



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.11.2017

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

S.A. (md) .No.161 of 2017 and C.R.P. (MD) .No.635 of 2017

S.A. (MD) .No.161 of 2017:

Natarajan

... Appellant/Appellant/Plaintiff

Vs.

1. The District Collector,
District Collectorate Campus,
Thiruppathur Salai,
Sivagangai Town,
Sivagangai District.

2. The Tahsildar,
Office of the Tahsildar,
Thiruppathur Town,
Sivagangai District.

3. Arunachalam @ Bose

4. Manickavasagam

... Respondents/Respondents/Defendants

Prayer: This Second Appeal is filed under 100 of Civil Procedure Code, against the Judgment and Decree dated 14.12.2016 passed in A.S.No.48 of 2014 by the learned Subordinate Judge, Sivagangai, confirming the judgment and decree dated 26.04.2013, passed in O.S.No.62 of 2010 on the file of the District Munsif cum Judicial Magistrate Court, Thiruppathur.

C.R.P. (MD) .No.635 of 2017:

Natarajan

... Petitioner/Petitioner/Appellant

Vs.

1. The District Collector,
District Collectorate Campus,
Thiruppathur Salai,
Sivagangai Town,
Sivagangai District.



2. The Tahsildar,
Office of the Tahsildar,
Thiruppathur Town,
Sivagangai District.

3. Arunachalam @ Bose

4. Manickavasagam

... Respondents/Respondents/Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India seeking to set aside the order and decretal order dated 14.12.2016 passed in I.A.No.121 of 2016 in A.S.No.48 of 2014 on the file of the learned Subordinate Judge, Sivagangai.

In Second Appeal and Civil Revision Petition:

For Appellant and Petitioner : Mr.A.Saravanan

For Respondents : Mr.E.Kumar

Addl. Govt. Pleader for RR-1 & R2

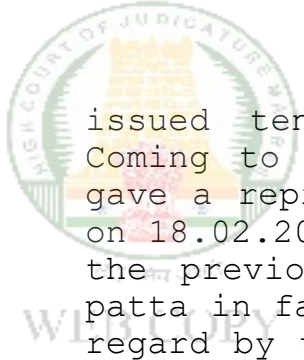
No appearance for RR-3 & 4

JUDGMENT

Challenging the judgment and decree dated 14.12.2016 passed in A.S.No.48 of 2014 by the learned Subordinate Judge, Sivagangai by confirming the judgment and decree dated 26.04.2013, passed in O.S.No.62 of 2010 on the file of the District Munsif cum Judicial Magistrate Court, Thiruppathur, the present second appeal has been preferred. The plaintiff, who lost before the courts below is the appellant herein.

2.For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the trial court.

3.According to the plaintiff, the suit property belongs to one Kalyani Achi. In the said property, the father-in-law of the plaintiff along with four of his close relatives were enjoying cultivating tenancy right and in that connection, they were given joint patta by the Tahsildar Thiruppathur, as per proceedings No.B4-T.R.No.15023-91, dated 10.02.1992. Thus, the father of the plaintiff and four of his close relatives namely Ramasamy, Thangavelu, Kumararaja and Chinna Karuppan were registered as cultivating tenants in respect of the suit property. The said tenancy right was purchased from the said five persons by the plaintiff on 19.11.1996 for consideration of Rs.2,00,000/- and ever since, the plaintiff is in possession and enjoyment of the suit property. While the plaintiff was away in foreign country from 1997 to 2000, the second defendant/Tahsildar, who was functioning under the first defendant/District Collector, Sivagangai, had wrongly



issued tenancy registration in favour of the third defendant. Coming to know of the same, the previous tenants in the property gave a representation to the Revenue Divisional Officer, Devakottai on 18.02.2009, but no action was initiated on the same. Even though the previous tenancy right holders gave consent for transfer of patta in favour of the plaintiff herein, no order was passed in that regard by the second defendant herein. Hence, the plaintiff herein filed W.P.(MD).No.7233 of 2009 on the file of this court to set aside the patta No.31 granted in favour of the third defendant and to issue patta in favour of himself. The said writ petition was ordered on 04.01.2010. Subsequently also, patta was not transferred. The third defendant on the basis of the patta issued to him, tried to interfere with the possession and enjoyment of the plaintiff and the same was prevented. Hence, the plaintiff has come forward with the suit, seeking to declare himself as a tenancy right holder of the suit property to cancel the patta wrongly issued to the third defendant and to issue patta in his favour. Hence, the suit.

