

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.09.2020

PRONOUNCED ON: 23.09.2020

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.NO.88 OF 2010

AND

C.M.P.NO.1074 OF 2020

1.Nagalakshmi (died)
2.V.Singaravelu (died)

... 1 & 2 Respondents/
Appellants/Defendants

3.Jayaraman
4.Jothikumar
5.Chandrasekaran
6.Pandimeena
7.Thirunavugarasu
8.Radhakrishnan
9.Pandian
10.Thilagavathi
11.Dhandapani

... 3 to 11 Appellants/
LRs of the 1 & 2 Appellant

(Appellants 3 to 11 brought on record as Lrs of the deceased appellants 1 and 2 vide order dated 08.01.2020 made in C.M.P.No.18730 & 18733/2019 in S.A.No.88/2010)

/versus/

Sivaprakasam
Rep.by his Power Agent and his
wife Senthamil Selvi

... Respondent/
Respondent/Plaintiff

Prayer:

Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree passed in O.S.No.440 of 2004 dated 08.08.2008 on the file of the District Munsif Court, Nagapattinam, as confirmed in A.S.No.54 of 2008 dated 15.09.2009 on the file of the Sub Judge, Nagapattinam.

For Appellants : Mr.P.V.S.Giridhar
For Mr.K.Raja Srinivas

For Respondent : Mr.K.Chandrasekaran

J U D G M E N T

(The case has been heard through video conference)

This Second Appeal is against the concurrent findings of the Courts below. The legal heirs of the defendants are the appellants herein. Since there are two earlier proceedings between the parties in respect of the suit property, parties are described by name, wherever required and as per their litigative status in the respective proceedings, as far as possible.

2. The property which is the subject matter of this appeal is one acre wet land in Seeyathamangai Village, Nannilam Taluk, Nagapattinam. It was assigned to one Murugaiyan an Ex-Serviceman, under the Tamil Nadu Land Reforms Act. He remained unmarried and died issueless. During his life time, Nagalakshmi, who is the first defendant/first appellant herein, filed O.S.No.197/1987 for the relief of permanent injunction in respect of this property against Murugaiyan, Ranganathan and Sivasami. In that suit Nagalakshmi pleaded that Murugaiyan after retirement from Army was living with her family and he was taken care by her and her family members. On 01/08/1974, he leased out the suit property to her and handed over the possession to her. She and her son paid the balance instalments for the property and enjoying it. Further, Murugaiyan also executed a will dated 18/02/1975 in favour of her son. While so, at the instigation of others he gave a petition to the Legal Service Authority as if she is in possession of the property illegally. In that proceedings Nagalakshmi agreed to hand over the possession to Murugaiyan if he repay Rs.3,500/- which she spend towards the payment of tax, instalments and interest to the instalments. Without paying the money spend for the property, Murugaiyan trying to forcefully take possession of the property.

3. The suit was contested by Murugaiyan denying the execution of lease deed in favour of the Nagalakshmi. It was alleged as a fabricated document. However, the Courts held that the lease deed marked as Ex.A-20 in O.S.No.197 of 1987 is valid and the plaintiff is in lawful possession of the property. The trial Court granted the relief of injunction in favour of the plaintiff. On appeal, same was confirmed by the First Appellate Court in A.S.No.6 of 1990.

4. Aggrieved by the judgment and decree, Second Appeal in S.A.No.859/1992 was filed by Murugaiyan and others against Nagalakshmi. Pending second appeal, Murugaiyan died. This Court confirmed the findings of the Courts below. Thus, the possession of the suit property in favour of the Nagalakshmi reached

finality on 31/10/2002 when the Second Appeal No.859/1992 got dismissed.

5. Meanwhile, soon after the demise of Murugaiyan, Singaravelu the second appellant herein filed O.S.No.392/1992 for declaration that the estate of Murugaiyan devolves on him. In that suit, Singaravelu alleged that he and Murugaiyan are brothers. The suit property is under lease with his wife (Nagalakshmi). Due to some misunderstanding Murugaiyan filed suit against his wife. However, on the death of Murugaiyan on 15/11/1991, under the Hindu Succession Act, 1956 he is the legal heir of the deceased Murugaiyan.

