

(1997) 09 MAD CK 0140
In the Madras High Court

T.N. Sivathanu (deceased) and Others	Vs	APPELLANT
A.T. Chidambarathanu and Others		RESPONDENT

Date of Decision : 04-09-1997

Acts Referred:

Citation : (1998) 1 MLJ 656(1)

Hon'ble Judges : S. Jagadeesan, J

Bench : Division Bench

Judgement

S. Jagadeesan, J.—The 1st petitioner is the decree holder in O.S. No. 809 of 1978. He has filed the suit for recovery of possession. The suit has been decreed. He filed the execution petition in E.P. No. 478 of 1979 for delivery. In the execution proceedings, the respondents 1 and 2 herein took an objection stating that they are cultivating tenants, and as such, the decree cannot be executed against them. Further the Civil Court has no jurisdiction to pass a decree for delivery of possession, and only the Revenue Court is empowered to evict the tenants. The lower court had accepted the contention of the respondents 1 and 2 herein and dismissed the execution petition. The present revision has been filed against the same. During the pendency of the revision 1st petitioner as well as the 2nd respondent were reported to be dead, and petitioners 2 to 9 and respondents 3 to 10 were impleaded respectively as their legal representatives.

2. It is rather unfortunate that the decree holder who obtained the decree in the year 1978 is still to get the fruits of the same. Admittedly the suit has been decreed, which means the claim of the respondents that they are the cultivating tenants must have been negated. It is not the case of the respondents that the Civil Court has held that they are the cultivating tenants and they are entitled to the benefits under the Cultivating Tenant's Protection Act. If that be so, naturally the proceedings ought to have been transferred to the Revenue Court or at least the respondents ought to have taken some steps to transfer the proceedings to the Revenue Court. Nothing has been done in this matter. Hence the decree of Civil Court has become final. When the decree of the Civil Court has become

final, it is not open to the executing court to go beyond the decree. The executing court relied upon the judgment reported in Subbaratnam Iyer Vs. Pattavarthi Moopan, , to come to the conclusion that the Civil Court need not give a final finding and has no jurisdiction to give a finding in respect of the right of the respondents as cultivating tenants.

3. A Division Bench of this Court in a case reported in Subbaratnam Iyer Vs. Pattavarthi Moopan, and held as follows:

We are of opinion that the view taken by Panchapakesa Ayyar, J. in Syed Sahib Vs. Angamuthu Mooppan, and Subbaratnam Iyer Vs. Pattavarthi Moopan, , (stated above) is not correct. With great respect to the learned Judge we are unable to subscribe to the view that a prima facie finding of the Civil Court holding that a party to the suit is a cultivating tenant can deprive the Civil Court of its jurisdiction to try the suit making it incumbent on that court to transfer the suit to the Revenue Court. If the view of the learned Judge as expressed by him in those decisions were to prevail it would lead to anomalous results. What is to happen if the Revenue Court were to hold contrary to the prima facie finding of the Civil Court that the tenant is not a cultivating tenant entitled to the benefits of the Act, there is no machinery under the Act for the Revenue Divisional Officer to retransfer the proceeding to the file of the Civil Court. Further the Civil Court cannot lose its jurisdiction to try a suit competently laid before it on tentative conclusion or prima facie findings. 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.

4. From this it is clear that only if the Civil Court holds that respondents are cultivating tenants, the matter has to be transferred to the Revenue Court. If the Civil Court finds otherwise, the court is entitled to proceed further and pass final order of eviction. Admittedly in this case, the Civil Court has found that the respondents are not the cultivating tenants, and as such, the decree of the Civil Court has become final. Moreover, the same has not been challenged in appeal. Hence the order of the executing court cannot be sustained. Therefore, the impugned order is set aside. The revision is allowed.