

(2009) 11 MAD CK 0227

In the Madras High Court

Case No : Second Appeal No's. 1059 and 1390 of 1995

Balu Pillai @ Balasubramania Pillai and Others

APPELLANT

Vs

Mahadevan and Others

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 41
Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 16A
Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 2, 6A

Citation : (2010) 1 LW 541

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : A. Muthukumar, for the Appellant; S. Ramamoorthy, for R1, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—Second Appeal No. 1059 of 1995 is filed against the judgment and decree in A.S. No. 45 of 1995 preferred against the judgment and decree in O.S. No. 132 of 1992 and Second Appeal No. 1390 of 1995 is filed against the judgment and decree in A.S. No. 52 of 1993 preferred against the judgment and decree in O.S. No. 132 of 1992.

2. The first Respondent, who is the Plaintiff in the suit filed the suit in O.S. No. 132 of 1992 praying for recovery of possession and also for mesne profits. The Trial Court chose to decree the suit for recovery of possession, but negated the prayer for mesne profits and as a result of which, the first Respondent, who is the Plaintiff in the suit preferred A.S. No. 52 of 1993 challenging the dismissal of the suit with respect to the prayer for mesne profits and the Appellants herein, who are Defendants 5 to 7, preferred A.S. No. 45 of 1993 aggrieved by the decree granted in favour of the first Respondent herein for recovery of possession. The first appellate court was pleased to allow the appeal preferred by the Plaintiff in A.S. No. 52 of 1993 and dismissed the appeal preferred by

Defendants 5 to 7 in A.S. No. 45 of 1993. In short, the suit filed by the first Respondent/Plaintiff was allowed in its entirety at the appellate stage and therefore, Defendants 5 to 7 have preferred the present appeals.

3. Defendants 1 to 4, who figure as Respondents 2 to 5 before this Court, remained absent. The Plaintiff has contended that the suit properties originally owned by one Devasundari Ammal and the same were purchased by the Plaintiff for valuable consideration under a registered sale deed dated 6.5.1979. Devasundari Ammal leased out the suit properties to one Karuthan even prior to the sale in favour of the Plaintiff and the said Karuthan was a recorded tenant of the suit properties. Karuthan died in the year 1971. Defendants 1 and 2 are his sons and the third Defendant is his widow and the fourth Defendant is his married daughter. The third Defendant was old and infirm and was blind and the fourth Defendant was married off. The first Defendant was employed in the Agriculture Department and the second Defendant was employed in the Postal Department. The fourth Defendant was living at Kodavilagam near Manganallur. None of the heirs of Karuthan contributed his physical labour in the cultivation of the suit properties. However, the first and second Defendants purportedly conveyed their tenancy rights in respect of the first item of the suit properties in favour of the fifth Defendant under a registered deed dated 5.6.1979 for a consideration of Rs. 1600/=. The fifth Defendant was also employed at Neyveli and had not cultivated the first item of the suit properties. The sixth Defendant, who is the divided brother of the fifth Defendant, is cultivating the first item of the suit properties with hired labour. The possession of the second item of the suit properties was given to the seventh Defendant by Defendants 1 and 2 and the seventh Defendant is actually cultivating the second item. None of the Defendants who are in possession of the suit properties, is a cultivating tenant and entitled to the benefits of the Act 25 of 1955. Eviction proceeding initiated as against the first, second and fifth Defendant before the Revenue Court was dismissed on the ground that the other legal heirs viz., the widow and daughter of the deceased Karuthan were not impleaded as necessary parties to the said proceeding. With the above pleadings, the Plaintiff has sought for recovery of possession from the Defendants.

