



S.A.No.1852 of 2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.07.2022

Coram

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

S.A.No.1852 of 2001

1.Narayanasamy alias Puthugiri

2.Kaliyan

...

Appellants

Vs

1.Rajalakshmi

2.Ramalingam

...

Respondents

Prayer: The Second Appeal is filed under Section 100 of CPC, against the judgment and decree dated 23.03.2001 passed in A.S.No.36 of 1998, on the file of the First Additional Sub-Court, Villupuram, modifying the judgment and decree dated 30.06.1997 passed in O.S.No.505 of 1990 on the file of the Additional District Munsif, Thirukoilur.

For Appellants : Mr.V.Balasubramaniam

For Respondents : Mr.V.Perumal
for Mr.T.Dhanyakumar



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JUDGMENT

The defendants in O.S.No.505 of 1990 on the file of the Additional District Munsif Court, Thirukkoilur, are the appellants herein.

2.The said suit in O.S.No.505 of 1990 had been filed by the respondents seeking declaration of title and recovery of possession. The suit schedule properties were divided into A & B schedule properties. They were all agricultural lands situated at Chennakulam Village, Arakandanallur Sub Division, Villupuram District.

3.After trial, by judgment dated 30.06.1997, the learned Additional District Munsif, Thirukkoilur, granted declaration of title but rejected the relief of recovery of possession. Questioning that particular rejection of recovery of possession, the plaintiffs had filed A.S.No.36/98, which came up for consideration before the First Additional Sub Court, Villupuram. By judgment dated 23.03.2001, the appeal suit was allowed, which effectively meant that the recovery of possession was also granted.



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Aggrieved by such judgment, the defendants have filed the present second appeal.

4.The second appeal had been admitted on the following two substantial questions of law;

“i.Whether the right of the tenant is taken away from the purview of Kudiyiruppu Protection Act by reason of entering into Sale of the property under the occupation of the tenant?

ii.Whether the Civil Court has jurisdiction to disturb the possession of the tenant rights under the Kudiyiruppu Act remain intact?”

5.O.S.No.505 of 1990 (Additional District Munsif Court, Thirukkoilur).

The plaintiffs Rajalakshmi and Ramalingam, had stated that “A” schedule property had been allotted to the first plaintiff by way of a judgment and decree in O.S.No.129 of 1979 in E.P.No.109 of 1992 dated 04.03.1982 on the file of the District Munsif Court, Thirukoilur. The first plaintiff was also allotted patta Nos.632 & 856. It was stated that the first plaintiff was doing agriculture by cultivating sugarcane and other crops.



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6.The “B” schedule property belongs to the second plaintiff. Patta was also granted in patta No.615. Even in the “B” schedule property, the second plaintiff was cultivating sugarcane.

7.In view of the fact that both the plaintiffs were title holders of A & B schedule properties, one comprehensive suit had been filed.

8.It was stated that the second defendant was owning land measuring 0.70 cents adjacent to the A & B schedule properties. He had also purchased 1 ¼ portion of Well and also using the said Well. Both the defendants are related. It had been stated that they offered to purchase the properties, which offer, the plaintiffs had rejected. It was therefore stated that they had tried to enter into the properties and in view of those particular facts, it was also stated that on 05.06.1996, they actually took possession of the properties. Under those circumstances, the suit was instituted seeking declaration of title and recovery of possession.



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9.The defendants filed independent and separate written statements. The first defendant questioned the title of the first plaintiff with respect to the “A” schedule property. The specific stand was that alleged possession granted in O.S.No.129 of 1979 was disputed and denied. It was stated that the suit property originally belonged to the mother of the second plaintiff/mother-in-law of the first plaintiff by name Lakshmiammal. It was stated that she had executed a gift settlement deed with respect to the “A” schedule property. It was also stated that in the year 1976, the first defendant had taken lease of the said land for cultivation purpose and receipts in this regard had also been issued. It was stated that therefore, the first defendant was in occupation of the “A” schedule property with rights as lessee. The observation in the plaint that forcible possession was taken was denied and disputed.

10.It was further stated that as a matter of fact, the first defendant wanted to purchase the “A” schedule property and had also given an advance of Rs.500/-. This was in the year 1990 but the plaintiffs avoided performance of their part of the agreement. It was therefore stated that



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with respect to the “A” schedule property, the first defendant was in continuous occupation and in the written statement, he also claimed that he had perfected title by adverse possession. It was stated that viewed from any angle, the suit of the plaintiffs with respect to the “A” schedule property should be dismissed.

