

(1940) 08 MAD CK 0015
In the Madras High Court

Chinna Goundan and Another	Vs	APPELLANT
Kalyanasundaram Aiyar and Others		RESPONDENT

Date of Decision : 23-08-1940

Acts Referred:

Citation : (1940) 52 LW 844 : (1940) 2 MLJ 881

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The appellants in this appeal are the judgment-debtors and the respondent is the holder of a decree which was obtained in 1922

and finally confirmed by the High Court in L.P.A. on 26th January, 1934. The decree is for the eviction of the appellants.

2. The appellants contended in the Courts below that the execution application could not be permitted, as, owing to the recent amendment of the

Estates Land Act, they had acquired occupancy rights. This contention was upheld by the learned District Munsif, but on appeal, the learned

District Judge of Salem has allowed execution to proceed.

3. There appears to have been some dispute in the Court of the District Munsif as to whether the land which is the subject-matter of this appeal

was or was not part of an estate, as now defined by the Act. However, the respondent, who was the appellant before the learned District Judge,

and against whom the District Munsif decided this point, did not raise it in his grounds of appeal and I need not therefore consider it either.

4. It is clear that at the present time and at the time when this execution application was presented, the appellants here were in occupation of land

which was part of an estate. They now rely upon Section 6(1), Expl. (2) of the

Estates Land Act, which enacts that any person who was in possession on 30th June, 1934, of any land which is now an estate by virtue of the Act of 1936 shall have occupancy rights. It is contended, on the

other hand, by the respondent, that he is protected by Section 127 of Act VIII of 1934. The first sub-section of that section runs as follows:

Subject to the provisions of Sub-section (2), nothing in this Act or in any repeal or amendment effected thereby shall affect any right, title, interest,

obligation or liability already acquired accrued or incurred before the commencement of this Act under a decree or order of a competent Court.

5. It is pointed out for the respondent that his decree is dated 26th January, 1934, before the Act VIII of 1934 came into force and it is argued

that under the provisions of this section, the rights which he has acquired cannot be attacked. I am unable to see how this section can apply to the

facts of the present case. It is clear from the language of the section that it relates only to such repeal or amendment as Act VIII of 1934 itself

brings about. Explanation 2 to Section 6(1) was enacted, not by Act VIII of 1934 but by Act XVIII of 1936. It is impossible therefore that

Section 127 of Act VIII of 1934 could control or in any way apply to Explanation 2 to Section 6(1) of the Act as we now have it. This contention

on the part of the respondent must therefore be overruled.

6. It is next contended on behalf of the respondent that if he is not permitted to execute his decree, it will infringe the well-known principle of law

that the executing Court cannot go behind the terms of the decree. This argument also I am unable to accept. The plea which the judgment-debtors

are now putting forward in no way affects the validity of the decree; If their contention is accepted, it does not in the slightest amount to an

assertion that the decree in 1934 ought not to have been passed. No new facts are alleged which would in any way involve, the reopening of the

decision then arrived at by the Court. All that they are pleading is that certain events have happened, namely, a new Act has been passed, the

effect of which renders the decree which is perfectly valid in itself in executable in practice. I see no reason or principle of law upon which the

appellants should be debarred from raising this plea. On the other hand, in *Shyam Mandal v. Satinath Banerjee* I.L.R.(1916)Cal. 954 , I find it

stated that a, particular objection which is there being dealt with is one that

could properly be taken in proceedings in execution of the decree.

The judgment-debtor, when he takes such objection, does not attack the decree, he merely urges that the decree, though properly made, has, by

reason of events subsequent, become incapable of execution.

7. I hold therefore that by reason of Expl. 2 to Section 6(1) of the Act, the appellants cannot be evicted from the land and that they are entitled to

raise this plea against the decree-holder when he attempts to execute his decree.

8. In the result, this appeal must be allowed and the order of the learned District Munsif must be restored with costs throughout.

9. Leave granted