

Rasu and ors. Vs. the Special Deputy Collector (Revenue Court) and anr.

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Court : Chennai

Decided On : Dec-02-1983

Reported in : (1984)2MLJ1

Appellant : Rasu and ors.

Respondent : The Special Deputy Collector (Revenue Court) and anr.

Judgement :

ORDER

V. Ratnam, J.

1. The tenant is the petitioner in these civil revision petitions. An extent of 4 acres forming the western portion out of 6.25 acres of R.S. 43/1 in Ulaganeri village, Madurai North taluk, was taken on lease by him from the second respondent herein, who is admittedly the owner of that property, agreeing to pay rent at 32 bags of 54 Madras Measures (65 Kgs. each per acre per bogum) and 32 bundles of straw per fasli. In T.C.T.P. No. 202 of 1978 filed under Section 3(4)(a) of the Tamil Nadu Cultivating Tenants Protection Act (XXV of 1955) hereinafter referred to as the Act) originally before the Authorised Officer (Land Reforms), Madurai, which was subsequently transferred to the file of the Revenue Court, Tirunelveli, and re-numbered as T.C.T.P. No. 21 of 1979, the second respondent herein prayed for the passing of an order or eviction against the petitioner herein on the ground that the petitioner had not measured the rent as contracted and was in

arrears of 28 bags of paddy and 96 bundles of straw in respect of faslis 1386 to 1388. That application was resisted by the petitioner on several grounds which need not be noticed in extenso for purposes of these proceedings. In the application for eviction, an ex parte order of eviction, was passed initially, but on an application at the instance of the petitioner, ex parte order of eviction was set aside and the petition was restored to file. Thereafter, the application for eviction had been adjourned to several dates and ultimately on 11th November, 1980, the petitioner and the second respondent made a joint endorsement signed by them as well as their counsel. Thereunder, the petitioner accepted that he was in arrears of 25 bags of 54 Madras Measures (65 kgs. each bag) and agreed to measure 25 bags or pay the market value thereof to the second respondent on or before 10th January, 1981, and obtain a receipt from him. It was further agreed that if the petitioner failed to do so, then he would vacate the land without asking for an extension of time, on the terms of the joint endorsement so made on 11th November, 1980, the Revenue Court fixed the value of the agreed rent at Rs. 1,885 at the rate of Rs. 116 per quintal and directed the petitioner to pay the amount of Rs. 1,885 to the second respondent on or before 10th January, 1981 failing which the second respondent was given liberty to file an execution petition. In that order, it was also stated that no further time will be granted. This order was despatched by the Revenue Court to the petitioner as well as the second respondent on 20th December, 1980. It is not now in dispute that the petitioner received the order through his counsel (vide paragraph 2 of the affidavit in C.M.P. No. 11549 of 1981.). It is common ground that the petitioner did not measure 25 bags of paddy or pay the sum of Rs. 1,885 to the second respondent as agreed to by him. In as much as the petitioner did not do so, the second respondent took out an application in E.P. No. 15 of 1981, for delivery of possession of the lands under the cultivation of the petitioner and on 21st April, 1981, the possession of the property under the cultivation of the petitioner was delivered to the second respondent. While in C.R.P. No. 2962 of 1983, the petitioner has challenged the correctness of the order passed by the Revenue Court on 11th November, 1980 on the basis of the joint endorsement, C.R.P. No. 1681 of 1981 questions the propriety of the delivery proceedings.

