



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD)Nos.309 to 311 of 2006

and

C.M.P. (MD)No.2410 of 2006

S.A. (MD)No.309 of 2006:-

1.Chinnaponnu Ammal (died) ...Appellant/Appellant/
Plaintiff

2.Parvathi

3.Minor Deepika Rani

4.Minor Sakres Kasilingam ...Appellants

(3rd and 4th Appellants rep by their
mother and guardian 2nd Appellant)

(Appellants 2 to 4 were brought on record as
legal heirs of the sole appellant vide Court
order dated 01.04.2019 in CMP(MD)Nos.9089 to 9091/2018
in SA(MD)No.309/2006)

Vs.

1.Mamundi ..1st Respondent/1st Respondent/
1st defendant

2.Pappathi Ammal ..2nd Respondent/ 2nd Respondent/
2nd defendant

3.Rajagopal (died) ..3rd Respondent/ 3rd Respondent/
3rd defendant

4.Paulraj ..4th Respondent/ 4th Respondent/
4th defendant

5.Balasubramaniam ..5th Respondent/ 5th Respondent/
5th defendant

6.Susila

7.Kalaiselvi

8.Kalaivani

9.Kalaiselvan

10.Sampathkumar

11.Saraswathi

12.Durairaj

..Respondents

(Respondents 6 to 12 were brought on record as legal heirs of the
deceased third defendant vide order dated 01.04.2019 in CMP(MD)
Nos.9203 to 9205/2018 in SA(MD)No.309/2006))



S.A. (MD)No.310 of 2006:-

1.Chinnaponnu Ammal (died)	..1 st Appellant/1 st Appellant/2 nd defendant
2.Kasilingam (died)	..2 nd Appellant/4 th Appellant/5 th defendant
3.Koyilambal	..3 rd Appellant/5 th Appellant/6 th defendant
4.Sevandhi	..4 th Appellant/6 th Appellant/7 th defendant
5.Rajkumar @ Kumar	..5 th Appellant/7 th Appellant/8 th defendant
6.Pachaimuthu	..6 th Appellant/8 th Appellant/9 th defendant
7.Sabila @ Sabeetha	..7 th Appellant/9 th Appellant/10 th defendant
8.Maheswari	..8 th Appellant/10 th Appellant/11 th defendant
9.Jayaseela @ Chasil	..9 th Appellant/11 th Appellant/12 th defendant
10.Jegadheesan	..10 th Appellant/12 th Appellant/13 th defendant
11.Praba	..11 th Appellant/13 th Appellant/14 th defendant
12.Praveen Nath	..12 th Appellant/14 th Appellant/15 th defendant
13.Parvathi	
14.Minor Deepika Rani	
15.Minor Sakres Kasilingam	.. Appellants

(Appellants 14 & 15 rep by their mother and guardian 13th Appellant)

(Appellants 13 to 15 were brought on record as legal heirs of the first appellant vide order dated 01.04.2019 in CMP(MD)No.9092/2018 in SA(MD)No.310/2006)

Vs.

1.Pappathi ammal	..1 st Respondent/1 st Respondent/ 1 st Plaintiff
2.Rajagopal (died)	..2 nd Respondent/ 2 nd Respondent/ 2 nd Plaintiff
3.Balasubramanian	..3 rd Respondent/ 3 rd Respondent/ 3 rd Plaintiff
4.Balraj	..4 th Respondent/ 4 th Respondent/ 1 st Defendant
5.Susila	
6.Kalaiselvi	
7.Kalaivani	
8.Kalaiselvan	
9.Sampathkumar	
10.Saraswathi	
11.Durairaj	..Respondents

(Respondents 5 to 11 were brought on record as legal heirs of the second respondent vide order dated 01.04.2019 in CMP(MD)Nos.9206 to 9208/2018 in SA(MD)No.310/2006)

S.A. (MD)No.311 of 2006:-

<https://hcservices.ecourts.gov.in/hcservices/> 1.Chinnaponnu Ammal (died) ..1st Appellant/1st Appellant/1st defendant



