
(1977) 10 MAD CK 0009
In the Madras High Court

The Madras State Wakf Board

APPELLANT

Vs

Vellayan Chettiar and Others

RESPONDENT

Date of Decision : 27-10-1977

Acts Referred:

Citation : (1978) ILR (Mad) 436 : (1978) 1 MLJ 542

Hon'ble Judges : A. Varadarajan, J

Bench : Division Bench

Judgement

A. Varadarajan, J.—The Madras State Wakf Board represented by its Secretary, the plaintiff in the 38 suits filed before the District Munsif,

Tirumangalam for recovery of possession of the suit properties with past and future mesne profits who failed in both the Courts below on the

question of the Civil Court's jurisdiction to entertain the suits is the appellant in these second appeals. The properties involved in O.S. No. 232 of

1968 out of which S.A. No. 271 of 1974 has arisen are situate in Ponmeni Village, Madurai Taluk. The properties involved in the other suits out of

which the other appeals arise are situate in certain other villages in Nilakottai Taluk. The properties in the suits were admittedly minor Inams which

were abolished by the Tamil Nadu Minor Inams (Abolition, and Conversion, into Ryotwari) Act, 1963 (Madras Act XXX of 1963) with effect

from 15th February, 1965. The Wakf Act (XXIX of 1954), was passed by the Parliament to provide for the better administration and supervision

of wakfs in the whole of India except the State of Jammu and Kashmir. There is no dispute that this Act has come into force in this State on 15th

January, 1955. Section 4(1) of that Act provides for the State Government by notification in the Official Gazette appointing a Commissioner of

Wakfs and as many Additional or Assistant Commissioners as may be necessary for making a survey of the wakf properties existing in the State at

the date of commencement of the Act, Under Sub-section (3) of Section 4 the Commissioner has power, after making such enquiry as may be

considered necessary, to submit his report to the State Government containing the particulars mentioned in Clause (a) thereof. u/s 5(1) of the Act,

on receipt of a report under Sub-section (3) of Section 4, the State Government shall forward a copy thereof to the Board of Wakfs,

establishment under Sub-section (1) or Sub-section (1-A) of Section 9. u/s 5(2) the Board shall examine the report and publish in the Official

Gazette a list of wakfs containing such particulars as may be prescribed. The publication in these cases was made on 27th May, 1959. u/s 6(1), if

any question arises whether a particular property specified as wakf property in a list of wakfs published is wakf property or not or whether a wakf

specified in such list is a Shiawakf or Sunni wakf, the Board or the Mutawalli of the wakf or any person interested therein may institute a suit in a

Civil Court of competent jurisdiction for the decision of the question and the decision of the Civil Court in respect of such matter shall be final.

According to the Proviso to Section 6(1) no such suit shall be entertained by the Civil Court after the expiry of one year from the date of the

publication of the list of wakfs.

2. On the basis of the aforesaid notification dated 27th May, 1959, the suits for possession were filed by the appellant in these appeals. As already

stated, the Inam was notified under Act XXX of 1963 on 15th February, 1965.

3. The defence was that the Notification was not binding on the respondents, that the suit properties were minor Inam properties governed by Act

XXX of 1963 and that no civil suit lies in view of the Notification of the Inam under that Act. An issue relating to jurisdiction was framed in all the

suits and it reads thus:

Whether the Court of the District Munsif, Tirumangalam has no jurisdiction to entertain the suits?

4. It was contended before the learned District Munsif that the Civil Court is impliedly barred to try the question, namely, the nature and character

of the properties involved in the suits and that this question will be a primary question to be decided as between the parties to the suits. The learned

District Munsif has observed that there is considerable force in this submission and he has held that the suits have been filed only to circumvent the provisions of the Act and nothing more and that under such circumstances, the Civil Court has no jurisdiction to entertain the suits. After recording such a finding, the learned District Munsif dismissed all the suits and directed the parties to bear their respective costs.

5. The learned Subordinate Judge of Madurai has extracted in paragraph 3 of his common judgment in all the appeals before him the several pleas

raised by the respondents and has stated that at the instance of the parties in all the suits, the preliminary issue as to whether the Court of the

District Munsif, Tirumangalam has no jurisdiction to try the suits was taken up for consideration. He agreed with the District Munsif and dismissed the appeals with costs.

