L.R. Ganapathi Thevar vs Sri Navaneethaswaraswami ... on 1 August, 1968

Equivalent citations: 1969 AIR 764, 1969 SCR (1) 508, AIR 1969 SUPREME COURT 764

Author: K.S. Hegde

Bench: K.S. Hegde, R.S. Bachawat

PETITIONER:
L.R. GANAPATHI THEVAR

Vs.

RESPONDENT:
SRI NAVANEETHASWARASWAMI DEVASTHANAM,SIKKI

DATE OF JUDGMENT:
01/08/1968

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
BACHAWAT, R.S.

CITATION:
1969 AIR 764 1969 SCR (1) 508

ACT:
Madras Estates Land Act 1 of 1908, ss. 6(1) and 8(5)--scope of.
Madras Cultivating Tenants Protection Act 19 'cultivating tenant'--meaning of.

HEADNOTE:
The respondent was the owner of the suit properties leased to the appellants by lease deeds executed in 1945 and 1946 and sued the appellant for their possession on various grounds. The appellant claimed an 'occupancy right' in the properties and pleaded that he could not be evicted in view of the protection afforded to him by s. 6 of the Madras Estates Land Act 1 of 1908. The Trial Court upheld his contention and dismissed the suit but the High Court allowed an appeal holding that as the case fell within the

scope of s. 8(5) of the Act, the appellant was not entitled to the benefit of s. 6; it therefore remanded the case for trial on other issues. During the pendency of the appeal in the High Court, the Madras Cultivating Tenants Protection Act came into force and therefore the appellant claimed before the Trial Court after remand that he was a 'cultivating tenant' within the meaning of the Act and could not, for this additional reason, be evicted. Both the Trial Court as well as the High Court rejected the appellant's contentions.

In the appeal to this Court it was contended on behalf of the appellant that although s. 8(5) of Madras Act 1 of 1908 may govern the present case, but when s. 8(5) says that the land-holder shall 'have the right notwithstanding anything contained in the Act for a period of twelve years from the commencement of the Madras Estate Land (Third Amendment) Act, 1936 of admitting any person to the possession of such land on such terms as may be agreed upon between them", it merely means that for the period of twelve years, the tenants on the land cannot claim the benefit of s. 6(1) of the Act but they get those rights immediately after the twelve years period is over; furthermore, that s. 6(1) is the main provision; it has general application and contains the policy and purpose of the law; s. 8(5) is an exception; therefore s. 6(1) should be construed liberally while s. 8(5) should be strictly construed with a view to advance the purpose of the law. It was also contended that the Trial Court as well as the High Court were in error in holding that the decision of the High Court prior to the remand was binding on both courts and could not be reagitated before them.

HELD: Dismissing the appeal.

(i) While s. 6(1) is subject to the provisions of the Act, s. 8(5) is not controlled by any other provision of the Act..Therefore if the case falls both within s. 6(1) as well as s. 8(5), then the governing, provision will be s. 8(5) and not s. 6(1). As the present case fell within s. 8(5) it necessarily followed that it was taken out of the scope of s. 6(1). [513 C-D]

From the language of 's. 8(5), it is not possible to. hold that the contract itself is exhausted or stands superseded at the end of the twelve year period mentioned therein. [514 C-D]

509

Executive Officer v.L.K. Ganapathi Thevar, (1955) 2 M.L.J., 112; and Sri Navaneethaswaraswami Devasthanam Sikki, represented by its Executive Officer v.P. Swaminatha Pillai, I.L.R. (1958) Mad. 921; referred to.

Muminia Damudu and Ors. v. Datla Papayyaraju Garu by Muktyar Putravu Ramalingaswami and Ors., A.I.R. 1944 Mad. 136; Korda Atchanna v. Jayanti Seetharamaswami, A.I.R. 1950 Mad. 357; Thota Seshayya and six Ors. v. Madabushi Vedanta Narasimhacharyulu, I.L.R.

1955 Mad. 1151 and Vadranam Ramchandrayya and Anr. v. Madabhushi Ranganavakamma, (1957) 2 Andhra Weekly Reports, p. 114 distinguished.

