

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2018
PRONOUNCED ON : 25.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1348 of 2003

1.Thulasiammal
2.Parameswari
3.Sudanthiravalli
4.Rajavadivelu
5.Annamalai
6.Vinayagam
7.Dhanalakshmi
8.Raji
9.Sekar

... Appellants/Defendants 1 to 10 in
Trial Court

Vs.

1.Amsammal
2.Mani

... Respondents/Plaintiffs in
Trial Court

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 01.04.2002 made in A.S.No.55 of 1998 on the file of the Additional District Court, Vellore, confirming the judgment and decree dated 29.10.1998 made in O.S.No.556 of 1995 on the file of the Additional District Munsif Court, Vellore.

For Appellants : Mr.N.Subbarayalu
for Mr.G.Jeremiah

For Respondents : No appearance

JUDGMENT

Challenge in this second appeal is made to the Judgment and decree dated 01.04.2002 passed in A.S.No.55 of 1998 on the file of the Additional District Court, Vellore, confirming the judgment and decree dated 29.10.1998 passed in O.S.No.556 of 1995 on the file of the Additional District Munsif Court, Vellore.

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

trial Court.

3. Suit for permanent injunction.

4. Shorn of unnecessary details, the case of the plaintiff, in brief, is that the suit properties belonged to Manicka Mudaliyar and the first plaintiff's husband Kuppan was employed in a timber shop of Manicka Mudaliyar and in recognition of his service, Manicka Mudaliyar leased out the suit properties to his first wife Ammakannammal under an oral tenancy arrangement and accordingly, the plaintiff's family constructed a house near the Well located in the suit properties and since 1952, Ammakannammal had been in possession and enjoyment of the suit properties by cultivating the same and on her death, after Kuppan had married the first plaintiff as the second wife, the plaintiffs had been cultivating the lands and after the death of Manicka Mudaliyar on 18.01.1989, the defendants, who are his legal heirs, attempted to interfere with the possession and enjoyment of the plaintiffs in respect of the suit properties. Till the death of Manicka Mudaliyar, the plaintiffs had been measuring the lease paddy regularly and after his death, the same had been measured to the defendants 8 & 9 and it is only the plaintiffs, who have been paying the electricity charges for the service connection No.192 and thus, the plaintiffs are enjoying the suit properties as the cultivating tenants thereof and the defendants demanded the plaintiffs to vacate the suit properties for the purpose of selling the same as plots which was not agreeable to the plaintiffs, the defendants thereby attempted to interfere with their possession and enjoyment and hence the suit.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts and though Kuppan had served in the timber shop of Manicka Mudaliyar, the suit properties were not leased out to Ammakannammal in recognition of his service and Kuppan's family members were not cultivating the suit properties as the tenants under Manicka Mudaliyar and there is no record to evidence the same and the farm house located in the suit properties was constructed by Manicka Mudaliyar and it is only he, who had been paying the electricity charges. Kuppan had stolen the electricity bills and taking advantage of the same, the plaintiffs have produced the same in the suit and it is only the defendants, who are cultivating the suit properties and the plaintiffs did not measure the lease paddy to Manicka Mudaliyar or the defendants as claimed in the plaint. With a view to grab the suit properties, after the death of Manicka Mudaliyar, the plaintiffs had conspired with Kuppan and laid the false suit and hence, the suit is liable to be

dismissed.

6. In support of the plaintiffs' case, PWs1 to 4 were examined and Exs.A1 to A133 were marked. On the side of the defendants, DWs 1 & 2 were examined and Exs.B1 to B3 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiffs' case and accordingly, decreed the suit as prayed for. Impugning the same, the present second appeal has been preferred.

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

" (i) Whether the order of the Court below in granting an order of the injunction in favour of the respondents is sustainable in law in view of the categorical decision reported in 1984 1 MLJ page 345 wherein it is observed that if the civil Court cannot proceed to investigate whether the person is a cultivating tenant or not, then equally it cannot declare that the respondents have such rights?

(ii) Whether the court below failed to note that the consequential relief of injunction depends upon the adjudication with reference to status of the respondents and when that cannot be done by the civil court, then the consequential relief of injunction cannot be granted?"