11.The second defendant filed an independent written statement claiming right over the “B” schedule property. He denied the fact that the second plaintiff had been granted patta with respect to the “B” schedule property. He claimed that he is a lessee with respect to the “B” schedule property and the terms of the lease was that he should give 7 gunny bags of paddy. This lease commenced in the year 1990. It was stated that he was paying the lease amount in the aforesaid manner continuously and without any interruption. He further stated that, quite independently, he had also entered into an agreement to purchase the “B” schedule property for a total consideration of Rs.50,000/-. He stated that though the plaintiffs had agreed to convey the property, they demanded more money and the sale did not go through. Under those circumstances, the second defendant also claimed the right to occupy the said lands.



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12. On the basis of the above pleadings, the following issues were framed:

1. Whether the first defendant was a lessee of the A schedule property?

2. Whether the contention of the first defendant that in the year 1976 he had taken on lease the A schedule property from Lakshmiammal and had also obtained the receipt for the same is correct and whether such receipt is legally valid?

3. Whether there was an oral agreement of sale between the first defendant and the first plaintiff with respect to the A schedule property in the year 1990?

4. Whether the first defendant had perfected title by adverse possession with respect to the A schedule property?



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5. Whether the second defendant had taken on lease the B schedule property from the second plaintiff?

6. Whether the second defendant had entered into an agreement of sale as contended in the written statement with respect to the B schedule property?

7. Whether the first plaintiff was in possession of the A schedule property?

8. Whether the second plaintiff was in possession of the B schedule property?

9. Whether the plaintiffs were entitled for the relief of declaration and recovery of possession with respect to the A and B schedule properties?

10. To what other relief the parties are entitled to?

13. Both the plaintiffs and the defendants were invited to adduce evidence. During the course of trial, the second plaintiff Ramalingam



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was examined as PW1. The first defendant Narayanasamy examined himself as DW1. He also examined six other witnesses as DW2 to DW7.

14.The plaintiff marked Exs.A1 to A9. Ex.A1 was the order by which “A” schedule property was allotted to the first plaintiff in E.P.No.109 of 1982 & O.S.No.129 of 1979 on the file of the District Munsif Court, Thirukkoilur. Ex.A2 & Ex.A3 were the pattas with respect to the “A” & “B” schedule properties. Exs.A4 to A9 were the receipts of land tax paid by the first and second plaintiffs towards the suit properties.

15.The defendants marked Exs.B1 to B4. Ex.B1 dated 12.07.1976 was the receipt given by Lakshmiammal to the first defendant. Ex.B2 dated 05.04.1990 was also a lease receipt executed by Lakshmiammal to the first defendant. Ex.B3 was the receipt for permission granted to do agriculture by the second plaintiff to Kaliyan dated 06.10.1983. Ex.A4 was also another document executed by the second plaintiff to Kaliyan with respect to the lease dated 26.08.1989.



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16.On the basis of the oral and documentary evidence, the Additional District Munsif, Thirukkkoilur, proceeded to examine the issues framed.

17.The Additional District Munsif took up for consideration, the first, second, fifth, seventh & eighth issues. These issues surrounded grant or otherwise of lease as contended by the defendants and as to whether the plaintiffs were in possession of the A & B schedule properties.

18.The Additional District Munsif considered the documents filed by the defendants, particularly, Exs.B1 and B2 which were the receipts for the lease executed by Lakshmiammal. These were with respect to “A” schedule property. With respect to “B” schedule property, documents considered were Exs.B3 & B4. However, it was the evidence of the first plaintiff that was analyzed and it was pointed out that during his cross examination, he denied the grant of lease to the defendants. The oral evidence was held not conclusive as to the aspect of grant or otherwise of the lease of the properties.



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19.It was therefore held that on the basis of the documents filed by the defendants, it had been established that they were in possession and they had taken the properties on lease for the purpose of cultivation.

20.With respect to the issue of declaration of title, since the defendants themselves affirmed the title of the plaintiffs, the Additional District Munsif held that the plaintiffs were entitled for the relief of declaration of title, but with respect to the recovery of possession, it was held that since the defendants were in possession and since documents relating to lease receipts had been produced, it had been stated that the possession cannot be disturbed or interfered with except in manner known to law. Recovery of possession was therefore not granted and that particular relief was negatived.

