

(1923) 11 MAD CK 0026
In the Madras High Court

Ramaswami Reddi

APPELLANT

Vs

Talaivasal Marudai Reddi and Others

RESPONDENT

Date of Decision : 29-11-1923

Acts Referred:

Citation : AIR 1924 Mad 469 : (1924) 19 LW 377 : (1924) 46 MLJ 198

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—This is an appeal against an order of remand by the Subordinate Judge of Trichinopoly in a suit brought by the plaintiff for

ejection of the defendants from the plaintiff's properties. The defendants pleaded inter alia that they had a right of occupancy in the land and that they

could not be ejected. This plea, it was urged by the plaintiff, was res judicata between the parties and could not in consequence be raised by the

defendants. The Munsif gave effect to the plea and took no evidence on the question of occupancy right. The Subordinate Judge has reversed his

judgment and has held that the plea of res judicata is not well founded, and, having also held on another preliminary issue on the question of

limitation that that issue should be found upon only after evidence was taken in the case, has remitted the suit to be tried by the Munsif after taking

such evidence.

2. The main question argued before us is the question of res judicata and that question arises in this way. The plaintiff, as the transferee from the

purchaser of the land in a revenue auction sale brought a suit, O.S. No. 883 of 1902, for the purpose of ejecting the present defendants 1 to 3 and

of recovering possession of the property on the strength of his title thereby

obtained. In that suit these defendants had pleaded that they had a right of occupancy and therefore they were not liable to be ejected, but they raised another plea in the alternative, namely that, in the event of their not establishing their right of permanent occupancy, they were at least tenants and were entitled to notice to quit before they were ejected and that therefore the plaintiff's suit should fail. The other pleas raised in that suit need not be referred to at present. When the suit came on for trial the District Munsif held against the defendants and in favour of the plaintiff that the defendants had failed to establish a right of permanent occupancy. He held however at the same time that they had a right of a yearly tenancy in the plaint property and that as no notice to quit was given by the plaintiff, the plaintiff should fail and he therefore dismissed the suit. The defendants, having succeeded in the suit before the District Munsif, naturally filed no appeal, but the plaintiff filed an appeal to the District Court. The District Court did not actually go into the question of the permanent occupancy, for it held that even if a permanent occupancy right was not established, the defendants should be held to be yearly tenants and that such a tenancy was not an encumbrance which could be wiped off by a revenue auction sale and therefore the plaintiff could not succeed without giving a proper notice to quit, and, as he had not given such notice, it dismissed the appeal. There was a second appeal by the plaintiff to this Court and this Court accepting the District Judge's finding considered that, on the finding that there was at least an yearly tenancy in the matter and no notice to quit was given, Act II of 1864 did not destroy that right, and dismissed the second appeal. Now it is the finding of the District Munsif in that suit that the defendants had no right of permanent occupancy that is pleaded as res judicata in the present suit.

3. There are two authorities, which have been referred to by the Munsif and by the learned vakil for the appellant which support the contention that when a Court comes to a definite conclusion on an issue and gives a finding on that issue that issue would be res judicata even if the decree in the case is not based on that issue. The cases relied on are Muthu Pillai v. Veda Viyasa Chariar (1920) 12 LW 277 and Ramakrishna Naidu v. Krishna-swami Naidu (1918) 36 MLJ 641. There is a case however which has been referred to by the Subordinate Judge which is in conflict with

this case; see *Laxmipathaya Vs. Ramachendra*, , where a question very similar to this was decided in favour of the parties pleading that there was

no *res judicata*. We need not however, consider these cases for we think that the matter has been settled by the Privy Council in the decision

quoted by the Subordinate judge, *Midnapur Zamindari Company v. Naresh Narayan Roy* (1921) ILR 48 C 460. (PC). In that case the defendant

had pleaded a right of permanent occupancy and he also pleaded that, as he had a right of renewal, the suit was premature. The first Court had

found that he had no right of occupancy but held that the suit was premature and dismissed the suit against him. The plaintiff had filed an appeal but

the defendant had also filed a cross appeal contesting the finding on the question of the permanent occupancy right, and the High Court dismissed

the plaintiff's appeal holding that the suit was premature, and further gave a finding also on the question of the permanent occupancy right set up by

the defendant in his cross appeal that no such right was proved. In spite of a cross appeal having been filed, the Privy Council held in the

subsequent suit where it was pleaded that the question of the right of occupancy was *res judicata* between the same parties that it was not so. Their

Lordships say at page 467 of the report "" Their Lordships do not consider that this will found on actual plea of *res judicata* for the defendant

having succeeded on the other plea, had no occasion to go further as to the finding against them. "" That case exactly covers the present case. Here

there was no necessity really to find on the question of permanent occupancy set up by the defendant, for even if the Court had assumed that he

had no such occupancy right the result would have been the same; a tenancy from year to year would result and that would require a notice to quit

to put an end to it.

4. In view of this ruling of the Privy Council we need not resolve the conflict between the different cases cited in Madras. We think that we are

bound to follow the Privy Council ruling, and following that ruling we hold that that the Subordinate Judge is right in deciding that the plea of *res*

judicata is not well founded in this case.

5. As regards the question of limitation we think the Subordinate judge is right in saying that question must be decided after taking evidence and

should not be decided without any evidence at all.

6. In the result the C. M. A. fails and it is dismissed with costs.