwhile owner Ranganatha Iyer has gifted the suit property to them and allowed them to enjoyed as a owner. The defendant have luxury to make inconsistent plea, but they should not be destructive to each other. Atleast there must be some evidence substantial to fortify either of the plea. In this case, the plaintiff have proved the lessor lessee relationship and also proved termination of the lease by Causing notice under Section 106 of the Transfer of Property Act while so, the defendants have failed to produce any evidence to show that they are agriculturists and protected under Kudiyiruppudar Act. In the absence of evidence to the effect that either the plaintiff or the defendants have some agriculture holding, the plea of the defendants that they are protected under Kudiyiruppudar Act is

highly imaginary and preposterous.

9.In the light of the above facts and circumstances, there is no substantial question of law to interfere the concurrent findings of the Court's below. Therefore, the Second Appeal is dismissed with cost. The appellant is directed to remove the superstructure and handed over the vacant possession to the first respondent within 3 months from the date of receipt of a copy of this order.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

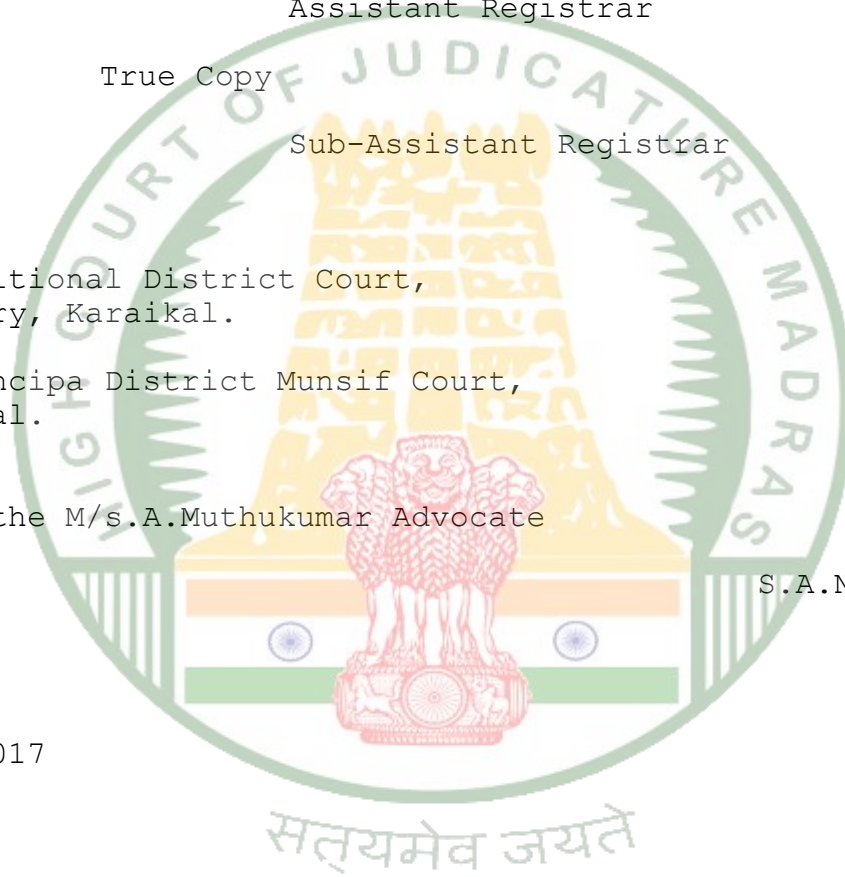
1.The Additional District Court,  
Pondicherry, Karaikal.

2.The Principa District Munsif Court,  
Karaikal.

+1 cc to the M/s.A.Muthukumar Advocate  
sr 6500

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