



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2019

PRONOUNCED ON : 27.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1027 of 2006

and

M.P.No.2 of 2006

Saravanan

...Appellant/Defendant

Rep by its Power of Attorney
G.Durailingam

Vs.

1. Karunakaran

2. Umaparameswara Kumaran

...Respondents/Plaintiffs

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 05.01.2006 in A.S.No.49 of 2004 on the file of the Subordinate Court, Chidambaram, confirming the judgment and decree dated 29.06.2004 in O.S.No.16 of 2000 on the file of the District Munsif-cum-Judicial Magistrate Court, Portnovo.

For Appellant : Mrs.V.Srimathi

For R1 : Mr.Srinath Sridevan

For R2 : No Appearance

JUDGMENT

Challenge in the second appeal is made to the judgment and decree dated dated 05.01.2006 passed in A.S.No.49 of 2004 on the file of the Subordinate Court, Chidambaram, confirming the judgment and decree dated 29.06.2004 passed in O.S.No.16 of 2000 on the file of the District Munsif-cum-Judicial Magistrate Court, Portnovo.

2. The parties are referred to as per their rankings in the trial court for the sake of convenience.

3. The second appeal has been admitted on the following



WEB COPY

substantial questions of law:

"(1) Whether the suit itself would not fail for want of cause of action when it was established that Noorudeen was not the owner of the property in 1974 and had acquired title of "F" schedule in compromise decree under Ex.B1 property in O.S.No.66 of 1976 only on 25.04.1978 and under these circumstances should not the Court below held that Purusothaman could never be the lessee of the property under Noorudeen in 1974, when he had secured title to the property in 1978?

(2) Whether the suit is maintainable in law and not expressly excluded under the provisions 16(A) of Tamil Nadu Record of tenancy Act, X of 1969?"

4. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

5. The suit has been laid by the plaintiffs against the defendant simplicitor for the relief of permanent injunction. The plaintiffs claim to be the cultivating tenants of the suit properties and according to the plaintiffs their father Purushothaman had taken the suit property on lease from Noorudeen Saheb, the owner of the suit properties and enjoying the same by cultivating the lands and paying the lease to the owner as agreed to and accordingly, it is putforth by the plaintiffs that after the demise of their father, they continued to cultivate the suit properties and enjoying the same and it is also putforth by the plaintiffs that recognizing their entitlement to remain in the possession of the suit properties as the cultivating tenants thereof, their names have also been recorded in the record of tenancy under the Tamil Nadu Cultivating Tenants Protection Act and accordingly, the plaintiffs are entitled to protection under the above said act and putting forth the case that the defendant claiming that he has become the owner of the suit properties, threatened the plaintiffs that he would dispossess them from the suit properties unlawfully and inasmuch as the plaintiffs are the cultivating tenants of the suit properties and entitled to protection under the Tamil Nadu Cultivating Tenants Protection Act, except by due process of law, as the defendant is not entitled to disturb the plaintiffs' possession and enjoyment in respect of the suit properties and accordingly, praying for the appropriate relief, the plaintiffs have come forward with the suit.



6. The defendant had disputed the claim of the plaintiffs that their father and the plaintiffs are in the possession and enjoyment of the suit properties under Noorudeen Saheb, the owner, as the cultivating tenants thereof and enjoying the same and also disputed the fact that the names of the plaintiffs had been recorded in the tenancy record and that the plaintiffs are entitled to the protection of the Tamil Nadu Cultivating Tenants Protection Act and according to the defendant, he has purchased the suit properties from the legal heirs of Noorudeen Saheb who had acquired the suit properties from their father in the year 1978 by way of a compromise decree and accordingly, it is only the defendant who is the owner of the suit properties and enjoying the same and the plaintiffs are not entitled to remain in the possession and enjoyment of the suit properties and hence, the plaintiffs are not entitled to seek the relief as prayed for.

7. Based on the materials placed on record, both oral and documentary, by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiffs case and accordingly granted the relief in favour of the plaintiffs as prayed for. Impugning the same, the second appeal has been filed.

