

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 24.08.2022

JUDGMENT PRONOUNCED ON : 23.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.195 of 2013

P.Ponnusamy ... Appellant/1st Respondent/1st Defendant

Vs.

1.M.Marudhambal ... 1st Respondent/Appellant/Plaintiff

2.State of Tamil Nadu,
Rep., by the District Collector,
Karur.

3.The Revenue Divisional Officer,
Revenue Divisional Office,
Kulithalai, Karur District.

4.The Thasildar,
Kulithalai Taluk,
Having office at Taluk Office,
Kulithalai Taluk, Now Kadavur Taluk,
Karur District.

... Respondents 2 to 4/
Respondents 2 to 4/Defendants 2 to 4

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 25.07.2012 made in A.S.No.20 of 2011 on the file of Sub Court, Kulithalai in reversing the judgment and decree

dated 07.02.2011 made in O.S.No.188 of 2008 on the file of District Munsif Court, Kulithalai.

For Appellants	:	Mr.K.Govindarajan
For R1	:	Mr.Raghuvaran Gopalan
For R2 to R4	:	Mrs.K.Christy Theboral Additional Government Pleader

JUDGMENT

The first defendant in O.S.No.188 of 2008 on the file of the District Munsif Court, Kulithalai, laid for recovery of possession of the suit property, is the appellant herein. The parties would be referred by their rank before the trial court.

2. The case of the plaintiff may be briefly stated:

- The suit property is described as a block of agricultural land comprised in S.F.No.702/6 of Mullipadi Village, Kulithalai Taluk, Karur District, measuring 1.08.5 hectares or 2.68 acres. This property belonged to a certain Perumayee, who purchased it under Ext.B.1-sale

- deed, dated 01.09.1987. This Perumayee is stated to have executed Ext.A.2-Power of Attorney, dated 17.10.2002 in favour of Sakthivel, on the strength of which the power holder had sold the said property to the plaintiff vide Ext.A.1-sale deed, dated 23.10.2002.
- On purchase, the plaintiff instituted O.S.No.209 of 2005 for bare injunction. It may be stated that the first defendant is the husband of Perumayee under whom, the plaintiff claims. The first defendant resisted the suit on the ground that he has been a tenant under his wife vide Ext.B.2-lease deed, dated 18.10.1988. The trial Court accepted the contention of the first defendant and dismissed the suit vide Ext.A.4-decree. This was challenged by the present plaintiff in A.S.No.20 of 2007 and this appeal came to be dismissed Vide Ext.A.6-decree. Soon thereafter, the plaintiff laid the present suit for recovery of possession.

3. The solitary line of defence of the first defendant is that he is a cultivating tenant of the property under his wife and that his application to register him as a cultivating tenant is still pending before the official under the Tamil

Nadu Cultivating Tenants Protection Act, 1955 (hereinafter referred to as “the CTP Act”).

4. The matter went to trial and both sides adduced necessary oral and documentary evidences, some of which have already been introduced. On appreciating the evidence, the trial Court dismissed the suit. The plaintiff preferred a first appeal in A.S.No.20 of 2011 before the Sub Court, Kulithalai, and the first appellate Court reversed the finding and decreed the suit. Hence, this second appeal at the instance of the first defendant.

5. This appeal was admitted for considering the following substantial questions of law:

“(i) Whether the plaintiff suit for recovery of possession as against the cultivating tenant is maintainable before the Civil Court especially when there is a specific bar under Section 6(A) of the Tamil Nadu Cultivating Tenants Protection Act? and

(ii) Whether the present suit for recovery of possession before the Civil Court is legally maintainable when there is a finding in the earlier round of litigation with respect to the same

party is to the effect that the parties should approach the competent authority under the Cultivating Tenants Protection Act?”

6.1. The learned counsel for the appellant/first defendant made a pointed argument that the first defendant has been consistently contending that he has been a cultivating tenant under his wife Perumayee from whom the plaintiff had purchased the property. This was his line of defence even in the earlier round of litigation in O.S.No.209 of 2005, wherein the Courts have consistently held that the first defendant indeed has been a tenant of the property. The learned counsel submitted that inasmuch as the first defendant's status *vis-a-vis* the suit property has already been decided in the earlier round of litigation, the present suit cannot be maintained for eviction under the common law, and if at all the plaintiff requires the termination of the tenancy and the eviction of the tenant, she ought to have moved the appropriate authority under the CTP Act.

