



SA.(MD)No.253 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.253 of 2024

and

CMP(MD)No.4895 of 2024

Natrajan @ Anthony : Appellant/Appellant/
Defendant

Vs.

Sorimuthu : Respondent/Respondent/
Plaintiff

PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in AS No.53 of 2015 on the file of the Sub Court, Sankarankovil, dated 20/10/2023 confirming the judgment and decree passed in OS No.7 of 2009 on the file of the District-cum-Judicial Magistrate's Court, Sivagiri, dated 08/06/2015.

For Appellant : Mr.S.Meenakshisundaram
Senior Counsel
for Mr.R.T.Arivukumar

For Respondent : Mr.K.Navaneetharaja

J U D G M E N T

This Second Appeal is filed seeking an order to set aside the judgment and decree passed in AS No.53 of 2015 by the Sub Court, Sankarankovil, dated 20/10/2023 confirming the judgment and decree passed in OS No.7 of



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2009 by the District-cum-Judicial Magistrate's Court,
Sivagiri, dated 08/06/2015.

2.The respondent herein namely Sorimuthu filed a suit in OS No.7 of 2009 seeking the relief of permanent injunction and for costs in respect of the second schedule of the property mentioned in the plaint, which is shown as one Acre, out of 2.7 Acres in the middle in Survey No.360 located in Vasudevanallur village, Sivagiri Taluk, Tenkasi Taluk with specific four boundaries.

3.In the plaint, it has been stated that the suit first item belongs to Thiruvavaduthurai Aatheenam. One Ramasamy Raja was the leaseholder of the property. Ramasamy Raja sold the lease hold right to the plaintiff and his brother Sivanu Chettiar on 17/10/1979. The plaintiff and Sivanu Chettiar were in possession and enjoyment of the property as lessees. They filed application before Record of Tenancy Rights Officer in TR Nos.27 and 28 of 1980 located in Sivagiri. They were recorded as Cultivating Tenants in respect of the first item of the property, by order, dated 29/09/1980. Ever-since, they have in possession and enjoyment till date.



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3. On the western side of the first item, land measuring about 1.30 Acre is located in Survey No.358, which was also belongs to Thiruvavaduthurai Aatheenam. The father of the plaintiff by name Pandian Chettiyar was the lessee. He was recorded as 'Cultivating Tenant' by the order of the Sivagiri Cultivating Tenancy Record Tenancy Right, Tashildar, by order, dated 03/09/1979 in TS No.38 of 1979. Pandian Chettiyar was enjoying the property through Sivanu Chettiyar and the plaintiff. Pandian Chettiyar expired in 1990. After his death along with the first item, the plaintiff and Sivanu Chettiyar were in joint possession. They divided the property mutually by oral agreement in 1990, by which one Acre out of 1.70 Acres in Survey No.358 and eastern side proper measuring about one Acre of the first item was allotted to Sivanu Chettiyar. The middle portion remaining about 30 cents in Survey No.358 and 1.7 acres in the first item totally about 2.00 Acre were allotted to the plaintiff and usual condition to pay the amount to Thiruvavaduthurai Aatheenam. The western 1 Acre is enjoyed by the plaintiff through one Kasi Pandi. The second item of the suit is in his enjoyment and paying the rent regularly.



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4.The suit second item is a portion of the first item. The defendant has no right in the second item of the property. When he requested to lease out the property was refused. Hence, the suit.

5.The defendant filed a written statement disputing the right and possession. He has stated that the property was never in possession of the plaintiff and Sivanu Chettiyar. The order is also not correctly passed by the Record of Tenancy Rights Tashildar mentioned in the plaint. The plaintiff was working as Writer in the Police Department. The property measuring about 1.30 Acres in survey No.358 was under the cultivation of the Pandian Chettiyar. Along with the land, the suit first item measuring 2.7 Acres, totally 4 Acres were under the enjoyment of Pandian Chettiyar as a lessee. The order dated 03/01/1979 is also not correct. The oral partition between Sivanu Chettiyar and the plaintiff is also denied. Pandian Chettiyar had four sons namely Sivanu Chettiyar, Sorimuthu Chettiyar, Gurusamy Chettiyar and Muthuraj Chettiyar. Some 18 years ago, the total extent 4 Acres were divided orally. Each was allotted to one Acre each. The second item was allotted to Gurusamy Chettiyar. He was in enjoyment. The defendant is now cultivating the lands and paying the rent to Thiruvavaduthurai Aatheenam.



