

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2018

PRONOUNCED ON : 26.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.905 of 2004

1.Venugopal (Died)
2.Pichayal Ammal
3.V.Ravikumar
4.S.Suganthi
5.A.Ezhilarasi
6.V.Ravichandran ...Appellants/Appellant/1st Defendant
(Appellants 2 to 6 brought on record of LRs of the deceased sole Appellant vide order of Court dated 07.12.2012 made in CMP.No.49 to 51/2012 in S.A.No.905 of 2004)

Vs.

1.R.Jayaraman
2.The Collector of Cuddalore
Cuddalore - 1.
3.The Tahsildar,
Cuddalore, Beach Road,
Cuddalore. ...Respondents/Respondents/
/Defendants 2 & 3

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 13.01.2004 passed in A.S.No.12 of 2003 on the file of the First Additional Sub Court, Cuddalore, against the Judgment and Decree dated 02.01.2003 passed in O.S.No.268 of 1998 on the file of the Additional District Munsif, Cuddalore.

For Appellants : Mrs.R.Meenal
For Respondents : Mr.R.Venkatesulu
for Ms.Usha Ramman

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 13.01.2004 passed in A.S.No.12 of 2003 on the file of the First Additional Sub Court, Cuddalore, modifying/confirming the Judgment and Decree dated 02.01.2003 passed in O.S.No.268 of 1998 on the file of the Additional

District Munsif Court, Cuddalore.

2. The second appeal has been admitted on the following substantial questions of law:

"(i). Whether in law the courts below are right in failing to see that there was a clear bar to the suit under Section 6A of the Tamil Nadu Cultivating Tenants Protection Act and Section 16A of the Records of Tenancy Rights Act?

(ii). Whether in law the lower appellate Court was right in granting a decree for declaration to the first respondent when he had not even preferred an appeal or cross appeal?"

3. Considering the issue involved in this second appeal lying in a narrow compass, in my considered opinion, it is unnecessary to dwell into the facts of the case in detail.

4. The suit has come to be laid by the plaintiff for the reliefs of declaration, permanent injunction or in the alternative for possession and future mesne profits and also for mandatory injunction.

5. It is not in dispute that the suit property originally belonged to Sundararaj Pillai. Now, according to the plaintiff, he had purchased the suit property by way of a Court auction sale on 18.08.1983 and thus, the plaintiff is the owner of the suit property. Further, according to the plaintiff, inasmuch as the first defendant, without any authority, attempted to interfere with his possession and enjoyment, he has been necessitated to lay the suit for appropriate reliefs and further, according to the plaintiff, the defendants 2 & 3 are bound to effect patta transfer in his name and as they had refused to effect the patta transfer, despite the plaintiff having acquired title to the suit property by way of the Court auction sale, it is stated that the plaintiff has been necessitated to lay the suit against them also for appropriate reliefs.

6. As seen, the defendants have also not disputed the original title of Sundararaj Pillai in respect of the suit property. According to the first defendant, he has taken the lease of the suit property from Sundararaj from 27.12.1982 onwards and accordingly, been enjoying the suit property as the cultivating tenant thereof and further, his name has also been recorded as the cultivating tenant in the relevant register by the authority concerned and therefore, it is contended that the suit laid by the plaintiff for recovery of possession of the

suit property from the first defendant is not maintainable and the civil Court has no jurisdiction to try the suit and accordingly, prayed for the dismissal of the suit.

7. The trial Court, on the basis of the materials placed by the respective parties, declined the reliefs of declaration and permanent injunction sought for by the plaintiff, however, granted the other reliefs sought for by the plaintiff and accordingly, disposed of the suit. On appeal, the first appellate Court modified/confirmed the judgement and decree of the trial Court by declaring the plaintiff's title to the suit property as prayed for and accordingly, granted the other reliefs of possession, mesne profits, patta transfer etc., in favour of the plaintiff as prayed for and accordingly, disposed of the appeal. Aggrieved over the same, the present second appeal has been laid by the first defendant.

