

(1958) 10 MAD CK 0020
In the Madras High Court

A. Bhaskaran and Another		APPELLANT
	Vs	
Sellappa Goundan and Others		RESPONDENT

Date of Decision : 01-10-1958

Acts Referred:

Madras Estates Land Act, 1908 — Section 11

Citation : (1959) ILR (Mad) 452 : (1959) 72 LW 55 : (1960) 1 MLJ 183

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Judgement

Ramachandra Iyer, J.—This Revision Petition is filed against the order of the District Munsif, Sankaridrug at Salem, transferring the records

in O.S. No. 67 of 1957 on his file to the Estates Land Act Tribunal, Vellore, u/s 11 of Madras Act (XXX of 1956). The plaintiffs are the

petitioners. O.S. No. 67 of 1957 was filed for ejectment of and recovery of mesne profits from the defendants. The plaintiffs claimed that the suit

properties belonged to them absolutely, that they granted a lease of the same in the year 1949 to the first defendant (defendants 2 to 4 being his

sons), and that the aforesaid lease was renewed thereafter. The renewed lease is stated to have terminated on 12th April, 1953 and as the

defendants refused to hand over possession, the suit was filed for recovery of possession and mesne-profits.

2. The defendants contested the suit. They denied the plaintiffs' title to the property and also the lease. They further stated that the suit properties

were ryoti lands in the whole inam village of Komarapalayam Agraharam, in which they have the kudivaram interest from the time of their

ancestors, and that the plaintiffs being only the landholders could not evict them. Various issues were framed in the suit. For the present purpose

Issues 7 to 9 are alone relevant. They are:

7. Is Komarapalayam Agraharam village not an estate as defined in the Madras Estates Land Act (I of 1908) as amended?

8. Are the suit lands ryoti lands?

9. Whether the defendants a to 4 have occupancy or kudivaram rights in the suit lands?

3. The defendants, thereafter, filed I.A. No. 2434 of 1957 in the lower Court for transferring the suit u/s 11 of Madras Act (XXX of 1956). The

lower Court held that as it was incumbent on the Court to decide whether the suit lands are situate in an estate or not, the suit should be transferred

to the Tribunal. The plaintiffs have filed the present Revision Petition against that order.

4. The plaintiffs' case is that the village, in which the land is situate, is not an estate, and even if it were so, they had the full right, that is, both the

melwaram and kudivaram interests in the suit property which would entitle them to evict the defendants. On the other hand, the defendants claim to

have occupancy rights in the lands, as the village according to them is an estate and the suit lands ryoti. On an analysis of the contention, it would

follow that (1) if the village is an estate and the suit lands are ryoti lands, the suit would have to be dismissed, as the civil Court will have no

jurisdiction to entertain the suit, (2) if the village is an estate but the suit lands are not ryoti lands but those in which the plaintiffs have both

melwaram and kudivaram interests or at least kudivaram interest in the lands, the suit will have to succeed and that (3) if the village is not an estate

at all, and the defendants' right was only under the lease granted by the plaintiffs, which subsequently came to an end, a decree for possession

should follow. Therefore, the right of the defendants to retain possession would depend not only on the fact of the village being an estate but on the

suit lands being ryoti lands in which they have an occupancy right. It is true that in order to prove that the lands are ryoti lands it should first be

shown that the village in which they are situate is an estate. But that is only preliminary or incidental step to ascertain whether the lands are ryoti

lands. The contention on behalf of the defendants is that u/s 11 of Madras Act (XXX of 1956) the Court has no option but to transfer the suit to

the Tribunal once there is an issue in the case involving the determination as to

whether any area is situate in an estate, regardless of the fact

whether such issue is necessary or merely incidental to the case. It may be noticed that Issues 8 and 9 cannot come within Section 11 of the

Estates Land Act. The only issue on which the defendants could rely is Issue No. 7 under which it has got to be decided whether the suit village is

an estate or not. Before considering the contention raised on behalf of the parties, it is necessary to set out Section 11(1) of Madras Act (XXX of 1956):

All suits, appeals or other proceedings (other than those proceedings before the High Court) pending at the commencement of this Act before any

Court or Tribunal or Settlement Officer as denied in Section 2, Clause (13), of the Abolition Act, in which any question is in issue whether a

particular area is or was an estate as defined in Section 3, Clause (2), of the Estates Land Act, or is or was an inam estate as defined in Section 2,

Clause (7) of the Abolition Act, shall stand transferred to the appropriate Tribunal constituted under this Act for the determination of that question.

5. The terms of the Section are, no doubt, wide. But in my view, it cannot be read so as to justify a transfer of suits to the Tribunal in which the

determination of the question referred to in the section is only incidental to the granting of reliefs, which could be granted by the civil Court. I am

also of opinion that there would be no bar to the entertainment of the suit by the civil Court if the issue as to whether a particular non-ryotwari

village is an estate or not is unnecessary for the determination of the suit.

