

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2019

PRONOUNCED ON : 18.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.483 of 2006

S.Asaithambi

...Appellant//Plaintiff

Vs.

1. M.Jayaraman

2.S.Govindasami

3.S.Sivakumar

...Respondents/Defendants

Prayer:Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.62 of 2005 dated 28.11.2005 on the file of Subordinate Judge, Tirupattur in dismissing the appeal and confirming the judgment and decree dated 12.04.2005 made in O.S.No.61 of 2002 on the file of the Principal District Munsif Court, Ambur.

For Appellant : Mr.K.Sridhar

For Respondent : Mr.V.Jeevagiridharan

JUDGMENT

Challenge in the second appeal is made to the judgment and decree dated 28.11.2005 passed in A.S.No.62 of 2005 on the file of the Subordinate court, Tirupattur, confirming the judgment and decree dated 12.04.2005 passed in O.S.No.61 of 2002 on the file of the Principal District Munsif Court, Ambur.

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

"a) Is not the order of the Tahsildar recording the tenancy of the appellant under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 binding on the respondents and is not the jurisdiction of civil courts to decide the validity of the said order barred under Section 16A of the Act

to decide the validity of the said order?

b) Has the Civil Court jurisdiction to go into the correctness of the order of the Record of Tenancy by the Tenancy Officer in view of the specific bar under Section 16A of the Tamil Nadu Lands Record of Tenancy Rights Act, 1969?

3. 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.

4. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. The suit has been laid by the plaintiff against the defendants simplicitor for the relief of permanent injunction to restrain them from interfering with his possession and enjoyment of the suit property and to restrain them from evicting the plaintiff unlawfully from the suit property except by due process of law.

6. The suit has come to be laid by the plaintiff against the defendants on 29.04.2002. The suit property is described as located in the suit village in survey No.35/1 consisting of 4.76 acres of land within the specific boundaries. Based on the materials placed on record by the respective parties and the submissions made, the courts below were pleased to grant the reliefs in favour of the plaintiff only insofar as the extent of 76 cents of land in the suit survey number and dismissed the plaintiff's suit as regards the remaining 4 acres of land purchased by the defendants. Impugning the same, the present second appeal has been laid.

7. In support of the plaintiff's case P.Ws.1 and 4 were examined Exs.A1 to A23 were marked. On the side of the defendants D.Ws.1 and 2 were examined and Exs.B1 to B12 were marked.

8. The plaintiff claims to be in the suit property as described in the plaint as the cultivating tenant under one Ponnurangam. According to the plaintiff, Ponnurangam is the owner of the suit property. The abovesaid case of the plaintiff is seriously disputed by the defendants. The plaintiff has failed to establish by placing acceptable and reliable materials that Ponnurangam is the owner of the suit property as described in the plaint. According to the plaintiff, Ponnurangam became the owner of the suit property by virtue of a will executed by his grand father R.A.Muthiaya Gounder and the said will had come to be marked as Ex.B1. On a perusal of Ex.B1 will, it is seen that the property comprised therein, i.e., the suit property,

does not belong only to Ponnurangam and on the other hand, it belongs to Raja Gounder's sons namely, Ranganathan,, Vijayarangam and also Ponnurangam and it is seen that as per the materials placed on record, Ponnurangam had died leaving behind his wife Ramabai as his legal heir. Thus, the claim of the plaintiff that Ponnurangam alone is the owner of the suit property based upon Ex.B1 will is not fortified or established by acceptable and reliable materials. In such view of the matter, the case projected by the plaintiff that he has taken the suit property in entirety on lease from Ponnurangam by virtue of the various lease deeds mentioned in the plaint, as such, cannot be readily accepted. Though the plaintiff would claim that Ponnurangam had executed various lease deeds in his favour qua the suit property on 10.04.1991, 04.03.1996, 06.02.1997 and 14.04.2000 during various spells, however, the plaintiff has not endeavoured to produce the said lease deeds along with the plaint. As regards the abovesaid lease deeds , the plaintiff had only averred that he would be producing the said lease deeds at the time of trial. The said lease deeds had come to be produced by the plaintiff only at the time of trial, which have come to be marked as Exs.A13 to A16. As rightly determined by the courts below, the plaintiff has not given any reason as to why he had not endeavoured even to produce the copies of the abovesaid lease deeds along with the plaint while instituting the suit. Be that as it may, as abovenoted, the plaintiff has not established the competency of Ponnurangam to execute the lease deeds on his own in respect of the suit property in favour of the plaintiff by way of Exs.A13 to A16. The plaintiff claims to be the cultivating tenant of the suit property under Ponnurangam based on the abovesaid lease deeds. According to the plaintiff, he has been in the possession and enjoyment of the suit property as a lessee and entitled to the benefits of the Cultivating Tenants Protection Act and the plaintiff would aver in the plaint that in connection with the same, he has presented an application to the Tahsildar, Vaniampadi to record his name as the cultivating tenant as per law and the same is pending. As rightly found by the courts below, the plaintiff has not whispered in the plaint as to when he had presented such an application to the Tahsildar, Vaniampadi to record his name as the cultivating tenant in respect of the suit property. As rightly pointed out by the courts below, the plaintiff has not come forward with the definite particulars as regards the application submitted by him to the authorities concerned for recording his name as the cultivating tenant.

