



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Second Appeal No.1380 of 2003

1.Gnanambal

2.Ravi

... Appellants

Vs.

M.V.Nagarajan

... Respondent

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 19.09.1997 made in A.S.No.55 of 1997 on the file of the learned Principal Subordinate Judge, Mayiladuthurai confirming the judgment and decree dated 18.02.1997 made in O.S.No.385 of 1994 on the file of the learned Principal District Munsif, Mayiladuthurai.

For Appellant

: Mr.G.Madhan Raj for A2

For Respondent

: MrT.M.Naveen,
Amicus Curiae

**JUDGEMENT**

WEB COPY This second appeal has been filed against the judgement and decree dated 19.09.1997 made in A.S.No.55 of 1997 on the file of the learned Principal Subordinate Judge, Mayiladuthurai confirming the judgment and decree dated 18.02.1997 made in O.S.No.385 of 1994 on the file of the learned Principal District Munsif, Mayiladuthurai.

2. The appellants are the defendants and the respondent is the plaintiff. For the sake of convenience, the parties are hereinafter referred to as per their nomenclature before the trial Court, viz., 'the plaintiff and 'the defendants'.

3. The case of the plaintiff is that he is the owner of the suit property. The defendants are his neighbor, who encroached upon his property and started to put up brick lane and therefore, without any other option, the plaintiff filed the suit, seeking for recovery of



possession of the suit property and also for mandatory injunction for removal of the constructions.

4. The case of the defendants is that one Krishnamoorthy, who was the husband of the 1st defendant and the father of the 2nd defendant was a cultivating tenant as per the Tamilnadu Agricultural Land Record of Tenancy Rights Act 1969 (in short, 'the Act'). Therefore, the suit is not maintainable and the plaintiff supposed to have file the appeal in terms of Section 6 of the Act. Further, it is stated that there is a specific bar under Section 16(A) of the Act to file the suit before the civil Court. Therefore, he contend that the suit is liable to be dismissed.

5. Based upon the pleadings, the trial Court framed the following issues for consideration:

- i) Whether the defendants are entitled to the protection under the Tamilnadu Agricultural Lands Record of Tenancy Rights Act 1969?
- ii) Whether the plaintiff is entitle to the suit



property?

iii) Whether the plaintiff is entitled to the mandatory relief as sought for?

iv) To what relief, the plaintiff is entitled to?

6. In order to prove their claims before the trial Court, on behalf of the plaintiff, he was examined as PW.1 and got marked Exs.A1 and A2. On behalf of the defendants, 2nd defendant was examined as DW.1 and apart from examined one Mr.Govindaraj as DW.2 and got marked Ex.B1. The Advocate Commissioner was appointed and he has also filed his report on 28.05.1994, which was marked as Ex.C1.

7. The trial Court, on consideration of both oral and documentary evidence, held that the plaintiff is entitled to the suit property and also entitled for mandatory injunction as sought for. The trial Court observed that the suit was filed on 22.4.1994, whereas, Ex.B1 is dated 29.04.1994, i.e. after filing of the suit, it was created and hence, held that Ex.B1 which is a copy of Record of Tenancy recognizing the



husband of the 1st defendant Thiru Krishnamoorthy as a cultivating tenant, is a fabricated one and the defendants failed to prove the same and therefore, the defendants are not entitled to the protection under the Act. The trial Court also held that the defendants encroached the suit property and started brick lane activities. Accordingly, the trial Court decreed the suit as prayed for. Aggrieved over the said judgment and decree passed by the trial Court vide order dated 18.02.1997, an appeal was preferred by the defendants in A.S.No.55 of 1997 before the first appellate Court.

8. The lower appellate Court, on consideration of the findings of the trial Court and after hearing both sides, passed a judgment and decree dated 19.09.1997 confirming the judgment and decree passed by the trial Court. Aggrieved over the said judgment and decrees of both the Courts below, the appellants/defendants preferred the present second appeal.