2.Kasilingam (died)	..2 nd Appellant/4 th Appellant/4 th defendant
3.Koyilambal	..3 rd Appellant/5 th Appellant/5 th defendant
4.Sevandhi	..4 th Appellant/6 th Appellant/6 th defendant
5.Rajkumar	..5 th Appellant/7 th Appellant/7 th defendant
6.Pachaimuthu	..6 th Appellant/8 th Appellant/8 th defendant
7.Sabila	..7 th Appellant/9 th Appellant/9 th defendant
8.Maheswari	..8 th Appellant/10 th Appellant/10 th defendant
9.Jayaseela	..9 th Appellant/11 th Appellant/11 th defendant
10.Jegadheesan	..10 th Appellant/12 th Appellant/12 th defendant
11.Praba	..11 th Appellant/13 th Appellant/13 th defendant
12.Praveen	..12 th Appellant/14 th Appellant/14 th defendant
13.Parvathi	
14.Minor Deepika Rani	
15.Minor Sakres Kasilingam	.. Appellants

(Appellants 14 & 15 are rep by their mother and guardian 13th Appellant)
(Appellants 13 to 15 were brought on record as legal heirs of the first appellant vide order dated 01.04.2019 in CMP(MD) No.9093/2018 in SA(MD)No.311/2006)

Vs.

1.Pappathi ammal	..1 st Respondent/1 st Respondent/ 1 st Plaintiff
2.Rajagopal (died)	..2 nd Respondent/ 2 nd Respondent/ 2 nd Plaintiff
3.D.Balraj	..3 rd Respondent/ 3 rd Respondent/ 3 rd Plaintiff
4.Balasubramanian	..4 th Respondent/ 4 th Respondent/ 4 th Plaintiff
5.Susila	
6.Kalaiselvi	
7.Kalaivani	
8.Kalaiselvan	
9.Sampathkumar	
10.Saraswathi	
11.Durairaj	..Respondents

(Respondents 5 to 11 were brought on record as legal heirs of the second respondent vide order dated 01.04.2019 in CMP(MD)Nos.9209 to 9211/2018 in SA(MD)No.311/2006)

COMMON PRAYER: These Second Appeals are filed under Section 100 of the Civil Procedure Code, against the decree and judgment made in A.S.No.154, 155 and 156 of 2002 dated 25.02.2005 on the file of the First Additional Subordinate Judge, Trichirappalli confirming the decree and judgment made in O.S.No.2094 of 1993, 2111 of 1994 and 373 of 1993, respectively dated 15.02.2002 on the file of the III Additional District Munsif, Tiruchirappalli.



WEB COPY

For Appellants : Mr.Maria Roseline
(in all appeals)

For R4 and R5 : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.R.Manimaran
(For SA(MD)No.309 of 2006)

For R6 to R12 : Mr.N.G.A.Nataraj
For R1&R2 : No Appearance
(for S.A.(MD)No.309 of 2006)

For R3 to R11 : Mr.N.G.A.Nataraj
(for S.A.(MD)Nos.310 & 311 of 2006)

For R1&R2-Died :No Appearance
(for SA(MD)No.310 of 2006&
311 of 2006)

COMMON JUDGMENT

These three second appeals have been filed as against the concurrent findings of the Courts below in a common judgment in A.S.No.154, 155 and 156 of 2002 dated 25.02.2005 confirming the decree and judgment made in O.S.No.2094 of 1993, 2111 of 1994 and 373 of 1993, respectively, dated 15.02.2002.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

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

(i) O.S.No.2094 of 1993 was filed by the first appellant in S.A.(MD)No.309 of 2006 for permanent injunction in respect the property in Survey Nos.82/10 and 82/11 covering an extent of 1.10 cents in Somarasampettai Village and in Survey No.80/2 to an extent of 42 cents in Malliampatti Vilalge. O.S.No.2111 of 1994 was filed by the respondent Nos.2, 3 and 5 in S.A.(MD)No.309 of 2006 herein for injunction in respect of the property in Survey No.80/2 to an extent of 42 cents, which is the second item of property in O.S.No.2094 of 1993. O.S.No.373 of 1993 was filed by the respondent Nos.2, 3 and 5 S.A.(MD)No.309 of 2006 for recovery of possession for the entire extent of 1.10 cents in Survey No.82/10 and 82/11.

