

(1971) 12 MAD CK 0014

In the Madras High Court

Case No : Second Appeal No's. 687 and 756 of 1969

Srivedapuriswaraswami Tiruvedukudi

APPELLANT

Vs

Sheik Farid

RESPONDENT

Date of Decision : 17-12-1971

Acts Referred:

Madras Port Trust Act, 1905 — Section 19, 57
Transfer of Property Act, 1882 — Section 111

Citation : AIR 1972 Mad 448 : (1972) 85 LW 577

Hon'ble Judges : K.N. Mudaliyar, J

Bench : Single Bench

Judgement

1. These two second appeals are directed against the judgments and decrees in A.S. Nos. 47 and 56 of 1968 respectively in O.S. Nos. 119/67 and 120/67 respectively. Sri Vedapuriswamy, Thiruvedhukudi is the plaintiff-appellant in these two appeals. The plaintiff-temple instituted two suits, viz. first two out of 4, i.e., O.S. Nos. 119 to 120 of 1967 on the file of the District Munisif Court, Tiruvaiyaru against the persons in possession for recovery of possession and profits. The defendants raised various pleas and resisted the plaintiff's case. The parties have endorsed to the effect that common questions of law and fact arise for determination in the suits. Therefore, these suits were tried together and the evidence recorded in O.S. No. 119/67 was treated as evidence in the other four suits. After the trial, the suits were decreed with costs directing the defendants to deliver possession of the suit lands to the plaintiff, delegating the question of determination of past and future profits to separate enquiry under O. 20, R. 12 of the Civil P.C.

2. Aggrieved by these decision, the second defendant in O.S. No. 119/67 has preferred an appeal before the Subordinate Judge, Thanjavur. The learned Subordinate Judge considered the history of the grant of the lands in question from the year 1839 and also the history of the earlier suits and gave the following findings

1. That the plaintiff is entitled to the suit lands;
2. the plaintiff's right title and interest have not been lost and the plaintiff is not entitled to recover possession of the suit land from the defendants;
3. that the defendants have no permanent occupancy rights in the suit lands;
4. the defendants have not prescribed title by prescription;
5. The defendants are yearly tenants in possession and that the lease cannot be determined on a ground of forfeiture; and
6. that the quantum of rents will be determined under Order 20, Rule 12 of the Civil Procedure Code.

The learned Judge finally concluded the matter by finding that the plaintiff is not entitled to recover possession of the suit lands from the defendants.

3. Aggrieved by those decisions of the learned Subordinate Judge, the plaintiff-appellant has filed the present two second appeals before this Court.

4. The learned counsel for the plaintiff (temple) appellant contended that in view of the terms of Section 111 of the Transfer of Property Act, and the contents of Ex. A-8 in O.S. No. 120/67 and Ex. A-3 in O.S. No. 119/67 the averments made by the defendants in the aforesaid exhibits amount to a denial of the title of the plaintiff to the suit properties, and therefore, such a denial constitutes a ground of forfeiture of the tenancy and the plaintiff is entitled to recover possession of the suit properties.

4-A. The history of the grant of the lands in favour of the temple and the administration of the temple and the suit lands is elaborately dealt with in the judgments of the two courts below. I shall briefly advert to the said aspects of the matter. It is common ground that the lands comprised in the present two suits and the others, belonged to Sri Vedhapuriswaraswami Temple, Thiru Vedhukudi. The temple was administered by the then Collector of Thanjavur, one Mr. Kinderslay. Ex. A-1 dated 18-2-1839 is the printed copy of Taram Faisal Muchalika executed by Marudhamuthu Sethurar to Principal Collector of Thanjavur. After his death, his son Venkatachalam alias Vengadasami Sethuran executed a Muchalika in favour of the Tahsildar of Thiruvaiyaru on 1-1-1849. Ex. A-2 is the printed copy of that Muchalika. These Exhibits A-1 and A-2 were marked by consent.

