

(1988) 01 MAD CK 0047
In the Madras High Court

A. Rukmani Ammal and Others		APPELLANT
	Vs	
R. Sankaran Nadar and Others		RESPONDENT

Date of Decision : 12-01-1988

Acts Referred:

Citation : (1989) 1 LW 266 : (1989) 1 MLJ 348

Hon'ble Judges : M.N. Chandurkar, C.J

Bench : Single Bench

Judgement

M.N. Chandurkar, C.J.—This revision is directed against the order of the Subordinate Judge, Nagercoil, reversing the order of the executing court and holding that the respondents are entitled to the benefits of the Tamil Nadu Cultivating Tenants Protection Act, as extended to Kanyakumari District.

2. The present petitioners filed an execution petition for executing a decree for possession passed in their favour in O.S. No. 1 of 1967 in respect of certain agricultural lands. The decree for possession was subject to the provisions of Act 8 of 1950 (Travancore-Cochin). The plaintiffs had taken a release deed in respect of one-third of the suit property from some of the defendants and the judgement debtors were in possession of two third share under the pattam and Kuzhikanam dated 12-2-1077, M.E. According to the contesting judgment debtors, the arrears of pattam for the entire property till 1974 came to Rs. 69.90 and out of this amount, the present petitioners were entitled only to Rs. 43.95 being two-third of the amount which they had deposited on 22-3-1974. The contesting judgment-debtors, therefore, claimed that no relief could be given to the decree holders in execution proceedings.

3. The executing court referring the provisions of Act 8 of 1950 (Travancore-Cochin) took the view that under that Act, if there was a wilful waste of leasehold property by the lessee or if the rent was in arrears due to the lessor, the lessor could recover possession of the leasehold right. Holding that default in payment of rent was committed, the executing Court took the view that the defendants had forfeited their right to stay the execution proceedings as

provided under Act 8 of 1950 and consequently held that the plaintiffs were entitled to recover possession of B schedule property. With regard to the improvements made on the land, however, the executing Court observed that the contesting judgment debtors did not even file a commission application to assess the value of improvements due to them from the plaintiffs. However, to meet the ends of justice, the executing Court directed the defendants to file an application for appointment of a commission to assess the value of improvements mission to assess the value of improvements due to them from the schedule property on or before 9.12.1974, failing which their rights would be forfeited and the plaintiffs would be entitled to take delivery of possession of B schedule property after removal of the sheds.

4. This order of the executing court was challenged in appeal before the Subordinate Judge, Nagercoil. A grievance has been made in the grounds of revision that the appeal itself was heard on the forenoon of 7.2.1978 but that later, additional grounds of appeal were filed claiming benefits under the Tamil Nadu Cultivating Tenants Protection Act and without giving any notice to the present petitioners the matter was reheard, and the appeal was allowed. It appears that a review application setting out these facts also came to be filed in the appellate court. The fate of that review petition is, however, not known.

5. The learned Subordinate Judge took the view that the judgment debtors being cultivating tenants entitled to protection under Act 25 of 1955, the decree could not be executed and the only remedy available to the plaintiffs, decree-holders was to move the prescribed authority for eviction as against the appellants therein for arrears of rent, if there is any. Consequently, the petition for delivery of possession came to be dismissed and the order of the executing court was set aside. This order is now challenged on behalf of the plaintiffs.

6. The argument of the learned Counsel appearing on behalf of the plaintiffs is that though the Tamil Nadu Cultivating Tenants Protection Act, 1955, was extended to Kanyakumari Dt., by the Tamil Nadu Cultivating Tenants Protection and Payment of Fair-Rent (Extension to Kanyakumari District) Act, 1972, the execution petition could not stand automatically rejected merely by the extension of the 1955 Act. The learned Counsel contended that the Amending Act having come into force only on 8.3.1976, the 1955 act became applicable only from that date and that there was an express provision in Section 6, which saved all rights which had accrued prior to 8.3.1976.

7. The learned Counsel appearing on behalf of the judgment debtors, however, contended that having regard to the clear bar in Section 3 of the 1955 Act, notwithstanding the fact that there was a decree of possession and that decree could have been executed if there were arrears of rent, the execution proceedings could not be continued and the learned Subordinate Judge was right in allowing the appeal. Section 3(1) of the 1955 Act on which the learned Counsel for the judgment debtors relied reads as follows

...(1) Subject to the next succeeding sections, no cultivating tenant shall be evicted from his holding or any part thereof, by or at the instance of his landlord whether in execution of a decree or order of a court, or otherwise.

