

(2009) 06 MAD CK 0176

In the Madras High Court

Case No : Writ Appeal No. 1150 of 2006

T. Singaravel @ Ramachandran, R. Devadoss and R. Sri
Ramulu

APPELLANT

Vs

Sudarsanathammal and Others

RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Pondicherry Cultivating Tenants Protection Act, 1970 — Section 2, 3(4), 4, 7

Citation : (2009) 5 MLJ 1297

Hon'ble Judges : Prabha Sridevan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : N. Damodaran, for the Appellant; R. Thirugnanam, for R.1 to R.6, for the Respondent

Final Decision : Allowed

Judgement

Prabha Sridevan, J.—Respondents 1 to 6 are the legal heirs of one Seetharama Naidu. He filed O.P. No. 644 of 1982 for including his name in the Village Adangal in respect of R.S. No. 101/4 of Thennangudi Melantham Village, Thirunallar Commune as "his own cultivation". This was treated as a petition u/s 7 of the Pondicherry Cultivating Tenants Protection Act. In this petition, he stated that he had entered into a sale agreement with one Rathinasamy Naidu of Thillayadi Village, who was the original owner, in the year 1963. Since the owner was in death bed, the sale deed was not executed. He paid the entire sale consideration and thereupon, he was put in possession and he had been in possession and enjoyment of the said property from 1963 onwards and he was also cultivating the same. But, when his name was removed from the Village Adangal without notice to him, the petition was filed. The Presiding Officer of the Revenue Court, while dealing with this, observed that the Adangal extracts have been tampered with and though they show the name of the aforesaid Seetharama Naidu as cultivating tenant from 1969-1973, thereafter, it shows the landlord Rathinasamy Naidu as a "self cultivator" and that the entries for the fasli 1384 (1975-75) and

fasli 1385 (1975-76) had obviously been tampered with. He had also referred to a report of the Tahsildar, which stated that Seetharama Naidu had been cultivating the land. The Officer also observed that Seetharama Naidu himself was not decided whether he should claim his right as an owner or as a cultivating tenant and was vacillating between the two stands. When the matter was taken up by the Revenue Court, Seetharama Naidu had died and his legal heirs had not been impleaded and therefore, after recording the above finding, the petition was dismissed.

2. The Officer, however, handed over the matter to the Deputy Collector for further action. This order was passed on 27.01.1986. Thereafter, in 1987, respondents 1 to 4 and 6 filed a petition u/s 4 of the Pondicherry Cultivating Tenants Protection Act claiming that they were the cultivating tenants in respect of the said property right from the time of death of Seetharama Naidu and prayed for change of name in the Adangal. In this, the legal heirs of original owner filed their counter denying the tenancy rights and also stating that in the earlier proceedings, no tenancy rights were claimed. Then, the first respondent thereafter filed yet another petition in 1997 with the same averments and prayed for entering her name in the Village Adangal and to allow her to cultivate the land atleast from the current fasli year. Again, this was resisted by the sons of Rathinasamy Naidu represented by a power agent. An order was passed in favour of the first respondent holding that the finding that Adangal Extracts had been tampered with, had attained finality and that there was a sale agreement between Seetharama Naidu and the original owner, though no sale deed was executed recording her name as a cultivating tenant. Against this, the owners filed a writ petition. The writ petition was dismissed on the same grounds viz., alleged fraud committed with regard to the Adangal Extracts. Now, the transferees from the owners, have filed this writ appeal.

3. Learned Counsel for the appellants submitted that there is no provision for recording the name of a cultivating tenant in the Pondicherry Cultivating Tenants Protection Act. Section 4 deals with the right to restoration of possession and Section 7 deals only with a declaration in a case where the landlord refuses or delays unreasonably for the execution of the lease deed. Therefore, according to him, the first respondent's prayer for recording her name as a cultivating tenant has been sought for by invoking wrong provision. He also relied on the decisions reported in *Tamalarasi Vs. S. Kumarasamy Gounder, Veerappan, V. Kumarasamy Gounder, Chellamuthu, Duraisamy, Ramasamy Gounder, Periasamy and Somasundaram, Sivarama Sethu Pillai, Trustee, Silugal Chatram Vs. Rowdri and Others*, , 1986 (2) M.L.J. 306 - *Subramaniam v. V. Periannan* and 1966 (1) M.L.J. 7 - *S.N. Sudalaimuthu Chettiar v. Palaniyandavan*. Learned Counsel further submitted that there should be pleadings regarding the personal cultivation and unless the conditions for declaring a person as a cultivating tenant exist, no protection under the Act can be granted.

4. Learned Counsel appearing for respondents 1 to 6 would submit that a finding

has already been given in the earlier proceeding regarding the cultivating tenancy and that has remained unchallenged. Learned Counsel further submitted that in her petition, the first respondent has clearly spoken about her right as a cultivating tenant. The said paragraphs read as follows:

4. In the said order, this Hon"ble Court has been given a clear finding that the Village adangal has been manipulated by the then Karnam and he has also been suspended for the same and it was clearly observed that Seetharaman Naidu was the cultivating tenant in respect of the above said properties.

