IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.1.2002.

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.6062 OF 1998 and SECOND APPEAL NO.379 OF 2001 AND W.P.M.P.NO.9364 OF 1998.

W.P.No.6062 of 1998:

J.Venkataraman ... Petitioner

Vs.

1. The District Revenue Officer,
Madurai District,
Madurai.

2. Revenue Divisional Officer,
Madurai District,
Madurai.

3. D.Sethupathy ... Respondents

S.A.No.379 of 2001:

J.Venkataraman ... Appellant

Vs.

1. D.Sethupathy
2. Daivendran ... Respondents

Writ petition No.6062 of 1998 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, as stated therein.

Second Appeal No.379 of 2001 is directed against the judgment and decree dated 31.7.2000 rendered in A.S.No.8 of 1999 by the Court of the III Additional Subordinate Judge, Madurai as against the judgment and decree dated 22.6.1998 rendered in O.S.No.564 of 1981 by the Court of the District Munsif, Melur.

! For the petitioner in : Mr.S.V.Jeyaraman,
W.P.No.6062 of 1998 & : Senior Counsel
for the appellant in : for M/s.N.P.Kumar
S.A.No.379 of 2001 and M/s.N.Maninarayanan
respectively.

^ For the respondents
in the S.A.379/2001
and for the third
respondent in the
W.P.No.6062/1998 : Mr.S.Kasikumar for
Mr.Chelladurai

For the respondents
1 and 2 in the
W.P.No.6062/1998 : Mr.M.Mahalingam, G.A.

: COMMON JUDGMENT

Both the above Writ Petition and the Second Appeal have been filed by one and the same person J.Venkatraman. W.P.No.6062 of 1998 has been filed praying to issue a Writ of Certiorari calling for the records of the first respondent/the District Revenue Officer, Madurai, pertaining to the order made in R.P.No.6/97 dated 28.2.1998 thereby confirming the order made in A.P.No.8/95 dated 20.1.1997 by the second respondent/Revenue Divisional Officer, Madurai and quash the same.

2. The Second Appeal No.379 of 2001 has been directed against the judgment and decree dated 31.7.2000 rendered in A.S.No.8 of 1999 by the Court of III Additional Subordinate Judge, Madurai thereby confirming the judgment and decree dated 22.6.1998 rendered in O.S.No.564 of 1981 by the Court of District Munsif, Melur.

3. Since the subject matter involved in both the above writ petition and the second appeal is one and the same and between the same contesting parties, both the matters have been taken up for a joint hearing and this common judgment is passed.

W.P.No.6062 OF 1998:-
4. In the affidavit filed in support of the writ petition, the petitioner would submit that he is the owner of the land bearing S.No.87/2-A in an extent of 1.46 acres in Ettimangalam village, Melur Taluk, Madurai District; that the said property was originally belonging to his father Janakirama Sharma and under a re gistered partition deed dated 4.9.1972, the said property of 1.46 acres fell to his share and he is in enjoyment of the same obtaining patta in his name and paying the kists without any default; that one Subbulakshmi Ammal, a

close relative of the petitioner was given the above property for cultivation on an annual rent of 18 bags of paddy and she died on 28.3.1981 without any heir to succeed and after her death, the petitioner took possession of the land and started cultivating the same. while so, the third respondent forcibly entered into the above land and filed a caveat petition No.24/1981 before the Court of District Munsif, Melur on ground that he obtained possession from the said Subbulakshmi Ammal for consideration and willing to continue the lease on the old conditions; that immediately thereafter, the petitioner had filed a suit before the Court of District Munsif, Melur in O.S.No.564 of 1981 for recovery of possession and for mesne profits.

5. The petitioner would further submit that the third respondent in the writ petition has filed a petition before the Tahsildar, Melur in T.R.No.57/81 to register him as a tenant, which was ordered on 31.8 .1982; that against the said order, the petitioner preferred an appeal before the second respondent in A.P.No.42/82, which was remanded for fresh disposal on 10.1.1985; that thereafter the said petition was renumbered as T.R.No.38/94 and after examining all the witnesses, the Tahsildar observing that the said Subbulakshmi Ammal cultivated the land only through her labourers and as per the provisions of the Tamil Nadu Cultivating Tenants Act, the cultivating tenant must cultivate the land on his/her own physical labour; that the said Subbulakshmi Ammal cannot be a cultivating tenant; that the claim of the third respondent that the said Subbulakshmi Ammal was the tenant was false; that the third respondent in the writ petition did not pay any rent and if really he was a tenant, he would have effected some payments and on such remarks, the Tahsildar would ultimately dismiss the T.R.No.38/1994.

