



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.07.2019

DELIVERED ON : 14.08.2019

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THE HONOURABLE MRS. JUSTICE R. THARANI

S.A. (MD) No.174 of 2009

A.Sekar .. Appellant/9th Respondent/9th Defendant

Vs.

1.A.Govindarajan ...1st Respondent/Appellant/Plaintiff

2.C.Krishnamurthy

3.C.Rukumani

4.C.Kumar

5.J.Uma

6.Shanthi ..Respondents 2 to 6/ Respondents 2 to 6/
Defendants 2 to 6

7.Kuppammal ...7th Respondent/8th Respondent/8th Defendant

8.Trichy Ariya Vaisya Madam Nutta

Appandaram Nagaram Varu Committee,
represented by its President,

R.Kalki Varadharajalu ...8th Respondent/10th Respondent/
10th Defendant

9.S.K.Seshagiri Rao ..9th Respondent/11th Respondent/11th
Defendant

10.S.Kannammal ..10th Respondent/12th Respondent/12th
Defendant

11.S.Ramesh ..11th Respondent/13th Respondent/13th
Defendant

12.M.Jayapal ..12th Respondent/14th Respondent/14th
Dedfendant

13.M.Latha .. 13th Respondent/15th Respondent/15th
Defendant

(Respondents 8, 10 and 11 are given up, vide Court order
dated 08.08.2016 made in S.A.(MD)No.174 of 2009)

Prayer :Second Appeal is filed under Section 100 of Civil
Procedure Code, to set aside the Judgment and Decree passed in
A.S.No.184 of 2006 dated 27.06.2008 on the file of the learned
Principal District Judge, Tiruchirappalli partly reversing the
judgment and decree made in O.S.No.177 of 1995 dated 07.02.2006 on



the file of the learned IV Additional Sub Judge, Tiruchirappalli.

For Appellant	: Mrs.J.Maria Roseline
For 1 st Respondent	: Mr.D.Kanaga Sabai
For Respondents 2 to 12	: Mr.M.Asok Kumar
For Respondents 7, 9 and 13	: No Appearance
For Respondents 8, 10 and 11	: Given up

JUDGMENT

Heard the learned counsel appearing on both the side.

2.This appeal is filed against the Judgment and Decree passed in A.S.No.184 of 2006 dated 27.06.2008 on the file of the learned Principal District Judge, Tiruchirappalli partly reversing the judgment and decree made in O.S.No.177 of 1995 dated 07.02.2006 on the file of the learned IV Additional Sub Judge, Tiruchirappalli.

3.The appellant herein is the ninth defendant and the first respondent herein is the plaintiff and the respondents 2 to 13 herein are the defendants 2 to 6, 8, 10 to 15 in the suit. As per the memo filed in this appeal, the appellant gave up the case against the respondents 8, 10 and 11. The first respondent herein had filed a suit in O.S.No.177 of 1995 before the learned IV Additional Sub Judge, Tiruchirappalli for a prayer of partition and for separate possession of 1/3th share in A & B schedule properties and 1/5th share in C & D schedule properties and for future profits from the date of plaint till the date of delivery of possession. The trial Court decreed the suit with regard to 1/3rd share in A & B schedule properties and dismissed the suit in respect of C & D schedule properties and permitted to take separate action under Order 20 Rule 7 of CPC for mesne profits. Against the Judgment and decree, the first respondent preferred an appeal in A.S.No.184 of 2006 before the Principal District Judge, Tiruchirappalli. The appeal was allowed partially modifying the trial Court decree and decreed the suit giving 1/5th share to the plaintiff in C & D schedule properties. Against which, the appellant herein has preferred this second appeal.

