

(1988) 08 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No. 1557 of 1980

Raman

APPELLANT

Vs

The District Revenue Officer, North Arcot District at Vellore,
The Sub Collector, Thirupattur, North Arcot District, The
Tahsildar, Tirupattur, North Arcot District and Sadasiva
Chettiar

RESPONDENT

Date of Decision : 12-08-1988

Acts Referred:

Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 2(8)

Citation : (1989) LW(Cri) 355

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : M. Kalyanasundarm, for the Appellant; Shakir Ali, Addt., Govt. Pleader on behalf of the Respts. 1 to 3 and Mr. K. Ramachandran for 4th Respt., for the Respondent

Judgement

Swamikkannu, J.—The definition of "tenant" in S. 2(8) of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act 1969, and the

definition of "cultivating tenant" in S. 2, Cl.(i) (aa) of the Tamil Nadu Cultivating Tenants Protection Act, 1955, together with the decisions

reported in G. Ponniah Thevar Vs. Nalleyam Perumal Pillai and Others, , and Ganesa Vanniar v. Vengusamy (1978) II M.L.J. 393, are relied on

by Mr. M. Kalyanasundaram, learned counsel for the petitioner, to uphold the contention raised by the petitioner in this writ petition. The petitioner

seeks the remedy of the issue of a writ of certiorari calling for the records of the first respondent, the District Revenue Officer, North Arcot District

at Vellore, relating to his order in Re. No. B-4/188655/78 dated 5-2-1980 and to quash the said order. According to the petitioner, the first

respondent has committed an error in law in holding that he is not a cultivating tenant in respect of the properties in question and as such, his name cannot be recorded as a cultivating tenant. According to the petitioner, for the creation of a lease, in law, it is not necessary that the lease should be from the lawful owner himself, but even persons having limited interests in the property as possessory mortgagees who do not have any title to the property, can create a lease. The point for consideration in this writ petition is whether there is any infirmity in the order of the first respondent passed in the revision filed by the fourth respondent herein. The said revision was filed against the order of the Sub-Collector, Tirupattur, in his order in T.R.A. No.14 of 1977 dated 25-8-1978 which, in turn, set aside the order dated 20-7-1977 in No.B-1/SR/12/77 on the file of the third respondent herein.

2. The facts of the case may be briefly stated as follows :-- The petitioner applied in Form V for inclusion of his name in the approved record of tenancy as cultivating tenant, to the Tahsildar the third respondent herein in respect of Survey Nos. 165/1, 165/2, and 165/3 and 164 of Perambut village. He had made the request by producing a lease deed entered into between him and the owners of the lands, viz. one Sivanandam and Radhakrishnan. After due enquiry the third respondent rejected the application of the petitioner, holding that the fourth respondent had been declared to have title to the said properties and as such, the tenancy between the petitioner and Sivanandam and Radhakrishnan could not be recognised. The petitioner, being aggrieved, challenged the said order in appeal and the appellate authority, viz. The Sub Collector, Tirupattur (second respondent) heard the appeal and set aside the order of the third respondent and directed the petitioner to be recorded as cultivating tenant in the record of tenancy rights. The aggrieved fourth respondent preferred a revision to the first respondent who, in turn, reversed the order of the second respondent and restored that of the third respondent. It is the said order of the first respondent that is the subject-matter of this writ petition being challenged by the petitioner.

3. It is seen from the orders of the authorities below that the lands in question were purchased by the fourth respondent on 20-9-1956 from one Balamani Ammal, the mother of Sivanandam and Radhakrishnan and the title to

the lands were changed in the name of the fourth respondent as early as in 1968. The alleged landlords, viz, Sivanandam and Radhakrishnan, had no right or title over the lands in question. The muchalika dt. 11.4.1975 executed between the petitioner, on the one hand and the said Sivanandam and Radhakrishnan on the other, was not a valid one and the fourth respondent could not take possession of the lands from the seller since he had been prevented by the judgments of the civil Courts. The suit filed by Sivanandam and Radhakrishnan had been dismissed by the civil court and a second appeal against the said decision to the High Court, Madras, also met the same fate. While dismissing the second appeal of Sivanandam and Radhakrishnan, however, the High Court observed that the fourth respondent was entitled to be in possession of the lands and that the alleged lessors had no title to the same and that the petitioner herein could not be treated as a cultivating tenant in respect of the lands in question, as per the law.

4. It is contended on behalf of the petitioner herein that the lands in question were in the possession of the petitioner, that he had been cultivating the lands as a tenant on the basis of the muchalika executed by Sivanandam and Radhakrishnan, that the petitioner is a cultivating tenant and that the case of the fourth respondent herein is not correct.

5. It is seen that the fourth respondent herein had purchased the lands in question by virtue of a reconveyance deed dated 20.9.1956. The Tashildar had held in his order that the records and adangal prior to 1968 were not available and therefore he was of the view that the name of the purchaser would have been included as pattadar in the chitta in respect of the lands in question even prior to 1968. The revisional authority, viz., the first respondent, perused the adangal extracts for fasli 1378 (corresponding to the year 1968) which showed that the title of the lands had been transferred in the name of the fourth respondent herein and the names of Sivanandam and Radhakrishnan had been shown as tenants. The name of the petitioner herein had been shown as cultivating tenant in fasli 1387 (corresponding to the year 1977) further mentioning that the petitioner had cultivated the lands in April 1977. The lease muchalika produced by the petitioner herein had been executed between the petitioner on the one hand and the abovesaid Sivanandam and Radhakrishnan on the other. In the

muchalika it has been stated as follows:--

A careful reading of the relevant portion of the muchalika shows that the lease was for a period of one year from 11.4.1975 and hence the lease

had expired on 10.4.1976. Though the muchalika was executed on 11.4.1975, the lands were actually cultivated only in April 1977 (fasli 1387),

as seen from the adangal extracts. There had been no evidence produced before the authorities to show that another muchalika was executed

between the parties as stipulated in the muchalika that expired on 10.4.1976 and therefore, it was doubtful that the petitioner herein had a right in

1977 to cultivate the lands, and hence the petitioner could not be considered as a cultivating tenant in respect of the lands. Learned counsel for the

petitioner has taken me through the definition of the term "landlord" in the Tamil Nadu Cultivating Tenants Protection Act, 1955, and submitted

that the petitioner herein is a cultivating tenant. I am unable to uphold this contention. This Court has held that the fourth respondent is the lawful

title holder in respect of the lands and as such, the fourth respondent is the landlord who is entitled to evict the cultivating tenant and not others.

Sivanandam and Radhakrishnan are not the rightful owners who could lease out the lands in question, as they had no right or title to the lands. The

facts of the decisions referred to by the learned counsel for the petitioner are not similar to the facts of this case. In this case, this Court has already

held that the fourth respondent is the lawful title holder. The order of the revisional authority, viz. the first respondent, does not suffer from any

infirmity whatever. There being, therefore, no merits in the writ petition, the same is dismissed. Under the circumstances, there will be no order as

to costs.