



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (PD) (MD)No.1078 of 2013
and M.P. (MD) No.1 of 2013

1.V.Jayaraman
2.V.Ramnujam
3.V.Ramakrishnan
4.V.Karmegam
5.V.Packiyam
6.Krishnanveni
7.S.Meenakshi

... Petitioners/Respondents 1 to 7

Vs.

1.Enathi ammal
2.Amudha
3.Radhakrishnan
4.Ranganathan
5.Balasubramanian
6.K.Mayan
7.Sulochana

..Respondents 1 to 5/Petitioners

... Respondents 6 & 7/Respondents 8 & 9

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure Code to set aside the order passed in Na.Ka.No.G3/36093/2011 R.P.2/2012, on the file of the District Revenue Officer, Madurai dated 20.05.2013.

For Petitioner : Mr.N.Ananthapadmanaban

For R1,R2,R4 & R5 : Mr.M.Ponniah

For R3 : Mr.R.Senthilkumar

For R6 : Mr.V.R.Venkatesan

For R7 : Mr.M.Venkatesan

O R D E R

This Civil Revision Petition emanates from the proceedings initiated under the Tamilnau Cultivating Tenants Protection Act, 1955. The unsuccessful petitioners before the Record of Tenancy Officer (Madurai North Tahsildar) are the revision petitioners



before this Court.

2. Before proceeding to discuss the proceedings before the Record of Tenancy Officer, it is necessary to briefly allude to the facts that transpire prior to the filing of this petition. The respondents 1 to 5 herein had originally filed O.S.No.151 of 1994 on the file of the District Munsif, Melur, for permanent injunction. The said suit was filed stating that they are in possession of the said property as a cultivating tenants being the legal representatives of their father Perumal Konar, who was originally given the lease hold right to cultivate the said land. The revision petitioners herein are the legal representatives of the 7th defendant in the suit in O.S.No.151 of 1994. His defence in the said suit was that he had entered into a lease agreement with original owner Subba Naidu, who is the father of the first respondent before the Record of Tenancy Officer. He had also contended that his brother Perumal Konar has never cultivated the property and that it is only the 7th defendant, the father of the revision petitioners herein, who were registered as Cultivating Tenant and who have been cultivating the said land. Therefore, they had set up a rival claim to that of the revision petitioners.

3. The learned District Munsif, Melur, by his judgment and decree dated 19.12.1995 was pleased to dismiss the suit. The first issue was whether the plaintiffs have been in possession and enjoyment of the suit properties as cultivating tenants. The said issue was answered against the plaintiffs/respondents 1 to 5 herein.

4. They had taken up the said judgment and decree in appeal before the III Additional Subordinate Judge, Madurai. The learned III Additional Subordinate Judge, Madurai, by his judgment and decree dated 14.12.2010 was pleased to confirm the judgment and decree of the trial court. Challenging the same, the respondents 1 to 5 herein filed S.A.No.1526 of 2001 on the file of this Court. The Second Appeal was also dismissed. In the above Second Appeal, the substantial questions of law were raised, which read as follows:

i) Whether the tenancy right stood in the name of Perumal Konar as Ex.A.5 is heritable to his legal heirs by succession and if so, the claim of the appellants is justified and reasonable?

ii) Whether the courts below committed error without granting injunction in favour of the appellants although the possession is proved by documentary evidence under Ex.A.2, A3, A4 and A.5?

iii) Whether Ex.B.7 can be accepted as a valid document without giving an opportunity to the appellant to represent the case in accordance with procedure laid down under Section 5(1) of the Tamil Nadu Record of



5. This Court had come to the conclusion that the plaintiffs had failed to prove that they had contributed any physical labour as defined as under the Act to show that they had physically contributed the labour to cultivate the lands and that they have no proof that they are in actual possession and enjoyment of the suit property. The learned Judge has proceeded to hold that the plaintiffs have not produced sufficient proof either in the form of oral or documentary evidence to establish that they have been in possession of the property as a cultivating tenants. The learned Judge has held as follows:

"Further, the appellants have not shown that they could come under the definition of 'cultivating tenants' as defined under Section 2(aa) of the Tamil Nadu Cultivating Tenants Protection Act, 1955. Even otherwise, the suit praying for a decree of injunction, cannot be maintained as provided under Section 6 of the said Act"

6. After disposal of the above Second Appeal, the revision petitioners have filed an application before the Record of Tenancy Officer (Madurai North Tahsildar) to record them as cultivating tenants. The Record of Tenancy Officer by his order dated 04.12.2009 has observed that the petitioners were not entitled to declare as cultivating tenants and had proceeded to declare that the respondents 1 to 5 are cultivating tenants. This order was taken up on challenge to the Deputy Collector, Madurai. The Deputy Collector, Madurai by his order dated 20.05.2011 was pleased to declare that the petitioners were the cultivating tenants in respect of the property. That order was challenged by the respondents 1 to 5 before the District Revenue Officer, who, by order dated 20.05.2013 was pleased to reverse the order passed by the Deputy Collector. It is challenging this order that the revision petitioners are before this Court.

7. It is strenuously argued by the learned counsel for the petitioners that the civil court has clearly held that the respondents 1 to 5 were not in possession of the property as cultivating tenants and therefore, in the light of the above finding, the order passed by the Revenue Divisional Officer, granting cultivating tenants rights to the respondents 1 to 5 is totally wrong. He further pointed out that the father of the respondents 1 to 5, who according to the respondents were the original cultivating tenants had never contributed his physical labor since he was working as a Peon in a school. Therefore, he would argue that the respondents 1 to 5 did not qualify to the definition of Cultivating Tenant under the Act.

8. Per contra, the learned counsel appearing for the respondents 1 to 5 would submit that they have produced the official gazette notification in which their father Perumal Konal has recognized as



cultivating tenant and further they have produced adangal receipt with reference to pasaly 1385 which was of the year 1975 and therefore, having proved they are in possession of the property as cultivating tenants, the authorities were right in recording them as cultivating tenants.

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9. Heard the learned counsels and perused the record.

10. The Civil Court is right in holding that the respondents 1 to 5 were never in possession of the property as cultivating tenants. The issues have been specifically framed by the civil court as to whether the alleged possession of the suit property by the respondents 1 to 5 was in the capacity as the cultivating tenants and the issues have been answered against them. In the light of the said categorical finding by the civil court and after perusing the evidence, it is not known as to how the Revenue Divisional Officer has recorded the respondents 1 to 5 as the cultivating tenants.

11. Be that as it may, the revision petitioners who had come forward to have their names recorded as cultivating tenants on the basis of the lease agreement said to have been entered into between their father and the original owner Subba Naidu has also failed to prove the contentions. The revision petitioners are trying to fall upon the judgment and decree of the civil court holding that the respondents 1 to 5 are not the cultivating tenants in order to buttress their claim to be recorded as the cultivating tenants. It is well established principle of law a person has to come to court on the strength of his case and not on the weakness of the defence.

12. It is also brought to the notice of this Court by the learned counsel appearing for the landlord that the land is no longer agricultural in nature and is now a fallow land.

13. On the conspectus of all these factors, this Court is inclined to dismiss the Civil Revision Petition. Accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

CM



To
The District Revenue Officer,
Madurai.

+1 CC to M/s.M. PONNIAH, Advocate (SR-97494[F] dated 12/11/2019)

+1 CC to M/s.R. SENTHIL KUMAR, Advocate (SR-97626[F] dated
12/11/2019)

+1 CC to M/s.M. VENKATESAN, Advocate (SR-98043[F] dated
13/11/2019)

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