2. The learned Counsel for the petitioner contended that the order passed by the Revenue Court though based on a joint endorsement made by the petitioner and the second respondent is vitiated in as much as the Revenue Court has proceeded to pass a rolled up order in that the direction to pay the arrears and the direction to be evicted in the event of non-payment of the arrears have been given in the same order by the Revenue Court at the same time contrary to the provisions of the Act. Such an order, according to the learned Counsel for the petitioner, would not only run counter to the provisions of the Act and indeed could not be passed by the Revenue Court even if the party invited the Court to pass such an order. On the other hand, the learned Counsel for the second respondent contended that if the application for eviction had run its normal course, then, undoubtedly, the Court would have passed orders strictly in conformity with the provisions of the Act; but that since the parties to the proceedings, by a joint endorsement, invited the Court, to depart from the usual procedure and to pass an order in terms of the joint endorsement exercising jurisdiction to pass such an order which normally the Revenue Court did not possess and which constituted a strain upon the procedure of that Court, it was wholly out of its course and such a procedure would really be in the nature of extra cursum curiae and that having invited the court to adopt such a course and pass orders on that basis, it would not be open to the petitioner to challenge the correctness of the order so passed.

3. The application for eviction in this case had been filed towards the end of 1978 and the petitioner had filed his statement in opposition to that in February, 1979. Thereafter, the proceedings stood transferred to the Revenue Court, Tirunelveli, and was adjourned to several dates, on 28th February, 1980 owing to the absence of the petitioner as well as his advocate, the petitioner was set ex parte and accepting the affidavit of proof filed on behalf of the second respondent the application was allowed. Thereafter, the petitioner filed an application in I.A. No. 130 of 1980 to set aside the ex parte order of eviction and the ex parte order was set aside on 23rd July, 1980 on payment of costs by the petitioner on or before 5th August, 1980 and the application for eviction was also directed to be posted for enquiry on that day.- Even thereafter from 5th August, 1980 upto 18th September, 1980 the application had been adjourned. On 18th September, 1980 the application was posted to 25th September, 1980 for settlement and again it was

posted to 14th October, 1980 and 28th October, 1980 the settlement and on 28th October, 1980 the application was posted to 11th November, 1980 when the joint endorsement referred to earlier had been made. Thus it is seen from the records that between 18th September, 1980 till 11th November, 1980 the application has been adjourned only to enable the parties to report settlement; It is in this background that the scope of the joint endorsement and its effect will have to be considered. It is at once apparent that neither the petitioner nor the second respondent was ready with the evidence in order to enable the Revenue Court to proceed with the matter on its merits. On the contrary, the parties had requested the Revenue Court to adjourn the application for purposes of effecting a settlement. That would clearly indicate that the parties were not desirous of proceeding with the petitioner according to the ordinary course of procedure before the Revenue Court in such matters. Eventually, on 11th November, 1980 a joint endorsement, had been made by the petitioner and the second respondent to the effect stated supra. In other words, though normally the application for eviction would have been dealt with by the Revenue Court, 'on its merits on the evidence in accordance with the procedure prescribed under Section 3(4)(b) of the Act, -the parties did not want the Revenue Court to adopt that procedure. Instead, the Revenue Court had been invited by the petitioner and the second respondent by means of their joint endorsement to adopt a course different from the normal procedure in such cases and to pass an order not only directing the petitioner to measure 25 bags of paddy or pay the value thereof computing it at Rs. 1,885 on or before 10th January, 1981 but also directing the eviction of the petitioner from the holding in the event of non-payment or failure to measure the paddy without asking for further extension of time even. In the circumstances of this case, it is obvious that the petitioner and the second respondent requested the Court to adopt a procedure not contemplated by Section 3(4)(b) of the Act of the rules thereunder, but had requested the Court to adopt a procedure extra cursum curiae. After having so done, certainly, it is not open to the petitioner to turn round and say that the Revenue Court is to be blamed for adopting this very procedure suggested by the petitioner and the second respondent which the Court was invited to follow.

