



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.06.2022

Pronounced on : 13.07.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.Nos.1488 & 1489 of 1986

S.A.No.1488 of 1986:

- 1.Lourdus (died)
- 2.Mary Rajam (died)
- 3.P.Annammal
- 4.G.Mary Angelina
- 5.Madhavan (died)
- 6.Selvi Kanimozhi
- 7.Mukilarasu

...Defendants / Respondents

...Appellants

4th appellant is brought on record as legal representative of the deceased 1st appellant vide order of the Court dated 15.09.2005 made in CMP.No.17408 of 1999.

5th to 7th appellants brought on record as Legal representatives of the deceased 2nd appellant viz., Mary Rajam vide order of the Court dated 22.01.2020 made in CMP.Nos.249 and 250 of 2015 in S.A.No.1488 of 1986 (GKIJ)



Vs.

1.Vellai Kanniammal (died)

...Plaintiff / Appellant

2.Rathnavel

3.Gopi

4.Jayasankar

5.Loganathan

6.Govindammal

7.Saroja

...Respondents

Respondents 2 to 7 are brought on record as legal representatives of the deceased sole respondent vide order dated 21.04.2006 made in CMP.Nos. 5352 to 5357 of 2006 and CMP.Nos.9049 to 9051 of 2005.

S.A.No.1489 of 1986:

1.P.Annammal (died)

... Plaintiff / Respondent

2.Mary Rajam (died)

3.Madhavan (died)

4.Selvi Kanimozhi

5.Mukilarasu

... Appellants

2nd appellant brought on record as legal representatives of the deceased sole appellant.

3rd to 5th appellants brought on record as Legal representatives of the deceased 2nd appellant viz., Mary



Rajam vide order of the Court dated 22.01.2020 made in CMP.Nos.251 and 252 of 2015 in S.A.No.1489 of 1986 (GKIJ)

Vs

1.Krishnan
2.Vellai Kanniammal (died)

... Defendants / Appellants

3.Saroja
4.Rathnavel
5.Gopi
6.Jayasankar
7.Loganathan
8.Govindammal

... Respondents

2nd Appellant brought on record as legal representatives of the deceased sold appellant and Respondents 3 to 8 are brought on record as legal representatives of the deceased 2nd respondent vide order of Court dated 21.04.2006 made in CMP.Nos.5352 to 5357 of 2006.

Prayer in S.A.No.1488 of 1986:- The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.74 of 1983 dated 11.02.1986 on the file of the Principal Sub Court, Vellore against the judgment and decree made in O.S.No.9 of 1978 dated 02.04.1983 on the file of the District Munsif Court, Sholinghur.



Prayer in S.A.No.1489 of 1986:- The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.93 of 1983 dated 11.02.1986 on the file of the Principal Sub Court, Vellore against the judgment and decree made in O.S.No.306 of 1977 dated 02.04.1983 on the file of the District Munsif Court, Sholinghur.

For Appellants : Mrs.Hema Sampath, Senior Counsel
For Ms.R.Meenal (in both Appeals)

S.A.No.1488 of 1986

R1 : Died

For RR 2 to 7 : No appearance

S.A.No.1489 of 1986

For R1 : Mr.D.Baskar

For RR3 to 7 : Mr.R.Dhanasekar
for R.Thamaraiselvan

R2 : Died



COMMON JUDGMENT

The plaintiff / legal representatives of the plaintiff in O.S.No.306 of 1977 on the file of the District Munsif Court, Sholinghur are the appellants in S.A.No.1489 of 1986.

2.The suit in O.S.No.306 of 1977 had been filed by the appellant / P.Annammal, who died during the pendency of the Second Appeal against two defendants viz., Krishnan and his sister Vellai Kanniammal seeking declaration of title with respect to the suit schedule property which forms part of Gramanatham S.No.233/1 at Banavaram Village at Arakonam in Vellore District, measuring East to West 58 feet and North to South 45 feet.

3.The said Annammal was the 3rd defendant in O.S.No.9 of 1978 and the defendants / legal representatives are the appellants in S.A.No.1488 of 1986. The suit in O.S.No.9 of 1978 had been filed by Vellai Kanniammal who died pending the Second Appeal, again with respect to the very same property seeking declaration of title and permanent injunction.



