



S.A.No.538 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.02.2024

Delivered on:16.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.538 of 2020

and

C.M.P.No.11609 of 2020

Diliraja
S/o.Govindhan

...Appellant

Vs.

Zerina Begum
W/o.Mohammed Iqbal

...Respondent

PRAYER:

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 13.02.2020 made in A.S.No.12 of 2013 on the file of learned Subordinate Judge at Nagapattinam, confirming the judgment and decree dated 30.07.2013 made in O.S.No.245 of 2008 on the file of learned District Munsif cum Judicial Magistrate, Vedaranyam.

For Appellant : Mr.S.Arivazhagan



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For Respondent : Mr.R.Murugabharathi

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J U D G M E N T

The unsuccessful defendant before the trial Court as well as the First Appellate Court is the appellant before me.

2. The parties are described as per the litigative status before the trial Court.

3. The respondent herein, as plaintiff filed a suit in O.S.No.245 of 2008 for recovery of possession of the suit property from the defendant.

4. The case of the plaintiff is that the defendant was engaged as a watchman for protecting the possession of the suit property and the defendant is only a permissive occupant. However, the defendant refused to vacate and handover vacant possession and therefore, the plaintiff was constrained to file the suit. The suit was resisted by the defendant on the ground that the



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defendant was entitled to the suit property and that original owner of the lands, one Mr.A.K.M.Kasim Marakkayar gifted 50 kuzhi of lands to the defendant's family. The plaintiff never engaged the defendant as watchman for the suit property and the defendant has put up construction over 5 cents of the said lands admeasuring 50 kuzhi and he is absolutely entitled to the same and therefore, the suit was sought to be dismissed.

5. The trial Court decreed the suit finding that the plaintiff was the absolute owner of the suit property and the defence stated by the defendant was not established, by producing sufficient oral and documentary evidence.

6. On appeal, in A.S.No.12 of 2013, the First Appellate Court confirmed the findings of the trial Court holding that the defendant was not able to prove the alleged gift of 50 kuzhi by A.K.M.Kasim Marakkayar and on the contrary, the plaintiff had established his right, title and interest over the suit property. The First Appellate Court also found that the documents relied on and exhibited by the defendant i.e., receipts were in respect of



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different properties and in different names could not relate to the suit property. The First Appellate Court found that the plaintiff had purchased the suit property under Ex.A1 Sale Deed dated 27.08.1986 from the said A.K.M.Kasim Marakkayar and was therefore, entitled to recovery of possession.

7. The second appeal has been admitted on 30.11.2020 on the following substantial question of law:-

"Whether the suit is said to be barred under the provisions of the Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act, 1971?"

8. I heard Mr.S.Arivazhagan, learned counsel for the appellant and Mr.R.Murugabharathi, learned counsel for the respondent.

9. Learned counsel for the appellant, Mr.S.Arivazhagan would refer to the Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act,



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1971 [Act 40/1971] and contend that the suit was not maintainable in view of Section 23 of Act 40/1971. According to the learned counsel for the appellant, it was only the authorized officer appointed by the Government, who was empowered to determine any issue arising under Act 40/1971. He would also further contend that in view of Section 3 of Act 40/1971, the defendant, whether he was a tenant or licensee, would become the owner of the Kudiyiruppu and such Kudiyiruppu would vest in him absolutely, free from all encumbrances. He would also refer to a decision of this Court in ***Thangavelu Naicker*** case [***Thangavelu Naicker Vs. Muthukumara Chettiar and another*** reported in **92 LW 678**] wherein, this Court held that the issue of the plaintiff claiming eviction based on right of ownership of a hut and underlying lands as Kudiyiruppu cannot be decided by the Civil Court.

10. Per contra, Mr.R.Murugabharathi, learned counsel for the respondent would submit that for the first time, the appellant has raised the issue of his alleged right based on Kudiyiruppu. He would take me through the written statement, the memorandum of grounds of appeal in the first



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appeal as well as before this Court and contend that no where the appellant neither pleaded nor taken a ground of challenge that Act 40/1971 namely, Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act, 1971 would come into play and protect the possession of the defendant.

