

## **MYSORE HIGH COURT**

Ullal Venkatraya Kini

Vs

Louis Souza

Civil Revn. Petn. No. 197 of 1959, in S. C. No. 72 of 1958

(K.S. Hegde, J.)

15.01.1960

### **JUDGMENT**

#### **K.S. Hegde, J.**

1. In this revision petition the true scope of some of the provisions in the Madras Cultivating Tenants Protection Act, 1955 (which shall be hereinafter called the 'Act') comes up for consideration.
2. The petitioner is the plaintiff in Small Cause Suit No. 72/1958 on the file of the learned Second Additional Subordinate Judge of South Kanara, Mangalore. He sued the defendant who is his tenant, for a sum of ₹ 790.52 NP. as being the arrears of rent for the years 1956, 1957 and 1958, on the basis of a chalgeni lease deed alleged to have been executed by the defendant on 26-9-1950. The defendant denied the genuineness of the lease deed produced. He alleged that the plaintiff had taken his thumb impression on a blank paper and the same must have been used to get up the lease deed in question. He further pleaded that the claim made in the present suit is barred by the principle of res judicata, in view of the decision given by the Special Assistant Commissioner in O. P. No. 386/58 on his file.
3. The trial Court rejecting the contentions of the defendant, held that the lease deed is genuine and binding against the defendant. But it dismissed the plaintiff's suit on the ground that the same is barred by the principle of res judicata by virtue of the decision in O. P. No. 386/58 on the file of the Special Assistant Commissioner, Mangalore. This conclusion is challenged.
4. At this stage, it is necessary to state a few more facts to understand properly the respective contentions of the parties. The petitioner had applied to the Special Assistant Commissioner in 1958 by means of O. P. No. 386/58 to evict the defendant from the property leased on the ground that he was in arrears of rent for the year 1956 and 1957. In that proceedings the parties were at

issue as regards the quantum of arrears. In order to decide that question the Assistant Commissioner had to decide the rate of rent agreed to be paid by the defendant and for deciding that he had to go into the question of the genuineness of the lease deed dated 26-9-1950. He came to the conclusion that the lease deed is not genuine and upheld the case of the defendant as regards the annual rent payable. In the present suit, the plaintiff has ignored that decision and based his claim on the chalgeni lease dated 26-9-1960. Hence it is necessary to decide whether the decision in O. P. No. 386 of 1958 bars the present suit.

5. The two questions that arise for decision are : (1) whether the suit is barred in view of the provisions contained in Section 6 of the "Act"; and (2) whether it is barred by the principle of res judicata. In order to decide these questions, it is necessary to examine the relevant provisions of the "Act". The preamble to the "Act" says that it is "An act for the protection from eviction of cultivating tenants in certain areas in the State of Madras." It is with this limited object the "Act" appears to have been enacted. The next relevant provision is Section 3. It reads :

" (1) Subject to the next succeeding sub-section, no 'cultivating tenant shall be evicted from his holding or any part thereof, during the continuance of this Act, by or at the instance of his landlord,' whether in execution of a decree or order of a Court or otherwise.

(2) Subject to the next succeeding sub-section, sub-section (1) shall not apply to a cultivating tenant,

(a) who, in the areas where.....the South Kanara Cultivating Tenants Protection Act, 1954 (Madras Act 6 of 1954) were in force immediately before the date of coming into force of the Madras Cultivating Tenants Protection (Amendment) Act, 1956, 'if in arrears at the commencement of this Act, with respect to the rent payable to the landlord does not pay such rent within six weeks after such commencement or who in respect of rent payable to the landlord after the commencement of this Act, does not pay such rent within a month after' such rent becomes due;

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3. (a) 'A cultivating tenant may deposit in Court the rent or, if the rent be payable in kind, its market value' on the date of deposit, to the account of the landlord –

(i) in the case of rent accrued due subsequent to the 31st March, 1954, within a month after the commencement of this Act;

(ii) in the case of rent accrued due after the commencement of this Act, within a month after the date on which the rent accrued due.

(b) The Court shall cause notice of the deposit to be issued to the landlord and determine, 'after a summary enquiry, whether the amount deposited represents the correct amount of rent due from the cultivating tenant'. If the Court finds that any further sum is due, it shall allow the cultivating tenant, such time as it may consider just and reasonable having

regard to the relative circumstances of the landlord and the cultivating tenant for depositing such further sum inclusive of such costs as the Court may allow. 'If the Court adjudges that no further sum is due, or if the cultivating tenant deposits within the time allowed such further sum as is ordered by the Court, the cultivating tenant shall be deemed to have paid the rent within the period, specified in the last foregoing sub-section. If, having to deposit a further sum, the cultivating tenant fails to do so within the time allowed by the Court, the landlord may evict the cultivating tenant as provided in sub-section (4).

(c) The expression "Court" in this sub-section means the Court which passed the decree or order for eviction or, where there is no such decree or order, the Revenue Divisional Officer.

4-5. (a) Every landlord seeking to evict a cultivating tenant falling under sub-section (2) shall whether or not there is an order or decree of a court for the eviction of such cultivating tenant, make an application to the Revenue Divisional Officer and such application shall bear a Court-fee stamp of one rupee.

(b) On receipt of such application, the Revenue Divisional Officer shall, after giving a reasonable opportunity to the landlord and the cultivating tenant to make their representations, 'hold a summary enquiry into the matter and pass an order either allowing the application or dismissing it and in a case falling under clause (a) of sub-section (2) in which the tenant had not availed of the provisions contained in sub-section (3), the Revenue Divisional Officer may allow the cultivating tenant such time as he considers just and reasonable having regard to the relative circumstances of the landlord and the cultivating tenant for depositing the arrears of rent' payable under this Act inclusive of such costs as he may direct. If the cultivating tenant deposits the sum as directed, he shall be deemed to have paid the rent under sub-section (3) (b). If the cultivating tenant fails to deposit the sum as directed, the Revenue Divisional Officer shall pass an order for eviction."

