
(1984) 12 MAD CK 0064
In the Madras High Court

K. Ramaprasad

APPELLANT

Vs

Record Officer and Special Tahsildar, No. 1, Tenancy Record
and Others

RESPONDENT

Date of Decision : 05-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) 98 LW 413 : (1985) 2 MLJ 212

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—This appeal is directed against the judgment of Mohan, J. dated 10.1.1978 made in Writ Petition No. 4426 of 1977.

2. The appellant herein is the landlord and he filed an application before the Record Officer for removal of the fourth respondent's name from the record of tenancy in respect of seventy cents of land in S.No. 34/4 and 12 cents of land in (sic).33/6 in the village of Keelamathikkattinam, Madurai South Taluk. The enquiry on the said petition was taken up by the Record Officer and in the said enquiry, the appellant herein contended that the fourth respondent herein was not a tenant at all either on waram basis or on Kuthagai basis, that he was engaged only as an agricultural labourer to watch and water the land in question for which he was paid four bags of paddy as wages and that therefore, the fourth respondent cannot be registered as a tenant under the provisions of the Record of Tenancy Act, 1969. As against this, the fourth respondent contended that he is a cultivating tenant of the appellant for the last thirteen years and that he has been paying kuthagai regularly and that therefore, the record of tenancy does not require any alteration.

3. As a result of the said enquiry, the Record Officer held that the fourth respondent is a cultivating tenant directly cultivating the lands in question and that therefore the entries in the record of tenancy do not require any modification or variation. The appellant took the matter on appeal to the

Revenue Divisional Officer, Madurai who is the appellate authority, but without success, Thereafter, the appellant took the matter in revision before the Additional Collector, Madurai where also he failed, Thereafter the appellant moved this Court under Article 226 of the Constitution of India by way of filing Writ Petition No. 4426 of 1977 praying for the issue of a writ of Certiorari to quash the order dated 16.7.1977 passed by the third respondent, the revisional authority, confirming the order of the Revenue Divisional Officer, dated 2.4.1973 which in turn confirmed the Order of the Tahsildar dated 9.2.1972.

4. It is seen from the impugned proceedings that the appellant apart from questioning the orders of the authorities on merits, has also raised the contention that the provisions of the Tamil Nadu Cultivating Tenants' Protection Act, 1955, after the introduction of Section 4-B, do not recognise an oral tenancy, and a person who claims to be a tenant on the basis of an oral tenancy cannot claim the benefits of the Act in view of Section 4-B of the Act. This contention was negated by the third respondent, the revisional authority, on the ground that notwithstanding the introduction of Section 4-B, the definition of the term "cultivating tenant" which contemplates even an implied tenancy, has not been amended, that therefore even after the insertion of Section 4-B in the Act, there can be an oral tenancy and that the fact that there is no written agreement evidencing the tenancy will not disable a tenant from claiming the benefits of the Act.

5. At the stage of the writ petition itself, the only ground urged before the learned single Judge was with regard to the scope of Section 4-B of the Act. The legal point based on the scope of Section 4-B of the Tamil Nadu Cultivating Tenants Protection Act, 1955 urged by the learned Counsel for the appellant was this. Whatever be the position before the insertion of Section 4-B of the Act, after such insertion, there cannot be any oral tenancy at all, that all tenancies entered into subsequent to 1956 when Section 4-B was inserted, can only be under a written agreement, that such a written agreement should be in triplicate and a copy of the same should be filed in the Taluk Office, and that if either the landlord or the tenant refused to sign the written agreement, he will be liable to a penalty upto fifty rupees under the provisions of Section 4-B of the Act. The fact that the statute has chosen to levy a penalty for non-compliance with the provisions of Section 4-B would itself indicate that the said Section is mandatory and that unless the mandatory provisions of the Act are complied with, a tenant cannot claim benefits under the Act. This contention was rejected by Mohan, J. on the ground that the question is covered by the decision of Kailasam, J. (as he then was) in *Sakuntala v. Thandukkaran* (1965) 78 L.W.362 wherein the learned Judge has held that even after 1956, there can be an oral tenancy and that a tenant under an implied oral agreement can claim the benefits of the Act notwithstanding the fact that Section 4-B of the Act has not been complied with.

6. Though the learned Counsel for the appellant challenges the view taken by the learned single Judge on the ground that the scope of Section 4-B of the Act has

not been properly considered by him we are of the view that the learned Judge has come to the right conclusion. In view of the contention of the learned Counsel for the appellant that whatever be the position before 1956, after the introduction of Section 4-B in 1956, all tenancies can only be in writing and an oral tenancy cannot be recognised in view of the said section and that in any event all tenancy agreements after the introduction of Section 4-B in 1956, can only be in the form of a written agreement prepared in triplicate as contemplated by Section 4-B, it is necessary to refer to the relevant statutory provisions which have got a bearing on the question referred to above.