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9. When the matter was taken up for hearing on 12.09.2003, the second appeal was admitted and the following substantial questions of law were formulated for consideration:

(i) Whether the Courts below erred in not dismissing the suit on the admissions made by the plaintiff in the witness box that the defendants 1 and 2 are in possession of the suit properties since the life time of the plaintiff's father?

(ii) Whether the Courts below erred in doubting the genuineness of Ex.B1 extract of R.T.R without any pleading or evidence let in by the plaintiff to that effect?

(iii) Whether the Courts below erred in not properly appreciating the bar of civil Courts jurisdiction contemplated under Section 16-A of the Record of Tenancy Rights Act?

10. The learned counsel for the appellants by referring Ex.B1 would submit that the husband of the 1st defendant was recognized as a cultivating tenant and he was in the possession of the suit property even



at the time of filing of the suit. This aspect has not been considered by the Courts below in a proper perspective. Apart from that, the learned counsel submitted that there was no pleading on the part of the plaintiff to doubt the genuineness of Ex.B1. When such being the case, the Courts below should not have completely brushed aside Ex.B1 and decreed the suit. Ex.B1 was issued by the Tenancy Record Officer. Further, the learned counsel for the appellant would submit that in terms of Section 16-A of the Act, that there is a bar for the civil Court from dealing with the present subject matter and the respondent/plaintiff was supposed to have filed an appeal in terms of Section 6 of the Act. Instead of filing an appeal under Section 6 of the Act before the concerned authority, the plaintiff has wrongly approached the trial Court. However, both the Courts below have not dealt with the said aspect in proper perspective and hence, he contended that judgment and decree passed by the Courts below are liable to be set aside. Further, the learned counsel for the appellants has also referred to the judgments rendered by this Court in the case of “*Nachayee Ammal and Others Vs.*



Sri Venugopalakrishnaswamy Temple, rep. by the Executive Officer,

Arulmigu Jambugeswarar Temple” reported in 2003(9) CTCOL 78

(Mad) and in the case of “***Shanmugam Vs. Arulmigu Vinayagar and***

Arulmighu Dhandayuthapaniswami Deities rep. by their Manager

Doraisamy @ Semba Gounder” reported in 2002(4) LW 247 and

contended that judgments and decrees passed by the Courts below cannot be sustained and accordingly, liable to be set aside.

11. By order, dated 14.6.2022, this Court, taking note of the fact that there was no representation on behalf of the respondent/plaintiff despite his name was printed in the cause list, in the interest of justice, appointed one Mr.T.M.Naveen as Amicus Curiae to assist this Court on behalf of the respondent/plaintiff.

12. The respondent/plaintiff filed the suit, praying for recovery of possession and for permanent injunction and mesne profits. According to the learned Amicus Curiae, the defendants are the trespassers and



encroached upon the plaintiff's property. He further submitted that for some point of time, the plaintiff used to give money for the defendant to show some sites and for other cultivating business and by taking advantage of that the defendants encroached the suit property and started using the land for brick lane activities. Therefore, the plaintiff without any option, has filed a suit for recovery of possession. He pointed out that both the Courts below have considered these aspects in proper perspective and there is no irregularity or infirmity in the judgments and decrees passed by the Courts below in order to interfere with the same. Hence, he would submit that the present second appeal is liable to be dismissed.

13. He would further submit that Ex.B1 document was filed subsequent to the filing of the suit and it is established that at the time of filing of the suit, the defendants were trespassers. The defendants solely relied upon Ex.B1 dated 29.04.1992, which is a copy of Record of Tenancy and if at all it is a genuine, the defendants ought to have proved



the same by examining the Tenancy Record Officer, but admittedly, the defendants have not examined him and except this document, no other documents have been filed to prove the tenancy even subsequent to the filing of the suit. Therefore, the learned Amicus would submit that all these aspects have been well considered by both the Courts below. He also relied upon a judgment of this Court in the case of ***“Avudaithangammal Vs. Subramania Thevar and Murugaiah Thevar and 8 others”*** reported in 1994-1-L.W.82.

