

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.08.2017

PRONOUNCED ON : 17.08.2017

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.798 of 2001

1.Dakshinamoorthy

2.Raja

3.Semiyan

...Appellants/Defendants

Vs

Rajeswaran

... Respondent/Plaintiff

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree of the Principal Sub Court, Mayiladuthurai in A.S.No.61 of 2000 dated 31.10.2000 reversing the judgment and decree of the Principal District Munsif Court, Mayiladuthurai in O.S.No.913/1996 dated 08.02.1999.

For Appellants : Mr.S.Sounthar

For Respondent : Mr.A.Muthukumar

JUDGMENT

This Second Appeal arises from the suit filed for recovery of possession and mesne profits. While the trial Court dismissed the suit, the First Appellate Court reversed the trial Court Judgment and allowed the suit. Hence, this Second Appeal has been preferred by the defendants.

2.The facts of the case as unfold through the pleadings and evidence are as under:-

The suit schedule property measuring about 1 acre 60 cents is part of larger extent of land originally known as Mudaliar Estate in Kanchanagaram, Tharngambadi, Nagapattiam District. Under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, the excess land was assigned to several landless persons. Thiru.Thambusamy, the father of the plaintiff is one

such beneficiary. As per the assignment order dated 12.12.1968, the land was assigned and its value was fixed at Rs. 3,236.12/- (Rupees three thousand two hundred and thirty six rupees twelve paise only) payable in 20 annual installments.

3.The plaintiff, who is the only son of the said Thiru.Thambusamy, contends that, the suit land was given in assignment subject to certain conditions. Till the last installment is paid, the title will not pass on to the assignee. His father Thiru.Thambusamy died without discharging the dues. Before title could be transferred to his name, he has given possession of the property to the defendants. The plaintiff is not aware what type of arrangement his father had with the defendants. But, the defendants are in possession of 100 kuzis of land. Thiru.Thambusamy is not competent to induct into possession any third party in the suit property. The assignment order prohibits any assignment or transfer of the land before expiry of 10 years from the date of assignment or before the payment of entire costs of the land. Any arrangement between Thiru.Thambusamy and the defendants is in violation of assignment order and void.

4.After the demise of Thiru.Thambusamy when the plaintiff approached the defendants to surrender the possession of the suit property, they declined. Hence, as successor to the property of the deceased Thiru.Thambusamy, the plaintiff initiated proceedings to recover possession from the defendants.

5.In the written statement, the first defendant admit the assignment in favour of Thiru.Thambusamy. They also admit that Thiru.Thambusamy did not clear the dues and till the payment of dues, the title will not be transferred to the assignee. It is contented by the defendants that in the year 1985, Thiru.Thambusamy has given possession of the property to them through oral sale after receiving sale consideration and executed a hand letter to that effect. On 25.04.1985 Thiru.Thambusamy agreed to convey an extend of 100 kulis of land in S.No.154/13 for a sum of Rs 3,000/- and received the same on 30.06.1985. Since then, the defendants are in possession.

6.After taking possession of the land, the defendants also paid one installment of Rs. 251.54/- to the Government. These facts are known to the plaintiff. Even if the assignment is cancelled for non payment of dues, the Government alone is competent to cancell the assignment and get back the property. The plaintiff cannot claim right or title over the property through Thiru.Thambusamy, as his son. Since, Thiru.Thambusamy

had failed to pay the installment and get title in his favour. The plaintiff who claims right through his father cannot get better right than his father. No right or title to the suit property vest with Thiru.Thambusamy and in turn to the plaintiff. Still the Government alone has the title over the property and right to take over the possession. Therefore, there is no cause of action enure on the plaintiff to file the suit for recovery of possession.

7. Based on the above pleadings, the trial Court, framed 2 issues. Examined the plaintiff, the defendant and one more witness on each side. The plaintiff relied on 4 documents which were marked as Exs.A.1 to A.4. The defendants relied on 3 documents and they were marked as Exs.B.1 to B.3.

8. The trial Court, considering the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and the Rules framed thereunder has held that, Thiru.Thambusamy has violated the terms of assignment laid down under Rule 9. He has transferred the possession to the defendants contrary to rule which makes him liable to be evicted under Section 65 of the Tamil Nadu Land Reforms Act. Since, the right of the assignee himself is a subjective one, the plaintiff who is the son of the assignee has no right to seek recovery of possession. Any right of recovery of possession is only vest with the Government and not to the plaintiff. For this reason, the trial court dismissed the suit.

