

(1984) 03 MAD CK 0030
In the Madras High Court
Case No : S.A. No. 1450 of 1979

Pankajam and Others

APPELLANT

Vs

Chinliaswamy Naidu

RESPONDENT

Date of Decision : 27-03-1984

Acts Referred:

Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 — Section 16A

Citation : AIR 1984 Mad 235 : (1985) ILR (Mad) 87 : (1984) 97 LW 207 : (1984) 1 MLJ 345

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : V. Natarajan, for the Appellant; K. Subramaniam, for the Respondent

Judgement

1. The defendants I to 3 in O. S. No. 191 of 1975, District Munsif's Court, Tiruppur, are the appellants in this second appeal, That suit was laid by

the respondent herein praying for a declaration of his right to enjoy the suit properties as a cultivating tenant and for a permanent injunction

restraining the appellants and others from interfering with his peaceful possession and enjoyment of the properties and other, incidental reliefs.

Admittedly, the suit properties belonged to one Ranganayaki Ammal, after whose death the appellants became entitled to them. The respondent

claimed that his father Rangaswami Naidu was a lessee of the suit properties till about 21 years prior to the filing of the suit and that on his death,

he became the tenant under the owner Rauganayaki Ammal about 21 years ago on an annual rent of R's. 1,000/-, , which was subsequently raised

to Rs. 1,300/-, in 1965 and again to Rs. 1,500/- in .1.971. Claiming that he has been in continuous possession and enjoyment of the suit

properties for over 21 years as a tenant and that his name also found a place in

the cultivation account and stating that there was a demand by the appellants calling upon, him to surrender possession of the Properties and owing to his refusal to do so, the appellants were enraged, and were attempting to interfere with his possession and enjoyment of the properties, the respondent laid the suit for the relief's set out earlier.

2. In the written statement filed by the third appellant, which was adopted by the appellants I and 2, while admitting the claim of the respondent that he was a lessee of the suit properties up to Chitrai 1974, they pleaded relinquishment of tenancy rights by the respondent over the suit properties and surrender of possession to the appellants in or about Chitrai 1974. Subsequent to the surrender, according to the appellants, the properties had been leased out from Chitrai 1974 onwards to one Arumugha "Gounder, who is the tenant of the suit Properties. The suit was characterised by the appellants as a counter blast to the demand for arrears of rent made by the appellants. The appellants also disputed the entries in the cultivation accounts relied on by the respondent and stated that the entries had been made falsely taking advantage" of the enmity between the appellants and the Karnam of the village. The threat to interfere with the respondent's possession of the properties by the appellants was denied. It was the further plea of the appellants that there was no cause of action at all for the respondents to institute the suit. On these grounds, the appellants prayed for the dismissal of the suit.

3. Before the learned District Munsif, Tiruppur, on behalf of the respondents Exts. A1 to A5 were marked and the "respondent was examined as P.

W. 1, while, on behalf of the appellants their Manager was examined as D. W. 1. Placing reliance upon, the order passed by the authorities under

the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (hereinafter referred to as the "Act), and also the entries in the Adangal

and some other letters, the learned District Munsif found that the respondent has established that he is a, cultivating tenant i.e, Possession , of the

Properties and that -the case of surrender "of the properties by the respondent get up, by the appellants was not made out. In that view, a decree

was granted in favour of the respondent declaring that he has right to enjoy the suit properties as a cultivating tenant and also granting an injunction

in. his favour restraining the appellants from interfering with his possession and

enjoyment of the suit properties. Aggrieved by this, the appellants preferred an appeal in A. S. 140 of 1977 before the 11 Additional Subordinate Judge, Coimbatore. Before the lower appellate Court, the appellants filed 1. A. 295 of 1978 to receive as additional evidence the order of the Revenue Divisional Officer, Pollachi, setting aside the order recording the respondent as a cultivating tenant. In turn, the respondent filed I. A. 318 of 1978 for reception of an order Passed by the record of Tenancy Tahsildar after remand recording the respondent as a cultivating tenant, as additional evidence in the appeal. Both the applications were allowed and the order passed by the Record of Tenancy Tahsildar recording the respondent as a cultivating tenant was marked as Ext. A6, while the documents filed by the appellants in 1. A. 295 of 1978 were exhibited as Exts. BI and B2. Adverting to the documentary evidence, the lower appellate Court took the view that Ext. A1 the earlier order upon which reliance was placed by the respondent to establish his status as a cultivating tenant had been passed without notice to the appellants and that order had also been set aside on appeal by the Revenue Divisional Officer and, therefore, no reliance could be placed on that. Referring to the order Ext. A6 relied upon by the respondent recording him as a cultivating tenant, the lower appellate Court found That that order had not become final as there was every possibility of an appeal being preferred against that order. Section 16-A of the Act was relied upon by the Court below as prohibiting Civil Courts from granting a declaration in. respect of the rights of tenancy, as such matters could be decided only by the authorities constituted under the Act. In that view, the Civil Court's jurisdiction was held to be barred with reference to the relief of declaration prayed for by the respondent. However, regarding the relief of injunction, relying upon the decision in Palaniswamy v. Rarnaswami Gounder, 1977 I MLJ 5, the lower appellate Court maintained the decree of the trial Court, granting the relief Of injunction in favour of the. respondent. In the result, the appeal Preferred by the appellants was allowed in part add to the declaration granted by the trial Court in favour of the respondent was deleted. It is the correctness of this that is challenged by the appellants in this second appeal.