6. In the said suit, O.S.No.392 of 1992, Mr.Ranganathan was the sole defendant. He contested the suit denying the relationship of Singaravelu and Murugaiyan. It was contented that they both belong to different community. During the life time, Murugaiyan executed a will in favour of Sivaprakasam S/o.Ranganathan (Ex.B-3) and got it registered. The defendant contented that under this will dated 02/07/1991 Murugaiyan has bequeathed the suit property in favour of Sivaprakasam absolutely, reserving life interest to defendant (Ranganathan). The Trial Court dismissed this suit filed for declaration. The Trial Court also held the will Ex.B-3 relied by Ranganathan was not proved, however, referring the earlier will dated 18/02/1975 of Murugaiyan which was relied by the plaintiff (marked as Ex.A-7) it held that Singaravelu is not the blood brother of the deceased Murugaiyan since Murugaiyan has described Singaravelu as his first cousin and not blood brother.

7. Aggrieved by the dismissal of his declaration suit (O.S.No.392 of 1992), Singaravelu filed A.S.No.332/1995. The defendant Ranganathan filed cross appeal in respect of the observation that Singaravelu (plaintiff) was first cousin of the deceased Murugaiyan and the observation regarding the last will dated 02/07/1991 of Murugaiyan as not proved.

8. In that appeal, the first Appellate Court after tracing the genealogy of Murugaiyan and Singaravelu through the other documents relied by the parties held that even if it is accepted that Singaravelu and Murugaiyan belongs to same community, there is no evidence to show they are first cousin. Further, there are evidence to show that the Murugaiyan had blood sister and Murugaiyan father had blood brothers. While so, Singaravelu (plaintiff) claiming to be a distant agnate cannot be declared as legal heir of the deceased Murugaiyan. Regarding, the proof

of the will dated 02/07/1991, the Appellate Court held that Ranganathan (defendant) has proved the will through the attesting witnesses D.W-2 and D.W-3 and the scribe to the will examined as D.W-4. So, while dismissing the appeal preferred by Singaravelu, the cross objection was allowed holding that the will of Murugaiyan dated 02/07/1991 is true and valid. The Lower Appellate Court held that the trial Court erred in rejecting the will on minor discrepancies found in the evidence of P.W-2 to P.W-4.

9. In the above said factual background, claiming absolute right over the property based on the will of the Murugaiyan dated 02/07/1991, after the demise of his father Ranganathan on 23.12.2003 who had life interest. O.S.No.440/2004 which is the subject matter of the instant appeal, filed by the Sivaprakasam against Nagalakshmi (plaintiff in O.S.No.187/1987) and her husband Singaravelu (Plaintiff in O.S.No.392/1992) for recovery of possession, arrears of rent and mense profit and other incidental reliefs.

10. The defendants in their written statement contended that, the suit for recovery of possession is not maintainable. They are protected under cultivating tenants Act. Only the Revenue Court has jurisdiction over this dispute. Due to pendency of civil proceedings the request to register them as cultivating tenants is kept pending. The second appeal against the judgment and decree passed in A.S.No.332/1995 is pending in High Court. Hence the present suit is bad for lis pendens. The plaintiff cannot have the advantage of Section 14 of the Limitation Act. The finding of the civil Court in the suit filed by the second defendant (Singaravelu) against the father (Ranganathan) of the present plaintiff will not save the limitation for the present suit. The relief for arrears of rent and mense profit cannot be combined together and sought in one suit. The relief does not fall under Transfer of Property Act.

11. Based on the pleadings, the trial court framed the following issues:

1. Whether the plaintiff is entitled for the relief of recovery of possession of the suit properties from the defendants?

2. Whether the plaintiff is entitled for Rs.11,250/- from the defendants towards lease arrears?

3. Whether plaintiff is entitled for future profits as prayed for by him?

4. To what other relief if any?"

Additional issues:

"1. Whether this Court has jurisdiction to try this suit?

2. Whether notice of plaintiff dated 07.03.2003 is in accordance with Section 106 of Transfer of Property Act and whether it is valid?"

