

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.11.2017

PRONOUNCED ON : 21.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.80 of 2001
and
W.P.No.16238 of 1999

1. Kaliyaperumal (Deceased)

2. Bhoomadevi

3. Inbanila

... Appellants in S.A.No.80 of 2001/
Petitioners in W.P.No.16238 of 1999

(Appellants 2 and 3 brought
on record as LRs of the deceased sole appellant
vide order of the Court dated 24.10.2017
in CMP No.17580/2017)

(P2 & P3 are substitute as Lrs of deceased
P1 Kaliaperumal as per the order dated
24.10.2017 in WPMP.57/2015)

Vs.

Sellam
N.Sarojini

... Respondents in S.A.No.80/2001 &
R4 and R5 in W.P.No.16238/1999

R.Annadurai

... R3 in S.A.No.80 of 2001

The District Revenue Officer,
Villupuram.

... R1 in W.P.No.16238/1999

The Special Deputy Collector/Revenue Court,
Cuddalore. ... R2 in W.P.No.16238/1999

The Tahsildar/Record Officer,
Ulundurpet. ... R3 in W.P.No.16238/1999

N.Annaswamy ... R6 in W.P.No.16238/1999

Prayer in Second appeal: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 11.10.1999 made in A.S.No.3/1997 on the file of the Additional District Judge, Villupuram District, Villupuram reversing the judgment and decree dated 30.09.96 made in O.S. No.187/95 on the file of the Additional District Munsif, Ulundurpet.

Prayer in Writ petition: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the entire records in connection with the impugned order of the first respondent made in B3/80930/95 dated 4.6.99 and Quash the said impugned order dated 4.6.99 of the first respondent.

For Appellants in second appeal : Mr. Dhalapathi Vigneshkumar
& petitioners in Writ petition for M/s.M.Sriram

For Respondents : Ms. G.Sumitha
R1 to R3 in Second Appeal for M/s. R.Jaikumar
& R4 to R6 in Writ Petition.

For Respondents 1 to 3
in writ petition : No appearance

COMMON JUDGMENT/ORDER

This second appeal is directed against the judgment and decree dated 11.10.1999 made in A.S.No.3/1997 on the file of the Additional District Judge, Villupuram reversing the judgment and decree dated 30.09.96 made in O.S. No.187/95 on the file of the Additional District Munsif Court, Ulundurpet.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for permanent injunction.

S. A.No.80 of 2001

4. The case of the plaintiff, in brief, is that the suit properties originally belonged to the brother of the defendant namely Narayana padayachi and after the death of Narayana padayachi his wife Alamelu ammal inherited the suit properties and the plaintiff was the cultivating tenant in respect of the suit properties under Alamelu ammal till her death and after the death of the Alamelu ammal, the defendant succeeded to the suit properties and accordingly, the plaintiff executed a lease deed dated 15.5.84 for the lease amount of Rs.300/- for a period of one year in favour of the defendant and thereafter enmity arose between the plaintiff and the defendant and thereby, the defendant attempted to trespass into the suit properties, which

necessitated the plaintiff to initiate the proceedings before the Record Tenancy Tahsildar to register his name as the cultivating tenant in respect of the disputed properties. The plaintiff has been cultivating crops in the suit properties and as the defendant attempted to interfere with the possession and enjoyment unlawfully, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that it is false to state that the plaintiff was the cultivating tenant in respect of the suit properties under Alamelu ammal and on the other hand, the plaintiff had never cultivated the suit properties when Alamelu ammal was alive. No doubt, on 15.9.84, the plaintiff executed a lease deed in favour of the defendant, in respect of the suit properties, for a period of one year and after the expiry of the said period the defendant had taken possession and it is only the defendant who is enjoying and cultivating the suit properties on his own and while so, the plaintiff attempted to trespass into the suit properties and hence, the defendant issued notice to the plaintiff, to which a reply had been sent containing false allegations. The defendant has also entered appearance before the Record tenancy Tahsildar and filed his objections and hence the suit is liable to be dismissed.

6. In support of the plaintiff's case PW1 has been examined and Exs. A1 to A7 were marked and on the side of the defendant DWs1 to 3 were examined and Exs.B1 to B6 were marked.

