

(1974) 09 MAD CK 0013

In the Madras High Court

Case No : Appeal Against Appellate Order No. 192 of 1973

Ayyamperumal Gounder

APPELLANT

Vs

Parthasarathi Naicker

RESPONDENT

Date of Decision : 13-09-1974

Acts Referred:

Citation : (1975) ILR (Mad) 506

Hon'ble Judges : Maharajan, J

Bench : Single Bench

Advocate : S. Rajarama Iyer and Srinivasavaradan, for the Appellant; V. Sridevan and P.A. Deivasigamani, for the Respondent

Final Decision : Allowed

Judgement

Maharajan, J.—The interesting question that arises for consideration in this Civil Miscellaneous Second Appeal is whether a person who has

usufructuary mortgaged his agricultural land and has obtained a lease back of the same from the usufructuary mortgagee and is in cultivation

thereof, can be regarded as a cultivating tenant entitled to the benefits of the Tamil Nadu Act XXI of 1972.

2. Section Clause (c) of that Act defines a Cultivating tenant to mean a cultivating tenant as defined in Clause (aa) of Section 2 of the Tenants

Protection Act. Evidently the reference is to the definition in the Madras Cultivating Tenants Protection Act, as amended by Tamil Nadu Act IX of

1969 Section 2 clause [a] of the Act as amended reads, as follows

Cultivating tenant

(i) Means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another a

under a tenancy agreement express or implied,

(ii) I shall omit because it is not relevant for the present purpose.

3. Both the Courts below have held that the Appellant is dis-entitled to the benefits of the Act because he is not a person in the cultivation of any

land belonging to another, under a tenancy agreement, express or Implied. How can the owner of a land be his own tenant? This is the question

that appears to have puzzled the Courts below and constrained them to record a finding against the Appellant. I think the question is no more

intriguing than the questions can a man rape his own wife and steal his own ring? The law is not without its wits in answering such questions. The

Appellant is not doubt the owner of the land, of which he is in cultivation. But then, he parted with one of the most precious rights of ownership

when he usufructuary mortgaged the land and deprived himself of the right to possess and enjoy the land and to lease it out to third parties. After

conferring upon the usufructuary mortgagee the right of possession" which carried with it the right to lease out the land to others and the right to

evict the tenants therefrom, he obtained a lease back of the same land from his usufructuary mortgages in pursuance of a tenancy agreement

between the mortgagee and himself. By virtue of this agreement, a new jural relationship Was created between the Appellant and the usufructuary

mortgagee, whereby the quondam owner of the property became a mere lessee of the property with, no doubt, a right to redeem the mortgagee

and thereby to recover the right to be in possession of the property on his own. I see, therefore, no anomaly about the Appellant being a cultivating

tenant of land, the equity of redemption of which may, no doubt, belong to him but the right of possession to which belongs undoubtedly to his

landlord, who is the usufructuary mortgagee.

4. Learned Counsel for the Respondent laid great emphasis upon the expression belonging to another occurring in the definition of a cultivating

tenant. The word belonging has a variety of convocations. It usually takes its colour from the company of the words in which it occurs. The Shorter

Oxford English Dictionary gives as many as four meanings to the word belong.

(1) to go along with as an adjunct, function or duty; to pertain to;

(2) to pertain, concern or relate to carch];

(3) To be in the rightful possession of; and

(4) to be connected with; to form a part or appendage of.

If the meaning to pertain to is attribute to the word belong the land can be said to belong to the usufructuary mortgagees who, under the mortgage,

has become entitled to exclusive possession of the property as well as to lease it out to others, including the Appellant, the holder of the equity of

redemption. The word belong does not necessarily connote the concept of absolute ownership. It may also denote a person to whom the tangible

right of possession of a land pertains

5. It Stroud's Judicial Dictionary, under the heading belonging the following passage occurs;

Property belonging to a person has two general meanings, (1). ownership (2) absolute right of user, ""A road may be said with perfect property to

belong to a man who has a right to use it as of right, all though soil does not belong to him.

Under the same heading an English case is quoted, where the expression children belongings to me used in the will of unmarried woman was

construed to refer to her illegitimate children. Reference is also made to another case where a power-of-attorney was granted by a man to another

to sell any real or personal property belonging to me. The expression was held not wide enough to authorise the agent to exercise the power of

sale in respect of a mortgage held by the author of the power. This shows that the word belonging should be interpreted in the context in which it is

used. Where the expression Passengers belonging to a ship is used, there is no idea of ownership by the ship of the passenger. It is merely a

convenient way of saying that the passengers have booked their passage by a particular ship in order to distinguish them from passengers belonging

to another ship.

