
(1999) 01 MAD CK 0017
In the Madras High Court

State of Tamil Nadu

APPELLANT

Vs

Malayalangaram Chettiar and Another

RESPONDENT

Date of Decision : 08-01-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1999) 2 MLJ 445

Hon'ble Judges : V. Bakthavatsalu, J

Bench : Division Bench

Judgement

V. Bakthavatsalu, J.—The first defendant is the appellant. The first respondent/plaintiff filed the suit for declaration and injunction.

2. The case of the plaintiff is as follows: One Periyannayagi Ammal wife of Muthukaruppa Pillai for herself and on behalf of her adopted son of

Sadasivam Pillai executed a mortgage in favour of Nallamuthan Chettiar for Rs. 6,000 under Registered deed dated 9.12.1942. The said

Nallamuthan Chettiar assigned the mortgage to Sembayi Achi. She filed the suit in O.S.No. 83 of 1960 and the suit properties were brought to

sale as per decree in the said suit. One Kathiresan purchased the properties in court auction in E.P.No. 2.68 of 1962 and sale certificate was

issued on 17.11.1962. He took delivery of the properties through court in E.A.No. 1080 of 1962 and delivery was duly recorded on 15.12.1962.

Diraviam Pillai purchased the suit properties for Rs. 5,000 from Kathiresan Chettiar under sale deed dated 11.5.1963 and he was also granted

patta in his name. The plaintiff purchased suit properties from Diraviam Pillai for Rs. 19,000 on 3.9.1980. It now transpires that due to want of

proper enquiry and mistake, the suit properties are alleged to have been declared as surplus land of Sadasivam Pillai. Diraviam Pillai learnt about

the mistake of having treated the proper-lands as the surplus land of Sadasivam Pillai through his daughter Vimala, when she showed the communication dated 13.9.1979 from Special Officer and the order issued by the Authorised Officer dated 25.4.1979. Neither the plaintiff nor Diraviam Pillai had any notice of any draft notification or final notification. Any such notification declaring the suit properties as surplus land of Sadasivam Pillai who had lost all title would not bind Diraviam Pillai or the plaintiff. Any such statement could be rectified by deleting the suit properties as surplus lands of Sadasivam Pillai. But, it was not done so. The plaintiff's vendor issued a suit notice to the first defendant u/s 80, C.P.C. on 21.11.1979. The first defendant did not issue reply. Since the first defendant declared the suit properties erroneously as surplus land of the second defendant, the second defendant is added as a formal party. Therefore, the plaintiff has filed this suit for declaration of title to the suit properties and for consequential injunction restraining the first defendant from taking any proceedings affecting the rights of the plaintiff.

3. The case of the first defendant is as follows:

The defendant is not concerned about the suit O.S.No. 83 of 1960 said to have been filed by Sambayee Achi. After commencement of Tamil Nadu Land Reforms Act 58 of 1961, with a view to defeat the provisions of the Land Ceiling Act, in collusion with the landowner, the suit O.S.No. 83 of 1960 has been filed. The allegation that Periyannayagi Ammal or Sadasivam Pillai had no right after 15.10.1962 when it was sold in court auction is not relevant or material. The suit land was standing in the name of Kunjammal wife of the second defendant as on 6.4.1960. It was treated as her "stridhana property". Sadasivam Pillai is a party attracted under the provisions of the Tamil Nadu Land Reforms Act. The second defendant sold certain lands during the crucial period between 6.4.1960 and 2.10.1962. As the said transactions hit the provisions of Section 22 of the Act, an enquiry was initiated by the Authorised Officer, Land Reforms and orders were passed on 2.9.1965 declaring the sales as null and void. A draft statement was published in the Gazette on 20.4.1966. The land owners namely Sadasivam Pillai and his wife and other persons filed their objection and their objections were heard by the Authorised Officer and final orders were passed. Then, final statement u/s 12 of the Act was

prepared and the same was published in the Gazette on 26.4.1972. A notification u/s 18(1) of the Act was also approved by the Government

declaring an extent of 312.03 acres as surplus. Those surplus lands were taken possession on 5.4.1973 by the Government. The statutory

notifications were published in the village and other places as contemplated under the rules and the plaintiff or his predecessor in interest have not

put forth any objection. The second defendant did not prefer any appeal or revision as provided under the Act. In the enquiry, the claim of the

second defendant was rejected. The second defendant did not prefer any appeal or revision. The allegation that neither the plaintiff nor Diraviam

Pillai had any notice of draft notification is incorrect. According to Section 23 of the Act, any transfer whether by sale (including the sale in

execution of a decree or order of civil court) effected on or before the notified date shall not be taken into consideration by the Authorised Officer.