7. During the course of the first appeal, it is found that by way of the petition preferred by the defendant, an additional document has come to be marked on the side of the defendant as Ex.B7

8. The trial Court, on the basis of the materials placed and the submissions made, was pleased to decree the suit as prayed for. On appeal, the first appellate Court, on a consideration of the materials placed before the appellate Court reversed the judgment and decree of the trial Court and by allowing the appeal, dismissed the suit laid by the plaintiff. Aggrieved over the same, the plaintiff has preferred the second appeal.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

1. Whether the lower appellate Court is right in not appreciating the evidence which resulted in dismissal of the suit?

2. Whether the lower appellate Court is right in relying in Ex.B7 which was under challenge to arrive at the finding of possession?

3. Whether the lower appellate Court is right in holding that the appellant is not a tenant as per Ex.B2 and not in possession?

W.P.No.16238 of 1999

10. The plaintiff has preferred W.P. No. 16238/99 contending that the lands in dispute originally belong to Alamelu ammal and that Alamelu ammal had leased out the lands to the petitioner and accordingly, the petitioner had been cultivating the lands and the said lease arrangement was extended and subsequently, Alamelu ammal died during 1984 and after her death, the lands were succeeded to by Ramar udayar, the defendant in O.S. No.187/95 and accordingly, the petitioner had executed a lease deed in favour of the defendant for a period of one year in 1984, agreeing to pay rent at Rs.300/- and though the lease period had expired in 1985, the petitioner continued to cultivate the lands in dispute and he is in possession of the lands as the cultivating tenant as described under the Act and while so, the defendant issued a notice directing the petitioner to hand over the

possession and as the petitioner is the cultivating tenant in respect of the lands and further as the defendant attempted to interfere with the possession and enjoyment, he preferred O.S.No. 597/89 against the defendant for permanent injunction and obtained interim injunction in his favour and that apart, the petitioner had also moved the necessary authority namely the third respondent in the writ petition, to register his name in the Tenancy record, in respect of the disputed lands and the third respondent after issuing notice to the defendant, conducted enquiry and as per the materials placed, came to the conclusion that the petitioner is the cultivating tenant in respect of the disputed lands and accordingly, allowed the petition preferred by the petitioner to register his name in the Tenancy record by order dated 21.4.93 and the third respondent pending enquiry, had nominated the Deputy Tahsildar to inspect the properties in dispute and file a report and the report had been filed by the Deputy Tahsildar that it is the petitioner who has been in possession and enjoying the lands in dispute and accordingly, the third respondent had passed the above order dated 21.4.93. Aggrieved over the order of the third respondent, the defendant preferred an appeal before the second respondent in the writ petition and the second respondent also, after considering the rival contentions of the parties, concurred with the order of the third respondent and accordingly, dismissed the appeal preferred by the defendant by order dated 15.09.95 and aggrieved over the above said

order of the second respondent, the defendant/landlord had preferred revision before the first respondent in the writ petition and pending revision before the first respondent, the landlord had died and his legal representatives had been impleaded as parties in the proceedings and meanwhile, the suit laid by the petitioner which was re-numbered as O.S.No. 187/1985 came to be decreed in favour of the petitioner and as against the same, the defendant had preferred appeal in A.S.No.1/97 and while so, the Revisional authority namely the first respondent whose jurisdiction and scope of the revision is very limited and without considering the issues in the proper perspective, set-aside the order of the second and third respondents by order dated 4.6.99 and aggrieved over the same, according to the petitioner he has preferred the writ petition and thus, according to the writ petitioner, the order of the first respondent in holding that he has not contributed his physical labour in the cultivation of the lands in question, is nothing but a colourable exercise of the jurisdiction and the first respondent without any contra evidence wrongly set aside the orders passed by the respondents 2 and 3 and the first respondent has failed to consider that the defendant had not placed any material to disprove the factum of possession and cultivation of the lands in question by the petitioner and the first respondent without applying his mind and failing to see that the petitioner had filed the lease arrangements in respect of the suit properties right from 1969 onwards erred in holding that he is not

the cultivating tenant in respect of the disputed lands and hence, according to the petitioner, he has been necessitated to file the writ of certiorari to call for the entire records in connection with the impugned order passed by the first respondent dated 04.6.99 and quash the same and pass such order or further orders as the Court may deem fit in consideration of the case.