6. Learned Counsel for the Respondent would next quote Bank Voor Nandel En Scheerpvaart v. Stafford (1951) 2 All E.R. 779 In that case

Articles (3) of the Treaty of peaces: Hungarys Order, 1948 came to be considered. That Article charged.

Any property, rights or interests within His Majestys dominions.... belonging to or held or managed on behalf of the Government of Hungary or a

Hungarian national.

Devlin J., while construing the word belonging observed as follows:

In construing the paragraph I do not think that the question is simplify, as was argued for the Administrator to give to the word "belonging" a

meaning wide enough to include what was called the substantive owner as well as the person who is the owner in the eyes of the laws The word

cannot be isolated from the "property rights" or interests, to which it appertains. When one talks about property loosely may mean a piece of

property such as a specific chattel. If one speaks of a specific chattel , such as a chair, as belonging to Smith, there may be room for the admission

of some looser connection between Smith and the chair than that which is ordinarily denoted by the conception of property, but rights or interests

cannot be used in Article 1(3) of the Mder in a loose sense to denote a concrete piece of property If a chattel owned by a Hungarian is pledged to

an Englishman it is conceded that the Administrator takes the chattel subject to the pledge; i.e., he does not take the chattel as a piece of property,

but he takes the property which the Hungarian has in the chattel. That property can only be identified in relation to an owner and has, therefore, no

existence apart from the legal relationship which requires a legal owner to make complete when therefore a legal document talks of property rights

or interests belonging to a person, it must mean belonging to the person who in law owns them.

After making all these observations, the learned Judge felt some doubt about the construction he had placed upon the word and proceeded to deal

with the question on a different footing altogether. This illustrates the proposition already said down that the meaning of the word belonging will

have to be construed in the context in which it occurs. Initially speaking, the Appellant has no right to possession of the land which he has been

cultivating. After the usufructuary mortgage, possession of the land did not ""belong to him. It belonged only to the usufructuary mortgagee.

Otherwise, there was no need for him to enter into a lease arrangement with the mortgagee before seeking to cultivate what I am asked to say is

his own land. A person in the legal situation of the Appellant is as much a cultivating tenant as any one else and there is little reason to think that the

Legislature intended to exclude a person like the Appellant, who, after parting with his right of procession in favour of a usufructuary mortgage

obtained a lease back of the hypotheca and has been cultivating it under a tenancy agreement with the mortgagee.

7. I find that the identical question came up for discussion before N.S. Ramaswami, J. in Civil Miscellaneous. Second Appeal No. 11 of 1973 and

Civil Revision Petition Nos. 2736 and 2907 of 1972 reported at page 314, Tamilnadu Law Notes Journal, Part 20 of 1974 Pavadai Padayachi v.

Pitchammal 1974 TLNJ 314. The learned Judge answered that question in the following manner.

The revision Petitioner was no doubt the full owner of the land. Out of the bundle of rights which he had, he has already transferred all the rights,

except the right to the equity of redemption, in favour of the Respondent The Respondent in his capacity as usufructuary mortgagee is entitled to

enter into a lease back arrangement with the revision Petitioner and it is under that arrangement the revision Petitioner is bound to pay the rent.

There is nothing to show that the word "belonging" is synonymous with ownership. under the circumstances, the civil revision petitions and the

appeal are allowed.

With great respect to the learned Judge, I agree with his observations and hold that the Appellant, despite the fact that he holds the equity of

redemption in respect of the suit property, is never the less a cultivating tenant within the meaning of the Tamil Nadu Act XXI of 1972.

8. But the question whether he has fulfilled the preconditions laid down by the Act before he can claim the benefits thereof, has not been considered

by either of the Courts below. I, therefore, allow the appeal, set aside the orders of the Courts below and holding that the Appellant is a

cultivating tenant within the meaning of the Act, remand the matter to the Court of first Instance for disposal of the execution petition in

accordance with law. Such questions as whether the Appellant has deposited or paid the prescribed rent within the prescribed period .etc., left

open for decision by the Court of First instance.

9. The costs will abide the results.