9. Considering the materials placed on record, it is found that the Courts below had, on a proper appreciation of the materials placed on record, both oral and documentary, finding that the plaintiffs, without any ambiguity, had established that they are in possession and enjoyment of the suit properties by producing the various electricity bills and also the bills, pertaining to the purchase of manure and the tax receipts paid in the name of Kuppan for the house put up in the suit properties and also the evidence adduced by the plaintiffs through the mouth of PWs1 to 4 and also considering the admission in the evidence of DWs1 & 2 and also further noting

that the Adangal extracts marked by the defendants would not serve their case and disbelieving the case of the defendants that Kuppan had stolen the electricity bills and also negating the contention put forth by the defendants that in the absence of any record to establish that the plaintiffs are the cultivating tenants of the suit properties as provided under the Tamil Nadu Cultivating Tenants Protection Act, the plaintiffs' suit is not maintainable, holding even otherwise the suit laid by the plaintiffs for permanent injunction is maintainable, the Courts below, accordingly, finding that it is only the plaintiffs, who are in possession and enjoyment of the suit properties and cultivating the same as the cultivating tenants thereof and accordingly, also noting that the defendants are attempting to disturb their possession and enjoyment without any authority of law, granted the relief sought for by the plaintiffs.

10. As regards the above said concurrent findings arrived at by the Courts below, the counsel for the defendants did not project any arguments as such challenging the same. However, he would mainly contend that inasmuch as the plaintiffs have laid the suit claiming that they are in possession and enjoyment of the suit properties as the cultivating tenants thereof and hence, according to him as the civil Court cannot proceed to investigate the above said case of the plaintiffs that they are the cultivating tenants of the suit properties and in such view of the matter, it is his contention that for deciding that issue, the Civil Court's jurisdiction is ousted under the Tamil Nadu Agricultural Lands Record of Tenancy Right Act by virtue of Section 16-A of the said Act and therefore, it is argued on his part that following the decision reported in AIR 1984 MADRAS 235 (Pankajam and others Vs. Chinnaswamy Naidu), this Court should hold that the Civil Court's jurisdiction is ousted and hence, according to him, the determination of the Courts below that the plaintiffs are enjoying the suit properties as the cultivating tenants thereof are liable to be set aside and accordingly, prayed for the necessary determination on the above point canvassed by him.

11. In so far as this matter is concerned, though the case was adjourned on several occasions, as there was no representation on behalf of the plaintiffs / respondents, they were called and as they remained absent, consequently, they were set ex parte.

12. For the above said contention, the defendants' counsel relied upon the decision reported in AIR 1984 MADRAS 235

(Pankajam and others Vs. Chinnaswamy Naidu). It is found that the said decision was also projected before the Courts below, however, the Courts below found that the above said decision would not be applicable to the facts and circumstances of the present case as the present suit laid by the plaintiffs is only for a mere injunction and the plaintiffs have not sought for the relief of declaration that they are the cultivating tenants of the suit properties and thereby, entitled to the Protection of the Tamil Nadu Cultivating Tenant protection Act. On a perusal of the materials, it is found that the above said determination of the Courts below deserve acceptance.

13. In so far as the decision relied upon by the defendants' counsel reported in AIR 1984 MADRAS 235 (Pankajam and others Vs. Chinnaswamy Naidu), it is found that in the said suit, the relief of declaration was asked for by the concerned plaintiff for establishing his right to enjoy the suit properties covered therein as a cultivating tenant thereof and also prayed for the consequential permanent injunction restraining the landlords from interfering with his possession and enjoyment of the properties covered therein. Accordingly, in the above said decision, following the decision of the Full Bench reported in AIR 1980 Mad 180 (Ponnusami V. District Revenue Officer, North.Arcot) and in particular, relying upon the illustrations dealt with by the Full Bench in the above said decision with reference to the several categories of cases that may arise where this type of question would assume importance as detailed in para-40 of the judgment of the Full Bench and accordingly, finding that in one such case dealt with by the Full Bench and finding that the Full Bench, while considering the question where a claim for the primary relief of declaration as the status of cultivating tenant cannot be granted by the Civil Court and further, noting that as the full bench had observed that if the cultivating tenant filed a suit for declaration that he is the cultivating tenant of the land in question and as a consequential relief prays for recovery of possession from the land owner/defendant or for an injunction, the primary relief being one for declaration of his status as a cultivating tenant, other reliefs being consequential, the Civil Court may not have jurisdiction to decide the controversy with regard to which, the primary relief is prayed for and accordingly, finding the above said observations/findings of the Full Bench would govern the said case covering the above said decision and accordingly, in that decision, it has been held that inasmuch as the relief of declaration that the plaintiff is the cultivating tenant of the suit properties cannot be determined by the Civil Court and accordingly, the Civil Court having denied the relief of declaration sought for on the above said footing, it was held in the said decision that the

consequential relief of injunction depending upon the adjudication with reference to the status of the plaintiff, whether he is the cultivating tenant or not and when that cannot be done by the Civil Court, it was determined in the said decision that the consequential relief of permanent injunction also cannot be granted. Therefore, it is found that what had been decided in the above said decision is that once the relief of declaration sought for as regards the status of the cultivating tenant cannot be determined by the Civil Court and thereby, the same had been declined, the civil Court would not be competent to grant the consequential relief of permanent injunction sought for.