4. Defendants 1 to 4 remained ex parte. Defendants 5 to 7 resisted the claim of the Plaintiffs on the ground that the legal heirs, who inherited the tenancy rights of Karuthan, transferred the tenancy right in favour of the fifth Defendant. It is contended that the heirs of Karuthan continued to cultivate the suit properties by contributing their physical labour even after the demise of Karuthan. The fifth Defendant, on transfer of tenancy rights, is contributing his physical labour in the lands alongwith his family members. The fifth Defendant has become the tenant in respect of item one of the suit properties. The Plaintiff has chosen to create a sale deed in his favour having fully known that the fifth Defendant is the cultivating tenant of the first item of the suit properties. The Plaintiff, who has purchased the suit properties subject to the tenancy rights of the fifth Defendant, can only collect rent from him. As the fifth Defendant is the cultivating tenant

and is entitled to the benefits of the Tamilnadu Cultivating Tenants Protection Act, 1955, he cannot be evicted from the premises. Having admitted the status of the Defendants, the Plaintiff filed an application for eviction before the Revenue Court Mayiladuthurai and the same was dismissed. Therefore, the Plaintiff is estopped from contending that the Defendants are not cultivating tenants of the suit properties. The seventh Defendant has been in possession and enjoyment of the second item of the suit properties in his capacity as sub-lessee. Even if the fifth and seventh Defendants are considered as assignees of tenancy rights, they are recognized as cultivating tenants under the Tamilnadu Cultivating Tenants Protection Act, 1955. With the aforesaid contentions, Defendants 5 to 7 have sought for dismissal of the suit.

5. The Trial Court examined the Plaintiff as PW1 and one Sundaramurthy as PW2. As many as four documents were marked on the side of the Plaintiff. On the side of the Defendants, the 6th Defendant was examined as DW1 and the 7th Defendant was examined as DW2. No document was marked on the side of the Defendants.

6. The Trial Court as well as the first appellate court rendered a finding that the legal heirs of Karuthan were not cultivating tenants inasmuch as they had not contributed their physical labour to cultivate the suit properties. It has also been held that Defendants 5 and 6 also were not cultivating tenants. The courts below have also decided that the legal heirs of Karuthan have no right to transfer the leasehold right in favour of third parties. Though the Trial Court granted a decree for recovery of possession, negated the plea for mesne profits. The first appellate court, in the appeal preferred by the Plaintiff, chose to grant that relief also and allowed the suit in its entirety.

7. The following substantial questions of law were framed at the time of admission of S.A. No. 1059 of 1995.

1. Whether the lower appellate court has erred in refusing to admit the certified copy of the RTR extract sought to be marked on behalf of the Appellants herein?

2. Whether the jurisdiction of civil court is ousted as per Section 16-A of the Tamil Nadu Agricultural Lands Records of Tenancy Rights Act?

8. The following substantial questions of law were framed at the time of admission of S.A. No. 1390 of 1995:

1. Whether the jurisdiction of civil court is ousted as per Section 16-A of the Tamil Nadu Agricultural Lands Records of Tenancy Rights Act?

2. Whether in the absence of evidence addressed by the Plaintiff, the past mesne profits can be relegated to separate proceedings under Order 20 Rule 12 Code of Civil Procedure?

9. There are two items of suit properties. The first item of the suit properties bearing R.S. No. 75 measures 1.37 acres and the second item of the suit

properties bearing R.S. No. 48/2C measures 37 cents. Devasundari was the original owner of the suit properties. She leased out the suit properties to one Karuthan for cultivation. It is the admitted case that he became the recorded cultivating tenant. It is also the admitted position that Karuthan passed away in the year 1971. Defendants 1 and 2 are sons, third Defendant is the wife and fourth Defendant is the daughter of the said deceased Karuthan.

10. The fifth Defendant would claim that he purchased the leasehold right from the first and second Defendants under a deed, Ex.A2 dated 5.6.1979 with respect to the first item of the suit property. The sixth Defendant is the divided brother of the fifth Defendant. It is the case of the fifth and sixth Defendants that the fifth Defendant, through the sixth Defendant, is cultivating the first item of the suit properties. The seventh Defendant makes a claim that he became the sub-tenant under the legal heirs of Karuthan. The fact remains that he had not specifically stated in the written statement as to which of the legal heirs, in fact, sub-let the second item of the suit properties to the seventh Defendant.

