

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
21~02~2019	05~03~2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

S.A.No.699 of 2008
and M.P.No.1 of 2008

1. Udayam
2. Ramathilagam @ Thilagam
3. Saraswathi
4. Thailnayagi
5. Usharani
6. Muthulakshmi
7. Saminathan

... Appellants/Appellants/
Defendants 2-8

Versus

1. Ragupathi ... 1st Respondent/1st Respondent/
Plaintiff
2. Arulmigu Adikesava Perumal Koil
Rep. By its Executive Officer
Kuttalam, Mayiladuthurai Taluk
Nagapattinam District ... 2nd Respondent/2nd
Respondent/ 1st Defendant

Second Appeal filed under Section 100 C.P.C. against the judgment and decree of Principal Sub Court, Mayiladuthurai dated 01.02.2008 made in A.S.No.54 of 2007 confirming the Judgment and Decree of Principal District Munsif, Mayiladuthurai dated 12.02.2007 made in O.S.No.345 of 1999.

For Appellants ... Mr.S. Sounthar
For Respondents ... Mr.A.Muthkumar [for R1]
No Appearance [for R2]

JUDGMENT

Aggrieved over the concurrent finding of the trial Court and First Appellate Court granting Declaration and

Injunction in respect of the suit property the present Second Appeal came to be filed. For the sake of convenience, the parties are arrayed as per their own ranking before the trial Court.

2. The brief facts leading to file this Second Appeal is as under:

2.(a) The Suit property belongs to the First Defendant. The Suit 'A' Schedule property is cultivable dry lands. It was leased out in favour of the Plaintiff in 1395 fasli for raising groundnuts and 'Isanthapalan' therein. The rent agreed was Rs.150 per fasli. The Plaintiff had been raising groundnut, gingelli, blackgrams, etc., besides vegetables contributing his own physical labour and that of the members of his family. He has also put-up a thatched watchman hut. He filed an application to record his name as cultivating tenant. After enquiry, the Record Officer passed an order directing the name of the Plaintiff to be recorded vide order dated 4.6.1987. The Plaintiff has been in exclusive possession and enjoyment of the suit property as cultivating tenant thereof. Originally there were 80 coconut trees in the suit property however now only 41 coconut trees are available. The usufructs of the coconut trees is being leased out by the temple in public auction every year and the successful bidders in different faslis collected the usufructs with the permission of the Plaintiff. One Mr.Narasimhan and Mr.Pannamuthu attempted to interfere with Plaintiff's possession and enjoyment of the suit property in the year 1987. Hence, the Plaintiff filed a suit in O.S.No.683 of 1987 against them for Permanent Injunction wherein the Temple was also added as a proper party to the suit. The suit was decreed after enquiry on 26.8.1991.

2.(b) While the above suit was pending, the Executive Officer of the Temple refused to receive the rent for 1399 fasli. When it was sent through Advocate along with a notice, it was sent back stating that the suit was pending. Again when three fasli rent was sent in 1992, It was returned stating proceedings are pending in Hindu Religious and Charitable Endowments Department. The husband of the Second Defendant is the local leader of a political party. The Defendants 2 to 5 and & 7 have filed suit in O.S.No.321 of 1999 against one Mr.Selvam and some others alleging that portion of the suit property was leased out in their favour on 1.7.1989. While the tenancy in favour of the Plaintiff is subsisting no tenancy could be created in respect of the same property in favour of Defendants 2 to 8. The documents have been created by the defendants.

The alleged lease in favour of the Defendants 2 to 8 will not bind the Plaintiff. The Defendants 2 to 8 are attempting to trespass upon the suit C schedule property. Hence suit filed for Declaration that the Plaintiff is the tenant in respect of the B schedule property and consequently directing the 2nd Defendant to put Plaintiff in possession of the Suit B Schedule property and also for a direction that the Plaintiff is the tenant in respect of the Suit C Schedule property and consequently restraining the Defendants 1 to 8 from interfering in any manner with the Plaintiff's peaceful possession and enjoyment and to direct the Second Defendant to pay future profits.

3. The Defendants denied the allegation of the Plaintiff and submitted that the entries in the R.T.R. will not advance the case of the Plaintiff. The Defendants are not aware of the earlier suit in O.S.No.683 of 1987, since the above decree will not bind them. The Defendants never trespassed the portion of the property. On the other hand the 2nd Defendant has executed a Paguthi chit in favour of the First Defendant on 01.07.1989 and he has regularly paying the rent to the Temple due to the temple. With the permission of the temple authorities and 2nd Defendant has constructed a pucca house for which the Panchayat also levied house tax. The house bears door No.10-A. The second defendant also obtained electric connection. Hence prayed for the dismissal of the suit.

