

(1959) 03 MAD CK 0006
In the Madras High Court

S. Rengaraja Iyengar and Another

APPELLANT

Vs

Achikannu Ammal and Another

RESPONDENT

Date of Decision : 03-03-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 103

Citation : (1959) 72 LW 767 : (1940) 72 LW 767 : (1959) 2 MLJ 513

Hon'ble Judges : Subrahmanyam, J

Bench : Single Bench

Judgement

Subrahmanyam, J.—The plaintiffs appeal from the judgment of the learned Additional Subordinate Judge, Devakottai, in A.S. No. 1 of

1956 on his file by which he allowed the appeal preferred by the defendants against the judgment and decree of the District Munsif of Devakottai,

in O.S. No. 134 of 1954. The suit was for a declaration that the plaintiffs were the owners of the site described in the plaint schedule and for a

decree setting aside the order passed by the District Munsif in E.A. No. 92 of 1954, on his file and directing possession of the property to be

delivered to the plaintiffs.

2. The suit property is the northern portion of the property purchased by the plaintiffs under Exhibit A-6 on 14th November, 1951, from one

Alagappa Chettiar and three others. A part of this northern portion had been leased by one of the vendors in favour of one Muthayya under Exhibit

A-4 on 1st October, 1945. The lease was to enable Muthayya to construct and conduct a tea-shop in the site. He accordingly constructed a tea-

shop and was conducting it for some years. The southern portion of the property purchased by the plaintiffs under Exhibit A-6 had been leased to

them by Chidambaram Chettiar, father of Alagappa Chettiar, one of the persons who later executed the sale-deed, Exhibit A-6. The site east of

the site leased to Muthayya and the plaintiffs was leased to the second defendant by Chidambaram Chettiar under Exhibit A-5 on 25th September,

1949. After Chidambaram Chettiar's death, his sons conveyed to the plaintiffs the site which had been leased to Muthayya under Exhibit A-4 and

the site which had been leased to the plaintiffs themselves east of the site purchased by the plaintiffs under Exhibit A-6 was the site which had been

leased to the second defendant under Exhibit A-5. That is the finding of the Courts below, which I accept.

3. Muthayya purported to sell to his wife under Exhibit A-7 the site which had been leased to him by Alagappa. She purported to sell the site to

one Vaidyalingam Pillai under Exhibit A-31 on 17th November, 1951. Against Muthayya, his wife (Sathi) and Vaidyalingam Pillai, the plaintiffs

instituted O.S. No. 94 of 1952 on the file of the District Munsif for possession of the property which had been leased to Muthayya and which had

been subsequently sold to the plaintiffs. They obtained a decree for possession, in that suit. The decree was eventually confirmed in Second

Appeal No. 663 of 1954. In execution of the decree, delivery of the property to the plaintiffs was ordered. The defendants in this suit, viz., the

parents of Vaidyalingam Pillai, obstructed delivery to the plaintiffs. Vaidyalingam Pillai's father is the second defendant who had obtained a lease of

the site east of the site which had been purchased by the plaintiffs under Exhibit A-6. To remove the obstruction, the plaintiffs filed E.A. No. 92 of

1954 in E.P. No. 62 of 1954 in O.S. No. 94 of 1952 on the file of the District Munsif, Devakottai. That application was dismissed. Hence the

plaintiffs instituted, under Order 21, Rule 103, Civil Procedure Code, the suit which has given rise to this Second Appeal praying for a decree

declaring their title, setting aside the order passed in E.A. No. 92 of 1954 and directing delivery of possession to the plaintiffs. The suit was

decreed by the learned District Munsif on 11th November, 1955. The decree was set aside in appeal by the learned Subordinate Judge on 3rd

September, 1956. He dismissed the plaintiffs' suit with costs.

4. The learned Subordinate Judge dismissed the plaintiffs' suit on the ground that the plaintiffs' vendors did not have title to convey the property on

the date of Exhibit A-6, viz., 14th November, 1951. He found that the plaintiffs and their predecessors in-title had title on the date on which they granted leases in favour of Muthayya and the plaintiffs in 1948 and 1949. The Subordinate Judge held, however, that because the village in which the land was situate was taken over by the Government under the Madras Estates (Abolition and Conversion into Ryotwari) Act, (Madras Act XXVI of 1948), the title of the plaintiffs' vendors became extinguished and that the plaintiffs acquired no title under the sale-deed.

5. The suit to which this appeal relates is situate in the shrotriem village of Kurunthampallam. The village was an "estate". The Government notified the estate under Madras Act XXVI of 1948 on 1st October, 1951. The learned Subordinate Judge holds that, by reason of that notification, the plaintiffs' vendors lost title to the site. The point for determination in this appeal is whether that finding is correct.

6. The Subordinate Judge appears to think that the plaintiffs' vendors were the landholders of the estate. He uses the word "proprietor" throughout his judgment in relation to the vendors. There is no evidence which shows that they were the landholders in relation to the estate. In the sale-deed which they executed in favour of the plaintiffs and in the lease-deed, Exhibit A-5 the vendors or the lessors describe themselves as the owners of both the warams in the land. That expression does not necessarily lead to the inference that they were the proprietors or the landholders of the estate in relation to land in an estate, the claim by a person that he owns both the warams in some particular lands situate in the estate need signify no more than that, in relation to the lands, he is under no liability to pay any rent, cist or melwaram to the proprietor or the landholder or any other person. The expression iruwaramdar does not necessarily lead to the inference that such person is the owner, proprietor or landholder of the village in which the land is situate. The finding, in so far as the learned Subordinate Judge's judgment can be said to contain such a finding, that the vendors of the plaintiffs were the landholders or proprietors, is not a finding supported by any evidence and is hereby set aside. We should for the purpose of the appeal proceed on the basis that the plaintiffs' vendors were the owners of the land which they sold and that in respect of that land no cist or melwaram or rent was payable to the landholder.

