
(2004) 02 MAD CK 0011

In the Madras High Court

Case No : L.P.A. No's. 173 to 178 of 2002 and C.M.P. No. 18071 of 2003

G.M. Kandasamy and Others

APPELLANT

Vs

Palaniammal (deceased) and Others

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 3(1), 3(2)

Citation : (2004) 5 CTC 496

Hon'ble Judges : N. Kannadasan, J;K. Govindarajan, J

Bench : Division Bench

Advocate : V.S. Subramanian, in L.P.A.173 to 176/02 and Asif Ali, in L.P.A.177 and 178/02, for the Appellant; S.V. Jayaraman, for K. Nandakumar, for Respondents 1 to 3 in L.P.A. 173 and 174/02, S.V. Jayaraman, for R. Nandakumar, for Respondents 1 to 5 in L.P.A.175 and 176/02, Asif Ali, for Respondent 9 in L.P.A.175 and 176/02, S.V. Jayaraman, for R. Nandakumar, for Respondents 1, 4 and 5, M.V. Venkateshan, for Respondents 10 to 12 and V.S. Subramanian, for Respondents 3, 7 and 8 in L.P.A. No. 177 and 178/02, for the Respondent

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—The above Appeals arise out of the suit filed in O.S.Nos. 1290/1979, 340/1980 and 341/1980.

2. O.S.No. 1290/1979 filed by the plaintiffs 1 to 7, namely, Easwaramoorthy, Parvathy, Kamalaveni, Ganapathi Gounder, Kandaswamy,

Mylswami and Chellammal @ Selvarathinam, against one Muruga Gounder, Rajarathinam and Jothimani seeking for partition of the suit properties

described in item No. 1 and for permanent injunction restraining the 1st defendant-Muruga Gounder from using or otherwise diverting the water in

the well in item No. 1 of the property so as to irrigate item No. 2 of the property and for a mandatory injunction directing the 1st defendant to

remove the underground pipes laid near the well in item No. 1 of the property within a time to be fixed by the Court, failing compliance by the 1st

defendant, the plaintiffs have to be permitted jointly or severally to remove the underground pipes at the cost of the 1st defendant.

3. Item No. 1 of the property is described as Survey No. 275 measuring 5 acres. According to the plaintiffs in the said suit, the suit properties

originally belonged to one Koundammal who died on 16.7.1970 leaving her three daughters Palaniammal, Velammal and Thayammal. Plaintiffs 1

and 2 are the son and daughter of Palaniammal respectively. Third plaintiff and third defendant are the daughters of the 2nd plaintiff. Plaintiffs 5 to 7

are the sons and daughters of Thayammal. 4th plaintiff is the husband of Thayammal. Thayammal died on 5.4.1970 leaving behind plaintiffs 4 to 7

as her heirs. 2nd defendant is the son of Velammal and also the son-in-law of 1st defendant. The said Koundammal executed a deed of gift in

favour of Thayammal giving her one acre of land in Schedule 1. The said gift deed was accepted and acted upon by putting Thayammal in

possession of the property. After the death of Thayammal, plaintiffs 4 to 7 have become her heirs and they are entitled to the said property.

Koundammal executed another Will under which plaintiffs 1 to 3, 6 and 7 and defendants 2 and 3 have become legatees. Since the 1st defendant

was wrongfully diverting the water from the suit well for irrigating his own land in S.No. 287/1 with the result the water supply in the well was

affected and also the motor and pump set. On that basis the plaintiffs sought for permanent injunction against the 1st defendant. On the basis of the

Will, the plaintiffs have also come forward with the prayer for partition. With respect to the claim of the 1st defendant as a cultivating tenant of the

suit property, the plaintiffs have come forward with the plea that the 1st defendant is not in possession of the suit property. It is specifically stated

that the 2nd defendant who is the son-in-law of the 1st defendant has colluded with him and fabricated false records.

4. The 1st defendant filed a separate written statement stating that he is the cultivating tenant. He claims that he became the owner of 2.03-1/2

acres in S.F.No. 275 together with a half share in the well with three service connections. The 1st defendant categorically denied the execution of

the gift deed and it is stated that the gift deed was not accepted and acted upon. Similarly, the 1st defendant denies the execution of the Will by

Koundammal. He claims that he is the cultivating tenant of the land. It is also stated that the plaintiffs are only entitled to division of the suit land on the basis of the gift deed or Will.

