

(1967) 11 MAD CK 0027
In the Madras High Court

Thangayya Vanniar

APPELLANT

Vs

Ramaswamy represented by his mother Papathi Ammal and
Another

RESPONDENT

Date of Decision : 23-11-1967

Acts Referred:

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 6A

Citation : (1969) ILR (Mad) 426 : (1969) 2 MLJ 27

Hon'ble Judges : Ismail, J

Bench : Division Bench

Judgement

Ismail, J.—These two appeals arise out of two suits filed by the respondents herein against the appellant for the recovery of possession of certain lands in possession of the appellant with past and future profits. Admittedly the lands in the possession of the appellant originally belonged to Ammani Ammal and Vijayathammal of Kabistalam and the appellant herein was a tenant under them in respect of the lands in question. The case of the plaintiffs in the suits was that the plaintiffs, who were minors and were represented by their mother Papathi Ammal, the next friend, Were the purchasers of the lands in question from their previous owners under two sale deeds dated 29th December, 1956, and registered on 29th April, 1957; the appellant was formerly cultivating the lands on yearly lease under the vendors of the plaintiffs; the appellant despite the demand did not pay the income to the plaintiff's next friend for the enjoyment of the suit lands after the purchase by the plaintiffs, though as per custom, contract and usage the yearly income should be paid in two equal instalments one by 31st October, and the other by 31st March of every fasli; the plaintiffs sent a notice dated 12th December, 1960, to the appellant demanding the income but the appellant through his Counsel sent a reply notice denying the title of the plaintiffs and expressly stating that there was no relationship of landlord and tenant between the parties and claiming title in himself; in view of this, there had been forfeiture of tenancy and the appellant was liable to be evicted. However in the Written statement filed by him, the appellant claimed that he was a cultivating

tenant and consequently the suit had to be transferred to the Revenue Court pursuant to the provisions contained in Section 6-A of the Madras Cultivating Tenants Protection Act (XXV of 1955). The learned District Munsif who tried the suits together came to the following conclusions : (1) that the appellant was a cultivating tenant, (2) that the appellant had denied only the tenancy agreement between the plaintiff's guardian and himself as set out in Exhibit A-1 the notice sent by the plaintiff's mother and beyond that he did not deny the title of the original lessors or the derivative title of the plaintiffs under the sale deeds, (3) that the Civil Court had no jurisdiction to try the suit so far as the relief of possession was concerned and (4) that the Court had jurisdiction to try the suit so far as the relief of arrears of rent was concerned since the plaintiffs had claimed arrears of rent as past profits at the same rate at which the defendant was liable to pay under the terms of the original lease. In view of these findings, the learned District Munsif passed a decree in favour of the plaintiffs for the suit amount with proportionate costs and the relief of possession was negatived, and the suits were dismissed without costs in this respect. Against this judgment and decree of the learned District Munsif, the respondents herein preferred two appeals to the learned District Judge of West Thanjavur. The learned District Judge by judgment and decree dated 30th March, 1963, reversed the decision of the learned District Munsif and decreed the suits of the respondent. Hence the present second appeals.

2. Before considering the contentions put forward by the parties before me, it is necessary to refer to the grounds which found favour with the learned District Judge, on the basis of which he allowed the appeals of the respondents and decreed their suits. The learned District Judge came to the conclusion that by Exhibit A-2, the reply notice sent by the appellant herein, the appellant had denied the title of the plaintiffs and also the subsistence of the relationship of tenant and landlord between him and the plaintiffs; because of this the appellant herein had denied himself the benefits of the Madras Cultivating Tenants Protection Act, 1955. The learned District Judge went a step further and held that the defendant (appellant) falsely alleged that he was not in arrears of rent and had paid the entire rent was one of the reasons for holding that he was not entitled to the benefits of the Madras Cultivating Tenants Protection Act. The entire judgment of the learned District Judge proceeds on the assumption that the appellant was a cultivating tenant but because of the denial of the title of the plaintiffs, he had lost the benefits to which he would have been otherwise entitled under the Madras Cultivating Tenants Protection Act, 1955.

