

(1968) 08 SC CK 0001
In the Supreme Court Of India
Case No : Appeal (civil) 582 of 1965

L.R. Ganapathi Thevar

APPELLANT

Vs

Sri Navaneethaswaraswami Devasthanam, Sikki

RESPONDENT

Date of Decision : 01-08-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Madras Estates Land (Third Amendment) Act, 1936 — Section 6(1), 8(5)
Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 2

Citation : AIR 1969 SC 764 : (1969) 1 SCR 508

Hon'ble Judges : R. S. Bachawat, J; K. S. Hegde, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Hegde, J.—This is an appeal by special leave. It is directed against the decision of the High Court of Madras in A. S. No. 157 of 1957. This case has a fairly long history but we shall set out in this judgment only such facts as are necessary for the decision of the issues debated before us.

2. In the course of his arguments Mr. C. E. Pattabhiraman learned Counsel for the appellant urged two grounds in support of this appeal. They are: (1) the appellant being in 'occupancy tenant' of the suit properties he cannot be evicted from the land in view of the provisions of the Madras Estates Land Act (Madras Act I of 1908) as amended by the Madras Estates Land Third Amendment Act (Madras Act XVIII of 1936) and (2) that under any circumstance the appellant should be held as enjoying the lands in question by personal cultivation and therefore he cannot be evicted in view of the provisions of the Madras Cultivating Tenants Protection Act (Madras Act XXV of 1953).

3. The respondent is the owner of the suit properties. It leased out two different portions of those properties to the appellant under two lease deeds dated 11-9-1945 and 27-7-1946 (Exhs. A-7 and A-8) respectively for a period of three years. Even before the lease period came to an end the respondent sued the

appellant for the possession of the suit properties on various grounds. The appellant pleaded that he cannot be evicted from the suit properties in view of the protection afforded to him by Section 6 of the Madras Estates Land Act. He claimed 'occupancy right' in the suit properties on the basis of the provisions of that Act. The trial court -upheld his contention and dismissed the suit. But in appeal the High Court held that as the case fell within the scope of Section 8 (5) of the Madras Estates Land Act, the appellant was not entitled to the benefit of Section 6 of that Act. It accordingly allowed the appeal and remanded the case to the trial court for the trial of the other issues. During the pendency of the appeal in the High Court the Madras Cultivating Tenants Protection Act came into force. On the basis of the provisions of that Act, the appellant claimed before the trial court after remand that he should be considered as a cultivating tenant under that Act and if so held he cannot be evicted from the suit properties. Both the trial court as well as the High Court rejected both the aforementioned contentions of the appellant. As regards the occupancy right pleaded, they held that the matter is concluded by the earlier decision of the High Court. The trial court held that the appellant cannot be considered as a cultivating tenant under the Madras Cultivating Tenants Protection Act as he is not proved to have cultivated the properties by his own physical labour as claimed by him. That Court opined that mere supervision of the work of the hired labour cannot be considered as 'physical labour' of the appellant. The High Court affirmed this conclusion observing:

"But the evidence disclosed that the cultivation of the suit lands was carried on by the appellant solely with the aid. of hired labour. Neither the appellant nor any member of his family took part in the cultivation operations in respect of the suit lands. We therefore agree with the learned District Judge in his view that the appellant does not satisfy the test of carrying on personal cultivation to qualify for becoming a cultivating tenant. He could not therefore claim the benefits conferred by the various protection Acts in force."

4. We have to first decide whether the appellant can be permitted to raise the contention that he has occupancy right in the suit properties in view of the decision of the High Court of Madras in A. S. No. 241 of 1949. In other words whether that decision operates as *res judicata* as regards his claim to the occupancy right.

5. We are unable to agree with Mr. Pattabhiraman that the High Court did not finally decide the appellant's claim to occupancy right in the suit properties in A. S. No. 241 of 1949 and that it merely made some tentative observations in respect of the same leaving the matter for a fresh decision by the trial court. The High Court has specifically gone into the appellant's claim to occupancy right, examined the relevant provisions of the Madras Estates Land Act, took into consideration the decisions bearing on the point and thereafter came to a firm conclusion that the appellant's claim is unsustainable. The case was remanded to the trial court for the trial of the issues that have not been decided earlier.

