

S.A.Nos.133 & 134 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 30.07.2025

JUDGMENT PRONOUNDED ON : 18.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.Nos.133 & 134 of 2004

SA.No.133 of 2004:

1.M.Karuppannan

2.M.Sakthivel

3.Sellammal (died)

...Appellants/Respondents/Defendants

4.Sagundhala

....4th appellant/ Lrs of the deceased
3rd appellant

Vs.

1.Kasiammal

2.Amirtham

....Respondents/Appellants/
/Plaintiffs 2 & 3

(4th appellant brought on record as legal heirs
of the deceased 3rd appellant vide Court order dated 18.11.2024)

SA.No.134 of 2004:

Sellammal (died)

...Appellant/Respondent/Plaintiff

2.M.Karuppannan

3.M.Sakthivel

4.Sagundhala

Appellants/Lrs. Of the deceased
sole appellant

Vs.



S.A.Nos.133 & 134 of 2004

1.Kasiammal

2.Amirtham

....Respondents/Appellants/
/Defendants

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(Appellants 2 to 4 are brought on record as
legal heirs of the deceased sole appellant
vide Court order dated 18.11.2024)

PRAYER in S.A.No.133 of 2004: Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 29.09.2003 made in A.S.No. 109 of 1998 on the file of the II Additional Subordinate Judge, Trichy in reversing the judgment and decree dated 28.11.1997 made in O.S.No.2743 of 1991 on the file of the III Additional District Munsif Court, Trichy is illegal, unsound and liable to be set aside.

PRAYER in S.A.No.134 of 2004: Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 29.09.2003 made in A.S.No. 110 of 1998 on the file of the II Additional Subordinate Judge, Trichy in reversing the judgment and decree dated 28.11.1997 made in O.S.No.804 of 1993 on the file of the III Additional District Munsif Court, Trichy is illegal, unsound and liable to be set aside.

(In both appeals)

For Appellants : Mr.P.Arun Jeyatram

For Respondents : Mr.C.K.M.Appaji



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COMMON JUDGMENT

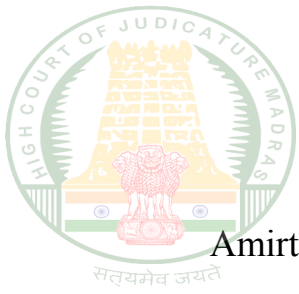
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The plaintiff in O.S.No.804 of 1993 and the defendants in O.S.No. 2743 of 1991 on the file of the District Munsif Court, Trichy have filed the present second appeals challenging the order of the First Appellate Court wherein the findings of the trial Court were reversed.

(A)Factual Matrix:

2.Item Nos.1 to 3 are agriculture properties and owned by one Ahammed Sherrif, Maruthai Mazhavarayar and Dhanapal. The 4th item is the family property of one Maruthai. The said Maruthai was the cultivating tenant of items 1 to 3 during his life time. After his death, his wife Elanchiyam was the cultivating tenant. The said Maruthai passed away leaving behind his wife Elanchiyam and his three daughters Amirtham, Kasiammal and Sellammal. These facts are not in dispute.

3.Elanchiyam along with his two daughters Kasiammal and Amirtham had filed O.S.No.2743 of 1991 for the relief of permanent injunction or in the alternative parition of the suit schedule properties. The suit was filed as against the third daughter Sellammal. The husband and son of Sellammal were shown as defendants. As per plaint averments, after death of her husband Maruthai, Elanchiyam is the cultivating tenant of the suit schedule property along with her two other daughters namely Kasiammal and



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Amirtham who are the exerting physical labour in items 1 to 3. As far as 4th

item of property is concerned, the property is liable to be partitioned among the plaintiffs and other daughter Sellammal.

4.Pending suit, the first plaintiff Elanchiyam had passed away and the other two daughters namely Kasiammal and Amirtham have made a claim to the suit schedule property on the basis of Will dated 08.04.1992 said to have been executed by Elanchiyam.

5.The suit was resisted by another daughter Sellammal on the ground that her mother Elanchiyam had executed a land lease surrender deed on 13.03.1989 in her favour and from then onwards, she and her husband are the exerting physical labour in the suit schedule property and she is the exclusive cultivating tenant of items 1 to 3. The said Sellammal did not dispute that item No.4 is a joint family property and liable for partition.

6.The said Sellammal independently had filed O.S.No.84 of 1993 as against her mother and two other sisters claiming injunction over first three items of the property in O.S.No.2743 of 1991.

7.Both the suits were tried together and a common judgment and decree was passed by the trial Court on 28.11.1997.

