



S.A(MD)No.662 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2022

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C O R A M

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**S.A(MD)No.662 of 2022 and
CMP (MD)No.9363 of 2022**

Ramalingam

...Appellant

Vs.

1.A/M.Nageswaran Temple,
Kumbakonam,
Represented by its Executive Officer,
Office at Temple Premises.

2.The Assistant Commissioner,
HR&CE Office at Nageswaran North,
Street Kumbakonam.

3.The Joint Commissioner,
HR&EC Office at
Patta Mangala Street,
Mayiladuthurai.

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree of the lower appellate Court dated 25.02.2019 passed in AS.No.AS.No.8 of 2016 on the file of the Additional District Court (Fast Track Court), Kumbakonam, reversing the judgment and decree of the trial Court dated 30.11.2015 passed in OS.No.206 of 2012 on the file of the Sub Ordinate Judge, Kumbakonam and allow the second appeal.

For Appellants : Mr.S.Sankar



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For Respondent : Mr.V.Chandrasekar

No.1

For Respondent :Mr.N.Ramesh Arumugam

Nos.2 and 3

Government Advocate

JUDGMENT

This second appeal is filed as against the judgment and decree dated 25.02.2019 passed in AS.No.8 of 2016 by the learned Additional District Judge (Fast Track Court), Kumbakonam reversing the judgment and decree dated 30.11.2015 passed in OS.No.206 of 2012 by the learned Sub Judge, Kumbakonam.

2.This appellant/ plaintiff filed the suit in OS.No.206 of 2012 against respondents for relief of permanent injunction, not to evict him except under due process of law. The suit was decreed by the Principal Sub Court, Kumbakonam on 30.11.2015. As against the judgement and decree passed in OS.No.206 of 2012, the respondent has filed an appeal before the Additional District Court, Kumbakonam in AS.No.8 of 2016, which was allowed reversing judgment and decree passed by the trial court. Challenging the same, the plaintiff has filed this appeal on the following substantial questions of law:



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i. Whether the findings of the court below against section 107 of the Indian Evidence Act with regard to the admissions given by the respondents tenable?

ii. Whether the findings of the court below that respondent is not a tenant and he is not in possession without considering pleadings, written statement, when the respondent has not denied in specific terms that there is no landlord-tenant relationship and also after admitting the possession of the appellant is tenable?

iii. Whether the court below relying on the Ex.B1 appellate order passed in the tenancy, which was obtained behind the back of the appellant as basis for allowing the appeal, as no possession is with the appellant is illegal?

iv. Whether the court below is correct in relying upon the appellate order produced by the respondents, when appellant has categorically stated in the plaint of the year 2012 that the respondents have not filed any appeal, which was also not denied by the respondents in the written statement still 2014 and later after obtaining an ex-parte order by filing with delay of 1682 days reversing the tenancy right granted to the appellant



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and then filing additional written statement amounts to abusing the process of the court?

v. Whether the fasil revenue records could be used against the appellant when the respondents themselves have admitted that the appellant is in possession of the suit property for allowing the appeal in favour of the respondents? and

vi. Whether respondents are bound to follow the due process of law in evicting the appellant as contemplated under section 78 of the Tamil Nadu Hindu Religious and Charitable and Endowments Act?

3. The learned counsel for the appellant submits that the appellant is a cultivating tenant of the land belonging to the temple. Since the land was originally leased to one Ramamurthy as tenant, his name is also registered in RTR register. After the death of Ramamurthy the tenancy was transferred to his wife Vasanthakumari and her name was also entered in the RTR register. Vasanthakumari was not able to cultivate the land and therefore she has leased out the property to this appellant and thereafter he is cultivating the land. He also filed an application in P.No.49 of 2006 before



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the Revenue Authority and in the revenue records his name is recorded as tenant and his name is also recorded in the RTR register. The respondent did not record his name even after the orders passed in P.No.49 of 2006. Therefore he filed above suit for injunction restraining the respondents from evicting without following due process of law. The trial court considering the available evidence decreed the suit in favour of the appellant. However the appellate court reversed judgement of the trial court based on the orders of the appellate authority, who reversed the recorded tenancy in favour of the appellant.

