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SA No. 1311 of 2007



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 07-01-2025**

CORAM

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

**SA No. 1311 of 2007**

**and**

**CMP.Nos.26174 of 2023, 14816, 11770 & 11776 of 2021**

1. Swami Hathiramjee Mutt  
Rep. By Its Mahantvaru His Holiness  
Arjundossri Mahant Varu, Having  
Office At Gandhiji Road, Tirupathi,  
Andhra Pradesh.

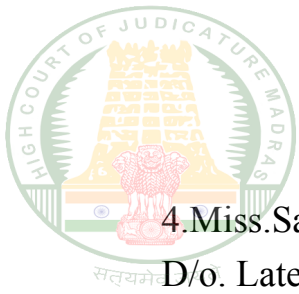
Appellant(s)

Vs

1. Mrs.Indira Ramakrishnan  
W/o. Late Mr.K.N.Ramakrishnan,  
Atbethel House, St. Thomas Church  
Road, Ootacamund.

2.Mrs.Saila Chidambaram Kutty (died)  
D/o. Late K.N.Ramakrishnan, Bethel  
House, St. Thomas Church Road,  
Ootacamund, Nilgiris.

3.Mrs.Sheela Jayaram  
D/o. Late K.N.Ramakrishnan, Bethel  
House, St. Thomas Church Road,  
Ootacamund, Nilgiris.



4.Miss.Sai Deepa

D/o. Late K.N.Ramakrishnan, Bethel  
House, St. Thomas Church Road,  
Ootacamund, Nilgiris.

5.Mr.N.R.Sundresh

S/o. Late K.N.Ramakrihnan, Bethel  
House, St. Thomas Church Road,  
Ootacamund, Nilgiris.

6.K Chidambarankutty

H/o Late Sailaja, Res At.Saranyam,  
Gayatri Nagar, Lane 1, Oottara,  
Kollengode, Palakad, Kerala 678506.

7.C Dhanya

W/o Subith Narayanan, Res  
At.Saranyam, Gayatri Nagar, Lane 1,  
Oottara, Kollengode, Palakad, Kerala  
678506.

8.C Dhivya

W/o Akhil K Unni, Res At C/o.  
Sudharmajan K.V. Kunnath House,  
Edathara, Palakkad, Kerala 678 611

\*RR6 to 8 brought on records Lrs of the deceased R2 Viz Saila Chidambaram Kutty vide Court order dated 13.07.2021 made in CMP.Ns.10440, 10441 and 10443 of 2021 in S.A.No.1311 of 2007.

Respondent(s)

**PRAYER:** Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 05.03.2007 in A.S.No.17 of 2006 on the file of the District Judge, Udagamandalam, confirming the decree and judgement decree dated 28.02.1996, made in O.S.No.491 of 1990 on the file of Court of District Munsif, Udagamandalam.



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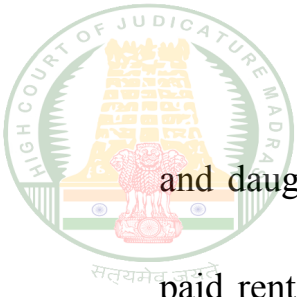
For Appellant(s): M/s R.Selvakumar

For Respondent(s): M/s.S.Ashok Kumar, for R1,3-5  
R2 - died  
M/s G. Krishnakumar, for R6-8

### **JUDGEMENT**

The appellant has filed this Second Appeal against the judgment and decree dated 05.03.2007 in A.S.No.17 of 2006 on the file of the District Judge, Udagamandalam, confirming the decree and judgement decree dated 28.02.1996, made in O.S.No.491 of 1990 on the file of Court of District Munsif, Udagamandalam.

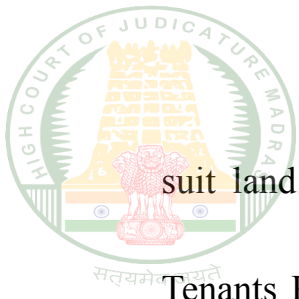
2. Challenging the concurrent findings of the courts below, the plaintiff has preferred this appeal. The plaintiff, Swami Hathiramjee Mutt, filed a suit in O.S. No. 491 of 1990 before the District Munsif, Ootacamund, Nilgiris, seeking recovery of possession from five defendants, who are the legal heirs of one Ramakrishnan. The plaintiff, Swami Hathiramjee Mutt is the absolute owner of the suit property. K.M. Ramakrishnan became a cultivating tenant of the property from 1962 onwards. After his demise, his legal heirs, namely his son



and daughters (Defendants 1 to 5), neither personally cultivated the lands nor paid rent regularly. Therefore, the tenancy was terminated by issuing a notice dated 17.06.1990. The first defendant gave a false reply to the notice, leading to the present suit for eviction and delivery of possession.

3. The defendants contested the suit by filing a written statement. They admitted that the plaintiff, Swami Hathiramjee Mutt is the owner of the suit property and that their father was a cultivating tenant. However, they claimed that after his demise, they personally cultivated the suit land and contributed their own labour. Therefore, they argued that, as cultivating tenants, they are entitled to protection under the Tamil Nadu Cultivating Tenants Protection Act and cannot be evicted except by due process of law. Hence, they prayed for dismissal of the suit as not maintainable.

