
(1993) 04 MAD CK 0048
In the Madras High Court

Varada Reddiar and Others

APPELLANT

Vs

The District Revenue Officer and Others

RESPONDENT

Date of Decision : 15-04-1993

Acts Referred:

Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 4(1)

Citation : (1993) 2 MLJ 662

Hon'ble Judges : Janarthanam, J

Bench : Division Bench

Judgement

Janarthanam, J.—The landed properties comprised in S. Nos. 255/1, 257/2B, 290/3A, 291/2 and 294/1 measuring 49.30 acres situate in Sirangadu village, Dindigul Taluk originally belonged to one Guruswamy Reddiar. He, it is said, died intestate on 24.3.1975 leaving behind him his legal heirs, namely, (1) Thiru Ayyaswami Reddiar, (2) Thirumathi Rukmani Ammal, (3) Thirumathi Kamalam Ammal, (4) Thiru Varada Reddiar, (5) Thirumathi Muthammal, and (6) Thirumathi Chellammal.

2. It appears that on the dispute arising as to the division of the properties among his legal heirs, a partition action had been resorted to be taken before the competent civil forum. One K. Ramasubbu, a resident of Reddiarpatti, being the sister's daughter's son of the deceased Gu-ruswamy Reddiar, claiming to be a cultivating tenant of the aforesaid lands, presented a petition u/s 4(1) of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1960 (for short "the Act") to register his name as a tenant thereof, impleading the aforesaid legal heirs as party-respondents before the Tahsildar and Record Officer, Dindigul which was taken on file as TR. No. 36/75. By order dated 25.1.1978, the Record Officer directed the name of the said K. Ramasubbu to be registered as a tenant in respect of the aforesaid lands.

3. Aggrieved by the said order, three of the legal heirs, Thiru Varada Reddiar, Thirumathi Muthammal and Thirumathi Chellammal preferred an appeal u/s 6 of the Act in A.P. No. 5/78 before the Sub-Collector, Dindigul impleading the so-

called tenant Thiru K. Ramasubbu and three other legal heirs, namely Thiru Ayyaswami, Thirumathi Rukmani Ammal and Thirumathi Kamalam Ammal respectively as a party-respondents 1 to 4. By order dated 21.10.1978, the appellate authority dismissed the Appeal upholding the order of the Record Officer.

4. The aggrieved appellants did agitate the matter further by filing a revision in R.P. No. G3/8-78 before the Additional Collector, Madurai revisional authority, who in turn, on consideration of the materials, allowed the revision on 11.1.1979 by setting aside the orders of the authorities below and the operative portion of the said order is couched in the following terms:

Thiru Ramasubbu has not let in sufficient evidence to establish that he is a tenant. The revision therefore succeeds and the name of Thiru Ramasubbu is ordered to be deleted from the Record on Tenancy Rights in respect of the lands involved in this case.

5. The abovesaid order of the revisional authority had been challenged by the said K. Ramasubbu in W.P. No. 351 of 1979 before this Court. In the affidavit filed in support of the said writ petition, it was contended that the revisional authority, while interfering with the orders of the appellate authority has taken into account the points, which were never raised in the memorandum of grounds or at any earlier stage, as points of objections and that the material documents like Ex.A-31, an affidavit filed in O.S. No. 137 of 1975 on the file of Sub Court, Dindigul and Ex.C-1, order of the Additional Collector, in which the continuity of possession of K. Ramasubbu had been recognised and upheld have not been considered and hence for the apparent error on the face of the record, the impugned orders deserve to be quashed.

6. Taking notice of such contentions, which met with repulsion emerging from the other side, this Court, by order dated 27th August, 1981 allowed the Writ Petition and remitted the matter to the revisional authority for fresh consideration and disposal according to law with the following observations:

(1) The revisional authority has wrongly construed the distance between Reddiarpatti and Sirangadu as considerable and decided against possible physical cultivation.

(2) The revisional authority dealt with unobjected point of physical cultivation and did not give sufficient opportunity to the petitioner to prove it.

(3) The revisional authority did not consider Exs.A-31 and C-I in the order in deciding the question about the physical cultivation.

