



S.A.No.2073 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2022

Pronounced on : 16.12.2022

CORAM : JUSTICE N.SESHASAYEE

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Sivalingam (Died) ... Appellant/Respondent/Plaintiff

2.Seethalakshmi

3.Jegatheeswaran

4.Umapathy

5.Prema ... Appellants 2 to 5

[Appellants 2 to 5 – brought on record as LRs of the deceased sole appellant vide order dated 21.11.2022 made in C.M.P(MD).No.2463 of 2022 in S.A.No.2073 of 2003]

Vs

1.Uthandalakshmi Ammal (Died)

2.Nagarathinam Iyer (Died) ... Respondents 1 & 2/Appellants/
Defendants

3.V.N.Sastha Subramanian

4.N.Sambamoorthy

5.N.U.Manikandan

6.N.Rajam

7.N.Meenakshi



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8.S.V.N.Maheswari

9.N.Geetha

10.N.Jeyashree

... Respondents 3 to 10

***[Respondents 3 to 10 – suo motu brought on record as
LRs of the deceased 1st and 2nd respondents vide order
dated 09.09.2021 made in S.A.No.2073 of 2003]***

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 01.08.2003 made in A.S.No.26 of 1997 on the file of the Subordinate Court, Periyakulam, Madurai, reversing the judgment and decree dated 24.02.1995 made in O.S.No.693 of 1985 on the file of the District Munsif's Court, Periyakulam, Madurai District.

For Appellants : Mr.R.Suriya Narayanan

For Respondents : Mr.M.Saravanan

J U D G M E N T

The plaintiff who was successful in his suit in O.S.No.693 of 1985 on the file of the District Munsif's Court, Periyakulam, but suffered a reversal in A.S.No.26 of 1997 before the Sub Court, Periyakulam, is the appellant herein. For narrative convenience, the parties would be referred to by their rank before the trial Court.



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2. The brief facts are as below:

- The suit property is a block of dry agricultural land measuring 12.74 acres in Survey No.1305/2 of Gullapuram Village, Periyakulam Taluk. It belonged to the defendants.
- The case of the plaintiff is that he is a cultivating tenant of the property and filed a suit seeking for prohibitory injunction that his possession should not be disturbed.

3. The dispute went to trial Court and before the trial Court, both sides adduced oral and documentary evidence. For the plaintiff, he examined himself as P.W.1 and also examined two independent witnesses as P.W.2 and P.W.3, who are the adjacent land owners of the suit property. Besides, he also examined a Junior rank Revenue Official as P.W.4 to speak about the cultivating tenancy granted to the plaintiff. He produced Ext.A.1 to Ext.A.4, of which the thrust is on Ext.A.1 which is Form-I from the register of the record of the tenancy. The defendants did not adduce any oral evidence but have adduced Ext.B.1 to Ext.B.8 all of which are adangals from *fasli* year 1385 (1975-76) upwards.



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4. The trial Court relied on Ext.A.1 and concluded that the plaintiff is a cultivating tenant and granted a decree of injunction. When the matter reached the first appellate Court, it relied on the testimony of P.W.1 (the plaintiff) wherein he had admitted that he indeed had surrendered the possession of the property to the defendants, and took note of Ext.B.1 to Ext.B.8. This is now under challenge.

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

“Whether the lower appellate Court is right in relying upon Ex.B1 to Ex.B8 when the defendant had not let in oral evidence and when there was no opportunity for the plaintiff to cross examine the defendant on Ex.B1 to Ex.B8?”

6. The learned counsel for the appellants submitted that it is an admitted fact that the plaintiff was inducted as a tenant, and that he was also registered as a cultivating tenant under the provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. The plaintiff has produced



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Ext.A.1, dated 14.12.1970. Inasmuch as the plaintiff has been registered as a cultivating tenant under Section 5 of the said statute, till it is modified, he is presumed to be a cultivating tenant and a civil Court cannot ignore it. He added that the first appellate Court overlooked this aspect.

7. Per contra, the learned counsel for the defendants made the following submissions:

(a) The plaintiff had since died and his legal representatives have impleaded themselves in his place vide order dated 21.11.2022 made in C.M.P(MD) No.2463 of 2022. For any of the legal heirs of the plaintiff to step into the shoes of the plaintiff as cultivating tenant, it is necessary that they must be shown to have contributed their physical labour and exertion in carrying out agricultural activities in the suit property. However, in the affidavit filed in support of C.M.P. (MD) No.2463 of 2022, there is no whisper that any legal representatives have either contributed or contributing any labour for carrying out agricultural activities.

(b) The case of the defendants is that the plaintiff has surrendered



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possession of the entire suit property. Now the plaintiff as P.W.1, has admitted that he has surrendered the property, but clarifies that he had surrendered only 3 acres and not the entire property. He also admits that Veeriah has been inducted as a tenant in the 3.0 acres by the defendants. This implies that the description of the property itself is wrongly given if not, deliberately given wrongly. Having chose to suppress the material fact, it is possible to justly infer that the plaintiff came up with a false case after surrendering possession of the entire suit property.

- (c) To show that the defendants have taken possession, they have produced *adangal* from the years 1976 to 1986. In a suit for possession, the principal aspect is who is in legitimate possession or settled possession and not, who may be lawfully entitled to be in possession. Inasmuch as the defendants have proved their possession, the plaintiff would not be entitled to the decree he seeks for and the first appellate Court was appropriate in dismissing the suit.



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8. This Court is impressed with the line of argument of the counsel for the defendants/respondents. The suit is laid for bare injunction as if the plaintiff was in possession of the entire suit property. But later he concedes that he had surrendered possession of about $\frac{1}{4}$ extent of the suit property. Knowing fully well that he had so surrendered, it is very unfortunate that he should suppress it, and seek protection of his possession of the entire extent of which he was once a cultivating tenant. Secondly, what is the guarantee that he might not have surrendered the remaining portion as well? The defendants have filed Ext.B.1 to B.8 adangal and in the absence of any evidence to outweigh their effect, they can be considered as evidence for establishing possession. And, the plaintiff has not produced any evidence to rebut the effect which these documents create.

9. In effect this Court endorses the view of the first appellate court and hold that the defendants are in settled possession of the suit property and the plaintiff will not be entitled to a decree of prohibitory injunction. And the chances get dimmed after plaintiff's demise when nothing was produced by any of his heirs to prima facie show that they contribute any physical labour



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for claiming right as a cultivating tenant.

10. In fine, this Second Appeal is dismissed. Accordingly, the judgment and decree dated 01.08.2003 made in A.S.No.26 of 1997 on the file of the Subordinate Court, Periyakulam, Madurai, is confirmed. No costs.

16.12.2022

Internet: Yes
Index: Yes/No
ssb/abr



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To

- 1.The Sub Judge,
Periyakulam.
- 2.The District Munsif,
Periyakulam.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

ssb

Pre-delivery Judgment made in
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