

(1979) 04 MAD CK 0028
In the Madras High Court

K. Periaswamy Ambalam

APPELLANT

Vs

Pichayammal and Others

RESPONDENT

Date of Decision : 09-04-1979

Acts Referred:

Citation : (1980) 93 LW 32 : (1979) 2 MLJ 455

Hon'ble Judges : V. Sethuraman, J

Bench : Single Bench

Judgement

V. Sethuraman, J.—These two appeals arise out of appeals from two suit O.S. Nos. 522 of 1970 and 72 of 1970 respectively in the Court of the District Munsif of Madurai. The suits were filed for recovery of arrears of rent from one Karuppanan Ambalam in respect of 2 acres 12 cents and 2 acres 18 cents of land belonging to the plaintiffs and leased to the said Karuppanan Ambalam at the rate of 16 bags of paddy of 48 Madras measures in each case. The suits related to the arrears of rent for faslis 1378 and 1379. Karuppanan Ambalam contended that the rent was only 12 bags of paddy of 48 Madras measures in each case, and when he paid the rent for faslis 1378 and 1379 the plaintiffs refused to receive the same giving false hopes to him that the amount may be settled and adjusted in the sale transaction negotiated between the parties. The trial Court held that the rent payable was 16 bags of paddy and decreed the suit for the value thereof, namely, Rs. 1,280 in each suit.

2. Karuppanan Ambalam filed two appeals and he died during the pendency of those appeals, and his legal representatives have been brought on record. During the pendency of the appeals I.A. Nos. 564 and 565 of 1973 were filed taking advantage of the provisions of Tamil Nadu Act XXI of 1972, which came to be enacted subsequent to the disposal of the suits and before the disposal of the appeals. The attempt of the tenants was to deposit the arrears of rent for fasli 1381 so that the earlier rent could be taken to have been wiped out in accordance with the provisions of Tamil Nadu Act XXI of 1972. The plaintiffs contended that the deposit of the value of 12 kalams of paddy in each case was

not proper so as to discharge the arrears, and that the proper rent was 16 kalams of paddy in each of the cases. According to the plaintiffs, the value of the paddy deposited by the tenants did not represent the market value and was much less. It was, therefore, contended that the tenants had not complied with the provisions of Tamil Nadu Act XXI of 1972 so that the plaintiffs were entitled to a decree as prayed for in the suits.

3. The III Additional Subordinate Judge of Madurai, who heard the appeals, went into two questions. One was whether the suits were liable to be dismissed on the deposit of the rent for fasli 1381, and the second was whether the plaintiffs were entitled to the amount claimed by them in the suits. On both these points he decided against the tenants, and that is how the matter comes in appeal before this Court.

4. The learned Counsel for the appellant contended that this is a case in which the provisions of Section 3 of Tamil Nadu Act XXI of 1972 would apply, that in this case, there is a bona fide dispute as to the amount to be deposited and that in such a case, the Court was bound to grant further time for making up the deficiency in deposit. For the respondents, the submission was that this is a case in which the actual rent had already been fixed under a decree as between the parties, against which there was no appeal, and that this is not a case in which the tenant would be entitled to any benefit under the provisions of Tamil Nadu Act XXI of 1972 after he had failed to deposit the entire rent for fasli 1381 within the period stipulated under the Act.

5. The only question that arises for consideration is whether the tenant had complied with the provisions of Tamil Nadu Act XXI of 1972 so that the arrears of rent due for the earlier faslis would stand wiped out. Tamil Nadu Act XXI of 1972 was passed for providing relief to cultivating tenants in respect of arrears of rent. Due to default in the payment of arrears of rent, landlords took action against cultivating tenants for eviction as well as for recovery of arrears of rent. It was considered that in the interests of the general public, cultivating tenants should, at the time when the Act was enacted, be spared the distractions and expenditure involved in such action, in order that the maximum possible advantage may result to the State in the matter of production of food crops. It was, therefore, considered necessary, as part of agrarian reform, to give relief to cultivating tenants from the burden of discharging arrears of rent on condition of payment of the current rent to landlords.

6. This Act was published in the Fort St. George Gazette on 11th of August, 1972. Section 3(1) which is the only material provision reads as follows:

3. Relief in payment of arrears of rent.-- (1)(a) All arrears of rent payable by a cultivating tenant to the landlord and outstanding on the 30th June, 1971 (hereinafter referred to as arrears of rent), shall be deemed to be discharged; whether or not a decree or order has been obtained therefore, if such cultivating tenant--

(i) has before the date of the publication of this Act paid to the landlord or deposited in the Court or before the competent authority, to the account of the landlord; or

(ii) pays or deposits in the manner specified in Clause (b) within six months from the date of the publication of this Act; or

(iii) is deemed to have paid or deposited under this Act the whole of the rent due for the fasli year commencing on the 1st July, 1971 and ending with the 30th June, 1972 (hereinafter referred to as the current rent).

