(2007) 05 MAD CK 0013

Madras High Court

Case No: S.A. No. 687 of 1995

J.M. Jeyachandran Samuel	APPELLANT
Vs	
G.S.S. Masilamani	RESPONDENT

Date of Decision: May 16, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Evidence Act, 1872 - Section 109, 115, 4(3)(a)
- Transfer of Property Act, 1882 - Section 53A

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: K. Srinivasan, for the Appellant; S. Meenakshisundaram, for the Respondent

Final Decision: Dismissed

Judgement

V. Dhanapalan, J.
Aggrieved by the judgment, dated 27.03.1995 made in A.S.No.71 of 1994 passed by the Principal Subordinate Judge, Thirunelveli, the defendant has preferred this appeal. The case of the plaintiff as put forth before the Trial Court is as follows :

Originally, the father of the plaintiff, namely, Gnanaprakasam Benjamin was the cultivating tenant in respect of the plaint schedule properties. After the untimely death of his father, the plaintiff is in enjoyment of the plaint schedule properties as a cultivating tenant. The defendant, who is residing in the city of Madras permanently, is receiving varam from the plaintiff. Since the defendant compelled the plaintiff to surrender possession of the plaint schedule property, in order to facilitate him to sell away the property, the plaintiff filed a suit in O.S.No.300 of 1986 against the defendant and obtained an order of temporary injunction.

In the meanwhile, the defendant agreed to sell away the plaint schedule property to the plaintiff for a consideration of Rs.8,400/-. Consequently, the plaintiff withdrew the suit in O.S.No.300 of 1986 on 14.07.1987. On the very same day, a sum of

Rs.1001/- was paid as advance sale consideration and subsequently, on 05.06.1989, the plaintiff has sent a sum of Rs.3,750/- as partial sale consideration and a sum of Rs.250/- towards paatam. Again, the defendant compelled the plaintiff to surrender possession of the properties. Hence, the plaintiff filed a suit in O.S.No.152 of 1990 for permanent injunction, restraining the defendant from interfering with the peaceful possession of the plaintiff as cultivating tenant.

2. It is the case of the defendant that the plaint schedule properties were originally cultivated by the plaintiff''s father and he was in arrears of paatam during his life time. After the demise of his father, the plaintiff was permitted to cultivate the plaint schedule property, with a specific condition that he should clear off the paatam arrears of his father. According to the defendant, the plaintiff has not chosen to pay the arrears of paatam of his father. The defendant denies that he had commanded the plaintiff to surrender the suit property to him. Since the defendant asked the plaintiff to clear off the arrears of paatam, the plaintiff filed a suit in O.S.No.300 of 1986 on the file of the District Munsif Court, Ambasamudram and obtained an order of interim injunction.

Later on, on request by the plaintiff to the defendant to give some concession in the arrears of paatam, it was agreed that the plaintiff had to pay the arrears of rent of Rs.15,000/- in ten annual instalments of Rs.1,500/-, that the plaintiff should surrender possession of land to the defendant and that he should withdraw the suit in O.S.No.300 of 1986. Thereafter, the plaintiff surrendered possession of the defendant and had withdrawn the suit. According to the defendant, he had leased out the plaint schedule property to the plaintiff''s mother, by name, Pushpam Ammal. The defendant has never agreed to sell the suit lands to the plaintiff. The defendant stated that since the plaintiff is not in possession and enjoyment of the suit lands, he has no locus standi to file the suit and prayed for dismissal of the same.

3. The Trial Court on evaluation of the evidence on record raised substantial questions of law. Though, it is stated by the defendant that the plaintiff handed over possession of the suit property to the defendant and thereafter, the defendant permitted the plaintiff''s mother to enjoy the possession of the suit property as a cultivating tenant, there is contrary evidence let in by the witnesses examined on the part of the defendant. There is also no evidence as to how the defendant was in possession of the suit property, after the handing over of the same by the plaintiff. The Trial Court found that at the time of filing the suit by the plaintiff, he was not in possession of the suit property. On evaluation on the evidence on record, the Trial Court found that the plaintiff has handed over possession of the property to the defendant at the time of filing the suit by the plaintiff.

According to the defendant, the plaintiff is in possession of the plaint schedule property and hence, he has filed the suit seeking permanent injunction. The Trial Court held that the suit is filed only for permanent injunction and not for declaration

of possession of the plaint schedule property by the plaintiff as a cultivating tenant. The Trial Court dismissed the suit on the ground that the Civil Court cannot decide the case and moreover, the case is not within the limits of jurisdiction.

4. The Lower Appellate Court on consideration of the facts and circumstances of the case held that it may not be true that the plaintiff would have surrendered possession of the plaint schedule properties in the context of the incompatible stand taken by the defendant at each and every stage to improve his case. There is no evidence on the side of the plaintiff that he had paid any arrears of rent, subsequent to the withdrawal of the suit from the District Munsif''s Court. The Lower Appellate Court held that in the absence of sale deed executed by the landlord, it is only optional for the tenant to lodge the lease deed in the Taluk Office and therefore, Exs.B2 and B6 do not take away the rights of the plaintiff.

