

(1978) 09 MAD CK 0009
In the Madras High Court

Thangavelu Naicker

APPELLANT

Vs

Muthukumara Chettiar and Another

RESPONDENT

Date of Decision : 26-09-1978

Acts Referred:

Easements Act, 1882 — Section 61

Citation : (1979) 92 LW 678 : (1979) 2 MLJ 369

Hon'ble Judges : V. Balasubrahmanyam, J

Bench : Single Bench

Judgement

V. Balasubrahmanyam, J.—One Thangavelu Naicker was appointed by two brothers Muthukumara Chettiar and Somasundaram Chettiar to

be a watchman or kavalkarar for their coconut tope, Puliantope and other clusters of trees in two survey numbers in which the own distinct

portions. It is common ground that Thangavelu Naicker was paid Rs. 40 every year and was also entitled to take the ripe coconut leaves. His

duties as kavalkarar included gathering, plucking and delivering the fruits of tamarind trees. In 1963, Thangavelu Naicker moved the Authorised

Officer functioning under the Tamil Nadu Agricultural Land Record of Tenancy Rights Act for a declaration that he was a cultivating tenant under

the two brothers. He did not succeed in obtaining an order in his favour and an appeal from the decision of the Authorised Officer also failed. In

those proceedings, it was held that Thangavelu Naicker was not a tenant, much less a cultivating tenant of Muthukumara Chettiar and

Somasundaram Chettiar. Thereafter, Thangavelu Naicker filed O. S. No. 191 of 1972 against the owners of the property, asking for a permanent

injunction restraining the owners from evicting him from the premises. It may be observed that in the coconut tope, Somasundaram Chettiar had

raised a hut and in that hut Thangavelu Naicker was permitted to reside for purposes of looking after the topes. Thangavelu Naicker accordingly

claimed in the suit that he was entitled to ownership of the hut and the underlying land as a kudiyruppu. He invoked the provisions of the Tamil

Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act (XL of 1971). The suit was resisted by the owners of the tope and the

superstructure on the score that after the adverse decision by the duly constituted authorities and the Tribunals under the Tamil Nadu Agricultural

Land (Record of Tenancy Rights) Act, 1961, Thangavelu Naicker was disentitled to file a suit for injunction against them. It was also pleaded that

the Madras Occupants of Kudiyruppu (Conferment of Ownership) Act, 1971 was not applicable to Thangavelu Naicker or to the suit property in

question.

2. The learned District Munsif recorded a finding that Thangavelu Naicker was not a tenant of the land, but he was a kavalkarar of the coconut and

other topes under the owner Muthukumara Chettiar and Somasundaram Chettiar. But the learned District Munsif held that since there were

disputes between Thangavelu Naicker and the owners as early as in 1970 on the question of tenancy rights, he must be held to have ceased to be

a watchman or kavalkarar. On this basis, the learned District Munsif held that Thangavelu Naicker was disentitled from invoking the provisions of

the Act since the said Act was applicable only to an agriculturist or an agricultural labourer who was in occupation of a kudiyruppu on 19th June,

1971. In this case, according to the finding of the learned District Munsif, he had ceased to be the kavalkarar and, therefore, ceased to be the

licensee even in 1970.

3. On appeal, the findings of the learned District Munsif were substantially concurred in by the Sub-Court, Kumbakonam. The learned

Subordinate Judge endorsed the finding of the District Munsif that Thangavelu Naicker's occupation as a licensee of the kudiyruppu must be

deemed to have been cancelled since he had raised disputes with the owners of the land claiming to be entitled to tenancy right therein. The learned

Subordinate Judge referred to Section 61 of the Easements Act and held that the licence given by the owners to Thangavelu Naicker to reside in

the kudiyruppu must be deemed to have been revoked by implication the

moment disputes arose between the parties. In the result, concurring with the findings of the learned District Munsif, the learned Subordinate Judge dismissed the appeal and the suit filed by the plaintiff.