6. Aggrieved, the third respondent in the writ petition preferred an appeal in A.P.No.8/1995 before the second respondent,who had allowed the said appeal with the observation that the third respondent was paying the rents even after the death of the said Subbulakshmi Ammal and after her death, the third respondent claimed as tenant by paying rents. Against the order of the second respondent, the petitioner filed a revision petition before the first respondent in R.P.No.6 of 1 997 and the same having become dismissed, confirming the order of the second respondent, the petitioner has come forward to file the above writ petition on grounds that the first respondent dismissed the revision petition No.6/97 only on the ground that the petitioner had not taken any action against the trespasser, which is factually incorrect in the sense that since the third respondent trespassed into the land within a short period of the death of the said Subbulakshmi Ammal and after the petitioner taking possession of the land, the petiioner filed O.S.No.564 of 1981 on the file of the Court of District Munsif, Melur and would pray for the reliefs extracted supra.

S.A.No. 379 OF 2001

7. It further comes to be known from the materials made

available on record the petitioner in the above writ petition had filed a suit in O.S.No.564 of 1981 before the Court of District Munsif, Melur, against the third respondent in the writ petition viz. D.Sethupathy and his father Daivendran as defendants 1 and 2, praying for recovery of possession and mesne profits and the said suit having been dismissed, the petitioner/plaintiff had preferred an appeal in A.S.No.8 of 1999 before the Court of III Additional Subordinate Judge, Madurai and the said first appellate Court also having dismissed the said appeal, thus confirming the judgment and decree passed by the trial Court, the plaintiff has come forward to prefer the above Second Appeal on certain grounds as brought forth in the grounds of appeal and this Court has admitted the same for determination of the following substantial questions of law:

1.When once plaintiff's title is proved and admitted, are the Courts below correct and justified in dismissing the suit merely on the ground that he has not proved taking of possession?
2.Are the Courts below correct and justified retracing on Ex.B.1, an unstamped and unregistered document, holding that the first defendant is a cultivating tenant and therefore, the suit is not maintainable? And
3.Are the Courts below correct and justified in retracing on the orders passed by the authority under Tamil Nadu Act 10 of 1969 upholding that the first defendant is a cultivating tenant and therefore,the suit is not maintainable, especially when those orders had not become final and were pending final disposal in W.P.No.6062/1998 on the file of this Hon'ble Court?"

8. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both what comes to be known is that the petitioner in the above writ petition has averred that he is the owner of the subject matter having got the same in the family partition dated 4.9.1972 and is in enjoyment of the same obtaining patta and paying the kists in his capacity as the landlord leased out the subject matter to one Subbulakshmi Ammal on annual rent of 18 bags of paddy; that after the death of Subbulakshmi Ammal, the third respondent herein had filed a caveat petition No.24/1981 before the Court of District Munsif, Melur on ground that he obtained possession from the said Subbulakshmi Ammal for consideration and willing to continue the lease on the old conditions; that thereafter the petitioner herein had filed a suit in O.S.No.564 of 1981 for recovery of possession and for mesne profits against the third respondent and his father.

9. So far as the above Caveat Petition No.24/1981 is concerned, no sufficient materials have been placed at the disposal of this Court and hence this Court is not in a position to know about the further details of the said proceeding.

10. While so, the third respondent in the writ petition,

claiming to be in possession and enjoyment of the subject matter as a cultivating tenant, had filed an application in T.R.No.57/81 under the relevant provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 before the Tahsildar, Melur praying to register him as a tenant and the same having been ordered by the authority concerned as per his order dated 31.8.1982, the petitioner herein had preferred an appeal before the second respondent in A.P.No.42/82 and the said appellate authority, having examined the same and on enquiry, had remanded the case to the Record Officer himself for fresh disposal as per his order dated 10.1.1985 and thereafter the Record Officer having renumbered the same as T.R.No.38/94 and on enquiry, would pass his order observing that the said Subbulakshmi Ammal cultivated the land only through her labourers and since as per the provisions of the Tamil Nadu Cultivating Tenants Act, the cultivating tenant must cultivate the land on his/her own physical labour, the Tahsildar would conclude that the said Subbulakshmi Ammal could not be a cultivating tenant and rejected the claim of the third respondent that the said Subbulakshmi Ammal was the tenant and further remarking that the third respondent did not pay any rent, the Tahsildar had dismissed the petition.

