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(1969) 03 SC CK 0042

In the Supreme Court Of India

Case No : Civil Appeal No. 680 of 1966

Muddada Chavannna APPELLANT

Vs

Sri Sri Sri Kodandrama Swami Varu RESPONDENT

Date of Decision : 19-03-1969

Acts Referred:
Evidence Act, 1872 — Section 116
Madras Estates Land Act, 1908 — Section 3(5), 6(1)

Citation : (1969) 2 UJ 345

Hon'ble Judges : M. B. Shah, J;A. N. Gover, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shah, J.—This appeal arises out of a dispute relating to the claim made by the respondent to recover rent in respect of an area measuring 45-00 acres of Inam land in Chodavaram village in Urlam Zamindari now in the state of Andhra Pradesh. The land belonged to two deities--Sri Kodandarama Swami Varu and Bala Sasisekhara Swami Varu. One Venugopalarao was a tenant of the land in 1945. Muddada Chavanna--hereinafter called 'the appellant' offered to pay higher rent and executed on December 28, 1946, a lease deed for the area of the land, for a period of five years commencing from the cultivating season of 1946. The appellant could not be put in possession because Venugopalarao and his sub-tenants declined to vacate and deliver possession of the land. Suit No. 220 of 1947 was then filed by the deities and the appellant in the Court of the District Munsif, Srikakulam, for a decree in ejectment against Venugopalarao and his sub-tenants. The suit was resisted on the plea that the lands demised were not personal Inam lands of the deities, bat were Darmila (post settlement) Inam lands in which the defendants as tenants held occupancy rights, and the Civil Court had no jurisdiction to try the suit. The deities and the appellant contended that the lands were pre-settlement Inam lands The tenants filed an additional written statement contending that the suit lands were not pre-settlement personal Inam and being lands situated in the Zamindari Jerovati village within

the proprietary estate of Urlam and Devidi in actual physical possession in specified plots of lands from times immemorial, they had in law rights of occupancy tenants under the Madras Estates Land Act, 1908, and could not be evicted therefrom. The District Munsif raised two preliminary issues (1) "whether the suit lands were Darmila Inam lands or personal Inam lands and whether the tenants held occupancy rights in them", and (2) "whether the civil court had jurisdiction to try the suit. The District Munsif held that the lands were Darmila Inam lands and the tenants held occupancy rights in those lands, and the Civil Court had no jurisdiction to try the suit in ejectment in respect of those lands. "

2. In appeal against the decree, the Subordinate Judge held that the tenants failed to establish that the lands were Darmila Inam lands, or that the tenants had acquired occupancy rights therein, and that the Civil Court had jurisdiction to try the suit. Accordingly he remanded the suit for further trial according to law.'

3. Against the judgment of the Subordinate Judge, the tenants moved a revision application in the High Court of Madras. Basheer Ahmed Sayeed, J., by order dated August 2, 1951, confirmed the order passed by the Subordinate Judge. The learned Judge held that the tenants failed to discharge the burden of proving that the lands in their occupation were post-settlement Inam lands.

4. In the meanwhile the deities had commenced suit No. 27 of 1951 against Venugopalarao and the sub-tenants for a decree for compensation for wrongful occupation of the land. After the order passed by the High Court, suits Nos. 220 of 1947 and 27 of 1951 were consolidated for trial. By a consent decree the tenants Venugopalarao and others agreed to vacate the lands and to hand over possession on March 31, 1953, and to pay Rs. 19,344/4/- as compensation The amount paid was divided between the deities and the appellant--the deities receiving Rs. 9,431/4/ and the appellant Rs. 9,913/-.

5. Since the appellant could not be given possession under the terms of the lease dated December 28, 1946, on behalf of the deities an agreement was executed in favour of the appellant on January 21, 1951, to grant him a lease of the lands for a period of five years alter possession of the lands was obtained from Venugo-pala and his sub-tenants. The other terms and conditions of the agreement were the same as under the earlier agreement dated December 28, 1946.

