



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.08.2020
Pronounced on : 18.12.2020

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THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A(MD) .Nos.37 & 38 of 2013

SA(MD)No.37 of 2013

1.Dhakshinamoorthy Pillai(died)
2.G.Vasantha Mallika
3.Mrs.Selvi ...Appellants/Appellants/Plaintiffs

[3rd appellant brought on record as the LR of
the deceased 1st Appellant Vide Court order
dt:22.12.16 made in CMP(MD).7781/16 to
7783/16 in SA/37/13by(MDJ)]
(1st Appellant dismissed as abated vide Court
Order dt.26.04.2016 made in SA(MD)No.37/2013)

Vs.

1.N.S.Nagaraj Pillai
2.T.Saraswathy ...Respondents/Respondents/Defendants

SA(MD)No.38 of 2013

1.Dhakshinamoorthy Pillai(died)
2.G.Vasantha Mallika
3.Mrs.Selvi ...Appellants/Appellants/Defendants

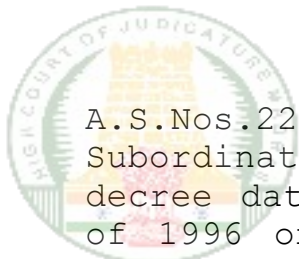
[3rd appellant brought on record as the LR of
the deceased 1st Appellant Vide Court order
dt:22.12.16 made in CMP(MD).7784/16 to
7786/16 in SA/38/13by(MDJ)]
(1st Appellant (died)dismissed as abated vide Court
Order dt.26.04.2016 made in SA(MD)No.38/2013)

Vs.

T.Saraswathi Annamal ...Respondent/Respondent/Plaintiff

COMMON PRAYER:- Second Appeals filed under Section 100 of Civil
Procedure Code against the Judgment and Decree dated 28.02.2012 in

<https://hcservices.ecourts.gov.in/hcservices/>



A.S.Nos.229 & 230 of 2008 on the file of the first Additional Subordinate Judge, Tiruchirappalli confirming the judgment and decree dated 19.12.2007 made in O.S.No.548 of 1993 & O.S.No.1422 of 1996 on the file of the I Additional District Munsif Court, Tiruchirappalli.

In both SAs:

For Appellants : Mr.T.V.Ramanujam,
Senior Counsel for
Mr.N.C.Ashok Kumar

For Respondents : Ms.N.Krishnaveni,
Senior Counsel for
Mr.P.Thiyagarajan

COMMON JUDGMENT

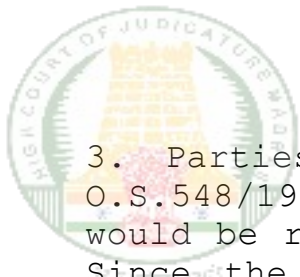
These twin appeals relate to a property comprised in Sy.No.129/2, measuring an extent of 2.02 acres. In all, there were three suits substantially between the same set of parties.

2.1 The appellant is one Dhakshinamurthy and he laid a suit in O.S.No.548 of 1993 for bare injunction not to disturb his possession over the suit property. The suit was laid against a certain Nagaraja Pillai and another Saraswathi. Of them, Saraswathi laid an independent suit in O.S.No.1422 of 1996 against Dhakshinamurthy and one Vasantha Mallika. Nagaraja Pillai, on his part, had filed a suit in O.S.No.1421 of 1996 against the aforesaid Dhakshinamurthy and Vasantha Mallika and another. Item Nos.1 and 2 in O.S.No.548 of 1993 are the subject matter in O.S.No.1421 of 1996.

2.2 All the three suits were tried together and a common judgment was delivered. In all the three suits, the appellant herein suffered a decree. He preferred A.S.No.229 to 231 of 2008 and yet, again he suffered a second round of defeat before the first appellate Court. Therefore, he preferred S.A(MD)No.36 to 38 of 2013, challenging all the decrees.

2.3 During the pendency of these appeals, the dispute in O.S.No.1421 of 1996, which ultimately led to SA(MD).No.36 of 2013, was compromised. Hence, Nagaraja Pillai and the properties (Items Nos.1 & 2 in O.S.No.548 of 1993) concerning him are now eliminated from the line of consideration.

2.4 This leaves S.A(MD)Nos.37 and 38 of 2013 for consideration. To repeat, these two appeals arise out of O.S.No.548 of 1993 and O.S.No.1422 of 1996 and the subject matter of these suits is the 2.02 acres in S.F.No:129/2, as indicated in the opening paragraph of this judgment.



