Subbiah Nadar Vs. Nallaperumal Pillai and ors.

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Court : Chennai

Decided On : Feb-23-1973

Reported in : AIR1973Mad432; (1973)1MLJ459

Judge : Ramanujam, J.

Acts : Cultivating Tenants Protection Act - Sections 3, 3(2) and 4; Madras Cultivating Tenants Protection Act, 1955 - Sections 2; Specific Relief Act, 1963 - Sections 6 and 9

Appeal No. : Second Appeal No. 1328 of 1971

Appellant : Subbiah Nadar

Respondent : Nallaperumal Pillai and ors.

Judgement :

1. The plaintiff in O. S. No. 472 of 1967 on the file of the District Munsif Court. Tuticorin, is the appellant herein. He filed the suit for a declaration that he is the cultivating tenant in respect of the suit properties and for an injunction restraining the defendants, from interfering with his possession and enjoyment of the same. His case was that the suit properties originally belonged to one Nallaperumal, who died leaving two sons, Chinnakannu Pillai and Sundaram Pillai that the suit properties came to be allotted to the share of Chinnakannu Pillai, that after his death his sons the defendants 1 to 4 became owners of the same that he is a cultivating tenant of the suit properties although for the last 40 years since the time of Nallaperumal Pillai, that defendants 1 to 4 with the assistance of defendants 5 and 6 are trying to evict him from the suit lands by force and, that therefore, he was constrained to file the suit for the relief's set out above.

2. It was contended by defendants 1 to 4 that the plaintiff was a lessee under Nallaperumal Pillai and thereafter under their father, that subsequently he became a tenant under them, that the lease being annual was renewed year after year, that on expiry of the lease in Adi 1967 the plaintiff surrendered possession of the lands, and that, thereafter the 4th and 5th schedule lands had been leased out to the 5th defendant. They also denies that the plaintiff is a cultivating tenant. They also alleged that the plaintiff is a rich man owning houses worth more than one lakh of rupees and a costly car and that he is the President of a Panchayat and also doing other business. The 5th defendant filed a written statement supporting defendants 1 to 4 and contending that the plaintiff surrendered the suit properties in Adi 1967 and thereafter the 4th and 5th schedule lands had been given to him on lease by defendants 1 to 4. The 6th defendant also contended that the plaintiff surrendered possession of the suit lands to defendants 1 to 4 and as their servant he is supervising the cultivation of the lands.

3. The plaintiff filed a reply statement disputing that he ever surrendered possession of the suit lands to defendants 1 to 4 at any time and that the alleged lease in favor of the fifth defendant of schedule 4 and 5 lands was not true.

4. The trial Court found on its appreciation of the evidence that the plaintiff is a cultivating tenant only in respect of plaint schedules 1 and 2 and that the plaintiff had not surrendered possession of the suit lands as alleged by the defendants. It therefore, granted a decree for a declaration that the plaintiff is a cultivating tenant of plaint schedules 1 and 2 and for a permanent injunction in respect of the said schedule lands. It also granted an injunction in respect of other schedules on the ground that the plaintiff is entitled to continue in possession till he is evicted by due process of law.

5. On appeal by the defendants, the lower appellate Court had held that the plaintiff is not a cultivating tenant in respect of the plaint schedules 1 and 2 for the reason that he had sub-leased a portion of the leasehold property and that no personal cultivation has been carried on by the plaintiff. It also held that the plaintiff is not entitled to an injunction protecting his possession on the ground that possession has been taken by defendants 1 to 4 long before the institution of the suit and that the plaintiff was not in possession of the suit lands on the date of the suit.

6. In this second appeal it is contended by the plaintiff-appellant that the findings rendered, by the lower appellate Court are legally unsustainable. It is urged that the sub-lease alleged has not been duly proved and that, in any event a sub-lease per se will not disentitle him to claim the benefit of the Cultivating Tenants Protection Act (hereinafter referred to as the Act). The plaintiff also questions the finding of the lower appellate Court on the question of personal cultivation on the ground that the lower appellate Court had considered irrelevant and extraneous materials such as his social and financial status and based its finding on those materials. It is also contended that even if the plaintiff is not a cultivating tenant in respect of items 1 and 2 he cannot be forcibly evicted from those lands except under due process of law and, therefore he is entitled to a permanent injunction as sought for by him in relation to all the suit lands.