6.2. Expatiating his arguments, the learned counsel submitted that in the earlier round of litigation in O.S.No.209 of 2005 filed by the present

plaintiff for injunction, the Court has entered a categorical finding that the plaintiff had not established her possession over the property and also entered a finding that the first defendant is a tenant of the property. He also submitted that Ext.A.5-judgment extracts, the written statement of defendants 2 to 4 (who respectively are defendants 3 and 4 in the present suit), wherein they have made a statement that an application filed by the first defendant had been received at the office of the fourth defendant in R.T.R.No.2 of 2003 is pending consideration, the suit for bare injunction itself cannot be maintained. It is of relevance to note that the plaintiff herself has alleged in the plaint in O.S.No.209 of 2005 that she has learnt that the first defendant herein has been taking steps to have his name registered as a cultivating tenant before the fourth defendant.

6.3. When the matter reached the first appellate Court in A.S.No.20 of 2007 at the instance of the plaintiff, argued the counsel, the plaintiff changed the character of her allegation for seeking injunction. Ext.A.7, the judgment of the first appellate Court in A.S.No.20 of 2007 shows that the line of argument of the plaintiff was that the first defendant was a lessee and not a

cultivating tenant. The learned counsel submitted that while dealing with the issue, the first appellate Court has carefully manoeuvred its line of reasoning and left the issue as to whether the first defendant/appellant herein is a cultivating tenant to the decision of the authority concerned.

6.4. Concluding his argument, the learned counsel submitted that inasmuch as the application is still pending before the authority, in decreeing the suit without a decision on the status of the first defendant, the appellate Court was in error in granting a decree for recovery of possession. In all fairness, the plaintiff ought to have participated in the proceedings before the concerned Tahsildar, and could have waited for the outcome of his decision before laying the suit.

7.1 Per contra, Mr.Raghuvaran Gopalan, learned counsel for the first respondent/plaintiff argued that the first defendant had taken an identical plea *vis-a-vis* the title to the property and also regarding his alleged tenancy both in the earlier suit in O.S.No.209 of 2005, and also in the present suit. Taking this Court through the pleadings of the first defendant, as extracted

in Ext.A.5-judgment in O.S.No.209 of 2005 and also in the present suit, the learned counsel submitted that the first defendant in essence, has pleaded that the property was purchased by him in the name of his wife Perumayee, that Perumayee was only a name lender and also has proceeded to plead as in the earlier suit that he was a tenant under Perumayee as per Ext.B.2-rent note. Developing his arguments, the learned counsel for the plaintiff submitted that:

- The stand adopted by the first defendant has two parts. In the first part, he, by continuing or renewing his claim of title in him and that his wife Perumayi was his *benami*, has chosen to dispute the very title of the plaintiff since the plaintiff had purchased the property from the first defendant's wife Perumayee.
- The first defendant/appellant now seeks to take umbrage under the CTP Act but so far as the applicability of the CTP Act goes, Section 3(2)(d) makes it categorical that the CTP Act will not apply to the tenant who challenges or disputes the title of the Landlord.
- Though Sec. 6-A of the Act (in relation to whose application a pointed question of law has been now raised by this Court) makes it

mandatory for the Court to transfer any proceedings where it comes to a *prima facie* conclusion based on the material available before it, the Court without an option has to transfer the proceedings to the authority concerned. The conditions stipulated are that (a) there must be a *prima facie* material before the Court to come to a conclusion that the tenant might be a cultivating tenant; and (b) that the tenant is entitled to the benefit of the CTP Act.

7.2 Interpreting Section 6-A of the CTP Act, the Hon'ble Supreme Court in ***Chinnamuthu Gounder and others Vs P.A.S.Perumal Chettiar*** [(1970) 1 SCC 451], had declared that the two conditions as stipulated by Section 6-A shall coexist and must be available to the tenant simultaneously and not in the alternative. Placing reliance on ***Meenakshiammal Vs Ramasamy Muthiriar and others*** [(1998) 3 MLJ 390], the learned counsel submitted that the facts of the present case bears more similarity to those in ***Meenakshiammal*** case where the tenant had denied the title of the lessor. Hence, in terms of reading Section 6-A along with Section 3(2)(d), the tenant would not be entitled to the protection of the CTP Act. This implies

that the first defendant has not made himself eligible under the second limb of the criteria required to invoke Section 6-A of the CTP Act.

