Sowrirajan Vs Sundaram and others

Court: Madras High Court

Date of Decision: Dec. 17, 1997

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 27
Constitution of India, 1950 â€" Article 141
Evidence Act, 1872 â€" Section 114, 35
Madras Estates Land Act, 1908 â€" Section 181
Specific Relief Act, 1963 â€" Section 41
Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 â€" Section 16(A)
Transfer of Property Act, 1882 â€" Section 105, 52, 76

Citation: (1998) 1 CTC 247

Hon'ble Judges: K. Sampath, J

Bench: Single Bench

Advocate: Mrs. Prabha Sridevan, for the Appellant; Mr. S. Ramamurthi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The plaintiff who succeeded before the trial court and lost before the lower appellate court is the appellant in the second appeal. The suit

properties are two in number. They are 1.60 acres of wet lands in R.S.No.41/6 and 0.52 acre of wet lands in R.S.No. 42/3, totally of an extent of

2.12. acres in Pavattakkudy Village, Nannilam Taluk, Nagapattinam District.

2. The suit was filed on 10.5.1995 by the appellant against the respondents for a permanent injunction restraining them, their men, servants, agents,

etc. from interfering with his peaceful possession and enjoyment of the suit properties or trespassing upon the same till the appellant was evicted by

the competent court under due process of law.

3. The material averments in the plaint are as follows:

The second respondent was in possession and enjoyment of the suit properties for the past several years under some sale agreement with the five

sons of one Varadarajan. Under Ex.A-1 dated, 15.5.1991 there was a lease agreement entered into between the second respondent and the

appellant as per the provisions of the Tamil Nadu Cultivating Tenants Protection Act (Act 25 of 1955), as per the terms of which it was agreed

that the appellant would pay or give 32 kalams of samba paddy and 12 bundles of straw for each fasli. Ever since the date of lease the appellant

had been in possession of the properties contributing his own physical labour and promptly delivering the rent to the second respondent and also

paying the land revenue to the Government. On 20.3.1992 the appellant paid the rent for fasli 1401 as evidenced by Ex.A- 3, Exs.A-7 and A-8

are the kist receipts for faslis 1401 and 1402. On 13.4.1993 both the respondents came and told the appellant that he should not cultivate the

lands for the ensuing fasli. The first respondent told the appellant that under some court decree the suit properties had been allotted to his share and

that of Kamala and her two sons and four daughters, all of whom were in Singapore. The second respondent also told the appellant to stop work,

as otherwise both would forcibly trespass upon the land and commence cultivation. The appellant had already filed a petition No. 26/93 under

Ex.A-4 before the Record Tahsildar impleading the second respondent and Ramaswamy, Radhakrishnan, Perumal, Vadivel and Kasinathan, all of

whom were sons of Varadarajan and the title-holders of the lands, to records his name as a tenant. In those proceedings, notice was ordered

under Ex.A-5 dated, 23.4.1993 and it stood posted on 10.5.1993.

The second respondent was the landlord as defined under Act 25 of 1995 and he was entitled to evict the appellant invoking the provisions of the

said Act. The appellant had a right to be in possession as a cultivating tenant. It was a statutory right and it had to be protected. There was no

denial of title by the appellant. The respondents were conspiring and colluding and jointly advancing the threats. A single suit had been filed as

common questions of law and facts would arise. The cause of action for the suit arose on 15.5.1991 when the lease deed Ex.A-1 was executed

and on 13.4.1993 when the respondents advanced their threats to commit trespass.

4. The second respondent herein was the first defendant. He filed a written statement contending as follows:

The sale agreement between him and the sons of Varadharajan was true, The lease agreement Ex.A-1 was also true. The terms contained therein

were true. The appellant was in possession ever since fasli 1401 cultivating the lands. The receipts Exs.A- 2 and A-3 were issued by him to the

appellant. It was not true to say that he along with the second respondent told the appellant not to cultivate the lands. He was also not aware as to

on what basis the second respondent threatened the appellant. For himself he never threatened the appellant. The Record Tahsildar, Nannilam,

recorded the appellant''s name as tenant. He was a party to the proceedings. There was no conspiracy with the second respondent nor was there

any threat. He had been unnecessarily dragged to the court and he should be exonerated.

5. The first respondent who was the second defendant in the suit filed a written statement contending as follows:

The suit had been filed at the instigation of the second respondent. The lease agreement Ex.A-1 between the second respondent and the appellant

was false and concocted and was not valid. In respect of the suit properties and other properties there was a partition suit in O.S.No.611 of 1982

filed by Uthirapathy in which this respondent was the 9th defendant. There was a preliminary decree passed and final decree application was also

made. It had been pending for ten years. There was a Commissioner appointed for dividing the properties. He inspected the properties and

submitted his report suggesting the allotment of the suit properties to this respondent and defendants 10 to 16 in the suit. The Commissioner''s

report had been accepted by the Court and final decree had also been passed. If really the appellant had any right he could have informed the

Commissioner then itself. The suit had been filed with ulterior motive to defend the right of this respondent, which had accrued to him, after ten long

years of litigation. No particulars of date or year regarding the alleged agreement between the appellant and the second respondent had been

given. The allegation that the appellant was in enjoyment pursuant to the agreement was false. Any such agreement did not bind this respondent.

