

(1985) 02 MAD CK 0061
In the Madras High Court

Govindaraja Vanniar and Others

APPELLANT

Vs

Thirusangu Vanniar and Others

RESPONDENT

Date of Decision : 19-02-1985

Acts Referred:

Citation : (1986) 99 LW 916 : (1988) 1 MLJ 501

Hon'ble Judges : P.R. Gokulakrishnan, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, J.—Defendants 1, 2 and 4 to 7 are the appellants herein. The suit is for delivering possession of the suit properties and also for directing the defendants to pay the damages claimed in the suit and also the profits claimed including that of the future profits from the date of plaint till delivery of the suit properties.

2. The case of the plaintiffs is that one Amalorpava Nadar sold the suit properties to the plaintiffs by three sale deeds dated 13.8.1974. By virtue of the said sale deeds, the plaintiffs have become the owners of the suit properties together with all the trees, superstructures and other appurtenances. The properties were tope on ground overgrown with fruit bearing trees and other trees like casuarina, coconut, mango, jack, palmyrah and other trees. The owners of the suit properties have been using the properties by leasing out the usufructs and there has been a watchman shed in the suit properties. One Kaveri Ammal and Packiri Vanniar were constituted as lessees of the trees in the suit lands and they were using the property by periodically paying the cash rent. The predecessors-in-interest of defendants 2 to 7 filed Q.S. No.266 of 1964 against the owner Amalorpava Nadar and another seeking the relief of permanent injunction. This Amalorpava Nadar is the predecessor-in-interest of the plaintiffs. The suit for injunction (O.S.No.266 of 1964) was decreed in favour of the defendants herein and the appeal and the second appeal therefrom also went against Amalorpava Nadar. It is only subsequent to these proceedings, the plaintiffs herein became the owners of the suit properties. After the purchase, the plaintiffs wanted to

improve the lands and they found the defendants committing acts of waste and cutting the branches of several fruit bearing and yielding trees and destroying the bamboo trees. They were also committing acts of waste by their various deeds. Before filing a comprehensive suit against the defendants, the plaintiffs, as a precautionary measure, filed O.S. No. 314 of 1975 on the file of the District Munsif, Thiruvayyaru restraining the defendants from cutting the trees and committing acts of. waste. According to the plaintiffs, the defendants are lessees for the collection of the usufructs and they are not entitled to the benefits of Act 25 of 1955. Regarding S.A. No. 63 of 1977, Amalorpava Nadar v. Govindaraja Vanniar and 2 Ors. the plaintiffs have stated, that the said Second Appeal was disposed of only on the question of possession and the question as to whether the defendants are entitled to the protection under the Cultivating Tenants Protection Act or not was not necessary to be gone into for the purpose of giving the relief of injunction. According to the plaintiffs, the right enjoyed by the defendants at best can only be a licence to enter the land for the purpose of gathering the usufructs of the trees and even that licence has been revoked subsequently. It is the further case of the plaintiffs, that since the defendants have put forward title in themselves to the trees standing on the disputed lands, it clearly constitutes denial of landlord's title on their part, which incurs forfeiture of tenancy right even if they are entitled to any. With the above-said allegations, the plaintiffs have come forward with the present suit for possession.

3. The defendants have inter alia pleaded that they are the cultivating tenants entitled to the benefits of Tamil Nadu Act 25 of 1955, that they cannot be evicted from the suit lands, that it is only the Revenue Court that has got jurisdiction u/s 3(4) of the Tamil Nadu Act 25 of 1955 to decide the question of eviction and that the suit has to be dismissed as not maintainable in the Civil Court. It is further contended by the defendants that plantain and vegetables were raised in the interspace and that the suit lands are agricultural lands, which include horticultural lands also. After referring to the proceedings in O.S. No. 314 of 1975 and also the injunction suit filed by the plaintiffs, the defendants prayed for the dismissal of the suit with exemplary costs.

4. The trial Court, after elaborately discussing the evidence on record, decreed the suit as prayed for leaving the decision of mesne profits, past and future, by a separate proceedings under Order 20, Rule 12 of the Code of Civil Procedure. It is as against this judgment and decree, defendants 1, 2 and 4 to 7 have preferred A.S. No. 722 of 1977 to this Court. A learned single Judge of this Court, after observing that there is no oral evidence and not even a plea in the written statement that the defendants are contributing physical labour in the cultivation of the lands in dispute, assuming that they are cultivating the lands in dispute, and that there is absolutely no evidence on the side of the defendants to establish that they are either carrying on subsequent operations like protecting the crops, pruning, cutting harvesting, etc., or otherwise tending them dismissed the appeal. It is as against these judgments and decrees, the present appeal has been filed.

