
(2011) 01 MAD CK 0322

In the Madras High Court

Case No : S.A. (MD) No. 100 of 2010 and M.P. No. 1 of 2010

P.R.S. Sivakumar and P.S. Rajeswari Devi

APPELLANT

Vs

V. Palani and V. Karupiah

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2011) 01 MAD CK 0322

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M.N. Sankaran, for the Appellant; M. Sureshkumar, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.

1 The unsuccessful Plaintiffs are the Appellants in the Second Appeal.

2. The suit was filed by the Plaintiffs for injunction. The case of the Plaintiffs is that first item of property belongs to the second Plaintiff and the second item of property belongs to the first Plaintiff and they are enjoying the property by doing personal cultivation and the Defendants were only the coolies engaged occasionally to do the coolie work in the suit properties and they are not cultivating tenants and they have no right over the suit properties and they are not in possession and enjoyment of the same. The Defendants are not lessees or cultivating tenants in respect of the suit properties and they are attempting to interfere with the Plaintiffs' peaceful possession and enjoyment of the suit properties. Therefore, the suit was filed for injunction by the Plaintiffs.

3. The Respondents contended that they are the cultivating tenants of the suit properties and originally, their father viz., Velu, was the cultivating tenant and even in the year 1958, a tenancy agreement was executed in favour of their father Velu, and it was also renewed in the year 1969 and the Plaintiffs also

recognized the Respondents/Defendants as their cultivating tenants. Therefore, the Defendants are enjoying the property in the capacity 3 of cultivating tenants and they are in possession and enjoyment of the suit properties and hence, the Plaintiffs are not entitled to the relief of injunction.

4. The Trial Court found that the documents filed by the Respondents/Defendants would prove that they are in possession of the suit properties as cultivating tenants and therefore, the Plaintiffs are not entitled to the relief of injunction and dismissed the suit. Aggrieved by the same, the Plaintiffs filed an appeal in A.S. No. 77 of 2006 on the file of the I Additional Subordinate Judge, Madurai and the Learned Subordinate Judge, concurred with the findings of the Trial Court and dismissed the appeal and as against the same, this Second Appeal is filed.

5. In the Second Appeal, the Appellants raised the following Substantial questions of law:

i) Whether the first Respondent admittedly being a Government servant, can claim as a cultivating tenant under the Appellants?

ii) Whether the judgments of both the Courts below is valid by failing to consider the admitted and documentary evidences of the Appellants?

iii) Having failed in the application filed by the Revenue Courts for Record of Tenancy Rights Act, can claim as cultivating tenants?

6. While entertaining the Second Appeal, without admitting the Second Appeal, records were called and as the Respondents entered caveat, the Second Appeal was posted for final hearing and both the parties were heard.

7. It is submitted by Mr. M.N. Sankaran, the learned Counsel appearing for the Appellants that both the Courts below failed to appreciate the various documents filed by the Appellants/Plaintiffs to prove that they are in possession and enjoyment of the suit properties and the Respondents have not proved that they are the cultivating tenants of the suit properties and just prior to the filing of the suit, they have applied to the Tahsildar to register their names as cultivating tenants and till such right is recognized, they cannot claim that they are the cultivating tenants of the suit properties. Therefore, they cannot claim any right over the suit properties. He further submitted that the Appellants filed Exs.A-15 to A-17, to prove that they have purchased the fertilizers for the suit properties and Exs.A-26 & 27, would 5 prove the purchase of the fertilizers for the suit properties and the records maintained by the Revenue Authorities also would prove that they are in possession and enjoyment of the suit properties. But those documents were not properly appreciated by the Courts below.