4. What is the legal effect of the adoption of a procedure *extra cursum curiae* has come up for consideration in quite a number of cases; but the decided cases do not speak with one voice. However, there are two well known English cases laying down the principles applicable to cases of this kind. The first is *Pisani v. Attorney General Gibraltar* (1874) P.C. 516. In that case, the Crown sued to establish right to certain lands which belonged to a lady, but which were alleged to have been escheated for want of heirs on her demise. The defendants to the action put forward competing claims to the property. In the course of the trial, it became evident that the title of the Crown by escheat was unsustainable, but instead of dismissing the suit the Court with the consent of the parties, allowed an amendment of the pleadings by the addition of a prayer that the rights of several defendants might be ascertained and declared by the decree of Court. The rival claims of the defendants were then enquired into and declared. On an appeal being preferred by one of the defendants to the Judicial Committee, a preliminary objection with reference to competency of the appeal was raised and the Judicial Committee held that though the Court below had been invited by the rival claimants to adjudicate upon their rights *inter se*, there was no stipulation that a right of appeal should be given up. It was in that context, the Judicial Committee made the following observations:

It is true that there was a deviation from the *cursum curiae*, but the Court had jurisdiction over the subject and the assumption of the duty of another tribunal is not involved in the question. Departures from ordinary practice by consent are of every day occurrence, but unless there is an attempt to give the Court jurisdiction which it does not possess, or something occurs which is such a violent strain upon this procedure that it puts it entirely out of its Court or Court of appeal cannot properly review the decision, such departures have ever been held to deprive either of the parties of the rights of appeal.

It was further observed by the Privy Council that it would not be right to regard the decision of the Court in such cases as an award of an arbitrator or to attribute an intention to the parties that the decision should not be open to appeal. In that case, there was no agreement between the parties that a decision of the Court should be final nor was there anything in the course of the proceedings to suggest that

the decision was intended by the parties or the Court to be final and not appealable.

5. Reference may now be made to *Robert Murray Burgess v. Andrew Morton* (1896) A.C. 136. The use of a special case except for purposes of obtaining a decision on a question of law arising upon the facts admitted was not contemplated or permitted by the English rules of procedure. Though the parties were not agreed about the facts, yet, they submitted to a special case and invited the Divisional Court to try questions of fact in dispute and give a decision thereon. The Court acted upon it and gave a decision. The House of Lords held that the proceedings were not in the ordinary course of law, but *extra cursum curiae* and that the decision of the Divisional Court should be regarded as being in the nature of an arbitrator's award from which no appeal lay. There was no agreement between the parties excluding a right of appeal and the basis of the decision was that the proceedings were *extra cursum curiae* and therefore, the right of appeal was barred. Lord Halsbury observed thus:

Where with the acquiescence of both parties a Judge departs from the ordinary course of procedure and has, as in this case, decided upon a question of fact, it is incompetent for the parties afterwards to assume that they have an alternative mode of proceeding and to treat the matter as if it had been arrived in due course.

I am satisfied that if the parties had not agreed to take the decision of the Divisional Court upon the question of fact, that court would have refused to hear the case. The parties having done so, I think they are now precluded from treating the matter as subject to appeal.

The decision of the Divisional Court was considered as being in the nature of an arbitrator's award and therefore, unappealable and the right of appeal was held to be barred not on account of the express agreement, but by necessary implication by reason of their invitation to the court to act *extra cursum curiae*.

6. The cases in India have sought to apply the principles enunciated in the two English decisions referred to earlier. There has been a large body of case law interpreting such agreements sometimes as barring an appeal against a decision

on such a consent memo and sometimes holding that an appeal lies against it. Reference in this case may be made to the decision in Chengalraya Chetti v. Raghavo Ramanuia Doss, : (1919)37MLJ100 Sankaranarayana v. Ramaswami : AIR1923 Mad444 Venkata Somayajulu v. A. Venkanna : AIR1934 Mad397 , S.E. Makudam Mohammad v. Mohammed Sheik Abdual Kadir and Anr. : (1936)71MLJ281 Md. Ishaq v. Balmukund Lal : AIR1929 All116 and Raghubir Saran Das v. Ramdas : AIR1925 All348 . How such agreements have to be looked into and interpreted is laid down in Sankaranarayana v. Ramaswami : AIR1923 Mad444 and Venkata Somayajulu v. Venkanna : AIR1934 Mad397 . In the latter case, it is stated as follows:

If a proceeding is extra cursum curiae, the decision is in the nature of a consent order and generally the right of appeal against it is barred. If on the other hand, the proceeding is not extra cursum curiae unless there is a clear waiver of the right, of appeal will not be lost; in that case the person who contends that no appeal will lie must clearly show that the right has either expressly or by necessary implication been given up.

