
(2008) 04 MAD CK 0136
In the Madras High Court
Case No : S.A. No. 1246 of 1996

Muthiah Padayachi (deceased) and Others	APPELLANT
Vs	
Muthusamy, Manickam, Varadarajan and Kannusamy	RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12
Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 16A

Citation : (2009) 1 MLJ 134

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : V. Srinivasan, for the Appellant; T.Sudhan Raj, for K. Chandrasekaran, for R3, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—The second appeal has been filed against the judgment and decree, dated 24.07.1995, made in A.S. No. 65 of 1987, confirming the judgment and decree of the District Munsif, Mettur, dated 11.02.1987, made in O.S. No. 9 of 1981

2. For the sake of convenience, the parties in the appeal are referred to as they have been arrayed in the original suit in O.S. No. 9 of 1981.

3. The defendant in the suit O.S. No. 9 of 1981, is the appellant in the present second appeal. The suit had been filed by the plaintiffs who are the respondents herein praying for a judgment and decree in their favour for possession and for mesne profits.

4. The averments in the plaint are as follows:

4.1 The suit property belongs to the plaintiffs. The defendant had entered into an agreement of sale of the property with the plaintiffs, on 28.02.1970, for the sale consideration of Rs. 18,750. The defendant was put in possession of the suit property consequent to the said agreement. The defendant had agreed to

discharge the mortgage, dated 6.11.1958, made for a sum of Rs. 2500/- and the other pronote debts in favour of one Narayanan. The defendant had also agreed to discharge all the said debts due to Narayanan, within the period mentioned in the said agreement.

4.2 It was also stated that the agreement was liable to be cancelled, if the defendant fails to pay the dues within the stipulated period. Since the defendant had failed to pay the decree amount due to Narayanan, in accordance with the decree made in O.S. No. 310 of 1969, the third plaintiff had been arrested and brought to Court in REP.216 of 1970. Thereafter, the plaintiffs had sent a notice, dated 14.10.1970, calling upon the defendant to surrender the possession of the property, as he had failed to comply with the terms of the agreement. The defendant had sent a reply, dated 28.04.1971, making false allegations. The defendant had filed an Execution Petition in E.P.33 of 1972, to adjudge himself as an insolvent. The plaintiffs had opposed the said petition, which was later dismissed as not pressed. Again the defendant had filed another suit in O.S. No. 880 of 1973, on the file of the Subordinate Judge, Salem, for the return of the advance money of Rs. 8700/- stating that the defendant is not entitled to the suit property in accordance with the said agreement. 4.3 It was also stated that the defendant had been evading delivery of the possession of the suit property to the plaintiffs. In such circumstances, the plaintiffs had filed the present suit for delivery of possession and mesne profits from the date of the suit till the date of the delivery of possession.

5. In the written statement filed by the defendant it has been stated that the plaint filed by him in O.S. No. 880 of 1973, on the file of the Sub Court, may be read as part of the written statement filed in the present suit. The plaintiffs did not disclose the actual debts and the defendant had to file a suit in O.S. No. 880 of 1973, seeking for the return of the amount paid by him.

5.1. It has been further stated that the defendant is a cultivating tenant, who had been duly recognised as per the records of rights maintained at the Taluk office. The plaintiffs are not entitled to possession. The defendant cannot be evicted, as he is a cultivating tenant and the plaintiffs are not entitled to mesne profits as prayed for in the suit.

6. Based on the pleadings, the trial Court had framed the following issues for consideration:

- 1) Whether the plaintiffs are entitled to the relief of possession as prayed for?
- 2) Whether the plaintiffs are entitled to future mesne profits and if so at what rate?
- 3) What reliefs are the plaintiffs entitled to?

