

(1910) 11 MAD CK 0011
In the Madras High Court

Gorakala Kanakayya

APPELLANT

Vs

Janardhana Padbi and Others

RESPONDENT

Date of Decision : 14-11-1910

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(7)

Citation : (1913) ILR (Mad) 439 : (1911) 21 MLJ 31

Hon'ble Judges : Krishnaswami Aiyar, J; Charles Arnold White, J; Ayling, J

Bench : Full Bench

Judgement

Charles Arnold White, Kt., C.J.—The question which has been referred to us is ""where an appeal from a decree in ejectment passed

under the old law is heard after the date of the commencement of Madras Act I of 1908, the defendant being a ryot in possession of ryoti land on

such date, is he entitled to claim a right of occupancy u/s 6, Clause (1) of the Act notwithstanding the original decree?"" The question really resolves

itself into a very narrow one - the meaning of "final decree" in Section 3(7) of the Act. It is of course perfectly clear that the word "now" in Section

6(1) refers to the date of the commencement of the Act. u/s 6(1) a ryot who at the date of the commencement of the Act is in possession of ryoti

land which is not old waste has a permanent right of occupancy. ""Old waste"" is defined in Section 3(7). By the last paragraph of this sub-section a

technical meaning is given to ""old waste"" as including ryoti land in respect of which before the passing of the Act the landholder had obtained a final

decree of a competent civil court establishing that the ryot had no occupancy right. There seems no particular reason why land in respect of which

such a decree had been obtained should be called ""old waste,"" but the provision was probably introduced in the definition section in this way for

convenience of drafting. One thing is clear, and that is that the the legislature intended to extend the class of lands which fell within the definition of

old waste,"" and by so doing to extend the class of lands which were excluded from the operation of Section 6, in the interest of the landholder.

The question raised in the order of reference came before Abdur Rahim, J. and myself in Raja of Venkatagiri v. Narasayya A 174 and 197 of

1905 and we took the view that the word ""final"" in Section 3(7) meant final with reference to the court which pronounced the decree, and that a

decree was none the less final for the purposes of the section because an appeal was pending when the Act came into operation. It seemed to us

unreasonable to hold, unless we were constrained to do so by the language used by the legislature, that the effect of a decree in the landowner's

favour was overridden by the Act unless the decree was that of the court of final appeal, or unless, where the decree was not that of the court of

final appeal, the time for appealing from the decree had expired at the date of the commencement of the Act, It is clear that where a landlord

obtains a decree in ejectment before the commencement of the Act and executes it before the commencement of the Act, the ryot could not claim

the benefit of the first part of Section 6. And it seems anomalous that a question of title might turn on the more or less accidental circumstance of

execution or non-execution of a decree in ejectment. But the intention of the legislature must of course be gathered from the language used by the

legislature. Some meaning must be attached to the word ""final"" in Section 3(7) and there is no doubt much force in the argument that, in a suit for

ejectment, final decree of a Court does not mean final as distinguished from a preliminary or interlocutory decree of that Court in the sense in which

these decrees are provided for in the Code of Civil Procedure.

2. I do not think we should be warranted in treating the word as surplus age and if it does not mean final as distinguished from preliminary or

interlocutory as regards the Court which pronounced the decree, it is difficult to resist the argument that it means final in the sense that it cannot be

appealed against. My learned brethren are of opinion that the word "final" should be so construed. I confess to considerable doubt upon the point,

but, after hearing the matter fully argued, I do not propose to dissent from this view. I would, therefore, answer the question which has been

referred to us in the affirmative.

Krishnaswami Aiyar J.

3. I have carefully reconsidered the question referred to the Full Bench in the light of the further arguments addressed to us by the learned pleader

for the respondents. I have been strengthened in the conclusion indicated in the order of reference. I have no desire to repeat the arguments stated

in the last paragraph of that order. The question is what is a "final decree of a competent civil court establishing that the ryot has no occupancy

right." Does it include a decree which is under appeal? I attach no importance to the indefinite article "a" before "competent civil court" any more

than in the phrase "a court of competent jurisdiction" in Section 2 of Act VIII of 1859. To my mind it does not mean "any." It would have been

quite out of place to use the definite article "the" instead. I think that "a final decree establishing that the ryot has no occupancy right" is a decree

that is not under appeal or liable to be set aside on appeal. It seems to me to be altogether incongruous to convert ryoti land into old waste by

reason of the adjudication of one civil court and to retain it in the same category although that adjudication may be set aside on appeal. It was

pointed out that the last clause of Sub-Section 1 of Section 6 saves a permanent right of occupancy that may have been acquired in old waste.

