
(1981) 12 MAD CK 0050
In the Madras High Court
Case No : S.A. No. 1360 of 1978

N.V. Sundarachar (died) and others	Vs	APPELLANT
Alagappan and others		RESPONDENT

Date of Decision : 14-12-1981

Acts Referred:

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 6, 6A

Citation : (1981) 12 MAD CK 0050

Hon'ble Judges : Sethuraman, J

Bench : Single Bench

Advocate : V. Krishnan and P. Padmini, for the Appellant; V. Rangaraju, for the Respondent

Judgement

Sethuraman, J.—The plaintiffs are the appellants in this second appeal. The suit was originally instituted by one Sundarachar. But, on his death, plaintiffs 2 to 11 were brought on record as his legal representatives. He leased item No. 1 of the suit property to the first defendant in the year 1965 for a period of one year. According to him, after the expiry of the lease, the first defendant surrendered possession of the land to him and he was cultivating the land on his own thereafter. It was alleged that the first defendant was claiming to be the cultivating tenant of the suit property so as to be entitled to possession thereof and he, therefore, came forward with the suit for declaration and injunction. The first defendant in his written statement accepted that the property belonged to the plaintiff, but he denied that the lease in his favour was only for one year. He denied also that there was any surrender by him after the period of one year. According to him, he continued to be a tenant entitled to the protection of the Tamil Nadu Cultivating Tenants Protection Act, 1955. There were three other defendants who did not file any written statement.

2. The learned District Munsif framed only one issue, namely, whether the suit was maintainable in a civil court, and found that the suit was not maintainable. Therefore, he transferred the suit to the file of the Revenue Divisional Officer

purporting to act under S. 6A of the Tamil Nadu Cultivating Tenants Protection Act. On appeal, the learned Subordinate Judge, following the decision of this Court, reported in Vellachamy Ambalam Vs. Paramasamy Ambalam, confirmed the decision of the trial court and held that the civil court had no jurisdiction to go into the question raised in the present case and the Revenue Divisional Officer alone was competent to decide the question of surrender of possession. Aggrieved by this judgement of the lower appellate court, this second appeal has been filed.

3. The only question raised in this second appeal is, whether the civil court had no jurisdiction to entertain the suit? S. 6 and S. 6A are the material provisions to be considered and, therefore, they are reproduced below :?

6. Bar of civil courts : No civil court shall, except to the extent specified in S. 3 (3), have jurisdiction in respect of any matter which the Revenue Divisional Officer is empowered by or under this Act to determine and no injunction shall be granted by any Court in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

6 A. Transfer of certain suits to the Revenue Divisional Officer by civil courts : If in any suit before any court for possession of, or injunction in relation to any land, it is proved by affidavit or otherwise that the defendant is a cultivating tenant entitled to the benefits of this Act, the court shall not proceed with the trial of the suit but shall transfer it to the Revenue Divisional Officer who shall thereupon deal with and dispose of it as though it were an application under this Act and all the provisions of this Act shall apply to such an application and the applicant.

4. Mr. V. Krishnan, learned counsel for the appellants contended that in the present case, the dispute between the parties is as to whether there was a surrender of possession by the first defendant after the expiry of the period of the lease. If there was such a surrender, then in his submission, the first defendant would have no right to claim the protection under the aforesaid statute and the civil court would have jurisdiction to decide the suit.

5. Mr. Rangarajan, learned counsel for the respondents submitted that the question as to whether the first defendant is a cultivating tenant or not is exclusively within the scope of the jurisdiction of the statutory authority and that the courts below rightly transferred the case to the Revenue Divisional Officer for appropriate disposal.

6. The lower appellate Court has relied on a decision of this Court in Vellachami Ambalam v. Paramasami Ambalam 1962-2-M.L.J. 142=75 L.W. 228. In that case the plaintiff claiming to be a cultivating tenant filed the suit for injunction. The defendant contended that the plaintiff had surrendered possession and that thereafter he was the cultivating tenant inducted into the property. The question that arose for decision was, whether this dispute could be decided by the civil court. Ananthanarayanan, J. (as he then was), observed that the Revenue Court

alone could decide the question whether the alleged surrender of possession by the prior cultivating tenant was true and that the jurisdiction of the civil court was clearly barred by S. 6A of the Act. It is this decision which is strongly relied on by the learned counsel for the respondents.