11. At the time of the admission of the second appeal, it is found that this Court has ordered the second appeal to be tagged along with the writ petition No.16238/99.

12. The plaintiff who is the appellant (during the pendency of the second appeal and the writ petition, the plaintiff have died, his legal representatives have been brought on record) and the writ petitioner claims to be the cultivating tenant of the lands in dispute under the defendant. It is not in dispute that the defendant is the owner of the disputed lands and it is further seen that the plaintiff had originally taken the disputed lands on lease under the erstwhile owner Alamelu ammal and after the death of Alamelu ammal, as the disputed lands had been inherited by the defendant, it is further seen that the plaintiff had executed the lease deed in favour of the defendant during the year 1984 i.e.15.5.84 for a period of one year agreeing to pay the lease amount of Rs.300/-. It is further found that the above said lease

arrangement was not extended by the defendant. However, it is the case of the plaintiff that he continued to remain in possession of the disputed lands and accordingly, cultivating the same and while so, as the defendants attempted to interfere with his possession and enjoyment and also directed the plaintiff to hand over the possession of the disputed lands, according to the plaintiff, he had been necessitated to lay the suit against the defendant for permanent injunction and inasmuch as the plaintiff has been cultivating the lands in dispute as the cultivating tenant thereof, in order to record his name in the Tenancy record, it is the case of the plaintiff that he had also preferred necessary petition before the Tahsildar, Ulundhurpet, to record his name as the cultivating tenant in the tenancy records as per the Records of Tenancy Act and the further according to the plaintiff, despite the resistance putforth by the defendant to his plea before the Tahsildar to record his name as the cultivating tenants in the tenancy record, the Tahsildar, after considering the materials placed by the respective parties and also the report of the Deputy Tahsildar who had been nominated to give report as to the possession of the disputed lands by the plaintiff, held that it is only the plaintiff who has been in possession and enjoyment of the disputed lands and accordingly, by order dated 21.4.93 he had allowed the petition preferred by the plaintiff and recorded his name in the Tenancy record and the said order has also been confirmed by the Special Deputy Collector/

Revenue Court, Cuddalore, in the appeal preferred by the defendant by order dated 15.09.95. It is also the further case of the plaintiff that meanwhile, his suit laid against the defendant for permanent injunction in O.S.No 187/95 also came to be decreed in his favour and aggrieved over the same, it is stated that the defendant has preferred an appeal in A.S.No. 3/97 before the first appellate Court and further according to the plaintiff, aggrieved by the orders of the Tahsildar and the Special Deputy Collector, the defendant has also preferred revision before the District Revenue Officer, Villupuram, challenging the inclusion of his name as the cultivating tenants in the Tenancy record.

13. Inasmuch as the District Revenue Officer, Villupuram, has set-aside the orders passed by the Tahsildar and the Special Deputy Collector and entertained the revision preferred by the defendant by order dated 04.06.99, according to the plaintiff, the said order being not sustainable in law and as it had been passed without considering the materials placed on record in the right perspective, he has been necessitated to lay the writ petition for appropriate reliefs.

14. Meanwhile, the order of the District Revenue Officer allowing the revision preferred by the defendant dated 04.06.99, came to be received as additional evidence by the first appellate court in A.S.No. 3/97 and the said order has come to be marked as Ex.B7. The first

appellate Court, on the basis of the materials placed, accordingly finding that the plaintiff has failed to establish that he is in possession and enjoyment of the disputed lands as the cultivating tenant thereof and also relying upon the order passed by the District Revenue Officer Villupuram, marked as Ex.B7 and also holding that the plaintiff has not placed any material to show that he is in physical enjoyment of the disputed lands, accordingly, set-aside the judgment and decree of the trial Court and by allowing the appeal preferred by the defendants, dismissed the suit preferred by the plaintiff. Aggrieved over the same, the second appeal in question has come to be preferred.