7. Before proceeding to consider the above contentions of the appellant, it is necessary to set out a few facts. The suit properties consist of five schedules. Schedule 1 comprises 44.51 acres of nanja lands. Schedule 2 consists of 136 acres forming part of tank and tank bed lands. Schedule 3 is 12.97 acres of tope. Schedules 4 and 5 consist of 52 and 175 acres of grazing lands respectively. The plaintiff claims that the lands, comprised in all the five schedules have been leased out to him for Rs. 2,000 a year, which the defendants dispute. But we are not concerned here with the quantum of the lease amount. The trial Court has held that the plaintiff is a cultivating tenant of only schedules 1 and 2. It rejected the claim of the plaintiff that he is a cultivating tenant in respect of the other schedules also. The finding that the plaintiff is not the cultivating tenant of schedules 3 to 5 has not been challenged by the plaintiff by filing an appeal before the lower appellate Court. Therefore, that finding has become final. The question whether the plaintiff is a cultivating tenant arises in this appeal only in respect of schedules 1 and 2. The lower appellate Court has given mainly two reasons for holding that the plaintiff is not a cultivating tenant. One is that he has not personally cultivated the lands and the other is that he has sub-leased portions of the suit lands.

8. On the question of personal cultivation the following considerations had been taken into account by the lower appellate Court. The plaintiff is the president of Milavittan Panchayat since April 1965 and a member of Tuticorin Panchayat Union. He is admittedly 70 years old. In his capacity as the President he will have to necessarily attend to the affairs of the Panchayat. Admittedly he has taken up contracts from the Panchayat Union for laying road and for sinking a well. He is also the President of Jaggery Manufacturers Association of Milavittan for the last 15 years. He is also running a firewood shop in Tuticorin. He has himself purchased and sold large extents of lands from 1962 to 1967. He also owns four houses and a car. He owns ten acres in a joint patta in Vedanatham and another 60 acres in that village are in the names of his sons. 2 1/2 acres are in the name of his wife in the same village. His son also own 11 acres of nanja lands in Kalmaduvu. He also owns 18 acres in Melavittan village which are situate on the east of the suit first schedule lands. Another 24 acres of lands had been purchased by him in the name of his sons in the same village in which he has sunk a well. He has also purchased lands in the name of his wife in Melavittan village. He also owns 16 acres of saltpans in Pattanamarudur. In the light of these circumstances the lower appellate Court found that the plaintiff had not been doing personal cultivation in the lands mentioned in schedules 1 and 2 which are of the extent of about 180 acres.

9. Section 2(aa) of the Madras Cultivating Tenants Protection Act. 1955 defines a 'cultivating tenant' as a person who carries on personal cultivation on such land, under a tenancy agreement, express or implied, and Section 2(ee) provides that a person is said to carry on personal cultivation on a land when he contributes his own physical labour or that of the members of his family in the cultivation of that land. In view of these provisions the plaintiff has to establish that he has contributed his own physical labour or that of the members of his family in the cultivation of the suit lands so as to become a cultivating tenant as defined in the Act. The plaintiff has examined himself as P.W. 1 and a neighboring owner as P.W. 2 and some others to speak to the fact that he and the members of his family contributed their physical labour in the cultivation of the lands. P.W. 1 in his chief-examination has stated--

'I plough the land, I form bunds for the land. My son Mariappan also forms the bunds. My laborers cannot attend to that work. My womenfolk would attend to removing of the weeds. Myself, my sons and my laborers remove green leaves and work in the soil by stamping my womenfolk attend to sowing. I have seven daughters and my wife. Except those who are married the other daughters work in the fields..... I used to prepare mixture for spraying. My so Mariappan used to spray them in the field. I used to mark the areas to be harvested by each. I used to work in the thrashing floor also My son and myself attend to the spraying of pesticides. My wife and my womenfolk pluck the brinjals and chilies.' In cross-examination he has, however, admitted that all his daughters are married and they are living with their husbands. From the evidence it is clear that out of his six sons, three are studying in the High Schools and another son is a student in a College at Tuticorin and they are stated to be less than 17 years of age. Plaintiff's another son is admittedly living in Vedanatham and not in the suit village. The only son who is living with the plaintiff is Mariappan. Even the said Mariappan, according to the defendants, owns and conducts a grocery shop at Vedanatham village, and he is not working in the suit fields as alleged by the plaintiff. The plaintiff, however, does not deny that Mariappan is running grocery shop at Vedanatham but he merely gives an evasive reply and that he does not remember if Mariappan conducted the shop. Mariappan was also not examined in court to speak to the fact that he actually worked in the suit fields. Having regard to the above

