



WEB COPY

S.A.(MD)No.1102 of 2006 and W.P. (MD)No.6856 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.01.2022

PRONOUNCED ON: 19.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

S.A.(MD)No.1102 of 2006

and

C.M.P.(MD)No.1 of 2006

and

W.P.(MD)No.6856 of 2008

S.A.(MD)No.1102 of 2006:-

1.Muthusamy Muthiriyar (Died)

2.M.Renganathan ... Appellant / 1st Respondent / Plaintiff

(2nd Appellant brought on record as Legal Heirs of the deceased Sole Appellant Vide Order Dated 15.11.2021, made in CMP(MD) No.6831 of 2021)

vs.

1.M.Subramanian (Died) ... 1st Respondent/ 2nd Appellant / ---

2.Rajammal ... 2nd Respondent/ 2nd Respondent / 4th Defendant

3.Sannasi Alias Mohan ... 3rd Respondent / 4th Respondent / 6th Defendant

4.Selvi Alias Chellam ... 4th Respondent / 5th Respondent / 7th Defendant

5.Selvamani ... 5th Respondent / 6th Respondent / ----

6.Jayakumar

7.Ramkumar

8.M.Natarajan

9.M.Palanisamy ... Respondent Nos. 6 to 9

(Respondents 6 and 7 were brought on record as legal heirs of the deceased first respondent vide order of this Court, dated 05.07.2018 in C.M.P.(MD)No.4243 of 2018)

(2nd appellant and Respondents 8 to 9 were brought on record as Legal heirs of the deceased sole appellant vide order, dated 15.11.2021 made in C.M.P.(MD)No.6831 of 2021)

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree of Subordinate Court, Trichirapalli in A.S.No.16 of 1992, dated 15.03.2006 reversing the judgment and decree of the learned Principal District Munsif, Trichirapalli made in O.S.No.1501 of 1984, dated 13.12.1991.

For Appellant :Mr.N.Ashok Kumar

R1 :Died

For R2, R4 and R5 :No Appearance

<https://hcservices.ecourts.gov.in/hcservices/>



R3 :Died (Steps due)
For R6 and R7 :Mr.R.Subramanian
RR 8& 9 : No Appearance

W.P. (MD)No.6856 of 2008:-

WEB COPY

Muthusamy (Died)
2.M.Renganathan

... Petitioners

vs.

- 1.The District Revenue Officer - cum -
Additional District Magistrate,
Trichirappalli District.
- 2.The Special Deputy Collector,
Revenue Court, Trichirapalli District.
- 3.The Special Tahsildar - cum -
Revenue cum Record Officer,
Tenancy Rights Revenue Court,
Trichirapapalli District.
- 4.M.Nagammal
- 5.Thanga Ponnu
- 6.Veerayee
- 7.Elanjiyam
- 8.Amirtham
- 9.Lakshmi
- 10.M.Subramanian (Died)
- 11.Jayakumar
- 12.Ramkumar
- 13.Nageswari
- 14.M.Palanisamy
- 15.Natarajan

... Respondents

(2nd petitioner was impleaded vide order of this Court dated 15.11.2021 made in W.M.P.(MD)No.10904 of 2021)

(Respondents 11 and 12 were impleaded as legal heirs of the deceased 10th respondent vide of this Court in W.M.P.16724 of 2016, dated 09.11.2018)

(13th Respondent was impleaded vide order of this Court dated 04.01.2019)

(Respondents 14 and 15 were impleaded vide order of this Court in W.M.P.(MD)No.10904 of 2021, dated 15.11.2021)

PRAYER: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent, dated 14.03.2008 in

<https://hcservices.ecourts.gov.in/hcservices/>



R.P.G2/75674/2005 and quash the same and to direct the respondents 1 to 3 to register the name of the petitioner as cultivating tenant in respect of Survey No.125/1, Thaayanu Village, Punganoor Village, Srirangam Taluk, Trichirapalli District.

