

S.A.(MD)No.695 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.11.2024

PRONOUNCED ON:14.02.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD)No.695 of 2020
and
C.M.P.(MD)No.7222 of 2020**

Suresh : Appellant/1st Respondent/Plaintiff

Vs.

1.Poomalai : 1st Respondent/Appellant/2nd Defendant

2.A.K.M.L.Muthuraman Chettiyar : 2nd Respondent / 2nd Respondent/
1st Defendant

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree passed in A.S.No.103 of 2014, dated 28.08.2020, on the file of the Principal Subordinate Judge, Pudukkottai reversing the judgment and decree passed in O.S.No.105 of 2007, dated 26.08.2014, on the file learned District Munsif cum Judicial Magistrate, Keeranur.



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For Appellant : Mr.G.Karnan
for Ms.A.Banumathy

For Respondents :Mr.V.S.Badrinath
for R.1
:Mr.R.Balakrishnan
for R.2

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.103 of 2014, dated 28.08.2020, on the file of the Principal Subordinate Court, Pudukkottai, reversing the judgment and decree made in O.S.No.105 of 2007, dated 26.08.2014, on the file of the District Munsif Court, Keeranur.

2. The appellant, as plaintiff has filed the suit for permanent injunction restraining the defendants and their men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

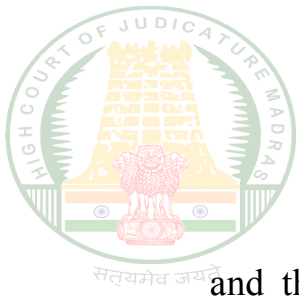


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4. Admittedly the suit properties in three schedules came to be owned by the first defendant.

5. The case of the plaintiff is that his father and forefather are enjoying the suit properties as cultivating tenant for more than 35 years, that after the death of the plaintiff's father, the plaintiff has been in possession and enjoyment of the property, that since the first defendant claimed more lease amount, the plaintiff was constrained to approach the Tahsildar, Illuppur Taluk to register his tenancy right under the record of tenancy register, that after enquiry, RTR order came to be passed on 16.05.2007 recording the plaintiff as cultivating tenant, that the first defendant in collusion with the second defendant and by alleging that he sold a portion of the suit property to the second defendant, the first defendant instigated the second defendant, who in turn has been attempting to interfere with the plaintiff's possession, that the sale deed if any executed by the first defendant in favour of the second defendant is sham and nominal and as such, the same is invalid, that the defendants along with their men, on 19.09.2007 attempted to disturb the plaintiff's possession and enjoyment of the suit property, but the same was thwarted



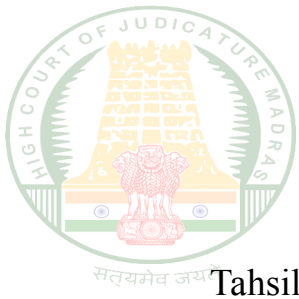
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and that therefore the plaintiff was constrained to file the above suit claiming permanent injunction.

6. The defence of the first defendant is that the revenue records including the order passed by the Tahsildar were manipulated and the same are legally unsustainable, that there is no relationship of landlord and tenant between the first defendant and the plaintiff, that the first defendant sold 2 acres of land in the suit property to the second defendant vide sale deed dated 21.09.2006 and the same was in possession and enjoyment of the second defendant, that the contention of the plaintiff that the sale deed in favour of the second defendant is sham and nominal, is totally untenable, that the cause of action alleged is false and imaginary and that therefore, the suit is liable to be dismissed.

7. The defence of the second defendant is that he purchased a portion of the suit property from the first defendant on 21.09.2006 and even prior to the sale, he was in actual possession and enjoyment of the suit property, that the plaintiff in order to dispossess the second defendant from the suit property, filed a vexatious petition before the



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Tahsildar, Illuppur and filed the present vexatious suit and that therefore, the suit is liable to be dismissed.

8. The learned trial Judge, upon considering the pleadings of both parties, has framed the following issues:

(i) Whether the plaintiff's contention that he is in possession of the suit property as a cultivating tenant is true?

(ii) Whether the cause of action set out in the plaint is true?

(iii) Whether the plaintiff is entitled to a decree for permanent injunction as prayed for?