11. I have carefully considered the rival submissions advanced by the learned counsel on either side.

12. The short point that needs to be addressed is as to whether the provisions of Act 40/1971 would apply to the facts of the present case in order to non-suit the plaintiff and disentitle him to a decree of recovery of vacant possession from the defendant.

13. Act 40/1971 received the assent of the President of India on 20.12.1971 and thereafter was published in the Tamil Nadu Government Gazette on 24.12.1971. Act 40/1971 provides for the conferment of ownership rights on occupants of Kudiyruppu in the State of Tamil Nadu.



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14. Some of the definitions of Act 40/1971 assume relevance in deciding the present second appeal.

15. Section 1A of Act 40/1971 reads as follows:

"1A. Provisions of this Act shall apply to certain occupants of Kudiyiruppu subject to certain modification.- In regard to any agriculturist, or agricultural labourer who was occupying any kudiyiruppu on the 1st day of April 1990 either as tenant or as licensee, the provisions of this Act shall apply subject to the following modification namely : -

(1) in Section 2, -

(a) for clause (6) the following clause shall be substituted, namely :-

(a) "date of the commencement of this Act" means the date of the publication of the Tamil Nadu Kudiyiruppu Laws (Amendment) Act, 1990 in the Tamil Nadu Government Gazette;

(b) in clause (8) in Explanation II, in item (i), for the expression "19th June 1971", the expression "1st day of April 1990" shall be substituted;

(2) in section 3, in sub-section (1), for the expression



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"19th June 1971", the expression "1st day of April 1990" shall be substituted;

(3) in section 4, in sub-section (1), for the expression "19th June 1971", the expression "1st day of April 1990" shall be substituted."

16. Section 2(1) of Act 40/1971 reads as follows:

"2. Definitions - In this Act, unless the context otherwise requires,-

(1) "agricultural labourer" means a person whose principal means of livelihood is the income he gets as wages for his manual labour on agricultural land [but does not include a plantation labour];"

17. Section 2(8) of Act 40/1971 reads as follows:

"(8) "kudiyiruppu' means the site of any dwelling house or hut occupied, either as tenant or as licensee, by any agriculturist or agricultural labourer and includes such other area adjacent to the dwelling house or hut as may be necessary for the convenient enjoyment of such dwelling house or hut."



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18. Section 3 of Act 40/1971 reads as follows:

"3. Occupant of Kudiyiruppu to become owner - (1) [Save as otherwise provided in this Act, any agriculturist] or agricultural labourer who was occupying any kudiyiruppu on the 1st day of April 1990, either as tenant or as licensee shall, with effect from the date of the commencement of this Act, be the owner of such kudiyiruppu and such kudiyiruppu shall vest in him absolutely free from all encumbrances.

(2) Where, in the case of an occupant of Kudiyiruppu, [in whom such kudiyiruppu vests under sub-section (1)], the superstructure belongs to any person other than such occupant, such superstructure shall also with effect from the date of the commencement of this Act, vest in such occupant absolutely free from all encumbrances.

[(3) Nothing in sub-section (1) shall be deemed to confer the right of ownership of kudiyiruppu on any agriculturist or agricultural labourer, if he already owns a dwelling house or hut or a house-site, within a distance of one kilometre from the kudiyiruppu referred to in sub-section (1) : provided that the site on which the dwelling house or hut is erected or the house-site concerned is more than three cents in extent.]"



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19. Even though as rightly pointed out by learned counsel for respondent / plaintiff, the ground that Act 40/1971 would protect the right of the defendant and would entitle him to claim ownership of Kudiyuruppu was never pleaded in the written statement or any evidence was let in before the trial Court. Considering the fact that this Court on 30.11.2020 has admitted the above second appeal on the aforementioned substantial question of law, directly touching the applicability of Act 40/1971, I am proceeding to decide the appeal based on the arguments advanced by learned counsel for the appellant revolving around Act 40/1971.