14. This Court has carefully considered the submissions made by the learned counsel appearing for both the parties and perused the documents available on record. On perusal of the documents, it appears that the suit was filed by the plaintiff on 22.04.1992 and though there was no document regarding the ownership of the suit property filed by the plaintiff, but it was admitted by the defendants that the plaintiff was the owner of the property. But the case of the defendants that the husband of the first defendant, Krishnamoorthy was recognized as



cultivating tenant and he was issued with Ex.B1 which is a extract of Tenancy of Record and thereby, the defendants claimed that the suit property is exclusively belonging to them by virtue of Ex.B1 dated 29.4.1994. On a perusal of Ex.B1, it shows that it was dated 29.04.1994 whereas, the present suit was filed on 22.04.1992. Admittedly, Ex.B1 is subsequent to the filling of the suit. According to the plaintiff, the defendants are the trespassers at the time of filing of the suit. That being the case, the genuineness of Ex.B1 document is questionable since it was issued on 29.04.1994. The defendants relied only upon Ex.B1 document and if at all it was really issued, the defendants ought to have examined the concerned Tenancy Record Officer. But admittedly, the defendants have not taken any steps to examine the said Officer and thereby, they failed to prove the said document.

15. The main contention of the plaintiff is that there was no tenancy right was granted to the husband of the 1st defendant, recognizing him as a cultivating tenant and further more, before issuing



Ex.B1 document in favour of said Krishnamoorthy, no one was examined and no notice was served on the plaintiff by the Tenancy Record Officer in regard to the grant of tenancy in terms of Sub Clause 3(a)(b)(c) of Section 4, which insists upon before passing an order on an application made for grant of tenancy right, the record officer shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. If the record officer decides that the particulars of the land specified in the application should be included in the approved record of tenancy rights, he shall pass an order accordingly and shall make the necessary entries in the approved record of tenancy rights. But in the present case, it appears that no particulars were provided before passing the alleged Ex.B1, the Record of Tenancy document and also nothing has been communicated including reasons for passing the tenancy order. In such circumstances, both the Courts below have right come to the conclusion that there is no genuinity in the document Ex.B1. This Court does not find infirmity in such conclusion.

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belonging to the plaintiff, the Courts below rightly dismissed the suit and this Court does not find any irregularity in such conclusion reached by the Courts below and accordingly, this first substantial question of law is answered against the appellants/defendants.

17. As regards the third substantial question of law is concerned, it is contended by the learned counsel for the appellants/defendants that there is a bar of Civil Court's jurisdiction contemplated under Section 16-A of the Act and the Courts below have not properly appreciated the same and erroneously entertained the suit.

18. With regard to the jurisdiction of trial Court is concerned, the case of the plaintiff is that the defendants trespassed the property and admittedly that there was no Record of Tenancy on 22.04.1992 in favour of the husband of the 1st defendant. In fact, Ex.B1 viz., the Record of Tenancy document was said to have been issued by the Record of Tenancy Officer on 29.04.1994, while the suit was filed on 22.04.1992,



thus, there was no tenancy agreement was recorded by Tenancy Officer as on the date of filing the suit, therefore, by no stretch of imagination, the trial Court predict and come to the conclusion that the suit is not maintainable as there is civil bar in terms of Section 16 A of the Act. Therefore, the contention raised by the learned counsel for the appellants as regards the bar of civil Court's jurisdiction to entertain the suit, is not sustainable. Therefore, this Court does not find any infirmity in the conclusion reached by the Courts below on this aspect.

19. Though the learned counsel for the appellants/defendants relied on two decisions cited supra, on going through the same and on consideration of the factual scenario of the present suit which was filed by the plaintiff claiming suit property since the defendants being trespassers, have encroached the same, which was also proved by the plaintiff and on the other hand, the defendants who solely relied upon Ex.B1 extract of Record of Tenancy, have failed to prove the same, this Court is of the view that the reliance placed on behalf of the appellants



will not be useful to the facts of the present case.