6. There is no provision either in Act XXX of 1956 or in the Abolition or Rent Reduction Acts, for deciding suits by the Tribunals appointed under

the Act. Nor is there any provision for re-transfer of the suits by the Tribunal to the civil Court after the determination of the issue to enable the civil

Court to decide the rest of the suit. Having regard to Sections 3 and 11 of the Act, the only jurisdiction of the Tribunal would be to decide the

question whether an area is situate within an estate or not. If suits for possession or money are transferred to the Tribunal, there is no provision in

the Act to indicate as to what is to happen to them if the question contemplated by Section 11 has been decided. The Tribunal would seem to have

no power to decide any consequential matters or grant relief to the parties as a result of its finding on the issue entrusted to it for decision. The

Legislature could not, therefore, have contemplated that suits for reliefs which could be granted only by the civil Court, should be transferred to the Tribunal although for the purpose of granting those reliefs the civil Court has incidentally to decide the issue contemplated by Section 11. The terms of that section if liberally interpreted would entail a transfer of every suit in which one of the issues relates to the determination of the question as to whether an area is situate in an estate or not. But the general words of that section have got to be interpreted in the light of the other provisions of the Act. In Maxwell on Interpretation of Statutes, 10th edition, at page 18, it is stated:

General words admit of indefinite extension or restriction, according to the subject to which they relate, and the scope and object in contemplation.

They may convey faithfully enough all that was intended, and yet comprise also much that was not; or be so restricted in meaning as not to reach all

the cases which fall within the real intention. Even, therefore, where there is no indistinctness or conflict of thought, or carelessness of expression in

a statute, there is enough in the vagueness and elasticity inherent in language to account for the difficulty so frequently found in ascertaining the

meaning of an enactment with the degree of accuracy necessary for determining whether a particular case falls within it.

7. It is well-settled that in order to properly interpret any statute and arrive at its real meaning, it is necessary to get an exact conception of the

scope and object of the Act. What should be considered in such circumstances is stated in an old English case known as Heydon's Case 76 Eng.

Rep. 637, where Lord Coke laid down that to arrive at the real meaning of a statute it was necessary to consider (1) what was the law before the

Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed and (4) the

reason for the remedy. In the Treatise on Statute Law by Craies (1952 Edition), page 91, it is stated:

These rules are still in full force and effect with the addition that regard must now be had not only to the common law, but also to prior legislation

and to the judicial interpretation thereof.

8. In *Macmillan & Co. v. Dent* L.R. (1907) 1 Ch. 107, Fletcher Moulton, L.J., observed at page 120:

In interpreting an Act of Parliament you are entitled, and in many cases bound, to look to the state of the law at the date of the passing of the Act

not only the common law, but the law as it then stood under previous statutes in order properly to interpret the statute in question. These may be

considered to form part of the surrounding circumstances under which the Legislature passed it, and in the case of a statute, just as in the case of

every other document, you are entitled to look at the surrounding circumstances at the date of its coming into existence, though the extent to which

you are allowed to use them in the construction of the document is a wholly different question.

Therefore, in order to properly interpret the provisions of Madras Act (XXX of 1956) it is necessary to consider what was the state of law before

the Act was passed, the purpose for which the Act was passed or the mischief for which the remedy provided by it was intended. This rule is of

particular importance in the interpretation of the enactment in question which specifically refers to three previous tenancy legislations in the State,

namely, the Madras Estates Land Act, the Madras Estates Abolition Act and the Madras Rent Reduction Act (Act XXX of 1956) was evidently

intended to provide machinery for determination of the questions relevant for the application of the Madras Rent Reduction Act (Act XXX of

1947) and the Estates Abolition Act (Act XXVI of 1948). In Maxwell on Interpretation of Statutes, page 20, it is stated:

The true meaning of any passage, it is said, is to be found not merely in the words of that passage, but in comparing it with other parts of the law,

ascertaining also what were the circumstances with reference to which the words were used, and what was the object appearing from those

circumstances which the Legislature had in view.

One of the principal tenancy legislations in this State is the Estates Land Act, Madras Act I of 1908. That applied to Zamindari and whole inam

village which is defined as an estate u/s 3 of the Act.

9. The Madras Rent Reduction Act (Madras Act XXX of 1947), applied to all ryoti lands in an estate. Section 3 of the Act gave power to the

Government to reduce the rates of rent, to collect the rent on behalf of the landholder and pay the same to him. It created also a right in the ryot to

pay only the reduced rate of rent. Questions often arose as to whether any

particular village was an estate or not. No machinery was provided

under that Act to decide that dispute, so that the question whether a village which was notified under that Act was an estate or not had to be

decided by the civil Court.

