

**(1976) 02 MAD CK 0055**  
**In the Madras High Court**

A. Shukur

APPELLANT

Vs

K.E. Sundara Mudaliar and Another

RESPONDENT

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**Date of Decision :** 23-02-1976

**Acts Referred:**

Madras Estates Land Act, 1908 — Section 3

**Citation :** (1976) ILR (Mad) 366 : (1976) 2 MLJ 332

**Hon'ble Judges :** A. Varadarajan, J

**Bench :** Division Bench

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**Judgement**

A. Varadarajan, J.—The plaintiff, who failed in both the Courts below, is the appellant. He filed the suit for declaration of his title to the suit properties and recovery of possession thereof and a half share of the casuarina crop raised by the respondents, on the suit properties alleged to have been leased to the" 1st respondent or its value of Rs. 3,000.

2. The suit properties are 3 items of lands, viz., 1 acre 71 cents comprised in S. No. 97/1 said to correspond to Paimash No. 248/D forming item 1; 5 acres 50 cents of land comprised in S. No. 88/2 said to correspond to Paimash Nos. 221 and 365 forming item 2; and specific 13 acres 79 cents out Of 44 acres 13 cents comprised in Paimash Nos. 233, 250/A, 250/B, 251, 252/B, 253, 255/B, 257/A, 257/B, 257/C and 264 of Karungali Village, Ponneri Taluk, Chingleput District, which was originally a zamin estate and taken over by the Government on 3rd January, 1951 under the provisions of the Madras Estates (Abolition; and Conversion into Ryotwari) Act XXVI of 4 948.

3. The appellant is the son of one Tippu Saheb who died in or about November, 1930, and he claimed to have inherited the suit properties as the heir of his father and to have obtained patta No. 17 in respect of the lands under the provisions of Act XXVI of 1948. He alleged that he had leased out the lands to the first respondent in 1958 for raising casuarina on half waram basis and that the first respondent refused to give him his share of the crops in 1965 and took away the entire casuarina crop estimated at 150 tons. He impleaded the second

respondent, the widow of the first respondent's brother Vaidyalingam on the ground that she also put forward a claim to the suit properties.

4. The suit properties and other properties admittedly belonged originally to Tippu Saheb. Those properties appear to have been brought to sale subsequent to the death of Tippu Saheb in execution of a decree obtained against him in Small Cause Suit No. 19 of 1933 on the file of the District Munsif 's Court, Poonamallee, and sold to one Parthasarathi Mudaliar. The appellant's wife Ghouse Bi and her brother Abdul Razack appear to have obtained reconveyance of the properties from the Court auction-purchaser Parthasarathi Mudaliar. Subsequently the first respondent obtained a sale in respect of a half share in those properties from Abdul Razack under Exhibit B-6 dated 18th November, 1944. Thereafter the appellant's wife Ghouse Bi filed O.S. No. 103 of 1947 in the Sub-Court, Chingleput, for a declaration that the sale of the half share of the properties by Abdul Razack (the third defendant in that suit) to the first respondent (the first defendant in that suit) was not valid and binding on her and that the first respondent was not entitled to be in joint possession of the properties with her on the basis of that sale and also for recovery of Rs. 3,500 being the value of the casuarina alleged to have been cut and removed by the first respondent and Parthasarathi Mudaliar. Exhibit A-10 is the copy of the plaint in that suit. The parties in that suit entered into a compromise (Exhibit B-1) and the compromise decree (Exhibit B-2) dated 12th August, 1949 had been passed in terms thereof, allotting certain properties to the first respondent. The properties had been described in the plaint, Exhibit A-10, by survey numbers though the zamin estate had been taken over under the provisions of Act XXVI of 1948 only on 3rd January, 1951 and survey and settlement operations in respect of the estate could have commenced only thereafter. But, in the compromise petition and decree, Exhibits B-1 and B-2, the properties have been described only by paimash numbers.

5. The defence in the present suit was that the first respondent got the present suit properties in the compromise decree and has been, in exclusive possession and enjoyment of the properties since the date of the compromise decree and had perfected his title by adverse possession. The respondents denied the lease set up by the appellant and contended that the patta for the suit properties granted to the appellant by the Settlement Officer would not confer any rights on the appellant and will not affect the first respondent's right to the suit properties. They denied that the appellant was entitled to any share in the casuarina crop and contended that in any event the quantum of mesne profits claimed was excessive.