The appellant claimed right through somebody who had no right over the property. The suit for permanent injunction on the basis of any such lease

was not maintainable in law. Defendants 1, 2, 4 and 8 in O.S.No.611of 1982 had set up the appellant to file the suit. Even after the allotment of

the suit properties to this respondent and defendants 10 to 16 in O.S.No.611of 1982, they had not been made parties to the proceedings before

the Record Tahsildar and therefore the petition before the Record Tahsildar was not maintainable. Persons who were necessary parties had not

been made parties and proceedings had been initiated against parties who had no interest in the properties. This would itself show that the

appellant and the second respondent and others colluded and created documents. Neither the appellant nor the second respondent had any right

or possession in respect of the suit properties. It was also false to say that the second respondent was a landlord as per the provisions of Act 25 of

1955. The appellant was not entitled to any legal relief. The collusion alleged between the respondents was also false. The alleged lease agreement

dated 15.5.1991 having came into existence during the pendency of O.S.No. 611of 1982 was not valid or enforceable. The second respondent

not having obtained any right in the property, the appellant claiming right through somebody who had no right was not entitled to the relief of

injunction. The suit had been filed with concocted records against true state of affairs and with ulterior motive to make unlawful gain with a view to

cause hardship and loss to this respondent. The suit had been filed with full knowledge of the prior court proceedings and the same was liable to be

dismissed with exemplary cost.

6. The trial court framed the following issues:

(1) Whether the plaintiff is in possession as cultivating tenant pursuant to the lease agreement dated 15.5.1991 with the first defendant?

(2) Whether the second defendant is entitled to interfere with plaintiff''s possession?

(3) Whether the defendants attempted to interfere with plaintiff''s possession on 13.4.1993? and

(4) To what relief plaintiff is entitled?

Exs.A-1 to A-8 were marked and P.Ws.1 and 2 were examined on the side of the appellant. Exs.B-1 to B-8 were marked and D.Ws.1 and 2

were examined on the side of the respondents. The learned District Munsif found that the appellant was a cultivating tenant inducted into

possession pursuant to the agreement Ex.A-1 dated 15.5.1991 executed by the second respondent herein. The trial court also found that the

appellant had not established that the second respondent was trying to interfere with his possession, but the first respondent might have gone to the

suit property with the idea of interfering with the appellant''s possession on 13.4.1983. The learned District Munsif relied on the judgment of the

Supreme Court in Munusamy Achary v. Rajammal Ammal and others 1977 (II) M.L.J. 1 (SC) and held that even if the first respondent and others

were the owners, the appellant could not be thrown out except by due process of law. So holding the trial court decreed the suit as prayed for.

The first respondent filed an appeal in A.S.No.58/95 before the Additional Subordinate Judge''s Court, Mayilanduthurai, In the appeal he filed

applications I.A.Nos. 37 and 38 of 1996 under Order 41, Rule 27 of the Code of Civil Procedure. The applications were allowed and Exs.B-9 to

B-12 were marked. The learned Additional Subordinate Judge framed two points for consideration.

(1) Whether the plaintiff is entitled to permanent injunction as prayed for in the plaint? and

(2) to what relief the second defendant/appellant was entitled?

The learned Subordinate Judge held as follows:

The suit properties were allotted to the first respondent and defendants 9 to 16 in the partition suit O.S.No.611of 1982. The appellant had to

establish that the second respondent entered- into suit agreement only with the true owners and this the appellant had not established. The

agreements Exs.B-1 to B-5 had come into existence during the pendency of the partition suit, viz. O.S.No.611of 1982 and at the time Exs.B-2

and B-3 came into existence it had been decided that Varadharajan''s sons had no right in the properties. The appellant had not established as to

how Varadharajan''s sons could enter into agreements with the second respondent during the pendency of the partition suit and after the passing of

the preliminary decree. These agreements would not bind the true owners, viz. the first respondent and defendants 10 to 16 in O.S.No. 61 lof

1982 and consequently, the lease agreement Ex.A-1 also would not bind the true owners.

The learned Subordinate Judge relied on V. Ratnam v. S.S. Arunachalam Chettiar90 L.W. 633 which was followed in Aavudaitha Nagammal v.

Subramani Thevar1994 (1) L.W. 82 and held that co-owners could not claim ownership of an identifiable part of common properties till a final

decree was passed and none of the co-owners could project any title to a defined portion and that there could be no valid lease by one co-owner

of a specific portion to another co-owner. The learned Subordinate Judge also rejected the proceedings before the Record Tahsildar as the real

owners had not been made parties and also did not appear. The learned Subordinate Judge also found that the appellant was aware that the first

respondent branch were the owners as would be evident from the notice Ex.B- dated 16.4.1993 sent by the second respondent to the first

respondent and five others. Still the second respondent did not insist on the first respondent and others being impleaded in those record

proceedings. The appellant therefore could not claim right pursuant to Ex.A-6 record.

The learned Judge also relied on Moravaneni Veerayya and Others Vs. Sree Raja Bommadevara Venkata Bhashyakaralarao Bahadur, that the

proceedings would be hit by the doctrine of lis pendens. The second respondent had deliberately suppressed that the properties had been allotted

to the family of the first respondent. The second respondent and the appellant colluded and at the instigation of co-owners not having any right,

brought about Ex.A-6 record and this would not bind the first respondent. Consequently, the learned Subordinate Judge allowed the appeal and

dismissed the suit by his judgment and decree dated 4.4.1996.

7. The learned Counsel appearing on both sides submitted elaborate arguments and supported them with several decisions.

8. Mrs. Prabha Sridevan, learned Counsel for the appellant, submitted that the appellant is a cultivating tenant, that his name has been recorded as

a tenant under the Record of Tenancy Rights Act (Act 10 of 1969) under Ex.A-6 on 31.5.1993 and that he cannot be thrown out except under

due process of law. She also submitted that when the original agreement Ex.B-1 was entered into, final decree had not been passed. According to

the learned Counsel, the first appellate court has not considered the question of possession at all. The right attaches to the land and in support of

her submission, she relied on the following decisions:

(1) G. Ponniah Thevar Vs. Nalleyam Perumal Pillai and Others, ; (2) S.V. Venkatarama Reddiar Vs. Abdul Ghani Rowther and Others, ; (3)

Avudaithangammal v. Subramania Thevar and Murgaiah Thevar 1994 (I) L.W. 82; (4) Muniyandi Vs. Rajangam Iyer, Ganesa Vanniar v. K.