4.The defendants entered appearance. Third and fourth defendants entered appearance and filed their written statement refuting the allegations made in the plaint and would state that the suit property originally belongs to Arunachalam Chettiar and patta No.28 was granted in his name. Arunachalam Chettiar and his wife Kalyani Achi had three sons. Taking advantage of the fact that Arunachalam Chettiar and his family were living outside, Periyasamy, Ramasamy, Thangavel, Chinna Karuppan, Kumararajan obtained tenancy registration, without any notice to the owners of the property. On coming to know of the same, Kalyani Achi gave a representation to the Tahsildar, Thiruppathur to cancel the patta issued to the said five persons. The said petition was taken on file and after enquiry, the patta granted to the said five persons was cancelled, as per order dated 27.05.1999 and a copy of which was produced as Ex.B.1. Subsequently, as the sons of Arunachalam Chettiar expired, the third defendant purchased the property from one Meenatchi/daughter-in-law of Arunachalam Chettiar for a sum of Rs.68,000/- and patta No.31 was issued in the name of third defendant. Ever since, he was in possession and enjoyment of the property. The said five persons preferred appeals against the order dated 27.05.1999 of Thasildar, Thiruppathur before the Revenue Court, Madurai, wherein, Kalyani Achi and third defendant were shown as respondents. After enquiry, all the five appeals preferred were dismissed on 30.04.2002, as evidenced by Exs.B.5 to B.8. Aggrieved over the same, the said five persons preferred appeals against the said order before the District Revenue Officer, Madurai. After enquiry, the said appeals were also dismissed on 16.04.2008, as evidenced by Exs.B.9 to B.13. As patta was granted to third defendant without any basis, W.P.(MD).No.7233 of 2009 was filed to cancel the same, but the same was dismissed with a direction to approach the civil court and the third defendant, who received the summons in civil proceedings on 31.03.2010 has sold away the property, even prior to that, to the fourth defendant on 15.03.2010

itself. After the said sale, the fourth defendant obtained patta No.1381 and he is in enjoyment of the property. According to the 3rd and 4th defendants, no suit will lie before the civil court to obtain tenancy registration and patta. The third defendant has contended that civil court has no jurisdiction and sought for dismissal of the suit.

5.The trial court, on perusal of the pleadings, framed the following issues:

- “1. பிரதில் கோரியுள்ள விளம்புகை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
2. 3ம் பிரதிவாதி பெயரில் உள்ள மட்டாவை ரத்து செய்ய வேண்டும் என வாதி கோருவது ஏற்புடையதா?
3. வாதிக்கு கிடைக்கத்தக்க பரிகாரம் என்ன?”

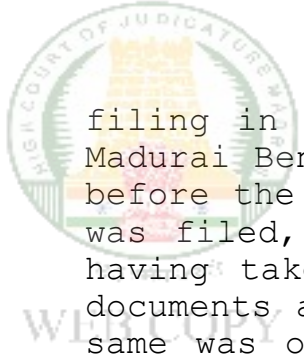
6.During the course of trial, the plaintiff examined himself as P.W.1 and another witness as P.W.2. However, no document was produced on the side of the plaintiff. The defendant examined D.Ws.1 to 3 and produced Exs.B.1 to B.15 to refute the claim of the plaintiff.

7.The trial court, on consideration of the pleadings as well as oral and documentary evidence, found that the claim of the plaintiff is not established and dismissed the suit. The plaintiff is claiming tenancy registration right and allotment of patta. The plaintiff has not produced any documentary evidence to prove his claim. Further only a person actually using his physical labour to cultivate the land can seek the relief as sought for in the suit. Further, the plaintiff has gone abroad from 1997 to 2000. In such circumstances, the trial court held that the relief sought for by the plaintiff cannot be entertained.

