

(1996) 04 MAD CK 0088

In the Madras High Court

Case No : Writ Petition No. 2717 of 1993

K. Govindammal and Others

APPELLANT

Vs

The Tahsildar and Record Officer (Tenancy Record) Erode and
Others

RESPONDENT

Date of Decision : 26-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1996) 04 MAD CK 0088

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : E.J. Ayyappan, for the Appellant; M.M. Sundares, Government Advocate for Respondents 1 to 3 and Mr. V.K. Muthusamy, for the 4th Respondent, for the Respondent

Judgement

N.V. Balasubramanian, J.—Petitioners and one Nagammal are the legal representatives of one Kuttiappa Chettiar. The said Kuttiappa Chettiar was a cultivating tenant of the land measuring about 2.45 acres in Mettunasuvanpalayam village, Erode Taluk, Periyar District is Survey No. 52/1. The name of Kuttiappa Chettiar was registered as a cultivating tenant in the Records of Tenancy Rights, maintained by the first respondent. It was stated by the 4th respondent that on 25.2.1986, Kuttiappa Chettiar by a deed of release, released the right of tenancy in favour of the 4th respondent. The 4th respondent instituted a suit based on the deed of release executed by Kuttiappa Chettiar in O.S. 58 of 1936 before the Vacation Civil Court, Erode and the said Court granted an interim injunction in favour of the 4th respondent in I.A.786 of 1986 in O.S. 58 of 1986 on the that Kuttiappa Chettiar's complaint was lodged at 11:00 a.m. on 20.5.1986, but the complaint against Kuttiappa Chettiar was filed at 1:30 p.m. on 20.5.1986. On 22.5.1986, the proceedings under S. 145, Cr. P.C. were i file of the Vacation Civil Court, Erode. On 20.5.1986, a complaint was registered in time No. 132 of 1986 against the fourth respondent alleging

the trespass by him. On the same date, a complaint was registered against Kutiappa Chettiar and others by the fourth respondent the Crime No. 131 of 1986. It is relevant to mention initiated as per the directions of the Inspector of Police. On 16.10.1986, in M.C.I of 1986, , orders were passed remitting the case under S. 145 Cr.P.C. for a fresh disposal. Another complaint was filed in Crime No. 18 of 1987 against the 4th respondent and others alleging tresan order was passed with a finding that the petitioners and Kuttiappa Chettiar were in possession of the property in question. On 20.10.1986, in Criminal Revision No. 820 of 1986 pass and damage to the property. On 22.6.1987, Kuttiappa Chettiar whose name was shown as a tenant in the records of tenancy rights was found to be murdered in the property in question. On 11.8.1987, the legal representatives of Kuttiappa Chettiar filed an application to register their names as cultivating tenants before the first respondent. The first respondent considered the evidence and held that the widow of Kuttiappa Chettiar, because of her old age, could not be regarded as having contributed physical labour for the cultivation of the land. He also held that the 2nd petitioner, who was the sister, did not appear before the first respondent on any one of the dates of enquiry and hence, she also cannot be regarded as having contributed physical labour for the cultivation of the land. In so far as the 4th petitioner is concerned, he was not examined. In so far as the 3rd petitioner is concerned, he held that he was working as a teacher in a Government School at Kankeyara and hence, he could not be regarded as having contributed physical labour for the cultivation of the land. The first respondent held that it cannot be accepted that the petitioners have contributed their physical labour even during the lifetime of Kuttiappa Chettiar. Therefore, he held that the petitioners have not proved that they contributed their physical labour for the cultivation of the land when Kuttiappa Chettiar was alive. In this view of the matter, he rejected the application under S. 4(3) of the Act.

2. The petitioners preferred an appeal before the second respondent. The second respondent set aside the order of the first respondent on the ground that all the persons should have been examined and the first respondent has not granted sufficient opportunity to the petitioners before rejecting their application to record their names as cultivating tenants. In this view of the matter, he remitted the matter to the first respondent.

3. The 4th respondent challenged the order of remittal passed by the second respondent by way of Revision before the 3rd respondent. The third respondent held that there was no evidence to show that the legal representatives of Kuttiappa Chettiar contributed their physical labour after the death of Kuttiappa Chettiar. He also held that there was no evidence to show that the petitioners have contributed their physical labour after the death of Kuttiappa Chettiar. In this view of the matter the 3rd respondent allowed the Revision and restored the order of the first respondent.