If Section 3(1) stood by itself and was attracted to the facts of the present case; there would have been no difficulty in upholding the claim of the present respondents. What is, however, relevant to the facts of the present case is not Section 3 by itself but it has to be read in the light of the 1972 Act which extended the provisions of the 1955 Act to Kanyakumari District. There are exhaustive provisions in the Extension Act of 1972. The crucial amendment is the addition of Sub-section (3) after Sub-section (2) of Section 2(A) of the Act which had the effect that the provisions of 1955 Act would become applicable to Kanyakumari District on the day on which the 1972 Extension Act was first published in the Tamil Nadu Government Gazette. That date is 8.3.1976. The other relevant amendment is a special provision in Clause (aa) in Explanation IV which was added in Sub-section (2) of Section 3. Explanation IV with Clause (aa) reads as follows:

In relation to the Kanyakumari District, Clause (aa) of this sub-section shall have effect as if the following clause had been substituted, namely-(aa) who, if in arrears on the date on which the Tamil Nadu Cultivating Tenants Protection and Payment of Fair Rent (Extension to Kanyakumari District) Act, 1972, is first published in the Tamil Nadu Government Gazette with respect to the rent payable to the landlord and accrued due during a period of one month before such date does not pay such rent within a month after such date, or who is in respect of rent payable to the landlord after such date, does not pay such rent within a month after such rent becomes due; or...

The Explanation is a part of Sub-section (2) of Section 3. Sub-section (2) of Section 3 refers to case to a which the bar under Sub-section (1) will not apply. In so far as Kanyakumari District is concerned, the bar under Sub-section (1) shall not apply if the tenant who was in arrears on 8.3.1976 with respect to the rent payable to the landlord and accrued due during a period of one month before 8.3.1987 does not pay such rent within a month after 8.3.1976, or who in respect of rent payable to the landlord after 8.3.1976 does not pay such rent within a month after such rent becomes due.

8. The case of the judgment debtors is not covered by this clause because the rent had already become due earlier. What are crucial however, are Sections 5 and 6 of the 1972 Act. Under Sections 5, it was provided as follows:

Any law corresponding to either of the said Acts in force in the said district immediately before the commencement of this Act (hereinafter referred to as the corresponding law) shall stand repealed on such commencement.

Section 6 reads as follows-

(1) the repeal, by Section 5 of the corresponding law shall not affect-

(a) The previous operation of the corresponding law or anything done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the corresponding law; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the corresponding law; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forbearing forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the provisions of Sub-section (1) anything done or any action taken including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation or form framed, certificate granted or registration effected under the corresponding law shall be deemed to have been done or taken under the said Acts and shall continue in force accordingly, unless and until superseded by anything done or any action taken under the said Acts.

It is not in dispute that the "corresponding law" referred to in Section 5 was Travancore Cochin Act 8 of 1950. That Act stood repealed from 8.3.1976. Section 6 of the 1972 Act was intended to safeguard certain rights, which had accrued to tenants and landlords under the repealed Act, namely Act 8 of 1950. Similarly, the saving provision in Clause (b) of Section 6(1) of 1972 Act would also permit the liability for eviction, if it has been incurred under the repealed Act to be enforced as if the repealing Act has not come into force. The effect of Sections 6 therefore, is that if right to possession had accrued already under Act 8 of 1950 and the tenants had incurred a liability to be evicted under the terms of Act 8 of 1950, the corresponding right to evict could be enforced and the tenants could be proceeded against for eviction.

9. The learned Subordinate Judge has not even considered the effect of Sections 5 and 6 and has merely made a general observation that the tenants are cultivating tenants. The learned Counsel for the revision petitioner is right when she contends that before a person can claim protection under the 1955 Act he has to establish that he is a cultivating tenant within the meaning of the definition of "cultivating tenant" in Section 2(aa) of the 1955 Act. For the purposes of the definition, only a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement express or implied, is entitled to the benefits of the Act. There is no inclusive portion and if a person wants to claim the benefit of the inclusive part of the definition, he has to prove that he falls within that part. However, so far as the facts of the present case are concerned, it is unnecessary to go into the question as to whether the respondents were

cultivating tenants because even otherwise, certain rights had accrued in the present petitioners and the liability for eviction which had already accrued under Act 8 of 1950 and which liability was given effect to by the executing Court is not affected by the provisions of Act 6 of 1976, because the right which had accrued to the present petitioners is expressly saved by Section 6. Therefore there is no substance in the contention raised on behalf of the present respondents that Section 3(1) of the 1955 Act did not enable the present petitioners to evict the respondents in pursuance of the decree of the civil court. In my view, the order of the learned Judge suffers from a complete non-application of mind to the relevant provisions of the 1972 Act and was made overlooking the relevant provisions of 1972 Act. The order of Subordinate Judge is liable to be set aside. Accordingly, the order of the learned Subordinate Judge is set aside and the order of the executing court is restored.

10. The revision petition is allowed. There will be no order as to costs.