

(1973) 08 MAD CK 0024
In the Madras High Court

Brahadambal and Others

APPELLANT

Vs

Sri Swayambunathaswami Devasthanam and Others

RESPONDENT

Date of Decision : 03-08-1973

Acts Referred:

Citation : (1975) 88 LW 155 : (1975) 1 MLJ 161

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—All the above cases arise out of the suits filed by the respondent Devasthanam for the recovery of arrears of rent from the various tenants as per the lease deeds executed by them. The Devasthanam succeeded in getting a decree for arrears of rent claimed in the lower appellate Court, which overruled the contention of the tenants that the rent payable should be taken to be the fair rent and not at the contract rate.

2. When the above cases were pending in this Court, Madras Act XXI of 1972 came into force on 11th August, 1972. Section 3 of that Act conferred certain benefits on the tenants. It provided that, if a tenant deposits the whole of the current rent within six months from the publication of that Act in the Court, or before the competent authority, he shall be deemed to have paid or deposited all the arrears of rent outstanding on 30th June, 1971. Taking advantage of the said provision, the tenants in all those cases have deposited the whole of the current rent in respect of their tenancies with the Devasthanam in the Revenue Court and the Revenue Court had accepted such deposits. At the time of the hearing of these cases, Mr. T. R. Srinivasan, the learned Counsel for the tenants, brought to my notice the factum of deposit of the current rent by the tenants in the Revenue Court and submitted that, in view of the said deposit of the current rent by all these tenants, these cases have to be allowed and the decrees of the lower appellate Court have to be set aside in entirety.

3. Mr. M. S. Venkatarama Iyer, the learned Counsel for the respondent-Devasthanam, however, contends that, even though the tenants have deposited

the current rent in the Revenue Court, that will not entitle them to have the decrees of the lower appellate Court set aside in entirety, but that they will be entitled to have only that portion of the decrees, which relate to the arrears of rent, set aside or cancelled, and not the entire decrees. According to the learned Counsel the decree for costs cannot be set aside and the tenants cannot get over their liability for costs in cases where the decrees have been obtained even, before the commencement of this Act, and the position has been made clear by the provisions of Section 3 (3) of the Act, which specifically states that, if, before the date of the publication of that Act, any decree or order has been passed in any suit or proceeding for the recovery of any arrears of rent, the Court or the competent authority shall, on the application of the cultivating tenant who pays or deposits the whole of the current rent, vacate the decree or order in so far as such decree or order relates to the recovery of the rent. It is stated that the intention of the legislature is made quite plain when it said that the decree has to be vacated in so far as it relates to the arrears of rent. The learned Counsel also points out the distinction made by the legislature between a suit or proceeding pending on the date of the publication of the Act and a suit or proceeding in which a decree or order has been passed before the date of the publication of the Act, that, while Section 3 (2) states that in any suit or proceeding pending on the date of the publication of the Act, if the tenant deposits the whole of the current rent, the suit shall be dismissed without costs, Section 3 (3) dealing with suits or proceedings in which decrees or orders have been passed before the date of the publication of the Act, directs the decree to be vacated only as regards the amount of the rent claimed. The learned Counsel for the respondent says that if the intention of the legislature were to be otherwise, it would have made a similar provision in Section 3 (3) for not awarding costs, as has been done in Section 3 (2).

4. I am inclined to agree with the respondent's learned Counsel. In cases where decrees had been obtained before the date of the publication of the Act, costs had been incurred by the landlords in getting the decrees for the recovery of arrears of rent and the decrees passed in those cases would naturally include such costs. The legislature, well aware of this position, has made a distinction between cases pending on the date of publication of the Act and cases in which decrees had been passed before that date, while conferring a benefit on the tenants for the purpose of getting a discharge from their liability to pay the arrears of rent due to their landlords. It has directed that in respect of pending matters no costs are to be allowed to the landlords, but that in respect of decrees obtained earlier to the date of the publication of the Act the tenants are entitled to have the decrees vacated only in so far as they related to the arrears of rent. Section 3 (3) when read with Section 3(1) makes the position still clearer. Section 3 (1) says that once the deposit of the whole of the current rent is made, all the arrears of rent outstanding on 30th June, 1971 shall be deemed to be discharged, whether or not a decree or order has been obtained here-for. That means in cases where a decree has been obtained for arrears of rent, the discharge contemplated by

