
(1976) 09 MAD CK 0003
In the Madras High Court
Case No : S.A. No. 1825 of 1973

V.R. Karuppiah and others

APPELLANT

Vs

Thiruvannamalai Adheenam and others

RESPONDENT

Date of Decision : 08-09-1976

Acts Referred:

Cultivating Tenants Protection Act, 1955 — Section 3

Citation : (1976) 09 MAD CK 0003

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Advocate : Raj and Raj, for the Appellant; P. Narasimhan for 1st Respt., for the Respondent

Judgement

V. Ramaswami, J.—Defendants, 1, 3, 5 and 7 are the appellants. The plaintiffs-respondents filed a suit for declaration of their title to the suit

properties and for a permanent injunction restraining the defendants from interfering with the possession of the plaintiffs and enjoyment of the same,

or in the alternative for recovery of possession. The suit lands said to measure an extent of 16 acres and 71 cents are nanja lands called

Avadainayagi Paduondal situated in Aralipatti village which is one of the many villages endowed to Anju Koil Devastanam (hereinafter called as the

Devastanam). The village was notified and taken over as an Inam Estate under Madras Act 26 of 1948. The first plaintiff is the Thiruvannamalai

Adheenam which claimed that originally the kudivaram rights in respect of these suit lands were vested in it and that the Adheenam was the land-

holder which was owning the melwaram right. On 12th December 1943, the first plaintiff gifted the kudivaram right in the suit properties in favour

of the Devastanam under a registered document. After the gift the Devastanam

was cultivating the suit land with pannai servants for some years and was keeping the lands fallow for some other period. After the estate was notified the Devastanam filed an application under S. 13, for the issue of ryotwari patta. The application was rejected by the Assistant Settlement Officer and the Devastanam preferred an appeal to the Estates Abolition Tribunal. When that appeal was pending the first plaintiff filed O.S. No. 14 of 1956 on the file of the Subordinate Judge, Sivaganga against the Devastanam for declaration that the gift, deed executed by the Adheena Kartha in favour of the Devastanam was void and inoperative and for setting aside the same. This was on the ground that the Adheena Kartha had no right to gift the kudivaram right in the suit lands. This suit was decreed and the first plaintiff took possession of the suit lands through court in execution of the decree on 26th October 1956. In view of this judgment the Devastanam did not press their appeal before the Estates Abolition Tribunal. After the decree the first plaintiff filed a petition for the issue of ryotwari patta under S. 11 of the Madras Act 26 of 1948 in respect of the suit lands. The defendants claimed that they were kudiwaramdars and that they are entitled to the patta. The Assistant Settlement Officer accepted the claim of the first plaintiff and ordered the issue of a ryotwari patta to the first plaintiff. The defendants preferred an appeal to the Settlement Officer. Before the Settlement Officer the parties agreed that the question of title to these lands could be decided by the civil court and accordingly the Settlement Officer directed the parties to settle their disputes in a civil court. Thereafter the suit was filed by the plaintiffs as already stated for declaration of their title and for an injunction or in the alternative for possession. It was also stated in the plaint, that subsequent to their taking delivery on 26th October 1956, for one or two years the defendants were cultivating the lands under the first plaintiff on oral leases, and later on the leases were granted by public auction. The leases for the year 1958-59 are evidenced by the documents Exs. A-9 to A-13. Subsequently it is stated that for faslis 1369 and 1370, the lands were again leased by auction and plaintiffs 2 to 4 became the successful lessees. It is also stated that the plaintiffs 2 to 4 took possession of the lands. But this was denied by the defendants. The defendants contended that they owned the kudiwaram rights in the suit lands, that they were

paying the melwaram to the Devastanam and that after the estate was notified and taken over they became entitled to a ryotwari patta under S.11.

They specifically stated that they were never the tenants under the first plaintiff and that the first plaintiff had no title to the property. The defendants

also claimed that in any case they were the cultivating tenants entitled to the benefits of the Cultivating Tenants Protection Act and that, therefore,

they could not be evicted. The learned District Munsif who tried the suit held that the first plaintiff has established his kudiwaram right but dismissed

the suit on the ground that the first plaintiff has not proved his possession within 12 years. There was an appeal to the learned Subordinate Judge,

Sivaganga. Originally the decree of the trial court was confirmed in appeal but when the first plaintiff preferred a second appeal to this court the

judgment and decree of the lower appellate court were set aside and the matter was remanded to the lower appellate court for afresh disposal.

