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G. PONNIAH THEVAR

v.

NELLAYAM PERUMAL PILLAI AND OTHERS

December 15, 1976

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[A. N. RAY, C.J. M. H. BEG AND JASWANT SINGH, JJ.]

Madras Cultivating Tenants Protection Act, 1955, s. 2(e) "Landlord", whether relates only to creator of lease—Section 3(1) whether protects tenancy rights created by life-estate holder extending beyond his life-time—Provisions of Act, whether prospective.

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The plaintiffs-respondents who became owners of the land in dispute, as remainder-men, sued to evict the appellant, a cultivating tenant, on the ground that his tenancy rights created by Annamalai Ammal, a life-estate holder had ceased with her death. The appellant claimed protection under s. 3(1) of the Madras Cultivating Tenants Protection Act, 1955. The respondents contended that such protection was only available against the creator of a lease, to persons who were cultivating tenants in 1955 when the Act came into force, and not to the appellant who became a cultivating tenant in 1961. The eviction-suit was decreed by the District Court and the High Court.

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Allowing the appeal, the Court,

HELD : (1) The statutory definition of the term "landlord" relates not only to the person who created the lease but contemplates and takes in every successive holder who could be entitled to evict a tenant. That person can only be one who has the right, at the time of filing the suit, to realise rents or evict persons in wrongful occupation. [449G-H]

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(2) The terms of the statutory protection apply to all tenancies governed by the Act irrespective of the nature of rights of the person who leased the land so long as the lessor was entitled to create a tenancy. [447E]

The Court observed—

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The Madras High Court's view that a life estate holder cannot create a tenancy which could last beyond his life-time, applied to statutory tenancies runs counter not only to the principles underlying creation of statutory tenancy rights in agricultural land, through out the country, but is in conflict with the particular statutory protection conferred upon cultivating tenants in the State of Madras. [447E-F]

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(3) The provisions of the Act are prospective except for section 4(1) and even s. 4(1) shows that the protection was not meant merely for those who were cultivating tenants in 1955. The provisions became enforceable as soon as the Act became operative and there is nothing in the Act to show that it ceased to be operative at any time or was limited in its operation only as a protection given to persons who were cultivating tenants in 1955. [450B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 523 of 1976.

(Appeal by Special Leave from the Judgment and Order dated 29-1-1976 of the Madras High Court in Second Appeal No. 468/75).

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K. S. Ramamurthi and Mrs. S. Gopalakrishnan, for the appellant.

T. S. Krishnamoorthi Iyer, K. Rajendra Chowdhary and Miss Veena Devi Khanna, for respondents Nos. 2—4.

The Judgment of the Court was delivered by

BEG, J.—This appeal by special leave raises quite a simple question of interpretation of the provisions of the Madras Cultivating Tenants Protection Act, 1955, (hereinafter referred to as 'the Act'), which, we think, have been ignored entirely by the Madras High Court in the judgment under appeal.

The undisputed facts are : one Annamalai Pillai died leaving behind two widows, namely, Annamalai Ammal and Veerayee. The last mentioned lady instituted a suit No. 482 of 1927 in the Court of the District Munsif, Periyakulam, for partitioning the properties of the deceased, impleading the other widow and a nephew of the deceased Annamalai Pillai as defendants. That suit ended in a compromise dated 6th July, 1935. Under the terms of the compromise decree, some land was given to Annamalai Ammal for enjoyment during her life time, and, thereafter, absolutely to the sons of the second defendant of suit No. 482 of 1927. Annamalai Ammal died on 26th July, 1968. She had, however, during her life time, inducted a tenant, G. Ponniah Thevar, the appellant before us, by means of a lease dated 27th March, 1961. After the death of Annamalai Ammal, the plaintiffs-respondents, as remainder-men, sued to evict the appellant, the cultivating tenant, on the ground that his tenancy rights did not enure beyond the life time of Annamalai Ammal.

The suit for eviction, decreed by the District Court and the High Court, is now before us. It is not disputed that the provisions of the Act conferring protection upon cultivating tenants govern the rights of the appellant. We are, therefore, not concerned with any rights under any general or personal law which may enable the remainder-men to evict a tenant of a life estate holder. The terms of the statutory protection apply clearly to all tenancies governed by the Act irrespective of the nature of rights of the person who leased the land so long as the lessor was entitled to create a tenancy. It is not disputed before us that Annamalai Ammal was entitled to create a tenancy. The only question, on which there is a dispute, is whether a tenancy created by her could legally extend beyond her life. The Madras High Court had, apparently, followed certain decisions of that Court which had applied the principle that a life estate holder cannot create a tenancy which could last beyond the life of a life-estate holder. The view taken by the Madras High Court and applied to statutory tenancies runs counter not only to the principles underlying creation of statutory tenancy rights in agricultural land, throughout the length and breadth of the country, but, it seems to us to be obviously in conflict with the particular statutory protection conferred upon cultivating tenants in the State of Madras. These enactments are really meant for the purposes proclaimed by them. The obvious effect of such statutory provisions cannot be taken away or whittled down by forensic sophistry. Courts should not allow themselves to become tools for defeating clearly expressed statutory intentions.

