

Narasimma Naicker Vs. Sanjeeviammal

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Court : Chennai

Decided On : Jul-03-2013

Judge : S. Palanivelu

Appellant : Narasimma Naicker

Respondent : Sanjeeviammal

Advocate for Def. : Mr. Sanjay Baba

Advocate for Pet/Ap. : Mr. R. Singgaravelan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated:

03. 07.2013 Coram: THE HON'BLE MR. JUSTICE S. PALANIVELU S.A. No.1419 of 2004 Narasimma Naicker ... Appellant ..vs..

1. Sanjeeviammal 2. K.V. Selvarajan 3. K.V. Paneerselvam 4. K.V. Krishnamurthy
5. The Special Officer Vellore Co-operative Sugar Mills Ammundi Village Gudiyattam Taluk, Vellore District. ... Respondents PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree of the Subordinate Judge, Ranipet dated 30.03.2004 made in A.S. No.65 of 2003 confirming the judgment and decree of the Court of District Munsif, Sholingur dated 22.09.2003 made in O.S. No.360 of 1995 (O.S. No.383 of 1991, Sub Court, Ranipet). For Appellant ... Mr. R. Singgaravelan For Respondents ... Mr. Sanjay

Baba for R1 to R4 Mrs. Vijayakumari Natarajan for R5 J U D G E M E N T The first defendant in the suit before the trial court has preferred the second appeal against the judgment and decree of the lower appellate court, namely, the court of the Subordinate Judge, Ranipet dated 30.03.2004 made in A.S. No.65 of 2003, confirming the judgment and decree of the trial court dated 22.09.2003 made in O.S. No.360 of 1995 on the file of the District Munsif Court, Sholingur.

2. The suit was originally filed by the respondents 1 to 4 herein against the appellant herein, for a declaration of title to their suit property and for permanent prohibitory injunction restraining the defendants from interfering with their possession and enjoyment of the suit property. The suit property, which are agricultural lands measuring about 4.5 acres belongs to the first respondent and her husband. Since the first defendant has trespassed into the property during the pendency of the said suit, the plaintiffs had amended the plaint and sought for recovery of possession. In the said suit, the second respondent is the 2nd plaintiff and the other plaintiffs are his mother and brothers. The first defendant is none other than the father-in-law of the 2nd plaintiff.

3. The suit was resisted by the appellant/ first defendant based on the contention that he is in possession of the suit property as cultivating tenant, which has been proved by the letters sent by the husband of the first respondent to the appellant, in Ex.B20 and B21. However, the title of the plaintiffs are not denied by the defendants. It is the further contention of the appellant/ first defendant that the kist receipts in Ex.B23 to B52 shows that the kist were paid by the father of the appellant. Thus, the appellant/ first defendant had clinching proof to establish his status as a cultivating tenancy through oral and documentary evidences. It was also the contention of the appellant/ first defendant that the amended prayer for recovery of the suit would clearly prove that the respondents/ plaintiffs were in Chennai and was not in possession of the suit property. Hence, it is further claimed that he can be evicted only under the common civil law i.e. by the Revenue Court constituted under the Tamilnadu Cultivating Tenants Protection Act, 1955.

4. The trial court at the conclusion of trial, on appreciation of evidences, rendered a finding that as the owners of the property the respondents 1 to 4/ plaintiffs are entitled to recovery of possession of the property and hence the suit was decreed on 22.09.2003 as prayed for. Challenging the said decree of the trial court, the appellant/ first defendant preferred an appeal before the lower Appellate Court in A.S.No.65 of 2003. The learned first Appellate judge on re-appreciation of evidence, concurred with the findings of the trial court and confirmed the judgment and decree of the trial court in all respects by dismissing the appeal by its judgment and decree dated 30.03.2004. Challenging the same, the present second appeal has been filed.

