

R.Manicka Naicker Etc vs E. Elumalai Naicker Etc on 7 April, 1995

Equivalent citations: AIR 1995 SUPREME COURT 1613, 1995 (4) SCC 156, 1995 AIR SCW 2536, (1995) 2 MAD LJ 121, (1995) 1 MAD LW 731, (1995) 3 SCR 217 (SC), (1995) 5 JT 561 (SC)

Bench: S.C. Agrawal, Sujata V. Manohar

CASE NO.:

Appeal (civil) 111-12 of 1984

PETITIONER:

R.MANICKA NAICKER ETC.

RESPONDENT:

E. ELUMALAI NAICKER ETC.

DATE OF JUDGMENT: 07/04/1995

BENCH:

S.C. AGRAWAL & SUJATA V. MANOHAR

JUDGMENT:

JUDGMENT 1995 (3) SCR 217 The Judgment of the Court was delivered by MRS. SUJATA V. MAHOHAR, J. Delay in filing special leave petitions out of which Civil Appeals No. 111 and 112 of 1984 arise, is condoned.

Leave in Special Leave Petition No. 2186 of 1995 is granted.

The land which is the subject matter of dispute in these appeals was originally Minor Inam Land. Minor Inams were extinguished on and from the notified date i.e. 15.2.1965 on the coming into force of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (hereinafter referred to as 'the said Act') On the abolition of Minor Inams, ryotwari pattas were granted to the persons so entitled under the provisions of the said Act.

For the sake of convenience, the facts referred to hereinafter are those in Civil Appeals Nos.111-112 of 1984. The facts in other appeals are similar to these facts.

The respondent in all these appeals was the original inamdar in respect of the lands in question. The appellant was his tenant. The appellant had constructed a structure on the said land.

The respondent filed a suit being O.S. No. 4421/70 in the City Civil Court at Madras for recovery of the said land from the appellant on the ground of non-payment of rent and on other grounds. The

suit was decreed in favour of the respondent on 31.8.1972. However, during the pendency of the suit, under the said Act, the Assistant Settlement Officer, after hearing objections, granted a joint patta on 29.2.1972 in respect of the said land in the names of the appellant and the respondent. Similar joint pattas have been granted in the other appeals. The order of the Assistant Settlement Officer itself states that the ground rent patta is allowed under Section 13(1) of the said Act for the building to the "persons noted in Column 4". The persons noted in Column 3 include the appellants in all these appeals while the respondent is the person noted in column 4. In other words, the ground rent patta for the building is given to the appellant who constructed the structure and is the owner of it while the patta for the site is given to the former inamdar, that is to say, the respondent.

Against the order of the Assistant Settlement Officer, a revision was preferred before the Commissioner which was dismissed on 23.11.1974.

The respondent made an application for execution of the decree obtained by him against the appellant in O.S. No. 4421/70 by E.P. No. 408/79 in the City Civil Court. The City Civil Court at Madras by its order dated 2nd of January, 1980 held that by reason of the appellant being granted a joint patta under Section 13(1) of the said Act, he had become the owner of the property and his status had changed. The Court said that the grant of a joint patta "nullified" the earlier proceedings and hence the respondent was not entitled to execute the decree. The respondent preferred Civil Revision Petition before the High Court of Madras which was allowed. The High Court, by its judgment and order dated 22.10.1982 in Civil Revision Petition No. 1149/81 held, after examining a number of decisions, that the issue of a ryotwari patta under the said act does not amount to an adjudication on title. Hence a decree duly passed by the Civil Court adjudicating on the title of the parties before it cannot be nullified by the decisions of the Settlement authorities in the matter of granting a ryotwari patta. The High Court remitted the matter to the lower court for fresh disposal in the light of its judgment. The present appeals are filed from the above judgment of the High Court.

The Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 is an Act to provide for the acquisition of rights of inamdars in Minor Inams in the State of Madras and for the introduction of ryotwari settlement in such Inams. Under Section 3 of the said Act, on and from the appointed day (and save as otherwise expressly provided in the Act) Minor Inams shall vest in the Government. The inamdar and any other person whose rights stand transferred under the said section or stand ceased and determined, shall be entitled only to such rights and privileges as are recognised or conferred on him under the said Act. Section 8 of the said Act provides for the grant of ryotwari pattas to every person who is lawfully entitled to the "kudivaram" in Inam land immediately before the appointed day whether such person is an inamdar or not. Section 9 provides for the grant of ryotwari pattas in cases specified therein. Section 13 provides as follows:

"13 (1) : Every building situated within the limits of an inam land shall, with effect on and from the appointed day, vest in the person who owned it immediately before that day but the Government shall be entitled for each fasli year commencing with the fasli" year in which the appointed day falls to levy the appropriate assessment thereon.

