



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2025

CORAM

THE HON'BLE MR. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.134 of 2025

Arumugaservai (Died)

- 1.Murugan
- 2.A.Palanivel
- 3.S.Veeramani
- 4.C.Muthumariammal

...Appellants/Appellants/Plaintiffs

Vs.

- 1.Kattaripandian
- 2.Thangavel

3.Tashildar,
Tashildar office, Bodinayakanur,
Bodinayakanur Taluk,
Theni District.

- 4.District Collector,
Theni Taluk, Theni District.

...Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgement and decree dated 04.12.2024 in A.S.No.11 of 2024, passed by the learned Sub Court at Bodinayakanur, Theni District, confirmed Judgment and Decree dated 17.08.2021, in O.S.No.85 of 2015, passed by the learned District Munsif Court, Bodinayakanur, and to set aside the same and consequently allow the suit.



WEB COPY



For Appellants : M/s.R.Narayanan

For Respondents : Mr.R.Suriyanarayanan for R1
Mr.B.Saravanan
Additional Government Pleader
for R3 & R4

* * * * *

JUDGMENT

The unsuccessful plaintiffs who were impleaded as the legal heirs of the deceased first plaintiff in the suit are before this Court. The Second Appeal is filed challenging the Judgment and decree dated 04.12.2024, in A.S.No.11 of 2024, on the file of the Sub Court, Bodinayakanur, Theni District, confirming the judgment and decree dated 17.08.2021, in O.S.No.85 of 2015, on the file of the District Munsif Court, Bodinayakanur.

2.For the sake of inconvenience, the parties are referred to as per their ranking before the trial Court.

3.Originally, the suit was filed by the deceased first plaintiff who is the father of the plaintiffs 2 to 5. According to the first plaintiff, the first defendant is the owner of the suit schedule property and he has been assigned with the tenancy to cultivate the land based on which he was registered as cultivating tenant on 28.10.1971. He has been cultivating the said land by cultivating



WEB COPY

Coconut, Mango, Lemon and Jack fruit etc. Pursuant to the registration of his name by the Special Tashildar as a cultivating tenant, he has been cultivating the land by paying lease amount to the first defendant. While so, all of a sudden for the past one week prior to filing of the suit, the first defendant by intending to change the cultivating tenancy in favour of the second defendant started to interfere in the possession and cultivation carried on by the first plaintiff. As such, the first plaintiff has come up with the suit for permanent injunction. The suit was filed on 20.08.2015, and the first plaintiff died on 25.05.2018. Pursuant to which, the plaintiffs 2 to 5 have been impleaded as the legal heirs and they have filed amended plaint.

4.The first defendant resisted the suit by contending that originally the first plaintiff was carrying on cultivating the land as he was registered as a cultivating tenant. However, due to his old age and he was more than 80 years, orally, the tenancy was handed over by him in favour of his son, namely, the second defendant and the second defendant was in possession and enjoyment of cultivating the suit property. As dispute arose between the first and the second defendant, the first defendant had approached the police authorities. He has lodged a complaint and pursuant to the enquiry, a report was also submitted wherein it was noted that the second defendant alone was carrying on



WEB COPY

cultivation. It is the further contention of the second defendant that the first defendant was only entitled to cultivate paddy and maize, but on the contrary, he has changed the nature of land and planted Coconut, Mango and other trees, which only yield once in a year. It is also contended that as the second defendant is indulging in the activities against the interest of the land owner, the first defendant had raised a dispute before the District Revenue Court, Madurai, in D.C.D.P.No.21 of 2010, to evict the second defendant from the suit schedule property. The Revenue Court, Madurai, by way of an order dated 25.07.2013, passed an eviction order against the second defendant. Challenging the same, the second defendant has preferred Civil Revision Petition in C.R.P.(MD)No. 2426 of 2014, before this Court and the same came to be dismissed on 01.04.2015. Pursuant to which, the first defendant had filed Execution Petition in E.P.No.7 of 2014, for getting delivery of the suit schedule property and E.P. was also allowed by the Revenue Court on 08.07.2015, ordering eviction of the second defendant from the suit schedule property. At this stage, the first plaintiff to frustrate the order of eviction and drag on the proceedings, had come up with the above suit. It is the specific contention of the first defendant that the first plaintiff was not in possession and cultivation of the suit schedule property on the date of filing of the suit and the properties have been cultivated by the second defendant from long ago and sought for dismissal of the suit.



WEB COPY

5.The second defendant had filed a separate written statement resisting the claim of the plaintiff.

6.During trial, the second plaintiff examined himself as P.W.1 and further examined P.W.2, P.W.3 and marked the documents in Ex.P1 to Ex.P5. On the side of the defendants, the first defendant examined himself as D.W.1 and marked the documents as Ex.D1 to Ex.D3. The trial Court after analysing the evidences dismissed the suit on the ground that though the first plaintiff was originally the cultivating tenant, his possession was handed over to the second defendant and he had been in cultivation. Since dispute arose, in the application filed by the first defendant an eviction was ordered against the second defendant which has been confirmed by this Court and further, the plaintiffs 2 to 5 have not been in cultivation contributing physical labour and they don't come within the purview of cultivating tenant.

