

(1944) 02 MAD CK 0014
In the Madras High Court

Teertha Swamulu Varu

APPELLANT

Vs

K. Ramamurthy

RESPONDENT

Date of Decision : 11-02-1944

Acts Referred:

Madras Estates Land Act, 1908 — Section 127

Citation : AIR 1944 Mad 375 : (1944) 57 LW 253

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal involves a question of the interpretation of Section 15 (2) of Madras Act 4 of 1938. The appellant filed a suit

in the revenue Court claiming arrears of rent for fasli 1345 and for fasli 1348. It is common ground that the arrears for faslis 1346 and 1347 were

deposited within the time contemplated in Section 15 of the Act. There is no dispute regarding the arrears for fasli 1348. Both the Courts below

have held that the suit for fasli 1345 is barred by the cancellation of previous arrears u/s 15 of Act 4 on the payment within the proper time of the

rent for faslis 1346 and 1347. The appellant contends that by the operation of Sub-section (2) of Section 15 of the Act, the arrears for fasli 1345

are not cancelled. This sub-section is not very easy to construe and so far as I know, it has not been the subject of any judicial interpretation by

this Court. Omitting the words with which we are not concerned it runs as follows, ""Nothing contained in Sub-section (1) shall be deemed to effect

a discharge of arrears of rent which accrued due for fasli 1345 if proceedings for the recovery of such arrears stood stayed by an Act of the

Legislature or by an order of a Court, or if such proceedings, if instituted, would have stood so stayed."" In the present case, there were no

proceedings for the recovery of arrears for fasli 1345 until the present suit was filed on 11th March 1940. So this cannot be a case in which the

proceedings have been stayed by an Act of the Legislature or by an order of the Court. It can only come, if at all, under Clause 3 as one of

proceedings which, if instituted, would have stood so stayed. The relevant Acts of the Legislature are the four Acts which successively amended

the Madras Estates Land Act. Section 127 of Act 8 of 1934 prohibited the ejectment of tenants in inam villages upto 1st November 1935 and also

directed the stay up to the same date of all proceedings in which the ownership of the kudiwaram by the inamdar was in issue. By Act 1 of 1936,

the date 1st November 1935 was extended to 1st May 1936. By Act 13 of 1936, the date was again extended to 1st November 1936 and finally,

by Act 18 of 1936, the date was fixed as the commencement of that Act which is, 31st October 1936. The result therefore was that any

proceedings involving the determination of the ownership of the kudivaram by the inamdar, if filed between May 1934 and the end of October

1936, would necessarily have been stayed by the operation of this series of statutes.

2. Turning to the facts of the present case, we find that the appellant in August 1935 filed a suit for arrears on the same holding for faslis 1342,

1343 and 1344. The suit was instituted in the civil Court and the plaint was returned for presentation to the revenue Court. It was actually

presented on 24th November 1936 after Act 18 of 1936 came into operation. The arrears for fasli 1345 accrued due on 15th January 1936. A

suit filed in the civil Court for those arrears at any time prior to 31st October 1936 would necessarily have been stayed. But after 1st November

1936 there was a period, extending up to 31st March 1938 when Act 4 of 1938 came into operation and a fresh legislative stay began to come

into force, during which the arrears for 1345 might have been claimed by the landlord. The appellant contends that because a suit for these arrears,

if it was instituted before 1st November 1936 would have been stayed, the arrears for fasli 1345 are immune from cancellation u/s 15 (1) of the

Act. That is to say, the appellant really wants to read instead of the words ""if instituted would have stood so stayed"", the words ""if instituted, might

have stood so stayed."" The word ""would"" standing in the second portion of a conditional sentence in the past tense normally implies that if the

condition in the first portion happens, the result contemplated in the second portion will inevitably follow. For instance in the sentence "if it rained,

he would get wet," we mean not that if it rained, he would perhaps get wet, but that if it rained, he would certainly get wet. In ordinary English, if

after the condition a mere problematic result is anticipated, we should use the word "might" and not the word "would." Supposing in the sentence

quoted, we did not know whether the person had or had not got an umbrella, we should say, "if it rained, he might get wet," because we did not

know whether the umbrella would save him from getting wet or not. If, on the other hand, we were quite sure that he had not got an umbrella or

any means of shelter, we should say, "if it rained, he would get wet.

3. Therefore in ordinary English, the words "proceedings if instituted, would have stood so stayed" seem to indicate that the staying by legislative

action of the proceedings is the necessary consequence of their institution. It has been suggested that this interpretation robs the clause of all effect

and that all proceedings for the arrears for fasli 1345 affected by Act 4 of 1938 must be such as might or might not have been filed at such a time

as to bring into force the legislative stay. I do not think this contention is correct. There are many proceedings under the Estates Land Act for

which very short periods of limitation are prescribed. For instance, the period to contest the right of sale of a holding u/s 112 of the Act is only

thirty days. It might well be that such proceedings would involve the question of the right of the inamdar to the kudiwaram. If the landlord, in the

present case, had proceeded immediately to bring the holding to sale for the arrears for Fasli 1345 and the tenant had wished to object contending

that the holding was not one under the Estates Land Act, he would have had to file the proceedings at a time when they would have been futile

because of the bar under Act 18 of 1936 and the preceding Acts. It is to meet the case of the landlord necessarily abstaining from filing

proceedings because such proceedings would be futile in view of the legislative stay, that this clause appears to have been enacted. It seems to

have no application to cases in which the landlord had ample time to realise the arrears after the legislative stay had ceased to operate and before

Madras Act 4 of 1938 came into force. In this view, I hold that it cannot be said of the present case that, if a suit for the arrears of fasli 1345 had

been instituted, it would have been stayed by the operation of Act 18 of 1936 and the preceding amending Acts. The appeal is, therefore, dismissed with costs. Leave to appeal is refused.