6. Venugopalarao and the sub-tenants did not vacate and deliver possession even on March 31, 1953, and the appellant instituted suit No. 20 of 1954 for specific performance of the agreement dated January 21, 1951. This suit was compromised and a fresh lease was executed on March 15 1954; there under the appellant was to remain in possession for a period of five years as a tenant of the deities. The appellant was put into possession of the lands.

7. After being inducted into the lands, the appellant refused to pay the rent stipulated under the lease dated March 15, 1954. The deities then instituted the present suit No. 5 of 1958 in the Court of the Subordinate Judge, Sri kakulam, for a decree for Rs. 14,171/8/10 being the amount pf rent and interest due

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thereon by the appellant. The appellant contended that the members of his family had been let into possession more than 70 years ago and held occupancy rights therein and that in any event he had been let into possession of the entirety of the suit lands on December 28, 1946 under the lease deed Ext. A/4; that the rent was not paid because the Urism Zamindari was abolished and Inams had vested in the State of Madras, and on that account the deities had no right to sue; and on that the consideration or object of the agreement dated January 21, 1951 and the lease dated March 15, 1954, on the basis of which the deities had sued, were forbidden by law as they were calculated to defeat the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948, and were on that account void u/s 23 of the Contract Act. The Trial Court held that the lands in suit were post settlement or Darmila Inam lands and the appellant was entitled to occupancy rights, provided he succeeded on other issuer raised in the suit. The Subordinate Judge, however, held that the agreement dated January 21, 1951, and the lease dated March 15, 1954, were valid and enforceable in law, that in view of the compromise decree in suit No. 27 of 1951 and the application to the Hindu Religious and Charitable Endowment Department the appellant had never asserted occupancy rights and that he was estopped from resisting the claim of the deities to evict him in view of the prior compromise decree, that though the Urlam Zowin Jain was taken over by the Government on January 12, 1951, the suit agreement i. e. lease dated March 15,1954, governed the relationship between the parties which was that of landlord and tenant under the Transfer of Property Act, and that the Madras Estates Land Act 1 of 1908 had no application and on that account the suit was liable to be decreed. In appeal to the High Court of Andhra Pradesh the decree of the Trial Court was confirmed. The High Court held that the deities were entitled to recover the stipulated rent from the appellant, that the appellant had admitted the title of the deities and had been inducted into possession on the basis of a contract of lease, and that he could not challenge their title, that the prior decision of the High Court that the lands were pre-settlement Inam lands debarred the appellant from re-agitating the question about the nature of the Inam. With special leave, the appellant has appealed to this Court.

8. Prima facie, the question whether the Inam was Darmila Inam or was a pre-settlement Inam was res judicate between the parties since in the earlier litigation with Venugopalarao, the deities and the appellant were the plaintiffs, and in order to decide the dispute raised by Venugopalarao it was necessary to determine the nature of the land. In any event, the appellant cannot approbate and reprobate. We need, however, express no considered opinion on those questions, because counsel has sought to rely solely upon the right of occupancy arising under the Madras Estates Land Act 1 of 1908. Counsel contends that the appellant was put into possession of the land on December 23, 1946, and by virtue of Section 6 of the Madras Estates Land Act 1 of 1908, the appellant acquired occupancy rights in the land. Counsel concedes that if he fails to establish this argument, the appeal filed by the appellant must fail.

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9. Section 6 (1) of the Madras Estates Land Act 1 of 1908 (insofar as it is material) provides :

"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."

"Ryoti land" is defined in Section 3(16) as meaning "cultivable land in an estate other than private land, but does not include - (a) beds and bunds of tanks and of supply, drainage, surplus or irrigation channels; (b) threshing floor, cattle-stands, village-sites, and other lands situated in any estate which are set apart for the common use of the villagers; (c) lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists."

