
(1949) 10 MAD CK 0035
In the Madras High Court
Case No : Second Appeal No. 1893 of 1946

Korada Atchanna

APPELLANT

Vs

Jayanti Seetharamaswami

RESPONDENT

Date of Decision : 13-10-1949

Acts Referred:

Madras Estates Land Act, 1908 — Section 151, 189, 6, 6(1), 77

Citation : AIR 1950 Mad 387

Hon'ble Judges : Viswanatha Sastri, J

Bench : Single Bench

Advocate : C.V. Dhikshitulu, for the Appellant; D.V. Reddi Pantulu, for the Respondent

Final Decision : Allowed

Judgement

Viswanatha Sastri, J.—The defendant is the appellant in this second appeal. The suit was filed by a landholder for ejectment of his tenant on

the expiry of the term of his lease and for rent. The appellate Court passed a decree in ejectment, but dismissed the claim for rent on the ground

that it was cognizable only by the revenue Court. The tenant has preferred this second appeal against the decree in ejectment while the landlord has

preferred a memorandum of cross-objections regarding the disallowance of the claim for rent. The land which is the subject-matter of the suit is

part of and situated in a whole inam village which became an ""estate"" by reason of Madras Act, XVIII [18] of 1936. In O. S. No. 197 of 1933 on

the file of the District Munsif's Court, Vizianagaram, the landholder obtained a decree dated 5th July 1933 for ejectment of the tenants then

occupying the land without any contest on the part of those tenants, The defendant was let into possession of the land by the plaintiff on 26th June

1936 under a kadappa for a year but the lease was renewed subsequently every year till 1943. The present suit for ejectment and rent was

brought in 1944 on the expiry of the term of the last kadappa dated 10th April 1943. The above facts are either admitted or have been found

concurrently by the Courts below and the arguments in this Court proceeded on the basis of their correctness.

2. Mr. Dhikshitulu, the learned counsel for the appellant, argued that Section 8 (5), Madras Estates Land Act (hereinafter called the Act) as

amended in 1936 on which the claim of the laud, holder for eviction was based does not apply to the present case. First he contended that there

was here no final decree or order of a competent civil Court establishing that the tenant had no occupancy right in the suit land, the decree passed

in O. S. No. 197 of 1933 on the file of the District Munsif's Court of Vizianagaram for ejectment of the tenants then on the land, having been

passed without any issue being raised or adjudication given as regards the existence or otherwise of occupancy rights in the land. There, fore, it is

argued, that the first requirement of Section 8 (5) of the Act is not satisfied. I am unable to agree with this contention. In my opinion, the

requirement of Section 8 (5) is satisfied if there had been a final decree for ejectment of the tenants on the land before 1st November 1933 and

that was the case here. It is not necessary that the judgment or decree should contain a specific declaration that the tenant had no right of

occupancy in the land. If there was a decree in ejectment in the face of which the tenant who was a party to the decree could not set up occupancy

rights in the land, even though the decree itself did not specifically state that the tenant had no occupancy rights the case, in my opinion, would fall

within Section 8 (5) of the Act.

3. The next contention of Mr. Dikshitulu raises a somewhat difficult question relating to the construction of Section 6, Expln. (2), read with Section

8 (5) of the Act as amended. Section 8 (5) was intended to give a limited measure of protection to Inamdars, like the present plaintiff, whose lands

became an estate within Section 3, Clause (2) (d) of the Act as amended by the Act XVIII [18] of 1936 and lays down an exception to the

general rule enacted in Section 6 of the Act by postponing for a period of 12 years, the operation of Section 6 with reference to the lands falling

within Section 8 (5). To claim the benefit of Section 8 (5) in respect of land other than his private land, the landholder has to prove not only that a final decree of a competent Court has been obtained before 1st November 1933 but also that no tenant has acquired a right of occupancy in the land before the commencement of the Amending Act XVIII [18] of 1936. I have held that the first condition is satisfied in the present case, but it is argued that the second condition has not been satisfied.

4. Section 6, Expln. (2) and Section 8 (5) were enacted by the Amending Act XVIII [18] of 1936. The Amending Act came into force on 31st

October 1936, the date of its publication in the official gazette by virtue of Section 5, Madras General Clauses Act (I [1] of 1891). In the present

case, the tenant had been let into possession of the land on 26th June 1936 by the landholder under a lease for a year. As a result of Expln. (2) to