21.With respect to the agreements of sale, it was found that the agreements of sale had not been properly established and there were no documentary evidence produced with respect to the same. Holding title



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in favour of the plaintiffs, declaration of title was granted but however recovery of possession was negatived.

22.Questioning such reasoning with respect to the denial of recovery of possession, the plaintiffs then filed A.S.No.36/1998.

23.A.S.No.36 of 1998 (First Additional Sub Court, Villupuram)

The learned First Additional Sub-Judge, Villupuram, had framed only two points for consideration, namely, whether the plaintiffs were entitled for the reliefs as given in the plaint and whether the appeal should be allowed.

24.The learned First Additional Sub-Court/First Appellate Court once again re-examined the evidence on record and stated that even though the defendants admitted that they had taken possession of the agricultural land as lessee, taking into consideration their further plea about the agreements of sale, had stated that when the defendants themselves had stated that they are agreement holders, then, their status



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as lessees stand extinguished and that they stand on a different footing from the date of such agreements of sale as agreement holders with interest to purchase the property and therefore, their right lies under the agreements and the earlier relationship between the parties, either as landlord/lessee or independently as cultivating tenants had become effluxed by this particular supervening circumstance. The Additional Sub Judge therefore stated that the agreement of sale could only be entered into with the owner of the property and therefore, upheld the finding of the trial Court with respect to the title of the appellants and with respect to the recovery of possession held that the respondents before the first appellate Court can only proceed in manner known to law with respect to the terms of the agreement and therefore, interfered with the finding of the trial Court and granted the relief of recovery of possession in favour of the appellants/plaintiffs before the trial Court.

25.In effect, the suit was decreed as prayed for, namely by granting of relief of declaration of title and also granting the relief of recovery of possession.



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The defendants then filed the present second appeal. The second appeal had been admitted on the following substantial questions of law:

“i. Whether the right of the tenant is taken away from the purview of Kudiyruppu Protection Act by reason of entering into Sale of the property under the Occupation of the tenant?

ii. Whether the Civil Court has jurisdiction to disturb the possession of the tenant rights under the Kudiyruppu Act remain intact?”

27. Heard arguments advanced by Mr.V.Balasubramaniam, learned counsel for the appellants and Mr.V.Perumal for Mr.T.Dhanyakumar, learned counsel for the respondents.

28. The appellants herein would be called the defendants and the respondents herein would be called as plaintiffs, as per the rank given before the trial Court.



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29.The plaintiffs had instituted O.S.No.505 of 1990 before the Additional District Munsif Court, Thirukoilur, seeking declaration of title and recovery of possession. The suit schedule properties were divided into A & B schedule properties. The first plaintiff is the owner of “A” schedule property and the second plaintiff is the owner of “B” schedule property. For good measure, the defendants also claimed right which would indicate that the first defendant expressed interest in his written statement over the “A” schedule property and the second defendant similarly expressed interest in his written statement over the “B” schedule property.

30.The first plaintiff claimed right, title and interest by way of allotment of 'A' schedule property in an execution petition in an original suit before the District Munsif Court at Thirukoilur. Subsequently patta had also been obtained by the first plaintiff. The second plaintiff claimed title over the “B” schedule property and also claimed that patta had been granted.

31.Both the plaintiffs and the defendants are relatives. It was



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claimed that the defendants were the owner of the adjoining lands and had offered to purchase the suit schedule properties. When said offer was refuted, they tried to trespass into the property and finally, trespassed into the property and this necessitated the plaintiffs to institute the suit for declaration of title and recovery of possession.

32.The learned counsel for the defendants, Mr.V.Balasubramaniam pointed out that the suit had been filed for declaration of title. The learned counsel pointed out that the defendants had taken two separate defences, namely, the defendants were lessees of the land and also alternatively claimed that they are also agreement holders with the right to purchase the lands. They also claimed that even if the contentions are rejected, they hold the land by adverse possession.

33.Both the Courts below have examined the issues of lease and while the trial Court declined to grant the relief of recovery of possession, the first appellate Court had granted the said relief.



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34.This observation of the first appellate Court is challenged by Mr.V.Balasubramaniam, the learned counsel for the defendants/appellants.

35.The learned counsel pointed out the findings of the trial Court relating to the lease, therefore, the learned counsel stated that once the lease was recognized, then the defendants should be recognised as cultivating tenants and if that is to be the case, then it is urged that the defendants cannot be directed to be vacated from the suit schedule properties on the sole ground that they are agreement holders.