The Lower Appellate Court, on evaluation of the evidence of P.W.3, to the effect that the plaintiff is cultivating the plaint schedule property found it to be cogent and acceptable and held that the plaintiff is in possession and enjoyment of the plaint schedule property as tenant under the defendant, after the demise of his father, that the respondent has not executed any agreement of sale in favour of the plaintiff and that the plaintiff is entitled to permanent injunction as prayed for. In fine, the Lower Appellate Court held that the Trial Court has misdirected itself and has come to a wrong conclusion which called for interference by this Court and set aside the judgment of the Trial Court and allowed the appeal with costs.

Aggrieved by the same, the defendant has preferred this appeal seeking to set aside the judgment of the Lower Appellate Court.

5. At the time of admitting this Second Appeal on 16.05.1995, this Court raised the following substantial question of law :

"Whether the finding of the Lower Appellate Court are vitiated by its failure to consider the absence of any evidence on the side of the respondent/plaintiff established possession and enjoyment of the suit property as a cultivating tenant especially when it is found that the agreement of sale under Ex.A4 as alleged in the plaint is found to be created for the purpose of the case?"

6. Learned Counsel for the appellant/defendant contended that the Lower Appellate Court having found and accepted that the respondent/plaintiff voluntarily surrendered the lease hold pursuant to the Settlement referred in O.S.No.300 of 1986, ought to have held that the respondent/plaintiff cannot claim possession of the suit property as cultivating tenant. He also contended that the Lower Appellate Court erred in law in stating that the appellant/defendant never had a consistent case regarding the tenancy, evidently overlooking the specific allegation in the written statement that the respondent/plaintiff''s father was a tenant and thereafter pursuant to the compromise in O.S.No.300 of 1986 was pending, by which the respondent/plaintiff surrendered possession. He further contended that the Lower

Appellate Court failed to advert to the specific allegations in the written statement that the respondent/plaintiff''s mother became a tenant, but however subsequently, she surrendered possession,

7. In support of his contentions, learned Counsel for the appellant/defendant relied on the following decisions:

(i) In Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Others, this Court has held as follows:

"We shall now proceed to consider the first aspect of the matter. As far as the first aspect is concerned, as we have pointed out already, we have to ascertain the matters covered by S. 16-A with reference to the other provisions of the Act dealing with the matters to be determined by the authorities functioning under the Act. Two provisions in the Act which are relevant in this behalf are S. 3(2) and S. 14(1), which we have extracted already. S. 3(2) of the Act refers to the particulars which the record, directed to be prepared under Sub. S(1) thereof, should contain, while S. 14(1) provides for a certified copy of a record being annexed to an application made in pursuance of the provisions of the enactments enumerated therein. The object of the Act as well as the provisions contained in S. 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 of 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 determined these question may occur in the context of different controversies and not purely on a specific disputes with respect to these particulars alone. Even the determination of the particulars enumerated in S. 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 u/s 16-A. From the language of S. 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 basis and fundamental to the exercise of the jurisdiction by the Record Officer and the other authorities under the Act. The very object of the Act is to prove for the preparation and maintenance of record of tenancy rights in respect of agricultural lands and

therefore if there is no tenancy in respect of a land, there is no question of any further particulars being determined. This aspect is made clear even from the definition of the expression ''landowner'' means the owner of the land let for cultivation by a tenant and includes the heirs, assignees or legal representatives of such owner or persons deriving rights through him. 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 to assume 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...."

(ii) In Arumugam and Another Vs. Sri. Dharmapuram Mutt, this Court has held as follows :

"5. Even according to the Trial Court and even as per the case pleaded by the first defendant, he and prior to him, his father was "gl;oaf;fhu CHpad;" and lands have been in lieu of the services to be rendered. Though the defendants also pleaded that they enjoyed the suit property on Paguthi basis, curiously they contended that Paguthi was paid by rendering service to the Mutt. Unfortunately, the trial Court has chosen to believe such a version of the defendants without even appreciating the contradiction in terms underlying such a plea. Enjoying suit properties on Paguthi basis means paying in lieu of such enjoyment to the landlord a Paguthi or portion of the yield and to say that such paguthi was paid by rendering service is a travesty of truth. When that be the position, it is rather surprising that the trial Court could have jumped to the conclusion about the first defendant being a cultivating tenant merely because some of the witnesses examined on the side of the defendants were able to say that is the defendants who have been cultivating the suit properties by their own physical labour. Though cultivation of lands by a person contributing his own physical labour or that of any member of his family in the cultivation on any land belonging to another is a vital ingredient, the primary requirement that such cultivation should be under a tenancy agreement express or implied cannot be ignored or given a go-bye. Even a careful scanning through of the judgment of the trial Court would disclose a conspicuous omission to advert to this vital condition precedent about the existence of a tenancy agreement express or implied. This having been found lacking in the trial Court judgment by the lower Appellate Court, in my view, legitimately and rightly, and having regard to the further admitted fact of the land having been given as remuneration for the services rendered to the Mutt as "gl;oaf;fhu CHpad;" it is futile to contended that the appellants can be considered to be a tenant at all leave alone the claim of being a cultivating tenant in accordance with either the provisions of the Record of tenancy Act or the provisions of the

Tamilnadu Act 47 of 1961...."

