



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD)No.511 of 2013

and M.P. (MD)No.1 of 2013

WEB COPY

1.Krishnamoorthy

2.Periyasamy

... Appellants/Respondents/
Defendants

Vs.

Karala Gounder

... Respondents/Appellants/
Plaintiff

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the decree and judgment dated 09.04.2013, passed in A.S.No.67 of 2012, on the file of Principal Subordinate Judge, Karur in reversing the decree and judgment passed in O.S.No.192 of 2009, on the file of Additional District Munsif, Karur, dated 30.01.2012.

For Appellants : Mr.K.Suresh
for Mr.E.K.Kumaresan

For Respondent : Mr.M.P.Senthil

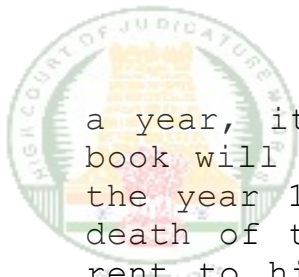
JUDGMENT

Aggrieved over the reversal finding of the first appellate Court, setting aside the judgment of the trial Court, dismissing the suit filed for bare injunction, the present Second Appeal is filed.

2.The parties are referred to as per their rank before the trial Court.

3.The brief facts, leading to filing of this Second Appeal, are as follows:-

The suit property originally belonged to one Palaniyandi Pillai and he has leased out the same in favour of the plaintiff on 15.02.1980, for a period of three years under a Lease Deed. Eversince from the date of said lease, the plaintiff cultivating the property as a cultivating tenant till today and he was in the habit of paying the lease amount to the landlord without any default. Lease amount paid by the plaintiff will be entered into a kutchat book maintained by the plaintiff and after completion of



a year, it is usual practice adopted by the lessor that the old book will be retained by the lessor. The said lessor had died in the year 1995, leaving behind his wife Ramayee Ammal. After the death of the said Palaniyandi Pillai, the plaintiff has paid the rent to his wife Ramayee Ammal periodically without any default. The said Ramayee Ammal also died on 30.04.2005 issueless. The defendants are the brother's son of Ramayee Ammal and the plaintiff has continued to pay the rent to the defendants till today and he is in continuous possession of the property. When the matter stood thus, the defendants, with the intention to sell the property to the third parties, demanded the plaintiff to surrender of possession. However, the plaintiff did not do so. Therefore, the defendants on 27.04.2009, attempted to interfere with the possession of the plaintiff. Hence, a suit was filed for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property.

4. Denying the allegation that the plaintiff is in continuous possession of the property, it is the contention of the defendants that the plaintiff has handed over the possession of the property to Palaniyandi Pillai, after the expiry of the lease period. Thereafter, the said Palaniyandi Pillai was in possession of the property. After his demise, his wife viz., Ramayee Ammal was enjoying the property. After her death, the defendants have become the absolute owner of the property, by virtue of the 'Will' executed by the said Ramayee Ammal, during her life time. Hence, it is his contention that plaintiff was never in possession of the property and prayed for dismissal of the suit.

5. Based on the above pleadings, the trial Court has framed the following issues:

- 1. Whether the plaintiff is entitled to get permanent injunction as prayed for?*
- 2. To what other reliefs, the plaintiff is entitled to?*

6. Before the trial Court, on the side of the plaintiff P.W.1 and P.W.2 were examined and Exs.A1 and A2 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.B1 to B.32 were marked. Exs.X1 to X5 were also marked.

7. The trial Court, after appreciation of evidence, found that the plaintiff was not in possession of the property and dismissed the suit. The first appellate Court, however allowed the appeal by setting aside the judgment of the trial Court, holding that the plaintiff's plea of surrender, after the lease period, have not been established. As against which, the present Second Appeal is filed.



8. While admitting this Second Appeal, the following substantial questions of law have been framed:

"i) Whether in a suit for permanent injunction, the possession on the date of suit has to be decided from the available documents or not?

ii) Whether a registered Lease can be terminated by implied surrender?

iii) Whether the present possession over the property can be assumed on the basis of 20 years old document and against the revenue records?

iv) It is a duty of the landlord to take steps for cancelling the Lease Deed even after the landlord obtains possession from the tenant?