For Petitioners :Mr.J.Anandhavalli
For R1 to R3 :Mr.D.Ghandiraj
For R4, R11 and R12 :Tapal Return
For R5, R9, R14 and R15:No Appearance
For R10 and R13 :Mr.R.Subramanian

COMMON JUDGMENT / ORDER

Though facts and the points in law raised in a Second Appeal and in a Writ Appeal would have to be differently viewed and examined, I would still venture to determine the contours in S.A. (MD)No.1102 of 2006 and in W.P.(MD) No.6856 of 2008 together, since the adversarial parties claim the same status, the land in dispute is the same and the parties also lay their respective claims on the basis of the same set of documents. The determination of the Second Appeal would have a direct bearing on the fate of the Writ Petition.

2.The plaintiff in O.S.No.1501 of 1984 on the file of the Principal District Munsif Court, Tiruchirapalli, Muthusamy Muthiriyar, is also the Writ Petitioner. Owing to passage of time, he had died and his son M. Renganathan is now prosecuting both the Second Appeal and the Writ Petition.

3.The plaintiff in O.S. No. 1501 of 1984 claimed that he was a cultivating tenant and filed the suit seeking permanent injunction restraining the defendants therein from interfering with his peaceful possession of the lands in S.No.125/1, Thaayanur Village, Punganoor Village, Srirangam Taluk, Tiruchirapalli District.

4.The Writ Petition was filed calling into question successive orders of the revenue officials rejecting his petition to record his name as cultivating tenant in the revenue records with respect to the same lands.

5.It is thus evident that the facts in the Second Appeal and Writ Petition are intricately interconnected and it will only be prudent that they are examined together.

6.The suit in O.S.No.1501 of 1984 was decreed by judgment dated 13.12.1991. However, the first appeal filed by the contesting



defendant, in A.S.No.16 of 1992 before the 1st Additional Sub Court, Tiruchy was allowed, which in effect nullified the decree granted by the District Munsif in the Original Suit. This has necessitated the plaintiff to file the Second Appeal, now under consideration.

WEB COPY

7.It must be mentioned that though the Second Appeal has been pending for well over 15 years, and applications have been filed to bring on record legal representatives of both the appellant and some of the respondents, still, the same had not been admitted and substantial questions of law have not been framed. Notice of Motion had been directed when the Second Appeal came up for admission.

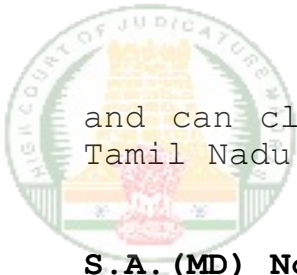
8.Thus, the first aspect to be examined is whether the Second Appeal merits admission, and this would require examining whether substantial questions of law arise necessitating admission.

9.The plaintiff/writ petitioner, Muthusamy Muthiriyar had filed a petition in 1987, taken on file as T.R.No.25 of 1987 under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (Act X of 1969), before the Special Tashildar, Revenue cum Record Officer, Tenancy Rights Revenue Court, Tiruchy, seeking to record his name as cultivating tenant of the aforesaid lands. That petition was rejected by order dated 01.12.2003. Questioning that order, the plaintiff/writ petitioner, Muthusamy Muthiriyar filed an appeal in A.P. No. 1 of 2004 before the Special Deputy Collector, Revenue Court, Tiruchy. That appeal was dismissed by order dated 13.06.2005. Questioning that order, the petitioner/writ petitioner, Muthusamy Muthiriyar filed a revision, in R.P.No.G2/75674/2005 before the District Revenue Officer cum Additional Magistrate, Tiruchy. That revision was also dismissed by order dated 14.03.2008. Questioning that order, the Writ Petition has been filed.

10.The narrative of the various legal proceedings would indicate that the plaintiff/writ petitioner, Muthusamy Muthiriyar, will have to establish that

- i.That he was in possession of the aforementioned lands.
- ii.That he was in possession as a cultivating tenant.
- iii.That his possession is lawful and his status as cultivating tenant had been recognized by the landlord.