(iii) In Pankajam and Others Vs. Chinliaswamy Naidu, this Court has held as follows:

"6. ... If the civil court cannot proceed to investigate whether the respondent is a cultivating tenant or not, then equally, it cannot declare that he has such rights. The lower appellate Court was, therefore, quite justified in holding that having regard to the provisions of the Act, the relief of declaration could not be granted in favour of the respondent. The consequential relief of injunction, if at all, could be granted only upon a finding that the respondent is a cultivating tenant. If the court cannot go into that question, then it does not appear as to how the court can proceed to protect the alleged possession of the respondent as a tenant against the appellants 2 and 3, who are the real owners of the properties. The consequential relief of injunction depends upon the adjudication with reference to the status of the respondent and when that cannot be done by the civil court even according to its own finding, then the consequential relief also cannot be granted."

(iv) In (1984) 97 L.W. 390 in the case of G. Natesa Nainar vs. Sri Karikudinathaswamy Devastation, Marudhanallur, this Court has held as follows :

"5. ... Though the learned District Munsif in Ex. B1, found that the appellant was a lessee of the property and not a mere licensee for the collection of the usufructs and a cultivating tenant as well of the property, the lower Appellate Court in A.S.No.78 of 1973, reversed that finding and held that the appellant was not entitled to claim any right as a cultivating tenant in the property belonging to the respondent and he had not established the raising of any crops therein, but that the appellant was only a licensee of the usufructs of the coconut trees and nothing more and further that in any case having regard to S. 51 (iv) of Tamilnadu Act 57 of 1961, the appellant cannot be heard to claim statutory rights as a cultivating tenant. It was in that view that the suit instituted by the appellant in O.S.No.534 of 1970 was dismissed. In S.A.No.1332 of 1974, disposed of 7th February 1974 by this Court, the conclusions arrived at by the Lower Appellate Court were upheld (sic) and it was held that what had been leased out in favour of the appellant was only the usufructs of the coconut frees and he had no right in the soil and that even n the assumption that the appellant was a lessee of the suit property, yet by virtue of S. 51 (iv) of the Tamil Nadu Act 57 of 1961, the provisions of the Tamil Nadu Cultivating Tenants Protection Act will not apply and further that having regard to the exemption under S. 51(iv) of the Tamil Nadu Act 57 of 1961, exempting thopes, the appellant would not be entitled to any right in the soil as a cultivating tenant, and, therefore, no injunction should be granted in his favour. It is thus seen from Ex. B1, and from the appeals therefrom, that the very right projected by the appellant to the disputed property in question was as a cultivating tenant and that claim had been negatived on the ground that the appellant was only a licensee of the usufructs in the coconut thope and had no rights whatever in the soil. In the suit of which the present second appeal has arisen, the appellant had claimed the same rights as a cultivating tenant

with the addition of the entry in the Record of Tenancy Rights Register in his favour. That however would not make any difference to the applicability of the principle of res judicata. It has to be remembered that the entry in the Record of Tenancy Rights Register by itself does not confer any right upon the appellant as a cultivating tenant, for, the main aim and purpose of the provisions of Tamil Nadu Act 10 of 1969 is only to prepare and maintain a record of tenancy rights in respect of agricultural lands in Tamil Nadu. No provision in Tamil Nadu Act 10 of 1969 has been brought to the notice of the court to show that an entry in the Record of Tenancy Rights Register confers right as a cultivating tenant on a person whose name is so entered. The provisions of Tamil Nadu Act 10 of 1969 pertain to the preparation of the record and are not declaratory of rights as a cultivating tenant. It is common knowledge that there may be several persons fulfilling the requirements of the definition of a cultivating tenant, but whose names may not be recorded in the Record of Tenancy Rights Register. ..."

