

(1984) 01 MAD CK 0048
In the Madras High Court

Charles Hereward Simpson and Others	APPELLANT
Vs	
The Commr. for Land Revenue, Land Reforms, Settlement of Estates and Food Production, Board of Revenue - 5 and Others	RESPONDENT

Date of Decision : 05-01-1984

Acts Referred:

Citation : (1984) 97 LW 305 : (1984) 2 MLJ 157

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Judgement

S. Nainar Sundaram, J.—These writ appeals are directed against the common order passed by S. Natarajan, J., in Writ Petitions Nos. 682, 695, 704 and 707/708. The appellants are the petitioners in the writ petitions and the respondents are the respondents in the writ petitions. We shall refer to the parties as they stood arrayed in the writ petitions for the sake of convenience.

2. The writ petitions came to be filed under the following circumstances, as set out in the order of the learned single Judge. The petitioners applied for pattas under the Tamil Nadu (Transferred Territory) Ryotwari Settlement Act 30/64, hereinafter referred to as the Act, for the lands covered by title deed Nos. 3 and 15 granted by the Government of the erstwhile Travancore State to their great grand-father one Rev. John Cox somewhere in the years 1866 to 1875 for the purpose of coffee cultivation. Rev. John Cox established a coffee estate and built residential and other buildings. Subsequently, due to poor yield or drought or for other allied reasons, the Travancore Government abolished the tax on lands under a Royal Proclamation. Some years after the coffee plantation, the crops withered and dried and other crops like cardamom and tea (sic) always kept properly marked and pathways were laid and maintained by Rev. John Cox and his successors-in-interest. The lands were in the continuous enjoyment since then, upto the present days by the descendants of Rev. John Cox, the petitioners belonging to the third generation. The petitioners derived title to the properties

and possession over them under an oral partition effected by their father. The Assistant Settlement Officer, Nagercoil, conducted preliminary enquiry and submitted his report to the Settlement Officer, Madurai. The Settlement Officer, Madurai returned the reference to the Assistant Settlement Officer and instructed him to call for the original documents from the parties, to record their statements and to have a joint inspection of the lands with the Assistant Director of Surveys and Lands Records, Nagercoil. Thereupon, the original documents were called for and examined by the Assistant Settlement Officer and the statement of the petitioners' father, Charles Harold Simpson was recorded and inspection of the properties was made on 14.12.72 by the Assistant Settlement Officer and the Assistant Director of Survey and Land Records, Nagercoil, accompanied by the survey staff and the village Officer of Azhagiapandipuram. A combined sketch based on the joint inspection was prepared and thereafter, further enquiry was held by the Additional Assistant Settlement Officer II, Nagercoil under the Act. Notices were served on the interested parties and a copy of the notice was also published in the village. The Additional Settlement Officer II, Nagercoil, also inspected the lands on 7.3.73. In the enquiry, Charles Harold Simpson was examined as P.W. 1 and Elizabeth Anne (petitioner in W.P. 704 of 78) was examined as P.W. 2. The Tahsildar, Thovalai was examined as R.W. 1. The Additional Settlement Officer by his order dated 10.3.73 held that the lands for which patta was claimed and identified by the survey staff in the sketch prepared by them, are in the possession and ownership of the successors-in-interest of Rev. John Cox and hence, the said officer ordered issue of ryotwari patta under the Act for the lands covered by T.D. Nos. 3 and 15 in favour of the five children of Charles Harold Simpson. The District Forest Officer, Tirunelveli (South) Division, Palayamcottai, the third respondent, filed an appeal against the said order to the Director of Settlement Nagercoil. The Director of Settlement by his order The third respondent filed a revision petition before the Board of Revenue, the first respondent, against the said order. The Board of Revenue, by its order dated 5.7.76, set aside the order of the Director of Settlement and remanded the matter for reconsideration. The Director of Settlement, Madurai, the second respondent, by his order dated 25.7.77, allowed the appeal and dismissed the claim of the petitioners for patta under the Act. The petitioners filed a revision petition against the said order before the first respondent, but the first respondent, by order dt. 31.1.78, dismissed the revision petition. Questioning the correctness of the said order the five children of Charles Harold Simpson came to this Court by way of four writ petitions.