4.The case of the plaintiff is that one Alagirisamy Naidu and his wife Krishnammal had four sons and two daughters. 'A' schedule property stood in the name of Krishnammal and she got the same through her father. C schedule property was a coconut farm owned by the tenth defendant trust. Alagirisamy Naidu was the cultivating tenant in D schedule property which was owned by the defendants 11 to 13 and Alagirisamy Naidu was a cultivating tenant under the defendants 11 to 13. The female heirs of Krishnammal were the defendants 7 and 8 and they executed a release deed dated



26.03.1980 relinquishing their rights in the suit properties. Out of the four sons of Alagirisamy Naidu, Chinnanan Naidu expired and his legal heirs are the defendants 1 to 6, the second son is the plaintiff in the suit and the third son Sundara Rajan got divided from the family after the death of Alagirisamy Naidu. The fourth son is the ninth defendant. Alagirisamy Naidu was the cultivating tenant in C and D schedule properties. Even after the death of Alagirisamy Naidu, the lease was in the name of the joint family and the plaintiff and the defendants 7, 8 and 9 were entitled to 1/5th share in C and D schedule properties. The ninth defendant was in possession of the C schedule property and his possession was joint possession on behalf of all the sharers and the plaintiff was entitled to 1/3rd share in the A & B schedule properties and 1/5th share in the C & D schedule properties.

5.The case of the ninth defendant is that in respect of A & B schedule properties, the plaintiff, the heirs of Chinnanan Naidu in total and the ninth defendant had 1/3th share. A schedule item (1) namely house bearing Door No.79 was kept in common. Since the ninth defendant requested the plaintiff to divide the house bearing door no.79. The plaintiff and the defendants 1 to 6 conspired together and come forward with this false suit. 'A' schedule property has already been divided among the parties and the partition had been acted upon. The 'B' schedule property was already sub divided between the sharers except the house shown as item (1) in the A schedule property. All other items in A and B schedule properties were already partitioned.

6.It is stated that the tenancy right for the C & D schedule properties stood in the name of the ninth defendant. One Chinnanan Naidu filed a suit in O.S.No.1962 of 1990 in respect of D schedule property and the same is pending. The ninth defendant alone was the cultivating tenant in respect of D schedule property. When the other sons left the family, the ninth defendant along with his father had cultivated the property. The ninth defendant has executed a lease deed in favour of the trust which is the owner of the C schedule property. The lease executed by Alagirisamy Naidu expired by efflux of time and after the lapse of the lease period, the family of Alagirisamy Naidu had no claim or right. After removing the old trees in the 'C' schedule property on 15.12.1994, the trustees leased out the C schedule property in favour of the ninth defendant.

7.The brief averments of the 11th defendant is that the ninth defendant assisted in cultivating the D schedule property. After the death of Alagirisamy Naidu, he continued to cultivate the property and he entered into a fresh lease agreement as per law. The other sons of Alagirisamy Naidu never cultivated the D schedule property. The name of the ninth defendant was recorded as



a tenant in the cultivating tenants Register.

8. On the basis of the pleadings, the trial Court framed the following issues:

- "(i) Whether the partition in respect of 'A' and 'B' schedule property had already been effected ?*
- (ii) Whether the 9th defendant is the lessee in respect of C' and D' schedule property ?*
- (iii) Whether the 7th and 8th defendants are not entitled for any share in the property ?*
- (iv) Whether the plaintiff is entitled for the relief of partition ?*
- (v) Whether the plaintiff is entitled for future mesne profits ?*
- (vi) To what other relief ?"*

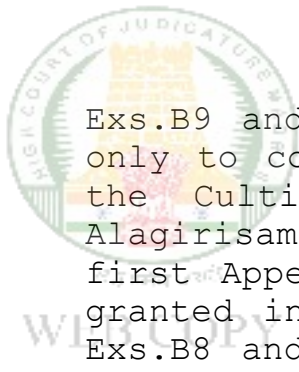
9. One witness was examined as P.W.1 and nine documents were marked as Exs.A1 to A9 on the side of the plaintiff and one witness was examined as D.W.1 and 46 documents were marked as Exs.B1 to B46 on the side of the defendants. After trial, the trial Court decreed the suit granting the plaintiff 1/3rd share in A & B schedule properties and dismissed the suit in respect of C & D schedule properties and permitted the plaintiff to take separate action under Order 20 Rule 7 of CPC for mesne profits.