7. The 4th plaintiff has deposed as P.W.1 and three witnesses have been examined and Exhibits A-1 to A-10 have been marked to support his contentions. It was contended by the plaintiffs that the defendant had entered into an

agreement of sale, dated 28.02.1970, with regard to the suit property and the defendant had agreed to discharge the debts due to one Narayanan. Since the defendant had failed to discharge the debts due to Narayanan within the stipulated period as per the agreement of sale, the 3rd plaintiff had been arrested in execution proceedings in REP. No. 216 of 1970. The suit property had been brought for sale by said Narayanan. Since the defendant had failed to discharge the debts as per the terms of the agreement and as the suit property was in possession of the defendant only in pursuance of the agreement of sale, dated 28.02.1970, and also as the defendant was not cultivating the property as a tenant at any time and as the defendant had filed an I.P. petition in 33 fo 1972 to adjudge the plaintiff as an insolvent, it was contended that the defendant is not entitled to the possession of the suit property.

8. It was contended by the defendant that he was not able to discharge the debts mentioned in the agreement of sale as the debts were more than the actual value of the suit property which is in the possession of the defendant. The agreement of sale was not liable to be cancelled, as D.W.1 was a cultivating tenant and he could not be evicted as per the agreement of sale. Further, it was contended that D.W.1 had taken the suit properties on lease prior to the date of the agreement of sale.

9. On analysing the rival contentions and in view of the evidence available, the trial Court had found by way of Exhibit A-1 that the defendant had not paid the amounts due as per the decree in O.S. No. 310 of 1969 and as a consequence, the third plaintiff had been arrested in REP. No. 216 of 1970. Thereafter, the plaintiff had sent a notice to the defendant to surrender the possession of the suit property in question. The trial Court had also held that according to Paragraph-4 of Exhibit A-2, the defendant was in possession of the property only in accordance with the agreement, dated 28.02.1970. From Exhibit A-2, it could not be gathered that there was a lease in favour of the defendant as a cultivating tenant in the suit property. Therefore, the claim of the defendant that he was in possession of the suit property even prior to the date of the agreement of sale could not be accepted. D.W.1 had admitted during his cross examination that the plaintiff had handed over the possession of the suit property as soon as the agreement of sale had been executed in the year 1970.

10. Thus, it was clear that the first defendant was in possession of the suit property only as per the agreement of sale, dated 28.02.1970 and not by any lease. Even in the written statement filed by the defendant no averments have been made that he took possession of the suit property by a lease. From Exhibit B-1, dated 31.12.1980, which is the certified copy of the order regarding the tenancy rights in favour of the plaintiff, it could not be found that the recording of tenancy in favour of the defendant had been done after due enquiry. In such circumstances, no reliance could be placed on Exhibit B-1. It was also found that the defendant had filed the suit for the return of the advance amount in O.S. No. 880 of 1983, showing the same description as that of the suit property. Thus, it

was held that the defendant has been in possession of the suit property only in pursuance of the agreement sale, dated 28.02.1970 and not as a cultivating tenant, under a lease as found in Exhibit B-1.

11. With regard to the second issue, the trial Court had held that the defendant was not entitled to be in possession of the suit property after the cancellation of the agreement of sale and therefore, the defendant is also liable to pay mesne profits for his wrongful possession of the suit property. Thus, it was held that the plaintiffs were entitled to delivery of possession of the suit property as prayed for in the suit. However, it was held that the plaintiffs are entitled to mesne profits as prayed for by initiating separate proceedings under Order XX Rule 12 of Civil Procedure Code.

12. Aggrieved by the judgment and decree of the trial Court, the defendant had filed an appeal in A.S. No. 65 of 1987 on the file of the Sub Court, Sankari. By a judgment and decree, dated 24.07.1995, made in A.S. No. 65 of 1987, the first Appellate Court had dismissed the appeal, confirming the judgment and decree of the trial Court. The first Appellate Court has framed the following points for consideration:

- 1) Whether the plaintiffs are entitled to the relief of possession as prayed for?
- 2) Whether the plaintiffs are entitled to future mesne profits?
- 3) What relief the parties are entitled?

