

(1958) 08 MAD CK 0032

In the Madras High Court

Case No : A.A.O. No's. 74 to 77 of 1956

K.S. Sodsai Udayar and another

APPELLANT

Vs

S. Andiappan Ambalam and others

RESPONDENT

Date of Decision : 27-08-1958

Acts Referred:

Citation : (1958) 08 MAD CK 0032

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Advocate : G.R. Jagadisan and S. Somasundaram, for the Appellant; A. Sundaram Ayyar and R.M. Muthuveerappa, for the Respondent

Judgement

Ramachandra Iyer, J.—These appeals are directed against a common order of remand by the District Judge of Ramanathapuram in A. S.

Nos. 36 and 39 to 41 of 1955 setting aside the dismissal of a preliminary point of O. S. Nos. 100, 101, 133 and 134 of 1951 by the Subordinate

Judge of Devakottai The plaintiffs are the appellants They filed the four suits mentioned above in a representative capacity after having obtained

leave under O. 1. R. 2. C.P. Code on behalf of the "" Eightkarai Valambars "" of Idayan Ariakudi and Vettiur Villages in the Sivaganga Zamin in

the Ramanathapuram district The suits were for possession Their case was that the kudivaram right in the lands in the aforesaid villages belonged to

them, that the respondents who were cultivating the lands under them trespassed on the lands between January 1948 and May 1950 and that they

were entitled to get back possession" The defendants in the various suits contested the claim and asserted title to and possession of the kudivaram

in them selves. They also pleaded that the villages in question have been notified under the Madras Estates Abolition and Conversion into Ryotwari

Act, XXVI of 1948 (which shall be hereafter referred to as the Act) as a result of which the Government alone are the owners, and that, that the

civil Court had no jurisdiction to decide the questions involved in the suit. Several issues were framed in the suits but the learned Subordinate Judge

took up for consideration Issue No. 11 as a preliminary issue. That issue was ""have the plaintiffs no right to bring this suit since the suit villages have

been taken over by the Government."" He held that that the civil Court had no jurisdiction to entertain the suits by reason of S. 56 of the Act and

dismissed them. The plaintiffs took up the matter on appeal to the District Judge, who came to the opposite conclusion and as stated already

remanded the suits for trial on the other issues. The main reason for the learned District Judge's view in favour of the civil Court's jurisdiction was

that the cause of action for the suits arose before the notification of the villages. The defendants have filed the above appeals against the orders of

the District judge. It is admitted that the villages of Ariyakudi, Edayavoor and Vettiyyu were under tenure villages in the Sivaganga Zamindari and

that they have been validly taken over by the Government under the Act. The contention on behalf of the appellants is that as a result of the

notification under the Act the village vested in the Government absolutely that the respondents could have no right to possession and that the

jurisdiction of the civil Court is barred by S. 56 of the Act. The view of the learned District judge that S. 56 would not apply to a case where the

cause of action arose prior to the notification under the Act cannot be sustained in the light of the decisions reported in *Arunachala Chettiar v.*

Narayan Chettiar (1957) 1 M.L.J. 183=70 L.W. 291., and *Appanna v. Sri Ramamurthi* (1958) 1 A.W.R. 420. But the question of jurisdiction

would still remain to be decided having regard to the nature of the relief's prayed for in the suit and the competency of the Court to decide the

issues in the case. Under the Act there is no express exclusion of the jurisdiction of the civil Court to dispose of suits involving the determination of

the question as to who is entitled to the kudivaram but it is contended that S. 56 of the Act impliedly bars such suits being entertained. To

appreciate the scope of the Section it is necessary to advert briefly to the context in which the Act was passed and its provisions. Under the