5. Mr. S. Govind Swaminathan, learned Counsel appearing for the appellants, after referring to the judgment in S.A. No. 63 of 1967, which arose out of O.S. No. 266 of 1964, contended that this decision amply establishes that the appellants are cultivating tenants. O.S. No. 266 of 1964 is a suit for injunction filed by the appellants herein against one Amalorpava Nadar alleging that the appellants are lessees and that the said Amalorpava Nadar is interfering with their possession. In that case, Amalorpava Nadar contended that the appellants are only watchmen and not lessees and that they cannot have the benefit of injunction. The learned single Judge of this Court in A.S. No. 722 of 1977 referred to certain admissions made by the respondents regarding the status of the appellants herein and said that they are on a mistaken impression of the provisions of the Tamil Nadu Cultivating Tenants Protection Act 25 of 1955 relating to the definition "cultivating tenant" and as such it will not bar the respondents from contending that the appellants are not the cultivating tenants. In this connection, the learned Judge referred to the decision reported in V. Srinivasan and Others Vs. Sundaramurthi and Another, , wherein a single Judge of this Court has held as follows:

Section 115 of the Evidence Act does not apply to a case where the statement relied upon is made to a person who knows the real facts and is not misled by the untrue statement and there can be no estoppel where the truth of the matter is known to both parties-vide the decision of the Privy Council in Mohari Bibee v. Dharmadas Ghose L.R. (1903) 30 IndAp 114 : (1903) Bom. L.R. 421 : ILR (1903) Cal. 539.

In Jadhoo Naqu Bai v. Jadhoo Gangu Bai AIR 1958 A.P. 19, it has been held as follows:

Although admissions constitute good evidence against the party making them and his representatives in interest he is not concluded by them unless they operate as estoppel and he is at liberty to show that they were mistaken or untrue.... The effect of admissions is merely to shift the onus of disproving them on the party making them unless a plea of estoppel can be successfully invoked. The evidentiary value of admissions depends upon the circumstances in which they are made and the possibility of incorrect statements being misguidedly made by ignorant persons should not be overlooked. If it is proved by other evidence that the facts admitted cannot be true, no Court of Justice will hesitate to give effect of that conclusion.

After referring to the abovesaid decisions, the learned Judge of this Court found that there is absolutely no evidence on the side of the appellants herein to prove that they are cultivating tenants within the meaning of Tamil Nadu Act 25 of 1955 as amended. The learned Judge further found that the appellants have not satisfied the contribution of physical labour in the cultivation of lands in order to come under the purview of "cultivating tenants" defined under Act 25 of 1955 and that since the appellants have not satisfied this test of personal cultivation, they are not cultivating tenants within the meaning of Act 25 of 1955 as

amended. On the strength of these discussions, the learned Judge correctly dismissed the appeal.

6. Mr. S. Govind Swaminathan, learned Counsel appearing for the appellants, wants this case to be remanded so as to enable the appellants to contend that they are cultivating tenants on the strength of the decision of this Court in S.A. No. (sic)3 of 1967. There is absolutely nothing in the grounds of appeal praying for such a remand. Further, the trial Court and the learned single Judge of this Court have considered the prior proceedings and come to the conclusion, after applying the definition of "cultivating tenant" in Act 25 of 1955 as amended, that the appellants are not cultivating tenants entitled to the benefits of Act 25 of 1955 as amended. In *Middi Ramakrishna Rao Vs. Middi Rangayya and Others*, , a single Judge of this Court has succinctly dealt with Order 41, Rule 23, Civil Procedure Code, and has stated the circumstances under which a remand can be made. In paragraphs 4 and 5 of the said decision, the learned Judge has stated as follows:

This is not within the scope of remand under Order 41, Rule 23. It is quite true that under the Madras Amendment of Order 41, Rule 23 the discretion of the Court is unfettered; but that discretion of the Court is not arbitrary but sound and reasonable guided by judicial principles and capable of correction by a Court of Appeal. The Appellate Court should not however rashly and without sufficient cause, order retrial in any case in which this can possibly be avoided; a remand order should not thus be made under this rule in a case which could efficiently be dealt with under Rule 25; nor can a remand be ordered so as to enable a party to fill up the lacuna in his case. It has been repeatedly held by this Court that a remand should not, generally speaking be ordered when the defect in the proceeding has been made due to the negligence or default of the party who will benefit by the remand. It has been further held that the mere fact that the evidence on record is not sufficient to enable a Court to come to a definite finding on the point in issue, is not sufficient to enable the Court to remand the case, when there is no reason to think that the parties did not have an opportunity of producing all the evidence that they desired to produce before the trial Court. There is a clear danger that in such cases a remand order may in effect be an invitation to perjury.

