



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.11.2017

DELIVERED ON : 16.02.2018

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.1835 of 2017

and

C.M.P. (MD) Nos.9709 & 9710 of 2017

P.Ganesan : Petitioner/Respondent/Petitioner/Plaintiff

vs.

S.Backiyalakshmi : Respondent/Appellant/Respondent/Defendant

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and executable order dated 21.06.2017 passed in Civil Miscellaneous Appeal in C.M.A.No.6 of 2017 on the file of First Additional Sub Court (Melur Camp), Madurai reversing the fair and executable order dated 14.02.2017 passed in I.A.No.233 of 2016 in O.S.No.108 of 2016 on the file of the District Munsif Court, Melur.

For Petitioner : Mr.T.R.Jeyapalam

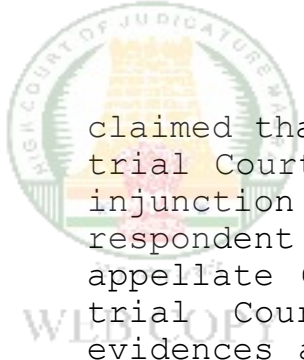
For Respondent : Mr.M.V.Venkataseshan

ORDER

This Civil Revision Petition has been filed to set aside the fair and executable order passed by the First Additional Sub Court (Melur Camp), Madurai, in C.M.A.No.6 of 2017 dated 21.06.2017, reversing the fair and executable order passed by the District Munsif Court, Melur, in I.A.No.233 of 2016 in O.S.No.108 of 2016 dated 14.02.2017.

2. The facts of the case, as averred in the affidavit, are as follows:

2.1. The petitioner, as plaintiff, has filed a suit in O.S.No.108 of 2016 for permanent injunction along with an interlocutory application in I.A.No.233 of 2016 seeking temporary injunction. The petitioner had mentioned item No.1 as R.S.No.122/5A, Karuvanoor Village and item No.2 as R.S.No.138/1A and 138/1B, Kulamangalam I Bit Village. Item No.1 was purchased by the father of the petitioner on 24.06.1982 & 18.06.1986 and after the demise of his father, the property devolved on the petitioner. Item No.2 was purchased by the petitioner on 15.03.1995, from the respondent. The title of the property was admitted by the respondent, but, she



claimed that she is the cultivating tenant of the suit property. The trial Court, after some arguments, has passed an order of temporary injunction in I.A.No.233 of 2016. Challenging the same, the respondent herein has filed C.M.A.No.6 of 2017 and the first appellate Court has set aside and remanded the matter back to the trial Court for fresh consideration, based on the additional evidences adduced by both the parties. Aggrieved over the same, the present civil revision petition came to be filed.

3. The sum and substance of the arguments put forth by the learned Counsel for the petitioner are as follows:

3.1. The learned Counsel for the petitioner would submit that the respondent has filed her counter in I.A.No.233 of 2016 on 13.07.2016 and written statement in O.S.No.108 of 2016 on 24.10.2016. Neither in the counter nor in the written statement, the respondent has specifically pleaded that she had contributed her own physical labour and cultivating the suit property. The definition of "Cultivating Tenant" as per Section 2(aa) of the Tamil Nadu Cultivating Tenants Protection Act, 1959, reads thus,

"..means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied."

3.2. The respondent, after filing her counter as well as written statements, in order to create evidence, has filed a petition in T.R.No.3 of 2016 before Tahsildar and Tenancy Record Officer, Madurai North Taluk on 31.08.2017, wherein, she had mentioned Survey No.122/5A, Karuvanoor Village alone. The petitioner has also filed his counter in T.R.No.3 of 2016 on 31.08.2017, but, has not filed any written arguments or synopsis. All of a sudden, the Tahsildar, fraudulently, has passed an order dated 25.09.2017, for Survey Nos.138/1B, 122/5A, that too, without conducting any enquiry and hearing arguments. Moreover, the said Tahsildar was transferred on 30.09.2017.

3.3. The learned Counsel for the petitioner drew the attention of this Court to the counter affidavit filed before this Court and submitted that even in the counter, the respondent did not plead that she is contributing her own physical labour for cultivating the land.

