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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
02.02.2022	15.02.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 19722 OF 2019

AND

W.M.P. NO.19235 OF 2019

K.S.Myilsamy

.. Petitioner

- Vs -

1. The District Revenue Authority
and Additional Judicial Magistrate
Coimbatore.
2. The Deputy Collector-cum-Revenue Court
Tiruchirappalli.
3. The Tenancy Record Officer &
Tahsildar of Coimbatore North Taluk
Coimbatore.
4. Rajammal
5. S. Parthipan
6. Rajeswari
7. Prema
8. Jothimani
9. C.N.Bharathi
10. Kanchana
11. T.M.S.Rajendran

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the first respondent in Ne.Mu.No.16151/2015/E1 dated 10/8/2018 reversing the order passed by the second respondent in May.Mu.Manu No.14/2014 (Kovai) dated 17/4/2015 and the order passed by the third respondent in T.R.No.6 of 1998 dated 10/3/2014 and quash the same.

For Petitioner : Mr. B.Kumarasamy
for Mr. B.Gopalakrishnan

For Respondents : Mrs. Sangamithirai, Spl. GP
for RR-1 to 3
Mr. K.Myilsamy for RR-4 to 11



ORDER

This writ petition has been filed to quash the order in Ne.Mu.No.16151/2015/E1 dated 10/8/2018 passed by the first respondent setting aside the order passed by the original and appellate authorities.

2. It is the case of the petitioner that one M.Subbiaya Gounder, leased out in No.11, Veerapandi Village, Coimbatore North Taluk, admeasuring 1.00 acre in S.F.No.501/1 to one C.Subbaiya Gounder, the father of the petitioner on 17.6.1964 under a registered sale deed for an annual rent of Rs.340/-, which is payable in the Tamil month of "MASSI". It is the further case of the petitioner that his father was cultivating the said lands as cultivating tenant by contributing his physical labour till his demise. After the demise of his father, the petitioner has been cultivating the aforesaid land as cultivating tenant by contributing his physical labour. Recognising the right of the petitioner, the said M.Subbaiya Gounder, executed a document on 17.6.1982 and the petitioner has been paying the annual rent of nine salagais of paddy every year. It is the further averment of the petitioner that after the death of M.Subbaiya Gounder, the petitioner has been paying the rent by paying nine salagais of paddy or paying the market value of the same in cash. It is the case of the petitioner that he has been in possession and enjoyment of the said property as a cultivating tenant by contributing his labour

3. It is the further averment of the petitioner that respondents 4 and 5 were making attempts to interfere with his rights by trying to evict him which forced the petitioner to file T.R.No.6 of 1998, before the 3rd respondent, under the Tamil Nadu Agricultural Land Record of Tenancy Rights Act, 1969. Pending the said petition, the 11th respondent impleaded himself as party to the said proceedings stating that he had entered into a lease agreement with respondents 4 to 8.

4. It is the further averment of the petitioner that pending the tenancy petition, the legal heirs of the said M.Subbaiya Gounder sold the above property to third parties. However, the petitioner, till date, is in peaceful possession and enjoyment of the said property.

5. It is further averred that in the pending tenancy petition, the 3rd respondent herein examined himself, the respondent and the Village Administrative Officer as witnesses. It is further averred that though the legal heirs sold the property to third parties, but till date the possession has not been taken by the purchaser and, as such, the legal heirs have no right or interest in the property or to file a case and seek



any relief. It is further averred by the petitioner that in the suit in O.S. No.1101/1999, the Advocate Commissioner has filed his report, wherein a categorical finding has been rendered that "மனு பூமிக்கு அதாவது குத்தகை பூமிக்கு மனுதாரர் கே.எஸ்.மயில்சாமியின் கிணற்றிலிருந்துதான் தண்ணீர் பாய்ச்சப்படுகிறது என்று தனது அறிக்கை சமர்ப்பித்துள்ளார்".

6. It is further averred that considering all the materials, the 3rd respondent vide order, dated 10.03.2014, allowed the claim of the petitioner aggrieved by which respondents 4 to 8 filed appeal in Appeal No.14 of 2014 before the 2nd respondent, which was dismissed leading to the filing of revision by respondents 4 to 8 before the first respondent. The 1st respondent, after affording an opportunity of hearing and on the basis of the materials placed before him, allowed the said revision against which the present petition is filed by the petitioner.

