

(1976) 01 MAD CK 0013
In the Madras High Court

G. Ponniah Thevar

APPELLANT

Vs

Nallayam Perumal Pillai and Others

RESPONDENT

Date of Decision : 29-01-1976

Acts Referred:

Transfer of Property Act, 1882 — Section 76(a)

Citation : (1976) 89 LW 41 : (1976) 2 MLJ 260

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

M.M. Ismail, J.—The first defendant in O.S. No. 186 of 1969 on the file of the Court of the District Munsif, Periyakulam, who lost before

the Courts below, is the appellant herein.

2. The controversy lies within a very narrow compass. Admittedly, the suit property of an extent of 1 acre 75 cents belonged to one Annamalai

Pillai under a settlement deed, the original of Exhibit A-2, dated 16th December, 1907 by his natural father Ramaswamy Pillai. After the death of

Annamalai Pillai, leaving two widows, viz., Unnamalai Ammal and Veerayee. Veerayee instituted O.S. No. 482 of 1927 on the file of the District

Munsif's Court, Periyakulam for partition of the properties of Annamalai Pillai, impleading Unnamalai Airmal and the son of the natural brother of

Annamalai Pillai, viz., the second defendant in this suit. That suit ended in a compromise, as evidenced by Exhibit A-5, dated 6th July, 1935, being

the certified copy of the final decree in I.A. No. 1009 of 1933 in O.S. No. 487 of 1927. Under the terms of the compromise, the extent of.1 acre

75 cents was to be enjoyed by Unnamalai Ammal during her life time, and the same was to belong also lutely to the sons of the second defendant

herein. "The plaintiffs in the suit are the sons of the second defendant. After the death of Unnamalai Ammal on 26th July, 1968, the plaintiffs in the

present action instituted this suit for declaration and possession and for past and future mesne profits. The appellant herein, who was the first

defendant in the suit, claimed to be the lessee of the suit lands under Unnamalai Ammal under the original of Exhibit A-7, dated 27th March, 1961.

He put forward several contentions, even denying the title of the plaintiffs to the suit property, but the effective contention, which was put forward,

and which alone was urged repeatedly before me was that the appellant is a cultivating tenant entitled to the benefits of the Tamil Nadu Cultivating

Tenants Protection Act, and consequently he could not be evicted from the suit lands. Both the Courts below, following the judgment of this Court

in *Man-galathachi v. Kalyanasundaram Mudaliar* (1966) 2 M.L.J. 66, negated this claim of the appellant, and decreed the suit as prayed for.

Hence the present second appeal by the first defendant in the suit.

3. Mr. T.R. Mani, the learned Counsel for the appellant, does not dispute the title of the plaintiffs to the suit property, nor the status of the appellant

as the tenant of the suit property, but only contends that the appellant is entitled to the protection of the Tamil Nadu Cultivating Tenants Protection

Act, and, therefore, he is not liable to be evicted in the present suit. The question for consideration is whether that contention is correct or not.

4. Of course, the Courts below relied on a decision of this Court referred to already, though a subsequent Full Bench decision in *Chandrasekaran*

Vs. Kunju Vanniar and Others, , has taken a different view. However, that decision as well as the judgment of the Full Bench dealt with a case

where the mortgagee in possession had leased the properties, and the question for consideration was whether the tenant under the mortgagee in

possession was entitled to the protection of the Tamil Nadu Cultivating Tenants Protection Act after redemption of the mortgage. The Full Bench

had no occasion to consider the question whether a tenant under a limited owner or a life estate-holder can claim the protection of the Act after the

death of the lessor, viz., the life estate-holder. In the present case, as I have pointed out already, under Exhibit A-5, the compromise decree,

Unnamalai Ammal acquired only an interest to enjoy the property for her life and she alone had inducted the appellant into possession ; and

admittedly,. Unnamalai Ammal died on 26th July, 1968. The question is whether the appellant can claim the protection of the Act as against the ultimate owners of the property, viz., the plaintiffs in the suit.

5. There are two direct decisions on this, point by this Court. One is the Judgment of Ramanujam, J., in O.J.V. Ramanathan and O.N.