7.3 This apart, by simultaneously pressing denial of plaintiff's title to the suit property and also claiming that the defendant is a cultivating tenant of the property, two situation emerges (a) the first defendant cannot be a lessee of his own property; and (b) that the inconsistent pleas of the defendant kill each other with the result that the first defendant will neither be entitled to the benefit of the CTP Act, nor is he entitled to have a formal notice of termination of lease under the provisions of Transfer of Property Act, since the very leasehold right which the tenant claims under the circumstances would stand forfeited.

8. In response, the learned counsel for the first defendant/appellant would submit that:

- (a) The plaintiff's counsel has not addressed the issue that the suit itself was premature more so in the context of the findings/observations of the first appellate Court in the earlier round of litigation (Ext.A.7),

and that the issue whether the first defendant is a cultivating tenant has to be decided by the Revenue Authority; and

(b) So far as the pleading of the first defendant denying the plaintiff's title in the present suit is concerned, since this issue has already been settled in the earlier round of litigation, that portion of the pleading of the first defendant must be considered as redundant and may have to be excluded. The second part of the contention *vis-a-vis* the claim of tenancy is same in both the suits. If this angle of the aspect is overlooked, then it would render the finding of the first appellate Court in Ext.A.7 judgment otiose. Given the fact that the property is an agricultural property and given the fact that the first defendant has already established his right of tenancy, it is only appropriate that this Court refers the matter to the concerned authority under Section 6-A of the CTP Act.

9. The arguments are carefully spread and weighed for their merit. Critical to the case of either side is the pleading of the first defendant where he indisputably denies the title of the plaintiff/lessor by claiming that the

lessor's vendor is his *benami*. This is a copy-paste pleading of his in the earlier suit in O.S.No.209 of 2005. If this plea were to be acted upon, then the plaintiff reaches the shore safely. But the first defendant's counsel would now do a rear guard action with a statement that it is a redundant plea and might not be acted upon. He knew the consequences only too well.

10. The pleading helps in drawing the battle lines for the trial. And, the first defendant did plead disputing the title of the landlord. He continued it from where he left in O.S.209 of 2005 and alleges that Perumayi, his wife, is his *benami*. While he bypassed this allegation in his chief examination as D.W.1 with a substituted plea that the deed of power of attorney of Perumayi itself was a fabrication, in his cross examination he returned to his original position and has deposed that the suit-property is his own. Does the stands adopted by the first defendant indicate a sense of redundancy about it? Not in the opinion of this Court. He, at no place has abandoned his plea disputing the title of the plaintiff, but has created opportunity for himself to dispute it even during trial. And, in the process he troubles this Court the least to arrive at the conclusion that he indeed had denied the title

of the plaintiff. And the rest of the conclusion falls in place and this Court accepts the argument of the counsel for the plaintiff/first respondent as elaborated in paragraph 7.2 above in its entirety and hence refrains from engaging in an elaborate exposition on it. The point is he who denies the title of the lessor consciously and repeatedly is not entitled to the protection of his rights under the Cultivating Tenants Protection Act, 1954, and the first defendant, having taken an adventurous leap, necessarily has to land in an unsafe zone outside the purview of the Act. He is not entitled to the protection of Sec.6A of the Act

11. To conclude, this Court dismisses this appeal with costs as it does not find it necessary to interfere with the judgement and decree of the first appellate court dated 25.07.2012 in A.S.No.20 of 2011 on the file of Sub Court, Kulithalai.

23.09.2022

Index : Yes/No
Internet : Yes
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To,

- 1.The Sub Judge, Kulithalai.
- 2.The District Munsif , Kulithalai.
- 3.The District Collector, Karur.
- 4.The Revenue Divisional Officer,
Revenue Divisional Office,
Kulithalai, Karur District.
- 5.The Thasildar,
Kulithalai Taluk,
Having office at Taluk Office,
Kulithalai Taluk,
Now Kadavur Taluk,
Karur District.
- 6.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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N.SESHASAYEE, J.

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Pre-Delivery Judgment made in
S.A.(MD) No.195 of 2013

23.09.2022