14. However, as rightly found by the Courts below, the said decision cannot be applicable to the case at hand as the present suit is laid only for the relief of permanent injunction simplicitor. No doubt, the plaintiffs have sought for the relief of permanent injunction against the defendants on the footing that they are in possession and enjoyment of the suit properties as the cultivating tenants thereof and their such position should not be disturbed by the defendants unlawfully and on that footing, it is found that the plaintiff has laid the present suit.

15. Whether on the above said footing, the plaintiffs are entitled to maintain the suit for bare injunction has to be seen. As regards the above position, it is found that an authority was also cited before the Courts below reported in 1977 1 MLJ (SN) Page 5 (K.S.Palaniswamy Vs. Ramaswami Gounder), the position of law as regards the above issue has been detailed in the said decision as under

“ Tamil Nadu Agricultural Lands Record of Tenancy Right Act (X of 1969), Section 16-A- suit for injunction - Question whether the tenant was a cultivating tenant - Question incidental - Jurisdiction of civil Court to entertain suit.

Though section 16-A of the Tamil Nadu Act X of 1969 excludes the jurisdiction of the Civil Court to determine a question which the authorities constituted under that Act had to decide, the present suit, which is one for mere injunction, can be maintained in the civil Court. It is true for the purpose of granting the relief of injunction claimed in the suit, the Court has to incidentally go

into the question as to who is in possession of the property and in what capacity. The fact that the Court has to consider an incidental question for the purpose of granting the main relief claimed in the suit will not make the suit incompetent in a civil Court."

16. It is thus found that as per the above said decision, the suit for mere injunction is maintainable though in such suit, the Court has to incidentally go into the question as to under what capacity, the plaintiff is in possession and enjoyment of the property.

17. The contention put forth by the defendants' counsel that the Civil Court's jurisdiction is completely ousted from determining as to whether the plaintiffs are enjoying the suit properties as the cultivating tenants thereof cannot be accepted in the light of the determination of the said point of controversy as determined by the Full Bench in the decision reported in AIR 1980 Mad 169 (FB) (Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and ors.) and the position of law as regards the above said point had been dealt with by the full bench as follows:

" 36. A controversy may arise whether the land has been let for cultivation by a tenant at all. The question to be considered is, whether the determination of that controversy is within the exclusive jurisdiction of the authorities functioning under the Act so as to bar the jurisdiction of the Civil Court under S.16-A. From the language of S.3(2) it cannot be stated that the determination of that controversy is within the exclusive jurisdiction of the authorities functioning under the Act, though the determination of that controversy is basic and fundamental to the exercise of the jurisdiction by the Record Officer and the other authorities under the Act. The very object of the Act is to provide for the preparation and maintenance of record of tenancy rights in respect of agricultural lands and therefore if there is no tenancy in respect of a land,

there is no question of any further particulars being determined. This aspect is made clear even from the definition of the expression 'landowner' occurring in S.2 (5) of the Act, because according to the said definition, 'landowner' means the owner of the land let for cultivation by a tenant and includes the heirs, assignees or legal representatives of such owner or person deriving rights through him. Consequently, the controversy as to whether a particular piece of land has been let for cultivation by a tenant or not is one constituting the jurisdictional issue which a Record Officer has to decide before he can determine any other matter under the Act. But that controversy cannot be said to be within the exclusive jurisdiction of the authorities functioning under the Act, because to hold so will enable the statutory authorities to assume jurisdiction by erroneously deciding the jurisdictional issue. If the controversy arises, the authorities functioning under the Act have necessarily to decide the same, because a decision on that controversy alone will determine the jurisdiction of the authorities functioning under the Act. If the decision is that the land has been let for cultivation by a tenant, then the Record Officer will have jurisdiction to determine the further particulars provided for in S.3 (2) of the Act. If, on the other hand, the decision of the controversy is that the land has not been let for cultivation by a tenant there is no question of there being any tenancy rights in respect of the said land and consequently, there is no question of the Record Officer ascertaining or determining any further particulars in this behalf. Therefore, if such controversy arises, that controversy cannot be said to be within the exclusive jurisdiction of the authorities functioning under the Act, and any determination of that controversy by the authorities can be said to be only incidental to the assumption of jurisdiction by the authorities under the Act. Subject to this qualification it can be held that once the Record Officer or any other authority functioning under the Act has come to the