Madras Estates Land Act, I of 1908, the landholder and the ryot had distinct interests in the land and the tenure of the ryot though substantial did

not make him the proprietor of the holding.. The zamindar or the inamdar was considered to be the landholder. The Madras Estates Abolition Act, XXVI of 1948 was passed with the object of abolishing certain types of the estates and introducing the ryotwari system in its place Under that Act a direct relationship would be established between the ryot and the State by eliminating the intermediary and the former would become the proprietor of the land That object was achieved by the Government acquiring the entire estate and granting ryotwari patta on the basis of a fresh tenure under it S. 3 of the Act provides for vesting of the entire estates in the Government free from all claims after the notified date, S. 11 for the grant of ryotwari patta to the ryot in respect of ryoti lands Ss. 12, 13 and 14 for the grant of ryotwari patta to the zamindar, inamdar or under tenure holder respectively with regard to certain category of lands. The machinery for carrying out of the provisions of the Act is provided by Ss. 4, 5 and 8 which enable the Government to appoint the Director of Settlement, Settlement Officers and to constitute Tribunals for the purposes of the Act The effect of these provisions is that all the rights of the landholder, ryots, inamdars and other persons interested in the erstwhile estate would cease on a notification being made and under the Act and the entire estate would vest in the Government absolutely. Compensation has been provided for to the landholder and to the encumbrancers claiming under him. The estate having thus vested in the Government it should normally be open to it to dispose of the lands as it pleased but the statute itself regulated as to how it should be disposed of. As regards ryoti lands, private lands etc in the village the tenure was changed to one under the familiar ryotwari system under the Government, and ryotwari pattas are to be issued to the ryots in respect of their holdings and to the landholder in respect of the private lands. The right to obtain such patta is regulated by the provisions in the statute As the old tenure has been abolished and a new one is created in respect of the estates taken over by the Government, the right to obtain a ryotwari patta is a new right created by the statute. The ryot in an estate had previously no such right and indeed there was no direct relationship between him and the Government; so also is the case of a landholder with regard to private lands etc Ss. 11 to 14 and 17 prescribe as to whom such patta is to be granted. As S. 11 creates a right in the various ryots of the estate to a ryotwari patta in respect of their

holdings, it may become necessary to decide as to who was the lawful ryot in case there are rival claims or disputes for grant of the patta. A

machinery has been provided in the Act for determination of such questions. S. 56 of the Act provides for the decision of such disputes by the

Settlement Officer subject to an appeal to the Tribunal under the Act. Thus the statute which created the right has also provided for an agency to

decide disputes as to who was the lawful ryot of the holding prior to the notification" S. 56 of the Act runs thus :

56 (1) Where an estate is notified a dispute arises as to (a) whether any rent due from a ryot for any fails year is in arrear or (b) what amount of

rent is in arrear or (c) who the lawful ryot in respect of any holding is, the dispute shall be decided by the Settlement Officer (2) Any person

deeming himself aggrieved by any decision of the Settlement Officer under Sub-S. (1) may within two months from the date of the decision or such

further time as the Tribunal may in its discretion allow, appeal to the Tribunal; and its decision shall be final and not be liable to be questioned In

any Court of law.

2. Section 56 (1) (a) and (b) became necessary as the Madras Estates Land Act stood repealed in relation to the estates notified. The Collector

under that Act would cease to have jurisdiction. S. 56 provides the authority to adjudicate claims as to arrears of rent As stated already claims to

a holding may also arise for adjudication before the grant of the patta and this is provided for in S. 56 (1) (c)

3. Section 56 does not expressly exclude the jurisdiction of the civil Court; it confers jurisdiction an exclusive jurisdiction to the authorities

mentioned therein S. 65 of the Act which deals with the exclusion of civil Court's jurisdiction does not refer to matters in relation to which

jurisdiction is conferred by S. 56. But in view of the fact that the statute creates a right and also a remedy to get an adjudication as to who would

be qualified to get that right and makes the adjudication by the statutory Tribunal final the jurisdiction of the civil Court should be held to be

impliedly prohibited in regard to that matter But at the same time it is clear that the finality that attaches to the order of the Settlement Officer and

the Tribunal should be restricted to only that for which it was intended by the Act, as that jurisdiction is only for the purposes of the working of the