7. As to the character of the land, the only evidence that is available is the evidence furnished by the description of the property in the sale-deed,

Exhibit A-6, and the lease-deeds or rent-deeds, Exhibits A-4 and A-5. These documents show that the site which the plaintiffs purchased under

Exhibit A-6 had been leased in two parcels ; the northern parcel in favour of Muthayya Ambalam in order that he might construct and conduct a

tea-shop in that part of the land, and the southern parcel in favour of the plaintiffs in order that they might construct and conduct a rice mill. The

documents show also that the property leased to the second defendant, east of the site which was subsequently purchased by the plaintiffs was

leased in 1949 to enable him to construct a building for use as a school. There is no evidence that any part of these lands was at any time under

cultivation or was in use otherwise than as house-site. There is no evidence that any rent or cist or melwaram was paid for any part of these lands

at any time. Therefore, on the evidence, the finding to be recorded in relation to the lands purchased by the plaintiffs and leased to the second

defendant is that they are house-sites in the village of Kurunthampallam village.

8. Section 3(b) of Madras Act XXVI of 1948 enacts:

With effect on and from the notified date and save as otherwise expressly provided in this Act the entire estate (including all communal lands and

porambokes) other non-ryoti lands...shall stand transferred to the Government and vest in them, free of all encumbrances ; and the Madras

Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865, and all other enactments applicable to ryotwari areas shall apply to the

estate.

The Madras Land Encroachment Act, 1905 (Madras Act III of 1905) is one of the enactments which are applicable to ryotwari areas and which

become applicable to an estate when it is notified u/s 3.

9. The learned Subordinate Judge held that u/s 3(b) the land to which this appeal relates became transferred to the Government and that the title of

the plaintiffs' vendors got extinguished. I do not consider that the view can be supported. A house-site owned by a person in what is generally

known as gramanatham is not, under Madras Act III of 1905, property of the Government. Section 2 of Madras Act III 1905 says, in regard to

lands which are not covered by Clauses (a) to (e) of Sub-section (1) of Section 2,

that those lands are and are hereby declared to be the property of the Government, save in so far as they are temple-site or owned as house-site or backyard. In order that a land may properly be described as house-site within the meaning of that expression in Section 2 of Madras Act III of 1905, it is not necessary that there should be a residential building actually constructed and standing on that site. A person may in a village habitation own a house in a street and a site on the outskirts of the habitation but within the limits of the gramanatham, which he uses for the purpose of storing his hay and manure, if he is an agriculturist, or as a smithy, if he is a smith, or as a brick-kiln if he is a brick-maker or as a place for weaving if he is a weaver. On such sites, buildings or sheds may when necessary be constructed. But whether such buildings or sheds are constructed or not, such sites are, in my opinion, house-sites within the meaning of that expression in Section 2 of the Madras Act III of 1905. Madras Act III of 1905 is made applicable to an estate when it is notified under Madras Act XXVI of 1948. The provision as to vesting u/s 3(b) of Madras Act XXVI of 1948 should be read so as to be in consonance with the provisions regarding the applicability of the enactments relating to ryotwari areas which are expressly made applicable to estates notified under the Act.

10. It is contended, that, in relation to buildings, specific provision is made u/s 18 of Act XXVI of 1948 and that, consequently, unless a house-site can be brought within the ambit of Section 18, such house-site should be held to be property as to which title gets transferred to the Government u/s 3(b). Section 18 deals, in my opinion, with buildings wherever they may be situate, whether in the gramanathams, or in ryoti lands or pannai lands or waste lands. Section 18 has no particular application to buildings or house-sites in a gramanatham. A building in a gramanatham (or village habitation) is protected from transfer of title to the Government both u/s 18(1) of Madras Act XXVI of 1948 and under the Madras Land Encroachment Act (III of 1905). The title to a house site in a gramanatham is protected from transfer to Government by the operation of Madras Act III of 1905.

11. It is not necessary that, in order that the policy underlying Madras Act XXVI of 1948 be completely given effect to, house-sites belonging to

private individuals (that is, persons other than the landholder) in a gramamatham, should be transferred to the Government. It is not part of the policy of the Act to transfer to the Government land in which the proprietor had no interest at any time. Further, transfer of title of such house-sites to the Government would be virtually without payment of compensation because there would be no means of determining the part of the total compensation payable for the estate as a whole, which should be regarded as compensation paid for a few cents of house-site in a hamlet of the village. Therefore, if there is any ambiguity in the Act in relation to transfer of title as to a house site, such ambiguity should be resolved in favour of the owner, because no legislation should be held to be expropriatory in character if such an inference could possibly be avoided.

12. I hold that Section 3(b) of Madras Act XXVI of 1948 does not have the effect of transferring to the Government title to a house-site within a gramamatham belonging to a person other than the landholder when the estate in which the house-site is situate is taken over under a notification issued under the Act.

13. The title of the plaintiffs' vendors was not extinguished by the notification. The plaintiffs acquired title to the site under the sale-deed Exhibit A-

6. The learned Subordinate Judge's finding on the question of title is hereby set aside. In the place of the judgment and decree of the learned

Subordinate Judge, there will be a decree restoring the learned District Munsif's decree with costs in all Courts.

14. Leave to appeal granted.