BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.128 of 2014

K.Chandrasekharan ... Nil/4th Appellant / Appellant

-Vs-

1. H.H.The Prince of Arcot
Tiruchirappalli
Rep. by its Agent. ... Plaintiff / Respondent / 1st Respondent

2.Manickam Pillai ... 1st Defendant / 1st Appellant / 2nd Respondent

3.Krishnan alias Krishnamurthy ... 2nd Defendant / 3rd Appellant / 3rd Respondent

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 16.12.2004 in A.S.No.15 of 2001 on the file of the first Additional Subordinate Judge, Tiruchirappalli, confirming the Judgment and decree dated 06.11.2000 in O.S.No.1777 of 1995 on the file of the Principal District Munsif, Tiruchirapalli.

For Appellants	: Mrs.Ganthimathi.AL
For R1	: Mr.K.S.Sankar Murali
For R2	: Mr.P.T.S.Narendra Vasan
For R3	: No appearance

JUDGMENT

The appellant K.Chandrasekharan is the legal representative of the second defendant in O.S.No.1777 of 1995 on the file of the District Munsif Court, Tiruchirappalli. The said suit was instituted by the first respondent herein namely H.H.The Prince of Arcot represented by his agent for recovery of rent for faslis 1401, 1402 & 1403 with interest. In the suit, the defendants filed their written statements denying their liability to pay rent. The defendants took the stand that the suit property is not the property of the plaintiff and that it belonged to one M.L.Venkatachalam Pillai and that from the said Venkatachalam Pillai, they had purchased the property vide sale deed dated 18.07.1956. The defendants further pleaded that there is no tenancy agreement with the plaintiff. They further claimed that they are having settlement patta issued by the Assessment Settlement Officer, Thanjavur. Based on the rival pleadings, the trial Court framed the necessary issues. On behalf of the plaintiff, an official of the endowment was examined as P.W.1. Ex.A1 to Ex.A12 were marked. The second defendant Arumugam Pillai examined himself as D.W.1 and Ex.B1 to Ex.B6 were marked. The learned trial Munsif, by judgment and decree dated 06.11.2000 decreed the suit as prayed for and directed the defendants to pay a sum of Rs.11,250/- to the plaintiff endowment with interest at the rate of 6% from the date of suit till the date of payment. Aggrieved by the same, the defendants filed A.S.No.15 of 2001 before the Sub Court, Trichy. During the pendency of the appeal, the second defendant passed away and that is how, the appellant and the third respondent Krishnan @ Krishnamurthy came on record. By judgment and decree dated 16.12.2004, the appeal was dismissed. Challenging the same, the appellant herein filed this second appeal.

2.The second appeal was admitted on the following substantial questions of law:-

> "(1)Whether the Courts below were correct in granting a decree for recovery of lease amount when the title of the plaintiff itself is disputed?
>
> (2) Whether the Courts below erred in not considering the position of law that subsequent to Tamil Nadu Act 13 of 1973 all the rights of the plaintiff, if any, stand abrogated?
>
> (3) Whether the Courts below erred in granting a decree for recovery of lease amount when there is no relationship of landlord and tenant between the parties?"

3.At the outset, I must express my regret that this second appeal has to be disposed of without the original records being made available. When the matter was listed for final hearing, I directed the Registry to secure the records from the Court below. But it is learnt that the records were destroyed in April 2009 itself. The Court below cannot be blamed for having done so. Though the Judgment of the first appellate court is of the year 2004, the appeal itself came to be numbered only in the year 2014.

4.The learned counsel appearing for the appellant relied on Ex.B6 dated 08.03.2000. Ex.B6 is the order passed by the Commissioner and Director of Survey and Settlement Registrar, Chennai dismissing the petition filed by the first respondent herein. It is stated that the said order dated 08.03.2000 has been put to further challenge. But the counsel on either side are not quite clear as to what happened to the same. It is seen that the Settlement Officer, Thanjavur, vide order dated 18.04.1995 in R.P.No.19 of 1994 had ordered that the defendants in the suit namely Manickam Pillai and Arumugam Pillai are entitled to pay land revenue to the Government. Against the said order, the first respondent herein/plaintiff filed the revision petition. After a consideration of the contentions on either side, the revisional authority held that the plaintiff herein had only a melvaram right and kudivaram right vested only with the defendants herein in the suit. The revisional authority confirmed the order of the settlement officer that the ryotwari assessment shall be collected from the defendants in the suit.

5.The sheet anchor of the learned counsel appearing for the appellant is predicated on Ex.B6. While some of the earlier antecedent documents might indicate that rents were being paid by the predecessors-in-interest to the plaintiff endowment, definitely with effect from 08.03.2000, the appellant is not liable to pay any rent to the plaintiff endowment. The firm contention of the learned counsel appearing for the appellant is that the plaintiff endowment had long ago ceased to be the owner of the suit property. She pressed for answering the substantial questions of law in favour of the appellant by reversing the decisions of the courts below.

6.Per contra, the learned counsel appearing for the plaintiff / first respondent herein submitted that the impugned judgment and decree does not call for any interference.