Act, i.e., to enable the grant of patta etc, The officers and the Tribunal appointed under Ss. 4 and 8 of the Act are appointed for the purposes of the Act and would cease to have authority or become *functus officio* after their work is completed. They are not permanent Tribunals exercising a parallel jurisdiction to the civil Courts. Their powers and jurisdiction are limited and specified. The object of S. 56 being to enable an adjudication of disputes for the purposes of the Act, the prohibition of the civil Courts' rights to decide disputes cannot extend beyond adjudication of those rights for which the statute provided. Exclusion of the civil Courts' jurisdiction cannot by implication be held to be more than what is necessary for working out the rights created by the statute. If for instance the determination as to who was lawful ryot of a holding becomes necessary for the grant of a patta under the Act, that would be within the exclusive jurisdiction of the Tribunals under the Act. A person should not for the purpose of obtaining a ryotwari patta be enabled to get a declaration of his title to *kudivaram* so as to force the Tribunals under the Act to grant the patta to him, as the duty of deciding that question is invested in the Tribunal. If however that determination becomes relevant for deciding any other issue between the parties in a civil suit, there can be no exclusion of jurisdiction of the civil Court.

4. In *Secretary of State for India v. Mask and Co* I. L. R. 1940 Mad. 599=52 L. W. 1 (P.C.), the Privy Council stated it as settled law that the exclusion of the jurisdiction of the civil Court is not to be readily inferred but that such exclusion must be explicitly expressed or clearly implied. The scope of the rule in regard to the ouster of the jurisdiction of the civil Courts has been stated in the classical passage in the judgment of Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 C.B. (N.S.) 336 at 356. At page 356 that eminent Judge observed:

There are three classes of cases in which a liability may be established founded upon a statute. One is where there was a liability existing at common law and that liability is affirmed by a statute which gives a novel and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of case is, where the statute gives the right to sue merely, but

provides no particular form of remedy, there, the party can only proceed by action at common law. But there is a third class, viz,, where a liability

not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it-the remedy

provided by the statute must be followed and it is not competent to the part to pursue the course applicable to cases of the second class,

5. The right to obtain ryotwari patta was not common law right of the ryot who was holding under the landholder in an estate That right as stated

already is conferred on him by the Madras Act XXVI of 1948. Such a right being a creature of a statute the remedy provided by the statute should

be deemed to be the exclusive remedy on the basis of the third category of the cases mentioned supra. This is not really exclusion of jurisdiction of

the Court but as stated by Maxwell in his Interpretation of Statutes, 10th Edn, at page 132

Where indeed a new duty or cause of action is created by statute, and a special jurisdiction out of the course of the common law is prescribed

there is no ouster of the jurisdiction of the ordinary Courts for they never had any.

6. In one view therefore there is no exclusion of any existing jurisdiction of the Court as the new right never came within its ambit the statute itself

having provided an agency for the exercise of the jurisdiction under the statute AS the statute confers rights and benefits to those persons who had

certain pre-existing rights in the estate it may become necessary to adjudicate on those rights. That right to adjudicate was given to the statutory

Tribunals for the purpose of granting rights declared by the Act Generally speaking the question as to who was the lawful ryot of a holding cannot

have any practical importance alter the estate has been taken over except for the purpose of the grant of the rootworm patta That perhaps is the

reason why the determination of the question is provided for by S. 56 But if the relief claimed in a civil Court is not what is created or granted by

the Act, e.g the right to obtain a patta, but a civil right the jurisdiction of the civil Court which always existed cannot be held to be ousted as the

statute does not either expressly or impliedly extinguish such rights It may be that for the granting of such relief the question to be decided is as to

who was the ryot of a holding. Such a determination would necessarily be incidental and cannot be deemed to be impliedly excluded by S. 56