12. The trial Court held that the suit is maintainable and the subject matter does not fall within the jurisdiction of Revenue Court. It held that the lease was duly terminated by issuing notice of termination Ex.A-10 under section 106 of the Transfer of Property Act by the father of the plaintiff on 07/03/2003. Therefore, the suit was decreed as prayed.

13. The First Appellate Court, after considering the rival submissions and various decisions of this Court as precedents, held that in the earlier suit for injunction filed by Nagalakshmi/first appellant herein, nowhere the Courts have held Nagalakshmi as a cultivating tenant under the lease deed executed by Murugaiyan. They have only held that the lease deed of Murugaiyan dated 01/08/1974 in favour of Nagalakshmi is valid and Nagalakshmi is entitled for injunction. On facts, based on the oral testimony of the witnesses, the Lower Appellate Court has held that Nagalakshmi is not a cultivating tenant as defined under the statute. In fact, the first defendant in the cross examination has deposed that she contest the present suit claiming title over the property and not as tenant. Hence, the Lower Appellate Court dismissed the appeal with costs confirming the judgment and decree passed by the trial Court.

14. Aggrieved, the Second Appeal is filed on the grounds such as will (Ex.A-1) referred by the plaintiff not proved in terms of Evidence Act. There is a violation of assignment condition, hence the title of Murugaiyan itself is defective, the plaintiff cannot derive better title than the paramount title holder. The provisions of Cultivating Tenant Protection Act not properly considered by the Lower Court. P.W-1, the wife of the plaintiff is not a competent to file the suit and depose.

15. When the Second Appeal was taken up for consideration, this Court has formulated the following substantial questions of law:-

"1. Whether the Courts below has failed to consider Section 3 of the Tamil Nadu Cultivating Tenants Protection Act, 1955, would oust the jurisdiction of the civil Courts and granted a decree for recovery of possession of the agricultural land in possession of the cultivating tenants, contrary to Tamilnadu Cultivating Tenants Protection Act, 1955?

2. Whether the Courts below has erred in saying that the suit is not maintainable for the non-compliance of Section 106 of Transfer of Property Act?

3. Whether the Courts below had not failed to see that the Special Law i.e.. Tamilnadu Cultivating Tenants Protection Act, 1955 would prevail over the general term?"

16. The Appellants when the matter was taken up for final disposal, filed written submissions along with an application in C.M.P.No.1074/2020, to consider few more questions of law as additional questions of law. The learned counsel for the appellant beside written submissions made oral submission through video conference and placed citations in support of his arguments.

17. The written submission and citations relied by the learned counsel for the appellant reads as below:-

"1. The plaintiff has not proved his title in the manner known to law. He is relying on the will dated 02.07.1991 of Murugaiyan without examining any of the attesting witnesses as required u/s.68 of Evidence Act. सत्यमेव जयते

2.The Burden of Proof is on the plaintiff to prove all ingredients of this case.

3. The weakness in the Defendant's case does not dilute the Burden of proof on the plaintiff if any.

4. The plaintiff has averred that the Murugaiyan who was the executor of the will died on 15.11.1991 and that the defendant has not paid any installments or any rent.

As such the possession of the defendant became adverse to the plaintiff immediately upon the death of Murugaiyan on 15.11.1991. In para 7 of his plaint, Plaintiff claims that proceedings arising out of O.S.Nos.197 of 1987 and 392 of 1992 were pending, the period has to be excluded under Section 14 of the Limitation Act. It is well established that Section 14 applies only in cases where the present plaintiff was the plaintiff in the earlier case. But admittedly the plaintiff was not a party to the said cases and his father was only a Defendant in those cases (1942 CJ (Mad) 74 and Delhi State Industrial & Infrastructure Development Corporation Limited Vs. Road Master Industries India (P) Ltd.)

5. Under Section 3 of the Limitation Act the Court is bound to dismiss the suit although limitation has not been set up as a defense. Similarly Section 103 of Civil Procedure Code.