5. The arguments advanced by Mr. R. Singgaravelan, learned counsel for the appellant and Mr. Sanjay Baba, learned counsel for the respondents 1 to 4 were heard. The appeal memorandum, copies of judgments and decrees of the courts below and the other documents produced in the form of typeset of papers were also perused.

6. At the time of admission, the following substantial questions of law were framed :

1. Whether the findings of the Courts below that the appellant/ 1st defendant is not the cultivating tenant, are correct in law ?.

2. Whether the findings of the Courts below that for want of pleadings regarding Section 106 of Transfer of Property Act, the appellant/ 1st defendant is debarred from raising such a plea, is correct in law?.

3. Whether the findings of the courts below are correct in law in holding that the possession of the appellant/ 1st defendant cannot be deemed to be treated as lawful one, is correct in law ?.

7. The appellant herein is the first defendant in the original suit before the trial Court. This court considered the submissions made on both sides regarding the above said questions. Admittedly, the first respondent is the owner of the suit property, which fact has not been disputed by the appellant. At the outset, the suit

was filed for declaration and permanent prohibitory injunction restraining the defendants from interfering with their possession and enjoyment of the suit property. But, the Interlocutory Application in I.A. No.783 of 1990 seeking injunction was dismissed. The appeal preferred by the plaintiffs in C.M.A No.75 of 1990 on the file of the Sub Court, Vellore was also dismissed. Hence, another application was filed to amend the plaint seeking recovery of property on the basis of the title. Ex.B1 to B3 show that the plaintiffs/ respondents have received Rs.2000/- as lease amount.

8. In the original suit the plaintiffs produced 22 exhibits and 77 exhibits were marked on the side of the defendants. Exhibits B23 to 52 are the kist receipts. The first defendant during the course of his cross examination has admitted that the first plaintiff is the owner of the property and the same was leased out to them for a sum of Rs.2000/- per month from the year 1955 itself. Learned counsel for the appellant would submit that based on the admissions made during the cross examination, coupled with the documents produced by the first defendant, it has to be concluded that the appellant/ first defendant has been in possession and is cultivating the lands. Learned counsel further referred to the judgment of this Court in K.M. Balasundaram and anr. v. Narayanasamy (died) and anr., reported in (2001) 1 MLJ162 wherein it is observed as follows :- No doubt, the civil court cannot declare that a particular person is a cultivating tenant but as has been held in Periyathambi Goundan v. The District Revenue Officer, Coimbatore (1980)2 MLJ89 AIR1980 Mad.180 by the Full Bench, it is open to the Civil Court while granting injunction to incidentally go into the question whether the person is a cultivating tenant. The Civil Court has ample jurisdiction to grant injunction on the basis that a person is a cultivating tenant and by doing that, a Civil Court is not usurping the powers of the authority constituted under the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act. However, in the decision of G. Selvamani & 4 Ors. v. The District Revenue Officers-cum-Revisonal Authority (Record of Tenancy Rights under the Tamil Nadu Act 10 of 1969), Thanjavur & Ors., reported in (1998) 1 MLJ639 this Court has held that, 8. Though it is contended by the counsel for the second respondent that the Civil Court has no jurisdiction by the counsel for the second respondent of the tenancy right, in the judgment reported in Periyathambi Goundan v. The District Revenue Officer, Coimbatore 93 LW169the

