
(1958) 12 MAD CK 0013
In the Madras High Court
Case No : Appeal No. 396 of 1955

State of Madras

APPELLANT

Vs

Sulaika Beevi Ammal and Others

RESPONDENT

Date of Decision : 17-12-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1960 Mad 81 : (1959) 72 LW 683

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Judgement

1. This appeal arises from the decree in O. S. No. 15 of 1954, on the file of the Subordinate Judge's Court, Ramanathapuram, declaring that the

suit village of Neriyaandooval in Mudukulathur taluk, Ramanathapuram Dt. was one to which the provisions of Madras Act XXX of 1947 and the

Notifications thereunder would not apply and that the appellant could not interfere with the respondents' possession of the same. The State of

Madras, which was the first defendant to the action, is the appellant to the appeal.

2. Neriyaandooval was one of the 92-3/4 villages in Perungaranai Vattam which was a Dharmasanam grant by the ancient Pandyan King

Sundarapandian to certain Brahmins. It is conceded that it is not an inam estate under the provisions of the Madras Act 26 of 1948. The appellant

issued a notification under the provisions of Madras Act 30 of 1947, for reducing the rent. Thereupon the 9th respondent filed an application for

the issue of a writ of certiorari under Art. 226 of the Constitution in C. M. P. No. 13299 of 1950 to this court for quashing the proceedings

initiated by the appellant.

3. Having regard to the nature of the question involved and the evidence that was necessary to be gone into it, was apparently considered

necessary that the appropriate remedy for the petitioner was to file a suit. On behalf of the State, the learned Advocate General waived notice

under S. 80 C.P.C. in case the matter was to be agitated by way of suit. This court by its order dated 3-1-1952 held that the more appropriate

manner in which the proceedings of the appellant under Act 30 of 1947 could be questioned was to challenge the propriety thereof in a separate

suit.

4. Respondents 1 to 8 then filed the suit impleading the 9th respondent as a party defendant. Later the 9th respondent was transposed as the 9th

plaintiff to the suit. The respondents raised several contentions against the validity of the Government's order issuing the notification. First it was

denied that the village was an estate. Then it was stated that Act 18 of 1936 itself was void and then it was contended that the suit village should be

deemed to be the private or pannai lands of the landholders and therefore no reduction of rent was possible. This last question is the only question

in the present appeal. The appellant contested the suit.

5. It was contended that the lands were ryoti lands in the occupation of tenants. In the written statement the names of 67 tenants were set out as

being in actual occupation of the various plots of land. It was also pleaded that there was no valid notice under S. 80 C.P.C. and the suit was

therefore liable to be dismissed. The learned Subordinate Judge held that all the lands were pannai lands and that as there had been a waiver by the

Advocate General of a notice under S. 80 C.P.C. the suit was maintainable. In that view, the lower court passed a decree as prayed for by the

respondents. The State has filed the present appeal against the decree of the lower court.

(2) Learned Government Pleader first contended that the lower court was in error in regard to the necessity of a notice under S. 80 C.P.C. His

contention is that the 9th respondent Abdul Rahiman alone was the petitioner in the writ petition to this court and the concession or the waiver by

the Advocate General should be deemed to relate only to a case where that individual brought a suit challenging the validity of the Notification and

that such a concession would not avail the other plaintiffs, namely, respondents 1

to 8 to the action. In support of his contention, the learned

Government Pleader said that S. 80 was a mandatory provision, which had to be strictly complied with. The learned Subordinate Judge did not

accept this contention.

6. He has pointed out that uncontradicted evidence of P.W. 1 in the case was that the 9th respondent filed the writ petition on behalf of all the

other co-sharers in a representative capacity and that therefore the present suit filed by all the co-sharers eo nomine would not be barred by the

provisions of S. 80 C.P.C. having regard to the waiver of the notice by the Advocate General in the writ proceedings. P.W. 1 in his evidence has

stated that he filed the writ application on behalf of himself and his co-sharers and that he could not join in as plaintiff in that suit as at that time he

had gone away to Rangoon.

7. That evidence has been challenged in cross-examination. Apart from that contention, I am of opinion that the objection to the maintainability of

the suit by reason of there having been no notice under S. 80 C. P.C. is not sustainable in the circumstances of the case. It is admitted the property

in respect of which the notification (which was challenged in the writ proceedings) was made is the identical property which is the subject matter of

the present suit. A writ of certiorari is directed against the record and not against any particular person. The nature of writ jurisdiction has been

considered in the judgment of the Supreme Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , Venkatarama Aiyar J. observed:

""The writ for quashing is thus directed against a record, and as a record can be brought up only through human agency, it is issued to the person

or authority whose decision is to be reviewed."" In Corpus Juris Secundum, Vol. 14, at p. 123, it is stated.

The office of certiorari is to bring up the proceedings of the court below for examination, that they may be affirmed or quashed, and not to enforce

any rights growing out of those proceedings its purpose not being to compel performance."" Lower down it is stated.

It is not a proceeding against the Tribunal or an individual composing it; it acts on the cause or proceeding in the lower court, and removes it to the

superior court for re-investigation.

The nature of the proceedings being one for removal of record before the

superior court and quashing the same when circumstances warrant, it is not a question of adjudication of any right as between two parties to any litigation. It is no doubt true that for the purpose of moving the superior court to issue the writ the applicant should have an interest in the subject matter. But that does not mean that all the parties interested in the subject of the application should be before the court, as it is competent for any one of them to move the court to exercise its superior jurisdiction. In case the superior court exercises its jurisdiction in proceedings by way of issue of writ of certiorari all the persons interested would be bound by it as the order had been quashed.

8. But that does not necessarily mean that all the persons interested are necessary parties to the writ application. Therefore when the Advocate General waived the notice the waiver should be deemed to be in respect of the notification a record which was impugned in that case and not in respect of any particular party to the writ application. It is well known that in a civil suit all the persons interested in the cause of action should figure as parties to the suit. Therefore when the learned Advocate General waived the notice under S. 80, he should be deemed to have contemplated the possibility of all persons interested in the cause of action being made parties to the suit. I am therefore of opinion that the waiver of notice by the Advocate General would enure for the present suit, although the suit was originally filed by persons other than the applicant for the issue of a writ of certiorari.

(Rest of the judgment is not material for the purposes of this report.--Ed.)

9. Appeal dismissed.