

Aravan Servai Vs. Kamugan Servai and ors.

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Court : Chennai

Decided On : May-13-1958

Reported in : (1958)2MLJ505

Appellant : Aravan Servai

Respondent : Kamugan Servai and ors.

Judgement :

Ramaswami, J.

1. The Civil Revision Petition (C.R.P. No. 190 of 1958) has been filed against the order made by the learned Revenue Divisional Officer, Tiruchirappalli in R.A. No. 23 of 1957.
2. R.A. No. 23 of 1957 was an application by Kamugan Servai against Aravan Servai and Ramaswami Reddiar for restoration of possession of lands under Section 4(5) of the Madras Cultivating Tenants Protection Act (XXV of 1955) as amended by Madras Act XIV of 1956.
3. This application has been allowed and restoration ordered in respect of items 1 and 3 after the existing Samba Crops on them are harvested and the application has been dismissed in respect of item 2.

4. Items 1 and 2 belong to Aravan Servai and item 3 to Ramaswami Reddiar. This Civil Revision Petition has been filed by Aravan Servai in regard to item 1.
5. On the foot that one Sevugan Servai was a cultivating tenant for this land under Aravan Servai and that Kamugan Servai was interfering with the possession and enjoyment of the suit properties by Sevugan Servai, O.S. No. 470 of 1956 wai' filed in the Court of the District Munsif of Kulitalai by Sevugan Servai for a permanent injunction against Kamugan Servai, on 13th August, 1956. On the same day, in I.A. No. 1107 of 1956 in O.S. No. 470 of 1956, District Munsif's Court, Kulitalai, an application was made for a temporary injunction. On 25th August, 1956, a counter was filed by Kamugan Servai disputing the claims of Sevugan Servai. On 5th September, 1956, a temporary injunction was granted against Kamugan Servai.
6. Thereupon Kamugan Servai appeared before the Revenue Divisional Officer, and, filed a petition on 30th November, 1956, under Section 4(5) of Act XXV of 1955 giving the date of eviction as May, 1956, for restoration and possession and which was numbered as R.A. No. 23 of 1957. On 30th January, 1956 the landlord Aravan Servai filed a counter specifically pointing out that the District Munsif has granted him an injunction in O.S. No. 470 of 1956. On 28th December, 1957, restoration was ordered by the Revenue Divisional Officer finding that this Kamugan Servai was a cultivating tenant.
7. On 24th February, 1958, O.S. No. 470 of 1956 was decided in the District Munsif's Court of Turaiyur, numbered as O.S. No. 493 of 1957. The suit was decreed. Issue (2) there was whether the plaintiff was in possession on the date of suit, and, Issue (1) was whether the defendant was a cultivating tenant and whether the suit was barred under Act XXV of 1955. The finding on issue (1) was that the defendant Kamugan Servai was not a cultivating tenant and that the suit was not barred under Act XXV of 1956. The finding on issue (2) was that the plaintiff was in possession on the date of suit and that he was entitled to an injunction as prayed for.
8. The present Civil Revision Petition has been filed against the decision of the learned Revenue Divisional Officer directing restoration.

9. The relevant provisions of Madras Act I of 1955, Act XXV of 1955 and Act XIV of 1956 are as follows:

10. Section 6 of the Act XXV of 1955 runs as follows:

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 this Act.

11. Section 6-A of Act XIV of 1956 provides for transfer of certain suits to the Revenue Divisional Officer by civil Courts:

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.

12. Both these provisions are naturally governed by Section 10, Civil Procedure Code, which states,

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

13. That both the Civil and Revenue Courts are subordinate to the High Court is provided by the Civil Procedure Code as well as by Section 6-B of Act XIV of 1956.

14. To sum up, under Section 9, Civil Procedure Code, civil Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred : Surajnarain v. Jamal A.I.R. 1946 Pat. 385; Jagannatha v. Kutumba raydu (1916) 27 M.L.J. 233 : I.L.R. Mad. 21; State of Bombay v. Adamjee L.R. (1951) A.C. 147 and Valli v. Corporation of Madras (1915) 23 M.L.J. 531 : I.L.R. Mad. 38 .But even in such cases civil Courts have jurisdiction to examine into cases where the provisions of the statute have not been complied with or the tribunal has not acted in conformity with the fundamental principles of Judicial Procedure: Secretary of State v. Mask and Co. (1940) 2 M.L.J. 140 : L.R. 67 IndAp 222 : I.L.R. (1940) Mad. 599 (P.C.); Noor Muhammad v. Sulaiman I.L.R. (1947) Cal. 339 : 49 C.W.N. 10. Ordinarily suits for possession, injunction, for ejectment or arrears of rent, will be filed in the civil Courts. But, by virtue of these special Acts, a class of civil suits has been withdrawn from the purview of civil Courts in specified circumstances.

15. The jurisdiction of the Revenue Divisional Officer is dependent upon two factors, viz., that the relationship of landlord and cultivating tenant must exist between the parties coming before him and it must be for one of those reliefs specified in the Act.

16. In regard to the first condition it will of course be open to the Revenue Divisional Officer in case the relationship is denied to go into the question to decide that he has got jurisdiction, viz., whether the relationship of landlord and cultivating tenant exists in the particular circumstances of the case. If the answer is in the affirmative he can proceed with the application. If the answer is in the negative. he has got to dismiss the application.

17. This does not mean that in cases where the relationship of landlord and cultivating tenant is alleged not to exist it is not open to a landlord or the landlord's lessee to go to the civil Court in the first instance for one or more reliefs which the civil Court can give. The civil Court has got jurisdiction to enquire into the matter unless it is found that the relationship of landlord and cultivating tenant exists and the relief asked for is one which the Revenue Divisional Officer is empowered to give. In such a case it is provided for under Section 6-A of Act XXV of 1955 as

amended by Act XIV of 1956 for the transfer of certain suits from the Civil Courts to the Revenue Courts established under the Act.