3. Mr. T.R. Srinivasan, learned Counsel for the appellant put forward two contentions. The first contention is that once the Courts below found that the appellant was a cultivating tenant they had no further jurisdiction to proceed with the matter and that u/s 6-A of the Act they had to transfer the suits to the Revenue Court for disposal according to the provisions contained in that Act. The second contention is that even assuming that the Civil Court had any jurisdiction to proceed further with the matter, the finding of the learned District Judge that

by Exhibit A-2 the appellant had denied the title of the plaintiffs is not warranted by the terms of Exhibit A-2 itself or by Exhibit A-2 read with Exhibit A-1 the notice sent by the guardian of the plaintiffs. On the other hand, Mr. Balasubramanian, appearing for the respondents, did not dispute the finding that the appellant was a cultivating tenant. He sought to support the decision of the learned District Judge on two alternative grounds. The first ground is that the relevant " Section 6-A uses the expression " a cultivating tenant entitled to the benefits of this Act " and that consequently before proceeding to transfer any suit pursuant to the provisions of Section 6-A the Court will have to go into the question whether the appellant was entitled to the benefits of the Act, namely the protection from eviction which alone is relevant for the purpose of the suit and the Court had therefore jurisdiction to go into the question. The alternative ground urged by Mr. Bala-subramanian is that, in any event, the appellant by Exhibit A-2 had denied the existence of the relationship of landlord and tenant between the plaintiffs and himself and thereby renounced the character as a tenant; if that be the case, the question of his being entitled to the benefits of the Act did not arise and consequently the lower appellate Court was justified in decreeing the suits of the respondents in entirety. I shall first dispose of the second contention of Mr. Balasubramanian. I have already pointed out that the learned Counsel did not dispute the finding that the appellant herein was a cultivating tenant. Necessarily that finding implied that he was a cultivating tenant on the date of the suit. On the other hand if the contention of Mr. Balasubramanian is to be accepted that will go contrary to that finding. A person cannot be a cultivating tenant and at the same time cannot be said to have lost his character as a tenant. The very finding that he was a cultivating tenant on the date of the suit implies that he had not lost his character as a tenant on that date and he continued to be a tenant. Therefore in my view there is no substance in the alternative contention of Mr. Balasubramanian.

4. There remains the principal question as to the scope of the jurisdiction of the civil Court for the purpose of acting u/s 6-A of the Act. It is true that Section 6-A uses the expression " a cultivating tenant entitled to the benefits of this Act". The real point to be considered is what exactly is the meaning of this expression. Obviously Section 6-A specifies two kinds of suits only, namely, a suit for possession of or injunction in relation to any land and consequently if the jurisdiction of the civil Court in respect of such suits is to be barred, that must be based upon the fact that those questions have been relegated or left to be determined by some other authority so as to justify the exclusion of the jurisdiction of the Civil Court. Therefore it becomes necessary to find out what exactly is the ambit and scope of this expression occurring in Section 6-A of the Act. Section 3 (1) provides that no cultivating tenant shall be evicted from his holding or any part thereof by or at the instance of his landlord, whether in execution of a decree or order of a Court or otherwise. The provision contained in this sub-section is subject to the next succeeding sub-section. Sub-section (2) states that subject to the next succeeding subsection, Sub-section (1) shall not

apply to a cultivating tenant coming within the scope of Clauses (a), (aa), (b), (c) and (d) enumerated therein. Thereafter Sub-section (3) enables a cultivating tenant to deposit in Court the rent under certain circumstances. Sub-section (4) is the procedural section dealing with the procedure to be followed by the Revenue Divisional Officer whenever a landlord files an application to evict a cultivating tenant under Sub-section (2). The next important sections to be noticed are sections 6 and 6-A. According to Section 6, no civil Court shall, except to the extent specified in Section 3 (3), have jurisdiction in respect of any matter which the Revenue Divisional Officer is empowered by or under this Act to determine and no injunction shall be granted by any Court in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. Section 6-A states that if in any suit before any Court for possession of, or injunction in relation to, any land, it is proved by affidavit or otherwise that the defendant is a cultivating tenant entitled to the benefits of the Act, the Court shall not proceed with the trial of the suit but shall transfer it to the Revenue Divisional Officer who shall thereupon deal with and dispose of it as though it were an application under the Act and all the provisions of the Act shall apply to such an application and the applicant.