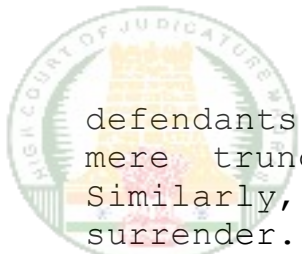
v) Whether the First Appellate Court is right in not considering the admission made by P.W.1 regarding the possession of Ramayee Ammal, who is the predecessor-in-title of the appellants in terms of Section 58 of Indian Evidence Act?"

9. The learned counsel appearing for the appellants vehemently contended that the plaintiff though was inducted as a lessee under Ex.A1 in the year 1980, the lease is only for a period of three years. Lease is over by efflux of time. The plaintiff has handed over possession to the original lessor. Though there was no written contract evidencing the surrender, the nature of the document filed by the defendants and the admission and conduct of the parties clearly proves the surrender of the property. Therefore, it is the contention of the appellants that the surrender need not always be in writing and it can be gathered from the circumstances and there can be implied surrender also. Hence, his submission is that the trial Court has considered the evidence and found that the plaintiff was not in possession of the property. Hence, prays for allowing the appeal. In support of his submission, he has relied upon the following judgments.

i) **P.M.C.Kunthiraman Nair Vs. C.R.Naganatha Iyer and others** reported in **(1992) 4 SCC 254**; and

ii) **T.N.Ramachandra Naidu Vs. T.R.Parameswaran Nair** reported in **(1970) 1 MLJ 578**.

10. The learned counsel appearing for the respondent submitted that admittedly, the lease is by a registered document. Therefore, the burden lies on the defendants to establish the surrender. Once the lessee has been inducted into possession lawfully, even assuming that no rent has been paid after the period is over, it is deemed to be a lessee by sufferance, though which is not holding over. Once a person is such as tenant by sufferance, he should be evicted only by following the due process of law. Therefore, the appellate Court has rightly granted



defendants has not been established. It is submitted that the mere truncated admission need not be given much importance. Similarly, the burden lies on the person to establish the surrender. The defendants have not discharged their burden in establishing the alleged surrender pleaded by them. Therefore, when there is a registered document, through which possession was handed over to the plaintiff, the surrender also necessarily to be established by way of writing. Hence, it is the contention of the learned counsel appearing for the respondents that the first appellate Court has rightly granted a decree and prays for dismissal of this Second Appeal. In support of his submission, he has relied upon the following judgments:

I) **Nand Ram (D) through Lrs & others Vs. Jagdish Prasad (D) thorough Lrs** reported in *CDJ 2020 SC 404*;

ii) **A.Subramanian & Another Vs. R.Pannerselvam** reported in **2021(1) R.C.R. (Civil) 902**

iii) **M.Manohara Chetty and others Vs. C.Coomaraswamy Naidu and Sons** reported in *(1980) AIR (Madras) 212*.

11. The suit has been laid for permanent injunction not to disturb the possession of the plaintiff, until he is evicted by due process of law. The claim is based on Ex.A1-Lease Deed, dated 15.02.1980. Lease is a for period of three years. Admittedly, the time is expired in the year 1983, which is not in dispute. The recital in the document provides the manner in which the annual rent to be paid, whereas the plaintiff now has pleaded, as if he has paid rent regularly, which was recorded in the kutchat book maintained by the lessor. Such contention has been put forth by the plaintiff. It is highly against the normal human conduct. If the lessor receives a rent and lessee pays rent, the normal conduct and natural course of event would be to get a receipt from the lessor for such amount, but it has not been done. Though the lease has been expired by efflux of time, the plaintiff has not established the payment of rent nor there is evidence to show that the defendants have received the rent or gave their assent to continue the possession by the plaintiff. It is also not disputed by both sides that the original lessor died leaving behind his wife Ramayee Ammal and she also died leaving the Will. The defendants claim to be the owner of the property, on the basis of the Will said to have been executed by the said Ramayee Ammal. The entitlement or right claimed by the defendants is not in dispute. It is the case of the plaintiff that after the death of Ramayee Ammal, tenancy has been attorned and the rent has been paid periodically to the defendants. Therefore, the plaintiff himself has acknowledged the rights of the defendants as landlords.