6. On a consideration of the evidence placed before him the learned District Munsif found that the survey numbers given in the plaint, Exhibit A-10, in O.S. No. 103 of 1947 was a mistake for paimash numbers and held that the properties allotted to the share of the first respondent in the compromise decree, Exhibit B-2, are the present suit properties, having regard to the boundary description.

He held that the civil Court has no jurisdiction to go into the question of the validity or otherwise of the grant of patta by the Settlement Officer, but has jurisdiction to adjudicate upon competing claims to title to the property and for possession of the land for which patta had been granted by the Settlement Officer and that the first respondent; has title to the suit property. He disbelieved the case of the appellant that the first respondent was in possession of the suit properties as his lessee and found that the first respondent had taken possession of the lands allotted to him under Exhibit B-2 even prior to the date of the alleged lease in October, 1958, viz., items 1 and 2 in 1949, and item 3 in 1953, and had acquired title even by prescription to items 1 and 2. On these findings he dismissed the suit with costs.

7. On appeal the learned Subordinate Judge found that the first respondent has acquired title by prescription even to item 3 and he agreed with the learned District Munsif in all other respects and dismissed the appeal with costs.

8. Now the learned Counsel for the appellant submits that the suit lands are different from those allotted to the first respondent under the compromise decree. Exhibit B-2, on the ground that boundaries, extents and paimash numbers do not tally, that on the abolition of the estate under the provisions of Act XXVI of 1948 the suit properties had vested in the Government under the provisions of Section 3 of that Act and Patta No. 17 had been granted to the appellant in respect of the properties by the Settlement Officer before whom the first respondent had not made any claim for the grant of patta in his favour, and the appellant, therefore, has title to the suit properties and that on the vesting of the suit properties in the Government on 3rd January, 1951 the continuity of possession of the first respondent had been lost and he could not be held to have acquired title to the suit properties by prescription.

9. As already stated, the lands had been described by survey numbers in the plaint (Exhibit A-10) in O.S. No. 103 of 1947 which had been filed by the appellant's wife Ghouse Bi against the first respondent, Pathasarathi Mudaliar and Abdul Razack, who were defendants 1 to 3 respectively in that suit. The estate having been taken over by the Government under the provisions of Act XXVI of 1948 only on 3rd January, 1951, survey and settlement operations could have commenced only thereafter. Therefore, it is clear, as observed by the learned District Munsif, that paimash numbers have been wrongly mentioned as survey numbers in Exhibit A-10. This is made clear by the fact that in the compromise petition and decree, Exhibits B4 and B-2, dated 12th August, 1949 only paimash numbers have been given.

10. The suit item 1 has been described as 1 acre 68 cents comprised in Paimash No. 92/1 in Exhibit B-2, while it is stated to be 1 acre 71 cents in Paimash No. 248/D said to correspond to S. No. 97/1 in the plaint. The suit item 2 has been described in Exhibit B-2 as 5 acres 22 cents comprised in Paimash No. 82/2, while in the plaint it is stated to be 5 acres 50 cents comprised in Paimash Nos. 321 and 265 said to correspond to S. No. 88/2. The suit item 3 is stated in

