
(1959) 08 MAD CK 0002
In the Madras High Court

R. Ganapathy Goundar

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 21-08-1959

Acts Referred:

Citation : (1940) 72 LW 786 : (1960) 1 MLJ 322

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

Rajagopala Ayyangar, J.—These petitions are by the same petitioner and seek the quashing of the orders of the Estates Abolition Tribunal,

Vellore, by the issue of a writ of certiorari in four appeals preferred by him to it, namely, A.S. Nos. 334 to 337 of 1956. These four appeals were

dismissed by a common order and it is therefore not necessary to deal with each of the petitions separately. The petitioner is the landholder of

Kokkarayanpettai zamin estate in Salem district, and he made four applications Nos. 17 of 1951, 24 of 1951, 25 of 1951 and 29 of 1951 to the

Assistant Settlement Officer, Pudukottah, for the issue of ryotwari patta to him for certain items of lands in the four hamlets of the estate claiming

them as his private land. These applications were dismissed by the Assistant Settlement Officer two on 28th February, 1952 and the other two on

28th April, 1952, for the reason that the lands for which patta had been applied had stood registered in the name of his son and that by reason of

this fact the petitioner was not entitled to make any application for patta. There is no doubt that this order of the Assistant Settlement Officer was

correct. It was, therefore, not naturally taken up in appeal. The lands for which patta was applied for stood registered in the name of the

petitioner's undivided son. Subsequent to the dismissal of these applications for ryotwari patta there was a registered partition in the family under

which the items of land for which the petitioner had previously made applications for patta fell to the share of the petitioner himself. When the

petitioner thus obtained title in these items of lands he made another set of applications to the Assistant Settlement Officer basing his right to patta

on the allotment of the items under the partition. The Assistant Settlement Officer, however, held that the previous order disallowing the petitioner's

claim on the ground of lack of title barred the present application on the principle of res judicata and therefore, dismissed the application. From

these orders the petitioner preferred appeals to the Tribunal whose numbers I have quoted earlier and the Tribunal confirmed the dismissal on the

same reasoning, namely, that the present applications were barred by res judicata.

2. It is clear that the Tribunal fell into an error in rejecting the applications on the grounds stated by them. For the principle of res judicata to apply

there must be an identity of issue to be tried and the issue must have been decided on the merits in the previous proceedings. The previous

applications had been dismissed on the ground of want of title. The title now put forward could not be in issue at the stage of the first application

and therefore there is no identity of the issues arising for decision. No doubt the previous order had become final but it became final on the

question that on that date the petitioner had no title to apply for ryotwari patta. If by reason of a subsequent act namely, the partition in the family

he obtains title there could be no question of res judicata which would prevent the assertion of the newly acquired title. The petitioner did not

possess title which he now alleges and on the basis of which he now seeks relief. In a case so simple and elementary as this it appears to me that it

is needless to cite authority but nothing is better settled in law as to res judicata as that there can be no res judicata regarding a cause of action that

has arisen subsequent to the previous suit. Where a previous suit was dismissed because it did not disclose any cause of action and later another

suit was filed after the plaintiff had a cause of action and a plea of res judicata was raised, a learned Judge of the Allahabad High Court observed

in Mt. Wahidan Vs. Mt. Aliman, :

Under Section 11 of the CPC the bar arises only where the issue has been directly and substantially raised in a former suit. When there was no

cause of action no matter of the plaint can be said to be directly and substantially in issue in the former suit.

3. It is clear that the orders of the Tribunal cannot stand and are, therefore, set aside, the rules being made absolute. The Tribunal will restore the

appeals to their file and proceed with them in accordance with law, if necessary, by remanding the proceedings to the Assistant Settlement Officer

for proceeding with the applications u/s 15 of the Abolition Act. There will be no order as to costs.