

(1954) 01 MAD CK 0027

In the Madras High Court

Case No : Civil Revision Petition No. 1008 of 1952

Sri Akshayalingam Temple

APPELLANT

Vs

A.P. Nagarathnam Iyer

RESPONDENT

Date of Decision : 05-01-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Madras Estates Land Act, 1908 — Section 125, 127, 163, 3(15), 3(5)

Citation : (1955) ILR (Mad) 176

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : K.S. Naidu, for the Appellant; T.S. Kuppuswami Ayyar, for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, J.—This is a Civil Revision Petition filed against the order of the learned District Judge of Nagapattinam in Civil Miscellaneous Appeal No. 6 of 1951, confirming the order of the learned District Munsif of Nagapattinam in Original Suit No. 209 of 1949.

2. The facts are: The Plaintiff, Sri Akshayalingaswami Temple at Kivalur, is the owner of the suit lands. These suit lands were leased out in public auction in fasli 1356 for three years. The Defendant, Nagarathnam Iyer, became the highest bidder for 161 kalams. The Plaintiff thereupon put the Defendant in possession of the suit lands. The Defendant cultivated the lands for faslis 1356 and 1357 and measured only 92 kalams and failed to measure the balance of 69 kalams in the first fasli and did not measure any paddy at all in fasli 1357. The lease was terminated. The Defendant relinquished possession and gave up the currency of the one year of lease remaining still unexpired. A new tenant took the properties on lease and he is cultivating the lands. It is in these circumstances that the Plaintiff-temple has filed the suit for arrears of rent from the Defendant in the District Munsif's Court of Nagapattinam.

3. A preliminary objection raised by the Defendant was that the civil Court had no jurisdiction to try the suit because the suit lands have been held in Original Suit No. 158 of 1948, District Munsif's Court, Nagapattinam and Appeal Suit No. 92 of 1949, District Court, East Tanjore, to come within the definition of an estate under the Madras Estates Land Act and that this Defendant had occupancy rights in the same up to March-April 1948, when he is found to have relinquished the holding and surrendered possession and the new tenant had been inducted therein and has been holding the same ever since.

4. Both the Courts held that this suit is triable only by a revenue Court and directed the return of the plaint for presentation to the proper Court. Hence this Civil Revision Petition by the Plaintiff-temple.

5. The general principle is that civil Courts have jurisdiction to try all suits of a civil nature excepting the suits of which the cognizance is either expressly or impliedly barred. Their Lordships of the Privy Council have clearly laid down that Section 9, Code of Civil Procedure, lays down the general rule in favour of the jurisdiction of the civil Courts and the burden of proof is on the party who maintains an exception to the general rule: *Ramayya v. Lakshminarayana* (1934) ILR 57 Mad. 443 (P.C.). This High Court has held similarly in *Srimath Kidambi Jagannathacharyulu Ayyavarlu Vs. Pidipiti Kutumbarayadu and Another*, .

6. I have just mentioned that the jurisdiction of civil Courts can be expressly barred and the suits and applications which are triable only by the Collector and not by the civil Court are specified in parts A and B of the schedule to the Madras Estates Land Act. So, unless we find that the jurisdiction is expressly conferred on the revenue Court exclusively, the jurisdiction of the civil Court cannot be said to have been taken away. Except to the extent to which it is expressly or by necessary implication taken away, the jurisdiction of the civil Courts in all other matters remains unimpaired: *Rajah of Ramnad v. Venkataramier* ILR (1922) Mad. 890 (F.B.).

7. The burden of proving that the jurisdiction of the civil Court is ousted and that a particular proceeding is not cognizable by the civil Court lies on the person who urges want of jurisdiction as just now pointed out, and therefore in order to invoke the jurisdiction of the revenue Court, the fact to be proved in each case is that the proceeding is of the nature specified in the schedule to the Act. Put in this form, the test seems to be a simple one. But in practice, it is sometimes difficult to say whether a particular proceeding is or is not of that nature. The general tests for determining the jurisdiction are: (i) the parties between whom the litigation takes place and (ii) the matter which is the subject of the litigation. If the relationship between the parties is not one of landholder and ryot, any proceeding between them cannot be cognizable by the revenue Court. Coming to the second test, viz., the matter which is the subject of the litigation, it has to be seen with reference to the scope of the suit and the reliefs claimed therein whether it is of the nature specified in the schedule.

