

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :12.06.2018

PRONOUNCED ON:25.06.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2273 of 2003

and

C.M.P.No.1957 of 2008

1.Muruga Gounder (Deceased)

2.Pudur Ammal

3.M.Jayaseelan

4.M.Palani

5.M.Viswanathan

6.Amutha

7.Deivanai

8.Minor Muthulingamoorthy

9.Minor Padmasreeyan

[Minors Appellants 8 and 9
Rep by their mother & next friend
7th appellant Deivanai.]

[Appellants 2 to 9 brought on record
as LR's of the deceased sole appellant
vide order of Court dated 10.04.2018
made in CMP.Nos.5697 to 5699 of 2018
in SA.No.2273 of 2003]

...LRS of Appellant/Plaintiff

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Vs.

Arulmigu Chelliamman Temple,
Puliyandapatti
rep. By,
The Inspector,
H.R. & C.E. Department,
Harur, Dharmapuri District.

...Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 31.10.2003 passed in A.S.No.6 of 2000 on the file of the I Additional District Court, Dharmapuri District at Krishnagiri in reversing the judgment and decree dated 28.10.1999 passed in O.S.No.51 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Uthankarai.

For Appellants : Mr.P.Mani

For Respondent : Mr.S.Vijaya Kumar

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 31.10.2003 passed in A.S.No.6 of 2000 on the file of the I Additional District Court, Dharmapuri at Krishnagiri reversing the judgment and decree dated 28.10.1999 passed in O.S.No.51 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Uthankarai.

2.The Second Appeal has been admitted on the following substantial questions of law.

- (i)Whether the appellant is entitled to protection from eviction from the suit lands under sections 7, 15 (2) and 19 of the Tamilnadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1963 even though the lease in favour of the appellant was not sanctioned by the Commissioner of H.R.& C.E Department as required under section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 when section 3 of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1963 specifically override the provisions of other law which are inconsistent?
- (ii)Whether the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 is applicable to the lands belong to a public Trust and governed by the Tamilnadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1963 particularly when the lands belong to a public trust has not been specifically exempted under section 19 of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969?
- (iii)Whether in law the judgment and decree passed by the lower Appellate Court are

sustainable when it has failed to frame necessary points for determination in the appeal as required under Order 41 Rule 31 of C.P.C?

3. The suit has been laid by the plaintiff for permanent injunction restraining the defendant to dispossess the plaintiff from the suit property without due process of law.

4. The fact that the suit property belongs to the defendant temple is not in dispute. Even as per the case of the plaintiff, he had taken the suit property on lease every three years by way of participation in the auction conducted by the defendant temple and accordingly, remitting the lease amount to the defendant temple, as agreed upon without any default and it is stated that the plaintiff got himself registered as the cultivating tenant of the suit property under the Tamilnadu Cultivation Tenants Protection Act and accordingly, inasmuch as the plaintiff is occupying the suit property as the cultivating tenant of the same, it is contended that the defendant without any authority had taken steps to auction the suit property by issuing pamphlets in connection with the same and as the abovesaid acts of the defendant are illegal and thereby attempting to dispossess the plaintiff from the suit property, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendant has taken the plea that the suit property had been leased out to the highest bidder of the auction once in 3 years and in that view of the matter, accordingly on the expiry of the lease period, the defendant's administration is entitled to lease out the suit property by way of public auction, as per the provisions of H.R & C.E Act 22 of 1959 and the same could not be questioned by the plaintiff and hence the plaintiff has no cause of action to institute the suit and the suit is liable to be dismissed.

6. As above pointed out, the suit property belongs to the defendant temple. Even as per the admission of the plaintiff, the suit property had been leased out by the defendant temple once in three years to the highest bidder in the auction held by the defendant in connection with the lease of the suit property. Accordingly, it is found that the plaintiff having been the highest bidder in the lease auctions held earlier, he had been, in that capacity, inducted into the suit property by the defendant. No doubt, meanwhile the plaintiff had got his name registered as the cultivating tenant under the relevant Act, in respect of the suit property. Thus, it is found that the plaintiff could be in the occupation of the suit property only during the lease period and thereafter, as per the Act to which the defendant temple is governed i.e., Act 22 of 1959, the

defendant would be entitled to auction the lease in public and let out the suit property to the highest bidder for augmenting its income. Accordingly, it is seen that the defendant had taken steps to lease out the suit property, by conducting public auction and challenging the same, the present suit has come to be laid by the plaintiff.