9. During the course of trial, the plaintiff has marked two documents, namely, the notice sent by the Tahsildar dated 04.04.2002 as Ex.A1 and the proceedings of the Tahsildar dated 01.08.2002 recording his name as the cultivating tenant in

respect of the suit property marked as Ex.A2. Obviously, it is found that the proceedings of the Tahsildar recording the plaintiff's name as the cultivating tenant has emanated only after the institution of the suit and after the lis had developed between the parties concerned. As could be seen from the materials placed on record, even prior to the proceedings of the Tahsildar dated 01.08.2002 marked as Ex.A2, the defendants had purchased an extent of 4 acres of land in the suit survey number from the lawful owners of the suit property on 18.04.2002 and the said documents have come to be marked as Exs.B4 to B6. Thus, it is noted that even prior to the proceedings marked as Ex.A2, the defendants had acquired an extent of 4 acres of land from the lawful owners of the suit property including Ponnurangam. As abovenoted, the plaintiff has not established that Ponnurangam alone is the exclusive owner of the suit property.

10. The main crux of the plaintiff's case as inasmuch as he is a cultivating tenant in respect of the suit property and his name had been recorded as the cultivating tenant by the concerned authority by way of Ex.A2 proceedings, the same cannot be gone into or interfered with by the civil court and in such view of the matter, his possession should not be allowed to be disturbed by the defendants except under due process of law and therefore, contended that he is entitled to seek the relief of permanent injunction as prayed for against the defendants.

11. The defendants, in toto, has disputed the claim of the plaintiff that his name has been recorded as the cultivating tenant by the authority concerned by way of the proceedings dated 01.08.2002 marked as Ex.A2. In the light of the abovesaid position, *prima facie*, the plaintiff has to establish that his name has come to be recorded as the cultivating tenant by the competent authority by way of Ex.A2 proceedings after inviting the objections with reference to the same from the lawful owners of the suit property as on 01.08.2002. It is found that with reference to the extent of 4 acres of land, the erstwhile owners, namely, Raja Gounder's sons Ranganathan, Vijayarangam and Ponnurangam had ceased to be the owners and by virtue of Exs.B4 to B6, it is only the defendants who had acquired title to an extent of 4 acres of land in the suit survey number. On a perusal of Ex.A2 proceedings extensively, it is seen that the same had not come to be passed by the concerned authority after issuing notice to the defendants, the lawful owners of the extent of 4 acres in the suit survey number. As above noted, the defendants had challenged the truth and validity of the documents marked as Exs.A1 and A2 projected by the plaintiff and according to them, the abovesaid documents have been fabricated by the plaintiff with the connivance of certain revenue officers and Ponnurangam one way or the other to buttress his case.

Accordingly, the plaintiff has also endeavoured to examine the staff of the revenue department as P.W.4 to establish the authenticity of the documents marked as Exs.A1 and A2. Materials placed on record go to show that the summons had been issued to the revenue department to produce the file pertaining to the proceedings of the Tahsildar dated 01.08.2002 marked as Ex.A2. P.W.4, the assistant of the Tahsildar's office has admitted that he had received the summons directing the production of the concerned file pertaining to Ex.A2 proceedings. However, he has admitted that he has not produced the said file in the court. He has clearly averred that, despite the summons, the concerned file has not been produced by him. During the course of cross examination, he has admitted that in the application preferred for recording the tenant name as the cultivating tenant, the notice would not be issued to the real owners based upon the records and from his evidence, it could be gathered that the notice would be issued only to the owner as disclosed by the applicant in the application. Accordingly, it is seen that no endeavour has been taken to issue notice as regards the proceedings in connection with Ex.A2 to the real owners of the suit property, namely, the defendants. Furthermore, P.W.4 has also admitted that the defendants had presented the application to the District Collector during Jama Bandhi to declare that the name of the plaintiff has been erroneously recorded as the cultivating tenant without issuing notice to them and according to him, no further action has been contemplated with reference to the same on account of the pendency of the present lis. Therefore, when P.W.4 or the revenue department had not endeavoured to produce the concerned file of the proceedings pertaining to Ex.A2 despite the notice to produce the same, in such view of the matter, when prima facie, it is found that no notice had been sent to the real owners in connection with the proceedings marked as Ex.A2, i.e., the defendants and when there is no proof prima facie placed on the part of the plaintiff that his name had come to be recorded as the cultivating tenant by the authority concerned only after examining all the true owners of the suit property in the manner known to law and that apart, when as rightly determined by the courts below, the documents projected by the plaintiff and marked as Exs.A1 and A2 bear no official seal of the revenue department or the competent authority who had issued the same and also the said documents contain different reference number and not tallying with each other, in such view of the matter, when the plaintiff has failed to place acceptable material that the proceedings Ex.A2 had come to be issued lawfully in his favour by the authority concerned by summoning the original records, in such view of the matter, the courts below are found to be wholly justified in not placing reliance upon Exs.A1 and A2 for upholding the case of the plaintiff that he is enjoying the suit property as the cultivating tenant of Ponnurangam. If really the plaintiff had