10. Against which, the appellant filed an appeal in A.S.No.184 of 2006 before the learned Principal District Judge, Tiruchirappalli. On the basis of the grounds of appeal, the first appellate Court framed the following issues:

- "(i) Whether the appellant/plaintiff is entitled to get share in the leasehold rights in suit C and D schedule properties ?*
- (ii) To what relief the appellant is entitled ?"*

11. After hearing both sides, the first appellate Court allowed the appeal partially modifying the trial Court decree, declaring 1/5th share to the plaintiff in C & D schedule properties. Against which, the appellant herein has preferred this second appeal.

12. In the grounds of this second appeal, it is stated that C schedule property belongs to a public trust and the question of cultivating Tenant's Protection Act does not arise. The lease deed dated 07.08.1968 was for a period of five years and the lease period expired. The contract of tenancy expired due to efflux of time and the plaintiff cannot claim any share in the C schedule property. There was no documents to show that the plaintiff was cultivating the C schedule property. The lease was granted only in favour of the ninth defendant. The lease deeds were marked as



Exs.B9 and B10. The lease in respect of C schedule property was only to collect the usufructs and the same was not covered under the Cultivating Tenancy Protection Act. The legal heirs of Alagirisamy Naidu were not entitled to any lease hold right. The first Appellate Court failed to consider that a fresh lease was granted in favour of the ninth defendant in the year 1994 under Exs.B8 and B10. There was no evidence to show that 'C' schedule property being a coconut farm was used for other cultivations and the plaintiff contributed his physical labour for such cultivations.

13.It is stated that in the D schedule property, the ninth defendant was the only cultivating tenant and his name was recorded in Exs.B2 and B5. Ex.B40 is the notice dated 27.09.1990 and only in pursuant of the notice, the plaintiff appeared before the Revenue Divisional Officer. Certified copy of the proceedings is marked as Ex.B1 and recording the name of ninth defendant as the cultivating tenant is not an order obtained behind the back of the plaintiff and the appellate Court failed to consider that Ex.B1 was issued after due notice. The Revenue Divisional Officer had given a finding that the ninth defendant was the cultivating tenant. The plaintiff appeared before the Revenue Officer as a power agent to the legal heirs of Chinnan Naidu. The plaintiff was employed as Sub Registrar at various places throughout Tamil Nadu and he could not have contributed any physical labour. The first appellate Court failed to consider this aspect. There was no such plea that the plaintiff had contributed his physical labour in respect of C and D schedule properties as stated in the plaint. The ninth defendant had proved that he alone was the cultivating tenant by filing various documents including rental receipts. P.W.1 had admitted that other lease holding properties of Alagirisamy Naidu were now cultivated by Chinnan Naidu and those properties were not included in the suit.

14.This Court by its order dated 05.02.2019, has admitted the second appeal and has framed the following substantial questions of law, which are as follows:

"(1)Whether the plaintiff is entitled to the relief of partition in respect of the 'C' schedule property owned by a Public Trust and are exempted from the purview of the Tamilnadu Cultivating Tenants' Protection Act? More so, when the lease deed dated 07.08.1960 marked as Ex.A1 had expired due to efflux of time ?

(2)Whether it is open for the first appellate Court to grant a decree for partition in respect of the 'D' schedule property when the Record Officer had already held that the 9th defendant alone had been recorded as a Cultivating Tenant by the authority constituted under the Tamilnadu Cultivating Tenants' Protection Act. (Act 25 of 1955) ?



(3) Whether the order passed by the Record Officer holding that the 9th defendant is a cultivating tenant is binding on the Civil war ?

(4) Whether it is open for the Civil Court to ignore the order passed by the Record Officer in respect of the 'D' schedule and to grant a decree for partition ?

(5) Whether the first appellate Court is right in reversing the findings of the trial Court in respect of the 'C' and 'D' schedule properties in the absence of a plea that the plaintiff is contributing his physical labour in cultivating the properties?"