5. The petitioners do not have any other income except the income from the said lands. Being the ladies they could not resist the respondents who with their men and agents cause all sort of troubles in the village.

He prayed that the appeal should be dismissed.

5. We have to see whether a case of cultivating tenancy has been made out.

6. In the statement filed by the husband of the first respondent in O.P. No. 644 of 1982, which is the genesis for all these proceedings, there is a mention only of a sale agreement with the original owner Rathinasamy Naidu. According to him, it is this sale agreement which gave him the right to be in possession as seen from paragraph 3 of the said statement. It is alleged that from 1963 onwards, he has been in possession and the Adangal was in his name as own cultivation. No doubt, he has mentioned that there has been some wrongful deletion of his name, but in this earliest pleading, there is no mention of him being in possession as a cultivating tenant. There is a mention of possession, but not as a cultivating tenant. It is true that in O.P. No. 644 of 1982, the Officer had noted that there was some tampering of the records for the year 1974-75 and 1975-76. But, however, that petition was dismissed. Therefore, even if some findings have been given, the first respondent could not have challenged it since the proceedings against her were dismissed. Here, the authority has proceeded on the basis that the above finding foreclosed the issue regarding the cultivating tenancy rights. Even in this petition u/s 4 of the Pondicherry Cultivating Tenants Protection Act, respondents 1 to 4 and 6 have merely stated that " as per law, they are the cultivating tenants in respect of the said property". The relevant provisions are Section 2(a)(i) and (ii), Section 4 and Section 7 which read as follows:

Section 2(a)(i) : any such person who continues in possession of the land after the determination of the agreement;

Section 2(a)(ii): the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land.

4.(1) Every cultivating tenant who was in possession of any land on the 1st December, 1969 and who is not in possession thereof at the commencement of this Act shall, on application to the Revenue Court, be entitled to be restored to such possession on the same terms as those applicable to the possession of the

land on the 1st December, 1969.

(2) Nothing in Sub-section (1) shall be deemed to entitle any such cultivating tenant to restoration of possession:

(i) If, at the commencement of this Act, he is in possession, either as owner or as tenant or as both, of land exceeding the extent specified in the Explanation below or if he has been assessed to any sales tax, profession-tax or Income Tax under the respective laws relating to the levy of such taxes during 1967-68 or 1968-69; or

(ii) If the landlord, after evicting such cultivating tenant from the land has been carrying on personal cultivation on the land provided as follows:

(a) the total extent of land held by such landlord inclusive of the land, if any, held by him as a tenant does not exceed the extent specified in the Explanation below;

(b) the landlord has not been assessed to any sales tax, profession-tax or Income Tax under the respective laws relating to the levy of such taxes during 1967-68 or 1968-69; or

(iii) If subsequent to the 1st December, 1969 the landlord has bona fide admitted some other cultivating tenant to the possession of the land and such other tenant has cultivated the land before the commencement of this Act:

Provided that where such other tenant is in possession, either as owner or as tenant or as both of any other land which exceeds the extent specified in the Explanation below and the cultivating tenant who was evicted is not in possession of any land or is in possession of any other land which is less than the extent specified in the said Explanation, the cultivating tenant shall be entitled to restoration of possession.

Explanation: The extent referred to in Clauses (i) to (iii) above is 2 2/3 hectares of wet land.

(3) Every application to the Revenue Court under Sub-section (1), shall be made within such time as may be prescribed and shall bear a court-fee stamp of one rupee:

Provided that the application may be received after the prescribed period, if the applicant satisfies the Revenue Court that he had sufficient cause for not making the application within the period.

(4) On receipt of an application under Sub-section (3), the Revenue Court shall, after giving a reasonable opportunity to the landlord and the cultivating tenant, if any, in possession of the land, to make their representations, hold a summary inquiry into the matter and pass an order either allowing the application or dismissing it and in passing an order allowing the application, the Revenue Court may impose such conditions as it may consider just and equitable including

conditions in regard to:

- (i) the payment by the applicant of any arrear of rent already due from him to the landlord, but not exceeding one year's rent, and
- (ii) the reimbursement by the applicant of the landlord or the other cultivating tenant in respect of the expenses incurred or the labour done by him during the period when the applicant was not in possession, on any crop which has not been harvested, if an agreement is not reached between the parties as regards the rates and manner of such reimbursement.

Explanation: In lieu of imposing any condition in relation to reimbursement as provided in Clause (ii), the Revenue Court may, in its discretion, postpone the restoration of the applicant to possession of the land, until any crop which is being grown thereon at the time when the order is passed, has been harvested.

(5) Any cultivating tenant who after the commencement of this Act has been evicted except under the provisions of Sub-section (4) of Section 3 shall be entitled to apply to the Revenue Court within two months from the date of such eviction for the restoration to him of the possession of the lands from which he was evicted and to hold them with all the rights and subject to all the liabilities of a cultivating tenant and the provisions of Sub-section (4) shall, so far as may be, apply to such an application.