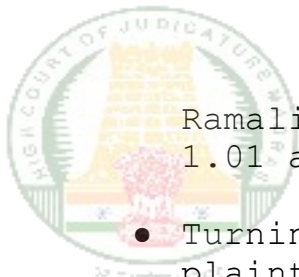
3. Parties would be referred to by their respective rank in O.S.548/1993. Accordingly Dhakshinamurthy, the first plaintiff would be referred to as the plaintiff in the narration to follow. Since the second plaintiff Vasantha Mallika has a very limited role to play, she would be referred to as the second plaintiff at the appropriate stage of this judgement. Saraswathi would be referred to as the defendant.

4.1 The facts relevant for the current purpose are now briefly stated;

- The suit property measuring 2.02 plus some more extent was originally comprised in S.F.No.129/1 of Varaganeri Village. It appears, a portion of this property was acquired and what remained after the acquisition is 2.02 acres and this came to be assigned S.F.No.129/2.
- This property originally belong to a certain Srinivasa Rao. He was declared a lunatic in O.P.No.127 of 1941 by the order of the District Court, Tiruchirappalli. The Court appointed his wife Ammini Ammal as the guardian for both the person and properties of her husband Srinivasa Rao. Ext.B-64 is the copy of the petition and order, dated 19-03-1942.
- It is useful to refer to a few allegations in the petition in O.P.127/1941 (Ref.Ext.B-64). It is stated that Srinivasa Rao's wife Ammani Ammal was the daughter of a Judge of the Travancore High Court. The couple had a son Narasimhamurthy, then aged 13 years, and a daughter Vasantha, who was younger to him. The properties are stated to be the ancestral properties of Srinivasa Rao.
- It could not be ascertained from the pleadings, or the evidence as to when Srinivas Rao died. While so, on 15.07.1979, Narasima Rao had executed two sale deeds: One pertains to the eastern half of 1.01 acres in S.F.No:129/2, and it was executed in favour of a certain Ramalingam Pillai under Ext.B-103. The other relate to the western 1.01 acres, and it was sold to one Anjalai Ammal under Ext.B.102. In both these sale deeds, it is recited that Narasimha Rao had obtained the properties covered by them on the demise of his father Srinivasa Rao. Therefore, it can only be gathered that Srinivasa Rao might have died prior to 1979.

4.2 Now, it is necessary to take a short deviation from the above narration, for introducing certain other facts:

- The plaintiff's father was one Ayyavu. Ayyavu was married twice. Through his first wife, he had a son Arunachalam. Through his second wife, he had two sons: the plaintiff and



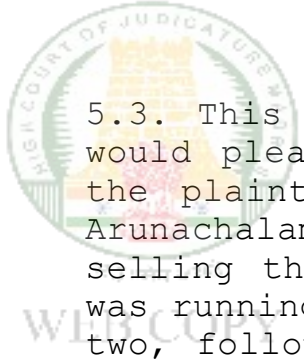
Ramalingam. It was this Ramalingam, who purchased the eastern 1.01 acre, under Ext.B.103 from Narasimha Rao.

- Turning to Ayyavu's son Arunachalam (stepbrother of the plaintiff), he was married to one Pancharatna. Pancharatna's mother was one Anjalai. In other words, Anjalai was Arunachalam's mother-in-law, and she was the purchaser of the western 1.01 acre in Ext.B.102.
- Arunachalam had two daughters. One of his daughter was married to Nagaraja Pillai referred to above, and the other daughter was Saraswati, the defendant herein.
- Ramalingam, the purchaser of the eastern 1.02 acres (under Ext.B.103) had sold the same to the defendant under Ext.B.100, dated 22.05.1980. Anjalai, the other purchaser of the western 1.01 acre (also the maternal grandmother of the defendant) had executed Ext.B.101, Will dated 03.01.1980 in favour of the defendant. Anjalai died in the same year and the Will took effect on her death. Accordingly, the defendant became the title holder of the entire 2.02 acres comprised in S.F.No.129/2.
- In O.S.No.548 of 1993, the suit property is described in item Nos. 3 & 4, and each of them pertains to one half of the total extent.

Facts in dispute:

5.1 Now begins the facts in dispute. As has been referred to earlier, the plaintiff and Ramalingam are brothers, and Arunachalam was their step-brother. According to the plaintiff, on 21.09.1963, under Ext.A.1=Ext.A.19, he had executed a lease deed in favour of Narasimhamurthy, represented by his power of attorney Lakshmana Rao. (It may be mentioned that in Ext.B64 petition, there is a reference to a certain Lakshmana Rao, as the step brother of Srinivasa Rao, and it is not known whether Lakshmana Rao mentioned in Ext.A-1 is the same person). The plaintiff would allege in his plaint that he is the cultivating tenant of the property and that he has been recorded as thus, in Ext.A-16 = Ext. X-1, the record of tenancy.

