

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11. 09.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition(NPD) No. 2446 of 2010

and
M.P.No.1 of 2010

Thiru Kathirvelu (died)

2. Muthulakshmi

3. Ravikumar

4. Rajachindambaram

5. Usharani

6. Shyamaladevi

7. Dhanaselvi

(Appellants 2 to 7 brought on record as LR's of
the deceased first appellant, viz., Kathirvelu,
vide Court order dated 03.07.2019 made in
M.P.Nos.1 to 3 of 2014)

... Petitioners

Vs

Tmt. Fathima Selvanathan (died)

2. Marry Joseph Selvanathan

3. Marry Angel Sundari Selvanathan

4. Sagaya Marry Silvia Daniel

(RR2 to 4 brought on record as LR's of the deceased sole respondent, viz., Fathima Selvanathan, vide order of this Court, dated 29.07.2020, made in CMP Nos. 27261, 27264 & 27268 of 2019)

... Respondents

Prayer : Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order dated 10.11.2008 passed in Ku.Vu.Pa.See.Ma.Tha.Pa.No.2/2008/Vu(4) on the file of the Tiruvarur District Revenue Officer-cum-Revision Petition Enquiry Officer (Tenancy right Record) Court, Tiruvarur.

For Petitioners : Mr.M. Thamizhavel

For Respondents : Mr.P. Paul Selvam,
for R2 to R4

ORDER

The Civil Revision Petition has been filed to set aside the order dated 10.11.2008 passed in Ku.Vu.Pa.See.Ma.Tha.Pa.No.2/2008/Vu(4) on the file of the Tiruvarur District Revenue Officer-cum-Revision Petition Enquiry Officer (Tenancy right Record) Court, Tiruvarur.

2. The revision petitioner has filed an application before the Special Tasildhar, (Record of Tenancy) Nannilam in R.T.R.No.2 of 2004 to register his name as a cultivating tenant in the petition mentioned properties in Survey Nos.13/5, 10/15 and 4/7. After enquiry, the learned Special Tasildhar (Record of Tenancy), Nanillam, has dismissed the application filed by the petitioner holding that the petitioner has not proved that he was cultivating tenant under Section 2(8)(1) of the Tamil Nadu Agricultural Lands Tenancy Rights Record Act. Since the respondent/landowner denied that the petitioner was not cultivating tenant under him, it is the duty of the petitioner to prove that he was the cultivating tenant under the said Act. Challenging the said order passed by the Special Tasildhar, the petitioner had filed an appeal before the Special Deputy Collector, Mayiladuthurai in R.T.R.A.P.No.3 of 2005. The Deputy Collector after hearing the arguments and perused the materials, allowed the appeal and set-aside the order passed by the Special Tasildhar. Challenging the said order passed by the Special Deputy Collector, Mayiladuthurai, the respondent/landowner filed a revision before the District Revenue Officer (Tenancy Right Records), Thiruvarur in Revision Petition No.2 of 2008. The District Revenue Officer after hearing the arguments, allowed the revision and set-aside the order passed by the Special Deputy Collector in R.T.R.A.P.No.3 of 2005 and restore the order

passed by the Special Tasildar (record of Tenancy) Nannilam in R.T.R.No.2 of 2004. Now, challenging the said order passed by the Revenue Divisional Officer (Tenancy Right Records) Court, Thiruvarur, the petitioner has filed the present revision before this Court.

3. The learned counsel for the revision petitioner would submit that the Village Administrative Officer, who gave the certificate to avail the loan with the Primary Agricultural Co-operative Bank Ltd., was examined as P.W.3 and he has clearly stated that the revision petitioner is cultivating the lands in Survey Nos.13/5, 10/15 and 4/7. Based on the certificate given by the Village Administrative Officer, the Primary Agricultural Co-operative Bank also granted agricultural loan, which clearly proves that the petitioner was cultivating the land, which was under his possession. During the trial proceedings, the respondent did not appear before the Special Tasildhar, Nannilam. The Special Tasildhar, Nannilam has not properly applied his mind while rejecting the application filed by the revision petitioner to record the tenancy right. Even the Government allotted Dry Relief Fund to the revision petitioner for cultivating the land in the above said survey numbers. The revision petitioner is a member in the Primary Agricultural Co-operative Bank Ltd, through which, the revision petitioner borrowed the agricultural