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4.The trial in both the suits, O.S.No.306 of 1977 and O.S.No.9 of 1978 were conducted jointly and by judgment dated 02.04.1983, the District Munsif, Sholinghur, on the basis of the pleadings and the evidence on record, decreed O.S.No.306 of 1977 and dismissed O.S.No.9 of 1978. Questioning the decree granted in O.S.No.306 of 1977, the defendants therein who are the respondents herein filed A.S.No.93 of 1983 before the Principal Sub Court, Vellore. Questioning the dismissal of O.S.No.9 of 1978, the plaintiff therein / legal representatives of the deceased plaintiff filed A.S.No.74 of 1983 before the Principal Sub Court, Vellore.

5.Both the First Appeals were taken up together and a common judgment was delivered by the learned Principal Sub Judge Vellore on 11.02.1986. By the said judgment, the findings of the District Munsif were held to be not correct and were set aside. This meant that O.S.No.306 of 1977 which had been decreed by the Trial Court was dismissed by the First Appellate Court and O.S.No.9 of 1978 which had been dismissed by the Trial Court was decreed by the First Appellate Court. In effect both the First Appeals were allowed.



6.Questioning the judgment and decree in both the First Appeals, the plaintiff in O.S.No.306 of 1977 filed S.A.No.1489 of 1986. She was one of the defendants in O.S.No.9 of 1978 and she filed S.A.No.1488 of 1986.

7.Pending the Second Appeals, the appellant P.Annammal died and thereafter, appellants 3 to 5 have been brought on record.

O.S.No.306 of 1977 (District Munsif Court, Sholinghur):-

8.The plaintiff P.Annammal had filed the suit seeking declaration of title and permanent injunction to protect possession of the site which forms part of Gramanatham S.No.233/1 of Banavaram Village, Arakonam, Vellore District. She claimed that she had occupied the site 11 years prior to the institution of the suit and had put up a thatched hut and also paid house tax to the panchayat. She claimed exclusive possession and enjoyment. Further the Tashildar, Arakonam Taluk, had issued a B-memo. Alleging that the 1st defendant in the said suit, Krishnan was attempting to trespass into the property, she filed the suit seeking declaration of title and permanent injunction.



9. She stated that Krishnan claimed that the Tashildar, Arokonam had granted assignment of a portion of the schedule mentioned property in the name of his sister Vellai Kanniammal and therefore, he asserted right to possess the property. The plaintiff further stated that earlier one M.R.Duraikannu Naidu had obtained an assignment of a portion of the site from the Tahsildar, Arakonam. He filed a suit in O.S.No.330 of 1975 before the District Munsif Court at Sholinghur seeking declaration of title and recovery of possession. That suit was transferred to the District Munsif Court, Ranipet and re-numbered as O.S.No.49 of 1977. It was dismissed as withdrawn. The plaintiff further stated that questioning assignment in favour of M.R.Duraikannu Naidu, she filed an Appeal before the Revenue Divisional Officer. The Appeal was allowed and assignment in favour of M.R.Duraikannu Naidu was cancelled. The further Appeal before the District Revenue Officer, Vellore was dismissed and the Tahsildar was directed to assign the land to the plaintiff. The plaintiff thus claimed right to occupy the land and filed the suit for declaration of possessory right and for permanent injunction.



10.The 1st defendant / Krishnan in the written statement questioned the description of the property and denied that the plaintiff was in possession of the property. He claimed that the property in the suit instituted by M.R.Duraikannu Naidu was different from the present suit schedule property. He stated that the boundaries of the suit had also been amended pending the suit. He claimed that his sister Vellai Kanniammal had obtained an assignment of her site and had constructed a hut in that place. He therefore claimed that the suit should be dismissed.

O.S.No.9 of 1978 (District Munsif Court, Sholinghur):-

11.This suit was filed by Vellaikanniammal against three defendants again seeking declaration of title and permanent injunction. The land was described as Gramanatham land and it was claimed that it was assigned to the plaintiff on 05.09.1973 as house site, owing to the fact that she was a destitute lady. The Government records reveal the fact of assignment. She claimed to be in a possession from the date of assignment. She claimed that the defendants had disturbed her possession and therefore she had filed the suit seeking declaration of title and permanent injunction.