6. The learned District Munsif was wrong when he accepted the submission that the question involved in the suits was about the nature and

character of the properties involved. But the learned Subordinate judge rightly understood the scope of the suits and has stated in paragraph 5 of

his judgment that the suits have been filed for recovery of possession of the properties on the basis that they have been endowed as Inams for

religious and charitable purposes and that the respondents are in wrongful possession and enjoyment of the properties. The contention urged on

behalf of the appellant before the learned Subordinate Judge was that the reliefs of recovery of possession and mesne profits can only be granted

by the Civil Court and that the officers appointed under Act XXX of 1963 are incompetent to grant such reliefs and, therefore, the suits for

recovery of possession and mesne profits can only be entertained and decided by a Civil Court and a Civil Court alone would consequently have

jurisdiction to try the suits. But the learned Subordinate Judge rejected this conclusion and dismissed the appeals with costs as stated above

observing:

Considering the nature and character of the present suits and the scope of the Civil Court with reference to the provisions of Act XXX of 1963

and the various decisions cited for and against the point, whether the Civil Court has jurisdiction to try the suits in question, I hold that the present

suits under appeal have been filed in the Court of the District Munsif,

Thirumangalam only with a view to evade the provisions of Act XXX of

1963 with regard to the determination of the question as to who was entitled to get patta for the suit lands....

7. In view of Section 3(b) of Act XXX of 1963, it cannot be disputed that all rights in the Inam has vested in the Government though an attempt

was made by the learned Counsel for the appellant to contend that the title to the lands had not vested in the Government by the Notification of the

village under the provisions of the Act. Section 3(b) of the Act lays down that every minor Inam including all communal lands and porambores,

waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and coranies, fisheries and ferries, situated within the

boundaries thereof, shall stand transferred to the Government and vest in them free of all encumbrances; and certain Acts including the Madras

(Transferred Territory) Ryotwari Settlement Act, 1964, and all other enactments applicable to ryotwari lands with certain exceptions mentioned in

the clause had been made applicable to the minor Inam. Therefore there is no substance in the contention that title has not vested in the

Government.

8. Section 7 of the Act provides for the Government constituting as many Tribunals as may be necessary for the purposes of the Act. Section 8(1)

of the Act lays down that subject to the provisions of Sub-section (2) every person who was lawfully entitled to the kudivaram in an Inam land

immediately before the appointed day whether such person is an inamdar or not shall, with effect on and from the appointed day, be entitled to

ryotwari patta in respect of that land. Section 8(2)(i)(a) and (b) provide for grant of patta in respect of lands transferred by way of sale. u/s 8(1)(i)

(a) if the transferee or his heir, assignee, legal representative or person deriving rights through him had been in exclusive possession of the land for a

continuous period of sixty years immediately before the 1st day of April, 1960 such person shall, with effect on and from the appointed day, be

entitled to ryotwari patta in respect of that land. Under Clause (6) if the continuous possession was not for a period of sixty years immediately

before the 1st day of April, 1960 but was for a continuous period of only twelve years before that date, such person shall, with effect on and from

the appointed day, be entitled to a ryotwari patta if he pays as consideration to

the Government in such manner and in such number of installments as may be prescribed an amount equal to twenty times the difference between the fair rent in respect of such land determined in accordance with the provisions contained in the Schedule and the land revenue due on such land. Section 8(4) of the Act provides for payment of the compensation thus payable u/s 8(2)(i)(b) to the institution concerned in one lump sum within such period and in such form and manner as may be prescribed.

Section 9 of the Act provides for grant of patta in cases not governed by Section 8. Section 10 deals with lands in respect of which no ryotwari patta will be granted. Section 11 deals with determination of lands in respect of which any person is entitled to ryotwari patta by the Assistant Settlement Officer after giving the necessary notices as required under that section. Against the decision of the Assistant Settlement Officer, there is provision for an appeal being filed to the Tribunal u/s 11(3) of the Act, and Section 30 provides for appeal against the decision of the Tribunal u/s 11(3) to the special Appellate Tribunal consisting of two Judges of this Court nominated from time to time by the Chief Justice in this behalf.

Section 46(1) of the Act lays down that any order passed by any Officer, the Government or other authority or any decision of the Tribunal or the Special Appellate Tribunal under the Act in respect of matters to the determined for the purposes of the Act shall, subject only to any appeal or revision provided under the Act, be final. Under Clause (2) of Section 46 no such order or decision shall be liable to be questioned in any Court of law. Section 47 of the Act lays down that no suit or other proceeding shall lie against the Government for any act done or purporting to be done under the Act or any Rule made thereunder and also no suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any act done or purporting to be done under the Act or any Rule made thereunder without the previous sanction of the Government. A period of limitation is provided for actions contemplated in Section 47(2) in Clause (3) of that section. Section 43(1) lays down that the decision of a Tribunal or the Special Appellate Tribunal in any proceeding under the Act on any matter falling within its jurisdiction shall be binding on the parties thereto and persons claiming under them in any suit or proceeding in a Civil Court, in so far as such matter is in issue

between the parties or persons aforesaid in such suit or proceeding. Section 43(2) lays down that the decision of a civil Court (not being the Court

of District Munsif or a Court of Small Causes) on any matter falling within its jurisdiction shall be binding on the parties thereto and persons

claiming under them in any proceeding under the Act before a Tribunal or the Special Appellate Tribunal in so far as such matter is in issue

between the parties or persons aforesaid in such proceeding.