8. On the other hand, Mr. M. Suresh Kumar, the learned Counsel appearing for the Respondents submitted that the case of the Appellants was that they are doing personal cultivation through one Ammavasai, and the said Ammavasai, was not examined as a witness on their side and they have not gone into the Box and they examined only their agent to give evidence on their behalf and the bill

for having purchased the fertilizers will not prove that they are cultivating the properties and even as landlords they have to purchase the fertilizers and that would not prove their possession. He further submitted that the Exs.A-30 to A-33, would not also prove that the Respondents worked only as coolies under the Appellants/Plaintiffs. On the other hand, the Respondents have filed documents as Exs.B2, B3, B4, and B5, to prove that lands were given to their father for cultivation and the letters as Exs.B6 & B7, issued by the first Plaintiff mentioning that the second Defendant is tilling their land would also prove that the Respondents are in possession and enjoyment of the suit 6 properties. Ex.B-9, is the receipt for having paid the rent in the year 1964 and Ex.B16 and B17, are the certificates issued by the first Plaintiff's father stating that the Defendants are the sons and they are tillers and the second Defendant is the tenant of the suit property. Therefore, after perusing all these documents and after considering the report of the Advocate Commissioner, the Courts below held that the Plaintiffs are not in possession of the suit properties and the properties are in the possession of the Respondents and rightly dismissed the suit.

9. In the Second Appeal, on going through the pleadings, evidence and the judgments of the Courts below, I do not find any substantial questions of law. It is admitted that the Appellants/Plaintiffs are the owners of the suit property and it is the case of the Appellants/Plaintiffs that they are cultivating the properties and they are in possession of the suit properties. On the other hand, the case of the Defendants is that they are the cultivating tenants of the suit property. Being the Plaintiffs, it is the duty of the Plaintiffs to prove that they are in possession of the suit property. As rightly pointed out by the learned Counsel appearing for the Respondents and also held by the Courts below, the Plaintiffs have not gone into the Box and they examined only their agent. Though the Plaintiffs claimed that one 7 Ammavasai, was taking care of the agricultural operation as a coolie, the said Ammavasai, was not examined on the side of the Plaintiffs. The Exs.A30 to A33, relied upon by the learned Counsel appearing for the Appellants would not also support the case of the Appellants and they have not mentioned in those documents about the engagement of coolie by the Respondents/Defendants. On the other hand, the Ex.B2, B3, B4 and B5, are the various tenancy agreements executed by the Plaintiffs' predecessors in title, in respect of the suit properties and in Exs.B6 and 7, the first Plaintiff mentioned that the second Defendant is tilling their land. Ex.B9, is the rent receipt dated 23.01.1964, issued by the Plaintiffs' predecessors in title. Exs.B 16 and 17, are the certificates issued by the first Plaintiff, stating that the second Defendant is the son of their farmer Velu. The other exhibits filed by the Respondents/Defendants also supported the case of the Respondents to the effect that they are the cultivating tenants of the suit property. The Courts below after considering all those evidence, rightly came to the conclusion that the Plaintiffs have not proved their case that they are in possession of the suit property. Therefore, I do not find any reason to interfere with the said findings of fact. Hence, I do not find any substantial questions of law for admitting the Second Appeal. Further, the substantial questions of law

raised by the Appellants in the course of appeal 8 also cannot be termed as substantial questions of law for the following reason:

i) The first substantial question of law raised by the Appellants is whether the first Respondent, who admittedly being a Government servant can claim as a cultivating tenant under the Appellants. In this appeal we are concerned only with the possession of the suit property and we will have to see whether the Plaintiffs have proved their possession or not. Even assuming that the first Respondent cannot claim the status of cultivating tenant, having regard to the fact that they proved their possession and the Plaintiffs failed to prove their possession, the Plaintiffs are not entitled to the decree of injunction. Therefore, the first substantial question of law cannot be termed as the substantial question of law and it is also answered against the Appellants.

ii) The second substantial question of law cannot be termed as substantial question of law as per the provision of Section 100 of Code of Civil Procedure

iii) As regards the third substantial question of law raised by the 9 Appellants, it is not the case of the parties that the Respondents filed the applications before the Record Tahsildar to register their names. It is not the case of the parties that the applications filed by the Respondents to register themselves as the cultivating tenants was dismissed by the Competent Authority. Admittedly, the petition filed by the Respondents are pending before the Revenue Authorities and the matter has not yet been decided. Even assuming that the Revenue Authorities have not declared that the Respondents are the cultivating tenants of the suit properties, even then, the Appellants are not entitled to the relief of injunction without proving their possession. Therefore, the third issue framed by the Appellants is also not the substantial question of law as per Section 100 of Code of Civil Procedure

10. Hence, there is no substantial question of law arises for consideration in the Second Appeal and hence it is dismissed accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.