(ii) It is the case of the plaintiffs in O.S.No.373 of 1993 and 2111 of 1994, who are one and the same, that the entire property belongs to them. The defendants in the above suits are their close relatives. Due to their close proximity, when the first plaintiff had intended to execute a Will in favour of her



daughter, the defendants under the pretext of helping the first plaintiff, suggested that a Will can be executed. Accordingly, by the suggestion of the defendants, a Will was prepared and the first plaintiff went to the Registration Office. While executing the Will on 12.03.1991, the defendants taking advantage of the illiteracy and the age of the first plaintiff, has also maneuvered to obtain thumb impression in the document stated to be lease deed. The first plaintiff put thumb impression in all the documents on the instructions of the defendants.

(iii) When the matter stood thus, the second defendant in the month of May, 1992 made an attempt to enter into the property claiming to be a tenant under the first plaintiff. Only at that time, the first plaintiff came to know that the defendants under the pretext of preparing a Will, have got the thumb impression in the documents styled as lease deeds (yearly lease at the rate of Rs.1,500/- per year) and the lease deeds have been registered for a period of 10 years. Hence, it is the contention that the first plaintiff never intended to execute any such document and therefore, filed the above said suits for delivery of possession and for permanent injunction restraining the defendants 2 to 4 from interfering with the peaceful possession and enjoyment in respect of entire property to an extent of 1.10 acres. It is the further contention of the plaintiffs that the so called lease deed is created and the plaintiff never intended to execute the lease. In fact there was a mortgage agreement between the plaintiff and one Mamundi in respect of the land in S.F.No.80/2 to an extent of 0.42 cents for a sum of Rs.16,000/- and allowed the said Mamundi to be in possession.

(iv) In O.S.No.2094 of 1993, the plaintiff sought permanent injunction. The second defendant in her written statement denied the allegations of the plaintiff. The contention of the plaintiff is that lease deeds have been executed by the defendants voluntarily not as alleged by them in their plaint in O.S.No.373 of 1993 and the plaintiff is the cultivating tenant. It is the contention of the plaintiff that based on the above lease deed, she is in possession of the entire extent of 1.10 cents in Somarasampettai Village.

4. Based on the above pleadings, the following issues were framed by the trial Court:-

In O.S.No.373 of 1993:-

(1) Whether the plaintiffs are entitled to the relief of recovery of possession and enjoyment of the suit property from the defendants?

(2) Whether the plaintiffs are entitled for mesne property?

(3) To what other reliefs?



In O.S.No.2111 of 1994:-

- (1) Whether the plaintiffs are entitled for the relief of permanent injunction?
- 2) To what other reliefs?

In O.S.No.2094 of 1993:-

- (1) Whether the plaintiff is the lessee in respect of the suit property?
- (2) Whether the plaintiff is entitled for the relief of permanent injunction?
- (3) To what other reliefs?

5. Based on the above pleadings, though different suits have been filed as narrated above, evidence was recorded in O.S.No.373 of 1993. On the side of the plaintiffs, the first plaintiff in O.S.No.2111 of 1994 and 373 of 1993 was examined as P.W.1 and the second plaintiff in O.S.No.2111 of 1994 and 373 of 1993 was examined as P.W.2 and Exs.A1 to A6 were marked and on the side of the defendants the plaintiff in O.S.No.2094 of 1993 was examined as D.W.1 and Murugan, Kathalingam and Nagamuthu were examined as D.W.2 to D.W.4 and Exs.B1 to B4 were marked.

6. The trial Court after framing necessary issues based on the pleadings of the parties, dismissed the suit in O.S.No.2094 of 1934 filed for permanent injunction by the first appellant herein and decreed the suit in O.S.No.373 of 1993 and 2111 of 1994 filed by the respondents herein. The First Appellate Court has also confirmed the findings of the trial Court. Aggrieved over the concurrent findings, the present second appeals have been filed.