11. The learned Counsel appearing for the Appellants/Defendants 5 to 7 would submit that the courts below have no jurisdiction to decide as to whether the legal heirs of Karuthan were in fact cultivating tenants and whether Defendants 5 and 7 were the cultivating Defendants inasmuch as there is a bar u/s 16A of the Tamilnadu Agricultural Lands Record of Tenancy Rights Act, 1969. The courts below have wrongly decided that there cannot be any transfer of leasehold right by the legal heirs of the recorded cultivating tenant in favour of a third party. The Revenue Court had already decided the core issues involved in this case and therefore, the Plaintiff is estopped from claiming recovery of possession before the civil court. The first appellate court erred in not admitting the petition seeking to adduce additional evidence. The vital document produced before the first appellate court would finally determine the core issues arisen between the parties. Therefore, he would submit that the judgment of the courts below will have to be set aside.

12. Per contra, learned Counsel appearing for the first Respondent/Plaintiff would submit that though the fifth Defendant was not examined before the Trial Court, the sixth Defendant, who was examined as DW1, has categorically admitted that the fifth Defendant and his wife were in service residing at Kattumannarkoil. It is also his admission that Defendants 1 and 2 were also Government employees. Inasmuch Defendants 1, 2 and 5 were Government servants, they cannot be termed as cultivating tenants, he would submit. Inasmuch as Defendants 1, and 2 were not cultivating tenants, they do not have any right to transfer the tenancy rights in favour of the fifth Defendant. As the fifth Defendant is also a Government servant, he cannot assert his tenancy rights, if any. The 7th Defendant, who was examined as DW2 also has not established by giving cogent evidence that he became the sub-tenant under the legal heirs of Karuthan. He would also submit that the civil court ceases to have jurisdiction only when it comes to a decision that a party to a suit is a cultivating tenant. Once the civil

court comes to a decision that a party to a suit was not a cultivating tenant, it has got jurisdiction to determine the relationship of the parties to grant the relief prayed for in the suit.

13. The learned Counsel appearing for the Plaintiff would further submit that in the instant case, there is a concurrent decision by the courts below that neither Defendants 1 to 4 nor Defendants 5 and 7 are the cultivating tenants. In view of the above, the civil court has jurisdiction to determine the status of the parties in order to grant the reliefs sought for. Coming to the plea of res judicata in the garb of the estoppel set up by Defendants 5 to 7, the learned Counsel appearing for the first Respondent/Plaintiff would submit that the material issue as to whether Appellants 5 and 6 were cultivating tenants was not decided by the Revenue Court. Therefore, the principle of res judicata u/s 11 of the Code of CPC does not apply to the facts and circumstances of this case. With regard to the plea of reception of additional document invoking the provision u/s 41 Rule 27 of the Code of Civil Procedure, the learned Counsel appearing for the Plaintiff would submit that there was no pleading in the written statement that the fifth Defendant was registered as a cultivating tenant. Quite surprisingly, the fifth Defendant, who allegedly came to know of such things, produced a document without any pleading for the first time before the appellate court and that, therefore, such a document cannot be admitted before the first appellate court. The learned Counsel appearing for the Plaintiff would submit that the appeals deserve dismissal.

14. Jurisdiction of the civil court: The admitted fact is that one Karuthan was the recorded cultivating tenant before his death in the year 1971. Defendants 1 to 4 are admittedly his legal heirs. The fifth Defendant claims to have purchased leasehold right of Karuthan with respect to the first item of the suit property through his legal heirs Defendants 1 and 2. The court will have to find whether Defendants 1 and 2 were the cultivating tenants contributing their physical labour for the cultivation of the first item of the suit properties.