4. The principal contention of the learned counsel for the appellants is that while

the lower appellate Court rightly held that the relief of declaration that the respondent is a, cultivating tenant cannot be granted it fell into an error in maintaining the injunction granted, by the trial Court in favour of the respondent, as the relief of injunction was only a consequential one and while the main relief of declaration had been negative the consequential relief of injunction could not be granted * "Reliance in support of this contention. was placed by the learned counsel upon the decisions in Periathambi Goundan Vs. The District Revenue Officer, Coimbatore and Others, and Ponnusami v. District Revenue , Officer, North Arcot, (1982) 95 MLW 647. On the other hand, the learned counsel for the respondent would submit that the respondent had been in possession of the properties and that the Courts below have merely proceeded to protect his possession, and therefore, no exception could be take learned to the grant of an injunction. The counsel also relied upon the decision in Rama Padayacbi v. Krishna Padayachi, (1981) 94 MLW 738, to contend that even as a tenant legally entitled to be in possession, the respondent can ask for" an injunction.

5. Before proceeding to consider these rival submissions, it is necessary to state that no attempt was made by the learned counsel for the

"respondent to challenge the conclusion arrived at by the Court below that Section 16-A of the Act would prohibit the Civil Court from -granting a

declaration as prayed for by the respondent in this case. The controversy, therefore, is limited with reference to the entitlement of the relief of

injunction by the respondent. if the question of the status of the respondent as a cultivating tenant could not be adjudicated upon by a Civil Court,

even as found by the lower appellate Court, and that was the main relief prayed for by the respondent in the suit, then it does not appear on what

basis the respondent can claim the relief of injunction. In the decision of the Full Bench in Periathambi Goundan Vs. The District Revenue Officer,

Coimbatore and Others, , the relative "scope of the jurisdiction of the authorities constituted under the Act and the Civil Court having regard to the

introduction of S. 16-A in that Act was exhaustively considered. Holding that Section 16-A of the Act was not intended to affect any suit instituted

prior to its introduction, it was pointed out by the Full Bench that where the controversy is as to whether a particular piece of land has been let for

cultivation by a tenant or not is one constituting the jurisdictional issue which has to be decided before the Record Officer can determine other

matters under the Act and that if such a controversy arises, that controversy cannot be said to be within the exclusive jurisdiction of the authorities

functioning under the Act. The determination of that controversy by the authorities, according to the Full Bench, can be said to be incidental to the

assumption of jurisdiction by the authorities under the Act and subject to that qualification, when once the Record Officer has come to the

conclusion that the land had been let for cultivation the matters provided for in S. 3 (2) of the Act have to be determined by the Record Officer or

other authority functioning under the Act and to that extent, the jurisdiction of the Civil Court is barred Under S. 16-A of the Act. It was further

laid down. by the Full Bench that matters within the exclusive jurisdiction of the authorities constituted under the Act are limited by the provisions

contained in S. 3 (2).of the Act, because, those are the particulars which are directed to be included in the approved records to be prepared under

the Act. While laying down the aforesaid principles, the Full Bench, in para 40 of its judgment, illustrated the position with reference to the several

categories of cases that may arise where this question would assume importance. One such case dealt with by the Full Bench was whether a

cultivating tenant can claim the relief of injunction while the primary relief of declaration of his status as a cultivating tenant cannot be granted by the

Civil Court. At page 105 (of Mad LJ): (at p. 193 of AIR), the Full Bench observed thus:

Similarly, if the cultivating tenant files a suit for declaration that he is the cultivating tenant of the land in question and as a consequential relief prays

for recovery of possession from the landowner-defendant or for an injunction, the primary relief being one of declaration of his status as a

cultivating tenant, the other reliefs being consequential, the Civil Court may not have jurisdiction to decide the controversy with reference to which

the primary relief is prayed for.