11.If the above facts are proved, then, he can claim, as a matter of right, recording his name as a cultivating tenant under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (Act X of 1969) by the Revenue authorities,



and can claim protection of possession under the provisions of the Tamil Nadu Cultivating Tenants Protection Act, 1955.

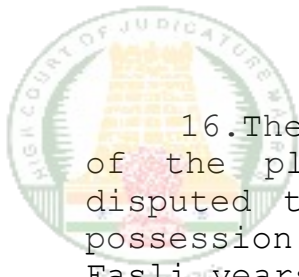
S.A. (MD) No. 1102 of 2006 :

12.The plaintiff, Muthusamy Muthiriyar, in O.S. No. 1501 of 1984 on the file of the Principal District Munsif Court, Tiruchy is the appellant. The suit had been filed for permanent injunction restraining the defendants, particularly, the 3rd defendant, Murugaiyan from interfering with the peaceful possession of the plaintiff in the lands in S.No.125/1, Thaayanu Village, Punganoor Village, Srirangam Taluk, Tiruchirapalli District. The plaintiff claimed status as cultivating tenant and sought protection of possession.

13.The plaintiff claimed that the lands belonged to the 1st defendant, Kaveri Ammal. The 2nd defendant Marudhai Muthiriyar was her son. They both died pending the suit. The 4th to 7th defendants were then impleaded. The 3rd defendant Murugaiyan, laid claim over the lands and interfered with the plaintiff's possession, necessitating institution of the suit.

14.It is the claim of the plaintiff that the 1st defendant had inducted the plaintiff as cultivating tenant and had executed a document in this regard on 12.04.1976. This was marked as Ex.A.13 during trial. The plaintiff claimed that he had parted with a portion of the produce towards lease rent to the 1st defendant. He filed Kist receipts, dated 09.04.1977 (Ex. A 3), 12.07.1980 (Ex. A 4), 16.05.1984 (Ex. A 5) and 19.05.1976 (Ex. A 6) and also Adangal for Fasli 1392 (Ex. A 1) and 1393 (Ex. A 2), as proof of holding the lands as cultivating tenant.

15.However, the 1st and 2nd defendants dealt with the lands by first executing a document in favour of one Malayalam Muthiriyar on 21.08.1970 (Ex.A7), who then executed a made over document in favour of one Pitchi Muthiriyar on 29.08.1973 (Ex. A8). The 3rd defendant then purchased the lands by Sale Deed dated 02.07.1984 (Ex.A13). The plaintiff further stated that he had sent a petition to recognize him as cultivating tenant to the Special Tashildar, Revenue cum Record Officer, Tenancy Rights Revenue Court, Tiruchy, on 25.12.1987 (Ex. A 10). Dismissal of the said petition, taken on file as T.R.No.25 of 1987, and dismissal of further appeal in A.P.No.1 of 2004 and revision in R.P.G2/75674/2005 had led to the filing of the Writ Petition.



16.The 3rd defendant/purchaser of the lands contested the claim of the plaintiff. He disputed possession of the plaintiff. He disputed the status of the plaintiff. He claimed that he was in possession of the lands. He filed Adangal receipts in his name for Fasli years, 1394, 1395, 1396, 1398 and 1399 (Exs A24 - 28) to prove possession. He also relied on the dismissal of T.R.No.25 of 1987 by the Special Tashildar, Revenue cum Record Officer, Tenancy Rights Revenue Court, Tiruchy, on 25.12.1987, and contended that such rejection would imply that the plaintiff was not in possession and certainly cannot be recognized as cultivating tenant.

17.The Trial Court, on the basis of the pleadings found that the plaintiff should be granted the relief of injunction and protected the possession of the plaintiff.

18.The First Appellate Court, 1st Additional Sub Court, Tiruchy in A.S. No. 16 of 1992 however found that the possession of the plaintiff had not been established, and relied on the Sale Deed of the 3rd defendant, wherein a specific covenant related to possession, and therefore held that the plaintiff had not established possession and allowed the appeal and therefore dismissed the suit.