15. DW1, the sixth Defendant in the suit has categorically admitted that Defendants 1 and 2 were Government servants. In this context, the learned Counsel appearing for the Plaintiff submitted a decision in *Angu @ Angammal V. The Record Officer & Additional Tahsildar, Thanjavur And 3 Others* (1988 TLNJ 35 : 1988 2 L.W. 41) wherein it has been held as follows:

In the instant case, it is common ground that the fourth Respondent herein is a permanent employee of the Government as a teacher of a Government institution. Never it can be ever contemplated that a Government servant, who is in service to go to the field work in the field thereby transferring himself as a "cultivating tenant" as per the Act, in addition to the Government job which says that is a Government servant all the twenty-four hours. Wherever he is, he is to be governed by the Government Servants Conduct Rules and other enactments including the Corruption Act. Under the circumstances, he never comes under the purview of Section 2(b) of the Tamil Nadu Cultivating Tenants Protection Act,

1962.

16. A person, who is a Government servant governed by the Government Servants Conduct Rules can never come under the purview of Section 2(b) of the Tamil Nadu Cultivating Tenants Protection Act, 1962. The logic behind the decision is that a Government servant cannot claim to have contributed his physical labour when he is actually in service for the cultivation of the subject property. Defendants 1 and 2 being Government servants cannot be cultivating tenants. When Defendants 1 and 2 were not cultivating tenants, they have no right to transfer the leasehold right with respect to the first item of the suit property in favour of the fifth Defendant.

17. Quite surprisingly, it is found that the fifth Defendant is also a Government servant. That is the admission made by DW1, the sixth Defendant in this case. But, the fact remains that the fifth Defendant, who alleged to have purchased the leasehold right from Defendants 1 and 2, has not gone into the box to speak about such a purchase of leasehold rights. The sixth Defendant has completely betrayed the fifth Defendant through his testimony that the fifth Defendant was working as a Government servant and has not contributed his physical labour for the cultivation of the lands.

18. The next question that arise for consideration is whether the fifth Defendant is cultivating lands through the sixth Defendant. The fact remains that the sixth Defendant is not one of the family members of the fifth Defendant. The sixth Defendant would admit that he had divided from the joint family status of the fifth Defendant. The sixth Defendant is found to be the divided brother of the fifth Defendant. Therefore, the possession and enjoyment of the property or the cultivation being made by the sixth Defendant cannot be considered as the cultivation made by the sixth Defendant on behalf of the fifth Defendant. Though the Plaintiff would admit that the sixth Defendant is cultivating the first item of the suit property, he cannot be considered as cultivating tenant under the Tamilnadu Cultivating Tenants Protection Act, 1955.

19. Coming to the claim made by the seventh Defendant that he was inducted as sub-tenant by the legal heirs of Karuthan, as already pointed out by this Court, he has not specifically come out with a plea that such and such heir, in fact, sub-let the second item of the suit properties in his favour. Except the ipse dixit of the seventh Defendant examined as DW2, no other evidence is available on record to show that he is cultivating the suit property in his capacity as sub-tenant under the legal heirs of Karuthan. It is on record that none of the legal heirs of Karuthan ever contributed their physical labour for the cultivation of the lands. Though the Plaintiff would admit that the seventh Defendant is, in fact, cultivating the second item of the suit properties, inasmuch as the seventh Defendant failed to establish that he has come to occupy the second item of the suit properties in his capacity as sub-tenant, he cannot be classified as a cultivating sub-tenant.

20. Coming to the legal issue involved in this case, the learned Counsel appearing for Defendants 5 to 7 cited the decision of a Full Bench of this Court in *Periathambi Goundan v. The District Revenue Officer, Coimbatore* (93 LW 169) wherein it has been held that Section 16A of the Tamilnadu Agricultural Land Record of Tenancy Rights Act, 1969 clearly bars the exercise of jurisdiction of a civil court to determine whether a particular person is a cultivating tenant or not under the Act.