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For deciding the issue, the brothers of the plaintiff and the defendant namely Sivanu Chettiyar and Gurusamy Chettiyar are necessary parties, so also Kasipandi. The suit is bad for non-joinder of necessary parties.

6.The trial court framed the following issues:-

(1)Whether the plaintiff is entitled to permanent prohibitory injunction as prayed for?

(2)Whether the suit is not maintainable on the ground that the declaration relief was not claimed by the plaintiff?

(3)Whether the suit is bad for Non-joinder of necessary parties?

(4)To what other relief?

7.On the side of the plaintiff, 3 witnesses were examined and 11 documents marked. On the side of the defendant 5 witnesses were examined and 2 documents marked. More over, witness document Ex.X1 also marked.

8.At the conclusion of the trial, the trial court recorded a finding that the plaintiff proved his



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possession over the plaint second schedule of property and decreed the suit. Aggrieved over the same, the defendant preferred appeal in 53 of 2015 on the file of the Subordinate Judge, Sankarankovil. The appellate court dismissed the appeal, confirming the judgment and decree of the trial court.

9. Against which, this second appeal is preferred by the defendant.

10. At the time of hearing both sides, the following substantial questions of law were framed:-

(a) Whether the courts below are correct in giving evidentiary value to an unregistered deed Ex.A1 which can be created at any point of time?

(b) Whether the Courts below are correct in disregarding the evidentiary value of the DW3 who is Inspector of Atheenam in service for more than 11 years in the suit village?

(c) Whether the suit is maintainable without impleading proper and necessary parties namely the landlord Thiruvaduthurai Atheenam?



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11.The suit is for permanent injunction, concurrent finding. In view of the above said concurrent findings of the courts below, the appreciation of evidence is very limited.

12.Now let us go to the findings of the trial court on the question of possession.

13.The trial court recorded a finding that the plaintiff is a registered cultivating tenant. So it got its own evidentiary value than that of the oral evidence pleaded by the defendant. Against the order of Record of Tenancy Right Tashildar, under the provisions of Tamil Nadu City Registration of the Tenancy Act, no appeal was preferred by any one. So the order has become final and that ought to be properly recognized by the civil courts.

14.Ex.sA2 and A3 are the relevant documents showing the proceedings of the Recording Officer. So this is the finding of facts based upon the official documents.

15.What was the evidence let in by the defendant to disprove the case of the plaintiff is only circumstantial evidence and picking holes in the case of the plaintiff. One of the circumstantial evidence, that was relied upon



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the defendant is that if really the order under Exs.A2 and A3 came into effect, there was no necessity to pay the rent in the name of the original lessee to Thiruvaduthurai Atheenam. So when there is dispute then Exs.A2 and A3 has no evidentiary value. This is one of the circumstantial evidence let in by the defendant.

16.Challenge was made to the order stating that the plaintiff was working as an official in the Police Department. Being an official of the Police Department, he could not contribute the physical labour to be recorded as '**Cultivating Tenant**' and for that purpose, he would rely upon the following judgments:-

(1)Avudaithangammal Vs. Subramania
Thevar & others (CDJ MHC 413);

(2)Angu alias Angammal Vs. The Record
Officer and Additional Tahsildar,
Thanjavur & others (CDJ 1988 MHC 530; and

(3)K.Ramdoss Vs. Rukmani Ammal (CDJ
1997 MHC 973).

17.Apart from that, it is also contended that mere recording a person as cultivating tenant without verifying the possession physically cannot be relied. To show the physical possession, the defendant has examined



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DW2 and DW4. So according to him, the above said documents are sufficient enough to discredit the order passed by the Recording Officer.

18.Now let go to the findings of the appellate court on this aspect. It concurred with the finding of facts recorded by the trial court on the basis of Exs.A2 and A3.

19.Now let us go to the evidence let in the light of the defence taken by the appellant.

