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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

S.A.No.175 of 2010

and

M.P.No.1 of 2010

Srinivasan

...Appellant/Defendant

Vs.

R.Govindaraj

...Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 28.02.2008 passed in A.S.No.116 of 2003 on the file of the Additional District Court, (Fast Track Court) Ariyalur in reversing the judgment and decree dated 30.03.1998 passed in O.S.No.32 of 1995 on the file of the Additional District Munsif Court, Ariyalur.

For Appellant : Mr.P.Mani

For Respondent : No appearance

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 28.02.2008 passed in A.S.No.116 of 2003 on the file of the Additional District Court, (Fast Track Court) Ariyalur in reversing the judgment and decree dated 30.03.1998 passed in O.S.No.32 of 1995 on the file of the Additional District Munsif Court, Ariyalur.

2. The appellant is the defendant in the suit.

3.The brief facts of the plaintiff's case is as follows:-

The suit property belongs to Sri Periyasamy Koil Karaipakkam now attached to Sri Mariamman Koil and Sri Kailasanathan Koil, Thirumanur. The said suit property was under the lease hold enjoyment of Sri Rangam Ammal wife of Perumal Chettiar. Sri Rangam Ammal was his second wife and she was



cultivating the suit property and in her capacity as a registered cultivating tenant under Act 10 of 1969. Rajagopal who is the father of the plaintiff was the son of Perumal Chettiar through his first wife. Ethirajulu Chettiar was also son of Perumal Chettiar through his second wife Sri Rengam Ammal. The suit property was in the enjoyment of Sri Rengam Ammal till her death and her son Ethirajulu Chettiar was measuring rent due to the Devasthanam. The defendant is the tenant of the remaining extent of the property in the suit Survey Number. The defendant was actually helping Ethirajulu and he was never a cultivating tenant in the suit property. Plaintiff's father Rajagopal and his paternal uncle Ethirajulu died on 02.02.1990 and 12.04.1994 respectively. So, the plaintiff and his brother Kothandaraman are the legal heirs of the deceased Ethirajulu since, he did not have any children. So, the plaintiff and his brother are alone entitled to the Tenancy Rights in the suit property. The plaintiff requested the concerned authorities to effect changes in the Temple accounts. The plaintiff raised seedlings and made ready for transplantation in the suit property. But, the defendant has trespassed into the suit property with the help of Police. Thus, the plaintiff filed the suit for recovery of possession of the suit property and also for directing the defendant to pay mesne profits.

4. The brief facts of the written statement of the defendant are as follows:-

The averments of the plaint are not correct. The R.T.R. Standing in the name of Sri Rengammal is just a mistake. Even if it is correct that ought to have been rectified after her demise. During the life time of Ethirajulu, he could not cultivate the suit property because of his inability and illness. He had orally transferred the lease hold right to the defendant before 8 years of his death. From then onwards, the defendant alone is in enjoyment of the suit property as tenant and he has been paying the rent regularly. The Temple Authority has also recognized the defendant alone as the tenant. The legal heir certificate filed by the plaintiff is false and it would not bind the defendant. The plaintiff has got no right to seek a decree as prayed for. The defendant has already filed a suit as against the Temple Authority not to disturb his possession in O.S.No.64 of 1995 and the same was decreed in his favour. Since the issues involved are with regard to the Tenancy Right, the Civil Court has got no jurisdiction to entertain the suit. The owner of the property is a necessary party for better adjudication of the suit. Since he was not impleaded as a party, the suit is bad for non-joinder of unnecessary parties also and there is no cause of action for the suit has to be dismissed.



5. The trial Court has tried the suit by framing six issues and one among the six issues was whether the Civil Court has jurisdiction to try the suit. The trial Court has answered the issue as to jurisdiction to the effect that the jurisdiction of the Court is barred. The trial Court has held that the jurisdiction of the Civil Court is barred under Section 6 of the Tamil Nadu Agricultural Land of Record Tenancy Rights Act, 1969. Aggrieved over that the plaintiff has filed the First Appeal. The First Appellate Court has allowed the appeal on the ground that this is not a suit for deciding the Tenancy Right but this is a suit by a person in possession of property against a stranger who was disturbing his possession. Making such an observation, the First Appeal was allowed and the decree of the trial Court was set aside. Aggrieved over that, the defendant has filed this Second Appeal.

6. This Second Appeal has been admitted on the following two Substantial Questions of Law:-

"1. Whether in law the judgment and decree passed by the lower Appellate Court are sustainable when it has failed to frame necessary points for determination in the appeal as required under Order 41, Rule 31 of CPC?

2. Whether in law lower Appellate Court right in decreeing the suit merely because the defendant failed to establish his case when it is for the plaintiff to prove his case by sufficient oral and documentary evidence and he has to succeed on his own case and not on the loopholes of the defendant's case?"