5. The question for determination in these second appeals is whether immediately the Civil Court found that the appellant was a cultivating tenant it was under an obligation to transfer the proceedings u/s 6-A of the Act to the Revenue Divisional Officer or whether it had any further jurisdiction to go into any other matter in relation to the prayer for possession of the land. In this connection several decisions of this Court were brought to my notice by the learned Counsel appearing for both the sides.

6. The first decision is *Veluchami Naicker and Others Vs. M. Mouna Gurusami Naicker (deceased) and Others*, . That decision concerned with a suit instituted in 1954 before coming into force of the Act in question for possession of the lands from the tenants. The question that came up for consideration was whether to such a suit the bar of sections 6 or 6-A would apply. While holding that the bar of Section 6 or Section 6-A would apply, the learned Judges remanded the suit to the file of the trial Court for the purpose of deciding whether the tenants in that case were cultivating tenants or not since the said question was not decided in the view that the Act did not apply to the suit. In the course of the judgment the learned Judges observed at page 629 as follows:

If the Court decides that the defendants are cultivating tenants entitled to the benefits of the Act, then it shall not proceed with the further trial of the suit but shall transfer it to the Revenue Divisional Officer. If, however, the Court comes to the conclusion that the defendants are not cultivating tenants, then it can proceed with the trial and pass such decree as it may deem fit....

It may be noticed that this decision does not say what exactly is meant by the expression " entitled to the benefits of the Act " but merely reproduces the language of the section in making the above observation. The next decision which

was brought to my notice is S. Ratnasami Mudaliar Vs. Ponnammal and Others, . A Bench of this Court observed at page 429:

Since the question at issue has to be disposed of in accordance with Section 6-A in the first instance it is for the civil Court to decide whether the claim put forward by the first defendant that he was a cultivating tenant is correct.

The learned Judges further stated that the procedure to be followed in such cases had been indicated by a Bench of this Court in Veluchami Naicker and Others Vs. M. Mouna Gurusami Naicker (deceased) and Others, , referred to earlier. Even this decision does not take the matter any further. The next decision on which strong reliance was placed by Mr. Balasubramanian is that of Balakrishna Ayyar, J., in V. Kuppuswami and Others Vs. Sri Subramaniaswami Devasthanam and Others, . The relevant passage on which reliance has been placed is as follows at page 209:

Mr. Jagadisa Aiyar argued that in the context the expression "cultivating tenant entitled to the benefits of this Act" only means a cultivating tenant as defined by the Act. His reasoning was this. If you hold otherwise and say that before he can call in aid Section 6-A a cultivating tenant must be actually entitled to the benefits of the Act then it means that the cultivating tenant will have to plead, allege and prove what particular benefit or benefits he is entitled to under the Act. Now the jurisdiction in respect of such matters is conferred by other portions of the Act exclusively on the revenue Courts. If this construction is not adopted a civil Court will be called upon to adjudicate on matters which are exclusively reserved for the revenue Courts.

There is no doubt force in this criticism but then, the question naturally arises why did the Legislature add the words "entitled to the benefits of this Act" if it merely intended to say cultivating tenant as defined by the Act. When the Legislature has used certain words I shall not ordinarily be justified in ignoring them. Therefore before the civil Court can transfer a proceeding u/s 6-A to the Revenue Court it must be satisfied that the tenant is not merely a cultivating tenant as defined in the Act but also entitled to some benefit or other under the Act.

Even this judgment does not say what exactly is the scope of the expression "entitled to the benefits of this Act". All that this judgment emphasises is that the presence of the expression "entitled to the benefits of this Act" in the section should be taken note of and some meaning must be assigned to it and the expression cannot be ignored. This observation of the learned Judge is amplified by another unreported decision of Anantanarayanan, J. (as he then was) in Second Appeal No. 562 of 1959 dated 29th September, 1961. Since the facts of this case are very similar to the facts of the present case, it is desirable to refer to that judgment in some detail. In that case, also, there was a suit for recovery of possession of the land in the possession of the tenant with past and future profits on the ground that the tenant had wilfully denied the title of the landlord.