8. That Noorudeen Saheb was the original owner of the suit properties is not in dispute. Even the defendant claims title to the suit properties only based on the purchase of the same on 05.12.1999 from the legal heirs of Noorudeen Saheb. According to the plaintiffs, their father Purushothaman had taken the suit properties on lease from Noorudeen Saheb and accordingly, enjoyed the suit properties as the cultivating tenant thereof by contributing his physical labour as well as the toil of his family members and paying the lease amount to Noorudeen Saheb and furthermore, the case of the plaintiffs is that, after the demise of their father, they continued to be the tenants of the suit properties and enjoying the same and paying the lease to Noorudeen Saheb and accordingly, their names had been recorded in the tenancy record as the cultivating tenants of the suit properties, thereby, they are entitled to the benefits of the Tamil Nadu Cultivating Tenants Protection Act and except under due process of law, the defendant who claims to be the owner of the suit properties is not entitled to seek the eviction of the plaintiffs from the suit properties and hence, it is stated that the plaintiffs have been necessitated to lay the suit for appropriate relief.

9. Though the defendant would dispute the claim of the plaintiffs that their father and they had been enjoying the suit properties as the cultivating tenants thereof, however, considering the materials placed on record, it is seen that the plaintiffs' father is not a stranger to Noorudeen Saheb, and on



WEB COPY

the other hand, it has been found and rightly determined by the Courts below that the plaintiffs' father Purushothaman was acting as the agent of Noorudeen Saheb, the original owner and in that capacity cultivating the suit properties and as abovenoted according to the plaintiffs, their father had been cultivating the suit properties only as the lessee of Noorudeen Saheb. From the document marked by the plaintiffs as Ex-A1, it is found that the plaintiffs names had been recorded in the tenancy record as the cultivating tenants of the suit properties till date. The abovesaid entry made by way of Ex-A1 document has not been challenged or set aside in the manner known to law. Therefore, the Courts below are found to be wholly justified in raising a presumption that the entry in Ex.A1 record had been made only after ascertaining the fact that the plaintiffs are the cultivating tenants of the suit properties under the owner thereof. No doubt, the name of the land owner in Ex.A1 is shown to be the father of the Noorudeen Saheb and not Noorudeen Saheb as such, however, as rightly determined by the Courts below, in the revenue records, normally unless the parties concerned move for mutation of their names in respect of the properties owned by them, the names which had been already recorded would continue to be recorded in the revenue records. As rightly found and determined by the Courts below, even in the revenue documents projected by the defendant, they carry only the name of the father of Noorudeen Saheb and not Noorudeen Saheb as such. Thus, it is noted merely because of the name of Noorudeen Saheb is not reflected in Ex.A1 document, that by itself would not render the document invalid. As abovenoted, till date, the entry of the plaintiffs as the cultivating tenants of the suit properties as recorded in Ex.A1 proceedings has not been set aside in the manner known to law. Furthermore to buttress their case that they had been enjoying the suit properties as the cultivating tenants thereof and paying lease to Noorudeen Saheb, the plaintiffs have produced the receipts for the lease paid by them in the form of paddy marked as Exs.A2 to A6 and A11 to A13 and also seen that there had been communication between the plaintiffs and the original owner Noorudeen Saheb and the letters exchanged between them have also been produced. Furthermore, to evidence that the plaintiffs had been enjoying the suit properties as the cultivating tenants thereto by paying the kists, the plaintiffs have also marked the kists receipts in the matter. Therefore, the abovesaid documents viewed in toto would go to disclose that inasmuch as the plaintiffs had been cultivating the suit properties as the cultivating tenants thereof under Noorudeen Saheb, accepting the payment of lease in a form of paddy, Noorudeen Saheb had signed in various receipts issued with reference to the same and marked in the suit and even the defendant's witness DW2 has also admitted that the signature of Noorudeen Saheb is contained Ex.A11 receipt, whereunder, as found therein Noorudeen Saheb has acknowledged



