
(1960) 08 MAD CK 0023

In the Madras High Court

Case No : Second Appeal No. 702 of 1957

Seethalakshmi Ammal

APPELLANT

Vs

G. Krishnaswami Rao and Others

RESPONDENT

Date of Decision : 25-08-1960

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 12

Citation : (1961) ILR (Mad) 265

Hon'ble Judges : P.V. Rajamannar, C.J.; Veeraswami, J

Bench : Division Bench

Advocate : R. Rangachari, for the Appellant; V. Vedantachari and T. Rangaswami Ayyangar, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Rajamannar, C.J.—The only question which arises in this appeal relates to the effect of the Madras Estates (Abolition and Conversion into Ryotwari) Act on a charge created on an estate for unpaid purchase price under a sale deed relating to the estate. The sale was for a sum of Rs. 14,000 out of which a sum of Rs. 10,400 remained to be paid. On 4th November 1917, a deed of charge or hypothecation was executed by the purchasers in favour of the vendors over lands comprised in Schedules 1 and 2. The estate was notified under the Abolition Act and subsequently the landholder-purchaser obtained ryotwari pattas u/s 12 of the Act for the suit lands which fell within the category of private or home farm lands of the landholder. In the suit out of which this appeal arises the representative of the vendors sought to enforce the charge inter alia against these lands. The claim was resisted mainly on the ground that the charge had somehow disappeared with the notification under the Act even in respect of the pannai lands because they had ceased to be private lands and ryotwari pattas had been issued in respect of them. This contention found favour with the learned District Munsif but on appeal the learned Subordinate Judge repelled it and granted a decree for the Plaintiff. The above second appeal has been filed in

which this contention is once more pressed upon us. Pending the appeal an application for stay of the passing of the final decree came up before Ramaswami J. He dismissed it. Even at that stage he dealt rather elaborately with the main contention in the second appeal itself and he held that by virtue of the notification the Government had in no way put an end to, modified or altered the mutual rights between parties in regard to pannai lands over which the charge had been created. He held that the patta lands should be deemed to be substituted security for the pannai lands. The second appeal came up for final disposal before the same learned Judge-but he considered that the appeal should be disposed of by a Division Bench as it raised a question of importance.

2. We do not find any difficulty in deciding the case. Admittedly there was a charge on the pannai or private lands of the landholder for the unpaid purchase price. The argument of Mr. Rangachari, the learned Counsel for the Appellant, is that the Abolition Act is a piece of exproprietary legislation and the effect of the notification is to completely destroy the rights inter se between the charge-holder and the persons who created the charge. This of course is not quite right because there is a provision entitling a mortgagee of an estate to obtain relief by the payment of the amount due to him from and out of the compensation deposited by Government. This is an indication that it was not the intention of the Act to completely abrogate the rights of mortgagees or charge-holders. Indeed Mr. Rangachari concedes that the charge holder in this case will be entitled to obtain relief so far as the amount of compensation is concerned. But his argument, if we understood him right, is that the pannai lands as such have ceased to exist, and though in respect of the same lands ryotwari pattas have been issued to the landholder, they cannot be deemed to be subject to the charge created in this case. We cannot accept this contention. u/s 12 of the Act in the case of a zamindari estate, the landholder shall be entitled to a ryotwari patta in respect, among other lands, of what can be established to be private lands within the meaning of Section 3, Clause (10)(a) of the Estates Land Act. If in this case ryotwari patta has been issued, it is only because they have been established to be private lands. If instead of issuing ryotwari patta the Government had taken the interest in these private lands and awarded compensation for them, surely it cannot be contended that the charge-holder will not be entitled to have the amount of compensation. If that be so, we fail to see why the charge holder should be deprived of his security over the same lands which though they have ceased to be private lands continue to be the property of the landholder. Only before the notification these lands were subject to the payment of peshkush along with other lands in the estate, but after issue of pattas, they would be subject to the ryotwari assessment. This Court took this view in any early case; vide: Civil Miscellaneous Petition Nos. 8017 of 1950, etc., and 1032 of 1951. We pointed out that the ownership of private lands must be deemed to continue with the zamindar and there has only been a change of the nature of the burden on such lands. It follows that the charge would continue to subsist in respect of the private lands for which u/s 12 a ryotwari patta has been

issued o the landholder. The second appeal is, therefore, dismissed with costs.