

(1958) 10 MAD CK 0019

In the Madras High Court

Case No : Civil Revision Petition No. 168 of 1958

A. Bhaskaran and Another

APPELLANT

Vs

Sellappa Goundan and Others

RESPONDENT

Date of Decision : 01-10-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Madras Estates (Supplementary) Act, 1956 — Section 11

Citation : AIR 1959 Mad 199

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Advocate : V. Vedantachari and T. Rangaswami, for the Appellant; T.K. Subramania Pillai and V. Shanmugham, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Iyaer, J.—This revision petition is filed against the order of the District Munsif, Sankari, 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 1937 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 12-4-1953 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 Komrapalayam Agraliaram, in which they have the kudiwaram 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 Komrapalayam Agaharam village not an estate as defined in the Madras Estates Land Act 1 of 1908 as amended?

8. Are the suit lands ryoti lands?

9. Whether the defendants 2 to 4 have occupancy Or kudiwaram rights in the suit lands?" 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 sit should be transferred to the Tribunal. The plaintiffs have filed the present revision

petition against that order.

3. 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 kudiwaram 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 arc 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 arc not ryoti lands but those

in which the plaintiffs have both melwaram and kudiwaram 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 of 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 he 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 defined 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.

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-ryotiwari

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

4. 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 the 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 the 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 a 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 Edn. 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 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,

5. 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 he considered in such circumstances is stated in an old English case known as Heydon's case (1584)

76 E. R. 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 salute law by Craies, 1952 Edn. 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." In *Macmillan & Co. v. Dent* 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 1950. 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, Art 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 1 of

1908. That applied to Zamindari and whole inam. villages which is defined as an estate u/s 3 of the Act.

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.

7. 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 aow 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 may be 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 enactments 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 1935 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.

8. 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 of the Abolition Act. The two questions would respectively be relevant for the purpose of Rent Reduction Act and Abolition Act. Section 3

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-ryot-wari 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 are 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 1958 cannot have any application to suits in civil courts in respect of rights other than those 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 retransfer 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 11 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.

9. Section 11 under which transfer of the present case hits 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 under

Section 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 costs.