(ii) On the facts found in the present case, the appellant could not be considered a 'cultivating tenant' after the amendment of the definition of a cultivating tenant' in the Madras Cultivating Tenants Act, 1955, became of the addition of the explanation; in order to fall within the definition of 'cultivating tenant' a person should carry on personal cultivation which again requires that he should contribute physical labour. The use of physical labour includes physical strain, the use of muscles and sinews.Mere supervision of work, or, maintaining of accounts or distributing the wares will not be such contribution of physical labour as to. attract the definition. [516 G]

Mohamed Abubucker Lebbai & Anr. v. The Zamindar of Ettayapuram Estate, Koilapatti, (1961) (1) M.L.J., p. 256 and S.N. Sundalaimuthi Chettiar v. palaniyandayan, (1966) 1 S.C.R. 450; referred to.

(iii) The trial court could not go into the question of the claim to an occupancy tenant's right after the judgment of the High Court at the time of the remand. That decision was also binding on the bench which heard the appeal. However, the appellant was entitled to reagitate the issue in the present appeal.

Satyadhyan Ghosal and Ors. v. Sm. Deorajin Debi and Anr., [1960] (3) S.C.R. 590, referred to,.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 582 of 1965. Appeal by special leave from the judgment' and order dated August 23, 1961 of the Madras High Court in Appeal No. 157 of1957.

C.R. Pattabhiraman and R. Thiagarajana, for the appellants. Vedantachari, G. Kausalya and S. Balakrishnan, for the respondent.

The Judgment of the Court was delivered by Hegde, J. This is an appeal by special leave. It is directed against the decision of the High Court of Madras in A.S. No. 157 1957. This case has a fairly long history but we shall set out in this Judgment only such facts as are necessary for the decision of the issues debated before us.

In the course of his arguments Mr. C.R. pattabhiraman, learned Counsel for the appellant, urged two grounds in support of this appeal. They are: (1) the appellant being an 'occupancy tenant' of the suit properties he cannot be evicted from the land in view of the provisions of the Madras Estates Land Act (Madras Act I of 1908) as amended by the Madras Estates Land Third Amendment Act (Madras Act XVIII of 1936) and (2) that under any circumstance the appellant should be held as enjoying the lands in question by personal cultivation and there fore he cannot be evicted in view of

the provisions of the Madras Cultivating Tenants Protection Act (Madras Act XXV of 1953).

The respondent is the owner of the suit properties. It leased out two different portions of those properties to the appellant under two lease deeds dated 11-9-1945 and 27-7- 1946 (Exhs. A-7 & A-8) respectively for a period of three years. Even before the lease period came to an end the respondent sued the appellant for the possession of the suit properties on various grounds. The appellant pleaded that the cannot be evicted from the suit properties in view of the protection afforded to him by s. 6 of the Madras Estates Land Act. He claimed 'occupancy right' in the suit properties on the basis of the provisions of that Act. The trial court upheld his contention and dismissed the suit. But in appeal the High Court held that as the case fell within the scope of s. 8(5) of the Madras Estates Land Act, the appellant was not entitled to the benefit of s. 6 of that Act. It accordingly allowed the appeal and remanded the case to the trial court for the trial of the other issues. During the pendency of the appeal in the High Court the Madras Cultivating Tenants Protection Act came into force. On the basis of the provisions of that Act, the appellant claimed before the trial court after remand that he should be considered as a cultivating tenant under that Act and if so held, he cannot be evicted from the suit properties. Both the trial court as well as the High Court rejected both the aforementioned contentions of the appellant. As regards the occupancy right pleaded, they held that the matter is concluded by the earlier decision of the High Court. The trial court held that the appellant cannot be considered as a cultivating tenant under the Madras Cultivating Tenants Protection Act as he is not proved to have cultivated the properties by his own physical labour as claimed by him. That Court opined that mere supervision of the work of the hired labour cannot be considered as "Physical labour" of the appellant. The High Court affirmed this conclusion observing:

> "But the evidence disclosed that the cultivation of the suit lands was carried on by the appellant solely with the aid of hired labour. Neither the appellant nor any member of his family took part in the cultivation operations in respect of the suit lands. We therefore agree with the learned District Judge in his view that the appellant does not satisfy the test of carrying on personal cultivation to qualify for becoming a cultivating tenant. He could not therefore claim the benefits conferred by the various protection Acts in force."

We have to first decide whether the appellant can be permitted to raise the contention that he has 'occupancy right in the suit properties in view of the decision of the High court of Madras in A.S. No. 241 of 1949. In other words whether that decision operates as res judicata as regards his claim to the occupancy fight.