4. Temple filed Written Statement contending that as per records the property was given lease to defendant 2 to 8. The Plaintiff has to work out his remedy only before the Revenue Court and not before this Court.

5. The trial Court has framed the following issues:

1. Whether the Plaintiff is entitled to Declaration, Possession and Permanent Injunction as prayed for?
2. Whether the Plaintiff is entitled to lease right in the Suit 'B' and 'C' schedule Properties?
3. Whether the Plaintiff is entitled for future profits?
4. Whether the description of the Suit Schedule and sketch are correct?
5. Whether this court has power to issue the relief of Declaration as prayed for

by the Plaintiff

6. Whether the Suit 'C' Schedule property is in lawful enjoyment of the Plaintiff?

7. Whether the cause of action is true?

8. To what other reliefs the Plaintiff is entitled to?

6. The suit was tried jointly along with O.S.No.409 of 2001 filed by the Plaintiff against one Tmt. Udayam who is Second Defendant in O.S.No.345 of 1999. On the side of the Plaintiff P.Ws.1 to 3 were examined and Exs.P.1 to P.16 were marked. On the side of the Defendants D.Ws1 and 2 4 were examined and Exs.D1 to D43 were marked. Advocate Commissioner Report and Sketch were also marked as Ex.C.1 and Ex.C.2. After the trial, the trial court has decreed the suit O.S.No.345 of 1999 however dismissed the suit in O.S.No.409 of 2001. Appeal was filed against the Decree and Judgment in O.S.No.345 of 1999. The First Appellate Court confirmed the Decree and Judgment, against which the present Second Appeal came to be filed.

7. The learned counsel for the Appellant contended that as per the plaintiff pleading itself clearly indicates that the suit property is 'Thoppe'. Therefore, Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 will not apply to the suit property. Therefore the Plaintiff claim for declaration on the basis of the entries made by the Record Officer is not maintainable. Though the Plaintiff relies on the lease deed under Ex.A.1, Ex.A.1 was executed for a period of one year. AS the period has already over, and the Plaintiff has not paid any rent thereafter to the temple, the Declaration that the Plaintiff is a tenant is not maintainable. Further, there is no evidence available on record to show that the Plaintiff is in possession of the property. Hence submitted that the Trial Court and First Appellate Court have not appreciated these facts and law. Hence, the Judgment of the Court below is liable to be interfered. In support of his contention he relied upon the Judgment reported in Thiagaraja Sendar vs. Sri Pasupatheswararswami [(1979) 1 MLJ 437].

8. The learned counsel appearing for the Respondent would contend that the total extent of land leased to the Plaintiff is 1.47 Acres. Exs.A1, A2, A3 and A8 when carefully seen, his tenancy has been recorded by the Record Officer which has reached finality. Under Section 15 of

the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 an entry in the approved record of the tenancy rights shall be presumed to be true and correct until the contrary is proved or a new entry is lawfully substituted therefor. According to the learned counsel Temple also party before the Authorised Officer. The order of the Record Officer reached finality. Once the rights have been recorded, now the Appellants cannot contend that the Plaintiff is not a cultivating tenant.

9. It is the further contention of the learned counsel that as per the Tamil Nadu Act XXV of 1995 [Tamil Nadu Cultivating Tenants (Protection) Act, 1955] any person continues in possession of the land after the determination of the tenancy agreement, he is a cultivating tenant. It is the further contention of the learned counsel that merely because of coconut trees found in the suit properties scattered, it cannot be considered as a "Tope". Hence submitted that the trial Court and First Appellate Court had factually found that the Second Respondent who claimed to be the tenant of the same property has created false records and filed before the Court. Hence submitted that the Courts below have analysed the entire facts and granted the relief. Temple having participated in the proceedings before the Authorised Officer has not challenged the proceedings of the Authorised Officer. Similarly P.W.3 person from the temple in his evidence clearly spoken about the manner in which the defendants maneuver to get false records. Hence submitted that Appeal has to be dismissed.

10. The Appellants have raised the following Substantial Questions of Law in this Second Appeal:

"a) Whether the prayer for declaration sought for in the suit is maintainable in view of the specific bar under section 16-A of Tamil Nadu Agricultural Lands Records of Tenancy Right Act?

b) Whether the judgment of the courts below are vitiated by non-consideration of material evidence namely exhibit B1 and B2?

c) Whether the First Respondent who failed to prove that he took possession of the suit property from Second Respondent by producing Revenue Records like adangal extract etc., is entitled to relieves prayed for the suit."