loan for cultivating the lands belonging to the respondent. Since the Special Tasildhar failed to consider the same and rejected the claim of the petitioner, the petitioner filed an appeal before the Special Deputy Collector, Mayiladuthurai in R.T.R.A.P.No.3 of 2005 and Special Deputy Collector rightly appreciated the entire evidence and set-aside the order passed by the Special Tasildhar and directed the Revenue Authorities to record the petitioner as cultivating tenant. Against which, the respondent/landowner filed revision before the District Revenue Officer and he has failed to consider the materials and set aside the order passed by the Special Deputy Collector, Mayiladuthurai. The District Revenue Officer failed to consider the evidence of the Village Administrative Officer and also the certificate issued by the Village Administrative Officer and the loan granted by the Primary Agricultural Co-operative Bank and also the evidence of the revision petitioner that the land owner never used to give receipt for the payment of the rent and therefore, the order passed by the learned District Revenue Officer is liable to be set-aside.

4. The learned counsel for the respondent would submit that though the petitioner filed an application before the Special Tasildhar (Record of Tenancy) to record him as a cultivating tenant, he has not proved the fact that he has taken the land from the respondent for cultivation. The respondent

denied the tenancy and therefore, it is the duty of the petitioner to establish that he has taken the land on lease for cultivation. The revision petitioner has not established that he was in possession of the land on the date of application and cultivating the land by contributing his own physical labour or through any of the member of his family. The learned Special Tasildhar (Record of Tenancy) Nannilam has rightly dismissed the application filed by the petitioner in R.T.R.No.2 of 2004 and observed that the survey number has been altered in the certificate issued by the Village Administrative Officer as well as the Certificate issued by the Primary Agricultural Co-Operative Bank to the petitioner. Even the Village Administrative officer also admitted that on enquiry only he came to know that the petitioner was cultivating the above said lands and he has not stated that he has personally visited the land and issued the certificate based on the personal knowledge. Further he has not proved by producing copies of the Adangal for the relevant period that he is cultivating the land. Therefore, the District Revenue Officer, Nagapattinam rightly allowed the appeal filed by the respondent/landowner in Revision Petition No.2 of 2008 and set-aside the order passed by the Special Deputy Collector, Mayiladuthurai and held that the petitioner has not established that he was cultivating the land and therefore, there is no merit in the revision and the revision is liable to be dismissed.

5. Heard both sides and perused the materials available on records carefully.

6. The case of the petitioner(since deceased) is that the respondent(since deceased) is the land owner. The petitioner is the tenant contributing physical labour in cultivating the petition mentioned properties and the tenancy is oral. The petitioner was paying rent to the land owner and the payment of the rent was received and the respondent did not deny that she has not received any amount for lease. One Peter S/o. Soosairaj claimed to be power agent of the respondent, wanted the petitioner to surrender the tenancy so that the lands could be sold and the petitioner did not agree and hence, the said Peter has started making arrangements to enter forcibly into the petition mentioned properties and take possession. Therefore, the petitioner has filed application for recording his name as cultivating tenant before the Special Tasildhar, Nannilam in R.T.R.No.2/04. In that case, the respondent did not file any counter and he did not even cross examine the P.W.1. Without proper enquiry and without following any of the procedure as contemplated in the Act, Special Tasildhar dismissed the application filed by the petitioner. Though the appeal filed by the petitioner before the Special Deputy Collector, Mayiladuthurai, was allowed, the District Revenue Officer, Nagapattinam,

set-aside the order passed by the Special Deputy Collector, Mayiladuthurai.

Hence, the petitioner has filed the present revision.