(v) In 1998 (II) CTC 157 in the case of V. Manakkan and five others vs. Veera Perumal, this Court has held as follows :

"17. As happened in the case before the Supreme Court, the finding given by the learned District Judge that the respondent was a bona fide purchaser in good faith, was not based on any pleading and proof in the case, but was merely ipse dixit. The learned District Judge erred in considering the impact of the provisions of Section 41 of the Act on the facts of the case without any foundation having been laid in the pleadings and the same not having been proved. The specific case in the plaint was that the suit property belonged to the plaintiff''s grandfather who sold to Lakshmanan''s father and after Lakshmanan''s father''s death, Lakshmanan became entitled to the property from whom he purchased. In the wake of these pleadings, there was absolutely no warrant for bringing in Section 41 of the Act to the facts of the present case. Such a finding arrived at without evidence and without applying the correct principles of law, cannot bind this Court. It is indeed exercising powers u/s 100, Civil Procedure Code. But the error of law committed by the lower Appellate Court is so patent and substantial that it calls for interference. The decisions referred to and relied on by the learned District Judge in paragraph 10 of the judgment may be unimpeachable on the legal aspect they deal with but, they have no application to the facts of the present case.

18. One other aspect that has to be considered is the rejection of Ex.B4 by the lower appellate Court. I am clearly of the view that the lower appellate Court has misread Ex.B4. In my opinion, the document did not effect a partition, but merely recorded the nature of the arrangement arrived at as regards the division of the properties. The decision of the Supreme Court in Roshan Singh and Others Vs. Zile Singh and Others, , will apply to the facts of the present case and it has to be held that Ex.B4 was only a partition list recording a partition which had already taken place among the parties.

19. One other point sought to be raised by the learned Counsel Mr. Chandrasekaran for the respondent, was that the parties knew about what kind of right they had and the respondent having established his possession, his possessory right should be declared by the Court. Even for showing his possession, the respondent had not produced any document. In fact, no document showing his possession in his own right, was filled before the Trial Court. Ex. Al is the sale deed in favour of the respondent from a person who has not been proved to have any title to the suit property. Ex.A2 sale deed, dated 13.03.1961 admittedly does not have anything to do with the suit property. Ex.B-1 is the notice by the third appellant''s lawyer and Ex.A3 and Ex.A-4 are the acknowledgements. None of these documents showed the possession of the respondent in the suit property in his own right."

(vi) In 1999 (1) MLJ 505 in the case of Subbammal vs. Masanamuthu Thevar and others, this Court has held as follows :

"21. On a perusal of Ex. Al, this Court finds that it is incomplete form and it contains all the material stipulation of an agreement to sell and it is complete in all respects. Ex. A1-Sale Agreement is a concluded contract is established the suit for specific performance of contract would not lie. The onus to prove that the contract concluded contract is on the plaintiff. The essential ingredients of an agreement to sell are:

1. Certainty as to price or consideration.

2. Certainty as to parties viz., the vendor and vendee:

2. Certainty as to other terms relating to the purchaser the cost of conveyance time and other mutually agreed clauses."

34. The learned Counsel for the third defendant contended that at any rate, the plaintiff even if he is entitled for specific performance, he is not entitled to actual possession as the third defendant is a cultivating tenant whose possession is protected by the Provisions of the Tamil Nadu Cultivating Tenants Protection Act. This Court is unable to sustain such a claim as there had been a merger of his right of tenancy on his getting a transfer or conveyance of the suit land and the right of tenancy has not been preserved to be operative in spite of conveyance in his favour."

(vii) In 2001 (1) CTC 559 in the case of P. Subramanian Udayar vs. Eswari and four others, this Court has held as follows:

"24. When I reach the said conclusion, the next question would be whether there was any justifiable for the plaintiff in not coming forward to perform his part of the contract by paying the balance sale consideration of Rs.40,000/-. The plaintiff was clearly put on notice under Exs.B8 and B10 about his failure in not paying the balance sale consideration within the stipulated time as provided in the agreement Ex.A15. Admittedly, both Exs.B8 and B10 were not relied to by the plaintiff. The only

explanation given by the plaintiff is that after receipt of the above said notices, he met the Power of Attorney holder of the defendants in person at Trichy and wanted him to clear the cloud cast on the performance of samaradanai rights to, vis-a-vis the suit schedule property by the defendants. Except the ipse dixit statement of the plaintiff, there is not other supporting evidence to believe his statement. On the other hand, a reading of Ex.A15 discloses that a specific reference was made to the Will dated 02.04.1944 in clause 4 of the said agreement. When the plaintiff had the assistance of his lawyer, it is quite unbelievable that in spite of the said state of affairs as on the date of the agreement, still, the plaintiff developed a serious doubt as to the title to the suit schedule property after the execution of Ex.A15 and after part-performance of the same by paying a sum of Rs,10,000/- towards advance."

