
(1964) 03 MAD CK 0044

In the Madras High Court

Case No : Civil Revision Petition No. 1282 of 1963

Sri Navaneetheswaraswamy Devasthanam

APPELLANT

Vs

V. Kunja and Others

RESPONDENT

Date of Decision : 13-03-1964

Acts Referred:

Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961
— Section 15(2), 16(2), 19, 2(5), 5(2)

Citation : (1965) ILR (Mad) 270

Hon'ble Judges : S. Ramachandra Ayyar, C.J

Bench : Single Bench

Advocate : V. Vedanthachari, T.M. Chinniah Pillai and T.S. Palanisivagurunathan, for the Appellant; K.S. Naidu, R. Vijayan, T.R. Srinivasan and T. Ramalingam, for the Respondent

Final Decision : Allowed

Judgement

S. Ramachandra Ayyar, C.J.—This Civil Revision Petition arises out of an order passed by the Subordinate Judge of Nagapattinam

dismissing a petition filed by the decree-holder to remove, certain obstruction offered by the Respondents while taking possession of the property

under the decree. The lands which form the subject-matter of this petition have been granted in inam to the Petitioner, Sri Navaneetheswaraswami

Devasthanam at Sikkil and are situate in a village called Sellur in Thanjavur district. One Ganapathi Thevar was granted a lease for a period of

three years of the lands from the year 1945-46 by the trustees for the time being. Even before the expiry of the lease the Devasthanam was obliged

to file a suit for eviction of Ganapathi Thevar the period of tenancy expired pending the suit.

2. The latter pleaded that he had acquired occupancy rights in the lands. His

contentions were overruled and a decree for possession against him was passed by the trial Court on 26th March 1957. That decree was affirmed on appeal by this Court in Appeal Suit No. 157 of 1957 by its judgment, dated 28th March 1961. Against the judgment an application for leave to appeal to the Supreme Court was filed and I am told that the appeal has since been filed and is pending in that Court. In the meantime Ganapathi Thevar wanted to continue in possession of the lands. On his application an order was passed by the Supreme Court permitting him to continue in possession on condition, that he paid a certain quantity of paddy by way of rent or mesne profits. This, he defaulted to do and the Devasthanam, by the term of that order became entitled to execute the decree of this Court. Long after the judgment of this Court and indeed after it became clear that Ganapathi Thevar can no longer continue to be in possession of the property by reason of his, having defaulted in complying with conditions imposed by the Supreme Court, he appears to have granted sub-leases to twenty-eight persons who are the Respondents to this application.

3. The decree-holder who applied for the execution of the decree obtained against Ganapathi Thevar was obstructed when he proceeded to take delivery of the properties. He, then filed an application before the lower Court for the removal of the obstruction. The Court while rejecting the plea of the obstructors that they were entitled to remain in possession of the property by virtue of the provisions of the Madras Cultivating Tenants Protection Act, upheld their claim as justified under the provisions of the Madras Public Trusts Act (Regulation of Administration of Agricultural Lands), 1961. That legislation was enacted for regulating the administration of lands held by public trusts. It provides inter alia certain protection to cultivating tenants of lands belonging to trust. Section 5(2) states: Nothing in this section shall be deemed to authorise any public trust to evict any person holding land as cultivating tenant under such public trust on the date of commencement of this Act except in accordance with the provisions of Sections 7, 16(2) and 19.

4. From the foregoing it will be seen that the only person who will be entitled to the protection of this provision will be a cultivating tenant. He has been defined in Section 2(5)

as including a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land.

5. The claim of the Respondents to this petition is that in as much as they have been let into possession by the former tenant of the Devasthanam

they could be cultivating tenants within the meaning of the Act and as such could not be evicted under the decree of the Court obtained against the

chief tenant except under the terms and conditions laid down in Sections 7, 15(2) and 19 of the Act.