15. As regards the impugned order in the writ petition, it is found that as rightly held by the Revisional Authority, inasmuch as the plaintiff claims to be a cultivating tenant of the disputed lands, it is for the plaintiff to establish that he is the cultivating tenant in respect of the said lands. It is seen that the Revisional authority has correctly understood the definition of the cultivating tenants as provided under section 2(aa) of the Cultivating Tenants Protection Act and accordingly, finding that the person who claims to be a cultivating tenant should establish that he is carrying on personal cultivation of the lands in question and the use of physical labour connoting the idea of physical strain and use of sinews and as distinct from mental or intellectual work and accordingly, holding that the contribution of physical labour

being the *sine qua non* for establishing the plea of cultivating tenant, held that the plaintiff has resultantly failed to establish that he has been cultivating the lands in question by contributing his physical labour as required under the Act. As seen from the impugned order of the Revisional authority, no doubt, the Tahsildar and the Special Deputy Collector had found that the plaintiff to be in possession of the suit properties based on the report of the Deputy Tahsildar. It is found that pending enquiry, the Tahsildar had nominated the Deputy Tahsildar to inspect the lands in dispute and file a report and accordingly, based on the report of the Deputy Tahsildar, the Tahsildar and Special Deputy Collector had come to the conclusion that the plaintiff had been in possession of the disputed lands along with his own lands. As rightly determined by the Revisional authority, it is found that the plaintiff's own lands and the disputed lands are situated adjacent to each other and as there is no ridge dividing the said lands, accordingly, it has been held by the respondents 2 and 3 that the plaintiff is in possession of the disputed lands also. However, that by itself would not automatically lead to the conclusion that the plaintiff is the cultivating tenant in respect of the disputed lands. The essential ingredient for satisfying the requirement of the cultivating tenants being the contribution of the physical labour, the Revisional authority finding that the same is completely absent in the present case and accordingly, held that the plaintiff has failed to establish that he is the

cultivating tenant in respect of the disputed lands. In this connection, the Revisional authority has rightly not taken into consideration, the decree passed in favour of the plaintiff in O.S. No.187/89, as it is the only authorities constituted under the Act, who are competent to decide as to whose name is entitled to be recorded as the cultivating tenants in respect of the disputed lands.

16. That apart, at that point of time, it is seen that the judgment and decree passed by the trial Court was under challenge before the first appellate Court and therefore, the Revisional authority has rightly held that the suit laid by the plaintiff has not come to a finality and pending before the first appellate Court. Therefore, no exception could be taken to the approach of the Revisional authority in not considering the judgment and decree in O.S. No.187/89 at the time of the disposing of the revision petition. It is further found that before the Revisional authority materials had been placed to hold that the petitioner has leased out his own lands in favour of one Chinnasamy for a period of three years and during the currency of such arrangement, it has been found that the petitioner had taken the disputed lands on lease and therefore, when it is noted that the plaintiff had not been cultivating his own lands by physical labour, his contribution of physical labour to the lands in dispute would not arise.

The Revisional authority has also noted rightly that the Tahsildar and

Special Deputy Collector have wrongly held that the lease in favour of Chinnasamy was only for a period of one year and on the other hand, the said lease arrangement is found to be made for a period of three years and accordingly, it has been held rightly by the Revisional authority that the plaintiff would not be cultivating lands in dispute with his own physical labour. Accordingly, taking into consideration the above factors, the Revisional authority has held that the plaintiff is not a cultivating tenant of the disputed lands as provided under the Tamilnadu Cultivating Tenants Protection Act.

17. It has been further found by the Revisional authority that the plaintiff has failed to establish that he has paid the lease amount in respect of the lands to the defendant and though the plaintiff would claim to have paid the lease amount, to buttress the claim, it is found by the Revisional authority that no document as such is produced and accordingly, it is found that the plaintiff has not paid the lease amount whatsoever to the defendant and that factor was also taken into consideration to hold that the petitioner has not paid the lease amount in respect of the disputed lands and accordingly, not cultivating the lands in question.