8. In regard to the first test, the difficulty arises when the parties to the litigation, viz., the landholder and the ryot, cease to bear that character by the time the suit comes to be filed.

9. This High Court has had to deal with cases where the landholder ceased to be a landholder by the time (sic) filed the suit for arrears of rent. It is now settled law of this Court that even a lessor whose lease had expired is a landholder for the purpose of recovering arrears of rent due to him. In a case under the Bengal Tenancy Act, the Privy Council held that the existence of the relationship of landlord and tenant is essential at (sic) time when the remedy provided by the law is sought (sic) be enforced: *Forbes v. Maharaj Bahadur Singh* ILR (1914) Cal. 926 (P.C.). This decision however proceeded on the definition of (sic) landlord" under the Bengal Tenancy Act and the provisions of that Act. In *Sundaram Ayyar v. Kulathu Ayyar* ILR (1915) Mad. 1018, *Spencer and Seshagiri Aiyar, JJ.* were of opinion that an ex-lessor cannot bring the holding of a ryot to sale for an arrear due in respect of a year which fell within the period of the lease. *Spencer, J.* held that an ex-lessor is not a landholder u/s 3(5). *Seshagiri Aiyar, J.*, while holding that an ex-lessor to whom arrears are due is a landholder, held that the law does not give him a first charge on the holding and that he cannot bring the holding to sale for the arrears due. In *Venkata Lakshamma v. Seetayya* ILR (1920) Mad. 786, *Sadasiva Aiyar and Spencer, JJ.* held that a proprietor whose right as proprietor was sold in court-auction was not entitled to bring to sale the holding of a ryot for arrears due to him and that such a remedy could be enforced only if the relationship of landlord and tenant subsisted at the time when the remedy was sought to be enforced. In *Venkata Lakshamma Garu v. Achi Reddi* ILR (1921) Mad. 433 (F.B.) the point arose whether a person who was a landholder when the arrear accrued due, continued to be a landholder even after his interest in the estate was sold. *Napier, J.* thought that the decision in *Forbes v. Maharaj Bahadur Singh* ILR (1914) Cal. 926 (P.C.) applied and that he was not a landholder. *Krishanan, J.* did not agree with him and he opined that there was a marked difference between the Bengal Tenancy Act and the Estates Land Act and the decision in *Forbes v. Maharaj Bahadur Singh* ILR (1914) Cal. 926 (P.C.) was comprehensive enough to include an ex-landholder as a person entitled to collect rents of an estate. The matter was ultimately referred to the Full Bench in *Venkata Lakshamma Garu v. Achi Reddi* ILR (1921) Mad. 433 (F.B.) consisting of *Wallis, C.J., Oldfield and Sadasiva Aiyar, JJ.* The Full Bench held that an ex-landholder who has arrears to collect is a landholder and that the decision in *Forbes v. Maharaj Bahadur Singh* ILR (1914) Cal. 926 (P.C.) was inapplicable, being a decision based on a question of some difficulty depending entirely on the terms of the Bengal Tenancy Act. *Sadasiva Aiyar, J.* stated that his own reliance on that decision in *Venkata Lakshamma v. Seetayya* ILR (1920) Mad. 786 was unsound. The Full Bench therefore held that a suit for arrears of rent was cognizable only by a revenue Court. In two later decisions in *Meenakshi Ammal v. Rangaswami Aiyar* (1929) 59 M.L.J. 752 and *Muhammad Gosukani v. Muhammad Sekka Maracayar* (1935) 70 M.L.J. 146 it was held also that a

landholder who had transferred his interest as a landholder could bring the holding to sale under Chapter VI of the Act. These decisions, it will be noticed, all proceeded on the footing of the definition of "landholder" in the Madras Estates Land Act. The term "landholder" includes every person entitled to collect the rent of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor-in-title or of any order of a competent Court or a provision of law.