been the cultivating tenant of Ponnurangam in respect of the suit property in a lawful manner, as rightly determined by the courts below, at the first instance, the plaintiff would have produced the lease deeds while instituting the suit said to have been executed by Ponnurangam, on the other hand, belatedly only during the trial he has endeavoured to produce the said lease deeds and with reference to the delay, the plaintiff would claim that inasmuch as the said lease deeds had been subjected to the scrutiny of the revenue officials, he was not able to produce the same at the earliest point of time. However, when there is no indication contained in Exs.A13 to A16 that they had been subjected to the scrutiny of the revenue department on the production of the same by the plaintiff in connection with the proceedings marked as Ex.A2, the same not bearing the seal of the revenue department one way or the other, in such view of the matter, particularly when Ex.A2 proceeding had come to be passed after the institution of the suit, admittedly when the same had come to be passed without notice to the contesting defendants who had acquired an extent of 4 acres of land much prior to the same, in such view of the matter, the reliability of the lease deeds projected by the plaintiff marked as Exs.A13 to A16 as well as the documents projected by the plaintiff marked as Exs.A1 and A2 is found to be highly unsafe and accordingly, the courts below are found to be justified in not placing any credence on those set of documents. Furthermore, P.W.4, the assistant of the revenue department has also admitted during the course of cross examination that during the course of enquiry, the witnesses had deposed that the plaintiff is not in the possession and enjoyment of the suit property and the same is in the possession and enjoyment of the defendants and he had also endeavoured to search the document/file as regards the application given by the plaintiff to record his name as the cultivating tenant of the suit property to ascertain as to who had all been examined in connection with the same and according to him, the said documents were not able to be detected. Therefore, it is highly doubtful whether, at all, the proceedings Ex.A2 had come to be issued by the authority concerned only based on the application presented by the plaintiff and the same had come to be passed by the competent authority after issuing notice to all concerned and after inviting their objection and after examining them as per law. When with reference to the same, the witness examined on behalf of the plaintiff as P.W4 is unable to state anything about the file and when according to him the concerned file is not available and when as per the evidence of P.W4, the witnesses had deposed that the plaintiff is not in the possession of the suit property and that the suit property is only in the enjoyment of the defendants, in such view of the matter, the claim of the plaintiff that he is occupying the suit property as the cultivating tenant under Ponnurangam cannot, at all, be

accepted in any manner and the same had been rightly disbelieved and rejected by the courts below.

12.The defendants had examined the concerned Village Administrative Officer as D.W.2 and as per the evidence of Village Administrative Officer, it is seen that the revenue records disclose that the suit property comprised in survey No.35/1 stands in the name of six persons jointly namely, Jayaraman, Govindasamy, Sivakumar, Raja Gounder, Rama Bai and Ponnurangam and according to him the names of Jayaraman, Govindasamy and Sivakumar, namely the defendants had been included from 24.01.2003 and when as per the evidence of D.W.2, on the date of Ex.A2 proceedings, the patta jointly stood in the name of the abovesaid six persons in respect of the suit property, it is evident that the plaintiff is not in the occupation and enjoyment of the suit property as the cultivating tenant thereof under Ponnurangam as claimed by him, in particular, the plaintiff cannot be held to be in the occupation and enjoyment of the extent of 4 acres of land purchased by the defendants by way of Exs.B3 to B4 from the lawful owners. On the other hand, from the evidence of D.W.2, it is found that it is only the defendants who are in the possession and enjoyment of the property acquired by them by putting brick kiln and also cultivating the same and in such view of the matter, since the date of purchase, it is only the defendants, who are in the possession and enjoyment of an extent of 4 acres of suit survey number and accordingly, the plaintiff is unable to place any reliable or acceptable material to establish that he is in the possession and enjoyment of the suit property in entirety as claimed by him.