Therefore we have now to see whether the plea of occupancy right can be gone into afresh.

6. There is hardly any doubt that the trial court could not have gone into that issue again. It was bound by the Judgment of the High Court. It is also clear that that decision was binding on the Bench which heard the appeal. On this question judicial opinion appears to be unanimous and it is a reasonable view to take.

7. We are unable to agree with the contention of the respondent that the decision of the High Court of Madras in A. S. No. 241 of 1949 on its file precludes the appellant from reagitating in this Court the plea that he has occupancy right in the suit properties. An identical question came up for decision in this Court in Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, wherein this Court ruled that 'such a decision can be challenged in an appeal to this Court against the final Judgment.

8. As it is open to the appellant to recanvass the correctness of the decision of the High Court regarding his claim for occupancy right, we shall now go into the merits of that claim. The suit land was in an Inam village but it was not an 'estate' within the meaning of the Madras Estates Land Act as it originally stood; but it became an 'estate' by virtue of the amending Act XVIII of 1936. The lands in dispute are not admittedly 'private lands'. Prior to the amending Act came into force the respondent had obtained a decree for possession against the tenants who were then in the suit lands. It is also not in dispute that no tenant had obtained any occupancy right in those lands prior to 1936. Therefore all that we have to see is whether the appellant can be said to have acquired occupancy right in those lands in view of the leases in his favour. For deciding this question we have to examine the scope of Section 6 (1) and Section 8 (5) of the Act as they now stand. Section 6 (1) reads thus:

"Section 6 (1):- Subject to the provisions of this Act every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land situated in the estate of such landholder shall have a permanent right of occupancy in his holding.

Explanation (1):- For the purposes of this sub-section, the expression 'every ryot in possession' shall include every person who, having held land as a ryot, continues in possession of such land at the commencement of this Act.

Explanation (2):- In relation to any Inam village which was not an estate before the commencement of the Madras Estates Land (Third Amendment) Act 1936 but became an estate by virtue of that Act, or in relation to any land in an Inam village which ceased to be part of an estate before the commencement of that Act, the expressions 'now' and 'commencement of that Act' in this sub-section and Explanation (1) shall be construed as meaning and thirtieth day of June 1934, and the expression 'hereafter' in the sub-section shall be construed as meaning the period after the thirtieth day of June, 1934."

Section 8 (5) reads as follows:

"If before the first day of November, 1933 the landholder has obtained in respect of any land in an estate within the meaning of Sub-clause (d) of Clause (2) of Section 3 a final decree or order of a competent Civil Court establishing that the tenant has no occupancy right in such land, and no tenant has acquired any occupancy right in such land before the commencement of the Madras Estates Land (Third Amendment) Act, 1936, the landholder shall, if the land is not private land within the meaning of this Act, have the right, notwithstanding anything contained in this Act, for a period of twelve years from the commencement of the Madras Estates Land (Third Amendment) Act, 1936, of admitting any person to the possession of such land on such terms as may be agreed upon between them:

Provided that nothing contained in this sub-section shall be deemed during the said period of twelve years or any part thereof to affect the validity of any agreement between the landholder and the tenant subsisting at the commencement of the Madras Estates Land (Third Amendment) Act, 1936."