6. The plaintiff claims that the will had already been proved in O.S.No.392/1992 between the plaintiff and his father Renganathan and that the said finding in the Judgments amount to a Judgment in Rem Under Section 41 of the Evidence Act. Sec 41 of Evidence Act applies only to probate proceedings and not to title suits (2007) 6 SCC 737 and (2003) CTC 229.

7. Its only Sec 40 of Evidence Act which applies to the present case. Moreover the plaintiff is not claiming under his father who was a party to O.S.No.392 of 1992 but claiming under will of Murugaiyan as such he has to prove the will by independent evidence in the manner known to law which he has admittedly failed to do. Hence the Second Appeal may be allowed."

Citations:

Plaintiff has burden of proving his case Section 101 of Evidence Act:

1. Ramachandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (Dead) and other [(2007) 6 SCC 737]

2. Saraswathy, Muthusenapathy and Angairkanni Vs. Tamizharasi and Vanathi [Manu/TN/0819/2003]

In applicability of Section 41 of Evidence Act

3. Satrucharala Vijaya Rama Raju Vs. Nimaka Jaya raju & Ors
Bar of Limitation (Inapplicability of Section 14 of Limitation Act)

4. Gali Rama Naidu and Another Vs. Muppala Gangi Reddi & Ors [1942 CJ (MAD) 74]

5. Delhi State Industrial and Infrastructure Dev. Corp.Ltd. Vs. Road Master Industries India Pvt.Ltd.

6. S.V.Krishnier Vs. A.R.Ramachandra Iyer and ors [AIR 1961 MAD 197]

Contention of the Respondents Counsel:-

18. The Learned Counsel for the respondents submitted that the first appellant admitting Murugaiyan title over the suit property, filed suit in O.S.No.197/1987 for injunction based on the document dated 01.08.1974, claiming it is a lease deed executed by Murugaiyan. She also relied upon the will executed by Murugaiyan in favour of her son Jothikumar. In that suit, she obtained injunction and same was confirmed by the First Appellate Court and Second Appellate Court. The suit came to end on 31/10/2002, when the Second Appeal No.859/1992 was disposed in her favour.

19. The respondent Sivaprakagasam claims right over the property based on the will of the Murugaiyan dated 02/07/1991. The validity of the said will was tested in O.S.No.392/1992 and A.S.No.332/1995. While the trial Court held the truth and genuineness of this will not proved, the said finding was reversed by the First Appellate Court in the cross objection preferred by the father of the respondent. The judgment Ex.A-5 is a judgment in rem, which has declared the will of Murugaiyan dated 02/07/1991 is true and genuine. Since, the will was executed at Nannilam, Nagapattinam District, no probate of will is required. Any reference to Section 41 of the Evidence Act and probate is misconceived.

20. Further, the appellants never questioned the genuinenesses of the will in their written statement or while cross examining P.W-1 through whom the will Ex.A-1 was marked.

When the genuineness of the will already proved before the competent Civil Court in the manner prescribed under law, it is needless to prove it again in the subsequent proceedings more particularly, when the contesting parties were already privy to the earlier proceedings.

21. The Learned Counsel for the Respondent would also submit that, the earlier two proceedings initiated by the first and second appellants separately one after another and the new grounds raised for the first time in the Second Appeal without pleadings and contrary to their earlier pleadings in the previous litigation would clearly show their intention to grab the property of the Ex-serviceman, who got assignment from the Government for his service to nation. The said assignee fought against these appellants to get back his property. Mentioning the pendency of the litigation had bequeathed the property to the respondent herein through his will dated 02.07.1991.

22. The injunction suit initiated by the first appellant in the year 1987. The declaration suit claiming title over the property was initiated by the second appellant in the year 1992. The first appellant suit reached finality on 31.10.2002, on disposal of the Second Appeal No.859/1992. The second suit for declaration filed by the second appellant reached its finality on 09.09.1996, immediately on dismissal of A.S.No.332/1995. No Second Appeal filed by the appellants. They falsely pleaded in their written statement that the second appeal is filed by them and is pending to claim the defence of lis pendens which is not factually correct. Only after the disposal of the Second Appeal No.859 of 1992, termination notice Ex.A-10 was issued and the suit was filed on 09.09.2004 well within the period of 12 years, which is prescribed under the Limitation Act in Article 67.