8.The trial Court found that the said Sellammal is in exclusive possession of items 1 to 3 as cultivating tenant based upon Ex.B104 land lease surrender deed and the other documents disclosed that she was



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cultivating the lands. The trial Court has proceeded to grant an injunction decree in O.S.No.804 of 1993 in favour of Sellammal.

9.As far as O.S.No.2743 of 1991, the trial Court dismissed the suit with regard to items 1 to 3 and decreed the suit for partition with regard to 4th item granting 2/3rd share in favour of the two daughters of Elanchiyam.

10.The said Kasiammal and Amirthamhad filed A.S.Nos. 109 and 110 of 1998 before the Sub Court, Trichy challenging the above said judgments and decrees passed by the trial Court. The First Appellate Court found that Sellammal has not established her exclusive lease hold right over item Nos. 1 to 3 of the suit schedule properties and proceeded to grant a decree for partition with regard to lease hold property also. However, the First Appellate Court confirmed the decree for partition with regard to 4th item of the property. Challenging the said decrees, the present second appeals have been filed.

11.Both the second appeals were admitted on the following substantial questions of law.

“1.Whether the judgment and decree of the lower appellate Court is in conformity with Order 41 Rule 31 of C.P.C.?

2.Whether the rights of a cultivating tenant could be inherited by the legal representatives contributing actual physical labour in the agricultural operations as contemplated under the Cultivating Tenant Protection Act.



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3. Whether the document under which a cultivating tenant surrendered the possession of lands to her daughter requires registration under Section 17(b) of the Registration Act?

4) Whether the lower appellate Court is justified in directing division of the suit properties 1 to 3 by metes and bounds and allotting two shares to the respondents even without arraying the landlord/owner of the suit properties as parties to the suit? “

(B).Submissions of the learned counsels appearing on either side:

12.The learned counsel appearing for the appellants submitted that Kasiammal and Amirtham cannot rely upon a Will and claim themselves as cultivating tenants without contributing actual physical labour. The contribution of physical labour is a mandatory pre-requirement for claiming rights under Cultivating Tenants Protection Act. He had further submitted that Ex.A1 Will has not been proved by the plaintiffs in O.S.No.2743 of 1991 in accordance with Section 68 of Indian Evidence Act. He had further submitted that the plaintiffs in O.S.No.2743 of 1991 have not produced even a single document to establish that they are cultivating the lands by themselves. On the other hand, the defendants in the said suit have produced all the official records to establish the fact that they are cultivating the land in person. The First Appellate Court has not properly appreciating these documents.

13.The learned counsel for the appellants had further submitted that



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their mother namely Elanchiyam was the cultivating tenant of Items 1 to 3 of the suit schedule property. She has surrendered the possession of the land to one of her daughter. Therefore, the said document does not require any registration as contemplated under Section 17(b) of the Registration Act. The First Appellate Court has erroneously arrived at a finding that Ex.B104 requires registration, without properly appreciating the contents of the said document.

14.The learned counsel for the appellants had further submitted that the decree for partition granted with regard to items 1 to 3 of the suit schedule properties is clearly illegal without impleading the land owners. Hence, he prayed for setting aside the judgment of the First Appellate Court and to restore the judgment and decree of the trial Court.

15.Per contra, the learned counsel appearing for the respondents submitted that Mrs.Sellammal as plaintiff has filed O.S.No.804 of 1993 claiming that she is in exclusive possession of the items 1 to 3 of the suit schedule properties on the ground that she is the cultivating tenant. However, the land owners have not been impleaded. She is not able to establish that she is cultivating the lands by exerting physical labour. Ex.B104, being an unregistered document is not admissible in the eye of law. Attempt made on the part of the Sellammal to register herself as a cultivating tenant based upon the said unregistered deed was not successful.



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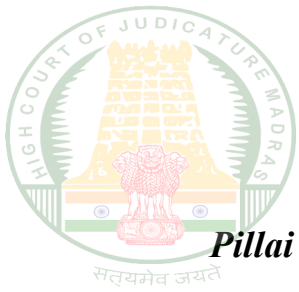
16.The learned counsel for the respondents had further submitted that the son of one of landlords has been examined as PW2 and he has categorically deposed that the lands are cultivated only by Elanchiyam, thereafter by her two daughters namely Kasiammal and Amirtham. In such circumstances, the non-impleading of the landlords would not in any way affect the maintainability of the suit. It is for the landlord to file an application before the concerned authority seeking eviction. Hence, he prayed for sustaining the judgment and decree of the First Appellate Court.

17.Heard both sides and perused the material records.