9. During trial, the plaintiff has examined himself as P.W.1 and exhibited 8 documents as Exs.A.1 to A.8. The first defendant has examined himself as D.W.1 and one other witness as D.W.2. The second defendant has examined himself as D.W.3 and one other witness as D.W.4 and the defendants exhibited 11 documents as Exs.B.1 to B.11. The learned Advocate Commissioner's report and plan came to be exhibited as Exs.C.1 and C.2 respectively. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and



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decree dated 26.08.2014, holding that the plaintiff is a cultivating tenant, granted the relief of permanent injunction as prayed for. Challenging the said judgment, the second defendant has preferred an appeal in A.S.No. 103 of 2014 and the learned Principal Subordinate Judge, Pudukkottai, considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree, dated 28.08.2020, setting aside the judgment and decree passed by the trial Court and thereby dismissed the suit. Aggrieved by the impugned judgment and decree, the plaintiff has preferred the present Second Appeal.

10. At the time of admission of the Second Appeal, the following Substantial Questions of Law came to be formulated:

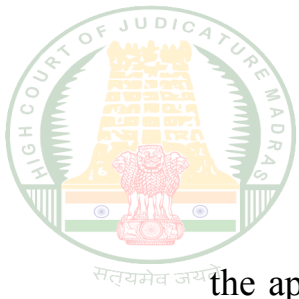
- (i) Whether the appellate Court is right in rejecting Ex.A.5 order recording the appellant as cultivating tenant?
- (ii) Whether the appellate Court is right in holding that the first respondent herein is in possession of the property, in the absence of any documents?



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11. The learned Counsel for the appellant/plaintiff would submit that the trial Court has given a finding on the basis of the evidence of P.W.1 to P.W.3 and also the documents under Exs.A.1 to A.7, which proved the possession and enjoyment of the suit property, that the defendants have only produced the documents relating to the title of the property and no documents relating to possession and enjoyment of the same, that the first appellate Court has committed a grave error in holding that Ex.A.5 order is not proving the possession of the suit property, that the order of the Tahsildar recording the plaintiff as tenant, came to be confirmed by this Court in the writ proceedings and as such, the defendants are not entitled to raise the issue of status of the plaintiff as cultivating tenant, that the first appellate Court, taking note of the observations made in the revenue proceedings has come to an erroneous decision that the cultivating tenancy got seized when the parties entered into a sale agreement with regard to the suit property, that there are absolutely not pleading regarding the sale agreement either by the plaintiff or by the defendants and no issue came to be framed by the trial Court, that the first defendant has not chosen to prefer any appeal, but on the other hand, the second defendant who is alleged to have been purchased 2 acres of land in II schedule of the suit property has preferred

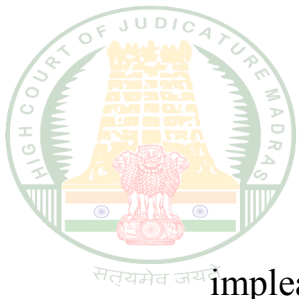


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the appeal and as such, the first appeal filed by the second defendant in respect of second item of the suit property alone is not maintainable and that therefore, the judgment and decree passed by the first appellate Court are liable to be interfered with.

12. The learned Counsel for the second defendant would submit that the plaintiff has not specifically pleaded how he is enjoying the property and what are all his cultivation, that the plaintiff is bereft of any details, that the order of Special Tahsildar may be a record only to maintain the record of tenancy and that will not substitute the actual or physical possession, that the plaintiff has not pleaded anything as to whether the tenancy agreement is oral or written and when it was commenced, that even though the civil Court is not an appellate or revisional authority to determine the correctness of the order passed by the tenancy Registrar, the civil Court is certainly entitled to have an independent view regarding the possession, that the plaintiff is duty bound to plead and prove his possession, that the plaintiff has not produced any materials to prove 35 years of possession, that the plaintiff has purposely suppressed the sale agreement alleged to have been entered into between the parties, that the second defendant was not at all



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impleaded as a party in the revenue proceedings, that the appellate Court has rightly pointed out that there is a difference between the extent mentioned in the revenue orders and the present suit property, that though the plaintiff is fully aware that he is entitled to a lesser extent, than what was claimed in the suit and that the first appellate Court, considering the materials available on record in proper perspective, has rightly allowed the appeal and thereby reversed the judgment and decree of the trial Court.

13. It is not in dispute that the plaintiff and one Rengarajan have filed an application before the Tahsildar cum Tenancy Registrar, Iluppur Taluk to record themselves as cultivating tenant in RTR No.3/2006 and after enquiry, the said application came to be allowed vide order dated 16.05.2007 under Ex.A.5 and thereby recording the plaintiff and Rengarajan as cultivating tenants. It is pertinent to note that the plaintiff claimed to be a cultivating tenant to an extent of 1.47 Acres in S.No. 24/1C, 7.37 Acres in S.No.25/1 and 1.39 Acres in S.No.35/2 of Panampatti village, Iluppur Taluk, Pudukkottai District, whereas the said Rengarajan claimed to be a cultivating tenant of 12 Acres in S.No.24/1c of Panampatti Village.

