



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.204 of 2007

K.SUBRAMANIAN (DIED),

1 KRISHNALEELA

2 S.UMARANI

3 S.SARAVANAN

4 SURESH KUMAR

... Appellants / Respondents / Plaintiffs

Vs

1 KALAVATHY

... 1st Respondent / Appellant / 1st Defendant

SELVARAJ (DIED)

... 2nd Defendant

2 SUBRAMANIAN(DIED)

... 2nd Respondent / Respondent / 3rd Defendant

(This Second Appeal is dismissed as abated as
against the second respondent herein as perusing
the order dated 20.10.2021

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Principal Subordinate Judge, Madurai, in A.S.No.149 of 2005 dated 01.06.2006 reversing the judgment and decree of the learned District Munsif, Madurai, in O.S.No.21 of 2002 dated 05.04.2005.

For Appellants : Mr.S.Alagarsamy

For Respondents : Mr.S.Madhavan for R1

Mr.P.T.S.Narendravasan for R2

JUDGEMENT

The plaintiffs in O.S.No.21 of 2002 on the file of the Court of the District Munsif of Madurai Taluk are the appellants in this second appeal. The suit was for permanent injunction. The trial Court decreed the suit. On appeal by the contesting defendants, the first appellate Court reversed the decision of the trial Court and dismissed the suit by allowing the appeal. This second appeal was admitted on the following substantial questions of law:-

"1.Has not the learned Subordinate Judge erred in holding that the plaintiffs have not proved with sufficient evidence that they are in possession of the suit land though the same were admitted by the defendants under Exs.B3 and B4?

2.Has not the learned Judge erred in admitting and receiving in evidence documents B3 and B4 which are



unregistered sale deed? and

3.Has not the learned Judge erred in holding that the unregistered sale deed can be marked as documents because the same was not objected to at the time of their marking by the plaintiffs?"

2.The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds. He submitted that the suit property belonged to the third defendant/P.R.Subramanian. However, one Koolu @ Karuppannan was the cultivating tenant. He had three sons namely, K.Subramaniam, Selvaraj and Alagumuthu. In a partition that took place among the family members, the suit property was allotted to the share of the plaintiff/K.Subramaniam. The plaintiff was in possession of the suit property and his name was also entered in the record of tenancy rights. Selvaraj was the plaintiff's brother and Kalavathy was the daughter of Selvaraj. Kalavathy attempted to enter her name in the record of tenancy rights in respect of the suit property by substituting the name of the plaintiff/K.Subramaniam. Her application was dismissed and the appellate authority only remanded the matter. As on the date of filing of the suit, the name of the plaintiff alone was reflected in the tenancy register. After filing the suit, K.Subramaniam passed away and his legal representatives were brought on record. His wife examined herself as P.W.1. Three other witnesses were examined on the side of the plaintiffs. Exs.A1 to A12 were marked. The trial Court after a consideration of all the exhibits marked by the plaintiffs rightly decreed the suit. The specific finding of the trial Court was that the plaintiffs have proved their possession over the suit property. The learned counsel for the appellants pointed out that the first appellate Court erred in relying on Exs.B3 and B4. According to the contesting defendants, under these two documents, the original plaintiff had conveyed his tenancy rights over the suit property in favour of Kalavathy. The learned counsel for the appellants pointed out that both these documents are compulsorily registrable but have not been registered. Therefore, they are inadmissible in evidence. If these two documents are eschewed out of consideration, there is nothing on record to show that the contesting defendants have possession over the suit property. In any event, the fact that the name of the original plaintiff figures in the tenancy register and that the contesting defendants could not displace the same is sufficient to sustain the judgment and decree passed by the trial Court. He called upon this Court to set aside the impugned judgment and decree and restore the decision of the trial Court.

<https://hcservices.ecourts.gov.in/hcservices/> 3. Per contra, the learned counsel for the contesting



respondent submitted that the impugned judgment and decree do not warrant any interference.

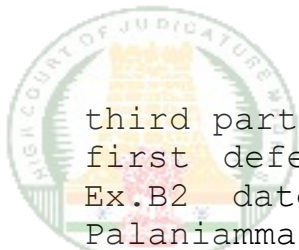
4.I carefully considered the rival contentions and went through the evidence on record.

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5.The suit on hand is one for injunction. Therefore, the only fact that is to be determined is to find out who was in possession of the suit property on the date of filing of the suit. In normal circumstances, the entry in the record of tenancy rights should have played a substantial role in deciding the issue. But not so in this case. P.W.1/Mrs.Krishnaleela admitted in her testimony that her husband was employed in TNEB and that he was transferred from place to place. He retired only by the end of 1999. P.W.1 was also a government school teacher. She retired from service only in June, 2003. In the decision reported in (2010) 3 MLJ 198 Balu Pillai @ Balasubramanina Pillai and Others Vs. Mahadevan and Others, it was held that a government servant governed by Conduct Rules can never come within 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 actually in service for the cultivation of the subject property. P.W.1 further admitted that they had engaged the second defendant/Selvaraj to do the cultivation. It is not the case of the original plaintiff that after his retirement from service, he took over cultivation of the suit property and got his name entered in the record of tenancy rights. Since the original plaintiff was a public servant governed by Conduct Rules and since he was transferred from place to place, the fact that his name finds mentioned in the tenancy register cannot assist the Court in arriving at a conclusion regarding possession.