We are unable to agree with Mr. Pattabhiraman that the High Court did not finally decide the appellant's claim to occupancy right in the suit properties in A.S. No. 241 of 1949 and that it merely made some tentative observations in respect of the same leaving the matter for a fresh decision by the trial court. The High Court has specifically gone into the appellant's claim to occupancy right, examined the relevant provisions of the Madras Estates Land Act, took into consideration the decisions bearing on the point and thereafter came to a firm conclusion that the appellant's claim is unsustainable. The case was remanded to the trial court for the trial of the issues that have not been decided earlier. Therefore we have now to see whether the plea of occupancy right can be gone into

afresh.

There is hardly any doubt that the trial court could not have gone into that issue again. It was bound by the Judgment of the High Court. It is also clear that that decision was binding on the Bench which heard the appeal. On this question judicial opinion 'appears to be unanimous and it is a reasonable view to take.

We are unable to agree with the contention of the respondent that the decision of the High Court of Madras in A.S. No. 241 of 1949 on its file precludes the appellant from reagitating in this Court the plea that he has occupancy right in the suit properties. An identical question came up for decision in this Court in Satyadhyan Ghosal and Ors. v. Sm. Doorajin Debi and Ant.(1) wherein this Court ruled that such a decision can be challenged in an appeal to this Court against the final Judgment. As it is open to the appellant to recanvass the correctness of the decision of the High Court regarding his claim for occupancy right, we shall now go into the merits of that claim. The suit land was in an Inam village but it was not an 'estate' within the meaning of the Madras Estate Land Act as it originally stood; but it became an 'estate' by virtue of the amending Act XVIII of 1936. The lands in dispute are not admittedly 'private lands'. Prior to the amending Act came into force, the respondent had obtained a decree for possession against the tenants who were then in the suit lands. It is also not in dispute that no tenant had obtained any occupancy fight in those lands prior to 1936. Therefore all (1) [1960] 3 S.C.R. 590.

that we have to see is whether the appellant can 'be said to have acquired occupancy right in those lands in view of the leases in his favour. For deciding this question we have to examine the scope of s. 6(1) and s. 8(5) of the Act as they now stand. Section 6(1) reads thus:

> "Section 6(1) :---Subject to the provisions of this Act every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land situated in the estate of such land-holder shall have a permanent right of occupancy in his holding.
>
> Explanation (1). For the purposes of this Sub-section, the, expression 'every ryot in possession' shall include every person who, having held land as a ryot, continues in possession of such land at the commencement of this Act.
>
> Explanation (2). In relation to any inam village which was not an estate before the commencement of the Madras Estate Land (Third Amendment) Act, 1936 but became an estate by virtue of that Act, or in relation to any land in an inam village which ceased to be part of an estate before the commencement of that Act, the expression 'now' and 'commencement of that Act' in this sub-section and Explanation (1) shall be construed as meaning and thirtieth day of June 1934, and the expression 'hereafter' in the sub-section shall be construed as meaning the period after the thirtieth day of June,1934."

Section 8 (5) reads as follows:

> "If before the first day of November 1933 the landholder has obtained in 'respect of any land in an estate within the meaning of Sub-clause (d) of Clause (2) of Section 3 a final decree or order of a competent Civil Court establishing that the tenant has no occupancy right in such land, and no tenant has acquired any occupancy right in such land before the commencement of the Madras Estates Land (Third Amendment)Act, 1936, the .land- holder shall, if.the land is not private land within the meaning of this Act, have the right, notwithstanding anything contained in this-Act, for a period of twelve years from the commencement of the Madras. Estates Land (Third Amendment) Act, 1936, of admitting any person to the possession of such land on such terms as, may be agreed upon between them:
>
> Provided that' nothing contained' in "this sub-section shall be deemed during the said period of twelve years or any part thereof to affect the validity of any agreement between the land-holder and the tenant subsisting at the commencement of the Madras Estates Land (Third Amendment) Act, 1936."