3.4. The learned Counsel for the petitioner had produced patta, chitta and other revenue documents to show that he is in possession and enjoyment by cultivating the properties. He placed reliance on Rule 6(D)(i) of the Tamil Nadu Cultivating Tenants Protection Rules, 1955, which reads thus,

"6-D(i) In every case of tenancy agreement entered into after 1st October 1956, between a cultivating tenant and a landlord, a lease deed in Form VII shall be executed in triplicate within a fortnight after the commencement of such tenancy or such later date as the Government may in any case or class of cases deem fit to allow. Wherever fresh lease

deeds are necessary in future, they shall be executed within a fortnight of the commencement of the agricultural year."

But the respondent has not produced any tenancy agreement and has not even made any pleading as to when the tenancy agreement was made and what is the rent payable by her, etc.,

3.5. The learned Counsel for the petitioner further submitted that the trial Court, after considering the documentary evidences, granted an order of temporary injunction. But, the first appellate Court has erroneously set aside the order of the trial Court and remanded the same, on the basis of the additional evidences produced by the respondent. He would also contend that there is no reasonable explanation for non-production of the said additional documents before the trial Court and he relied on certain judgments, viz., 1984 (97) L.W. 390 and 1994 (1) L.W. 82, holding that entry in the record of tenancy rights register did not confer rights as a cultivating tenant.

3.6. In result, the learned Counsel for the petitioner would submit that he is ready and willing to face the trial, within a stipulated time and prays for setting aside the impugned order dated 21.06.2017.

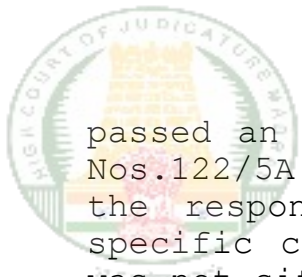
4. On the other hand, the learned Counsel for the respondent has made his submissions as follows:

4.1. The learned Counsel for the respondent would submit that the definition of cultivating tenant mentioned in the Cultivating Tenant Protection Act would come into consideration only when the proceedings were initiated under that act. In the instant case of injunction application, the only point for consideration is which party is in possession, as on date of suit and subsequently. Indisputably, the Trial Court had rejected certain documents, viz., R.1, R.2, R.3 and R.4 filed by her, because these documents were issued by the Village Administrative Officer. He would further submit that Ex.R.8 is the book containing rental receipt with signature of the plaintiff himself and it was not taken into consideration by the learned trial Judge, while passing order in I.A.No.233 of 2016.

4.2. He would further submit that both the parties have submitted additional documents before the first Appellate Court and they were also taken on record. Since additional evidences have been produced before the Appellate Court, the learned Judge has rightly remanded the matter and the interference of this Court is not required and therefore, he prays for dismissal of this civil revision petition.

5. Heard the learned Counsel appearing for both sides and perused the documents placed on record.

6. Counsel for the petitioner specifically contended that no arguments were heard in T.R.No.3 of 2016. The Tahsildar who was transferred on 30.09.2017, without conducting any enquiry, has



passed an order antedated namely, 25.09.2017, in respect of Survey Nos.122/5A & 138/1B, though Survey No.122/5A alone was mentioned by the respondent herein in the said T.R.No.3 of 2016. It is the specific contention of the petitioner that the Tahsildar concerned was not sitting on 31.08.2017 and 21.09.2017 as he was on some other duty.

7. Perusal of the record further shows that there is no pleading that the respondent is contributing her own physical labour for cultivating the land. On the other hand, the petitioner has produced patta, 10(1) chitta and other documents so as to prove that he is in possession and enjoyment of the cultivating property. The respondent has also produced number of documents to show that she is cultivating tenant.

8. Whether the respondent is a cultivating tenant or not has to be decided before the Court below during trial and therefore, the learned Judge instead of deciding the matter on merits had remanded the matter based on the aforesaid documents filed before it. In my considered opinion, *prima facie* case has been made out by the petitioner and therefore, the learned Judge had granted interim order. It is for the respondent to prove her case by conducting trial.

9. Therefore, to meet the ends of justice, I am inclined to set aside the order dated 21.06.2017 passed in C.M.A.No.6 of 2017 on the file of the I Additional Sub Court (Melur Camp), Madurai and accordingly, it is set aside and the order passed in I.A.No.233 of 2016 in O.S.No.108 of 2016 on the file of the District Munsif Court, Melur is restored.

10. Resultantly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The First Additional Sub Judge (Melur Camp), Madurai.

2.The District Munsif, Melur.

+One cc to Mr.T.R.Jeyapalam, Advocate, SR.No.49414

+One cc to Mr.M.V.Venkataseshan, Advocate, SR.No.49110

gk

RL/5C/4P/KK/SAR1/22/2/2018

Order made in

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and

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