WEB COPY 20. T.M.Naveen, learned Amicus Curiae appearing for the respondents referred to a judgment of this Court, dealing with the provisions of Tamil Nadu Cultivating Tenants Protection Act, 1955 in the case of ***“Avudaithangammal Vs. Subramania Thevar and Murugaiah Thevar and 8 others”*** reported in 1994-1-L.W.82, wherein, he particularly relied upon paragraph nos.7, 8 & 9 which are extracted hereunder:

“7.That leaves for consideration the rights based upon the entries under the Record of Tenancy Rights Act, 10 of 1969. The relevant documents in this connection are Exs. A10 and A11 in so far as Second Appeal No. 701 of 1980 is concerned and Exs. A2 to A5 in so far as Second Appeal No. 702 of 1980 is concerned. These entries have been made on the same day, namely, 5.6.1972. A perusal of the documents referred to above, does not show that the appellant, whose right has been declared under the preliminary decree in O.S. 4 of 1969, D.M.C. Tenkasi, was made a party to the proceedings under the Record of Tenancy Rights Act. It is seen therefrom that some persons against whom the appellant had instituted the suit for partition alone had been shown as



land owners. In respect of suit properties, the final decree in O.S. 4 of 1969, D.M.C. Tenkasi was passed only under Ex. B.19 dated 4.12.1975. Till then, there was no knowing whether the suit properties would be allotted to the share of those persons, whose names have been mentioned in Exs. A2 to A5 and A10 and A11. It is also seen that no notice of the enquiry under the Record of Tenancy Rights Act was given to the appellant. There is no evidence to show that the appellant was either issued a notice regarding the proceedings or was heard in the course of the proceedings. It is thus seen that without reference to the person interested in the properties, who had also obtained a decree in respect thereof, the proceedings under Exs. A2 to A5 and Exs. A10 and A.11 have taken place and had culminated in the recordings of the names of the 1st respondents in these Second Appeals. If, as found earlier, the surrender by the 9th respondent is not established and the subsequent lease is also not made out, then, it is difficult to accept the entries under Exs. A2 to A5. and A10 and A11 as having been made after conforming to the procedural requirements under Tamil Nadu Act 10 of 1969. In other words, the entries have been made behind the back of the appellant, who had got a decree in respect of the suit properties, without notice to her and without making any enquiry. Obviously therefore, the entries cannot be put



against the appellant to confer the status of cultivating tenants on the 1st respondent/s in these Second Appeals. The appellant had stated that these entries had been made surreptitiously and fraudulently. From the manner in which these entries have been made without notice to the person interested and without any enquiry, it is obvious that the 9th respondent in these second appeals had, with the active connivance and assistance of his sons, manoeuvred the entries by resorting to a suppression of the real state of affairs as well as the ownership of the properties declared by the decree of Court. The 9th respondent was a party to O.S. 4 of 1969 and had indeed preferred an appeal therefrom. Being fully aware of the rights of the appellant, he had set up his sons to show the names of other persons, not interested, as the land owners and had succeeded in securing entries in the Register of Record of Tenancy Rights in the names of his sons. The 9th respondent and the 1st respondent in these appeals have thus, by suppressing the adjudication by Court in O.S. 4 of 1969 as well as the existence of the appellant and her interest in the properties, secured Exs. A2 to A5, A10 and A11. Such entries secured by concealing the real state of affairs and without an opportunity to the persons interested to show cause against the making of entries, cannot at all be considered as conclusive, even for the purpose of Tamil Nadu



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Act 10 of 1969.

..... On a careful consideration of the circumstances under which Exs. A2 to A5, A10 and A11 have come into existence, it is obvious that these entries have been procured by suppression of facts and by the exercise of fraud. Thus, the entries cannot be pressed into service by the 1st respondent/s in these Second Appeals to claim or project rights against the appellant in respect of the suit properties.

