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**(1974) 08 MAD CK 0040**  
**In the Madras High Court**

Raja Ambalam and Others

APPELLANT

Vs

M.K.PL. Adaikkappan

RESPONDENT

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**Date of Decision :** 30-08-1974

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115, 3

**Citation :** (1975) 88 LW 177 : (1975) 1 MLJ 276

**Hon'ble Judges :** T. Ramaprasada Rao, J

**Bench :** Single Bench

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**Judgement**

P.R. Gokulakrishnan, J.—The petitioners secured a ryotwari patta over the land in dispute. But, during the interregnum between the date of the vesting and the date when the petitioner obtained such a ryotwari patta, the predecessor in title sold the property to the petitioners and the petitioners claimed, as lawful transferees of such land, to be entitled to all the rights as stated in the second proviso to Section 42 of the Madras Act XXX of 1963. On this basis, they came to Court and sought for recovery of melwaram due to them on the ground that the respondent is their tenant and that he is liable to pay the above waram payable by him which he was paying to the quondam inamdar. This was resisted on the ground that after the passing of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act of 1963 and in particular Section 3 thereof, all such lands in the minor inam got transferred to the Government and vested in them free of all encumbrances, and that therefore, the petitioners did not have any right or title to claim the waram from the respondent. Reference was also made to Section 38 (3) of the Act, which prohibited transfers of lands after the appointed date by the inamdar. The trial Court decreed the suit. But the appellate Court reversed it mainly on the ground that Section 38 (3) envisages a bar to transactions, like sale, mortgage, lease etc., and that the petitioners having obtained the property by a sale thereof, after the appointed date and before the date on which the "deposit" as is legally known under the Act was made, it held that the sale itself is void and therefore the petitioners had no right to institute the action claiming arrears of rent. On this ground, the appeal was

allowed. But, as the subject-matter of the suit is below Rs. 500 the matter comes up before me u/s 115 of the CPC in revision. Learned Counsel for the petitioners contends, and in my view, rightly that the petitioners are lawful transferees of the property in question and it was this which prompted the Government not to dispossess them from the lands in question, as contemplated under the proviso to Section 3 of the Act. He would also refer to the admitted supervening fact that the petitioners had secured a ryotwari patta over the land in question and that feature can be taken into consideration by this Court though it was not a matter contemporaneous on record at the time when the lower appellate Court disposed of the appeal. But, on the other hand, reliance is placed by the learned Counsel for the respondent on Sub-clause (3) of Section 38 wherein there is an absolute prohibition in the matter of sale, mortgage, lease etc. of properties in a minor inam on and after the appointed date and before the date on which the earliest deposit as provided in the Act is made. There is no doubt, considerable force in the argument of the learned Counsel for the respondent. But, it would be inequitable to read Section 38 (3) without conjunctively reading it along with the other provisions of the Act. Section 3 which is the vesting section imposes, as it were, an embargo on the Government from dispossessing any person of any land in the minor inam in respect of which they consider that he is prima facie entitled to a ryotwari patta, pending decision of the appropriate authority under the Act as to whether such person is entitled to such patta. It is common ground, in the instant case, that such proceedings were undertaken by the petitioners as transferees of the lands. Presumably, this was the reason why they were not dispossessed by the Government, even though the transfer was hit by Section 38 (3) . In the light of the second proviso to Section 42 of the Act, which says that any lawful transferee of the title to such land shall be entitled to all the rights under this Act " and further, in view of the special provisions made in the proviso to Section 3, I am of the view that the impact of Sub-clause (3) of Section 38 of the Act would sink into insignificance in the peculiar facts and circumstances of this case. No doubt, as I said, the argument of the learned Counsel has considerable force as transactions like sale, mortgage or lease of a property during the prohibited interregnum have to be held to be void and inoperative but when a ryotwari patta is obtained by such a transferee based on such an irregular transfer which the appropriate authorities ought to have noticed under the Act, those supervening rights secured by the petitioners as transferees cannot be lightly brushed aside. It would be highly unjust to ignore the effect of that legal right obtained by the petitioners under the provisions of the very enactment which prohibited a sale or a dealing of the property during a particular period as mentioned in Section 38 (3). I do not think that the harmonious interpretation of the provisions of the enactment prevents me from placing only reliance on Sub-clause (3) of Section 38 ignoring the effect of the proviso not Section 3. Practical aspects of a litigation also would enter into the computation while ascertaining the content of a right claimed by a person under the provisions of the Act. I am of the view that by the issuance of the ryotwari patta to the petitioners, the lawful nature of their possession has been recognised by

the Government and as that was issued in a proceeding in which the respondent was also a party, he is estopped from contesting the quantum and content of such a right secured by the petitioners in the above proceedings resulting in the issue of a ryotwari patta in their name. Though ryotwari patta is not evidence of title by itself, yet it is evidence of possession and this has been held very early in our Courts. Therefore, notwithstanding the legal impact or bar of Section 38 (3), I am of the view that the supervening circumstances in this case compel me to accept the plaintiff's case that as ryotwari pattadars they are entitled to file a suit for recovery of arrears from the person in occupation of their lands. It is this, which was asked for by the petitioners when they instituted the small cause suit. The trial Court rightly decreed the suit. The appellant Court did not consider this aspect in the light of the correct provisions of the Act. The order of the appellate Court, is, therefore, set aside as being one without jurisdiction and the civil revision petition is allowed. There will be no order as to costs.