

(1979) 10 SC CK 0029

In the Supreme Court Of India

Case No : Civil Appeal No. 2136 of 1969

Oduru Chenchulakshamma and Another

APPELLANT

Vs

Duvvuru Subrahmanya Reddy

RESPONDENT

Date of Decision : 23-10-1979

Acts Referred:

Tamil Nadu Estates (Abolition And Conversion Into Ryotwari) Act, 1948 — Section 2(3), 2(10), 3, 4, 7, 11, 12, 13, 14, 15, 53, 55, 56, 56(1), 56(2)

Citation : AIR 1980 SC 133 : (1980) 3 SCC 130 : (1980) 1 SCR 1006 : (1980) 12 UJ 149

Hon'ble Judges : N. L. Untwalia, J;A. D. Koshal, J

Bench : Division Bench

Advocate : P. Govindan Nair, V.V. Rao and G.N. Rao, for the Appellant; A.V. Nair, for the Respondent

Final Decision : Allowed

Judgement

A.D. KOSHAL, J.—The facts giving rise to this appeal by special leave are concluded by concurrent findings of fact arrived at by the trial court and the first appellate court and may be briefly stated here with reference to the following pedigree table :

Krishna Reddy | _____ | | |
Subramanyam Reddy Daughter (name not _ Venkatarama (plaintiff) known)
Reddy | _____ | | Pocha Subba
Reddy Krishna = Challamma (defendant Nos. 6) Reddy (defendant No. 1) | |
Srinivasulu Reddy (defendant No.2)

Defendants Nos, 1 and 2 and one P. K. Reddy were the" owners of the lands in dispute which are situated in village Makhamambavilasami forming part of Chittoor district. Some of the lands were sold by defendants Nos.. 1 and 2 and the rest by P.K. Reddy and defendant No. 2 by means of two sale deeds dated the 25th of September, 1947 (exhibits A-8 and A-9 respectively) in favour of defendant No. 6 who: was the brother of defendant No. 1 and therefore the

maternal uncle of defendant No. 2. : Although both the sale deeds were supported by valid consideration, possession was not delivered to the vendee under either of them and continued to be with defendant No. 1,

In 1948 was promulgated the Madras Estates (Abolition and Conversion into Ryotwari) Act (hereinafter called the 'Madras Act') Section 3 of which reads thus :

3. With effect on and from the notified date and save as otherwise expressly provided in this Act-

(a) the Madras Estates Land (Reduction of Rent) Act,

1947 (Madras Act XXX of 1947) in so far as it relates to matters other than the reduction of rents and the collection of arrears of rent and the Madras Permanent Settlement Regulation, 1802 (Madras Regulation XXV of 1802) the Madras Estates Land Act, 1908 (Madras Act 1 of 1908)

and all other enactments applicable to the estate as such shall be deemed to have been repealed in their application to the estate;

(b) the entire estate (including all communal lands; porambokes; other non-ryoti lands; waste lands; pasture

lands, lanka 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 by the principal or any other landholder, shall as against the Government cease and determine;

(d) the Government may, after removing any obstruction that may be offered, forthwith take possession of the estate, and all accounts, registers, pattas., muchilikas, map's, plans and other documents relating to the estate which the Government may require for the administration there of;

Provided that the Government shall not dispossess any person of any land in the estate in respect of which , they consider that he is prima facie entitled to a ryotwari patta-

(i) if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta;

(ii) if such person is a landholder, pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it, as to whether he is actually entitled to such patta;

(e) the principal or any other landholder and any other person, whose rights stand transferred under Clause (b) or cease and determine under Clause (c),

shall be entitled " only to such rights and privileges as are recognized or conferred on him by or under this Act;

(f) the relationship of landholder and ryot, shall, as between them, be extinguished;

(g) any rights and privileges which may have accrued In the estate, to any person before the notified date, against the principal or any other landholder thereof, shall cease and determine, and shall not be enforceable against the Government or such landholder, and every such person shall be entitled only to such rights and privileges as are recognized or conferred on him by or under this Act

The term 'estate' is defined in Clause (3) of Section 2 of the Madras "Act as meaning a zamindari or an under-tenure or an estate.

Section 11 declares that every ryoti in an estate would be entitled to a ryotwari patta in respect of all ryoti and lanka lands in his occupation before the "notified" date which meant, under Clause (10) of Section 2, the date appointed by a notification issued by the Govern-ment. Sections 12 to 15 deal with the determination of lands in zamindari, inam and Under-tenure I estates in which the landholder is declared to be entitled to a ryotwari patta.

On the 1st of October, 1953, came into being the State of Andhra through an Act of Parliament known as the Andhra State Act, by virtue of Section 3 contained in Part II of which the entire Chittoor district forming part of the State of Madras prior to the said date was transferred, along with other areas, to the State "of Andhra. Section 53,of the Act last mentioned provided as follows :

53. The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Madras Or of Mysore shall, until otherwise provided by a competent Legislature or other competent authority, continue to have the same meaning.

As a result of this provision the district of Chittoor continued to be governed by all the laws, including the Act, which were in force in the State of Madras immediately before the 1st "of October, 1953.