7. Learned counsel appearing for the petitioner submitted that the petitioner, through oral and documentary evidence, has proved that the petitioner is in possession of the property as cultivating tenant. It is the further submission of the learned counsel that the Village Administrative Officer has, in his deposition, has categorically spoken about the fact that the petitioner is in possession of the property. It is the further submission of the learned counsel for the petitioner that the report of the Advocate Commissioner clearly specifies that water to the land, which is dispute, is being drawn from the well of the petitioner, which clearly shows that the petitioner is cultivating the said property by drawing water from his well.

8. It is the further submission of the learned counsel for the petitioner that the impleading petition filed by the 11th petitioner is only in collusion with respondents 4 to 8 and that he is not a necessary party to the proceedings. It is further averred that respondents 4 to 8 having sold the property to third parties, have no right or interest in the said property and taking advantage of the impugned order, respondents 4 to 8 are attempting to evict the petitioner from the property and that respondents 9 and 10 are also trying to alienate the property to third parties. In view of the findings recorded concurrently by respondents 2 and 3, which is based on proper appreciation of oral and documentary evidence, it is prayed that the impugned order is liable to be set aside.

9. Learned counsel appearing for respondents 4 to 11 submitted that the disputed land belongs to M.Subbaiya Gounder, who died intestate leaving respondents 4 to 8, being the legal heirs to succeed to the estate. It is the further submission of the learned counsel that the whole case of the petitioner revolves around the report of the Advocate Commissioner, which



was filed in O.S. No.1101/1999. However, it is the further submission of the learned counsel that the suit for permanent injunction, filed by the petitioner herein, ended in dismissal, against which the petitioner has not preferred any appeal and the same has attained finality and that it is binding on the parties. That being the case, dismissal of the suit clearly shows that the petitioner is not in possession of the property, as otherwise the petitioner would have gone on appeal against the same.

10. It is the further submission of the learned counsel that the petitioner is not cultivating any crops in the said lands and is not a cultivating tenant, as he has not put in any labour, which is the requirement for a person to be adjudged as a cultivating tenant and the said fact stands established by the fact that the petitioner is not in possession of the property.

11. It is the further submission of the learned counsel that the petitioner, being an adjacent land owner, with a view to grab the property, had created the unregistered lease deed by forging the thumb impression of M.Subbaiya Gounder, as the said Subbaiya Gounder seldom puts his thumb impression, as he is under the practice of affixing his signature to any instruments and the person, who has stood witness to the lease deed has also stated that he does not know who has subscribed the thumb impression to the lease deed. It is the further submission of the learned counsel that any lease deed beyond a period of eleven months has to necessarily be registered u/s 17 of the Registration Act and in the absence of the deed being registered, the present lease deed, alleged to have been entered into between the petitioner and the said M.Subbaiya Gounder is inadmissible in evidence. Merely submitting a document, which has not been registered would not suffice to hold that the petitioner has been a cultivating tenant under respondents 4 to 8. It is further submitted that no material, whatsoever, has been placed before the court to show that the father of the petitioner was a cultivating tenant under M.Subbaiya Gounder and no receipts to prove the payments of annual rent has been filed to establish the lease. All the aforesaid facts have been appreciated in proper perspective by the 1st respondent, while setting aside the orders passed by the original and the appellate authority and, therefore, the said order does not require any interference at the hands of this Court.

12. Learned Special Government Pleader appearing for the respondents 1 to 3 submitted that the petitioner has forged the Tenancy Lease Deed for which criminal prosecution was initiated and the petitioner was tried and convicted and undergoing imprisonment for the past ten years. Subsequent to his coming out on bail, the petitioner has filed the present writ petition.



While passing the orders in Review Petition, the District Revenue Officer, Coimbatore observed that the entries made in the revenue records are false and the entire land was sold to the 10th respondent. It is the further submission of the learned Special Government Pleader that even the petitioner himself has admitted that the property was sold to third parties. That being the position, the stand of the petitioner that he is still in possession and enjoyment of the property as a cultivating tenant, more so when the suit filed by him having been dismissed and no appeal having been filed against the same, the stand of the petitioner is wholly unsustainable and bereft of any materials and the writ petition is liable to be dismissed.

13. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

14. The points that arise for consideration in this writ petition are :-

i) Whether the petitioner has proved his possession of the lands as a cultivating tenant through proper and admissible oral and documentary evidence.

ii) Whether the petitioner has proved that he is a cultivating tenant as per the definition of "cultivating tenant" provided in the Tamil Nadu Cultivating Tenants Protection Act, 1955.

15. The issues framed above are inter-connected and, therefore, both the issues need to be considered together. The main plank of the case of the petitioner lies in the fact that a lease deed is alleged to have been entered into between the petitioner's father and M.Subbaiya Gounder, for a period of three years. Thereafter, the unregistered deed between the petitioner and M.Subbaiya Gounder is said to have been entered into in the year 1982. Prior to the execution of the alleged document, it is the case of the petitioner that his father, C.Subbaiya Gounder was a cultivating tenant, on the basis of a registered lease deed in the year 1964, which was for a period of three years. It is the case of the petitioner that after the death of his father, the petitioner entered into the lease transaction with M.Subbaiya Gounder. The first respondent has rendered a finding that the father of the petitioner passed away in the year 1973. Though in the affidavit filed in support of the petition, except for stating the fact that the petitioner's father died and that the petitioner entered into the lease agreement with M.Subbaiya Gounder in the year 1982, however, the date on which the petitioner's father died has not been spelt out by the petitioner, for reasons best known to him. There is



also no material to show that the lease between the petitioner's father and M.Subbaiya Gounder was extended beyond the period of three years, though the petitioner claims that his father was cultivating the said lands.

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16. Further, a perusal of the impugned order reveals that the respondents 4 to 8 have taken a categorical defence that the lease deed in which the petitioner places reliance based on which the petitioner had earlier filed O.S. No.995/1999 in which the thumb print alleged to have been affixed by M.Subbaiya Gounder in the alleged lease deed entered into between the petitioner and M.Subbaiya Gounder was held to be beyond comparison. Further, a finding has been recorded therein that consequent to the same, a criminal complaint was registered against the petitioner for fabrication of document, in which the petitioner has suffered conviction in S.C. No.3/17 and the appeal in C.A. No.926/19 is pending. The above facts have not been disputed by the petitioner.

17. The whole case of the petitioner falls on a narrow compass, in that the petitioner claims that the property is in his possession and that he is cultivating the said property for which the petitioner draws strength from the report of the Advocate Commissioner submitted in O.S. No.1101/99. The case of the petitioner is that the Advocate Commissioner has reported that the water from the well of the petitioner flows to the lands, which are the subject matter in issue and in the aforesaid backdrop, it is the case of the petitioner that since water flows from his well to the lands, which are put in issue, it is to be deemed that the lands are under his cultivation.

18. It is to be pointed out at this juncture that the report filed by the Advocate Commissioner has only persuasive value and it cannot be taken to be a finding recorded in a judicial proceeding. Further, based on the Advocate Commissioner's report and other documents, both oral and documentary, the trial court has dismissed O.S. No.1101/1999, vide order dated 15.11.2019. Though it is the stand of the respondents 4 to 8 that no appeal has been filed by the petitioner against the said order, documents have been placed before this Court to show that appeal in A.S. No.35/2020 has been filed before the Principal Sub Court, Coimbatore. However, the filing of appeal, being a right of the petitioner, the same cannot in any way be termed to be giving any leverage to the petitioner insofar as the possession of the petitioner with regard to the particular property is concerned. As on date, the suit filed by the petitioner with regard to the said property has been dismissed against which the petitioner has filed appeal and no orders of stay/injunction has been granted in the said appeal. That being the position, filing of appeal will not give any benefit to the



petitioner insofar as possession of the property is concerned.

19. Though the petitioner claims that he has filed documentary evidence in the form of the Advocate Commissioner's report and also the oral evidence of the Village Administrative who has deposed that the petitioner is a cultivating tenant in the said property, however, the trial court has negatived the said evidence to be not worthy of acceptance and has dismissed the suit filed by the petitioner. Therefore, when the court below has negatived the said documents as unworthy of acceptance, as pointed out above, the above evidence, insofar as the present petition is concerned would have only persuasive value and it cannot be taken to be evidence admissible and supporting the case of the petitioner.

20. Further, it should not also be lost sight of that the petitioner, for fabrication of document, criminal prosecution was initiated against him resulting in conviction in S.C. No.3/17. The document, which forms the basis of the possession of the petitioner itself has found to be not genuine and it has been held to be a document fabricated by the petitioner for the purpose of usurping the lands of respondents 4 to 8 leading to his conviction. That being the case, the stand of the petitioner that he has proved his possession through oral and documentary evidence is unsustainable and deserves rejection.