36.Mr.V.Perumal, learned counsel for the respondents/plaintiffs would submit that the lease had not been established.

37.On a careful perusal of the documents, both the Courts below have given a specific finding with respect to the title of the A and B schedule properties and held that the plaintiffs are the title holders of the properties. A re-examination of the concurrent findings on fact would not be just unless such finding is held to be perverse or contradictory to the



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evidence available on record.

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38.Ex.A1 was the order of the Court granting allotment with respect to “A” schedule property and Exs.A2 and A3 are the pattas granted with respect to A & B schedule properties. They are not challenged by the defendants. Therefore, let me not enter into a discussion with respect to the title but examine the claim for recovery of possession.

39.The substantial questions of law revolve around Kudiyiruppu Protection Act and whether entering into an agreement of sale would extinguish any right under such Act.

40.It is seen that it is only in the written statement filed by the defendants that they claimed that they had entered into an agreement of sale with the plaintiffs. There has been no reply to such written statement. Therefore, it can be reasonably presumed that there was some agreement entered into between the parties with respect to the properties.



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Whether it had actually materialized to sale is a separate issue. Still if it was an executory contract between two parties, then in my view, the right which can be claimed by either one of the parties thereto can be only under such agreement.

41.Their right to seek enforcement of such agreement depends on their proving such agreement of sale.

42.Section 54 of the Transfer of Property Act also recognizes oral sale. Section 54 again states that an agreement holder, does not have any interest or charge over the property but only a right to seek enforcement of the agreement of sale. Once that position of law, creeps in, then the agreement holder cannot seek protection as a lessee.

43.It is asserted that the defendants can take any defence which would be permissible in law. That is correct. However, the defendants must also exercise caution that they are not mutually exclusive and does not act to their adverse interest.



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44.Once agreement of sale is asserted in the written statement, then, the defendants would also have to necessarily give up the plea of adverse possession. They have also admitted the title of the plaintiffs. They will have to claim that they were in possession only under the agreement. Prior to that the issue of possession would not come into play and possession of an agreement holder cannot be stated to be hostile to that of the plaintiffs or to the real owners.

45.With respect to the issue of protection under the Kudiyruppu Protection Act, it can be clearly stated that such protection does not hold since the defendants are agreement holders with a future right over the land. If they were to seek protection under the Act, they can only seek as cultivating tenants. They have to be registered in the land registers by the competent authority after due enquiry. If that be so, they will have to abandon their right under the agreement of sale.

46.Therefore, with respect to the first substantial question of law, I



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would hold that the right of the tenant is taken away from the purview of the Kudiyruppu Protection Act by reason of entering into an agreement of sale to purchase the properties.

47.The Second substantial question of law revolves around the jurisdiction of the Civil Court. In the instant case, the plaintiffs have sought recovery of possession on the basis that the defendants had entered into the property on a particular date as stated in the plaint. They are not recognized as cultivating tenants. Therefore, unless the defendants' names are registered in the revenue records as cultivating tenants, the jurisdiction of the Civil Court is not ousted. This is a suit for recovery of possession of vacant land from the defendants, who, according to the plaintiffs, trespassed into the lands. Both the Courts below had decreed the suit. The trial Court had stated that the defendants are entitled to cultivate the land as cultivating tenants. The first appellate Court held that the agreement of sale supervenes any such right. Once that conclusion had been arrived, then the defendants cannot claim protection under the Kudiyruppu Protection Act and therefore,



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jurisdiction of the Civil Court is not ousted.

48.In view of the above reason, second appeal is dismissed with costs.

(i).The Judgment and decree of the first appellate Court with respect to the grant of recovery of possession is confirmed.

(ii).The Judgment and decree of the trial Court in O.S.No.505 of 1990 with respect to the declaration of title is confirmed and with respect to negating the relief of recovery of possession is interfered with and the suit is decreed in entirety as prayed for.

(iii).Connected miscellaneous petition, if any, is dismissed.

Index:Yes/No

27.07.2022

Internet:Yes/No

sms

To

1.The First Additional Sub-Court, Villupuram.

2.The Additional District Munsif, Thirukoilur.

3.The Section Officer, V.R.Section, High Court of Madras.

C.V.KARTHIKEYAN,J.,

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