A dispute arose between defendant No. 1 and defendant No. 6 as to who of them was entitled to a patta under the Act in respect of the lands covered by exhibits A-8 and A-9. The Additional Assistant Settlement Officer resolved the dispute by means of an order dated the 14th of September, 1957 (exhibits B-3 and B-4) holding that defendant No. 6.

On the same date, i.e., 14th of September, 1957, defendant No. 6 sold the lands in dispute by means of a registered sale deed (exhibit A-7) to the plaintiff who was his maternal uncle and who, about three years later, filed the suit (suit No. 169 of 1960) which has given rise to this appeal, against six persons, claiming

declaration of title to the said lands and possession thereof. Defendants Nos. 1 and 2 were alleged by the plaintiff to have taken possession of part of the land while defendants Nos. 3 to 5 were accused of having trespassed into some other parts thereof. No relief was claimed against defendant No. 6 and the suit was based on sale-deed exhibits A-7, A-8 and A-9 all three of which were claimed to be genuine documents under which, it was pleaded by the plaintiff, possession had passed to defendant No. 6 in the first instance and to himself '(the plaintiff) on the 14th of September, 1957. Another plea taken was that the grant of the patta in favour of defendant No. 1 under the order evidenced by exhibits B-3 and B-4 did not confer any title on her and was obtained fraudulently on the basis of her 'unlawful possession'.

The trial court held that the sale deeds exhibits A-8 and A-9 were genuine but that the possession of the lands in dispute had throughout remained with defendants Nos. 1 and 2. It was further of the opinion, however, that by virtue of sale deed exhibit A-7 the plaintiff had become entitled to the lands. The contention raised on behalf of defendant No. 1 that the civil courts could not take cognizance of the suit in view of the provisions of the Act was overruled on the strength of *Krishnaswami Thevar v. Perumal Konar* (1961) 1 MLJ 168 wherein it was held that a Settlement Officer had no jurisdiction under the Act to adjudicate upon rival claims for the grant of a patta and that such disputes fell within the jurisdiction of the civil courts. The suit, was found to be within limitation and in view of the other findings above detailed was decreed against defendants Nos. 7 and 8 who had by then been substituted for defendants 1 and 2 as the latter's legal representatives, defendants Nos. 1 and 2 having died during the pendency of the suit. No relief was granted against defendants 3 to 5 as they did not claim or were found to be in possession of any part of the lands in dispute.

The learned Additional District Judge of Chittoor who decided the first appeal preferred by defendants Nos. 7 and 8 concurred with the landings of fact arrived at by the trial court but reversed its decree and dismissed the suit holding, on the authority of *Guddiradu v. Murugappa Modali* (1964) 2 AWR 332 that by virtue of the provisions of Section, 3 of the Act, with effect from the notified date an rights in the lands in dispute Vested in the Government except those recognised under the Act as vesting in others so that after the notified .date the only right which a landholder,, under-tenure holder or a ryot could claim was the right: to obtain a patta. The rights of the plaintiff under exhibit A-7 -were thus held to have been dislodged by the grant of a patta to defendant No. 1.

In second appeal the High Court observed that the only question requiring determination by it was whether the plaintiff, who was admittedly the owner of the properly, lost his right by reason of the patta having been granted to defendant" No. 1. It relied upon *Krishnaswami thever's case* and *A.R. Sanjeevi Naicker v. P. M. Shanmuga Udayar* (1965) 2 MLJ 204 in Support of its view that it was competent to a civil court to adjudicate upon the title of the parties notwithstanding the grant of a patta under the Act to one of them. It was in this

view of the matter that the High Court accepted the appeal before it and restored the decree of the trial court, thus granting to the plaintiff the relief claimed by him; and it is the judgment of the High Court which is challenged before us by defendants Nos. 7 and 8.

2. The case was argued before us by learned Counsel for the con-tending parties on the assumption that it was governed by the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 ('hereinafter referred to as the Andhra Act'), the provisions enacted by which, except for necessary changes, were practically the same as those of the Madras Act. That assumption, however, is not well-founded. As already pointed out, Chittoor district (in which lie the lands in dispute) continued to be governed by the provisions of the Madras Act as they stood on the 1st of October, 1953, even after its transfer to the State of Andhra by reason of the mandate of Section 53 above extracted. After that date the Madras Act could be amended or repealed by the Andhra Pradesh legislature but till that was done, the district of Chittoor would continue to be governed by the Madras Act in its unamended form and as it stood on that date. We make it clear, however, that the correction of the error on which the assumption was based would not really make any difference to the decision of the case inasmuch as the relevant provisions of the Madras Act, as they stood on the 1st of October, 1953, are practically the same, as the corresponding provisions of the Andhra Act. Apart from Sections 3 and 11 to 15, it is Section 56 of the Madras Act which clinches the matter. It reads, thus:

56. (1) Where after an estate is notified, a dispute arises as to (a) whether any rent due from a ryot any fasli 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-section (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.

