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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.391 OF 2014

&

M.P.NO.1 OF 2014

Jayaraman

... Appellant/Defendant

Vs.

1. Rajendran

... 1st Respondent/Plaintiff

2. Arulmigu Sattanathaswami Devasthanam
Sirkali

(R2 suo motu impleaded vide
order of Court dated 13.11.2019
made in S.A.No.391 of 2014 by RSMJ)

... 2nd Respondent

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 20.12.2013 made in A.S.No.101 of 2012 on the file of the learned Principal Sub Judge, Mayiladuthurai reversing the judgment and decree dated 18.07.2012 made in O.S.No.6 of 2008 on the file of the learned District Munsif Court, Sirkali.

For Appellant : Mr.A.Muthukumar

For Respondents : Mr.M.V.Venkataseshan for R1
Mr.S.Sounthar for R2

J U D G M E N T

Aggrieved over the reversal of decree passed by the Trial Court, the defendant has preferred the above Second Appeal.

2. The respondent/plaintiff filed a suit for permanent injunction against the appellant/defendant. The subject matter in the suit is right of cultivating tenancy in the land



belonging to the 2nd respondent temple. According to the plaintiff item Nos.1 and 2 of the suit properties belong to Sattanathaswami Devasthanam, The maternal aunt of the parties viz., paunammal was cultivating the same as a cultivating tenant under 2nd respondent temple. She transferred the right of cultivating tenancy by virtue of a deed dated 21.08.1988. Thereafter, the plaintiff and his family were cultivating the same. The cultivating tenancy was also transferred in his favour. In respect of item No.3 a house site a transfer was made in favour of plaintiff. The appellant/defendant who is the brother of the plaintiff is interfering with the peaceful possession, which lead to filing of the suit.

3. The appellant/defendant had denied the averments made in the plaint and contended that the said Pounammal had adopted the defendant and transferred the right of cultivating tenancy in favour of the defendant's wife Selvi in respect of item Nos.1 and 2 and executed a settlement deed in respect of item No.3. Not arraying Selvi as a party is bad for non-joinder of parties Such she prayed for dismissal of the suit.

4. The Trial Court after framing appropriate issues has decided that the plaintiff is not a cultivating tenant at all and the transfer of cultivating tenancy vide Ex.A.1 is illegal and non-est and the transfer of patta was also not in possession of the plaintiff and therefore the title and possession was not proved and dismissed the suit. It also decided that the suit is bad for non-joinder of parties.

5. On appeal, the Lower Appellate Court has held that vide Ex.A.2 the said Pounammal the maternal aunt of the parties had transferred the cultivating tenancy rights in favour of the plaintiff and vide Ex.A5 the patta was transferred in favour of the plaintiff in respect of item No.3 and the death certificate, legal heir certificate and the kist receipts proved the possession of the plaintiff. In so far as the issue of non-joinder of parties is concerned the Lower Appellate Court has held Ex.B8, the settlement deed does not disclose the survey numbers, boundaries of the property and therefore they cannot be relied on. Even the unregistered settlement deed is taken for recedes for collateral purpose. On this ground the judgment of the Trial Court was reversed and the suit was decreed. Aggrieved over the same, the defendant has preferred the above Second Appeal and the same was admitted on the following questions of law.

“(i). Whether the Lower Appellate Court erred in law in holding that Ex.A1 is valid when the same was passed by the Record of Tenancy Rights Tahsildar after the death of



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Pounammal despite no steps were taken to bring her LRs on record?

(ii) Whether the order of the Record of Tenancy Rights Tahsildar, Ex.A1 is binding on the defendant when admittedly the defendant was not a party to the said proceedings?

(iii) Whether the Lower Appellate Court erred in law in relying upon Ex.A1 when the entries made in the Record of Tenancy Rights Registers are not conclusive proof of evidence with regard to tenancy or possession?

(iv) When the plaintiff (P.W.1) categorically admits in his cross examination that third item of the suit property whether the Lower Appellate Court erred in law in reversing the decree of Trial Court by granting a decree for injunction in favour of the plaintiff?"

