

Muhammad Badsha Saheb and ors. Vs. Duraisami Goundan

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SooperKanoon Citation : sooperkanoon.com/810879

Court : Chennai

Decided On : Dec-11-1959

Reported in : (1960)1MLJ412

Appellant : Muhammad Badsha Saheb and ors.

Respondent : Duraisami Goundan

Judgement :

ORDER

Subrahmanyam, J.

1. The appeal (C.M.S.A. No. 80 of 1958) is from the order, dated 27th August, 1958, passed, by the District Judge of South Arcot in A.S. No. 346 of 1956 on his file. C.R.P. No. 2037 of 1958 is preferred from the order passed by the Assistant Collector, Tiruppattur, on 9th June, 1958, in T.P. No. 58 of 1957.

2. S.T. Muhammad Hussain leased the land to which she appeal and the petition relate, on 7th June, 1951, to Duraisami Goundan. The lease expired with 12th May, 1952. Muhammad Hussain instituted O.S. No. 379 of 1952 on the file of the District Munsif of Tirupattur for evicting Duraisami Goundan. A decree ex parte was passed in that suit on 16th September, 1954. Duraisami Goundan applied on 17th September, 1954, that the decree be set aside. During the pendency of that application, he was dispossessed, in execution of the decree, on 30th October, 1954. The decree was set aside on 5th April, 1955. Madras Act XXV of 1955

(Madras Cultivating Tenants' Protection Act) came into force on 24th September, 1955. On 15th February, 1956, Duraisami Goundan filed an application for restitution, that is to say, to be put back in possession of the property. That application was pending until 3rd November, 1956. On 24th August, 1956, by Amending Act XIV of 1956, Section 6-A was introduced in Madras Act XXV of 1955. Section 6-A requires that any suit pending before a Court for possession of land against a person who is a cultivating tenant entitled to the benefits of the Act should be transferred to the Revenue Divisional Officer having jurisdiction over the area in which the land is situate. When Section 6-A became part of Madras Act XXV of 1955, the suit O.S. No. 379 of 1952 was pending on the file of the District Munsif's Court, Tirupattur. The plaintiff in that suit namely, Muhammad Hussain was in possession by reason of having taken possession in pursuance of the decree which had been passed ex parte. The application for restitution, namely, the application by the defendant to be restored to possession, was pending. On 3rd November, 1956, the learned District Munsif passed an order allowing the application for restitution and directing the transfer of the suit to the file of the Revenue Divisional Officer.

3. The Revenue Divisional Officer took the suit on file and registered it as a petition. While it was pending on his file, Muhammad Hussain died. His legal representatives applied that they be brought on record. The learned Revenue Divisional Officer held that there was no provision in Madras Act XXV of 1955 under which he could add legal representatives of the deceased petitioner. In that view, he dismissed the application and the petition which was pending on his file. The result was that Muhammad Hussain was in possession of the property and there had not been a disposal, on the merits, of the suit which he had instituted for possession.

4. The order for restitution which had been made in favour of the defendant by the District Munsif was appealed from by Muhammad Hussain. In that appeal, his legal representatives were added. They prosecuted the appeal. Pending appeal there was stay of execution of the order for restitution. Consequently, Muhammad Hussain's representatives continued in possession. The appeal was dismissed by the learned District Judge. From the order of dismissal, C.M.S.A. No. 80 of 1955

has been preferred.

5. During the pendency of this appeal, execution of the order of restitution has been stayed with the result that the legal representatives of Muhammad Hussain continue in possession. They applied in T.P. No. 58 of 1957 before the Revenue Divisional Officer for conviction of the defendant. But since they were in possession, no question of eviction could arise. On that ground, the Revenue Divisional Officer dismissed that petition. From the order of dismissal, they have preferred C.R.P. No. 2037 of 1958.

6. Learned Counsel for the petitioners, namely, the legal representatives of Muhamad Hussain, contends that the orders of restitution passed by the District Munsif was wrong because that order contravened the provisions of Section 6 of Madras Act XXV of 1955 read with Section 4 of the Act. Sections 6 and 4 are in these terms:

Section 6. - 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.

Section 4. - Every cultivating tenant who was in possession of any land on the 1st December, 1953 and who is not in possession thereof at the commencement of this Act shall, on application to the Revenue Divisional Officer, be entitled to be restored to such possession on the same terms as those applicable to the possession of the land on the 1st December, 1953.

7. The defendant was in possession of the lands on 1st December, 1953. He was not in possession at the commencement of Madras Act XXV of 1955, namely, on 24th September 1955. Dispossession was due to execution of the decree which had been passed ex parte on 16th September, 1954. When the Act came into force, the decree had been set aside and the defendant was entitled to be restored to possession. The argument of the learned Counsel for the petitioners is that an application to be restored to possession should, under Section 4 of the Act, be

made to the Revenue Divisional Officer and that the civil Court's jurisdiction to entertain an application for restitution was barred by Section 6 of the Act. The point is whether that contention is correct.

