



WA (MD) No.1408 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on 29.10.2024	Delivered on 02.12.2024
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CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MRS.JUSTICE **L.VICTORIA GOWRI**

Writ Appeal (MD) No.1408 of 2023
and CMP (MD) No.10989 of 2023

S. Kulanthai (Deceased)

1. K. Inbarajan

2. Sirumani

3. Lourdhu Mary

4. R. Gnanammal

5. R.Maria Kulanthaisamy

6. R. Reeta Jothimani

7. R. Priya

8. Arulanandam

... Appellants

Cause title is accepted vide Court order dated
25.04.2023 made in CMP(MD) No.5398 of 2023
in WA (MD) SR No.30657/2023 by ACJ & RSMJ



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Vs.

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1. Mrs. Ragina Jeyapaul

2. The District Revenue Officer,
Madurai

3. Trustee, Soorvalisubbier Trust
No.19, Tamil Sangam Road,
Madurai.

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 22.02.2023 in WP (MD) No.14946 of 2014.

For Appellant : Mr.S.Parthasarathy, Senior Advocate
for Mr.R.V.Rajkumar

For Respondents : Mr. V.Raghavachari, Senior Counsel
for Mr.S.Ramesh, for R1

Mr.S.RA. Rama Chandaran,
Additional Government Pleader, for R2

Mr. N.C.Ashok Kumar, for R3



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in this Appeal is to the order of the Writ Court allowing the Writ Petition filed by the first respondent seeking to quash the proceedings of the District Revenue Officer, Madurai dated 18.06.2014.

2. In and by the said order dated 18.06.2014, the District Revenue Officer, Madurai had affirmed the orders of the Revenue Court, Madurai dated 04.07.2013, which in turn affirm the orders of the Tahsildar, Madurai North, dated 20.04.2007 recording respondents 1 to 4 in the Revision as tenants in respect of a land measuring about 1 acre 38 cents in Survey No.173/1B and 174 of Tallakulam Village, Madurai North Taluk, Madurai District.

3. The brief facts that led to the proceedings before the Authorities under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (*Act 10 of 1969*) are as follows:

One Santhanam, son of Rayappan was a cultivating tenant in respect of the said lands under the third respondent herein and his name was also recorded as a tenant under *Act 10 of 1969*. Claiming that the



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said Santhanam, had transferred the lease hold rights to the first respondent herein, the first respondent moved the Record Officer and an order was passed by the Record Officer on 02.08.1985 accepting the transfer and recording the name of the first respondent as a tenant. However, the appellants claiming to be the heirs of the said Santhanam, the cultivating tenant had filed an application in TR No.39 of 2004 seeking modification of the entries in the approved record of the Tenancy Rights under Section 5 of *Act 10 of 1969*. The Record Officer rejected the request by his order dated 20.04.2007. Aggrieved, the appellants preferred an Appeal under Section 6 of *Act 10 of 1969*, before the Revenue Court.

4. The Revenue Court by its order dated 04.07.2013 allowed the Appeal and directed registration of the names of the appellants as the tenants. In coming to the said conclusion, the Revenue Court had taken note of the fact that a statutory tenancy which is protected under the Tamil Nadu Cultivating Tenants Protection Act, 1955 is not transferable for consideration. Adverting to the definition of the term tenant under the said Act, the Revenue Court found that a transferee from a tenant for consideration cannot claim to be a statutory tenant under the enactment.



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5. The Revenue Court also took note of the fact that the first respondent, who claims to be a tenant is a citizen of Singapore and she is running a Higher Secondary School as a Correspondent. The Revenue Court found that the claim that the first respondent has been cultivating the land contributing her own physical labour is wholly unbelievable. On the said conclusion, the Revenue Court set aside the order of the Tahsildar and directed recording of the names of the appellants 1 to 8 as the tenants.

6. Aggrieved a Revision was filed by the first respondent before the District Revenue Officer under Section 7 of the Act. The District Revenue Officer dismissed the Revision, on the conclusion that there are discrepancies in the amount that is said to have been paid to Santhanam, the original tenant and the transfer document which transfers interest in immovable property worth more than Rs.100/- is an unregistered instrument. It was also held that such transfer is not permitted by the Tamil Nadu Cultivating Tenants Protection Act.