4. Upon considering the submissions and evidence (both oral and documentary) presented by both sides, the trial court held that after the demise of the original tenant, Ramakrishnan, the defendants personally cultivated the



suit land. As a result, they were entitled to protection under the Cultivating Tenants Protection Act, 1955, and the plaintiff could take action only through

revenue proceedings. Accordingly, the suit was dismissed.

5. Challenging the said findings, the plaintiff Swami Hathiramjee Mutt filed an appeal in A.S. No. 17 of 2006 before the District Judge, Nilgiris. The learned first appellate court analyzed the entire evidence, framed appropriate points for consideration, and ultimately held that the defendants had established that they were cultivating the land. Therefore, the appeal was dismissed, confirming the trial court's findings.

6. The unsuccessful plaintiff preferred the present Second Appeal, challenging the concurrent findings of both the courts below.

7. The learned counsel for the appellant argued that, the defendants D2, D3, and D4 are employed in government or private sectors, D2 resides in Palakkad, and D5 is an electrical contractor. These facts were substantiated by



the testimony of DW-2. The courts below failed to properly appreciate this evidence and erroneously concluded that the defendants were personally cultivating the land. The findings are perverse, illegal, and liable to be set aside. Even during the lifetime of the original tenant Ramakrishnan, rent was not paid regularly. The defendants' own documents show this. Yet the courts wrongly observed that rent had been paid continuously. Accordingly, the findings of the courts below require interference.

**8. The appeal was admitted on the following substantial questions of law:**

*“A. Are the Court below correct and justify holding that the suit is not maintainable and dismissing the suit.*

*B. In the absence of proof of heir proving are establishing continuation of physical presence in cultivating are the courts correct and justify holding that the fifth defendant are cultivating tenant that entire to the family.”*



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9. During the appeal hearing, the appellant filed an application to submit additional evidence, letters from Respondents 1 to 5 to the Commissioner of the Endowment Department, dated 1986, seeking permission to purchase the suit property. The appellant contended that the suit property is under the control of the Andhra Pradesh Hindu Religious and Charitable Endowment Department, and therefore, the Swami Hathiramjee Mutt is exempt from the Tamil Nadu Cultivating Tenants Protection Act. The appellant prayed to frame additional substantial question of law, “(i) Whether the plaintiff is exempt from the purview of the Tamil Nadu Cultivating Tenants Protection Act if the property is under the control of the Hindu Religious and Charitable Endowments Department, Andhra Pradesh? And (ii) Whether such an issue is necessary can be decided at the time of disposal of the appeal? ”

10. The respondents opposed this, arguing that the appellant had never previously raised this plea or produced such documents. However, since the documents are official communications and public records, the court admitted



them as additional evidence, noting that doing so would not prejudice the defendants.

11. The learned counsel for the respondents argues that the husband of the first defendant and the father of defendants 2 to 5, namely K.N. Ramakrishnan, was a tenant in the suit property, paying a rent of Rs. 360 per annum since the year 1910. Until his demise in 1982, he regularly paid rent. After his death, as his legal heirs, the defendants personally cultivated the suit property as cultivating tenants. Thereafter, they attempted to pay the rent, but the plaintiffs purposely evaded accepting it. The money order (M.O.) receipts were also produced before the Court and were rightly appreciated by the Trial Court.

12. Further respondent contend that as legal heirs of the cultivating tenant, the defendants continued possession and enjoyment of the property through their personal labour. Therefore, they are deemed to be cultivating tenants as on date. Hence, the suit is not maintainable in a civil court. They are entitled to protection under the Tamil Nadu Cultivating Tenants Protection Act,

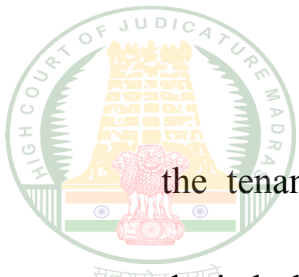


and they can only be evicted through proceedings before the Revenue Court.

The findings rendered by the Trial Court require no interference and the appeal deserves to be dismissed.

13. Further, learned counsel also contends that the property being under the supervision of the Andhra Pradesh State Charitable and Hindu Religious Endowments Department is irrelevant to the present appeal. There is no proof that the suit property was under the control of the said department. Hence, the additional documents filed by the appellant are unwarranted. Accordingly, he prays for dismissal of the appeal as being without merit.

14. Considering submissions from both sides, the facts reveal that the suit property absolutely belongs to the plaintiff Swami Hathiramjee Mutt. The property was given to Ramakrishnan in the year 1960 on lease for annual rent, and he was a cultivating tenant. Subsequently, the plaintiff came to know that Ramakrishnan had died and that his legal heirs were neither cultivating the land nor paying the rent. As a result, the plaintiff issued notice in 1990, terminating



the tenancy and seeking possession of the lands. However, the defendants denied the allegations in their reply notice, which contained false claims.