The civil court shall not have jurisdiction to decide or deal with any question which is required to be decided or dealt with by the competent

authorities under the Act. If the plaintiff is really aggrieved, he ought to have agitated the matter before the forum provided under the relevant

provisions of Land Ceiling Act. Hence, the suit is not maintainable.

4. On the above pleadings, the trial court has framed five issues. On a consideration of oral and documentary evidence, the trial court dismissed the

suit with costs. Aggrieved on the said judgment and decree, the plaintiff preferred an appeal in A.S.No. 8 of 1983. The learned Third Additional

Sub Judge, Madurai by judgment dated 31.8.1983 allowed the appeal and consequently, the suit was decreed with costs. Aggrieved on the said

judgment and decree, the first defendant/Government has come forward with this second appeal.

5. The following contentions are raised in this appeal.

The appellate court ought to have seen that the Authorised Officer while calculating the holdings of the second defendant can ignore the transaction

including the court sales if the transactions were taken place subsequent to the date of the notification. The appellate court ought to have seen that

the authorised officer has preferred draft and final statements only after giving full opportunities to the landholder. The aggrieved parties should file

a statutory appeal before the land tribunal u/s 78 of the Act within the relevant

period. The appellate court ought to not have decreed the suit on the ground that no notice was issued to the plaintiff or Diraviam Pillai. The appellate court has completely ignored the fact that the relevant Act for the purpose of this case is only Act 58 of 1961 and not Act 17 of 1970.

6. The following substantial question of law was formulated while admitting this second appeal:

Whether the Authorised Officer can ignore the transaction of sale as it has taken place after the notified date, namely 2.10.1962?

7. The suit property an extent of 4 acres, 71 cents comprised in R.S.276/1 A is said to be mortgaged by Periyamayagi Ammal and her adopted

son in favour of Nallamuthan Chettiar who assigned the same in favour of Sembayi Achi. It is the case of the plaintiff that the mortgagee brought

the property for sale after obtaining decree in O.S.No. 83 of 1960. Ex.A-1 the same certificate will show that Kathiresan purchased the property

in court auction on 15.10.1962. Ex.A-2 the delivery receipt will show that the property was delivered to Kathiresan. The said Kathiresan under

sale deed Ex.A-3 dated 11.5.1963 sold the same in favour of one Diraviam Pillai for Rs. 5,000. The said Diraviam Pillai sold the same in favour of

plaintiff under sale deed Ex.A-5 dated 3.9.1980 for Rs. 19,000. It is the case of the plaintiff that by virtue of the above sale deed, he is entitled to

the suit properly.

8. It is admitted in that plaint that Diraviam Pillai came to know on 15.11.1979 that the suit property by mistake was treated as surplus land of

Sadasivam Pillai and that neither he nor Diraviam Pillai had any notice of any draft notification or final notification. It is the case of the plaintiff that

Sadasivam Pillai had lost his title and that therefore, the above notification will not bind Diraviam Pillai and the plaintiff. The plaintiff also issued

notice under Ex.A-6 to the Government requesting the Government to take suitable action for rectifying the mistake in the notification.

9. The defendant denies the right and title of the plaintiff to the suit property. It is alleged in the written statement that the second defendant sold the

property during the crucial period between 6.4.1960 and 2.10.1962 and that those transactions were hit under the provisions of Section 22 of the

Land Ceiling Act and that the draft notification was published on 20.4.1966 and that the final notification was published in the Government Gazette

on 14.3.1973. It is, further contended by the defendant that the civil court has no jurisdiction to entertain the suit, in view of bar u/s 107 of the Act.