7. The case of the respondent(since deceased) is that he is the owner of the property and he is cultivating the land through power of attorney and the petitioner(since deceased) only managed the property and the respondent never let out the land to the petitioner. The petitioner never cultivated the land as tenant and he never paid any lease amount either by cash or by agricultural products. Except the certificate given by the Village Administrative Officer, the petitioner has not filed any other documents to show that he has been cultivating the land. The respondent stoutly denied that the petitioner is the tenant and cultivating the land and he is entitled to register his name as tenant in Record of Tenancy Right Register .

8. A careful perusal of the entire records, it could be seen that though the petitioner has claimed him as cultivating tenant and he has also filed application before the Tasildhar (Record of Tenancy Rights Officer), Nannilam in R.T.R.No.2 of 2004 to record his name as cultivating tenant, in that application, the respondent denied the claim of the petitioner. Though the counsel for the petitioner submits that P.W.1 was not cross examined by

the respondent, a reading of the order passed by the said Tashildar, it is seen that on the side of the petitioner, 3 witnesses were examined and they were cross examined. Though P.W.1 was not fully cross examined, subsequently, she has cross examined the other witnesses. Therefore, the contention of the petitioner that the respondent has not participated in the trial and not cross examined the witnesses is not acceptable. Even otherwise, it is for the petitioner to prove his case and he cannot take advantage of the loopholes left by the respondent. Further on a reading of the entire records, it is seen that except the certificate issued by the Village Administrative Officer and the certificate issued by the Primary Agricultural Co-operative Bank, the petitioner has not produced any other records to show that he was cultivating the land belongs to the respondent as a tenant. The respondent stoutly denied that she never let out the land to the petitioner to cultivate the land and the petitioner was in possession as a cultivating tenant. From the careful reading of the certificate issued by the Village Administrative Officer, it is clearly stated that through enquiry he came to know the fact that the above said survey numbers are under the cultivation of the petitioner and that the certificate was issued only for obtaining the loan from the Primary Agricultural Co-operative Bank. Even the certificate issued by the Primary Agricultural Cooperative Bank also shows that based on the certificate

issued by the Village Administrative Officer, they sanctioned the loan. Therefore, except these two documents, no other materials has been produced to show that the petitioner was cultivating the land of the respondent as a cultivating tenant. The Village Administrative Officer has not even stated in the certificate that he visited the property physically and also the Revenue Records that the petitioner was in possession of the property and cultivating the land as tenant. It is known principle that Village Administrative Officer used to record the Adangal for every agricultural land, which is under cultivation, i.e., what are the crops have been cultivated as each fasali and who are the land owners and who are cultivating the said lands for the particular fasali and the same have to be sent to the Tahsildhar through Revenue Inspector. However, the certificate issued by the Village Administrative Officer does not reflects the same and he has stated that on enquiry, he came to know that the above said survey numbers said to have been cultivated by the petitioner. Further, the Tasildhar has clearly stated that the survey number has been altered in both the certificates issued by the Village Administrative Officer and the Primary Agricultural Co-operative Bank,. Therefore, even during the examination before the Special Tahsildar, the Village Administrative Officer has not stated that he personally visited the property and the petitioner was in possession of the property and he was

cultivating the land as a cultivating tenant. He has not stated whether he is paying the rent regularly to the land owner. Therefore, under these circumstances, the evidence of the Village Administrative Officer is not acceptable and the Certificate issued by the Village Administrative Officer and the certificate issued by the Primary Agricultural Co-operative Bank is not genuine document and it is only created for the purpose of getting loan from the Primary Agricultural Cooperative Bank. Therefore, under the circumstances, the certificates issued by the Village Administrative Officer and the Primary Agricultural Co-operative Bank alone are not sufficient to decide that the petitioner was cultivating the land. The petitioner has to prove the same by producing other revenue records. Even P.W.2 has not stated that what crops have been cultivated by the petitioner and he simply stated that one time he paid the lease amount for the petitioner to the power agent of the respondent and even though he received the amount, he has failed to issue receipt and when P.W.2 enquired the same, he replied that since the tenancy is oral, there is no need to give receipt. However, it is for the petitioner to receive the receipt. If the owner refused to give receipt, the petitioner ought to have demanded for receipt in the manner known to law. But, the petitioner has not given any evidence that he has taken steps to receive the receipt for the payment of the lease amount. Therefore, under the

