

(1964) 08 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No's. 863 to 865 and 957 to 959 of 1962

A.R.V.A.R. Muthuraman Chettiar and Others

APPELLANT

Vs

The Estates Abolition Tribunal Now Called New Tribunal for
Estates Ramanathapuram and Others

RESPONDENT

Date of Decision : 20-08-1964

Acts Referred:

Madras Estates Land (Reduction of Rent) (Amendment) Act, 1956 — Section 11,
11(2), 12, 3A, 3A(2)

Madras Estates Land (Reduction of Rent) Act, 1947 — Section 3(2)

Citation : (1965) ILR (Mad) 495

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : R. Sethurama Sastri, for the Appellant; K. Venkatasami, for V. Ramaswami, Additional Government Pleader and K.V. Sankaran, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, J.—The Petitioners claim to be landholders entitled to certain shares in Dharmasanam village of Kalanivasal, Ramanathapuram

district. The Dharmasanam is said to have been granted by the Rajah of Ramanathapuram and was confirmed by the Inam Commission. For the

purpose of Madras Act XXVI of 1948, the village would appear to have been treated as not an inam estate. By a notification in 1949, the

provisions of Madras Act XXX of 1947 were made applicable to the village on the assumption that it was a post 1936 estate. Finding that certain

persons were in physical possession of parcels of lands in question claiming them to be ryoti in character, the Petitioners instituted suits in the Court

of the District Munsif of Devakottai in 1951 for a declaration of their title to the kudiwaram and for recovery of arrears of rent. By a common

judgment, dated July 31, 1952, the learned District Munsif held that Dharmasanam Kalanivasal village was not an estate within the meaning of the term as used in the Madras Estates Land Act but only a minor inam and decreed the suits. The matter was taken up in appeal and, by an appellate judgment, dated November 29, 1954, the village was held to be an estate and the lands in question to be pannai lands. The result was the appeals were dismissed. The disappointed tenants filed second appeals. While they were pending in this Court, Madras Act XXIX of 1956 came into force on December 19, 1956. On August 28, 1959, the second appeals were withdrawn, this Court giving no indication as to the effect of their withdrawal. In the meantime on February 13, 1957, the Petitioners filed applications u/s 3A(2) of Madras Act XXIX of 1956. In these applications they specifically referred to the decisions of the civil Courts in the said judgments and stated that in view of the provisions of Act XXIX of 1956, they felt obliged to come forward with the applications, though the question raised was the subject matter of the judgments of the civil Courts and the second appeals which were then pending in this Court. In those applications, they prayed for a declaration that the lands described in the schedules thereto were not ryoti lands but were their private lands. In addition to the character of the lands, the question would appear to have been argued before the Deputy Collector in those applications as to whether the previous judgments operated as res judicata. The Deputy Collector held that they did not so operate and did not bar enquiry into the nature of the lands and that the lands in question in three of the applications were ryoti in character and in the other three applications non-ryoti in character. There were appeals by both parties in which the Tribunal agreed with the Deputy Collector on the question of res judicata. It also agreed with the finding that some of the lands were ryoti in character but held that the other lands, which were found to be non-ryoti by the Deputy Collector, were also ryoti in character. These petitions are to quash the Tribunal's orders.

2. On the question of res judicata the Tribunal, like the Deputy Collector, was of the view that inasmuch as there was no provision in Madras Act XXIX of 1956, unlike in Madras Act XXX of 1956 and Section 64A of Madras Act XXVI of 1948, the judgments of the civil Courts could not

be regarded as barring an enquiry in proceedings u/s 3A of Madras Act XXIX of 1956 as to the character of lands. The Tribunal was further of

the view that the fact that the Petitioners applied to the Deputy Collector for a declaration as to the character of the lands showed that they gave up

their plea of res judicata and invited him to decide that question. Mr. R. Sethurama Sastri, for the Petitioners, contends that this view of the

Tribunal is not correct. He has invited my attention to Sections 11 and 12 of Madras Act XXX of 1956 and Section 64-A of Madras Act XXVI

of 1948 and contended that the absence of similar provisions in Madras Act XXIX of 1956 unmistakably showed that the Legislature in that Act

evinced no intention to nullify the effect of the judgments of the civil Courts so that they continued to be binding as between the parties.