20. As seen from the above definitions and also the very object of the enactment, it would apply only to "Agriculturist" or "Agricultural Labourer". The definition of "Agriculturist", "Agricultural Labourer" or even "Kudiyiruppu" cannot be extended to a permissive occupant, who was put in possession of the suit property as a care taker / watchman.



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21. From the written statement also it is clear that it is not the case of the appellant / defendant that he was carrying on agricultural operations in the suit property as a tenant or as a licensee under the plaintiff. Thus, I do not see any force in the submission made by learned counsel for the appellant that his right in the Kudiyiruppu would stand enlarged into ownership in view of the provisions of Act 40/1971 and that the suit is also barred under Section 23 of Act 40/1971.

22. The case of the respondent / plaintiff is plain and simple. It is the specific case that he is the owner of the suit property, which is not denied by the appellant / defendant. Further, the plaintiff seeks for recovery of possession of the suit property from the defendant, who was put in possession only as a caretaker / watchman. It is neither the plaintiff's case nor the defendant's case that the defendant was in-charge of agricultural operations in the suit property. Thus, there is absolutely no ground to even refer to any of the provisions of Act 40/1971 in order to non-suit the plaintiff.



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23. The decision of this Court in *Thangavelu Naicker* case was entirely on different facts. In the said case, the caretaker appointed by the owners moved the authorized officer under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 and sought to declare himself as a cultivating tenant. Thereafter, he has also filed a civil suit against the owner for permanent injunction restraining the owners from evicting him from the suit property. The said caretaker was also permitted to reside in a hut in order to look after the Thopes. The owners resisted the said suit on the ground that Act 40/1971 would not apply to the plaintiff. This Court referring to Section 4 of Act 40/1971 held that the Civil Court cannot grant any injunction under Act 40/1971 and also referring to the bar under Section 23 of Act 40/1971 held that the suit filed by the caretaker claiming to be the owner of Kudiyiruppu was dismissed. This decision would not apply to the facts of the present case because the plaintiff in that suit had approached this Court claiming right under Act 40/1971 and this Court found that there was a bar under Section 23 of Act 40/1971 and there was a remedy provided under Section 4 of Act 40/1971 and therefore, the plaintiff could not maintain the



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suit claiming right based on Kudiyiruppu and ownership consequent to the Enactment namely, the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971.

24. On the facts of the present case, it was never the case of the defendant that he was carrying on agricultural operations in the suit property in order to claim himself to be an agriculturist or agricultural labourer. Thus, I am unable to apply the ratio laid down by this Court in *Thangavelu Naicker's* case.

25. I answer the substantial question of law against the appellant, holding that the suit for recovery of possession is not barred under the provisions of Act 40/1971 as the appellant neither pleaded nor proved or established that he was in possession of a 'Kudiyiruppu' as defined under Act 40/1971 in order to claim right and protection under Act 40/1971.



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26. In fine, the Second Appeal is dismissed. The appellant / defendant shall vacate and handover vacant possession of the suit property within three months from the date of receipt of a copy of this judgment, subject to the appellant / defendant filing an affidavit of undertaking within 10 days from today, undertaking to handover vacant possession of the suit property, peacefully to the respondent / plaintiff, without driving the respondent / plaintiff to execution proceedings. It is made clear that if the appellant does not file such an undertaking affidavit, within 10 days, as set out herein above, the respondent shall be at liberty to execute the decree forthwith. Connected miscellaneous petition is closed. There shall be no order as to costs.

16.02.2024.

Index:Yes/No

Neutral Citation:Yes/No

Speaking/Non-speaking order

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1. The Subordinate Judge
Subordinate Court,
Nagapattinam.
2. The District Munsif-cum-Judicial Magistrate,
District Munsif Court,
Vedaranyam.



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P.B.BALAJI, J.,

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