In Kunjammal and Anr. v. P.S. Rajagopala Iyer : (1948)2MLJ291 , Rajamannar, C.J. and Rajagopalan, J after considering the earlier cases held as follows

A mere agreement between the parties that the court may dispense with certain rules of procedure and evidence without giving up the right of appeal does not deprive the parties of the right of appeal, but it is a question of fact in each case whether the circumstances merely amounted to deviation more or less from the ordinary procedure or whether the agreement between the parties was that the Court should give a decision more in the nature of an award than an adjudication on the evidence in the case, complete or incomplete, and the intention can only be ascertained by the events which happened in the particular case.

7. In the light of the above principles the question that has to be decided is whether in this case the parties intended to depart from the ordinary practice and constituted the Revenue Court as a quasi-arbitrator. In the present case there are several circumstances which establish that they so intended. The petitioner filed a statement denying that he was in arrears. Nevertheless on 11th November, 1980

when the application for eviction came up for trial, he accepted that he was in arrears abandoning his plea. The petitioner stood to gain by accepting the arrears at 25 bags as against 28 bags claimed in the application for eviction. There was absolutely no evidence at all placed by either side regarding arrears or even with reference to the value of the admitted arrears and both sides left the value thereof to be determined by the Revenue Court. Apart from this, the petitioner has bound himself to measure the arrears or pay the value thereof on or before 10th January, 1981, without seeking an extension of time even. After all, the petitioner had also agreed to be evicted from the holding in the event of 25 bags of paddy not being measured or the value thereof not being paid before 10th January, 1981. He had asked the Revenue Court to give a decision on the basis of the joint endorsement in the teeth of the provisions of Section 3(4)(b) of the Act and this is not a slight departure from the ordinary procedure and practice of the Revenue court. Indeed, it puts the Court wholly and totally out of its course. Under Section 3(4)(b) of the Act, the Revenue Court in the exercise of its discretion may allow the cultivating tenant such time as the Court may consider just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing the arrears of rent payable. Even after the exercise of such a discretion granting time to the tenant, if the tenant shows sufficient cause for his inability to comply with the direction for depositing the arrears of rent, it would be open to the Revenue Court to consider granting him further time. By the joint endorsement, the petitioner has agreed that no discretion in the matter of granting time need be exercised in his favour and no further time also need be granted. This is directly opposed to the normal course of proceedings before the Revenue court under Section 3(4)(b) of the Act. Besides, under Section 3(4)(b) of the Act, it after the tenant had been given reasonable time for depositing the arrears of rent payable and he had not done so, only then, the Revenue Court should pass an order for eviction. Here by the joint endorsement, the petitioner had invited the Revenue Court to direct his eviction on his failure to measure the paddy or pay the sum of Rs. 1,885 on or before 10th January, 1981 without any further time being granted that regard.

8. It is now well established that an order for payment or deposit and one for eviction on such non-deposit or non-payment has to be passed at two different