Vengusamy and others 91 L.W. 292; (6) Chandrasekaran Vs. Kunju Vanniar and Others, ; (7) Karthiyayani Amma Vs. Govindan, ; (8) Smt.

Sarladevi Bandawar Vs. Shailesh Namdeo, ; (9) Sri Ram Pasricha Vs. Jagannath and Others, ; (10) Mahesh Bhagat Vs. Ram Baran Mahto and

Others, and (11) Lakshmilkanthan and others v. Thiruvengadam and another 1992 (I) MLJ 297.

9. The learned Counsel for the first respondent Mr. S. Ramamurthi contended as follows:

(1) This is a clear case of fraud and collusion between the second respondent and the appellant. The first respondent has specifically pleaded fraud

and collusion in paragraphs 6 and 9 of the written statement. The appellant and the second respondent knew even in 1986 that there were other

sharers. In the final decree proceedings, a Commissioner was appointed and the Commissioner also visited the property for finding out a mode of

division. Still the first respondent and defendants 10 to 16 in O.S.No.611of 1982 were not made parties before the Record Tahsildar. Ex.B-4

dated 16.4.1993 gave the lie direct to the case in the plaint that all the landowners were made parties in the record proceedings and the appellant

cannot escape by saying that Ex.B-4 notice emanated from the second respondent. On the question of fraud, the learned Counsel relied on the

following decisions:

(a) S.P. Chengalvaraya Naidu (dead by L.Rs. v. Jagannath (dead) by L.Rs. & others1994 (I) L.W. 21 SC; (b) Gowrishankar and Another Vs.

Joshi Amba Shankar Family Trust and Others, ; (c) Vishwa Vijay Bharati Vs. Fakhrul Hassan and Others, and (d) S. Balasubramanian v. Shamsu

Thalreez and others, 98 L.W. 536.

and submitted that when fraud was made out, the person who had participated or engineered the fraud could not have any relief in a court of law.

(2) Ex.B-1 agreement between the second respondent and the heirs of Varadharajan came into existence while the partition suit O.S.No.611 of

1982 was pending and Exs.B-2 and B-3 came into existence after the preliminary decree. These documents were all clearly hit by the doctrine of

lis pendens and in support of this argument, the learned Counsel relied on the following decisions:

(a) Veerayya v. Venkata Bhashyakaralarao AIR 1936 Mad. 887 and (b) Ganesa Vannia v. K. Venguswamy and others1978 (II) MLJ 393 : 91

L.W. 292.

(3) The parties were co-owners and even assuming that there was a valid lease created by the second respondent in favour of the appellant, the

co-owners were not bound by either the agreement for sale or the alleged agreement for lease. In support the learned Counsel placed reliance on

the following decisions:

(a) V. Ratnam and others v. S.S. Arunachalam Chettiar and others90 L.W. 633 and (b) Avudaithangammal v. Subramania Thevar and Murugaiah

Thevar with eight others1994 (I) L.W. 82.

The learned Counsel also submitted that one fact distinguished the present case from other cases, in that the lease was subsequent to the

proceedings for partition.

(4) The proceedings under the Tamil Nadu Record of Tenancy Act (Act 10 of 1969) were not conclusive when the question of jurisdiction was

involved, that is to say, if the very letting out was disputed, the Civil Court could very well step in and decide the question and in support the

learned Counsel relied on the Pull Bench decision in

(a) Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Others, , and (b) Arumugam and Another Vs. Sri. Dharmapuram

Mutt, and (c) Judit Victor Ignace and Another Vs. Kothandaraman and Another, .

(5) In Ex.B-3, the second respondent had wanted only his money back. He did not want a sale deed to be executed in support of the properties

subject matter of the agreements Ex.B-1 to B-3. There could be no injunction de hors section 53A of the Transfer of Property Act.

(6) Factually it had not been established that the appellant was in possession on the date of the suit. This would be evident from a comparison of

his deposition with the report of the Advocate Commissioner. When the appellant had not established his possession, he would not be entitled to

any injunction.

(7) For all practical purposes the appellant was only a trespasser and it is settled law that a trespasser''s possession cannot be protected. The

following decisions are relied on for this proposition:

(a) Alagi Alamelu Achi Vs. Ponniah Mudaliar, ; (b) Premji Ratansey Shah and Others Vs. Union of India (UOI) and Others, ; (c) Mahadeo

Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, and (d) D.T.T.D.C. v. M/s D.R. Mehara and Sons, .

10. Before adverting to and dealing with them, let us have a look at the facts leading to the second appeal. A genealogy was made available. It was

stated that the same was based on Ex.B-4 notice dated 16.4.1993 issued on behalf of the second respondent to the first respondent and five

others. I have made slight modifications and come up with a more detailed genealogy, which is as follows:

GENEALOGY

(Ranks of the parties given as per the ranks given in O.S. No. 611 of 1982 on the file of the

District Munsif, Mailaduthurai)

Packiri Pandithan

|

W1_____W2

| |

_____ |

| | |

Vardarajan Subramanian Uthirapathi

(Plaintiff)

| |

Veerammal Saradambal Kamala

(D-1) (W1) (S2) D-10

| |

| Sundaresan |

| (D-9) |

| |

| _____

| | | | | |

| Vijayalakshmi Kadiresan Rajalakshmi Devi Pushpa Nagarajan

| (D-11) (D-12) (D-13) (D-14) (D-15) (D-16)

| Chinnaiyan Mohankumar

|_____

| | | | |

Ramasami Radhakrishnan Perumal Vadivelu Ulaganathan Kasinathan

(D-2) (D-3) (D-4) (D-5) (D-6) (died) (D-7)