13.Though the plaintiff would claim that Ponnurangam is the owner of the suit property and that he had taken lease arrangement from Ponnurangam in respect of the suit property and enjoying the same as a cultivating tenant thereof, the materials placed on record go to disclose that the plaintiff had endeavoured to purchase the suit property from the real owners of the same, namely, Ponnurangam, Raja and Ramabai by way of an agreement dated 10.09.1998 and however, the said agreement had come to be cancelled and the same could be evidenced from revocation deed marked as Ex.B2 dated 07.02.2002. Furthermore, on 07.02.2002, Ponnurangam, Rama Bai, Raja Gounder had entered into an agreement with one Ganesan with reference to the suit property marked as Ex.B3 and the recitals contained therein states that following the same, suit property had been handed over to Ganesan and in the said document, when it is admitted by the plaintiff himself that he has signed as an attester in the abovesaid document, would clinchingly go to show that inasmuch as the plaintiff has never been in the possession and enjoyment as the cultivating tenant thereof under Ponnurangam exclusively

without any demur, he has attested the sale agreement dated 07.02.2002 marked as Ex.B3 whereunder the recitals disclose that the suit property had been handed over to Ganesan. In such view of the matter, the abovesaid materials, on seen cumulatively, would go to show that the endeavour of the plaintiff to purchase the suit property from the lawful owners having ended in vain and thereafter, the defendants having acquired an extent of 4 acres of land from the lawful owners, unable to digest the same, it is found that the plaintiff had endeavoured to create certain records in connivance with Ponnurangam one way or the other and also with the help of the revenue officials known to him seems to have also created certain documents marked as Exs.A1 and A2 projected by him and had come forward with the false case as if he is the cultivating tenant of the suit property under Ponnurangam and that the defendants are attempting to interfere with his possession and enjoyment unlawfully. On the other hand, when the documents projected in the matter go to clearly expose that Ponnurangam is not the owner of the suit property exclusively and on the other hand, the defendants had acquired an extent of 4 acres of land from the lawful owners including Ponnurangam as above pointed out, and enjoying the suit property as abovenoted, and when the plaintiff has failed to establish the truth and validity of the documents marked as Exs.A1 and A2 mainly relied upon by him for sustaining his case and when the lease deeds projected by the plaintiff are not shown to be valid as per law and not having been obtained from the lawful owners of the suit property and furthermore, when the plaintiff has failed to establish his possession and enjoyment of the entire suit property as claimed by him, in all, it is found that the courts below are found to be right in declining the relief sought for by the plaintiff in respect of the entire suit property and accordingly, excluding the extent of 4 acres of land acquired by the defendants, had chosen to the grant the relief in favour of the plaintiff against the defendants only in respect of the remaining 76 cents of land and I do not find any error in the abovesaid determination of the courts below in rejecting the plaintiff's suit as regards the extent of 4 acres of land in the suit survey number.

14. The plaintiff's counsel in support of his contentions placed reliance upon the following decisions reported in

1. 1976 I MLJ 344 (Muniyandi vs. Rajangam Iyer)
2. AIR 1980 Madras 180 (Periathambi Goundan vs. The District Revenue Officer)
3. 1985 I MLJ 168 (S.Balasubramaniam vs. Shamsu Thalreez and others)

15. In the light of the above discussions, when the plaintiff has failed to establish, prima facie, the truth and validity of the documents projected by him marked as Exs.A1 and

A2 and the witness examined on behalf of the plaintiff, namely, P.W.4 is unable to depose anything on the said documents and admitted that the file pertaining to the same are not available in the department and when there is no other material projected by the plaintiff that the proceedings marked as Ex.A2 had come to be issued in his favour after issuing notice to the lawful owners of the suit property and furthermore, when the proceedings had come to be issued after the institution of the suit and when the validity and the binding nature of the same has not been sustained by the plaintiff as per law, in such view of the matter, the courts below are justified in not placing reliance upon the documents for accepting the plaintiff's case and in my considered opinion, on the facts and circumstances of the case, no interference is called for with reference to the abovesaid determination of the courts below and the substantial questions of law formulated in this second appeal are accordingly answered in favour of the defendants and against the plaintiff.

16. In view of the abovesaid discussions, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bga

To

1.The Subordinate Judge, Tirupattur

2.The Principal District Munsif Court, Ambur.

Copy to

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

+1 CC to Mr.K.Sridhar, Advocate sr 27021.

+1 CC to Mr.V.Jeevagiridharan, Advocate sr 25194.

S.A.No.483 of 2006

VGI (CO)
SP(21/06/2019)