27. In my opinion, the judgment reported in Sambangi Applaswamy Naidu and Others Vs. Behara Venkataramanayya Patro and Others, , holding that there could be no merger will have no application at all to a transaction namely an agreement for sale of an immovable property. It is distinguishable because rights and pitfalls in the case of an agreement for sale will be quite different from the one that would be involved in the case of mortgage vis-a-vis existing lease in respect of the same property. In the case of mortgage, there would be no scope for the mortgagee as against the status of a transferee to aspire for the possession of the property as a rightful owner whatever be the default irrespective of entirely different. In the event of the vendor committing default irrespective of the various terms contained in the agreement for sale, then the prospective purchaser would be entitled, as a matter of right, to seek for the execution of a sale in his favour by resorting to appropriating relief in the form of suit for specific performance, which would not be available to the mortgagee in the case of the former. In the case of agreement for sale, in the event of the purchaser namely the transferee fulfilling his part of the performance of the contract would be fully protected by the provisions contained u/s 53-A of the Transfer of Property Act. In any event, even if the judgment reported in Sambangi Applaswamy Naidu and Others Vs. Behara Venkataramanayya Patro and Others, Their Lordships held that even in respect of the mortgage, the lessee''s rights would depend upon the intention of the parties at the time of execution of the mortgage deed as could be seen from the terms and conditions of the mortgage transaction in the light of the sorrounding circumstances of the case. Their Lordships were of the view that if an implied surrender of lessee''s rights could be inferred from the terms of the deed, the mortgagor would be entitled to have delivery of physical possession upon redemption but not otherwise and therefore, in the case of a mortgage agreement impliedly provide for it. Such being the case, under Ex.A-15, when under clause 3, the possession of the plaintiff was stated to be pursuant to the agreement of sale and the so called tenancy rights as claimed by the plaintiff having been not crystalised in the form of an enforceable right as a cultivating tenant the protection of the relevant laws. It could only be Inferred that the possession of the plaintiff on and after Ex.A15 could be characterised only as that of a transferee and not that of a

cultivating tenant as claimed by him. In such circumstances, the plaintiff, as found by the Court below and which finding is fully supported by the evidence on record, having failed to perform his part of the contract and thereby committed a breach of the agreement Ex.A15, has rendered himself liable to restore possession of the defendants by virtue of clause 6 of the agreement Ex.A15. Consequently, the plaintiff was also liable to pay the mesne profits at the rate which it was directed to be paid by the Court below.

(viii) In 2(2) CTC 5001 90 in the case of K. Sadasivam and another vs. B. Harikrishnan, this Court has held as follows :

"6. The appellants no doubt have claimed that they are sub-tenants. Both the Courts have held against them. But the basis of the plaintiff''s claim is that he is in exclusive possession of the suit property and the defendants are interfering with his possession. He is bound to prove this before getting a decree. The respondent''s father died in December, 1961. It is evident that after his father''s death his mother became entitled to all the shops.

...

Therefore, it is his case that when his father died, it was only his grandfather, who was carrying on the business of Astrology in the shop. It is not clear in what capacity M.K.P. who is the grandfather of the respondent and father of the appellants was occupying the suit shops. It is the case of the respondents that he was a sub-tenant and after that they became tenants. This has been disbelieved. Therefore, M.K.P. could have occupied the property in his own right or he might have been permitted to occupy the suit shop. There is no pleading regarding this. The grandfather was obviously a well-known astrologer and the respondent states that this person who had been carrying on the astrology business from 1961-1979 on his own right was assisting him, the grand son in the shop till his death, This is a little difficult to believe since an experienced elderly man is not likely to be this young amateur''s assistant. ..."

(ix) In 2005 (2) M1J 411 in the case of Iqbal Mohammed Bijili vs. K. Arumugham and others, this Court has held as follows :

"The only question in this second appeal is whether the respondents are entitled to the relief of injunction on the basis of possession. In the circumstances stated above, I am of the opinion that the respondents have not come to Court with clean hands. They have deliberately suppressed the earlier suits fearing that, it would clearly show that the appellant was not co-operating with them for registration of sale deed. The mere fact that they have managed to obtain mutation of their names in the revenue records cannot help them when this was effected only after the compulsory registration of the sale deed, consequent to the decree passed by the Court in favour of the respondents. They have not chosen to get into the box, but they put their father into the box who did not know anything about the factual

aspects and in fact deposes contrary to the clear recitals in Exs.A1 and A2 that they were put in possession on the date of Exs.A1 and A2."

8. Learned Counsel for the respondent/plaintiff contended that the plaintiff was in possession of the plaint schedule property as a cultivating tenant. He contended that no tenant will normally surrender his tenancy rights without receiving any consideration and the defendant did not state anywhere, whether he paid any consideration for the alleged surrender of the entire property. He further contended that u/s 109 of the Evidence Act, the presumption is that the tenant continues to be the tenant and it is for the Landlord to prove that the tenant surrendered the possession. Since, the Landlord/defendant has not let in any satisfactory evidence that the plaintiff has surrendered the possession to the defendant, learned Counsel for the respondent/plaintiff prayed that the appeal may be dismissed.

