

(1958) 10 MAD CK 0035
In the Madras High Court
Case No : C. R. P. No. 1657 of 1957

K.K. Muthiah

APPELLANT

Vs

The State of Madras and others

RESPONDENT

Date of Decision : 15-10-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1
Constitution of India, 1950 — Article 226

Citation : (1958) 10 MAD CK 0035

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Single Bench

Advocate : K.G. Srinivasa Iyer, for the Appellant;

Judgement

Basheer Ahmed Sayeed, J.—This civil revision petition is against the order of the learned Subordinate Judge of Tiruchirapalli in O.S. No. 101 of 1953. In a very elaborate order the learned Subordinate Judge has thought it fit to transfer the entire suit to the Tribunal appointed under Act XXX of 1956 on the ground that the Sub Court had no jurisdiction. He has of course refrained from giving any directions as to costs. Mr. K.G. Srinivasa Iyer, the learned Counsel for the petitioner, has invited my attention to an order passed by Rajagopalan, J., in W.P. No. 490 of 1954, filed by the petitioner against the order of the Assistant Settlement Officer, Pattukottai, under Art. 226 of the Constitution praying that this Court should be pleased to issue a writ of mandamus or other appropriate writ or order directing the Assistant Settlement Officer, Pattukottai, to forbear from proceeding with the enquiry in S.R. 31/Kulithalai/50 on his file. The learned Judge at the end of his order, upholding the contention and granting a mandamus observed as follows:

Of course Act XXVI of 1948 vests the exclusive jurisdiction to decide whether a given estate is an in am estate or not in the Settlement Officer, subject to the ultimate determination of that question by the Tribunal. But before it could be held that a given piece of property is an in am estate, it will have to be held it is

an estate. The statutory Tribunals are not clothed with the exclusive jurisdiction to determine whether a given village is an estate or not as defined by the Act. That matter is still open to determination by the ordinary civil Courts, and that was why the petitioner filed O. S. No. 101 of 1953 for a declaration that the village was not an estate.

Under S. 64-A of the Act, the ultimate decision in O.S. No. 101 of 1953 will attract the principle of res judicata even in proceedings under S. 9 of the Act.

In the special circumstances of the case, when the main question at issue, whether D" Edayapatti is an estate, arises for consideration both before the civil Court and before the Assistant Settlement Officer as the statutory Tribunal under S. 9 of the Act, and since the jurisdiction of the civil Court to determine that issue remains unaffected, it would certainly appear to be a proper case for the Assistant Settlement Officer to exercise at least his discretion and stay proceedings under S. 9 of the Act. till the proceedings in O.S. No. 101 of 1953 terminate. Since from the order of the Assistant Settlement Officer it does not appear that he exercised such a discretion, I direct that the order of the Assistant Settlement Officer dated 28th June 1954 be set aside, and a writ of mandamus do issue to the Assistant Settlement Officer to refrain from proceeding with the enquiry till the final disposal of O.S. No. 101 of 1953 on the file of the Sub Court, Tiruchirapalli. Rule made absolute. The petition is allowed. No order as to costs.

2. It is plain as argued by the learned Counsel for the petitioner that under this order it is the Sub Court of Tiruchirapalli that has to determine the issue raised in O.S. No. 101 of 1953 and the Assistant Settlement Officer by the order in the writ application is prohibited from proceeding with the enquiry till the disposal of O.S. No. 101 of 1953 by the Sub Court, Tiruchirapalli. The order of the Sub Court now transferring the suit to the Tribunal under Act XXX of 1956 seems to be a clear violation of the order passed in the writ application by Rajagopalan J. It is inconceivable how when there is a mandamus prohibiting the Assistant Settlement Officer from proceeding with the enquiry into the matter till the final disposal of O.S. No. 101 of 1953 he could again do the very same thing which he has been ordered to refrain from. Therefore it is plain that the transfer is not well conceived and it ought not to have been ordered.

3. In the second place Mr. Srinivasa Iyer has invited my attention to a decision of a Full Bench of this Court in Swaminatha Odayar and Others Vs. Asan Muhammad Rowther and Another, , where it has been held that the civil Court has the right to enquire into the question of title to a land forming part of an estate within the meaning of the Estates Land Act, and to give consequential relief provided that the relief is not one in respect of which the Rent Court has got the exclusive jurisdiction. The principle enunciated in this decision seems to apply to the facts of the present case.

4. Mr. Srinivasa Iyer has also invited my attention to another decision in

Aiysumma v. Kunhali (1957) 1 M.L.J. 5=69 L.W. 1023, where it has been held that a civil Court has jurisdiction to decide whether a particular institution is a public temple or not where the question arises incidental to other disputes in the case before the Court. The dispute referred to in S. 84 is a dispute between the trustee of the institution on the one hand and the Board on the other. The section does not bar either expressly or impliedly the jurisdiction of a civil Court when the dispute is not with the Board but between two private parties.

5. It is common ground in this case that the plaintiff in O.S. No. 101 of 1953 has prayed for relief in regard to a temple situated in the estate and to which lands have been granted and which he claims to be a private temple and not a public one. This question is one which has also to be decided in the suit, and over this question the Special Tribunal can have no jurisdiction whatsoever. It is the civil Court alone that has jurisdiction to try this question and determine as to whether the temple claimed by the plaintiff is actually a private one or a public one.

6. In these circumstances also, to transfer a suit of this nature from the civil Court to the Special Tribunal under a special Act does not seem to be either expedient or legal.