circumstances, the evidence of the P.W.2 is not helpful to this Court. The respondent has stoutly denied the relationship and also denied the possession of the land by the petitioner and the receipt of lease amount. It is for the petitioner to prove that he has taken the land on lease and he was cultivating the land and he is paying the lease amount to the respondent regularly. The petitioner has not filed revenue records or any other documents to show that he has taken the land on lease and he was cultivating the land by contributing his own physical labour, or any of the member of the family. Under this circumstances, this Court finds that, since the petitioner has miserably failed to make out the case to register his name as cultivating tenant, the District Revenue Officer rightly allowed the appeal filed by the respondent herein and set aside the order passed by the Special Deputy Collector, Mayiladuthurai. Hence, I find no merit in the revision and the revision is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

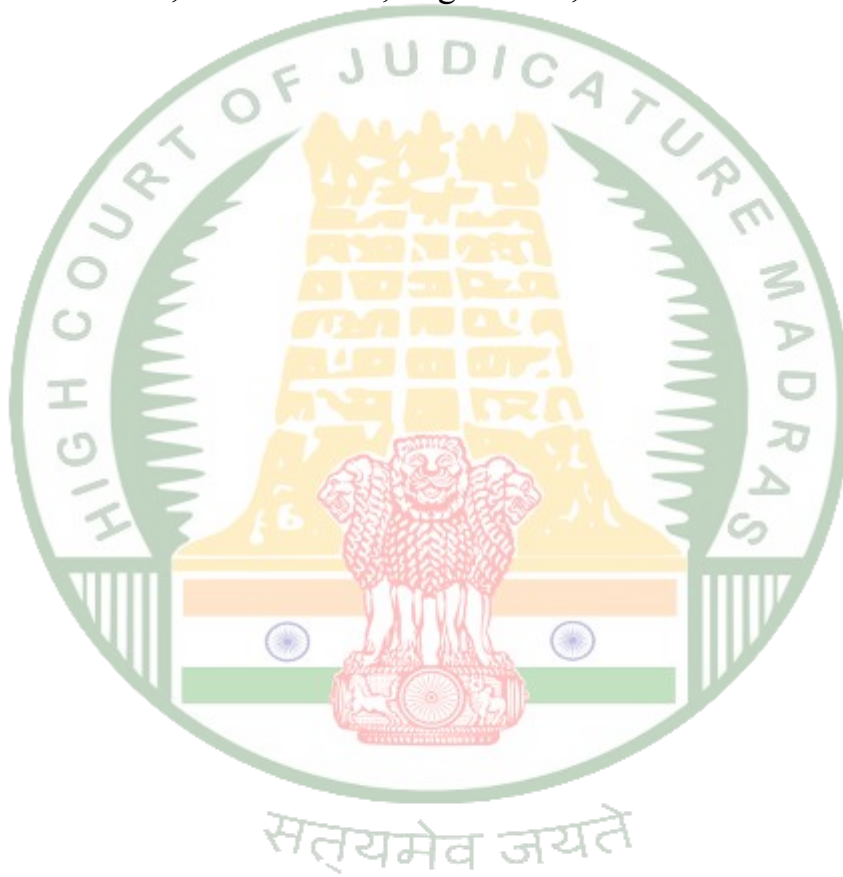
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11.09.2020

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To

1. The District Revenue Officer, Nagapattinam
2. The Special Deputy Collector, Mayiladuthurai,
3. The Special Tasildhar(Record of Tenancy) Nannilam.
4. The Section Officer, V.R. Section, High Court, Madras



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C.R.P.NPD No.2446 of 2010

P. VELMURUGAN, J.

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C.R.P.(NPD) No. 2446 of 2010
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