5. The 2nd defendant also filed a written statement denying the averments contained in the plaint.

6. The 1st defendant in O.S.No. 1290/1979, namely, Muruga Gounder, filed a suit in O.S.No. 1695/1979, on the file of the District Munsif Court,

Coimbatore which was subsequently transferred to Sub-Court, Coimbatore and renumbered as O.S.No. 340/1980. According to the said

Muruga Gounder, by virtue of a registered lease deed of the year 1951, the said Koundammal leased out the suit property for a period of five

years and the same was renewed from time to time, the last renewal was on 21.11.1960, for a period of three years. The plaintiff has been

continuing in possession and enjoyment of the suit property as a cultivating tenant in spite of the expiry of the lease. The plaintiff has also mentioned

about the fact that his name has been recorded by tenancy Tahsildar. Saying that the defendants were threatening to interfere with his possession,

he filed the above suit for permanent injunction restraining the defendants from interfering with his possession of the suit property.

7. One Palani Ammal and plaintiffs 1, 4 to 7 in O.S.No. 1290/1979 had been arrayed as defendants in the said suit in O.S.No. 1695/1979 and

the 2nd defendant therein, Eswaramurthy, filed a written statement denying the fact of lease. It is also stated that the plaintiff/Muruga Gounder is

not recorded as tenant as he claimed. The 2nd defendant disputed the truth and genuineness of the said record of tenancy.

8. One Velammal filed a suit in O.S.No. 1697/1979 on the file of the District Munsif Court, Coimbatore which was transferred to Sub-Court,

Coimbatore and renumbered as O.S.No. 341/1980 for partition of her 1/3rd share in the suit lands. She claims that the properties belonged to her

mother Koundammal and so she is entitled to a share along with other two daughters. She admits the tenancy of Muruga Gounder/6th defendant

therein (plaintiff in O.S.No. 340/1979).

9. All the defendants in O.S.No. 340/1980 except 2nd defendant/Easwaramurthy, have been arrayed as defendants in the said suit in O.S.No.

341/1980 along with the plaintiff in O.S.No. 340/1980. The 3rd defendant in the

said suit contested the said suit by filing written statement stating that the plaintiff/Vellammal is not a heir of Koundammal and so the plaintiff/Vellammal is not entitled to the relief as sought for by her as the Will dated 26.4.1979 executed by Koundammal has been pressed into service to deny the right of the plaintiff/Vellammal.

10. The trial Court in the common judgment dated 30.4.1982 found that the Will marked as Ex.A2 dated 26.4.1979 is a genuine document, that the settlement dated Ex.A1 though a true document was not acted upon and that the plaintiff/Muruga Gounder in O.S.No. 340/1980 is a tenant of the suit property. On the basis of the above findings, the trial Court granted permanent injunction by decreeing the suit in O.S.No. 340/1980 in favour of Muruga Gounder and dismissed the suit, filed by Velammal in O.S.No. 341/1980 and decreed the suit only for partition in O.S.No. 1290/1979 and in other respects, the same was dismissed. The plaintiffs in O.S.No. 1290/1979, not satisfied with the decree passed therein, preferred an Appeal in A.S.No. 467/1983 on the file of this Court. The tenant Muruga Gounder filed Cross Objections in the said Appeal in A.S.No. 467/1983. The 2nd defendant/Rajarathinam in O.S.No. 1290/1979 preferred an Appeal in A.S.No. 2/1985 on the file of this Court, against the decree granted in O.S.No. 1290/1979. The plaintiff/Velammal in O.S.No. 341/1980 preferred an Appeal in A.S.No. 230/1983 on the file of the District Court, Coimbatore which was subsequently transferred to this Court and renumbered as A.S.No. 174/1991, aggrieved against the dismissal of the suit. The defendants in O.S.No. 340/1980, preferred an Appeal before the District Court, Coimbatore which was transferred to this Court and renumbered as Tr.Appeal No. 173/1991. The plaintiff/Vellammal in O.S.No. 341/1980 aggrieved by the dismissal of the suit preferred an Appeal in A.S.No. 230/1983 on the file of the District Court, Coimbatore which was transferred to this Court and renumbered as A.S.No. 174/1991.