19.The issues whether the plaintiff is in possession and whether the plaintiff is a cultivating tenant are purely questions of fact. They can be adjudicated only on the basis of evidence let in by the plaintiff, who claims to be in possession and who claims a right to be in possession as a cultivating tenant. Then, the plaintiff will have to establish that he is a cultivating tenant and is in lawful possession.

20.In the instant case, it is clear that the plaintiff has not established the same. The Trial Court had not even whispered about Ex-A13, the sale deed in favour of the third defendant. The first Appellate Court had however extracted relevant portions from that particular document, which indicated that the third defendant had been handed over possession by his vendor, who in turn, was in continuous possession.

21.Under Section 92 of the Indian Evidence Act, 1872, no oral evidence can be let in to controvert the facts stated in a written document. When in the sale deed, it had been very specifically stated that the third defendant had been handed over possession, then such statement prevails over oral evidence. The documents produced by the plaintiff relate to intermittent periods and no successive periods of possession had been established



by the plaintiff. As a matter of fact, the sale deed of the third defendant had been produced only by the plaintiff and was marked as document on the side of the plaintiff. Thus, it is clear that the plaintiff has not proved possession.

22. Insofar as the claim of the plaintiff that he should be recognized as a cultivating tenant is concerned, again the plaintiff has not established the same. The revenue authorities have rejected such a contention and have refused to record the name of the plaintiff as a cultivating tenant. Thus, the plaintiff has failed to establish both the facts, namely, possession and possession as cultivating tenant. No issue or no substantial question of law therefore arises for consideration in the second appeal. These are purely issues of fact.

23. In 1979 SCC OnLine Mad 151 : (1980) 93 LW 169 : (1980) 2 Mad LJ 89 (FB) : AIR 1980 Mad 180, a Honourable Full Bench of this Court in the case of **Periathambi Goundan vs The District Revenue Officer, Coimbatore and others**, answered a reference whether Section 16(a) of the Tamil Nadu Cultivating Tenant Protection Act, 1955, which provision had been inserted subsequently and which provision relates to bar of Civil Court would be applicable to suits, which had been instituted and were pending on the date of introduction of said provision. The Honourable Full Bench answered that the said provision would not be applicable. It also held that the issue whether a particular piece of land had been let for cultivation by a tenant can be decided only before the revenue authorities and that the issue cannot be decided by a Civil Court. In the instant case also, the ratio has to be applied that since the revenue authorities, whose orders are questioned in the Writ Petition, have held against the contention of the plaintiff that he was a cultivating tenant and the plaintiff has also not proved possessions, naturally, the suit will have to fail.

24. In 2003 SCC OnLine Mad 538 : (2003) 3 LW 745 : (2003) 3 Mad LJ 396 in the case **Subbiah Pillai (died) and others vs M.A. Thirunavukkarasu Pillai (died) and others**, a learned Single Judge of this Court, Justice R. Banumathi (As Her Lordship then was) had held in a Second Appeal flowing out of an Original Suit, where also plaintiff claimed to be in possession as a cultivating tenant, as follows:

"30. But, as pointed out earlier, in the present case, the main point for consideration is to determine the status of the plaintiff as cultivating tenant. More often than not, even in those cases where serious disputes are raised denying the status as cultivating tenant, suits are being instituted under the simple device of filing suits



for bare permanent injunction invoking Section 27(c) of Tamil Nadu Court Fees and Suits Valuation Act. Further, instances are not uncommon, where on the bare statement of the plaintiff unaccompanied by any material worth saying, suits are instituted claiming status as cultivating tenant. When the status is denied at the time of filing of the written statement, serious disputes are not raised as to the maintainability of the suit. The parties straight go into the trial. Civil Courts are to be wary of those cases, where the very tenancy is denied by the defendants and the suits instituted under the colour of Bare Suit for Permanent Injunction.

