
(2013) 11 MAD CK 0158
In the Madras High Court
Case No : A.S. (MD) No. 63 of 2012

T.P. Mayavan

APPELLANT

Vs

Sowcar Gopaldass Dwaragadas Family Trust Estate

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0158

Hon'ble Judges : R. Karupiah, J

Bench : Single Bench

Advocate : Amjadkhan for Mr. N. Ananthapadmanathan, for the Appellant;
T.S.R. Venkatramana, for the Respondent

Final Decision : Dismissed

Judgement

R. Karupiah, J.—The appellant who is defendant in the original suit filed this appeal suit against the judgment and decree of the I Additional District Munsif Court, Tiruchirappalli made in O.S. No. 29 of 2009, dated 26.04.2011. For the sake of convenience, the defendant in the suit referred as appellant herein and the plaintiff in the above said suit referred herein as respondent.

2. The respondent/Plaintiff filed a suit in O.S. No. 29 of 2004 for the following reliefs:

i) to direct the defendant to delivery of possession of the suit property to the plaintiff and to direct the defendant to pay the plaintiff a sum of Rs. 1,80,000/- with future interest,

ii) to award future profits from the date of plaint till the date of delivery of land and awarding costs of the suit and

iii) such other reliefs.

3. The case of the respondent/plaintiff stated in the plaint is that the suit property and other portion of the property totally 57.75 cents belongs to the respondent/plaintiff trust. Since there were bushy growths in the suit property,

the respondent wanted to clear the bushes and also with a view to plant coconut trees in that area at the cost of the respondent. The appellant accepted the offer made by the respondent/plaintiff and hence he was permitted to cultivate for two years to bring the land fit for cultivation and also permitted to raise paddy crops for two years alone and licence was granted to him accordingly. Since the weeding of the shrub has to be done at the expenses of the appellant, licence fee for cultivation was fixed at Rs. 2,500/- per year. Therefore, the suit property was not leased out to the appellant. Further, there are standing fruit bearing trees and the respondent alone has got the right of enjoying the usufructs and the appellant/defendant has no right to enjoy the usufructs in those trees. The appellant agreed to pay the licence fee of Rs. 2,501/- for fasli year 1394 and licence fee has to be fixed for next fasli 1395 taking into consideration the cultivation in the land. No interest in the land was transferred. But the appellant has paid only Rs. 1,000/- as advance and no other payment has been made. The appellant had given a letter embodying the terms of the licence. After the expiry of fasli 1395, the appellant did not stop the cultivation and begun to cultivate the land without consent and approval of the respondent and also against the protests of the respondent's people. On 02.05.1987, the appellant gave a letter in which it is stated that he would cut the plantain crops raised by him unauthorisedly and given up the possession of land on 31.12.1987. After cutting all the plantains, the respondent made arrangements to cultivate the land but the appellant begun to give trouble and therefore, the respondent/plaintiff filed a suit in O.S. No. 141 of 1998 for the injunction before the Sub Court, Trichy.

4. It is also averred in the plaint that the possession of the appellant is purely as trespasser and he has no right to continue in the land and his possession is unlawful. Therefore, the respondent as owner of the land is entitled to recover the possession of the suit property. Further the appellant has no right to cultivate any crop in the land except for the two fasli years 1394 and 1395. During 1988 and 89, 1989-1990 and 1990 and 1991, the appellant raised the plantain crop and enjoyed the products and hence he is liable to pay a sum of Rs. 1,80,000/-. The appellant cannot claim benefits of Tamil Nadu Cultivating Tenants Protection Act since neither the appellant nor any members of his family ever contributed any physical labour in the property. The appellant is a front rank leader of DMK party and he was also the Chairman of Srirangam Municipality for a period of three years and he is in a higher stage in society. The members of his family are of a decent type and they would never enter into the lands for agricultural operations and all the agricultural operations in the land done by the appellant only by hired labour. Therefore, the appellant is not entitled to Act 25 of 1955. Hence this suit.