5.2 Asserting that he is a cultivating tenant of the entire suit property measuring 2.02 acres, he laid a suit in O.S.548/1993 against the said Nagaraja Pillai and the defendant for bare injunction that his peaceful possession of the suit property should not be disturbed (As already mentioned, the plaintiff and Nagaraja Pillai have since resolved their dispute).



5.3. This allegation is strongly disputed by the defendant. She would plead that her father Arunachalam was the step-brother of the plaintiff, that they two were jointly doing business, that Arunachalam was cultivating plantain in the property, and had been selling the produce to his brother(the plaintiff), as the latter was running a *mandi*, that there arose some differences between the two, following which Arunachalam stopped supplying the produce to the plaintiff. She claimed that she is in possession of the property, and instituted O.S.1422/1996 again for a decree of prohibitory injunction restraining the plaintiff from interfering with her possession. She would further allege that Ext.A.16 itself is fraudulently obtained, and claimed that her father Arunachalam was the tenant of the suit properties and that he had orally surrendered possession to her when she became the owner of the property.

6.1 The dispute went to trial along with the other suit in O.S.1421/1996 to which reference has been made earlier. Evidence was recorded in O.S.548/1993. The plaintiff has examined himself as P.W.1 and examined two other witnesses as P.W.2 (husband of the second plaintiff Vasantha Malikka) and P.W.3 (the Tahasildar) and attempted to sustain his cause of action based on Ext.A-1 lease deed, followed by Ext.A-16, the extract of record of tenancy, supported by Ext.A-3 to A-6, A-8 to A-11 and A-13, all of which are Adangal issued by VAO for various *fasli*. Through P.W.3, Ext.X-1 and Ext.X-2 were marked.

6.2 Both the trial court and the first appellate court doubted the reliability of Ext.A-16 and dismissed O.S.548/1993 filed by the plaintiff and decreed O.S.1422/1996, which the defendant has filed. Their line of reasoning are:

- Ext.A-1 lease deed under which the plaintiff claims right to be in possession is suspect. The reason was, this document refers to a certain Lakshmana Rao, as the Power of Attorney of Narasimha Rao but in A-19 which is also a certified copy of the same document he is referred to as the Power of Attorney of Srinivasa Rao. This power of attorney document was not produced, even though the plaintiff as P.W.1 has conceded in his testimony that he has seen it. Nor, Ext.A-1 recites the specific details about the power of attorney.
- So far as Ext.A-16 is concerned, the plaintiff again has deposed that it was Lakshmana Rao who had given a written petition to him, and he in turn had given it to the authorities concerned to record himself as a cultivating tenant. The reliability of these document was suspected since: (a) the name of the owner is stated to be Srinivasa Rao, and not his Power of Attorney, Lakshmana Rao. (b) The plaintiff has conceded that he was not aware if the mandatory



enquiry, as contemplated under TNACT 10/1969 had taken place before recording his name in the Record of Tenancy.

7. These appeals are admitted to consider the following identical substantial questions of law:

"1. Whether the Judgement of the courts below are vitiated for having failed to give effect to the statutory scheme set out in Tamil Nadu Act No.10/1969?

2. Whether the courts below failed to note that there is a statutory presumption in favour of the appellant herein that the continued to be cultivating tenant of the suit schedule property?

3. Whether the courts below failed to give effect to the admission of the land lord that they have not challenged the entries in favour of the appellant herein in the record of tenancy?

4. Whether the courts below ought to have seen that the possessionary claim of the appellant herein stands established by Ex.A1 dated 21.09.1963 (A Registered Lease Deed) and Ex.A14 & 15 entries in the records of tenancy and when there is nothing to show that there is surrender of lease?

5. Whether the courts below failed to correctly construe Ex.B1 to Ex.B44 which are merely Katcha receipts?

6. Whether the courts below merely accepted the defence exhibits without substantiating their correlation to the suit property?"

A preludial statement:

8.1 The outcome of these litigations depend on a solitary question of fact: whether the appellant/plaintiff, is a cultivating tenant of the suit property and if Ext.A-16=Ext.X-1 is conclusive a proof of which it states. The plaintiff/appellant has produced Ext.A1=Ext.A-19 lease deed, besides Ext.A-16 and Ext.X-1, copy of the register of record of tenancy prepared in terms of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (henceforth would be referred to as Act 10/1969), to be supported by Ext.A- 8 to A-11 and A-13 *adangal* for fasli 1397 to 1401 along with other corroborative pieces of evidence viz., Ext.A-7 and A-12 letters from his brother Ramalingam. He claims that these evidence would indicate that he has been in lawful and settled possession of the 2.02 acres (items 3 and 4 in O.S.548/1993 and the only property scheduled in O.S.1422/1996), and he is entitled to defend his possession.