7. The only challenge put forth by the plaintiff's counsel is that the plaintiff would be governed by the Tamilnadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, (LVII of 1961) and accordingly, it is his contention that the plaintiff cannot be dispossessed from the suit property except in accordance with the abovesaid Act and hence the First Appellate Court erred in not applying of the provisions of the abovesaid Act to protect the possession of the plaintiff in respect of the suit property and hence the need for the Second Appeal.

8. On the contra, it is contended by the defendant's counsel that the plaintiff by way of the present suit is attempting to perpetuate his occupation of the suit property without any authority and when the defendant temple is letting out the lease of the suit property by conducting the public auction once in three years and on that footing only, the plaintiff himself had been let into the suit property, the plaintiff cannot be allowed to urge that he is entitled to remain in the suit property unless he is evicted under the abovesaid Act and hence, according to the defendant's counsel, the first appellate court is justified in not invoking the abovesaid act, in favour of the plaintiff.

9. Even as per the plaintiff's case, he had been inducted into the suit property only on the lease granted by the defendant temple once in three years. Accordingly, it is found that, after the lease period, the plaintiff cannot seek further entitlement to remain in the suit property without any authority. In so far as this case is concerned, the plaintiff seeks protection from dispossession on the footing that his name has come to be recorded as the cultivating tenant under the relevant Act, in respect of the suit property. However, when it is found that as determined by the first appellate court, when the plaintiff has neither pleaded nor placed any material that he falls within the definition of tenant as defined under Tamilnadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, (LVII of 1961) and when further it is seen that under section 62 of the abovesaid act, the Cultivating Tenants Protection Act 1955 [XXV of 1955] stands repealed and accordingly when the plaintiff's holding of the suit property is not shown to be established in accordance with the provisions of Act LVII of 1961 and further, when it is also seen that the plaintiff, by way of the present suit is

attempting to perpetuate his occupation of the suit property endlessly which cannot be allowed as per section 34 of H.R & C.E Act 22 of 1959, unless the parameters governing thereof are complied with by the plaintiff, accordingly, it is found that after the expiry of the lease period in favour of the plaintiff, the defendant temple is entitled to let the suit property by way of lease, by conducting public auction to the highest bidder and in such view of the matter, it is found that the plaintiff cannot be allowed to squat in the suit property endlessly taking the umbrage under Act LVII of 1961. When it is not the case of the plaintiff that he is governed by the Act LVII of 1961 and on the other hand, the plaintiff has laid the suit mainly on the footing that he is the cultivating tenant of the suit property as per the Cultivating Tenants Protection Act and accordingly, it is found that when the said Act has been repealed by Act LVII of 1961 as above pointed out, it is found that the plaintiff would not be entitled to injunct the defendant from letting the suit property on lease by way of public auction.

10. Further when the plaintiff has not pleaded and established that he is governed by the provisions of Act LVII of 1961, as rightly argued, the plaintiff cannot be allowed to prevent the defendant temple from invoking the provisions of H.R & C.E Act, 22 of 1959 and accordingly when it is seen that in accordance with the provisions of the abovesaid Act, the defendant temple had taken appropriate steps to conduct the public auction for leasing out the suit property after the expiry of the lease period of the plaintiff, it is seen that the action of the defendant cannot be considered as any attempt on their part, to dispossess the plaintiff from the suit property illegally or without due process of law. Accordingly, it is found that the defendant temple had taken only the proper and appropriate steps to let the suit property on lease as per law and the plaintiff after the expiry of the lease period is not entitled to question the same and if at all the plaintiff seeks to remain in the suit property further, he has to take part in the public auction and seek claim to remain in the possession of the suit property by successfully bidding in the auction. Without resorting to the above process, the plaintiff cannot be allowed to invoke the provisions of the Act LVII of 1961, particularly, when his case is not based on the provisions of the said Act and further, when it is also seen that he has not been inducted into the possession of the suit property under the provisions of the abovesaid Act.