Issue No.1 :

15.It is seen that there is no dispute regarding the relationship between the parties and that there is no dispute regarding the share in A and B schedule properties. The matter to be decided is with regard the C and D schedule properties.

16.On the side of the appellant, it is stated that the relief of partition in respect of 'C' schedule property owned by a public Trust is not possible as the property is exempted from the purview of the Tamilnadu Cultivating Tenants' Protection Act. It is stated that the lease deed dated 07.08.1960 which is marked as Ex.A1 was already expired due to efflux of time. It is stated that the C schedule property is the coconut farm which is exempted under the Tamilnadu Cultivating Tenancy Protection Act.

17.The C schedule property belong to the tenth defendant and the tenth defendant in his written statement has admitted that the property was leased to the ninth defendant. On the side of the appellant, it is stated that Exs.B8 to B10 are lease deeds for every five years which will prove that no such continuous lease was given to the family members.

18.On the side of the respondents, it is stated that no document was filed to prove that the suit property was leased out to various other persons. It is stated that not only the usufructs but also the sub soil was the subject matter of the lease. It is stated that the fence was put up by the landlord and the landlord has to provide for drawing water from the well and the wordings of the agreement reveals that the lease includes the sub soil and that the lease is not exempted under the Tamil Nadu Cultivating Tenancy Act.

19.On the side of the respondents, it is stated that the lease deed executed by Alagirisamy Naidu in favour of Vardarajulu Naidu is marked as Ex.A1. The receipt issued by Krishnasamy Rao and others in favour of Chinnan Naidu and A.Sekar is marked as Ex.A6. The rent receipt issued by the tenth defendant in favour of Alagirisamy Naidu is marked as Ex.A7. The sale deed executed in



favour of Chinnanan Naidu and Sekar by Krishnasamy Rao and three others is marked as Ex.A5.

20.On the side of the respondents, it is stated that Thooppu belong to the trust is used for other cultivations and it is not exempted under the tenancy Act. The learned counsel appearing for the first respondent would rely on the Judgment passed in the case of **Nachayee Ammal and others v. Sri Venugopalakrishnaswamy Temple** reported in **(2003) 2 MLJ 212**, which reads as follows:

"The rights granted to pluck or gather coconuts or mangoes in lease of immovable property and therefore the lease would be considered as agricultural lease and the lessee is entitled to the Tamil Nadu Cultivating Tenants Protection Act, 1955."

21.On the side of the appellant, it is stated that usufructs of the 'C' schedule property was leased out to Alagirisamy Naidu for a period of five years by the Trust. He had the right of usufructs of the coconut trees and that after the lease deed dated 07.08.1960, the lease hold right was given to various other persons through public auction. On the side of the appellant, it is stated that sometimes usufructary right was given to other persons and those persons used to pay kist. The kist receipt issued in the name of Seshagiri Rao was marked as Ex.B3. The receipt issued in the name of Tamilnadu Consumer and Sales Corporation, Tiruchirappalli was marked as Ex.B4. The receipt issued in the name of Seshagiri Rao dated 28.02.1989 was marked as Ex.B44. It is stated that the appellant in his individual capacity has got the lease of the 'C' schedule property and the lease property is not a joint family property.

22.From the written statement filed by the 10th defendant and from the evidence of P.W.1, it is clear that there was a lease deed in favour of Alagirisamy Naidu dated 07.08.1960. No document was filed on the side of the plaintiff to prove that the suit property was further leased out to Alagirisamy Naidu and that the leased hold right was a hereditary right and that the plaintiff is having 1/5th share in the lease hold right. Admittedly C schedule property is a coconut farm and in the subsequent lease deeds, there was no wordings as to fresh cultivation. No document was filed on the side of the respondent to prove that the sub soil was used for other cultivation purposes. The trial Court has come to the conclusion that lease hold right of the appellant is an individual right and the Cultivating Tenancy Protection Act is not applicable to the suit schedule property.