5. The appellant/defendant filed written statement in which it is denied various averments made in the plaint. According to the appellant, the suit property i.e., the land to the extent of 24.20 acres in S.F. No. 74 which is situated on the eastern side was given to the appellant on lease for cultivation. After taking the property on lease, at a heavy cost reclaimed the property and brought them into

cultivation and he is in possession as cultivating tenant. Therefore the transaction between the appellant and the respondent is not licence only lease. The allegation stated in the plaint that this defendant was permitted to raise paddy crops for two years (i.e.,) for Fasli 1394 and 1395 alone in the inter space of the trees as licensee with a view to make the land fit for cultivation are all false. In the entire suit property, there are no trees and the trees are in existence only in a particular portion of the property. In fact, the land itself has been let out for cultivation. The appellant also denied the allegation that there are standing fruit bearing trees and the respondent being enjoyed the usufructs till date. Further, the amount agreed to be paid is not licence fee but it is lease amount. The appellant has been using the suit property for the purpose of agriculture and horticulture. Further, the appellant was given right to pay water and electricity consumption charges. The appellant has also planted coconut and mango trees. It is also denied the allegation that the appellant continued to cultivate the land without consent and approval of the respondent and also against the protest of the respondent. Further, there is a building in the suit property and it has been given to the appellant and he is using the said building for agricultural purpose. The appellant has also dug up a bore-well with the knowledge of the respondent. The respondent has filed a vexatious suit as against the appellant in O.S. No. 141 of 1988 on the file of the Sub Court, Trichy and the above said suit has been dismissed as withdrawn. The appellant has also denied that the respondent raised banana crops in all the years. The appellant is not bound to hand over the possession since the appellant continues to remain in possession and enjoyment after the expiry of the lease and he squarely comes within the definition of the term cultivating tenant as defined under Act 25 of 1955. The contention of the respondent that the appellant is liable to pay Rs. 1,80,000/- by way of past profit is untenable. The appellant and the members of his family are contributing their physical labour for raising cultivation and therefore, the appellant is entitled to the benefits of Act 25 of 1955 as amended and also Occupants of the Kudiyuruppu Act. The appellant is not a front rank leader of DMK party but the appellant belongs to that party only. The contentions of the respondent that the appellant was Chairman and he owned cars etc., are not at all relevant for consideration.

6. The has registered his name as a cultivating tenant by the Tenancy Tahsildar. Therefore, the Civil Court has no jurisdiction to order delivery of possession of the property and also the suit is barred by the provisions of Sections 6, 6A of TNCTP Act 25 of 1955 as amended. Hence the suit is liable to be dismissed.

7. The trial Court has tried this suit in O.S. No. 20 of 2004 along with two other connected suits namely O.S. No. 30 of 2004 and O.S. No. 31 of 2004 and since the parties are one and the same and the issues are inter-linked with other suits and the trial Court has also given an opportunity to both sides and modified the earlier issues and the following issues were framed in all the three suits. They are:

1. Whether the defendant was given lease and if so, whether the defendant is entitled to the benefit of cultivating Tenants?
2. Whether the defendant was given possession of the suit properties only for reclaiming the property and to make the suit properties fit for such reclamation and whether the plaintiffs permitted the defendant to enjoy the properties only for two years as claimed by the plaintiff?
3. Whether the possession of the suit properties by the defendant after the expiry of two years into the suit property is unauthorised and if so, whether the plaintiff is entitled to claim past and future benefits from the defendant?
4. Whether the defendant has made any profit out of such possession and enjoyment of the suit properties and if so, how much the defendant befitted?
5. Whether the plaintiff in O.S. No. 30 of 2004 is entitled to Rs. 8,40,000/- as claimed?
6. Whether the plaintiffs in O.S. No. 31 of 2004 are entitled to the relief of permanent injunction as against the defendant as claimed in O.S. No. 31 of 2004?
7. To what relief the plaintiff is entitled to?
8. To prove the case of the respondent/Plaintiff in all the three suits examined two witnesses as P.W. 1 and P.W. 2 and marked 7 documents as Ex. A1 to Ex. A7. On the side of the defendants, the appellant herein namely T.P. Mayavan alone deposed as D.W. 1 and no documents were marked on the side of the appellant/defendant.
9. The trial Court has discussed the above said oral and documentary evidence and finally held that the defendant has to be construed only as a trespasser without any valid right or possession of the property and therefore the defendant cannot continue possession of the property and has to deliver possession of the property and answered issue Nos. 1 to 3 accordingly. With regard to issue Nos. 4 and 5, the Trial Court has also directed the defendant to pay Rs. 3000/- per acre as profit to the plaintiff and therefore the plaintiff is entitled to claim Rs. 3000/- from 19.09.2003 to till date of judgment. The other issues relating to other suits namely O.S. No. 30 of 2004 and O.S. No. 31 of 2004. The trial Court has finally decreed the suit in O.S. No. 29 of 2004 and held that the plaintiff is entitled to profit claimed for Fasli 1398, 1399, 1400 working at the rate of Rs. 3000/- per acre i.e., Rs. 2,17,800/- and directed the defendant to pay the plaintiff interest at the rate of 6% p.a. from the date of decree till the date of payment and also the trial Court has directed the defendant to pay further amount from Fasli 1404 till delivery of possession at the rate of Rs. 3000/- per acre and with interest at the rate of 6% from the date of decree, till the date of delivery of possession and further the trial Court has also directed the plaintiff to adjust Rs. 2,42,000/-, the expenses incurred for reclamation and to convert the suit property for cultivation is to be adjusted towards the profit payable by the defendant.

10. Aggrieved over the above said judgment and decree passed by the trial Court, the appellant herein who is the defendant in O.S. No. 29 of 2004 alone preferred this appeal Suit.

11. The points for consideration in this appeal are:

1. Whether the appellant/defendant is a cultivating tenant under the respondent/plaintiff as pleaded by the appellant/defendant?
2. Whether the appellant/defendant is entitled to the benefits of Act 25 of 1955 as amended and also Occupants of the Kudiyuruppu Act as pleaded by the appellant/defendant?
3. Whether the Civil Court has no jurisdiction as contended by the appellant/Plaintiff?

12. Point Nos. 1 and 2

Admittedly, the suit property belonging to the respondent and it is not disputed by the appellant. The main contention of the respondent is that since there were bushy growth in the suit property, the respondent wanted to clear the bushes and at that time, the appellant undertakes to clear the bushes and therefore the appellant was directed to clear the bushes and to bring the land fit for cultivation and also has given licence to the appellant to raise paddy crops only for 2 years and the amount of Rs. 2500/- per year was fixed a Licence Fee. Further contention of the respondent is that in the suit properties, there were standing fruit bearing trees and the respondent alone is enjoying the usufructs of the above said trees and therefore the appellant has no right of the above said usufructs from these trees. According to the respondent, since the plaintiff is a trespasser in the suit property, filed a suit for recovery of possession and for future profits as already stated.

13. Per contra, the learned counsel for the appellant submitted that the defendant is in possession of the suit property as a cultivating tenant and therefore the appellant is entitled to be in possession as per the Tamil Nadu Cultivating Tenants Protection Act (act 25 of 1955) as amended and also the benefits of the Occupants of the Kudiyuruppu Act and further contended that the civil Court has no jurisdiction to decide this case since the suit is barred by the provisions of Section 6 and 6(A) of the Tamil Nadu Cultivating Tenants Protection Act (Act 25 of 1955). Therefore the main question to be decided in this appeal is that whether the appellant is a cultivating tenant as pleaded by the appellant or in permissive possession given by the respondent as pleaded in the plaint. Further it is to be decided that whether the appellant is entitled to the benefits of the above Tamil Nadu Cultivating Tenants Protection Act (Act 25 of 1955) or the Occupants of Kudiyuruppu Act as contended by the appellant?

