S. RAMA IYER

v.

SUNDARASA PONNAPOONDAR

February 4, 1966

[K. SUBBA RAO, M. HIDAYATULLAH AND R.S. BACHAWAT. JJ.]

Madras Cultivating Tenants Protection Act, (25 *of* 1955), *s.* 6B *and Code of Civil Procedure* (*Act* 5 *of* 1908), *s.* 115—*Decision by Revenue Court that petitioner was not a cultivating tenant—If revisable by High Court.*

The respondent, claiming to be the cultivating tenant of the appellant, filed an application before the Revenue Court under ss. 3(3) of the Madras Cultivating Tenants Protection Act, 1955, praying for a declaration that the amount deposited by him in the Court represented the correct amount of rent due from him to the appellant. The appellant denied that the respondent was his cultivating tenant. The Revenue Court held that the respondent was not the appellant's cultivating tenant. The High Court in a revision petition under s. 6B of the Act read with s. 115 of the Civil Procedure Code, held that the respondent was a cultivating tenant of the appellant and that the amount deposited represented the correct amount due from him to the appellant.

In appeal to this Court the appellant contended that the High Court had no jurisdiction, in revision, to set aside the finding of the Revenue Court that the respondent was not the appellant's cultivating tenant.

HELD : The Revenue Court under the Act can exercise its jurisdiction only if a relationship of landlord and cultivating tenant exists between the contending parties. If its jurisdiction is challenged it must enquire into the existence of the preliminary fact and decide if it has jurisdiction. If by an erroneous decision on a question of fact or law touching its jurisdiction a subordinate court assumes a jurisdiction not vested in it by law or fails to exercise a jurisdiction so vested, its decision is not final and is subject to the revisional jurisdiction of the High Court. Therefore, the High Court had power to enquire into the correctness of the Revenue Court's decision and on finding that the tenancy existed and that the Revenue Court had erroneously refused to exercise the jurisdiction vested in it by s. 3(3), the High Court could set aside that decision under s. 115(b) of the Civil Procedure Code read with s. 6B of the Act. [447 H-478 B; 478 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 797 of 1963.

Appeal by special leave from the judgment and order dated March 27, 1959 of the Madras High Court in C.R.P. No. 1282 of 1958.

R. Ganapathy Iyer, for the appellants.

R. Thiagarajan, for the respondent.

The Judgment of the Court was delivered by

Bachawat, J. On April 24, 1958, the respondent claiming to be the cultivating tenant of the appellant in respect of certain lands in Manapparavaivattam, Nannilam Taluk deposited Rs. 462/-

A as rent for 1367 fasli in the Revenue Court (the Court of the Revenue Divisional Officer), Tanjore under s. 3(3) of the Madras Cultivating Tenants Protection Act, 1955 (Madras Act No. 25 of 1955) and filed an application before the Court praying for a declaration that the amount deposited represented the correct amount of rent due from him. The appellant denied that the respondent was his B cultivating tenant. On July 31, 1958, the Revenue Court, Tanjore held that the respondent was not a cultivating tenant of the appellant and could not claim the benefit of s. 3(3) and dismissed the application. The respondent filed a petition in revision before the Madras High Court under s. 6-B of the Act read with s. 115 of the Code of Civil Procedure. The High Court came to the conclusion C that the respondent was a cultivating tenant of the appellant and by its order dated March 27, 1959, allowed the revision petition and declared that the amount deposited by the respondent represented the correct amount due from him to the appellant. The appellant now appeals to this Court by special leave.

Counsel for the appellant submitted that the finding of the D Revenue Court that the respondent was not a cultivating tenant was a finding of fact and the High Court had no jurisdiction to set it aside on revision. On the other hand, counsel for the respondent submitted that the finding was in respect of a collateral fact upon the existence of which the jurisdiction of the Revenue Court under s. 3(3) depended and the High Court had ample power to revise E the finding under s. 6-B of the Act.

Section 6-B is in these terms :

> "The Revenue Divisional Officer shall be deemed to be a Court subordinate to the High Court for the purposes of section 115 of the Code of Civil Procedure, 1908 (Central) F (Act 5 of 1908), and his orders shall be liable to revision by the High Court under the provisions of that section."

Section 6-B empowers the High Court to revise the decision of the Revenue Divisional Officer under s. 115 of the Code of Civil Procedure, and for the purposes of the section, the Officer is deemed to be a subordinate Court. Section 115 is in these terms :

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> "The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—
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> (a) to have exercised a jurisdiction not vested in H it by law, or
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> (b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

In the present case, no question of revision under sub-s (c) of s. 115 arises, and we are concerned only with the power of revision under sub-ss. (a) and (b) of s. 115. Sub-section (a) empowers the High Court to correct an erroneous assumption of jurisdiction; sub-s.(b) empowers it to correct an erroneous refusal of jurisdiction. The decision of the subordinate Court on all questions of law and fact not touching its jurisdiction is final and however erroneous such a decision may be, it is not revisable under sub-ss. (a) and (b) of s. 115. On the other hand, if by an erroneous decision on a question of fact or law touching its jurisdiction, *e.g.*, on a preliminary fact upon the existence of which its jurisdiction depends, the subordinate Court assumes a jurisdiction not vested in it by law or fails to exercise a jurisdiction so vested, its decision is not final, and is subject to review by the High Court in its revisional jurisdiction under sub-ss. (a) and (b) of s. 115. The question is, on which side of the line the present case lies, and whether the decision of the Revenue Divisional Officer that the respondent is not a cultivating tenant of the appellant is subject to review by the High Court in its revisional jurisdiction. The Revenue Divisional Officer is an inferior Court of limited jurisdiction functioning under the Madras Cultivating Tenants Protection Act, 1955. To ascertain the limit and extent of its jurisdiction, we must examine the provisions of the Act.