(2) In this section, 'building' includes the site on which it stands and any adjacent premises occupied as an appurtenance thereto."

Section 43 and 46 of the said Act are as follows :

"43(1): The decision of a Tribunal or the Special Appellate Tribunal in any proceeding under this Act on any matter falling within its jurisdiction shall be binding on the parties thereto and persons claiming under them in any suit or proceeding in a Civil Court, in so far as such matter is in issue between the parties or persons aforesaid in such suit or proceeding.

(2) The decision of a Civil Court (Not being the Court of a District Munsif or a Court of Small Causes) on any matter falling within its jurisdiction shall be binding on the parties thereto and persons claiming under them in any proceeding under this Act before a Tribunal or the Special Appellate Tribunal in so far as such matter is in issue between the parties or persons aforesaid in such proceeding.

"46(1): Any order passed by any officer, the Government or other authority or any decision of the Tribunal or the Special Appellate Tribunal under this Act in respect of matters to be determined for the purposes of this Act shall, subject only to any appeal or revision provided under this Act be final.

(2) No such order or decision shall be liable to be questioned in any Court of law."

(underlining ours) The purpose of the said Act is introduction of ryotwari settlement in the place of the rights of inamdars in Minor Inams with the exception of certain types of public lands set out in Section 10 such as forests, irrigation channels, lands which are set apart for the common use of the villagers, rivers, streams etc. which vest in the Government and in respect of which no ryotwari patta can be granted.

The Assistant Settlement Officer is required under Section 11 to enquire into the claims of any person to, a ryotwari patta in respect of any Inam land and to decide it. This enquiry has to be conducted by the Assistant Settlement Officer in the manner set out in Section 11. Under Section 12, every person who becomes entitled to a ryotwari patta is required to pay land revenue to the Government as set out therein. The grant of ryotwari patta is for the purpose of collection of land revenue. By eliminating Minor inams any intermediaries for the collection of land revenue are eliminated. In the case of buildings situated within an Inam land, Section 13 provides that the building shall vest in the person who owned it immediately before the appointed day but the Government shall be entitled to levy appropriate assessment on it. As the object of the enquiry by the Settlement Officer is the grant of a ryotwari patta as a revenue settlement, the grant of a patta cannot be equated with an adjudication of title to the lands in question.

The contention of the appellant that by virtue of Section 13, the land underneath the building also vests in him must be rejected. Section 13 does not vest any property in a person in whom that

property did not vest prior to the appointed day. It merely sets out that a building shall vest in the person who owned it immediately before the appointed day. Section 13(2) merely provides that the site on which the building stands will also be covered by section 13(1). Hence the site on which the building stands will vest in the person who owned it immediately before the appointed date.

In the case of *Sri Kumarakattalai Subrahmanyaswami Devasthanam v. K.S. Sunderarajulu Chettiar*, ILR (1975) 1 Mad., 501, a learned Single Judge of the Madras High Court considered the provisions of Section 13 of the said Act and held that unless the owner of the building is also the owner of the site, the site will not vest in the owner. The effect of sub-section (2) is not to make a statutory transfer of the land to the owner of the building where it had not formerly belonged to him. An inamdar who continues to be in constructive possession of the site even after the notified date would be entitled to recover possession from his tenant. We respect-fully agree with these findings of the learned Single Judge.

Moreover, in the present case, the patta granted expressly provides that the appellant has been granted a ground rent patta only in respect of the building, while the patta for the site has been granted to the respondent. A joint patta seems to have been granted in the names of both the appellant and the respondent because of the claim of the appellant to the building and the claim of the respondent to the site on which the building stands. Therefore, looking to the nature of the grant of the patta also it cannot be said that by virtue of the patta, the site on which the building stands has been, in any manner, transferred to the appellant or vests in him. The appellant cannot, therefore, claim that the decree for possession cannot be executed against him because he has become the owner of the site.