7. Subsequent to the remand, the revisional authority and the District Revenue Officer, Madurai took it on his file in R.P. No. 39/83/G3.

8. The dominant purpose of the remit order was to give the so-called tenant K. Ramasubbu sufficient and adequate opportunity to let in evidence, oral and

documentary, in proof of his claim of tenancy as set up by him, in as much as the revisional authority ordered for the deletion of his name under the Record of Tenancy Rights by taking note of certain points relatable to contribution of physical labour in the cultivation of those lands. Despite such factual position, he did not choose, subsequent to remand, to place any material or adduce any evidence relatable to such factors, in proof of the tenancy as set up by him inclusive of contribution of his physical labour or that of the members of his family, in cultivation of those lands. The revisional authority, having been placed in such a predicament situation, however, took into consideration the materials, which were already in existence, in the shape of oral and documentary evidence, and recorded a finding that he was a cultivating tenant, in respect of those lands and such a finding was based on the following three pieces of evidence:

(1) The so-called admission made by a witness by name Rengasamy examined on behalf of the landlords before remand, as respects the management, possession and cultivation of the lands by him.

(2) Ex.C-1 order of the District Revenue Officer, Madurai imposing punishment on the Karnam Vivekanandan in the year 1976 for tampering with the adangal records, as relatable to the aforesaid lands, in the sense of making false entries thereon in Columns 6(a) and 6 (b) as if those lands were under the tenancy cultivation of K. Ramasubbu for certain faslis containing a statement of fact relatable to those lands having been in his possession and enjoyment; and

(3) The so-called admission made by one Chellammal, one of the legal heirs of Gu-ruswamy Reddiar in Ex.R-31, affidavit filed in O.S. No. 137 of 1975 (I.A. No. 6 of 1976) on the file of Sub Court, Dindigul as to Ramasubbu having been in possession of those lands, as a cultivating tenant and his cutting and removing sugarcane crops to the value of Rs. 6,000 to Alanganallur Co-operative Sugarcane Factory.

It is on those findings, the revision petition had been disposed of on 25.3.1984 upholding the claim of tenancy cultivation by the said K. Ramasubbu.

9. Subsequently, Chellammal died and her son Muruganandam, it is said, succeeded to her estate.

10. Aggrieved by the order of the revisional authority, the said Muruganandam, alongwith two others namely, Varada Reddiar and Muthammal, the other legal heirs of Guruswamy Reddiar, resorted to the present action praying for issue of a writ of certiorari to quash the impugned order of the revisional authority.

11. Mr. T.R. Mani, learned Senior Counsel appearing for the petitioners would, with all seriousness, contend that though this Court, in the exercise of power under the extraordinary jurisdiction under Article 226 of the Constitution cannot at all be expected to sift and scan the materials available on record, as a Court exercising the power of appellate jurisdiction, yet, it cannot be stated that this Court is denuded of its power, to sift the materials available on record to find out

as to whether those materials should be construed, in the eye of law, as evidence which could be used for arriving at a conclusion, as regards the issue or the question posed for consideration in the case and in that view of the matter, the materials available in the instant case, if sifted in such a broad spectrum analysis, cocksure it is that the materials relied upon by the revisional authority cannot at all be construed as legal evidence in determining the question of tenancy as relatable to those lands, as set up by the so-called cultivating tenant K. Ramasubbu.

12. Mr. K. Alagiriswami, learned Senior Counsel appearing for K. Ramasubbu (fourth respondent) would, however, strike a discordant note to such a submission by stating that the revisional authority is perfectly justified in placing reliance on those materials as legal evidence.

13. Learned Additional Government Pleader Mr. P. Balasubramani and learned Government Advocate Mr. M. Liagat Ali appearing for respondents 1 to 3 did not choose to make any submission; but left the matter to the discretion of the court.