8. Sections 4 and 6, as indeed every other section of the Act, should be so construed as to give effect to the purposes of the Act and so as not to result in the blurring of limits of jurisdiction in the sphere of administration of justice.

9. In *Kuppammal v. Vellingiri Goundar* (1956) 70 L.W. 11, it was held that Section 4 would not apply to a tenant who was in possession on 1st December, 1953 and was not in possession on 24th September, 1955, by reason of his having voluntarily surrendered possession. Such a tenant would be within the language of the section because he was in possession on 1st December, 1953 and was not in possession on 24th September, 1955. But the Court held that Section 4 would not apply to him because he had not been evicted but voluntarily surrendered possession.

10. In the case before us, the tenant, was evicted but he was evicted in the course of a suit in execution of a decree which was subsequently set aside. In such a case, the tenant has a right to file an application for restitution in the pending suit. It would be a violation of the normal processes of law to hold that an application in a suit which is pending in a civil Court and which cannot be transferred to a Revenue Court should be made to a Revenue Court. On the date on which the application for restitution was made by the appellant, namely, 15th February, 1956, Section 6-A had not been made part of Madras Act XXV of 1955. The suit could not, therefore, on that date, be transferred to the Revenue Divisional Officer and was validly pending in the Court of the District Munsif. An application for restitution would ordinarily have to be made to the District Munsif in that pending suit. To hold that such an interlocutory application in a suit which was pending in the District Munsif's Court should, under Section 4 read with Section 6, be made in the Court of the Revenue Divisional Officer would result in such conflicts of jurisdiction as could not possibly have been intended by the Legislature. I hold that it was not the intention of the Legislature, in enacting Sections 6 and 4 of Madras Act XXV of 1955, that any application in a suit pending in the District Munsif's

Court should be made to a Revenue Divisional Officer. I find that the application for restitution was properly made to the District Munsif on 15th February, 1956. The District Munsif had on that date jurisdiction to entertain the application and to dispose of it on its merits.

11. While the application for restitution was pending, Section 6-A was, by the enactment of Act XIV of 1956, made part of Madras Act XXV of 1955 on 24th August, 1956. The District Munsif became thereby bound to transfer the suit to the Court of the Revenue Divisional Officer. Section 6-A does not by itself cause an automatic transfer of suits dealt with in that section without an order of transfer being passed by the District Munsif. For comparison, we may refer to Section 8(1) of Madras Act X of 1955, which, with reference to an analogous matter, enacts:

All suits pending in the High Court on the date of the commencement of this Act and Which would be within the cognizance of the Madras City Civil Court shall stand transferred to the Madras City Civil Court.

12. Under that section, it will be seen, suits stand transferred by the operation of the Act without the need for the intervention of an order of transfer by any Court. Reference may be made also to Section 60(6) of Central Act XXXVII of 1956. Under Section 6-A of Madras Act XXV of 1955, on the other hand, an order of transfer has to be passed by the civil Court' on whose file the suit is pending before the Revenue Divisional Officer could acquire jurisdiction to deal with the matter. Until the order of transfer is made, the civil Court in which the suit is pending, would have jurisdiction to pass all orders required to be passed in the pending suit. The District Munsif on whose file the application for restitution was pending did not lose jurisdiction to pass an order for restitution by reason merely of the enactment of Madras Act XIV of 1956.

13. The suit which the District Munsif had to transfer to the Revenue Divisional Officer under Section 6-A was a suit for eviction. There would be no point in transferring a suit for eviction if the plaintiff was himself in possession of the property on the date on which the Revenue Divisional Officer would acquire jurisdiction to deal with the subject-matter. The District Munsif was therefore right in passing an order of restitution before transferring the suit and in thereafter

transferring the suit to the Revenue Divisional Officer. The order passed by the District Munsif on 3rd November, 1956, is correct and the order passed in appeal is also right.

14. C.M.S.A. No. 80 of 1958 is dismissed. The parties will bear their own costs in the appeal.

15. The C.R.P. is from the order passed by the Revenue Divisional Officer dismissing the petition for eviction on the ground that the petitioners were themselves in possession on the date on which they applied for possession. As a result of the order passed in C.M.S.A. No. 80 of 1958, the respondent in that appeal will obtain possession. He would therefore be a cultivating tenant against whom an application for eviction might be made. That application would have to be dealt with on the merits by the Divisional Officer. The order passed by the Divisional Officer in T.P. No. 58 of 1957 is set aside. He will restore the petition to its original number and dispose of it afresh in accordance with law. The parties will bear their own costs.