7. On the other hand, the learned counsel for the appellants brought to my notice, a decision of the Supreme Court reported in *Chinnamuthu Gounder and Others, etc. Vs. P.A.S. Perumal Chettiar*, In that case, the plaintiff sued for declaration of his title, for possession and for realisation of arrears. The defence was that the defendant had occupancy rights over the property. It was found that the plaintiff and his predecessors were ryots under the inamdar and that the defendants were only under-tenants under the lease granted by the predecessors-in-title of the plaintiff. In other words, it was held that the plaintiff was an occupancy tenant and the defendants were cultivating tenants. The matter reached the Supreme Court and the question considered by their Lordships was whether the civil court had jurisdiction to decree a suit in respect of possession in the light of the provisions of the Madras Cultivating Tenants Protection Act, 1955 (Act 25 of 1955). After referring to the provisions of Ss. 6 and 6A of the Act, their Lordships pointed out?

The clear import of S. 6A is that in any suit before any civil court for possession if the defendant proves not only that he is a cultivating tenant but also that he is entitled to the benefits of the Act the civil court is bound to transfer it to the Revenue Divisional Officer and cannot proceed to try and dispose it of itself. In the present case, it has been found by the High Court as also by the trial court that the appellants had wilfully denied the title of the respondent who is the landlord). They thus became disentitled to the benefits under the Act. Consequently, the civil court had jurisdiction to proceed with the trial and there was no question of its transferring the suit to the Revenue Divisional Officer.

The Supreme Court noticed that there had been a consistent line of decisions of this Court that in order to attract the applicability of S. 6A, two conditions must be satisfied, namely (1) the defendant must be a cultivating tenant within the meaning of the Act, and (ii) he should be entitled to the benefits of the Act. If both these conditions were not satisfied no question of any transfer under S. 6A will arise. It was added by their Lordships?

The civil court may have to determine for the purpose of coming to the conclusion, whether a suit has to be transferred under S. 6-A, certain questions which are within the jurisdiction of the revenue court under the Act.

Reference was also made in the Supreme Court's decision to another decision of this Court in *V. Kumaraswami v. Sri Subramania swami* 1958-1-M.L.J. 205 and also to the case of *N.S. Ramachandra Sastrigal v. Kuppuswamt Vanniar* 1961-1-M.L.J. 335 in which a third condition is also required to be satisfied under S. 6A. The third condition was that the tenant must show that on a transfer of the proceedings to the Revenue Divisional Officer he would be in a position to

obtain one or the other statutory reliefs provided for in his favour under the Act. Their Lordships did not think it necessary to deal with the third requirement mentioned in the aforesaid decision.

8. As far as I am concerned, I have to consider not only the decision of the Supreme Court, but also the decision of this Court cited above. Under the Supreme Court's decision, the twin conditions, namely, the defendant must be a cultivating tenant and that he must be entitled to the benefits of the Act would have to be satisfied. Under the aforesaid decision of this Court, the third condition, namely, that the tenant must show that on a transfer of the proceedings to the Revenue Divisional Officer, he would be in a position to obtain one or the other statutory reliefs provided for in his favour under the Act.

9. These decisions make it clear that the civil court will have to make a preliminary enquiry as to whether the defendant is a cultivating tenant. If he is a cultivating tenant, no other question would arise for consideration and the matter would have to be transferred to the statutory authority. If, however, he was not a cultivating tenant, having surrendered possession of the property prior to the suit, then he would be a person who is not entitled to the protection of the statute and the matter will have to be dealt with by the civil court. It is thus necessary for the trial court to frame an issue as to whether there was surrender of possession and the question will have to be considered in the light of the finding on this point. If it is found that he had not surrendered possession, then the proceedings will have to be transferred to the statutory authority. If he had surrendered possession the civil court will consider appropriately and deal with the matter. The second appeal is accordingly allowed, the judgments of the trial court and the lower appellate Court are set aside and the matter restored to the file of the trial court for disposal in accordance with law and in the light of the discussions above. There will be no order as to costs. Court-fee paid on the memorandum of second appeal will be refunded.