10. Next came the Abolition Act, namely, Act XXVI of 1948. That provided for the taking over of all inam estates by the Government and

converting the tenure into a ryotwari one and granting ryotwari pattas to the persons specified in the Act. Section 9 of that Act provided a

machinery to decide as to whether an estate under the Madras Estates Land Act was an inam estate or not. There was, however, no machinery

either under Act XXVI of 1948, or under Act XXX of 1947, to decide whether a village or any area was an estate within the meaning of Madras

Estates Land Act. That question could be finally decided only by the civil Court, though u/s 9 of Madras Act XXVI of 1948 that question maybe

incidentally decided. Section 56 of that Act provided also for the decision of certain disputes namely, in regard to arrears of rent and as to who

was a lawful ryot, by the Tribunals appointed under the Act. The remedies provided for in the enactment were, however, not complete. For

instance u/s 9 of Act XXVI of 1948 the Officer may decide whether an estate is an inam estate or not, but he cannot finally decide whether it was

an estate at all. Act XXX of 1956 was, therefore, enacted to provide machinery for decision as to whether an area is an estate or not for the

purpose of Act XXX of 1947 as well as for Act XXVI of 1948.

11. Section 3 of Act XXX of 1956 provided that any person interested may make an application to the Tribunal constituted under the Act for a

declaration that any specified area in the application is the whole or part of an estate u/s 3(2) of the Madras Estates Land Act or an inam estate

within the meaning of the Abolition Act. The two questions would respectively be relevant for the purpose of Rent Reduction Act and Abolition

Act. Section 6 gives jurisdiction to the Tribunal to decide the question and an appeal is provided against such a decision u/s 7. Section 10 bars the

jurisdiction of the civil Court to adjudicate on any question whether any non-ryoti area is or is not an estate or in respect of any matter which the

Tribunal under the Act is empowered to decide. It is evident from the provisions of the Act that the jurisdiction to decide whether a non-ryotwari

area is an estate or part of an estate was for the purposes of Act XXX of 1947 and XXVI of 1948. Having regard also to the fact that the

Tribunals under the Act or temporary ones created by statute for the proper working of the two enactments referred to above, and that they were

not intended as a substitute to the ordinary Courts of the land, their jurisdiction should be limited to cases where the sole question is whether an

area is an estate or not for the purposes of the two enactments. Section 10 should not be understood as prohibiting the ordinary civil or revenue

Courts or other Tribunals from deciding that question incidentally if that were necessary for the purpose of exercising their jurisdiction. The

provisions of Section 10 would only preclude those Courts and Tribunals from deciding the question so as to bind either directly or indirectly the

authorities in the exercise of their jurisdiction under Act XXX of 1947 and XXVI of 1948. For the purposes of these enactments the machinery

provided under Act XXX of 1956 above would be competent to adjudicate the question. I am, therefore, of opinion that the provisions of Act

XXX of 1956 cannot have any application to suits in civil Courts in respect of rights other than created by Act XXX of 1947 and Act XXVI of

1948. There has been no abrogation of such rights, nor has there been any stay of proceedings in regard to the enforcement of those rights-by Act

XXX of 1956. As I have already held, there is no means by which after the decision of the question the Tribunal concerned can re-transfer the suit

to the civil Court for granting reliefs in the light of the adjudication made by the Tribunal. Having regard to the history and context under which the

Act was passed the general words in Sections 10 and n of Act XXX of 1956 should be taken to apply only to those adjudications which became

necessary for obtaining rights or declarations under Act XXX of 1947 and Act XXVI of 1948. It is no doubt true that in such matters it is the

substance of the claim of the plaintiff that ought to be looked into. If the Court comes to the conclusion that proceedings were intended only to get

adjudication to enable the litigant to use it for the purposes of Act XXX of 1947 and Act XXVI of 1948 those proceedings should certainly be

transferred to the Tribunal. If, on the other hand, it comes to the conclusion that the substance of the claim is only to agitate an ordinary civil right in

which the question involving determination as to whether a particular area is an estate or not is only incidental, the Court would have no jurisdiction

to transfer that matter and it has got to decide itself.

12. Section 11 under which transfer of the present case has been ordered is only a transitory provision, that is, it would relate to only those

pending proceedings which if initiated after the Act could be done u/s 3 of the Act, that is, a proceeding at the instance of a person interested. If,

therefore, in a suit or appeal a question as to whether an area is an inam estate or not is raised by a person not interested, the Court would have no

jurisdiction to transfer the proceedings u/s 11. For example in the instant case if it were found that the defendant is only a tenant under a terminable

lease holding under the plaintiffs, he would not be a person who would be interested in the question whether the suit land was situate in an estate or

not, for whatever it may be, he would be liable to be evicted on the termination of the lease. The question of the land being in an estate will not

conclude the matter, because the plaintiffs would be entitled to relief even if the land is situate in an estate if they prove that they as owners would

be entitled to the possession of the land. I am, therefore, of opinion that the order of the lower Court in transferring the suit merely because there is

an issue like Issue 7 is not warranted. That order is, therefore, set aside and the lower Court is directed to restore the suit to its file and dispose of

it in accordance with the law. This Civil Revision Petition is allowed with cost.