



A.S.No.162 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 05.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.162 of 2022 & CMP.No.5829 of 2022

1. Pechi Ammal
2. Sankaravadivu

... Appellants

Versus

1. Kuluppai Ramasamy Chettiar Dharma Paribalana Sabha,
Rep. by its Dharmakarthas, Cuddalore O.D.,
21, Pappammal Nagar Extension,
Kondur, Cuddalore District.

2. S.Arumugam

3. N.Mandhiramoorthy

... Respondents

PRAYER : This Appeal Suit has been filed under Order 41 Rule 1 read with section 96 of Code of Civil Procedure to set aside the judgment and decree dated 21.12.2021 made in O.S.No.86 of 2018 on the file of the learned II Additional District Court, Chidambaram by allowing this Appeal Suit.

For Appellants : Mr.N.Manoharan



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For Respondents : Mr.S.Adharsh – R2

No appearance – R1 & R3

JUDGMENT

Aggrieved over the dismissal of the suit filed for declaration and permanent injunction, the present appeal has been filed by the unsuccessful plaintiffs.

2. The parties are arrayed as per their own ranking before the trial Court.

3. It is the case of the plaintiffs that the suit property was originally owned by the first defendant. The plaintiffs and third defendant are sisters and brother. The plaintiffs' father Nallaperumal Pillai was a cultivating tenant in respect of the suit property and tenancy was recorded in the Record of Tenancy in T.R.No.321 of 1975. The plaintiffs' father died intestate. Even during the life time of their father, the plaintiffs and the third defendant were exerting joint labour along with their father. According to them, they are cultivating tenants



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along with the third defendant and they are in physical possession of the property. The second defendant is their neighbour and he owns 39 cents in the same survey number. Besides he has also sold the same to one Rajalakshmi on 15.03.1999. However, from 01.06.2018, the second defendant is attempting to trespass into the suit property. Hence, the suit has been filed by the plaintiff for a declaration that the plaintiffs and the third defendant are joint cultivating tenants in respect of the suit property and for permanent injunction restraining the second defendant and their men from interfering with the plaintiffs' enjoyment of the suit property.

4. It is the contention of the second defendant that the description of he property is not correct. The third defendant has already filed a suit through Selvakumar, Krishnaraj and Senthil in O.S.No.30 of 2012 on the file of the District Munsif Court, Portnovo for permanent injunction against this defendant and his wife. The said suit has been dismissed after contest. In the above suit, the third defendant has been examined as P.W.2, wherein he has spoken as if he has sold out the lease hold right in favour of above three persons for a sum of Rs.2 lakhs and executed a sale deed dated 19.04.2011. It is also denied that the



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plaintiffs' father has been recorded as a cultivating tenant and the plaintiffs were also exerting joint labour. According to this defendant, his father had been in possession and enjoyment of an extent of 2.00 acre as a lessee under the first defendant for more than 50 years. After his death, this defendant has been in possession and enjoyment of the property. He had also raised paddy crops in the extent of 1.48 acres which is three months old. Besides he has also constructed a thatched house in the property on the north of the road leading to railway station and also obtained electric service connection in his name. The thatched house was constructed in the extent of 1.48 acres and his wife has been in possession and enjoyment of an extent of 0.48 cents by a sale deed executed by the first defendant. Hence, it is his contention that he is in possession of 1.49 acres. Hence, opposed the suit.

5. On the basis of the above pleadings, the following issues have been framed by the trial Court :

1. Whether the plaintiffs and the third defendant are the cultivating tenants in respect of the suit schedule property?



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2. Whether the plaintiffs are entitled to get the relief of declaration as prayed for?

3. Whether the suit properties are in possession and enjoyment of the plaintiffs and the third defendant?

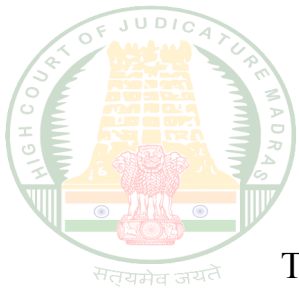
4. Whether the plaintiffs are entitled for permanent injunction against the third defendant?