23.A perusal of the records reveals that C schedule property is a Thooppu (Coconut farm) and Thooppu is excluded from



the Tamilnadu Cultivating Tenancy Protection Act. The plaintiff and other defendants never took any action to include their name in the revenue records. From Exs.B8 to B10, it is seen that the property was leased to the ninth defendant through an auction. The first respondent/plaintiff failed to prove that the lease hold right of C schedule property which is coconut farm owned by a public trust is not exempted from the Tamilnadu Cultivating Tenancy Protection Act. Hence, it is decided that the lease deed dated 07.08.1960 had expired due to efflux of time and the 'C' schedule property a farm owned by a public trust is exempted from the Tamil Nadu Cultivating of Tenancy Protection Act.

Issue Nos.2, 3 and 4:

24.On the side of the appellant, it is stated that the first appellate Court is not correct in granting partition in respect of D schedule property, as the Record Officer had already held that the ninth defendant alone had been recorded as a Cultivating Tenant under the Tamilnadu Cultivating Tenancy Protection Act.

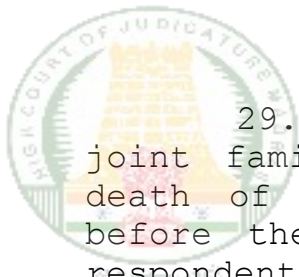
25.The proceedings of the Record Officer, Tiruchirappalli is marked as Ex.B2. Another proceedings of the Revenue Tahsildar and lease Record Officer dated 27.01.2005 was marked as Ex.B5. The rent receipt issued in the name of the plaintiff was marked as Ex.B15 and the kist receipts in the name of ninth defendant were marked as Exs.B16 to B39, B43, B45, B46.

26.On the side of the appellant, it is stated that when all the other sons left the family the ninth defendant alone was contributing his physical labour in cultivating the properties. It is stated that the first respondent worked as Divisional Revenue Officer and he was employed in various places in Tamil Nadu and he could not have contributed his physical labour.

27.It is stated that in the written statement of the 11th defendant, it is stated that the tenancy in favour of the father of the ninth defendant was not extended and that the District Revenue Officer also dismissed the petition and the same matter cannot be re-agitated.

28.The learned counsel appearing for the appellant would rely on the Judgment passed by this Court in the case of **S.Balasubramanian v. Shamsu Thalreez and others** reported in **98 L.W. 536**, which reads as follows:

"In the said circumstances the order passed by the authority under the Act will have to govern until and unless it is set aside by any process know to law"



29.On the side of the respondents, it is stated that the joint family was enjoying the lease hold right even after the death of Alagirisamy Naidu and that status can be questioned before the Court. The learned counsel appearing for the first respondent would rely on the Judgment passed by this Court in the case of **P.Shanmugasundaram v. The District Revenue Officer, Tirunelveli and others** reported in **(2005) 1 MLJ 91**, which reads as follows:

"Suit for declaration of the status of a party as a cultivating tenant is maintainable."

30.On the side of the respondents, it is stated that Ex.B2 is not valid as the other sharers were not participated in the enquiry. In support of this contention, the Judgment passed by this Court in the case of **Jayarama Naidu v. Meenakshi Ammal and Another** reported in **1999 (1) CTC 566** is cited, wherein it is stated that the order without impleading the other legal heirs is not valid and that there is no necessity to set aside the order as the order is not exist in the eye of law.

31.On the side of the respondent, it is stated that the suit is for partition and that the rights cannot be decided by agitating before the Tahsildar. In support of this contention, the judgment passed by this Court in the case of **P.Shanmugasundaram v. The District Revenue Officer, Tirunelveli and others** reported in **(2005) 1 MLJ 91** is cited.

32.The learned counsel appearing for the first respondent would rely on the Judgment passed by this Court in the case of **P.Shanmugasundaram v. The District Revenue Officer, Tirunelveli and others** reported in **(1980) 1 MLJ 89**, which reads as follows:

"Record officer concluding that land has been let to a tenant for cultivation - Matters provided for in section 3(2) to be determined by Record Officer and pro tanto jurisdiction of civil Court barred - Scope of Section 16-A."