Leela (D-19)

10. a. Uthirapathi, step brother of Varadarajan and Subramanian, all three sons of one Packiri Pandithan. filed a suit O.S.No.611of 1982 against

the heirs of Varadarajan and Subramanian for partition and separate possession of his 1/3rd share in several items of properties. The first

respondent herein was the 9th defendant in that suit. The present suit items were items 4 and 5 in that suit. Under Ex.B-1 dated 29.5.1986 the

second respondent herein entered into an agreement with Ramasamy, Perumal and Vadivelu, who were all defendants 2 to 5 in O.S.No.611 of

1982, all being sons of Varadharajan for purchasing 1 acre 26-2/3 cents in R.S.No.41/6 for Rs. 15,960. The second respondent also paid an

advance of Rs. 8,460 on that date. In the meantime preliminary decree was passed in the suit O.S.No. 611of 1982 on 30.11.1986 declaring

Uthirapathy"s 1/3rd share in the suit properties and 1/3rd share in the income. According to the second respondent, even on the date of Ex.B-1

possession was handed over to him. It should be noted that the present appellant is the paternal uncle of the second respondent and he has also

attested Ex.B-1. According to the second respondent, as per his notice Ex.B-4 dated 16.4.1993 in the present proceedings, after the filing of the

partition suit Uthirapathy and the first respondent threatened to trespass upon the property, subject matter of Ex.B-1 and therefore he lodged a

caveat in caveat No. 28 of 1986 on 26.9.1986 on the file of the District Munsif"s Court, Mayilanduthurai. Notwithstanding the alleged trespass,

the second respondent entered into a further agreement Ex.B-2 on 23.9.1987 with Radhakrishnan, another son of Varadharajan to purchase 33

1/3 cents in R.S.No.41/6 for Rs. 4,200. He also paid an advance of Rs.2,500. He entered in yet another agreement under Ex.B-3 on 8.3.1988

with Kasinathan, yet another son of Varadharajan, to purchase 52 cents in R.S.No.42/3 for Rs. 6,552. He paid advance of Rs. 5,885. In respect

of Ex.B-1 time was being extended from time to time by further payments and it was finally extended till 31.3.1988. In respect of Ex.B-2 time was

similarly extended till 31.8.1988. So also in respect of Ex.B-3 it was extended till 8.3.1989. According to the second respondent, pursuant to the

agreements, Exs.B-2 and B-3, he was put in possession of the respective lands.

11. Pursuant to the passing of the preliminary decree, on Uthirapathy filing I.A.No.933 of 1988 in O.S.No.611of 1982 on 6.7.1989, an Advocate

Commissioner was appointed to effect a division of the suit property as per the terms of the preliminary decree. In the meantime, the second

respondent purported to lease out the present suit properties on 15.5.1991 under Ex.A-1. The present suit came to be filed on 10.5.1993.

12. Factually the second respondent knew that the properties belonged not only to the heirs of Varadharajan, but also to the first respondent and

his step mother, brothers and sisters. This is evident from Ex.B-4 dated 16.4.1993. Even in 1986 the second respondent had filed caveat

expecting some trouble in respect of the properties he wanted to purchase and as already stated, the appellant is the paternal uncle of the second

respondent and he had also attested Ex.B-1. It is therefore not open either to the appellant or the second respondent to plead ignorance of the

rights of persons other than Varadharajan"s heirs to the suit properties. The collusion between the heirs of Varadharajan and the appellant and the

second respondent has been clearly established. Notwithstanding his knowledge that there were other owners, the appellant did not choose to

implead any of the heirs of Subramanian, viz. the first respondent and his step mother and step brothers and sisters in the proceedings before the

Record Tahsildar. It is therefore not open to the appellant to contend that the entries in the record under Act 10 of 1969 are conclusive so far as

this case is concerned.

13. In paragraphs 6 and 9 of the written statement filed by the first respondent in O.S.No. 534 of 1993 as the second defendant, it is stated as

follows:

I have already referred to Ex.B-4 notice and the attestation by the appellant of Ex.B-1. Ex.B-4 was addressed to the first respondent, his step

mother Kamala, his sisters Vijayalakshmi, Rajalakshmi, Devi, Pushpa and step brothers Kadiresan and Nagarajan. In the body of the said notice in

paragraph 2 it is stated as follows:

Possession of the lands was handed over to my client even on 29.5.1986, the date of agreement for sale. After filing of the partition suit, No.1 of

you and the said Uthirapathy threatened to trespass upon the property and my client has filed a caveat in Caveat No. 28 of 1986 on the file of the

District Munsif Court, Mayilanduthurai, on 5.9.1986. After due notice to you and upon your Advocate entering appearance, the caveat was

lodged on 26.9.1986. After filing of the Caveat, No.1 of you and Uthirapathy never interfered with my client ''spossession with regard to the

lands"".

In paragraph 3 it is stated as follows:

My client is residing in the suit village and he knows only Varadharajan and his family members are enjoying the properties for the past so many

years. He is not aware of the proceedings of the partition suit in O.S.No.611 of 1982 on the file of the District Munsif Court, Mayilanduthurai"".

This notice Ex.B-4 is by itself sufficient to demolish the case of the appellant. Even in 1986 he knew that Uthirapathy and the first respondent and

others had a claim in the properties subject matter of the present proceedings, notwithstanding that he chose to enter into agreements for

purchasing the properties from the heirs of Varadharajan. In these circumstances, I am clearly of the view that the appellant and the second

respondent are guilty of fraud.

14. It has been held by the Supreme court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, that,

the courts of law are meant for imparting justice between the parties. One who comes to the court most come with clean hands. A person, whose

case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation"".

Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception to gain by

another''s loss. It is a cheating intended to get an advantages. It is a cheating intended to get an advantage.

Fraud aveidsall judicial acts, ecalesiastical or temporal"" observed Chief Justice Edward coke of England"".

This was relied on in Gowrishankar and Another Vs. Joshi Amba Shankar Family Trust and Others, . In that case the trustees of a trust obtained

permission from court by practising fraud on the court. It was held by the Supreme Court that,

The order of the High Court granting the permission was a nullity and non est which could be challenged in any court. Question whether the

respondents purchasers purchased the property bona fide subsequent to the permission so granted without notice of the higher offer was

immaterial"".

15. In Ramanathan Iyer''s Law Lexicon, it is stated that the expression ""fraud"" in the CPC should be construed in a broad sense. A deliberate

evasion of the process of Court with intention to defeat execution of decree would amount to fraud. (ILR 35 Madras 670 : 22 MLJ 35).

Actual or positive fraud has been said to consist in circumventing, cheating or deceiving a person to his injury by any cunning, deception or artifice.

A constructive fraud has been said to be an act which the law declares to be fraudulent without inquiring into its motive; not because arbitrary rules

on this subject have been laid down but because certain acts cany in themselves an irresistible evidence of fraud.

16. In the same Law Lexicon, it is further stated that collusion between two persons to the prejudice and loss of a third is, in the eye of the Court,

the same as a fraud. The collusion between the appellant, the second respondent and Varadharajan''s heirs has been clearly made out. The

decision of the Supreme court will directly apply.

17. In Vishwa Vijay Bharati Vs. Fakhrul Hassan and Others, dealing with entries in revenue records and sections 35 and 114 of the Evidence Act,

the Supreme Court held as follows:

It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate

inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may

be fine but it is clear, the distinction is that one cannot challenge the correctness of what the entry in the revenue record states, but the entry is open

to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to

possessory title"".

18. In S. Balasubramanian v. Shamsu Thalreez and others98 L.W. 536 a Bench of this court held as follows:

Where an authority is constituted under an Act of legislature, conferring on him jurisdiction, for the purpose of determining questions arising under

it and if that authority has exercised the jurisdiction vested in him and has rendered his determination, and further more as against the said

determination, the machinery for further agitation has also been delineated in the Act itself, then the general remedy of suit before a civil court will

be barred. This is more so when the provisions of the Act say that the determination of the ultimate authority under is final. There are exceptions to

the above rule, such as where orders have been obtained by fraud, collusion, etc."".

The Bench followed the Full Bench decision in Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Others, and held that

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 design 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. The Bench has,

however, pointed out the exceptions to the rules, which I have already referred to.

19. In the light of these decisions, the appellant would not be entitled to any relief whatsoever.

20. Before proceedings to refer to the authorities relied on by the learned Counsel for the appellant, I would like to cover the point of lis pendens

raised by the learned Counsel of the first respondent. The suit for partition had been filed even in the year 1982 by Uthirapathy against his step

brothers. Preliminary decree was passed on 13.11.1996 declaring Uthrapathy''s 1/3rd share in the suit properties. Ex.B-1 agreement between the

second respondent and Varadharajan''s sons is no doubt dated 29.5.1986 before the preliminary decree. However this was while the main suit

itself was pending. The other two agreements Exs.B-2 and B-3 were entered into subsequent to the preliminary decree. These agreements are

definitely hit by the doctrine of lis pendens.

21. In Veerayya v. Venkata Bhashyakaralarao AIR 1936 Mad. 886 the facts were as follows:

In 1920 a partition suit was filed by a minor son represented by his mother against his father. On 3.3.1921 a preliminary decree was passed, which

was the result of a compromise and which terms showed that persons who brought it about were anxious as far as possible not unnecessarily to

affect the dignity of the father''s possession and at the same time effectively safeguard the plaintiff''s rights and prevent the father from causing any

further loss to his miner son. On 8.4.1921 a petition for final decree was filed. While the final decree proceedings were pending, on 31.3.1923 the

father granted a patta to third parties. The final decree came to be passed subsequently in 1924.

It was held by a Bench of this Court that the doctrine of lis pendens would come into play and the patta granted to the father would not prevail

against the decree in the suit nor would it affect the properties allotted to the son under the decree. It was contended on behalf of the lessees from

the father by relying upon section 181 of the Estates Land Act, 1908, Act 1 of 1908, that the father had statutory authorisation enabling him to

convert home farm land into ryoti land. The Bench observed that,

This is certainly not a legitimate interpretation of the provisions of that section. It is merely a provision inserted by way of abundant caution and it

only says that nothing contained in the main part of the section shall prevent a land holder from converting his private land into ryoti land. Whether

he had power so to convert or not must be decided with reference to other branches of law"".

Having regard to the provisions of section 181 of Estates Land Act it was held that,

Where there are co-sharers, a co-sharer landholder cannot make conversion from home farm to ryoti of any portion of the joint estate without any

regard to the rights of other co-sharers"".

The Bench relied on the decision of the Privy Council in Midnaport Zamindary Co. Ltd. v. Naresh Narayan Roy AIR 1924 P.C. 144 : 47 MLJ 23

(P.C.) : ILR 51 Cal. 631 : 80 I.C. 827 which held that,

it would not ordinarily be within the power of any co-sharer to do anything which would amount to the creation of permanent rights of occupancy

in favour of another in any portion of the joint estate"".

22. Of course, it is possible to say that the case turned on the interpretation of section 181 of the Estates Land Act and that concept cannot be

imported when it came to apply the overawing provisions of Act 10 of 1969.