12. In the written statement, the averment that the Government had assigned the site to the plaintiff on 05.09.1973 denied and contested. The description of the property was also questioned. The possession of the plaintiff was also put to strict proof. It had been stated that the 3rd defendant has been in possession from 1966 by putting up a hut and paying property tax to the panchayat. It was stated that the 2nd defendant was living with the 3rd defendants. The defendants claimed exclusive possession. It was also stated that the lay of the land would indicate that there were no sites available for assignment. It had been further stated that such assignment is invalid and not binding on the defendants. It had been further stated that Krishnan the brother of the plaintiff was employed in the Revenue Department and had obtained the assignment surreptitiously. It had been further stated that the schedule to the property was amended by orders of the Court and it would be evident that it was only the defendants who are in possession. It was therefore contended that the suit should be dismissed.

13. On the basis of the aforementioned pleadings, the following issues had been framed by the Trial Court in O.S.No.306 of 1977 and O.S.No.9 of 1978:-



Issues in O.S.No.306 of 1977:-

- WEB COPY “1. Whether the plaintiff is in possession of the suit property and whether she is entitled to the declaration as prayed for?
2. Whether the plaintiff is entitled to permanent injunction?
3. To what reliefs if any is the plaintiff entitled?”

Issues in O.S.No.9 of 1978:-

- “1. Whether the suit property is properly described?
2. Whether the alleged assignment in favour of the plaintiff is binding on the defendants?
3. Whether the plaintiff is entitled to the relief of permanent injunction?
4. Whether there is cause of action for the suit?
5. To what relief if any is the plaintiff entitled to?”

The Trial:-

14. By the consent of both the parties joint trial was conducted. The evidence recorded in O.S.No.306 of 1977 was agreed to be read as evidence in O.S.No.9 of 1978. This would indicate that the nomenclature 'plaintiff'



would indicate the plaintiff in O.S.No.306 of 1977 / defendant in O.S.No.9 of 1978. Similarly, the word 'defendant' would indicate the defendant in O.S.No.306 of 1977 / plaintiff in O.S.No.9 of 1978.

15.During the course of trial, the plaintiff P.Annammal examined herself as PW-1 and the 1st defendant Lourdous in O.S.No.9 of 1978 was examined as PW-2. On the side of the defendants, the 1st defendant Krishnan in O.S.No.306 of 1977 was examined as DW-1 and an independent witness Jaya Naidu was examined as DW-2. The plaintiff marked Exs.A1 to A12. Exs.A1, A6, A10 and A11 was the B-memos issued by the Tahsildar, Arakonam. Exs.A2, A3, A7 and A8 were house tax receipts. Ex.A4 was the proceedings of the District Revenue Officer and Ex.A12 was the proceedings of the Revenue Divisional Officer, Ranipet.

16.On the side of the defendants, Exs.B1 to B5 were marked. Exs.B1 and B2 related to O.S.No.330 of 1975 and Ex.B4 was the certified copy of Sagubadi adangal extract and Ex.B5 was the grant of assignment to the defendant Vellaikanniammal dated 05.09.1973. The report of the Advocate Commissioner was marked as Ex.C1 and the plan filed by the Advocate Commissioner was marked as C2.

**The Findings:-**

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17. On consideration of the oral and documentary evidence, the District Munsif, Sholinghur, first took up for consideration issue No.1 in O.S.No.306 of 1977 namely, whether the plaintiff was in possession and whether she was entitled to the relief of declaration and issue No.2 in O.S.No.9 of 1978 namely, whether the assignment in favour of the defendants is binding on the plaintiff together.

18. After examining the rival pleadings, the learned District Munsif, observed that the plaintiff had amended the suit schedule property by filing I.A.No.225 of 1978 which was ordered on 05.07.1979 and amendment was also carried out to the suit schedule property with respect to the borders and boundaries. It was further observed that such order permitting amendment was not challenged before any higher judicial forum by the defendant. It was therefore contended that the amendment had attained finality.

