

(1955) 01 MAD CK 0031

In the Madras High Court

Case No : Appeal No. 241 of 1949 and Second Appeal No. 2083 of 1949

Navaneetheswaraswami Devasthanam, Sikkil

APPELLANT

Vs

L.R. Ganapathi Thevar

RESPONDENT

Date of Decision : 12-01-1955

Acts Referred:

Madras Estates Land Act, 1908 — Section 6(1), 8(5)

Citation : AIR 1955 Mad 473 : (1955) 68 LW 462

Hon'ble Judges : Rajamannar, C.J.; Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : T.V. Muthukrishna Iyer, K. Rajah Iyer and G.R. Jagadisa Iyer, for the Appellant; C.A. Vaidyalingam, T. Venkatadri, V.S. Rangaswami Iyengar and R.G. Rajan, for the Respondent

Final Decision : Allowed

Judgement

Rajagopala Ayyangar, J.—The Executive Officer of Sri Navaneetheswaraswami Devasthanam, Sikkil, East Tanjore, is the appellant in these appeals and the short point that arises for consideration in them as regards the proper construction of Section 8(5), Madras Estates Land Act, 1 of 1908. The village of Sellur belongs to the appellant Devasthanam who is the Ekabosam Mirasdar or the sole proprietor of the village. The question is whether the respondent is entitled to occupancy rights under Madras Act 1 of 1908. The learned District Judge from whose judgment and decree these appeals are preferred has held that the respondent who is a tenant has such rights and that the civil Courts have no jurisdiction to entertain the suit for eviction.

2. Certain facts are beyond controversy. The suit inam village was not an "estate" within the meaning of Act 1 of 1908 as it stood originally but became an "estate" by virtue of the amending Act 18 of 1936 and the lands in dispute are not "private lands". There had been an earlier litigation in relation to the lands in the village when a suit was filed for the eviction of the then tenants. It was originally numbered as O. S. No. 35 of 1910 on the file of the Sub-Court,

Negapattinam and was transferred to the Sub-Court, Tanjore, and renumbered is O. S. No. 4 of 1913. The village was held not to be an "estate" and so the right of occupancy claimed by the tenants was negated. The right of the landlord-trust to evict them was affirmed by the Sub-Court in its judgment dated 12-1-1916, which was finally affirmed by this Court in A. S. Nos. 146, 228 and 230 of 1916 on 29-11-1917. The trust has been in enjoyment of these properties since then by leasing them out to its tenants. While so the properties now in suit were leased to the respondent-defendant under two lease deeds Ex. A. 7 dated 11-9-1945 for a period of three years and under Ex. A. 8 dated 27-7-1946 for a similar period. Each of these lease deeds contains a provision under which the lessee agreed to surrender possession at the end of the term.

On the allegation that there had been default in the payment of rent and other breaches of express covenants in the leases enabling the landlord to effect re-entry the landlord claimed to forfeit the leases and issued notice on 9-9-1947 determining the leases and demanding the surrender of possession of the leased lands. As this was resisted the plaintiff filed the present suit on 17-10-1947 for possession of the properties and for arrears of rent, mesne profits etc. The tenant denied the jurisdiction of the Court to adjudicate upon the subject-matter by reason of the provisions of the Madras Estates Land Act as amended by the Madras Act 18 of 1938 setting up occupancy rights. He also filed a summary suit in the Revenue Court for the grant of a patta to him under the statute. The Revenue Court dismissed this summary suit for the grant of patta by reason of the fact that u/s 8(5), Madras Estates Land Act the tenants were not entitled to claim occupancy rights. The defeated ryot took up the matter on appeal to the District Judge. The suit, O. S. No. 32 of 1947, by the landlord for eviction and this appeal were heard together,

In O. S. No. 32 of 1947 an issue (Issue 1) was raised as regards the jurisdiction of the Court which was dependent upon whether the tenant had occupancy rights in "the lands by reason of the Madras Estates Land Act. This was heard as a preliminary point and the learned District Judge held that the tenants had acquired such right by reason, of his construction of Section 8(5) of the Act and he therefore directed the dismissal of the suit without considering the other issues in the case. On the same reasoning the learned District Judge also allowed the appeal against the dismissal of the summary suit for the grant of a patta. App. No. 241 of 1949 and S. A. No. 2083 of 1949 are by the landlord-trust against the decrees in these two proceedings.