The observations are apposite and would govern this case. As seen earlier, the lower appellate Court had declined to grant the relief of declaration

in favour of the respondent that he has right to enjoy the properties as a cultivating tenant. Though the relief is couched in the form of declaration, it

really involves an adjudication and recognition of the rights projected by the respondent as a cultivating tenant and declaring such rights in favour

of the respondent. Admittedly, in this case, proceedings had been taken under the Act and at the earliest point of time the respondent was

registered as a cultivating tenant, but without notice to the appellants and as a result of an appeal preferred by the appellant, that order came to be

set aside and the matter was remitted. Though subsequent to the remit order, the respondent claimed that he was recorded as a cultivating tenant,

yet, that order has not attained finality. In this case, the very letting of the suit properties to the respondent for cultivation had been disputed and

though it may be that the authorities have to decide that question as a jurisdictional fact before considering the Other matters which would be

relevant u/s 3 "(2) of the Act, yet, those are all matters over which the Record Officer or the other authority functioning under the Act alone will

have jurisdiction and the Civil Court cannot go into those questions. If the Civil Court cannot proceed to investigate whether the respondent is a

cultivating tenant or not, then equally it cannot declare that he "has such rights. The lower appellate Court was, therefore, quite justified in holding

that having regard to the provisions of the Act, the relief of declaration could not be granted in favour of the respondent. The consequential relief

of injunction, if at all, could be granted only upon a finding that the -respondent is a cultivating tenant. If the Court cannot go into that question, then

it does not appear as to how the Court can proceed to protect the alleged possession of the respondent as a tenant against the appellants 2 and 3,

who are the real owners of the properties. The consequential relief of injunction depends upon the adjudication with reference to the status of the

respondent and when that cannot be done by the Civil Court even according to its own finding, then the consequential relief also cannot be

granted. It has to be remembered that the relief prayed for by the respondent in the suit was not for a bare injunction as was the case before

Ramanujam, J. in Palanisami v. Ramaswami Gounder, 1977 1 MLJ 5. The considerations adverted to by the learned Judge in the course of his

judgment do not apply to the instant case Where the suit is not one for a bare injunction. The illustration given in the judgment of the Full Bench

already extracted and the decision in Ponnusami v, District Revenue Officer, North Arcot, (1982) 95 MLW 647 : AIR 1983 NOC 69, would

cover this case.

6. It now remains to consider the decision in *Ramu Padayachi v. Krishna Padayachi*, (1981) 94 MLW 739, relied on by the learned counsel for

the respondent. In that case, the suit was not for a declaration that the plaintiff was a cultivating tenant, but the prayer was only with reference to his

leasehold right in the property. Thus, there is a fundamental difference between the relief prayed for in the present suit and the one which gave rise

to the decision referred to earlier. Apart from this, after referring to the passage in para 40 of the judgment of the Full Bench in *Periathambi*

Goundan Vs. The District Revenue Officer, Coimbatore and Others, it had been explained away stating that that passage is in the nature of

obiter. While examining and explaining the scope of the jurisdiction of the authorities constituted under the Act as well as that of the Civil Court, the

Full Bench, after laying down the scope of the provisions of the Act and the jurisdiction of the authorities COB situated under the Act and the ambit

of the jurisdiction of the Civil Court, illustrated the effect of the principles laid down. On cases normally likely to arise and the passage referred to

dealt with one such case to characterize the observations, while illustrating the applicability of the principles laid down, to a particular situation as

obiter, does not appear to me to be correct., though the difference in the reliefs prayed for in the present suit as well as the one that came to be

considered in *Rama Padayachi v. Krishna Padayachi*, (1981) 94 MLW 738, would suffice to exclude the applicability of that decision to the

present case. Besides, there is no knowing now whether the respondent is at all a cultivating tenant as admittedly that matter remains to be

adjudicated upon by the authorities constituted under the Act and who are also seized of the same. In such a situation, while holding that the Civil

Court cannot decide the question whether the respondent is a tenant or not, the lower appellate Court was not in error in assuming that the

respondent is such a cultivating tenant (which according to the lower appellate Court, could not be decided by it) and in further assuming that the

respondent's possession was that of a tenant, which required or even deserved to be protected by an order of injunction. Having regard to these

considerations, the lower appellate Court was in error in having maintained the relief of injunction granted in favour of the respondent by the trial

Court. The result is, O. S. No. 191 of 1975 instituted by the respondent herein will stand dismissed in toto. The second appeal is allowed with costs.

7. Appeal allowed.