19. Thereafter, the learned District Munsif found that there was no document produced by the defendant that she was in possession prior to Ex.B5 assignment in her favour, except for the interested oral testimony of



DW-1 and DW-2. There was nothing on record to prove that the defendant was in enjoyment of the suit property. It was specifically found that the defendant Vellaikanniammal was not the owner of the suit property. Further Ex.B5 was only an conditional assignment. There was no evidence adduced to show that she had satisfied any of the conditions stipulated in Ex.B5. It was specifically stated that only the Government has the authority and power to evict the plaintiff. It was further found that the defendants has no right to evict the plaintiff from the house site even though her possession may be objectionable to the Government. The fact that B-memos had been issued by the Tashildar was also noted. It was stated that only the Government could determine whether the possession of the plaintiff was objectionable or not. It was very specifically observed that the Tashildar, Arakonam should have assigned the property in favour of the plaintiff, but had rather granted the assignment in favour of the defendant Vellaikanniammal, without asserting whether she was in occupation of the site. Holding as above, the suit in O.S.No.306 of 1977 was decreed and the suit in O.S.No.9 of 1978 was dismissed.



A.S.Nos.74 & 93 of 1983 (Principal Sub Court Vellore):-

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20.As stated two First Appeals came to be filed in A.S.Nos.74 of 1983 and 93 of 1983. Both the Appeals were taken up together for consideration by the Principal Sub Court, Vellore. The only point which was taken up for determination was whether the plaintiff in O.S.No.306 of 1977 was entitled to the relief prayed with respect to the suit property. The learned Principal Sub Judge again examined the amendment made to the schedule of the property and held that the plaintiff was living in the site encroached by one Dhanapal Chetti. The learned Principal Sub Judge found that the amendment to the suit schedule property which was allowed by the District Munsif Court was not bonafide and that the same was made only for the purpose of grabbing the property occupied by others. It was also observed that the plaintiff had not filed any document to show that she was in possession before 1977. Thereafter, Ex.B5 / assignment order was examined and it was held to be valid. It was held that the plaintiff cannot claim title much less possessory title in her name. The learned Principal Sub Judge once again re-examined the report of the Advocate Commissioner and the sketch of the Advocate Commissioner and stated that the plaintiff could be in possession only of a portion of the property. The findings of the Trial Court were set



aside and O.S.No.306 of 1977 was dismissed and O.S.No.9 of 1978 was decreed.

S.A.Nos.1488 and 1489 of 1986:-

21.Questioning the findings in the Appeal Suits, the present Second Appeals have been filed.

22.Since evidence in O.S.No.306 of 1977 was taken to be the evidence to be read as evidence in O.S.No.9 of 1978, it would be indicate that the plaintiff in O.S.No.306 of 1977 is the appellant in S.A.No.1489 of 1986 and the defendant in O.S.No.9 of 1978 is the appellant in S.A.No.1488 of 1986.

23.S.A.No.1488 of 1986 had been admitted on the following substantial question of law:

“1.Whether the assignment of the land in favour of the respondent is not valid inasmuch as the appellants have been in possession and have not been evicted?”

24.S.A.No.1489 of 1986 had been admitted on the following



substantial questions of law:

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“1. Whether the assignment of the land in favour of the appellant is not valid in view of the fact that the respondents have been in occupation thereof?”

25. It must be pointed out that the substantial question of law with respect to S.A.No.1489 of 1986 should also read the same as S.A.No.1488 of 1986, since the issue in question is with respect to the assignment Ex.B5 in favour of the respondents in both the appeals.

26. The substantial question of law would necessitate examination whether the assignment Ex.B5 granted in favour of the defendants in O.S.No.306 of 1977 / plaintiff in O.S.No.9 of 1978 / respondents herein is valid, particularly because, the appellant is said to have been in possession of the land assigned on the date of such assignment.

27. Heard arguments advanced by Mrs.Hema Sampath, learned Senior



Counsel appearing on behalf of the appellants and Mr.D.Baskar, learned counsel for the 1st respondent and Mr.R.Dhanasekar learned counsel for R3 to R7.

28.Written arguments were also filed by both sides.

29.The main focus of the arguments advanced on behalf of the appellants was that the learned First Appellate Judge, had misdirected himself on appreciating the report of the Advocate Commissioner and rough sketch of the Commissioner presented as C1 and C2.

