



W.P.(MD) No.23522 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.23522 of 2018

Settu, S/o.Periyasamy

... Petitioner

Vs.

The Record of Tenancy Authority and Thasildhar,
Mannachanallur,
Trichy District.

... Respondent

Prayer:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus, directing the respondent to adjudicate on petition submitted by the petitioner on 26.09.2017 under Sections 4(2) and 5(2) of the Tamil Nadu Cultivating Tenants Record of Tenancy Act.

For Petitioner : Mr.S.Muthukrishnan

For Respondent : Mr.S.P.Maharajan
Special Government Pleader

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondent to adjudicate on the petition submitted by the petitioner on 26.09.2017 under Sections 4(2) and 5(2) of the Tamil Nadu Cultivating Tenants Record of Tenancy Act.



W.P.(MD) No.23522 of 2018

2. The prayer in this Writ Petition is not maintainable in view of the collateral proceedings initiated against the petitioner by one Sritharan, S/o.Parthasarathy in O.S.No.474 of 2013, which was decreed on 24.11.2016, against which, the petitioner had filed an appeal in A.S.No.7 of 2017 before the Principal District Court, Tiruchirappali, and the same was dismissed on 31.08.2017, against which, the petitioner had also filed S.A.(MD)No.377 of 2018 before this Court and the same was also dismissed, vide judgment and decree, dated 30.10.2018. Relevant portion of the said judgment reads as under:-

" 11.The trial Court had held that the property belongs to legal heirs of T.R.Parathasarathy and there is no dispute in it. The defendant who claims himself as cultivating tenant and in possession and enjoyment of the suit property, has not discharged his onus to establish the said fact. The defence document does not indicate that the defendant Settu was allowed to cultivate the land or any lease entered between the landlord and the defendant. There is no document to show that he was a cultivating tenant under the plaintiff. Mere pleading sans the evidence is of no avail. Just because the plaintiff was not able to recollect the four boundaries of the property during the cross examination and ignorant of the word 'Adangal', will not disentitle his right over the property. The plaintiff having proved positively that he is the owner of the property and in possession of the property through patta and kist receipt, contrary to that fact the defendant has not proved that he is in



WEB COPY



W.P.(MD) No.23522 of 2018

possession and enjoyment of the property as cultivating tenant. For the said reason, the trial Court has allowed the suit and decreed as prayed for.

12. On appeal preferred by the defendant the first appellate Court has re-appreciated the evidence. Based on the grounds of appeal, the first appellate Court has framed the following points for consideration:-

(i). Whether the appellant contention is sustainable one regarding that the trial Court has failed to see the oral and documentary evidence and decreed the suit?

(ii). Whether the Judgment and Decree of the learned II Additional Subordinate Judge, Tiruchirappalli in O.S.No.474 of 2013 dated 24.11.2016 is legally sustainable one?

13. The first appellate Court on perusal of the evidence of the plaintiff as well as the defendant and the document relied by them has observed that through Ex.A-1 to Ex.A-8 the plaintiff has proved that the suit property was allotted to his father and after demise of his father, the property is enjoyed by him along with his brothers and sisters. The patta stands in their names and kist is also paid by them. Contrarily the defendant is not able to place any records before the Court to show that neither he nor his uncle Natarajan was enjoying the suit property as a cultivating tenant. In the absence of any lease agreement or any other proof that the defendant was in possession and enjoyment of the property, the respondent/plaintiff is entitled for injunction as prayed for and therefore confirmed the decree passed by the trial Court and dismissed the appeal.

14. In the second appeal, the learned counsel appearing for the appellant/defendant would contend that the landlord who is not able to produce Adangal



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W.P.(MD) No.23522 of 2018

to show what he is cultivating and not able to say the boundaries of the land, cannot be considered as the person in possession of the property. Further, Ex.B.3 and Ex.B.4 which are receipts issued by the father of the plaintiff in favour of Natarajan, uncle of the defendant, have not been properly considered by the Courts below, which would show that the suit property was leased out to the defendant.

15.It is also contended that the suit property is a trust property as per Ex.B.1. The plaintiff has suppressed that fact and filed a suit as if it is a personal property of the plaintiff and others. The suit is therefore not maintainable.

16.This Court gave anxious consideration to the above submissions made by the learned counsel appearing for the appellant. The plea which is now raised by the appellant that the suit property is a trust property is entirely baseless. He has not only failed to produce any document to show that the suit property is a trust property, but Ex.A-9 would indicate that he himself has purchased part of the property, which form part of the family arrangement of the year 1967 from the owners, who were allotted the 'B' schedule under Ex.A-1. Similarly, while the plaintiff has proved his entitlement and possession through Ex.A-1 to Ex.A-8, contrary plea of the defendant that originally his uncle Natarajan was enjoying the property as a cultivating tenant and later he became a cultivating tenant under the plaintiff, stands without any material evidence to substantiate.

17.This Court finds no substantial question of law involved in this second appeal. Hence, this Second Appeal is liable to be dismissed.



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W.P.(MD) No.23522 of 2018

18.As a result, this second appeal is dismissed. The Judgment and decree dated 24.11.2016 passed in O.S.No.474 of 2013 by the Second Additional Sub Court, Tiruchirappalli as confirmed in A.S.No.7 of 2017 vide Judgment and decree dated 31.08.2017 by the Principal District Court, Tiruchirappalli, are confirmed. No order as to costs. Consequently, connected Miscellaneous Petition is dismissed."

3. In the light of the above decision, the prayer of the petitioner is liable to be rejected and is accordingly, rejected. Consequently, this Writ Petition is dismissed. No costs.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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27.06.2024

To

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Mannachanallur,
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W.P.(MD) No.23522 of 2018

C.SARAVANAN, J.

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W.P.(MD) No.23522 of 2018

27.06.2024