7.I carefully considered the rival contentions and went through the evidence on record. Ex.B6 dated 08.03.2000 passed by the Commissioner and Director of Survey and Settlement, Chennai is to the effect that the plaintiff endowment has only a melvaram right and that the assessment has to be paid only by the defendants in the suit. There is no dispute that the revision arose out of proceedings under Tamil Nadu Levy of Ryotwari Assessment on Free-Hold Lands Act, 1972 (Tamil Nadu Act 31 of 1973). A mere look at the schedule would show that the suit property is also included therein. The scope of the Act was to decide the ryotwari assessment on free-hold lands. The free-hold lands had been defined in Section ***(2)(d) of the said Act*** as follows:-

> (I) free from demand of land revenue, or
>
> (ii) subject to the payment of concessional land revenue and specified in Part I of the Schedule to this Act and includes land-
>
> (I) in respect of which land revenue or other tax in respect of such land has been assigned in favour of any religious institution or charitable Endowment in lieu of cash allowance knows as month in allowance, and
>
> (ii) which is specified in Part II of the schedule to this Act.

As per 2(h) of the Act, Ryotwari assessment means the assessment payable to the Government under Sub-Section (1) of Section 9.

Section 9 of the Act states that every owner of free-hold land shall be liable to pay to the Government in respect of his free-hold land the assessment under the ryotwari settlement effected under this Act.

8.A careful reading of the statutory scheme does not contemplate adjudication of rival claims as regards the title over the property. In this regard, the learned counsel placed reliance on the decision reported in ***(1993) 1 MLJ 527 (Sri Mahalingaswami Devasthanam Vs. The State of Tamilnadu and anothe***r). Paragraph Nos.16 to 18 of the said decision read as under:-

"16.From the very conspectus of various provisions, as extracted above, it is thus clear that the object of the Act is only to provide for the levy of ryotwari assessment on freehold land in the State of Tamil Nadu. It does not purport to affect or alter in any manner other rights in the freehold land. Ryotwari settlement of freehold land can be effected in accordance with the settlement notification framed and published by the Government for the purpose. The notification shall embody the principles adopted in making ryotwari settlements in ryotwari areas and it shall adopt the rates of assessment in force in the district, in which, the freehold land is situate. All rates of assessments imposed at ryotwari settlement shall be liable to revision from time to time.

17.Any settlement notification published shall have effect in superssession of any settlement or re-settlement notification already in force in respect of the freehold land concerned. Neither such settlement notification nor any order passed in pursuance thereof shall be liable to be questioned in any Court of law. Every owner of freehold land shall for the fasli year commencing from 1st July 1972 and for subsequent fasli year, be liable to pay to Government in respect of freehold land the assessment under ryotwari settlement. If any dispute arises as to liability to pay ryotwari assessment, such a dispute shall be decided by the Settlement Officer. The order of the Settlement Officer is liable to be challenged in appeal before the Director. The order of the Director in appeal is challengeable by way of revision before the Board of Revenue. Top of all the provisions of the Act shall override any contract, grant or order or any law for the time being in force with effect from 1st July 1972, thereby indicating the Government's right to future increments to revenue in respect of freehold lands.

18.The object of various notices now under challenge is not only to bring the lands in question on par with similarly situated ryotwari lands for the purpose of assessment, but also for the purpose of deciding the question as to the entitlement of rough patta of those lands by the occupiers. It is, therefore, clear that the rights of the petitioners-Devasthanams in the lands in question are likely to be interfered with as a result of those notices under challenge and therefore, it goes without saying that any action taken therefore by the Government is without jurisdiction, as rightly contended by the learned counsel for the petitioners-Devasthanams and in that view of the matter, the impugned notices deserve to be quashed insofar as they relate to deciding the question as to the entitlement of rough patta by the occupiers of those lands and the same are ordered accordingly."

9.Ex.B6 dated 08.03.2000 cannot therefore be construed as ousting the rights of the plaintiff over the suit property. A mere look at the documents marked on either side would indicate that the present proceedings are only a continuation of the earlier proceedings. The plaintiff has been filing cases periodically for recovery of the rents from the persons who are in occupation of the properties belonging to the endowment. For instance, O.S.No.90 of 1958 was filed before the Sub Court, Trichy seeking recovery of rents. The defendants herein were figuring as parties to the said proceedings. The suit was decreed and it was confirmed vide Judgment and decree dated 01.08.1967 in S.A.Nos.1866, 1843 of 1963 (Ex.A3). D.W.1 in his cross-examination had also accepted that they had suffered adverse decree earlier and that they had also been remitting the rents to the plaintiff endowment. In fact, a reading of the terms of Ex.B1- sale deed, dated 18.07.1956 would show that the vendor of the defendants had stipulated that purchasers should continue to pay tax to the plaintiff endowment.

10.As rightly contended by the learned counsel appearing for the first respondent, there is no question of remitting any tax to a private body. The learned counsel appearing for the first respondent would place reliance on Section 109 of the Evidence Act. The said provision casts the burden of proof on the person who affirms that they have ceased to stand in relationship of landlord and tenant. In the case on hand, the plaintiff was all along accepted as the landlord and rents were paid. Since the appellant's stand is that the plaintiff ceased to be the landlord, the burden is on the appellant to establish the same. As already noted, the defence of the appellant rests entirely on Ex.B6 dated 08.03.2000. I have already held that under Tamil Nadu Act 31 of 1973, the authority could not have gone into the issue of title. The scope of the Act was only to determine the liability to pay the ryotwari assessment.

11.In this view of the matter, the substantial questions of law are answered against the appellant. The impugned Judgment and Decree are confirmed. The second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The Principal District Munsif, Tiruchirappalli.
2. The first Additional Sub Judge, Tiruchirappalli.
3. The Section Officer,
   Vernacular Records,
   Madurai Bench of Madras High Court,
   Madurai. (2C)

+1 CC to M/s.A.L.GANTHIMATHI, Advocate (SR-19627[F] dated 18/06/2021)

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RC (02.08.2021)6P-6C