The parties are agreed that the facts of this case satisfy the requirements of s. 8(5) of the Act. That being so the respondent was entitled for a period of twelve years from the commencement of the Madras Estate Land (Third Amendment) Act, 1936 to admit any person to the possession of the suit lands on such terms as may be agreed upon between him and his lessee notwithstanding anything contained in the Act. While s. 6(1) is subject to the provisions of the Act, s. 8(5) is not controlled by any other provision of the Act. Therefore if the case falls both within s. 6(1) as well as s. 8(5) then the governing provision will be s. 8 (5) and not s. 6 (1). Once it is held' that the present case falls within s. 8 (5) it necessary follows that it is taken out of the scope of s. 6 (1), But what is argued on behalf of the appellant is that when s. 8(5) says that the land-holder shall"have .... the right notwithstanding anything contained in the Act for a period of twelve years from the commencement of the Madras Estate Land (Third Amendment) Act, 1936 of admitting any person to the possession of such land on such terms as may be agreed upon between them" it merely means that for the said period of twelve years, the tenants on the land cannot claim the benefit of s. 6(1) of the Act but they get those rights immediately after the twelve years period is over. It was urged on behalf of the appellant that the object of the Act is to confer occupancy right on the tenants in respect of all lands included the inam excepting the 'private lands' of the inamdar; at the same time the legislature thought that in respect of lands coming within the scope of s. 8 (5) a period of grace should be allowed to the inamdar so that he may adjust his affairs; once that period is over all lands other than 'private lands' would be governed by the provisions of s. 6(1). Another facet of the same argument was that s. 6(1) is the main provision; it has general application; that provision contains the policy and purpose of the law; s. 8(5) is an exception; therefore s. 6(1) should be construed liberally and s. 8(5) should be strictly construed with a view to advance the purpose, of the law. Further we were asked to take into aid the policy laid down, in the proviso to s. 8(5) while ascertaining the legislative intention behind s. 8(5).

This proviso applies to agreements entered into between landholders and their tenants prior to the 1936 amendment. It 'was said that there was no, discernible reason for treating the agreements in force on October 31,, .1936 (the date of commencement of the amended Act). differently from

agreements entered into 'after that date and since the legislature has expressly stated that the former shall be in force only for a period of twelve years, it is not reasonable to hold that in the case Of leases subsequent to Oct.

31, 1936, it intended to lay down a different rule. We do see some force in these contentions but in our opinion none of these considerations are sufficient to cut down the plain meaning of the words "that the landlord has a right of admitting any person to the possession of such land on such terms as may be agreed upon between them." "Such terms"

> must necessarily include the term relating to the period of the lease. We have to gather the intention of the legislature from the language used in the statute. The language of s. 8(5) is plain and unambiguous. Hence we cannot call into aid other rules of construction of statutes. If it was the intention of the legislature that the terms of the agreements entered into between the land- holders and their tenants during the period of the twelve years mentioned earlier should come to an end at the close of the period and thereafter the provisions of the Act other than those in s. 8(5) should govern the relationship between them it should have said so. From the language of s. 8(5), it is not possible to hold that the contract itself is exhausted or stands superseded at the end of the twelve years period mentioned therein. If the legislative intention is not effectuated by the language employed in s. 8(5) then it is for the legislature to rectify its own mistake. It must be remembered that this legislation is in operation only in some parts of the Madras State as it was prior to the formation of the Andhra State in 1954. In other words it is a State legislation. The Madras High Court has consistently taken the view right from 1955 that agreements entered into by virtue of s. 8(5) under which tenants were admitted into possession of lands falling within the scope of that provision do not get exhausted or superseded merely by the expiry of twelve years period mentioned in that sub-section. On the other hand under s. 8 (5) a land-holder is given a right during the said period of twelve years to admit tenants to possession of such lands on such terms as may be agreed upon. It was so held for the first time in this very case before it was remanded to the trial court for further trial. That decision is reported in Navaneethaswaraswami. Devasthanam, Sikki represented by its Executive Officer v. L.K. Ganapathi Thevar(1). This view was affirmed by a Full Bench of that High Court in Sri Navaneethaswaraswami Devasthanam Sikki represented by its Executive Officer v.P. Swaminatha Pillai(2). The learned Counsel for the appellant invited our attention to three decisions of the Madras High Court and one of Andhra Pradesh High Court. The first decision to which our attention was invited is Muminia Damudu and Ors. v. Datla Papayyaraju Garu by Muktyar Putravu Ramalingaswami and Ors.(3). That is a decision of Hotwill, J. sitting singly. Therein it was head that when (1) [1955] 2 M.L.J. 112.
>
> (2) I.L.R. (1958) Mad. 921.
>
> (3) A.I.R. (1944) Mad. 136.