He says that the Deputy Collector was, therefore, bound to take notice of the judgments of the civil Courts and give effect to them. Madras Act

XXX of 1956 was enacted making provisions for determination of the question whether any non-ryotwari area in the State of Madras was or

was not an estate, and for that purpose certain Tribunals were set up with original and appellate jurisdiction. Section 11 is a transitory provision

and deals with pending suits, appeals and other proceedings in Courts subordinate to the High Court. It directs that such matters pending at the

commencement of the Act should stand transferred to the appropriate Tribunal constituted under the Act for determination of the specific question.

The Section also directs that if at the commencement of the Act, acting u/s 9 of Madras Act XXVI of 1948, a Tribunal constituted thereunder has

rendered a finding that a particular area is an inam estate as defined in Section 2(7) of that Act, such a finding should be final subject, of course, to

the decision of the Special Appellate Tribunal constituted under Madras Act XXX of 1956. Section 12 relates to cases in which the High Court

has remitted a matter touching the question whether a particular non-ryotwari area is or is not an estate as defined in Section 3(2) of the Estates

Land Act. In such a case as provided by the section, the case would stand transferred at the commencement of the Act to the appropriate Tribunal

constituted under the Act from the subordinate Court to which the High Court had remitted the matter. Section 64-A of Madras Act XXVI of

1948 was introduced by the amending Act, Madras Act XVII of 1951, the effect of which is that the decision of a Tribunal or Special Tribunal in

any proceeding under that Act or of a Judge of the High Court hearing a case u/s 51(2) of that Act on any matter falling within its or his jurisdiction

shall be binding on the parties thereto and persons claiming under them, in any suit or proceeding in a civil Court in so far as such matter is in issue

between the parties or persons aforesaid in such suit or proceeding. The decision of a civil Court other than the Court of a District Munsif or a

Court of Small Causes on any matter falling within its jurisdiction is also made by Section 64-A binding on the parties thereto and persons claiming

under them in any proceeding under the Act before a Tribunal or Special Tribunal or a Judge of the High Court u/s 51(2) in so far as such matter is

in issue between the parties or persons aforesaid in such proceeding. The Tribunal with reference to these statutory provisions thought that the

Legislature whenever it intended to provide for a finding of civil Court to be binding and as such res judicata it said so and that inasmuch as

Madras Act XXIX of 1956 did not provide for such a matter, it should be taken that the judgments of the civil Courts were not intended to

operate as res judicata in proceedings u/s 3A(2) of Madras Act XXIX of 1956. In my opinion, this is not a sound reasoning Sections 11 and 12 of

Act XXX of 1956 did not deal with finality of judgment of civil Courts as between parties thereto. Sub-section (2) of Section 11 of the said Act

related to a finding u/s 9 of Act XXVI of 1948 The effect of Sections 11 and 12 in that Act is no more than that pending matters should stand

transferred to the appropriate Tribunals which had been set up statutorily for determining the specific question whether a non-ryotwari area was or

was not an estate. Section 64-A(1) of Madras Act XXVI of 1948 relates to finality of decisions by Tribunals and a Judge of the High Court in

respect of matters arising under that Act. It is true that Sub-section (2) of Section 64-A provides for finality of decisions of civil Courts other than

the Court of the District Munsif or a Court of Small Causes with reference to matters within their jurisdiction. Even without such a provision, the

position will be the same as between parties to the decision. So far as the provisions of Act XXIX of 1956 go, there is not the slightest indication

of the intention of the Legislature that the ordinary rule of finality of judgments between parties thereto is to be nullified. I can find no justification in

the provisions of this Act to take the view that because the Deputy Collector has been constituted as the exclusive Tribunal to decide the question

as to the character of the land whether it is ryoti or non-ryoti, the judgments of the civil Courts rendered even before the Act came into force

should be ignored and the Deputy Collector could proceed as if the judgments of civil Courts were of no effect and not binding as between the

parties thereto and the matter was at large. Mr. K.V. Sankaran, for the contesting Respondents, argues that the very absence of any provision in