18. It is thus found that the Revisional authority, based on the materials placed, in the right perspective of the same, has rightly held that the plaintiff has miserably failed to establish that he is the cultivating tenant in respect of the disputed lands by showing that he has contributed his physical labour in the cultivation of the same. Mere possession of the lands by itself would not satisfy requirement of the cultivating tenant as provided under the Act and accordingly, it is seen that the Revisional authority, in the correct analysis of the materials held that the plaintiff is not the cultivating tenants in respect of the disputed lands and accordingly, entertained the revision petition preferred by the defendant and thereby rightly set-aside the orders passed by the Special Deputy Collector, Cuddalore as well as the order of the Tahsildar.

19. In such view of the matter, it is found that the impugned order passed by the District Revenue Officer, Villupuram has been passed on the proper appreciation of the materials placed in the correct perspective both on factual as well as legal aspects. It is thus found that the order of the first respondent is not liable to be set-aside and in the light of the above position, it is found that the plaintiff is not entitled to obtain any relief as prayed for in the writ petition and hence, the writ petition has to fail.

20. As regards the second appeal, the plaintiff is found to have laid the suit claiming the relief of permanent injunction mainly on the footing that he is the cultivating tenant in respect of the disputed lands. However, as rightly found by the first appellate Court, when the competent authority to decide the said issue has held by way of Ex.B7 that the plaintiff has failed to establish that he had cultivated the lands in question by contributing his physical labour and therefore cannot be the cultivating tenant of the disputed lands, accordingly has rightly placed reliance upon the said order for coming to the conclusion that the plaintiff has failed to establish that he is the cultivating tenant in respect of the disputed lands. Therefore, it is found that the first appellate Court is right in relying upon Ex.B7, even though, the same had been under challenge by way of a writ petition. Now that the writ petition impugning the said order marked as Ex.B7, has also come to be dismissed, it is found that the first appellate Court has rightly relied upon the said order for holding that the plaintiff is not the cultivating tenant in respect of the lands in dispute.

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21. In addition to that it is also found that the first appellate Court has rightly held that the plaintiff has failed to establish that he is in possession and enjoyment of the lands in dispute by filing necessary adangal extract and on the other hand, it is found that the defendant has produced the necessary adangal marked as Ex.B2, to evidence

that he is in possession and enjoyment of the lands in dispute after the expiry of the lease period and accordingly, held that it is only the defendant who is in possession and enjoyment of the disputed land and not the plaintiff. It is not established by the plaintiff that the defendant has unlawfully taken possession of the suit lands from the plaintiff during the pendency of the civil proceedings. Accordingly placing reliance upon the adangal placed by the defendant and also the order of Revisional authority marked as Ex.B7, the first appellate Court correctly set-aside the judgment and decree of the trial Court and no exception could be taken to the same. It is thus found that the first appellate Court is also right in holding that the plaintiff is not the cultivating tenant and not in possession of the suit properties by placing reliance upon the document marked as Ex.B2 and other materials placed on record. It is further found that the first appellate Court has by properly approaching this matter in the right perspective and by considering all the factual and legal aspects correctly, held that the plaintiff has failed to establish that he is in possession and enjoyment of the suit lands as the cultivating tenant thereof and accordingly, set-aside the judgment and decree of the trial Court and thereby dismissed the suit laid by the plaintiff. In view of the above discussions, the substantial questions of law formulated in this second appeal are answered against the plaintiff and in favour of the defendant.

22. In conclusion, both second appeal and the writ petition are dismissed with costs. Consequently, connected miscellaneous petition in both the second appeal and the writ petition, if any, is closed.

21.11.2017

Index : Yes/No
Internet: Yes/No
Speaking order/Non-speaking order
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To

1. The District Revenue Officer,
Villupuram.
2. The Special Deputy Collector/Revenue Court,
Cuddalore.
3. The Tahsildar/Record Officer,
Ulundurpet.
4. The Additional District Judge, Villupuram.
5. The Additional District Munsif, Ulundurpet.

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T.RAVINDRAN,J.

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Pre-delivery Judgment/Order in
S. A.No.80 of 2001 &
W.P.No.16238 of 1999

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