
(1950) 04 MAD CK 0026

In the Madras High Court

Case No : Second Appeal No. 850 of 1947

Chukka Annam Naidu (died) and Others

APPELLANT

Vs

Kolachala Apparao and Others

RESPONDENT

Date of Decision : 06-04-1950

Acts Referred:

Madras Estates Land Act, 1908 — Section 6(1)

Citation : AIR 1951 Mad 231 : (1951) ILR (Mad) 442 : (1942) 55 LW 942 : (1950) 2 MLJ 396(2)

Hon'ble Judges : Rajamannar, C.J;Balakrishna Ayyar, J

Bench : Division Bench

Advocate : C.V. Dhikshitalu, for the Appellant; S. Ramamurthy, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This second appeal originally came on before Panchapagesa Sastri J. who referred it to a Division Bench in view of the

conflict of decisions between Mummina Demudu v. Pappayaraju, 1943-2 M. L. J. 657 : A. I. R. 1944 Mad. 186 and Korada Atchanna Vs.

Jayanti Seetharamaswami, .

2. This second appeal arises out of a suit for evicting certain tenants in occupation of lands in an agharam which became an estate by virtue of the

Madras Estates Land (Third Amendment) Act, 1936, which amended Clause (d) of Section 3 (2), Madras Estates Land Act, I [1] of 1908. The

only facts necessary for understanding the point which falls for decision are as follows: The first respondent's father an Inamdar obtained a decree

for eviction in respect of the suit lands on 7-4-1933 and obtained delivery of them on 23-5-1933. He let the lands to the defendants by a lease

dated 22-6-1933. The period of lease was one year ending 16-3-1934, The defendants, however, continued to remain in possession thereafter. In

1937 the Inamdar gave notice to quit and eventually filed the suit for eviction on 24-4-1944. The main defence of the tenants was that they had

acquired occupancy rights under the Madras Estates Land (Third Amendment) Act, 1936 and, therefore, the suit for eviction was not

maintainable. Both the Courts decreed the suit and defendants 1 and 2 are the appellants.

3. The relevant statutory provisions which have a material bearing on the question to be decided are Sections 6, Sub-section (1), Explns. (1) and

(2) and Section 8, Sub-section (5), Madras Estates Land Act I [1] of 1908 as amended by Act XVIII [18] of 1936, i.e., the Madras Estates

Land (Third Amendment) Act 1936, Section 6 (1) declares that:

Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a land-holder to possession of ryot land

situated in the estate of such land-holder shall have a permanent right of occupancy in his holding.

Explanation (1) runs thus :

For the purposes of this sub-section, expression "every ryot now in possession" shall include every person who, having held land as a ryot,

continues in possession of such land at the commencement of this Act.

Ordinarily the word "now" in Sub-section (1) and the words "at the commencement of this Act" must be taken to refer to the date of the passing of

Madras Act I [1] of 1908 Explanation (2) became necessary because by the provisions of the Madras Act XVIII [18] of 1936 certain inam villages,

which did not fall within the definition of an estate originally contained in Madras Act I [1] of 1908, became estates by virtue of the new provisions.

It was necessary to provide for a different construction of the words "now" and "at the commencement of this Act" in relation to such inam villages.

Explanation 2, therefore, declares that the expressions "now" and "commencement of this Act" in Sub-section (2) and Expln, (1) shall be construed

as meaning 30-6-1934 and the expression "hereafter" in the sub-section shall be construed as meaning the period after 30-6-1930. Madras Act

XVIII [18] of 1936 came into force on 31-10-1936. But for reasons which need not detain us now, the Legislature took a date prior to the date

of the coming into force of that Act as the material date to denote the tenants in occupation of the lands in such villages, who would be entitled to permit rights of occupancy.

4. It will be noticed that Sub-section (1) of Section 6 commences with the words ""subject to the provisions of this Act"" and the provisions of Section 8 (5) are to take effect notwithstanding anything, contained in the Act. That sub-section provides that:

If before the 1st day of November 1933, the landholder has obtained in respect of any land in a village which became an estate by virtue of Act

XVIII [18] of 1936, a final decree or order of competent civil Court.

Declaring that the tenant has occupancy right in such land, the land-holder shall, if the land is not private land, have the right for a period of 12

years from the commencement of Madras Act XVIII [18] of 1936 i. e., from 31-10-1936, of admitting any person to the possession of such land

on such terms as may be agreed upon between them, provided also that ""no tenant has acquired any occupancy right in such land before the

commencement of the Madras Estates Land (Third Amendment) Act 1936.

