



S.A.(MD) No.735 of 2012

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 13.02.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE S.SOUNTHAR**

S.A.(MD) No.735 of 2012

and

M.P.(MD) No.3 of 2012

Shanmugam

... Appellant/Appellant/  
Plaintiff

Vs

1.Thiruvaduthurai Aathinam  
Dhanakonariappa Mudaliar Kattalai,  
No.72, Dhanappa Street,  
Madurai-1.

2.Pandian

... Respondents/Respondents/  
Defendants

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 10.10.2011 made in A.S.No.113 of 2010 on the file of the Principal Sub Court, Madurai, confirming the judgment and decree dated 12.02.2010 made in O.S.No.52 of 2005 on the file of the District Munsif's Court, Madurai Taluk, Madurai.



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For Appellant : Mr.J.Lawrance  
for Mr.V.Venkkatasamy

For R1 : Mr.S.Manohar

For R2 : Mr.F.X.Eugene

### J U D G M E N T

1.1. The unsuccessful plaintiff in the suit is the appellant in this second appeal. The suit was filed for declaration that the appellant was cultivating the suit property under the permission from the first respondent and for a consequential injunction restraining the second respondent from interfering with his peaceful possession and enjoyment. The suit was dismissed by the trial Court and the findings of the trial Court were confirmed in first appeal. Aggrieved by the concurrent findings against him, the appellant/plaintiff is before this Court.

1.2 According to the appellant/plaintiff, the suit property belonged to the first respondent and the same was originally let out in favour of his father Veluchamy under lease deed dated 25.05.1957. The second respondent is the younger brother of the appellant. According to the



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appellant, the suit property was surrendered by his father in favour of the first respondent. Later on, the suit property was let out to the second respondent by the first respondent on 15.02.1963. The second respondent cultivated the suit property up to the fasli year 1383 (relevant to the year 1973) and surrendered the suit property to the first respondent. It is the case of the appellant that the first respondent permitted the appellant to cultivate the suit property from fasli year 1396 (relevant to the year 1986). It was further submitted in the plaint that the appellant had been cultivating the suit property and paying rent to the first respondent regularly. It was further submitted that the second respondent tried to interfere with the appellant's cultivation illegally and hence, he was constrained to file a suit for declaration and injunction as mentioned above.

2.1. The first respondent filed a written statement denying the alleged permission pleaded by the appellant herein. It was further stated by the first respondent that the declaration sought for by the appellant as if he had been cultivating the suit property cannot be granted by the civil Court and the appellant has to file a petition before the Record Officer for that purpose.



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2.2. The second respondent herein filed a written statement claiming that he was a recorded tenant of the suit property. The surrender pleaded by the appellant as if the second respondent surrendered the suit property to the first respondent in the fasli year 1383 was specifically denied. It was further pleaded by the second respondent that in a suit for bare injunction filed by him and the appellant against one Manickam Pillai in O.S.No.84 of 2000, the appellant herein admitted the second respondent's possession over the suit property and therefore, he was not entitled to maintain a suit for bare injunction.

3. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the appellant was not entitled to declaration and injunction and dismissed the suit. Aggrieved by the same, the appellant had preferred a first appeal in A.S.No.113 of 2010 on the file of the Principal Sub Court, Madurai. The first appellate Court also concurred with the findings of the trial Court and dismissed the suit. Aggrieved by the same, the appellant is before this Court.



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4. The learned counsel for the appellant tried to assail the findings of the Courts below mainly on the ground that earlier the appellant along with the second respondent filed a suit for bare injunction in O.S.No.84 of 2000 against one Manickam Pillai and in that suit, later on the appellant herein was transposed as the second defendant and he also filed counter claim seeking injunction against the appellant therein. The learned counsel submitted that the said suit in O.S.No.84 of 2000 was decreed by the trial Court and on appeal filed by the appellant herein in A.S.No.147 of 2009, the judgment and decree passed by the trial Court was set aside and the suit for bare injunction filed by the second respondent was dismissed and the appellant's counter claim was allowed granting injunction against the second respondent. Therefore, it is the contention of the learned counsel for the appellant that a competent civil Court accepted the appellant's possession over the suit property and granted a decree against the second respondent and hence, the dismissal of the appeal filed by the appellant by the first appellate Court has to be interfered with.



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5.1. The present suit was filed by the appellant seeking a declaration that he was cultivating the suit property under permission granted by the first respondent. The first appellate Court dismissed the suit mainly on the ground that such a declaration cannot be granted by the civil Court and the appropriate remedy for the appellant would be to approach the Record Officer appointed under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (hereinafter referred to as “the Act” for brevity). It would be appropriate to refer to the decision of the Hon'ble Full Bench of this Court in ***Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and others*** reported in ***1980-II-MLJ 89*** in this regard. In the said judgment, the Hon'ble Full Bench of this Court after discussing the scope of ouster of civil Court jurisdiction under Section 16-A of the Act, had rendered a judgment that the civil Court cannot go into the question whether particular land was let out to anybody for cultivation as a cultivating tenant. The relevant observation of the Hon'ble Full Bench in this regard is as follows:

*“40. .... In such a suit, if the prayer for grant of injunction is coupled with the prayer for declaration that the*



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*defendant was not a cultivating tenant or that the defendant had surrendered possession of the property, then the Civil Court may not have jurisdiction to go into the question whether the defendant was a cultivating tenant or not. Similarly, if the cultivating tenant files a suit for declaration that If he is the cultivating tenant of the land in question and as a consequential relief prays for recovery of possession from the land owner-defendant or an injunction, the primary relief being one of declaration of his status as a cultivating tenant, the other reliefs being consequential, the Civil Court may not have jurisdiction to decide the controversy with reference to which the primary relief is prayed for.”*

5.2. Therefore, it is clear that if a declaration is sought for with regard to the status of a person as a cultivating tenant, such a relief cannot be granted by the civil Court. In the case on hand, the appellant sought a declaration that he is cultivating the land of the first respondent under permission from it. In effect, he is seeking a declaration of his cultivating tenancy rights. In view of the law laid down by the Hon'ble Full Bench of this Court, such a declaration cannot be sought for before the civil Court. Once this Court comes to a conclusion that the main relief of declaration is



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not maintainable before the civil Court, the consequential prayer for injunction cannot be granted. Therefore, without going into the question of possession, this Court is inclined to affirm the findings rendered by the first appellate Court and dismiss the second appeal.

6. Accordingly, this Second Appeal is dismissed by confirming the judgment and decree passed by the Courts below. It is always open to the appellant to file appropriate application before the Record Officer appointed under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 and seek appropriate relief. In the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

**13.02.2023**  
(½)

NCC: Yes  
Index: Yes

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To

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



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**S.SOUNTHAR, J.**

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(<sup>1</sup>/<sub>2</sub>)