

(1980) 10 MAD CK 0034
In the Madras High Court
Case No : Appeal No. 722 of 1977

Govindaraja Vanniar and Others

APPELLANT

Vs

Thirusangu Vanniar and Others

RESPONDENT

Date of Decision : 03-10-1980

Acts Referred:

Evidence Act, 1872 — Section 115

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 2

Transfer of Property Act, 1882 — Section 111

Citation : (1981) ILR (Mad) 344

Hon'ble Judges : Suryamurthy, J

Bench : Single Bench

Advocate : Abdul Hadi and M.S.M. Md. Jafarullah, for the Appellant; V.N. Krishna Rao and T.S. Subramaniam, for the Respondent

Final Decision : Dismissed

Judgement

Suryamurthy, J.—This is an appeal from the judgment and decree of the learned Subordinate Judge of Thanjavur decreeing Original Suit No. 75 of 1976 on the file of this Court, instituted by the Respondents herein as Plaintiffs, for recovery of possession of the suit properties for damages and for future profits from the date of suit till the date of delivery of possession.

2. The properties in dispute are an extent of 8 acres 52 cents comprised in R.S. No. 21/3, 1 acre 14 cents in R.S. No. 22/2, 2 cents in R.S. No. 21/2 and 2 cents in R.S. No. 21/1. These lands are topes. It is seen from the report of the Commissioner that there are 785 trees standing on these lands and most of them are fruit bearing trees like mango and coconut. There are also teak trees standing on these lands. Govindaraja Vanniar, the first Defendant and Amarsing Vanniar, husband of the second Defendant and father of Defendants 3 to 7, took these lands on lease and were collecting the usufructs of the fruit bearing trees. The Plaintiffs have purchased these lands. The predecessors-in-title of the Plaintiffs endeavoured to take possession of the lands and thereupon Govindaraja

Vanniar and Amarsing vanniar referred to above instituted Original Suit No. 266 of 1964 on the file of the District Munsif of Thiruvaiyaru for a permanent injunction restraining them from taking possession. That suit was decreed by the learned District Munsif, upholding the claim of the Plaintiffs in that suit that they are lessees and not mere licensees. Appeal Suit No. 59 of 1966 on the file of the Sub-Court, Thanjavur preferred against the judgment and decree in Original Suit No. 266 of 1964 was dismissed, upholding the claim for the Plaintiffs therein that they are lessees. Second Appeal No. 6 of 1967 preferred against the aforesaid two judgments and decrees of the learned District Munsif and the learned Subordinate Judge of Thanjavur was also dismissed.

3. Thereafter Original Suit No. 314 of 1975 was filed by the Plaintiffs herein for a permanent injunction restraining the Defendants herein from cutting or otherwise damaging in any manner the trees in the suit lands, except by enjoying the usufructs thereof. The Defendants filed a written statement contending inter alia that they, their fathers and fore-fathers planted the trees and reared them in the suit lands with their own labour and expenses for their benefit. In view of this denial of the title of the Plaintiffs to the trees, a notice u/s 111(c) of the Transfer of Property Act was issued by the Plaintiffs and this suit was instituted.

4. The Defendants contend that they are cultivating tenants entitled to the benefits of the Tamil Nadu Cultivating Tenants Protection Act, that the Plaintiffs and their predecessors-in-title have admitted in earlier proceedings that they are cultivating tenants and that, in any event, there was no proper notice to quit in accordance with the provisions of Section 111 of the Transfer of Property Act. The Court below found that the Defendants are not cultivating tenants entitled to the benefits of the Tamil Nadu Cultivating Tenants Protection Act (XXV of 1955) as amended, that the Defendants have denied the title of the Plaintiffs and that, therefore, the Plaintiffs are entitled to a decree as prayed for. No issue was framed regarding the objections raised by the Defendants to the maintainability of the suit without a notice u/s 111 of the Transfer of Property Act. On the question of jurisdiction, which was also raised by the Defendants, the lower Court held that the suit is not barred.

5. The points for determination in this appeal are:

(1) Whether the Defendants are cultivating tenants, entitled to the benefits of the Tamil Nadu Cultivating Tenants Protection Act (XXV of 1955) and whether the Plaintiffs are stopped from contending that the Defendants are not cultivating tenants by reason of their admission in the earlier proceedings that the first Defendant and Amarsing Vanniar were cultivating tenants?

(2) Whether the civil court has no jurisdiction to entertain the suit? and

(3) Whether there was no valid notice to quit?

6. Points 1 and 2: As already observed, it is seen from the report of the Commissioner, the correctness of which is not disputed, that there are 785 trees

and that most of them are fruit bearing trees. Exhibits A-11 to A-18, certified extracts from the Adang 1 Register, show that no crops were cultivated on any of these lands during the period from Fasli 1375 to 1383. The Defendants have not gone into the witness box, nor have they examined any witness on their behalf in support of their claim that they planted the trees and reared them. Cultivating tenant has been defined in Section 2(aa) of the Tamil Nadu Cultivating Tenants Protection Act (XXV of 1955), as amended as.

a person, who carries on personal cultivation on such land, under a tenancy agreement, express or implied.