7. The Tamil Nadu Cultivating Tenants Protection Act, 1955 is intended to protect the cultivating tenants in certain areas in the State of Tamil Nadu from unjust eviction. The term "cultivating tenant" is defined in Section 2(aa) as follows:

Section 2(aa): "Cultivating tenant" (i) means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and

(ii) includes -

(a) any such person who continues in possession of the land after the determination of the tenancy agreement;

(b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land;

(c) and (d)

The definition of the term "cultivating tenant" throws considerable light on the question raised by the learned Counsel for the appellant. This definition talks of a tenancy agreement, express or implied. A tenancy agreement can be implied from the conduct of the parties. That means that there can also be an oral tenancy agreement. The definition also contemplates a person continuing in possession after the termination of the tenancy agreement, which means that there need not be any subsisting agreement in writing to claim the benefits of the Act as a cultivating tenant. The definition also includes the heir of a deceased cultivating tenant, and in such a case there could not have been any written agreement as contemplated in Section 4-B. Thus, the definition of the term "cultivating tenant" does not exclude an oral tenancy agreement. As already stated, the object of the Act being to protect the cultivating tenant from unreasonable and unjust eviction, the application of the Act cannot be restricted only to tenants under a written agreement.

8. It is no doubt true that Section 4-B of the Act directs that in the case of every tenancy agreement entered into after the coming into force of the Madras Cultivating Tenants Protection (Amendment) Act, 1956, between a cultivating tenant and a landlord, a lease deed shall be executed in triplicate in the prescribed form within a reasonable time after the commencement of such tenancy, specifying the name and description of the cultivating tenant, the name

(if any), survey number, description and extent of the land leased out and the terms of the tenancy, and shall be signed both by the landlord or his agent and by the cultivating tenant. One of the three copies shall be kept by the landlord, one shall be kept by the cultivating tenant and the third shall be caused to be lodged in the Taluk office by the landlord or his agent within a fortnight of the date on which the cultivating tenant signs it. The proviso to Sub-section (1) of Section 4-B says that, if there is a refusal or delay to execute the lease deed, it shall be open to the cultivating tenant or the landlord as the case may be to lodge the deed in the taluk office with a declaration that the other party has refused or delayed unreasonably to execute it. Sub-section (3) of Section 4-B lays down that, if the landlord or his agent or the cultivating tenant refuses to sign or fails to lodge the lease deed in accordance with the provisions of Sub-section (1), the Revenue Divisional Officer may impose on the landlord or the cultivating tenant, as the case may be, a penalty which may extend to fifty rupees and that the penalty so imposed may be recovered as if it were an arrear of land revenue.

9. It is no doubt true that Section 4-B contemplates the execution of a lease deed between the landlord and the cultivating tenant after the coming into force of the Madras Cultivating Tenants Protection (Amendment) Act, 1956 in triplicate and one copy to be lodged in the Taluk Office. A penalty is provided for either refusal to sign or failure to lodge the lease deed with the Taluk Office. But the question is whether the non-execution of a lease deed as contemplated in Section 4-B will deprive the parties of the benefits of the provisions of the Act. Admittedly, Section 4-B does not contain any forfeiture clause to the effect that, if the landlord or the cultivating tenant refused or failed to execute the lease deed, they will forfeit the benefits arising under the Act. As already stated, the purpose of the Act is to confer benefits on the cultivating tenants and to protect them from unjust eviction. If such a right given to the cultivating tenant is to be taken away or withdrawn, one would expect a specific provision in- Section 4-B of the Act for forfeiture for not executing a lease deed as contemplated therein. No doubt, the object of Section 4-B is to see that after 1956, the parties enter into agreements in writing which would be in triplicate and one copy is to be deposited with the Taluk Office. Such a requirement has been made in Section 4-B only to see that there is no dispute between the landlord and the tenant as to the exact terms of the tenancy. If the terms of the tenancy are reduced to writing and a copy of the same is deposited with the Taluk Office, then the terms of the tenancy cannot be put in dispute and the rights of the parties could be decided with reference to those terms contained in the lease deed in proceedings under the Act initiated or resorted to by the parties.

10. The learned Counsel for the appellant contends that Sub-section (3) of Section 4-B imposes a fine for non-compliance of Section 4-B and this shows that Section 4-B is mandatory. Sub-section (3) of Section 4-B of the Act applies only to a case where one party to the tenancy agreement is willing to execute the agreement but the other party refuses to sign the same. In such a case, the

refusal is made punishable. From this it is not possible to say that there cannot be any oral tenancy at all. If the landlord and the cultivating tenant do not want to- enter into a written agreement, then neither the proviso to Section 4-B, nor Sub-section (3) of Section 4-B will stand attracted and there is no way of compelling both the parties to enter into a written tenancy agreement. Apart from these aspects, so long as Section 4-B does not exclude oral tenancies, persons holding under oral tenancies cannot be deprived of the benefits of the Act merely on the basis of oral tenancies. It is significant to note that even after the introduction of Section 4-B by the Amending Act of 1956, the definition of the term "cultivating tenant" still continues to be the same and that definition, as already stated takes in oral tenancies as well. Unless that definition was amended so as to confine the operation of the Act only to tenancies under written agreement, the application of the Act to oral tenancies cannot be excluded. In this view of the matter, we are inclined to agree with the view taken by Mohan, J.

11. The Writ Appeal therefore fails and it is dismissed. There will be no order as to costs in this appeal.