12. In such view of the matter, now there cannot be any



room for questioning the right of the defendants as a lessor or otherwise the lessee is totally estopped from disputing the right of the landlord viz., the defendants herein. Be that as it may, it is the contention of the plaintiff that he is in continuous possession of the property, ever since from the date of lease. Ex.A2 itself indicates that the kist receipts have to be paid by the lessor. Now the kist receipts, which are marked as Ex.A2, sought to be relied upon by the plaintiff to prove his possession. When Ex.A2 itself provides the manner in which the kist receipt has to be paid by the owner, there was no occasion whatsoever for the lessee to pay such kist receipts. Further the receipts paid on the same day also indicative of the fact that these receipts have been obtained some how or other to establish the case of the plaintiff. Be that as it may, the land is an agricultural land. If really, the plaintiff is continuing as a cultivating tenant as pleaded in the plaint, there would have been entries relating to such tenancy before the Authorised Officers. No such efforts whatsoever has been taken by the plaintiff at any point of time to register him as a cultivating tenant, though he claims to be in possession for more than 30 years. That apart, there is no evidence to show that he is in continuous possession of the property by doing cultivation, there is no material produced at least to prove the nature of the crops raised by him and sold the same in the market.

13. Therefore, when the plaintiff is not able to establish any semblance of possession, after the period of lease is expired, now it has to be seen whether the surrender as pleaded by the defendants have been established. Though the surrender of possession should be in writing, particularly, when the possession was handed over by way of a written document, such surrender by writing need not always be there and it is all depend upon the facts of the particular case. The implied surrender also permissible under Law. Otherwise, the surrender also can be gathered by the various circumstances obtained in the particular case. As already indicated, despite the specific covenant in Ex.A1 document that only the lessor will pay the kist, the kist has been paid only for some period by lessee. Apart from the kist receipts, no other document is available on record and the plaintiff has not even registered him as a cultivating tenant. All these facts and circumstances, coupled with the admission in the evidence of plaintiff, infact probablised the defendants' theory that the land was surrendered after the lease period is over. It is to be noted that in his evidence, he has admitted that after the death of the Palaniyandi Pillai-original lessor, only his wife was in possession of the property. Though it is emphasised by the learned counsel for the respondent that it is only a truncated admission, on a reading of the entire cross examination of the plaintiff, this Court is unable to countenance



the submission of the learned counsel to the effect that such admission is only a truncated admission and infact this admission is coupled with non production of other documents to prove the possession clearly probablised the surrender.

14. Further, it is also to be noted that even assuming that the plaintiff is in possession of the property, his status would be only a tenant by sufferance, he is akin to a trespasser. Such being the manner, when a person squatting on the property as a trespasser, cannot seek for permanent injunction as against the true owner. Be that as it may, It is also relevant to note that, as already indicated, no evidence is available on record to show that he is continuously in possession of the property, eversince the date of lease. It was executed in the year 1980. Though the plaintiff claimed that he has paid the rent continuously not only to the original lessor, but also to his wife, thereafter to the defendants herein, no evidence was also available. All these circumstances clearly probablise the defendants' theory that plaintiff was not in possession of the property. It has been further fortified by the admission of the plaintiff in the cross examination.

15. In **T.N.Ramachandra Naidu Vs. T.R.Parameswaran Nair** reported in **(1970) 1 MLJ 578**, this Court has held as follows:

"16.In a recent decision of the Andhra Pradesh High Court in *Munuswamy Vs. Muniramiah*, the doctrine of surrender by operation of law by a tenant taking a new lease was discussed and it is sufficient to refer to the following observations at page 169:

"An express surrender effectuates the clear and unambiguous intention of the lessee to 'surrender and yield up' his leasehold to the lessor. It is therefore a matter of intention of the parties and not a matter of implication of the law. But in an implied surrender, an intention to surrender is not expressed. It is inferred by the law. An implied surrender is an act of the law and takes place independently of, and in some cases even in spite of, the intention of the parties. The law infers such surrender from the act and conduct of the parties. 'Thus it is properly applied to cases where the owner of a particular estate has been party to some act having some other object than that of a surrender, but which object cannot be effected whilst the particular estate continues, and the validity of which act he is by law estopped from denying.' (See *Lyon v. Reed* (1844) 13 M and W

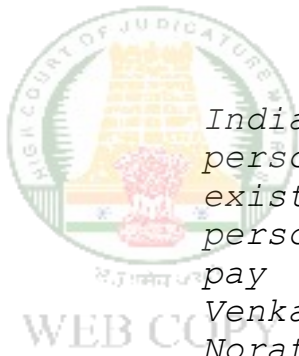


285, and Bessel V. Landsberg L.R. (1845) 7 Q.B. 638.

