

(1971) 11 MAD CK 0031
In the Madras High Court

Taj Prakash Thaikkal, represented by S.M.A. Syed Hameed,
Managing trustee and Others APPELLANT

Vs

S.F. Wahab and Another RESPONDENT

Date of Decision : 29-11-1971

Acts Referred:

Citation : (1972) 85 LW 308 : (1972) 2 MLJ 237

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The plaintiff is the appellant, and he filed a suit for possession of the suits property as well as for mesne profits, both past and future. The plaintiff's case was that the suit property was leased out to the first defendant for a period of 5 years on an annual rental of Rs. 40 from 7th June, 1960 and that even after the expiry of the lease, the first defendant has not surrendered possession nor has he paid the arrears of rent for the period from 30th June, 1963 to 30th June, 1964. The plaintiff also claimed that he is entitled to damages for use and occupation after the expiry of the lease period on 7th June, 1965. The defendants resisted the suit contending that the second defendant had purchased the property from the first defendant for a sum of Rs. 500 on 5th July, 1966 and that in any event the suit is not maintainable as the suit property is situated in an Inam village governed by the provisions of Madras Act XXVI of 1963.

2. The trial Court considered both the question of title put forward by the plaintiff as also the question as to whether a civil Court has jurisdiction to try the suit. On both these issues, it held in favour of the plaintiff and proceeded to decree the suit, for possession; and also for Rs. 190-37 being the arrears of rent as also damages for use and occupation.

3. The appellate Court, however, did not consider the question of the plaintiff's title to the property, but it straightway proceeded to consider the question as to whether a civil Court had jurisdiction to entertain a suit for possession in view of

the Madras Act XXVI of 1963, and ultimately held that the civil Court had no jurisdiction to entertain such a suit for possession and the remedy open to the plaintiff was to go before the authorities constituted by the Madras Act XXVI of 1963. According to the lower appellate Court, the provisions of Sections 3, 5, (c), 3(d), 3(e) and 9(1) made it abundantly clear that the right of ownership of the property has been taken over by the Government by virtue of the notification issued under the Act, and that it is not possible to brush aside the contention raised on behalf of the defendants, that it is only the tribunals constituted under the special enactment which can go into the question as to whether the defendants are entitled to ryotwari patta or not, In that view the lower appellate Court dismissed the suit in entirety.

4. The question as to whether a suit for possession of lands situate within the areas covered by the Madras Act XXVI of 1963, after that enactment came into force, came up for consideration before Ramaprasada Rao, j. in Muthukumaraswami Pillai Vs. Srimushnam Vedapatasalai, In meeting an identical contention put forward on behalf of the defendants who were in possession of the property, the learned Judge, after considering the various provisions, of the statute, expressed the view, that the civil Court had jurisdiction to entertain the suit and grant relief of possession even in respect of properties covered by the provisions of that Act. 3 According to the learned Judge "to oust the jurisdiction of civil Courts words of express import or significant expressions necessarily implying such ouster are required and ouster of jurisdiction of civil Court Ought not to be lightly inferred. Whereas there is a ban on the adjudication of such issue by civil Courts when the statutory tribunals have finally decided that the land is ryoti, there is no such ban in cases where such decisions have not yet been made though initiated by the landlord. There appears to me," to be, no bar for Civil courts to try such suits for possession and rent or mesne profits when the statutory tribunals have not yet decided the principal matter in controversy.

6. With respect, I entirely agree with the view expressed by the learned Judge. 1 Under the provisions of the Madras Act XXVI of 1963, the tribunals constituted thereunder are Vested with certain functions and their ultimate decisions have, been made final in some types of cases, and not so in others.

6. To the same effect is the decision of Alagiriswamy, J. in Kulandaiswami Madurai and Others Vs. Murugayya Madurar and Others, . In dealing with the similar contention that in respect of lands covered¹ by the provisions of Madras Act XXVI of 1948, it has been held that:

it is well established that the civil. Court has ultimately the jurisdiction in respect, of every civil matter except such, matters as are taken away from its jurisdiction either expressly or by necessary implication. The decisions of this Court have held that the power of the Settlement Officer under Act XXVI of 1948 is only for the purpose of giving effect to the provisions of¹ that Act and except to that extent, the power of the civil Court to deal with matters, which are within its jurisdiction is no way affected and the question of title to any particular

property is riot a matter which a Settlement Officer, is competent to deal with. It is essentially a matter for the civil Court to decide. The fact that the Settlement Officer has for the limited purpose of issuing a. patta to decide who the owner of the holding is does not mean that the decision on that point is final and the civil Court cannot decide that question.

7. The provisions of Madras Act XXVI of 1963 and Madras Act XXVI of 1948 are in pari materia so far as this question is concerned. As between the two rival claims to the same property, who is entitled to the patta may be a matter to be decided by the settlement authorities under both the Acts. But, whether the patta has been given to the rightful person or not can be gone into by the civil Court as the statute has not made the decision of the Settlement Officer granting patta final.

8. The learned Counsel for the respondent, however, relies on the decision in Mohammed Abubacker v. R. Ranganathan Chettiar and Ors. L.P. No. 18 of 1968 in support of his contention that the civil, Court's jurisdiction is ousted once the notification under Madras Act XXVI of 1963 is issued. In my view that decision proceeds on the basis that if there is a dispute as to the character of the land, then the decision of the statutory authority is final, but that once the character of the land is decided and the grant of patta is ordered under the provisions of the Act, the question as to which of the claimants is entitled to patta will be a matter to be finally decided by a civil Court. In my view that decision instead of supporting the respondent's case fortifies the view expressed above, that is, which of the competing claimants to the patta is entitled to the property is a matter to be decided ultimately by the civil Court, though it may Originally be initiated before the settlement authorities.

9. In view of the decisions referred to above, the view taken by the lower appellate Court cannot be accepted. The decision of the lower appellate Court is, therefore, set aside and A.S. No. 63 of 1962 is remanded to that Court for fresh disposal on merits. There will be no order as to costs. No leave.