9. In support of his contentions, learned Counsel for the respondent relied on the following judgments :

(i) In 1985 (1) MLJ 175 = (1984) 97 L.W. 391 in the case of G. Natesa Nainar vs. Sri Karikudinathaswamy Devasthanam, Marudhanallur, this Court has held as follows :

"5. Before embarking upon a consideration of the rival contentions urged, it is necessary to note the circumstances which led to the institution of O.S.No.534 of 1970 and the scope of the adjudication therein. It is seen from Exhibit B1, the printed copy of the judgment in O.S.No.534 of 1970, District Munsif''s Court, Kumbakonnam, that the basis on which the appellant laid O.S.No.534 of 1970 is the same as in the present suit, out of which the Second Appeal has arisen, namely, lease of uncultivable land for purposes of reclamation and planting of coconuts and acquisition of rights by the appellant therein as a cultivating tenant. It was this claim so made by the appellant that was refuted by the respondent in the written statement filed in the course of the earlier suit. On those pleadings, issue No. 1 related to the question, whether the plaintiff (appellant herein) was a cultivating tenant of the suit property. Though the learned District Munsif in Ex. B1 found that the appellant was a lessee of the property and not a mere licensee for the collection of the usufructs and a cultivating tenant as well of the property, the lower appellate Court in A.S.No.78 of 1973 reversed that finding and held that the appellant was not entitled to claim any rights as a cultivating tenant in the property belonging to the respondent and that he had not established the raising of any crops therein, but that the appellant was only a licensee of the usufructs of the coconut trees and nothing more and further that in any case having regard to section 51 (iv) of Tamil Nadu Act 57 of 1961. the appellant cannot be heard to claim statutory rights as a cultivating tenant. It was in that view that the suit instituted by the appellant in O.S.No.534 of 1970 was dismissed. In S.A.No.1332 of 1974 disposed of on 07.02.1977 by this Court, the conclusions arrived at by the lower appellate court were upheld that what had been leased out in favour of the appellant was only the usufructs of the coconut trees and he had no right in the soil and that even on the assumption

that the appellant was a lessee of the suit property, yet by virtue of section 51(iv) of Tamilnadu Act 57 of 1961, the provisions of the Tamil Nadu Cultivating Tenants Protection Act will not apply and further that having regard to the exemption u/s 51 (iv) of Tamil Nadu Act 57 of 1961 exempting of thopes, the appellant would not be entitled to any rights in the soil as a cultivating tenant and, therefore, no injunction could be granted in his favour. It is thus seen from Ex. B1 and from the appeals therefrom that the very right projected by the appellant to the disputed property in question was as a cultivating tenant and that claim had been negatived on the ground that the appellant was only a licensee of the usufructs in the coconut thope and had no rights whatever in the soil. In the suit out of which the present Second Appeal has arisen, the appellant has claimed the same rights as a cultivating tenant with the addition of the entry in the Record of Tenancy Rights Register in his favour. That however would not make any difference to the applicability of the principle of res judicata. It has to be remembered that the entry in the Record of Tenancy Rights Register by itself does not confer any right upon the appellant as a cultivating tenant for the main aim and purpose of the provisions of Tamil Nadu Act 10 of 1969 is only to prepare and maintain a record of tenancy rights in respect of agricultural lands in Tamil Nadu. No provision in Tamilnadu Act 10 of 1969 has been brought to the notice of the Court to show that an entry in the Record of Tenancy Rights Register confers right as a cultivating tenant on a person whose name is so entered. The provisions of Tamil Nadu Act 10 of 1969 pertain to the preparation of the record and are not declaratory rights as a cultivating tenant. It is common knowledge that there may be several persons fulfilling the requirements of the definition of a cultivating tenant, but whose names may not be recorded in the Record of Tenancy Rights Register. Equally, it has to be borne in mind that a person may not be a cultivating tenant at all, but neverthless manage to secure an entry to that effect in his name. Would such a person become a cultivating tenant merely by reason of his name being found in the Record of Tenancy Rights Register? In my opinion, he does not obtain or secure any rights as a cultivating tenant. The entry in the Record of Tenancy Rights Register, as pointed out earlier, does not confer by itself any right on a person as a cultivating tenant unless he satisfies the other requirements."

(ii) In 2005 (1) MLJ 91 in the case of P. Shanmugasundaram vs. The District Revenue Officer, Thirunelveli, Nellai Kattabomnan District and others, this Court has held as follows:

"7. Going by the Division Bench judgment, it is clear that while a party may not be able to seek for a declaration of the status of a party as a cultivating tenant in the Civil Court, a suit for declaration cannot be said to be not maintainable in the Civil Court in which, incidentally there can be a consideration and finding with reference to the nature and character of possession and status of the party. In fact, it is also made clear in the above decision that Civil Court decree either filed during the pendency of the applications before the Revenue Authorities or subsequent to that should be given due weight by the authorities concerned who deal with the

applications under Act XXV of 1955."