10. The lease Ext. A/4 was executed by the appellant in favour of the trustees on December 28 1946. But on that day Venugopalarao and his sub-tenants were in possession of land. On June 23, 1947, the appellant and the deities instituted suit No. 220 of 1947 for a decree for possession of the lands and actual possession of the lands was not obtained till some time in 1954. We are unable to accept the argument of the appellant that eventhough he was not and could not be put in actual possession under the lease Ext. A/4, he must in law be deemed to be in legal possession of the lands. Under Ext A/4 the appellant could not be said to be admitted to possession of ryoti land by the landholder. Since the appellant was not admitted to possession of ryoti land under Ext. A/4, he acquired no occupancy rights in the holding.

11. Counsel for the appellant contended in the alternative that the appellant was put into possession after March 15, 1954, and under the second agreement dated March 15. 1954, he acquired occupancy rights. It is however to be noticed that before the agreement dated March 15, 1954, the Madras Legislature enacted the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948. By Section 3 it was provided, insofar as it is material :

"with effect on and from the notified dale and save as otherwise expressly provided in this Act.

(a) xx xx xx

"(b) the entire estate (including all communal lands; poram-bokes; other non-ryoti lands; waste lands; pasture lands' lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries), shall stand transferred to the Government and vest in them, free of all encumbrances and the Madras Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865, and all other enactments applicable to ryotwari areas shall apply to the estate;

(c) all rights and interests created in or over the estate before the notified date

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by the principal or any other landholder, shall as against the Government cease and determine;" The requisite notification was issued under the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948 on January 12, 1951, and exfacie, the estate vested in Government of Madras on that date. But the Madras High Court in Srinivasa Ayyangar v. The State of Madras and Anr. held that though a minor Inam cannot be treated a s a separate estate, it vests in the Government along with the parent estate subject to the other provisions of the Act, and that Section 20 of the Act saves such minor Inams. Accordingly the post settlement minor Inams or the minor Inams included in the assets of the Zamindari at the time of the permanent settlement are protected u/s 20 of the Act, and the rights thereunder may be enforced against the Government. It was on the footing that notwithstanding the issue of the notification dated January 12, 1951, the minor Inams will continue to remain vested in the deities that the appellant obtained a lease from the deities and he was put into possession. The judgment of the Madras High Court was reversed by this Court in The State of Madras and Anr. v. Srinivasa Ayyangar (2), Venkatarama Ayyar, J. speaking for the Court observed in interpreting Section 20 of the Act (at p. 916) :

"At the very outset, it seems somewhat inconsistent to hold that a darmila minor Inam is part of an estate, and also that it is governed by Section 20. If it is part of an estate, it must automatically vest in the Government u/s 3(b). But if it falls within Section 20, the title to it will continue to stand in the inamdar with a right in the Government to take action under the third proviso, subject to the conditions laid down therein."

The deities were not at the date of the second lease "landholders" within the meaning of Section 3(5) of the Madras Estates Land Act 1 of 1908 which defines "landholder" as meaning a person owning an estate or part thereof, and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor-in-title or of any order of a competent Court or of any provision of law. The title of the deities had vested in the Government of Madras, and thereafter they could not be deemed landholders within the meaning of Section 3(5) of the Madras Estates Land Act, 1908; and if they were not landholders, Section 6(1) could not be pressed into service, for, it is one of the conditions of the acquisition of permanent right of occupancy in a holding that the person claiming occupancy rights should have been admitted to possession of ryoti land situated in the estate of such landholder. Section 6(1) of the Madras Estates Land Act also cannot come to the aid of the appellant, because the appellant had been put into possession of the land under an agreement dated March 15, 1954, and that was in pursuance of an arrangement under which the appellant agreed to remain in possession for a period of five years and to pay rent at the agreed rate. The appellant is estopped from raising the plea that the deities had no title to the land, and even though he had been inducted into the land under the agreement dated March 15, 1954, he is not liable to pay rent to the deities. Section 116 of the Indian Evidence Act raises an estoppel against the appellant preventing him

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from raising the contention that on March 15, 1954, or when he was put into possession, the deities had no title to the land.

12. There is no reason to hold that either the notification dated January 12, 1951, or the decree for specific performance passed pursuant thereto and the lease dated March 15, 1954, are invalid. No such contention was pressed before us, and in our judgment rightly.

The appeal fails and is dismissed with costs.

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