



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.11.2020

PRONOUNCED ON: 01.12.2020

WEB COPY

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.976 of 2010

1. Jayakrishnan (died),
S/o.Ramasamy Reddiar,
Adhiredidiyur,
Gettisamudram Village,
Bhavani Taluk.
2. Leelavathi,
W/o.Late Jayakrishnan,
3. Dhamodharan,
S/o.Late Jayakrishnan.

Appellants 2 & 3 are residing at No.29C,
Adhiredidiyur, Gettisamudram Village,
Bhavani Taluk, Erode District.

Appellants 2 & 3 brought on record as LRs of the deceased sole
appellant viz., Jayakrishnan vide order of Court dated 28.08.2020
in C.M.P.No.1180 of 2020 in S.A.No.976 of 2010.(Dr.GJJ)

...Appellants/LRS of the Plaintiff

/versus/

1. Arappa Goundar,
S/o.Komarasamy Goundar.
2. Rangasamy,
S/o.Lakshmanan Chakkili.
3. Guruval,
W/o.Lakshmanan Chakkili.
4. Perumal,
S/o.Lakshmanan Chakkili.
5. Krishnammal,
D/o.Lakshmanan Chakkili.



6. Kuttiammal,
D/o.Lakshmanan Chakkili.

7. Perumal,
S/o.Chinnamaran Chakkili.

8. Duriammal,
D/o.Chinnamaran Chakkili.

9. Chandran,

10.Madhan,
Both sons of Chinnamaran Chakkili.

11.Ramal,
W/o.Chinnamaran Chakkili.

All residing at,
Kumbaravanikattukottai,
Sankarapalayam, Bhavani Taluk,
Erode District.

...Respondents/Defendants1,4 to 13

Prayer: Second Appeal is filed under Section 100 of C.P.C, praying against the judgment and decree dated 29.06.2001 made in A.S.No.123 of 99 (on the file of the Subordinate Court, Bhavani) modifying the judgment and decree dated 06.07.1999 made in O.S.No.19/96 (on the file of the Additional District Munsif at Bhavani).

For Appellants : Mr.T.Murugamanickam,
Senior Counsel,
for Zeenath Begum

For R1 : Mr.A.K.Kumarasamy,
Senior Counsel,
for Mr.S.Kaithamalai Kumaran

For R2 to 6 & 8 to 11 : No appearance

JUDGMENT

(The case has been heard through video conference)

This Second Appeal is preferred by the plaintiff in the suit. The relief sought in the suit is for recovery of possession and for past and future mesne profit in respect of the following two items of properties mentioned in the plaint schedule. Item No.1: Half share in A.C 8.05 land comprising G.S.No.268 at Sankaranpalayam Village, Bavani Taluk, Erode District and Item No.2: AC 8.17 land, well and channel comprising G.S.No.269 at



Sankaranpalayam Village, Bavani Taluk, Erode District.

2. **Plaint averment:**

One Kuppan was the original owner of the item Nos.1 and 2 of the suit schedule land. He had 4 sons by name Maran, Raman, Chinnamaran and Lakshmanan. During his lifetime, Kuppan along with his four sons borrowed Rs.5,000/- from one Thoppulan @ Thandavarar and executed a promissory note. Since, they failed to clear the debt, for recovery of the loan money, Thoppulan @ Thandavarar filed O.S.No.114/1966 (on the file of Sub-court, Erode) against the legal heirs of Kuppan and obtained money decree on 15/04/1967. For execution of the decree, E.P.No.7 of 1968 filed and the suit property was brought for auction. The plaintiff purchased the suit property in the Court auction held on 22.01.1970 for a sale consideration of Rs.3,010/-. The sale was confirmed on 21.03.1970. The first item property was taken delivery symbolically on 26.09.1970 and same was duly recorded. The second item property was taken actual delivery on 01/10/1971 and duly recorded.