Section 3 (1) is only in relation to the actual arrears of rent and not in relation to the entirety of the decree. In this connection, it is pertinent to refer to the provisions of Sections 18 and 19 of the Madras Agriculturists Relief Act, 1938, which deals with a similar situation. Section 18 of that Act provides that, where a decree is passed against an agriculturist in a suit filed on or after 1st October, 1937, the Court shall allow only such costs as would have been allowable if the suit had been filed for the amount of the debt as scaled down in accordance with the provisions of that Act. Section 19 says that, where before the commencement of that Act a decree has been passed for the repayment of a debt, on the application of the judgment-debtor, who is an agriculturist, the decree shall stand amended applying the provisions of that Act, and that all payments made or recovered under the decree whether before or after the commencement of that Act, shall first be adjusted as against the costs as originally decreed. These provisions in a way indicate the legislative practice. It cannot therefore be assumed that the legislature in enacting the Act in question intended to confer an additional benefit to the tenants to get over the liability for costs even in respect of decrees obtained against them for arrears of rent, before the date of the publication of Act XXI of 1972. I, therefore, agree with the submission made by the learned Counsel for the respondent that the entire decrees of the lower appellate Court cannot be vacated.

5. The learned Counsel for the tenants, however, contends that Sub-section (3) of Section 3 should be read along with Sub-section (2), which directs that a suit for recovery of arrears of rent shall be dismissed without costs, if the tenant pays the whole of the current rent within the time prescribed u/s 3 (1), and if so read, the benefit given to the tenant u/s 3 (2) in the matter of costs cannot be denied even in respect of cases covered by Sub-section (3), and that the appeal being a continuation of the suit the benefit of Sub-section (2) cannot be denied to the tenants merely because the suits have resulted in decrees. I am not inclined to accept this contention. It is true that for certain purposes the appeal is taken to be a continuation of the suit. When the legislature had made separate and independent provisions in regard to pending suits on the one hand and suits in which decrees have been passed on the other, it is not possible to read one provision into the other. Each provision has to be understood in its setting. The learned Counsel for the tenants then contends that the tenants having deposited the whole of the current rent in the Revenue Court and such deposit having been accepted, it should be taken that the entire liability under the decrees has been wiped out. I am unable to agree that the acceptance of the deposit by the Revenue Court will mean that the entire decree is discharged. The acceptance of the deposit by the Revenue Court is only u/s 3 (1) of the Act and such acceptance will amount to a discharge of the arrears of rent alone and not in respect of any other amounts covered by the decree.

6. On a due consideration of the matter. I am of the view that the tenants in these cases are not entitled to have the decrees, set aside in so far as they relate to costs, though they are entitled to have the decrees vacated in so far as they

relate to the arrears of rent.

7. The learned Counsel for the respondent-Devasthanam draws my attention to the fact that the validity of Madras Act XXI of 1972 has been questioned in certain writ proceedings in this Court, and contends that any decision rendered in those cases on the basis of the provisions of the said Act can only be subject to the ultimate decision to be rendered by this Court in those proceedings as to the validity of this Act. Of course, my decision in these cases is entirely based on the provisions of Madras Act XXI of 1972 and therefore it can only be subject to that Act being upheld.

8. In the result, the second appeals and the revision petitions are allowed in part and the decrees and judgment of the lower appellate Court will stand set aside in so far as they relate to the arrears of rent. In so far as they relate to costs, they will stand. There will be no order as to costs in these second appeals and revision petitions. No leave in the second appeals.