14. I may not try to find out the tenability or otherwise of the submission of either Senior Counsel.

15. Consistent a case it was right through by the petitioners that the fourth respondent's possession of the lands was not traceable to any tenancy agreement, express or implied and it is only in projection of such a claim, the said witness Rengasamy had been examined by them. What all the said Rengasamy was stated to have admitted during the course of cross-examination was that the lands in question had been cultivated by the fourth respondent. A perusal of his deposition did not at all point out anything as to his making a candid admission as to such cultivation being traceable to a tenancy created in his favour at any point of time. He did not also state that such cultivation had been done by him by contribution of his physical labourer that of the members of his family. Such being the case, the so-called admission of the cultivation of the lands by the fourth respondent is of no consequence, in the sense of creating a tenancy right in his favour. In this view of the matter, reliance made by the revisional authority on such portion or piece of evidence of the witness Rengasamy cannot be sustained as one based on legal evidence.

16. The revisional authority, before the remit order, took into consideration the residence of the fourth respondent at Reddiarpatti as an insurmountable obstacle, in effecting personal cultivation of the lands, admittedly situate at Sirangadu village, even without ascertaining the distance between those two places. The Court, in the remit order, as stated earlier, observed that the revisional authority has wrongly construed the distance between Reddiarpatti and Sirangadu as considerable and has decided against the question of possible physical cultivation. As indicated earlier, of course, no evidence had been placed as respects the distance between those two places. However, the revisional authority, after remand, took judicial notice of the distance between those two

places as being one furlong and such a minimal distance can, by no stretch of imagination, be construed as considerable to force as a circumstance against possible physical cultivation. But, however this circumstance cannot by itself be construed as a factor to clothe with the right of cultivating tenancy in favour of the fourth respondent, in the absence of other evidence establishing conclusive proof of his tenancy rights, and in such a contingency, this sort of a circumstance can if at all serve as a lending assurance factor to the evidence aliunde, if any.

17. Ex.C-1 is the appellate order dated 20-9.1976 of the District Revenue Officer, Madurai, in his proceedings in RA.43/76-A1 imposing a fine of Rs. 50 on the Karnam Vivekanandam, in modification of the punishment of suspension for a period of six months imposed by the Sub-Collector, Dindigul in Roc. No. A9/30405/75 dated 31-5-1976 for his tampering of the adangal extracts relatable to the lands in question. A perusal of the order reveals how the disciplinary proceedings had been initiated against the said Karnam (a) Two of the legal heirs namely, Thirumathi Chellammal and Thirumathi Muthammal presented petitions alleging that the said Karnam made false entries in Columns 6(a) and 6 (b) of the adangal in respect of the lands involved in question as if they were under the tenancy cultivation of the fourth respondent while they were actually under the personal cultivation of late Guruswamy Reddiar during faslis 1382 to 1385. This alteration of entries in the adangals had been made by the said Karnam subsequent to the issuance of an extract of adangal for fasli 1385, in which the particulars of tenancy cultivation in Columns 6(a) and 6(b) of the adangals did not find a place (b) A report was called for from the Tahsildar, Dindigul as to such alteration and the reports revealed that the Karnam did tamper with the entries in the adangals for Faslis 1382 to 1385. Explanation had been called for from the said Karnam and not satisfied with his explanation, charges have been framed and in the enquiry, he was found guilty and penalty had been imposed upon him, as stated above.

18. It is to be noted that the enquiry consisted of only perusal of the connected records and none had been examined in the so-called enquiry conducted. The relevant finding and the imposition of punishment get reflected in the last two paragraphs of the appellate order and they are as below:

I have gone through the connected records carefully. Regarding charge 1, the non-inclusion in the approved record of tenancy is not the conclusive proof of a particular land being under the personal cultivation of the land owner. Especially when a person has other documentary evidence to prove that he is in enjoyment of the land since Fasli 1382, the Sub-Collector should have made a more detailed enquiry so far as this charge is concerned. The charge 2 that he issued an incorrect extract from the adangal for Fasli 1385 in respect of the S. Nos. in question to Tmt. Muthammal is proved. The charge 3 that he made entries in Col.6(a) and 6(b) contrary to Government order is also proved. The 4th charge is that he was negligent in his duty as Karnam. Making unauthorised entries in the adangal is not negligence. It is wilful commission. The charge of negligence is not

proved. Hence dropped. Thiru. Ramasubbu was actually enjoying the lands since 1382. This is a mitigating factor in charge No. 1. Charge No. 2 shows the deliberate mischief of the Karnam. Having regard to the above factors, I modify the order of the Sub-Collector, Dindugal passed in her Roc.A 9/30405/75 dated 31.5.1976 to one of fine of Rs. 50 (Rupees Fifty only). The stay granted in this office reference 3rd cited is hereby vacated.