3. The first defendant, being the friend of other defendants, created documents as if 1/4th share in the suit property was sold by Raman, S/o.Kuppan, to one Chittan on 09.06.1967. From Chittan, he has taken lease of 1/4th of the suit property and from the rest of the heirs of Kuppan, he has taken lease of the remaining 3/4th of the suit property through an unregistered lease deed dated 14.04.1967. Through these fabricated documents, claiming the status of cultivating tenant over the suit property filed O.S.No.484 of 1971. From 23.09.1971 the defendants are forcibly occupying the suit property, hence suit for recovery of possession and mesne profit.

4. **Written statement averment:**

The suit property was assigned to Kuppan by the Government in the year 1929. After the demise of Kuppan, his four sons orally divided the property among themselves and enjoying the same. One of his son Raman was enjoying 3.04 ¼ acres of land on the Northern side of S.F.Nos.268, 269. He sold that portion to one Chittan on 09.06.1967. From Chittan, the defendant has taken lease of the land and cultivating. The said Chittan, after leasing out his land, joined hands with the plaintiff and started disturbing his leasehold right. Therefore, he filed O.S.No.942/1973 (on the file of District Munsif Court, Gopichettipalayam) renumbered as O.S.No.108/1976 (on the file of Sub-Court, Bavani) for permanent injunction and obtained interim injunction against the plaintiff and others. In respect of the remaining 3/4th portion, the defendant had taken lease from the other legal heirs of Kuppan for a consideration of Rs.400/- p.a. In respect of the 3/4th share, he laid suit O.S.No.484/1971 for injunction and obtained interim protection. The allegation



that the lease deeds were created after the auction sale of the suit property is false and denied. The allegation that the defendant forcible trespassed into the suit land on 23.10.1971 is also false and denied.

5. Based on the pleadings, the trial Court framed the following issues:-

1). Whether the plaintiff is the owner of the entire suit land?

2). Whether the plaintiff is entitled for any mesne profit ? if so, how much?

3). Whether the first defendant (Arappa Gounder) is the lease of the suit land ?

4) What are the other relief?

6. Additional issue:-

Whether the plaintiff is entitled for possession ?

7. On the side of the plaintiff and on the side of the defendants 2 witnesses each were examined. For plaintiff, Ex.A-1 to Ex.A-3 were marked. For the defendants, Ex.B-1 and Ex.B-2 were marked.

8. The Trial Court, on considering the common judgment of this Court passed in S.A.No.880 of 1981 and S.A.No.881/1981 and W.P.No.4896 of 1983 dated 08.03.1993 marked as Ex.A-1, held that the status of the defendant as cultivating tenant of the suit property based on alleged lease deeds already negatived by the High court. The cancellation of defendant name in the tenancy record also upheld in W.P.No.4896 of 1983 in the same common judgment. Therefore, the plaintiff as the lawful purchaser of the suit property through Court auction is entitled for possession. Regarding the claim of mesne profit, permitted the plaintiff to proceed under Order 20 Rule 12 of C.P.C.

9. The defendant has preferred Appeal Suit No.123/1999 before the Sub-Court, Bhavani, aggrieved by the Trial Court judgment. On re-appreciating the facts, the First Appellant Court held that, under the sale deed dated 09.06.1967 Ex.B-1, 1/4th share of Raman S/o.Kuppan, sold to one Chittan much before the Court auction purchase by the plaintiff. On the date of, this Court auction the title in respect of 1/4th share in the property was not with Kuppan or his sons. The owner of the property was Chittan. The defendant had taken lease of the 1/4th share from Chittan. When the said Chittan and the plaintiff tried to disturb his enjoyment, he has filed O.S.No.942/1973 (later renumbered as O.S.No.108/1976 on the file of Sub-court, Bhavani) and obtained interim injunction. The deposition of Chittan (P.W-2) is contrary to the content of the sale deed



Ex.B-1 so not reliable. Therefore, while confirming the judgment and decree of Trial Court in respect of 3/4th share, reversed the Trial Court judgment in respect of 1/4th share sold by Raman to Chittan. While partially allowing the Appeal, the First Appellate Court has also observed that, the earlier proceedings between the parties culminated in the common judgment rendered in S.A.No.880/1981 and S.A.No.881/1981 was only in respect of the status of the defendant whether he is the cultivating tenant of the land in dispute or not. It is not a title suit. Therefore, the findings in the said proceedings will not be hit by res judicata.