21. The learned Counsel appearing for the Plaintiff would submit that the aforesaid decision came to be rendered under the Tamilnadu Agricultural Land Record of Tenancy Rights Act, 1969 whereas Defendants 5 to 7 have asserted their right through the written statement only under the Tamilnadu Cultivating Tenants Protection Act, 1955. He cited a decision in *Chinnamuthu Gounder and Others, etc. Vs. P.A.S. Perumal Chettiar*, wherein it has been held as follows:

The clear import of Section 6-A is that in any suit before any civil court for possession if the Defendant proves not only that he is a cultivating tenant but also that he is entitled to the benefits of the Act the civil court is bound to transfer it to the Revenue Divisional Officer and cannot proceed to try and dispose it of itself. In the present case it has been found by the High Court as also by the trial court that the Appellants had wilfully denied the title of the Respondent who is the landlord. They thus become thus disentitled to the benefits under the Act. Consequently the civil court had jurisdiction to proceed with the trial and there was no question of its transferring the suit to the Revenue Divisional Officer. There has been a consistent course of decisions of the Madras High Court that in order to attract the applicability of Section 6-A both the conditions must co-exist, namely, the Defendant must be a cultivating tenant within the meaning of the Act and he should be entitled to the benefits of the Act. If both these conditions are not satisfied no question of any transfer u/s 6-A will arise. The civil court may have to determine, for the purpose of coming to the conclusion, whether a suit has to be transferred u/s 6-A, certain questions which are within the jurisdiction of the revenue court under the Act. But that cannot affect the interpretation of the words "cultivating tenant entitled to the benefits of the Act".

22. The aforesaid decision has arisen under the background of the Madras Cultivating Tenants Protection Act, 1955. Section 6-A of the said Act came to be interpreted in the said decision. Defendants 5 to 7 have made an attempt to assert their rights only under the Tamilnadu Cultivating Tenants Protection Act, 1955. Interpreting Section 6-A of the Madras Cultivating Tenants Protection Act, 1955, the Supreme Court has held that once the civil court comes to a decision that a person is a cultivating tenant and also entitled to the benefits of the Madras Cultivating Tenants Protection Act, 1955, the civil court, immediately thereof, ceases to have any jurisdiction to decide the suit, but, if the civil court comes to a decision that a party to the suit is not a cultivating tenant and is also not entitled to the benefits under the Tamilnadu Cultivating Tenants Protection

Act, 1955, the civil court is entitled to entertain the suit filed by the landlord. Following the aforesaid ratio rendered by the Supreme Court, this Court finds that the civil court has got jurisdiction to decide the relationship of the parties concerned as to whether they are the cultivating tenants under the scope and ambit of the Tamilnadu Cultivating Tenants Protection Act, 1955 and grant the relief as sought for once it has come to the decision that the Defendants are not cultivating tenants of the suit properties and that they are not entitled to protection under the aforesaid Act. Therefore, there is no embargo for the civil court to decide the issues arisen in the instant suit. The concurrent decision arrived at by the courts below that neither Defendants 1 to 4 nor Defendants 5 and 7 are cultivating tenants in the background of the materials produced by the Plaintiff does not warrant interference.

23. Transferability of the cultivating rights: The learned Counsel appearing for Defendants 5 to 7 would vehemently submit that the cultivating tenant has every right to transfer the leasehold right in favour of a third party. But, for the question put by this Court before the learned Counsel appearing for Defendants 5 to 7 whether there is any provision either under the Tamilnadu Cultivating Tenants Protect Act, 1955 or under the Tamilnadu Agricultural Lands Record of Tenancy Rights Act dealing with transfer of cultivating right, he would submit that there was no such specific provision under the Act recognizing the transfer of cultivating right by the cultivating tenants to a third party. But, the learned Counsel appearing for Defendants 5 to 7 banked on the decision of this Court in *Ramiah Nattar v. Jambakathamma and Ors.* (1977 TLNJ 157). That was a case where the question whether a legatee of the leasehold right inherits the same with all incidents of inheritability and transferability. In the said case, on facts, it was found that the tenant holding over bequeathed the leasehold right in favour of the first Defendant. Firstly, it is found that the question whether the leasehold right can be transferred by way of an instrument was not specifically dealt with in that judgment. Secondly, the facts and circumstances of the above case would not apply to the facts of this case.