the lease amount in the form of paddy and also deferred the payment of rent for a particular point of time due to lesser production derived from the suit properties. The defendant claims to be the owner of the suit properties following the purchase of the same from the legal heirs of Noorudeen Saheb. Therefore, as rightly found and determined by the Courts below, the defendant would not be aware of the signatures of Noorudeen Saheb available in the receipts projected by the plaintiffs and if the abovesaid receipts are not genuine, as rightly determined by the Courts below, the defendant should have endeavoured to examine his vendors to determine whether the signatures projected in the receipts are that of Noorudeen Saheb, as his vendors would be competent to adduce evidence with reference to the same. However, with reference to the appropriate determination of the abovesaid factors, the defendant has not endeavoured to examine his vendors and no reason has been assigned for the same by the defendant. Therefore, the documents projected by the plaintiffs, if cumulatively seen, would go to show that they had been enjoying the suit properties from the days of their father under Noorudeen Saheb as the cultivating tenants thereof and accordingly, their names had been recorded as the cultivating tenants in the tenancy record by the appropriate authority under the concerned Act. Though the defendant would claim that the suit properties had not been leased out either to the plaintiffs' father or the plaintiffs as such, however, no material, as such, had been projected by the defendant to establish that if his vendors or he who had been in the possession and enjoyment of the suit properties. When the possession of the plaintiffs had been amply established and when there is no material to hold that the plaintiffs had surrendered the suit properties to Noorudeen Saheb or his legal heirs, accordingly, it is found that, as determined by the Courts below, the plaintiffs as the legal heirs of Purushothaman, their father, continued to enjoy the suit properties as the cultivating tenants thereof. As found by the Courts below, the defendant has not placed any acceptable and reliable material to evidence that he had taken the possession of the suit properties from the legal heirs of Noorudeen Saheb based upon the sale deed obtained by him from the abovesaid legal heirs.

10. The determination of the Courts below that the plaintiffs are the cultivating tenants of the suit properties based upon the factual appreciation of the materials available on record and when the abovesaid determination had been arrived by the Courts below on the proper appreciation of the materials placed on record and as abovenoted when the defendant has not placed acceptable material to hold that he had taken the possession of the suit properties from his vendors nor placed any material to hold that the plaintiffs had surrendered the possession of the suit properties to his vendors or to him, in



such view of the matter, the finding of the Courts below that the suit properties are in the possession and enjoyment of the plaintiffs as the tenants thereof do not require any interference.

WEB COPY

11. The main argument projected by the defendant's counsel is that inasmuch as the plaintiffs claim to be in the possession and enjoyment of the suit properties as the cultivating tenants thereof and on that basis, seek the relief of permanent injunction, according to her, the civil suit laid by the plaintiffs with reference to the relief as prayed for by them, is not maintainable as the jurisdiction of the Civil Court is barred under Section 16-A of the Tamil Nadu Record of Tenancy Act, 1969 and accordingly, contended that the suit laid by the plaintiffs is liable to be dismissed.

12. Per contra according to the plaintiffs' counsel inasmuch as they are in the possession and enjoyment of the suit properties as the cultivating tenants thereof and their case has also been buttressed by the records projected by them as recording their names as the cultivating tenants of the suit properties, as the said determination of the competent authority has not been set aside till date and furthermore, when the plaintiffs have also placed other materials evidencing their possession and enjoyment of the suit properties, in such view of the matter, according to him, inasmuch as they are seeking the relief of permanent injunction not to disturb their possession except under due process of law and when the abovesaid relief could be granted only by the Civil Court and not by the authority constituted under the Tamil Nadu Cultivating Tenants Protection Act, putforth the contention that the suit levied by them is legally maintainable and accordingly, urged this Court to confirm the judgment and decree of the Courts below.

13. With reference to the abovesaid rival contentions putforth by the respective parties, they are found to place reliance upon the decision of this Court reported in AIR 1980 Mad 180 [Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Ors] and furthermore, the defendant's counsel would also rely upon the decision of this Court reported in AIR 1984 Mad 235 [Pankajam and Ors. Vs. Chinliaswamy Naidu], whereunder, in particular, it has been held that when the plaintiffs laid the suit claiming to be the cultivating tenants of the suit properties and accordingly come forward with the lis for seeking the reliefs of declaration and permanent injunction in that context, it has been held in the abovesaid decision that the relief of declaration cannot be granted by the Civil Court as the same falls within the domain of the competent authority under the Tamil Nadu Cultivating Tenants Protection Act. Accordingly further held that as the abovesaid declaration



claimed by the plaintiff cannot be granted by the Civil Court, consequently the plaintiffs cannot be allowed to continue the suit for seeking the relief of permanent injunction sought for by them as the said relief had been claimed by the plaintiff only as a consequential relief to the main relief of declaration and accordingly, in that context, in the abovesaid decision, it has been held that the suit laid by the plaintiffs covered under the said decision is not maintainable. For arriving at the abovesaid determination, the judgment of the Full Bench of this Court reported in AIR 1980 Mad 180 [Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Ors] has been relied upon.

