



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Rev.Application(MD) .No.38 of 2021

and

CMP (MD) .No.5078 of 2021

in

S.A(MD) .No.58 of 2021

R.Jayachandran

...Applicant

Vs.

1.Mohamed Sirajudeen

2.Mohammed Bakrudeen

Murugan(died)

3.Malathi

4.Pandeeswari

5.Thennarasu

6.Pandiarasu

..Respondents

Prayer: Review Petition filed under Order XLVII Rule 1 r/w. Section 114 of C.P.C., praying to review the judgment and decree dated 10.02.2021 passed in S.A(MD).No.58 of 2021.

Prayer in SA(MD). 58/ 2021 :

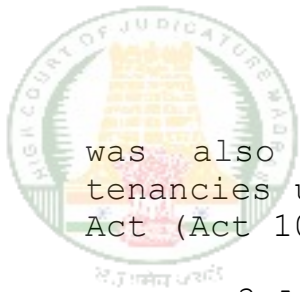
Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree dated 17-09-2019 passed in A.S.No. 79 of 2015 on the file of The Principal Subordinate Judge, Madurai confirming the Judgment and decree dated 28-04-2015 passed in O.S.No. 16 of 2008 on the file of the The District Munsif Court, Madurai Taluk.

For Applicant : Mr.D.Malaichamy

O R D E R

This review petition is at the instance of the appellant in S.A(MD) .No.58 of 2021.

2.The suit was laid by the appellant seeking permanent injunction restraining the defendants 1 and 2, who are admittedly the legal heirs of the owner of the property from interfering with his possession on the ground that he is in possession of the property as a cultivating tenant. According to the plaintiff, his father's maternal grand mother, Nallammal became a cultivating tenant from 1969 and cultivated the property by contributing her own physical labour and that of her family members. The said tenancy



was also registered with the Officer authorized to register tenancies under Tamilnadu Agricultural Land Record of Tenancy Rights Act (Act 10 of 1969).

3. According to the plaintiff, on the death of the plaintiff's father's maternal grand mother, Nallammal in the year 1979, her only daughter, Ayyakkal, who is the paternal grand mother of the plaintiff was cultivating the property by contributing her own physical labour as a cultivating tenant. After the death of said Ayyakkal, the father of the plaintiff, Raju Thevar was the cultivating tenant. On the death of Raju Thevar on 10.06.2005, the plaintiff continued to cultivate the property. Claiming that the defendants 1 and 2 attempted to interfere with his possession, the plaintiff sought for a decree for permanent injunction restraining the defendants from interfering with his possession of the property.

4. The suit was resisted by the 4th defendant contending that the plaintiff was never in possession of the property and he was not a cultivating tenant. The 4th defendant also claim that the maternal grand mother of the plaintiff's father, Nallammal also did not cultivate the property. The Trial Court dismissed the suit on the conclusion that the plaintiff has not established that he has been contributing his own physical labour in cultivation of the property as required under the Tamilnadu Cultivating Tenants Protection Act, 1955. The Court also faulted the plaintiff for not having disclosed the existence of the other legal heirs of Raju Thevar. On the said conclusion, the learned Trial Judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.79 of 2015. The Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved, the plaintiff preferred second appeal in S.A(MD).No.58 of 2021. I had dismissed the second appeal on 10.02.2021, agreeing with the conclusions of the Trial Court and the Appellate Court to the effect that the plaintiff has not established that he is contributing his own physical labour or that of any members of his family in cultivation of the lands. It is the judgment, which is sought to be reviewed.

5. Heard, Mr.D.Malaichamy, learned counsel appearing for the review applicant.

6. Mr.D.Malaichamy would vehemently contend that both the Trial Court as well as the Appellate Court had based their conclusions only on the premise that the plaintiff has not disclosed the existence of the legal heirs and the said premise, according to the learned counsel is incorrect, since as per the definition of the term cultivating tenant found in the Section 2(aa) of the Tamilnadu Cultivating Tenants Protection Act, a person, who contributes his own physical labour or any members of his family could be a tenant *de hors*, the availability of other heirs of the deceased cultivating tenant is immaterial. Therefore, according to Mr.D.Malaichamy, the fact that the



Trial Court as well as the Appellate Court had over looked a very essential ingredient, while recording a finding against the petitioner herein vitiates the same.

7.I have bestowed my anxious consideration of the contentions of the learned counsel. I am unable to countenance the submissions of the learned counsel appearing for the review applicant. Both the Courts below, apart from finding that the plaintiff is not the only legal heir of Raju Thevar, have also recorded specific findings to the effect that the plaintiff has not established that he has been cultivating the property by contributing his own physical labour or that any members of his family. Of course, the Courts have referred to the fact that the plaintiff has suppressed the existence of other heirs of Raju Thevar but that by itself has not been made a reason for rejecting the claim of the plaintiff. I therefore, do not see any substance of the review. The review application is therefore, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2021

Sub Assistant Registrar(CS)

Kkn

To

1. The Principal Subordinate Judge, Madurai.
2. The District Munsif, Madurai Taluk, Madurai.

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and CMP(MD).No.5078 of 2021
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ls (CO)

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