11. The learned Judge dealt with all the Appeals together and disposed of the same in a common judgment dated 30.4.2002, dismissing the Cross Objection preferred in A.S.No. 467/1983, allowing partly A.S.No. 467/1983. The learned Judge also dismissed Tr.A.S.Nos. 173 and 174 of 1991. Aggrieved against the said common judgment, the Legal Representatives

of Muruga Gounder, the plaintiff in O.S.No. 340/1980 filed

L.P.A.173, 174, 175 and 176 of 2002, aggrieved against the judgment and decree in Tr.A.S.Nos. 173, 174 of 1991, A.S.No. 467/1983 and 2

of 1985. The 2nd defendant/Rajarathinam in O.S.No. 1290/1979 preferred L.P.A.No. 177/2002, aggrieved against the judgment and decree in

A.S.No. 2/1985. Velammal/plaintiff in O.S.No. 341/1980 preferred L.P.A.No. 178/2002, aggrieved against the dismissal of Tr.Appeal No.

174/1991.

12. Learned counsel appearing for the appellants in L.P.A.Nos. 173 to 176 of 2002 submitted that the learned Judge is not correct in reversing the

decree granted in O.S.No. 340/1980 granting a decree for injunction against the respondents in O.S.A.No. 173/2002, accepting his case that he

is a tenant with respect to the land in question. He also submitted that merely because the said Koundammal settled the property with respect to

one acre, the learned Judge is not correct in "holding that the appellants" predecessor-in-title, namely, Murugappa Gounder cannot be construed

as a tenant, especially when in spite of the said settlement and the Will, the said Koundammal was dealing with the property and residing thereon.

Referring to Section 15 of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, hereinafter called "the Act, 1969" learned

counsel further submitted that any entry in the approved record of tenancy, his rights shall be presumed to be true and correct until the contrary is

proved or a new entry is lawfully substituted therefor. According to him, since the entry has been made by the Tahsildar stating that the said

Muruga Goundar is a tenant with respect to the land in question, the land in question, the learned Judge is not correct in holding that he cannot

claim any tenancy right in view of the settlement and the gift deeds marked as Exs.A1 and A2. Learned counsel also relied on the decisions in

Subhash Chandra Vs. Mohammad Sharif and Others, , C. Chandramohan v. Sengottaiyan, AIR 2000 S.C. 568, Kundan Mal Vs. Gurudutta, ,

V.S. Alwar Iyengar Vs. Tahsildar and Record Officer, Srivilliputtur and Others, and Ammayappan Vs. The Additional Collector in-charge and

Collector and Others, , in support of his submission. Learned counsel for the appellants in L.P.A.Nos. 177 and 178 of 2002 submitted that the

settlement deed Ex.A1 was not acted upon and the Will, though it was disputed,

was not established as required under law and so the learned

Judge is not correct in confirming the judgment and decree of the Courts below.

13. In answering to the above said arguments, learned Senior Counsel appearing for the respondents submitted that Muruga Gounder has raised a

dispute with respect to the settlement deed and the Will specifically in the written statement and also in the Grounds of Appeal before this Court.

Since he denied the title of the landlords who derived the title under the settlement deed and the gift deed, the tenant is not entitled for protection

given under the provisions of the Tamil Nadu Cultivating Tenants' Protection Act 1955, hereinafter called "the Act 1955". In support of his

submission, the learned Senior Counsel has relied on the decision of the Apex Court in Chinnamuthu Gounder and Others, etc. Vs. P.A.S.

Perumal Chettiar, . The Learned Senior Counsel also relied on Ex.B26 to show that Ex.A1, the gift deed had come into effect and acted upon.

14. The learned Judge found that the appellants in L.P.A.173 to 176 of 2002 cannot claim any right to protect their possession on the basis of the

Act 1955. With respect to the validity of the settlement deed and the Will, the learned Judge reversed the findings of the trial Court. Even with

respect to decree for injunction regarding the rights in the well, the learned Judge has dismissed the suit on the ground that the decree for injunction

cannot be sought for against the owner who had obtained a decree for possession in A.S.No. 467/1983.

15. From the above said arguments, the following points arise for determination:

(1) Whether Murugappa Gounder who was the predecessor-in-title of the appellants in L.P.A.Nos. 173 to 176 of 2002 is entitled for protection

under the provisions of the Act 1955 ?

(2) Whether the settlement deed Ex.A1 is acted upon ?