4.The learned counsel for the appellant submits that the respondents have admitted the possession of this appellant in the suit property. Admittedly the appellant was also recorded by the competent authority revenue officials in P.No.49 of 2006 as tenant. This order is said to have been reversed by the appellate authority in the appeal filed by the respondents and this appeal was also filed with a delay of 1682 days. According to the learned counsel for the appellant, the appellate authority had reversed finding of the Tahsildar by



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condoning the delay of 1682 days without issuing any notice to this appellant and without providing any opportunity to him. This appeal proceedings according to the learned counsel for the appellant was not stated in the reply statement of the respondents or anywhere in the proceeding in CMA.26 of 2014 or before the trial court. The delay was condoned by the Special Deputy Collector without any notice and on the same day, he also allowed the appeal. Even though tenancy recorded by the Tahsildar is set aside by the appellate authority, as on the date of filing of the suit, the appellant was a tenant of the respondent and he was also recorded as tenant and therefore the appellate court ought to have recognised his possession and ought not to have non-suited the plaint and when the possession is admitted then he has to be evicted in the manner known to law by filing necessary application under Section 78 of HR&CE Act.

5.Caveator / respondents have entered appearance and the learned Counsel for the respondent No.1 has made his submission with the permission of this Court in the admission stage itself.



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and there. Earlier one Ramamurthy was the tenant, his name entered in the RTR register. The order was passed in P.No.54 of 1994 by concerned Tahsildar Kumbakonam. The original of the order is filed herewith. The 1st defendant was party in the proceedings.

Due to shortage and scarcity of water, the lands now turned Tharisu and the plaintiff is in possession and enjoyment of the same. The plaintiff has sent the rent to the defendant No.1 through DD but for reasons best known to the 1st defendant the DDs were returned for no fault of the plaintiff."

7.The learned Counsel further submits that one Ramamurthy was the original tenant and after his death his wife one Vasanthakumari was recorded as tenant. Vasanthakumari by expressing that she cannot cultivate the land, returned the properties to the temple. The appellant is claiming that he is a sub-tenant of Vasanthakumari and the sub tenant can also be treated as tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969.

8.According to the respondents the subject lands are the properties of the temple. It can be governed only by



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the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural) Lands Act, 1961 and as per Section 21 of the Act, there must be an agreement in writing and therefore, the appellant is not entitled to seek any remedy under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. He further submits that the tenants means a person, who contributes his own physical labour or that of any other member of his family in the cultivation of the land under a tenancy agreement, express or implied;

9. Admittedly there is no cultivation in the land as per the appellant's averments in the plaint itself. Further, the appellant / plaintiff has not filed any proof that he is cultivating the land or paid any rent to the respondents. Not even any adangal has been filed or marked to prove his possession of the suit schedule property. The appellant / plaintiff has sought for injunction that he has been in possession of the property. Mere possession is not sufficient for grant of injunction and he must establish that he has been in lawful possession.



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10.This Court considered the rival submissions and perused the materials placed on record.

11.The appellants claims that he was a sub tenant of one Vasanthakumari to the property of the respondent temple. The appellant was originally declared as cultivating tenant by the Recording Officer in P.No.49 of 2006. It was subsequently set aside by the appellate authority. The appellant claims that the appeal was entertained by the appellate authority with a delay of 1682 days and without providing any opportunity and also on the same day the delay was condoned. If the appellant is having any grievance with regard to the orders of the appellate authority in deciding his tenancy right, the appellant has to challenge the orders of the appellate authority in the manner known to law.

12.The temple properties are governed by the provisions of the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural) Lands Act, 1961. Even as per the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, 'tenant' means, a person, who contributes his own physical labour or that of his family



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member in the cultivation of land under tenancy agreement express or implied. Cultivation is defined as use of land for the purpose of agricultural or horticulture. The appellant claims that he is a sub tenant of one Vasanthakumari. The respondents claim that Vasanthakumari already handed over the property, then she is not in possession of the cultivating lands. Vasanthakumari was not examined as witness in the suit. Even according to the appellant, there is no water and there is no cultivation, he has put up some construction and has been residing in that property. There is no proof that the appellant has obtained any permission from the temple authorities to put up any construction and admittedly the appellant has not paid any rent to the temple authorities also.

13. In view of the admissions of the plaintiff that there is no cultivation, this appellant is not having any document to show that there was any agreement between the respondent temple and himself that he is a sub-lessee of Vasanthakumari. Vasanthakumari has given letter to the temple that she had already handed over the property, the order which he had obtained in P.No.49 of 2006 was



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also set aside by the appellate authority. The appellant is not having any proof that he has ever cultivated the land or he has paid any rent or there was any agreement with the temple. Therefore this Court is not inclined to entertain this second appeal on the substantial questions of law raised in this appeal.

14.In the result, this second appeal is dismissed. No costs. Consequently connected miscellaneous petition also stands dismissed.

02.12.2022

dsk

To

- 1.The Additional District Judge,
(Fast Track Court),
Kumbakonam.
- 2.The Sub Ordinate Judge,
Kumbakonam.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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B. PUGALENDHI . , J

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JUDGMENT MADE IN

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