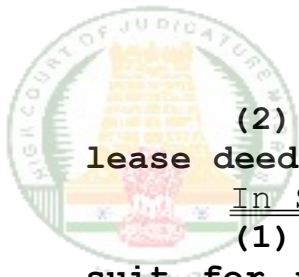
7. While admitting the second appeals, the following substantial questions of law have framed:-

In.S.A.(MD)No.309 of 2006:-

- (1) **Whether the Courts below are right in coming to the conclusion that the burden is on the plaintiff, when the second defendant had categorically admitted the 'Lease' in favour of the plaintiff?**
- (2) **Whether it is open for the second defendant to contend that the lease deed marked Ex.B2 dated 12.03.1991 is obtained by misrepresentation without seeking a prayer to set aside the lease deed, especially when the lease in favour of the appellant is admitted?**

In.S.A.(MD)No.310 of 2006:-

- (1) **Whether the Courts below are right in coming to the conclusion that the plaintiff is in possession and enjoyment of the suit property in the absence of proof of surrender of possession?**



(2) Whether the Courts below are right in ignoring the lease deed in the absence of prayer to set aside the same?

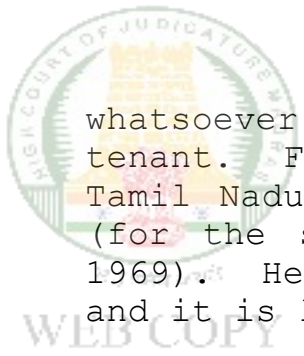
In S.A.(MD)No.311 of 2006:-

(1) Whether the Courts below are right in decreeing the suit for possession, when P.W.1 has categorically admitted that the defendants are lessees of the property and only when they have not paid the lease rental, this suit has been filed?

(2) Whether the Courts below are right in decreeing the suit, in the absence of prayer to set aside the lease deeds dated 12.03.1991?

8. The learned counsel for the plaintiff in O.S.No.2094 of 1993 vehemently contented that the Courts below has wrongly shifted the burden on her. Admittedly, the lease deed was a registered one and there is a legal presumption and validity. Besides, the attesting witnesses were also examined to prove the lease deed. That apart, as per the lease deed, the plaintiff is in possession of the property. The lease itself is given for cultivating the lands. Once lease is given for cultivating the lands, the plaintiff is entitled to all the benefits under the Tamil Nadu Cultivating Tenants Protection Act, 1955. This aspect was never dealt with by the Courts below. The evidence of the attesting witness and the other documents filed by the plaintiff herein clearly prove that the plaintiff is still in possession as cultivating tenant, which has not been considered by the trial Court as well as the First Appellate Court. Hence, it is submitted that the Courts below were erred in dismissing the suit filed by the plaintiff and decreeing the suit filed by the defendants. Hence, prayed for allowing these appeals.

9. The learned counsel appearing on behalf of the plaintiffs in O.S.No.373 of 1993 submitted that the alleged lease deed is a result of fraud and misrepresentation. It has been considered by the Courts below. Admittedly, the first defendant is none other than the plaintiff's sister's daughter. Other defendants are close relative. The first plaintiff is a rustic villager, illiterate and aged. On 12.03.1991, a Will has been executed. To execute the Will, when help of the defendants was sought, the first defendant had maneuvered to obtain thump impression of the first plaintiff to get the alleged lease deed be registered. The Courts below analyzed the entire facts and found that the execution of the documents has not been established. The burden is on the first defendant, who is in active confidence, and the same has not been discharged. Hence, it is the contention that the defendants have no right to claim right under the Tamil Nadu Cultivating Tenants Protection Act, 1955. It is the further contention that the suit was filed in the year 1993 and witnesses were examined only in the year 2000. Even till now, no rent



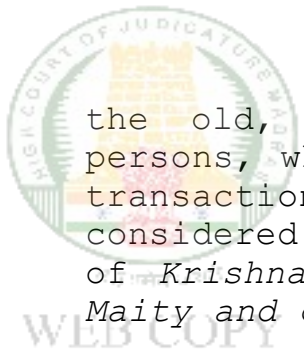
whatsoever has been paid to contend that she is the cultivating tenant. Further, she was not registered as tenant as per the The Tamil Nadu Agricultural Lands Record Of Tenancy Rights Act, 1969 (for the sake of brevity it will be referred to as Act 10 of 1969). Hence, it is the contention that the appeal has no merits and it is liable to be dismissed.