11. I have perused the respective pleadings of the parties. The Suit has been filed by the Plaintiff against the Defendants to declare that he is the tenant in respect of 'B' and 'C' Schedule properties and for recovery possession of 'B' Schedule property and Injunction in respect of 'C' Schedule property. It is the case of the Plaintiff that an extent of 1.47 Acres was originally leased to the Plaintiff by the First Defendant Temple, which is described as 'A' Schedule property. According to the Plaintiff he was given on lease in the fasli 1395 years for raising groundnut and 'Isainthapalan' therein and he was continuing agriculture contributing his own physical labours. His right as a tenant also recorded by the Authorised Officer. The main contention of the First Defendant is that as per their Temple record from 1.7.1989 the Defendants 2 to 8 are shown as the tenants in the property. The Defendants 2 to 8 have mainly contested the suit on the ground that the tenancy stand in their name from 1.7.1989.

12. The fact that the suit properties belong to First Defendant Temple is not in dispute. Similarly, the leasing of the property of 1.47 Acres i.e., suit 'A' Schedule property in favour of the Plaintiff in the year 1987 is also not in dispute and clearly established on record. Ex.A.1 is the lease deed executed in favour the Plaintiff for the fasli years 1395-1396 for a period of one year in respect of 1.47 Acres, to cultivate groundnut and 'Isainthapalan' therein. It is the contention of the First Defendant Temple that their record shows, from 1.7.1989 only Defendants 2 to 8 are shown as tenants. It is curious to note that in the year 1987 itself Authorised Officer recorded the Plaintiff as a tenant in the suit property. In the above proceedings, the First Defendant was also one of the parties. Ex.A.3 entries maintained by the Record Officer also clearly show that 1.47 Acres is in possession of the Plaintiff. Based on such entries the Plaintiff has already filed suit against third parties in O.S.No.683 of 1987 as could be seen from Ex.A.8, wherein First Defendant is also one of the Defendants and the Commissioner of Hindu Religious & Charitable Endowments Department passed a Proceedings dated 19.1.1989 under Ex.A.15, wherein he has directed to record the Plaintiff as a tenant and make entries in the Temple records. Ex.A.16 also similar proceedings in favour of the Plaintiff dated 13.2.1989. From the above documents, even at the time of recording the rights of the tenant under the Agricultural land record of Tenancy Right Act 1969, the Temple was a party. The Plaintiff name was recorded by the Authorised Officer. Section 15 of the Agricultural Lands Record of Tenancy

Rights Act, 1969 deals with the presumption of correctness of entries in the approved record of tenancy rights. Above entry shall be presumed to be true and correct until the contrary is proved or new entries lawfully substituted therefor. Admittedly, the temple has not challenged the proceedings and reached finality. No new entry under the Tamil Nadu Agricultural land Records of Tenancy Right Act lawfully substituted therefor. As long as no subsequent entries have lawfully made by the Authorised Officer, the entries found in the records presumed to be correct and true. It is not the case of the Defendant that the Authorised Officer have made subsequent entires lawfully. In the absence of any rebuttal evidence in this regard, this Court has to presume that the entries made by the Authorised Officer in favour of the Plaintiff is true and correct. As already stated temple has not challenged the proceedings.

13. Yet another contention of the learned counsel for the Appellant that the period of lease deed is for one year and the same was also over. Therefore, the Plaintiff cannot be called as a cultivating tenant and he cannot seek a declaration that he is a tenant. That contention cannot be countenanced. The Tamil Nadu Act XXV of 1995 [Tamil Nadu Cultivating Tenants (Protection) Act, 1955] defines who is cultivating tenant. Section 2(aa)(i) and Section 2(aa)(ii) (a) defines as follows:

"2(aa) 'Cultivating tenant'--

(i) 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 ; and

(ii) includes-

(a) any such person who continues in possession of the land after the determination of the tenancy agreement

(b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land;

(c) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land; or

(d) any such sub-tenant who continues in possession of the land notwithstanding that the person who sublet the land to such sub-tenant ceases to have the right to possession of such land."

From the above definition of the Act makes it clear even after the determination of the tenancy agreement the person in possession of the land is a cultivating tenant. It is not the case of the temple that they determined the lease agreement. In fact the proceedings of the Hindu Religious and Charitable Endowments Commissioner makes it clear that even in the year 1989 he has recommended for inclusion of his name in the Temple record as a tenant. Therefore, merely because of the period of lease is over, it cannot be said that he cannot be a cultivating tenant. Hence the contention of the Appellant Counsel in that regard cannot be countenanced.