6. The learned Subordinate Judge, as I said, accepted this contention. I am, however, unable to agree. There is no definition of the term sub-tenant

in the enactment itself. The word sub-tenant as used in Section 2(5) can, therefore, be taken as meaning that person who under the law can be

called a sub-tenant that is to say, a person in whose favour a lease has been granted by another who is himself a tenant of the lessor. In Woodfall

on Landlord and Tenant, volume I (twenty-sixth edition) the characteristics of a sub-lease have been set out at page 870 thus:

A sub-lease is a demise by a lessee (or his assignee) for a less term than he himself has. Every lessee, however, short his term may be and even a

tenant from year to year may make a sub-lease unless and except where, which frequently happens, he is restrained by the contract of tenancy from

sub-letting or restricted in his power of sub-letting by a requirement either absolute or qualified, that the consent of the landlord must be first

obtained. Even then, the sublease is effective to vest an estate but defeasible by exercise of the lessor's right of re-entry.

6. The difference between the English law and the law in this country is that a sub-tenancy need not necessarily be for a lesser term than the original

tenancy. Wherever a sub-lease is permitted, it will be competent for a tenant in this country to sub-lease for the entire duration of the lease in his

favour. The capacity or right to grant a sub-lease itself implies that there should be a right in the person granting the sub-lease as a lessee for no one

can grant a right over a lease in his favour unless he is himself a lessee. It is obvious that where he is not a lessee but a mere trespasser it would not

be competent for him to create any sub-lease.

7. In the present case the tenancy in favour of Ganapathi Thevar had run out by efflux of time The landlord has also sued him for recovery of

possession of the lands. His remaining in possession after the date of the expiry of the lease which was against the will of the land lord was, therefore, in the character of a trespasser. When, therefore, long after the decree for possession combined with which there was also a decree for mesne profits on the ground that he was not entitled to remain in possession he let into possession sub-tenants, he should be regarded as a mere trespasser who has transferred possession to them. Obviously the latter cannot get any right as sub-lessees for there was no lease subsisting in favour of Ganapathi Thevar over which he could create any subordinate interest by way of sub-lease. In this view the Respondents will not be entitled to the protection afforded by Section 5(2) of the Madras Public Trusts Act as they will not be cultivating tenants within the definition of the term in Section 2(5).

8. Mr. K.S. Naidu appearing for the Respondents, however, contended that as the creation of the sub-lease by Ganapathy Thevar was but an ordinary act of management of the lands, the lease should be regarded as valid and that possession of the Respondents was that of sub-tenants.

But this argument ignores the fact that the trespasser had no right even to do act of ordinary management. In support of his contention, however,

learned Counsel, relied on the decision of this Court in Subba Raju v. Seetharama Raju ILR (1914) Mad. 283 : That was a case where a

mortgagor in possession of the property granted a lease for one year after the suit on the mortgage had been filed and a decree obtained thereon. It

was held that inasmuch as the lease was one necessary for the ordinary management of the property the grant of it will not be hit by the principle of

lis pendens. That was a case where the possession of the mortgagor was lawful. Learned Counsel also relied upon the decision *Karu v. Pandia*

AIR 1924 Nag. 226 where a similar question arose which was decided to support a similar proposition. But the question in the present case is not

whether the lease granted by Ganapathi Thevar in favour of the Respondents is hit by any doctrine of *lis pendens*: what we have got to find is

whether Ganapathi Thevar had the right to create any sub-lease. As I pointed out, he had not that right because he had no right to remain in

possession of the property at all. Section 5(2) of the Madras Public Trusts Act does not give any protection to tenants who happen to be

trespassers on the property. The very definition of the term cultivating tenant would show that there should be an express or implied contract of tenancy with the landlord. In order that an actual occupier on the land like the Respondents can be a cultivating tenant two things are essential. First that there should be an express or implied contract of tenancy with the landlord and chief tenant; second the chief tenant also should have under an express or implied contract granted rights in the property by way of lease to the sub-tenant. Where there is no subsisting lease in favour of the chief tenant, it will not be competent for him to bind the head lessor by any grant of sub-lease. It follows that the Respondents have no title to remain on the land and would not be entitled to claim any protection offered under the Madras Public Trusts Act. The Civil Revision Petition has to be allowed and it is accordingly allowed with costs.