circumstances, the lower appellate Court very rightly disbelieved the assertion of the plaintiff that his sons and daughters contributed physical labour in the cultivation of the lands. On the question as to whether the plaintiff had in fact contributed physical labour in the cultivation of lands, the status of the plaintiffs, his old age and the extensive area he happens to possess both as owner and as lessee have been rightly taken note of by the lower appellate Court for holding that it is quite improbable that the plaintiff would have contributed physical labour. The suit lands are 180 acres in extent. In addition the plaintiff his wife and sons admittedly own large extents of land in the suit village as well as in two other villages. It has also been admitted by P.W. 1 that he got 400 acres of grazing lands on lease inclusive of the grazing lands shown in suit schedules 4 and 5. It has also been found that the plaintiff is the President of the Panchayat. He is also a member of the Panchayat Union, Tuticorin. He is doing contract work for the said Panchayat Union. He is also the President of the Jaggery Manufacturers Association for the last 15 years and the said association is conducting two grocery shops which are looked after by the plaintiff as president of the association. He is also running a firewood shop in Tuticorin for a long time. He has also been taking contracts of cutting and sale of odai trees. He owns four houses, a car, a revolver and a gun. From these circumstances one can reasonably infer that the plaintiff could not have contributed physical labour in the cultivation of the suit lands. It is quite unbelievable that the plaintiff actually ploughed the lands as alleged by him. The reasonable inference is that the plaintiff would have employed only hired labour for the cultivation of the lands.

It is true, the plaintiff has examined P. Ws. 2 to 4. P.W. 2 is a member of the Melavittan Panchayat. His evidence is that he owns a garden north of the second schedule property, that he has seen the plaintiff ploughing the lands and sowing the seeds and assisting his men during transplanting and thrashing of the crops. The evidence of P.W. 2 has not been accepted by the lower appellate Court on the ground that it is not only improbable but it quite interested as P.W. 2 is a member of the Panchayat of which the plaintiff is the President. P.W. 3, the Grama Sevak has stated that the plaintiff is having direct cultivation of the nanja lands and that he has not sublet the same and that Mariappan used to spray the insecticide solution and the plaintiff used to demarcate the line for planting. He also says that the plaintiff would also assist the laborers in lifting bundles and his wife used to gather chilies. Even if the evidence of this witness is accepted, it cannot establish the plaintiff's contribution of physical labour in the cultivation. Assisting in the lifting of bundles and demarcation of line for planting sapling's cannot be said to be a substantial contribution of physical labour in cultivating the lands. P.W. 4 is the village munsif of Melavittan for about two years. He states that P.W. 1 and his family members worked in the fields, and at the time of harvesting P.W. 1 would help in lifting bundles with spears. He has further stated that P.W. 1's wife and children would remove the weeds and his children would spray pesticides over vegetable crops and the womenfolk would gather brinjals and chilies. Having regard to the circumstances pointed out above the evidence of the village munsif cannot be accepted, and even if accepted, the acts attributed to the plaintiff and the members of his family cannot at all be said to be substantial contribution of physical labour in the cultivation of lands. In my view, the evidence relating to the contribution of physical labour by the members of his family in the cultivation of the suit lands is quite artificial and has rightly been rejected by the lower appellate Court. Even otherwise the appreciation of the oral evidence by the lower appellate Court cannot be interfered with by this court sitting in second appeal. I have to, therefore, uphold the finding of the lower appellate Court that the plaintiff is not a cultivating tenant as defined in the Act.

10. Even assuming that he is a cultivating tenant as a result of his subletting portions of the suit properties to others he has been held to be disentitled to the benefits of the Madras Cultivating Tenants Protection Act. The plaintiff has denied that he has sublet any portion of the suit lands as alleged by the defendants. But the returns filed by him to the Agricultural Income-tax Officer. Exs. B-13 to B-19 show that he has specifically admitted therein and he has subleased portions of the suit lands. The plaintiff's explanation that he merely put his signature in the returns and the returns were filled up by others has not rightly been accepted by the lower appellate Court. Further the admission that he has subleased portions of the suit lands is also contained in the statements Exs. B-43 and B-44 given to the Agricultural Income-tax Officer. Therefore, the plaintiff's assertion that he has not subleased any portion of the lands cannot be countenanced.