9. The First Appellate Court taking note of the fact that the Government has not proceeded against Thiru.Thambusamy, for recovery of land assigned to him for violation of the terms of assignment held that, if Thiru.Thambusamy had violated the terms of assignment, the Government would have proceeded with the cancellation and recovery of possession. When the assignment not cancelled for non payment of due or for violation of the assignment condition, the right of Thiru.Thambusamy does not get extinguishes. The revenue records relied by the plaintiff are also in favour of the plaintiff. Whereas from Exs.B.1 to B.3, no right gets conferred on the defendants. Title to the suit property cannot be transferred orally. In the absence of registered instrument, Ex.B.1 does not confer title to the defendants. Hence, the plaintiff can maintain the suit and entitled for the relief of recovery of possession.

10. Aggrieved by the reversing judgment of the First Appellate Court, the present Second Appeal is filed by the defendants. At the time of admission, the following substantial

questions of law are framed for consideration.:-

"a)Whether the lower appellate Court erred in reversing the well considered judgment of the trial Court over-looking the principle of estoppel enshrined in Section 115 of Evidence Act.

b)Whether the respondent claiming under his father Thambusamy is entitled to recover possession when the said Thambusamy himself has no right over the suit property as per the provision of Tamil Nadu Land Reforms Act ?"

11.The learned counsel for the appellants/defendants submitted that, the plaintiff claims right of possession through his father Thiru.Thambusamy, who himself had no perfect title over the property but only a inchoate interest. Conditional assignment will not confer any title to the assignee much less his legal heirs. The Government alone has right of recovery of possession and not the legal heir of the defaulter. Further, Thiru.Thambusamy who transferred the possession of the property to the appellants/defendants on receipt of money, never sought for recovery till his life time. Once, the assignment to Thiru.Thambusamy got terminated for default and violation, thereafter, the plaintiff as legal heir of Thiru.Thambusamy cannot seek recovery of the possession. The property was sold by Thiru.Thambusamy to the appellants/defendants after receiving appropriate consideration and possession also given. Thereafter, Thiru.Thambusamy or his legal heirs through him are estopped from claiming possession back.

12.Per contra, the learned counsel for the respondent/plaintiff submitted that, Ex.B.1 - letter alleged to have been executed by Thiru.Thambusamy to transfer his right in the suit property in favour of the appellants/defendants, being unregistered document, is not a valid document and the same is inadmissible in evidence. When the very transfer of possession in favour of the appellants/defendants itself is contrary to law, there can be no estoppel against statute. The order of assignment never been cancelled. Neither the Government proceeded against the assignee for cancellation. Even if there is any violation of assignment, cancellation is not automatic. Even Government cannot cancel the assignment without following the procedure contemplated under the provisions of the Act, under which the assignment made. Therefore, the

respondent/plaintiff as sole legal heir of the assignee/Thiru.Thambusamy has every right to get back the possession of the property which was given into possession of the defendants by his father Thiru.Thambusamy, contrary to law.

13.The question before this Court is whether the property assigned to Thiru.Thambusamy could be conveyed to third parties despite the conditions imposed in the statute and what is the nature of right conveyed to the respondents under Ex.B.1 letter dated 25.04.1985.

14.Ex.A.1 is the proposal notice to the assignee (Thiru.Thambusamy) of the surplus land under the then 'Madras' Land Reforms (Fixation of Ceiling on Land) Act, 1961 under Form 'E' as per Rule 8(6) of the then 'Madras' Land Reforms (disposal of Surplus Land) Rules 1965. (later the word 'Madras' replaced by the word 'Tamilnadu'). It is the proposal to assign the surplus land measuring 1 acre 60 cents to the assignee for a cost of Rs. 3,236.12/-, payable in lumpsum or in 20 annual installment with interest, at the rate of 5% p.a, as per the schedule mentioned. In the letter, the assignee was directed to execute a deed of assignment under Form 'F' of the rules. The documents subsequent to Ex.A.1 - notice; Ex.A.2- the village register extract; Exs.A.3 and B.3 - kist receipts. Exs.B.2, the receipt issued for payment of Rs.251.54/-, invariably indicates the name of Thiru.Thambusamy as the person in possession. Therefore, it has to be presumed that Thiru.Thambusamy has executed the said deed of assignment under Form 'F' and taken possession of the suit property. The appellants/defendants rely upon Ex.B.1 in support of the claim that the property was sold to them orally. Thiru.Thambusamy after executing Ex.B.1 took the sale consideration as found in Ex.B.1 and handed over the possession of the property. Since, there was 20 years for conveying the property, he promised to execute sale deed after completion of assignment proceedings.