10. But the definition of "ryot" precludes us from extending that term to take in an ex-ryot. According to the definition in Section 3(15) a ryot means,

a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it.

The definition, as originally framed, contained the word "occupies". The Select Committee substituted the word "holds" for "occupies". The object of the change was this. The Select Committee wanted to use a word which applies to cases of actual possession as well as possession through another. The word "occupies" indicates actual possession, as will be seen from a reading of Sections 45 and 163, but it seems to include also cases of possession through another as will be seen from the use of the word in Section 4. Therefore, the Select Committee wanted to avoid the use of a word of doubtful signification and substituted the word "holds" which indicates both kinds of possession. In other words, the word "holds" precludes this term taking in ex-ryots. Therefore, it stands to common sense that on the date of the filing of this suit there was no relationship of landholder and ryot between the Plaintiff-temple and the Defendant Nagarathnam Iyer. In other words, the first requisite for excluding the jurisdiction of the civil Court is not present.

11. Point 2.--Coming to the second test, the scope of the suit and the reliefs that could be asked for are different in a suit u/s 77 of the Act and one filed for a money decree for arrears of rent in a civil Court. The relief that can be granted by the civil Court, viz., a money decree, can be granted by the revenue Court but the remedies that can be granted by the revenue Court and those that can be obtained under the Estates Land Act as against a ryot cannot be granted by the civil Court. Therefore, the landholder in the case of an ex-ryot, has got to choose his forum with regard to the scope of the suit and the reliefs that can be asked for by him and when those reliefs are such as can be obtained in a civil Court and are not such as can be granted only by the revenue Court and which would make the suit exclusively triable by the revenue Court, there is no bar to the trial of the suit by the civil Court and condition (ii) would not have been complied with. In other words, if the suit is by a landholder or an ex-landholder against an occupancy ryot for arrears of rent it must be filed only in the revenue Court. If the suit is for arrears of rent against an ex-ryot but for reliefs which can be exclusively granted only by the revenue Court it must be filed in the revenue Court. If the suit is for rent against an ex-ryot and for a relief which can be granted by the civil Court, the suit not being exclusively triable by the revenue

Court, it may be instituted in the civil Court.

12. In *The Official Receiver and Another Vs. Sakkuwar Bai Ammal, Panchapakesa Ayyar, J.* held as follows:

a landholder who had obtained a decree against a tenant, under the Madras Estates Land Act, but has afterwards ceased to be his landholder, and the relationship between the landholder and tenant has ceased to exist, cannot execute the decree in a Revenue Court and realise his arrears in a revenue sale (which will be free of all encumbrances) and should execute it in a Civil Court....

the policy of the Madras Estates Land Act is to give the landholder who is the present landholder in respect of the holding and ryot preference regarding the recovery of his rent free from all encumbrances and charges for arrears.

13. The amendments of Sections 125 and 127 of the Madras Estates Land Act have not affected the position. *Sundaram Ayyar v. Kulathu Ayyar* ILR (1915) Mad. 1018, *Venkata Lakshamma v. Seetayya* ILR (1920) Mad. 786, *Vyraperumal v. Alagappa* ILR (1931) Mad. 468 and *Suryanarayana v. Ramachendrudu* (1932) 37 L.W. 655 were relied on. The observations of Sadasiva Ayyar, J., in *Venkata Lakshamma Garu v. Achi Reddi* ILR (1921) Mad. 433 (F.B.) were treated as obiter and were not followed.

14. Therefore, in these circumstances, as there is neither the relationship of landholder and ryot, and the scope of the suit and the reliefs asked for are not such as to make the suit fall exclusively under Part A of the schedule to the Act, the jurisdiction of the civil Court cannot be deemed to have been ousted.

15. The order of the lower Court is set aside and the learned District Munsif is directed to restore the suit to his file and dispose of it according to law on the merits. This Civil Revision Petition is allowed with costs throughout.