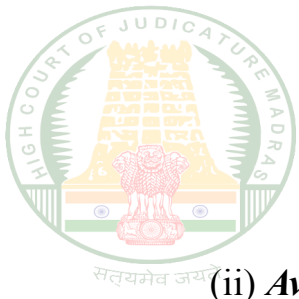


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14. It is further evident that the first defendant preferred an appeal challenging the order passed in RTR No.3 of 2006 before the Assistant Commissioner, Revenue Court, Trichirappalli in Appeal No.7 of 2007 and the Revenue Court, by setting aside the order passed by the Tahsildar, dismissed the application filed by the plaintiff and the said Rengarajan. Aggrieved by the said order, the plaintiff and the said Rengarajan have preferred a revision petition and the District Revenue Officer has passed an order dated 19.07.2011 under Ex.A.3 setting aside the order passed by the Revenue court and restored the order passed by the Tahsildar cum Tenancy Registrar. Challenging the order passed in the revision, the first defendant has filed a writ petition in W.P.No.11277 of 2015 before this Court and a learned Judge of this Court has passed an order dated 03.01.2023 confirming the order passed by the District Revenue Officer and dismissed the writ petition.

15. The learned Counsel for the second defendant would rely on two decisions of this Court in (i) ***G.Natesa Nainar Vs. Sri Karikudinathaswamy Devastanam, Marudhanallur, Kumbakonam Taluk represented by its Executive Officer*** reported in **97 L.W.,390.**, and

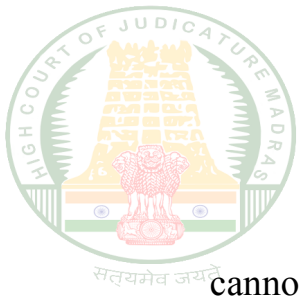


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(ii) *Avudaithangammal Vs. Subramania Thevar and others* reported in **1994-1-L.W.82**, in support of his contention that the entry in the record of Tenancy Rights Register by itself does not confer right as cultivating tenant and the main aim and purpose of the provisions of the Tamil Nadu Act 10 of 1969 is only to prepare and maintain a record of tenancy rights in respect of agricultural lands in Tamil Nadu.

16. In the first decision, the plaintiff – a lessee from the defendant, claimed injunction against the defendant Devasthanam to restrain them from interfering with his possession, alleging that an earlier suit filed by him for the said relief had been dismissed, but he had obtained during its pendency an entry in the record of Rights Register and therefore, the earlier suit would not operate as res judicata and in that fact situation, this Court has held that the right based upon the entry in the record of Tenancy Rights Register was also available to the appellant as a ground to secure an order for injunction in his favour as prayed for in the earlier suit, but the appellant did not specifically urge that right available to him on the strength of the entry in the Record of Tenancy Rights Register prior to the disposal of the earlier suit and as such, explanation IV to Section 11 C.P.C., would squarely stand attracted so that the appellant



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cannot be heard to contend that some rights have been secured on the strength of the entry in the Record of Tenancy Rights Register.

17. In the second decision, it was evident that the ninth respondent therein having contested the suit instituted by the appellant in O.S.No.4 of 1969 and lost it before all the Courts, had conceived of the device of a surrender and a fresh lease in favour of his son, the first respondent in these appeals, to defeat the rights of the appellant and in that fact situation, the learned Judge has observed that the ninth respondent and the first respondent in the appeals have thus by suppressing the adjudication by Court in O.S.4 of 1969 as well as the existence of the appellant and her interest in the properties, secured Exs.A.2 to A.5, A.10 and A.11 and such entries secured by concealing the real state of affairs and without an opportunity to the persons interested to show cause against the making of entries, cannot at all be considered as conclusive, even for the purpose of Tamil Nadu Act 10 of 1969.

18. The learned Judge has referred the decision of the Hon'ble Supreme Court in *Vishwa Vijai Bharti vs Fakhrul Hasan and others* reported in **AIR 1976 SC 1485** wherein the Hon'ble Apex Court has held



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that while it is true that the entries in the revenue record ought generally to be accepted at their face value and the Courts should not embark upon an appellate enquiry into their correctness, the presumption of correctness can apply only to genuine and not fraudulent entries.