Consequently, the plaintiff filed the present suit for eviction and possession.

15. The fifth defendant examined himself as DW-1. All the defendants jointly filed a written statement claiming that they were jointly cultivating the land using their physical labour. To support their contention, DW-2, a neighboring landowner, was also examined. The defendants relied on certain money order receipts to show that they attempted to tender rent after the demise of their father. However, the plaintiff allegedly evaded receipt of the same.

16. On perusal of the records, it is revealed that the suit property admittedly belongs to the plaintiff, Swami Hathiramjee Mutt. The said Ramakrishnan was a cultivating tenant is not in dispute. However, whether his legal heirs continued cultivating the land by contributing personal labour is the key issue. The records show that even during the lifetime of Ramakrishnan, from 1962 to 1964, he did not pay rent regularly. As a result, the plaintiff



initiated proceedings before the Revenue Court in 1964 (Exhibit B-5). In 1973,

the Revenue Court recorded the non-payment of rent and closed the case

(Exhibit B-6) due to lack of follow-up.

17. Further, in 1978, the plaintiff's counsel issued a notice to Ramakrishnan regarding non-payment of rent, which was replied to. After Ramakrishnan's demise in 1982, his legal heirs requested time to pay the rent. From 1985 onwards, the plaintiff initiated proceedings against the defendants. The defendants attempted to pay rent via money orders, but this does not establish a continuous or valid tenancy.

18. Even during Ramakrishnan's lifetime, he was irregular in payment. After his demise, the defendants did not pay rent consistently. The tenancy was rightfully terminated by the plaintiff in 1990 via notice (Exhibit A1). Though the notice was not received by defendants 2 to 5, the returned covers marked as Exhibits P3 to P6 show they were not residing at the stated address near the suit property. However, the defendants issued a reply notice through their counsel



denying the plaintiff's allegations. Therefore, at the time of notice issuance, it is proved that defendants 2 to 4 were not residing in or around the suit property.

19. Moreover, the first defendant (wife of Ramakrishnan) is of advanced age and cannot contribute personal labor. Defendants 2, 3, and 4 are government employees, one employed with BSNL, another with Tamil Nadu Photo Films, and the third, being a married daughter, is no longer residing near the suit land. The fifth defendant is an electrical contractor. There is no proof that they contributed personal labour to the land cultivation.

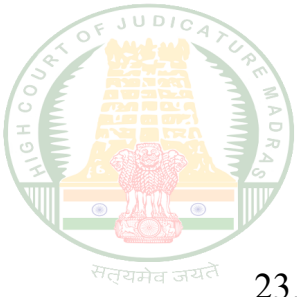
20. Though DW-1 (the fifth defendant) was examined, his responses in cross-examination were evasive. He admitted that they help "if necessary and called upon." DW-2 confirmed that defendants are government employees and not residing near the suit property. His evidence also suggests that cultivation was done through third parties. To claim protection under the Cultivating Tenants Act, the burden is on the defendants to prove that they cultivated the land personally with physical labour, which they failed to do.



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21. There is no evidence on record such as *Adangal*, *Chitta*, or other revenue documents to establish cultivation by the defendants. Only notices and correspondence were relied upon, which are insufficient to prove actual cultivation. The Trial Court and First Appellate Court failed to appreciate the facts and evidence properly. When findings are based on improper appreciation of evidence, this Court is empowered to interfere. Hence, the Trial Court's findings are perverse and liable to be set aside.

22. There is no proof that the defendants have paid any rent till date. They are unlawfully occupying the suit land belonging to the plaintiff Swami Hathiramjee Mutt. Even from 1964 onwards, there has been irregular payment of rent. Therefore, the plaintiff is entitled to the relief prayed for. The courts below erred in holding that the defendants were cultivating tenants and that the plaintiff ought to have approached the Revenue Court as such is erroneous, and the civil suit is maintainable, even if the property is under the control of the Endowment Department.



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23. The findings of the courts below are set aside. The suit is decreed. The respondents / defendants are directed to vacate and hand over possession of the suit property to the appellant / plaintiff within eight (8) weeks from the date of receipt of a copy of this order. The additional issues raised are found to be unwarranted. Questions of law A and B are answered in favour of the appellant.

24. Accordingly, this Second Appeal is allowed. The connected miscellaneous petitions are closed. There shall be no order as to costs.

**07-01-2025**

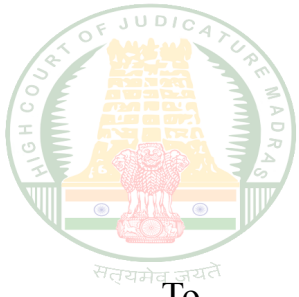
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To  
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- 1.The District Judge,  
Udagamandalam.
- 2.The District Munsif,  
Udagamandalam.
- 3.The Section Officer,  
V.R.- Section , High Court of Madras.



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**T.V.THAMILSELVI J.**  
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