9. The parties are agreed that the facts of this case satisfy the requirements of Section 8 (5) of the Act. That being so the respondent was entitled for a period of twelve years from the commencement of the Madras Estates Land (Third Amendment) Act, 1936 to admit any person to the possession of the suit lands on such terms as may be agreed upon between him and his lessee notwithstanding anything contained in the Act. While Section 6 (1) is subject to the provisions of the Act, Section 8 (5) is not controlled by any other provision of the Act. Therefore if the case falls both within Section 6 (1) as well as Section 8 (5) then the governing provision will be Section 8 (5) and not Section 6 (1). Once it is held that the present case falls within Section 8 (5) it necessarily follows that it is taken out of the scope of Section 6 (1). But what is argued on behalf of the appellant is that when Section 8 (5) says that the landholder shall "have the right notwithstanding anything contained in the Act for a period of twelve years from the commencement of the Madras Estates Land (Third Amendment) Act, 1936 of admitting any person to the possession of such land on such terms as may be agreed upon between them" it merely means that for the said period of twelve years, the tenants of the land cannot claim the benefit of Section 6 (1) of the Act but they get those rights immediately after the twelve years period is over. It was urged on behalf of the appellant that the object of the Act is to confer occupancy right on the tenants in respect of all lands included the Inam excepting the 'Private lands' of the Inamdar; at the same time the legislature thought that in respect of lands coming within the scope of Section 8 (5) a period of grace should be allowed to the Inamdar so that he may adjust his affairs; once that period is over all lands other than 'private lands' would be governed by the provisions of Section 6 (1). Another facet of the same argument was that Section 6 (1) is the main provision; it has general application; that provision contains the policy and purpose of the law; Section 8

(5) is an exception; therefore Section 6 (1) should be construed liberally and Section 8 (5) should be strictly construed with a view to advance the purpose of the law. Further we were asked to take into aid the policy laid down in the proviso to Section 8 (5) while ascertaining the legislative intention behind Section 8 (5).

10. This proviso applies to agreements entered into between landholders and their tenants prior to the 1936 amendment. It was said that there was no discernible reason for treating the agreements in force on October 31, 1936 (the date of commencement of the amended Act) differently from agreements entered into after that date and since the legislature has expressly stated that the former shall be in force only for a period of twelve years it is not reasonable to hold that in the case of leases subsequent to October 31, 1936, it intended to lay down a different rule. We do see some force in these contentions but in our opinion none of these considerations are sufficient to cut down the plain meaning of the words "that the landlord has a right of admitting any person to the possession of such land on such terms as may be agreed upon between them". "Such terms" must necessarily include the term relating to the period of the lease. We have to gather the intention of the legislature from the language used in the statute. The language of Section 8 (5) is plain and unambiguous. Hence we cannot call into aid other rules of construction of statutes. If it was the intention of the legislature that the terms of the agreements entered into between the landholders and their tenants during the period of the twelve years mentioned earlier should come to an end at the close of the period and thereafter the provisions of the Act other than those in Section 8 (5) should govern the relationship between them it should have said so. From the language of Section 8 (5), it is not possible to hold that the contract itself is exhausted or stands superseded at the end of the twelve years period mentioned therein. If the legislative intention is not effectuated by the language employed in Section 8 (5) then it is for the legislature to rectify its own mistake.

11. It must be remembered that this legislation is in operation only in some parts of the Madras State as it was prior to the formation of the Andhra State in 1954. In other words it is a State legislation. The Madras High Court has consistently taken the view right from 1955 that agreement entered into by virtue of Section 8 (5) under which tenants were admitted into possession of lands falling within the scope of that provision do not get exhausted or superseded merely by the expiry of twelve years period mentioned in that sub-section. On the other hand u/s 8 (5) a landholder is given a right during the said period of twelve years to admit tenants to possession of such lands on such terms as may be agreed upon. It was so held for the first time in this very case before it was remanded to the trial court for further trial. That decision is reported in Navaneetheswaraswami Devasthanam, Sikkil Vs. L.R. Ganapathi Thevar, . This view was affirmed by a Full Bench of that High Court in Sri Navaneethaswaraswami Devasthanam Vs. P.Swaminatha Pillai, .