33.The learned counsel appearing for the first respondent would rely on the Judgment passed by this Court in the case of **Jayarama Naidu v. Meenakshi Ammal and Another** reported in **1999 (1) CTC 566**, which reads as follows:

"Mere recording of tenancy of the second respondent under the first defendant according to the learned counsel apart from being collusive is of little consequence as such a recording is non est in law, enforceable not binding on the plaintiff and confer not an iota of tenancy. According to the counsel for the appellant/plaintiff a bonafide tenancy



under the Usufructuary mortgage is protected by the Tamilnadu ."

34. On the side of the appellant, it is stated that the plaintiff appeared as general power of attorney for the other respondents and that the Revenue Divisional Officer dismissed the petition against the defendants 1 and 2. It is stated that no appeal was filed against the order of the Record Officer.

35. It is seen that the appellant was recorded as a cultivating tenant and the Tamilnadu Cultivating Tenants Protection Act is applicable to the D schedule property. Those who contribute physical labour alone can be given the right of a cultivating tenant. The proceedings of the Record Officer is marked as Exs.B2 and B5. It is seen that the plaintiff was working as a Government official who used to be transferred from one place to another and this contention was not denied by the first respondent. The first respondent being a Government servant working in various place could not have contributed his physical labour to the cultivation of D schedule property. Before passing the order, the Record Officer conducted an enquiry and the plaintiff appeared as a power of attorney for the defendants 1 to 6. This aspect was not denied by the plaintiff. Exs.B2 and B5 were not obtained behind the back of the plaintiff. The plaintiff did not file any appeal against the order passed by the Record Officer. Hence, the plaintiff cannot claim 1/5th share in the lease hold right over the D schedule property.

Issue No.5:

36. A perusal of the records reveals that the appellant has got a fresh lease deed pertaining to 'C' schedule property and the appellant was recorded as cultivating tenant for the 'D' schedule property. The plaintiff did not plead that he has contributed his physical labour in cultivating C and D schedule properties. The plaintiff appeared on behalf of the defendants 1 to 6 before the Record Officer and Exs.B2 and B5 were not issued behind the back of the plaintiff. The first appellate Court failed to consider the fact that the plaintiff who was a Government Official was out of station and he could not have contributed any physical labour and the plaintiff has not taken any steps to cancel Exs.B2 and B5. The first appellate Court failed to consider that the C schedule property is a coconut farm that belong to a Trust and has modified the judgment and decree of the trial Court and decreed the suit in full. Hence, it is decided that the first appellate Court is not correct in modifying the Judgment and decree of trial Court in respect of C and D schedule properties.

37. In the above circumstances, it is clear that the plaintiff is not entitled for 1/5th share in the lease hold right



of C and D schedule properties. There is no dispute regarding the share in A and B schedule property. It is decided that the plaintiff is entitled only for 1/3rd share in A and B schedule properties and the plaintiff is not entitled for 1/5th share in the lease hold right of C and D schedule properties.

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38.Hence, this second appeal is **partly allowed**. The Judgment and decree passed by the learned Principal District Judge, Tiruchirappalli in A.S.No.184 of 2006 dated 27.06.2008 is hereby set aside and the Judgment and decree passed in O.S.No.177 of 1995 Dated 07.02.2006 on the file of learned IV Additional Sub Judge, Tiruchirappalli is confirmed. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

Mrn
To

- 1.The Principal District Judge, Tiruchirappalli.
- 2.The IV Additional District Munsif, Tiruchirappalli.
- 3.The Section Officer, V.R.Section,-2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.J.MARIA ROSELINE, Advocate (SR-81563[F] dated 14/08/2019)

+1 CC to Mr.D.KANAGA SABAI, Advocate (SR-82239[F] dated 19/08/2019)

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14.08.2019

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