By reason of Section 2(b) an heir of a cultivating tenant can also claim to be a cultivating tenant, if he or she contributes his or her own physical labour or that of any member of his or her family in the cultivation of such land.

7. In the instant case, there is no oral evidence and not even a plea in the written statement that the Defendants are contributing their own physical labour or that of any member of their families in the cultivation of the lands in dispute, assuming that they are cultivating the lands in disputes. On this ground alone the contention of the Defendants that they are cultivating tenants has got to be negatived. The learned Counsel for the Appellants/ Defendants relies on a decision of a Bench of this Court in *Govindaswami v. Mahalakshmi Ammal* (1963) 2 M.L.J. 137 in support of his contention that there can be an agricultural lease in regard to coconut trees planted already and existing on the land at the time the lessee takes the property on lease and, if there had been a transfer of the land in favour of the Appellant by way of lease, he would be entitled to protection as cultivating tenant as the lease should be regarded as one for agricultural purposes. But, in the very same decision *Ramachandra Iyer C.J.*, speaking for the Bench has referred to a judgment of the Supreme Court reported in *Commissioner of income tax v. Benoy Kumar Sahas Roy* (1957) 2 M.L.J. 145 (S.C.) and has observed that:

The Supreme Court pointed out that the term "agriculture" would comprise within it (1) basic operations like tilling of the land, sowing seeds, planting, etc., such basic operations requiring expenditure of human skill and labour on the land itself and (2) other operations which have to be resorted to by the agriculturist and which are absolutely necessary for the purposes of effectively raising the produce from the land referred to as subsequent operations like protecting the crops, pruning, cutting, harvesting, etc. It was held that where there had been no sowing or planting, but only subsequent tending and protection of the produce as in the case of a forest, it would not be agriculture. This view was reiterated in *Commr. of I.T. B and O v. Ramakrishna Deo* (1959) 1 M.L.J. 142 (S.C.). What is therefore essential to constitute an agricultural operation is the tilling of the land, sowing seeds, planting and similar operations on the land. The mere presence of subsequent operation without there being the basic operations referred to above, as in the case of forest produce and spontaneous growth, could not be agricultural operations, in other words, if there are no basic

operations as referred above, there cannot be an agricultural operation.

The ratio of that decision is applicable to the facts of the instant case. There is absolutely no evidence on the side of the Defendants to prove that either they had done basic operations or have been carrying on the subsequent operations like protecting the trees, pruning them and otherwise tending them.

8. In *Srirangam Municipality v. Nataraja Pillai* 85 L.W. 318 Ramanujam J., has held that a person who claims to be a cultivating tenant must establish that he contributed his own physical labour or that of the members of his family in the cultivation of the crops, which in that case was a crop of guinea grass. As there was no evidence to that effect he held that the Respondent who claimed to be a cultivating tenant and who has failed to prove that he contributed his own physical labour or that of the members of his family in raising guinea grass is not a cultivating tenant as defined in the Tamil Nadu Cultivating Tenants Protection Act.

9. In *L.R. Ganapathi Thevar (dead) by his legal representatives Vs. Sri Navaneethaswaraswami Devasthanam*, the Supreme Court has observed that:

The true effect of the amended definition came up for consideration before a Division Bench of the Madras High Court in *Abubucker v. Zamindar of Ettayapuram Estate* ILR [1961] 1 Mad. 466. Therein it was held that in order to fall within the definition of cultivating tenant" a person should carry on personal cultivation which again requires that he should contribute physical labour. The use of physical labour includes physical Strain, the use of muscles and sinews. Mere supervision of work, or maintaining of accounts or distributing the wages will not be such contribution of physical labour as to attract the definition. This view was upheld by this Court in *S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan*, to which one of us was a party. In view of the said decision, it follows that on the facts found in this case, the Appellant cannot be considered as a cultivating tenant.

As observed already, there is absolutely no evidence on the side of the Defendants to prove that they are cultivating tenants within the meaning of the Tamil Nadu Cultivating Tenants Protection Act, as interpreted by the decisions cited above. Moreover, Defendants 2 to 7, who are the heirs of Amarsing Vanniar, cannot claim to have become cultivating tenants automatically. They must satisfy the test of contributing physical labour in the cultivation of the lands. They have not satisfied this test of personal cultivation. Therefore, there is no doubt about the fact that the Appellants/Defendants are not cultivating tenants within the meaning of the Tamil Nadu Cultivating Tenants Protection Act (XXV of 1955), as amended.

