

(1939) 03 MAD CK 0021
In the Madras High Court

Anumala Ankamma

APPELLANT

Vs

Komaravolu Venkata Subbayya and Others

RESPONDENT

Date of Decision : 01-03-1939

Acts Referred:

Madras Estates Land Act, 1908 — Section 146

Citation : AIR 1939 Mad 517 : (1939) ILR (Mad) 794 : (1939) 49 LW 777 : (1939) 2 MLJ 1

Hon'ble Judges : Alferd Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alferd Henry Lionel Leach, C.J.—The question which falls for decision in this appeal is whether Section 146 and Section 147 of the

Madras Estates Land Act, 1908, are intended to have retrospective effect. Before considering the provisions of the Act I will state how this

question arises. The appellant is a ryot in possession of a piece of land known as Survey No. 191/1. The land forms part of a holding granted by

the Rajah of Venkatagiri. There are five lots bearing survey numbers in this holding, the other four being in the possession of one Venkata

Subbayya, the pattadar. Venkata Subbayya is the son of one Vobayya, who in 1903 sold to the appellant and two others the land described as

Survey No. 191/1. The appellant's co-owners eventually gave up their interests in the land and he alone cultivated it. Venkata Subbayya failed to

pay to his landlord the rent due by him for the years 1919, 1920 and 1921 in respect of Survey Nos. 246, 445, 679 and 305 which comprised the

remainder of the holding. The result was the landlord instituted a rent suit before the Sub-Collector, Ongole, in 1922 and obtained a decree. In

execution of that, decree the land held by the appellant was sold as being part of

the area covered by the patta. The purchaser was one Poluri

Yellamraju, who on the 28th November, 1928, conveyed the land to one Komaravolu Venkata Subbayya.

2. The appellant was recognised by the landlord as the holder of Survey No. 191/1 after his purchase in 1903 and he continued to pay year by

year the rent due by him in respect of it. It was held by the trial Court in the suit out of which this appeal arises that Venkata Subbayya had

deliberately defaulted, knowing that a rent suit could be filed. His scheme was to induce the decree-holder to, sell in execution the appellant's land

as it formed part of the holding and thus give him an opportunity of buying it at the Court auction. Of course, a scheme of this nature could only be

carried through with the connivance of the Subordinate Officials of the Zamindar. The present suit was filed in the Court of District Munsif of

Ongole by Komaravolu Venkata Subbayya on the 29th April, 1929, six years after the Court auction had taken place, to recover possession of

the property from the appellant. The District Munsif dismissed the suit, holding that the appellant's title was not affected by the sale, because he

had no notice of the suit or of the sale, he was not made a party to any of the proceedings, he had been in possession of the land since 1903, and

he had regularly paid his rent to the landlord, who had recognised him as his tenant. The District Munsif also held that Poluri Yellamraju and

Komaravolu Venkata Subbayya were creatures of Venkata Subbayya. Poluri Yellamraju had bought the property at the Court auction on behalf

of Venkata Subbayya and had transferred it to Komaravolu Venkata Subbayya, who was also his benamidar. The plaintiff appealed to the

Subordinate Judge of Guntur who held that the evidence was not sufficient to justify the conclusion that the auction purchaser was a benamidar of

Venkata Subbayya, although he appears to have accepted the finding that the plaintiff was. The Subordinate Judge set out the evidence on which

the District Munsif had held that the auction purchaser was a benamidar and apparently did not dispute its accuracy. If true, the evidence was

sufficient to support the District Munsif's finding that the auction purchaser was a benamidar. Accepting the evidence as true, there was no other

conclusion really open. Holding that the auction purchaser was not a benamidar and relying on the decision in *Sri Mahant Prayag Dossjee Varu v.*

Sarangapani Chetty (1922) 17 L.W. 361, where it was held that the Madras Estates Land Act had retrospective effect the Subordinate Judge

allowed the appeal and decreed the suit. The appellant then appealed to this Court, but in his memorandum of appeal he took no exception to the

finding of the Subordinate Judge that the auction purchaser was not a benamidar. He challenged the correctness of his decision on legal grounds

and left the facts entirely alone. It is unfortunate that he did so because it was open to him to have challenged the decision of the Subordinate Judge

with regard to the position of the auction purchaser. It is, however, too late in the day now for this question to be raised, and the Court is merely

concerned with the question whether the decision of Burn, J., who heard the appellant's appeal which followed the decision of the Subordinate

Judge, is right in law. Burn, J., dismissed the appeal on the ground that he was bound by the decision in Sri Mahant Prayag Dossjee Varu v.

