



C.R.P.(NPD)No.2878 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2878 of 2010

G.J.Balamurugan

.. Petitioner

Vs.

1.Ammasi (died)

2.Thangavel

3.Kaliammal @ Ammini

4.Karichiannan (died)

5.Muthusamy

6.Shanmugam

7.G.K.Sathiyamoorthy

(R7 brought on record as legal heirs of the deceased 4th respondent vide order of this Court dated 17.09.2021 made in C.M.P.Nos. 15067 to 15069 of 2021 in C.R.P.No.2878 of 2010)

8.A.Somasundaram

9.K.Gomathi

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(Respondents 8 and 9 brought on record as legal heirs of the deceased 1st respondent vide order of this Court dated 22.10.2021 made in C.M.P.Nos.15070 to 15072 of 2021 in C.R.P.(NPD)No.2878 of 2010)

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order dated 11.12.2009 passed by the Court of Special Deputy Collector, Trichy, (Revenue Department), in O.P.No.3 of 2008 (Erode) on the file of the Court of the Special Deputy Collector, Trichy.

For Petitioner : Mr.A.Veerasingam
for Mr.M.Narayananaswamy
For RR2, 5 to 9 : Mr.SP.Yuaraj

ORDER

Civil Revision Petition is filed against the order dated 11.12.2009 passed by the Court of Special Deputy Collector, Trichy, (Revenue Department), in O.P.No.3 of 2008 (Erode) on the file of the Court of Special Deputy Collector, Trichy.

2.The petitioner is landlord of agricultural land measuring 4 acres 99 cents with well, 5 H.P. electric motor pump set. According to the

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petitioner, originally one Kalianna Gounder was cultivating tenant. As per the terms, the said Kalianna Gounder and the petitioner must share crops raised or value thereof. The tenant must inform the petitioner about the crops that he is going to raise and send advance notice before harvesting and sale. The tenant Kaliyanna Gounder died on 11.08.1989 leaving behind his legal heirs, the respondents 1 to 6. Pending C.R.P., 1st respondent died, his legal heirs were impleaded as respondents 8 and 9 and 4th respondent died, his legal heir was impleaded as 7th respondent.

2(i) According to the petitioner, the respondents 1 to 6 colluded and did not inform the petitioner about the crops raised at the time of harvesting. They attempted to remove the then standing crops. The petitioner filed O.S.No.104 of 2000 on the file of the District Munsif Court, Gobichettipalayam, (a) for declaration that the respondents are bound to pay half share to the petitioner in the then standing crops, (b) for permanent injunction restraining the respondents 1 to 6 from removing the crops without payment of due share to the petitioner and (c) for a direction to the respondents 1 to 6 to give notice to the petitioner in



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advance both at the time of cultivation as well as harvest and after paying landlord's share, remove the harvested crops.

2(ii) In the said suit, the respondents 1, 5 and 6 alone filed written statement and respondents 2 to 4 remained exparte. The respondents 1, 5 and 6 in the written statement have stated that they alone are cultivating the entire land and respondents 2 to 4 did not cultivate the land.

2(iii) The said suit in O.S.No.104 of 2000 was dismissed with regard to the reliefs sought for in (a) and (b); for declaration that the respondents are bound to pay half share to the petitioner in standing crops and permanent injunction restraining the respondents 1 to 6 from removing the crops without payment of due share to the landlord and the suit was decreed with regard to relief sought for in (c); granting injunction that in future, the respondents do give notice to landlord in advance both at the time of cultivation and at the time of harvest and after paying landlord's share, remove the harvested crops.

2(iv) The petitioner filed O.P.No.3 of 2008(Erode) before the Special Deputy Collector, Trichy, under Section 3,4(a)&(b) of the Tamil



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Nadu Cultivating Tenants Protection Act, 1955, seeking an order of eviction against the respondents 1 to 3 regarding half share in the petition land and the petitioner be put in actual possession of the same by concerned Revenue Inspector after dividing the land into two with well right.

2(v) Before the Special Deputy Collector, the respondents 1 and 2 and respondents 4 to 6 filed vakalat, entered appearance through Advocate. The 3rd respondent did not appear. The 3rd respondent was absent on 08.02.2008 and after five adjournments, the respondents 1 to 3 did not appear and contest O.P.No.3 of 2008(Erode) filed by the petitioner. On 08.08.2008, The respondents 1 to 3 were set exparte and the Special Deputy Collector, Trichy, allowed the petition against the respondents 1 to 3 and posted O.P. for enquiry.

2(vi) In the counter statement filed by the respondents 4 to 6, they have stated that after the death of Kaliyanna Gounder, the original tenant, as his legal heirs, the respondents 1 to 3 did not cultivate the land and the respondents 4 to 6 alone are in possession and are cultivating the



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land. According to the respondents 4 to 6, even after termination of lease, the person, who is in possession of the land continues to be the tenant. Even during lifetime of original tenant Kaliyanna Gounder, only the respondents 4 to 6 alone are cultivating the land. The same was accepted and acknowledged by the petitioner. There is no provision in the Act, there is no power to the authority to divide the land and hand over half of the land to the petitioner and prayed for dismissal of the said O.P.