conclusion that the land has been let for cultivation by a tenant, the matters provided for in S.3 (2) have to be determined by the Record Officer, or other authority functioning under the Act, and to that extent the jurisdiction of the civil Court is barred under S.16 of the Act."

18. Therefore, as per the above said determination of the full bench, it is found that when a controversy or question arises, whether the land in question let for cultivation by a tenant, it is seen that the determinations of such controversy are held to be not within the exclusive jurisdiction of the authorities functioning under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 and it has been held that such issues can also be incidentally determined by the Civil Court, it has been further held that any determination of such controversy by the authorities under the Act can be said to be only incidental to the assumption of jurisdiction by the authorities under the Act. Not stopping there in the above said full bench decision, while considering the various circumstances arising with reference to the above said issue/controversy, the full bench, while dealing with the case reported in 1977 1 MLJ (SN) Page 5 (K.S.Palaniswamy Vs. Ramaswami Gounder), which case has come to be rendered in second appeal No.1496/1976 as referred to supra, holding that a suit for permanent injunction is maintainable, wherein, the question, whether the plaintiff is the cultivating tenant or not, can be gone into incidentally, the full bench, in the above said decision, had dealt with the case covered in the decision reported in 1977 1 MLJ (SA) Page 5 (K.S.Palaniswamy Vs. Ramaswami Gounder), extensively as follows:

" The question came to be decided by one of us (Ramanujam, J) in Palanisami V. Ramaswami Gounder, judgment dated 5th January, 1977). That arose from a suit filed for a permanent injunction restraining the defendants from interfering with the possession of the suit property by the plaintiff as a cultivating tenant. The plaintiff in the suit was the first respondent before this Court and his case was that he took the suit property on lease from respondents 2 and 3 in 1967 on an annual rent at Rs.400 that he continued to be in possession of the land as a cultivating tenant ever since, that though he was entitled to the benefits of the Tamil Nadu Act XXV of 1955, respondents 2 and 3 had sold the land on 7th April, 1975 to the appellant

who had chosen to interfere with his possession on the basis of the said purchase and that had occasioned his suit for permanent injunction. One of the defences put forward by the appellant and respondents 2 and 3 was that after the period of one year from the date of the lease, the first respondent-plaintiff had surrendered possession of the land, that subsequently he was not in possession of the same and that therefore, he was not entitled to the permanent injunction. The Courts below had rejected this contention of the appellant, third defendant and respondents 2 and 3 (defendants 1 and 2) and this Court concurred with that conclusion. However, one other point that was urged before this Court was that S.16-A of the Act excluded the jurisdiction of the civil Court and the question as to whether the first respondent was a cultivating tenant in respect of the said lands could not be gone into in that suit, as it was a matter to be decided exclusively by the authorities constituted under the Act and in support of that contention reliance was placed on the Bench decision of this Court in Muniyandi V. Rajangam Iyer referred to already. After referring to the said decision, this Court in the judgment in the second appeal referred to above observed-

" Dealing with the contention regarding the jurisdiction of the civil court to entertain this suit as framed, the lower appellate court has expressed the view that the relief sought for in the suit does not in any way, infringe the functions of the Record Officer, and that, therefore, the first respondent can invoke the jurisdiction of the Civil Court if his possession is sought to be disturbed by the appellant and respondents 2 and 3 and that S.16-A will not, therefore, stand in the way of the first respondent maintaining this suit. I am of the view that though S.16-A excludes the jurisdiction of the Civil Court to determine a question which the authorities constituted under the Tamil Nadu Act X of 1969 had to decide, the present suit, which is one for

