

Thulasi and ors. Vs. Jagannathan and ors.

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Court : Chennai

Decided On : Dec-17-1997

Reported in : (1998)2MLJ704

Appellant : Thulasi and ors.

Respondent : Jagannathan and ors.

Advocate for Pet/Ap. : Ms. R.T. Shyamala

Judgement :

K. Sampath, J.

1. Defendants 2 to 11 who are the legal representatives of the first defendant in the suit are the appellants. Deceased first defendant and the respondents were brothers being sons of One Veerappan Voykarar. The suit O.S.No. 414 of 1989 was filed by the respondents herein for partition and separate possession of several items of properties alleging as follows:

Items 1 and 2 of the suit properties belonged to Alaviammal mother of the plaintiffs and the first defendant. Items 3 to 7 were lease-hold properties belonging to the joint family, Those items were taken on lease by Veerappan Voyakarar from the owner one chettiar several years prior to the suit. Veerappa Voyakarar was cultivating the said lands and he died about 25 years prior to the suit. Alaviammal also died two years prior to the suit. The first defendant Ramayyan was the eldest

male member of the joint family and he was managing the properties of the joint family as kartha. After the death of the parents of the parties, each of the respondents would be entitled to an one-fourth share and the first defendant would be entitled to another one-fourth share. However the first defendant made a claim with regard to all the items as owner. He wanted to take advantage of the entry in his name in the tenancy records made under the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act (10 of 1969) (hereinafter referred to as the 'Act') with regard to items 3 to 7 and he caused a notice to be issued in August, 1989 stating as if there had been a partition in respect of the suit items, that items 1 and 2 were given to the first defendant in the said partition. The allegations in the said notice were false. All the items belonged to the joint family of the respondents and the deceased first defendant and they were all enjoyed jointly by all of them. Since the first defendant had claimed exclusive right to the suit properties, the respondents had to file the suit for partition.

2. The first defendant resisted the suit contending inter alia as follows:

It was not true that the parties were members of a joint Hindu family. Even while Veerappa Voykarar was alive the first defendant had left the father and came away separately. At that time, the respondents as well as the mother of the parties were all living with the first defendant. The first defendant spent a lot of money and celebrated the marriages of the respondents and after their marriage, each of the respondents set up separate residence, Even items 1 and 2 of the suit properties were purchased by the first defendant in the name of the parties' mother and therefore, those items were the separate properties of the first defendant. There was no joint family. There was also no joint family property available for partition. About 40 years prior to the suit, the first defendant took suit items 3 to 7 on lease from their owner one Chettiar and he was cultivating those items in his own right as lessee. That leasehold right was not joint family property. As the first defendant had become old and he had no male issue, the respondents were attempting to claim right in the suit properties. They had no right whatsoever in them.

3. The trial court framed the necessary issues and found that the case set up by the first defendant was not true, that the right claimed by the first defendant on the

basis of the entry under Act 10 of 1969 was not tenable and that the lease was for the benefit of the entire joint family. By its judgment and decree dated 15.12.1992, the trial court decreed the suit as prayed for. Even during the pendency of the suit the first defendant died, the present appellants were brought on record as defendants 2 to 10.

4. On appeal in A.S.No. 10 of 1995, the learned Subordinate Judge, Nagapattinam, by his judgment and decree dated 19.1.1996 confirmed the decision of the trial court and dismissed the appeal. Aggrieved the present Second Appeal has been filed by the appellants.

5. The appeal is confined to only items 3 to 7. Notice of motion was ordered in the appeal and the respondents also entered appearance through counsel and by consent, the Second Appeal itself was taken up for hearing.

6. Ms. R.T. Shyamala, learned Counsel for the appellants submitted that in view of provisions of Section 160-A of the Act, the civil court could not decide as to whether a person whose name had been entered as a tenant held the leasehold interest on behalf of the joint family. She relied on the Full Bench decision in *Periathambi Goundan v. District Revenue Officer* : AIR1980 Mad180 . The learned Counsel argued that the authorities constituted under the Act alone had jurisdiction to decide the question raised by her and the remedy if any of the respondents was only under the Act 10 of 1969.

7. On the basis of the above submission made by the learned Counsel, the following substantial question of law is framed for decision in the Second Appeal:

Whether the civil court has no jurisdiction to adjudicate upon the rights of parties when parties claim that the lease entered into by the eldest male member of the family when the entry in the record register under Act 10 of 1969 disclosed only the name of the eldest male member.

