

(1978) 06 MAD CK 0018
In the Madras High Court

Hussain Aysa Nachial and Others

APPELLANT

Vs

Vembu Ammal

RESPONDENT

Date of Decision : 19-06-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 102
Transfer of Property Act, 1882 — Section 52

Citation : (1979) 92 LW 141 : (1979) 1 MLJ 288

Hon'ble Judges : Nainar Sundaram, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—The petitioners in O.P. No. 22 of 1972 on the file of the Revenue Gourt, Karaikkal, are the revision petitioners. The respondent therein, is the respondent herein. In execution of an order of eviction obtained in O.P. No. 22 of 1972, the, petitioners sought for delivery of possession of the property in question. Admittedly, there was an obstruction by one Somu Piliai, son of Vuithilingam Pillai and this obstruction was notified to the Court below. Instead of taking proceedings for removal of obstruction, the petitioners herein wanted to prosecute the execution petition. The respondent raised a contention and it has been countenanced by the Court below that when no proceedings have been taken for removal of obstruction, the execution petition is incompetent and it cannot be prosecuted. This contention of the respondent as stated above has been accepted by the Court below and the execution petition has been dismissed. As against the order of the Court below the petitioners have filed the present revision.

2. Two questions would arise for consideration in the present revision : (1) whether the provisions of the CPC can be invoked in the contingency faced in the present case; and (2) even if the provisions of the CPC cannot be invoked for the purpose of removal of obstruction caused to the execution, can the principles of the Code of Civil Procedure, be invoked and applied so as to effectuate the orders of eviction passed by the Revenue Court, under the provisions of the Pondicherry Cultivating Tenants Protection Ace (IX of 1971), hereinafter referred to as the Act.

3. Shri. G. Nagarajan, learned Counsel appearing for the petitioners, submits that in the absence of specific provisions either under the Act or in the Rules invoking the aid of the Code of Civil Procedure, it is not possible to bring them into operation for the purpose of aiding the execution of the orders passed by the Revenue Court under the Act, and as per Rule 19 framed under the Act, "any order, decision or award passed by a Revenue Court: under the Act, shall be enforceable by an officer of the Revenue Department not lower in rank than a Revenue Inspector." The Revenue Court having passed an order must be deemed to have overall powers to enforce the same. In an application for execution the obstructor must be left with independent remedies to be worked out separately.

4. Shri R. Gopalakrishnan, learned Counsel for the respondent, submits that the absence of reference to the specific rules of the Code of Civil Procedure, either in the Act or in the Rules framed thereunder, need not form a bar for invoking the principles under the Code of Civil Procedure, to effectuate the orders passed by the Revenue Court and if such a procedure is not adopted, execution of the orders of the Revenue Court will become illusory and there may be successful obstruction which cannot be removed in the physical sense; and hence, construing the rules framed under the Act, it is possible to say that there should be a formal application for removal of obstruction without which the execution petition cannot be prosecuted.

5. I find that the submissions made by the learned Counsel for the respondent, are tenable. Ramamurthi, J., in *Abdul Ravoof Sahib v. M. Kannappan and Anr.* ILR (1966) 1 Mad. 538, had occasion to deal with the application of the Code of Civil Procedure, and in particular the machinery under Order 21, Rules 35 and 95 to 103 of the Code of Civil Procedure, to the proceedings under the Tamil Nadu Act XXV of 1955. It would be pertinent to extract the observations of the learned Judge which in my opinion, are appropriate to be applied to the facts of the present case.

Rule 10 framed under the Act simply provides that an order passed by the Revenue Divisional Officer shall be enforceable by an officer of the Revenue Department not lower in rank than a Revenue Inspector and that there is no machinery like Order 21, Rule 35 and Order 21, Rules 95 to 103 of the Civil Procedure Code, and the remedy of the tenant, therefore, would only be to file a suit for possession. I do not agree. Order 21, Rule 35 and Order 21, Rules 95 to 103 of the CPC (though rules of procedure) embody the basic principle of finality to litigation governing both the aspects; rights created before the proceeding and rights created during the pendency of the proceeding. The Revenue Inspector, while functioning under Rule 10 acts as the delegate of the Revenue Divisional Officer, and when disputes arise in enforcing his order, the Revenue Divisional Officer himself can and must decide the dispute in the same way as a civil Court would do, while executing a decree for possession. The Revenue Divisional Officer will undoubtedly have power and jurisdiction to pass auxiliary orders which may be necessary to enforce and implement his original order for eviction

and make it as efficacious as necessary. The fact that there is no specific provision does not matter. The principle of Order 21, Rule 102, Civil Procedure Code, and Section 52 of the Transfer of Property Act, would apply to obstruction by one in whose favour rights were created during the pendency of proceedings for eviction or for restoration of possession. It is needless to observe that if a person in possession obstructs asserting a paramount right, a right superior to the opponent in the proceedings, the unsuccessful party will have necessarily to work out his rights in a civil suit as in such cases the Revenue Divisional Officer cannot embark upon an investigation of competing title. But so long as the person in possession has no such superior rights, the Revenue Divisional Officer will have undoubted jurisdiction to pass an order capable of execution against the subsequent lessee or the sub-lessee, as the case may be.

