

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2004

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.1295 OF 1993

G. Thayumunasamy .. Appellant

-Vs-

1. V. Govindaswamy
2. P. Pownraj
3. K. Kaliaperumal
4. P. Uthirapathy
5. V. Chinnakulandi
6. V. Marudamuthu
7. Koothaian
8. Rajangam
9. Dharumaian .. Respondents

This second appeal is preferred under Section 100 of CPC against the judgment and decree dated 30.7.1993 and made in AS No.49/91 on the file of the learned Subordinate Judge, Nagapattinam reversing the judgment and decree dated 7.9.1990 made in OS No.240/89 on the file of the learned District Munsif, Thiruvarur.

!For Appellant : Ms.G.Devi

^For Respondents: No appearance

:JUDGMENT

Challenging the judgment of the learned Subordinate Judge, Nagapattinam made in AS No.49 of 1991 reversing the judgment of the trial court in a suit for permanent injunction, the plaintiff has brought forth this second appeal.

2. The short facts necessary for the disposal of this appeal are as follows:

The suit landed properties and other properties originally belonged to one Krishnamurthy. On his death, his wife Saraswathy Ammal became entitled to the same. The plaintiff took the same on lease and has been paying the lease amount to the owner. He has been recorded as a cultivating tenant under Tamil Nadu Act 25 of 1955 and he continues to be in possession. While so, the defendants made an attempt to trespass into the property on 19.4.1989, which gave the cause of action to file the suit for permanent injunction.

3. The suit was resisted by the defendants stating that it is true that the property was originally belonged to Saraswathy Ammal; that she was owning an excess property, and thus, applying the provisions of the Act, the properties, which were in excess, were acquired by the Government; that after the properties were acquired, the defendants, who are the poor agriculturists, have applied for assignment and it was done so; that apart from that on 31.12.1988, a petition filed by the plaintiff before the Tahsildar was also rejected and no appeal was preferred therefrom; that under the stated circumstances, it would be futile on the part of the plaintiff to contend that the properties were either owned by the Saraswathy Ammal or were in the possession of the plaintiff, and hence, he was to be non suited.

4. The trial court framed necessary issues, tried the suit and decreed the same. Aggrieved, the defendants took it on appeal before the first appellate Court, wherein the judgment of the trial court was reversed and the suit was dismissed. The aggrieved plaintiff has brought forth this second appeal.

5. At the time of admission, the following substantial questions of law were formulated by this Court for consideration in this second appeal:

1) Whether the Lower Appellate Court is justified in finding that the Government has been vested with the entire land when admittedly the authorised officer has not exercised his powers in taking possession of the suit land as per Section 18(4) of the Land Ceiling Act?

2) Whether the Lower Appellate Court has made proper appreciation of both oral and documentary evidence adduced by the Appellant/ plaintiff?

3) Whether the Lower Appellate Court has correctly and properly interpreted Ex.A.1 and other exhibits marked by the appellant/plaintiff?

4) Whether the Lower appellate Court is justified in reversing the decree and judgment of the trial court contrary to Section 15 of the Tamil Nadu Record of Tenancy Rights Act, as per which, the tenancy rights of the appellant/plaintiff shall be presumed to be proved?

5) Whether the Lower Appellate Court was correct in refusing the contention of the appellant/plaintiff that he was entitled to protection under Tamil Nadu Act 25/55 and he can be dispossessed from the suit lands only by following the procedures contained in the Act 25/55?

6. Heard the learned counsel for the petitioner and also the learned counsel for the respondents on those contentions.

7. Admittedly, the suit property originally belonged to Krishnamurthy and on his death, it was owned by his wife Saraswathy Ammal. The case of the plaintiff seeking permanent injunction was that he took the landed properties on lease and has been paying the lease amount to the owner; that he has also been recorded as cultivating tenant under Act 25/1955 and has been so all along, and thus, he has been in lawful possession of the same and an attempt of trespass was made by the respondents/defendants, and hence, he filed the suit. What was all contended by the respondents/defendants before the courts below and equally here also is that the properties were actually acquired by the Government, because they were excess in the hands of Saraswathy Ammal; that on the acquisition, the defendants, who are the poor agriculturists, made an application for assignment; that accordingly, it was ordered; that pursuant to the same, they got possession, and thus, they were in lawful possession, and hence, it is not a fit case for granting permanent injunction.

8. The trial court, in extenso, has discussed and marshaled the

evidence and has rightly found that the plaintiff's possession was to be protected. The plaintiff has examined himself as P.W.1. It is also not in controversy that the properties originally belonged to Sarawathy Ammal, the wife of Krishnamurthy. In order to substantiate the fact that the plaintiff was recorded as cultivating tenant, he has filed Ex.A.1, where-from it could be seen that he was recorded as cultivating tenant and for the payment of kist, he has produced Ex.A.2. He has also filed Ex.A.3 for the payment of lease amount to the owner. There is no evidence to show that the properties were actually taken possession either by the Government or after taking possession, it was handed over to the defendants. The case of the defendants was that there was an assignment in their favour and pursuant to the assignment, they took possession of the property.

9. The trial court has clearly pointed out that there is no evidence to show that the defendants were put in possession of the property, in question. Apart from that the trial court has also pointed out that the terms, what is now in the assignment order, which were condition precedent, have not been complied with. While so, the assignment order could not have been given effect to. Under the stated circumstances, in the absence of any taking over of possession from the plaintiff and since no evidence was available to prove that pursuant to the assignment order, it has been given effect to and complied with and possession was handed over to the defendants, the possession of the plaintiff has got to be taken as one lawful possession, since he was recorded as cultivating tenant as per the provisions of the Act. Hence, it was a fit case for granting permanent injunction. The trial court, in view of the same, has granted permanent injunction on the sufficient reasons. The first appellate Court has negated the same, which has got to be set aside. Accordingly, the judgment of the first appellate Court is set aside. The judgment of the trial court granting permanent injunction in favour of the plaintiff is restored.

10. In the result, this second appeal is allowed, leaving the parties to bear their costs.

Index : Yes

Internet : Yes

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To

1. The District Munsif, Thiruvapur
2. The Subordinate Judge, Nagapattinam
3. The Record Keeper, VR Section,  
High Court, Madras

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