Section 2(aa) of the Act lays down :

"2(aa) 'cultivating tenant' in relation to any land—

- (1) means a person who carried on personal cultivation on such land, under a tenancy agreement, express or implied, and

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(2) includes—

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- (i) any such person as is referred to in sub-clause (1) who continues in possession of the land after the determination of the tenancy agreement,
- (ii) in the district of Tiruchirappalli, a Kaiaeruvaramdar or a muttuvaramdar who works on the land under an engagement with the landlord for remuneration by a share in the crop in respect of which the work is done, and
- (iii) the heirs of any such person as is referred to in sub-clause (1) or sub-clause (2) (i) and (ii) : but does not include a mere intermediary or his heirs.

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Explanation.—A sub-tenant shall be deemed to be a cultivating tenant of the holding under the landlord if the lessor of such sub-tenant has ceased to be the tenant of such landlord;”

Section 3(1) of the Act lays down :

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“3(1) Subject to the next succeeding sub-sections, no cultivating tenant shall be evicted from his holding or any part thereof, by or at the instance of his landlord, whether in execution of a decree or order of a Court or otherwise”.

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Section 3(2) deals with the exceptional circumstances, such as default in payment of rent, in which the statutory protection is lifted. Section 3(3) relates to other matters with which also we are not concerned here. Section 3(4) lays down the procedure for the eviction of tenants in those cases in which the statutory protection is removed. It runs as follows :

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“4(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.

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(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) or clause (aa) 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

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sum as directed the Revenue Divisional Officer shall pass an order for eviction".

Thus, we see that the statutory protection from eviction, in this exhaustively comprehensive self contained procedure, may last even after the landlord has filed the prescribed application for eviction after an accrual of his cause of action.

Section 2(e) defines the landlord as follows :

"2(e) 'landlord' in relation to a holding or part thereof means the person entitled to evict the cultivating tenant from such holding or part;"

The plaintiffs respondents, on their own showing, are landlords as defined by the Act because they claimed, as the learned Counsel for the contesting respondents admitted, to be able to evict the appellant.

There is no doubt whatsoever that the appellant was the lessee whose right to cultivate as a tenant had not been determined by anything in the lease or under any statutory provision. The learned Counsel for the appellant pointed out that, even if there had been a determination of the tenancy under a lease, the appellant would still be a cultivating tenant as defined in the Act because of the provisions of Section 2(aa) (2) (i) of the Act. Apparently, such a statutory definition of a cultivating tenant and an exhaustive procedure for his eviction in certain cases only and in no other case, are there so as to carry out the purpose stated in the preamble as follows :

"Whereas it is necessary to protect cultivating tenants in certain areas in the State of Madras from unjust eviction"

The plaintiffs landlords could be entitled to resume land only under section 4(A) of the Act added by the Madras Cultivating Tenants Protection (Amendment) Act of 1956, for purposes of personal cultivation in the manner laid down in the Act itself. The tenant could also be evicted for arrears of rent as provided in Section 3(2) of the Act, because, in that case, the protection given by Section 3(1) would not apply. But, none of the conditions for eviction is fulfilled in the case before us. Moreover, the procedure for eviction is a special procedure provided by Section 3(4) of the Act by proceedings in the Court of the Revenue Divisional Officer.

Learned Counsel for the contesting respondent had tried to advance two contentions in support of the view taken by the High Court. Firstly, he submits that the protection given under Section 3(1) was for the landlord of the cultivating tenant. In view of the statutory definition of the term "landlord", we think that the suit itself would fail if the plaintiffs were not landlords. The statutory definition of the term landlord relates not only to the person who created the lease but contemplates and takes in every successive holder who could be entitled to evict a tenant. That person can only be one who has the right, at the time of filing the suit, to realise rents or evict persons in wrongful occupation. There is nothing in the Act itself to show that the protection given to

A the cultivating tenant, as defined in the Act, was given only against his original lessor and did not extend to subsequent holders of land occupying the capacity of the landlord. Secondly, it was urged that the protection was given only to those persons who were cultivating tenants in 1955 when the Act came into force. The argument has only to be stated to be rejected. There is not a scintilla of indication in the provisions of the Act to support such an impossible interpretation. The provisions of the Act are clearly prospective except for the provisions of Section 4(1) of the Act, showing that even a person who was a cultivating tenant of any land on 1st December, 1953, but is "not in possession thereof at the commencement of the Act" could be treated as if he was in possession of the land on 1st December, 1953. Even Section 4(1) of the Act shows that the protection was not meant merely for those who were cultivating tenants in 1955. Provisions of the Act show that they became enforceable as soon as the Act became operative. There is nothing whatsoever in the Act to show that it ceased to be operative at any time or was limited in its operation only as a protection given to persons who were cultivating tenants in 1955. Hence, we are unable to see any reason whatsoever for denying the appellant the clearly intended protection conferred upon cultivating tenants, as defined in the Act, by the provisions of the Act set out above.

D Our attention has been invited to some cases which relate to the applicability of Section 76(a) of the Transfer of Property Act. It is true that this provision has been applied to tenancies created under various statutory provisions regulating the rights of tenants to agricultural lands in States all over India. But, we are not concerned here with a case in which the position of the alleged lessee is struck by Section 76(a) of the Transfer of Property Act. Such alleged lessees are not tenants at all at the time when they are inducted on the land as tenants whatever else they may be. We, therefore, need not even refer to the cases cited before us which relate either to this provision of law or to enactments of other States.

F Consequently, we allow this appeal and set aside the judgment and decree of the High Court. But, in the circumstances of the case the parties will bear their own costs.

M.R.

Appeal allowed.