12. The learned Counsel for the appellant invited our attention to three decisions of the Madras High Court and one of Andhra Pradesh High Court. The first decision to which our attention was invited is *Mummina Demudu and Others Vs. Datla Papayyaraju Garu* by his Muktyar Putrevu Ramalingaswami and Others, . That is a decision of Horwill, J- sitting singly. Therein it was held that when the legislature spoke in Section 8 (5) of the tenant acquiring occupancy right during the period between the passing of the final decree and the commencement of the Act it was referring to acquisition of occupancy rights otherwise than under the Act; the legislature must have intended by Section 8 (5) to exempt from the general operation of Section 6, all cases where the landholder had obtained a decree prior to 1st November, 1983, unless the tenant subsequent to the passing of the final decree had acquired occupancy right independently of the Act. Consequently where the landlord obtained a final decree referred to in Section 8 (5) before 1st November, 1933, the tenant cannot be said to have acquired occupancy rights u/s 6 merely because he was in pos- session on 30th June 1934 so as to render Section 8 (5) inapplicable. We fail to see how this decision bears on the rule with which we are concerned in this appeal. In *Korada Atchanna Vs. Jayanti Seetharamaswami*, , *Viswanatha Sas'tri, J.* differed from the view taken by Horwill, J. in the decision cited above. This decision also docs not bear on the question of law we are' considering. In *Thota Seshayya and Others Vs. Madabhushi Vedanta Narasimhacharyulu*, a Bench of the Madras High Court while considering the vires of Section 8 (5) observed:

"We are satisfied that Section 8 (5) is giving some limited privileges for a limited period to the landholders who have obtained decrees before 1st November 1933, has acted on a classification based on some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and that the classification "cannot be called arbitrary or without any substantial basis, and must be upheld as perfectly valid and not impugning in the least on Article 14 or 15 of the Constitution of India. We may add that tenants who have been given new occupancy rights under the third amendment where they had none before cannot reasonably complain of the restrictions put on the acquisition of such new occupancy rights in a few cases where justice requires such restrictions as in Section 8 (5). The tenants acquired the right only under those conditions and cannot very well complain about them."

From these observations we are asked to spell out that the learned Judges had come to the conclusion that all contracts entered into between the landholders and their tenants during the twelve years' period mentioned in Section 8 (5) came to an end at the end of that period. In the first place this conclusion does not necessarily flow from the observations quoted above. Even if such a conclusion can be spelled out the observations in question are mere obiter on the question for decision before us. That was also the view taken by the Division Bench of the Madras High Court in *Navaneetheswaraswami Devasthanam, Sikkil Vs. L.R. Ganapathi Thevar*, .

13. In *V. Ramchandrayya v. M. Ranganavakamma*, 1957 2 AWR 114 a Division Bench of the Andhra Pradesh High Court followed the decision of the Madras High Court in *ILR Thota Seshayya and Others Vs. Madabhushi Vedanta Narasimhacharyulu*, . Therein again the Court was not called upon to consider the scope of Section 8 (5).

14. For the reasons already mentioned we are unable to hold that the appellant had acquired occupancy right in the suit properties.

15. This takes us to the question whether the appellant can be considered as a 'cultivating tenant' within the meaning of the Madras Cultivating Tenants Act, 1955. If he can be considered as a cultivating tenant then he cannot be evicted from the suit properties except in accordance with the provisions of that Act. In the Cultivating Tenants Act as it originally stood the definition of a cultivating tenant was as follows:

"Cultivating tenant in relation to any land means a person who carries on personal cultivation on such land, under a tenancy agreement, express or implied, and includes (i) any such person who continues in possession of the land after the determination of tenancy agreement." If this definition had remained unaltered then on the basis of the findings of the trial court and the High Court the appellant could have been held as a cultivating tenant, as cultivation today is a complex process involving both mental as well as physical activity. But by the time this case came to be instituted the definition of "cultivating tenant" was amended by adding an explanation to the original definition. That explanation reads:

"A person is said to carry on personal cultivation on a land when he contributes his own physical labour or that of the members of his family in the cultivation of that land."

16. The true effect of the amended definition came up for consideration before a Division Bench of the Madras High Court in *Mohamed Abubucker Labbai v. The Zamindar of Ettayapuram Estate Koilapatli*, 1961 1 Mad LJ 256 . Therein it was held that in order to fall within the definition of "cultivating tenant" a person should carry on personal cultivation which again requires that he should contribute physical labour. The use of physical labour includes physical strain, the use of muscles and sinews. Mere supervision of work, or maintaining of accounts or distributing the wages will not be such contribution of physical labour as to attract the definition. This view was upheld by this Court in *S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan*, to which one of us was a party. In view of the said decision, it follows that on the facts found in this case, the appellant cannot be considered as a cultivating tenant.

17. In the result this appeal fails and the same is dismissed with costs.