10. However, the learned Counsel for the Appellants/ Defendants relies on the admissions made by the predecessors-in-title of the Plaintiffs and the Plaintiffs in prior proceedings that the first Defendant and Amarsing Vanniar were cultivating tenants. In fact, the Respondents/Plaintiffs have filed a petition before

the Rent Court of Thanjavur, for fixation of fair rent u/s 9(1) of Madras Act XXIV of 1956 (vide exhibit B-7) admitting that the first Defendant and Amarsing Vanniar were tenants of the and with the trees and not merely the lessees of the usufructs alone and that their claim as full cultivating tenants was upheld in respect of all the lands and they were held to be entitled to the protection of the tenancy laws. The question to be considered is, whether these admissions will act as estoppel against the Plaintiffs. As observed already, there is no doubt about the fact that the Defendants are not cultivating tenants and, therefore, I am of the opinion that the admissions made by a mistaken interpretation of the provisions of Tamil Nadu Cultivating Tenants Protection Act (XXV of 1955) regarding the definition of cultivating tenant will not bar the Plaintiffs from contending that the Defendants are not cultivating tenants.

11. In *Srinivasan v. Sundaramurthi* ILR (1977) Mad. 377, 388 Krishnaswamy Reddy J., has held that:

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. Dharmodas Chose* I.L.R (1903). Cal. 539.

The ratio of that decision is applicable to the facts of the instant case.

12. Similarly, the Andhra Pradesh High Court has held in that:

It is well-established that 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 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 over-looked. If it is proved by other evidence that the facts admitted cannot be true, no court of justice will hesitate to give effect to that conclusion.

With respect, I agree with this view of the Andhra Pradesh High Court and find that the earlier admissions will not act as an estoppel. The onus of disproving the earlier admissions has been satisfactorily discharged by the Plaintiffs on the admitted facts of the case, viz., the existence of trees from which usufructs alone can be realised and the absence of any cultivation during the period from Fasli 1375 to 1333 evidenced by exhibits A-11 to A-18. It has been established beyond the possibility of any doubt that the lands are only topes and cannot be cultivated and they have not been cultivated. The statement made in the earlier proceedings relied on by the Defendants is not a mistake statement of fact, but a

mistaken statement of a non-existent jural relationship. It has been proved by the Plaintiffs by the facts referred to above that the earlier admissions cannot be true and correct and that such admissions were made by reason of a mistaken interpretation of the provisions of the Tamil Nadu Cultivating Tenants Protection Act.

13. It has been laid down *Kalidas Dhanjibhai Vs. The State of Bombay*, that when the facts are fully set out and admitted a party's opinion about the legal effect of those facts is of no consequence in construing the section and that no estoppel arises by reason of the admission of the party as to such effect. The Plaintiffs have not admitted in the earlier proceedings that the first Defendant and Amarsing Vanniar were cultivating the land by contributing their own physical labour or that of the members of their families and by raising any crops and were in enjoyment of the lands in any other manner except by appropriating the usufructs of the trees. Therefore, I find that the admissions made in the earlier proceedings will not operate as an estoppel against the contention of the Plaintiffs that the Defendants are not agriculturists, entitled to the benefits of the Tamil Nadu Cultivating Tenants Protection Act. They have proved by indisputable facts that the Defendants are merely enjoying the usufructs of the trees and are not contributing any physical labour of their own or of the members of their families for the purpose of carrying on the basic or subsequent agricultural operations.

14. The next question to be considered is, whether the civil court is barred from adjudicating upon the dispute between the parties to the suit in view of the claim of the Defendants that they are cultivating tenants. The Defendants seem to have filed a petition subsequent to the institution of the suit for entering their names in the Record of Tenancy. As I find that the lands themselves are not agricultural lands in which any agricultural operations can be carried on, that the trees were in existence from a very long time and that the first Defendant and Amarsing Vanniar have been given a right merely to appropriate the usufructs of the trees, no decision falls to be considered under the Tamil Nadu Record of Tenancy Rights Act (X of 1969). Therefore, the jurisdiction of the civil Court is not ousted. The civil Court alone can decide the dispute between the parties in the instant case.

15. Point 3.-In Original Suit No. 314 of 1975, Govindaraja Vanniar, the first Defendant, has filed a written statement which has been adopted by the other Defendants, who are Defendants 2 to 7 in the suit, contending that they, their fathers and forefathers planted the trees, reared them in the suit lands with their own labour and expenses for their benefit and have thereby denied the title of the Plaintiffs to the trees. Hence, by reason of Section 111(c) of the Transfer of Property Act, the Defendants have forfeited their right to claim to be lessees and the lease of the immovable property has been determined by forfeiture. By claiming title to the trees the Defendants have earned the forfeiture. In the circumstances, the notice given by the Plaintiffs u/s 111(g) of the Transfer of

Property Act is a sufficient and valid notice.

16. For the above reasons, the judgment and decree of the trial Court are confirmed and this appeal is dismissed with costs.