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.

25. Factually it is found that the first and second Defendants, who were not cultivating tenants inasmuch as they had not tilled the lands physically, have no right to transfer the leasehold right in favour of the fifth Defendant. Inasmuch as first and second Defendants did not have any right to transfer the leasehold rights as they were not cultivating tenants, the fifth Defendant also does not derive any leasehold right from the first and second Defendants. The law also, as

stated above, does not permit the wholesale alienation of the leasehold right by a recorded cultivating tenant in favour of a third party behind the back of the landlord. The seventh Defendant also has failed to establish satisfactorily that he became a subtenant under the legal heirs of Karuthan. The factual decision rendered by the courts below with respect thereto cannot be upset by this Court in the absence of cogent reason put forth before this Court for interference.

26. Estoppel pleaded by the Defendants: It is relevant to refer to Ex.A3, the orders passed by the Revenue Court Mayuram in P. No. 1017/79 dated 15.10.1980. The Plaintiff herein initiated the aforesaid proceedings before the Revenue Court, Mayuram as against Defendants 1, 2 and 5. The third and fourth Defendants, who are also legal heirs of Karuthan, were not impleaded as parties therein. The questions arose for determination before the Revenue Officer were,

(1) Whether the proceedings initiated by the Plaintiff as against Defendants 1, 2 and 5 without impleading the other legal heirs viz., Defendants 3 and 4 were maintainable.

(2) Whether Defendants 1, 2 and 5 ceased to cultivate the subject lands.

27. The Revenue authority under the proceedings, Ex.A3, chose to determine that the proceedings initiated by the Plaintiff were not at all maintainable on account of non-joinder of necessary parties viz., Defendants 3 and 4, the legal heirs of Karuthan. As the issue of non-joinder of necessary parties was determined against the Plaintiff herein, the other issue whether Defendants 1, 2 and 5 ceased to cultivate the lands was not taken up and decided on merit.

28. The principle of res judicata would apply only if the material directly and substantially in issue in the former suit has been heard and finally decided by a competent court. The court should have applied its judicial mind and adjudicated the issue finally. But, if the former suit is dismissed without any adjudication on the material directly and substantially in issue, on the ground of non-joinder of necessary parties, the decision arrived at in the former suit will not operate as res judicata. (Refer State Of Maharashtra v. National Construction Co. (1996) 1 SCC 735).

29. The learned Counsel appearing for Defendants 5 to 7 submitted a decision in *Saraswathi v. Muthukumarasamy (died) and Ors.* (1989) TLNJ 303 : 2002 (1) L.W. 460 wherein it has been held as follows:

The Revenue Court exercising authority under the Act can be held to be a Court of limited jurisdiction within the meaning of Explanation VIII. The Revenue Court is vested with the jurisdiction over questions relating to the existence or otherwise of the relationship of landlord and tenant, as to the status, as to the terms on which he held the tenancy or he holds the tenancy and as to similar questions, and the Revenue Court must be held to be competent to decide such issues. A decision by the Revenue Court on these issues, which is within its competence, will certainly operate as res judicata in view of Explanation VICE to

Section 11 of the Code of Civil Procedure.

30. Of course, if the Revenue Court had already decided finally as to whether Defendants 1 to 4 were cultivating tenants, the same would definitely operate as *res judicata* in the present suit where the very same substantial question had arisen for determination. But, unfortunately, the Revenue Court under Ex.A3 chose to dismiss the proceedings initiated by the Plaintiff for eviction only on the ground that the proceedings were not maintainable on account of non-joinder of necessary parties. The issue as to whether Defendants 1 to 4 were cultivating tenants, was not decided by the Revenue Court. Therefore, the aforesaid ratio will not apply to the facts and circumstances of this case.