21. The term "Cultivating Tenant" has been defined u/s 2 (aa) of the Tamil Nadu Cultivating Tenants Protection Act and for better clarity, the same is quoted hereunder :-

"A person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied."

22. The petitioner claims that he is a cultivating tenant and that previously his father had been cultivating the lands as a cultivating tenant from the year 1964 to 1972 till his demise. A careful perusal of the definition of "cultivating tenant" as found in Section 2 (aa) of the Tamil Nadu Cultivating Tenants Protection Act, reveals that the person, who claims such cultivating tenancy either should have contributed his own physical labour or by any member of his family in the cultivation of land belonging to another under a tenancy agreement. Sub-clause (a) of sub-section (ii) of Section 2 (aa) further prescribes that such persons would include any such person, who continues in possession of the land after the determination of the tenancy agreement and that the heir of such person, if the heir contributes his own physical labour or that of any member of the family in the cultivation of the lands.



23. Therefore, contribution of physical labour in cultivating the land is the main ingredient coupled with the fact that the same should be under a tenancy agreement. In the case on hand, the petitioner claims the agreement on the basis of an unregistered lease deed, which has been found to be a fabricated document, which was unworthy of reliance. Therefore, no material whatsoever has been placed by the petitioner, except for the report of the Advocate Commissioner, who has stated that the water from the well situated in the lands of the petitioner is used for cultivating the disputed property. However, there is no material to show that the petitioner has put in his physical labour or that of any other member of the family in the cultivation process. Merely because water flows to the lands from the well of the petitioner at the time the Advocate Commissioner inspected the property cannot be taken as an inference to hold that the petitioner is cultivating the said lands.

24. Further, one other aspect that stares writ large on the face of the record is the fact that even according to the petitioner, his father, who is alleged to have been the cultivating tenant under M.Subbaiya Gounder died around the year 1972. It is the case of the petitioner that he entered into the alleged lease deed with M.Subbaiya Gounder in the year 1982. That being the case, the interregnum period between 1972 and 1982, there is no whisper about what was the status of the land during the said period. It is not the case of the petitioner that he was in possession of the property between 1972 and 1982 and that he was cultivating the property. In fact, the petitioner has not whispered anything about the status of the land between 1972 and 1982. Had he been really a cultivating tenant, he would have been cultivating the lands on the demise of his father and that even as early as in the year 1972, he would have entered into a lease deed with M.Subbaiya Gounder. However, such is not the case and no material has been placed before this Court to establish the fact that the petitioner has been cultivating the lands between 1972 and 1982. All of a sudden, in the year 1982, the petitioner claims to have entered into a lease deed, which is disputed by respondents 4 to 8 and which has been held to be spurious by the court below in O.S. No.1101/1999. Further, it is to be pointed out that in respect of lease exceeding eleven months, mandatory registration of the lease deed is necessary as per Section 17 of the Registration Act.

25. In the aforesaid backdrop, this Court is of the considered view that the petitioner has neither proved the possession of the lands through proper evidence and also the lease deed entered into between the petitioner and M.Subbaiya



Gounder nor he has proved that he has been cultivating the lands as a cultivating tenant by contributing his physical labour. Therefore, the petitioner would neither fall under the definition of "cultivating tenant" nor can be termed to hold documentary evidence to establish his possession of the lands.

26. For the reasons aforesaid, this Court is of the considered opinion that the 1st respondent has passed the order after appreciating the materials in proper perspective and had rightly set aside the orders passed by respondents 2 and 3 and, therefore, no interference is called for with the said order. Both the issues are answered in the negative and against the petitioner.

27. Accordingly, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The District Revenue Authority
and Additional Judicial Magistrate
Coimbatore.
2. The Deputy Collector-cum-Revenue Court
Tiruchirapalli.
3. The Tenancy Record Officer &
Tahsildar of Coimbatore North Taluk
Coimbatore.

+1cc to Mr.B.Gopalakrishnan, Advocate, S.R.No.9763
+1cc to Mr.K.Myilsamy, Advocate, S.R.No.10106
+1cc to the Government Pleader, S.R.No.9868

W.P. NO. 19722 OF 2019

GPL(CO)
SB(09/03/2022)