3. The relevant statutory provisions calling for consideration in deciding the case are mainly two, viz., Section 6(1) and Section 8(5), Madras Estates Land Act. Section 6(1) of the Act as amended runs thus:

"6(1): Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a land-holder 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 subsection, the expression "every ryot now 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 this Act" in this sub-section and explanation (1) shall be construed as meaning the thirtieth day of June 1934, and the expression "hereafter" in this sub-section shall be construed as meaning the period after the thirtieth day of June 1934."

Section 8(5) runs thus:

8(5) If before the first day of November 1933, the land-holder 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 land-holder 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." .

4. It would be seen that the present case satisfies the requirements of Section 8(5) of the Act since before 1-11-1933 the landholder had obtained a final decree of a competent Civil Court establishing that the tenant had no occupancy rights in such lands. It is also clear that no tenant has acquired any occupancy rights in such lands before the commencement of the Madras Estates Land (Third Amendment) Act, 1936, which came into force on 31-10-1936, for it is admitted that the present tenant who is the respondent came into the lands for the first time in 1945 and 1946 under Ex. A. 7 and A. 8 respectively. In such a case the section enacts that the land-holder shall 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", that is, during the period from 31-10-1936 to 31-10-1948. As the admission of the respondent to possession is between these two periods, the requirements of the last portion of Section 8(5) are satisfied.

Further as the provisions of this section operate notwithstanding anything contained in this Act it would be inclusive of the provisions of Section 6(1). The matter is put beyond doubt because Section 6(1) starts by subjecting the rights conferred by that section to the provisions of this Act which would include

Section 8(5). There cannot therefore be any doubt that having regard to the respective provisions of Section 8 (5) and Section 6(1), the former will have precedence in the case of any conflict or inconsistency. But if properly read, we do not see any conflict or inconsistency between the two! The construction however, which found favour with the Court below is to read the last portion of Section 8(5) as withholding from the tenant or the person in possession occupancy rights for an absolute period of 12 years from 31-10-1936 and to hold that he acquired such rights u/s 6(1) provided he happened to be in possession of the property on or after 1711-1948. In other words, the learned District Judge has read the provision as meaning that even though a landholder has admitted a tenant into possession of the property within the period of 12 years, the contractual tenancy ceases to be operative after 31-10-1948 and that the concession afforded by Section 8(5) becoming exhausted, the tenant thenceforward statutorily acquires occupancy rights by force of Section 6(1) of the Act.

This interpretation of the section appears to us to be forced and as not giving effect to the actual words of the provision in Section 8(5) which is clearly designed to save from the operation of Section 6(1), the terms of contracts entered into within a particular period namely between 31-10-1936 and 31-10-1948. If the contract admitting a tenant into possession is saved u/s 8(5) it is difficult to see how that contract itself is exhausted or superseded merely by the 12 years" period prescribed for entering into contract expiring. The learned District Judge appreciated this difficulty and that was why he thought that while all the other terms of the lease would be binding upon the tenant, the only term which ceased to be operative after 31-10-1948 was the covenant to surrender possession. This reasoning itself shows the illogicality of the construction adopted by the learned District Judge.

5. "There are a few reported decisions of this Court which have dealt with the construction of Section 8(5) in relation to Section 6(1) of the Act but they do not directly touch the present question which relates to the effectiveness of a contract entered into between a landholder and a tenant admitted into possession during the period 31-10-1936 and 31-10-1948, beyond the later date. The earlier decisions are all dealt with in a judgment in -- Chukka Annam Naidu (died) and Others Vs. Kolachala Apparao and Others, to which one of us was a party. In that case the admission of the tenant to possession was in June 1933 and was for a period of one year which expired on 15-3-1934. But the tenant continued in possession thereafter and in the suit filed in 1944 the question raised was whether a tenant who had been admitted to possession before Act 18 of 1936 came into force, could be held to have acquired an occupancy right in the land "before the commencement of the Madras Estates Land (Third Amendment) Act, 1936" --under Section 8(5) or be treated as "a ryot now in possession" within the meaning of Section 6(1) read with explanation 2, The learned Judges held that the tenant did not acquire occupancy rights by such admission. The derision however is useful to this extent that it lays down

the proper rule of construction of the two provisions of Section 6(1) and Section 8(5) in relation to each other.