11. It further comes to be known that aggrieved against the said order of the Tahsildar, the third respondent had preferred a regular appeal in A.P.No.8/1995 before the second respondent, who had allowed the same with the observation that the third respondent was paying the rents even after the death of the said Subbulakshmi Ammal in his capacity as the tenant,against which the petitioner had filed a revision petition before the first respondent in R.P.No.6 of 199 and the said revision petition also having been dismissed confirming the order of the appellate authority, the petitioner, left with no option, has come forward to file the above writ petition on ground that the first respondent dismissed the revision petition only on ground that the petitioner had not taken any action against the trespasser, which is factually incorrect and would pray for the relief extracted in the above writ petition.

12. It should be borne in mind that excepting the Tahsildar, who dismissed the application filed by the third respondent in T.R.No.38/19 94 praying for the inclusion of his name in the record of tenancy, both the appellate authority and the revisional authority as well, having had their own discussions purely on facts and circumstances, had concluded that the Tahsildar/Record Officer was wrong in dismissing the petition filed by the third respondent and that the third respondent had been regularly paying his lease rents. Thus, having exhausted all his statutory avenues kept open under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 and left with no choice but to seek remedy before this Court, the petitioner has come forward to institute the above writ petition for a judicial review of the orders passed by the lower authorities, especially that of the first respondent/District Revenue Officer and the revisional authority.

13. A careful perusal of the materials placed on record

and the grounds raised in the writ petition, it would come to be known that the authorities below, having extracted the pleadings by parties and having heard their counsel and on such discussions held on facts and circumstances brought forth in the light of the materials made available on record,have ultimately decided confirming the physical possession of the subject matter by the third respondent, in his capacity as the cultivating tenant on regular payments of rents. This Court of judicial review is neither required to go into such factual questions nor is it desirable to have a reappraisal or re-appreciation of the evidence placed on record below. In this regard, it has been held time and again by the upper forums of law, particularly the Honourable Apex Court, that a Court of judicial review is not to go into such factual position or apprising the evidence, when there is `some evidence' made available since the dictum is that only when the order has been passed on `no evidence' made available,this Court of judicial review could interfere with the decision made thereon, unless patent errors of law and perversity in approach have crept into the decisions arrived at by the lower authorities.

14. While such is the position regarding the decision arrived at by the authorities below, it is relevant to consider the manner in which the decision has been arrived at since only in this area, this Court has something to poke its nose when error is committed regarding the procedures established by law, opportunity to parties in compliance of the high principles of natural justice etc. It is nobody's case so far as the writ petition is concerned that any procedural flaw has occurred in passing the orders by the authorities below and no opportunity was given to any of the parties before passing such orders and therefore there is no occasion for this Court to go into such questions which have not been raised and it is safe to conclude that the authorities below have well taken care of these vital aspects. Therefore, this Court, so far as the above writ petition is concerned, has absolutely no reason to interfere with either the decisions arrived at by the authorities below much less by the first respondent herein so far as it is concerned with the impugned order or even the manner in which such decisions have been arrived at by the authorities below and therefore the interference of this Court sought to be made into such well considered and merited order impugned herein which is neither necessary nor called for in the circumstances of the case.

15. So far as the Second Appeal No.379 of 2001 is concerned, it too has been preferred by the writ petitioner himself having initiated the proceedings in the trial Court,filing a suit in O.S.No.564 of 1981 seeking the delivery of possession and mesne profits and having miserably failed to get a decree in his favour before the trial Court, he had preferred an appeal in A.S.No.8 of 1999 and the appeal also having come to be dismissed confirming the judgment and decree of the trial Court, ultimately, the appellant has come forward to prefer the above Second Appeal on certain grounds as brought forth in the grounds of appeal.

16. On a careful perusal of the pleadings and the

evidence placed on record, it comes to be known that the trial Court having carefully traced the facts pleaded by parties and having framed six specific issues based on the facts and circumstances pleaded by parties, had allowed the parties to record evidence, during which, the appellant herein, as the plaintiff therein, had examined himself as the sole witness P.W.1 for oral evidence and had further marked 17 documents for documentary evidence as Exs.A.1 to A.17. Likewise, on the part of the defendants also, the first defendant had examined himself as D.W.1 for oral evidence and had marked six documents as Exs.B.1 to B.6. The trial Court then based on such evidence placed on record, having appreciated the same, had its own discussions on each and every issue and had ultimately arrived at the conclusion to hold that the appellant/ plaintiff had failed to establish his case, so as to become entitled to any relief in the whole of the suit and had ultimately dismissed the appeal, but without costs.