10.The First Appellate Court reversing the Trial Court judgment and decree partially is challenged in this Second Appeal by the aggrieved plaintiff.

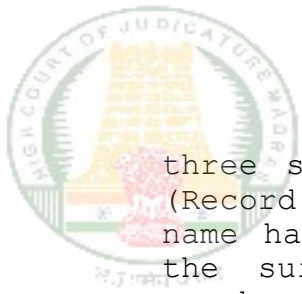
11.This Court, after perusal of the records, formulated the following Substantial Questions of Law:-

(i)Whether the Lower Appellate Court correct in holding the judgment rendered in S.A.No.880/1981 and S.A.No.881/1981 and W.P.No.4896/1983 are not determined the rights and status of the parties ?

(ii) Whether or not the appellant entitled for recovery of possession of the 1/4th share in the suit property covered under Ex.B-1, despite the fact it was alienated prior to the court auction purchase?

12.The Learned Senior counsel for the appellant submitted that, 1/4th share in the suit property which is the first item of the suit schedule, was never transferred to Chittan. The sale deed Ex.B-1 was a sham and nominal document created to defeat the interest of the decree holder in O.S.No.114/1966. The lender's name for the said transaction Thiru.Chittan was examined by the Appellant as P.W-2 and he has supported the case of the plaintiff and denied the alleged lease to Arappan Gounder. The Court, in the earlier proceedings, has considered this issue and held against the first respondent/defendant. The sale deed Ex.B-1 created purposely, after the commencement of the execution petition in O.S.No.114/1966. In the previous proceedings, this Court has confirmed the finding of the Courts below that the first respondent has created false document and entries in the cultivating accounts to uphold his status as a cultivating tenant but in futile. While so, the lower appellate Court ought not to have declined to grant the relief for the entire suit property including the 1/4th share.

13.Per contra, the Learned Senior Counsel for the first respondent submitted that, in the year 1969, the entire suit property was taken for lease by the 1st respondent from its owners. 1/4th of the suit land from one Chittan, who purchased the share of Raman S/o Kuppan and remaining 3/4th from the other



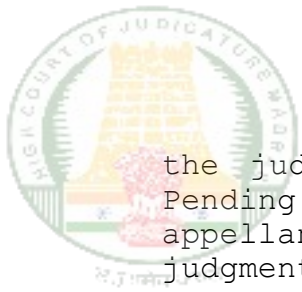
three sons of Kuppan. After the Tamil Nadu Agricultural Land (Record of Tenancy Regulation) Act 1969 came into force, his name has been recorded as the cultivating tenant in respect of the suit property. The Appellant, after his Court auction purchase, gave representation to the Tahsildar to delete the name of Arappa Gounder (first respondent) from the Tenancy Register. This petition was dismissed by the Tahsildar in his proceedings in T.R.No.56 of 1976, dated 25.02.1980.

14. Against this order, the Appellant gave the Appeal petition in A.P.No.2 of 1980 to Revenue Divisional Officer, Gobichettipalayam. This Appeal petition was allowed by the Revenue Divisional Officer and the name of the Arappa Gounder was ordered to be deleted from the tenancy record vide his proceedings dated 28.09.1981. Against the order passed in A.P.No.2 of 1980, Arappa Gounder filed Revision Petition R.P.No.8/1982 before the District Revenue Officer, Erode, same was dismissed on 07.07.1982. Challenging the order of deleting his name from the tenancy record W.P.No.4896 of 1983 was filed and same came to be dismissed.

