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S.A.(MD)NO.91 OF 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.10.2024

PRONOUNCED ON : 08.05.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.91 of 2016

and

CMP(MD)No.2022 of 2016

Thirumalai Saminathan ... Appellant / Respondent / Plaintiff

Vs.

1.Alagammal ... 1st respondent/appellant/1st defendant

2.K.Pandi S/o.Kulandai ... 2nd respondent/2nd respondent /
2nd defendant

Prayer: Second Appeal filed under Section 100 CPC, to set aside the judgment and decree of the Principal Subordinate Judge, Tiruchirappalli in A.S No.149 of 2010 dated 10.10.2011 in reversing the well considered judgment and decree of the District Munsif, Manaparai in O.S No.87 of 2008 dated 14.07.2010.

For Appellant : Mr.K.Prabhakar

For Respondents : Mr.T.Antony Arulraj for R1

JUDGMENT

The plaintiff in O.S No.87 of 2008 on the file of the District Munsif Court, Manaparai is the appellant in this second appeal. The suit was for recovery of possession. The suit was decreed by the trial court



on 14.07.2010. Aggrieved by the same, the first defendant filed AS No. 149 of 2010 before the Principal Sub Court, Tiruchirappalli. The first appellate court reversed the decision of the trial court vide judgment and decree dated 10.10.2011. Challenging the same, this second appeal has been filed.

2.The second appeal was admitted on the following substantial questions of law :

“1. Whether the 1st Appellate Court is right in reversing the decree and judgment of the Trial Court in the absence of any proof of personal cultivation more so when the first defendant categorically admitted that there is a hut in the suit property?

2. Whether the 1st Appellate Court is right in reversing the decree for possession when the 1st defendant had categorically denied the title of plaintiff and claiming title upon herself in the light of decision of this Hon'ble Court?

3. Whether the 1st Appellate Court is right in relying upon the entry in records of tenancy in the absence of any corroborative material to substantiate the case of tenancy?



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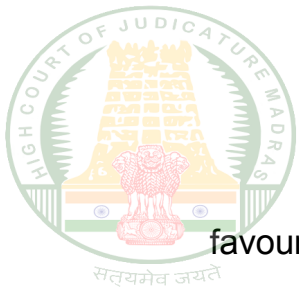
4. Whether the 1st Appellate Court is right in not considering the admission of the defendant changing the character of the land in dispute from cultivable land to house site?

5. Whether the 1st Appellate Court is right in not considering that claim of right of tenancy by succession from her father, without pleading continuation in her personal involvement of her labour in cultivating the land?

6. Whether the first appellate court is right in not considering Exs.A5, A9 which are patta and adangal issued by the revenue authorities wherein there is no entry reflecting that defendant or her father is the cultivator and which could ultimately lead to presumption that Ex.B1 is only a created document that too when defendant have not adduced any independent, oral or documentary evidence corroborating Ex.B1?

7. Whether the first appellate court is right in not considering the defendant's denial of title of plaintiff who claim right to be in possession as tenant under plaintiff ?”

3.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal and called upon this Court to answer the substantial questions of law in



favour of the appellant and set aside the impugned judgment and decree and restore the decision of the trial court.

4.Per contra, the learned counsel appearing for the contesting defendant/respondent herein submitted that the impugned judgment passed by the first appellate court does not call for any interference.

5.I carefully considered the rival contentions and went through the evidence on record. The case of the plaintiff is as follows :

The suit property belonged to one Veera Raghava Perumal. Following his demise, it devolved on his wife Rajambal. Patta was issued in favour of Rajambal. Rajambal sold the suit property to the plaintiff under a registered sale deed dated 11.01.2008. Patta was mutated in favour of the plaintiff. The plaintiff is the sole and exclusive owner of the suit property. Since the plaintiff is residing at Thuvarangurichi, the defendants trespassed into a portion of the suit property and put up a small tent. The plaintiff issued legal notice dated 25.02.2008 calling upon the defendants to deliver possession of the suit property after removing the tent.



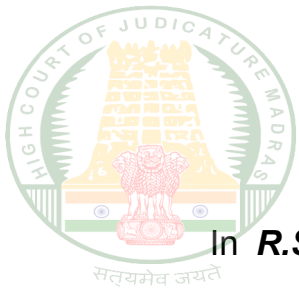
6.The second defendant remained exparte. The first defendant alone contested the suit proceedings. The first defendant denied the ownership of Veera Raghava Perumal and the devolution of title in favour of Rajambal. The suit property measuring 78 cents comprised in Survey No.281/4 was leased out in favour of Karuppan, the father of the first defendant. In fact, his name was also duly recorded in the record of tenancies on 15.01.1972. After the demise of Karuppan, the first defendant is in possession and enjoyment of the suit property in her capacity as leaseholder. After the legal notice dated 25.02.2008 was received, the first defendant went and confronted the plaintiff and since the plaintiff gave an assurance that he will not take any further action, she did not issue any reply to the legal notice. The contesting defendant called for dismissal of the suit.