2. Subsequent to the remand, the lower appellate court had come to the conclusion that the first plaintiff had established his kudiwaram right in

respect of the suit properties, that the defendants came into possession only as lessees under the first plaintiff sometime after 1956 and that though

the defendants are in possession and as the lease in their favour was found, they are cultivating tenants within the meaning of the Cultivating Tenants

Protection Act, and since they denied the title of the landlord they are liable to be evicted and accordingly allowed the appeal and decreed the suit

for possession as prayed for. It is against this judgment and decree the said defendants, 1, 3, 5 and 7 have filed this second appeal.

3. That the first plaintiff was entitled to the kudiwaram rights is clearly borne by a number of records produced by the plaintiffs. First of all we have

Exs. A-35, 36 and 37, which are pattas issued by the then landholder in favour of the first plaintiff. They are of the years 1931, 1917 and 1923

respectively. Being pattas issued by the landholder under the Estates Land Act, they are documents of title and clinches the issue. It may be stated

that Ex. A-36 is a patta issued by a Court Receiver to the Devastanam. We have then the entries in Inavazhi Jama that is marked as Ex. A-30 in

this case and for fasli 1330 that is in 1920 the suit lands stood registered in the name of the first plaintiff as kudiwaramdar. The Namuna Virasu

prepared and maintained by the Devastanam for the years 1923 and 1933 also show the first plaintiff as kudiwaramdar. In addition to these

records maintained by the landholder, we have also in evidence the receipt of rental income issued by the first plaintiff leasing the properties to third parties. Exs. A-1 to A-6 relate to faslis 1336 to 1340 and those are receipts granted by the first plaintiff in favour of one Chinnaiya Chervai. It may also be mentioned that it is on the basis that the first plaintiff is owning the kudiwaram rights the gift deed was executed under the registered documents dated 12th December 1943 in favour of the Devastanam which was the land-holder owning the melwaram. Thus even as early as 1943, the first plaintiff was asserting his title to the kudiwaram right. After the setting aside of the gift deed the first plaintiff again had become the owner. In fact the nature of the claim for setting aside the gift shows that the gift deed was a void document and it could not have legally vested the kudiwaram right in the land-holder and, therefore, the kudiwaram right continued with the first plaintiff, subsequent to 1956. By that time the estate had been notified and taken over the scramble for possession and a dispute relating to the ryotwari patta have arisen. While the first plaintiff claimed that for one or two years they leased it to the defendants orally and later on that is for 1958-59 under a document called pathaduppu, it was claimed by the defendants that they were not only in possession from 1950 onwards but they had been in possession even for a long time prior thereto. Both the courts below have concurrently held that the defendants have proved their possession subsequent to 1956. But the trial court did not give any finding as to who was in possession prior to 1956. But as already stated the suit was dismissed on the ground that the first plaintiff has not proved his possession within 12 years. But the lower appellate court had definitely given a finding that the defendants came into possession only from 1956 onwards and they were not in possession prior thereto. The lower appellate court had also given a finding that the first plaintiff was in possession in 1943 and subsequent to 1943 the lands were in possession of the Devastanam for sometime under their personal cultivation through hired labour, and sometime the lands were left fallow. There is also no evidence for coming to the conclusion that in between 1943 and 1956 who was in possession. The only thing that could be inferred is that since under purported gift the Devastanam had become the owner of the melwaram and kudiwaram rights, the possession must have been with the Devastanam. This is only a legal inference but no evidence