8. Mr. V.K. Vijayaraghavan, learned Counsel appearing for the respondents relies on the same decision cited by the learned Counsel for the appellants and contends that it is only the civil court which can decide these matters. He also

relies on the following further decisions:

(1) Avudaithangammal v. Subramanya Thevar and Ors. (1994)1 L.W. 82. (2) Rasappa Gounder v. G.N. Ramaswamy (1975)1 M.L.J. 157. (3) Senga Pillai and Ors. v. Varadarajan and Ors. : (1980)1MLJ424 .

9. It is settled law that a joint family can own leasehold properties also as joint family properties. It is not necessary to quote chapter and verse on this point. Factually, it has been found that the property was taken on lease for the benefit of the joint family. It is the contention of the learned Counsel for the appellants, that there is an express and complete bar of the jurisdiction of the civil court.

10. In Periathambi Goundan v. District Revenue Officer : AIR1980 Mad180 , it was held as follows:

The object of the Act as well as the provisions contained in Section 3(2) make it clear that a Record Officer or the appellate or revisional authority has to determine the following matters:

(1) the survey number or sub-division number, extent and local name, if any, of the land let for cultivation by a tenant;

(2) the name and address of the landowner;

(3) the name and address of the intermediary if any; and

(4) the name and address of the tenant cultivating the land.

It may be prima facie stated that these are the four matters which are required to be determined by the Record Officer or the appellate or revisional authority under the provisions of the Act. However, the necessity to determine these questions may occur in the context of different controversies and not purely on a specific dispute with respect to these particulars alone. Even the determination of the particulars enumerated in Section 3(2) cannot be in isolation in respect of any one particular matter but can only be in the context of preparing the approved record showing the particulars in respect of the land and who is the tenant and who is the landowner. For instance, the statutory requirement for the preparation of a record

under the Act is that the land must have been let for cultivation by a tenant. A controversy may arise whether the land has been let for cultivation by a tenant at all. The question to be considered is, whether the determination of that controversy is within the exclusive jurisdiction of the authorities functioning under the Act so as to bar the jurisdiction of the civil court under Section 16-A. From the language of Section 3(2) it cannot be stated that the determination of that controversy is within the exclusive jurisdiction of the authorities functioning under the Act, though the determination of that controversy is basic and fundamental to the exercise of the jurisdiction by the Record Officer and the other authorities under the Act....Consequently, the controversy as to whether a particular piece of land has been let for cultivation by a tenant or not is one constituting the jurisdictional issue which a Record Officer has to decide before he can determine any other matter under the Act. But that controversy cannot be said to be within the exclusive jurisdiction of the authorities functioning under the Act, because to hold so will enable the statutory authorities to assume jurisdiction by erroneously deciding the jurisdictional issue. If the controversy arises, the authorities functioning under the Act have necessarily to decide the same, because a decision on that controversy alone will determine the jurisdiction of the authorities functioning under the Act. If the decision is that the land has been let for cultivation by a tenant, then the Record Officer will have jurisdiction to determine the further particulars provided for in Section 3(2) of the Act. If, on the other hand, the decision of the controversy is that the land has not been let for cultivation by a tenant, there is no question of there being any tenancy rights in respect of the said land and consequently, there is no question of the Record Officer ascertaining or determining any further particulars in this behalf. Therefore, if such controversy arises, that controversy cannot be said to be within the exclusive jurisdiction of the authorities functioning under the Act, and any determination of that controversy by the authorities can be said to be only incidental to the assumption of jurisdiction by the authorities under the Act.

11. The Full Bench also referred to the decision of Ramanujam, J. in Palanisami v. Ramaswami Gounder, S.A.No. 1496 of 1976, dated 5.1.1977 and has approved the dictum as correctly representing the scope and effect of Section 16-A. That arose from a suit filed for a permanent injunction and restraining the defendants

from interfering with the possession of the suit property by the plaintiff as a cultivating tenant. In that case, the learned Judge held that the civil court's jurisdiction to entertain the suit for injunction cannot be said to have been taken away the rights of the authorities under Section 16-A of Act 10 of 1969.