30.My attention was drawn to the rough sketch and it was informed that the sketch had prepared in an unconventional manner, with the directions not given as is normally done, with North pointing upwards. It was therefore pointed out by the learned Senior Counsel that there is every possibility that the First Appellate Judge had wrongly understood the sketch of the Advocate Commissioner and thereby had come to a wrong conclusion regarding possession or otherwise of the parties. A tangential line had been drawn by the First Appellate Judge holding that the possession of the



appellants should be restricted and not extend to the entirety of the property as claimed by her.

31.The learned counsel for the respondents however pointed out the amendment made to the suit property and claimed that by such amendment the respondents had been seriously prejudiced.

32.I hold that the interpretation or otherwise of Exs.C1 and C2 by the First Appellate Judge would pale into insignificance, if the substantial questions of law are addressed. Similarly, the contention of the learned counsel for the respondents to re-examine the amendment to the schedule will have to be considered only with skewed eyes because the order granting amendment had become final and the respondents had taken a conscious decision to abide by it and not to challenge it. In the absence of any challenge made to the said order, examining the correctness or otherwise of the same in a Second Appeal would mean re-examination of a fact determined and would be an exercise ill advised to be undertaken and actually be a taboo, so far as the procedure to adjudicate a Second Appeal is concerned. Therefore, let me concentrate on the substantial question of law which had been framed and which are identical in both the Second Appeals.



33.They revolve around Ex.B5. This Court has to examine such assignment in the teeth of possession by the appellants of the suit schedule lands. It is seen that it was the Tashildar who granted assignment to the respondents. A duty was therefore cast on the Tashildar to ensure that the land which is so assigned was free from any encumbrance or litigation and was not in the possession of any other third party. It was the Government acting through the Tashildar who can seek enforcement of the assignment. The assignee can only complain to the assignor about possession by a third party. The assignment was also done in the teeth of an earlier assignment order in favour M.R.Duraikannu Naidu having been set aside by the Revenue Divisional Officer and the District Revenue Officer who both found that the appellants herein were in possession. The issue therefore narrows down to the right of the Tashildar to grant an assignment overlooking possession and overlooking earlier orders of the revenue authorities in the hierarchy scheme and the pendency of civil litigations over the site for which such assignment was granted.

34.The vexed issue of revenue officials, starting from the Tashildar, granting pattas or assignments with respect to lands embroiled in civil



litigation without reference to the on going litigation and without putting the contesting parties on notice has often come up for consideration before Courts. Further, whether such documents can pressed to advantage by the beneficiary under the said documents before the Civil Suit or whether the documents can be ignored during the civil litigation are also issues which have come up often for consideration before Courts.

35.A Bench of two Judges of the Hon'ble Supreme Court had referred a Special Leave Petition for a decision by a larger bench of three Judges, in an issue relating to the Kerala Land Reforms Act as amended by Act, 35 of 1969. The issue was whether a decision rendered by the Kerala Land Tribunal declaring tenancy rights in the teeth of final decree proceedings is valid. This issue was so referred on an apparent conflict between two decisions rendered by two benches of the Hon'ble Supreme Court.

36.The judgment of the larger bench of three Judges of the Hon'ble Supreme Court had been reported in **(1998) 3 SCC 751, *Sankaranarayanan Potti (Dead) By Lrs. Vs. K.Sreedevi and others***. That appeal had arisen from O.S.No.75 of 1958. That suit was filed by the



plaintiff therein to set aside a sale deed dated 27.07.1955 executed by 1st defendant one of the co-owners in favour of the 2nd defendant. A relief of redemption of a mortgage in favour of the 2nd defendant was also sought. The mortgage had been executed by the Tarwad of the plaintiffs. A preliminary decree was passed by the Trial Court on 22.01.1963 for redemption of the mortgage on payment of the mortgage amount and other charges. This decree was challenged by the 2nd defendant by filing A.S.No.527 of 1963, which was dismissed on 27.11.1965. The 2nd defendant then filed S.A.No.334 of 1966 before the High Court of Kerala. That Second Appeal was also dismissed on 19.02.1969. In effect the preliminary decree for redemption of mortgage was confirmed. O.S.No.75 of 1958 remained pending for filing of final decree application for actual redemption.