23. The following judgments were cited by the learned counsel for the respondents to buttress his submissions:

(i). Pathan Murtazakhan Dadamkhan and others. Vs. Pathan Pirkhan Amdumiyar reported in 1993 Supp (2) Supreme Court Cases 518.

"It is not necessary to express any opinion on the correctness of the judgment of the Division Bench of the Gujarat High Court. Suffice it to say that the appellants had not specifically pleaded that the appellants are deemed tenants by operation of Section 2-A of the Act. What was pleaded in the written statement was that initially the appellants' predecessor was continuing as cultivating tenant. But by virtue of the

mortgage, their tenancy right merged in the right as usufructuary mortgagee. On redemption pre-existing tenancy rights get revived. But that plea was not pursued. A new plea based on Section 2-A was sought to be raised for the first time in the High Court. The High Court rightly did not permit the appellants to raise the plea of a deemed tenancy as the said claim needs investigation based on factual foundation which was lacking."

(ii). Nagarmal Baijnath Vs. Commissioner of Income Tax reported in 1993 Supp (2) Supreme Court Cases 520.

"The point on which the High Court allowed the Second Appeal was not an issue before the two Courts below. We are of the view that in the Second Appeal it was not open to the High Court to have gone into a question which was neither pleaded nor raised or dealt with by the Trial Court and the lower Appellate Court. The High Court, in the facts and circumstances of this case, exceeded the jurisdiction vested in it under Section 100, Civil Procedure Code."

(iii). Muddasani Venkata Narsaiah (dead) through Legal Representatives Versus Muddasani Sarojana reported in (2016) 12 SCC 288.

"15. It is settled law that denial for want of knowledge is no denial at all. The execution of the sale deed was not specifically denied in the written statement. Once the execution of the sale deed was not disputed it was not necessary to examine Buchamma to prove it. The provisions contained in Order 8 Rule 5 require pleadings to be answered specifically in written statement. This Court in Jahuri Sah & Ors. v. Dwarika Prasad Jhunjunwala AIR 1967 SC 109 has laid down that if a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of existence of fact, not even an implied denial. Same decision has been followed by Madhya Pradesh High Court in Dhanbai D/o Late Shri Cowash v. State of M.P. & Ors. 1978 MPLJ 717. The High

Court of Madhya Pradesh in Samrathmal & Anr. v. Union of India, Ministry of Railway & Ors. AIR 1959 MP 305 relying on P.L.N.K.L. Chettyar Firm v. Ko Lu Doke AIR 1934 Rang 278 and Lakhmi Chand v. Ram Lal AIR 1931 All. 423, had also opined that if the defendant did not know of a fact, denial of the knowledge of a particular fact is not a denial of the fact and has not even the effect of putting the fact in issue.

16. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW.1 and PW-2 have not been cross examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal & Ors. v. Debnath Bhagat & Ors. AIR 1963 SC 1906. This Court repelled a submission on the ground that same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the court would presume that the witness account has been accepted as held in M/s. Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. & Anr."

Finding:-

24. Though some of the submissions made by the counsel for the appellants were not part of the pleadings and tangential to the pleadings made by the appellants in their previous litigation, for sake of completion those contentions are also answered along with the substantial questions of law formulated.

25. Regarding the will marked as Ex.A-1. It was subject matter for consideration in the earlier suit filed by the Second Appellant. In the suit, O.S.No.392/1992, the will was marked as Ex.B-3. The attesting witnesses and the scribe were examined in that case as D.W-2 to D.W-4. Highlighting the discrepancies in

their evidence, the Trial Court held the will not proved. In the cross objection filed before the First Appellate Court in A.S.No.332/1995, the Appellate Court re-appreciated the evidence and has held that the will is true and genuine. Proved as required under law. The Second Appellant is the party in that proceedings.