4. Learned counsel for the petitioners contended that Kuttiappa Chettiar was; admittedly a cultivating tenant and hence after the expiry of Kuttiappa Chettiar,

his legal representatives are entitled to be registered as cultivating tenants. It was contended that it is the case of the petitioners that even during the tile time of Kuttiappa Chettiar, they contributed physical labour. Learned counsel for the petitioner drew my attention to the oral evidence given by Krishnan, who was the 3rd petitioner In the proceedings before the 1st respondent to the effect that even during the lifetime of Kuttiappa Chettiar, the petitioners have cultivated the land He also referred to the documents filed before the first respondent, particularly Exs. A. 1 to A23 to show that they have been contributing physical labour upon the land in question Learned counsel for the petitioners also submitted that they are in possession of the land in question even after the order of interim injunction granted by the Vacation Civil Court. Erode and for that purposes, he has strongly placed reliance upon the proceedings initiated under S. 145 Cr. P.C. to show that they when in possession of the property in question. Learned counsel for the petitioners relied upon a decision of the Supreme court in Chinnamarkuthiun v. Ayyavoo (AIR 1982 S.C. 137) and contended that the Tamil Nadu Cultivating Tenants Protection Act should be so construed which will advance and fulfill the object of the Act rather than the one which would render the protection illusory. Learned counsel for the respondent- on the other hand submitted that the Revisional Authority, on the basis of the evidence, came to a conclusion that the writ petitioners have not proved that they have contributed physical labour for the cultivation of the land. He also contended that the appellate authority erred in remitting the matter to the Tahsildar for fresh disposal. He referred to the finding of the Tahsildar and contended that the entire evidence has been examined by the Tahsildar and the Tahsildar came to the conclusion that the petitioners have not contributed their physical labour for the cultivation of the land. He referred to the evidence given on behalf of the petitioners and also the evidence given on behalf of the 4th respondent and contended that the evidence is very clear that the petitioners have not contributed their physical labour either during the lifetime of Kuttiappa Chettiar or after the lifetime of Kuttiappa Chettiar. He referred to the evidence of P.W. 1 and contended that he denied the title of the fourth respondent and his entire evidence is false evidence, because he even denied the purchase of the land by the 4th respondent, and even the witness has deposed that he was not aware of the sale in favour of the fourth respondent and hence his evidence should be rejected. He also referred to the order of interim injunction which is still in force, and in view of the order of interim injunction of the competent court the claim of the petitioners that they are in possession and cultivating the land cannot be sustained in law. He contended that the Tahsildar as well as the District Revenue Officer have arrived at basis of a finding on the evidence and it is not open to the Court to reappraise the evidence and come to a different conclusion. Learned counsel for the respondent relied upon a decision in Venkataswami Reddiar and Another Vs. Sundaramoorthy, and another decision decision in Angu Alias Angammal v. The Record Officer And Additional Tahsildar (1988-2-L.W. page 41) According to the counsel for the respondents, as one of the petitioners was permanent employee as a teacher in a Government school, it cannot be implied

that the petitioners have contributed their physical labour for the cultivation of the land, placing reliance on the decision in V. Reddiar's case (cited supra) wherein it is held that to get the benefit of the Cultivating Tenants Protection Act, the tenant must establish that someone in his family was contributing the physical labour for the cultivation of the land, learned counsel for the respondents contended that in the absence of any such evidence from the petitioners, the authorities below came to a correct conclusion that the writ petitioners are not entitled to the benefits under the Cultivating Tenants Protection Act.

5. I have considered the rival contentions raised by the parties. The first respondent, the Tahsildar, framed two points for determination. The first point for determination was whether the fourth respondent viz., Pongianna Gounder was the owner of the land. The second point that was raised before the Tahsildar and considered by the Tahsildar was whether the petitioners have assisted the said Kuttiappa Chettiar and contributed their physical labour for the cultivation of the land, during the life time of Kuttiappa Chettiar. Arising out of the same question, an ancillary question was raised to the effect whether the petitioners should be regarded as tenants after the lifetime of Kuttiappa Chettiar, if it was held that the petitioners have contributed their physical labour during the life of Kuttiappa Chettiar. In so far as the point No. 1 is concerned, the Tahsildar held that the 4th respondent, Pongianna Gounder was the owner of the land in question and consequently, the point was answered in favour of the fourth respondent.