the legislature spoke in s. 8(5) of the tenant acquiring occupancy right during the period between the passing of the final decree and the commencement of the Act, it was referring to acquisition of occupancy rights otherwise than under the Act; the legislature must have intended by s. 8(5) to exempt from the general operation of s. 6, all cases where the 1andholder had obtained a decree prior to 1st November, 1933, unless the tenant subsequent to the passing of the final decree had acquired occupancy right independently of the Act. Consequently where the landlord obtained a final decree referred to in s. 8(5) before 1st November, 1933, the tenant cannot be said to have acquired occupancy rights under s. 6 merely because he was in 'possession on 30th June 1934 so as to render s. 8(5) inapplicable. We fail to see how this decision bears on the rule with which we are concerned in this appeal. In Korda Atchanna v. Jayanti Seetharamaswami(1), Viswanatha Sastri, J. differed from the view taken by Hotwell,. J. in the decision cited above. This decision also does not bear on the question of law we are considering. In Thota Seshayya and six ors. v. Madabushi Vedanta Narasimhacharyulu(2), a Bench of the Madras High Court while considering the vires of s. 8(5) observed:

> "We are satisfied that s. 8(5) is giving some limited privileges for a limited period to the landholders who have obtained decrees before 1st November 1933, has acted on a classification based on some real and substantial distinction beating a reasonable and just relation to the object sought to be attained, and that the classification cannot be called arbitrary or without any substantial basis, and must be upheld as perfectly valid and not impugning in the least on Art. 14 or 15 of the Constitution of India. We may add that tenants who have been given now occupancy rights under the third amendment where they had none before, cannot reasonably complain of the restrictions put on the acquisition of such new occupancy rights in a few cases where justice requires such restrictions as in s. 8(5). The tenants acquired the right only under those conditions and cannot very well complain about them."

From these observations we are asked to spell out that the learned Judges had come to the conclusion that all contracts entered into between the landholders and their tenants during the twelve years' period mentioned in s. 8(5) came to an end at the end of that period. In the first place this conclusion does not necessarily flow from the observations quoted above. Even if such a conclusion, can be spelled out, the observations in question are mere obiter on the question for decision before us. That was also the view taken by the Division Bench of the Madras High Court in Nava- (1). AIR. 1950 Mad. 357.

(2). I.L.R. [1955] Mad. 1151.

Ll3Sup. CI/68--2 neetheeswaraswami Devasthanam Sikkil v. L. K. Ganapathi Thevar(1) ..

In Vadranam Ramchandrayya and ant. v. Madabhushi Ranganavakamma(2), a Division Bench of the Andhra pradesh High Court followed the decision of the Madras High Court in Thota Seshayya and ors. v. Madabushi Vendanta Narasimbhacharyulu(3). Therein again the Court was not called upon to consider the scope of s. 8(5). For the reasons already mentioned we are unable.to hold that .the appellant had acquired occupancy right in the suit properties.

This takes us to the question whether the appellant can be considered as a 'cultivating tenant' within the meaning of the Madras Cultivating Tenants Act 1955. If he can be considered a cultivating tenant then he cannot be evicted from the suit properties except in accordance with the provisions of that Act. In the Cultivating Tenants Act as it originally stood the definition .of a cultivating tenant was as follows :-

> "Cultivating tenant in relation to an), land means a person who carries on personal cultivation on such land, under a tenancy agreement, express or implied, and includes
>
> (i) any such person who continue in possession of the land after the determination of tenancy agreement."

If this definition had remained unaltered then on the basis of the findings of the trial court and the High Court the appellant could have been held as a cultivating tenant, as cultivation today is a .complex process involving both mental as well as physical activity. But by the time this case came to be instituted the definition of "cultivating tenant' was amended by additing an explanation to the original definition. That explanation reads:

> "A person is said to carry on personal cultivation on a land when he contributes his Own physical labour or that of the members of his family in the cultivation of that land."

The true effect of the amended definition came up for consideration before a Division Bench of the Madras High Court in Mohamed Abubucker Lebbai and anr. v. The Zamindar of Ettayapuram Estate, Koilapatti(4).' Therein it was held that in order to fall within the definition of 'cultivating tenant', a person should carry on personal cultivation which again requires that he should contribute physical labour. The use of physical labour includes physical strain, the use of muscles and sinews. Mere -supervision of work, or maintaining of accounts or distributing the wages will not be such contribution of physical labour as to attract the definition. This view was upheld by this Court in S. N. Sunda-

(1) (1955)2 M.L.J. 112.

(2) (1957) 2 Andhra Weekly Reports, p. 114. (3) I.L.R. (1955) Mad. 1151 (4) (1961) 1 M.L.J.P. 256.

laimuthi Chettiar v. Palaniyandayan(1) to which one of us was a party. In view of the said decision it follows that on the facts found in tiffs case, the appellant cannot be considered as a cultivating tenant.

In the result, this appeal fails and the same is dismissed with costs.

R.K.P.S. Appeal dismissed.
(1) [1966] I S.C.R. 450.