7. There is also a further point that has to be considered. A suit for a complicated nature of this type, it will be easily conceded, is better tried by a civil Court rather than by a Tribunal. Such being the case, I think it is in the interests of justice also that this suit should be heard and disposed of only by the Sub Court, Tiruchirapalli.

8. It is represented that the suit is ready for trial and the documents have also been filed, the issue having already been framed. In such circumstances, the Sub Court will do well to take up the case immediately and dispose it of as expeditiously as possible.

9. The order of the Sub Court transferring the suit to the Tribunal is, therefore, not warranted and it is hereby set aside. No order as to costs.

(This petition having been set down for being mentioned the Court made the following):

ORDER

The matter has been posted for being mentioned at the instance of the Government Pleader. The judgment in the case was delivered on 10th October 1958. The learned Government Pleader contends that under Ss. 10 and 11 of the Madras Act XXX of 1956 the jurisdiction of the civil Court to try an issue as to whether a certain non-ryotwari area is or is not an estate or part of an estate as defined in S. 3 (2) of the Estates Land Act or whether it is or is not an in am estate as defined in S. 2(7) of the Abolition Act does not vest any more in any civil Court or Tribunal appointed under any law and that it expressly bars the civil Court from entertaining or adjudicating upon any question whether a non-ryotwari area is or is not an estate or part of an estate as defined in the Estates

Land Act or whether it is or is not an in am estate as defined in S. 2 Cl. (7) of the Abolition Act. The learned Government Pleader also invited my attention to S. 11 of Act XXX of 1956, which no doubt is a transitory one under which all suits, appeals, or other proceedings (other than those pending before the High Court) pending at the commencement of this Act (Act XXX of 1956) before any Court or Tribunal or Settlement Officer as defined in S. 2 Cl. 13 of the Abolition Act in which, any question is in issue whether a particular area is or was an estate as defined in S. 3 (2) of the Estates Land Act or is or was an in am estate as defined in S. 2 Cl. (7) of the Abolition Act shall stand transferred to the appropriate Tribunal constituted under the Act for the determination of that question. In so far as the matter out of which this civil revision petition has arisen is concerned it was not pending before the High Court at the commencement of Act XXX of 1956. The learned Government Pleader contends that under Ss. 10 and 11 the competent Tribunal to try the issue involved in the suit would only be a Tribunal constituted under the Abolition Act and that the jurisdiction of the civil Court is ousted because of the operation of the two sections, namely Ss. 10 and 11 of Act XXX of 1956. As against this contention Mr. K. G. Srinivasa Iyer appearing on behalf of the petitioner relies upon two judgments of my learned brother, Ramachandra Iyer, J., in K. S. Soosai Udayar v. S. Andiyappa Ambalam A.A.O. No. 74 to 77 of 1956 and Baskaran v. Sellappa Gonndar C.R.P. No. 168 of 1958. The judgment in the first case was delivered on 27th August 1958 and in the second case on 1st October 1958. In both these judgments the learned Judge has considered the scope and application of Ss. 10 and 11 of Madras Act XXX of 1956 and has come to the conclusion that the determination or adjudication of the question whether a non-ryotwari area is or is not an estate or part of an estate as defined in S. 3 Cl. (2) of the Estates Land Act or whether the said area is an in am estate as defined in the Abolition Act is only incidental to the adjudication of the civil right involved in the suit and that the jurisdiction of the civil Court is not ousted on account of the provisions contained in Ss. 10 and 11 of the Madras Act XXX of 1956, on account of the very many difficulties which the learned Judge has pointed out in the two judgments. It is contended by Mr. K. G. Srinivasa Iyer that one of the important questions raised in the suit for determination is whether the temple in question in favour of which the grant has been made is a public temple or a private one and that question cannot be determined by the Tribunal constituted under the Madras Act XXX of 1956 and that the competent Court having jurisdiction to adjudicate upon the question whether the temple in question is a public temple or a private one would only be a civil Court. Another equally important issue involved in the suit is whether a non-ryotwari area is an estate or part of an estate as defined in the Estates Land Act or whether it is an in am estate as defined in the Abolition Act. Both these are major questions which require adjudication and it cannot be said that the one is incidental to the other. Speaking for myself I am inclined to think that in a suit where two questions fall for determination one coming within the jurisdiction of a civil Court and the other, falling within the jurisdiction of a Tribunal constituted under a special statute, for a proper disposal of both the questions involved and

also in the interest of parties to the proceedings the suit should be tried and disposed of by a civil Court rather than by a special Tribunal, viz., the Tribunal constituted under Act XXX of 1956. It is difficult to bifurcate the suit and then direct the special Tribunal to try and determine the issue which falls legitimately within its jurisdiction under the special enactment and then allow the civil Court to decide the civil right involved. As pointed out by my learned brother, Ramachandra Iyer, J., there is no provision in the Madras Act XXX of 1956 for a suit being transferred to the special Tribunal constituted under the Act for decision of one of the issues involved in the suit and again for its being re-transferred to the civil Court for trial and determination of the other issues that do not fall within the jurisdiction of the Tribunal for adjudication, and which cannot be determined by the special Tribunal. In the circumstances of this case, I am of the view that the ends of justice would be met by the civil Court trying the entire suit and giving its findings on the issues involved, one relating to the question whether the suit temple is a public temple or a private one and (2) whether a non-ryotwari area is or is not an estate or part of an estate as defined in the Estates Land Act or whether it is or is not an in am estate as defined in S. 2 Cl. (7) of the Abolition Act. In this view, the earlier order I passed in this civil revision petition will stand and it will be given effect to.