19. As rightly observed by the learned trial Judge, the above decision cannot be made applicable to the case on hand. More importantly, it is not the case of the defendants that the plaintiff has obtained the orders from the Tenancy Registrar fraudulently. As already pointed out, the order passed by the Tenancy Registrar came to be challenged by the first defendant and though he succeeded before the revenue Court, the revision preferred by the plaintiff came to be allowed and subsequently, the said order came to be confirmed by this Court. As rightly contended by the learned Counsel for the plaintiff, the contentions of the second defendant that the plaintiff is bereft of particulars with regard to the cultivation, want of materials to prove possession of 35 years, non-impleadment of the second defendant, cannot be gone into by the civil Court, as already competent authority has decided that the plaintiff is a cultivating tenant in respect of the portions of the suit property.



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20. No doubt, the plaintiff has claimed permanent injunction for the property to an extent of 22.23 Acres ie., 5.45.5 Hectare in S.No. 24/1C, 2.98.5 Hectare in S.No.25/1 and 0.56.6 Hectare in S.No.32/2. But even according to the plaintiff and as per the revenue orders, the plaintiff claimed to be a cultivating tenant for 1.47 Acres in S.No.24/1C, 7.37 Acres in S.No.25/1 and 1.39 Acres in S.No.35/2 totalling 10.23 Acres . In the present case, we are not concerned with 12 Acres for which one Rengarajan came to be recorded as a cultivating tenant in S.No.24/1C. Since the plaintiff's name came to be recorded in the Tenancy Register for the extent of 10.23 Acres, he cannot claim permanent injunction in respect of nearly 22 Acres shown as suit property. As already pointed out, the learned trial Judge has granted permanent injunction as prayed for in respect of the entire suit property and as such, that portion cannot be sustained.

21. Admittedly, the first defendant, owner of the suit property, has not challenged the judgment and decree passed by the trial Court and whereas the purchaser of 2 Acres in S.No.25/1 has preferred the first appeal. Since the plaintiff has claimed cultivating tenancy in his favour

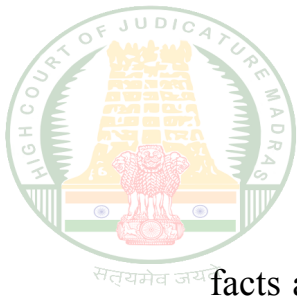


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and obtained order therefor, he cannot challenge title of the owner – first defendant. The first defendant being the owner has every right to sell the suit property to anybody and the plaintiff cannot question the same. As already pointed out, the first defendant sold 2 Acres of land in S.No.25/2 in favour of the second defendant vide sale deed dated 21.09.2006 under Ex.B.7. Hence, the contention of the plaintiff that the said sale is sham and nominal, is invalid and the same cannot legally be sustained. Moreover, the plaintiff cannot claim a blanket permanent injunction for ever. He can only claim injunction restraining the defendants from interfering with his possession except under due process of law.

22. As rightly contended by the learned Counsel for the plaintiff, the first appellate Court, without considering the legal position and the factual aspects of the case in proper perspective, has come to an erroneous decision that the plaintiff is not a cultivating tenant and as such, he is not entitled to get any injunction and that therefore, the reversal findings are perverse and are liable to be interfered with. Accordingly, the Substantial Questions of Law are answered in favour of the plaintiff and against the second defendant. Considering the other



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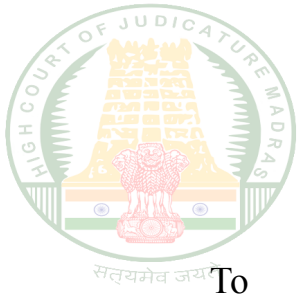
facts and circumstances, this Court is of further view that the parties are to be directed to bear their own costs.

23. In the result, the Second Appeal is allowed and the judgment and decree passed in A.S.No.103 of 2014, dated 28.08.2020, on the file of the Principal Subordinate Judge, Pudukkottai are hereby set aside. The finding of the trial Court that the sale deed in favour of the second defendant is sham and nominal, is set aside. The plaintiff is entitled to a permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the property, to the extent of 10.23 Acres in S.Nos. 24/1C, 25/1 and 35/2, except under due process of law. Consequently, the connected Miscellaneous Petition is closed. The parties are directed to bear their own costs.

14.02.2025

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

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To

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1. The Principal Subordinate Court, Pudukkottai.
2. The District Munsif cum Judicial Magistrate Court, Keeranur.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.695 of 2020

14.02.2025