(3) Whether the validity and genuineness of the Will Ex.A2 is proved?

(4) Whether the appellants in L.P.A.173 to 176 of 2002 have established their right in the well as claimed in the plaint ?

16. As rightly submitted by the learned Senior Counsel appearing for the respondents, the plaintiff in O.S.No. 1290/1979, Muruga Gounder in his

written statement filed in the said suit categorically denied the execution of the gift deed and the Will thereby denied the title of the plaintiffs therein.

The said portion of the written statement reads as follows:

5. This defendant categorically denies the allegations in para 5 of the plaint that Kavundammal executed a gift deed mentioned therein and gave 1

acre of land in favour of her daughter Thayammal. This defendant also categorically denies the allegation therein that the gift deed was accepted

and acted upon and that the donee Thayammal had been in possession of the 1 acre gifted. On the other hand it was Kavundammal, who was

leasing out her entire lands inclusive of the so called gifted 1 acre. Again it was Kavundammal who was collecting the rent of the entire lands year

by year. The alleged donee Thayammal never claimed any rent from this defendant, nor did this defendant paid even a single pai by way of rent to

the said Thayammal. Thayammal never put forth any right on the basis of the alleged gift deed. In the circumstances, the claim of the plaintiffs 4 to 7

on the basis of the gift deed and their heirship to Thayammal is clearly illegal and in any event untenable.

6. This defendant also categorically denies the Will referred to in para 6 of the plaint and alleged to have been executed by Kavundammal. The

alleged Will is neither true nor valid. Kavundammal was neither physically able nor mentally capable of executing a Will at the time when she is

alleged to have executed the same. She was then in the evening of her life, very old and was also blind and therefore afflicted she was not at all

having a sound and disposing state of mind. In short, she was not having the testamentary capacity. She was also illiterate. She was under the

thump of the plaintiffs 1 and 4 who conspired between them and hence coined and created the alleged Will as though Kavundammal executed the

same and Kavundammal has also no independent advice to execute the Will alleged. In the circumstances, the so called legatees under the same

cannot claim anything under the alleged Will. In short the alleged Will is untrue, invalid and unenforceable. The plaintiffs are therefore bound to

prove the allegations contra.

17. Even in the grounds of Appeal filed in the above L.P.A.173 to 176 of 2002, the appellants have also raised a dispute regarding the title of the

respondents. Under Sections 6 and 6-A of the Act 1955, protection has been given to the cultivating tenants who are entitled to the benefits of the

Act 1955. u/s 2(b) of the Act 1955, ""cultivating tenant"" is defined, Section 3 of

the Act 1955 prohibits the landlords from evicting the cultivating tenants. But the said protection is subject to Sub-section (2) to Section 3 of the Act 1955. The prohibition to evict the tenant as contemplated u/s 3(1) of the Act 1955 shall not apply to a tenant who has wilfully denied the title of the landlord to the land. In view of the above said provision, learned Senior Counsel appearing for the respondents submitted that even assuming that Muruga Gounder is a tenant with respect to the land in question in view of the exclusion from the protection u/s 3 of the Act 1955 as he had denied title wilfully, the Civil Court is having jurisdiction to pass a decree for possession and the appellants cannot rely on Sections 6 and 6-A of the Act 1955 in support of their contention that the suit is not maintainable against a tenant. The Apex Court had an occasion to deal with the said provision in the decision in Chinnamuthu Gounder and Others, etc. Vs. P.A.S. Perumal Chettiar, and held as follows:

3. The sole question on which arguments have been addressed is whether the Civil Court had jurisdiction to decree the suit in respect of possession in the presence of the provisions of the Madras Cultivating Tenants' Protection Act, 1955 (Act XXV of 1955) hereinafter called the Act. Section 2(a) defines "cultivating tenant" to mean a person who carries on personal cultivation on any land under a tenancy agreement and includes any person who continues in possession after the determination of the tenancy agreement as also the heirs of such person. According to the provisions of Section 3 no cultivating tenant shall be evicted from the holding at the instance of the landlord whether in execution of a decree or order of a Court or otherwise; but that is subject to Sub-section (2) which contains the various contingencies in which the tenant cannot claim the protection of the Act. Clause (d) which appears in the exceptions reads "who has wilfully denied the title of the landlord to the land". According to Explanation I a denial of the landlord's title under the bona fide mistake of fact is not wilful within the meaning of the aforesaid clause. Sections 6 and 6-A are material for our purpose and may be reproduced:

Section 6: "No Civil Court shall, except to the extent specified in Section 3(3), have jurisdiction in respect of any matter which the Revenue Divisional Officer is empowered by or under this Act to determine and no injunction shall be granted by any Court in respect of any action taken or

to be taken in pursuance of any power conferred by or under this Act.