mere injunction, can be maintained in the Civil Court. It is true, for the purpose of granting the relief of injunction claimed in the suit, the Court has to incidentally go into the question as to who is in possession of the property and in what capacity. The fact that the Court has to consider an incidental question for the purpose of granting the main relief claimed in the suit will not make the suit incompetent in a civil Court. In Ramaswami Raja V. Ellaypa Gounder Ramachandra Iyer, J. as he then was, had held that an injunction, which is a preventive remedy, can be granted only by the Civil Court, that there is no inherent power in any tribunal to grant an injunction and that, therefore, the tenant has always got his remedy to approach the Civil Court for the relief by way of injunction whenever his possession is interfered with. In Ramachandra Sastrigal V. Kuppusami Vanniar, while dealing with the scope of S.6-A of the Tamil Nadu Act 25 of 1955, a Division Bench had expressed the view that in a simple suit for an injunction laid in a Civil Court for restraining the defendant from interfering with the plaintiff's possession, the defendant, even if he were to be a cultivating tenant entitled to the benefits of the Act, cannot gain anything by merely having the forum of adjudication being shifted from the Civil Court to the Revenue Court as it is obvious that a Revenue Court cannot grant any injunction. In Sri Venkatanarayanamsami Deity Vs. Vadugammal, a Division Bench of this Court, while construing the scope of S.93 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, held that a relief which cannot be granted by the Deputy Commissioner under S.57 can be asked for in a Civil Court and that the Civil Court, while deciding whether the plaintiff is entitled to the relief asked for, can go into and decide incidental questions which may fall within S.57. The Bench has observed " Therefore, the preponderance of authority of our Court is that a civil suit is not barred in respect of a relief which cannot be granted by the Deputy Commissioner and that in such a suit,

the Civil Court has jurisdiction to decide incidental issues which are within the jurisdiction of the Deputy Commissioner."

On the pleadings in the case, there are three possibilities. Firstly, the plaintiff in the suit might have been in possession of the suit lands on the date of suit and he may be a cultivating tenant entitled to the benefits of the Tamil Nadu Act 25 of 1955. If this is the real position, an injunction must issue in favour of the plaintiff. Secondly, the plaintiff might have been in possession of the suit lands on the date of suit but he might not be a cultivating tenant entitled to the benefits of the Act. Even in such a case the plaintiff is, entitled to an injunction by virtue of his having been in possession of the suit property on the date of suit, as he is entitled to continue in possession until duly evicted by the true owner. The third possibility is the plaintiff might not have been in possession of the suit lands on the date of suit, In such a case whether he is a cultivating tenant entitled to the benefits of the Act or not, the suit must fail. Therefore, if the plaintiff is in a position to get an order of injunction even without establishing his status as a cultivating tenant, the suit cannot be thrown out merely because it raises an incidental question as to whether the plaintiff is a cultivating tenant or not. I am, therefore, of the view that the Civil Court jurisdiction to entertain this suit for injunction cannot be said to have been taken away under S.16-A of the Tamil Nadu Act X of 1969".

and concluded that they are of the opinion that the above decision correctly represents the scope and effect of Section 16-A. Accordingly, it is seen that the full bench has approved the decision of justice Ramanujam rendered in S.A.1496/76 dated 05.10.1977, which decision has come to be reported in 1977 1 MLJ (SN) page 5 and therefore, it is seen that as per the above said decision of justice Ramanujam, the civil Court's jurisdiction to entertain the suit for permanent injunction is maintainable and in such a suit, the Civil Court has the

jurisdiction to incidentally go into the question as to in what capacity the plaintiff is in possession of the property, whether as the cultivating tenant thereof or otherwise.

19. In the light of the above position, it is found that the Courts below were justified in holding that the suit laid by the plaintiffs is maintainable in the Civil Court, following the decision of justice Ramanujam as aforesaid and in such view of the matter, it is found that the determination of the Courts below in granting the relief of permanent injunction in favour of the plaintiffs is sustainable in the eyes of law and accordingly, while awarding the said relief, it is found that the Courts below are entitled to go into the question incidentally whether the plaintiffs are the cultivating tenants of the suit properties or not. Inasmuch as the suit laid by the plaintiffs is not one for declaration and consequential injunction and on the other hand, it is a suit for mere permanent injunction, in such view of the matter, it is found that the Courts below were correct in holding that the decision reported in AIR 1984 MADRAS 235 (Pankajam and others Vs. Chinnaaswamy Naidu) is not applicable to the case at hand. Accordingly, the substantial questions of law formulated in the second appeal are answered in favour of the plaintiffs and against the defendants.

In conclusion, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Court, Vellore.
2. The Additional District Munsif Court, Vellore.

S. A.No.1348 of 2003

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