<https://www.mhc.tn.gov.in/judis> 7. The fact that the first respondent is a Correspondent of a



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Convent School and the fact that she is residing in Singapore for more than 7 months in a year was taken into account to conclude that she could not have contributed her own physical labour. On the above conclusions, the District Revenue Officer dismissed the Revision by his order dated 18.06.2014 leading to the Writ Petition by the first respondent.

8. The Writ Court, however, allowed the writ petition on the conclusion that the tenancy was transferred and after the transfer of tenancy, the third respondent Trust had sold the property to the tenant herself and thereafter the appellants had approached the Tahsildar belatedly after 19 years. The Court also took into account the fact that the appellants have not filed any document to show that they have been cultivating the land. On the above conclusion, the learned Single Judge allowed the Writ Petition, setting aside the orders of the Authorities. Hence this Appeal.

9. We have heard Mr.S.Parthasarathy, learned Senior counsel appearing for Mr.A.V.Rajkumar, for the appellants, Mr.V.Raghavachari, learned Senior Counsel appearing for Mr.S.Ramesh, for the first



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respondent, Mr.S.R.A. Ramachandran, learned Additional Government Pleader appearing for the second respondent and Mr.N.C.Ashok Kumar, learned counsel appearing for the third respondent.

10. Mr.S.Parthasarathy, learned counsel appearing for the appellants would vehemently contend that a transfer of a tenancy right in agricultural land which is protected by the Tamil Nadu Cultivating Tenants Protection Act, itself is illegal. Taking us to the definition of the term ‘Cultivating Tenant’, the learned counsel would submit that a cultivating tenant should be a person, who contributes his/her own physical labour or that of any member of the family in cultivation of the land belonging to another, under a tenancy agreement, express or implied. It includes

(i) a person who continues in possession after the determination of the tenancy;

(ii) the heir of such person, if the heir contributes his own physical labour or any member of his family in cultivation of the land;

(iii) a sub-tenant who contributes his own physical labour or that of any member of his family in cultivation of



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such land;

(iv) any such sub-tenant who continues in possession of the land notwithstanding the main tenancy has been determined and it does not include a mere intermediary or his heir.

11. The learned counsel would submit that from the very definition, it is clear that a cultivating tenancy is not transferable. In support of his contention, the learned counsel would rely upon the judgment of a Single Judge of this Court in ***Balu Pillai @ Balasubramania Pillai & others v. Mahadevan and others, reported in (2010) 1 LW 541***, wherein after advertng to the definition of the term ‘tenant; under Section 2(b) of the Tamil Nadu City Tenants Protection Act, held that a recorded cultivating tenant has no right to alienate the leasehold right to a third party though he has a right to sub-let the properties to a third party. After considering the provisions of the Act as well as various other pronouncements of this Court, the learned Single Judge had held that a transfer of a cultivating tenancy is not permitted under the Act. In doing so, the learned Judge had observed as follows:

23 *Transferability of the cultivating rights:—*



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The learned counsel appearing for defendants 5 to 7 would vehemently submit that the cultivating tenant has every right to transfer the leasehold right in favour of a third party. But, for the question put by this court before the learned counsel appearing for defendants 5 to 7 whether there is any provision either under the Tamilnadu Cultivating Tenants Protect Act, 1955 or under the Tamilnadu Agricultural Lands Record of Tenancy Rights Act dealing with transfer of cultivating right, he would submit that there was no such specific provision under the Act recognizing the transfer of cultivating right by the cultivating tenants to a third party. But, the learned counsel appearing for defendants 5 to 7 banked on the decision of this court in RamiahNattar v. Jambakathamma And Others (1977 TLNJ 157). That was a case where the question whether a legatee of the leasehold right inherits the same with all incidents of inheritability and transferability. In the said case, on facts, it was found that the tenant holding over bequeathed the leasehold right in favour of the first defendant. Firstly, it is found that the question whether the leasehold right can be transferred by way of an instrument was not specifically dealt with in that judgment. Secondly, the facts and circumstances of the above case would not apply to the facts of this case.