5. Whether the second defendant is a tenant under the first defendant?

6. Whether the suit is bad for want of leave of the Court under section 92 of CPC?

7. To what relief the plaintiffs are entitled for?

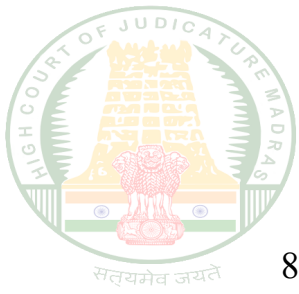
6. On the side of the plaintiffs, P.W.1 and P.W.2 have been examined and Ex.A.1 to Ex.A.9 have been marked. On the side of the second and third defendants, D.W.1 and D.W.2 have been examined and Ex.B.1 to Ex.B.12 have been marked.



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The first defendant remained *exparte* in the suit. Considering entire evidence, the trial Court has dismissed the suit. Challenging the same, the present appeal has been filed.

7. The learned counsel appearing for the appellant mainly would contend that Ex.A.2 of the year 1975 clearly indicate that the plaintiffs' father was recorded as a cultivating tenant. Ex.A.4, Ex.A.5 and Ex.A.6 also proves that the father of the plaintiffs was in possession of the property. The plaintiffs being his legal heirs were continuing as a cultivating tenant along with their father. Therefore, according to him, as the entries in the record have been made, there shall be a presumption that the plaintiffs were cultivating in the property and they are in possession of the property. The contention of the second defendant that he is in possession of the property as a lessee has not been established. Further, the receipts issued by the first defendant in favour of the plaintiffs' father and plaintiffs clearly show that they are in possession of the property. Therefore, it is his contention that the trial Court without appreciating the evidence in proper perspective has dismissed the suit.



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8. The learned counsel appearing for the respondent would content that the plaintiffs are not in possession of the property. They are not cultivating tenants under the first defendant. That apart, the third defendant himself has been examined as P.W.2 in the earlier suit filed by the Selvakumar, Krishnaraj and Senthil against the second defendant, wherein he has clearly admitted that he is not in possession of the property. Even in this suit, his evidence as D.W.2 indicate that he is not in possession of the suit property. That apart, the plaintiffs have not established their possession to seek injunction. Further the relief of declaration that they are cultivating tenant and joint exertion is not maintainable before the Civil Court.

9. In the light of the above submissions, the points that arise for consideration are :

1. Whether the plaintiffs are in possession of the suit property as a cultivating tenants?
2. Whether the plaintiffs are entitled for declaration that they are cultivating tenant along with the third defendant?
3. To what other reliefs the parties are entitled?

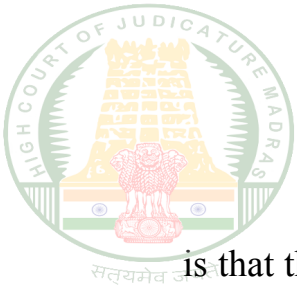


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10. The suit has been proceeded as if the plaintiffs' father was recorded as a cultivating tenant under the first defendant and the plaintiffs have also exerted joint labour along with their father and the third defendant herein. Therefore, according to them, they are in possession of the property as a cultivating tenant. To prove their contention, Ex.A.2 has been filed to show that the name of their father has been recorded as a cultivating tenant by an Order dated 30.09.1975. Ex.A.3 series are the receipts said to have been issued by the first defendant. Ex.A.3 receipts have been issued from 07.03.1989 and four receipts were said to have been issued by the first defendant. Ex.A.4 Adangal has been filed to show that the name of the plaintiffs' father has been recorded in the Adangal. Similarly, lease agreement has also been filed as Ex.A.5. All other documents are subsequent sale deeds and settlement deeds executed between the parties have been filed to show that the plaintiffs are in possession of the property.