26. The learned counsel for the appellant referring section 41 of the Indian Evidence Act contended that, since the will Ex.A-1 not probated, the finding in the earlier proceedings will not be a judgment in rem. This submission is misconceived as submitted by the learned counsel for the respondent. Section 68 of the Indian Evidence Act, deals about proof of execution of document required by law to be attested. Will is one such document which requires attestation. In the previous proceedings, the will was subjected to test. One of the Appellants was party to that proceedings. In that proceedings while the Trial Court held the will not proved, on appeal the Appellate Court held the will proved. Just because, the said party along with his wife is now contesting the case, he or his wife cannot plead that will has to be proved again and the earlier judgment is not a judgment in rem. If this argument is accepted, then whenever a will is relied by a party, he should trouble the attesting witnesses every time to mount the witness box and depose. This will become an endless process and that is not the intention of the law makers. To avoid such difficulty, Section 41 of the Evidence Act say that a final judgement, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, confers upon a person a legal character not against any specified person but absolutely, is relevant and such judgment, order or decree is conclusive proof.

27. Sections 40 to 44 of the Indian Evidence Act deals with relevancy of judgment of Courts of justice. Section 68 of the Evidence Act is under the chapter proof of documents. The applicability of Sections 40 to 43 of the Evidence Act, in the instant case can be well understood from the observation of the Supreme Court at paragraph No.10 of its judgement Satrucharla Vijaya Rama Raju -vs- Nimmaka Jaya Raju and others, (cited supra).

28. In an election petition filed under Representation of People Act, when the community of the successful candidate was questioned, the respondent contended that similar petition was filed by a different petitioner in the previous election and same was dismissed. Hence, that judgment will Act as res judicata for the present election petition. In the said contest, the Hon'ble Supreme Court considering Sections 40, 41, 42 and 43 of the Indian Evidence Act and observed that,

"An election petition under Section 80 of the Representation of the People Act, 1951 cannot be held to lead to an adjudication which declares, defines or otherwise determines the status of a person or a jural relation of that person to the world generally. It is merely an adjudication of a statutory challenge on the question whether the election of the successful candidate is liable to be voided on any of the grounds available under Section 100 of the Representation of the People Act, 1951. It is not an action for establishing the status of a person. It is not an action initiated by a person to have his status established or his jural relationship to the world generally established, to borrow the language of Spencer Bower. No doubt in E.P. 13 of 1983, the question was whether the election petitioner therein who alleged that the appellant before us was not qualified to contest as a candidate belonging to a Scheduled Tribe, in a constituency reserved for that tribe and to that extent, having relationship to the status of the appellant. In such an action under the Representation of the People Act, 1951 what is decided is whether the election petitioner had succeeded in establishing that the successful candidate belonged to a caste or community, that was not included in the Scheduled Tribes Order. In a case where the election petitioner failed to establish his claim, it could not be said that it amounted to a declaration of the status of the respondent in that election petition, the successful candidate and that such a finding on status would operate as a judgment in rem so as to bind the whole world. It is also not one of the judgments specifically recognized by Section 41 of the Evidence Act. It has been held that the challenge to an election is only a statutory right. An election petition is not a suit of a general nature or a representative action for adjudication of the status of a person. Even if we take it that the earlier judgment is admissible in the evidence, on that, no objection was raised even at the trial, it

could be brought in under Section 42 of the Evidence Act on the basis that it relates to a matter of a public nature or under Section 43 of the Evidence Act. In either case, not being inter-parties, the best status that can be assigned to it is to say that it is of high evidentiary value, while considering the case of the parties in the present election petition."

29. Unlike suit of general nature, the Election petition under Representation of People Act is sui generis in nature. Nevertheless, the judgement in the previous case has high evidentiary value. In the instant case, in the previous suit one of the appellants was a party. The other appellant herein is none other than the wife of that party. Therefore, the contention of the learned counsel for the appellant and the judgments relied are not of much help for the appellants.

30. The Learned counsel for the appellant referring Section 101 of the Evidence Act contended that, the recovery of possession to be decided on the strength of the title of the plaintiff and not on the weakness of the defendant. To this preposition, the Counsel rely upon the judgment of the Hon'ble Supreme Court in Ramachandra Sakharan Mahajan Vs. Damodar Trimbak Tanksale(Dead) and other reported in 2007 (6) SCC 737.