6.The trial Court erroneously held that tenancy rights cannot be subject matter of conveyance. Lease hold rights are very much transferable. The specific case of the contesting defendants was that under Exs.B3 and B4 dated 18.04.1987 and 14.06.1987, the original plaintiff sold the tenancy rights in favour of Kalavathy/first defendant for a sale consideration of Rs.16,000/-. Exs.B3 and B4 obviously required registration. However, both are unregistered documents and hence, inadmissible. I answer the second substantial question of law in favour of the appellants. However, they can very well be looked into for collateral purposes. The collateral purpose can even be by the nature of possession over the suit land, as held in Bondar Singh and Others Vs. Nihal Singh and Others (2003) 4 SCC 161.

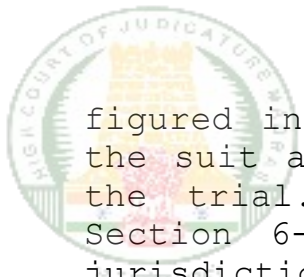
7.The case of the contesting defendants was that the original plaintiff never cultivated the land and that it was under lease to



third parties. One such third party was Palaniammal from whom the first defendant obtained possession after discharging her loan. Ex.B2 dated 23.09.1985 is the document entered into between Palaniammal and Kalavathy. Ex.B4 dated 14.06.1987 executed by the original plaintiff in favour of Kalavathy speaks about his indebtedness to Palaniammal. The total sale consideration of Rs.16,000/- includes this component also. Ex.B4 though not a registered document and though otherwise inadmissible in evidence, can be looked into for this purpose. Ex.B2 stands proved by the contents of Ex.B4. In the written statement, it had been specifically pleaded that the original plaintiff had availed loans from quite a few parties and oblige him, the defendants 1 and 2 paid him a sum of Rs.16,000/-. According to the contesting respondent, this constituted the consideration for transfer of the tenancy rights. Though in view of non-registration of Exs.B3 and B4, the Court cannot construe them as conveying title to the first respondent, they can certainly be looked into for the purpose of finding out who was in possession of the suit property.

8.In the plaint, the original plaintiff had impeached Exs.B3 and B4 as forgeries. But steps were not taken to establish the said allegation. It was the contesting respondent herein who filed I.A.No.64 of 2005 before the first appellate Court for referring the documents for expert opinion. The first appellate Court after a careful consideration of the entire evidence on record had opined that Exs.B3 and B4 were executed only by the original plaintiff. I sustain the said conclusion.

9.The learned counsel for the contesting respondent raised an alternative contention that under Section 6-A of the Tamil Nadu Cultivating Protection Act, 1955, the suit in question should have been transferred to the Revenue Court. Section 6-A will apply if it is proved by affidavit or otherwise that the defendant is a cultivating tenant entitled to the benefits of the Act. In the case on hand, the name of the original plaintiff is figuring in the tenancy register as a cultivating tenant. The contesting defendant has already moved the jurisdictional authority for entering her name in the place of the original plaintiff. She failed in the first instance and the appellate authority had remanded the matter. Therefore, before the Civil Court, the contesting defendant could not have proved that she is the cultivating tenant entitled to the benefits of the Act. This provision was intended to protect a cultivating tenant from being sued in a civil Court either in an injunction suit or in a suit for recovery of possession. The Civil Court on being satisfied that the defendant was a cultivating tenant entitled to the benefits of the Act could not then proceed with the trial. It is then enjoined to transfer it to the Revenue Court. In the present case, the suit itself was instituted by a person whose name



figured in the record of tenancy right on the date of filing of the suit and which had not been mutated till the commencement of the trial. Therefore, the defendant could not have invoked Section 6-A of the Act. The Civil Court very much had the jurisdiction to try the present suit.

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10.The first appellate Court had found that the contesting defendant had proved her possession over the suit property in the light of Exs.B2 to B4. P.W.1 herself had conceded that they engaged the second defendant to cultivate the suit property. The plaint is silent as to when the original plaintiff resumed personal cultivation. His name could not have figured in the record of tenancy rights because he was a public servant governed by Conduct Rules. The first and third substantial questions of law are answered against the appellants. The impugned judgment and decree passed by the first appellate Court is confirmed. The second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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- 1.The Principal Sub Court, Madurai.
- 2.The District Munsif Court, Madurai.

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Madurai Bench of Madras High Court,
Madurai.

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PS (CO)

SP/NS (19.11.2021) 2P 5C
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