

(1942) 09 MAD CK 0001
In the Madras High Court

Kalyanasundaram Aiyar

APPELLANT

Vs

Chinna Goundan and Others

RESPONDENT

Date of Decision : 17-09-1942

Acts Referred:

Madras Estates Land Act, 1908 — Section 6

Citation : AIR 1943 Mad 83 : (1943) ILR (Mad) 556 : (1942) 55 LW 802 :
(1942) 2 MLJ 689

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellant obtained a decree against the respondents declaring that he held both the melwaram and

the kndiwaram rights in certain land then in the occupation of the respondents. This decree became final on the 26th January, 1934, as the result of

the decision of this Court in L.P.A. No. 12 of 1931. On the 22nd January, 1937, the appellant filed in the Court of the District Munsiff of

Sankaridrug at Salem an application for an order in execution of his decree. The District Munsiff held that by reason of Section 6 of the Madras

Estates Land Act, as it now stands, the application for possession of the property did not lie. This decision was challenged in an appeal to the

District Judge, who reversed the decision of the District Munsiff. The respondents then appealed to this Court. The appeal was heard by King, J.,

who restored the judgment of the District Munsiff. This appeal is from the judgment of King, J., under Clause 15 of the Letters Patent.

2. On behalf of the appellant it is conceded that if the question is governed merely by Section 6 of the Madras Estates Land Act the appellant is

not entitled to ask for possession of the property. It is, however, contended that

by reason of the provisions of Section 127 (The reference is to Section 127 of Madras Act VIII of 1934 as subsequently amended.--Ed.) an application for possession does lie.

3. Sub-section (1) of Section 6 states that subject to the provisions of the Act, every ryot now in possession or who shall hereafter be admitted by

a landholder to possession of ryoti land situated in the estate shall have a permanent right of occupancy in his holding. Three explanations follow.

Only two need to be considered. The first explanation is to the effect that for the purposes of Sub-section (1) the expression ""every ryot now in

possession"" shall include every person who, having held land as a ryot, continues in possession at the commencement of the Act. Explanation (2)

states that the expressions ""now"" and ""commencement of the Act"" shall be construed as meaning the 30th day of June, 1934. The respondents

were admittedly in possession on the 30th June, 1934.

4. Section 127 was introduced by the Madras Estates Land (Amendment) Act, 1934 and reads as follows:

(1) Subject to the provisions of Sub-section (2) nothing in this Act or in any repeal or amendment effected thereby shall affect any right, title,

interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act under a decree or order of a competent

Court.

(2) No tenant in possession on the first day of November, 1933, of any land in an inam village, not being an estate within the meaning of Sub-

clause (d) of Clause 2 of Section 3 of the said Act as amended by this Act, or admitted by the inamdar to possession of any such land subsequent

to the said date, shall be liable to be ejected until the date of the commencement of the Madras Estates Land (Third Amendment) Act, 1936, and

all proceedings in ejectment of any such tenant and all proceedings involving decision whether or not the inamdar has the kudiwaram right in such

land. shall be stayed until the date of the commencement of the Madras Estates Land (Third Amendment) Act, 1936:

Provided that nothing contained in this sub-section shall apply to any land the kudiwaram interest in which has been declared or recognised before

the 1st day of November, 1933, to vest in the inamdar by a decree or order of a competent Court which has become final.

5. The Madras Estates Land (Third Amendment) Act, 1936, came into force on the 31st October, 1936. The learned advocate for the appellant says that as he had obtained a decree before this section was enacted he has the right to obtain possession. Here, however, the governing section is Sub-section (2) because the land in suit is inam land. The first part of Sub-section (2) merely provides for the stay of execution proceedings until the passing of the Madras Estates Land (Third Amendment) Act, 1936. The appellant does not come within the proviso to this sub-section because he had not obtained a final decree on the 1st November, 1933. His rights were not finally declared until the 26th January, 1934. We agree with the learned Judge that there is nothing in Section 127 which overrides anything said in Explanation (2) to Section 6. That explanation was inserted at a later date by the Madras Estates Land (Third Amendment) Act, 1936, and the amendments made by that Act finally settled the rights of the parties. The appeal will be dismissed with costs.