10. The trial court has held that the Authorised Officer is not under obligation to take note of the alienation made during the crucial period and that

the alienation includes court sale and that the court auction took place after 6.4.1960 and that the aggrieved party did not file any appeal to land

tribunal and that therefore, the court has no jurisdiction to give a finding that the notification without issuing proper notice is not valid in law. But the

appellate court has taken a different view. The appellate court has held that the date of commencement of Tamil Nadu Land Reforms Act, 1961 is

15.2.1970 and that long prior to that date as early as 17.11.1962, the suit property had been sold to Kathiresan who in turn sold the same to

Diraviam Pillai on 11.5.1963 under Ex. A-3 and that therefore, the first defendant, the competent authority has no right to say that Ex.A-1 is a void

transaction and that Diraviam and Kathiresan were not served with any notice at all and that therefore, the plaintiff is entitled to declaration and

injunction.

11. It is seen that the defendant has not filed any documents relating to the commencement of draft notification and publication of final notification.

The defendant has not filed documents to prove that the aggrieved parties were issued with notice. The second defendant Sadasivam Pillai

remained exports. But the case of the defendant cannot be negated for the simple reason that the document as relating to declaration of surplus

land and notification were not filed. As already stated, the plaintiff himself has admitted in the plaint that on 15.11.1979 his vendor came to know

that the suit lands are shown as surplus lands of Sadasivam Pillai. The defendant has not filed documents relating to publication of draft notification

and final notification. The averments in the written statement will show that the draft statement was published in the Gazette on 20.4.1966 and that

on its publication and service on the interested persons, the land owners namely Sadasivam Pillai and his wife filed objection and that their

objections were heard by the Authorised Officer and that the final statement u/s 12 of the Act was published on 26.4.1972. The fact that the

Authorised Officer initiated proceedings even before the amendment of Act is not seriously disputed. Therefore, the findings of the appellate court

that the date of commencement of the Land Reforms Act is 15.2.1970 and that, long before the commencement of the said Act, the properties were sold in court auction cannot be accepted to"" be correct.

12. The original Act 58 of 1961 came into force on 6.4.1960. u/s 22 of the Act, if any person has transferred any land held by him by sale, gift, exchange, surrender etc., after the date of commencement of that Act, but, before the notified date the authorised officer may after notice to such

person or other person affected by such transfer and after enquiry, declare the transfer or partition to be void, if he finds that the transfer or

partition defeated any of the provisions of this Act. Even under the old Act and Amended Act, the Authorised Officer shall not take into

consideration any transfer whether by sale including any execution of the decree or order of civil court or of award or by gift and any sub-division

effected after the notified date and before the date of publication of the final statement u/s 12 or 14 of the Act. Section 23 of the Act is very clear

that the authorised officer need not take into consideration the sale including the court sale effected during the crucial period. The crucial period is

between 6.4.1960 and 2.10.1962. The court sale took place after coming into force of the Act i.e., 6.4.60. Therefore, the authorised officer was

well within his right to ignore the above sale and proceed to initiate proceedings such as preparation of draft notification and enquiry u/s 22 of the

Act. It is, however, open to the Authorised Officer in the enquiry to declare that the said court sale is not valid for the reasons stated by him.

Section 22 of the Act declares that any transfer made during the crucial period is void, if the authorised officer finds that the transfer was made to

defeat the provisions of the Act.

13. Even admitting that the Authorised Officer is not competent to include the suit property as surplus land, since the sale certificate itself was

issued after. 2.10.1962, the civil court is not competent to decide the said question. Section 107 of the Act which was in force when the suit was

filed states that no civil court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or

dealt with by the Authorised Officer, Land Board, Land Commissioner and Land Tribunal. The Act provides remedy to the aggrieved party. Even

assuming that the notification was prepared without issuing notice to the affected

parties, it is open to the aggrieved party to file petition before the authorised officer to delete a particular piece of land from the notification. The appellate tribunal such as land tribunal is also empowered to decide the question relating to title to the property. Without exhausting the said remedy, it is not open to the plaintiff to file this suit for declaration. As already stated, the plaintiff himself requested the Government to rectify the mistake. When the Government failed to rectify the mistake, the remedy of the plaintiff is only to initiate proceedings under the provisions of Land Reforms Act and not by separate suit. Section 107 of the Act bars the civil court from deciding the question whether the plaintiff has got title to the property when the suit land was included and declared as surplus land of Sadasivam Pillai. The operation of Section 107 of the Act was not properly considered by the appellate court.