6. Mr. Vaithilingam learned counsel for the respondent referred us to an unreported decision of Subba Rao & Pancnapakesha Aiyar JJ. in Thota Seshayya and Others Vs. Madabhushi Vedanta Narasimhacharyulu, , as supporting him. The lease in that particular case was for a period of five years granted in 1941. On its expiry another lease was granted for one year which expired in March 1947. Thereafter the tenants " refused to surrender possession of the lands, with the result that the landholder had to file a suit for eviction. After the filing of the suit a receiver was appointed and the lessees continued in possession as receivers from 27-10-1948. The learned Judges followed the earlier Bench decision in Chukka Annam Naidu (died) and Others Vs. Kolachala Apparao and Others, " and held that by reason of being in possession of the property after 1934 the tenants did not acquire any occupancy rights and, that the landholders were protected by Section 8(5). The question of the type now raised namely that as the tenants continued in possession of the property after 31-10-1948, Section 8(5) could not avail the landholder was raised before them but they negatived this contention on the facts which showed that after 27-10-1948 the possession of the tenants was not qua tenants but as Receivers under orders of Court. Mr. Vythilingam contends that this must be treated as an implied decision in his favour that if the tenants had continued in possession of the property as tenants after 31-10-1948, they would have acquired occupancy rights by reason of Section 6(1) of the Act. We are unable to agree that this decision involves any such implication. Beyond considering that the argument now put forward need not be rejected out of hand, it does not impliedly decide its correctness merely by reason of the learned Judges investigating the question of fact as to whether there was any basis for the argument. In any event, the assistance afforded by it is very small and the matter has therefore to be considered as if it were "res integra".

7. Mr. Vythilingam also contended that if the construction adopted by the learned District Judge were rejected it would mean that a landholder could in 1947 or 1948 admit a tenant to the possession of the land for such a long term as 50 years or more and would thus enable him to take the land out of the category of ryoti land in which occupancy rights could exist and that this was against the policy of the Legislature. We do not however see any reason why the landholder should not do so. There was no obligation upon him to let the land to any tenant and if he kept the land on pannai cultivation, he could do so for ever. Unless he chooses to admit a tenant to possession after 31-10-1948, there is no means by which a ryot can claim occupancy rights in such lands. In these circumstances, we do not see any anomaly in the construction of Section 8(5) which we are inclined to adopt.

8. It would also be noticed that the above construction accords with the principle and language of Section 6(1) also. Under this provision there are only two

methods by which statutory occupancy rights are obtained. (1) Possession of ryoti land at the commencement of the Act which in the case of inams of the suit category is fixed as 30-6-1934 (vide explanation 2.) (2) Admission to possession after the coming into force of the Act and in the case of inams which became estates by virtue, of Madras Act 18 of 1936 this would be 31-10-1936. u/s 8(5) the landlord is given a right for a period of 12 years from 31-10-1936, i.e., till 31-10-1948 to admit tenants to possession without the latter obtaining statutory occupancy rights. If there is any admission at a later date, it would not be protected by Section 8(5) and would therefore fall within Section 6(1) and confer on the tenants so admitted statutory rights. There would thus be no conflict between the two provisions. But the construction contended for by the respondent would introduce a third method of acquiring statutory rights besides the above two --- not possession at the commencement of the Act, nor admission to possession for such admissions between 31-10-36 and 31-10-48, are admittedly saved by Section 8(5) but mere possession thereafter and this under a contract protected by Section 8(5) and in our opinion this cannot be obviously achieved except by introducing into Section 6(1) words which are not there for which there is no warrant.

9. The construction which the learned District Judge has adopted is therefore wrong and his decree dismissing the suit is set aside. As the other issues in O. S. No. 32 of 1947 have not been tried, the suit will be remanded to the District Court for that purpose. As regards the second appeal, as the applicant for the patta is not entitled to the relief and as there are no other points to be considered, the second appeal is allowed and the summary suit is dismissed with costs throughout. The appellant is entitled to his costs of Appeal No. 249 of 1949. The costs of the suit O. S. No. 32 of 1947 will be provided for by the lower Court by its decree. The appellant is entitled to a refund of the Court-fee paid for the appeal.