15. But then, the suit land was assigned to the predecessor in title Thiru.Kuppan, in the year 1929, by the Board of Revenue, on condition it should not be alienated. Since the property was alienated contrary to the assignment condition, pending Second Appeal, the assignment has been cancelled by the Sub-Collector, Gopichettipalayam vide his proceedings dated 23.07.2015. The appellant herein has challenged the said cancellation of assignment in W.P.No.28503 of 2015 and same is pending. Therefore, the appellants presently have no legs to sustain the second appeal.

16. The Learned Senior Counsel appearing for the 1st respondent further submitted that, though the first respondent lost his suits and writ petition, the findings in the common judgment Ex.A-1 will not Act as res judicata since the issues now under consideration were not heard and decided in the earlier proceedings.

17. Also the Learned Senior Counsel for the first respondent cited the judgments of this Court rendered in Muniyandi -vs- Rajangam Iyer reported in AIR 1976 Mad 287 (DB) and Periathambi Goundan -vs- The District Revenue Officer, Coimbatore and others reported in AIR 1980 Mad 180 (FB) submitted that, the exclusion of Civil Court jurisdiction under Section 16-A of the Tamil Nadu Agricultural Lands (Record of Tenancy Right) Act 1969, not applicable to the facts of the case in hand. The First Appellate Court has rightly gone into the material evidence regarding the title, on the date of auction purchase by the appellant and had decided against the appellant with respect to the 1/4th share alienated before the date of auction. No purchaser can derive better title than its vendor. On the date of auction purchase,



the judgment debtors had no title in respect of 1/4th share. Pending Second appeal, for the remaining 3/4th share also the appellant has lost his right since the assignment given to the judgment debtor late Kuppan has been cancelled.

18.Regarding the subsequent event pending appeal, the Learned Senior Counsel for the appellant submitted that, the cancellation of assignment granted in the year 1929 through the executive order of the Sub-Collector dated 23.07.2015 at the instance of certain vested interest politicians in now subject matter of the W.P.No.28503/2015. The assignment to Kuppan was in the year 1929. The 30 years prohibition to alienate ended in the year 1959. Whereas, the property was purchased by the appellant in the Court auction held on 22/01/1970 and confirmed on 21/03/1970. As a bonafide Court auction purchaser, his right and title is protected and he is contesting his cancellation of assignment in the above said writ petition. As far as the dispute between the appellant and the first respondent regarding recovery of possession, the subsequent event have no bearing.

19.Heard the submissions of the Learned Senior Counsel appearing for the appellants and the Learned Senior Counsel appearing for 1st respondent.

20.The suit is for recovery of possession. The appellant base his claim on the Court auction purchase. The first respondent resist it on the base of the sale deed Ex.B-1 and adangal Ex B-2. With the same set of facts, the earlier suits were agitated and this Court in S.A.Nos.880 and 881 of 1981 had held that the first respondent has not proved to be in possession of the suit property under the lease deeds purported to have been executed by the owners of the suit property. The said second appeals are in respect of the entire suit property and not only for 3/4th share as wrongly observed by the first appellate Court.

21.O.S.No.484/1971 is for the 3/4th share and O.S 108/1976 is for 1/4th share. These suits were filed by the first respondent for declaration of his statue as cultivating tenant under the lawful owners and not to disturb his peaceful possession. Again the first appellate Court has wrongly observed that these suits are filed for bare injunction and not for title or status.

22.The first appellate Court has failed to note that after the decision of this Court in the common judgment dated 08/01/1993 in S.A.Nos.880/1981 and 881/1981 and W.P.No.4896/1983, the first respondent has not preferred any further appeal. In S.A.Nos.880/1981 and 881/1981 the Courts have concurrently held that the first respondent cannot retain the possession of the suit property, since he has failed to prove his lawful possession. Pursuant to the Court decree and



the order in the Execution Petition, he is bound to deliver the possession. In W.P.No.4896/1983 filed by the Arappan Gounder (first respondent) challenging the cancellation of the entry made in the tenancy record, the Court has held that the deletion of his name is valid. Arappan Gounder has accepted this finding and not challenged it.