stages of the same proceedings and cannot be clubbed or rolled into one. Even so, the petitioner, by means of the joint endorsement, did not want the benefits conferred on him under Section 3(4)(b) of the Act and had agreed to give up holding on non-payment or failure to measure the 25 bags of paddy on or before 10th April, 1981 without praying for any further time for that purpose. This again would constitute such a drastic departure from the ordinary practice by consent. It must also be borne in mind that the passing or a rolled up order has been deprecated and in fact held to be without jurisdiction in some of the earlier decisions of this Court arising under Section 3(4) of the Act and subsequently, by the Supreme Court also in Chinnamarkathian alias Muthu Gounder and another v. Ayavoo alias Perianna Gounder and Ors. : [1982]2SCR146 (S.C.) (S.N.). Where the Revenue Court cannot in the ordinary course or exercising its jurisdiction under Section 3(4)(b) pass such a rolled up order, the petitioner had invited the Revenue Court by the joint endorsement to pass such an order, which the Revenue Court would not otherwise have jurisdiction to pass. Indeed, this appears to be a case where by the joint endorsement, the petitioner as well as the second respondent had attempted to give the Revenue Court the jurisdiction to pass a rolled up order which it did not otherwise possess and in doing so, the Revenue Court has acted in a manner which is a violent strain upon its procedure so that the order passed by it is taken wholly and completely out of the course of the normal proceedings before the Revenue Court. The order, dated 11th November, 1980 was as a matter of compromise bound up with the procedure agreed to by both sides and which left the Revenue court absolutely free to pursue a course which cannot in any sense be termed judicial, or otherwise in accordance with, Section 3(4)(b) of the Act, and the rules thereunder. In view of this, the petitioner cannot maintain in C.R.P. No. 2962 of 1983 and complain that the order of the Revenue Court is vitiated and that there is no proper order for eviction.

9. The learned Counsel for the petitioner next contended that there is absolutely no evidentiary basis whatever for the fixation of the value of paddy at Rs. 116 per quintal and therefore the order directing the petitioner to pay the sum of Rs1,885 towards the admitted arrears is bad. There is no substance at all in this contention. It is seen that the petitioner had filed I.A. No. 421 of 1980 in T.C.T.P. No. 21 of 1979 praying that the petitioner should be permitted to deposit the sum of Rs.

1,040 towards the value of the admitted arrears and not Rs. 1,885 as fixed by the Revenue Court. On 31st January, 1981, that application was dismissed holding that the amount of Rs. 1,885 towards the value of the arrears was calculated on the basis of the Government notified prevailing market rate and that there is no provision by which the petitioner can be permitted to deposit a lesser amount than that ordered. It is thus seen from this order that the value had been arrived at by the Revenue Court on the basis of the Government notified market rates which prevailed during the relevant faslis in question and this order had also admittedly become final. It is no longer open to the petitioner to raise a plea that the fixation of the value of 25 bags of arrears of paddy at Rs. 1,885 is in any manner erroneous or otherwise not supported by evidence.

10. A faint attempt was made by the learned Counsel for the petitioner to contend that the order, dated 11th November, 1980 was not at all received by the petitioner and therefore, the petitioner should not be found fault with for the non-payment of the sum of Rs. 1,885 on or before 10th January, 1981 and evicted. Already reference has been made to the despatch of the order, dated 11th November, 1980 to the petitioner as well as the second respondent by the Revenue Court on 20th December, 1980. In the ordinary course therefore, the petitioner must have received the order, the next day or at least a few days thereafter. Apart from this, in C.M.P. No. 11549 of 1981 to excuse the delay in filing C.R.P. No. 2962 of 1983, the petitioner has sworn to an affidavit and therein he has stated that the order, dated 11th November, 1980, was served on his counsel only after 25th December, 1980, and as the postal cover had been lost, the petitioner was unable to prove the exact date of receipt of that order. The stand taken by petitioner thus establishes the receipt of the order by the petitioner through his counsel and the petitioner cannot, therefore, take shelter under the excuse that the order, dated 11th November, 1980 had not been received by him and therefore he should not be evicted. No other point was urged. C.R.P. No. 2962 of 1983 is therefore dismissed with costs.

11. In C.R.P. No. 1628 of 1981, the only contention urged by the learned Counsel for the petitioner is that since there is no proper order of eviction against the petitioner, the execution of such an order is bad. It has earlier been pointed out

how as a result of the joint endorsement, the petitioner had invited the Revenue Court to adopt a procedure different from the normal or usual practice and having so invited the Revenue Court to adopt a procedure extra cursum curiae it is not open to him to complain that the court had acted in the manner suggested by the petitioner. Since the validity of the order of eviction passed by the Revenue Court on 11th November, 1980 has been upheld in C.R.P. No. 2962 of 1983, there is absolutely no substance whatever in this civil revision petition. C.R.P. No. 1628 of 1981 is also dismissed with costs.

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