13. The first Appellate Court found that the agreement entered into between the plaintiffs and the defendant, for sale of the property, had not been filed before the Court. It was also found that the defendant had agreed to discharge the debts due to one Narayanan. However, since the defendant had failed to discharge the debts as agreed to, the 3rd plaintiff had been arrested in REP. No. 216 of 1970 and the suit property had been brought to sale. It was also found that no acceptable evidence has been produced by the defendant to show that he was a cultivating tenant except the entry in a record published in the District Gazette, dated 10.06.1972. No adangal extract had been filed by the defendant to prove his possession.

14. It was also found that D.W.1 had admitted that he was put in possession only in pursuance of the agreement, dated 28.02.1970. In the absence of any record or evidence to prove that the defendant was put in possession of the suit property even prior to the agreement of sale, it cannot be held that the defendant was a cultivating tenant at any point of time. The entry made in Exhibit B-1 is not a declaration to hold that the defendant is a cultivating tenant.

15. The contention of the defendant that there was no proper description of the suit property and that no specific boundaries had been given by the plaintiffs had not been accepted by the first Appellate Court, since it was found that the same description had been given by the defendant with regard to the suit property in the suit O.S. No. 880 of 1973.

16. Aggrieved by the judgment and decree of the first Appellate Court, dated 24.07.1995, the defendant in O.S. No. 9 of 1981, had filed the present second appeal in S.A. No. 1246 of 1996. The second appeal had been admitted on the following substantial questions of law:

Whether the Courts below erred in law and misdirected themselves in deciding the question that the appellant is not a cultivating tenant in view of Section 16-A of Tamil Nadu Act 10/69, namely, Tamil Nadu Agricultural Land Record of Tenancy Rights Act, as regards the status and the nature of tenancy and in view of decision reported in 89 L.W page 249 and the Full Bench Decision reported in 93 L.W page 169?

17. It was contended by the learned Counsel appearing on behalf of the Defendant in the suit and the appellant in the present second appeal that the Courts below had erred in holding that Exhibit B-1 cannot be taken as a conclusive proof of tenancy even though it had been published in the District Gazette ,dated 10.06.1972. Once it was held by the authorities constituted under The Tamil Nadu Agricultural Lands Record of Tenancy Rights Acts, 1969, that the defendant is a cultivating tenant, it is not open to a Civil Court to decide the status that such a person is not a cultivating tenant. The Courts below had erred in holding that the entry made in Exhibit B-1 is not a declaration, declaring the defendant as a cultivating tenant. Both the Courts below had erred in holding that the possession of the suit property by the defendant is only in pursuance of an agreement of sale, dated 28.02.1970, and not as a cultivating tenant.

18. The learned Counsel appearing on behalf of the plaintiffs in the suit and the respondents in the second appeal had contended that the Courts below had come to the right conclusion in holding that the defendant is not a cultivating tenant and the suit property is in his possession only in pursuance of the agreement of sale, dated 28.02.1970. No evidence is available for the defendant to support his claims.

19. In view of the submissions made by the learned Counsels appearing for the parties concerned and on analysing the evidence available on record this Court is of the considered view that the defendant in the suit and the appellants herein have not shown sufficient cause or reason for this Court to interfere with the findings of the Courts below.

20. It is clearly seen that the defendant had not shown sufficient evidence to prove his claim that he was a cultivating tenant and that the suit property was in his possession only based on the lease. Exhibit B-1 is the only document relied on by the defendant to show that he is a cultivating tenant. However, the Courts below had found that there is no supporting evidence to prove that he has been declared as a cultivating tenant, based on a proper enquiry conducted by the authorities concerned, in accordance with the provisions of The Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. Once it is found that the defendant is in possession of the suit property only in pursuance of the

agreement of sale, dated 28.02.1970 and that the said agreement stood cancelled, it is the duty of the defendant to hand over possession of the suit property to the plaintiffs. Thus, the trial Court as well as the first Appellate Court had come to the right conclusion that the plaintiffs are entitled for the reliefs sought for by them in the suit in O.S. No. 9 of 1981.

21. In such circumstances, the second appeal stands dismissed, confirming the judgment and decree of the Courts below. No costs.