14.On perusal of the recital found in Ex.B.1, it appears to be an agreement to sell 200 kuzis in S.N.154/13 at the rate of Rs 35/- per kuzi. On the strength of this letter, the appellants/defendnats have taken possession of the property and also paid one installment of Rs. 251.54/- vide Ex.B.2 and kist Ex.B.3. It is only through their pleadings and deposition, they claim that sale consideration of Rs.3,500/- paid to Thiru.Thambusamy. As pointed out earlier, Ex.B.1 speaks about the price per kuzhi but not about the total sale consideration, or payment of full or partial sale consideration.

15.Further, there is no proof on the side of the appellants/defendants to show any payment of consideration except Ex.B.2 which is the receipt for payment of installment of Rs.251.54/-. If Ex.B.1 is a sale deed as pleaded and deposed by the first defendant, the Court has to outrightly ignore it for want of registration and for absence of passing of consideration. If it is to be taken as proof for possession as submitted by the learned counsel appearing for the defendant. Then, the owner is entitled to repossess it in the manner known to law. For that purpose, to ascertain who is the owner of the land to seek possession has to be decided.

16.The plaintiff claims that his father/Thiru.Thambusamy is the real owner of the land and as his sole legal heir, he is entitled for possession. Whereas, the appellants/defendants claim that, till the process of assignment gets completed, the ownership does not vest with the assignee/Thiru.Thambusamy. Further, for default of payment and violation of terms of assignment, the assignee/Thiru.Thambusamy has lost right over the property whatsoever he had. Hence, the Government alone is the true owner of the property and the respondent/plaintiff has no cause of action to file the suit.

17.Rule 9 of the Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules 1965, (hereinafter referred to as "the Rules") stipulates certain conditions for assignment which reads as follows:-

"9.Conditions of assignment.- (1) The assignment of land shall be subject to the following conditions, namely:-

(i)The land assigned shall not be sold or otherwise alienated (before the expiry of period specified in sub-clause 9a) of clause (iii) below):

(ii)If the land has been assigned subject to the payment of value of the land and buildings and trees thereon in installments.

(a).....

(b).....

(c)...

(d)...

(e)...

(iii)(a)The land will vest absolutely in the assignee only after the value of the land and the buildings and trees thereon is paid in full (or after the expiry of a period of twenty years from the date of assignment, whichever is later)."

18. Thus, it is clear from reading of Rules 9(a)(iii) and 9 (2) of the Rules, that land before payment of full value or before expiry of 20 years from the date of assignment whichever is later, the land assigned cannot be sold or otherwise alienated. Under Rule 8(6) of the Rules, if assignee dies after execution of deed of assignment, in Form 'F' before expiry of time limit prescribed in Clause (i) of Sub Rule 1 of Rule 9, the assignment made in his favour shall stand transferred in favour of the legal heir nominated by such assignee. For easy reference, Clause (6) of Rule (8) of the Rules is extracted below:-

"8(6) (a) If an assignee dies after the execution of the deed of assignment in Form-F but before the expiry of the time-limit perscribed in clause(i) of sub-section (1) of Rule 9, the assignment made in his favour shall stand transfered in favour of the legal heir nominated by such assignee under sub-rule (5) with effect form the date of death of the assignee. If the legal heir nominated as above is not eligible for assignment on the date of the death of the assignee or is not willing to accept, the assignment may be transfered to any one of the eligible legal heirs of the deceased assignee;

(b) On such transfer of the assignment in favour of a legal heir of the deceased assignee, the provisions of these Rules, shall apply as if it were as assignment made under sub-rule (4);

(c) If none of the legal heirs of the deceased assignees are eligible for assignment or are not willing to take up the land on assignment, the land shall revert to the Government."

19. In this context, it is also relevant to refer Sections 64 & 65 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 which deal about the power of the Government to distribute excess land to the landless persons and dispossess persons in some cases for violation of terms of assignment.

"64. Authorized officer to distribute possession of land.-(1) The Authorized Officer shall distribute possession of the land, possession of which he has taken under Section 62, to the landless persons or to persons holding land below the cultivating tenant's ceiling area.

(2) The distribution under sub-section (1) shall be in accordance with such Rules and subject to such conditions as may be prescribed. Such Rules may also provide for the manner or recovery of any amount due to the Government from, and the manner of evicting, the person to whom such distribution is made.

65. Authorized Officer empowered to summarily dispossess persons in certain cases.- The Authorized officer may summarily dispossess-

(i) any person to whom any land has been distributed under Section 64, if such person fails to comply with the conditions subject to which the distribution was made, or contravenes any Rule made under this Chapter;
(ii) any other person occupying such land except in accordance with the provisions of this Chapter or the Rules made thereunder."

