

(1964) 08 MAD CK 0053

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

APPELLANT

Vs

The Estates Abolition Tribunal, now called New Tribunal for
Estates, Ramanathapuram at Madurai and others

RESPONDENT

Date of Decision : 20-08-1964

Acts Referred:

Citation : (1965) ILR (Mad) 495

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : R. Sethurama Sastri, for the Appellant; K. Venkataswami for The
A.G.P. and Mr. K.V. Sankaran, for the Respondent

Judgement

Veeraswami, J.—The petitioners claim to be landholders entitled to certain shares in Dharmasanam Village of Kalanivasal, Ramanathapuram Dt. 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 parcels of lands in question claiming them to be ryoti in character, the petitioners instituted suits in the Court of the District Munsif, Devakottai, in 1951 for a declaration of their title to the kudiwaram and for recovery of arrears of rent. By a common judgment dated 31st July, 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 29th November, 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 19th December 1956. On 28th August 1959,

the second appeals were withdrawn, this Court giving no indication as to the effect of their withdrawal. In the meantime on 13th February 1957, the petitioners filed applications under S. 3-A (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 order. 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 29 of 1956, unlike in Madras Act 30 of 1956, and S. 64-A of the Madras Act 26 of 1948, the judgments of the civil Courts could not be regarded as barring an enquiry in proceedings under S. 3-A of Madras Act 29 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 Ss. 11 and 12 of Madras Act 30 of 1956 and S. 64A of Madras Act 26 of 1948, and contended that the absence of similar provisions in Madras Act 29 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 30 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. S. 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 under S. 9 of Madras Act 26 of 1948, a Tribunal constituted thereunder has rendered a finding that a

particular area is on inam estate as defined in S. 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 30 of 1956. S. 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 S. 3 (2) of the Estate 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. S. 64-A of Madras Act 26 of 1948 was introduced by the Amending Act, Madras Act 17 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 under 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, a Court of Small Causes on any matter falling within its jurisdiction is also made by S. 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 under S. 51 (2) in so far as such matter is in issue between the parties or persons aforesaid in such proceedings. The Tribunal with reference to these statutory provisions thought that the Legislature whenever it intended to provide for a finding of a civil Court to be binding and as such *res judicata*, it said so and that inasmuch as Madras Act 29 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 under S.3-A (2) of Madras Act 29 of 1956. In my opinion, this is not a sound reasoning. Ss. 11 and 12 of Act 30 of 1956 did not deal with finality of judgments of civil Courts as between parties thereto. Sub-S. (2) of S. 11 of the said Act related to a finding under S.9 of Act 26 of 1948. The effect of Ss. 11 and 12 in that Act is no more than that pending matters should stand transferred to the appropriate Tribunal which has been set up statutorily for determining the specific question whether a non-ryotwari area was or was not an estate. S.64-A (1) of Madras Act 26 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-S.(2) of S.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 to 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 Ss. 11 and 12 in Madras Act XXX of 1956 and S. 64-A of Madras Act XXVI of 1948 would show that the legislature intended that the Deputy Collector, acting under S. 3-A 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.

2. The next contention for the petitioners is that the Tribunal was also in error in thinking that in consequence of their filing applications under S. 3-A of the 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 S. 3-D of Madras Act XXIX of 1956. He also points out that in the applications themselves, the petitioners made it clear that the civil Courts had decided the very question and the applications were filed because they felt obliged to file them on account of the conclusive presumption raised by S.3-D. 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 under S. 3-A. In such a situation I think also that no application would be required to be filed for a declaration as to the character of the land and S. 3-D would be inapplicable. Quite apart from that aspect, we will take it that when the petitioners filed the applications under S. 3-A 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 a 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 under S. 3-A 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. 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.