7.On appeal, the lower appellate Court holding that the plaintiffs 2 to 5, cannot be termed as cultivating tenants simply being the legal heirs and unless it is established that they are contributing labour and are in cultivation, they would not be covered under the benefits of the Act and also considering the



proceedings taken by the first defendant to evict the second defendant who is the son of the first plaintiff, dismissed the appeal confirming the judgment and decree of the trial Court. Assailing the concurrent finding of fact, the plaintiffs have preferred the above appeal.

8.The appeal has not been admitted and it is only in the adjourned admission stage.

9.The learned Counsel appearing for the appellants contended that the proceedings that has been mainly relied on by the lower appellate Court placing reliance on Ex.D1 to Ex.D3, cannot be of much use. Those proceedings are taken as against the second defendant, who is not the cultivating tenant and if at all any proceedings is sought to be taken by the first defendant, it can be done only as against the first plaintiff, who is admittedly registered as the cultivating tenant. It is the further contention that since the relationship was between the first plaintiff and the second defendant was not cordial, the defendants 1 and 2 entered into collusive proceedings and as a result of which, eviction order came to be passed which was not within the knowledge of the first plaintiff and therefore, the order do not bind the first plaintiff. The learned Counsel further contended that on the death of the first plaintiff, the plaintiffs 2 to 5 were in



enjoyment of the suit schedule property and therefore, they are entitled to have the benefits under the Act and the cultivating tenancy pass on to them as they are legal heirs to the first plaintiff. The learned Counsel further contended that the first defendant had admitted that the first plaintiff is the cultivating tenant and he has only taken a stand that the tenancy has been orally transferred by the first plaintiff in favour of the second defendant which has not been established through any materials and therefore, the judgment and decree of the Courts below in dismissing the suit is not based on no evidence and perverse, as such he sought for interference of this Court.

10.Per contra, the learned Counsel appearing for the respondent contended that the first defendant had taken the steps to evict the second defendant in the manner known to law and the eviction order was ordered by the statutory authorities in Ex.D1 and challenging the same, the second defendant also filed C.R.P.(MD)No.2426 of 2014, before this Court and the eviction order came to be confirmed by the order of this Court, dated 01.04.2015, in Ex.D3. It is the further contention that thereafter, the execution petition also came to be filed and only after E.P. was allowed and eviction was ordered, the first plaintiff who has been a silent spectator, on the instigation of the third defendant had come up with this suit only to drag and deny the



benefits of the eviction order passed in favour of the first defendant. It is the further contention that the plaintiffs 2 to 5, who were nowhere in the picture, cannot claim any benefits under the Act, since they have not contributed their physical labour and they would not become the cultivating tenants simply being the legal heirs of the first plaintiff and therefore, the Courts below have rightly by analysing the evidences had dismissed the suit which is justified and needs no interference.

11.Heard the rival submissions made by the learned counsel on either side and perused the materials available on record.

12.Admittedly, the suit schedule property belongs to the first defendant. It is also admitted that originally, the first plaintiff was the tenant in the suit schedule property carrying on cultivation and pursuant to the application made by him, he has been registered as the cultivating tenant by way of an order dated 28.10.1971, in Ex.P1. Admittedly, the second defendant is the son of the first defendant.

13.It is the case of the first defendant that as the first plaintiff was aged above 80 years and he was not in a position to carry on cultivation, he had



orally handed over the tenancy in favour of the second defendant and the second defendant being son has been in a possession and carrying on cultivation in the suit schedule property.

14. There had been certain dispute between the first defendant and the second defendant and in this regard, there was a police complaint in which enquiry has been conducted and those proceedings reveal that the relationship between the first defendant and the second defendant was not cordial. In view of the adverse proceedings and also contending that the second defendant had been carrying on cultivation by planting Coconut and Mango, which are not permissible as only paddy and Maize and such other crops are to be cultivated and the nature of the property is sought to be changed, the 1st defendant had approached the competent authority under the Tamil Nadu Cultivating Tenants Protection Act, 1955, seeking for eviction of the second defendant. The first defendant filed a petition in D.C.D.P.No.21 of 2010, before the District Revenue Officer/ Revenue Court, Madurai. On contest, petition filed by the first defendant came to be ordered and an eviction order was passed as against the second defendant on 25.07.2013. The second defendant has further challenged the order of eviction passed by the Revenue Court, Madurai, in Ex.B1, before this Court by filing C.R.P.(MD)No.2426 of 2014. This Court by an order dated



01.04.2015, dismissed C.R.P. in Ex.B3, confirming the order of eviction passed by the Revenue Court. Thereafter, the first defendant has also filed eviction petition in E.P.No.7 of 2014, seeking for delivery of the property and E.P. also came to be allowed by the Revenue Court on 08.07.2015, ordering eviction of the second defendant from the suit schedule property.

