



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Second Appeal (MD) No.449 of 2017

and

C.M.P. (MD) No.9495 of 2017, 11556 of 2018

and 6826 & 6828 of 2019

1.Muthulakshmi

2.Sornakkalai : Appellants/Respondents/Defendants

-Vs-

Dhanalakshmi : Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, praying to set aside the judgment and decree dated 14.07.2017 in A.S.No.33 of 2016 on the file of the learned Subordinate Judge, Devakottai reversing the judgment and decree dated 07.02.2015 in O.S.No.85 of 2014 on the file of the learned District Munsif, Devakottai.

For Appellants

: Mr.VR.Shanmuganathan

For Respondent

: Mr.R.Sundar Srinivasan

JUDGMENT

The defendants in the suit in O.S.No.85 of 2014 on the file of the District Munsif, Devakottai, are the appellants in the above Second Appeal.

2.The brief facts that are necessary for the disposal of this Second Appeal are as follows:

2.1.The respondent in this Second Appeal, as plaintiff, filed the suit in O.S.No.85 of 2014 for permanent injunction restraining the appellants from interfering with her peaceful possession and enjoyment of the suit property. The suit property is an extent of 68 ares in Survey No.114 in D.Siruvaanur Village, Theralapoor Group, Devakottai Taluk in Sivagangai District. The suit was filed on the basis that the plaintiff is the owner of the suit property by virtue of a registered sale deed dated 21.09.1972. Stating that the suit property is in enjoyment of the plaintiff right from the date of purchase and that the defendants posed threat to the possession of the plaintiff, the suit came to be filed.

2.2.The appellants filed written statement claiming right as cultivating tenants in possession of the suit property. In the written statement, the appellants also raised a plea that the suit itself is not maintainable in view of Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act 10 of 1969. It is

admitted that the first defendant/first appellant is the sister of plaintiff and the second defendant is the husband of first defendant.

2.3. During the pendency of the suit, the appellants filed a petition in I.A.No.991 of 2014 in O.S.No.85 of 2014 under Order 7, Rule 11(d) of C.P.C. to reject the plaint as the suit is barred by law. The application was filed by relying upon Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act 10 of 1969. The said petition was allowed by the trial Court and the plaint was rejected by holding that the issue raised by the defendants that they are the cultivating tenants or not cannot be decided in the suit and that therefore, the suit is barred by Section 16A of the Act 10 of 1969. The trial Court also found that the bar of jurisdiction under Section 16A of the Act specifically refers to the exclusive jurisdiction of the Record Officer to decide the status of the defendants. Thus based on the order in I.A.No.991 of 2014, the suit was dismissed. Aggrieved by the judgment and decree of the lower Court rejecting the plaint in O.S.No.85 of 2014, the respondent preferred an appeal in A.S.No.33 of 2016 before the Sub Court, Devakottai. The appellate Court set aside the decree of the trial Court rejecting the plaint in O.S.No.85 of 2014. The appellate Court came to the conclusion that the defendants in the suit have not proved their possession over the suit properties and that no document or oral evidence is let in to prove the contention of the defendants. All issues based on pleadings and evidence with regard to the rights of the parties were considered by the lower appellate Court. The conclusion of the lower Appellate Court with regard to the scope of Order 7, Rule 11 C.P.C. vis-a-vis Section 16A of the Act 10 of 1969 was in favour of plaintiff and it was held that the suit is maintainable. As per Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act 10 of 1969, Civil Court shall not have jurisdiction in respect of matters which the Record Officers or the District Collector or other authorities empowered under the Act has to determine. No injunction can be granted by any of the Court in respect of any action that may be taken by an authority in exercise of the power conferred to him under the Act. The appellate Court has rightly held that the jurisdiction of the Civil Court to decide the question of title or possession is absolute and that the suit cannot be dismissed on the ground that an issue has been raised by the defendants claiming right as cultivating tenants. The appellate Court, of course, went further and gave a categorical finding that the defendants have not established their status as cultivating tenant before the Record Officer and that the petition filed before the Record Officer is still pending. Since no other document was filed by the appellants, the lower Appellate Court set aside the judgment and decree of the trial Court and restored the suit to be decided by the trial Court afresh in accordance with law. Aggrieved by the same, the defendants have preferred the above Second Appeal.

3. This Court admitted the Second Appeal on the following substantial questions of law.



"(1) Whether the first appellate court is right in holding that Section 16A of Tamil Nadu Agricultural Land Record of Tenancy Rights Act, 1969 will not be applicable to the present case, more particularly when the application to register the tenancy right is pending with Tahsildar, Devakottai and further where the lease/tenancy is supported by letter dated 08.11.1984 issued by the husband of Respondent/plaintiff herein acknowledging tenancy of Appellants/Defendants?

(2) Whether the First Appellate Court failed to see that ouster of civil courts jurisdiction under Section 16A is not dependent upon actual preexistence of an order of the record officer or even actual pendency of any proceedings before record officer?

(3) Whether the First Appellate Court failed to see that the suit is barred under Section 6 of Tamil Nadu Cultivating Tenants Protection Act, 1955 as no injunction shall be granted by any court in respect of any action to be taken in pursuance of any power to be conferred or under the Act?

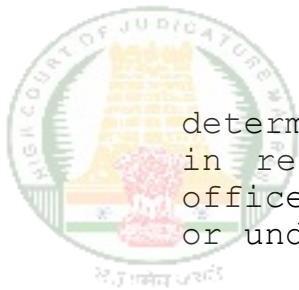
4. The questions of law framed can be answered by understanding the scope of Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act 10 of 1969 and the scope of Order 7, Rule 11 C.P.C.