Exhibit B-2 to be 13 acres 10 cents out of 39 acres 68 cents comprised in Paimash No. 90, while as stated already, it is stated in the plaint to be 13 acres 79 cents out of 44 acres 12 cents comprised in Paimash Nos. 233, 250/A, 250/B, 251, 252/B, 253, 255/B, 257/A, 257/B, 257/C and 264. No doubt, there is some discrepancy in the extents and paimash numbers between the plaint and Exhibit B-2. But the learned District Munsif has considered the boundaries and extents, with reference to the key list, Exhibit A-6, in paragraphs 7 and 8 of his judgment and found that the suit items 1, 2 and 3 correspond to item 2, and 3 respectively in Exhibit B-2. With regard to item 1 he has found that the northern boundary in the plaint is given as S. No. 96 belonging to the first respondent and in Exhibit B-2 as the first respondent's land, that the eastern boundary of item 1 is given in the plaint as S. No. 92 and in Exhibit B-2 as item 3 which, according to the key list Exhibit A-6, is S. No. 92, that the western boundary is given in the plaint as Buckingham Canal and backwater and in Exhibit B-2 as Buckingham Canal, and that the southern boundary is not given in Exhibit B-2, and he has observed that three out of the four boundaries in regard to item 1 tally. With regard to the suit item 2 the learned District Munsif has found that item 1 in Exhibit B-2 should be S. No. 88/2 corresponding to suit item 2, that the eastern boundary is given in the plaint as poramboke battai and in Exhibit B-2 as battai poramboke, that the southern boundary is given in the plaint as Chinthamani Eswarar Koil lands and battai and in Exhibit B-2 as poramboke battai and Chinthamani Eswarar Koil land and battai, that the northern boundary is given in the plaint as backwater and in Exhibit B-2 as Buckingham Canal and the first respondent's land and that the western boundary is given in the plaint as S. No. 89 belonging to the first respondent and backwater and in Exhibit B-2 as the first respondent's land, and he has observed that the boundaries of item 2 given in the plaint and Exhibit B-2 tally. With regard to the suit item 3 the learned District Munsif has found that the western boundary, according to the plaint, is parts of Section Nos. 97/1, 96 and 93 and in Exhibit B-2 as item 2 therein corresponding to S. No. 97/1, that the southern boundary is given in the plaint as battai and in Exhibit B-2 as battai poramboke leading to Kuppam, that the northern boundary is given in the plaint as S. No. 96 belonging to the first respondent and a portion of S. No. 92 and in Exhibit B-2 as the first respondent's land bearing Paimash No. 91 (a mistake for S. No. 91) and that the eastern boundary is given in the plaint as S. No. 92 and in Exhibit B-2 as the balance of Paimash No. 91 (a mistake for 92) belonging to Ghouse Bi and he has observed that the boundaries of item 3 tally, consequently be held that the suit properties had been allotted to the first respondent in the Compromise decree, Exhibit B-2.

11. The learned Subordinate Judge has considered this question in paragraph 9 of his judgment and has observed that he is convinced that the present suit properties had been allotted to the first respondent in the compromise decree, Exhibit B-2. The learned Counsel for the appellant submitted that there are some variations in the extents and boundaries; but he admitted fairly that the discrepancies cannot be stated to be pronounced. The Courts below have found,

on the basis of the boundaries and the key list, Exhibit A-6, that the suit properties had been allotted to the first respondent in the compromise decree, Exhibit B-2. This is a finding on a question of fact and it cannot be interfered with in this second appeal.

12. The learned Counsel for the appellant submitted that the appellant's father Tippu Saheb was the inamdar and the suit lands were his pannai lands and contended that after the estate had been taken over by the Government on 3rd January, 1951 under the provisions of Act XXVI of 1948, Patta No. 17 has been granted to the appellant in respect of the suit lands and that it is not open to the respondent to contend that the appellant has no title to the same having regard to the provisions of that Act, Section 3(b) of the Act vests in the Government free from all encumbrances with effect on and from the notified date and save as otherwise expressly provided in that Act the entire estate, including all communal lands, porambokes, other non-ryoti lands, etc. Section 3(c) of the Act declares that all rights and interests created in or over the estate before the notified date by the principal or any other landholder shall as against the Government cease and determine. Section 3(d) provides for the Government taking possession of the estate forthwith after removing any obstruction that may be offered, as well as all accounts, registers, pattas, muchalikas, maps, plans and other documents relating to the estate which the Government may require for the administration thereof. No doubt the proviso lays down that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta, if such person is a ryot, pending the decision of the Settlement Officer as to whether he, is actually entitled to such patta, and if such person is a landholder pending, the decision of the Settlement Officer and the Tribunal on appeal, if any, to it, as to whether he is actually entitled to such patta. "Ryoti land" according to Clause (16) u/s 3 of the Madras Estates Land Act (1 of 1908) means "cultivable, land in an estate her than private land but does not include beds and bunds, of tanks, etc. Therefore, as contended by the learned Counsel for the appellant, pannai lands, of the inamdar would fall within the category of "other non-ryoti lands" mentioned in Section 3(b) of Act XXVI of 1948. Section 11 of Act XXVI of 1948 provides for every ryot in an estate with effect on and from the notified date being; entitled to a ryotwari patta in respect of all ryoti land which, immediately before the notified date, would properly be included or ought to have been properly included in his holding, and are not either lanka fends or lands in respect of which a landholder or some other person is entitled to a ryotwari patta under any other provision of the Act; and also to all lanka lands in his occupation immediately before the notified date, such lands, having been in his possession or in occupation of his predecessors-in-title continuously from the first of July, 1939. The proviso to Section 11 lays down that no person who had been admitted into possession of any land by a landholder on or after the first of July, 1945 shall, except where the, Government may otherwise direct, be entitled to a ryotwari patta in respect of such land. Section 12 of Act XXVI of 1948 provides that in a

