

(1958) 01 MAD CK 0027
In the Madras High Court

V. Kuppuswami and Others

APPELLANT

Vs

Sri Subramaniaswami Devasthanam and Others

RESPONDENT

Date of Decision : 21-01-1958

Acts Referred:

Citation : (1958) 71 LW 303 : (1958) 1 MLJ 208

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—O.S. No. 41 of 1956 on the file of the Subordinate Judge, Mayuram,. is a suit by the trustees of the

Subramaniaswami Devasthanam at Thiruvidadakkazhi and a person named Muhammad Ali claiming to be a lessee from the devasthanam, for the

issue of an injunction to restrain the defendants from interfering with the plaintiffs' possession of the suit properties.

2. Thirty three persons were impleaded as defendants in the suit. On behalf of all of them the first defendant filed a written statement in which,

among other things, the plea was taken that, only the revenue Court had jurisdiction to try the suit. On list November, 1956 the defendants filed I

.A. No. 522 of 1956 praying that O.S. No. 41 of 1956, be transferred to the file of the Revenue Divisional Officer, Mayuram. The transfer was

asked for on the basis of Section 6-A which was introduced into Madras Act XXV of 1955 by Madras Act XIV of 1956. To that section I shall

return presently. The learned Subordinate Judge dismissed the application. The defendants have therefore come to this Court.

3. Section 2(a) of the Act defines the expression cultivating tenant". Three classes of persons are included in that definition : (1) a person who

carries on personal cultivation under any tenancy agreement, (2) any person who holds over and continues in possession after the determination of

the agreement of tenancy and (3) the heirs of such persons. Section 3 prohibits landlords from evicting cultivating tenants, but this prohibition is

subject to certain limitations. One of them is this. If the tenant is in arrears with his rent at the commencement of the Act and does not pay those

arrears within six weeks after the commencement of the Act, he loses the protection against eviction. Similarly in respect of arrears accruing after

the commencement of the Act the tenant loses his right of not being evicted if he fails to pay the rent within a month of its becoming due. Then

follow other provisions enabling these rights to be worked out but they are not at present relevant. u/s 4 of the Act a cultivating tenant who has lost

his possession is given a right to be restored to possession under certain circumstances. The nature of that right and the limitations attached to that

are also set out in Section 4. Section 4-A confers on a landlord the right to resume the land for personal cultivation under certain circumstances.

Then there is Section 6-A which runs as follows:

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 this 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 this Act and all the provisions of this Act shall apply

to such an application and the applicant.

4. The question I have to determine here is what do the words "cultivating tenant entitled to the benefits of this Act" mean? It will be noticed that

the word "benefits" is in the plural and therefore if some one were to say that before a cultivating tenant can call in aid Section 6-A he must be

entitled to all the benefits under the Act or to more benefits than one under the Act, he would not be running counter to the rules of grammar. But

since that contention has not been raised before me I need not go into it.

5. 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.

6. 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.

7. In the present case there are as many as thirty-three defendants and no attempt appears to have been made to find out individual by individual which of these defendants satisfies both these requirements of Section 6-A , viz., (1) that he is a cultivating tenant and (2) that he is entitled to some benefit or other under the Act. The learned Subordinate Judge will go into this matter and consider in respect of each defendant whether he satisfies both these requirements. In respect of those defendants who satisfy both the requirements, the suit will have to be transferred " to the Revenue Divisional Officer.

8. In respect of those defendants who do not satisfy both these requirements the suit will have to go on before the Sub-Court. There will be a direction accordingly.