11. The decision of this Court relied upon by the plaintiff's counsel dated 20.07.2016 in W.A.No.1174 of 2012 [V.Angu Vs. The Commissioner, HR & CE Department, Chennai and Another] on facts, would not be applicable to the case at hand. The principles of law outlined in the decision reported in (2001) 2 MLJ 39 [Arulmighu Swaminathaswamy Devasthanam at

Swamimalai represented by its Assistant Commissioner / Executive Officer] relied upon the defendant's counsel are taken into consideration and followed as applicable to the case at hand.

12. In view of the foregoing reasons, inasmuch as the plaintiff has failed to establish that he is governed by Tamilnadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, (LVII of 1961), it is found that the defendant is entitled to lease out the suit property in accordance with the provisions of H.R. & C.E Act 22 of 1959 and further when it is found that the plaintiff claims right to be in the possession of the suit property only by invoking the Cultivating Tenants Protection Act and when further it is also noted that the defendant had taken only appropriate steps as per law to lease out the suit property to the highest bidder by conducting public auction and not endeavoured to dispossess the plaintiff by unlawful means, accordingly, it is seen that the first appellate court, on the proper appreciation of the materials placed on record, set aside the judgment and decree of the trial court and in such view of the matter, the judgment and decree of the first appellate court cannot be assailed in any manner. Inasmuch as the first appellate court has dealt with the points of controversy involved in the matter under the main point for determination, it is found that there is no infraction of Order 41 Rule 31 of Civil Procedure Code by the first appellate court. Accordingly the substantial questions of law formulated in the Second Appeal are accordingly answered against the plaintiff and in favour of the defendant.

13. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar (CS-IV)

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Sub-Assistant Registrar

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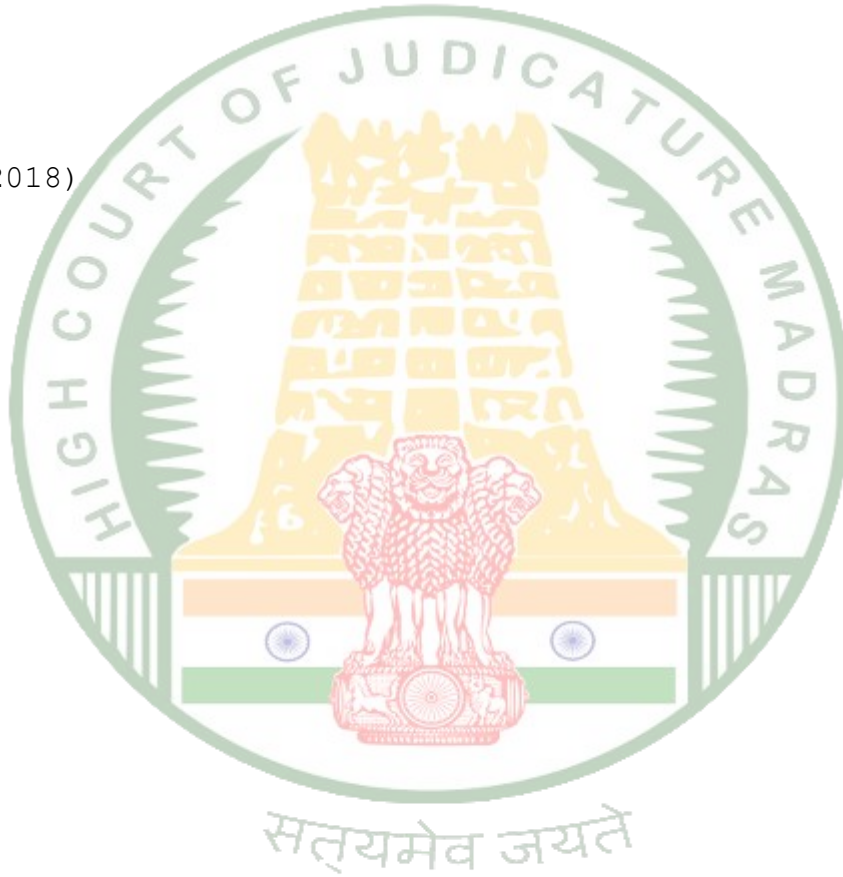
1. The I Additional District Judge,
Dharmapuri District at Krishnagiri .

2.The District Munsif cum Judicial Magistrate,
Uthankarai.

+2 Ccs to Mr.P. Mani, Advocate sr 39778.
+1 CC to Mr.S. Vijayakumar, Advocate sr 40192.

S.A.No.2273 of 2003

TM(CO)
SP(02/07/2018)



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