7.Based on the rival pleadings, the trial court framed two issues : a) whether the suit property belongs to the plaintiff ; b) whether the plaintiff is entitled to recovery of possession. The plaintiff examined himself as PW.1. Exs.A1 to A13 were marked. The first defendant examined herself as DW.1. One Azhaghu was examined as DW.2. Exs.B1 to B4 were marked. After consideration of the evidence on record, the trial court decreed the suit as prayed for on 14.07.2010.



8.As already mentioned, the first appellate court reversed the trial court's decision. The first appellate court took the view that when the first defendant's father was recorded as a cultivating tenant, the only course open to the landlord was to take appropriate revenue proceedings. Since tenancy in favour of Karuppan was never cancelled, it must be presumed that after his lifetime, the first defendant was in continued possession of the suit property. When the tenancy in favour of the Karuppan was not cancelled, the landlord of the property could not have handed over the property to the plaintiff. The plaintiff had filed the suit by treating the first defendant as a trespasser. Since the first defendant's possession cannot be said to be unlawful, the suit itself was liable to be dismissed.

9.The question that calls for consideration is whether the impugned judgment passed by the first appellate court warrants interference in view of the substantial questions of law already formulated. It is true that the first defendant's father was recorded as a cultivating tenant. Karuppan had passed away a long time back. There is no dispute on that score. The first appellate court erroneously assumed that since Karuppan was a cultivating tenant, the possession of the suit property by Karuppan's daughter cannot be said to be unlawful. This approach of the first appellate court is clearly erroneous.



In ***R.Subbaiah Thevar v. Muthurangaswamy Naicker*** 1975 8 LW

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775, it was held that the right of a cultivating tenant is not inheritable and it is a personal right conferred by the statute. A learned Judge of this court vide order dated 20.06.2022 in ***WP(MD)No.8806 of 2012 (O.Duraisamy v. The District Revenue Officer, Theni and ors)*** held that when a person who has been conferred with the status of cultivating tenant dies, the status also dies with him. The legal heirs have to independently establish their status as a cultivating tenant. Vide order dated 31.07.2024 in WP(MD)No.27604 of 2023, I had held as follows :

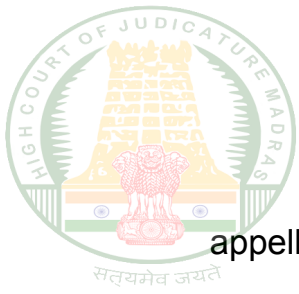
“11. Section 6 of the Transfer of Property Act makes it clear that an interest or right that is personal to the individual cannot be transferred. A cultivating tenant has to contribute his physical labour. Only then, he can be a cultivating tenant. If he dies, his heir cannot automatically become a cultivating tenant. The right would die with the person. A cultivating tenant cannot transfer his tenancy. Law does not permit it.”

Therefore, the first defendant ought to have established before the competent authority that she is personally engaged in cultivation and that her name should be substituted and entered in the revenue records after her father's demise. Admittedly, there is no such evidence to that effect. On the other hand, the first defendant had stated that the character of the property had undergone a change and that it is no longer a cultivatable land. It virtually became a house site. In fact, a



portion of the suit property had already been gifted so as to build a chavadi by the local body. Therefore, 3rd, 4th, 5th and 6th substantial questions of law are answered in favour of the plaintiff.

10. The written statement filed by the first defendant is in two parts. In one part, she would question the very title of the landlord. In the other part, she would claim that she is the leaseholder who is paying her rent. It is well settled that a person who willfully denies the title of the landlord is not entitled to the benefits of Tamil Nadu Cultivating Tenants Protection Act, 1955. A person who claims the status of a tenant cannot challenge the landlord's title. The principle of estoppel would operate against raising such a defense. The court below did not take note of this aspect also. The 2nd and 7th substantial questions of law are also answered in favour of the appellant. There is zero evidence to show that the first defendant is engaged in personal and physical cultivation. There is nothing on record to show that she has contributed her physical labour. If she had done so, certainly, her name would be entered in the record of tenancies. There is no proof to show that she is paying the lease rent. Ex.B2, is the family card issued under the Hon'ble Chief Minister's Farmer's Protection scheme. That would by itself not prove that Azhagammal is cultivating the suit property. The first



appellate court ought not to have reversed the well considered decision of the trial court.

11.The learned counsel for the first defendant in support of his contention that the suit itself is not maintainable. He relied on the Hon'ble Full Bench decision of the Madras High Court reported in **93 L.W - 23 (Periathambi Goundan v. The District Revenue Officer, Coimbatore)**. I would have applied the said decision and upheld the decision of the first appellate court if the name of the first defendant had been recorded in the record of tenancies. Since such is not the position here, the said decision may not have any application to the case on hand.

12.Since the substantial questions of law are answered in favour of the appellant, the impugned judgment and decree of the first appellate court are set aside. The decision of the trial court is restored. This second appeal is allowed. No costs.

08.05.2025

NCC : Yes / No
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To:

- 1.The Principal Subordinate Judge, Tiruchirappalli.
- 2.The District Munsif, Manaparai.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

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