9. In view of the special provisions in the Act whereunder an appeal could be filed against the order of the Assistant Settlement Officer granting

patta u/s 11 of the Act before a Tribunal and against the decision of the Tribunal in such matter before a Special Appellate Tribunal, it is not

possible to agree with the learned Counsel for the appellant that the Civil Court will have jurisdiction to go into the matter when there are rival

claimants for the grant of patta. In this connection, the learned Counsel for the appellant relied upon some decisions. The first of those decisions is

that of a bench of this Court in Adakalathammal Vs. Chinnayyan Panipundar, where the question was whether the jurisdiction of a civil Court in a

suit for possession and other incidental reliefs based on title is ousted by Section 56(1) of the XXVI of 1948 which has since been omitted. There,

the learned Judges observed thus:

The Settlement Officer is the authority to examine the nature and history of all lands in respect of which the landholder claims a ryotwari patta u/s

12, 13 or 14. Section 56 occurs among the miscellaneous provisions of the Act. Though in terms Section 56 confers on the Settlement Officer the

power to decide a dispute as to who the lawful ryot of any holding is, there is no corresponding provision expressly taking away the jurisdiction of

the Civil Court. Section 65 no doubt bars the jurisdiction of Courts in certain cases; but that is more in the nature of an immunity section.

Having regard to the material provisions of the Act and having regard to the express language of such provisions and without referring to any

decided authority we are of opinion that Clause (c) in Section 56, Sub-section (1) of the Act refers only to a dispute as to rights under the Act, that

is, the right to obtain a ryotwari patta. The decision of the Settlement Officer would be necessary in case of a dispute to work out the right

conferred u/s 11 on every ryot in an estate to obtain a ryotwari patta in respect

of ryoti lands which were included or ought to have been included in his holding. The provision to Section 3(d) which has been quoted earlier in this judgment prevents Government from dispossessing any person of any lands in an estate in respect of which they consider that he is prima facie entitled to a ryotwari patta, if such a person is a ryot pending the decision of the Settlement Officer as to whether or he is actually entitled to such a patta. It follows, therefore, that if a person has been in possession of ryoti land and another person has trespassed on his holding and no ryotwari patta has actually been granted to either of the persons, there is nothing prima facie in any of the provisions of the Act which prevents a civil Court from entertaining a suit for possession by a person who had been in possession and who had been dispossessed. Such a dispute would not necessarily mean that the successful party would be eventually entitled to a patta. To give one instance, if the person in possession was a sub-tenant from a ryot for a fixed period and during that period he had been dispossessed by another, the sub-tenant could maintain a suit for possession and even obtain possession; but eventually the patta may be granted only to the ryot in respect of the holding and not to the sub-tenant who might have succeeded in his suit for possession against the trespasser. Clause (c) in Section 56(1) should be read along with other provisions of the Act and the rights and privileges which can be recognised and conferred by or under the Act. So understood there is no conflict between the jurisdiction of a Settlement Officer and the jurisdiction of Civil Court. The suits out of which the above appeals arise were all suits simpliciter for recovery of possession on the ground that the plaintiff is entitled to the concerned land and that the defendant or defendants are trespassers. Section 56(1) cannot by implication take away the jurisdiction of the civil Court to try such suits.

10. The next decision relied upon by the learned Counsel for the appellant is that of Ramachandra Iyer, J., as he then was in *Krishnaswami Thevar*

v. *Perumal Konar* (1961) 1 M.L.J.169, There, the learned Judge has observed:

What the Act intended to do was to effect a conversion of the erstwhile Zamindari and Inam estates into ryotwari system of tenure. The features of

ryotwari system are too well known to require recapitulation. Recently I had occasion to consider the features of that system in two cases, viz., *S.*