(b) A cultivating tenant may--

(i) pay to the landlord the current rent, or

(ii) deposit in the Court or before the competent authority, to the account of the landlord, the current rent or if the rent be payable in kind its market value on the date of deposit;

(c) The Court in which, or the competent authority before which, the deposit is made shall cause notice of the deposit to be issued to the landlord, determine after a summary enquiry, whether the amount deposited represents the correct amount of the current rent due from the cultivating tenant. If the Court or competent authority finds that any further sum is due, it shall direct the cultivating tenant to deposit the further sum within the period specified in Clause (a)(ii). If the Court or competent authority adjudges that no further sum is due or if the cultivating tenant deposits within the time referred to above such further sum as is ordered by the Court or competent authority the cultivating tenant shall be deemed to have paid the current rent for the purpose of this Act.

7. It may be seen from the above provision that arrears of rent payable by a cultivating tenant to a landlord and outstanding on 30th June, 1971 is deemed to be discharged, if the tenant had paid before the date of the publication of the Act to the landlord or deposited in Court to the account of the landlord the whole of the rent due for the fasli commencing on 1st July, 1971, and ending with 31st June, 1972. Even in a case where the tenant had not paid the current rent before the publication of the Act or deposit the rent before the said publication, he was given time to pay the rent within six months from the date of the publication of the Act. The six months' time would expire by 10th of February, 1973. The Court or competent authority, before which the deposit is made, has to give notice of the deposit to the landlord and determine, after a summary enquiry, whether the amount deposited represents the correct amount of the current rent due from the cultivating tenant. If the Court or the competent authority found that any further sum was due, then, it has to direct the cultivating tenant to deposit the further sum within the period specified in Clause (ii) of Sub-Section 1(a) of Section 3. If the Court or the competent authority found that no further sum was due or if the cultivating tenant deposited the further sum found to be due within the period specified in Clause (a)(ii), then the cultivating tenant is deemed to

have paid the current rent for the purpose of the Act, so that the earlier rent in arrears would stand discharged or wiped out. There is no dispute about the fact that the tenant deposited the rent for fasli 1381 before the Authorised Officer, and the plaintiffs had withdrawn the amount. The amount so deposited was Rs. 678. As mentioned earlier, there was dispute as to the quantum of rent payable by the tenant to the landlords in these cases. The quantum was fixed under O.S. No. 18 of 1969 and the rent fixed in the said suit was 16 bags of paddy each containing 48 Madras measures. The tenant was, therefore, obliged to pay the landlord 16 bags of paddy in each of these cases, while in I.A. Nos. 564 and 565 of 1973 he stated that he had deposited the value of only 12 bags of paddy. The market value of the 16 bags of paddy was Rs. 1,280, and as the deposit was only Rs. 678 in each of these cases, the Court below came to the conclusion that the tenant had not deposited the entire rent as contemplated by Section 3 of Tamil Nadu Act XXI of 1972. Prima facie there appears to be no error in the judgment of the lower appellate Court.

8. The learned Counsel for the appellant, however, drew my attention to a decision of this Court in *Semmanna Gounder v. Mysore Mission* by its power Agent Rev. Father Uthrium. That was a case which came to this Court in a petition to revise the order of the Authorised Officer by which the Authorised Officer had dismissed an application by a tenant filed for a declaration u/s 3(1)(b) (ii) of Tamil Nadu Act XXI of 1972 that he had discharged the entire arrears due to the landlord by reason of the deposit of current rent. The deposit in that case was made on 9th of February, 1973 with an application for declaration that the entire arrears had been wiped out by reason of such deposit. The landlord disputed the correctness of the amount deposited and contended that the rent payable for each fasli was Rs. 360 and not Rs. 300. The Authorised Officer enquired into this matter, and ultimately accepted the contention of the landlord and held that the rent payable was Rs. 360. Finding that only a sum of Rs. 300 had been deposited and taking the view that he had no authority under the provisions of the Act to extend the time for depositing the balance amount, he dismissed the application. It was against that order that the revision petition came to be filed in this Court. The learned Judge held that that was a case in which the time taken for paying the additional amount could be excluded in calculating the period of six months.

9. I consider that this decision has no application to the facts of the present case. In that case, there was a dispute as to the quantum of the rent payable to the landlord. The quantum had to be determined, and on such determination, some excess was found to be due to the landlord. The question was whether the tenant was entitled to any further time for payment of the excess amount. It is on these facts that the Court held that the time taken for determination of the amount due could be excluded. As pointed out earlier, in this case, the civil Court has fixed the rent and the fixation has become final. The tenant had only to deposit the rent so fixed. There is no possibility of any time being taken for the determination of the rent by any authority so as to justify its exclusion as in the case cited. The

omission to deposit the entire rent on these facts is fatal to the tenant's claim for deeming the earlier rent in arrears to have been wiped out. The concession given to the tenant is conditional on his paying the entire rent for fasli 1381 within the period of six months. If he did not comply with the condition, the statutory concession cannot be extended to him. In this view, it is unnecessary to go into the question raised during the arguments whether the time limit fixed in Section 3(1)(b) is unalterable without there being any scope for extending the time-limit or excluding any time taken in other proceedings. The arrears here are not wiped out. The suits for arrears were rightly decreed.

10. The appeals are dismissed with no order as to costs.