24. *As the special Acts referred to above do not contemplate the right of transfer of the leasehold*



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rights in favour of third parties, it is held that the recorded cultivating tenant has no right to alienate the leasehold right to a third party though he has got a right under the Act to sub-let the properties to a third party. Ignoring the exclusive right of the landlord, the recorded cultivating tenant cannot simply sell away his leasehold rights in favour of a third party. Retaining his leasehold right, he can sub-let the premises to a third party.

25. Factually it is found that the first and second defendants, who were not cultivating tenants inasmuch as they had not tilled the lands physically, have no right to transfer the leasehold right in favour of the fifth defendant. Inasmuch as first and second defendants did not have any right to transfer the leasehold rights as they were not cultivating tenants, the fifth defendant also does not derive any leasehold right from the first and second defendants. The law also, as stated above, does not permit the wholesale alienation of the leasehold right by a recorded cultivating tenant in favour of a third party behind the back of the landlord. The seventh defendant also has failed to establish satisfactorily that he became a subtenant under the legal heirs of Karuthan. The factual decision rendered by the courts below with respect thereto cannot be upset by this court in the absence of cogent reason put forth before this court for interference.



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12. Relying heavily upon the above said judgment and the definition of the term ‘tenant’, Mr.S.Parthasarathy, the learned counsel would contend that the very alienation by Santhanam in favour of the first respondent itself is invalid and therefore, the mutation of the register effected by the Tahsildar recognizing the transfer effected itself is illegal. The learned counsel would also point out that the first respondent being a foreign national, who is not contributing her own physical labour in cultivation of the land cannot claim to be a cultivating tenant.

13. The learned senior counsel would also contend that once the order itself stems out of an illegality, it need not be challenged. He would also point out that no time limit prescribed under Section 5 of the Tamil Nadu Agricultural Lands Records of Tenancy Rights Act, to seek modification of the entry filed either under Section 4(2) or 5(2) of the Act. He would also draw our attention to the fact that though it is claimed that the Trust viz. the third respondent had alienated the property in favour of the children of the first petitioner in the year 1987, no mutation of the Revenue record has been effected.



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14. Contending contra, Mr.V.Raghavachari, learned Senior Counsel appearing for the respondent would submit that the document under which Santhanam has transferred the right in favour of the first respondent is of the year 1984 and the appellants had not taken any steps to cancel the same. According to the learned counsel being a transfer of an agricultural lease, the said instrument does not require registration.

15. The learned Senior Counsel would also rely upon the judgments in *A.Malaichami and others v. P.Muthandi and others*, reported in (1977) 90 LW 384; *J.Lease & Co and 2 others vs. M.S.A.MohamedFarooq*, reported in (2000) 2 LW 810; and *RamiahNattar v. Jambakathamma and others*, reported in 1977 TLNJ 157, in support of his contention that an agricultural lease could be transferred by the lessee. The learned Senior Counsel would also harp on the question of delay to contend that the appellants cannot be allowed to challenge the order of the Tahsildar after a gap of 19 years.

16. We have considered the rival submissions.



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17. An agricultural lessee becomes a statutory tenant entitled to protection from eviction. Such statutory tenancies are not transferrable.

This Court in *Balu Pillai @ Balasubramania Pillai & others v. Mahadevan and others*, referred to supra, had after referring to the provisions of the Act, has concluded that in the absence of any specific provision recognizing transfer of a cultivating right by the cultivating tenant to a third party, such transfer would be invalid. Therefore, we see no reason to differ from the views expressed by the learned Single Judge in *Balu Pillai @ Balasubramania Pillai & others v. Mahadevan and others*.

18. Let us now advert to the decisions that are relied upon by Mr.V.Raghavachari, learned Senior Counsel appearing for the first respondent. Reliance is placed on in *Ramiah Nattar v. Jambakathamma and others*, reported in *1977 TLNJ 157*, there the question was whether a testamentary heir would be included within the words of heirs of such person. While deciding the question, the learned Single Judge held that heirs of such person, who are contributing their own physical labour occurring in the definition of a cultivating tenant in the Tamil Nadu Cultivating Tenants Protection Act, 1955 would include a



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tenant and the status of a testamentary heir, the learned Single Judge came to a conclusion that it will take in itself a testamentary heir, who contributes his/her own physical labour. Though the learned Single Judge has used the term “transferee or a legatee”, the said judgment cannot be interpreted to mean that the learned Judge has authorised transfer of a statutory tenancy.

