

(1981) 04 MAD CK 0010
In the Madras High Court
Case No : Second Appeal No. 1965 of 1977

Ramu Padayachi	Vs	APPELLANT
Krishna Padayachi		RESPONDENT

Date of Decision : 27-04-1981

Acts Referred:

Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 16A

Citation : (1982) ILR (Mad) 147

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Advocate : P. Jayaraman, for the Appellant; S. Thyagaraja Iyer, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—The Plaintiff is the Appellant. He filed the suit for a declaration of his leasehold right in the suit property and for an order

of injunction against the Defendants preventing them from interfering with his possession of the same. The relief was asked on the ground that the

suit property originally belonged to one Abdul Karim and under a registered lease deed dated 5th March, 1954 it was leased to the Plaintiff on an

annual real of Rs. 250. The lease was for a period of five years. But the Plaintiff was holding over the property as a tenant even subsequent to the

expiry of the term paying the rent to the landlord. The first Defendant, claiming title to the property by purchase of the same from the purchaser in a

Court auction, tried to interfere with the possession of the Plaintiff. Subsequently the first Defendant had sold the property to the second Defendant

and the second Defendant also was trying to interfere with the possession of the Plaintiff. On these allegations the suit, as stated already, was filed

for a declaration of the Plaintiffs leasehold right and for an injunction against the Defendants.

2. The Defendants did not dispute either the fact that the property originally belonged to Abdul Karim or that Abdul Karim leased the property to

the Plaintiff. But they contended that in execution of a decree in Original Suit No. 775 of 1964 one Govindasamy Grounder, the decree-holder,

purchased the same and took delivery of possession on 8th November, 1966. Later on, Govindasamy, the auction-purchaser, sold the same to the

first Defendant on 30th March, 1968 and from the first Defendant the second Defendant purchased on 19th March, 1975. They further contended

that the Court auction-purchaser took possession of the property on 8th November, 1966 and they continued to be in possession ever since that

date and that the suit for injunction is not maintainable.

3. The trial Court held that the Plaintiff had established his tenancy right in respect of the property, that the tenant was not a party to the

proceedings in Original Suit No. 775 of 1964, that the Plaintiff continued to be in possession of the property, that he was never dispossessed, nor

did he surrender possession to the Defendants in execution of the decree in Original Suit No. 775 of 1964 and that, therefore, the Plaintiff is

entitled to the declaration and injunction as prayed for.

4. On appeal, however, though the Defendants had not raised any question of jurisdiction of the civil Court to deal with the matter, the lower

appellate Court was of the view that the suit itself was not maintainable in view of the decision of this Court in Muniyandi v. Rajangam I.L.R

(1976) Mad. 201 Similarly, though no specific ground was raised in the written statement, the lower appellate Court also held that there was a

surrender of possession and in that view, held that the Plaintiff had no leasehold right and that he was not in possession of the property and that the

civil Court also had no jurisdiction to decide the question whether the Plaintiff is a cultivating tenant. Accordingly the lower appellate Court allowed

the appeal and set aside the decree granted by the trial Court.

5. The second appeal was admitted by this Court on the ground that it raises the following three substantial questions of law:

1. Whether the lower appellate Court has misconstrued evidence and held that the Plaintiff had surrendered possession even without such a plea

having been raised in the written statement?

2. Whether the suit is not maintainable, because of the provision of Record of Tenancy Rights Act, as held by the lower appellate Court?

3. The Plaintiff having been a tenant of the suit land, whether his possession should not be protected till he is evicted in due process of law?

6. Though the reasoning of the lower appellate Court, as stated in its judgment, is confused and un-understandable and has mixed up the question

of jurisdiction, which is a question of law, with a factual question of surrender of possession, we may take it that the lower appellate Court was of

the view that the suit is not maintainable, and also that there was a surrender of possession by the Plaintiff to the Defendants. As rightly contended

by the Appellant/Plaintiff, there was no plea of surrender of possession. The lower appellate Court thought that the sale in execution and the

certified copy of the delivery receipt produced by the Defendant will amount to actual delivery of possession by the Plaintiff. It may be mentioned

that the Plaintiff was not a party to Original Suit No. 775 of 1964 or the execution proceedings taken thereunder. Exhibit B 7, the certified copy of

the delivery receipt produced by the Defendant, also did not show that possession was taken from the Plaintiff. The statement that the Defendant

has taken delivery of possession, in the circumstances, should be taken to mean that such possession, as was capable of, was given to the auction

purchaser. That is to say, subject to the rights of the tenant he takes possession of the property. In fact, Subsequent to these proceedings, the