8.2 The defendant however, contends that Ext.A 16 is fraudulently obtained, and that plaintiff's step brother Arunachalam had been the tenant of the property in terms of Ext.B-118, dated 06-03-1947. and that he had orally surrendered the possession of the property when once the defendant (who is none other than his daughter) became the owner.

8.3 Both the trial court and the first appellate court have suspected the genuineness of both Ext.A-1=A-19 lease in favour of the plaintiff as well as the correctness of Ext.A-16 and Ext.X-1. Their finding on them are one on facts, and this Court now needs to weigh if they are infested by any perversity.

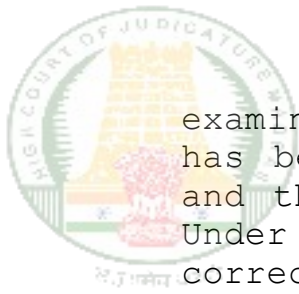
The Arguments:

9. Thiru.T.V.Ramanujam, the learned Senior counsel for the appellants argued that the suit property had been an ancestral property in the hands of Srinivasa Rao, but he was declared a lunatic Vide Ext.B-64 order of the District court, Tiruchirapalli, dated 19-03-1942. His wife was Ammini Ammal. They had a son Narasimhamurthy, a minor at the relevant time, and a daughter. Being an ancestral property, Srinivasa Rao and his son Narasimhamurthy Rao had equal shares in the property with right of maintenance for his wife and daughter. Developing his arguments, he contended:

- On 05-04-1944, under Ext B-119, Ammini Ammal, leased the property now litigated upon, to Arunachalam. Later it came to be renewed by Narasimhamurthy himself, on he attaining majority Vide Ext.B-118 dated 06-03-1947. The defendant, inasmuch as she relies on the lease to Arunachalam under Ext.B-118, she admits the competency of Narasimhamurthy to deal with the property. It necessarily follows that the defendant cannot challenge Ext.A-1= Ext.A-19 lease deed. In this regard, the defendant herein has not deposed before the court, and Nagaraj (originally the first defendant in O.S.548/1993, and the plaintiff in O.S.1421/1996, which is since compromised) was examined as D.W.1, and, for the defendant her husband Thirunavukarasu was examined as D.W.2. Both of them were sons-in-law of the family, and they did not know the state of affairs in 1963. And, in the context of this case, D.W.2's familiarity with the subject commences only after Ext.B-100 and B-101, both of which are dated in 1980, long after Ext.A-1= A-19 and Ext.A-16, Ext.X-1.

- Be that as it may in 1972, notices were issued to the plaintiff under Act 10/1969. Ext.A-16 is the certified copy of the Register of Record of Tenancy which shows that the plaintiff has been recorded as a tenant of the suit property.

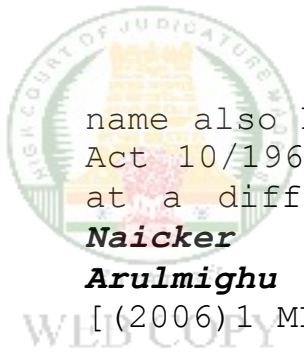
Ext.X-1 is the copy produced by the Tahsildar, who was



examined as P.W.3. They would establish that the plaintiff has been recognised as a cultivating tenant of the property and that his name figures in the record of tenancy as well. Under Sec.15 of Act 10/1969, there is a presumption as to the correctness and the truthfulness of the entries made in the record of tenancy, even though it is rebuttable. Here following aspects are relevant:

- ◆ The rebuttal evidence to Ext.A-16 and Ext.X-1 is sought to be provided by the evidence of Nagaraj (D.W.1) and Thirunavukarasu (D.W.2), both of who are incompetent to rebut it.
 - ◆ The other rebuttal evidence attempted is by pleading that Arunachalam continues to be a tenant in terms of Ext.B-118 lease note executed in 1947 in favour of Narasimhamurthy. But Arunachalam was not examined.
- This apart, after the purchase of the eastern 1.01 acres under Ext.B-103 sale deed, Ramalingam, the brother of the plaintiff, had addressed at least two handwritten letters, namely Ext.A-7 letter dated 06-09-1979, and another letter in Ext.A-12, dated 15-04-1980, wherein he had admitted that the plaintiff has been the lessee of the property. And, these two letters are dated prior to sale in favour of the defendant. Ext.A-12 in particular is barely a month prior to Ext.B-100 sale in favour of the defendant.
- Since Ext.A-1 lease, the plaintiff has been paying rent to the lessor Narasimhamurthy Rao, and no receipts were obtained as both shared mutual trust. Here it would be relevant to mention that the defendants who rely on the lease in favour of Arunachalam Pillai under Exts. B-119 and B-118 also did not receive any receipts for the rent paid to the lessors.
- The defendant is not a bonafide purchaser. Inasmuch as Ext.A-1 = A-19 lease deed are registered, it would be revealed in the encumbrance certificate. She ignored it.

In a suit for bare injunction to protect the lawful possession of of the plaintiff, Ext.A-1= Ext.A-19 lease note taken alongside with Ext.A-16 and Ext.X-1 entries made under Act 10/1969, would indicate that it is with him. This is corroborated by Ext.A-8 to A-11 & A-13 *adangal*, and Ext.A-7 and A-12 letters by Ramalingam. Turning to the suit filed by the defendant in O.S.1422/1996, Sec.16-A of Act 10/1969 bars civil suit. Reliance was made to **Periathambi Gounden vs The District Revenue Officer** [AIR 1980 Madras 180 (FB)], in which the Full Bench of this Court approved the ratio in **Muniyandi Vs Rajangam Iyengar** [AIR 1976 Madras 287]. And, once the authorities constituted under the Tamil Nadu Cultivating Tenants Protection Act, 1955 (Act 25/1955) have declared the plaintiff as the cultivating tenant, and when his



name also has been recorded as such in the record of tenancy under Act 10/1969, then civil court cannot have jurisdiction to arrive at a different conclusion. Reliance was placed on: **Narasimma Naicker Vs Sanjeeviammal & Others** [(2014)3 MLJ 283] and **Arulmighu Sundareswara Swamy Thirukoil, Neermulai Vs K. Bama** [(2006)1 MLJ 430].

10.1. **Per contra**, Ms. Krishnaveni, the learned counsel for the respondent/defendant contended:

- Both Ext.A-1 and A-19, are stated to be the certified copies of the same document, yet they show marked variance. Ext.A-1 recites that the said document was executed by the plaintiff in favour of Narasimha Rao represented by his power of attorney Lakshmana Rao, whereas Ext.A-19 shows that the same document was executed by the plaintiff in favour of Srinivasa Rao represented by his power of attorney Lakshmana Rao. If Srinivasa Rao had already been declared lunatic under Ext.B-64 in 1942, then he could not validly execute a power of attorney. **Secondly**, this power of attorney document has not been produced. **Thirdly**, the original of Ext.A.1 and/or Ext.A.19 was not produced. Not, even the document was summoned from the concerned sub-Registry. **Fourthly**, there is no document to show that Narasimhamurthy Rao was appointed as the guardian of his father Srinivasa Rao. Therefore, Ext.A-1 and Ext.A19 are both suspect and incompetent documents.
- The plaintiff as P.W.1 admits that his step brother Arunachalam had been the lessee of the suit property under Exts.B-119 and B-118, dated in 1943 and 1947 respectively. There is no evidence that the lease to Arunachalam was terminated, and that he had surrendered possession.
- Other than Ext.A-1 and Ext.A-19, plaintiff relies hugely on Ext.A-16 (record of tenancy document) and Ext.A-17 adangal. These documents, however, are marred by material inconsistencies: They are:
 - Ext.A-16 shows Srinivasa Rao was under the care of a lady doctor Dr.S.S.Murthy Rengamani. Who she was is not made clear, especially when according to the plaintiff, Narasimha Rao had begun dealing with the property even in 1963, even though allegedly through a power of attorney. Alternatively, if Srinivasa Rao had appointed Lakshmana Rao as his power of attorney, it is a mystery why a certain lady doctor should arrive in the scene.
 - Turning to the entries in Ext.A-16 (prepared in 1972), in column 6, the name of the owner was shown as Sinivasa Rao, and the care of lady doctor referred to above, where as in



Ext.A-16, it is mentioned as S. Narasimhamurthy Rao, s/o Srinivasa Rao, Kaladi Alwey, Kerala. Secondly, the plaintiff as P.W.1, would depose that it was Lakshmana Rao who presented the application to include the former's name as the cultivating tenant.