Full Bench of this Court has held that the Civil Court has no jurisdiction to give a finding with regard to the tenancy right alone. But, however, if that question arised incidentally then the Civil court has jurisdiction to give a finding and the Civil Court need not refer the matter to the Record of Tenancy Officer. The learned counsel for the first plaintiff has cited a Full Bench judgment of the Hon'ble Supreme Court in the case of Chinnamuthu Gounder & Ors. v. P.A.S. Perumal Chettiar reported in 1970 (II) MLJ114(SC) , in which Section 6-A of Madras Cultivating Tenants' Protection Act has been dealt with. Section 6-A If in any suit before any Court for possession of, or injunction in relation to, any land, it is proved by affidavit or otherwise that the defendant is a cultivating tenant entitled to the benefits of this Act, the Court shall not proceed with the trial of the suit but shall transfer it to the Divisional Officer who shall thereupon deal with and dispose of it as though it were an application under this Act and all the provisions of this Act shall apply to such an application and the applicant.". The clear import of Section 6-A is that in any suit before any civil court for possession if the defendant proves not only that he is a cultivating tenant but also that he is entitled to the benefits of the Act the Civil Court is bound to transfer it to the Revenue Divisional Officer and cannot proceed to try and dispose it of itself. In the present case it has been found by the High Court as also by the trial Court that the appellants had wilfully denied the title of the respondent who is the landlord. They thus become disentitled to the benefits under the Act. Consequently, the civil Court had jurisdiction to proceed with the trial and there was no question of its transferring the suit to the Revenue Divisional Officer. There has been a consistent course of decisions of the Madras High Court that in order to attract the applicability of section 6-A both the conditions must co-exist, namely, the defendant must be a cultivating tenant within the meaning of the Act and he should be entitled to the benefits of the Act. If both these conditions are not satisfied no question of any transfer under section 6-A will arise. The civil Court may have to determine, for the purpose of coming to the conclusion, whether a suit has to be transferred under section 6-A, certain questions which are within the jurisdiction of the revenue Court under the Act. But that cannot affect the interpretation of the words ".cultivating tenant entitled to the benefits of the Act.".

9. Eventhough, the trial court has rendered a finding that the plaintiffs have the right over the property though the first defendant was in possession of the suit

property, has observed that the civil Court has no jurisdiction to decide the matter since the issue has to be decided only by the Revenue court, as to whether the first defendant is cultivating or not. The Appellate court judgment also on the same lines. The first plaintiff has produced Ex.B-53, an application addressed to the District Collector, North Arcot District, Vellore and copies to the Tahsildar, Arani and the Revenue Divisional Officer, Ranipet. Ex.B54 to B56 are the acknowledgment cards showing that they have received the application. Eventhough the application was sent by 18.07.1989, no reply has been given by the authorities concerned. In Ex.B53, the first defendant has stated that he is cultivating the lands for 43 years and that his name is to be recorded in revenue records as a 'Cultivating tenant'. As per the decision of the Hon'ble Supreme Court, this court is bound to act in order to attract the applicability of Section 6A. Both the conditions must co-exist, namely, the defendants must be a cultivating tenant within the meaning of the Act and he should be entitled to the benefits of the Act. Though this Court is of the view that the first defendant is a cultivating tenant and he should be entitled to the benefits of the Act, it is for the record of Tenancy Tahsildar to decide the same, since he is the prescribed authority.

10. Therefore, as per law, this Court has to transfer the case to the Revenue court namely, the Court of Tahsildar/ Revenue Divisional Officer, Vellore District and hence the decree and judgments of the courts below are liable to set aside and they are accordingly set aside. The Substantial questions of law are answered as indicated above.

11. In fine, the Second Appeal is allowed, transferring the case to the Court of Tahsildar, Vellore District. The Tahsildar also shall take up the matter and decide, either by restoring the petition which was sent by first defendant on 18.07.1989, for registering the name of the appellant/ first defendant as 'cultivating tenant' or treating his written statement filed in this case as an application for the purpose. The Tahsildar is also directed to dispose of the matter within six months from the date of receipt of the case records. The High Court Registry is directed to transfer the entire case bundles to the trial Court namely the Court of District Munsif, Sholingur, Vellore District, and the said Court in turn send the same to the Tahsildar, Arani, Vellore District and to get proper acknowledgment from the

authorities. No costs. 03.07.2013 Index: Yes/No.Internet: Yes/No.avr To 1. The Subordinate Judge, Ranipet. 2.The District Munsif, Sholingur S. PALANIVELU J., avr S.A. No.1419 of 2004 03.07.2013

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