20. On reading of Sections 64 & 65 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, it is clear that the authorised officer is empowered to distribute the excess land which he has taken possession under Rule 62 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, to landless persons in accordance with such Rules and he is also empowered to summarily dispossess the person to whom he has distributed land under Section 64 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. If such person fails to comply with the condition subject to which the distribution was made under Rule 9(2) of the Rules, the

assignment shall be cancelled for violation of the condition of the assignment or in the deed of assignment in Form 'F' is noticed by the assignment authority. However, such cancellation shall not be ordered without giving the assignee an opportunity to make his representation. Therefore, on a cumulative reading of Sections 64 & 65 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and Rules 6, 8(6), 9(1)(ii) and 9(2) of the rules, it is crystal clear that once, assignment is made, the property cannot be sold before payment of cost or before expiry of 20 years from the date of assignment whichever is later. Any violation shall lead to cancellation of assignment after due notice. In this case, since full payment not made, the moratorium shall be for 20 years. By virtue of Rule 8(6), the plaintiff becomes eligible for assignment being the sole legal heir of Thiru.Thambusamy. Till any action taken by the Government for cancellation of assignment on the ground of violation of condition, the plaintiff as legal heir of the assignee is deemed to be the person entitled for enjoying the assignment. Therefore, the plea of the appellants/defendants that the plaintiff has no locus to maintain the suit is not sustainable. Furthermore, the document Ex.B.1 does not have any legal sanctity to consider it as a document supporting transfer of title or possession. On the face of it, one cannot presume that the subject property has been sold or otherwise alienated.

21.For the aforesaid reasons, the plaintiff is entitled for recovery of possession as prayed. The First Appellate Court has rightly applied the law and arrived at the just conclusion which require no interference under Section 100 of the Code of Civil Procedure.

22.In the result, the Second Appeal is dismissed and the decree and judgment of the First Appellate Court is hereby confirmed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Principal Subordinate Judge,
Mayiladuthurai

2.The Principal District Munsif,
Mayiladuthurai

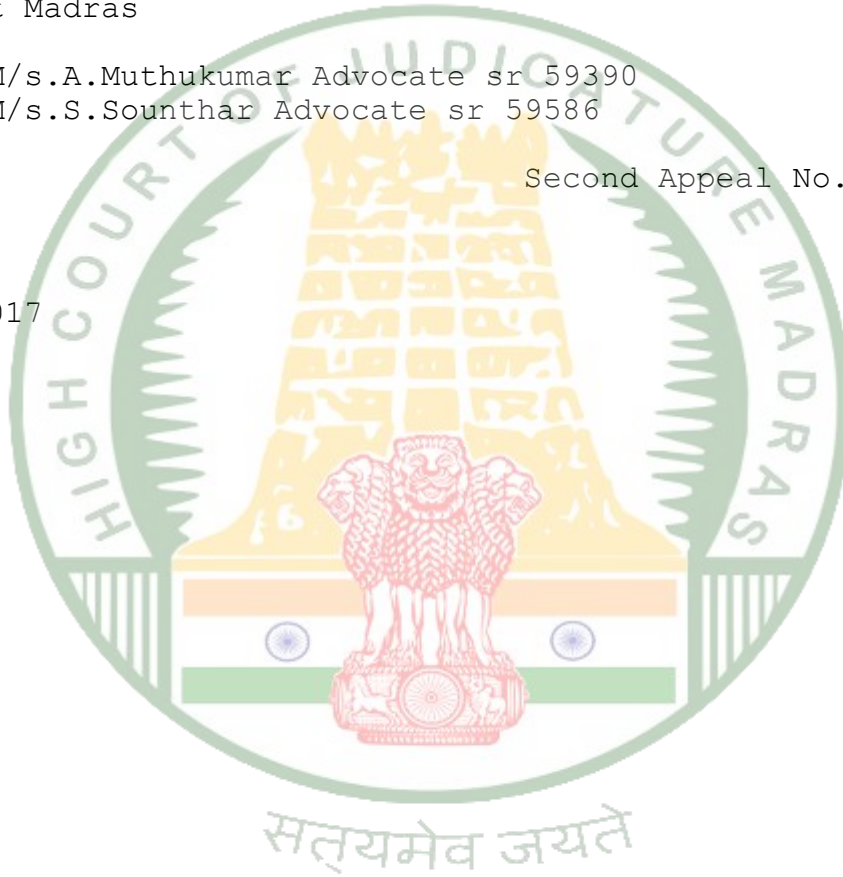
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