

(1947) 07 MAD CK 0003
In the Madras High Court

D. Thyagaraja Iyer

APPELLANT

Vs

The Abishega Kattalai of Tiruvarur Devasthanam

RESPONDENT

Date of Decision : 17-07-1947

Acts Referred:

Madras Estates Land Act, 1908 — Section 77

Citation : (1947) 60 LW 719 : (1947) 2 MLJ 421

Hon'ble Judges : Govindarajachari, J

Bench : Division Bench

Judgement

Govindarajachari, J.—The petitioner in this civil revision petition is the defendant in S.S. No. 4.5 of 1946 on the file of the Court of the Sub-

Collector, Nepapatam, which is a suit filed u/s 77 of the Madras Estates Land Act (Act I of 1908). It is admitted that the plaint asks for a sale of

the holding of the ryot for recovery of the arrears of rent claimed. Learned counsel are not agreed as to whether the suit was filed shortly before or

shortly after the 4th October, 1946, on which date Madras Act XVII of 1946 came into operation. But the exact date of the suit is immaterial and

it is admitted that it was instituted early in October, 1946. Shortly after filing his written statement the petitioner applied for stay of the suit under the

said Act and the Deputy Collector by his order, dated 2nd November, 1946, accordingly stayed it till 15th April, 1947. It would appear that along

with this suit several other suits were also stayed under similar orders. Against the orders passed in four of such suits civil revision petitions were

filed in the High Court on behalf of the present respondent which is Sri Thyagarajaswami Devasthanam, the plaintiff in the entire batch of suits.

While dismissing those civil revision petitions at the stage of admission Horwill, J., made the following order:

Under Section 4(1)(b) of Act XVII of 1946 the tenant had two months from the coming into force of the Act in which to deposit 2 years' arrears

of rent. The order of the Deputy Collector was made within a month of the passing of the Act : so the defendant was entitled to a stay until 4th

December, 1946. There is no reason to think that the Deputy Collector intended to continue to stay the suit beyond that date, whether the

defendant paid the arrears or not. The petitions are dismissed.

On the 27th February, 1947, the plaintiff in the present suit filed an application before the Deputy Collector stating that the stay order already

granted must be taken to have expired as the defendant did not deposit two years' arrears of rent and praying that the suit should therefore be

taken up for trial. In support of his application he would appear to have produced a copy of the order of Horwill, J. The Deputy Collector

thereupon cancelled the order of stay which he had passed on the 2nd November, 1946, and directed that the trial of the suit should be proceeded

with. The present civil revision petition is against this order of the Deputy Collector which is dated 31st March, 1947.

2. Mr. Desikan argued that the Deputy Collector should not have cancelled his previous order after having directed that the suit should not be

taken up for trial before 15th April, 1947. But I do not see why the Deputy Collector should not advance the trial of the suit when it is pointed out

to him that an order of stay which he had previously made was passed for a period longer than what is warranted under the provisions of the Act.

An order of stay is not an adjudication on the rights of the parties and it is quite within the competence of the Court to advance the trial of a suit

notwithstanding the order of stay previously made, or if it is so inclined, to continue the order of stay for a longer time.

3. It was next argued by Mr. Desikan that there is no provision under which in a suit like the present one the Court could direct the deposit of

arrears of rent for two years. Section 4(1) runs as follows:

All suits, proceedings in execution of decrees or orders and other proceedings

(a) for the eviction of tenants from their holdings or land, as the case may be, or in which a claim for such eviction is involved, whether in addition

to a claim for rent or not, or

(b) in which the sale of the holding of a tenant or ryot for recovery of rent is

claimed and which are pending at the commencement of this Act or may be instituted thereafter in any civil or revenue Court shall be stayed subject to the provisions of the following sub-sections.

It is clear that Clause (a) does not apply to this suit and it is equally clear that Clause (b) applies. The question, however, is whether the order of

stay is subject to any of the conditions laid down later in this section or in other words whether any of the following sub-sections covers a suit like

the present. Sub-section (2) is concerned with suits for eviction of tenants in which there is also a claim for rent. Clause (i) of Sub-section (2) deals

with such suits instituted before the commencement of Act XVII of 1946, while Clause (it) of the same sub-section deals with like suits instituted

on or after the commencement of the Act. The present suit being one for recovery of arrears of rent and for an order directing the sale of the

holding of the ryot for such recovery would obviously not come under Sub-section (2) which goes and should be read along with Clause (a) of

Sub-section (1).