A familiar instance of a surrender by operation of law is when the tenant takes a new lease from the landlord to commence during the term of the old lease. Here the tenant does not express his intention to surrender and determine the old lease. But by his taking a new lease, the law infers a termination of the existing lease. The reason is that the landlord has no power to grant the new lease except upon the footing that the old lease is surrendered; and the tenant, being a party to the agent of the new lease, is estopped from denying the surrender. This is how surrender by operation of law comes about."

16. In **P.M.C.Kunthiraman Nair Vs. C.R.Naganatha Iyer and others** reported in (1992) 4 SCC 254, the Hon'ble Supreme Court has held as follows:

"10.Under clause (f) of Section 111 of the Transfer of Property Act, 1908, implied surrender is a mode for determination of a lease of immovable property. In English law delivery of possession by the tenant to a landlord and his acceptance of possession effects a surrender by operation of law. It is also called implied surrender in contradistinction to express surrender which must be either by deed or in writing. It has been held that directing the occupier to acknowledge the landlord as his landlord, i.e., to attorn to the landlord, is a sufficient delivery of possession by the tenant to the landlord, is a sufficient delivery of possession by the tenant to the landlord. It also been held that receipt of rent from a person in possession may be evidence of the landlord's acceptance of him as tenant, whether he is a stranger, or whether he was already in possession as sub-tenant. [See: Halsbury's Laws of England; 4th Edn. Vol.27, paras 444, 445, 446 and 450; and Note (1) to para 446]. Under the illustration to clause (f) of section 111 of the Transfer of Property Act, there would be an implied surrender of the former lease if a lessee accepts from his lessor a new lease of the property leased to take effect during the continuance of the existing lease. The said illustration is, however, not exhaustive of the cases in which there may be an implied surrender of the lease. Just as under the English law, there can be an implied surrender under the law of transfer of property in



India, if the a lessor grants a new lease to a third person with the assent of the lessee under the existing lease who delivers the possession to such person or where the lessee directs his sub-tenant to pay the rent directly to a lessor. [See : Konijeti Venkayya v. Thammana Peda Venkata Subbarao and Noratmal v. Mohanlal]."

17. In **Nand Ram (D) through Lrs & others Vs. Jagdish Prasad (D) thorough Lrs** reported in **CDJ 2020 SC 404**, the Honourable Supreme Court has held as follows:

"13. In view of the settled position of law, the possession of the appellant is as tenant at sufferance and is liable to ejectment in due course of law. But his possession is not legal nor lawful. In other words, his possession of the theatre is unlawful or litigious possession. The appellant may remain in possession until he is ejected in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be settled possession. He is akin to a trespasser, though initially he had lawful entry."

18. In **A.Subramanian & Another Vs. R.Pannerselvam** reported in **2021(1) R.C.R. (Civil) 902**, the Honourable Supreme Court has held as follows:

"21. The High Court was also right in its view that it is a common principle of law that even trespasser, who is in established possession of the property could obtain injunction. However, the matter would be different, if the plaintiff himself elaborates in the plaint about title dispute and fails to make a prayer for declaration of title along with injunction relief. The High Court has rightly observed that a bare perusal of the plaint would demonstrate that the plaintiff has not narrated anything about the title dispute obviously because of the fact that in the previous litigation, D.W.1 failed to obtain any relief. The High Court has rightly observed that the principle that plaintiff cannot seek for a bare permanent injunction without seeking a prayer for declaration is not applicable to the facts of the present case."

19. Having regard to the above judgments and considering the entire materials, this Court finds that the plaintiff has not even established his possession in pursuant to Ex.A1, continuously. As indicated above, if surrender of possession is established by the circumstances, the plaintiff is certainly not



entitled for injunction. Accordingly, all the substantial questions of law are answered in favour of the appellants.

20. Accordingly, this Second Appeal is allowed and the judgment and decree of the Appellate Court is set aside. The decree and judgment of the trial Court is restored. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar (CS)

vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Subordinate Judge, Karur.

2.The Additional District Munsif, Karur.

3.The Section Officer-2 copies

Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-9565[F] dated 09/03/2021)

+1 CC to Mr.K.SURESH, Advocate (SR-9413[F] dated 08/03/2021)

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