case of zamindari estate the landholder shall, with effect On and from the notified date, be entitled to a ryotwari patta in respect of all lands, including lanka lands, which belonged to him as private land within the meaning of Section 3, Clause (10)(a) of the Estates Land Act...etc. Section 15 of Act XXVI of 1948 provides for the Settlement Officer examining the nature and history of all lands in respect of which the land-holder claims ryotwari patta under Sections 12, 13 or 14, as the case may be, and deciding in respect of which lands the claim shall be allowed, and also provides for an appeal against his decision to the Tribunal. Section 56 of Act XXVI of 1948 has been omitted by the Amendment Act XXXVI of 1958. But Section 64-C of Act XXVI of 1948 lays down that any order passed by the Government or other authority under the Act in respect of matters to be determined for the purposes of the Act shall, subject only to any appeal or revision provided by or under the Act be final, and declares that no such order shall be liable to be questioned in any Court of law.

13. The learned Counsel for the appellant relied upon the decision of Anantanarayanan, J. as he then was in *The State of Madras v. Chockalingam Chettiar* (1962) 2 M.L.J. 231 and submitted that the effect of the taking over of the estate is to vest in the Government free of all encumbrances the entire estate, including all communal lands, poramboke lands, other non-ryoti lands, etc., subject to such rights in the ryot or inamdar as are provided for in the Act. The learned Judge has observed in that decision.

I have already referred to Section 3(B) and 3(c), under which the entire estate in vested in the Government free of all encumbrances; and all rights and interests created before the notified date cease, and are terminated as against the Government. u/s 3(d), the Government are entitled to take possession of the estate and connected records, but they are not to dispossess any person if, prima fade, he is considered "entitled to patta". That the effect of Section 3 is to vest the entire estate in the Government including ryoti lands, pannai lands, buildings and every other kind, of interest except as specifically saved under the provisions of the Act, is a proposition beyond controversy or dispute. It is sufficient to refer here to the Bench decision in *Marimuthu Pillai v. Krishna joshi* (1985) 1 M.L.J. 273 : 71 L.W. 197 : ILR (1985) Mad. 564 : AIR 1985 Mad. 441 and *K.S. Lakshmipathy Nayakar Vs. The State of Madras and Another*, .

The learned Counsel for the respondents did not contend that this is not the effect of the notification of the estate under the provisions of Act XXVI of 1948. Therefore, I agree with the learned Counsel for the appellant that with effect on and from the notified date, viz., 3rd January, 1951, the entire estate had vested in the Government.

14. The learned Counsel for the respondents relied upon some decisions, which will be referred to presently, and submitted that the respondents were not aware of the grant of patta to the appellant after the notification of the estate under the Act and that as the properties had been lost by the Court sale held in execution of the decree obtained against the appellant's father Tippu Saheb in the said

Small Cause Suit No. 19 of 1933 on the file of the District Munsif's Court, Poonamallee, the grant of patta to the appellant is not valid and binding and that it has not resulted in the loss of the first respondent's title to the suit properties. The first decision relied upon by the learned Counsel for the respondents is of Ramachandra Iyer, J., as he then was, in *Soosai Udayar v. Andiyappan Ambalam* (1958) 71 L.W. 857 : (1959) 1 M.L.J. 195, which arose out of certain suits which had been filed for recovery of possession. The plaintiffs in those suits contended that the kudiwaram rights in the lands vested in them, and the defendants therein, who were cultivating the lands under them, trespassed into the lands between January, 1948 and May, 1950. The defendants in those suits asserted title to and possession of the kudiwaram in themselves and contended that the villages in question had been notified under Act XXVI of 1948 and the Government had become the owner and that the civil Court had no jurisdiction to go into the question of title. The question whether the civil Court has jurisdiction to try the suits was decided as a preliminary issue and the trial Court held in favour of the defendants while the lower appellate Court held Against them. Ramachandra Iyer, J., as he then was, observed in his judgment:

The effect of these provisions is that all the rights of the landholder, ryots, inamdars and other persons interested in the erstwhile estate would cease on a notification being made under the Act and the entire estate would vest in the Government absolutely. The estate having thus vested in the Government it should normally be open to it to dispose of the lands as it pleased, but the statute itself regulated as to how it should be disposed of. As regards ryoti lands, private lands etc., in the village the tenure was changed from one under the family to ryotwari system under the Government, and ryotwari pattas are to be issued to the ryots in respect of their holdings and to the landholder in respect of the private lands. The right to obtain such patta is regulated by the provisions in the statute. Exclusion of the Civil Court's jurisdiction cannot by implication be held to be more than what is necessary for working out the rights created by the statute. If for instance the determination as to who was the lawful ryot of a holding becomes necessary for the grant of a patta under the Act, that would be within the exclusive jurisdiction of the Tribunals, under the Act. A person should not, for the purpose of obtaining a ryotwari patta be enabled to get a declaration of his title to kudiwaram so as to force the Tribunals under the Act to grant the patta to him, as the duty of deciding that question is invested in the Tribunal; If, however, that determination becomes relevant for deciding any other issue between the parties in a civil suit, there can be no exclusion of jurisdiction of the civil Court.

In AIR 1940 105 (Privy Council) the Privy Council stated it as settled law that the exclusion of the jurisdiction of the civil Court is not to be readily inferred but that such exclusion must be explicitly expressed or clearly implied. Generally speaking the question as to who was the lawful ryot of a holding cannot have any practical importance after the estate has been taken over except for the purpose of the grant of the ryotwari patta. That perhaps is the reason why the determination of

the question is provided for by Section 56. But if the relief claimed in a civil Court is not what is created or granted by the Act, e.g., the right to obtain a patta, but a civil right the jurisdiction of the civil Court which always existed, cannot be held to be ousted as the statute does not either expressly or impliedly extinguish such rights. It may be that for the grant of such relief the question to be decided is as to who was the ryot of a holding. Such a determination would necessarily be incidental and cannot be deemed to be impliedly excluded by Section 56. There is no provision in the Act to stay all suits which involve the determination of the question as to who was the lawful ryot of a holding or one to refer that issue to the statutory Tribunals for adjudication and to dispose of the suit on receipt of a finding from such Tribunals. I am not able to see anything on principle or in the terms of the Act to hold that the civil Court has been rendered powerless to decide a necessary issue between the parties though such an issue is one contemplated u/s 56, for the purpose of deciding rights other than those created or provided for by the Act. In my opinion that view is supported by authority. In *Chingurupati Venkatasubba v. Ravi Ponniah* (1975) An.L.T. 670 : (1957) 2 An.W.R. 204, there was a dispute as to the right to possession of certain lands. One of the issues involved in the case was as to which of the parties was entitled to a patta from the landholder. Chandra Reddi, J. (as he then was), held that the Civil Court could certainly take cognizance of suits in which title to the holding forming part of an estate is put in issue as relief of possession and mesne profits could not be granted by the Settlement Officer, they being beyond his competence and within the purview of civil Courts. This question was considered by a Bench of the Andhra High Court in *Appanna v. Sri Ramamurthi* (1958) 1 An.W.R. 420. In that case a dispute arose as to the arrears of rent of a holding and also as to who was the lawful ryot. Subba Rao, C.J. (as he then was) held that the reliefs prayed for came within the provisions of Section 56 of the Madras Act XXVI of 1948 and that a suit was beyond the cognizance of the civil Court. In *Ramayya v. Brahmayya* AIR 1958 Andh.Pra. 100, it was held that the right to obtain ryotwari patta can be enforced only before the special forum set up under the Act and that relief cannot directly or indirectly be sought elsewhere and that the Act does not prohibit the grant of reliefs in regard to other rights flowing from possession etc.

15. In the instant case the relief claimed is one of possession. Neither the Settlement Officer nor the Tribunal has any jurisdiction to grant such a relief. It may be that for the purpose of granting relief the question whether which of the parties had kudivaram rights may have to be incidentally decided but such incidental decision is only to give relief as to possession and cannot bind the Settlement Officer or the Tribunal when they have to decide that question under the Act. Ultimately the learned Judge held that the civil Court had jurisdiction to entertain the suits for possession.