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- Ext.A-16 also shows another entry in column as 'Papammal Annachatram', then a certain Subbiah Pillai and Aranvinda Pillai. But P.W.1 concedes this choultry has no connection to the suit property herein. And, the role of others and their connection to the property is unknown. This would render the reliability of this document weak.

10.2 Entries in the revenue record merit acceptance as genuine and correct, but it cannot be extended to fraudulent entries. Here, P.W.1 also concedes that no formal enquiry had taken place before plaintiff's name was entered into record of tenancy. Where preparation of a revenue record is shrouded in fraud, the entries therein lose their credibility. Reliance was placed on **Avudaitangammal Vs Subramania Thevar** [1994-1-LW 82].

10.3 A record of tenancy *per se* is not declaratory of one's status as a cultivating tenant. On the other hand, where one is already declared as a cultivating tenant under the Cultivating Tenants Protection Act, he becomes eligible for being entered in the Record of Tenancy register. The plaintiff claims tenancy only from 1963, but he has been careful not to disclose when he was declared as a cultivating tenant. The plaintiff has produced Exts.A8 to Ext.A11 and Ext.A13 *adangal*, all pertain to the period from 1987 to 1993. He has not produced any document for a period earlier to the same. The defendant has produced Exts.B-46 and B-45 *adangal*, respectively for the immediate previous fasli 1395 and 1396. While these *adangal* show that the defendant is in possession of the property, in the plaintiff's document there is an endorsement by the Village Administrative Officer that the plaintiff is in possession of the property as a cultivating tenant. If this statement is true, then that ought to reflect in column 6 and not by an endorsement as inserted by the VAO at the foot of the document. And, a VAO is competent to issue *adangal* only for the current fasli and not for the earlier years. Reliance was to **G. Selvamani & four others Vs The District Revenue Officer cum Revisional Authority (Record of Tenancy Rights)** [1998-1 LW101]. Reliance was also placed on the authorities in **Ramayee Vs. Sakthivel and others**[2007(2) LW 454] ; **Thambayi Ammal Vs. K.Palanisamy(died) and others**[2007 (1) LW 436] ; **Tamalarasi Vs. S.Kumarasamy Gounder & others**[2003(4) LW 129] ; **Saraswathi Ammal Vs. Ponnammal and another**[2000 (2) LW 794]; **State of Tamil Nadu Vs. Ramalinga Swamigal Madam**[1998 LW



849]; **Esakki Vs. Subramania Aiyer**[1998(3) LW 36]; **K.Ramdoss Vs. Rukmani Ammal**[1997(2) CTC 703] ; **Periathambi Goundan Vs. The District Revenue Officer, Coimbatore**[93 LW 169] ; **G.Natesa Nainar Vs. Sri Karikudinathasway Devasthanam**[1985(1) MLJ 175]

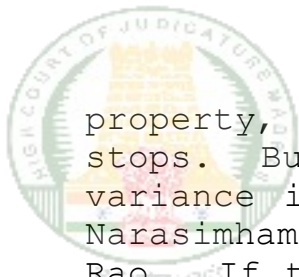
Discussion:

11. Hot has been the contest before this court, but the issue falls within a very narrow space. It may be stated that the defendant starts with an advantage. She is the title holder of the entire 2.02 acres in Sy.No:129/2. And, the plaintiff does not dispute it. Naturally, she would be entitled to be in possession and enjoyment of the property, and if she faces any interference to her peaceful possession of the property, she would be automatically entitled to a decree of injunction. Only, the plaintiff, having conceded that the defendant is the title holder of the property, claims that he is a cultivating tenant of the property and that he is in possession of the property and hence entitled to secure his possession. The burden in both the cases rest on him to establish why the defendant would not be entitled to a decree of prohibitory injunction.

12. In his pursuit to discharge the burden of proof, the plaintiff relies on (a) Ext.A-1 = A-19 lease deed, (b) Ext.A-16 = Ext.X-1, the copy of the Record of tenancy (c) Ext.A-8 to A-11 & A-13 adangal. Ext.A-7 and A-12 letters of Ramalingam have relatively limited role in deciding the point. The defendant raises issues on the genuineness, or the correctness of the entries in these documents, as the case may be. If these documents are reliable and worthy of being acted upon, then the plaintiff can lawfully resist the defendant and be in possession of the suit-property. However, how safe are these documents for this Court to act upon?