31. The analysis of the facts and documents, this Court find that, the Courts below had based their decision on the documents relied by the plaintiff. One such document is Ex.A-1 will. The validity of it was already tested in the earlier suit and held to be valid. The defendants, though contend that they have filed Second Appeal against the findings in A.S.No.332/1995, they have not placed any documents to substantiate this plea.

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32. The inconsistency of their stand are noteworthy to hold their case unworthy. First, they claimed possession under a deed, payment of instalments and admitted to return the property if Murugaiyan pay back Rs.3,500/-. Second, they set-up title on themselves based on a fictitious claim as brother of Murugaiyan and thirdly, denied the very title of Murugaiyan. They have never specifically pleaded that they are cultivating tenants under Murugaiyan and they were put into possession to cultivate the suit schedule property. Neither, they have filed documents to implicitly infer they were cultivating tenants under Murgaiyan and his successor in title.

33. Section 2 (a) (ee) of the Tamil Nadu Cultivating Tenant Act defines a cultivating tenant, as a person who carry on personal cultivation or contributing his physical labour. The basic requirement to claim the status of cultivating tenant, the appellant should satisfy the definition of a cultivating tenant. This requirement not been satisfactorily placed before the Court. The appellants have relied on 7 documents which are marked as Ex.B-1 to Ex.B-7. None of these 7 documents are proof for their contribution of physical labour or proof for carrying on cultivation in the suit property. They are the certificate copy of the judgment in previous proceedings A.S.No.6/1990 and their representation to the Revenue Authorities, to register the First Appellant as cultivating tenant. Rest of the Exhibits are receipts issued in the name of Murugaiyan. No document to indicate that the appellants were really engaged in any cultivation using their labour. Mere application or representation to seek a status cannot confer the status. The request must be supported with evidence. The Lower Appellate Court, after considering the evidence available and the law governing the point, had rightly rejected the defence of cultivating tenant.

34. There is no proof to hold the appellants are cultivating tenants under Murugaiyan. Contrarily, material available to show they claimed title over the property based on a cancelled will dated 18/02/1975 executed by Murgaiyan and latter claimed declaration as legal heir of Murgaiyan and tried to inherit his estate. The Courts below has rightly concluded that, the appellants/defendants have not proved to be the cultivating tenants. They have not vacated the suit property, despite receipt of termination notice. Therefore, the suit filed for recovery of possession is maintainable before the Civil Court. Hence, the Substantial questions of law formulated are bound to be held against the appellants.

35. After the confirmation of the injunction decree in S.A.No.859/1992 on 31/10/2002, for recovery of possession under due process of law, the proceedings has been initiated. Before filing this suit, termination notice under Section 106 of the Transfer of Property Act, was issued. The notice issued by the father of the plaintiff, who had life interest over the property is legal and valid. The termination notice Ex.A-10 is dated 07/03/2003. The six months time to vacate expired on 07.09.2003. Mr.Ranganathan, the life interest holder died on 23/12/2003. The plaint was presented on 09/09/2004. The suit is filed by the son, who had the absolute interest, after the demise of his father. Hence the notice is valid and there is no point in canvassing that there is no valid notice.

36. Insofar as limitation is concerned under Article 67 of

the Limitation Act, the limitation for a suit for recovery of possession by a landlord from the tenant is 12 years. For recovery of arrears of rent under Article 52, the limitation period is 3 years. In this case, the plaintiffs have restricted their right for recovery of rental arrears for 3 years. The notice of termination in this case was issued on 07.03.2003 and the suit for recovery of possession is filed within 12 years. Section 14 of the Limitation Act not pressed into service by the respondent/plaintiff for the relief of recovery of possession or for the recovery of arrears of rent. Therefore, the said ground and the citations referred by the learned counsel for the appellant has no relevancy to the facts of the case in hand.

37. For the reasons stated above, the Substantial Questions of law formulated are held against the Appellant. As a result, the Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpl/bsm

To

1.The Sub Judge, Nagapattinam.

2.The District Munsif Court,
Nagapattinam.

Copy To

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

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.31097

SSD(CO)
CS/03/05/2021

S.A.No.88 of 2010
and C.M.P.No.1074 of 2020

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