3. S. Natarajan, J., who heard the writ petitions, assessed the matter with reference to all the relevant materials and opined that the contentions raised by the petitioners cannot be considered in writ jurisdiction. The learned Judge has adverted to the controversy, which practically covered the aspects of title, identity, possession and boundaries of the lands in question for which patta was asked for by the petitioners and stated that they are matters which can only be considered by a civil court with reference to evidence placed before it in support

of the rival claims of the parties. Even in the impugned order of the first respondent, we find, the petitioners have been denied patta under the Act only on the ground that they have not established by evidence their claim of title and possession over the lands in question. The District Forest Officer, the third respondent seems to have put forth a plea that the lands in question have been notified as forest reserve and the petitioners cannot claim title over them. These contentions, as pointed out by the learned single Judge, do touch upon factual aspects concerning title, identity, possession and boundaries and other similar aspects. In this view, it can be legitimately said that the resolution of the controversy has got necessarily to be done only by the civil court and thereafter, it is for the petitioners to approach the authorities under the Act to seek appropriate orders for patta over the lands in question. If this is the view to be taken and we are inclined to take the said view, then, we could not interfere in writ jurisdiction, as rightly expressed by the learned single Judge. But, Mr. S. Chellaswami, learned Counsel for the petitioners would submit that the authorities under the Act, by the various orders culminating in the last order impugned in the writ petitions, have practically adjudicated upon these aspects and these reasonings expressed in the said orders as well as the orders of the learned single Judge may be put against the petitioners if they choose to resort to civil process to establish their right over the lands. Learned counsel would further submit that there are ample satisfactory materials to establish the right of the petitioners over the lands for which patta was asked and there were earlier civil proceedings also which can be pressed forth to support the case of the petitioners on the ground of res judicata. In our view, the controversy is one which has got to be properly adjudicated upon by the civil court only and not under the machinery of the Act. Mr. S. Chellaswami, learned Counsel for the petitioners, also points out that there is no machinery under the Act to decide the question of title and other allied questions when a dispute arises as between two rival claimants, as in the instant case. The question is as to whether the petitioners are entitled to the lands in question, so as to claim patta for them under the Act. There are disputes over their claims. The third respondent wants to deny the claim of the petitioners on the ground that the lands have been taken over as forest lands and they form forest reserves. The first respondent, in the impugned order, has rightly opined that unlike the Legislations, for introduction of ryotwari settlement in erstwhile estates, the Act contains no provision for determination of rights of parties, over which a controversy has arisen in the present case. This is a correct statement and this could not be impeached. Our attention has not been drawn to any provision of the Act which provides for and contemplates adjudication of disputes of the present nature. It was contended on behalf of the respondents that the civil Court's jurisdiction is excluded by virtue of Section 21(2) of the Act. That provision excludes the jurisdiction of the civil court in respect of any question which by, or under the Act is required to be decided or dealt with by the authorities or officers under the Act. But, as pointed out above, there is no machinery as such under the Act to decide a controversy of the present nature. This is the stand rightly expressed by

the first respondent himself in the impugned order. If this is so, we could not subscribe our support to the contentions put forth on behalf of the respondents that the civil Court's jurisdiction is excluded. An exclusion of the jurisdiction of the civil Court is not readily to be inferred unless certain well accepted conditions stand satisfied. Where the statute gives a finality to the orders of the special Tribunals, the test must be to find out whether the statute has provided the remedy, which the civil Court would normally do in a suit. We do not find, the remedy to establish right, title and interest over the lands, when there are rival claims, has been provided for under the provisions of the Act and no attempt was made before us to demonstrate this. Hence, we have to hold that there is no ousting of the jurisdiction of the civil Court to decide disputes of the present nature. But, as expressed by Mr. S. Chellaswami, learned Counsel for the petitioners, there is a possibility that the reasonings and findings rendered by the authorities under the Act in all their orders culminating in the impugned order as well as the reasonings expressed by the learned single Judge, may be put against the petitioners in case they resort to the appropriate civil process. Taking note of this position, we feel obliged to make it clear that none of the aforesaid reasonings and findings shall stand in the way of the petitioners in case they resort to the civil process to establish their right, title and interest over the lands in question. It is upto the petitioners, after they succeed in the civil process, to approach the authorities under the Act for appropriate orders. Hence, we dismiss all the writ appeals and at the same time observe that none of the reasonings and findings expressed in the orders of the authorities under the Act as well as that of the learned single Judge shall stand in the way of the petitioners or be put against them in , case they resort to civil process to establish their claims. Mr. S. Chellaswami, learned Counsel for the petitioners, states that pending the writ petitions as well as pending the writ appeals, there were orders maintaining status quo and this position may be continued for sufficient time to enable the petitioners to seek the civil process and have their rights protected by obtaining appropriate orders from the civil court. This is a reasonable request and we are inclined to accede to the same. The petitioners shall file the requisite suit or suits, if they are so advised, within three months from today and till then, the orders of status quo passed pending the writ appeals will continue to be operative. We make no order as to costs in these writ appeals.