15.It is to be noted that after all these adverse orders, which came to be passed as against the second defendant and confirmed by this Court and facing the order of eviction, the plaintiff, all of a sudden, had come up with the present suit seeking for permanent injunction. It is the only contention of the first plaintiff that he had been carrying on cultivation and all of a sudden, one week prior to filing of the suit, the first defendant wanted to change the tenancy in favour of the second defendant and he interfered in the possession. It is also to be noted that it is the categorical averment of the first plaintiff that he is alone carrying on cultivation in the suit schedule property and certain adverse steps were taken by the defendants 1 and 2, he had come up with the suit seeking permanent injunction. After filing of the suit, the first plaintiff had died and the plaintiffs 2 to 5 had been impleaded themselves and they had also filed an amended plaint.



16. In the amended plaint, the plaintiffs 2 to 5, had reiterated the averments as made by the first plaintiff and had only included that pursuant to the death of the first plaintiff, they are in the enjoyment of the property.

17. As per Section 2(aa) of the Tamil Nadu Cultivating Tenants Protection Act, 1955, cultivating tenant is defined in the following manner:-

(aa) "Cultivating tenant"-

(i) 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 a tenancy agreement, express or implied; and

(ii) includes-

(a) any such person who continues in possession of the land after the determination of the tenancy agreement;

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

(c) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land; or

(d) any such sub-tenant who continues in possession of the land notwithstanding that the person who sublet the land to such sub-tenant ceases to have the right to possession of such land; but

iii) does not include a mere intermediary or his heir;



WEB COPY

18. As per the above provision, cultivating tenant means, a person who contributes his own physical labour or that of any member of his family is in cultivation of any land belonging to another. The provision also make it clear the legal heirs would not automatically become the cultivating land on the death of the cultivating tenant. However, only if they are contributing their own physical labour or that any member of his family is in cultivation of such land, they will be construed to be a cultivating tenant. In the instant case, after the death of the first plaintiff, the plaintiffs 2 to 5, ought to have been in cultivation by contributing their labour or any one of their family members should have been in cultivation of the land. Admittedly, there is not even a single averment made in the pleadings filed by the plaintiffs 2 to 5, that they are carrying on cultivation by their own physical labour or any of their family members are in cultivation of such land. But only an averment is made that after the death of the first plaintiff, they are in enjoyment of the suit schedule property. As per the provisions of the Tamil Nadu Cultivating Tenants Protection Act, 1955, the mere enjoyment of the plaintiffs 2 to 5, is not sufficient to become a cultivating tenant and it is only when they are carrying on cultivation by contributing their own labour either by themselves or by any one of the members of their family, they would be entitled to be the cultivating tenants even by being the legal heirs



of a cultivating tenant.

WEB COPY

19.The Courts below have rightly analysed the legal provision and found that the first defendant who had handed over the tenancy in favour of his son, namely, the second defendant and the second defendant who are in cultivation of the suit schedule property, had some dispute with the owner of the land. The first defendant had taken appropriate proceedings and an order of eviction has already been passed by the competent forum which has been confirmed by this Court and further the delivery in execution has already been ordered. The Courts below had also rightly analysed the pleadings and also the provision of the Act and found that the plaintiffs 2 to 5, are not entitled to seek for the benefits under the Act, after the death of the first plaintiff that as they do not become the cultivating tenants merely on the death of the first plaintiff.

20.When the first defendant who is the owner of the property had approached the authorities in the year 2010 and after a long contest, was only able to obtain the eviction order in the year 2015, and further eviction order was also confirmed by this Court, because of the suit filed by the first plaintiff, now again, the first defendant is not able to take delivery of the property and the first plaintiff had successfully dragged for more than 10 years, after filing of the suit.



WEB COPY

The special enactment is for protecting the interest of the genuine tenancy holders, who are cultivating the land but when the land owner had approached the competent authority and obtained the order of eviction, the plaintiffs cannot be allowed to find loop holes and initiate one proceedings or the other and frustrate the order of eviction passed.

21. In view of the above deliberations, this Court finds that both the Courts below have arrived at a finding of fact based on the materials available on record. There is no illegality or perversity in the finding arrived at. No substantial question of law arises for consideration of this Court in this appeal.

22. Accordingly, this Second Appeal stands dismissed. No costs.

26.06.2025

NCC: Yes/No
Internet: Yes/No
Index: Yes/No

RJR



WEB COPY



G.ARUL MURUGAN, J.

RJR

To

- 1.The learned Sub Judge,
Bodinayakanur, Theni District.
- 2.The learned District Munsif, Bodinayakanur.
- 3.The Tashildar,
Tashildar office, Bodinayakanur,
Bodinayakanur Taluk,
Theni District.
- 4.The District Collector,
Theni Taluk, Theni District.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

S.A.(MD)No.134 of 2025

26.06.2025