Madras Act XXIX, like Sections 11 and 12 in Madras Act XXX of 1956 and Section 64-A of Madras Act XXVI of 1948, would show that the

Legislature intended that the Deputy Collector, acting u/s 3A of Act XXIX of 1956, would be at liberty to ignore the judgments of competent civil

Courts rendered as between the parties thereto. I am unable to accept this contention. The ordinary rule, in my view, is that a judgment of a

competent civil Court unless set aside in appeal, in respect of matters within its jurisdiction, is binding as between the parties. This is viewing the

matter apart from the strict rule or the extended principle of *res judicata*. There should be a clear indication by the Legislature if it intends a different

situation. Since, as I said, there is no such indication in Madras Act XXIX of 1956, I am clearly of the opinion that the judgments of the Civil

Courts would be binding as between the parties and the Deputy Collector is bound to give effect to them.

3. Next contention for the Petitioners is that the Tribunal was also in error in thinking that in consequence of their filing applications u/s 3A of Act

XXIX of 1956 for a declaration as to the character of the land, they should be taken to have abandoned or given up the plea of the binding

character of the judgments of the civil Courts. Learned Counsel for the Petitioners submitted that the applications were filed by them by way of

abundant caution in view of Section 3D of Madras Act XXIX of 1956. He also points out that in the applications themselves, the Petitioners made

it clear that the civil Courts have decided the very question and the applications were filed because they felt obliged to file them on account of the

conclusive presumption raised by Section 3D. On the view I take, it seems unnecessary to decide whether, where before the commencement of

Madras Act XXIX of 1956, civil Courts having jurisdiction had decided the character of the land as to whether they were ryoti or non-ryoti, there

could be any question relating to the character of the land after the commencement of the Act. *Prima facie* it seems to me that there could be no

such question. In such cases, the judgments of the civil Courts would prevail and be binding between the parties thereto and therefore neither of them could raise any question or dispute as to the character of the land u/s 3A. In such a situation I think also that no applications would be required to be filed for a declaration as to the character of the land and Section 3D would be inapplicable. Quite apart from that aspect, we will take it that when the Petitioners filed the applications u/s 3A of Act XXIX of 1956, the Deputy Collector was called upon to decide the character of the land. But that does not mean, especially when the Petitioners made it clear in their applications that they did not give up the earlier decisions of the civil Courts, the Deputy Collector, while deciding the character of the lands, could ignore the judgments of the civil Courts which were conclusive as between the parties thereto. It is true that the Deputy Collector in the discharge of his functions under Madras Act XXIX of 1956 is constituted as quasi judicial Tribunal. Even so, such a Tribunal will be bound to give effect to decisions of civil Courts on the very question which at the time they decided they were competent to decide and were therefore binding between the parties thereto before the commencement of Madras Act XXIX of 1956. In my opinion, all that the Tribunal was called upon to do in this case was that, in view of the judgments of the civil Courts, the lands were all non-ryoti in character. Clearly, in the circumstances, it is too much to attribute to the Petitioners an intention by filing applications u/s 3A that they would give up the judgments of the civil Courts and would accept the decision of the Deputy Collector without any reference whatever to them.

4. The result is, the petitions are allowed and the common orders of the Tribunal are quashed. The Tribunal will restore the appeals to its file and dispose of them in accordance with the observations contained in this judgment. No costs.