5. On behalf of the plaintiff-temple O.S. No. 901/1858 was instituted before the Court of the District Munsif, Thiruvaiyaru for possession of the lands of the temple and for recovery of arrears of rent. Ex. B-1 is the certified copy of Siddantham in O.S. 901/1858 and Ex. B-3 is the certified copy of judgment, in O.S. 901/1858 Ex. B-4 is the certified copy of Siddantham in A. S. No. 178/1861 on the file of the Acting Principal Sadar Amin of Tanjore. Ex. B-2 is the certified copy of the decree of the appellate court. The judgments held that the tenants cannot be evicted so long as the conditions of Muchalika, dated 1-1-1849,

namely, Ex. A-2 are satisfied. Later, a former trustee of the temple filed O.S. No. 41/12 on the file of the court of the Subordinate Judge, Thanjavur and the same was transferred to the temporary Sub-Court, Thanjavur. In the said suit, the trustee has prayed for recovery of possession of the lands of the temple and for profits, past and future. Ex. B-10 dated 24-9-1912 is the certified copy of the plaint in O.S. 41/1912 of Sub-Court, Thanjavur and Ex. B-7 dated 5-3-1913 is the copy of statement by the second defendant and Ex. B-8 dated 14-2-1914 is the certified copy of decree in O.S. 5/14. The suit appears to have been withdrawn.

5-A. The descendants of Mayudamuthu executed a settlement deed Ex. A-4, dated 16-8-1915 under original of Ex. A-4 in favour of the plaintiff-temple undertaking to pay the additional rent of 75 kalams of paddy in addition to the one provided for under Ex. A-2. In these suits, the defendants do not contend or deny the plaintiff's title to the suit properties but their main contention is that they and their predecessors-in-interest were entitled to occupancy rights and therefore they cannot be evicted from the lands in question. In paragraph 6 of the judgment the learned Subordinate Judge has held that persons who hold under Taram Faisal Muchilikas do so only as a terminable tenure and cannot (have) permanent rights of occupancy, and repelled the arguments of the defendants regarding their permanent occupancy right. After considering the contents of Ex. A-4, the learned Subordinate Judge found that the document cannot establish a permanent occupancy right over the suit items of property. In para. 7 of his judgment, as well as para 8 of the same, the learned Subordinate Judge found that the defendants have not established any permanent occupancy rights in the suit items.

6. The learned Subordinate Judge proceeded to observe that the defendants were merely holding the suit lands under a yearly tenancy. The present trustee, (P.W. 1) filed a fair rent application before the Rent Court for fixation of fair rent for the suit lands and the rent was fixed at 10 kalams per mah. On appeal, the Rent Tribunal confirmed the order of the Rent Court and a revision was also filed before the Subordinate Judge in C.M.P. 78/66. The learned Subordinate Judge has allowed the revision, finding that there is a dispute as regards the relationship of landlord and tenant and the forum is not the Rent Court but only the Civil Court. Thereafter the present suits were filed. The plaintiff contended that the defendants have denied the title of the landlord and therefore, the lease is liable to be determined u/s 111 of the Transfer of Property Act. The learned Subordinate Judge examined the question whether the lessees renounced their character as such by setting up a title in a third person or by claiming title in themselves. The learned Subordinate Judge noticed the fact that in the year 1964, the plaintiff-temple had accepted the defendants as "lessees" and claimed fixation of fair rent. u/s 111(g) of the Transfer of Property Act, the lease is brought to an end by a defeasance clause. Disclaimer or denial of the landlord's title is a ground of forfeiture. The learned Subordinate Judge set out the principles in paragraph 9 of his judgment and discussed the entire matter in

paragraph 10 of his judgment and ultimately gave the findings already noticed by me.

