

Ammayappan Vs. the Additional Collector In-charge and Collector and ors.

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SooperKanoon Citation : sooperkanoon.com/801198

Court : Chennai

Decided On : Sep-02-1987

Reported in : (1988)2MLJ293

Appellant : Ammayappan

Respondent : The Additional Collector In-charge and Collector and ors.

Judgement :

ORDER

Nainar Sundaram, J.

1. The matter arises under the Tamil Nadu Agricultural Lands Records of Tenancy Rights Act X of 1969, hereinafter referred to as the Act. The petitioner claims himself to be a tenant under the Act. The lands belong to a trust. It is stated that respondents 4 to 8 are the trustees. Respondents 9 to 12 claim themselves to be alienees of the lands in question. The lands were originally demised by way of lease to one Kuttianna Gounder, who is no more. According to the petitioner, he being the son of the said Kuttianna Gounder continued to be in possession of the lands as the cultivating tenant and hence he must be recorded as such under the Act. The third-respondent did not countenance this plea of the petitioner. The order of the third-respondent is dated 6.8.1979. Anterior to the order of the third-respondent, the petitioner was obliged to move the civil Court in O.S.No. 222 of 1977 on the file the District Munsif, Karur, against respondents 9 to 12 to ask for

the relief of injunction to maintain his possession as a cultivating tenant. That suit, in spite of contest by respondents 9 to 12 herein the defendants in that suit, was decreed on 22-6-1978. As against the order of the third-respondent, the petitioner preferred an appeal to the second respondent. Before the second respondent, copies of the proceedings in the civil suit were admitted as additional evidence. It has to be noted that in O.S.No. 222 of 1977, the question as to whether the petitioner herein, the plaintiff in the suit was 'in possession as a cultivating tenant was incidentally gone into and the answer thereto was given in his favour. That decision in the suit, as notified above, was rendered anterior to the order of the third-respondent. On the overall assessment of the materials placed in the case on the relevant question as to character of the possession of the petitioner, the second-respondent by order dated 31-1-1980, set aside the order of the third-respondent and directed that the name of the petitioner should be recorded as a tenant under the Act. There was a revision by respondents 4 to 12 to the first-respondent and the first-respondent expressing the view that the decision in the civil suit cannot be conclusive proof of the tenancy status and the tenancy status for the purpose of the Act should be determined only by the authorities under the Act, chose to set aside the order of the second-respondent and restored the order of the third respondent. In this Writ Petition, the order of the first-respondent dated 9-4-1980 is being put in issue.

2. It must be stated here that the decision of the first Court in civil litigation in O.S.No. 222 of 1977 was confirmed on appeal by the Sub-Court, Karur, in A.S.No. 107 of 1978 on 21-8-1980. The judgment and decree in A.S.No. 107 of 1978 were challenged in SA.No. 11.23 of 1981 raising the point that the civil Court lacked jurisdiction to entertain the suit for injunction wherein the question as to whether a person is in possession as a cultivating tenant is involved. That second appeal *Kamppanna Gounder v. Ammaiappan* : (1988)1MLJ376 , has been dismissed by me today holding that the civil Court does not lack jurisdiction to go into the question incidentally as to whether a person is in possession as a cultivating tenant in a suit for injunction to protect such possession and Section 16A of the Act does not bar such a suit.

3. G. Subramaniam, learned Counsel for the petitioner, would submit that the status of a tenant claimed by the petitioner can certainly be gone into and adjudicated upon by the civil court as an incidental issue, if not a jurisdictional one, for the purpose of granting the relief of injunction to protect possession and if such a decision has been rendered by the civil court anterior to the decision by the authorities under the Act, the latter must certainly take note of that and they cannot ignore the same, as done by the first respondent. In this connection, he places reliance on a pronouncement of this Court in *Palaniswami Gounder v. Chellammal* 1987 W.L.R. 59. There, I have expressed the view that the decision on relevant issues by the Civil court rendered anterior to the decision by the authorities under the Act has got relevancy and cannot be eschewed as irrelevant by the authorities under the Act. I have taken note of the view of the Bench of this Court to which I had been a party, in *Balasubramanian v. Shaksu Thalrees* 98 L.W. 536, which view ran as follows:

It would be a different matter if the matter had gone to the civil court and a decision had been rendered by the civil court on those questions anterior to the decision of the authority under the Act and the Civil Court thereby holding that the lease in favour of the first defendant by the second-defendant could not be legally sustained and has got to be ignored in the eye of law. The Civil Court can certainly go into these jurisdictional issues, which are not within the exclusive jurisdiction of the authority under the Act. But, such is not the case here.

It is true that the above decisions dealt with cases, where jurisdictional issues were involved. But in *Periathambi Gounder v. District Revenue Officer* (1980) 2 M.L.J. 89 : 93 L.W. 169, a Full Bench of this Court dealt with a case where anterior to final orders under the Act, there had been a decree and that too an ex-parte one, in a suit for a bare injunction on the claim that the plaintiff was in possession of the lands in question as a cultivating tenant. The Full Bench held that the jurisdiction of the civil court to go into the question incidentally as to whether the plaintiff was in possession as a cultivating tenant in the suit for bare injunctions is not ousted, and such a decision of the civil court, rendered anterior to the final orders of the authorities under the Act was a relevant fact and had a great and a definite bearing on the question as to whether the person was a cultivating tenant,

and since the decision of the Civil court was not at all taken into account by the authority in that case, the Full Bench remitted the matter back to the authority concerned. Here, the civil court's proceedings have been admitted as additional evidence before the second-respondent, and the second-respondent upheld the case of the petitioner. The first-respondent's view that the decision in the civil suit cannot be taken note of on the question of status of a tenant, is unsustainable, in view of the pronouncements of this Court. No other tenable reason has been assigned by the first-respondent for ignoring the decision of the civil court. Here, anterior to the decision of the third-respondent, the civil court has rendered a finding on the question as to the status of a tenant claimed by the petitioner in his favour, and that is not without jurisdiction, and certainly that will bind the authorities under the Act and it will not be proper for them to ignore the same. In this view, I am not able to support the order of the first-respondent when he chose to reverse the order of the third-respondent. Accordingly, the Writ Petition is allowed and the order of the first-respondent impugned in this Writ Petition is quashed. The result is the order of the second-respondent shall stand restored. No costs.