6. Ramaprasada Rao, J., as he then was, in *Muthiah Nattar Vs. N.S. Ibrahim Rowther alias N.S. Mohammed Ibrahim and Another*, was concerned with a case of addition of parties and the learned Judge had occasion to deal with the application of the CPC to the proceedings under the Tamil Nadu Cultivating Tenants Protection Act (XXI of 1955). It must be pointed out that the provisions of the Tamil Nadu Act (XXV of 1955) and the Rules framed thereunder, can be said to be substantially in pari materia with the provisions of the Pondicherry Cultivating Tenants Protection Act (IX of 1971) and the Rules framed thereunder. In the context of the case dealt with by him, the learned Judge observed as follows:

The Madras Cultivating Tenants Protection Act being a special Act, affords relief to tenants under particular stated circumstances and therefore, ought to be strictly construed. Rule 8 of the Madras Cultivating Tenants Protection Rules, ordains that every Court constituted under the Madras Cultivating Tenants Protection Act, shall have the powers exercisable by a civil Court in the trial of the suits and in particular provides under Rule 8(ii) that the proceedings before the Rent Court shall, "as far as possible" be governed by the provisions of the Code of Civil Procedure, 1908. We are here concerned with the addition of parties expressly provided for in Rule 8(ii)(e) of the Madras Cultivating Tenants Protection Rules. It is common ground that unless there is anything in the Madras Cultivating Tenants Protection Act or the Rules, prohibiting the application of any provisions of the Code of Civil Procedure, the Code is applicable to the proceedings in the Revenue Court. No doubt, the provisions of the Code of Civil Procedure, ought not to be strictly iron-jacketed and rendered inelastic. As the Code is mainly concerned with procedural law, intended to facilitate justice, its application has to be sought instead of being avoided, if it is so required in the interests of justice, *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, . But if a special or local law provides a procedure which is defined, distinct and separate and is in conflict with the common law provision as envisaged under the provisions of the Code of Civil Procedure, then of course, the former will prevail. *Generatia specialibus non derogant* is an accepted principle of law. A proceeding before a Rent Court though not strictly a suit is certainly a legal

proceeding wherein valuable justiciable rights of parties are adjudicated upon. Therefore, it has to be considered whether the impact of the Code of Civil Procedure, as against the provisions of the special beneficial legislation of the Madras Cultivating Tenants Protection Act is so great and telling that the Code should prevail over the special provisions under the Madras Cultivating Tenants Protection Act.

7. In *Shanmugathammal and Others etc. Vs. Valliappan alias Vallinayagam and Others*, , *Ramanujam, J.*, held that Rule 8(1) of the Rules framed under the Tamil Nadu Cultivating Tenants Protection Act (XXV of 1955) says that every Court constituted under the Act shall have the powers exercisable by a civil Court in the trial of a suit. This observation of the learned Judge indicated that even though all the provisions of the Code of Civil Procedure, have not been specifically invoked for the purpose of proceedings under the Tamil Nadu Cultivating Tenants Protection Act (XXV of 1955) and the Rules framed thereunder, on general principles, it is possible to invoke the aid of the CPC to properly effectuate the proceedings under the said Act and the orders passed by the Tribunal constituted under the said Act. A similar view has been taken by *Maharajan, J.*, in *Kumarasami alias Muthukumaraswami Vs. Theagarajan*, . The learned Judge observed as follows:

It is contended on behalf of the respondent that the Revenue Court is untrammelled by the rules of procedure laid down in the Civil Procedure Code. I am unable to agree. In the first place, even apart from the Code, common sense required that order shall not be passed in favour of or against dead person, because such orders will lead to starting difficulties in execution.

8. The observations of the learned Judge also lend support to the view that even though no specific reference to the particular provisions of the Code of Civil Procedure, have been made in the Act or in the Rules framed thereunder, yet for the proper conduct of the proceedings before the Revenue Court constituted under the Act and to effectuate and execute orders passed by the Revenue Court under provisions of the Act and the Rules framed thereunder, there is always the possibility of invoking the aid of the provisions of the Code of Civil Procedure, and such an application cannot be ruled out on a proposition that the Act and Rules do not refer to them.

9. In the present case, the Court below pointed out that there is an obstruction caused by one Somu Pillai, son of Vaithilingam Pillai and it would be a misnomer to say that the execution must be effected irrespective of obstruction. Putting into practice such a proposition will present great difficulties and it may even lead to affray and disturbance of peace. Hence, while effectuating and executing orders passed by the Revenue Court, if there is an obstruction caused, it would be, apart from specific invocation of the aid of the Code of Civil Procedure, on general principles also, proper to observe the Rules of the Code of Civil Procedure, and determine the rights of the obstructor after hearing him and then effectuate and execute the orders. In this view, I find that the Court below has

properly appreciated the position in law and it cannot be stated that the order of the Court below suffers on account of want of jurisdiction or error of law. I do not find any warrant for interference. Hence this revision is dismissed.

10. However, Shri G. Nagarajan, learned Counsel appearing for the petitioner, submits that the petitioner may be given an opportunity to file the requisite application for removal of obstruction and for that purpose, sufficient time may be given. Taking into consideration this representation, the matter, viz., E.P. No. 9 of 1973 in O.P. No. 22 of 1972 will stand remitted back to the Revenue Court, Karaikkal, and the petitioner is given the liberty to file the requisite application for removal of obstruction within a fortnight from the receipt of the records by the Court below failing which the order of the Court below will stand confirmed and the order of dismissal of the E.P. will stand. As far as the application for removal of obstruction is concerned, it shall be disposed of in accordance with law. There will be no order as to costs in this revision.