12. The Full Bench gave some illustrative instance where the civil court's jurisdiction would not be barred. 'A landowner may file a suit for injunction putting forward the contention that the defendant, who was his tenant, had surrendered possession of the land, but subsequently was seeking to interfere with his possession. If the suit is one for a simple injunction only, the question that has to be decided will be, whether the plaintiff landowner was in possession of the suit property on the date of the suit or not, and no other question will arise. All other questions as to the defendant having been previously a cultivating tenant and his surrendering possession of the property subsequently will be only incidental to the determination of the question as to whether, the plaintiff has established that he was in possession of the suit property on the date of the suit or not. Once it is held that the plaintiff-landowner was not in possession of the suit property on the date of the suit, the suit will have to be dismissed irrespective of the question as to whether the defendant was previously a cultivating tenant or not. In such a suit, if the prayer for grant of injunction is coupled with the prayer for declaration that the defendant was not a cultivating tenant or that the defendant had surrendered possession of the property then the civil court may not have jurisdiction to go into the question whether the defendant was a cultivating tenant or not. Similarly, if the cultivating tenant files a suit for 'declaration that he is the cultivating tenant of the land in question and as a consequential relief prays for recovery of possession from the landowner-defendant or an injunction, the primary relief being one of declaration of his status as a cultivating tenant, the other reliefs being consequential, the civil court may not have jurisdiction to decide the controversy with reference to which the primary relief is prayed for. We may also take a case where a landowner institutes a suit for recovery of arrears of rent from his tenant and there is a controversy as to the actual extent of the land in the occupation of the tenant, which has a bearing on the quantum of rent payable by me tenant. In such a case, it cannot be held that the civil court has no jurisdiction to try the suit, since the determination of the extent of land in-the occupation of the tenant, which

is one of the matters coming within the scope of Section 3(2) of the Act, is involved.' The Full Bench also observed that, 'the matters which are within the exclusive jurisdiction of the Authorities constituted under the Act are limited by the provisions contained in Section 3(2) of the Act because those were the particulars which are directed to be included in the approved record to be prepared under the Act.'

13. In *Avudaithangammal v. Subramanian Thevar and Ors.* (1994)1 L. W. 82, Ratnam, J., as he then was, held that the provisions of Act 10 of 1969 are not declaratory of the rights as the cultivating tenants but pertain to the preparation of record.

14. Again Raju, J., in *Arumugam and Anr. v. Sri Dharmapuram Mutt at Dharmapuram* (1996)1 C.T.C. 38, held following the Full Bench decision that the jurisdiction of the civil court was not totally ousted to entertain and decide the issue as to whether lease was under tenancy agreement.

15. No doubt in *S. Balasubramanian v. Shamsu Thalreez and Ors.* 98 L. W. 536, a Bench of this Court observed as follows:

When the Authority constituted under the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act (10 of 1969) had decided the ultimate question under the Act, within his jurisdiction and competency and which he is enjoined to decide in the proceedings under the Act, it is not open to the civil court in a subsequent suit to sit in judgment over the same as if it is an appellate authority and render a different decision.

16. The Full Bench gave only a few illustrations. In my view, the contingency that has arisen in this case is yet another instance where the civil court has undoubted jurisdiction. The civil, court in the instance case, is called upon to decide whether the lease in favour of the deceased first defendant Ramayyan was for the benefit of the joint family consisting of the first defendant and the respondents. It has already been noticed that joint family can hold leasehold properties also as joint family properties. There is abundant material in this case to hold that the lease in favour of Ramayyan was only for the benefit of the entire joint family of which by

the accident of his having been born first, he was the kartha after the death of the father Veerappan Voykaran. It is clear that Ramayyan had schemed to deprive his brothers of their legitimate right in the leasehold interest of items 3 to 7 by trying to rely on the entry in the Record of Tenancy Rights Act 10 of 1969. Factually, it has been found that the leasehold items 3 to 7 are joint family properties. The respondents had produced enough materials to substantiate the same and it has also been accepted by the courts below. No exception can be taken to the factual decision reached by the courts below.

17. The decisions relied on by the learned Counsel for the respondents are for the position that there could be partition of leasehold interest and that position is fairly well settled.

18. Consequently, the substantial question of law framed is answered against the appellants and the Second Appeal is dismissed. No costs. Consequently, C.M.P.No. 12518 of 1996 is dismissed.

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