8.Aggrieved over the same, the plaintiff filed A.S.No.48 of 2014 on the file of the Sub-Court, Sivaganga. The lower appellate court, on going through the grounds of appeal framed the following points for determination:

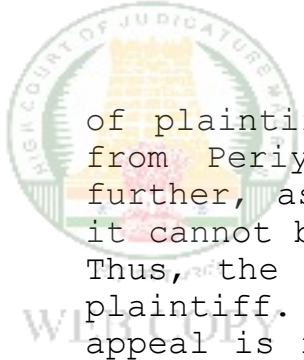
- “1.இடைமனு எண்.121/2016ல் தாக்கல் செய்யப்பட்டுள்ள கூடுதல் ஆவணங்கள் ஏற்றுக்கொள்ளத்தக்கதா?
- 2.விசாரணை நீதிமன்றம் இருதரப்பு ஆவணங்களையும், சாட்சியங்களையும் நன்கு ஆராய்ந்து முடிவு செய்துள்ளதா?
- 3.விசாரணை நீதிமன்றத்தின் தீர்ப்புரை மற்றும் தீர்ப்பாணை ரத்துச் செய்யத்தக்கதா? இல்லையா?”

9.Further, before the lower appellate court, the appellant herein filed I.A.No.121 of 2016 to receive additional documents and the same was dismissed. Aggrieved over the same, the appellant herein filed C.R.P.(MD).No.635 of 2017 and the same has been ordered to be clubbed for disposal along with the second appeal herein. The appellant herein filed a petition under Section 109 of 2016 was disposed along with A.S.No.48 of 2014 by the first appellate court. In the said petition, the petitioner has claimed that the original documents were given to the counsel for



filing in W.P.(MD).No.7233 of 2009 on the file of the High Court, Madurai Bench and as such, the original document could not be filed before the trial court. Since the xerox copy of the document alone was filed, the trial court dismissed the suit. The defendant now having taken back the said documents, sought to produce the said documents as additional evidence in the first appellate court. The same was opposed by the plaintiff. The first appellate court, on considering the reason stated by the petitioner, dismissed the said I.A filed under Order 41 Rule 27 of Civil Procedure Code to receive the additional documents. Aggrieved over the same, the petitioner preferred C.R.P.(MD).No.635 of 2007.

10.The lower appellate court, in its finding stated that those documents sought to be produced by the defendant are not relevant. Further, the five documents sought to be produced are the patta in the name of the third defendant and the same has already been produced as Ex.B.3. The other document is the copy of the order passed in W.P.(MD).No.7233 of 2009. The other documents sought to be produced relate to transfer of tenancy right in favour of the plaintiff from the previous owners of the property. However, in the proceedings between the owner of the property Kalyani Achi and the previous alleged five tenancy right holders before the Tahsildar, Thirappathur, the issue has been decided in favour of Kalyani Achi, as evidenced by Ex.B.1 and the appeals preferred against the same have already been dismissed. The revision petitions filed against the dismissal of appeals before the District Revenue Officer were also dismissed on 16.04.2008. Pointing it out, the first appellate court held that the predecessor in interest of the plaintiff herein have lost their claim before the Revenue Officials, as such, the document Nos.1 to 4, now sought to be produced by the plaintiff to substantiate his claim of tenancy right are not admissible. It is further held that the documents sought to be produced are not registered documents and on that ground also, the first appellate court rejected the plea of the petitioner to receive additional documents, as per I.A.No.121 of 2016, filed in A.S.No.48 of 2014. The first appellate court also found that Kalyani Achi filed a petition before the Tahsildar and got patta transferred in her name as per Ex.B.1 order. The appeals filed against the same by the predecessor in interest of the plaintiff were also dismissed. In the said proceedings, nothing was mentioned by those five persons about the selling of the tenancy right to the plaintiff herein. Following the same, Kalyani Achi has sold the property to third defendant as exhibited by Ex.B.2. Thereafter, the third defendant got patta in his name under Ex.B.3 and he was in enjoyment of the property evidenced by Ex.B.4/series of tax receipts. The appeals filed by Periyasamy and other persons before the Special Tahsildar, Madurai were dismissed on 30.04.2002, as evidenced by Exs.B.5 to B.8. The revision filed against the same before the District Revenue Officer, Sivagangai, was also dismissed on 16.04.2008, as evidenced by Exs.B.9 to B.13. Thus, the alleged predecessors in interest of the plaintiff Periyasamy and others have no legally valid tenancy rights in the property. As such, the claim



of plaintiff that he obtained tenancy rights in the suit property from Periyasamy and four other persons cannot be accepted and further, as the plaintiff has gone out of India from 1997 to 2000, it cannot be said that he cultivated land by his own physical force. Thus, the first appellate court dismissed the appeal filed by the plaintiff. Challenging the legality of the same, the present second appeal is filed. Likewise, challenging the dismissal of I.A.No.121 of 2016, Civil Revision Petition (MD).No.635 of 2017 is preferred by the plaintiff/appellant.