7. (1) In the case of every tenancy agreement entered into after the coming into force of this Act between a cultivating tenant and a landlord, a lease deed shall be executed in triplicate in the prescribed form, within a reasonable time after the commencement of such tenancy, specifying the name and description of the cultivating tenant, the name (if any), survey number, description and extent of the land leased out and the terms of the tenancy; and shall be signed both by the landlord or his agent and by the cultivating tenant. One of the three copies shall be kept by the landlord, one shall be kept by the cultivating tenant and the third shall be caused to be lodged in the Taluk Office or Sub-Taluk Office, as the case may be, by the landlord or his agent within a fortnight of the date on which the cultivating tenant signs it:

Provided that if the landlord or the cultivating tenant refused or delays unreasonably to execute the lease deed, it shall be open to the cultivating tenant or the landlord, as the case may be, to lodge the deed in the Taluk Office or the Sub-Taluk Office, as the case may be, with a declaration that the other party has refused or delayed unreasonably to execute it.

(2) No stamp need be affixed to the lease deed.

(3) In the case of any tenancy, if the landlord or his agent or the cultivating tenant refuses to sign or fails to lodge the lease deed in accordance with the provisions of Sub-section (1), the Revenue Court may impose on the landlord or the cultivating tenant, as the case may be, a penalty which may extend to fifty rupees; and any penalty so imposed may be recovered as if it were an arrear of

land revenue.

So, the cultivating tenant must contribute his own physical labour or any member of his family should contribute his own physical labour. Contribution of physical labour is a must for invoking the protection of this Act. There is no pleading herein regarding any such contribution of physical labour. An heir claiming such rights should again prove personal cultivation. The other crucial condition that has to be satisfied by a person claiming this right, is the existence of an agreement express or implied on condition of paying rent therefore in cash or in kind. There is no pleading regarding any such agreement either express or implied. It may be that there was in fact some tampering of the Adangal extract. We do not know who tampered with the records. But a person who claims some rights under the Act, will have to prove that he or she is a cultivating tenant. He cannot become a cultivating tenant merely because the opposite party had tampered with the records.

7. The learned Counsel for respondents 1 to 6 submitted that the matter may be remitted so that proper evidence could be let in. We find that neither in the petition filed u/s 4 of the Act by the present respondents 1 to 4 and 6 nor in the statement filed by Seetharama Naidu himself is there any pleading relating to cultivating tenancy, nor to any tenancy agreement either express or implied. Without any pleadings, we cannot allow the matter to be sent back for filling up blanks by oral evidence. There can be no evidence without the basis of pleading.

8. In *Tamalarasi Vs. S. Kumarasamy Gounder, Veerappan, V. Kumarasamy Gounder, Chellamuthu, Duraisamy, Ramasamy Gounder, Periasamy and Somasundaram*, the Division Bench of this Court has, in para 22, dealt with a similar situation. In that case also, the pleading was that the second defendant was in possession and that he was a cultivating tenant. But there was no pleading regarding the contribution of physical labour. It is identical to this case. The Division Bench held that the second respondent in that case was not a cultivating tenant. Paragraphs 19, 22 and 24 of the said judgment reads as follows:

19. Thus, in this case, applying the principles laid down by various Courts, it could be seen, the words "such person" refer to a person referred earlier. The person referred earlier in Section 2(aa)(i) is one who contributes his own physical labour or that of any member of his family in cultivation of any land. Or in other words, Section 2(aa)(ii)(a) has to be understood as any person who contributes his own physical labour in the cultivation or that of any member of his family in the property in which he is in possession even after determination of tenancy agreement. If mere possession is sufficient that Law makers would not have employed the word "such" in Section 2(aa)(ii)(a). Can a person, who after the expiry of the lease period continues to be in possession, but runs a petty betelnut shop or an arrack shop instead of cultivating the land, claim the status of a cultivating tenant. The answer is emphatically "No". The act is to protect only a cultivating tenant. Any interpretation has to be in consonant with justice

and reason and should not be absurd.

22. Coming to the present case, second defendant has to plead and prove that even after determination of tenancy agreement he continues to be in possession and cultivating the land contributing his own physical labour. It would not be sufficient if he simply says that he is in possession. In the present case, second defendant has only pleaded in the written statement that he is a cultivating tenant. Nowhere he has stated that he is contributing his physical labour and cultivating the land. That apart, he has not whispered anything in that regard in his evidence also. Even the plea that he is entitled to the benefits of the Act has not been made.

24. In these circumstances, it has to be held that second defendant is not a cultivating tenant as contemplated under Tamil Nadu Cultivating Tenants Protection Act, 1955. Once we come to such conclusion, then necessarily we have to declare that the plaintiff is entitled to a decree for possession as well.

This decision squarely applies to this appeal. The respondents 1 to 6 and 8 to 10 have not made out a case of tenancy.

9. For the reasons stated above, the writ appeal stands allowed and consequently the order dated 28.06.2006 made in W.P. 2537 of 1998 is set aside. No costs.