7. Mr. Sarvabhauman, learned counsel for the plaintiff-appellant, relied on the averments in Ex. A-8 (dated 19-5-1964, copy of counter filed by Kamalambal alias Pappa (1st defendant in O.S. 120/67) in F. R. P. 192/64 of Rent Court, Thanjavur) and Ex. A-3 (dated 30-4-1964, copy of counter filed by Mariam Bivi in F. R. P. No. 191/64 on the file of Rent Court, Thanjavur) respectively, and contended that those averments amount to a denial of the title of the defendants to the suit lands. The learned counsel also relied on the Commentary of Mulla on T. P. Act, 5th Edition, at page 740 which states: "Disclaimer or denial of the landlord's title is a ground of forfeiture." The learned counsel relied on the rationale found in the judgment of Ramachandra Iyer, J. in Kanchi Kamakoti Mutt by Agent R. Seshaiya Sastrigal Vs. A. Alagu Ambalam (deceased) and Others, wherein it was held that:

"Where a tenant against whom the suit is filed denies the title of the landlord or sets up rights of permanent tenancy or occupancy rights, it tantamounts to a repudiation of the relationship of the landlord and tenant and this entails forfeiture of the tenancy."

The learned counsel also relied on the rationale found in the judgment in Kolangereth Raman Nair v. Kolimatamullathil Moriyamma, ILR 43 Mad 480 : AIR 1920 Mad 256 wherein their Lordships, Mr. Oldfield and Mr. Seshagiri Ayyar, JJ., have held that "if a tenant denies a subsisting title in the landlord and claims that the property became vested in him by adverse possession, such conduct amounts to denial of landlord's title prior to suit. The learned counsel for the defendants respondents. Mr. Rajan, relied on the reasoning found in the judgment of the Supreme Court in Atyam Veeraraju v. Pechetti Venkanna (1967) 1 MLJ (SC) 4 : AIR 1967 SC 629 wherein their Lordships have held that.

"If the origin of the tenancy is not known, the tenant may lead circumstantial evidence to establish his permanent right of occupancy. The evidence of long possession coupled with other circumstances such as uniform payment of rent, construction of permanent structures, successive devolutions of property by transfer and inheritance may lead to the inference that the tenancy is permanent."

He argued, also, that the averments made by the defendants in resisting the proceedings filed by the plaintiff in the Rent Court do not amount to a denial of title of the plaintiff. The counsel relied on the reasoning found in paragraph 11 of the judgment in Raja Mohammad Amir Ahmad Khan Vs. Municipal Board of Sitapur and Another, . The learned counsel also relied on the Commentary of Mulla found in page 741 and the relevant passage is extracted below:

"The repudiation must be clear and unequivocal whether in pleadings or any other document; the mere claiming of a higher right by the lessee does not involve forfeiture; the bare statement that there is no relation of landlord and

tenant with the lessor may operate as a surrender, but it is not a disclaimer as it does not amount to setting up title either in a third person or in the tenant himself."

Mr. Parasaran argued that the decision in Kanchi Kamakoti Mutt by Agent R. Seshaiya Sastrigal Vs. A. Alagu Ambalam (deceased) and Others, is not correct because the ruling of the Full Bench in Katragadda Brahmayya v. Katragadda Balathivapura Sundaram AIR 1948 Mad 275, had not been brought to the notice of the learned Judge, Mr. Parasaran relied on this ratio found in the said judgment wherein their Lordships have held as follows:--

"The owner of a Kudiwaram right is the tenant of the owner of the malwaram right, using the words "landlord" and "tenant" in their widest sense. When a defence of permanent occupancy right is raised to a claim for possession by the landlord on the ground of expiry of lease, there is, necessarily, an admission of a tenancy between the parties since a claim to such right could not and would not be made, save upon the basis of the position of landlord and tenant in existence."