17. Likewise, the Court of first appeal and the III Additional Subordinate Judge, Madurai, having traced the facts and circumstances as it had been pleaded further having framed four points for determination of the appeal and having had a clear discussion of its own, had well arrived at its conclusion to dismiss the appeal preferred by the appellant with costs, against which the appellant has now come

forward to prefer the above Second Appeal and this Court had admitted the same for determination of three substantial questions of law, extracted supra.

18. So far as the first substantial question of law is concerned, the Courts below have concurrently arrived at the conclusion that the appellant had not proved taking of possession on facts and upon the evidence adduced, it is quite immaterial in a case of such nature to consider whether the status of the plaintiff as the owner of the property is admitted or proved, since it is a case for recovery of possession meaning thereby that the possession is in the hands of the other side, who claims himself to be the lawful tenant of the suit properties and the only question that would arise in this context is ` whether the plaintiff is entitled to the reliefs sought for i.e. for recovery of possession and mesne profits or whether the first respondent has proved, on his part, his pleading to the effect that he is the cultivating tenant?' Naturally, the orders passed by the revenue authorities in favour of the first respondent that he is the cultivating tenant, had helped him for the trial Court to arriving at the conclusion to hold that he is the cultivating tenant besides the other materials placed on record before it. Therefore, absolutely there is anything wrong in the trial Court holding that in spite of the plaintiff being the title holder,the suit could be dismissed to the extent of the prayer and the same had been done rightly by the trial Court and therefore, on the part of the landlord/plaintiff, his possession need not necessarily be proved since his case itself is for recovery of possession.

19. So far as the second substantial question of law is concerned, it is confined to Ex.B.1 dated 15.12.1970, the copy of the record of tenancy maintained by the Record Officer and the Tahsildar. Undoubtedly, it is a vital document but regarding the nature of document and its admissibility in evidence, without having testified the same before the trial Court thus leaving the opportunity for the trial Court to frame proper issues and decide the question, all of a sudden, in the second appeal, such a question cannot be raised and therefore this substantial question of law is also to be answered against the plaintiff/appellant holding that the first defendant is the cultivating tenant and therefore the suit filed by the plaintiff is not maintainable.

20. Regarding the third substantial question of law, since it had already been discussed that there is nothing wrong in the lower Courts mostly relying on the conclusions arrived at by the revenue authorities under Tamil Nadu Act X of 1969 since they are the statutory authorities designated by law and such conclusions could be arrived at by them only and it had been rightly approved by the lower Court and therefore this substantial question of law is also decided in favour of the respondents and against the appellant.

21. Since both the Courts below have concurrently decided on facts and circumstances and in consideration of the law on the subject to dismiss the case of the appellant upholding the case of the third respondent in the writ petition and since no additional materials have been placed or new circumstances have been brought forth, this Court is left with no option but to decide all the substantial questions of law raised in the Second Appeal against him and in such event, the interference of this Court sought to be made into the well considered and merited judgments and decrees concurrently passed by both the Courts below are not at all required and hence the above Second Appeal becomes only liable to be dismissed.

In result,

(i)both the above Writ Petition No.6062 of 1998 and the Second Appeal No.379 of 2001 are dismissed;

(ii) The order of the first respondent in W.P.No.6062 of 1998/the District Revenue, Officer, Madurai made in R.P.No.6 of 1997, dated 28.2 .1998 thereby confirming the order dated 20.1.1997 made in A.P.No.8/9 5 by the second respondent in W.P.No.6062 of 1998/the Revenue Divisional Officer, Madurai is hereby confirmed.
(iii) The judgment and decree dated 31.7.2000 rendered in A.S.No.8 of 1999 by the Court of III Additional Subordinate Judge, Madurai thereby confirming the judgment and decree dated 22.6.1998 rendered in O. S.No.564 of 1981 by the Court of the District Munsif, Melur is hereby confirmed.

However, in the circumstances the cases, there shall be

no order as to costs.

Consequently, WPMP.No.9364 of 1998 is also dismissed.

31.1.2002.

Index: Yes/No
Internet: Yes/No

Rao

Sd./

ASSISTANT REGISTRAR

// TRUE COPY//

SUB ASSISTANT REGISTRAR

To

1.The District Revenue Officer,
Madurai District,
Madurai.

2.The Revenue Divisional Officer,
Madurai District,
Madurai.

3.The III Additional Subordinate Judge,
Madurai.

4.The District Munsif, Melur.

Rao

V.KANAGARAJ, J.

Common judgment in W.P.No.
6062 of 1998 & S.A.No.
379 of 2001 & WPMP.

31.1.2002