

(1982) 04 MAD CK 0028
In the Madras High Court

Ponnuswamy and Another

APPELLANT

Vs

District Revenue Officer and Others

RESPONDENT

Date of Decision : 02-04-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) 97 LW 647 : (1982) 2 MLJ 381

Hon'ble Judges : S. Padmanabhan, J

Bench : Division Bench

Judgement

S. Padmanabhan, J.—The second appeal and the writ petition are disposed of by this common judgment. The second appeal arises from O.S. No. 1042 of 1973 on the file of the District Munsif, Tirupattur. The plaintiff in O.S. No. 1042 of 1973, filed the suit for a declaration that he was the cultivating tenant in respect of the suit property and for an injunction restraining the defendants, Ponnuswamy and Gnanamoorthy from interfering with his possession as a cultivating tenant. The case of Masilamani was that the property originally belonged to one Abdul Azeez and that the latter inducted him into possession of the suit property. Thereafter, on 17th November, 1972, Ponnuswamy and Gnanamoorthi purchased the property from Abdul Azeez and began to interfere with his rights.

2. The trial Court decreed the suit. Ponnuswamy and Gnanamoorthy, filed A.S. No. 93 of 1975 before the Subordinate Judge, Tirupattur. The appeal was dismissed. Thereupon, they filed S.A. No. 157 of 1981 on the file of this Court.

4. The writ petition has been filed by the petitioners who are the appellants in the Second Appeal for the issue of a writ of certiorari to quash the order passed by the first respondent on 6th June, 1979, holding that the petitioners have not taken possession of the land from the 4th respondent subsequent to their purchase. It may be stated that the 4th respondent had originally got himself registered as a cultivating tenant under the provisions of the Tamil Nadu Record of Tenancy Rights Act. Thereafter, the petitioners filed an application before the Tahsildar, Vaniyambadi, to delete the name of the 4th respondent from the

Records of Tenancy Rights registry. The petitioners raised the identical contention which they raised in O.S. No. 1042 of 1973 on the ground that after their purchase, the 4th respondent had surrendered possession of the property to the petitioners and accordingly they had taken possession of the same and have been cultivating the land since the date of surrender. The 4th respondent denied the factum of surrender and asserted that he was continuing to be in possession as a cultivating tenant.

5. The third respondent/Tahsildar accepted the case of the petitioners and ordered deletion of the name of the 4th respondent from the Record of Tenancy Rights registry. Against the said order, the 4th respondent preferred an appeal before the Sub-Collector, Tiruppattur, the second respondent in the writ petition. The Sub-Collector dismissed the appeal. Thereupon, the 4th respondent filed a revision petition before the first respondent. District Revenue Officer, North Arcot. The District Revenue Officer by his order, dated 6th June, 1979, set aside the orders passed by the second and third respondents and allowed the revision petition before the first respondent. The District Revenue Officer held that the petitioners who are respondents before him had not proved that the 4th respondent had surrendered possession of the land and that they have personally cultivated in fasli 1383 and they continued to be in possession thereof.

6. In the second appeal, it may be mentioned that both the trial Court as well as the lower appellate Court have concurrently found that the plea of oral surrender set up by the appellants, namely, the petitioners in the writ petition, had not been proved.

7. Mr. Muthukumaraswamy, the learned Counsel for the appellants, namely, the petitioners in the writ petition, relies upon the Full Bench decision in Periatambi Goundan Vs. The District Revenue Officer, Coimbatore and Others, , and argues that inasmuch as the suit was filed by the 4th respondent after the introduction of Section 16-A of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969, as amended by 1972, the suit itself is not maintainable. As regards the writ petition, the learned Counsel further argues that the impugned order of the first respondent is liable to be set aside as it is vitiated by an error apparent on the face of the record.

8. I shall first deal with the merits of the order impugned in the writ petition. It is admitted that the petitioners purchased the property from one Abdul Azeez and that at the time the 4th respondent had already been inducted into possession as a tenant by the said Abdul Azeez and was in possession of the property. The date of purchase by the petitioners was 17th November, 1972. The definite case of the petitioners in the writ petition is that after their purchase of the property from Abdul Azeez, the 4th respondent surrendered physical possession of the property to them. The fact of surrender is not borne out by any documentary evidence in this case. The first respondent has relied upon the certificates, dated 12th November, 1973, furnished by the village karnam and village headman, Vadakkupattu village, to the 4th respondent. It is seen therefrom that the 4th

respondent was cultivating 2.48 acres in survey No. 3311 with sugarcane and paddy. The first respondent has also stated that the petitioners had not let in any evidence to show that they were actually cultivating the land in question in fasli 1383. After giving due weight to the admissions of the petitioners that the 4th respondent was a cultivating tenant till 17th November, 1972, the date on which the petitioners purchased the land from the lessees and the date on which the 4th respondent is said to have surrendered possession of the property to the petitioners, the first respondent has come to the conclusion that the plea of surrender was not true. This finding is essentially a finding on a question of fact. Even before me, the learned Counsel for the petitioners was not able to place any documentary evidence to conclusively establish the plea that the 4th respondent had surrendered possession of the property to the petitioners subsequent to their purchase from Abdul Azeez. In the absence of any clinching documentary evidence which would have the effect of rendering perverse the finding of fact given by the first respondent, it is not possible to invoke the jurisdiction conferred on this Court under Article 226 of the Constitution of India and interfere with the order passed by the first respondent. I am of the view that the impugned order passed by the first respondent has not been shown to be vitiated in any manner warranting interference by this Court in exercise of its powers under Article 226 of the Constitution. The writ petition therefore fails and has to be dismissed.

9. In the civil suit also which has given rise to the second appeal, the finding is that the 4th respondent continued to be in possession of the property and that the plea of surrender by him to the appellants, namely the writ petitioners, is not true. However, the suit itself is not maintainable in view of the ratio in the Full Bench decision. *Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Others*, . In the present suit, the plaintiff (Masilamani) has prayed for a declaration that he is a cultivating tenant and for injunction restraining the defendants/appellants (Ponnusami and Gnanamoorthy) who are petitioners in the writ petition, from disturbing his possession. Such a suit is not maintainable. *Ismail, J.*, as he then was, has enumerated instances where a civil suit will not be maintainable vide *Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Others*, :

Similarly, if the cultivating tenant files a suit for declaration that he is the cultivating tenant of the land in question and as a consequential relief prays for recovery of possession from the land-owner-defendant or for an injunction, the primary relief being one of declaration of his status as a cultivating tenant, the other reliefs being consequential, the civil Court may not have jurisdiction to decide the controversy with reference to which the primary relief is prayed for.

I therefore hold that the suit is not maintainable and set aside the judgment and decree of the Courts below. In the result, the second appeal is allowed. The writ petition is dismissed. In the circumstances, the parties will bear their costs both in the second appeal as well as in the writ petition.