8. There is yet another aspect, which would also disentitle the 1st respondent/s in these Second Appeals from claiming rights as cultivating tenants on the basis of the entries Exs. A2 to A5 and A10 and A11. In *Natesa Nainar v. Sri Karikudinathaswamy Devastanam, Marudhanallur* (97 L.W. 390) I had occasion to consider the purpose for which and the nature of the entries made in the Record of Tenancy Rights Register. In that connection, it was pointed out that the entry in the Record of Tenancy Rights Register by itself does not confer rights as a cultivating tenant on the appellant in that case, for the main aim and purpose of the provisions of Tamil Nadu Act 10 of 1969 is only to prepare and maintain a record of tenancy rights in respect of agricultural lands in Tamil Nadu and that there is no provision in Tamil Nadu Act 10 of 1969 to show that an entry made in the Record of Tenancy Rights Register confers a right as a cultivating



tenant on a person, whose name is so entered. It was also emphasized that the provisions of Tamil Nadu Act 10 of 1969 are not declaratory of rights as cultivating tenants, but pertain to the preparation of the record and that it is common knowledge that there maybe persons fulfilling the definition of the term 'cultivating tenant', at all, but nevertheless manage to secure an entry to that effect in his name and that merely because a name is found in the Record of Tenancy Rights Register, such a person cannot obtain and secure rights as a cultivating tenant. In this case, as seen earner, there is no proof of a lease having been granted in favour of the 1st respondent/s in these Second Appeals and if so, it is a great wonder as to how the names of the 1st respondent in these Second Appeals came to be entered as cultivating tenants. Even assuming that there are entries in the Record of Tenancy Rights Register, merely on the strength of those entries, no right as cultivating tenant can be declared in favour of the 1st respondent/s in these Second Appeals. Consequently, the lower appellate Court was in error in holding that the entries could not be challenged and that on the strength of the entries, the 1st respondent/s in these appeals would be entitled to the reliefs prayed for by them in the suits



9. When the 1st respondent in these appeals are not tenants, it follows that even if they are in possession, such possession cannot be protected by an order of injunction. When the lease set up by the 1st respondent/s in these Second Appeals in their favour is not made out, then, it follows that their possession is not lawful and such unlawful possession cannot be preserved or protected. No Court by its order can help a party found to be in wrongful possession against the lawful owner. Under those circumstances, the possession of the 1st respondent in these appeals has to be treated as that of trespassers and therefore, the courts below were in error in having granted an injunction.”

21. In view of the above, it is clear that before recording tenancy, in terms of Sub Clause (3)(a) of Section 4 of the Act, the Tenancy Officer is supposed to have issued notice to the parties concerned, giving an opportunity to make their representations either orally or in writing. If the Record officer decides that the particulars of the land specified in the application should be included in the approved record of tenancy rights, he can pass an order accordingly and make the necessary entries in the approved record of tenancy rights. If the Record Officer decides that



there is no case for inclusion of particulars of the land in the approved record of tenancy rights, he can reject the application. But in the present case, even assuming Ex.B1 was issued in favour of the husband of the first defendant as claimed by the defendants, admittedly, no procedure as contemplated under Section 4 of the Act has been followed by the Record Officer as no notice or opportunity was given to the parties concerned and also it was issued consequent to the filing of the suit. Therefore, the contention raised on behalf of the appellants/defendants as regards the civil bar to entertain the suit, cannot be sustained. Accordingly, the third substantial question of law is also answered against the appellants/defendants.

22. In the light of the above discussion, this Second Appeal fails and it is dismissed. The parties shall bear their own costs throughout.

31.10.2022

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- To
- 1.The Principal Subordinate Judge, Mayiladuthurai
 - 2.The Principal District Munsif, Mayiladuthurai.

KRISHNAN RAMASAMY.J.,

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