The Act came into force on September 27, 1955 and was amended from time to time. Originally, the Act was temporary, recently it has been made permanent. The Act was passed for the protection of certain cultivating tenants from eviction. Section 2 defines, *inter alia*, 'cultivating tenant' and 'landlord'. 'Cultivating tenant' is a person who carries on personal cultivation on the land under a tenancy agreement, express or implied, and includes any person who continues in possession of the land after determination of the tenancy agreement and the heirs of such person. 'Landlord' means the person entitled to evict the cultivating tenant from his holding or a part of it. Section 3(1) protects the cultivating tenant from eviction at the instance of the landlord whether in execution of a decree or order of Court or otherwise. Section 3(2) sets out the grounds of eviction, and if one of these grounds is made out, the protection from eviction given by s. 3(1) is taken away. Section 3(3) enables the cultivating tenant to deposit the rent in Court. Section 3(3)(b) requires the Court to "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

A rent due from the cultivating tenant". The expression "Court" in s. 3(3) means the Court which passed the decree or order for eviction, or where there is no such decree or order, the Revenue Divisional Officer. The Act also vests jurisdiction in the Revenue Divisional Officer to entertain and decide an application by the landlord for eviction of a cultivating tenant—s. 3(4), an application B by cultivating tenants evicted before and after the commencement of the Act for restoration of possession—ss. 4(1) and 4(5), an application by the landlord for the resumption of land for personal cultivation—s. 4-A(1), an application by the cultivating tenant for restoration of possession from a landlord so resuming possession—s. 4-A(2), applications for resumption of possession by the land-C lord from his cultivating tenant and by the cultivating tenant from his sub-tenant provided the applicant was a member of the Armed Forces—ss. 4-AA(2) and 4-AA(3). On receipt of any application under ss. 3(4), 4(1), 4(5), 4-A(1), 4-A(2), 4-AA(2) and 4-AA(3), the Revenue Divisional Officer is required to hold a summary enquiry into the matter and pass necessary orders after giving a reasonable opportunity to the landlord and the tenant to D make their representations. Section 4-B empowers the Revenue Divisional Officer in the case of any tenancy to impose a penalty on the landlord or the cultivating tenant for his refusal to sign or failure to lodge a lease deed in accordance with its provisions. Section 6 provides that no Civil Court shall, except to the extent specified in s. 3(3), have jurisdiction in res-E pect of any matter which the Revenue Divisional Officer is empowered by or under the Act to determine, or shall grant an injunction in respect of any action taken or to be taken under such power. Section 6-A requires the Civil Court to transfer to the Revenue Divisional Officer any suit for possession or injunction in relation to any land pending before it, if it is satisfied that the F defendant is a cultivating tenant. We have already noticed s. 6-B, which confers powers of revision on the High Court. Section 7 gives the State Government the power to make rules.

The Act gives generous protection to cultivating tenants from eviction, and severely restricts the right of landlords to resume possession of their land from their cultivating tenants. In case G of disputes between the landlord and the cultivating tenant, the Revenue Divisional Officer is authorised to entertain and decide applications by the landlord for eviction and resumption of possession and by the cultivating tenant for restoration of possession and to impose penalties on the landlord or the tenant for infraction of s. 4-B. To attract the jurisdiction of the Revenue Divisional H Officer, there must be a dispute between a landlord and cultivating tenant. The existence of the relation of landlord and cultivating tenant between the contending parties is the essential condition for the assumption of jurisdiction by the Revenue Divisional Officer

in all proceedings under the Act. The Tribunal can exercise its jurisdiction under the Act only if such relationship exists. If the jurisdiction of the Tribunal is challenged, it must enquire into the existence of the preliminary fact and decide if it has jurisdiction. But its decision on the existence of this preliminary fact is not final; such a decision is subject to review by the High Court in its revisional jurisdiction under s. 6-B. The enquiry by the Tribunal is summary, there is no provision for appeal from its decision, and the legislature could not have intended that its decision on this preliminary fact involving a question of title would be final and not subject to the overriding powers of revision by the High Court.

In the present case, the Tribunal found that the respondent was not the cultivating tenant of the appellant, and on such finding declined to exercise the jurisdiction vested in it by s. 3(3) to determine the correct amount of rent due by the respondent to the appellant. The High Court had power to enquire into the correctness of this decision, and on finding that the tenancy existed and the Tribunal had erroneously refused to exercise the jurisdiction vested in it by s. 3(3), the High Court could set aside the decision under sub-s. (b) of s. 115 of the Code read with s. 6-B of the Act. On a review of the entire oral and documentary evidence, the High Court found that the respondent was the cultivating tenant of the appellant. It is not shown that this finding is erroneous. We see no reason for interfering with the decision of the High Court.

The appeal is dismissed. There will be no order as to costs.

Appeal dismissed.