11. It is relevant to note that the plaintiffs traces their claim mainly on the ground that they are cultivating tenants. The specific stand of the appellants



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is that they were exerting their physical labour even during the life time of their father. It is an admitted case of the plaintiffs that their father died intestate. Though it is stated that their father died, it is not stated in the plaint or in the evidence of P.W.1 that when their father died.

12. Be that as it may. Though the father of the appellants has been shown as a cultivating tenant in Ex.A.2, now it has to be seen whether the appellants are cultivating tenants and continued to be in possession of the property as a cultivating tenant. It is relevant to note that a cultivating tenant means, a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another under tenancy agreement, expression includes any such person, if he contributes his own physical labour or that of any member of his family in the cultivation of such land. Therefore, the legal heirs, who claims that they are cultivating tenant, they have to establish that they contributed their physical labour or any other member of his family contribute in the cultivation of such land. The definition contained in the Act 10 of 1969, Tamilnadu Agricultural Lands Record of Tenancy Rights Act makes it very clear that the legal heirs, who claims to be



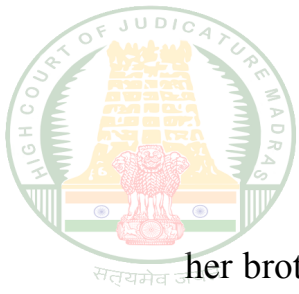
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cultivating tenant must establish that they contribute their own physical labour.

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Except the documents in the name of their father, no other documents have been filed by the appellants to prove that they are still continuing cultivation and exerting their physical labour.

13. The evidence of P.W.1 makes it clear that she was a Government servant and she has retired recently and she is not even aware of the fact that



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her brother is shown as a defendant. Her evidence further indicate that she was under impression that the suit has been filed for partition only. Her evidence also show that the second appellant is not in a position to walk. Further, it is her categorical admission that they have not taken the land for lease. Therefore, as long as the plaintiffs have not established the fact that they contribute physical labour and continued to cultivate in the property even after the death of their father, mere entry of their father's name will enure to the benefit of the plaintiffs to claim as a cultivating tenant.

14. It is also relevant to note that D.W.3 in his evidence has stated that he is electrician, besides he is also doing contract work. He has also admitted that one Selvakumar, Krishnaraj and Senthil have already filed a suit against the second defendant. In that suit, he has been examined as a witness on their side. In his evidence, he has admitted that he had sold his tenancy rights. His cross examination clearly indicate that neither the plaintiffs nor the third defendant are in possession of the property. He has further clearly admitted that the second defendant has made preparation to cultivate paddy. He has also admitted that in Ex.A.1, the name of the second defendant is also found. A



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suggestion is made to D.W.3 that after the earlier suit has been dismissed, the present suit has been filed. It is also admitted that the second defendant has also sold one portion of the property and they have constructed a house in the said land. These facts clearly establish that the plaintiffs are not in possession of the property.

15. The evidence of P.W.1 and P.W.2 clearly indicate that they are in different avocation and they had never contributed their physical labour. Therefore, merely on the basis of some receipts said to have been issued by the first defendant, that itself is not a ground to hold that the plaintiffs have established their possession in the suit property. The very evidence of P.W.1 and D.W.3 makes it clear that their possession has not been established by the plaintiffs. Further to contend that they are still in possession of the property, no revenue records have been filed, except the revenue records in the name of their father, which was issued long back. The first plaintiff is a retired Government servant and the second plaintiff is doing a different job. At any event, the issue as to whether the plaintiffs are cultivating tenant, also cannot be gone into by the Civil Court. The same has to be adjudicated before the authority under the Act 10 of 1969. Further, the revenue records Ex.B.1 and Ex.B.2 shows that the



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name of the second defendant also found place as if they are in possession of the property. Therefore, I do not find any merits in the appeal. The points are answered accordingly.

16. In the result, this appeal suit is dismissed and the judgment and decree of the trial Court in O.S.No.86 of 2018 dated 21.12.2021 is confirmed. There shall be no Order as to costs. Consequently, connected miscellaneous petition is closed.

05.03.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

The II Additional District Judge,
Chidambaram.



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N. SATHISH KUMAR, J.

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