

The Tirumalai Tirupati Devasthanams Committee by Its Commissioner Vs. Chapalamadugu Muniswami Naidu and ors.

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Court : Chennai

Decided On : Nov-02-1942

Reported in : AIR1943Mad631; (1943)2MLJ191

Appellant : The Tirumalai Tirupati Devasthanams Committee by Its Commissioner

Respondent : Chapalamadugu Muniswami Naidu and ors.

Judgement :

Horwill, J.

1. On 16th February, 1889, one Ananta Reddy executed a document Ex. I, which is described as a permanent bilmuktha muchilika, in favour of a predecessor in title of the Tirumalai Tirupathi Devasthanams Committee; and presumably there was a counterpart in favour of Ananta Reddy. The appellant is the Tirumalai Tirupati Devasthanams Committee. The respondents claim to be the ryots of the land which was the subject of Ex. I. The dispute between the Devasthanam and the respondents is whether Ex. I was a lease of the land to Ananta Reddy or whether it was a lease of the landlord's right to collect rent, which could not and did not affect the rights of the actual cultivators. The Devasthanam proceeded, when Ananta Reddy's successor failed to pay rent regularly under the muchilika, Ex. I, to attach the crops on the land. The respondents objected, claiming to have permanent occupancy rights in the land and asserting that the Devasthanam must proceed against the lessee personally and not against the land and the crops. The Devasthanam succeeded in distraining the crops; but the cultivators harvested the crops and took them away. The Devasthanam then filed an application under Section 90 of the Estates Land Act and another under Section 92 to have the crops sold. When notice went to the cultivators under Section 95(2), they filed what they described as a plaint under Section 95 or an application under Section 89. The Special Deputy Collector of Chandragiri Division examined the documents filed and conducted an enquiry as to the rights of the Devasthanam and of the cultivators and upheld the claim of the cultivators. He said in conclusion,

The tenant ryots not being defaulters so far as the Tirupathi Devasthanam Committee is concerned they have no right to sue under Section 95 of the Estates Land Act. Though they have elected to come under Section 95 of the Estates Land Act, their plaints will be treated as petitions under Section 89 of the Estates Land Act and allowed and the petitions by the Tirumalai Tirupathi Devasthanams Committee dismissed.

2. He nevertheless passed a decree as prayed for in the suits. In appeal, the District Judge asked the ryots whether they wished to regard their applications as petitions under Section 89 or as suits; and they replied that they wanted their petitions to be

treated as suits under Section 95. The learned District Judge considered the appeal on its merits and decided in favour of the cultivators; but added at the end of his judgment,

The Committee's petitions were rightly dismissed, and the ryots petitions called for no orders. To treat them as suits under Section 95 and to decree them was virtually to admit that the ryots were defaulter tenants of the Committee.

3. In second appeal, the learned advocate for the cultivators has raised the preliminary objection that as no suit under Section 95 lay, and the orders under Section 89 or 90 were orders that were not appealable under the schedule to the Act, no appeal to the District Judge and no second appeal to this Court lies. The learned advocate for the appellants agrees that such is the case; but would say, and I think rightly that a suit under Section 95 is not barred merely because the cultivators claim that they are not defaulters; for suits under Section 95 can be brought by persons who may not be defaulters. Since, however, the crop had been removed and was not brought back by an order of the Collector under Section 90, there was nothing to sell; and so no application under Section 92 would lie. From this it would follow that a suit under Section 95, which is a relief given to a cultivator, when a sale application has been filed, would also not be maintainable. I accept the preliminary objection; but in dismissing the second appeals it is of course necessary to set aside the decrees of the lower appellate Court and of the first Court; for if the suits were not maintainable no decrees should have been passed.

4. Mr. Govindarajachari for the appellant also contends that the order under Section 89(2) should not be allowed to stand; because it was sufficient that his application under Section 90 should be dismissed. I think, however, that the wording of Section 89 is sufficiently wide to permit of an application by the cultivators under that section. I do not agree that Section 89 would apply only as long as the property under distraint was before the Collector and that as soon as the crop was removed Section 89 would no longer operate.

5. As these second appeals were necessary because of the decrees passed against the appellant, there will be no order as to costs in this Court.