Sub-section (2) of the section categorically declares that the decision of the Tribunal deciding the appeal shall be final and not liable to be questioned in any court of law, in so far as it relates to any of the matters covered by Sub-section (1). It goes without saying that if no appeal is filed, a similar finality shall attach to the decision of the Settlement Officer. One of such matters is covered by Clause (c) of Sub-section (1) and embraces the determination of the question as to who the lawful ryot in respect of any holding is. Questions which a Settlement Officer may be called upon to decide under the said Clause (c) would certainly include such as may have resulted from a dispute between two or more persons as to who of them is the lawful ryot; and once a dispute of that type has been adjudicated upon by the Settlement Officer, his decision becomes final unless an appeal is filed before the Tribunal, in which event it is the decision of the Tribunal

to which finality attaches. In either case the decision is not liable to be called into question in any Court of law. We need not go into further details on the question of interpretation of Section 56 of the Madras Act inasmuch as our view is fully supported by another decision of this Court in Maddada Chayanna Vs. Karnam Narayana and Another, . In that case Chjnnappa Reddy, J, who delivered the judgment of the Court was concerned with the interpretation to be placed on Section 56 of the Andhra Act which repeats word for word the contents of Section 56 of the Madras Act. In holding that the authorities mentioned in Sub-section (2) of Section 56 of the Andhra Act had exclusive jurisdiction to decide a dispute between rival claimants for a ryotwari patta, this Court approved the decision in T. Munuswami Naidu (Died) and Others Vs. R. Venkata Reddi and Others, , in which the same interpretation had been given to Section 5.6 of the Andhra Act as a result of an elaborate discussion. this Court further held that Cherukuru Muthayya Vs. Gadde Gopalakrishnayya and Others, which was also decided by a Full Bench but had been over-ruled by a larger Full Bench in Munuswami's case (supra) had been wrongly decided.

3. Faced with the above situation, learned Counsel for the plaintiffs sought support for a contrary view from the two Madras cases on which reliance had been placed by the High Court in the impugned judgment. We may state at once that those cases are wholly irrelevant for deciding this case and that the High Court erred in taking Them into consideration. In this connection all that need be stated is that Section 56 of the Madras Act was repealed by Madras Act XXXIV of 1958 and both the Madras cases above mentioned were decided after Section 56 had ceased to be part of the Madras Act. That those cases may well have been differently decided if Section 55 had continued to be part of the Madras Act was recognized by Rama:-chandra Iyer, J., who decided Krishnaswami Thevar's case (supra) with the following observations :-

The Abolition Act as originally enacted contained Section 56 which conferred in terms a power to decide any dispute as to who the lawful ryot of a holding is. Sub-section (2) provided for an appeal from such a decision. If that provision were still to exist, it can be said that as the question whether the person was the lawful ryot or not was one to be decided by the Settlement Officer, the issue of ryotwari patta by him presumably after such decision could not be challenged in a civil court; to that extent there would be an ouster of the jurisdiction of the civil court. But Section 56(1) has been repealed by Act XXXIV of 1958. There is now no machinery to decide the case of a disputed claim to patta. Thus, if a ryot is entitled to the ryoti land before the notification, he would by virtue of that right be entitled to the grant of ryotwari patta. There is nothing in the procedure to be adopted for the grant of patta u/s 11, to justify an adjudication of title. Nor is there anything in the nature of the patta itself to show that there must have been an adjudication of title in favour of the pattadar.

Krishnaswami Thevar's case was followed in Sanjeevi Naicker's case which is again a Single Bench decision in which Ramamurti, J., also made a reference to

the repeal of Section 56 of the Madras Act by a later Madras enactment.

4. In the above view of the matter no assistance can be drawn by learned Counsel for the plaintiff who has to meet the challenge of the provisions of Section 56 because that section was a part of the Madras Act on the 1st of October, 1953, and continues to be so in so far as its application to the district of Chittoor in Andhra Pradesh, is concerned, the repeal of that section by the Madras Legislatures being wholly ineffective in so far as territories forming part of the State of Andhra are concerned.

The only other case to which reference was made by learned Counsel for the plaintiff was Pinninty Peda Govindayya v. Pinninty Subbarao 1969 2 AWR 1. That was a case in which Sections 3, 4, 7, 12 and 14 of the Andhra Inams (Abolition and Conversion into Ryotwari) Act, 1956 and Rule 15 of the rules framed thereunder came in for interpretation. The relevancy of the case is not apparent inasmuch as it makes no reference to a provision similar to the one enacted by Section 56 of the Madras Act as forming part of the statute or rules then under consideration. We do not see, therefore, that the plaintiff's case is in any manner advanced by the decision cited.

5. In the result, the appeal succeeds and is accepted. The judgment of the High Court is set aside and the plaintiff's suit is dismissed on the ground that the civil courts have no jurisdiction to entertain it by reason of the provisions of Section 56 of the Madras Act and that the order of the Additional Settlement Officer dated the 14th of September, 1957 (exhibits B-3 and B-4) is final and not liable to be questioned in any court of law in so far as the determination of the dispute between the rival claimants to the ryotwari patta, is concerned. The plaintiff-respondent's costs of the proceedings in this Court shall, however, be paid to him by the appellants in accordance with the order dated 30-9-1969 passed by this Court while granting special leave.'