11. In the memorandum of grounds of appeal, the following substantial questions of law are raised by the appellant/plaintiff:

"1. Whether the courts below are correct in deciding the suit on the ground of non production of documentary evidence?

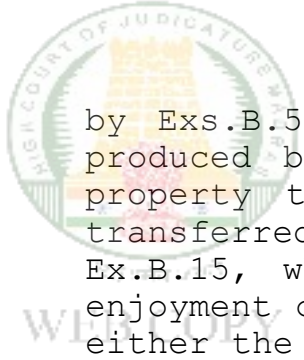
2. Whether the copies of documents are totally liable to be rejected only on the ground that the documents produced are xerox copies?"

12. The learned counsel for the appellant/plaintiff contended that the courts below have not properly appreciated the material available on record and erred in holding that the plaintiff has not established his claim of tenancy right in the property. The learned counsel for the appellant/revision petitioner conceded that no document was produced on their side before the trial court to substantiate their claim.

13. Per contra, the learned Additional Government Pleader and the counsel appearing for the other respondents contended that the plaintiff has no *locus standi* to file the suit as there is no tenancy right in the suit property. They also contended that the documents sought to be produced as additional evidence before the first appellate court are not relevant and further, no valid reason is stated by the plaintiff for non-production of the same before the trial court. They further contended that the points urged by the learned counsel for the plaintiff/appellant was elaborately considered by the trial court as well as by the lower appellate court,. Both the courts below had reached a conclusion to reject the claim of the plaintiff/appellant and as the findings are concurrent in nature, interference may not be warranted at the hands of this court, while exercising its jurisdiction under Section 100 of Civil Procedure Code and prayed for dismissal of the second appeal.

14. This Court considered the rival submissions and perused the impugned judgments passed by the courts below.

15. The plaintiff has sought for declaration of his tenancy right in the suit property. However, the plaintiff has not produced any documentary proof to prove his contention. The claim of his predecessors in respect of the suit property as cultivating tenants have been rejected by the concerned revenue authorities as evidenced



by Exs.B.5 to B.13. Further, it is apparent from the documents produced by the defendant that the third defendant has sold the property to the fourth defendant under Ex.B.14. Now, patta is transferred in the name of the fourth defendant, as evidenced by Ex.B.15, which would go to show that the fourth defendant is in enjoyment of the property. There is nothing on record to show that either the predecessor in interest of the plaintiff or the plaintiff himself had at any point of time were the cultivating tenants of the suit property. Further, the plaintiff has not stated any reason for failure to produce the documents before the trial court. No valid reason is stated by the plaintiff to permit him to produce additional evidence, as sought for by filing I.A.No.121 of 2016 in A.S.No.48 of 2014 before the Sub-Court, Sivagangai. The reason stated by the first appellate court for dismissing I.A.No.121 of 2016 appears to be just and correct and the same needs no interference. Similarly, the conclusion arrived at by the courts below clearly establish the fact that the plaintiff has not produced any material to establish the factum of he being in possession of the property as cultivating tenant. As such, this Court, on perusal of the records, particularly Exs.B.5 to B.13 finds that the plaintiff as well as predecessors in interest have not established the fact of having any right in the suit property as cultivating tenant and as such, the relief sought for by the plaintiff cannot be entertained.

16.The substantial questions of law raised by the appellant/plaintiff have already been answered by the courts below. In the considered opinion of this court, no substantial question of law arises for consideration in this second appeal and the concurrent finding rendered by the courts below are based upon proper appreciation of oral and documentary evidence and therefore, the judgments and decrees of courts below warrant no interference. In such circumstances, the judgment and decrees passed by the courts below need no interference.

17.In the result, both the second appeal and the Civil Revision Petition are dismissed at the admission stage itself, by confirming the judgment and decree passed by the courts below. No costs.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



1. The Subordinate Judge, Sivagangai

2. The District Munsif cum Judicial Magistrate,
Thiruppathur.

3. The Section Officer,
V.R Section, Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 2 CC TO Mr.A.SARAVANAN, ADVOCATE IN SR No. 89984 & 89985

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 89784

VS

TE/KKR/SAR-2 : 19/03/2018 : 8P/8C

Common Judgment made in
S.A.No. (md) .No.161 of 2017 and C.R.P. (MD) .No.635 of 2017
27.11.2017