From the above said decision, it is clear that even assuming that Muruga Goundar is the tenant in view of the specific allegations made in the written

statement and also in the grounds denying the title of the respondents, raising the issue with respect to the genuineness of the settlement and the will

had lost the protection given u/s 3(1) of the Act 1955. So, the Civil Court on the basis of the findings given regarding the validity of the settlement

and the will is correct in decreeing the suit in O.S.No. 1290/1979. The entire property covers under the settlement and the will.

18. Learned counsel appearing for the appellants relied on the decision in Kundan Mal Vs. Gurudutta, in support of his submission that mere denial

in the written statement cannot be construed as wilful denial. In the said decision, the issue was decided on the basis of the fact that there was no

statement pleaded in the plaint at all challenging the landlord's right and there was no occasion for the appellant to deal with the said aspect in view

of the scope of the suit. On that basis, the case was decided in favour of the tenant. So the said decision cannot be applied to the facts of the

present case.

19. Learned counsel for the appellants further relied on the decision in Subhash Chandra Vs. Mohammad Sharif and Others, , in support of his

submission that under the doctrine of estoppel enunciated u/s 116 of the Indian Evidence Act, 1872, does not apply even if the tenant denies the

title of the landlord, who derived title subsequent to the induction of the tenancy by way of assignment, gift, sale or inheritance, etc. The said

decision is not the answer to the present issue in view of the specific provisions under the Act 1955 with reference to the denial of protection to the

tenant who denies the title of the landlords wilfully. The principle laid down in the above said decision cannot be relied on to deny the right of the

landlord to get possession by filing a suit on the ground that the tenant has wilfully denied title. In the said decision, the Apex Court had no

occasion to consider similar provision to Section 3(2) of the Act 1955.

20. Then the learned counsel for the appellants relied on the decision in C. Chandramohan v. Sengottaiyan, AIR 2000 S.C. 568. The said decision

also arises out of the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960). Even under the said Act, the Apex Court

has come to the conclusion that the denial of the title of the landlord by the tenant is not wilful because such denial was due to lack of knowledge of release deed in favour of the present landlord. In the present case, that is not the fact. In spite of specific pleading by the respondents claiming right under the settlement deed and the Will and in spite of the specific findings given by the learned Judge holding that the settlement deed and the Will, Grounds have been taken in the L.P.As. filed before this Court, denying the title of the landlords saying that the settlement deed and the Will are not valid documents. The other decisions, namely, V.S. Alwar Iyengar Vs. Tahsildar and Record Officer and Others, and Ammayappan Vs. The Additional Collector in-charge and Collector and Others, need not be dealt with as the same have been relied only to establish that the said Muruga Gounder is a tenant in the land. Since the learned Senior Counsel appearing for the respondents argued the case only on the basis that even if the said Muruga Gounder is the tenant, he is not entitled for protection under the Act 1955.

21. So, we confirm the judgment and decree with respect to the same as given by the learned single Judge, but on different grounds.

22. Even with respect to the settlement deed, the learned Judge has relied on Ex.B28 to come to the conclusion that the gift deed has been acted

upon and the Will also has been properly established as contemplated under the Act 1955. Since both the Courts have concurrently upheld the

Will Ex.A2 and A1 settlement deed and the learned counsel for the appellants is not in a position to point out an error in the said judgments, we

are inclined to confirm the findings in the judgment and decree with respect to Exs.A1 and A2 the settlement deed and the Will.

23. With respect to the right in the well, the learned Judge has found that the Muruga Goudner cannot sustain the prayer for injunction against the

owner of the well. Learned counsel for the appellants though submitted that such a finding is wrong, he has not put forth his argument as to how it is

wrong. So we are not inclined to interfere with the said finding of the Learned Judge regarding the well.

24. For all the reasons stated above, the above Appeals are dismissed. No costs. C.M.P.No. 18071/2003 is also dismissed.