4. Thangavelu Naicker has brought this second appeal before this Court against the decisions of the Courts below.

5. Mr. M. Kalyanasundaram, learned Counsel for the plaintiff urged in the forefront of his argument that the Courts below were in error in

determining the question whether Thangavelu Naicker was or was not entitled to protection under the Kudiyruppu Act. He referred me to sections

4 and 23 of the Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act (XL of 1971) and submitted that the question whether his

client was or was not an agriculturist or agricultural labourer occupying kudiyruppu on 19th June, 1971 was a matter which had to be decided only

by the Authorised Officer appointed under the Act and was in his exclusive jurisdiction and the civil Courts cannot enter into a determination of the

same in any suit or other proceeding,

6. The bar of jurisdiction of the civil Court in the form in which it has been raised before me by learned Counsel for Thangavelu Naicker had not

been mooted either before the trial Court or before the learned Subordinate Judge. Since, however, the matter goes to the root of the jurisdiction

of civil Courts to entertain and determine the central issue in this case, I permitted the learned Counsel to raise and argue the point giving

opportunity to the learned Counsel for the respondent to meet the case,

7. In one sense, the objection put forward by the learned Counsel for the appellant is self-stultifying because it was his client who invoked the

jurisdiction of the civil Courts for protection and it is the very same person who now says that the civil Court has no jurisdiction. However curious

the position may be, if really the civil Court has no jurisdiction to go into the matter, I should examine the position irrespective of posture of the

parties before me and at the lower stage of the same proceedings.

8. I earlier mentioned that Act XL of 1971 was invoked by the learned Counsel. It seems to me, however, that the more appropriate statute would

be the Tamil Nadu Occupants of Kudiyruppu (Protection from Eviction) Act (XXXVIII of 1961), as amended and re-enacted by the Tamil Nadu

Occupants of Kudiyruppu (Protection from Eviction) Re-enacting Act (XXIII of

1975). It may be observed that the definitions of "Kudiyiruppu", "agricultural labourer", "agriculturist", "agricultural land" and "tenant" are substantially the same in all the Acts. It may also be observed that the Tamil Nadu Kudiyiruppu Protection from Eviction Act, 1961, was put into the statute book as a temporary enactment for a period of two years.

By Tamil Nadu Act, XXIII of 1975, it had been put on a permanent basis. The main purpose of Act XXXVIII of 1961 as re-enacted by Tamil Nadu Act XXIII of 1975 is to afford protection to occupants of kudiyiruppu from being evicted by the owners of the land offers an additional right to occupants of kudiyiruppu by declaring that those who have been in occupation of kudiyiruppu on 19th June, 1971, either as tenant or as licensee, shall be the owners of such kudiyiruppu and the kudiyiruppu shall vest in them absolutely free from all encumbrances. In the present case, although Tamil Nadu Act XL of 1971 has been invoked, the relief claimed in the suit itself was one for injunction restraining the defendants from evicting the plaintiff Thangavelu Naicker from the kudiyiruppu. So, the appropriate relief which he might seek even in the special Tribunal under the statute would be not a declaration that the kudiyiruppu has become vested in him as owner, but freedom from eviction by the owners of the property.

9. Section 4 of Tamil Nadu Act XL of 1971 provides that if any dispute arises whether any agriculturist or agricultural labourer was occupying on the 19th June, 1971, such dispute shall be decided by the Authorised Officer for purpose of Section 3 of the Act. An appeal is provided against the decision of the Authorised Officer before the District Collector u/s 23 of the same Act, it is clearly provided that no civil Court shall have jurisdiction in respect of any matter which the Authorised Officer is empowered by or under the Act to determine. The same section further provides in express terms that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. An identical provision is to be found in Section 11 of the Tamil Nadu Act XXXVIII of 1961 also. The submission of the learned Counsel for the appellant is that these provisions impose a clear bar on the civil Court entering into the question as to whether the hut, in which the plaintiff Thangavelu Naicker was

permitted to live as a watchman, is a kudiyruppu and whether he was in occupation of that hut as a kudiyruppu on 19th June, 1971.

10. It seems to me that that his contention must be accepted on the plain terms of sections 4 and 23 of Tamil Nadu Act, XL of 1971 and Section

11 of Tamil Nadu Act, XXXVI I of 1961. Learned Counsel for the respondents, however, brought to my notice the decision of a learned single

Judge of this Court, N.S. Ramaswami, J A brief report of the decision is to be found in Ganesan v. Madurai Achari. (1977) T. L. N. J. 437, N. S.