It is also not possible to accept the contention of the appellant that jurisdiction of the Civil Court to determine title to the said land has been ousted by the said Act. Section 43 provides that the decision of a Tribunal or the Special appellate Tribunal in any proceeding under the said Act shall be binding on the parties insofar as such matter is in issue between the parties in a suit or proceeding. The decision of a Tribunal, or the Special Appellate Tribunal is in respect of the grant of ryotwari pattas. It is only in respect of matters which are covered by the said Act that the decision of the Tribunal or the Special Appellate Tribunal is binding on the parties. Obviously, matters which are not the subject-matter of decision before such a Tribunal, cannot be considered as final or binding between the parties. Sub-section (2) of Section 43 expressly provides that the decision of the Civil Court (not being the Court of a District Munsif or a Court of Small Causes) on any matter falling within its jurisdiction shall be binding on the parties thereto in any proceedings before a Tribunal under the said Act. Therefore, there is no question of ouster of the jurisdiction of the Civil Court in respect of matters falling within its jurisdiction and which are outside the purview of the said Act. Section 46 also provides for finality only in respect of decisions of the Tribunal in respect of matters which are required to be determined by it for the purposes of the said Act. The jurisdiction of the Civil Court, therefore, to determine title to the lands in question or to determine whether the lessor has a right to evict the lessee from the lands in question is not ousted in any manner by the said Act.

In the case of *State of Tamil Nadu v. Ramalinga Samigal Madam*, AIR (1986) SC 794 this Court has construed the provisions of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948

which are similar to the provisions of the said Act. This Court said that the Civil Court's jurisdiction to adjudicate on the real nature of the land is not ousted by reason of the Settlement Officer's decision to grant or refuse to grant a patta. Construing the provisions of Section 64-C of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 which are similar to Section 46 of the present Act, this Court held that the finality to the orders passed by the authorities in respect of the matters to be determined by them under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 is "for the purposes of this Act" and not generally, nor for any other purpose. The main object and purpose of the Act is to abolish all the estates of the intermediaries like Zamindars, Inamdars, Jagirdars etc. and to convert all land-holdings in such estates into ryotwari settlements - which operation in revenue parlance, means conversion of alienated lands into non-alienated lands to deprive the intermediaries of their right to collect all the revenues in respect of such lands and vesting the same back in the Government. The enactment and its several provisions are thus intended to serve the revenue purposes of the Government by way of securing to the Government its sovereign right to collect all the revenues from all the lands and to facilitate the recovery thereof by the Government, and in that process, if necessary, to deal with the claims of occupants of lands, nature of the lands etc. only incidentally in a summary manner and that too for identifying and registering persons in the revenue records from whom such recovery of revenue is to be made. The Court further observed that even where the statute has given finality to the orders of the Special Tribunal, the Civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in the suit. We need not, however, examine this aspect at any length because of the nature of the grant which has been made in the present case which expression reserves the rights of the respondent in respect of the land.

In the case of Vatticherukuru Village Panchayat & Ors. v. Nori Venkatarama Deekshithulu & Ors., [1991] 2 SCR 531 this Court considered, inter alia, the provisions of the A.P. Inams (Abolition and Conversion into Ryotwari) Act, 1956. After referring to the judgment of this Court in State of Tamil Nadu v. Ramalinga Samigal Madam (supra) the Court said that the introduction of ryotwari settlement in the place of Inams should not be regarded only as for the purpose of recovery of revenue. The Act was designed to render economic justice to the ryots. The purpose of such Acts was to repeal permanent settlements, to acquire the rights of the landholders in the estates and introduce ryotwari therein. Referring to the Andhra Pradesh Act, the Court said that Section 11 envisaged an enquiry into the nature of the land and whether it was "ryotwari land immediately before the notified dates", to be properly included in the holdings of the ryot. This enquiry was entrusted to revenue authorities and their decision would be final and binding between the parties. The jurisdiction of the Civil Court in this regard was ousted. This judgment, which is relied upon by the respondent in our view, does not help the respondent. Undoubtedly, in respect of the enquiry which the revenue authorities are required to hold under the provisions of the said Act, the decision of the revenue authorities is final and binding. We are, however, concerned in the present case with the rights of the landlord to evict his tenant for non-payment of rent. The tenant in the present case has not been granted any patta by the revenue authorities in respect of the land. The decision of the revenue authorities, therefore, does not, in any manner, hinder the Civil Court from exercising its jurisdiction.

The jurisdiction of the City Civil Court, therefore, to entertain and decide suit No. 4421/1970 for recovery of land was not, in any manner, ousted by the coming into force of the said Act. Nor did the decree passed in the said suit become a nullity because of the grant of a joint patta by the Assistant Settlement Officer in the names of the appellant and the respondent in respect of the building and land respectively on 29.2.1972 prior to the passing of the decree in the above suit. The learned Single Judge of the Madras High Court, therefore, rightly allowed Civil Revision Petition No. 1149 of 1981.

The appeals are, therefore, dismissed. In the circumstances, however, there will be no order as to costs.

Appeal dismissed.