19. The next decision relied upon by the learned Senior Counsel appearing for the respondent is the one in *A.Malaichami and others v. P.Muthandi and others*, reported in (1977) 90 LW 384, there the question was whether a sub tenant, who is holding over after the determination of the lease in favour of the main tenant would still claim the benefits under the Act. Going by the definition, Hon’ble Chief Justice RamaprasadaRao, (as he then was) held that a sub tenant would also be entitled to the protection even after the expiry of the lease in favour of the main tenant. The third judgment relied upon by Mr.V.Raghavachari, in *J.Lease& Co and 2 others vs. M.S.A.Mohamed Farooq*, reported in (2000) 2 LW 810, also related to a legatee under a Will, therefore the same also cannot be of any help to the first respondent



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20. In the light of the pronouncement of this Court in *Balu Pillai*

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@ Balasubramania Pillai & others v. Mahadevan and others, wherein the Court considered the question of a transferee directly, the transfer effected by Santhanam in favour of the first respondent itself becomes questionable. Moreover, the transfer is not by way of a registered instrument. A lease hold right is an interest in immovable property, any transfer of such lease hold right is required to be done by way of a registered instrument. A surrender of the right to a land owner is different. But a transfer of a right by the tenant in favour of a third party will definitely come within Section 17 of the Registration Act as it is a transfer of a right in immovable property. Therefore, a transfer of such right for consideration of over Rs.100/- cannot be by way of an unregistered instrument. Therefore, the very transfer is vitiated and is illegal.

21. Moreover, both the Revisional and the Appellate Authorities under the Act, have as of fact found that the first respondent cannot be termed as a cultivating tenant, inasmuch as she is incapable of contributing her own physical labour and therefore, the very mutation of the Register effected by the officer at the instance of the first respondent



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22. The Writ Court has faulted the appellants for the delay. The law does not prescribe any limitation for seeking modification of the record maintained under *Act 10 of 1969*. Once it is found that the very transaction is illegal and would amount to fraud on the statute viz. the Tamil Nadu Cultivating Tenants Protection Act, 1955 and Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, the said fraud cannot be perpetrated by throwing out the petition which seeks rectification on the ground of laches or limitation. The Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu Vs. Jagannath*, reported in **(1994) 1 SCC 1**, had held that fraud vitiates all acts be it judicial or official. If we are to look at the Scheme of the transactions, we find that the transfer said to have been executed by Santhanam, in favour of the first respondent is dated 24.09.1984 and soon thereafter an application is filed by the Trustees of the third respondent Trust, under Clause 16 of the Scheme, for sale of the property to the first respondent and the said sale is sanctioned by the Court on 18.02.1986.

23. This chronology of events would show that the first respondent, who has planned to purchase the property, has obtained a



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transfer of tenancy which is illegal and had managed to purchase the property by getting rid of the tenant. This is nothing but an attempt by the first respondent in collusion with the third respondent to get rid of the tenant while purchasing the property. We therefore do not think that the Authorities could be faulted for having concluded that the transfer itself is illegal merely because of lapse of time. We therefore conclude that the Writ Court was not right in recognising the transfer and interfering with the orders of the Revisional and Appellate Authority under the *Act 10 of 1969*.

24. The Writ Appeal will therefore stand allowed, the order of the Writ Court is set aside, the orders of the Revisional Authority will stand restored. It will be open to the present owners to take appropriate proceedings for eviction of the appellants under the Tamil Nadu Cultivating Tenants Protection Act, 1955. The appellants will be recognised as tenants of the present owners of the property. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (L.VICTORIA GOWRI, J.)
02.12.2024



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jv

Index: Yes

Internet: Yes

Speaking order

Neutral Citation: Yes

To

1. The District Revenue Officer,
Madurai
2. Trustee, Soorvalisubbier Trust
No.19, Tamil Sangam Road,
Madurai.



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and

L.VICTORIA GOWRI, J.

(jv)

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