37. In the meanwhile, the Kerala Land Reforms Act, 1963 was amended by Act 35 of 1969. The 2nd defendant claimed that by this amendment, he can be categorized as a tenant which gave a statutory right to purchase the property mortgaged. He therefore filed an application before the Land Tribunal to be categorized as a tenant and to purchase the property. The Land Tribunal accepted his rights and held that he was



entitled to purchase the landlord's rights. Final orders were passed on 28.10.1974 directing certificate of purchase to be issued in his favour. A certificate of purchase was also issued under Section 72 K of the Land Reforms Act on 25.07.1975.

38. Much later, the 11th defendant filed I.A.No.5092 of 1979 on 17.11.1979 requesting the Trial Court to pass a final decree consequent to the preliminary decree. She also filed an application to condone the delay. The 2nd defendant contended that the application for final decree was barred by limitation and also claimed that the Land Tribunal had recognized his rights and the assignment of the landlord's rights to him. The Trial Court dismissed the application seeking final decree, holding that it was barred by limitation. The First Appeal filed was allowed by the District Judge. The 2nd defendant then filed a Civil Miscellaneous Appeal before the Kerala High Court, wherein, the proceedings were remanded back to the Trial Court to proceed further with the passing of the final decree. The Civil Miscellaneous Appeal was dismissed. No further judicial process was taken by the 2nd defendant in that regard.



39. Thereafter, before the Trial Court, the 2nd defendant filed an application to take up as a primary issue whether the plaintiff was entitled to get final decree, in view of the order passed by the Land Tribunal, which effectively extinguished the title of the landlord. That application was dismissed by the Trial Court and the revision was also dismissed by the High Court. The 2nd defendant then filed an appeal before the Hon'ble Supreme Court. Holding that there were two conflicting views by two earlier benches of two Judges of the Hon'ble Supreme Court, the matter referred to a bench of three Judges, with respect to the issue whether the decision by the Kerala Land Tribunal holding that the 2nd defendant was a tenant and entitled to purchase the landlord right and the order granting certificate of purchase under Section 72 K of the Kerala Land Reforms Act, can be treated as final and conclusive and consequently, whether the civil Court proceedings were to be held as incompetent and required to be closed.

40. The Hon'ble Supreme Court answered that issue in the following manner, after referring to Section 108 of the Kerala Land Reforms Amending Act, and also Section 125 of the Act which stipulated that there was bar of jurisdiction of civil Courts to examine issues to be determined by the land Tribunal.



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“10. It is obvious that in all types of civil disputes civil courts have inherent jurisdiction as per Section 9 of the Code of Civil Procedure unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority. On a conjoint reading of proviso to Section 125(1) of the principal Act and Section 108(3) of the Amending Act it must, therefore, be held that the question of status of Defendant 2 under the Amending Act 35 of 1969 could have been decided only by the civil court in the pending suit and not by the Land Tribunal under the Amending Act. Consequently, the direct approach made by him to the Land Tribunal under the Amending Act must be held to be premature and incompetent and it must also be further held that consequently the orders obtained by him from the Land Tribunal were rendered by a Tribunal which had no jurisdiction to pass such orders and they



were nullities.”

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41.It is thus seen that civil Courts have inherent jurisdiction under Section 9 of the Code of Civil Procedure unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority.

42.This position of law laid down by the Hon'ble Supreme Court is directly applicable to answer the substantial questions raised in the two Second Appeals. In O.S.No.306 of 1977, the plaintiff who was the appellant herein had contended that the defendants therein / respondents herein were interfering with their peaceful possession of the suit schedule property and the respondents/defendants claimed a right to possess the lands owing to an assignment granted by the Tribunal.