The learned District Munsif in that case held that the tenant was not entitled to the benefits of the Act and decreed the suit for possession. The lower appellate Court also concurred with that conclusion. In that case also both the Courts below came to the conclusion that the tenant in that case was a cultivating tenant within the meaning of the Act. But the learned Subordinate Judge on appeal held that the tenant was disentitled to the protection against eviction embodied in Section 3 of Act XXV of 1955 for the reason that the appellant there (tenant) wilfully denied the title of the landlord within the meaning of Section 3 (2) (d) and that this denial was not under a bona fide mistake of fact within the meaning of Explanation (1) to Section 3 (2) (d). After referring to these facts, the learned Judge proceeded to state as follows:

First of all, it seems to be very doubtful whether the learned Subordinate Judge had really any jurisdiction to decide this question, once he found that the appellant was a cultivating tenant entitled to the protection of the Act. It is true, as observed by the learned Counsel for the Temple, that the bar of the jurisdiction of the civil Court, embodied in Section 6 of the Act, is not an absolute bar. As pointed out by a Bench of this Court in *G. Venkatachala Odayar Vs. Ramachandra Odayar and Another*, it is not the Revenue Divisional Officer who has jurisdiction to grant the relief to the landlord in the matter of recovery of arrears; it is the civil Court which will be the proper forum in that respect. But, indisputably, upon the very wording of Section 6, the Civil Court will have no jurisdiction to consider whether a cultivating tenant should be evicted from his holding or not, and whether possession should be delivered of the land to the landlord. Once this question comes into the subject-matter of litigation, and to that extent, the jurisdiction of the Civil Court is specifically taken away, and the Revenue Divisional Officer alone would have jurisdiction. It is perfectly true that, as observed by the same Bench of this Court in *Ramachandra Sastrigal v. Kuppuswami Vanniar* (1961) 74 L.W. 167, before the civil Court transfers a proceeding u/s 6-A to the Revenue Court, it has to be satisfied not merely that the tenant is a cultivating tenant as defined in the Act but also that he is entitled to some benefit or other under the Act. But the obvious rejoinder to this, upon the facts of the present case, is that the appellant is a cultivating tenant entitled to some benefit under the Act, even if, by virtue of a denial of the title, he cannot resist eviction. Admittedly, even in that contingency, the Revenue Divisional Officer is clothed with special powers under the Act to grant time etc.. It is only in special cases falling within the scope of Section 3, Sub-clause (3), which has no application to the present appeal, that the civil Court is expressly clothed with jurisdiction u/s 6. With regard to eviction proper, it cannot be denied that the civil Court has no jurisdiction, and that the Revenue Court alone will have jurisdiction. The only requirement is that, in such a case, the tenant must show that he is the cultivating tenant under the Act entitled to some benefit or other, which may even include the benefit of the special procedure enacted u/s 3, Sub-clause (4) (b).

Thus it will be seen that this decision gives effect to the expression occurring in

the section "entitled to the benefits of this Act" but points out that that benefit need not necessarily be correlated to the protection from eviction, which alone is relevant for the suit for possession, but may have reference to any other benefit under the Act. If this is the proper construction of the expression occurring in the section, then it will automatically follow that once the civil Court comes to the conclusion that the tenant is a cultivating tenant entitled to some benefit under the Act, the civil Court has no further jurisdiction to determine the question whether the tenant is liable to be evicted or not.

7. The next decision which has been referred to and on which much reliance has been placed is the case of Ramachandra Sastrigal v. Kuppuswami Vanniar (1961) 1 M.L.J. 335. In that case, a Bench of this Court has observed as follows at page 341:

The plain words of Section 6-A of the Act clearly indicate the scope of that provision. The suit which is sought to be transferred must be one for possession or injunction in relation to any land. The defendant in such a suit can if he is a cultivating tenant entitled to the benefits of the Act have the trial of the suit before the civil Court interrupted and have the suit transferred to the Revenue Divisional Officer. On a transfer being ordered in terms of that section the Revenue Divisional Officer shall deal with and dispose of the suit as though it were an application under the Act. Before the section can operate, three conditions must be fulfilled. The first is that the defendant must be a cultivating tenant; the second is that he must be entitled to the benefits of the Act; the third is that he must on a transfer of the proceeding to the Revenue Divisional Officer be in a position to obtain one or other of the statutory reliefs provided for in his favour under the Act. Without the concurrence of these three conditions no transfer should be ordered by the civil Court under the provisions of Section 6-A of the Act.