23. In V. Ratnam and others v. S.S. Arunachalam Chettiar and others90 L.W. 633 dealing with a case of partition between co-owners where one

of the co-owners had become a tenant under the two co-owners and claimed that by virtue of the provisions of Tamil Nadu Buildings (Lease and

Rent Control) Act, Act 18 of 1960, he was entitled to statutory protection, a Division Bench of this Court held that privileges and rights available

to statutory tenant were not available to a co-owner, who got into possession of the property with the consent of the other co-owners or to a

person whom he let into possession of the relative property. The Division Bench referred to and followed another Division Bench of our High

Court, viz. Kuppuswami v. Balagurumurthi1965 (I) MLJ 86 : 77 L.W. 559. In that case a co- owner sold his undivided share to a stranger, but

obtained a lease-back of that undivided share sold by him. Thereafter, as against his own quondam co-owners, he projected a right under Act 18

of 1960. The Bench in that decision said,

By reason of the sale of the undivided share, the vendor and the vendee become thereafter co-tenants of the building each of whom has an

undoubted right to demand and obtain partition by metes and bounds of the joint property, but till that is done, it cannot be said that any of the

sharers has got an exclusive right to any part of the joint property. Where one co-tenant allows another co-tenant to enjoy his undivide share, it

cannot be said that he has such exclusive right to the property as to be capable of being let out. No co-owner can say that he is the owner of any

part or designed part of the building. His interest would be to the extent of the share owned by him in the entirety of the property"".

24. The Division Bench in V. Ratnam and others90 LW 633 held that,

in the case of co-owners, it would be idle, and indeed strange, for any one of them to lay their fingers upon any part of such joint property and

claim that it is his or their own. Such an accent or emphasis upon ownership of an identifiable part of a common properly is available only after a

final decree for partition is obtained by such a co-owner in a manner know to law. But, during the process of that litigation which leads to the

passing of a final decree no one amongst such co-owners can project any title to a defined portion of joint property"".

This judgment in V. Ratnam and others90 LW 633 was referred to and followed in Avudaithangammal v. Subramania Thevar and Murugaiah

Thevar with eight others, 1994 (I) L.W. 82 by Ratnam, J. as he then was. In that case, the appellant obtained a decree in a partition suit for a half

share in the suit properties, which was disputed by respondents 2 to 9 therein and after the final decree was passed the appellant attempted to take

delivery of possession. At that time, the first respondent in each of those second appeals (who were all brothers) filed the suits, out of which the

second appeal arose praying for a declaration that the plaintiff was a cultivating tenant and for injunction, etc. and reliance was placed on the

proceedings under Tamil Nadu Act 10 of 1969 wherein their names were recorded as cultivating tenants. The suits were resisted contending that

they were not cultivating tenants, that the entries in the record of tenancy rights were false and fraudulent as no notice whatever was given to her

and she was not made a party at all to those proceedings. The trial court decreed the suits and the same was affirmed in appeal. However in

second appeal it was held as follows:

The appellant in each of the second appeals could at best be considered to be only a co-owner with respondents 2 to 8, who were entitled to the

other half share. Respondents 2 to 8 leased out the property to the first respondent had not been clearly made out as they remained exparte. Even

assuming that respondents 2 to 8 as co-owners granted a lease in favour of the first respondent in the appeals.it would not in any manner enable

the first respondent in the appeals to the claim the benefits as cultivating tenants in view of the principle laid down in V. Ratnam and others supra"".

In that case, the 9th respondent, father of the first respondent, purported to surrender the lease in his favour by respondents 2 to 8 and the latter

purported to create a lease in favour of the first respondent, son of the 9th respondent.

25. It should also be noticed that Avudaithangammal v. Subramania Thevar and others, 1994 (1) LW 82 referred to supra also held that

proceedings under Act 10 of 1969 were not conclusive in cases where entries were made by suppressing the real facts without notice to persons

interested. Provisions of the Act were not declaratory of rights as cultivating tenants, but pertain only to preparation of records. It was held that

entries in the Record of Tenancy Rights Register did not confer rights as a cultivating tenant on the first respondent.

26. I have already held that in the present case, the appellant and the second respondent had colluded and had also seen to it that all co-owners

had not been made parties to the proceedings under Act 10 of 1969. The entries therefore are not conclusive and the appellant does not get any

right as a cultivating tenant entitled to the relief of injunction prayed for by him.

27. In Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Others, , the Full Bench of this Court held as follows:

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"".

The substance of the Full Bench decision is that in a situation like that the jurisdiction of the Civil Court will not be ousted.

28. In Arumugam and Another Vs. Sri. Dharmapuram Mutt, Raju, J. following the Full Bench held that the jurisdiction of the Civil Court was not

totally ousted to entertain and decide issues as to whether land was under tenancy agreement.

29. In Judit Victor Ignace and Another Vs. Kothandaraman and Another, , Jagadeesan, J. again followed the Full Bench and held that if the Civil

Court came to the conclusion that the land had been leased out for cultivation to the tenant, then the proceedings before the Civil court had to be

interdicted and the matter had to be referred to the revenue authorities to decide the rights of the parties.

30. Mrs. Prabha Sridevan referred to the judgment of a Full Bench of this Court in S.V. Venkatarama Reddiar Vs. Abdul Ghani Rowther and

Others, and submitted that this is a case where a person had parted with huge sums of money and entered into agreements for purchasing the suit

properties from co-owners and had subsequently created a lease in favour of the appellant and notwithstanding the allotment of the suit items to the

first respondent and defendants 10 to 16 in O.S.No.611 of 1982, the appellant as a cultivating tenant would be entitled to protection from eviction.