43.The substantial question of law is whether such assignment can withstand the scrutiny of this Court in the face of possession by the appellants herein. As pointed out by the Hon'ble Supreme Court that the assignment order obtained by the respondent “*must be held to be premature*



and incompetent", particularly, because the possession of the plaintiff had been recognized by the very same revenue officials who had nullified a similar assignment granted in favour of M.R.Duraikannu Naidu upholding the claim of the appellants / plaintiffs. Thus when a civil suit is pending or when parties have been litigating over a piece of land, the revenue officials have no right to pass any order either granting rights in the form of pattas or assignments as in this case, by ignoring the pendency of the civil suit and without putting on notice the contesting parties in the civil suits. If such patta or assignment are granted by revenue officials, as in this case by Tashildar and subsequently, if it is brought to their notice about the pendency of the civil suit or the fact that such an order was granted without enquiring into possession, then such an order will have to be set aside by the higher officials in the hierarchy.

44.This view of the Hon'ble Supreme Court was rendered on 26.03.1998. Immediately thereof, but without reference to the said judgment a Full Bench of the Madras High Court in a judgment reported in **1998 (I) CTC 630 : (1998) IIMLJ 722, Srinivasan and six others V. Sri Madhyarjuneswaraswami, Pattaviathalai, Tiruchirapally District and five**



others, had held consequent to a reference made by a learned Single Judge with reference to orders passed by the Tribunal or revenue authorities and in that particular case under the Tamil Nadu Minor Inams (Abolition and conversion into Ryotwari) Act, 1963, as follows:

“15. Further, the mere fact that the orders passed or decisions rendered under these Acts were given finality for the purposes of those Acts or that the issues, which they are obliged or required to be decided, when so decided are ordained to bind the parties to the proceedings or their privies and successors-in-interest applying the principles of res judicata, does not have the effect of ousting the jurisdiction of the Civil Court once and for all. It is by now well settled that even in cases where finality is accorded to any decision or order, there are certain well settled exceptions and proved and existence of such exceptional factors, the Civil Court is entitled to nullify any or all such decisions. Similarly, even in cases where the principles of res judicata are rendered applicable, the jurisdiction of the competent Civil Court to go into the question and find out whether the necessary ingredients to apply the principles of res judicata exist in a given case or not cannot be denied to the Civil Courts and from the mere fact of according



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finality to the orders or decisions rendered under the Act or the application of the principles of res judicata, a total or complete bar or ouster of the jurisdiction of the Civil Courts for all and any purpose cannot be automatically inferred or implied. Before a plea of res judicata can be given effect to, it must be sufficiently pleaded and established that the litigating parties must be the same, that the subject matter of the suit and the other proceedings also are identical, that the questions arising in the suit and the other proceedings were directly and substantially in issue and the same was finally decided and that too by an authority or Court of competent jurisdiction.”

45. Thus the jurisdiction of the civil Court to still grant a decree protecting possession in the face of an assignment order obtained by the defendants is recognized and upheld. The assignment will not act as a res-judicata for the civil Court to grant relief on the basis of the evidence adduced and to also hold that such assignment obtained in the back of the parties is a nullity.

46. In the instant case, the Trial Court did just that. The learned



District Munsif, Sholinghur, held that the assignment in favour of the respondents herein will have no effect on the suit for declaration of title and for permanent injunction to protect possession. That is a correct view. The First Appellate Court had misdirected itself. Quite apart from reading the sketch of the Commissioner upside down, the First Appellate Court had also erred on a basic principle of law. The substantial question of law is answered that the assignment in favour of the respondents is invalid as the appellants have been in possession and have not been evicted in manner known to law.

47. In the result, the judgment and decree of the First Appellate Court in A.S.Nos.74 & 93 of 1983 dated 11.02.1986 on the file of the Principal Sub Court Vellore is set aside. The judgment and decree of the Trial Court in O.S.Nos. 306 of 1977 and 9 of 1978 dated 02.04.1983 on the file of the District Munsif Court, Sholinghur, is restored and confirmed. Both S.A.Nos.1488 and 1489 of 1986 are allowed with costs right throughout.

13.07.2022

Index: Yes/No
Internet: Yes/No
Speaking / Non-speaking



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To

- 1.The Principal Sub Court, Vellore.
- 2.The District Munsif Court, Sholinghur.
- 3.The Section Officer, VR Section, Madras High Court.



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C.V.KARTHIKEYAN,J.

Smv

Pre-delivery Judgment made
in
S.A.Nos.1488 & 1489 of 1986

13.07.2022