As the learned Judges themselves observed, these three conditions flow from the language of Section 6-A and therefore there cannot be any dispute with regard to the necessity of these three conditions being satisfied cumulatively, so as to enable the civil Court to transfer the suit to the Revenue Court. The point I wish to mention is that even this decision does not indicate what exactly is the scope of the expression "entitled to the benefits of this Act" occurring in Section 6-A of the Act, Mr. Balasubramanian invited my attention to a portion of the judgment where the learned Judges had dealt with the decisions of Panchapakesa Ayyar, J., in Syed Sahib Vs. Angamuthu Mooppan, , and Subbaratnam Iyer Vs. Pattavarthi Mooppan, , and held that the view taken by Panchapakesa Ayyar, J., was not correct. " But that has no bearing on the point in issue. In those cases Panchapakesa Ayyar, J., had taken the view that the civil Court must arrive at a prima facie finding whether the tenant was a cultivating tenant or not and if the prima facie finding was that the tenant was a cultivating tenant, the suit must be transferred to the Revenue Court. The learned Judges have pointed out that that view is not correct and have observed at page 341.

Before the civil Court decides not to try a suit it must reach a definite conclusion and must record a comprehensive finding that it has no jurisdiction to deal with the matter. There cannot of course be a summary enquiry by a civil Court on such a vital issue as that of jurisdiction to try the suit.

The next decision on which reliance was placed by Mr. T. R. Srinivasan, learned Counsel for the appellant, is that of Natesan, J., in *Krishna Kambar Vs. Muthiah Thevar*, The passage on which reliance was placed is to the following effect at page 241.

But it is quite different thing when the suit is one for recovery of possession of a land in which the tenant is a cultivating tenant. There can be no eviction of the cultivating tenant except in due conformity with the provisions of the Act. The jurisdiction to order eviction is vested only in the Revenue Divisional Officer and the civil Court's jurisdiction is excluded. It will be seen that in such an action when the tenant is in possession and the claim is made by the landlord for possession, once it is found that the tenant is a cultivating tenant, automatically certain benefits flow to him. Even if he is in arrears, the Revenue Court could give him time. The Act places a general embargo on the eviction of cultivating tenants except in accordance with and under the provisions of the Act. The very decision above referred to *Ramachandra v. Kuppuswami* (1961) 1 M.L.J. 335, points out the distinction between suits for eviction and suits for injunction, where the tenant is out of possession. As observed by Ramachandra Ayyar, J., (as he then was) in *Md. Karimuddin Sahib v. Mohamban Naicker City Civil Court Appeal Nos. 149 of 1955 and C.R.P. No. 464 of 1959*, "therefore before an order for transfer is made the Court should find that it is incompetent to give the relief sought by reason of the Act". I do not think that the decision in *Ramachandra v. Kuppuswami* (1961) 1 M.L.J. 335, requires a prior specific determination in every kind of suit of the particular benefit to which a tenant is entitled. In a suit for eviction once it is held that the defendant is a cultivating tenant it follows he can claim certain benefits under the Act, as already pointed out * * *. For ordering the transfer in a suit for eviction in my view, the civil Court must find the existence of relationship of landlord and cultivating tenant as defined in the Act between the plaintiff and the defendant and secondly on the proceedings being transferred it must be possible for the Revenue Divisional Officer to order one or other of the reliefs specified in the Act.

8. Thus it will be seen that this judgment of Natesan, J., follows up the decision of Balakrishna Ayyar, J., in *Kuppuswami v. Subramaniaswami Devasthanam* (1950) 1 M.L.J. 208, and the decision of Anantanarayanan, J., (as he then was) in the unreported decision in Second Appeal No. 562 of 1959 and fully supports the contention of Mr. T.R. Srinivasan, learned Counsel for the appellant.