7. This Court heard elaborate arguments of the learned counsel for the appellant.

8. An important substantial questions of law that would arise for consideration in this appeal would be whether the Civil Court has got to jurisdiction to try the suit and whether the suit is barred under Section 6 of the Tamil Nadu Cultivating Tenants Protection Act. Hence, the following Additional Substantial Question of Law is framed as hereunder:-

"whether the Civil Court has got to jurisdiction to try the suit and whether the suit is barred under Section 6 of the Tamil Nadu Cultivating Tenants Protection Act?"



9. Going by the pleadings, evidence and submissions of both the plaintiff and the defendant, it is clear that the suit properties are the Temple properties and one Sri Rangam Ammal is admittedly, the cultivating tenant in the suit property. According to both the parties her name has to be entered as the Registered cultivating land in the Tenancy Register. Sri Rangam Ammal, had a son by name Ethirajulu, who is said to have enjoyed the suit properties along with his mother. Ethirajalu did not have any children. The plaintiff claims to be the brother's son of Ethirajalu and he has stated that he was in enjoyment of the suit properties along with his brother by physically cultivating the properties.

10. On the other hand, the defendant would submit that even during the life time of Ethirajalu, he was only cultivating the properties. According to the defendant, Ethirajalu became sick and he had orally transferred lease hold rights to him 8 years even before of his death. What ever may be the case, the important point that would arise for consideration is who is the cultivating tenant of the suit properties or who is rightfully entitled to get himself registered as a cultivating tenant after the demise of Sri Rangam Ammal and his son Ethirajalu. Without finding any answer to that question, the suit cannot be decided. But, the issue as to who is the cultivating tenant and whose name has to be registered in the Register of cultivating tenants are all within the purview of the Authorized Officer, who has to make necessary enquiry in this behalf. Even according to the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act also, the Civil Court will not have jurisdiction. Because Section 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 would bar the jurisdiction of the Civil Court, Section 5 of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, which deals with Modification of entries in the approved records of Tenancy Rights is extracted hereunder:-

5. Modification of entries in the approved record of tenancy rights:- (1) Where any person claims that in respect of any land already included in the approved record of tenancy rights any modification is required in respect of the entries in such record either by reason of the death of any person or by reason of the transfer of interest or by reason or any other subsequent change in circumstances, he shall make an application to the record officer for the modification of the relevant entries in the approved record of tenancy rights.



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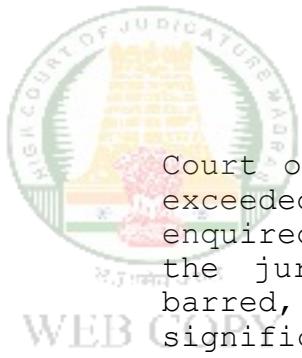
(2) An application under sub-section (1) shall contain such particulars as may be prescribed and shall be accompanied by the documents, if any, relied on by the applicant as evidence in support of his claim.

(3) (a) Before passing an order on an application under sub-section (1), the record officer shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. If the record officer decides that any modification should be made in respect of the entries in the approved record of tenancy rights, he shall pass an order accordingly and shall effect the modification and make such incidental and consequential changes in the approved record of tenancy right as appear to him to be necessary, for giving effect to his order.

(b) If the record officer decides that there is no case for effecting an modification in the entries in the approved record of tenancy rights, he shall reject the application.

11. So, both of the Acts, as mentioned above, bar the jurisdiction of the Civil Court to entertain the suit of this nature, the relief of recovery of possession cannot be granted without getting this decided by the Revenue Officer. Only, if the Revenue Officer decides and makes relevant entries in the concerned Revenue Register and confirms the Tenancy entitlement and enjoyment of either of the parties, then it would be ideal for any party to approach the Civil Court for the purpose of getting a relief of injunction for restraining the others from interfering with his rightful possession as a tenant.

12. Without that issue being decided by the Revenue Officer, if any suit is filed for recovery of possession that is not maintainable. And the suit for injunction would also be a premature one. Since the facts and circumstances of the case and the evidence available in this case would show that there is a clear case which has to be handled by the Revenue Authorities and the fact as to who is the cultivating tenant and whose name has to be entered in the Tenancy Register has to be decided by them, it has to be held that the Civil Court does not have jurisdiction to entertain the suit and the findings of the trial



Court on this aspect is correct. The first Appellate Court has exceeded itself by indulging into the aspects which have to be enquired by the Revenue Authority and decreed the suit. Since the jurisdiction of the Civil Court itself is found to be barred, the substantial questions of law 1 and 2 have no significance.

13. Hence, in the result, this Second Appeal is allowed. The judgment and decree of the First Appellate Court is set aside and the judgment and decree of the trial Court is upheld. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

dna

To

1. The Additional District Court,
(Fast Track Court) Ariyalur.
2. The Additional District Munsif Court,
Ariyalur.

Copy to

The Section Officer,
VR Section,
High Court, Madras - 104.

+1cc to Mr.P.Mani, Advocate, S.R.No.14456

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