Plaintiff filed Original Suit No. 1162 of 1968 for a declaration that the decree or the execution proceedings taken thereunder is not binding on him

and for an injunction against the Defendants herein. It was contended by the Defendants that in this suit there was a compromise and under that

compromise the Plaintiff agreed to put the first Defendant in possession of one acre, which is the subject-matter of the present suit. But the Plaintiff

denied this suggestion, and neither the Plaintiff nor the Defendants have produced it her the compromise decree or the term of the compromise

decree. Therefore, suffice it to state that this statement in the written statement that there was a compromise in Original Suit No. 1162 of 1968 and

under that compromise, the Plaintiff agreed to surrender one acre of land which was purchased by the first Defendant itself shows that there could

not have been any delivery of possession by the Plaintiff in the execution proceedings in Original Suit No. 775 of 1964. Nor is there any evidence to show that subsequent to the execution sale and purchase there was any surrender of possession by the Plaintiff to the Defendant. Naturally, therefore, one will have to conclude that the Plaintiff continued to be in possession and there was neither dispossession nor surrender, as found by the Courts below. The trial Court has specifically relied on the Commissioner's evidence and also the fact appearing that certain portions were lying fallow. If a land is lying fallow, the possession must be treated as rested in the person, which is having the title to remain in possession. The Plaintiff being a tenant, admittedly possession shall be deemed to be with him.

7. The lower appellate Court then stated that the evidence of D.Ws.2 and 3 shows that the second Defendant is in possession and cultivation of the suit land. The trial Court, which had the advantage of observing the demeanour of the witnesses as also the other circumstances, rejected their evidence. The lower appellate Court had not specifically dealt with the various grounds on which the trial Court had rejected the evidence of D.W.s. 2, 3, and 4, and I think in accepting that evidence the lower appellate Court had acted perversely. In fact, it is not clear on which ground the trial Court's finding that the Plaintiff continued to be in possession was disturbed on the basis of the oral evidence. Accordingly, I am of the view that though the finding on possession appears to be a finding on a question of fact, it is so perverse and contrary to all the evidence available, that it is not binding even in this second appeal.

8. It may also be mentioned that one of the reasons which was given for finding that the Plaintiff was not in possession was that the Plaintiff has got no legal title to be in possession. The lower appellate Court observed: ... in the absence of any proof that the Plaintiff has got legal right to be in possession and when the question of his being a cultivating tenant has to be decided by a separate forum and not by this Court, I feel, the Plaintiff will not be entitled to any relief in this suit.

The finding on the question of possession is, therefore, clouded by the wrong view of the lower appellate Court that the suit itself is not maintainable.

9. The lower appellate Court held that the suit is not maintainable on the ground

the Plaintiff's claim for a declaration that he is a cultivating tenant cannot be gone into by a civil Court and that it should have been done under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act (X of 1969). In this connection he relied on a decision of this Court in Muniyandi v. Rajangam ILR (1976) Mad. 201. The learned Counsel for the Respondent herein relied also on the decision in Periathambi v. District Revenue Officer ILR (1980) Mad. 255 (F.B.). This is a decision of a Full Bench which has approved Muniyandi v. Rajangam (1976) 1 Mad. 201. These two decisions have absolutely no bearing on the question now in issue. They were concerned with the bar of a Civil Court u/s 16-A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act (X of 1969). In this suit none of the relief's which can be obtained under that enactment is in dispute. This is a simple suit by a tenant for declaring his leasehold right in the property and for an injunction against the Defendant from interfering with his possession and enjoyment of such leasehold right. It has nothing to do either with the Tamil Nadu Cultivating Tenants Protection Act or with the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act. The decisions, therefore are absolutely irrelevant and not applicable to the facts of the present case.

10. The learned Counsel in particular referred to a passage in the judgment in Periathambi v. District Revenue Officer ILR (1980) Mad. 255

(F.B.) wherein the learned Judges have observed (at page 296);

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 relief's being consequential, the civil Court may not have jurisdiction to decide the controversy with reference to which

the primary relief is prayed for.

This passage is in the nature of an obiter. Further, this is not a suit in which the Plaintiff has prayed for a declaration that he is a cultivating tenant.

He had only prayed for a declaration of his leasehold right in the property. In order to obtain a relief of injunction he had prayed for that relief of

declaration that he is a tenant. To obtain a relief of injunction, it is not necessary that he should have been a cultivating tenant. Even a tenant legally

entitled to be in possession is entitled to ask for an injunction against anybody, who is interfering with his possession and enjoyment. The suit,

therefore, could not be said to be one covered by either the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act or the Tamil Nadu

Cultivating Tenants Protection Act. The suit, therefore, was clearly maintainable and the decisions have no application to the facts of this case. The

Plaintiff was, therefore, right in his contention that his possession is not liable to be interfered with except in accordance with law. He is therefore,

entitled to the declaration and injunction as prayed for.

11. Accordingly, the appeal is allowed, the judgment and decree of the lower appellate Court are set aside and the judgment and decree of the

trial Court are restored. There will be no order as to costs.