These principles are deducible from *Mallappa Chettiar alias Rathnasabapathi Chettiar and Another Vs. Alagiri Naicker and Others*, , (*Anakkaran Puthiya Valappil Valiapurayil*) *Kunha Mina Umma and Others Vs. (Anakkaran Puthiyavilappil Valiapurayil)* *Kunhipathumma and Others*, , *Prerepa Bhagavat Sastrulu (died) and Another Vs. Saridey Lakshmikantam*, , *Telikicherla Kandala Srimannarayana Charyulu Vs. Koyal Kandadai Bhavanacharyulu alias Modaliandan Swamuluvaru (deceased) and Others*, , *Kanjanur Sri Agneswaraswami Devasthanam Vs. Thillai Govinda Pandithan*, . The provisions of Order 41, Rule 23 are not intended, as pointed out by Mack, J., in *Pusuluri Puchamma Vs. Sankaramanchi Ramasitamma and Another*, , circumvent the

provisions of Order 41, Rule 27, Civil Procedure Code, nor by merely using the formula in the interests of Justice" can otherwise unjustifiable remand be clothed with an air of legality, because the judgment must show that the conditions of the rule have been fulfilled before the extraordinary powers conferred on the Appellate Court are used, as pointed by Rajamannar, J., (as he then was) in *Nedumkandathil Koyakutty Vs. Kunhali and Others*, . In other words, the order of remand made without coming to a conclusion that the decision of the trial Court is wrong and that it is necessary to reverse or set aside the decree is illegal, as has been pointed out Horwill, J., in *Kalahasti Veeramma Vs. Prattipati Lakshmayya and Others*, ; *Kanjanur Sri Agneswaraswami Devasthanam Vs. Thillai Govinda Pandithan*, and in *Ariangavu Pillai Vs. Nallamangai Ammal and Another*, , and cited with approval and followed by Chandra Reddy, J., in *Thirumalaiswamy Mudali Vs. Periasami Mudali and Another*, .

7. Applying the abovesaid principles to the facts of the present case, we are of the view that a remand as prayed for by Mr. S. Govind Swaminathan, cannot be granted. The judgments under appeal, in our view, are based upon relevant facts and proper interpretation of the definition of "cultivating tenant" occurring in Act 25 of 1955. We cannot remand the case in order to enable the appellants to fill up the lacuna, if any, in the evidence, for establishing the fact that the appellants are cultivating tenants within the meaning of Act 25 of 1955. Even apart from these aspects of the case, the learned single Judge of this Court has correctly approached the effect, of prior averments made by the respondents herein and the decisions rendered in the prior proceedings. Those things have been adverted to in paragraphs supra. We are in complete agreement with such reasoning and finding of the learned Judge of this Court and hold that the appellants are not cultivating tenants within the meaning of Act 25 of 1955, that the respondents are not estopped from contending that the appellants are not cultivating tenants and that the matter cannot be remanded for letting in fresh evidence. Further, the suit out of which the present appeal arises, was filed as early as March, 1976 and to remand the case to the trial Court or to any other Court to give an opportunity to the appellants to establish that they are cultivating tenants is an exercise which will not be either in accordance with law or the decisions referred to above. There is absolutely nothing in the written statement filed by the appellants to show that they are doing personal cultivation of the suit lands. It is also not argued by Mr. S. Govind Swaminathan, learned Counsel for the appellants, that on the existing state of evidence, the judgments of the trial Court and that of the learned single Judge of this Court are wrong. If that be so, the appellants cannot be given an opportunity to fill up certain gaps in evidence to establish that they are the cultivating tenants. On the facts and circumstances of the case, we are of the view, that no useful purpose would be served by remanding the matter except unnecessarily protracting the proceedings, which started as early as 1976.

8. For all these reasons, we concur with the finding and reasoning of the trial Court and that of the learned single Judge of this Court. The Letters Patent

Appeal fails and accordingly the same is dismissed. There will be no order as to costs.