There is no provision in the Act to stay all suits which involve the determination of the question as to who was the lawful ryot of a holding or one to refer that issue to the statutory Tribunals for adjudication and to dispose of the suit on receipt of a finding from such Tribunals. I am not able to see anything on principle or in the terms of the Act to hold that the civil Court has been rendered powerless to decide a necessary issue between the parties though such an issue is one contemplated under S. 56, for the purpose of deciding rights other than those created or provided for by the Act. In my opinion, that view is supported by authority In Chigurupati Venkatasubba v. Rave Ponniah (1957) 2 And W.R. 204. there was a dispute as to the right to possession of certain lands One of the issues involved in the case was as to which of the parties was entitled to a patta from the landholder Chandra Reddy, J (as he then was) held that the civil Court could certainly take cognizance of suits in which title to the holding forming part of an estate is put in issue as relief of possession and manse profits could not be granted by the Settlement Officer, they being beyond his competence and within the purview of civil Courts The learned Judge, therefore held that the jurisdiction of civil Courts is not excluded when special forums could not grant certain prayers This question was considered by a Bench of Andhra High Court in Appanna v. Sri Ramamurthy (1958) 1 And, W. R. 420. In that case a dispute arose as to the arrears of rent of a holding and also as to who was the lawful ryot Subba Rao, C. J. (as he then was) held that the relief prayed for came within the provisions of S. 56 of the Madras Act XXVI of 1948, and that a suit was beyond the cognizance of the civil Court While referring to the judgment of Chandra Reddy, J cited above the learned Chief Justice held: We are not now concerned with a case where the plaintiff seeks for relief which cannot be given under the Act. We need not therefore consider the question of the procedure to be followed in such a case where some relief's fall directly under S. 56 and some outside its scope. But if the learned Judge meant to lay down that the civil Court is not barred even in respect of a dispute between two persons claiming to "be lawful ryots with great respect we cannot agree with that view."

7. If I may say so with respect the last sentence in the learned Judge's judgment should be taken in the context to refer only to a case where the

dispute was with reference to one of the rights granted by the Act. in *Ramayya v. Brahmayya A. I. R. 1958 AP 100*, it was held that the right to obtain ryotwari patta can be enforced only before the special forum set up under the Act and that relief cannot directly or indirectly be sought elsewhere and that the Act does not prohibit the grant of relief in regard to other rights flowing from possession etc. That case related to a suit for partition where the defence was that the defendant was entitled to ryotwari patta under S. 11 of the Act, and it was held that the claim could be adjudicated in a civil suit S. A. No. 1246 of 1955 in our Court related to a suit for a declaration of the plaintiff's title to the suit pro parties and for an injunction restraining the defendants from interfering with the plaintiff's possession of the suit lands Ramaswami, J on a construction of the plaint held that the suit was in substance and in effect one based on title to occupancy rights and the issue of patta by the zamindar in respect of the suit lands. The learned Judge observed

8. The mere addition of certain relief which are outside the ambit of the relief which can be granted by the special Court will not prevent the ousting of the jurisdiction of the civil Court, It all depends upon the circumstances of each case. In *Chigurmpati Venkatasubbiah v. Ravi Donnish* where the suit was of such a nature that the relief's of possession and manse profits could not be granted by the Settlement Officer and incidentally the question of title to the holding was also in issue it was held by Chandra Reddi, J. that the jurisdiction of civil Courts is not excluded when special forum could not grant certain prayers. But where the suit is in substance and effect as in this case only for the determination as to who is the lawful ryot the addition of certain prayers which can be granted or withheld only at the determination of the dispute would not oust the jurisdiction of the special Court.