14. It is contended by the appellant that no notice was issued to the aggrieved party and as such, the notification published by the first defendant is not binding on the plaintiff. In support of the same, learned Counsel for the appellant relies upon certain decisions.

15. In *S.G.D.F. Trust Estate v. State* AIR 1976 Mad. 337, it is held that wherever a statute provides for service of notice, it is not a ritual, but it is

intended to draw the attention of the person Interested or concerned to the proceedings. It was contended in the above case that the management

trustee was not served with notice by the authorised officer. But, it is seen from the facts of the case that notice was served in the office of the trust.

It has been held that the managing trustee having appeared and objected that he had no notice, it is obvious that he had notice of the proceeding.

The above case arose under Article 226 of the Constitution. It is not doubt true that before publication of the draft notification, notice must be

served on the aggrieved party. There is no evidence to show that any notice was served on the plaintiff and his vendor. But the above facts alone

will not entitle the plaintiff to claim the relief in the civil court. As already stated, if the draft notification is defective or vitiated by any error, it is for

the aggrieved party to take appropriate proceedings under the provisions of the Act. It is open to the competent authority to delete a particular

item shown as surplus land from final notification. Therefore, the contention of the plaintiff that the publication of surplus land in the official gazette is

not binding on him has got to be rejected.

16. Even admitting but not conceding that the final notification and draft notification are defective and that the entries included therein are vitiated by

error, the said mistake and error can be rectified only by the authorities constituted under the Act. Hence, I hold that in view of bar u/s 107 of the

Act, the civil court has no jurisdiction to decide the question whether or not declaration made by the first defendant is binding on the plaintiff.

17. Learned Counsel for the appellant relies upon a decision reported in *S. Naganatha Ayyar and Others Vs. The Authorised Officer and Others*, .

It has been held in the above decision that even transfers made after the notified date which are likely to defeat the provisions of the Act have been

prohibited nor declared void and that the authorised officer is only authorised to declare the lands acquired by the transferee in excess of the ceiling

area as having been transferred to the Government under the transfer. It is seen from the facts of the above case that all the revisions were tiled

under the provisions of Tamil Nadu Land Reforms Ceiling Act, 1961, u/s 83 of Act 58 of 1961 the above revisions were filed. Section 83 of the

Act 58 of 1961 provides revision to High Court. The above case relates to revision tiled under Act 58 of 1961. The above decision will not assist

the case of the plaintiff in any way, since the plaintiff has come forward with a civil suit questioning the legality and validity of the notification issued

by the authorised officer. The appellate court has committed error in holding that long prior to the date i.e., 15.2.1970, the sale was held by the

court and that the plaintiff's vendor purchased the property and that therefore, the above documents are valid documents. As already stated, the

proceedings of the authorised officer commenced even before the commencement of the amended Act of the year 1970. Therefore, it is for the

aggrieved party to take appropriate proceedings under the provisions of the Act to delete the entry relating to the suit property from the final

notification. It is also open to the plaintiff to contend before the competent authority that the court auction was not hit either u/s 22 or 23 of the Act.

It is not within the province of this Court to decide that the sales are valid in law. Thus, looked at from any angle, the civil court is not competent to

entertain the suit, in view of bar imposed u/s 107 of the Act. The decisions relied on by the appellant will not strengthen his plea that the plaintiff is

entitled to declaration, notwithstanding the fact that the suit land is included as surplus land of Sadasivam Pillai in the final notification. I hold that the

remedy of the plaintiff lies elsewhere and not before the civil court. For the reasons stated above, I hold that the judgment and decree of the

appellate court cannot be sustained. On the other hand, the judgment and decree rendered by the trial court have to be restored.

18. In the result, the second appeal is allowed. The judgment and decree passed by the appellate court are set aside. The judgment and decree

rendered by the trial court are restored I direct the parties to bear their costs throughout.