9. On the other hand, Mr. Balasubramaniam strongly relied upon the decision of Kailasam, J., in *Mahalakshmi Ammal Vs. V. Swaminatha Iyer and Others*, . In that case the learned District Munsif found that the fourth defendant was a cultivating tenant within the meaning of Section 2 of Madras Act XXV of 1955 but that he

was not entitled to the benefits of the said Act, and therefore the suit for eviction was barred u/s 6 of the Act, as only the Revenue Divisional Officer was empowered to deal with and determine the question of eviction. That view of the trial Court was affirmed by the appellate Court. It is under those circumstances that the landlord preferred the second appeal and the learned Judge allowed the same. I must point out that the learned Judge who was a party to the decision in *Ramachandra Sastrigal v. Kuppuswami Vanniar* (1961) 1 M.L.J. 335, enumerates the three conditions mentioned therein and points out that those conditions must be fulfilled before the civil Court can transfer the suit u/s 6-A of the Act. In this case also the learned Judge did not go into the question what exactly is the meaning of the expression "entitled to the benefits of the Act " occurring in the section. As pointed out already, the only two decisions which refer to the meaning of this expression, as a cultivating tenant being entitled to some benefit or other under the Act, are the decision of Natesan, J., in *Krishna Kambar Vs. Muthiah Thevar*, , and the decision of Anantanarayanan, J., (as he then was) in S.A. No. 562 of 1959. The learned Judge (Kailasam, J.), has not held that before transferring the suit, the civil Court must conduct an enquiry and find out whether the protection which the cultivating tenant claims, with reference to the facts and circumstances of the particular case, is available to him or not. No doubt, in view of the expression "entitled to the benefits of the Act" occurring in the section, the Court must be satisfied that the cultivating tenant is entitled to some benefit or other under the Act. Otherwise, the Very object of barring the jurisdiction the of civil Court will be defeated. The purpose of barring the jurisdiction of the civil Court is that the matter sought to be agitated before the civil Court has to be agitated before the special forum created for the purpose. If the cultivating tenant is not entitled to some benefit or other under the Act, then there will be no object in transferring the proceedings to the Revenue Divisional Officer. On the other hand, to adopt the consideration that before transferring the suit the civil Court must conduct an enquiry and arrive at a finding as to whether the cultivating tenant is entitled to the protection against eviction, with reference to the facts and circumstances of the case, will lead to an anomalous situation. Let us take this very case. Here, the ground on which possession was sought to be obtained was that the appellant had denied the title of the landlord and therefore he was not entitled to remain in possession. Let us assume that the civil Court gives a finding that the tenant is a cultivating tenant and then it also goes into the matter whether he has really denied the title of the landlord or not. If it comes to the conclusion that he has denied the title of the landlord, then according to the interpretation contended for on behalf of the landlords, the suit for possession must be decreed. On the other hand, if it came to the conclusion that the tenant has not denied the title of the landlord, then the civil Court must transfer the proceedings to the Revenue Divisional Officer, who will have to deal with the matter afresh. That is, before the matter goes to the Revenue Divisional Officer there is already a finding by the civil Court that the tenant has not denied the title of the landlord. To hold, under such circumstances, that the suit must be transferred to the Revenue Divisional Officer and he will have to go into the

question again, without being in any way bound by the finding of the civil Court that the tenant has not denied the title of the landlord, will lead to an anomalous situation, which could not have been intended by the legislature. Consequently, the only reasonable construction of the section, in my view, appears to be that as soon as the civil Court finds that the tenant is a cultivating tenant coming within the scope of the Act, and also eligible to apply for and obtain one or more of the benefits provided in his favour by the Act, the requirement of the expression will be satisfied. It is not a condition precedent for the exercise of the power of transfer by the civil Court, that the civil Court must actually conduct an enquiry and determine the very point or issue that requires to be determined by the Revenue Divisional Officer under the provisions of the Act. Consequently, the expression "entitled to the benefits of the Act" has reference to the eligibility of the tenant to come within the scope of the Act and claim one or more of the benefits conferred on him by the Act and has no reference to the particular set of circumstances and facts which had been urged by the landlord, as taking away the protection available to the tenant from eviction.