10. Heard both sides and I have given careful consideration to the arguments of the learned counsel on either side and the citations relied on by them in support of their arguments.

11. Learned Counsel for the appellant has taken me to various evidences and the findings rendered by the Courts below particularly assailing the findings of the Appellate Court on the question whether the plaintiff continues as a tenant and what steps have been taken by the respondent/defendant on the date of agreement, i.e., 14.07.1987. Ingredients are necessary for contract and also about the surrender of possession. It is also seen that the plaintiff was not permitted to cultivate till the clearance of the arrears. On the other hand, learned Counsel for the respondent took me to the various legal areas and the question involved is that there is no estoppel in this case.

12. I have heard the respective counsels on this point and perused the evidence and the findings of the Courts below on record. On a careful analysis of the same, the questions that arise for consideration in this appeal is whether who is the actual tenant in possession and as on what date the period of limitation commences, taking note of the sale agreement.

13. Admittedly, the suit was dismissed by the Trial Court on the question of jurisdiction. As the Trial Court has concluded the plea that u/s 60A of the Tamil Nadu Agricultural Lands Record of Tenancy Rights, 1969 (hereinafter referred to as the ''Act''), the jurisdiction of the Civil Court is barred and issues regarding pendency cannot be decided before the Civil Court, which aspect of the matter has been overruled by the First Appellate Court.

14. It is seen that the plaintiff''s father was cultivating the suit property. After his father''s suit, the plaintiff completely involved himself in the cultivation of the suit property. There was pattam arrears and rental arrears towards Paguthi to be paid by the plaintiff''s father. It is also seen that the suit properties were let out to the plaintiff by the defendant for cultivation. The plaintiff was in possession of the suit property as a cultivating tenant. Since the plaintiff''s possession of the suit property as a cultivating tenant. Since the plaintiff''s possession was disturbed by the defendant, he filed a suit in O.S.No.300 of 1986 against him, before the Trial Court. When the defendant agreed to sell the property to the plaintiff itself, a settlement was made in the said suit and the same was withdrawn as settled out of Court on 14.07.1987. The said order was marked as Ex. B1. Later, an agreement of sale was entered into between the plaintiff and the defendant on 14.07.1987 for a consideration of Rs.8,400/- and the same was marked as Ex.A4. After the Sale Agreement, the plaintiff paid a sum of Rs.1001/- as advance sale consideration and thereafter he sent a sum of Rs.250/- towards pattam and Rs.3,750/- towards partial sale consideration through Demand Draft by means of Registered Post. The

counterfoil of the Challan of the Demand Draft was marked as Ex.A5. There was a specific pleading that there was also a letter to that effect. But the defendant did not state in his evidence that he did not receive the letter. In such a situation, it has to be seen whether the sale agreement was in existence. On the other hand, there was a defence on the side of the defendant that there was a compromise in which the plaintiff has surrendered his tenancy rights over the suit property and other properties and he has agreed to pay the total rental arrears of Rs.15,000/- of his father and himself in ten equal instalments, at Rs.1500/- each.

15. To decide the above issues as to whose version is true, it could be seen that there was no evidence regarding the surrender of tenancy rights. The sale agreement entered into between the plaintiff and the defendant is in itself shown against the interest of tenancy. No tenant in such circumstances would agree for sale after the surrender of tenancy. There is no evidence to come to the conclusion that the amount of Rs.4,000/- sent through Demand Draft was towards arrears of rent and partial sale consideration. If that is the case, it is also to be seen that no steps were taken by the defendant to recover the balance amount of arrears. A cursory glance of the examination and cross-examination of D.W.1 shows that there is inconsistency from his pleadings and evidence. The plaintiff could not be in possession of the suit property as a cultivating tenant, as the plaintiff''s father was the original tenant. But, in the written statement, it is stated that Pushpam ammal was the cultivating tenant of the property and therefore, she was in possession of the property as a tenant. To prove the same, Pushpam ammal need to be put in the witness box and examined.

16. Admittedly, the defendant was away from the suit property and the plaintiff was in possession of the property prior to the filing of the suit in O.S.No.300 of 1986. The defendant claimed possession of the property, stating that the plaintiff has orally surrendered the property. In paragraph 5 of the written statement, the defendant has stated that the plaintiff has to pay the pattam arrears, as he was a tenant. In such a case, what would be presumed is that the plaintiff was a cultivating tenant or not. u/s 109 of the Evidence Act, the presumption is if the tenant continues to be a tenant, it is for the latter to prove by proper pleading and evidence his possession of the property as a tenant and in case of surrender by the tenant, it is for the Landlord to prove whether the tenant has surrendered his possession or not. Since there is no evidence to the effect whether the plaintiff has surrendered possession of the property to the defendant, the presumption u/s 109 of the Evidence Act clinches the issue that in the absence of any evidence that the plaintiff was not in possession of the property, the presumption goes in favour of the plaintiff alone.