19. A perusal of what has been extracted above, makes it abundantly clear that the statement "Thiru. Ramasubbu was actually enjoying the lands since 1382" was taken as a mitigating factor, for modification of the imposition of penalty of suspension for six months on the delinquent Karnam by the Sub-Collector, Dindugal into one of fine of Rs. 50 and such a statement occurring in the said order had been relied upon by the revisional authority as one of the reasons for coming to the conclusion that the lands in question had been under the tenancy cultivation of the fourth respondent. The moot question is as to whether such a statement even assuming to be admissible as a valid piece of evidence, will go to the extent of proving the tenancy cultivation of the lands in question by the fourth respondent.

20. First of all, no evidence was recorded during the course of such enquiry as to factual or actual possession of the lands in question by the Disciplinary Authority. As stated earlier, records alone had been perused. The finding resulting in such a perusal was that the delinquent Karnam tampered with adangal extracts as if the fourth respondent had been cultivating the lands as a tenant, though it did not appear to be really so. In such state of affairs, how it was possible for the appellate authority to come to the conclusion that the fourth respondent Ramasubbu was actually enjoying the lands in question since Faslis 1382 so that the same could be taken as a mitigating factor for modification of the penalty imposed by the Disciplinary Authority.

21. Even otherwise, the further question that arises for consideration is as to whether such a statement of fact, referred to in the said order, could be relied upon as a piece of evidence, in the eye of law, by the revisional authority, in determining the question of tenancy rights as set up by the fourth respondent in respect of the lands in question. For such a statement occurring in the said order to be relied upon as a piece of evidence, the primary requisite is that the order in which such statement or figure appears must be one as admissible under the salient provisions adumbrated in any one of the Sections 40 to 44 of the Indian Evidence Act.

22. Section 40 deals with the question as to when a previous judgment will become relevant to bar a second suit or trial. What is relevant u/s 40 is the existence of any judgment, which by law, prevents any court from taking cognizance of a suit or holding a trial. Therefore, a judgment is admitted u/s 40 not as proof of the point decided by it but to support the plea that no inquiry can be made on the point determined by the previous judgment, the existence of the previous judgment barring such enquiry. The point decided by the previous

judgment being *res judicata* no question of proving that point arises; hence the relevant fact is not the judgment as such, but the existence of the judgment.

23. Section 41 deals with relevancy of certain judgments in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction.

24. Section 42 prescribed that judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the enquiry.

25. In Sections 41 and 42, however, the relevant fact is not the existence of the judgment, but the judgment itself and under those two sections the judgment is admitted in evidence as conclusive or *prima facie* proof of the point determined by the judgment.

26. Section 43 dealing with the relevancy of judgments, other than those mentioned in Sections 40 to 42 contains two rules, one declaring that a judgment which is not relevant under the three preceding sections is irrelevant and the other declaring that the existence of a judgment, which is not relevant under the three preceding sections, may become relevant under some other section of the Act. Thus, the fact declared irrelevant by Section 43 is a judgment as a judgment; whereas the fact, the relevancy of which is contemplated as possible under some other section of the Act, is the existence of a judgment. Therefore, when a judgment introduced in evidence under the latter part of Section 43, it is admitted for the purpose of proving its existence and not for the purpose of proving the point decided by it. In other words all judgments are conclusive of their existence as distinguished from their truth; so every judgment is conclusive evidence for or against all persons, whether parties, privies or strangers, of its own existence, date and legal effect as distinguished from the accuracy of the decision rendered. Consequently, a statement of facts in a previous judgment cannot be used as evidence in a subsequent case to decide points arising in that case.

27. Section 44 mentions circumstances, which if proved would avoid the evidentiary effect of a judgment admitted under Sections 40, 41 or 42 and it does not apply to judgments admissible u/s 43.