Ramaswarai, J., observed that under the statutes relating to kudiyruppu protection the question whether any house site is a kudiyruppu or not if

not is within the special jurisdiction of the Authorised Officer and the District Collector functioning under the Act. The learned Judge went on to

observe that an application before the Authorised Officer can lie only where it is common ground between the parties that the house site is a

kudiyruppu. In the opinion of the learned Judge, the civil Court has jurisdiction to go into the question whether the site is or is not a kudiyruppu.

11. I am not in a position to accept the entirety of the reason of the learned Judge as borne out by the statutory provisions. It is true that the

question whether a given house site is or is not a kudiyruppu is not within the exclusive jurisdiction of the Authorised Officer or the District

Collector functioning under the Act. But it cannot be said that the question whether a house site is or is not a kudiyruppu cannot be decided at all

by these functionaries. Under the plain terms of Section 4 of the Act XL of 1971, it is the Authorised Officer alone who is competent to decide

whether an agriculturist or agricultural labourer was occupying kudiyruppu on 19th June, 1971 and since it is within his jurisdiction, it is outside the

competence of the civil Courts to decide under the exclusive provisions of Section 23. When Section 4 clear terms confers jurisdiction on the

Authorised Officer to decide the question whether any agriculturist or agricultural labourer was occupying kudiyruppu on 19th June, 1971 it is

implicit in the section that he has also jurisdiction to decide whether the individual concerned is an agriculturist or agricultural labourer, whether the

place under his occupation was a kudiyruppu or not and whether the occupation was on 19th June, 1971 or not. There is an obvious

inconvenience in holding that the Authorised Officer is competent to decide only

one question, namely, whether an agriculturist or agricultural labourer was occupying the kudiyruppu on 19th June, 1971, leaving at large other questions between the parties, namely, whether he is an agriculturist or not, whether he is an agricultural labourer or not, whether the land is a kudiyruppu or not, to be decided by common law Courts. If all these questions are within the jurisdiction of the Authorised Officer, then, by definition, they must be outside the jurisdiction of the civil Courts, and as I pointed out, the express terms of Section 23 forbid the civil Courts even to issue an injunction in regard to these matters.

12. In the present case, the Courts below have rendered a determination to the effect that the plaintiff Thangavelu Naicker ceased to be a licensee in 1970 itself and hence, he could not be held to be in occupation of the kudiyruppu as a licensee on 19th June, 1971. This determination has been rendered in the face of Section 4 of Tamil Nadu Act XL of 1971. On the basis of my understanding of the provisions of the said Act, I must, therefore, hold that the Courts below had exercised jurisdiction which had been taken away from them by the express provisions of Section 23 of that Act. The result is that the matter must properly be the subject of decision or adjudication by the appropriate authority under the Act.

13. Learned Counsel for the respondents submitted that in such an event the other ancillary findings rendered by the Courts below in this suit should not be permitted to hamstring the enquiry by the Authorised Officer whether the proceedings are under Act XXXVIII of 1961 or Act XL of 1971. He submitted that his clients should not be regarded as having admitted that the plaintiff was either an agriculturist or agricultural labourer within the meaning of the Act.

14. I think this submission of the learned Counsel for the respondents must be accepted as furnishing the correct approach to any future proceedings before the Authorised Officer. I gained an impression, on a reading of the judgments of the Courts below that the question whether Thangavelu Naicker was an agricultural labourer or not has not been disputed by the respondents. This impression I gained because of absence of any discussion on the point. I had earlier pointed out that in the written statement filed by the respondents they had very clearly stated that the Madras Occupants of Kudiyruppu Act was not applicable to the plaintiff or to the

suit property. In view of this pleading, it is highly unlikely that they would have conceded before the Court any point which was worthwhile being contested before the Court. Hence, while holding that the determination of the Courts below on the question of the plaintiff's right to be entitled to protection under the Tamil Nadu Kudiyiruppu Acts is without jurisdiction. I must also observe that any findings or incidental observations that they had rendered on other questions which essentially have to be gone into for determination of the status of the plaintiff, must also be regarded as not conclusive or binding either on the parties or on the Authorised Officer in any future proceeding or enquiry which he may undertake under the provisions of the Act.

15. In the result, while I agree with the ultimate conclusion of the Courts below that the suit should be dismissed, I hold that the suit would stand dismissed for the reason that the civil Courts have no jurisdiction to go into the question whether the plaintiff is entitled to protection of the Kudiyiruppu Acts. The appeal is accordingly dismissed with the observations made above.

16. There will be no order as to costs.