17. The next issue that arises for consideration is that the plaintiff has not taken any efforts to prove as to who is the tenant. As per the provisions u/s 4(3) (a) & (b) to record the plaintiff''s name as cultivating tenant for the suit property, the efforts made by him are supported by material evidence to claim that he is the cultivating

tenant. Admittedly, the plaintiff had filed an application, but that application was dismissed for default. The said application was not restored and that order became final. An argument was made by the learned Counsel for the defendant that there was an application and that became final due to the order of dismissal for default. It is not clear whether for the same relief, a second application was filed or whether it was barred by the principle of resjudicata. Since there was no discussion and decisions made in the application for record of tenancy, the argument of the learned Counsel for the defendant cannot be sustained.

18. One more question raised by the appellant is the question of Estoppel u/s 115 of the Evidence Act. There should be a representation on the part of the plaintiff and that the defendant as regards recording the name of the tenant. In this case, nothing has happened because of the dismissal of the plaintiff''s application for recording of his name in the Tenancy Register. No injury has been caused to the defendant. Therefore, in the absence of any injury suffered by the defendant, the question of Estoppel does not arise. One more aspect argued by the respondent/plaintiff is that the Recording Officer has not sent the order of the application by means of Registered Post and no further efforts to go for an appeal were made. In the absence of the order being served on the plaintiff and further efforts not being taken by him, no question of Estoppel can arise for consideration. Mere dismissal of the application without any discussion would definitely not be advantageous to the appellant Landlord, as the Act itself is for the benefit of the tenant. From the evidence and pleadings, it is seen the the possession of the suit property was with the plaintiff. From the evidence of P.Ws.1 and 3, it is seen that even after the order dated 14.07.1987 in O.S.No.300 of 1986, the plaintiff had been in possession.

19. Therefore, mere entry in the Record of Tenancy Rights Register does not confer by itself any right on a person as a cultivating tenant unless he satisfies the other requirements. It is common knowledge that there may be several persons fulfilling the requirements of the definition of a cultivating tenant, but their names may not be recorded in the Record of Tenancy Rights Register. One more aspect is that the sale agreement was supported by Ex.A4 and the consideration was supported by P.W.2, an attesting witness to the sale agreement. The evidence in Ex.A5 would also show that there was a balance sale consideration. Therefore, the plaintiff has proved that he was a cultivating tenant of the suit property. The non-entry of the record of tenancy rights will not defeat the claim of the plaintiff. Therefore, the Trial Court concluded that the plaintiff was a tenant and the only question that has to be decided is that the finding of the Civil Court has been completely vested from the jurisdiction is correct or not.

20. In a decision reported in Arumugam and Another Vs. Sri. Dharmapuram Mutt, this Court in paragraph 5 has held as follows :

"Even that part, the embargo or ouster of jurisdiction u/s 16-A of the Act has been held to be not absolute in terms under all circumstances. The very Full Bench judgment of this Court in Periathambi Goundan vs. District Revenue Office (FB) (supra) relied upon for the appellant, while considering the ambit, amplitude and extent of interdict imposed by the said section has in categorical terms declared the position that the controversy as to whether a particular piece of land has been let out for cultivation by a tenant or not being one constituting the jurisdictional issue cannot be said to be within the exclusive jurisdiction of the authorities functioning under the Act alone since to hold so would amount to permitting statutory authorities to assume jurisdiction erroneously. As a matter of fact, in some of the subsequent decisions of this Court rendered, taking into account even the ratio of the above Fall Bench judgment, it was held that the authorities under the Act cannot be said to have exclusive jurisdiction to decide the issue as to whether the lands have been let under a tenancy agreement and the Civil Court is not totally precluded from dealing with a claim of a landlord in any and every or all circumstances. In the light of the very case pleaded, in my view, the question of relationship of landlord and tenant cannot be said to subsist and the lands cannot be said to have been held by the first defendant or defendants under a tenancy agreement express or implied. In view of the above, the question of applying the provisions contained in Section 16-A of the Act to the case on hand does not arise at all."

A careful reading of the above judgment would reveal that the case on hand is almost in the similar circumstances. Therefore, the ouster of jurisdiction as decided by the Trial Court cannot be sustained. It is the authoritative conclusion arrived at by the Appellate Court based on the material evidence supported by the oral evidence and the appropriate pleadings clinchingly show that the respondent/plaintiff was in physical possession and was cultivating the land in question and the question raised in this appeal whether the respondent/plaintiff has established his possession and enjoyment of the suit property as a cultivating tenant has amply been proved with clear evidence and therefore, there is no scope to interfere with the findings rendered by the First Appellate Court and the substantial question of law is answered in favour of the respondent/plaintiff and the Second Appeal deserves no consideration and the same is dismissed. No costs.