6. In so far as the point No. 2 is concerned, the Tahsildar held that Kuttiappa Chettiar was murdered on 22.6.1987 and till that date, Kuttiappa Chettiar was cultivating the land. The first respondent considered the evidence let in on behalf, of the petitioners and held that the first petitioner Nagammal was aged 65 and she would not be in a position to contribute her physical labour for the cultivation of the land. In so far as the 2nd petitioner by name. Govindammal, is concerned, she was found to be aged 52 years, and her marriage took place nearly 30 years before the date of enquiry and her husband has deserted the 2nd petitioner. The Tahsildar held that the 2nd petitioner was living under the care and control of her parents and hence, it cannot also be held that the 2nd petitioner also contributed physical labour. The Tahsildar has considered the other evidence let in on behalf of the petitioners and rejected evidence of the other witnesses. The Tahsildar, then considered the case of the 4th petitioner, Duraisarai. The said Duraisami was not examined. According to the evidence of Krishnan, the 3rd petitioner, the said Duraisami was employed in a Spinning Mill and he was contributing his physical labour. After considering the oral evidence of the 3rd petitioner, the Tahsildar found that Duraisami was residing in the same village. The Tahsildar considered the documentary evidence Exs. A.5 to A.23. Those documents relate to the purchase of seeds, urea fertilizers and pesticides. They also relate to the repairing charges for the electric motor pumped. The Tahsildar rejected the documentary evidence on the ground that the documents stand in the name of the 3rd petitioner, Krishnan, and they do not stand in the

name of Duraisami. Hence, the Tahsildar held that since no documents were found standing in the name of Duraisami and he was also not examined as evidence, the 4th petitioner-Duraisami also cannot be regarded as having contributed his physical labour. In so far as the 3rd petitioner Krishnan is concerned, the Tahsildar found that he was employed as a teacher in a Government School and since he was a public servant, he cannot be regarded as a cultivating tenant on the basis of a decision of this Court in *Angu alias Angammal v. The Record Officer and Additional Tahsildar* (1988-2-L.W.41). He also considered the affidavit filed by Kuttiappa Chettiar in O.S. No. 1270/84 on the file of the District Munsif, Erode and held that the petitioners have not contributed their physical labour during the life time of Kuttiappa Chettiar. In this view of the matter, he held that the petitioners have not proved that they have contributed their physical labour during the lifetime of Kuttiappa Chettiar. In this view of the matter, he held that the petitioners have not proved that they have contributed their physical labour during the life time of Kuttiappa Chettiar and there was no proof that they associated the sales of the Kuttiappa Chettiar in the cultivation of the land. It is unnecessary to consider the order of the Appellate Authority, as it is an order of remand to the Tahsildar to consider the matter afresh, because, the Appellate Authority found that the 4th petitioner-Duraisami should have been examined by the Tahsildar before he came to the conclusion that the petitioners were not entitled to the benefits of the Act.

7. Then the 4th respondent filed a Revision before the 3rd respondent viz the District Revenue Officer, Erode, Periyar District. A contention was raised before the Revisional Authority to the effect that on the basis of the interim order of injunction in I.A.786 of 1986 in O.S.58 of 1986 on the file of the Vacation civil Court, Erode, the 4th respondent is in enjoyment of the land. According to the revision petitioners even though the Revenue Divisional Office Erode in M.C.1/86 in the proceedings under S. 145 of the Code of Criminal Procedure held that the petitioners were in possession of the land in question, that order has been set aside by the High Court by its order dated 6.2.194. It was also contended on behalf of the 4th respondent viz., Pongiana Gounder that "the order of remand by the Appellate Authority was not justified on the ground that two of the petitioners have not been examined. It was contended on behalf of the writ petitioner" before the Revisional Authority that there was no bar for third petitioner, Krishnan to contribute his physical labour even though he was employed as a teacher in a Government High School, Kangeyam, because he was a teacher in agriculture and there was no bar on his part to engage himself as an agriculturist in the disputed land. It was also raised on behalf of the petitioners that the petitioners have contributed their physical labour even during the lifetime of Kuttiappa Chettiar and the release deed said to have been executed by the said Kuttiappa Chettiar in favour of the 4th respondent Pongiana Gounder was not a genuine one and the petitioners are in possession and enjoyment of the land, and for that purpose, reliance was placed on the proceedings of the Revenue Divisional Officer, Erode wherein it was held that the petitioners are in

enjoyment of the land. The Revenue Divisional Officer framed four issues and in so far as issues 1 and 2 are concerned, he held that the revision petition was maintainable and the 4th respondent, Pongianna Gounder was the owner of the land.

8. The Revisional Authority framed the third issue as under:-

Whether the petitioners can be regarded as tenants of the land after the death of their father?