.....

48. Having found to be a trespasser, plaintiff has no legitimate right to be in possession. Without any right, plaintiff cannot seek permanent injunction. The parties seeking injunction must possess some right and prove that the opponent is trying to invade in his possession. No such legitimate right of the plaintiff is set forth or proved without any right or possessory title, plaintiff is not entitled to seek for the equitable relief of injunction in O.S. No. 392 of 1975. Before a party can ask a court to exercise discretion in his favour, must show that he has some equities in his favour which would impel a Court to exercise discretion in his favour. In the alternative the party seeking injunction must possess some right which the opposite-party is trying to invade or there must exist an obligation in its favour whether contractual or otherwise in respect of which the opposite party is trying to commit a breach. It is settled position that no injunction could be granted against the true owner at the instance of the person, who is in unlawful possession."

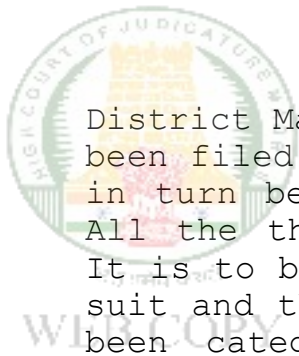
25.It is thus clear that the second appeal has to fail even at the time of admission. Even though the Second Appeal has been pending for the past 15 years, it has not been admitted and none of my predecessors have opined that substantial questions of law arise for consideration.

26.The second appeal is therefore dismissed at the stage of admission itself.

W.P. (MD)No.6856 of 2008:-

27.This Writ Petition has been filed questioning the order of the Respondent/District Revenue Officer-cum-Additional

<https://hcservices.ecourt.gov.in/hcservices/>



District Magistrate, Trichirapally, dismissing a revision, which had been filed questioning the order of the second respondent, which had in turn been filed questioning the order of the third respondent. All the three authorities have found against the Writ Petitioner. It is to be noted that the Writ Petitioner was the plaintiff in the suit and the appellant in the aforementioned Second Appeal. It had been categorically found that the Writ Petitioner had admitted during the course of examination before the three authorities that he was not in possession of the lands in question. The admission to that effect had been extracted and on the basis of the same, it had been held that the Writ Petitioner had not made out any case for being recognized as a cultivating tenant under Section 4 of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969.

28.The scope of Article 226 of Constitution of India is very narrow and there cannot be a re-appreciation of facts. The Writ Court cannot act as an appellate authority. The Writ Petitioner had not complained that necessary opportunity had not been granted to him. A finding of fact stares in the face of the Writ Petitioner. This finding of fact is established by the judgment in A.S.No.16 of 1992, dated 15.03.2006 passed by the learned I Additional Subordinate Judge, Trichirappallil, which judgment has been affirmed by me in the aforementioned Second Appeal.

29.The Writ Petition has to suffer an order of dismissal and accordingly, this Writ Petition is dismissed

30.In the result, S.A.(MD)No.1102 of 2006 and W.P.(MD)No.6856 of 2008 are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cmr

To

- 1.The Subordinate Judge, Trichy.
- 2.The Principal District Munsif, Trichy.
- 3.The District Revenue Officer - cum -
Additional District Magistrate,
Trichirappalli District.
- 4.The Special Deputy Collector,
Revenue Court, Trichirapalli District.



5.The Special Tahsildar - cum -
Revenue cum Record Officer,
Tenancy Rights Revenue Court,
Trichirapapalli District.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+2 CC to M/s.R.SUBRAMANIAN, Advocate (SR-1791,1788[F] dated
19/01/2022)

+1 CC to M/s.M.ASHOK KUMAR, Advocate (SR-1963[F] dated 20/01/2022)

+1. CC to M/S.J.ANANDHAVALLI Advocate SR.No.1806

S.A.(MD)No.1102 of 2006 and W.P.(MD)No.6856 of 2008
19.01.2022

RK(21.02.2022) 10P 12C