14. It is not in dispute that the suit property belongs to the respondent/Trust. The appellant has claimed right in the suit property as a cultivating tenant. On the side of the respondent produced Ex. A2 and Ex. A3, copy of the order passed

in W.P. No. 9344 and 17923/94 and 14207, 27254 and 27255 of 1994, copy of the order passed by the Record Officer Tenancy Rights and Tahsildar and also the order passed in the appeal. Further P.W. 1 has also deposed that the Petitioner has claimed right as a cultivating tenant in the earlier suit in O.S. No. 141 of 1988 filed by the respondent herein and also the appellant has filed an application before the Record Officer to record his name as a cultivating tenant under Act 25 of 1955. But the same was dismissed on 22.02.1990 in T.R. No. 18789. Aggrieved by the same, the appellant preferred an appeal before the Revenue Court in Na.Mu.Mu. No. 18 of 1992 and in which the Special Deputy Collector modified the order passed by the Record Officer to the effect that the name of the appellant would be recorded as a cultivating tenant only to an extent of 5 standard acres. Against the order, both the appellant and respondent preferred a revision before the District Revenue Officer. But the District Revenue Officer passed an order on 25.03.1994 setting aside the order of the Revenue Court and ordering recording the name of the appellant as a cultivating tenant only with regard to acre 2.50 cents. Aggrieved over the order of the District Revenue Officer, both the appellant and respondent herein filed Writ Petitions before this Court and this Court has passed a common judgment on 07.12.2001, in the above said judgment, this Court has held that the appellant did not contribute any physical labour of himself or the members of the family and hence he is not a cultivating tenant and therefore his name could not be recorded as a cultivating tenant and therefore allowed the Writ Petitions filed by the respondent herein. Being aggrieved by the same judgment, the appellant herein filed Writ Appeals before this Court in W.A. Nos. 693 and 694 of 2002 and both the appeals were also dismissed. The above said facts are not specifically denied by the appellant herein. From the above said documents and oral testimony of P.W. 1 and P.W. 2 reveal that the appellant herein is not a cultivating tenant in the suit property and also not entitled to claim as a cultivating tenant as rightly held by the trial Court.

15. On the side of the appellant, has not produced any document to prove that he is a cultivating tenant in the suit properties as pleaded in the Written Statement.

16. Per contra, on the side of the respondent has produced Ex. A1-copy of the letter given by the appellant to the respondent, dated 23.06.1984 and patta and adangal extract from Fasli 1399 to 1413 and also other documents Ex. B13 to Ex. B15-Minutes and proceedings reveal that the appellant/respondent is not a cultivating tenant as pleaded in the written statement. Therefore the trial Court has correctly discussed about the earlier proceedings between the parties and the oral evidence of both sides and documentary evidence adduced on the side of the respondent and correctly rejected the contention of the appellant. Therefore the appellant is not a cultivating tenant under the respondent as pleaded by the appellant and the appellant is not entitled to the benefits of Act 25 of 1955 as amended or the Occupants of Kudiyuruppu Act as pleaded by the appellant and points for consideration 1 and 2 are answered accordingly.

17. With regard to the third point for consideration i.e., whether the civil Court has no jurisdiction is concerned, the learned counsel appearing for the appellant would submit that the appellant has claimed as a cultivating tenant and filed an application before the competent authority and therefore the respondent is not entitled to seek the relief before the civil Court and on that ground the suit is not maintainable. As already discussed, the plea of cultivating tenant is rejected by the competent authorities and also confirmed by this Court in the Writ Petition and Writ Appeals and therefore it is clear that the appellant is not a cultivating tenant in the suit property. The appellant has not claimed any other right in the suit property. As rightly held by the trial Court, the possession of the plaintiff is illegal and therefore the civil Court is having jurisdiction to grant the relief to the plaintiff and answered this point for consideration as against the appellant and in favour of the respondent. In the result, the appeal suit is dismissed with costs and confirmed the decree and judgment passed by the 1st Additional District Judge, Tiruchirappalli, in O.S. No. 29 of 2009, dated 26.04.2011.