10. In the light of the above submissions, in addition to the substantial questions of law, the following additional substantial question of law is framed:-

Whether the appellants can claim protection under the Tamil Nadu Act 10 of 1969 namely, The Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 in the second appeal stage?

11. As narrated above, it is not in dispute that the suit property originally owned by the plaintiffs in O.S.No.373 of 1993. Similarly there is no dispute in the relationship between the parties. The first defendant is the plaintiff's sister's daughter. The second defendant is her husband and the third defendant is their son. It is also not in dispute that on the same date on 12.03.1991, on which the alleged lease deeds namely Exs.B1 and B2 were executed, Ex.B3 Will was also executed by the first plaintiff in favour of her legal representatives. It is to be noted that on 12.03.1991, three documents were said to have been executed by the first plaintiff. It is not in dispute that the first plaintiff in O.S.No.2111 of 1994 and 373 of 1993 is an illiterate and rustic village lady. The Courts below considered the nature of evidence, particularly, the attesting witness examined on the side of the defendant, namely, the plaintiff in O.S.No.2094 of 1993 and has recorded the finding to the effect that the contents of the deeds have not been read over to the executant namely, the old lady. The attesting witness has admitted in his evidence that the contents of the document have not been read out to the first plaintiff and nature of the document was also not properly mentioned. Considering the entire evidence, the trial Court has concluded that the so called lease deeds have not been executed.

12. It is to be noted that the first plaintiff in O.S.No.2111 of 1994 and 373 of 1993 is a old lady, rustic and illiterate widow. When persons like close relatives wanted to take an advantage of the documents said to have been executed by such rustic and illiterate villager, the burden of proof is on the persons, who have taken the benefits of such documents to show that the transaction is out of good faith. The entire onus lies on the persons, who have taken advantage of such document executed by an illiterate women. Good faith of transaction has to be shown by the persons, who take the benefit of the document executed by



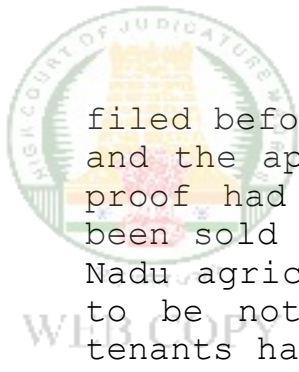
the old, illiterate, ailing rustic villager. Similarly the persons, who are in active confidence are liable to show that the transaction is *bona fide* and genuine one. This aspect is considered by the judgment of the Hon'ble Apex Court in the case of *Krishna Mohan Kul @ Nani Charan Kul and another vs. Pratima Maity and others* [AIR SC 2003 4351]

13. Besides, this Court has also considered other documents. Even assuming that Exs.B1 and B2 were voluntarily executed, the duration of the lease only for ten years. Those deeds were executed on 12.03.1991. The period of ten years was also over by efflux of time stipulated in the said lease documents. It is the case of the owners of the land that the so called lessee had not paid the rent at any point of time. Whereas the contention of the defendants is that they tried to pay the rent and the same has been refused. such contention cannot be countenanced. Even assuming that the said contention is true, the normal conduct of the party, who claims to be statutory tenant, would be to deposit the rent either before the civil Court or before the revenue Court. Admittedly, no such rents whatsoever has been paid. Therefore, the contentions that still the appellants have interest in the property as tenant by holding over cannot be countenanced. Holding over by the tenant means even after determination of the lease granted to the lessee or the tenant, the landlord continues to receive the rent and the tenant is continuing in possession. In such case, it can be said that it is the case of tenant by holding over. Whereas, in this case, no such rents whatsoever has been paid till now. Therefore, the appellant cannot be considered as tenant by holding over at any stretch of imagination and the possession is nothing but illegal.