11. The learned counsel for the appellant would, however, contend that the sublease is not a specific ground for eviction under Section 3 of the Act and that if only the lands are altogether left fallow without cultivation the disqualification contemplated by Section 3(2)(b) of the Act would arise. It is true, the sublease has not been made directly and specifically a ground of eviction under Section 3(2)(b) but a close reading of the section suggests that the liability for eviction would arise if the cultivating tenant has altogether ceased to cultivate the land taken on lease. A tenant may altogether cease to cultivate the land either by leaving the lands fallow without cultivation or subleasing the lands and parting with possession of the same in favor of third parties. I am, therefore, of the opinion that subletting being one of the acts by which the tenant could not himself cultivate the lands, that will stand attracted by clause(b) of Section 3(2).

This is what has been held in Venkatarama Iyer, v. Assan Md. Rowther (1961) 2 MLJ 277. In that case, Srinivasan J. observed that by virtue of sublease, the tenant may render himself liable to eviction under Section 3(2)(a) of the Act. Ramachandran Iyer, C. J. in Perumal Muthiriar v. Ramachandra Iyer. (1963)2 MLJ 205 also came to the conclusion that even if a cultivating tenant grants a sublease of a part of what has been demised to him, he would be liable for eviction under the provisions of Section 3 (2)(b) read with Section 4 of the Act. In Narayana Padayachi v. Sundaralingam : (1966)2MLJ577 Veeraswami J. (as he then was) held that the expression 'altogether ceased to cultivate the lands' occurring in clause(b) of Section 3(2) has reference not merely to the physical act of stopping cultivation but to an intention never to revert to cultivation of the land and that the intention has to be gathered from the facts and circumstances of each case including the fact of actual cessation of cultivation over a particular period. Anantanarayanan C. J. in Nisa Ruby Jacoba v. Anthonisami Udayar : (1970)1MLJ166 , however, took the view that the Act does not make an unauthorized sublease by a cultivating tenant a ground for eviction by the landlord and that the ground for eviction does not depend on possession in the legal sense but on actual cultivation or cessation of cultivation and that it is only in cases where it is established that the tenant has altogether ceased to cultivate the land either in whole or in part by virtue of the sublease, Section 3 (2)(b) could be invoked.

12. Therefore, if on the facts it is established that the plaintiff has actually subleased a portion of the suit lands and by such sublease he had altogether ceased to cultivate those lands, he would loose the benefits given to a cultivating tenant under the Act. As already stated Exs. B-14 to B-19 and B-43 and B-44 contain admissions on the part of the plaintiff that he had subleased portions of the suit lands.

13. But the learned counsel for the appellant would contend that the courts below were in error in allowing evidence to be adduced by the defendant on the question of sublease especially when such a plea has not been put forward in his written statement. If the defendant had specifically pleaded the alleged sublease as a ground to disentitle the plaintiff to the benefits under the Act, he would have had the opportunity to explain the alleged admissions contained in the above documents. He refers to the decision in Bhagawati v. Chandramaul : [1966]2SCR286 in this connection. In that case it has been observed--

'There can be no doubt that if a party asks for a relief on a clear and specific ground and in the issues or at the trial no other ground is covered either directly or by necessary implication, it would not be open to a party to attempt to sustain the same claim on a ground which is entirely new.'

Again in Bhagat Singh v. Jaswant Singh AIR 1966 SC 1861, the Supreme Court stated that where a claim has never been made in the defense presented, no amount of evidence can be looked into upon a plea which was never put forward. But it is not possible to invoke the principle enunciated in those cases on the facts of this case because the onus is on the plaintiff to prove that he is a cultivating tenant entitled to the benefits of the Act and, therefore, if as a matter of fact the plaintiff has subleased the lands, evidence as to the factum of sublease can be adduced by the defendant to show that the plaintiff is not entitled to the benefits of the Act even at the stage of cross-examination of the plaintiff. As a matter of fact in this case, the documents adduced are all his own admissions and statements in some other proceedings and he had enough opportunity to explain the admissions contained in those documents. It is further seen that after the documents had been put to him in cross-examination further cross-examination seems to have been taken up more than 3 months thereafter, so that he had enough time to rebut the evidence relating to the sublease and that the plaintiff did not object to evidence being adduced on the question of sublease at the trial. I therefore find that the evidence as to sublease has properly been entertained as relevant. The finding of the lower appellate Court that the plaintiff has subleased portions of the suit lands has to be accepted in the absence of the plaintiff's explanation regarding the admissions contained in the documents.