Krishnamurthi v. Raman-Pullavarayar and Nagappdn Ambalagarar S.A. Nos. 499 and 645 of 1970 disposed of on 3rd August 1972. In that case

also, under a settlement, deed, one Alamelu Ammal became entitled to enjoy the property for her life, and after her death, the property belonged

absolutely to the appellant in the second appeal. Ramanujam, J., had to consider whether the tenant under Alamelu Ammal could claim the rights

under the Tamil Nadu Cultivating Tenants Protection Act, after the death of Alamelu Ammal as against the absolute owner. Ramanujam, J.

negatived the claim of the tenant and held that he could not claim the protection of the Tamil Nadu Cultivating Tenants Protection Act.

6. The second decision is that of Mohan, J., in Rajappa Thennkandar v. Ramanatha Sundaram Thenkandar and Muthukumarai Thenkandar S.A.

No. 1691 of 1972, dated 14th July, 1975. Mohan, J., followed the judgment of Ramanujam, J., and held that a tenant from a life estate-holder will

not be entitled to claim the benefit of the Tamil Nadu Cultivating Tenants Protection Act. It must be pointed out that the judgment of Mohan, J.,

was rendered after the judgment of the Full Bench referred to already, viz., Chandrasekaran Vs. Kunju Vanniar and Others, . These two

judgments, though by single Judges, are binding on me, unless I am convinced that the said decisions require reconsideration, in which event I shall

have to refer this matter to a Bench.

7. Mr. T.R. Mani, the learned Counsel for the appellant, attempted to convince me that the said two decisions are erroneous and require

reconsideration. The argument of Mr. Mani is that on the analogy of Section 76(a) of the Transfer of Property Act, the acts done bona fide and

prudently in the ordinary course of management by the life estate-holder will bind on the reversioners or the owners of the vested remainder. The

question was actually considered by Ramanujam, J., who held that in the case of a tenant under the life estate-holder, Section 76 (a) of the

Transfer of Property Act as such will not apply, and there is no scope for applying

the provisions of that section by way of analogy, because

Section 111(c) of the Transfer of Property Act actually provides that a lease of immovable property determines where the interest of the lessor in

the property terminates on, or his power to dispose of the same extends only to, the happening of any event--"by the happening of such event. As

a matter of fact, in such cases, there is no scope for applying any principle of law, by way of analogy, because the right that is claimed by the

appellant herein is a specific right pursuant to a particular statutory provision, and, therefore, the question of applying the principles contained in

Section 76 (a) of the Transfer of Property Act by way of analogy does not arise.

8. The second submission of Mr. Mani that admittedly Unnamalai ammal was entitled to collect the rents from the appellant, and was actually

collecting the rents from him, and, therefore, she will be the landlord as defined - in the Tamil Nadu Cultivating Tenants Protection Act, and the

tenancy agreement under the original of Exhibit A-7 entered into between Unnamalai Ammal and the appellant would come within the scope of that

Act, so as to make the appellant a cultivating tenant entitled to protection under that Act. I am unable to accept this argument either. In the first

place, the two judgments referred to above dealt with the identical circumstances with regard to the provisions contained in the Tamil Nadu

Cultivating Tenants Protection Act, and, therefore, unless I hold that the learned Judges had failed to take into account the provisions contained in

the Act, I cannot say that their judgments require reconsideration. Apart from that, the conclusion arrived at by them is not rested on any provision

contained in the Tamil Nadu Cultivating Tenants Protection Act, but on the normal and general rule that a grantor cannot confer on another a large

interest than he himself had in the property. In view of this, I am of the opinion that there is no substance in this contention either.

9. Thirdly, Mr. Mani contends that several decisions with reference to Section 76(a) of the Transfer of Property Act has held that if a mortgagee in

possession had leased out the mortgaged property in bona fide exercise of his right to enjoy the property and the transaction happened to be a

prudent transaction, the tenant would acquire the rights conferred by statutes subsequent to the tenancy. In my opinion, this argument is

misconceived. In the first place, the said principle has been applied by the Courts

only with reference to Section 76(a) of the Transfer of Property

Act, and once it is held that Section 76(a) will not apply to the tenancy created by a limited owner, the question involved is one of absence of

power and not the manner of exercise of power. Under these circumstances, I am unable to hold that the decisions of Ramanujam, J., and Mohan,

J., referred to already require reconsideration, and following those judgments it must be held that the appellant is not entitled to the protection of

the Tamil Nadu Cultivating Tenants Protection Act.

10. Accordingly, the second appeal fails and it is dismissed. There will be no order as to costs. No leave.