23.The trial Court after considering these facts rightly decreed the suit in entirety. Whereas the first appellate Court without proper consideration of Ex.A-1 both on facts and law, erred and had partially allowed the appeal deleting the 1/4th share of the suit property .

24.Section 11 of the Civil Procedure Code bar courts from entertaining subsequent suit to try issues between parties which already heard and decided finally in the previous suit between the same parties litigating under the same title. In the instant case, the appellant had taken actual possession of 3/4th portion on 01/10/1970 and symbolic possession of the 1/4th portion of the property on 26/09/1970. The first respondent litigating his right as cultivating tenant under one Chithan. Ex.B-1 is the title document of Chithan in respect of the 1/4th portion. In the earlier proceedings, the first respondent has lost his case claiming cultivating tenant status and also the relief of injunction against the appellant. Therefore, his present resistance to deliver the possession to the lawful title holder contrary to the finding of this Court in the earlier proceedings is hit by the principle of res judicata.

25.The validity of Ex.B-1 was disputed in the earlier proceedings and the courts in the earlier proceedings held it to have been created when the execution petition was pending. Hence, its genuineness is doubtful. In this case, the purchaser in Ex.B-1. Chithan was examined as PW-2 and he has deposed to the effect that the said document is a make belief document and he did not lease out the said land to Arappan Gounder. The first appellate Court has rejected the evidence of PW-2 for the reason that he cannot give oral evidence contrary to the documentary evidence. Even if the said reasoning is held to be correct, this will not confer any right to the first respondent to retain possession claiming status as cultivating tenant under Chithan. Because, any right to resist the suit for recovery of possession filed by the Court auction purchaser can be sustained only if the resistance is from the lawful title holder at the time of auction purchase and not by a third party, who claims to be in possession as cultivating tenant and failed to prove the same in the previous proceedings.

26.As a result of the above discussion, this Court holds that:

- 1) The Lower Appellate Court erred in



WEB COPY

holding the judgment rendered in S.A.880/1981 and S.A.881/1981 and W.P.No.4896/1983 had not determined the rights and status of the parties. This Court in the common judgment Ex.A-1 had clearly held that the first respondent herein has failed to establish his cultivation tenant status and he is not entitled for a declaration to that effect and consequential injunction.

2)The appellant is entitled for the relief of recovery of possession the entire suit schedule property. Though Ex.B1 dated 09/06/1967 in respect of 1/4th share in the suit property is prior to the Court auction sale dated 22/01/1970, it was executed after the decree passed in O.S.No.114/1966 dated 15/04/1967 and while Execution Petition was pending. Chithan, who is the purchaser under this document has not supported the genuineness of this transaction. In the earlier proceedings, High Court has observed this document and other lease deeds relied by the first respondent are creation for the purpose to defeat the decree holder in O.S.No.114/1966. No appeal filed against the common judgment Ex.A-1. The observations made in the said judgment by the High Court has reached finality.

Answering the Substantial Questions of Law as above, the Second appeal is allowed.

27.In the result, the Second Appeal is Allowed. The judgment and decree of the first appellate Court i.e., Sub Court, Bhavani, passed in A.S.No.123 of 1999 on 29.06.2001 is set aside. The judgment and decree of the trial Court i.e., Additional District Munsif Court, Bhavani, passed in O.S.No.19/1996 on 06/07/1999 is restored. No order as to costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

bsm



To:

1. The Subordinate Judge,
Bhavani.
2. The Additional District Munsif,
Bhavani.
3. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.38545

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.38478

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.38607

S.A.No.976 of 2010

PA (CO)

RGA (03/09/2021)