14. One more contention of the learned counsel for the appellants is that the lease deed itself is executed for cultivating the lands. Therefore, the defendants 1 and 2 in O.S.No.373 of 1993 are the cultivating tenants and the deeds themselves show that both the defendants 1 and 2 fall within the definition of the Cultivating Tenant as defined under the Act 25 of 1995 in the Tamil Nadu Cultivating Tenant Protection Act, 1955.

15. Perusal of the entire written statement, it is made clear that except stating that the appellants are cultivating tenants and they are entitled to the benefits under the Act, no other pleadings whatsoever had been made as to the nature of the exercising the said right. The entire written statement when perused, except denial of the facts, which is in evasive nature, no specific denial is made.

16. Be that as it may, though the plaintiff in O.S.No.2094 of 1993 claims to be a tenant, no documents whatsoever had been



filed before the trial Court to show that the lands are cultivable and the appellants have the benefits from the lands. Further, no proof had been filed to show that the agricultural produce had been sold by plaintiff and her name had been included in the Tamil Nadu agricultural Lands Records under the Act 10 of 1969. It is to be noted that under Section 4 of the Act 10 of 1969, the tenants having interest in the land, in which they are cultivating shall make an application to the Record Officer for inclusion of the said lands in the approved record of tenancy rights. No such application was made under Section 4 of the Act 10 of 1969 to contend that her tenancy has been recognized under the statute. If such right was recognized, the person became statutorily a tenant. In such case, it is always open to the tenants to pay the rent regularly. No such rents whatsoever had been paid in this case.

17. Therefore, This Court is of the view that unless appellants' name are recorded as tenant under Section 4 of the Act 10 of 1969, they cannot be considered as cultivating tenant, merely on the basis of some documents namely, lease deeds said to have been executed in their favour. Admittedly, those documents also came to be executed as a result of fiduciary relationship and active confidence as discussed above. Therefore, merely on the basis of such documents, one cannot claim right as tenant without registering himself under Section 4 of the Act 10 of 1969.

18. Besides, even under Section 14 of the Tamil Nadu Cultivating Tenant Protection Act, if really the appellants are stated to be a cultivating tenant, three copies of the lease deeds ought to have been prepared in the prescribed form within a reasonable time after the commencement of such tenancy, specifying the name and description of the cultivating tenant, the name (if any) survey number. One of the three copies shall be kept by the landlord, one shall be kept by the cultivating tenant and the third shall be caused to be lodged in the Taluk Office /Revenue Divisional Officer by the landlord or his agent within a fortnight of the date on which the cultivating tenant signs it. This procedure is also not done in this case.

19. All these facts clearly show that the contention of the appellants that they are the cultivating tenants is nothing but an attempt to squat on the property forever. Therefore, this Court holds that the finding of the Courts below does not suffer from any infirmity or irregularity. Accordingly, all the questions are answered and these Section Appeals are dismissed. The decree and the judgment made in A.S.No.154, 155 and 156 of 2002 dated 25.02.2005 on the file of the First Additional Subordinate Judge, Trichirappalli confirming the decree and judgment made in O.S.No.2094 of 1993, 2111 of 1994 and 373 of 1993, respectively dated 15.02.2002 on the file of the III Additional District



Munsif, Tiruchirapalli is hereby confirmed. No costs.
Consequently, connected miscellaneous petition is also closed.

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// True Copy //

Sd/-

Assistant Registrar (CS-I)

/ /2021

Sub Assistant Registrar(CS)

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To

1.The First Additional Subordinate Judge,
Trichirappalli

2.The III Additional District Munsif,
Tiruchirapalli

copy to

The Section Officer-2 copies
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-1057[F] dated
19/01/2021)

+1 CC to Mr.N.GA.NATRAJ, Advocate (SR-1293[F] dated 20/01/2021)

Judgment made in
S.A. (MD) Nos.309 to 311 of 2006
18.01.2020

KM (10.02.2021) 11P 7C