Sarangapani Chetty (1922) 17 L.W. 361.

3. Before referring to what was said in that case I will set out the provisions of Section 146 and Section 147 of Madras Estates Land Act. Section

146 provides that whenever a holding or any portion thereof is transferred by the Act of a ryot, or in execution of a decree or order of a Civil

Court passed against him, or by a sale for arrears of Government revenue or for any demand recoverable as arrears the transfer shall, subject to

the provisions of Section 145, be recognised by the landholder if notice in writing be communicated to him by the transferor and transferee or a

certified copy of a decree or order of a Civil Court establishing a transfer is produced, or in cases in which a transfer is effected by sale under the

order of a Court or public officer the sale certificate or a certified copy is produced. On notice in writing given by the transferor and transferee or

by the co-sharers, as the case may be, the landholder is required to enter into separate engagements with the holders of the sub-divisions from the

revenue year next succeeding that in which the notice has been given. Therefore under this section the landlord is not bound to recognise a transfer

unless he receives a notification in the manner prescribed by the section. Section 147 says that all acts or proceedings commenced or had under

the Act against the transferor or the co-sharers prior to the giving of the notice u/s 146 or prior to the production of the copy of the decree or

order or certificate of sale u/s 146 in so far as such acts and proceedings affect or purport to affect the land on which the arrear is due, the crops

and the products, shall as against the transferee or co-sharer be as valid and effectual as if such acts and proceedings had been commenced or had

against the transferee or co-sharer himself, and he had been the defaulter. In other words all proceedings which have been commenced before

notice has been received by the landlord shall be effective against the transferee.

4. In *Sri Mahant Prayag Dossjee Varu v. Sarangapani Chetty* (1922) 17 L.W. 361, a Bench of this Court consisting of Oldfield and Ramesam,

JJ., held that these two sections applied to cases where the transfer was before the Act. In other words they held that the Act had retrospective

effect. Although the learned Judges seemed to have had some doubt as to what was the law before the Act came into force it was well settled that

where a pattadar transferred his holding or part of his holding to another the transferee became the tenant and it was the duty of the landlord to find

out the transferee and collect the rent from him. Proceedings for the recovery of the rent could not be commenced until notice had been given to

the transferee. See *Ekambara Aiyar v. Meenatchi Ammal* ILR (1903) 27 Mad. 401, *Peram Narasigadu Vs. Machiredi Butchireddi and Others*, ,

Kesavaswami Aiyar v. Narayana Chetty (1912) 24 M.L.J. 228 and *Muthukaruppa Pillai alias Muthukaruppa Maniam (deceased), Rajagopal*

Maniam and Others Vs. Annamalai Chettiar through his father and guardian Somasundaram Chetti, . The decision in *Peram Narasigadu Vs.*

Machiredi Butchireddi and Others, and that in *Kesavaswami Aiyar v. Narayana Chetty* (1912) 24 M.L.J. 228 had reference to a case where the

pattadar had transferred only a portion of his holding. The decision of Oldfield and Ramesam, JJ., in *Sri Mahant Prayag Dossjee Varu v.*

Sarangapani Chetty (1922) 17 L.W. 361, that the Act had retrospective effect was based on the opinion which they had formed that the Act did

not determine any substantive rights, but we are unable to share this view. Before the Act a transferee had a recognised status even without any

notice being given of the transfer to the landlord. Therefore in providing that transferees should be bound to give formal notice to the landlords the

Act did affect substantive rights and an act which has this effect cannot be regarded as being retrospective unless this is so stated or this is

necessarily implied. That is not the position here. The wording of Section 146 is in the present tense, and there is nothing in that section or in

Section 147 which indicates an intention on the part of the Legislature to interfere with rights acquired before the Act came into force.

5. To give retrospective effect to the Act would cause damage to the appellant. In 1903 he acquired a valid title to the land which was sold in

execution of the rent decree. He was not in default and throughout had paid his rent to his landlord, the Zamindar, who recognised him as being the

holder of the land. The payment of the rent to the officials of the Zamindar and their acceptance of it means recognition by the Zamindar. The

Legislature can take away rights which have become vested, but it can only do so by a measure which clearly expresses its intention. There is no

indication here of any such intention on the part of the Legislature which passed the Madras Estates Land Act, and Sri Mahant Prayag Dossjee

Varu v. Sarangapani Chetty (1922) 17 L.W. 361 was wrongly decided. It follows that in our opinion the appellant was not required to serve

formal notice on his landlord and that he got a good title to the land by the conveyance to him in 1903.

6. The result is that the appeal succeeds and the suit will be dismissed with costs throughout in favour of the appellant.