31. In the instant case, the issue whether Defendants 1 to 4 were the cultivating tenants or not, though raised before the Revenue Court, was not determined finally applying its mind. The said proceedings initiated by the Plaintiff was dismissed only on the ground that there was non-joinder of necessary parties. Therefore, by no stretch of imagination, we can come to a decision that the suit is hit by the principle of *res judicata*.

32. Reception of additional evidence: The fifth Defendant, who had not come to the box for giving evidence before the Trial Court, seeks to introduce certified copy of the Record of Tenancy Rights Register. Firstly, without pleadings, a document cannot be introduced to the surprise of the other side. On fact, it is found that the fifth Defendant never pleaded in the written statement that his name was recorded in the Record of Tenancy Rights Register maintained by the revenue authorities. Secondly, in the very affidavit filed by the fifth Defendant, seeking permission to introduce additional evidence, he has categorically admitted that he was already aware of the fact that his name was recorded in the record of tenancy rights. That being so, no explanation is forthcoming as to why he has not chosen to produce such a vital document before the Trial Court. A document cannot be introduced to surprise the other side.

33. Let us now see the scope and ambit of Order 41 Rule 27 of the Code of Civil Procedure. In *Ignasiammal v. Mrs. fathima Beeva* (1997 (II) CTC 313) this Court observed as follows:

"Order 41, Rule 27 of the Code of CPC enables the production of additional evidence in the appellate court only in certain contingencies viz., the trial court has refused to admit the evidence which ought to have been admitted or the parties seeking to produce the additional evidence establishes that notwithstanding the exercise of the due diligence, such evidence which was within his knowledge could not be produced by him at the time of the trial or the appellate court requires the document to be produced to enable it, to pronounce judgment or for any other substantial cause. None of the above contingencies has arisen in the present case."

34. It is not as if the Trial Court refused to admit the copy of the entries in the Register for Record of Tenancy Rights produced before the Trial Court. Nothing

has been pleaded in the application seeking to introduce additional evidence that inspite of the exercise of due diligence, the document now sought to be introduced could not be procured. Further, in the absence of the said document, the court can very well pronounce the judgment based on the materials available on record.

35. It is also relevant to refer to a decision reported in *N. Kamalam (Dead) and Another Vs. Ayyasamy and Another*, wherein it has been held as follows:

Incidentally, the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal - it does not authorise any lacunae or gaps in evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.

36. The parties cannot be permitted to introduce additional evidence to fill up the lacunae or gap in the evidence already let in.

37. It is not as if the court is handicapped in pronouncing the judgment in the absence of such a vital document. That being the scope and ambit of Order 41 Rule 27 of the Code of Civil Procedure, I find that the application filed under Order 41 Rule 27 of the Code of CPC by the fifth Defendant was rightly dismissed by the first appellate court.

38. This Court in *K.V. Ramasamy v. K.V. Raghavan* (2009 (4) CTC 440) has, of course, held that even if sufficient reason was not given for adducing additional evidence, permission may be granted to adduce additional evidence if the additional evidence is found to be so important and necessary for the determination of the issues involved. I have already held that sufficient materials were already produced before the court to determine the substantial issues involved in this case. Further additional evidence cannot be introduced to surprise the other party without any pleadings. The lacunae created on account of failure to produce the document at the trial stage cannot also be permitted to be filled up. Therefore, the aforesaid ratio will not come to the rescue of the fifth Defendant.

39. In view of the above, all the substantial questions of law arisen in both the second appeals are decided in favour of the first Respondent/Plaintiff. I find that there is no warrant for interference with the well considered judgment of the first appellate court. Therefore, confirming the judgment of the first appellate court, both the appeals stand dismissed. There is no order as to costs.