14. Then the further question is as to the plea of surrender. The trial Court has held that the surrender by the plaintiff is not duly proved. The lower appellate Court also agrees with that finding. That finding being one of fact cannot be interfered with in second appeal. But the lower appellate Court has held that even though there was no voluntary surrender by the plaintiff, the defendants had taken forcible possession of the leasehold properties and that defendants 1 to 5 are in possession of the suit properties on the date of suit. The finding on the question of possession is also one of fact and has, therefore, to be accepted. The lower appellate Court refers to the various circumstances to base its finding that the defendants 1 to 5 would have taken possession of the properties before the filing of the suit by the plaintiff. It cannot be said that the finding as to possession is not based on any evidence at all. It is well known that sufficiency of the evidence is not a matter for this court to consider in second appeal. Therefore, this court has to proceed on the basis that defendants 1 to 5 had taken possession of the suit properties forcibly from the plaintiff. The learned counsel for the plaintiff contends that defendants 1 to 5 could not have in fact taken possession of properties as it is most unlikely that the plaintiff would have kept quiet when they are alleged to have taken possession without reference to or the consent of the plaintiff. But the question of possession being one of fact. I cannot disturb that

finding on some probabilities.

15. The question then is whether the plaintiff will be entitled to an injunction in respect of all the suit properties on the ground that if at all the defendants 1 to 5 could take possession of the properties only through a court of law and not forcibly. The submission of the learned counsel for the plaintiff is that though the lease in favor of the plaintiff has been terminated and though he may not be a cultivating tenant he cannot be dispossessed forcibly, and the right of the lessor is only to evict him under the due process of law. The learned counsel refers to Section 6 of the Specific Relief Act. 1963 corresponding to the old Section 9 in support of his stand. The said provision enables a person dispossessed of immovable property otherwise than in due course of law to recover possession thereof. Dealing with the scope of the corresponding provision in Section 9 of the old Act it has been held by a Bench of this court in B. Venkayya v. K. Sateyya, ILR 37 Mad 281 AIR 1914 Mad 296 that the expiration of the lease did not necessarily imply the expiration of the lessee's right of possession and that the lessee was entitled to a decree for possession as against the persons who dispossessed him. In Rudrappa v. Narasing Rao, ILR(1927) Bom 213, a tenant holding over after the expiry of the period of tenancy was dispossessed without his consent by the landlord. The tenant then brought a suit for possession against the landlord under Section 9 of the Specific Relief Act. It was held that the plaintiff was not liable to be evicted by the landlord proprio motu and that he was entitled to a decree for possession. In K. K. Verma v. Union of India : AIR1954Bom358 , Chagla, C. J. speaking for the Bench expressed--

'Under the Indian law, the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical and that possession is protected by statute. Under Section 9 of the Specific Relief Act, a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to court under Section 9 and claim possession against the true owner.'

16. A slightly different note was been struck in Rahmatullah v. Md. Hussain : AIR1940All44 . Iqbal Ahmad, J. has said that where a tenant after the termination of the lease continues in possession of the leasehold premises without the consent of the landlord his position is no better than that of a mere trespasser and he can be turned out of the same at any time without any notice to quit. I am inclined to take that the preponderance of judicial opinion is that the possession of a tenant of the demised properties even after the expiry of the lease period is entitled to protection and that if he is dispossessed without due process of law. Section 9 can be invoked by such a tenant to recover possession even if the person who dispossessed him is the landlord. But in this case, the suit is not one for possession based on Section 6 or 9 of the Specific Relief Act, and it is only for a declaration that he is a cultivating tenant and for an injunction. It is not therefore, possible to invoke the said section and to grant relief of possession to the plaintiff in this suit. I have to therefore, agree with the view taken by the lower appellate Court.

17. The result is the second appeal fails and is dismissed with costs. No leave.

18. Appeal dismissed.