16. In the present case it is seen from the chitta extract (Exhibit A-1) that patta No. 17 had been granted to the appellant for the suit lands and other properties, therefore it is not open to the civil Court directly or indirectly to go into that



question and find put whether the appellant had no title to the suit lands and was not entitled to the grant of ryotwari patta.

17. The next decision relied only by the learned Counsel for the respondents is that of Ramamurti, J. in *M.A. Abdul Rahim and Mohamed Ibrahim and Co., Pernambut Vs. Deputy Commercial Tax Officer, Gudiyattam*, , where the learned Judge has observed:

The principles laid down in the decisions of this Court in *Soosai Udayar v. Andiyappan* (1959) 1 M.L.J. 159 : (1958) 71 L.W. 857 and *Krishnaswami Thevar v. Perumal Konar* (1961) 1 M.L.J. 168, would clearly govern despite, Section 64-G. It is unnecessary to discuss those cases in detail as the principle enunciated in those decisions is clear, i.e., only when the Revenue Authorities can grant a particular relief their decisions would become final to that limited extent. But if the Revenue,; Authorities cannot grant a particular relief, namely, relief of possession and declaration of title or relief of injunction, the orders passed or the decisions rendered by the authorities concerned u/s 64-C of Madras Act XXVI of 1948 cannot operate as a bar to the civil Court entertaining the suit and adjudicating upon such disputed questions which are out of the purview of the authorities functioning under the Act.

The learned Judge himself has held that the authority constituted under Act XKVI of 1948 can grant a relief and his decision would become final (to that limited extent. The ryotwari patta No. 17 for the suit lands had been granted to the appellant in the present case, as already stated. If Ramamurti, J., has held in that decision that merely because the relief of possession and damages also have been prayed for it is open to the civil Court to consider whether the plaintiff had no title to the suit lands and whether the grant of patta to the plaintiff by the authority constituted under Act XXVI of 1948 is not proper, with respect I am unable to agree, having regard to the fact that in *Ramayya v. Brakmayya* AIR 1958 Andh.Pra 100 and *Appanna v. Sri Ramamurthy* (1958) 1 An.W.R. 420, referred to in the decision of *Ramachandra Iyer, J.* (as he then was), in *Soosai Udayar v. Andiyappan Ambalam* (1959) 83 L.W. 580, it has been held that the right to obtain ryotwari patta can be enforced only before the special forum set up under the Act and that the relief cannot directly or indirectly be sought elsewhere, though the Act does not prohibit the grant of reliefs by the civil Courts in regard to other rights flowing from possession, etc.

18. The third decision relied upon by the learned Counsel for the respondents is of Natesan, J. in *Arumugam Chettiar v. Subramaniam Chettiar* (1970) 83 L.W. 580. The land in dispute in that case was in an inam village which had been taken over by the Government under Act XXVI of 1948 on 1st October, 1951. The suit was for declaration of title and injunction or in the alternative for possession. The land was admittedly pannai land in an estate and patta had already been issued to the first defendant in that suit. The case of the plaintiff in that suit was that there was an exchange of lands between the plaintiff and his father on the one hand and the first defendant on the other on a3rd October, 1941 and that in

the exchange the plaintiff obtained the suit lands from the first defendant and he was in continuous possession of the land since the land was dispossessed by the first defendant only in July, 1961. The plaintiff's application for grant of a patta u/s 13 of XXVI of 1948 had been rejected by the Settlement Officer on the ground that patta had already been granted to the first defendant. Admittedly there were deeds of exchange between the plaintiff and his father on the one hand and the first defendant on the other. But they were unstamped and the first defendant contended that they were cancelled immediately after they were executed. The defence that the exchange was cancelled had been rejected by the Courts below and it was found that the plaintiff was in possession from 3rd October, 1941 until he was dispossessed in July, 1961. The contention urged before Natesan, J., was that the civil Court had no jurisdiction to entertain a claim of; title to pannai lands. The learned Judge has observed:

There are two answers to this abjection: (1) the suit is not for the grant of patta, a matter within the exclusive jurisdiction of the authorities under the Act, and (2) the plaintiff's acquisition of title as against the defendant 1 is by uninterrupted possession, prescription, completed no doubt subsequent to the taking over of the estate by the Government. Reliance is placed for barring the jurisdiction of the civil Court on Section 64-C of the Act where it is provided that any order passed by the Government or other authority under the Act in respect of matters to be determined for the purposes of the Act shall, subject only to appeal or revision provided by or under the Act be final and that no such order shall be liable to be questioned in any Court of law. The first answer to this plea is, that the relevant sections do not provide for and are not intended to give an adjudication as; to the ownership of pannai land between rival claimants.