20.As stated in the preamble portion of the order, the specific case of the defendant namely the appellant is that Pandian Chettiyar was cultivating 4 Acres including the subject property. He had four sons. 4 Acres were divided east-west as one acre each. The second item was allotted to Gurusamy Chettiyar, who is examined as DW2. From 2002 onwards, Gurusamy Chettiyar permitted him to cultivate the land and paying the rent to Thiruvavadurai Atheenam for about eight years. To show the payment of rent, he relies on Ex.B1. Whether it is probablised by him is the next point for consideration.



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21.Now let us directly go to the evidence of DW2 on this aspect. He would say that the plaintiff is his own brother. The entire 4 Acres including the present subject was orally taken out lease by the plaintiff and Sivanu Chettiyar and his father. During the life time of their father, the western one Acre was allotted to Sivanu Chettiyar. The next eastern portion was allotted to the plaintiff. He leased out the properties to one Pandian Chettiyar and later Pandian Chettiyar sub-let to Kasi Pandi. Now Kasi Pandi's son namely Subburaj is in possession of that portion and the next eastern portion was allotted to him. Now, he sub-let the portion to the defendant in 2002. Ever-since the defendant is in possession in that property. The next eastern portion was allotted to the another brother namely Muthuraja.

22.A lengthy cross examination was made. During the course of cross examination, he admits that a portion of the property out of the above said 4 acres, originally was under the cultivation of Ramasamy Raja. Ramasamy Raja was the direct cultivating tenant under Thiruvadurai Aatheenam. From Ramasamy Raja, the plaintiff and Sivanu Chettiyar took the property as sub-lessees as per the records. But he has added the rider that only his father was the sublessee. He would also admit that there is no



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written document to the sublease taken by his father. He would also admit that the plaintiff and Sivanu Chettiyar filed TR Nos.27 and 28 of 1980 before the Record of Tenancy Right Tashildar for recording their names. He added as rider for the year was not brought to his notice. The property measuring about 1.30 Acres, on the western of 2.7 Acres was taken on lease by his father from Thiruvadurai Aatheenam. In respect of that portion, their father filed TS No.38 of 2009 for recording his name as cultivating tenant. But he added a rider that it was not known to him. He would also admit that in respect of the partition pleaded him, no document was entered between the parties. So his evidence does not support the case of the defendant on record.

23.The learned Senior counsel appearing for the appellant would rely upon the evidence of the mother, who was examined as PW2 on the side of the plaintiff to show that his case of oral partition is probabalised through his oral evidence. She has stated that the entire 4 acres western portion is in the occupation of Sivanu Chettiyar and the next eastern portion is in the occupation of Muthuraj. Further eastern in the possession of Kasipandi. But the possession of Kasi Pandi is not admitted by her.



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24.By pointing out her evidence, the learned Senior counsel appearing for the appellant would submit that the oral partition pleaded by the defendants is probabalised. But her evidence is not supported any one and her evidence is not clear with regard to the partition. So on record, it is evident that the defendant has not probabalised his defence that the present second schedule is in possession as a cultivating tenant. The argument that the plaintiff could not have been recorded as cultivating tenant, because on the date of entry into the tenancy record, he was working as an official in the Police Department, the learned counsel appearing for the respondent would submit that on the date of the recording, he was not in service. In the year 1998, he entered into the police service. So according to him, unless the order passed by the Record Tenancy Officer was cancelled by way of proper *suo motu* cancellation or at the instance of any one of the parties, it must be given any proper credence. Simply because the rent was paid by the plaintiff in the name of Sivanu Chettiyar, he cannot be thrown out of the possession. Payment of rent in the name of Sivanu Chettiyar will not give any right in favour of the defendant.



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26. Similarly, the argument that the plaintiff was a Government Servant on the date of the order passed is also not brought on record in view of the explanation offered by the respondent herein. So the overall evidence let in by the parties indicates that the plaintiff possession is probablised. The trial court as well as the first appellate court appreciated the oral and documentary evidence in a proper prospective, which requires no interference.

27. So, all the questions of law are answered accordingly.

28. For all the reasons stated above, this court is of the considered view that the findings recorded by the trial court as confirmed by the appellate court does not require any interference by this court.

29. In the result, this second appeal fails and the same is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
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To,

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- 1.The Sub Court,
Sankarankovil,
Tenkasi District.
- 2.The District Munsif-cum-Judicial
Magistrate,
Sivagiri,
Tenkasi District.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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