13.1. First to Ext.A-1 = A-19 lease deed dated 21-09-1963. There is no knowing what was the state of affairs on the day on which this document was alleged to have been executed. It has emerged as an indisputable fact that plaintiff's step brother Arunachalam had been the lessee of the property under Ext.B-118 dated in 1947. Should not the court presume that a state of affairs which was shown to be in existence as from 1947 continued to be in existence till 21-09-1963, unless the contrary is proved in terms of Sec.114 Illustration (d) of the Evidence Act? The defendant presses this into service, and this Court is now required to see if this presumption has been rebutted with better evidence by the plaintiff. Does Ext.A-1=A-19 provides plaintiff that rebuttal?

13.2. It has to be stated at the very outset that Ext.A-1 and Ext.A-19 cannot be stated to be the same document, even though both are certified copies of a purported same registered document. If the documents are in the name of the lessee (the plaintiff), the



property, and the power of attorney of the lessor. And there it stops. But as to who the lessor was, there is variance, and this variance is critical. In Ext.A-1, the lessor was stated to be Narasimhamurthy, where as in Ext.A-19 the lessor becomes Srinivasa Rao. If the suit property is an ancestral property in the hands of Srinivasa Rao (Ext.B-64 narrates that it is), and if this is also the admitted position of the the plaintiff, then when the karta of the coparcenary is declared a lunatic, the next senior most male member of the coparcenary would discharge the responsibilities of the karta. Therefore, Narasimha Rao, on he attaining the age of majority, alone would be competent to exercise the responsibility as the karta when he leased the property to Arunachalam under Ext.B-118. If Narasimhamurthy Rao had already assumed this responsibility, then it is puzzling why there be a power of attorney for Srinivasa Rao? Has any Court declared that Srinivasa Rao ceased to be lunatic, or are there any evidence to support it? The same presumption under Sec.114 Illustration (d) of the Evidence Act will necessarily have to be applied here, which would imply that Srinivasa Rao, if he was alive as on 21-09-1963 will continue to be a lunatic. Secondly, how can two different persons be a lessor for the same document, interestingly each of them mutually exclude the other? Thirdly, was Lakshmana Rao, a power of attorney at all, and if so whose power of attorney was he? If Srinivasa Rao was a lunatic he is incapable and incompetent to appoint an agent for him. Has any court appointed him replacing Ammini Ammal? This is shrouded in mystery. If Narasimhamurthy had executed the power of attorney, then the production of the power of attorney itself would be mandatory. It is to be seen that in terms of the averments in Ext.B-64 (copy of the petition in O.P.127 of 1941) Srinivasa Rao's wife Amminiammal was the daughter of a Judge of the Travancore High court, then seated at Thiruvananthapuram. It could also be seen that Srinivasa Rao had then moved to Thiruvananthapuram, from where he had strayed and was found wandering on the streets of Tiruchirapally. They were narrated in Ext B-64. The most probable conclusion that could be inferred is that Srinivasa Rao's family might have moved to Thiruvananthapuram after he had become a lunatic. The later documents such as Ext.B-100 and Ext.B101, both sale deeds executed in 1979, show that Narasimhamurthy Rao had been a resident of Thiruvananthapuram. Even his sister Vasatha too was a resident of the same place. To emphasis, the property is in Tiruchirapally district. And, Ext.B-64 refers to Lakshmana Rao as the step brother of Srinivasa Rao. It therefore leads to a just suspicion that in the absence of the owner of the property to administer it locally, a circumstance apparently had emerged for someone to play fraud. It is hence, the power of attorney document said to be in favour of Lakshmana Rao becomes significant. And, it is not produced. Therefore, to start with even the lease in favour of the plaintiff is shaky, and this Court



does not find any material to differ from the findings of the courts below.

13.3. The only defence offered was that Narasimha Rao was competent to deal with the property as in 1963. None can doubt it. But has he authorised Lakshmana Rao to enter into a lease on his behalf is the point, and this continues to remain unanswered.

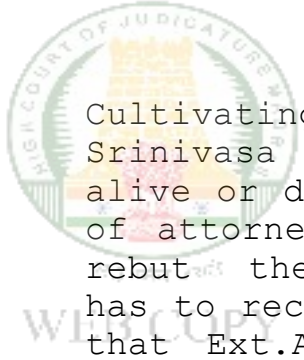
14.1. Can a suspicious lease deed sustain Ext.A-16=Ext.X-1? One becomes a tenant first, then a cultivating tenant under the Act, and thereafter the latter would enable feeding an entry into the register of record of tenancy. Here, the commencement of tenancy is suspect, and there is no evidence about the proceedings where under the plaintiff was declared a cultivating tenant. All that is available is Ext.A-16, and a statutory presumption under Sec 15 of Act 10/1969 as to the correctness and truthfulness of the entries therein.