8. The only point that has been urged by the first defendant's counsel is that inasmuch as the first defendant had taken the suit property on lease from Sundararaj, the erstwhile owner on 27.12.1982 and since then, been enjoying the suit property as the cultivating tenant thereof and further, as his name has also been recorded in the tenancy record by the appropriate authority, the plaintiff's suit for possession is not maintainable and hence, the suit is liable to be dismissed.

9. On the basis of the materials placed on record, it is found that the plaintiff had purchased the suit property by way of the Court auction sale as put forth by him in the plaint and the abovesaid determination of the plaintiff's title to the suit property by the Courts below based upon the proper appreciation of the materials projected do not warrant any interference and it is thus found that as per the sale certificate marked as Ex.A1, the plaintiff has title to the suit property.

10. It is however found that the plaintiff has not established to be in possession and enjoyment of the suit property and accordingly, it is seen that the plaintiff has also opted to seek the relief of possession, in the alternative to the relief of Permanent injunction prayed for by him.

11. The abovesaid relief of possession sought for by the plaintiff has now been resisted by the first defendant on the footing that he has been in possession and enjoyment of the suit property as the cultivating tenant thereof and hence, the plaintiff's suit for possession is not maintainable as such and further, according to the first defendant, the civil Court has no jurisdiction to entertain the suit laid by the plaintiff. In other words, according to the first defendant, inasmuch as he is the cultivating tenant of the suit property, if at all he is to be evicted the plaintiff has to resort to the other process

available as per law under the relevant Act and not by way of a civil action.

12. For sustaining his plea that he is a cultivating tenant in respect of the suit property, the first defendant mainly relies upon the proceedings of the revenue authority dated 26.02.1991, marked as Ex.B12. It is the case of the first defendant that by way of the above said proceedings, his name has come to be recorded as the cultivating tenant in respect of the suit property by the proper authority as per law. However, as rightly determined by the first appellate Court, considering the proceedings marked as Ex.B12, it is found that inasmuch as the erstwhile owner Sundararaj had not put forth any objection in recording the name of the first defendant as the cultivating tenant in respect of the suit property and on that premise, it is seen that the first defendant's name has come to be recorded as the cultivating tenant by the authority by way of Ex.B12 proceedings. However, when on the materials placed on record, it is found that way back on 19.04.1985 itself, the plaintiff had become the title holder of the suit property by way of the sale certificate marked as Ex.A1, it is found that on the date of Ex.B12 proceedings, Sundararaj had no title to the suit property and in such view of the matter, the case of the first defendant that inasmuch as Sundararaj had placed no resistance in recording his name as the cultivating tenant in respect of the suit property, the authority concerned had, by way of Ex.B12 proceedings, recorded his name in the tenancy register and hence the plaintiff cannot maintain the suit for possession, as such cannot be countenanced. When the erstwhile owner Sundararaj has no locus standi to raise any plea as regards the ownership of the suit property at the time of Ex.B12 proceedings, it is found that the concerned authority, without any basis, erroneously proceeded to record the name of the first defendant in the tenancy record on the mere footing that the erstwhile owner had expressed no resistance to the same. When the erstwhile owner Sundararaj had no interest, title or right in respect of the suit property at the relevant point of time, it is seen that the authority concerned based upon his no objection, has no legal entitlement to record the name of the first defendant as the cultivating tenant in respect of the suit property and accordingly, it is found that the first appellate Court rightly refused to accept the proceedings marked as Ex.B12 as by way of such entry in the tenancy record, the first defendant would not be entitled to claim any right as the cultivating tenant in respect of the suit property. In this connection, as rightly put forth by the plaintiff's counsel and also as seen from decisions relied upon by him reported in CDJ 2007 MHC 2023 (Thambayi Ammal Vs. K.Palanisamy (Died) & others), CDJ 1997 MHC 1107 (Sowrirajan Vs. Sundaram and others) and the order passed by this Court dated 22.11.2011 in W.P.Nos.26701, 26703 to 26707/2007 (Nagalakshmi Vs. The State of Tamilnadu, rep.by the