Natesan, J., has extracted in his judgment the following observation made by Ramachandra Iyer, J. (as he then was), in *Krisknaswami Thevar v. Perumal Konar* (1961) 1 M.L.J. 168.

It may be noticed that u/s 15 it is only the nature and character of the land that has got to be decided by the special machinery created by the Act. Patta would be given to the landholder if the land is of the category mentioned in Sections 12 to 14. But if there are rival claims to the title of the landholder himself, there would be no power in the Settlement Officer or the Tribunal to adjudicate as to who among them would have a preferential right.

The learned Judge has observed that patta is only a bill. In ryotwari areas it may be so. It cannot be mere bill when the patta is issued for the first time by the authorities constituted under Act XXVI of 1948 after the estate had vested in the Government under the provisions of that Act. With respect, it is not possible to agree with the view of Natesari, J., that the civil Court has jurisdiction to go into the question of the correctness or otherwise of the grant of patta by the Settlement Officer in a civil suit, if in that suit reliefs which could not be granted by the authority constituted under the Act of XXVI of 1948 are also prayed for, having regard to the decision in *Ramayya v. Brahmayya* AIR 1958 Andh.Pra. 100

and Appanna v. Sri Ramamurthy (1958) 1 An.W.R. 420 referred to above. It is necessary, in this connection, to note the decision of Kailasam, J., in Ratnasabhapathy Servai v. Sannasi Ambalagaran (1966) 1 M.L.J. 190. In that case the patta had been granted to the zamindar and the defendants contended that the lands were ryoti lands which were in the possession of themselves and their predecessor's and were not the pannai lands of the zamindar and that the grant of patta to the zamindar was without going to the merits and was invalid and not final and binding on them. The learned Judge has held that the decision of the Settlement Officer, which had not been appealed against, regarding the nature of the land in a notified estate by the grant of ryotwari patta is final and that the civil Court has no jurisdiction to go into that question.

19. Under the circumstances, though the title of the appellant and his wife to the properties had been lost by the Court-sale held in execution of the decree obtained in the Small Cause Suit No. 19 of 1933 on the file of the District Munsif's Court, Poonamallee, the title to the properties had subsequently vested in the Government under the provisions of Section 3 of Act XXVI of 1948 and the appellant has acquired title to the properties by the grant of patta under the provision of that Act by the authorities constituted under that Act, and this cannot be questioned in the civil Court.

20. Though the estate had vested in the Government under the provisions of Section 3 of the Act, the Government had no right to dispossess any person of any land in the estate in respect of which the Government considered that he is prima-facie entitled to a ryotwari patta having regard to the proviso to Section 3 of that Act. The Court below has found that the first respondent has been in possession of the suit properties since the date of the compromise decree (Exhibit B-2) passed on 12th August, 1949. The appellant has admitted in paragraph 4 of the plaint that the suit properties were originally included in Patta Nos. 10-A and 10-B issued to Tippu Saheb and has stated that those pattas were granted to him after his death. The kachayat book (Exhibit B-3) produced by the respondent shows that the first respondent has paid kist for patta Nos, 10-A and 10-B; for faslis 1360 to 1368 and for Patta No. 17 in faslis 1371, 1372 and 1375 and that the second respondent has paid kist for Patta No. 17 in faslis 1371 to 1373 and 1375. The respondent had thus paid kist for the suit lands right from 1950. Their case that the first respondent had been the appellant's lessee has been disbelieved by both the Courts below. The first respondent's possession of the suit lands from the date of the compromise decree (Exhibit B-2) has been adverse and it is not possible to, accept the contention of, the learned Counsel for the appellant that the mere vesting of the estate had resulted in the discontinuity of possession of the first respondent, especially having regard to the proviso to Section 3 under which the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to a ryotwari patta. There is, therefore, no reason to interfere with the concurrent finding that the first respondent has acquired title by prescription in respect of items 1 and 2 and that of the lower appellate Court

that he has acquired title by prescription even to item 3 of the suit properties.

21. The second appeal, therefore, fails and is dismissed with costs. No leave.