(Underlining (here in ' ') is mine).

The "Act" does not provide for an appeal against the decision of the Revenue Divisional Officer (Assistant Commissioner.) Only a summary enquiry is provided for. The right of revision under Section 6-B is not of much assistance. It merely confers jurisdiction on the High Court to revise the orders of Assistant Commissioners under Section 115 Civil Procedure Code But the correctness or the propriety of the orders in question cannot be challenged before any Court.

6. The only other section necessary to consider is Section 6. It takes away the jurisdiction of the Civil Court as regards certain matters. It reads :

" '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."

(Underlining (here in ' ') is mine).

7. From the provisions enumerated above it is clear that the "Act" is intended to protect the cultivating tenants from eviction. That appears to be the only legislative purpose. To carry out that purpose a separate tribunal is created (Revenue Divisional Officer who is designated in this State as Assistant Commissioner). The Assistant Commissioner is constituted as the sole tribunal to carry out the purpose of the "Act". The circumstances under which eviction could be ordered are set out in the "Act" and the Assistant Commissioner is made the sole Judge to determine whether any of the circumstances set out therein are established. Though his jurisdiction is exclusive it is limited in character. He can only decide the points left to his decision by the "Act" and that for the purpose of coming to the conclusion whether the eviction prayed for should be granted. In all other matters the jurisdiction of the Civil Courts remains unimpaired. When a tenant deposits into Court the rent alleged to be due from him, then the Assistant Commissioner can decide by means of a summary enquiry whether the amount deposited is correct or not. For that purpose he may have to go into the question of the rate of rent payable. He has no right to entertain a suit for arrears of rent nor could he grant any decree in favor of the landlord. The ouster of the jurisdiction of the Civil Courts will not be easily assumed. It is more so when we are concerned with a decision of a revenue tribunal arrived at after a summary enquiry and not subject to any right of appeal. The decision of the Assistant Commissioner in this case refusing eviction of the respondent is conclusive. In other respects his order is not conclusive. The landlord is entitled to get a decree for arrears of rent in the ordinary way. Eviction of a tenant is not even one mode of execution of a rent decree. It is highly inequitable and opposed to our notions of justice to allow revenue officials to dispose of civil disputes in a summary fashion. If the decision of the Revenue Tribunal on the question of arrears of rent is held to be final and binding between the parties for all purposes considerable complications are likely to arise. Let us take a case, where a landlord first obtains a decree for arrears of rent in a Civil Court and then moves the Assistant Commissioner for eviction of the tenant, but the Assistant Commissioner ignoring the decision of the Civil Court comes to the conclusion that there are no arrears, is the landlord's right to execute the decree obtained lost? Is it proper to assume that the legislature intended to confer on the Assistant Commissioner powers to set at naught decrees passed by Civil Courts, may be in some cases confirmed by the appellate as well as by the second appellate court.

It is true, if we read Section 6 in isolation and divorced from its setting it is likely to give an impression that all matters which the Assistant Commissioner is empowered by or under the Act to determine are excluded from the jurisdiction of the Civil Courts under all circumstances. I think the section is loosely worded. If the section is so understood, then no Civil Court can

decree any claim for arrears of rent as the quantum of arrears is a matter which the Assistant Commissioner is empowered to determine under certain circumstances. But there is no provision in the "Act" which empowers the Assistant Commissioner to give a decree. In the result, the aggrieved landlord will be left without a remedy in the matter of arrears of rent. Nothing so bad could have been intended by the Legislature. The only reasonable way to read Section 6 is, read it along with the other provisions in the "Act". If so read, the decision of the Assistant Commissioner in all matters relating to the eviction of the cultivating tenant and for that purpose cannot be challenged in a Civil Court. This conclusion is strengthened by the later part of Section 6 which says "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." In my judgment only the decision of the Assistant Commissioner ordering eviction or refusing to order eviction cannot be challenged before a Civil Court. To that extent Civil Court's jurisdiction is taken away. Incidental determinations such as quantum of arrears or the rate of rent are also final in so far as they relate to the question of eviction. It may be noted that the Assistant Commissioner is empowered by the "Act" to determine the quantum of arrears of rent only for the purpose of deciding whether the tenant should be evicted or not and not for any other purpose. To that extent only the jurisdiction of the Civil Court is excluded.

8. It is difficult to accept the contentions that the decision given by the Assistant Commissioner operates as *res judicata* in the present case. It cannot be said that the dispute as regards the rate of rent payable was a matter directly in issue in the proceedings before the Assistant Commissioner. It was only an incidental question. Further the Court of the Assistant Commissioner is not competent to grant the relief prayed for in the present suit. It is a Court of Special jurisdiction having limited powers. Consequently the rule of *res judicata* does not come up for consideration.

9. In this connection Shri G.K. Bhat placed reliance on the decision of a Single Judge of the Madras High Court in the case of *Narasimha Chettiar v. Muthuswami Gounder*<sup>1</sup>, With respect, I am unable to agree with that decision.

10. In the result, this petition is allowed and the case remanded to the Trial Court for determining the correct amount due from the defendant. In the circumstances of the case, there will be no order as to costs, in this petition. The plaintiff-petitioner is entitled to his costs in the trial court.

Petition allowed.

<sup>1</sup>1958 Mad WN 603