District Collector, Cuddalore and others), it is found that recording of the name of the first defendant as the cultivating tenant based on the statement given by a person, who has no title to the suit property at the relevant point of time, has no significance in the eyes of law and on the basis of such entry, it is found that the first defendant cannot lay any claim of status as the cultivating tenant of the suit property as such and accordingly, it is found that the first appellate Court has rightly negatived the plea of the first defendant to be the cultivating tenant of the suit property based upon Ex.B12 proceedings. At the relevant point of time, it is only the plaintiff, who has absolute title to the suit property. It is found that the plaintiff not being the party to the abovesaid tenancy proceedings and accordingly, it is found that on the basis of Ex.B12 proceedings, the first defendant cannot be declared to be a valid cultivating tenant in respect of the suit property and accordingly, it has been rightly determined by the Courts below that the first defendant would only be a trespasser in respect of the suit property without any legal entitlement to retain the suit property as such and accordingly, it is found that the plaintiff being the absolute owner of the suit property is entitled to recover the possession of the suit property from the first defendant. The principles of law outlined in the decision relied upon by the plaintiff's counsel reported in the judgment passed on 21.11.2017 in the second appeal No.80 of 2001 and W.P.No.16238/1999 (Kaliyaperumal and Ors. Vs. Sellam N.Sarojini and Ors.) and decided on 27.03.2018 passed in S.A. (MD).No.698/2006 (Grace Masilamani and Ors. Vs. Suguna and Ors.) are taken into consideration and followed as applicable to the case at hand. Accordingly, it is found that the decisions relied upon by the first defendant's counsel reported in AIR 1980 MADRAS 180(1) (Periathambi Goundan V. The District Revenue Officer, Coimbatore and others) and the decision by this Court dated 18.06.2002 in second appeal No.1418/1989 (Shanmugham Vs. Arulmigu Vinayagar and Arulmighu Dhandayuthapaniswami Dieties) are found to be not applicable to the facts and circumstances of the case at hand, inasmuch as the first defendant cannot be declared to be the cultivating tenant of the suit property for the reasons aforestated.

13. It is found that the trial Court has, on a misconception of law, declined the relief of declaration prayed for by the plaintiff and however, chosen to grant the reliefs of possession in favour of the plaintiff. Thus, it is found that only on the plaintiff's entitlement to recover the possession of the suit property as the owner thereof, it is found that the trial Court has granted the said relief in favour of the plaintiff. Accordingly, noting the abovesaid erroneous determination of the trial Court in not granting the relief of declaration prayed for by the plaintiff, it is found that the first appellate Court has rightly modified the same and accordingly, granted the relief of

declaration also in favour of the plaintiff, in addition to that, confirmed the other reliefs already granted by the trial Court in favour of the plaintiff.

14. In the light of the above discussions, inasmuch as Ex.B12 proceedings cannot be validly accepted for the reasons aforesaid and in the light of the abovesaid legal pronouncements, the first defendant cannot be held to be the cultivating tenant of the suit property and hence, it is found that the first defendant is not entitled to the benefits of the Tamil Nadu Cultivating Tenant Protection Act and Section 16-A of the Records of Tenancy Rights Act and in that view of the matter, the first appellate Court is right in holding that the civil action laid by the plaintiff to recover the possession of the suit property from the first defendant is perfect in order and for the reasons aforesaid, the first appellate Court is also justified in granting the relief of declaration also in favour of the plaintiff and accordingly, the substantial questions of law formulated in this second appeal are answered in favour of the plaintiff and against the first defendant.

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

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

sms

To

1. The First Additional Sub Court, Cuddalore.
2. The Additional District Munsif, Cuddalore.
3. The Section Officer, V.R. Section, High Court, Madras. (2 copies)

+1 CC to Ms. Usha Raman, Advocate sr 31386.

+1 CC to Mr. S. Venkateswaran, Advocate sr 31882.

S.A.No.905 of 2004

SVI (CO)
SP(01/06/2018)