

(1943) 03 MAD CK 0036
In the Madras High Court

Pillalamarri Ramakrishnasomayajulu

APPELLANT

Vs

Yarranedi Krishnayya and Others

RESPONDENT

Date of Decision : 12-03-1943

Acts Referred:

Madras Estates Land (Amendment) Act, 1934 — Section 127(2)

Citation : AIR 1944 Mad 88 : (1943) 2 MLJ 494

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—This case illustrates how, even in spite of amendment after amendment by the local Legislature, the way in which the drafting

is done in the case of the Estates Land Act gives trouble to the Courts and involves the parties in heavy expenditure.

2. The lands in question are situated in a whole inam village. Under the Madras Act XVIII of 1936, this village became an estate under the Act.

When the Legislature converted inam villages into estates irrespective of the test laid down in Section 3(2)(d) of Act I of 1908, whether the grantee

was or was not the owner of the kudivaram at the date of the grant. The Legislature passed Act VIII of 1934 which provided among other things

that certain classes of suits should be stayed; The stay under Act VIII of 1934 is embodied in Section 127 of that Act. It runs thus:

No tenant in possession on the 1st day of November, 1933, of any land in an inam village, not being an estate within the meaning of sub-clause (d)

of Clause (2) of Section 3 of the said Act as amended by this Act, or admitted by the inamdar to possession of any such land subsequent to the

said date, shall be liable to be ejected until the date of the commencement of the Madras Estates Land (Third Amendment) Act, 1936 and all

proceedings in ejectment of any such tenant and all proceedings involving a decision whether or not the inamdar has the kudivaram right in such

land, shall be stayed until the date of the commencement of the Madras Estates Land (Third Amendment) Act, 1936.

3. All suits which were filed after the Act of 1934 was passed against tenants holding lands in villages of the description contained in Section

127(2) were stayed by successive Acts until the Third Amendment Act of 1936. First it was said that the suit should be stayed until a particular

time. Then the period of stay was extended and extended and finally Section 13 of the Act of 1936 stated that all proceedings stayed under Sub-

section (2) of Section 127 of the Madras Estates Land (Amendment) Act, 1934, shall be disposed of as if the Madras Estates Land Act, 1908, as

amended by the Madras Estates Land (Amendment) Act, 1934, and by the 1936 Act, had been in force at the time of the institution of the said

proceedings in the Court of first instance These suits were to be taken up for trial and decided as though all these Amending Acts had been in force

before the commencement of the suit in the Court of first instance. Section 127(2) was obviously applicable to suits for rent filed by a landholder

against tenants in respect of whole inam villages. These villages were not estates u/s 3(2)(d) of the old Act. Section 127 expressly provided that the

trial of suits with respect to lands in such villages should be stayed. The provision as to stay contained in Section 127(2), it should be observed,

relates to all proceedings in ejectment and all proceedings involving a decision whether or not the inamdar has the kudivaram right in the land. "

Such land " means obviously lands in any village which was not an estate within the meaning of Section 3(2)(d) of the old Act. " Such tenant"

means tenant in a village which was not an estate within the meaning of Section 3(2)(d). Hence if in respect of a village which was not an estate

within the meaning of the Act of 1908, a suit for rent was filed against a tenant of land in that village, the stay operated u/s 127(2); similarly where

the suit involved a decision whether or not the inamdar has the kudivaram right in such land. Section 127 as it stood before the Act of 1936 was

passed led to this somewhat extraordinarily startling result. Suits by landholders either for ejectment or for rent if filed were to be stayed. They

were not to be tried; but the landholder was under an obligation to file suits because otherwise they would be barred. If in 1935 the landholder had

to recover rent for 1933 and 1934 he had to file the suit before 1936. If he did not file the suit, Section 127 would not save the suit from being

barred by limitation. The omission to provide that in such a case the time between the date of that Act and the final amendment should be deducted

was felt to be a grievous wrong to the landholder. It was under these circumstances that the Act XVIII of 1936, made specific provision in Section

14 that in suits covered by Section 127(2) of the prior Act the time taken between the Act of 1934 and the Act of 1936 should be deducted. The

lower Courts have held that the provision in the 1936 Act applies only to cases covered by Section 185 of the Act. I am unable to understand this

interpretation. Mr. Kotayya for the respondent says that he is unable to support the reasoning of the lower Courts or the ground upon which the

lower Courts have decided the cases in his favour. He says that the provision applies to cases coming u/s 127(2) of the prior Act and that that

means to suits already filed and the trial of which was stayed under the Act. If as contended by Mr. Kotayya Section 14 applies only to suits

already filed there was no necessity for providing for any deduction of time between the date of the first Act and the Amending Act. Mr. Kotayya

refers to a possibility where a plaint filed was returned for presentation to the proper Court and urges that Section 14 may cover a case of that

kind. It must have been a sui. which u/s 127(2) of the Act of 1934 should have been stayed, but nevertheless without observing the plain provision

and in disregard of it the Court should have returned the plaint for presentation to the proper Court. According to Mr. Kotayya the section applies

only to such cases. I do not think it was ever intended that Section 14 of the Act of 1936 should be restricted to this very narrow class of cases

and I do not think there would be a single case where, when the provisions contained in Act VIII of 1934 were brought to the notice of the Court,

any Court would have flouted the plain provisions of the Act and gone on with the trial of the suit. It is clear that Section 14 applies to this case and

I hold that suits for recovery of rent for Faslis 1343 and 1344 were not barred.

4. The next question that arises is whether independent proceedings for the settlement of rent had to be taken by the landholder before he filed

suits to recover rent. It is somewhat difficult to appreciate this contention. It is said that the defendants in the various suits came into possession of

their various holdings under leases, that the periods fixed in those leases had expired and that they were merely holding over on the date when the new amending Act came into force. The relative date is 1st November, 1934. The lower Courts have rejected this plea and decreed rents in favour of the landholder. It is stated by Mr. Raghava Rao, learned advocate for the landholders, that in some of the cases the leases which had been granted prior to 1934 were still in force and that they had not expired before the date of the Act. I think it is unnecessary to go into this question. Even taking it, that some of these defendants had come in say under five years' leases granted in 1925, and that the leases had expired in 1930, the defendants were still tenants holding over; If the tenants held over after the expiry of their lease, they hold in the absence of a contract to the contrary under the same terms as the expired lease. -Therefore whether the terms expired before the Act came into force or whether they were still running, it is not a case where there was no rent payable on the land on the date when the amending Act came into force and the villages in question became converted into estates. In such a case Section 27 of the Act would apply, namely, that the rent payable for previous years would be presumed to be the fair rent under the Act. The lower Courts have decreed rents on this basis in some cases and I see no reason to doubt the correctness of the findings.

5. In some cases it appears that the lower Court went into the question whether the old rents are proper and fixed sums which were slightly lower than what was being paid. The landholder has accepted this decision and it is unnecessary to say anything on that point.

6. In the result, Second Appeals Nos. 862 to 864 are allowed with costs throughout. Second Appeals Nos. 1304 and 1337 to 1339 are dismissed with costs. So also the memoranda of objections in S. As. Nos. 862 to 864 of 1942 are dismissed with costs.