
(1978) 04 MAD CK 0013
In the Madras High Court
Case No : C.R.P. 1649 of 1974

Kandaswamy Gounder and another	Vs	APPELLANT
Sinna Gounder and others		RESPONDENT

Date of Decision : 12-04-1978

Acts Referred:

Citation : (1978) 04 MAD CK 0013

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : N. Varadarajan for Mr. V.C. Veeraraghavan, for the Appellant; G.M. Nathan, for the Respondent

Judgement

Nainar Sundaram, J.—In this revision the cultivating tenants, the legal representatives of the original cultivating tenant under the Tamil Nadu

Act 25 of 1955 (hereinafter referred to as the Act) are the petitioners. The respondents herein are the landlords under the Act. The original

cultivating tenant, one late Ayya Gounder, wanted restoration of possession under S.4(5) of the Act on the ground that he was dispossessed on

20th Adi 1969 (4th August 1969). The landlords put forth a plea that there was a surrender by another son of Ayya Gounder, by name

Perumalswami Gounder, and in view of that, the petition under S.4(5) of the Act is not competent. The Authorised Officer (Land Reforms),

Coimbatore, who entertained the petition under S.4(5) of the Act as O.P. 136/70 found that Ayya Gounder was the cultivating tenant and his son

Perumalswami Gounder did not have the status of a cultivating tenant, that Perumalswami Gounder had no right to surrender possession of the land

and such a surrender would not bind the cultivating tenant Ayya Gounder. However, on a reasoning that the petitioners herein have not established

that Ayya Gounder was forcibly evicted from the lands, the reliefs prayed for were not granted to them by the court below. In this view the

application was dismissed. The present revision is directed against the order of the court below. Thiru N. Varadarajan, learned counsel for the

petitioners submits that once it is found that the cultivating tenant (Ayya Gounder) was not evicted under the provisions of S.3(4) of the Act and

that the possession of the cultivating tenant has been taken away from him in the sense that he stands dispossessed and admittedly the landlords

have taken possession, reliefs ought to have been given under S.4(5) of the Act.

2. Thiru G.M. Nathan, learned counsel for the respondents contends that in the absence of proof as to the manner in which the cultivating tenant

(Ayya Gounder) came to be dispossessed, the application under S.4(5) of the Act is incompetent and no reliefs could be granted.

3. There is no dispute before me about the relationship between the landlords and the original cultivating tenant (Ayya Gounder), though a

contention seemed to have been raised in the Court below that Perumalswami Gounder was competent to surrender possession of the demised

land. This has been rightly repelled by the court below and the surrender of possession by Perumalswami Gounder was held to be not binding on

the original cultivating tenant (Ayya Gounder) and his legal representatives who have continued the proceedings for reliefs. Admittedly, there is no

order of eviction under S.3(4) of the Act. The original cultivating tenant was not dispossessed pursuant to any such order of eviction. It is not

possible to give a restricted meaning to the expression "'evicted'" occurring in S.4(5) of the Act, so as to say, if not evicted under S.3(4) of the Act,

the cultivating tenant should have been evicted only by force, so as to come within the purview of the provision. If there has been no taking up of

possession pursuant to orders under S.3(4) of the Act and if the cultivating tenant stands dispossessed by the landlord and if possession has been

taken by and is found to be with the landlord, the cultivating tenant would be definitely entitled to seek the reliefs under S.4(5) of the Act. The

matter would stand on a different footing, if it is a case of voluntary surrender of possession by the cultivating tenant. Such is not the case here. It

may not be incumbent on the cultivating tenant to prove that by force only he came to be dispossessed to succeed in getting the relief of

restoration. The manner in which the cultivating tenant came to be dispossessed can only be a matter of evidence. But, once it is found that

possession was taken from the cultivating tenant by the landlord and that possession is now with the landlord and when such possession has not

been taken pursuant to orders under S.3(4) of the Act, in my opinion, the cultivating tenant will be entitled to get restoration of possession, unless it

is a case of voluntary surrender.

4. Thiru N. Varadarajan, learned counsel draws my attention to a passage in Halsbury's Laws of England (III Edition, Volume 23) page 552,

which reads as follows:

To constitute an eviction.....any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the

enjoyment of the demised premises, or any part thereof, will operate as an eviction.

Admittedly, in the present case the cultivating tenant was deprived of his possession of the demised lands; and possession has been taken by the

landlords, and their plea of surrender cannot be accepted, and has been rightly not accepted by the Court below. It may not matter, then as to how

and in what manner the cultivating tenant was dispossessed. In any event he was not dispossessed pursuant to orders under S.3(4) of the Act, so

as to exclude the operation of S.4(5) of the Act.

When the evidence on record makes out that there was possession with the cultivating tenant earlier and that possession was taken from him by the

landlord by process not covered by S.3(4) of the Act and the possession is with the landlord, then the cultivating tenant would be entitled to seek

the relief and get restoration of the possession under S.4(5) of the Act. In my view, the court below on the ground that the tenant has not proved

that he was forcibly evicted ought not to have denied the relief to the cultivating tenant. I find the order of the court below suffers an infirmity in law

and requires revision. Hence, this revision is allowed. The order of the court below is set aside, and the application by the cultivating tenant will

stand ordered. Time for delivery of possession 3 months from today.