Gopalan Vs. State of Madras, , and C.V. Rajagopalachariar Vs. The State of Madras by Collector, . Shortly stated, the ryotwari system was

conceived as a system of land revenue administration without the aid of middleman, a ryotawri pattadar is treated as the proprietor, he being made

to pay the assessment directly to the Government. The assessments are fixed periodically. There has been some controversy as to whether such

assessments should be held to partake the character of a rent or were really in the nature of a tax. The preponderance of authority is now in favour

of the view that the assessments are in the nature of taxes. The effect of Sections 11 to 14 is to declare that the ryots in the quandom estate as well

as the Zamindar or namdar as the case may be would be respectively entitled to patta in respect of the kudiwaram or pannai lands. Section 11

read with Section 3(d), Proviso 1 would show that the ryotwari patta in respect of ryoti lands would be granted to the ryot by the Settlement

Officer. There is no provision in Section 11 for the ascertainment of even the character of the land. Nor is there any machinery to decide whenever

a dispute arises between the rival claimants for the patta. Section 15 however provides for the examination of the nature and history of the private

or pannai land in respect of which the landholder would be entitled to a ryotwari patta under the provisions of Sections 12 to 14. There is also a

provision for appeal and for the finality of the decision in the appeal in respect of that matter. It may be noticed that u/s 15 it is only the nature and

character of the land that has got to be decided by the special machinery created by the Act. Patta would be given to the landholder if the land is of

the category mentioned in Sections 12 to 14. But if there are rival claims to the title of the landholder himself there would be no power in the

Settlement Officer or the Tribunal to adjudicate as to who among them would have a preferential right. This is more so in a case u/s 11 where no

question of any decision at all can arise. There is no provision for any adjudication amongst the rival claimants to patta in respect of a particular

land. It would therefore fellow that the statute having declared that the erstwhile ryot (that is the ryot lawfully entitled to be in possession of the

holding) would be entitled to patta and not having designated a Tribunal or machinery to decide as to who amongst the several claimants would be

entitled to patta, the dispute if and when it arises will have necessarily to be decided by the Civil Court.

11. In that suit also, the prayer was for declaration of title and for recovery of possession of the property from the defendant.

12. Reliance was also placed by the learned Counsel for the appellant on the decision of the Supreme Court in Chigurupati Venkata Subbayya and

Others Vs. Paladuga Anjayya and Others, , and of Ramanujam, J., in Subbiah Pillai v. Veerabadran and Anr. S.A. No. 1090 of 1976. The

learned Counsel further relied upon the decision of Sethuraman, J., in Jumma Mosque, Salavakkam, represented by its Jamatha of Salavakkam

Village by its members and Ors. v. Sulaimar Sheriff and Anr. S.A. No. 1705 of 1976. The decision of the Supreme Court and that of Ramanujam,

J., were concerned with communal lands governed by Act XXVI of 1948. Therefore, all the four decisions, namely Adakalathammal Vs.

Chinnayyan Panipundar, , Krishnaswami Thevar v. Perumal Konar (1961) 1 M.L.J. 169, Chigurupati Venkata Subbayya and Others Vs.

Paladuga Anjayya and Others, and Subbiah Pillai v. Veerabadran and Anr. S.A.No. 1090 of 1976. arose out of decisions relating to lands

governed by Act XXVI of 1948. They are not relevant for the purpose of the present cases which are governed by Act XXX of 1963. As

observed by Ranachandra Iyer, J., as he then was, in Krishnaswami Thevar v. Perumal Konar (1961) 1 M.L.J. 169, in cases governed by Section

11 of Act. XXVI of 1948 there is no provision for any adjudication amongst the rival claimants to patta in respect of a particular land.,

13. Section 11 of Act XXVI of 1948 merely lays down that every ryot in an estate shall, with effect on and from the notified date, be entitled to a

ryotwari patta in respect of all lands Mentioned in Clauses (a) and (b) subject to the proviso. The enquiry by the Settlement Officer u/s 15(1) of

that Act has been confined only to lands to which Sections 12, 13 and 14 of the Act are applicable. Section 12 deals with lands in Zamindari

estate in which the landholder is entitled to ryotwari patta. Section 13 deals with lands in inam estate in which the landholder is entitled to ryotwari

patta, and Section 14 deals with grant of patta to the landholder in respect of lands in an under tenure estate. Since no machinery has been

provided for the grant of ryotwari patta under-Section 11, of the Act, certainly the Civil Court will have jurisdiction when there are rival claims for

the grant of patta under that Section before the patta had been granted by the authorities under the Act.