(C)Discussion:

18.As per admitted facts, one of the daughters of Elanchiyam namely Sellammal claims that her mother Elanchiyam had surrendered her cultivating tenancy rights in her favour under Ex.B104 on 13.03.1989. A perusal of the said document reveals that it is an unregistered document. It is not a release deed executed by one tenant in favour of a co-tenant. The said Elanchiyam was the exclusive tenant of the property who had alienated her tenancy rights in favour of her daughter namely Sellammal. No consideration has passed under the said document. Therefore, it is clear that the cultivating tenant has transferred her tenancy rights in favour of a third party.

19.This Court in a judgment reported in ***(2010) 1 LW 541(Balu***



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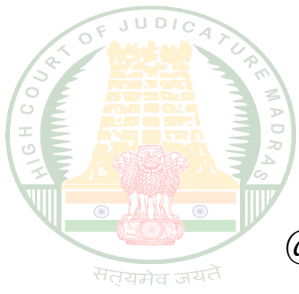
Pillai @ Balasubramania Pillai & others Vs.Mahadevan & others) in

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“24.As the special Acts referred to above do not contemplate the right of transfer of the leasehold rights in favour of third parties, it is held that the recorded cultivating tenant has no right to alienate the leasehold right to a third party though he has got a right under the Act to sub-let the properties to a third party. Ignoring the exclusive right of the landlord, the recorded cultivating tenant cannot simply sell away his leasehold rights in favour of a third party. Retaining his leasehold right, he can sub-let the premises to a third party.”

20.The above said judgment of the learned Single Judge has been quoted in approval in the judgment of the Hon'ble Division Bench reported in **2024-2-Writ L.R 871 (S.Kulanthai (Deceased) & others Vs. Mrs.Ragina Jeyapaul and others)**. Paragraph No.17 of the said judgment is extracted as follows:

“17.An agricultural lessee becomes a statutory tenant entitled to protection from eviction. Such statutory tenancies are not transferrable. This Court in Balu Pillai @ Balasubramania Pillai & others v.Mahadevan and others, referred to supra, had after referring to the provisions of the Act, has concluded that in the absence of any specific provision recognizing transfer of a cultivating right by the cultivating tenant to a third party, such transfer would be invalid. Therefore, we see no reason to differ from the views expressed by the learned Single Judge in Balu Pillai



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@ Balasubramania Pillai & others v. Mahadevan and others. ”

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21.In view of the judgments cited supra, it is clear that Ex.B104 is not a legally acceptable document and it is inadmissible. Therefore, no right will flow to Sellammal out of the said document.

22.Mrs.Sellammal had filed an application before the authority under the Record of Tenancy Rights Act to record herself as a cultivating tenant based upon Ex.B104. This application came to be dismissed by the concerned authority by an order dated 05.09.1994 which is marked as Ex.B40. A perusal of the said document reveals that the authority has rejected the said request primarily on the ground that, she cannot make an application without impleading the landlords. Mrs.Sellammal has neither filed an appeal nor chosen to file a fresh application impleading the landlords. Therefore, it is clear that Mrs.Sellammal has not established her exclusive right as a cultivating tenant.

23.It is settled possession of law that the power to declare a particular person as a cultivating tenant lies within the exclusive domain of the authority under The Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 and a civil Court has no jurisdiction whatsoever to entertain or adjudicate upon the said issue.



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24. When the concerned authority has rejected the application for recording Sellammal as a cultivating tenant, the civil Court cannot grant an injunction on the basis that she is a cultivating tenant.

25. Though Mrs. Kasiammal and Amirtham have relied upon a Will said to have been executed by their mother Elanchiyam, for claiming exclusive rights over items 1 to 3, the First Appellate Court has not relied upon the same and has only granted a decree for partition. In such circumstances, the issue whether a testamentary heir would be entitled to claim right as a cultivating tenant does not arise for consideration.

26. It is settled position of law that the lease hold right could also be partitioned among the legal heirs of the original lessee. One of the sons of landlord has been examined as PW2 who had supported the case of the plaintiff in O.S.No.2473 of 1991 claiming alternative relief of partition of items 1 to 3. In such circumstances, the appellants cannot contend that in the absence of landlords, a decree for partition cannot be granted. Partition of the lease hold right would not stand in the way of the landlord in initiating appropriate proceedings for evicting them as per the statutory provisions. Therefore, the non-impleading of the landlord would not in any way affect the partition of the lease hold rights.



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(D).Conclusion:

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27.In view of the above said deliberations, all the substantial questions of the law are answered as against the appellants. The judgment and decree of the First Appellate Court stands confirmed. Both the second appeals stand dismissed. No costs.

18.09.2025

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

1.The II Additional Subordinate Judge
Trichy

2.The III Additional District Munsif
Trichy

3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgment made in
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