14. It is the contention of the learned counsel that the plaint itself shows that there are 41 coconut trees and the usufructs of the coconut trees are being leased out by the temple in public auction every year. When the suit land is a "Tope" it will not fall within the ambit of Tamil Nadu Act 57 of 1961 [Tamil Nadu Public Trusts (Regulation of Administration of Agricultural lands) Act]. Section 2 (29) of the above act defines "Tope"

"Tope" means any land containing groups of fruit or nut-bearing trees including palmyrah trees, constituting the main crop in such land, whether of spontaneous or artificial growth and includes orchards, but does not include trees on such bunds as are not within or adjunct to such groups of trees.

No doubt if the property is of the "Tope" such property will not fall within the ambit of agriculture. Trees on any land should constitute the main crop in such land. Therefore, to exclude 'Tope' from the ambit of agriculture, one of the conditions is that the above land the main crop itself from the trees should be established. Only in such condition such land will construed as "Tope". Of course the Plaintiff himself has pleaded that there are 41 coconut trees in that land. It is to be noted that the total area of the land leased by the temple is 1.47 acres and as per Ex.A1 he was given a lease to cultivate the dry crops. This itself clearly indicate that only the coconut trees alone not constitute the crop in such land. Therefore merely because some fruit bearing trees found scattered in

any of the property entire land cannot be construed as Tope. Hence, the contention of the learned counsel for the Appellant cannot be countenanced. No doubt in the Judgment cited by him [Thiagaraja Sendar's case (supra)] the issue was once the land itself leased out in favour of the appellant was only the right to appropriate the usufructs of the trees, and that there was no lease of the land. As such the Court has held that the appellant cannot claim right as a cultivating tenant. It is to be noted that the land subject matter of the suit is not a predominantly coconut "Tope" containing the cluster of the coconut trees. Trees were found in a scattered manner. The lease was predominantly given for cultivating groundnut and other crops by the temple and the temple also participated in the proceedings before the authorities and the order reached finality. Therefore it cannot be contended by other defendants that the Plaintiff cannot be a cultivating tenant.

15. The main dispute between parties particularly the Plaintiff and Defendants 2 to 8 is, who is the legal tenant in the suit property. It is the case of the Defendant 2 to 8 that from 1.7.89 they become the tenants and receipts are executed by the temple. As already discussed above, the plaintiff right as cultivated tenant has already reached finality and recorded under the relevant acts. Such entry has not been challenged by the temple. Defendants 2 to 8 said to have obtained subsequent lease receipt from the temple from 1.7.1989. The Trial Court and First Appellate Court factually found on analysing of evidence that the receipts relied upon by the Defendants were signed by the person who was not an Executive Officer of the temple at the relevant point of time and come to the conclusion that the documents were created only for the purpose of the case and such receipts came into existence on the same day. All the documents said to be the rent receipt, were signed on the same day which has been noted by the trial court and those receipts were signed by one Mr. Vaigundadoss, Executive Officer. At the relevant point of time he was not the Executive Officer of the temple. The trial Court also recorded the finding that the defendants are the ruling political party members at the relevant point time. When the court below found that the receipts produced by the defendants are created for the purpose of the case. Merely on the basis of such receipts they cannot claim any right over the property. As long as the entries of the Plaintiff's name recorded carefully by the Authorised Officer under Ex.A.2 and the entries has not been challenged by the temple so far, such entry will prevail. Therefore even tenancy period is over or the tenancy

determined as referred above still he could be a cultivating tenant. It is for the temple to take a call whether or not to evict such person from the property and recover the possession under Tamil Nadu Public Trust (Regulation of Administration of Agricultural lands) Act, 1961. Therefore, on perusal of the entire judgment of the trial court as well as the pleading and evidence and as discussed above, the substantial questions of law raised by the Appellant is answered against him. Hence the Second Appeal is liable to be dismissed.

16. In the result the Second Appeal is dismissed. Consequently connected M.P. is closed. No costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

ggs.
To

1. The Principal Sub Judge, Mayiladuthurai
2. The Principal District Munsif, Mayiladuthurai
3. The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr. S. Sounthar , Advocate SR.No. 20698
+1cc to Mr. A. Muthkumar , Advocate SR.No. 20284

S.A.No.699 of 2008

A.SK(05/07/2019)

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