6. Heard the submission of both sides.

7. From the perusal of Ex.A1 it is noted that in proceedings Ne.Mu.Ku.1150/2007 dated September 2007, the Tahsildar has transferred the cultivating tenancy in favour of the plaintiff and recorded the same in its register. The plaintiff was shown as a petitioner and Pounammal was shown as the respondent. Admittedly, as per Ex.A.6 the said Pounammal died on 14.03.2002. Therefore, any proceeding against a dead person after a period of five years is not sustainable in law and void ab-initio. Therefore, the recording of plaintiff's name in the registers is absolutely illegal and Ex.A1 should be considered as non-est. Therefore, the finding of the Trial Court on this aspect is very much legal and the Lower Appellate Court has failed to consider the said point in proper perspective. In respect of Ex.A2 is concerned, it is an unregistered release deed in respect of 73 2/3 cents, I do not find any consequential documents that the said deed was acted upon and consequential entries in the registers of the temple as well as the revenue records have been made immediately after 1988. In so far as the claim of the plaintiff that he is the cultivating tenant is concerned it is imperative to look into the evidence adduced by him as P.W.1. It is stated by him during cross examination that he was working as Sub Inspector of Police and continued to work as such in various places. It is well settled that the cultivating tenant shall be a person who renders his physical labour in the lands where he cultivates. In the instant case, the evidence of plaintiff itself does not support his claim as a cultivating tenant.

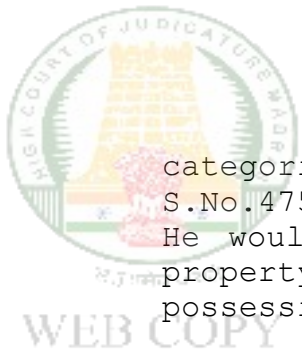


8. Learned counsel for the appellant would rightly rely on the judgment of this Court in Balu Pillai @ Balasubramania Pillai & Ors Vs. Mahadevan & Ors, reported in 2010 1 L.W 541, wherein it is observed as under:

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"16. A person, who is a Government servant governed by the Government Servants Conduct Rules can never come under the purview of section 2(b) of the Tamil Nadu Cultivating Tenants Protection Act, 1962. The logic behind the decision is that a Government servant cannot claim to have contributed his physical labour when he is actually in service for the cultivation of the subject property. Defendants 1 and 2 being Government servants cannot be cultivating tenants. When defendants 1 and 2 were not cultivating tenants, they have no right to transfer the leasehold right with respect to the first item of the suit property in favour of the fifth defendant."

9. From a reading of the judgment, it is well established that the plaintiff cannot be considered as a cultivating tenant in the eyes of law. The very basis of getting the cultivating tenancy right stand shattered on this aspect. Further, it is contended by the parties that the defendant was adopted by the said Pounammal on the contrary the plaintiff himself claims that he is the foster son of the said Pounammal. This Court is unable to understand as to how the foster son was given legal heir certificate. It is well settled in law that a foster son cannot inherit the property rights, but it is only the natural legal heirs or the adopted son can inherit the property. The defendant claims that he was the adopted son. Even though no evidence was produced, it is incumbent on the Tahsildar to enquire into the matter by issuing notice to all the parties concerned. It is also relevant to note that the plaintiff is not the only son but he has brothers and their maternal aunt Pounammal was mostly living with her sister, mother of the parties. In that event, the Tahsildar ought to have issued notice to all the parties interested enquired the same and should have issued the legal heir certificate. It appears that the plaintiff with the influence of his post had obtained legal heir certificate without following the proper procedure. Ex.A5 is the transfer of patta in respect of S.No.475/16 in Patta No.281 whereas the date of death of Pounammal was mentioned as 14.03.2004. Ex.A6, the death certificate specifies the date of death as 14.03.2002. Hence, it is very clear that the date of death mentioned in Ex.A5 is incorrect. Besides this in the evidence it is



categorically admitted that item No.3, the house property in S.No.475/16 is not at all existing as it was dilapidated one. He would further depose that no body is in possession of the property. In that event, the claim of injunction without possession is also not sustainable.

10. To sum up, the plaintiff will not fall under the ambit of cultivating tenant as he is a Government servant and a person who is not in possession of properties cannot claim any relief of injunction. The Trial Court has rightly considered all these issues and decreed the suit. The finding of the Lower Appellate Court reversing the well considered judgment of the Trial Court on the basis of unacceptable evidence is perverse and illegal. The questions of law thus answered in favour of the appellant and in fine the Second Appeal stands allowed. Consequently, connected miscellaneous petition is closed.

Learned Counsel Mr.Sounthar appearing for the 2nd respondent/ Temple would submit that the records of the temple does not show even the said Pounammal as a cultivating tenant and the temple is taking action under the cultivating tenancy Act. It is open to the temple to pursue their remedy and this judgment will not stand in their way. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kpr

To

1. The Principal Sub Judge, Mayiladuthurai.
2. The District Munsif Court, Sirkali.

Copy To

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

+1cc to M/s.A.Muthukumar, Advocate, S.R.No.46044
+1cc to Mr.M.V.Venkataseshan, Advocate, S.R.No.46058
+1cc to Mr.S.Sounthar, Advocate, S.R.No.45954

S.A.No.391 of 2014
&
M.P.No.1 of 2014

KJ(CO)
RLP(13/06/2022)