He answered the issue, by holding that there was no evidence to show that after the death of Kuttiappa Chettiar, his legal heirs have contributed their physical labour. In so far as the 3rd petitioners Krishnan is concerned, he held that he was employed as a teacher in a Government School, Kangeyam, which is situated 55 Kilometres away from the disputed village, and on the basis of a decision of this court in *Angu alias Angammal's case* (cited *supra*) he held that it was not possible to accept the case of the 3rd petitioner that he has contributed his physical labour. He also held that there was no evidence to show that the writ petitioners have contributed their physical labour after the death of their father. In this view of the matter, he allowed the revision petition. There is no quarrel about the proposition of law that where the authorities have considered the evidence and on the basis of such evidence, a conclusion was arrived at, this court exercising its powers under Art. 226 of the Constitution of India, will not interfere with the findings of the lower authorities, as this court does not sit in appeal over the decision of the authority. But, where the authorities have acted without any evidence of where the authorities have posed a wrong question and came to a conclusion, this court can certainly interfere. As narrated earlier, the case of the petitioners throughout was that they contributed their physical labour even during the lifetime of Kuttiappa Chettiar. The evidence of P.W.I Krishnan is also to the effect that even during the lifetime of Kuttiappa Chettiar, they all joined together and cultivated the land and it cannot be stated that only Kuttiappa Chettiar was cultivating the land and in support of this plea, several documents were produced before the Tahsildar to show that for the purpose of cultivation, they have purchased seeds, fertilizers and urea. He also filed documents to show that the electric motor was repaired and they paid the additional security. He also filed documents to show the payment of electric bills for drawing water. Certain other documents were also filed to show that the petitioners were in possession of the land. The Tahsildar rejected the documents on the only ground that they were all standing in the name of Krishnan, and not in the name of Duraisami and Duraiswami was not examined. But, when the matter came before the 3rd respondent, by way of Revision, he posed a question whether the petitioners have contributed their physical labour after the lifetime of Kuttiappa Chettiar. It is significant to note that the case of the petitioners was that they have contributed their physical labour during the lifetime of Kuttiappa Chettiar and the arguments advanced on behalf of the writ petitioners before the 3rd respondent, the Revisional Authority was that the writ petitioners

have contributed their physical labour even during the lifetime of Kuttiappa Chettiar. But, the Revisional Authority framed an issue to the effect whether the writ petitioners have contributed their physical labour alter the lifetime of Kuttiappa Chettiar. So, when the case of the petitioners was that they contributed the physical labour and the evidence was let in one basis, it is necessary for the Revisional Authority to examine that question and the Revisional Authority asked himself a wrong question and considered and decided the ease of the parties. On the other issue, since the real issue before the Revisional Authority was not decided. I have-to set aside the order of the third respondent and remit the matter for fresh consideration, it is necessary for the parties to bear in mind a decision of the Supreme Court in Chinnamarkathian alias Muthu Gounder and Others Vs. Ayyavoo alias Periana Gounder and others, wherein the Supreme Court has taken the view that this piece of legislation, viz., the Tamil Nadu Cultivating Tenants Protection Act is a beneficial legislation and it is intended to grant security of tenure to the cultivating tenants of agricultural lands and the construction of the provision of such an enactment should be with a view to advance or achieve the object of the Act. The Revisional Authority has failed in its duty to frame proper question and then deride the question in accordance with law. it is relevant to mention here that the 4th respondent have instituted a suit in O.S.411 of 1986 before the District Munsif, Erode and in that suit, on the basis of the release deed executed by Kuttiappa Chettiar dated 25.2.1984 the 4th respondent obtained an interim injunction. Armed with the finding of the Revenue Divisional Divisional Officer in his proceedings under S. 145 of the Code of Criminal Procedure which was. no doubt, set aside in the Criminal Revision, the petitioners contended that they arc in possession of the land. It is necessary for the 3rd respondent to come to a conclusion whether the petitioners are the cultivating tenants and they have contributed their physical labour even during the lifetime of Kuttiappa Chettiar considering the entire evidence of the parties. A comment must also be made about the finding of the Revisional Authority that a teacher employee Government School can in case be counseled have contributed his physical labour The case of the petitioners is that the 3rd petitioner employed as teacher in the subject of agricultural subject and if he was a teacher in the subject of agriculture there can be objection for the said person was known agriculture to utilize his knowledge in the by of agriculture and contribute his physical labour also in the cultivation of the land the decree of this court us Angu alias Angammals case (cited supra) cannot be said to foreclose the issue. No doubt, a Government servant is a Government servant for all 24 hours but that does not prevent him form rendering assistance to his father during the spare time available and utilise, his knowledge of agriculture in the cultivation of and with his father. However it is necessary to probe the matter of the order is set aside and the remitted to the respondent for fresh consideration of that the petitioner. The third respondent for fresh consideration of the case of the petitioner. The third respondent should be consider the legal effect of the order of injunction in the face of the claim petitioners that they are in possession of the land in question A detailed

examination of all fact's raised by both parties including the probative value" of the documentary evidence filed on behalf of the writ petitioners before the first respondent, should be undertaken and then arrive at a finding. I, therefore set aside the order of the third respondent and the matter is remitted to the 3rd respondent to the matter de novo. The writ petition was accordingly. There will be on order as to costs.