31. The Full Bench in S.V. Venkatarama Reddiar Vs. Abdul Ghani Rowther and Others, arose under Tamil Nadu Buildings (Lease and Rent

Control) Act and the question for consideration by the Full Bench was whether a tenant from usufructuary mortgagee of a building would be

entitled to protection of the Rent Control Act on redemption of mortgage. The Full Bench referred to a number of Supreme Court judgments:

(1) Mahabir Gope v. Harbans Narain AIR 1956 SC 305; (2) Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, ; (3) Asa Ram and

Another Vs. Mst. Ram Kali and Another, ; (4) Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, ; (5) Prabhu Vs. Ramdev and Others,

and ultimately held as follows:

The rule of exception contained in section 76(a) of the Transfer of Property Act cannot be read into and automatically invoked by a tenant let into

possession of urban property by a mortgagee in possession. The principle of exception afforded by section 76(a) of that Act applies ordinarily to

the management of agricultural lands and has seldom been extended to urban property so as to tie it up in the hands of lessees and to confer rights

under special statutes"".

From this the learned Counsel wants the Court to infer that the tenants of agricultural lands would be entitled to protection notwithstanding the

change of ownership of the property.

32. In the last of the decisions, viz. Prabhu Vs. Ramdev and Others, the Supreme Court held that the rights of tenants inducted by mortgagees may

conceivably be improved by virtue of statutory provisions which may in the meantime come into operation.

33. I would refer to another decision cited by the learned Counsel for the appellant, G. Ponniah Thevar Vs. Nalleyam Perumal Pillai and Others, In

that case, a life estate holder inducted a tenant. After the death of the life estate holder, the question was whether the tenant would be entitled to

protection. The Supreme Court held that the tenancy created by the life estate holder would legally extend beyond her life by virtue of the

provisions of Tamil Nadu Cultivating Tenants Protection Act, 1955 (Act 25 of 1955). The Supreme Court observed that the terms of the statutory

protection applied clearly to all tenancies governed by the Act irrespective of the nature of the rights of the person who leased the land so long as

the lessor was entitled to create a tenancy. In the opinion of the Supreme Court (with which nobody can quarrel) these enactments are really meant

for the purposes proclaimed by them. The obvious effect of such statutory provisions cannot be taken away or whittled down by forensic

sophistry. Court to should not allow themselves to become tools for defeating clearly expressed statutory intentions.

34. In my considered view, the ratio of the decision of the Supreme Court will not apply to the facts of the present case. Courts are not there to

protect fraudulent or collusive transactions.

35. In deed as observed by the Full Bench in S.V. Venkatarama Reddiar Vs. Abdul Ghani Rowther and Others, referred to, the reason for

treating agricultural leases differently is that the rights of parties are regulated by usages which are embodied in local Acts. Even in the Transfer of

Property Act, section 117 provides that sections 105 to 117 of Chapter V would not apply to leases for agricultural purposes except insofar as the

State Government may by notification declare any or any of such provisions applicable to all or any of such leases together with or subject to those

of the local law if any for the time being in force"".

36. In Muniyandi Vs. Rajangam Iyer, relied on by the learned Counsel for the appellant, a Bench of this Court dealing with section 16-A of Act 10

of 1969 held that,

a Civil Court had no jurisdiction to decide any matter which the Record Officer or authority empowered by or under the Act should determine.

The Court is also forbidden from granting injunction in respect of any action taken or to be taken by such officer or other authority in pursuance of

any power conferred by or under the Act. The Act indicates and provides for the remedy to correct the record by following the procedure laid

down. Until the contrary is proved or a new entry is lawfully substituted therefore, the entry shall be presumed to be correct"".

Relying on this sentence, the learned Counsel submitted that the entry so far as the appellant is concerned should be presumed to be correct. It is

axiomatic that in respect of agricultural tenancies created by persons competent to create them, the inductions would be lawful and the lessees

would be entitled to the benefits of the Cultivating Tenants Protection Act. But, in the instant case, it has already been held that there was no lawful

induction of the appellant as tenant.

37. Relying on the decision of the Supreme Court in G. Ponniah Thevar v. Nellayam Perumal Pillai and others91 L.W.292 it was submitted that

the statutory right conferred on a cultivating tenant and which springs from the special enactment has to be respected irrespective of any right which

would, when placed in juxtaposition with the right under special enactment, be opposed and violative to it. In the case before the Bench, the lease

was granted during the period the mortgage suit was pending. But, the Bench held that the principle behind the doctrine of lis pendens cannot do

away the vitals of the special benefits conferred on a cultivating tenant by statute which has sprung from agrarian legislation and which has a specific

purpose to serve in our and other States.

38. In the case before the Bench, it was not disputed that the person who created that tenancy had the requisite authority to do that. The Bench

rightly held that the special had to prevail over the general.

39. In Chandrasekaran Vs. Kunju Vanniar and Others, the question for consideration was whether the tenants under the usufructuary, mortgage

were entitled to claim the protection granted under the Tamil Nadu Cultivating Tenants Protection Act as against the mortgagor also. The Full

Bench observed that the principle that no man could confer upon another a title or right higher than what he himself possessed, would have no

validity in the application of the inclusive definition of cultivating tenant, and held that the tenants inducted by mortgagee in possession under the

provisions of Transfer of Property Act might conceivably be improved by statutory provisions which might meanwhile come into operation. The

Full Bench preferred to restrict its view on the construction of the statutory provisions themselves.

40. In the view that I have taken that the lease by the second respondent in favour of the appellant had not been validly created and that the entries

made under Act 10 of 1969 had been fraudulently made, the decisions referred to above and relied on by the learned Counsel for the appellant

will not help the case of the appellant.

41. The learned Counsel also relied on the following decision: Mahesh Bhagat Vs. Ram Baran Mahto and Others,

The defendant in that case were, settled raiyats. They held the lands as tenants of the tenure holder. There was no prohibition in the document

creating the tenure against inducting raiyats on the land unlike in the case of Mahabir Gope and Others Vs. Harbans Narain Singh and Others, . It

was held that the tenants became raiyats and as they were settled raiyats of the village. They acquired rights of occupancy and could not be ejected

except on one or more of the grounds mentioned in section 25 of the Bihar Tenancy Act (Act 8 of 1985).