Section 6 of the Act as amended, he acquired a right of occupancy on 26th June 1936 when he was admitted to possession, the land in question

being ryoti. Explanation (2) to Section 6 of the Act as amended gives retrospective operation to the amending Act XVIII [18] of 1936 by ante-

dating the accrual of occupancy rights to 30th June 1934 or to a later date thereafter when the tenant was admitted to possession. Though the

amending Act came into force on 31st October 1936 and its operation commenced on that date, still, Section 6 Expln. (2) of that Act gives it

retrospective operation from 30th June 1931 in respect of one important matter, namely, the accrual of occupancy rights u/s 6 (1). Section 8 (5) of

the Act as amended being an exception to the general rule enacted in Section 6 (1) of the Act must be strictly construed and confined to cases

falling within its language. In the present case, it could not be said that the tenant had not acquired occupancy rights in the land before the

commencement of the Amending Act of 1936, i. e., 31st October 1936, because Expln. (2) to Section 6 which, by express declaration, operates

retrospectively from 30th June 1934, clothed him with a right of occupancy as from 26th June 1936 the date when he was admitted to possession

by the land-holder. The tenant, therefore, had acquired occupancy rights before the commencement of the amending Act XVIII [18] of 1936 as a

result of the provision in that very enactment embodied as Expln. (2) to Section 6. Consequently, Section 8 (5) of the Act would not apply and the

landholder could not evict the tenant in enforcement of the terms of the contract of tenancy between him and the tenant.

5. A decision of Horwill J. taking a contrary view in *Mummina Demudu and Others Vs. Datla Papayyaraju Garu* by his Muktyar Putrevu

Ramalingaswami and Others, has been relied upon by Mr. Reddi Pantulu the learned advocate for the respondent. With reference to the

interpretation of Section 8, Sub-section (5) of the Act, the learned Judge observed as follows:

There seems to me no doubt when the Legislature spoke of the tenant acquiring occupancy right during the period between the passing of the final

decree and the commencement of the Act they were referring to an acquisition of occupancy right otherwise than under the Act..... The Legislature

must have intended by this Sub-rule to except from the general operation of Section 6 all cases where the landholder had obtained a decree prior

to 1st November 1933 unless the tenant, subsequent to the passing of the final decree, had acquired occupancy right independently of the Act.

With great respect to that learned Judge, I see no warrant for introducing this qualification of the general words employed in Section 8 (5) of the

Act and restricting its application to cases of acquisition of occupancy rights by private transfer, though that might be the normal or usual type of

cases falling within the Sub-section. Though the Act has not been a model of good drafting, there is no absurdity or repugnance which should lead

me to disregard the plain and natural meaning of the words used in Section 6 Expln. (2) and Section 8, Sub-section (5) which have to be read

together. The Court has to judge the intention of the Legislature not by speculating as to what it had in its mind but only by its expression of that

mind through the language of the enacted provisions. I see no compelling reason to hold that the expression ""no tenant has acquired occupancy

right in such land in Sub-section (5) of Section 8"" refers only to an acquisition otherwise than under the provisions of the Act, i. e., an acquisition by

means of a grant from the landholder or by prescription. If that had been the intention of the Legislature, appropriate words would have been used

to indicate such an intention. I therefore regret my inability to follow the decision in *Mummina Demudu and Others Vs. Datla Papayyaraju Garu* by

his Muktyar Putrevu Ramalingaswami and Others, .

6. The further questions that have been argued relate to the jurisdiction of the civil Court to entertain the suit for ejectment and rent. Even if my interpretation of Section 8, Sub-section (5) of the Act is erroneous, it is argued by the appellant that the suit for ejectment and rent would lie only in a civil Court. The contention is that the suit land is ryoti land situated in an estate and that the tenant is a ryot though by virtue of Section 8 (5) he is bound by the terms of the contract between him and the land holder and could not resist the claim for ejectment or for payment of the contract rate of rent. So far as the claim for rent is concerned, I am of the opinion that the suit should have been laid in the revenue Court. Even if Section 8 (5) applied to the case, the defendant would be a ryot within the definition of that term in Section 3 (15) of the Act though for the time being he would be what one may call a non-occupancy ryot; the land is ryoti as defined in Section 3 (16); and the claim is for "rent" as defined in Section 3 (11) of the Act. Therefore, the suit for rent is exclusively triable by a revenue Court by reason of the combined effect of Sections 77 and 189 and entry No. 3 of Part A of the schedule to the Act. The claim for ejectment, however, would stand on a different footing. A revenue Court could evict a ryot only on the ground specified in Section 151 of the Act and not on the ground that the term of the lease is over. Part A of the schedule to the Act provides only for a suit u/s 151 of the Act and such a suit is made exclusively triable by a revenue Court. If Section 8 (5) of the Act applies to the case and the landholder seeks to evict his tenant on the ground that the contracted period of tenancy has expired he can only bring the suit in the ordinary civil Court, the revenue Court not being empowered to evict a tenant on such a ground. In view, however, of my conclusion that Section 8(5) does not apply to the present case, I hold that this second appeal should be allowed, the memo of objections dismissed and the suit dismissed but in the circumstances without costs in any of the Courts.

7. No leave.