5. It is well settled that the plaint can be rejected only on the grounds that are enumerated under Order 7, Rule 11 C.P.C. The appellants are relying upon Section 16-A of Tamil Nadu Act of 1969 and states that the suit is barred and that Civil Court's jurisdiction is ousted. The suit has been filed for permanent injunction against the defendants alleging that the defendants are posing threat to the plaintiff's possession. The cause of action also discloses that an attempt was made by the defendants on 30.07.2014 to interfere with the possession of the plaintiff.

6. The learned Counsel appearing for the appellants though submitted that the plaint does not disclose a cause of action, a reading of paragraph 10 and the cause of action paragraph, this Court is of the view that the cause of action disclosed in the plaint is sufficient for a suit filed for permanent injunction. The main objection that is raised by the appellants is that the suit itself is barred by law, in view of the specific bar created under Section 16A of Tamil Nadu Agricultural Record of Tenancy Rights Act namely Act 10 of 1969.

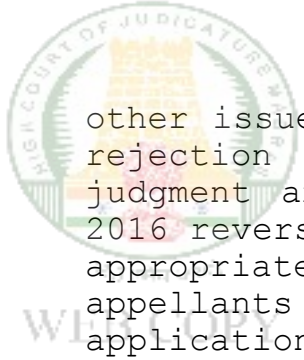
7. Section 16A of Act 10 of 1969 reads as follows:

"16-A Bar of jurisdiction of Civil Courts.-No civil court shall have jurisdiction in respect of any matter which the record officers, the District Collector or other officer or authority empowered by or under this Act has to



determine and no injunction shall be granted by any Court in respect of any action taken or to be taken by such officer or authority in pursuance of any power conferred by or under this Act."

8. The scope of Section 16A of the Act 10 of 1969 has been considered by a Full Bench of this Court in **Periyathambi Goundan v. District Revenue Officer** reported in **AIR 1980 Mad 180**. Having regard to the context in which the issue in the present appeal is raised, this Court is not inclined to elaborate further. The jurisdiction of the Civil Court to entertain a suit has to be considered in the light of the express language in Section 16A of the Act and the pleadings in the plaint. In the case of **Muniandi v. Rajangam Iyer** reported in **1976-1 Mad LJ 344** the position is made clear that a land owner may file a suit for injunction if a suit is for bare injunction, where the question is whether the plaintiff is the land owner and whether he has proved his lawful possession as on the date of the suit. No other question may arise for consideration. The scope of Order 7, Rule 11 C.P.C. is limited to the averments that are made in the plaint. The law is settled that the question whether the plaint disclose a cause of action or barred by law has to be decided only on the basis of the averments made in the plaint and not on the basis of the defence taken in the written statement. The scope of enquiry in a petition filed under Order 7, Rule 11 C.P.C. has to be considered in the present case having regard to the averments specifically made in the plaint. In the present case, it is not in dispute that the plaintiff has averred that she is the owner and in lawful possession of the property. In such circumstances, the contention of the defendants that the suit is barred by law in view of Section 16A of the Act can be decided only if the defendants' case in the written statement that they are the cultivating tenants is answered in their favour. A civil suit may involve the determination of several matters, some of which may be come in the exclusive jurisdiction of an authority functioning under a statute. A suit cannot be rejected unless the disposal of the suit solely rest on the determination of an issue which falls within the exclusive jurisdiction of the authorities functioning under the Act 10 of 1969. In such circumstances, the suit for injunction, based on the title may be disposed of, if the plaintiff proves her lawful possession. In that view of the matter, the question though raised by the defendants that the suit is barred by Section 16A of the Act, it cannot be said that the Court cannot grant relief without deciding the issue raised by the defendants. Upon satisfactorily proving the factum of possession as on the date of filing the suit, the plaintiff/the owner of the suit property is entitled to get a decree for injunction. As pointed out earlier, a petition filed under Order 7, Rule 11 C.P.C. cannot be decided or a plaint cannot be rejected on the basis of the defence that is raised in the written statement. Hence, this Court is of the view that the plaint in O.S.No.85 of 2014 discloses cause of action and that plaint cannot be rejected merely by citing Section 16A of Act 10 of 1969. Only when the plaintiff fails to establish possession the



other issues raised by the defendant need to be considered. Hence, rejection of the plaint by the trial Court is improper and the judgment and decree of the lower appellate Court in A.S.No.33 of 2016 reversing the decree of the lower Court in O.S.No.85 of 2014 is appropriate. The lower appellate Court was of the view that the appellants have not let in any evidence when they filed an application under Order 7, Rule 11 of C.P.C. The Court is confined to the limited issue whether the ingredients of the Order 7, Rule 11 C.P.C. is satisfied based on the averments in the plaint. It is not necessary at that stage to take into consideration the plea that was raised by the defendants in the written statement or any other evidence. In such circumstances, the findings of the lower appellate Court are unwarranted and the appellants should be given reasonable opportunity to put forth their contentions.

9.As a result, this Second Appeal is dismissed and the suit in O.S.No.85 of 2014 is restored and the trial Court is directed to frame appropriate issues on merits and dispose of the suit on merits uninfluenced by any of the observation or findings of the lower appellate Court in A.S.No.33 of 2016 in its judgment dated 14.07.2017. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

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Sub Assistant Registrar(CS)

SRM

To

1.The Subordinate Judge,
Devakottai.

2.The District Munsif,
Devakottai.

Copy to:

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-78825[F] dated 31/07/2019)

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