4. It is contended by Mr. Arunachalam, for the respondent that Sub-section (3) would apply to the present suit. That sub-section is in the following

terms:

In the case of a decree or order for eviction, if the decree or order provides for payment of rent, or in the case of a decree, order or other

proceeding for the sale of a holding to recover rent, the tenant or ryot shall, within two months from the date of the commencement of this Act,

deposit in Court, for payment to the landlord, the amount payable under the decree or order or an amount equivalent to rent for two years

immediately preceding the commencement of this Act, whichever is less.

I shall revert to this sub-section after dealing briefly with the scope and effect of the rest of the section.

5. The period specified in Sub-section (2) or Sub-section (3) can in proper cases be extended under Sub-section (4) subject to the limitation

contained in it. Under Sub-section (5) if a suit or other proceeding is stayed under Sub-section (1) the ryot is directed to deposit each year's rent

as it accrues due during the subsistence of the order of stay. In his original order dated 2nd November, 1946, the Deputy Collector intended to

give the ryot an opportunity of depositing the current year's rent as provided in

this sub-section, evidently under the impression that the provisions of the other sub-sections did not apply and that he had to provide only for payment of the rent which may fall due after the institution of the suit.

6. Sub-section (3) on which the advocate for the respondent relies does not by any means seem to be happily worded. It applies on the one hand to decrees or orders for eviction where such decrees or orders provide for payment of rent. Admittedly the present case does not fall under that category. On the other hand Sub-section (3) provides that in the case of a decree, order or other proceeding for the sale of holding to recover rent, the ryot shall deposit in Court within two months from the date of the commencement of the Act the amount therein specified which is either the amount payable under the decree or order or the rent for two years whichever is less. While Section 4(1) contemplates stay of two classes of suits, viz., suits for the eviction of tenants whether including a claim for rent or not and suits in which the sale of the holding of a tenant or ryot for recovery of rent is claimed and stay is made subject to the provisions of the following sub-sections, it is curious that there is no further reference in the following sub-sections to suits of the latter description while Sub-section (2) lays down the conditions subject to which suits of the former class are to be stayed. If as would appear from the language of Sub-section (1) the Legislature contemplated some provision in regard to the deposit of rent in suits in which the sale of a ryot's holding is asked for, such a provision can only be found in Sub-section (3) under the rather inappropriate expression " other proceeding ". It would no doubt be curious phraseology to describe a suit as "other proceeding" after referring to a decree or order, but if the words just quoted are not interpreted as including a suit, we are left in this peculiar position that there is no provision at all under which the condition by way of a deposit of arrears of rent can be imposed upon a ryot where he seeks stay of a suit in which the prayer is for the sale of his holding. Having regard to the dominant intention underlying Sub-section (1), namely, that the rights of the land-holder should be properly safeguarded where his suit is sought to be stayed, by providing for a deposit of rent by the ryot and in order to avoid a lacuna I think it is permissible to construe the words "" or other proceeding "" in Sub-section (3) as including a suit of the nature specified in Section 4(1)(b).

7. The result of this construction would be that if a ryot failed to deposit what he has to deposit under the provisions of Sub-section (3) he cannot

ask for a stay of the suit any longer. What would happen if a suit for sale of a holding for recovery of rent is filed more than two months after

Madras Act XVII of 1946 came into force and it is consequently impossible for the ryot to comply with Section 4, Sub-section (3) which provides

for deposit within two months of that date, I do not pause to consider. That difficulty does not arise in the present case and it is for the Legislature

to amend Sub-section (3) suitably to cover a case of that kind.

8. In the view indicated above the order of the Deputy Collector directing the trial of the suit to be proceeded with is correct as the defendant did

not make the necessary deposit.

9. The C.R.P. is therefore dismissed with costs.