5. It is this last condition that has given rise to a difference of opinion between Horwill and Viawanatha Sastri JJ. The construction which found

favour with Viawanatha Sastri J., in *Korada Atchanna Vs. Jayanti Seetharamaswami*, was that the landholder would not have the rights declared

under that sub-section against tenants who were in possession or who might have been admitted in possession on or after 30-6-1934 and before

31-10-1936, i. e., the commencement of Madras Act XVIII [18] of 1936. The reasoning of the learned Judge is that though the Amending Act

came into force on 31-10-1936 and its operation commenced on that date, still, Section 6, Expl. (2) of that Act (sic) gives it retrospective

operation from 30-6-1934, in respect of one important matter, namely, the accrual of occupancy rights. In the case before him, the tenant had

been let into possession of the land on 26-6-1936. Speaking of such a tenant the learned Judge says :

In the present case, it could not be said that the tenant had not acquired occupancy rights in the land before the commencement of the Amending

Act XVIII [18] of 1936, i. e., 31-10-1936, because Expl. (2) to Section 6 which, by express declaration, operates retrospectively from 30-6-

1934, clothed him with a right of occupancy as from 26-6-1936, the date when he was admitted to possession by the landholder. The tenant,

therefore, had acquired occupancy rights before the commencement of the Amending Act XVIII [18] of 1936, as a result of the provision in that

very enactment embodied as Expl. (2) to Section 6.

With great respect to the learned Judge we are not in agreement with this construction of Section 8 (5) or of Expl (2) to Section 6 (i). Before the

commencement of the Madras Estates Land (Third Amendment) Act, 1936"" can mean only before 31-10-1936. It is impossible to give an earlier

date, because that Act did not commence to have operation before that date. This much was also conceded by Mr Dhikshitalu the learned counsel

who appeared for the appellant before us Now, the only question is whether before the date, i, e., before 31-10-1936, it could be said that a

tenant has acquired any occupancy right, because he was in possession on and after 30-6-1936. The only provision under which it is contended

that the tenant has acquired such right is a provision contained in that very Act which did not come into force till 31-10-1936. Therefore it follows

that the tenant did not acquire any right prior to the commencement of that Act under a provision of that Act which did not exist at the time. In

other words, it cannot be held that on any date before the coming into force of Madras Act XVIII [18] of 1936 he had acquired any occupancy

right by virtue of a provision in that Act which was to come into force. With due deference to the learned Judge Viswanatha Saatri J. we think that

it is wrong to assume that the effect of Section 6 (1) Expl. (2) is to confer permanent occupancy rights on tenants as and from 30-6-1934 or such

other later date when the tenant was admitted into possession. There is nothing in Expl. (a) which says anything of the sort. It only lays down who

are the tenants who would be entitled to the benefits of Madras Act XVIII [18] of 1936. It helps us to ascertain the class of such tenants. They are

ryots who were in possession on 30-6-1934 and ryots who had been admitted subsequently and continued in possession. This does not mean that

they are deemed to have obtained rights of occupancy from 30-6-1934. They obtained such rights only from 31-10-1936. It follows, therefore,

that such tenants cannot be deemed to be tenants who have acquired occupancy rights before the commencement of the Madras Estates Land

(Third Amendment) Act, 1936, within the meaning of Section 8 (5) of the Act. Horwill J., took practically the same view which we are taking in

Mummina Demudu v. Pappayaraju, 1943-2-M. L. J. 657 : A. I. R. 1944 Mad. 136 though the way in which he put his view is slightly different.

The learned Judge observed :

There seems to me no doubt when the Legislature spoke of the tenant acquiring occupancy right during the period between the passing of the final

decree and the commencement of the Act they were referring to an acquisition of occupancy right otherwise than under the Act The Legislature

must have intended by this sub-rule to except from the general operation of Section 6, all cases where the landholder had obtained a decree prior

to 1-11-1933 unless the tenant subsequent to the passing of the final decree had acquired occupancy right independently of the Act.

The dates which occur in Section 6 (1) Expl. (2) and Section 8 (5) have a meaning and significance in relation to a prior Act, namely, Madras Act

VIII [8] of 1934, 30th June 1934. happens to be the date on which that Act became law. Section 127 (2) of that Act was as follows :

No tenant in possession on the 1st day of November 1933, of any land in an Inam village, not being an estate within the meaning of Sub-clause

(d) of Clause (2) of Section 3 of the said Act as amended by this Act or admitted by the Inamdar to possession of any such land subsequent to the

said date shall be liable to be ejected until the 1st day of November 1936 and all proceedings in ejectment of any such tenant and all proceedings

involving a decision whether or not the inamdar has the kudiwaram right in such land, shall be stayed until the 1st day of November 1936.

The proviso to this sub-section is the forerunner to Section 8 (5) which was inserted by Act XVIII [18] of 1936. It runs thus :

Provided that nothing contained in this sub-section shall apply to any land the kudiwaram interest in which has been declared or recognised before

the 1st day of November 1933 to vest in the Inamdar by decree or order of a competent Court which has become final.

It is, therefore, clear that the rights of an Inamdar which had ripened into a final decree or order of a competent Court were intended to prevail

over the rights which the legislature was conferring for the first time on tenants of Inam villages which became estates by virtue of Madras Act

XVIII [18] of 1936, Section 8 (5) declared definitely what the rights of such inamdars were.

6. This second appeal must, therefore, be dismissed with costs of the first respondent.