18. It has been recently held by Balakrishna Ayyar, J., in *Kuppuswami v. Subramaniaswami Devasthanam* : (1958)1MLJ208 , that

Having regard to the scheme of the Act and the language of the section before a civil Court can transfer a proceeding under Section 6-A of the Act, it must be satisfied that the tenant is not only a cultivating tenant as defined by the Act ; he should also be entitled to some benefit or other under the Act. If both these conditions are not satisfied, no question of any transfer under Section 6-A of the Act will arise. It may be that in coming to a conclusion whether a suit has to be transferred or not the civil Court may have to determine certain questions which are exclusively within the jurisdiction of the Revenue Courts under the Act. But this cannot affect the interpretation of the specific words of the section, viz., 'cultivating tenants entitled to the benefits of the Act.'

Quaere: Whether in view of the expression 'benefits of the Act' used in the plural, it is necessary that the tenant should be entitled to all the benefits of the Act before he could seek a transfer under Section 6-A.

19. In fact, subject to the bar contained in Section 6 of the Act an aggrieved landlord can even sue for arrears of rent as pointed out by me in *Narasimha Chettiar v. Muthuswami Gounder and Ors.* Journal section of 71 L.W. 26 Since reported in full : (1958)2MLJ216 which reads:

Subject to the bar contained in Section 6 of the Madras Act XXV of 1955 aggrieved landlords can file suits for arrears of rent, and subject, however, to the following limitations. A suit can be filed for arrears of rent not covered by the provisions of Madras Act XXV of 1955. Thus, for instance, in the case of a registered lease, suits can be filed for recovery of arrears of rent for a maximum period of six years and which cannot be the case under the Act. In regard to the lease years covered by the Act and in regard to which deposit of arrears had been directed and has not been complied with, under the Act the remedy of the landlord is only to get the tenant evicted. With regard to the arrears of rent itself not

deposited, the landlord can file a suit in the civil Court for recovery of such arrears and on obtaining a decree he can execute it in the manner provided by the Code of Civil Procedure.

A Receiver under Order 40, Rule 1, Civil Procedure Code, can exercise all the powers except that of dispossessing a cultivating tenant. It will be open to him, for instance, in the management of the estate for which he is appointed Receiver by Court on behalf of both parties and which property he holds in custodia legis, to get that cultivating tenant attorn to him in as much as he has stepped in to the shoes of the landlord for the time being. But he cannot dispossess him in contravention of the provisions of Madras Act XXV of 1955 and if he has to evict that cultivating tenant in pursuance of his management of the estate, he must do so only under the provisions of that Act.

If the cultivating tenant refuses to attorn to the Receiver, denying the title of the landlord, the cultivating tenant would cease to be a cultivating tenant and cannot invoke the protection of the Revenue Divisional Officer.

20. It will thus be open to the civil Court to go into the question for instance whether there has been a voluntary surrender by the tenant terminating his character as a cultivating tenant as laid down in *Chinmayanandaswami and others v. Sinangi Konar and Ors.* 70 L.W. 87 W.P. No. 699 of 4956 : The case is fully reported in (1957) 1 M.L.J. 165, *Kuppammal v. Vellingiri* 70 L.W.11 : The case is fully reported in (1957) 1 M.L.J. 293 and *Sellathammal v. M. Ganesan* 70 L.W. 119 C.R.P. No. 890 of 1957.

21. It is obvious under Section 10, Civil Procedure Code, that the civil Courts and the Revenue Courts are not rivals trying to obtain custom. On the other hand, the comity of Courts will be observed by both of them. If there are pending proceedings in a civil Court where a prima facie decision has been given that the relationship of landlord and cultivating tenant does not exist and the opposite party rushes to the Revenue Court in order to obtain a decision to the contrary, the Revenue Divisional Officer will hold his hand and await the decision of the civil Court. The moment the civil Court finds that the relationship of landlord and cultivating tenant exists it will transfer the proceedings. The moment it is found that

the relationship of landlord and tenant does not exist the Revenue Divisional Officer must rest at the finding of the civil Court and dismiss the application before himself. In the same way, if there are pending proceeding before the Revenue Divisional Officer and the opposite party runs to the civil Court, a civil Court will stay its hands and await the decision whether the relationship of landlord and cultivating tenant exists, and, if the answer is in the affirmative and the remedies asked for before it are those which can be granted by the Revenue Divisional Officer the civil Court will not proceed with the suit. On the other hand, if the Revenue Divisional Officer finds that the relationship of landlord and tenant does not exist or that the reliefs asked for before him are not those which can be granted by him it will be open to the civil Court to proceed. In other words, each must respect the jurisdiction of the other, and, as I have said, both these Courts are subordinate to the High Court and are not rivals going out and securing the highways and bye-ways touting as it were for custom. On the other hand both will be governed by the salutary principles laid down in Section 10, Civil Procedure Code.

22. Bearing these principles in mind, if we examine the facts of this case we will find that the Revenue Divisional Officer was not justified in proceeding with the application, and, what is more, he might well have abstained from the several observations he has made in his order. The order of the Revenue Divisional Officer is set aside and the Civil Revision Petition is allowed, in the circumstances, without costs.

23. C.R.P. Mo. 241 of 1958. - This Revision is based on identical facts as C.R.P- No. 190 of 1958 but is in regard to O.S. No. 471 of 1956, District Munsif Court, Kulitalai, in which the tenant is the same, though the landlord is different. The same order as in C.R.P. No. 190 of 1958 is made, viz., that the order of the Revenue Divisional Officer is set aside and this Civil Revision Petition is allowed in the circumstances without costs.