is available. The result of that is, we have to come to the conclusion that the first plaintiff was owning the kudiwaram right till 1943 and the melwaram vested in the Devastanam. In 1943, the kudiwaram right was gifted to the Devastanam but later in 1956 the gift was set aside and the first plaintiff again had become the owner. The first plaintiff was in possession prior to 1943, but there is no evidence of possession between 1943 and 1956. The defendants are in possession from 1956 onwards. Therefore the finding of the courts below that the first plaintiff has established his kudiwaram right to the suit lands is correct and could not be interfered with. The defendants could not claim to be entitled to a ryotwari patta under S.11, because there is no evidence to show, even assuming that in spite of the invalidity of the gift the landholder came to be possessed of the kudiwaram right also and admitted the defendants into possession. Whether there was a merger of the kudiwaram right with the melwaram or not, since the landholder had not admitted during the period from 1943 to 1956 when the kudiwaram right vested in it, the defendants could not claim any ryotwari patta. Their possession was only subsequent to 1956 and that has now been found by the lower appellate court to be as lessee under the first plaintiff. There is no dispute that the defendants are cultivating their lands. If they are the tenants under the first plaintiff they will be the cultivating tenants within the meaning of Cultivating Tenants Protection Act. The lower appellate court decreed the suit for possession and rejected the defence that the civil court could not grant a decree for possession since they are cultivating Tenants on the ground that the defendants had denied the title of the first plaintiff and that, therefore, they had ceased to be entitled to the benefits of the Cultivating Tenants Protection Act. I am unable to agree with the view of the lower appellate court that merely by reason of denial of title, the civil court is entitled to decree the suit for possession against the cultivating tenant. In fact in Chinnamuthu Gounder v. Perumal Chettiar 1970-2-M.L.J. 114 the Supreme Court held that where the suit is by the landlord against a tenant for possession a civil court could go into only the question whether the defendant is a cultivating tenant entitled to the benefits of the Act, but it could not go into the further question whether the defendant will be entitled to remain in possession and could have resisted the application for eviction under S.3. The learned counsel sought to rely on the very decision and contended that in all

cases where there is a denial of title by the tenant, he ceased to be entitled to the benefit of the Cultivating Tenants Protection Act and that

therefore, a civil court is entitled to give a decree for possession in favour of the landlord. I am unable to agree with the contention of the learned

counsel. Under S.3 of the Cultivating Tenants Protection Act, no cultivating tenant shall be evicted from his holding or any part thereof, by or at the

instance of his landlord, whether in execution of a decree or order of a court or otherwise. But this is subject to the right of the landlord to file an

application for eviction, under Sub-sec. (2) to S.3 which contains five grounds on which the landlord could have asked for eviction of the tenant.

One of the grounds mentioned in Sub-sec. 2(d) is wilful denial of title of the landlord by the tenant. It might be that on the ground of wilful denial

the landlord might be entitled to an order of eviction if he chooses to file an application on that ground before the Revenue Court constituted under

the Cultivating Tenants Protection Act. But, that does not mean that if there is denial of title the lessor need not go before the Revenue Court, but

directly go to the Civil Court and ask for eviction. The denial of title is only one of the many grounds set out in S.3(2). In fact, the question whether

there is a wilful denial or not will have to be gone into by the Revenue Court and this court is not entitled to go into that question. If the arguments

of the learned counsel for the respondents were to be accepted, then in every one of the cases in which the lessor could ask for eviction could file a

suit in a civil court without resorting to the provisions of the Cultivating Tenants Protection Act itself. That could have been the intention of the

Legislature. I am of opinion that it does not arise also in the express language of S.6(a), which excludes the jurisdiction of the civil court. I am,

therefore, of opinion that the only question that could be gone into by a civil court in a suit between the land lord and tenant is whether there is a

tenancy agreement express or implied between the landlord and the tenant and whether the defendant is a cultivating tenant within the meaning of

Cultivating Tenants Protection Act. If he is a cultivating tenant certainly he becomes entitled to the benefits of the Act, but subject to the rights of

the landlord to evict him on the stated grounds. Once the civil court finds that the defendant is a cultivating tenant within the meaning of Cultivating

Tenants Protection Act, it could not order eviction of the tenant and either the suit will have to be dismissed on the ground of want of jurisdiction so

far as the claim for possession is concerned or the plaint will have to be returned for representation to the proper court. In this case since the question of title of the first plaintiff was also involved no question of transfer of plaint to the Revenue Court arises. Accordingly the decree will have to be restricted to giving a declaration that the first plaintiff is entitled to the kudiwaram right in the suit lands and the suit in so far as it relates to the recovery possession from the defendants has to be dismissed on the ground that the defendants are Cultivating tenants entitled to the benefits of the Cultivating Tenants Protection Act. The second appeal is, therefore, allowed in part and the judgment and decree of the lower appellate court in so far as it granted a decree for possession is set aside. But the declaration of title granted by the lower appellate court will stand. But there will be no order as to costs. No leave.