Madras High Court
Muthu Krishna Naidu And Ors. vs T.M. Thamothara Chowdary And Ors. on 18 October, 1976
Equivalent citations: (1978) 1 MLJ 351
Author: V Ramaswami
JUDGMENT V. Ramaswami, J.

1. Defendants 3 and 7 to 14 are the appellants. The suit was filed by respondents 1 and 2 for a permanent injunction restraining defendants 1 to 3 and 7 to 14 from interfering with the plaintiffs' peaceful possession and enjoyment of the plaint schedule properties as long as they are the lessees and cultivating tenants in respect thereof. The suit properties originally belonged to defendants 1 and 2. They leased the properties in favour of one Mahadeva Naidu, the father and the husband of respondents 1 and 2 respectively. Subsequent to the death of Mahadeva Naidu on 30th June, 1968, the plaintiffs | respondents 1 and 2 claimed that as the legal representatives of the said Mahadeva Naidu, they are the lessees and that they are also cultivating tenants entitled to protection under the Tamil Nadu Cultivating Tenants' Protection Act. It appears that on 27th July, 1968 the properties were sold by the first and second defendants in favour of the third defendant. Defendants 7 to 12 are the children of the third defendent and the 14th defendant is the wife of the third defendant. The 13th defendant is the wife of the seventh defendant. On the ground that subsequent to the death of Mahadeva Naidu, defendants 1 to 3 and 7 to 14 are threatening to interfere with the possession and enjoyment of the plaintiffs, the suit was filed for a permanent injunction as stated already.

2. Both the Courts below have concurrently held that Mahadeva Naidu was a cultivating tenant entitled to the protection of the Cultivating Tenants' Protection Act. But, they did not go into the question whether the plaintiffs themselves are cultivating tenants. The trial Court proceeded to consider the question on the basis that as the legal heirs of Mahadeva Naidu, the plaintiffs are entitled to the protection, but dismissed the suit for injunction on the ground that though on the date when the suit was filed the plaintiffs have been proved to be in possession, they have admitted that they were dispossessed during the pendency of the suit. Since the plaint had not been amended in spite of the possession having gone to the defendants the trial Court dismissed the suit for injunction. The plaintiffs preferred an appeal. The lower appellate Court thought that since on the date when the suit was filed the plaintiffs were in possession, the subsequent events could not be taken into account in granting or refusing to grant: the injunction sought for and accordingly allowed the appeal and decreed the suit as prayed for.

3. In the second appeal, learned Counsel for the appellants contended that since it is admitted by the respondents that subsequent to the filing of the suit, the defendants have got possession of the property, there is no case for granting an injunction and the lower appellate Court erred in thinking that it could not take into account the subsequent events which have a bearing on the question of injunction. The learned Counsel, in my opinion, is well-founded in this contention. The suit is for an injunction restraining the defendants from interfering with the plaintiffs' possession and enjoyment of the plaint schedule properties as long as they are the lessees and cultivating tenants in respect thereof. In such circumstances, when the properties are not in the possession of the plaintiffs on the date when the decree was passed, I am unable to understand how this decree for injunction could be of any use or operation. Merely because a decree for injunction is granted, the plaintiffs will not be

entitled to recover possession of the properties as the suit itself was not decreed for possession. If the plaintiffs had asked for an amendment of the plaint and prayed for possession and injunction on the finding that the plaintiffs are the tenants, they could have got possession and injunction. But I find that in the trial Court itself, though a petition for amendment was filed by them they did not pursue the same when it was returned to them and did not represent the same. Subsequent to the filing of the suit, the plaintiffs had been dispossessed and the properties are in the hands of the defendants and the injunction was refused. Though the plaintiffs filed an appeal, they did not choose to ask for possession. The lower appellate Court, as already stated, thought that even without possession an injunction could be granted and it is not necessary for him to take into account the subsequent events. Even if I were to sustain the decree of the lower appellate Court, what is the earthly use of that decree, I am unable to understand. It will not have the effect of decreeing the suit for possession. Injunction could be granted only if the plaintiffs are found to be in possession of the properties and when they are not in possession no injunction could be granted. It is the bounden duty of the lower appellate Court to have taken into account the subsequent events that had happened prior to the decree. It is not to say that in every case the subsequent events will have to be taken into account. But in a matter of this kind where the decree is to operate not only as on the date of suit but even subsequently thereafter, possession is a relevant factor and the Court cannot ignore the fact that the plaintiffs have been dispossessed subsequent to the filing of the suit. No question of injunction, therefore, arises and the suit is liable to be dismissed.

4. The second appeal came on for hearing on 4th October, 1976. After hearing the arguments of the learned Counsel, when I am was about to deliver judgment it was considered necessary that a further opportunity should be given to. the plaintiffs to withdraw the suit itself if necessary and consider the filing of an application under the Cultivating Tenants Protection Act for possession of the properties. Today, the learned Counsel for the plaintiffs respondents came forward with a petition C.M.P. No. 11943 of 1976 for amendment of the plaint. The petition for amendment sought to add a paragraph in the plaint to the effect that subsequent to the filing of the suit on 5th October, 1968, defendants 1 to 3 and 7 to 14 have interfered with the possession of the plaintiffs and forcibly dispossessed them and that therefore, the plaintiffs are seeking the relief of recovery of possession alternatively. Amendment of cause of action paragraph also was asked for and with an additional prayer for possession of the suit properties. As already stated, the stage at which the plaintiffs could have asked for this amendment is at the time when the suit was pending or at any rate when the plaintiffs preferred an appeal before the lower appellate Court. In this Court, as already stated, the appellants are defendants 3 and 7 to 14. In this second appeal when the plaintiffs who have not got a decree for possession as it is and have not filed any appeal, how they could amend the plaint now as respondents and ask for an additional decree for possession, I am unable to understand. If this petition were to be allowed even without an appeal by the plaintiffs as against the decree of the trial Court dismissing the suit, the plaintiffs would have to be given a decree for possession when they had not even filed an appeal. Further, this is a belated petition. It is not as if they were not aware of the need for asking for amendment with a prayer for possession. Even in the trial Court, they did file a petition asking for an alternative relief of possession, but when that petition was returned for some compliance, the plaintiffs did not re-present the same. Even when they filed an appeal, they did not ask for possession either by amending the plaint or otherwise. They wanted to take the risk deliberately without any amendment of the plaint and to be satisfied with a mere decree for

injunction even though they had been dispossessed . I am, therefore, unable to order this petition for amendment at this stage. The petition C.M.P. No. 11943 of 1976 is accordingly dismissed.

5. As already stated, since the injunction could not be operative and could not be granted in favour of the plaintiffs as they are not in possession of the suit properties as on date, the second appeal is allowed and the judgment and decree of the lower appellate Court are set aside and the judgment and decree of the trial Court are restored. There will be no order as to costs. No leave.

6. It is not necessary for me to say that whatever remedies that are open to the plaintiffs now for recovery of possession of the properties are not affected by this judgment.