10. I may point out that no decision of this Court has been brought to my notice which holds that the expression "being entitled to the benefits of the Act" requires a finding by the civil Court that the cultivating tenant in question does not come within the scope of one or more of the clauses enumerated in Sub-section (2) of Section 3. In other words, no decision of this Court has held that before transferring a suit for possession to the Revenue Divisional Officer, u/s 6-A of the Act, the civil Court must hold an enquiry as to whether the cultivating tenant in question is one falling under one or more of the Various clauses enumerated in Section 3 (2) and arrive at a finding that he does not so fall. Such a construction of Section 6-A will yield the result that the civil Court after having recorded a finding that the cultivating tenant is not liable to be evicted under the provisions of Section 3 (2) of the Act, transfers the suit to the Revenue Divisional Officer to enable him to conduct an enquiry afresh for the purpose of finding out whether the tenant is liable to be evicted under the provisions of Section 3 (2) of the Act or not. To hold that the civil Court can conduct an enquiry and find out whether the cultivating tenant fails within one or more of the clauses of Section 3 (2) or not and if he does so fall, pass a decree for possession against him, since on such a finding he is not entitled to the benefits of the Act, is to fly in the face of the prohibition contained in Sections 3 (1) and 6 of the Act.

11. In this case the learned District Judge has decreed the suits on his finding that the defendant had denied the title of the landlords--plaintiffs. The next step in the reasoning is that by denying the title of the landlords the defendant had forfeited the tenancy and consequently had ceased to be a tenant, with the result that the protection afforded by Madras Act XXV of 1955 will not be available to him. For this purpose, the learned District Judge has relied on the decision of Ramachandra Iyer, J., (as he then was) in Kanchi Kamakoti Mutt by Agent R. Seshaiya Sastrigal Vs. A. Alagu Ambalam (deceased) and Others, . The learned Judge in that case was dealing with the Madras Tenants and Ryots Protection Act

(XXIV of 1949). The learned Judge himself points out at page 847.

There is however, the definition of the word "tenant" under the Act XXIV of 1949 and the popular meaning of the word would relate to a person whose tenancy is subsisting. In certain other enactments, e.g., the Madras City Tenants Protection Act III of 1922, Section 2 (4), the Madras Buildings Lease and Rent Control Act XXV of 1949, Section 2 (4), and the Madras Cultivating Tenants Protection Act XXV of 1955, Section 2-a (1), defines the word tenant as including a person who continues in possession after the termination of the tenancy.

Therefore, this decision of the learned Judge has no application to a cultivating tenant coming within the scope of Madras Act XXV of 1955.

12. Hence, I am of the opinion that since the Courts below came to the conclusion that the appellant was a cultivating tenant, under the circumstances of this case, they should have exercised their power u/s 6-A of the Act and transferred the suits to the Revenue Divisional Officer. I am referring to the circumstances of this case for the reason that the lower appellate Court proceeded on the basis that the appellant by his act in issuing Exhibit A-2 had forfeited his tenancy and did not actually consider whether the appellant was entitled to some benefit or other under the Act. It is not the case of the respondents that the appellant was not entitled to any benefit under the Act. Under these circumstances, I hold that the lower appellate Court ought to have transferred the suits u/s 6-A of the Act for trial by the Revenue Divisional Officer. Since I am taking the view that it is for the Revenue Divisional Officer to decide whether the appellant had denied the title of his landlords or not, I am not expressing any opinion with regard to the second contention urged by Mr. T. R. Srinivasan, learned Counsel for the appellant; nor the finding of the Courts below on that point will be binding on the Revenue Divisional Officer. Under these circumstances, these second appeals are allowed and the lower appellate Court is directed to transfer the suits u/s 6-A of the Act to the Revenue Divisional Officer for disposal in accordance with law. This judgment does not affect the decree for the arrears of rent passed by the Courts below. There will be no order as to costs in these second appeals.

No leave.