42. The learned Counsel also relied on Sri Ram Pasricha Vs. Jagannath and Others, and contended that the sons of Varadharajan had every right

to deal with joint family properties and the agreements executed by them in favour of the second respondent were perfectly valid and consequently

the lease created by the second respondent in favour of the appellant was also to be accepted, That decision arose under West Bengal Premises

Tenancy Act, 1956. The Supreme court observed as follows:

Jurisprudentially it is not correct to say that a co-owner of a properly is not a owner. He owns every part of the composite property along with

others and it cannot be said that he is only a part owner or a fractional owner of the property. The position will change when partition taken place"".

In that case the Court held that it was not possible to accept the submission that the plaintiff in that case who was admittedly the landlord and co-

owner of the premises was not the owner of the premises.

43. Having regard to the facts of the present case and my finding that the sons of Varadharajan, the second respondent and the appellant had

colluded and brought about fraudulent documents, the Supreme court decision will not apply.

44. The learned Counsel next relied on the decision in Lakshmikanthan and others v. Thiruvengadam and another1992 (I) MLJ 297. In that case,

it was proved by unassailable evidence that plaintiffs were in possession under a lease. It did not make any difference whether they were

contractual lessees or cultivating tenants. Once they were proved to be lessees having been in possession of the land under a contractual lease or

as cultivating tenants, their possession as on the date of the suit was bound to be protected and if during the pendency of the suit, the possession

was forcibly removed even without an amended prayer for recovery of possession by virtue of the inherent powers of the Court, the Court was

competent and was obliged to put back the parties in their original position by restoring possession to the plaintiffs and the Court should not allow

anybody to take the law in his hands and dispossess the plaintiffs when the Court was seized of the matter.

45. I am of the opinion that the facts of the decision are different and the decision will not apply here. That was a case where there was a valid

lease and there was also adequate evidence that the plaintiffs were in possession under the lease.

46. The learned Counsel relied on Karthiyayani Amma Vs. Govindan, and submitted that whatever be the position, the possession of the appellant

must be protected. In that case, it was held that a person in possession without title could sustain a suit for injunction against the rightful owner

preventing him from disturbing his possession. He could be evicted only by due process of law. This decision was followed in Smt. Sarladevi

Bandawar Vs. Shailesh Namdeo, .

47. The question to be considered now is whether the appellant was really in possession on the date of the suit and whether his possession should

be protected, particularly having regard to, the finding that the agreements and the lease deed are fraudulent documents. It is submitted by the

learned Counsel for the first respondent that the appellant had not established that he was put in possession pursuant to the alleged lease

agreement. The Commissioner had noted the existence of a palmyrah tree. But, P.W.2 was not aware of the same and therefore factually the

appellant could not have been put in possession of the suit properties. The learned Counsel for the contesting respondent further submitted that the

possession of the appellant, if at all was only that of a trespasser and a trespasser''s possession should not be protected by any legal process. In

support, the learned Counsel relied on Alagi Alamelu Achi Vs. Ponniah Mudaliar, . Veerasami, J. as he then was, held that when once the Court

found that the plaintiff''s possession was wrongful, such possession could not be protected by assistance of Court.

48. In Premji Ratansey Shah and Others Vs. Union of India (UOI) and Others, the Supreme Court held as follows:

Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the

possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal

right u/s 41(j) of the Specific Relief Act, 1963: the plaintiff must have personal interest in the matter. The interest or right not shown to be in

existence, cannot be protected by injunction, the possession of a person who had no lawful right was wholly unlawful possession of a trespasser

and an injunction cannot be issued in favour of a trespasser of a person who gained unlawful possession as against the owner"".

49. Again, in Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, , the same Bench of the Supreme Court held

that no injunction could be granted against rightful owner in favour of a person in unlawful possession.

50. In D.T.T.D.C. v. M/s D.R. Mehara and Sons, a Division Bench of the Delhi High Court while dealing with the possession of a licensee after

the expiry of the period of licence, held that such person''s possession was unlawful and illegal and the same could not be protected.

51. In Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, it has been held that judicial proceeding cannot be used to

protect or to perpetuate a wrong committed by a person who approaches the court.

52. The learned Counsel for the appellant placed reliance on T.S. Krishnamoorth Vs. Mercury Chemicals and Another, wherein the Supreme

Court has held that the possession of a trespasser also should be protected and he cannot be thrown out except under due process of law. It

should be immediately observed that the observation of the Supreme Court in that case was by way of obiter and as has been held by the Kerala

High Court in Karthiyayani Amma Vs. Govindan,

Sentences occurring in a judgment have to be read in the proper context. It may not be correct to say that casual observation in a Supreme Court

judgment or even obiter dicta unconnected with the facts of the case under discussion and not laying down any proposition of law have binding

force as law declared by the Supreme court under Article 141 of the Constitution"".

53. It has also to be mentioned that in Ex.B-4 dated 16.4.1993 the second respondent had wanted only his money back and he did not want to go

through the agreement for sale.

Injunction is an equitable relief and the Court must see whether a person who is a trespasser can seek the helping hand of the Court for protecting

his unlawful possession as against the owner. A person who seeks equity must do equity. He must also come to Court with clean hands. When he

does this mere will be no occasion to seek an injunction inasmuch as the trespass would have automatically stood vacated. If he does not do these

things; he cannot at the same time ask for the helping hand of the Court to protect his illegal possession"".

D.T.T.D.C. v. M/s. D.R. Mehara and Sons,

54. In view of the discussion above, the substantial question of law raised is answered against the appellant and the second appeal is dismissed.

However, there will be no order as to costs.