14. However, on a perusal of the judgment reported in AIR 1980 Mad 180 [Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Ors] rendered by the Full bench, it has gone into various aspects of the matter at length and accordingly, upheld the reasonings of justice G.RAMANUJAM, J. in sustaining the suit laid simplicitor for the relief of permanent injunction to restrain the landlord from interfering with the possession of the suit properties of the plaintiffs concerned as the cultivating tenants thereof except under due process of law and the reasonings and conclusions arrived at by Justice G.Ramanujam for supporting the maintainability of such a suit had been held to be correctly determined by the full bench in the abovesaid decision and the same could be gathered from the findings arrived at by the full bench which are extracted below:

"38. With particular reference to the facts of this case, as the Record Officer had jurisdiction to decide the name and address of the tenant cultivating the land, if there are competing claims by two persons that they are cultivating tenants he had necessarily to decide that question. In all matters which may arise incidental to the determination may arise incident of the matters mentioned in Sec. 8 (2), the Record Officer or the appellate or revisional authority cannot be said to have exclusive jurisdiction and with reference to those matters, the Jurisdiction of the Civil Court cannot be said to have been barred or ousted under S. 16-A of the Act.

39. The question came to be decided by one of us (Ramanujam J.) in Palanisami v. Ramaswami Gounder S. A. No. 1496 of 1976, judgment D/- 5-1-1977. That arose from a suit filed for a permanent injunction



WEB COPY

restraining the defendants from interfering with the possession of the suit property by the plaintiff as a cultivating tenant 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 7-4-1975 to the appellant who had chosen to interfere with his possession on the basis of the said purchase and that 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 it in 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 8 (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* 1976-1 Mad LJ 344: (AIR 1976 Mad 287) 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



WEB COPY

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 that 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 Rama-Papiah v. Ellappa Gounder, 1960 2 MLJ SN 26, Ramachandra Iyer J. as he then was, had held that an injunction, which is preventive remedy, can be grant- 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 1961-1 Mad LJ 335 while dealing with the scope of S. 6-A of the Tamil Nadu Act XXV 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 plaintiffs 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 Venkataramanaswarny Deity



WEB COPY

v. Vadugammal 1974-1 Mad LJ 431, 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 anted by the Deputy Commissioner and at 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 XXV of 1955. If this is the real position, an injunction must issue in favour of the plaintiff. Have Secondly, the plaintiff might 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



WEB COPY

that the Civil Court's 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".

40. We are of the, opinion that the above decision correctly represents the scope and effect of S. 16-A."

15. In the light of the principles of law outlined in the abovesaid decision holding that the suit laid by the plaintiffs simplicitor for the relief of permanent injunction for safeguarding their possession of the suit property as the cultivating tenants thereof is maintainable and applying the same to the facts and circumstances of the case at hand, the present suit also having been laid by the plaintiffs only for the relief of limited permanent injunction and furthermore, when the plaintiffs have also buttressed their case by placing materials evidencing their claim of possession and enjoyment of the same as the cultivating tenants thereof and as abovenoted their names have also been recorded as the tenants in the tenancy record which record has not been set aside till date in the manner known to law and the plaintiffs seeking only a restricted relief in the present suit not to disturb the possession except under due process of law, on the facts and circumstances of this case, it has to be held that the Civil Court has the jurisdiction to grant such a relief in favour of the plaintiffs.

16. In my considered opinion, the judgment and decree of the Courts below granting the appropriate relief in favour of the plaintiffs do not warrant any interference. The substantial questions of law formulated in the second appeal are accordingly answered against the defendant and in favour of the plaintiffs.

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

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

nsd



To

1. The Subordinate Judge,
Chidambaram.

2. The District Munsif-cum-Judicial Magistrate,
Portnovo.

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 28813

S.A.No.1027 of 2006

MP(CO)
GN(07/11/2019)