14.2 Ext.A-16 states that the owner was Srinivasa Rao under the care of a certain lady doctor. This Court is flummoxed by the statement that an unknown lady doctor should care Sinivasa Rao. Was he then abandoned by his son at Thiruvananthapuram, that some lady doctor should care him? It should not be forgotten the property is not entirely the personal property of a lunatic, but a coparcenary property in which Narasimhamurthy had equal share. Secondly, was Sinivasa Rao in the best of his mental health? It is because, if he continues to be a lunatic, then by default his son Narasihmamurthy would be the *karta*, but his name figures nowhere in Ext.A-16. And, if he ceased to be a lunatic then it requires evidence, but there is none. To crown it, the plaintiff as P.W.1 deposes that Lakshmana Rao had given a petition, but what authority has he to represent the property before the authorities constituted both under the Cultivating tenants Protection Act or Act 10/1969.

14.3 Sec15 of Act 10/1969 reads:

"Any entry in the approved record of tenancy rights shall be presumed to be true and correct until the contrary is proved or a new entry is lawfully substituted therefore."

The provision nowhere states that the entries in the Record of Tenancy are the conclusive proof of what it contains. It has only created a rebuttable presumption, and the correctness and the truthfulness of the entries would be presumed only till the contrary is proved. And for rebutting the presumption this court need not travel beyond what the plaintiff himself has provided. The sequence of events commencing from a suspect lease, followed by his inexplicable silence on the proceedings under the



Cultivating Tenants Protection Act, coupled with the status of Srinivasa Rao, and the absence of information on whether he was alive or dead then, followed by his omission to produce the power of attorney document in faour of Lakshmana Rao, all compound to rebut the presumption under sec.15 of Act 10/1969. This court has to record its agreement with the findings of the courts below that Ext.A-16 is suspect, and on its own it is incapable of establishing that the plaintiff is the cultivating tenant.

15. And, finally to the *adangal*. When the other documents are found to be suspect, *adangal* on its own cannot be relied on as a document to prove lawful possession. The plaintiffs relies on Ext.A-8 to A-11 and A-13 which cover the period from *falsi* 1397 to 1401, where there is an endorsement that the plaintiff is the cultivating tenant of the property. It is true that a Tahsildar had signed it. But there is no knowing whether the Tahsildar had counter signed the document, or was the endorsement inserted after he signed these documents, since there is considerable vacant space available above the signatures of the Tahasildar in these documents. This apart the endorsement referred to was not even placed above the signature of the Tahasildar but away from it. And, what makes these endorsements increasingly suspect is that for the two previous *fasli* immediate to the one for which the plaintiff has filed the *adangal*, the same revenue authority had issued Ext.B-45and B-46 *adangal* to the defendant without any such endorsements. This Court is convinced that a case that commences under a shade of suspccion cannot but produce a similar end. This court knows that a meticulous analysis of these facts is dispensable at the second appellate stage, but when a cloud of strong suspicion appears to cover the case of the plaintiff, it does require a mentioning as to how he has attempted to spread the net.

16. Now to Ext.A-7 and A-12. These two are stated to be letters written by plaintiff's brother Ramalingam. There is no indication in these hand-written chit-notes that it refers to the suit-property. What the primary documents of the plaintiff cannot achieve, a couple of papers allegedly written by Ramalingam can never achieve.

17. This Court holds that the plaintiff is not a cultivating tenant of the suit-property, that Ext.A-16=Ext.X-1 is suspect and does not confer any status as a cultivating tenant on the plaintiff, and the entries thereof cannot be considered as true and correct, and the *adangal* lose its potency to fill in what the other documents cannot support.

18.And finally to Ext.A-18 assignment of tenancy by the plaintiff to the second plaintiff. It is a *pendete lite* document and the



transferee under the document cannot obtain any right since the plaintiff did not have any right in him to transfer. And, being a pendete lite transferee, she is bound by the decree of the court.

19.To conclude all the substantial questions of law are decided against the appellant/plaintiff. Accordingly S.A(MD)Nos.37 and 38 of 2013 are dismissed with costs through out, and the decree dated 28.02.2012 passed A.S.Nos.229 & 230 of 2008 by the First Additional Subordinate Court, Tiruchirappalli is hereby confirmed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Tsg-2

To,

1.The First Additional Subordinate Judge,
Tiruchirappalli.

2.The First Additional District Munsif,
Tiruchirappalli.

3.The Section Officer-2 copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+6 cc to Mr.P.Thiyagarajan , Advocate SR.No.26580 & 26582

SA(MD)Nos.37 & 38 of 2013
18.12.2020

KM (19.02.2021) 15P 11C