9. In this view the learned Judge held that the suit was not cognizable by the civil Court To a similar effect is the judgment of Mack, J. in the State of Madras v. Swaminathan (1955) 2 M L.J, 178. That was a suit for a declaration against the Government in regard to two areas of land that they were ryoti land and for an injunction from interfering with possession. The lands were actually tank bed lands but in 1927 patta was granted in certain proceedings in favour of the plaintiff. The learned Judge held that the

substance of the suit was to obtain a patta and that he held, could not be obtained in a civil Court Both the casts mentioned above proceed on the basis that it is the substance of the plaint and not its form that has got to be looked into in deciding the question of the jurisdiction of the civil Court In this connection learned Advocate for the appellants cited the decision in Pandab Bissoyi and Others Vs. Magiti Sasamal, . in support of the proposition that the written statement should also be looked into for the purpose of ascertaining the real dispute between the parties. A similar question arose under S. 189 of the Madras Estates Land Act I of 1908 in Swaminatha Udayar v. Asan Muhamad Rowther ILR 1947 Mad. 505=60 L.W. 75 (F.B.), A Full Bench of this Court had to consider the question whether a civil Court can adjudicate the question of title between two rival persona who claimed kudivaram interest in a particular holding. Under a partition decree the landholder was allotted more than what he was entitled to in the estate, and he granted a lease in favour of the plaintiff in the case who subsequently attorney to the purchaser from the landholder. He also got patta in his favour. The partition decree was modified on appeal as a result of which in the restitution proceedings that followed, the first defendant in the case became the purchaser A suit was filed by the plaintiff against the purchaser for a declaration that he was entitled to continue in possession it was contended that S. 189 of the Estates Land Act was a bar to the maintainability of the suit. The Full Bench held that a civil Court has the right to enquire into the question of title to the land forming part of an estate within the meaning of the Estates Land Act (2). and to give consequential relief provided that relief is not one in respect of which the revenue Court has exclusive jurisdiction. In the instant case the relief claimed is one of possession. Neither the Settlement Officer nor the Tribunal has any jurisdiction to grant such a relief it may be that for the purpose of granting relief the question whether which of the parties had kudivaram rights may have to be incidentally decided but such incidental decision is only to give relief as to possession and cannot bind the Settlement Officer or the Tribunal when they have to decide that question under the Act S. 3 (d) of the Act itself recognizes that if a person is prima facie entitled to patta. his possession should not be disturbed by the Government. A fortiori his possession should be protected by the

Courts as against others Possessory title is well known under the law In Narayana Rao v. Dharmachar 26 Mad. 514 it was held that possession is good title against all but the true owner In the case of a notified estate no question of title can arise as title would be with the Government till the grant of patta The plaintiff if he proves possessor title should obtain possession against a trespasser without enabling the latter to acquire title by adverse possession. Similarly in a case where the plaintiff sues for injunction relief can be given on the basis of possessor title and it would not be necessary to investigate the question of title so long as the defendant is not the owner. It may be that in such cases the question as regards the right to occupancy before the estate was taken over by the Government has to be investigated but such investigation as stated already is only incidental to the grant of relief. Bearing in mind the principle laid down by Ramaswami J., in S. A No. 1246 of 1955 that it is the substance of the plaint that has got to be looked into in deciding the question of jurisdiction I find that in the present case the substantial dispute is as regards possession a relief which cannot be granted by the Tribunals under the Madras Act XXVI of 1948 and which could be granted only by the civil Court Such being the case I am of opinion that the civil Court should entertain the suits, To hold otherwise would lead to certain practical difficulties. Let us take a case where the plaintiff is a lawful ryot but the defendant trespassed into the property. If the plaintiff's suit for possession is not entertained by the civil Court and if he is asked to go and agitate his right to patta before the Settlement Officer and the Tribunal it may be that by the time he gets his right to patta declared by those Tribunals the claim for possession would have become barred by adverse possession by the defendant. I am therefore of opinion that the suit in the form in which it was laid in the present case is cognizable by the civil Court It may be that during the course of the suit if the defendant is able to obtain patta from the authorities he can produce that patta as an answer to the plaintiff's claim that he has got superior title against whom a decree for possession cannot be granted. I am, therefore of the opinion that the conclusion of the learned District judge is correct and that these civil miscellaneous as peals should be dismissed. There will be no order as to costs Leave, refused.