28. In the light of the salient provisions adumbrated under Sections 40 to 44 of the Evidence Act, as stated above, it goes without saying that the appellate order modifying the imposition of punishment on the delinquent Karnam in the disciplinary proceedings instituted against him for tampering with the adangals cannot be stated to be an order falling either under anyone of Sections 40 to 42 in the sense of the same not being *interpartes*; nor an order *in rem* and not relatable to matters of public nature relating to the enquiry and if at all, it may fall u/s 43 and if it does fall, it is conclusive evidence for or against all persons, who are parties, privies and strangers, of its own existence and legal effect, as distinguished from the accuracy of the decision rendered, that is to say, all statements of facts referred to therein cannot be used as evidence, in the case

on hand, being a subsequent one to decide the point relatable to the tenancy arising therein. Therefore, the use of the statement that the fourth respondent was actually enjoying the lands since fasli 1382, as mentioned in the appellate order, as extracted above, by the revisional authority herein in determining the question relatable to the tenancy of the lands in question in favour of the fourth respondent is not permissible in law, as being against the provisions adumbrated u/s 43 of the Evidence Act.

29. Ex.A-31 is the affidavit filed by Chellammal, a legal heir of Guruswamy Reddiar, in I.A. No. 6 of 1976 in O.S. No. 137 of 1975 on the file of Sub Court, Dindigul. The startling revelations emerge to the surface on a perusal of the said affidavit.

(a) The fourth respondent appeared to have made a daredevil attempt in impleading himself as a party-defendant in that suit, as if the lands in question were in his possession, traceable to the tenancy created in his favour. Tooth and nail opposition emerged not only from Chellammal, but from other parties to the suit, notwithstanding the said fact he had been impleaded as a party, leaving open the question of tenancy as set up by him to be decided at a later stage.

(b) The said Chellammal filed I.A. No. 1046 of 1975 for appointment of a Commissioner to harvest the maize and sugarcane-crops standing in those lands. A Commissioner was appointed only for the purpose of harvesting maize crops, leaving the appointment of a Commissioner to harvest sugarcane crops at a later stage, when those crops became ripe for harvest.

(c) In the meantime, vacation of the courts for summer holidays intervened and utilising such a contumacious situation, the fourth respondent is stated to have cut and removed the sugarcane crops to the value of Rs. 6,000 and sent the same to Alanganallur Sugarcane Factory.

(d) These things apart, it has been categorically stated that the fourth respondent was not at all a cultivating tenant and fabricated adangal extracts had been procured by him to establish his claim of such tenancy. So stating the said Chellammal prayed for appointment of a Commissioner to harvest the remaining standing sugarcane and other crops and deposit the sale proceeds into Court, so as to see that further loss is not caused to her.

30. The averments in the said affidavit as relatable to the cutting and removing of the sugarcane crops to the tune of Rs. 6,000 and sending them to Alanganallur Sugarcane Factory had been relied upon by the revisional authority, after remand, as if those averments are relatable to positive admissions made by the said Chellammal as to the lands in question having been in the possession and enjoyment of the fourth respondent, referable to his tenancy rights. But a careful reading of the entire affidavit demonstrates, in unmistakable terms, that the fourth respondent was not at all recognised, at any point of time, as a person in possession of the lands in question, traceable to the tenancy rights created in his favour and as and when such a claim had been made by the fourth

respondent, it had been categorically denied, besides positively stating that he was not the cultivating tenant.

31. This apart, he was stated to have trespassed into the lands during summer vacation and cut and removed the sugarcane crops to Alanganallur Sugarcane Factory and such acts of trespass and aggression had been considered by the revisional authority, torn out of context, as ones done in the exercise of his rights as a cultivating tenant. Such reliance on the face of it, is borne out of misreading of the affidavit, in the sense of reading something, which is not patently there. It is thus clear that the impugned order of the revisional authority is the resultant product of either misreading of the evidence or considering certain pieces of evidence, which cannot be read as evidence, in the eye of law, the irresistible consequence of which is the same deserves to be set aside as not being sustainable in law.

32. In fine, the writ petition is allowed as prayed for. Rule nisi issued is made absolute. There shall, however, be no order in the circumstances, as to costs.