3.The Special Deputy Collector, Trichy, dismissed the O.P. holding that shares of tenant can be decided only by the Civil Court and Revenue Court has no power to decide the share of tenants and has no power to direct the Revenue Inspector to divide the land and give possession to the landlord.

4.Against the said order of dismissal dated 11.12.2009 passed by the Court of Special Deputy Collector, Trichy, (Revenue Department), in O.P.No.3 of 2008 (Erode), the petitioner has come out with the present Civil Revision Petition.



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5.Both the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 2 and 5 to 9 reiterated the averments made by them in the affidavit filed in support of the O.P. and counter statement.

6.According to the learned counsel appearing for the petitioner, the Special Deputy Collector, Trichy, erred in dismissing O.P. in its entirety. Already on 08.08.2008, O.P. was allowed against respondents 1 to 3. The learned counsel for the petitioner referred to the reliefs claimed in O.P.No.3 of 2008(Erode) and contended that the Special Deputy Collector, Trichy, having granted the relief claimed in the O.P. to the petitioner on 08.08.2008 itself, erred in dismissing O.P. and prayed for setting aside the order of the Special Deputy Collector and permitting the petitioner to file a fresh amended petition in the same O.P. for evicting the respondents.

7.The learned counsel appearing for the respondents 2 and 5 to 9 after referring to the stand taken by him in the counter statement,



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contended that the Special Deputy Collector, Trichy, passed order by giving valid reason that there is no power to the Deputy Collector to divide the land, hand over the possession to the landlord and prayed for dismissal of the Civil Revision Petition.

8.The 3rd respondent remained exparte before the trial Court and hence, notice to the 3rd respondent is dispensed with.

9.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 2, 5 to 9 and perused the entire materials on record.

10.From the materials extracted above, it is seen that following facts are admitted:

- (i) The petitioner is landlord of petition property.
- (ii) Originally one Kaliyanna Gounder was cultivating tenant. He died on 11.08.1989. The respondents 1 to 6 are his legal heirs.



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(iii) The respondents 1 to 3 are not in possession and they are not cultivating the land. Only the respondents 4 to 6 are in possession and cultivating the land.

In the back ground of above admitted facts, it is to be seen whether Special Deputy Collector, Trichy, the Presiding Officer of Revenue Court has committed an error or impugned order is valid or not.

11.From the above materials on record, it is seen that petitioner has filed O.P.No.3 of 2008(Erode) seeking an order of eviction against the respondents 1 to 3 regarding half share in the petition land and the petitioner be put in actual possession of the same by concerned Revenue Inspector after dividing the land into two with well right. The petitioner has claimed relief only against respondents 1 to 3. Before the Special Deputy Collector, Trichy, the respondents 1 and 2 entered appearance through Advocate. The 3rd respondent did not appear either personally or through Advocate, the respondents 1 and 2 even after entering appearance through Advocate, did not file counter statement and did not



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contest the O.P. The respondents 1 to 3 were set exparte on 08.08.2008.

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The Special Deputy Collector, Trichy, allowed the O.P. on 08.08.2008 against the respondents 1 to 3 and after allowing against the respondents 1 to 3 on 08.08.2008, erred in proceeding further and passed impugned order dated 11.12.2009 dismissing O.P. The Special Deputy Collector, Trichy, failed to see that petitioner claimed relief only against respondents 1 to 3. The Special Deputy Collector, Trichy, having granted relief on 08.08.2008 to the petitioner as sought for, erred in dismissing O.P. by the impugned order. This shows that Special Deputy Collector, Trichy, has not properly appreciated the scope of O.P. and relief sought for by the petitioner. In view of the same, the impugned order of the Special Deputy Collector, Trichy, is passed without any application of mind. In view of the same, the impugned order of the Special Deputy Collector, Trichy, is liable to be set aside and is hereby set aside. O.P.No.3 of 2008(Erode) is remanded to the Special Deputy Collector, Trichy, for fresh consideration on merits and in accordance with law.



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12.The learned counsel appearing for the petitioner submitted that before the Civil Court in O.S.No.104 of 2000, the respondents 1, 5 and 6 in the written statement have stated that they alone are cultivating the land and respondents 2 to 4 are not cultivating the land. In view of the said fact, the petitioner will file a amended petition in O.P.No.3 of 2008(Erode) before the Special Deputy Collector, Trichy and prayed for fresh disposal. The petitioner is at liberty to file the amended petition in O.P.No.3 of 2008(Erode) within a period of four weeks from the date of receipt of a copy of this order. The Special Deputy Collector, Trichy, is directed to receive the amended copy of the petition and after giving opportunity to both the petitioner as well as respondents, decide the matter on merits and in accordance with law, within a period of six months thereafter.

13.With the above directions, the Civil Revision Petition stands allowed. No costs.

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V.M.VELUMANI,J.

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To

The Special Deputy Collector
Trichy, (Revenue Department).

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