14. The suit, out of which S.A. No. 1705 of 1976 decided by Sethuraman, J., arose, was for declaration and injunction in respect of certain lands

which had been notified under Act XXX of 1963 as from 15th February, 1965. The contention in that suit also was that the civil Court had no

jurisdiction Sethuraman, J., held that that contention was not tenable. The learned Judge has observed in his judgment thus:

Section 43 provides that the decision of a Tribunal in any proceeding under the Act on any matter falling within its jurisdiction is binding on the

parties and persons claiming under them, in any suit or proceeding in a Civil Court, in so far as such matter is in issue between the parties in such

suit or proceedings. The binding nature is restricted to any matter falling within the jurisdiction of the Tribunal or the Appellate Tribunal In the

present case the decision which is relied on by the respondents as constituting the bar to the present proceedings is the one decided by the Tribunal

exercising jurisdiction u/s 11(3). Section 11, as already pointed out, provides for the grant of ryotwari patta and the Assistant Settlement Officer

has to decide this question in respect of the land over which any claim is made. The jurisdiction of the Assistant Settlement Officer is merely for the

purpose of granting a patta and not to decide any dispute as to title. It is his decision, which is the subject-matter of the appeal before the Tribunal

and the jurisdiction of the Tribunal is also restricted to finding out the person in whose favour the ryotwari patta is to be issued. As the Tribunal has

no jurisdiction to go into the question of, title to the land, as such I do not consider that the bar enacted in Section 43 operates in the present case

so as to disentitle the plaintiffs from filing the present Suit.

15. With respect, I am unable to agree with the learned Judge that the jurisdiction of the Assistant Settlement Officer u/s 11 is merely for the

purpose of granting a patta and not to decide any dispute as to title, for the title to the land vests in the Government with effect on and from the

appointed day by virtue of the notification under section. 3(b) of the Act and by the grant of patta under the provisions of the Act, the rights of the

person to whom patta was granted to be in possession of the land is recognised by the Government. I may mention in this connection that

Ramachandra Iyer, J. as he then was has observed in his judgment in Krishna-swami Thevar v. Perumal Konar (1961) 1 M.L.J. 169 referred to

above that "a ryotwari pattadar is treated as the proprietor he being made to be pay the assessment directly to the Government.

16. Mr. G. Viswanatha Iyer, the learned Counsel for the respondents in S.A. Nos. 270 and 280 of 1974 invited my attention to a decision of a

Bench of the Andhra, Pradesh High Court in *Someswaraswamy Varu v. Srirajitam* (1971) A.W.R. 14. where the learned Judges have observed at

pages 17 and 18 thus:

The suit in the present case is for possession of items 3 to 10 of the plaint B schedule lands also along with mesne profits. But as stated already, the

defendant's possession Cannot be disturbed until their right to a patta is adjudicated on by the, Settlement Officer, a Tribunal contemplated under

the Act. This dispute is not a question relating to who has the lawful title to the land as title vested only in the Government but as to who is lawfully

entitled to a patta. The question relating to the granting of patta as between the landlord and the tenant, also is a question to be decided by the

Settlement Officer, under Sections 11 and 12 of the Act. It is not open to the plaintiff to circumvent the Act and go to a civil Court and ask for

possession when the civil Court cannot grant possession unless it goes into the question as to who is entitled to a patta and this is exclusively within

the jurisdiction of the Settlement Officer under the Act.

17. The decision also was rendered by the learned Judges under the provisions of Act XXVI of 1948 and would not, therefore, apply to the facts

of the present cases which are governed by Act XXX of 1963 which contains provisions for appeal to the Tribunal and Special Appellate Tribunal

in matters decided by the Assistant Settlement Officer u/s 11 of the Act and those decisions are final and could not be questioned in any Court of

law in view of Section 46 of the Act.

18. The present suits, as already stated, are for possession of the properties with past and future mesne profits. These reliefs could not be granted

by the authorities constituted under Act XXX of 1963 and could be granted only by the Civil Court. No doubt, when the question of title to the

properties is sought to be raised in the present suits for possession, it is open to the respondents to contend that this question cannot be gone into

by the civil Court having regard to the special provisions contained in Act XXX of 1963 and that the appellant is not entitled to recover possession

of the properties not having obtained patta for the same under the provisions of the Act, but that does not mean that the Civil Court has no

jurisdiction to go into the question whether it is or is not open to the appellant to seek to recover possession of the properties. Therefore, it is not

possible to agree with the view of the Courts below that the Civil Court has no jurisdiction to entertain the suits.

19. The second appeals are accordingly allowed, but under the circumstances of the case, without costs. The suits are restored to the file of the

learned District Munsif of Tirumaangalam and he shall dispose of them according to law after considering the evidence which the parties may

adduce and any arguments that may be advanced in respect of the several contentions and the relevant provisions in Act XXX of 1963. The

District Munsif shall dispose of the suits which are of the year, 1968 expeditiously.