SUPREME COURT OF INDIA

S. N. Sudalaimuthu Chettiar

Vs.

Palaniyandavan

C.A.No.480 of 1965

(K. Subba Rao, J. R. Mudholkar and R. S. Bachawat, JJ)

12.08.1965

JUDGEMENT

MUDHOLKAR, J.:

1. This is an appeal against an order passed by the High Court of Madras dismissing a petition for revision under S. 115 of the Code of Civil Procedure. In the revision application the appellant had challenged the order of the Sub-Collector, Cheranmahadevi, by virtue of which the respondents were permitted to deposit the arrears of rent due in respect of a holding of which one Kanda Devan was a tenant. The aforesaid order was made under S. 3 (3) (a) of the Madras Cultivating Tenants Protection Act, 1955.

2. It is common ground that this Act which was originally to remain in force for a period of three years is still in force by virtue of the provisions of amending Acts passed extending its duration from time to time. The expression "cultivating tenant" is defined thus in S. 2 (a) of the Act :

" 'cultivating tenant' in relation to any land means a person who carries on personal cultivation on such land and, under a tenancy agreement, express or implied, and includes -

(i) any such person who continues in possession of the land after the determination of the tenancy agreement, and

(ii) the heirs of such person, but does not include a mere intermediary or his heirs."

By the Amending Act, Madras Act 14 of 1956, CL. (ee) was added to S. 2 which purports to define the meaning of the expression "carry on personal cultivation". Clause (ee) reads thus :

"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 provisions set out above are relevant for consideration in this appeal. What happened was that Kanda Devan, who was the cultivating tenant, died some time before the proceedings before the Sub-Collector commenced. He left behind as his heirs his widow Palaniachi Ammal and his daughter Ramalakshmi Ammal. The respondent before us is the daughter's husband and holds a power of attorney both from her and Palaniachi Ammal. There was default in payment of rent and so the respondent by virtue of power of the attorney in his favour made an application in the year 1962 before the Sub-Collector under S. 3 (3) (a) of the Act for depositing the rental arrears. The

appellant who is the landlord contested the application on the ground that neither the wife nor the daughter of the deceased Kanda Devan was a cultivating tenant as defined in the Act because they were not personally cultivating the land and that, therefore, they were not entitled to the protection afforded by the Act. The Sub-Collector over-ruled the objection and, as already stated, directed the respondent to deposit the rental arrears. The question is whether the respondent was rightly allowed to deposit the arrears.

3. It is not disputed that Palaniachi Ammal and Ramalakshmi Ammal are the heirs of Kanda Devan, who, being a tenant, was entitled to the protection of the Act. It is also not disputed that after the death of Kanda Devan the land is being cultivated on behalf of these two women and that they are not personally cultivating them, in the sense that they are not contributing physical labour for its cultivation. It is, however, contended on behalf of the respondent that it is not necessary for a tenant to contribute physical labour before he can be held entitled to the benefit of the provision. Two decisions of the Madras High Court bearing on the point were cited before us. The first of these is Kunchitapatham Pillai v. Ranganatham Pillai(1958) 1 Mad LJ 272. In that case Balakrishna Iyer, J., held that in order to qualify as a cultivating tenant within the meaning of the definition given in the Act it was not necessary that a person should put his own muscular effort into the soil. Construing a similar expression occuring in the Tenjore Tenants and Pannaiyal Protection Ordinance IV of 1952, Rajagopala Ayyangar, J., observed in an unreported case. Writ Petn. No. 426 of 1953 (SC):

"Before a person can be a cultivating tenant, he or members of his family must contribute his or their own physical labour. I do not consider that the supervision of panniyals could be characterised as physical labour within the meaning of the definition clause." The view taken by Balakrishna Iyer, J., was held to be too wide in Mohamed Abubucker Lebbai v. Zamindar of Ettayapuram (1961) 1 Mad LJ 256. Rajamannar C. J., who delivered judgment of the Court, after considering the views of Balakrishna Iyer, J., and Rajagopala Ayyangar, J., and also certain English decisions agreed with the view of the latter, and in our view, rightly.

4. It is, however, said that though the heirs of Kanda Devan are not themselves exerting their physical labour the respondent who is the holder of a power of attorney from them is doing so and that, therefore, the heirs must be regarded as cultivating tenants. Reliance is placed in this connection on Cl. (ee) which gives the meaning of the expression "to carry on personal cultivation". Before the heirs can be given the benefit of this definition it is necessary for them to establish that someone is contributing his physical labour in the cultivation of the land and that that someone is a member of their family. Mr. S. C. Agarwal, appearing for the respondent, said that a son-in-law can be regarded as a member of the family because the word 'family' is not to be construed in a narrow sense or meaning only a member of a Hindu joint family. He is quite right there because the Act applies to all tenants irrespective of the personal laws which govern them. In Webster's New Word Dictionary one of the meanings of family is "a group of people related by blood or marriage, relatives". A person can, therefore, be properly regarded as being the member of his wife's family and not merely of his father's family. Mr. Viswanatha Sastri for the appellants, however, contends that even so the respondent is not contributing any physical labour but is only doing some kind of supervision. He further points out that according to the decision in Abubucker Lebbai's case (1961) 1 Mad LJ 256, the work of supervision is not tantamount to physical labour. There is, however, no finding by the Sub-Collector as to the nature of work, if any, which the respondent is doing in connection with the supervision of the land in question. In the absence of such a finding and in the absence of any relevant material before us we cannot deal with this argument. We do not even know whether there were any pleadings of the parties on the point and whether any evidence was led thereon by the parties. In the circumstances we think that in the interest of justice we should set

aside the orders of both the Courts below and remit the matter to the Sub-Collector for deciding as to whether the respondent was putting in physical labour in the cultivation of the field. If there is no material on record bearing on the point he should give opportunity to both the parties to make necessary pleadings and to adduce evidence. Accordingly we allow the appeal, set aside the decisions of the Courts below and remit the mater to the Sub-Collector for a decision adverting to what we have said in our judgment. Costs in this Court will be paid by the appellant as ordered on 3rd May, 1965. Costs in the two Courts below will abide the result.

Appeal allowed and matter remitted.

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