Ryoti land which is old waste only by reason of the adjudication of no occupancy right by one court must continue to be old waste though the very

adjudication which brought it within that category is upset on appeal, I cannot think that such a result which necessarily flows from the contention of

the respondent could have been intended by the legislature. It was conceded for the respondents that, if at the commencement of the Act there was

an appellate decree declaring occupancy rights in reversal of an original decree against them, the landlord could not be said to have obtained a final

decree negating occupancy rights. It is difficult to reconcile this with the interpretation of "a final decree" as the last decree of any one court.

Again Section 23 of the Act lays down that "when in any suit or proceeding it becomes necessary to determine whether any land is old waste or

ryoti land other than old waste it shall be presumed to be ryoti land other than old waste until the contrary is proved." Now this presumption

applies to all suits or appeals whether pending at the date of the commencement

of the Act or instituted thereafter. Although a decree may have been passed by a civil court establishing that the ryot has no occupancy right, the appellate court will, under this section, be bound to presume in favour of such a right until the contrary is proved. It seems to me to be somewhat inconsistent to relegate ryoti land to the head of old waste by reason of the adjudication of one court that there is no occupancy right, and to presume in favour of occupancy in appeal despite the decision of the original court, for the fact of such a decision having been obtained cannot itself preclude the presumption, I am inclined to think that the final decree of a competent civil court referred to in the definition of old. waste is a decree obtained in a proceeding independent of that in which the question of occupancy right is dealt with u/s 6 Clause (1), or the presumption u/s 23 is made.

4. Mr. Ramesam argued that the words "final order or decision fixing the rent" in Section 177 were of no value in interpreting the phrase "final decree establishing that the ryot has no occupancy right," for according to him there was only one officer who had to make the final order or decision. This contention proceeds upon a misapprehension of the provisions of Chapter XI of the Act. u/s 170 the preliminary record prepared u/s 169 has to be submitted to the confirming authority for sanction. The settlement of the rents comes into force upon such confirmation. Then under Section 171 an appeal lies to a superior revenue authority or other special officer determined by rule or empowered by the Local Government. Then Section 127 provides for revision by the Board of Revenue. Section 173 permits a regular suit in the civil court, within a time limited, by an aggrieved person. Clause 5 of Section 173 says "when a civil court has passed final orders or a decree, under this section, it shall notify the same to the Collector of the district." The final order or the decree under the section must certainly mean the decree passed on appeal in the suit in case an appeal has been preferred from the decree of the original court. Again Section 173 which empowers a revenue officer to correct a bonafide mistake in an order or decision u/s 168 or 169 requires him to stay his hand in case an appeal is pending against the order under Sections 171, 173, or 179. The appeal u/s 173 from the Revenue Officer's order must certainly include an appeal from the decision of the Civil

Court passed under that section. When we come next to Section 177 which speaks of the final order or decision fixing the rent which is not to be enhanced for a period of 20 years except on certain grounds, it seems to be abundantly clear that the finality here contemplated is not as regards a particular officer or court, but, where there has been an appeal or revision or suit, the decision of the authority of last resort. It seems to me that we should place a similar construction upon the phrase "final decree" in the definition of old waste in Section 3, Clause 7. I adhere to the other reasons set out in the order of reference which led Mr. Justice Miller and myself to this conclusion. I am prepared to accept the exposition of the word "final" in the expression "final decree" given by Mr. Justice Holloway in his very able judgment in *Arunachellathudayan v. Veludayam and A.P.*

Kunhi Perechan Kidavu v. Chembakat Kesava Paniker (1870) 5 M.H.C.R. 215. My answer to the question referred is in the affirmative.

Ayling, J.

5. It appears to me that some meaning must be attached to the word "final" as qualifying "decree" in Clause (7) of Section 3 of the Madras Estates

Land Act : and, that, in the connection in which it is used, it must be taken to indicate a decree which has ceased to be liable to be modified on

appeal. I would answer the reference in the affirmative.