He further argued, the very proceedings filed by the plaintiff before the Rent Court constitute an admission of tenancy between the parties. Mr. Parasaran also argued that the decision of Sadasiva and Phillips, JJ. in Kolangorath Raman Nayar and Others Vs. Kannothe alias Kandoth Vellarikka Kunhi Kolandan Musaliar and Another, was also not brought to the notice of Ramachandra Iyer, J. in the Kamakotti's case, wherein their Lordships have held:

"Assertions of title as owner by a person having rights in land of a very substantial kind should not be treated as denial of landlord's title so as to work a forfeiture of the tenant-right."

8. In Ex. A-8 (dated 19-5-1964, copy of counter filed by Kamalambal @ Pappa (1st defendant in O.S. 120/67) in F. R. P. 192/64 of Rent Court, Thanjavur) in paragraph 3, there is an averment that the petition is liable to be dismissed in limine as (no) relationship of landlord and tenant existed in respect of the suit lands. In paragraph 4, it is averred that the plaintiff is not the landlord and the provisions of Madras Public Trust Act, 1961 (Act LVII of 1961) sought to be invoked will not apply. In paragraph 5, it is stated that there is a clause of Kudikani rights in the suit lands and the plaintiff can claim only the fixed Swami Bogam of Melwaram. The plaintiff has no right to ask for any change of recognised tenure for the suit lands, which is in vogue, from time immemorial. To a similar effect of the counters filed by the plaintiff's advocates, the counters filed by the advocates for the defendants were in answer to the application filed by the plaintiff-temple u/s 29 of Madras Public Trust Act, 1961 for fixation of fair rent. The tenants contended that the persons in possession do not come strictly within the meaning of "tenant" as defined in 1961 Act because they claimed permanent occupancy rights subject to certain conditions. The documents Exs. A-2 and A-4 indicate the conditions under which they continued as lessees. Under S. 19(e) of Act LVII of 1961, "any public trust may evict any cultivating

tenant who has wilfully denied the title of the public trust to the land". There is a significant explanation to Section 19 of the Act which is as follows:

"Explanation: A denial of the public trust's title under a bona fide mistake of fact is not wilful within the meaning of this clause."

Therefore, the tenants asserted their rights to be in possession and controverted whether their possession would come within the scope of Act 57 of 1961. I am of the view that, in these circumstances, it cannot be stated that the tenants denied the landlord's title to the lands in question. There is no disclaimer if the tenants set up permanent tenancy although they repudiate the particular holding which the lessor attributes to them. They do not claim the lessor's right to receive the rents nor do they renounce their character as lessees. In the present case, the defendants (lessees) have paid all the rents, kist and Swamy Bogam. This fact is not controverted by P.W. 1, the Managing Trustee of the plaintiff-temple who has admitted in his evidence, that the tenants have not denied the plaintiff's right to collect at the rate of 10 marakkals per mah. On this piece of evidence of P.W. 1 Mr. Rajan placed strong reliance in support of his arguments. These tenants have been in possession for well over a century and they have also been paying rents and in 1965, there was an enhancement of the rent. Therefore, I have no hesitation in coming to the conclusion that under a bona fide claim these tenants have set up the claim of permanent occupancy right. But that does not mean that these defendants (tenants) renounced their character, as such by claiming title in themselves. It is clear that the defendants held the suit properties subject to payment of kist and Swamy Bogam in addition to the rent. The learned Subordinate Judge classified them as "fixed cultivators". This, in my view, is tantamounts to saying that the defendants have "permanent tenancy." These tenants held the property not absolutely but they have the right to cultivate the soil. The defendants and their ancestors have been in possession and cultivation of these lands for more than 125 years. The liberal legislation in favour of the rights of the tenants in the recent years, conferring benefits on the occupants of the soil ought to be taken into consideration and was rightly taken into consideration by the Subordinate Judge in giving his findings on the materials on records.

9. I find no merits in these two second appeals filed by the plaintiff-appellant. Hence these two Second Appeals fail and they are dismissed accordingly.

No costs. No leave.

10. Appeals dismissed.