

CRP. (NPD) No.838 of 2018
and CMP No.4638 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.08.2020	Delivered on 18.08.2020
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. (NPD) No.838 of 2018
and CMP No.4638 of 2018

Kaliyannan

.. Petitioner

Vs.

1. Sangeetha

2. Velmurugan

3. Jayammal

4. Vanavil

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and order dated 29.04.2017 made in I.A.No.112 of 2016 in O.S.No.9 of 2002 on the file of the Sub Court, Attur.

For Petitioner : Mr.T.Murugamanickam, Senior Counsel
for M/s.Zeenath Begum

For Respondents : Mr. A.Rajkumar for RR 1 to R3

No appearance – R4

ORDER

This matter is taken up for hearing through Video-Conferencing.

This Civil Revision Petition is at the instance of the defendant in OS No.9 of 2002 challenging an order dated 29.04.2017 made in IA No.112 of 2016 directing the application to be forwarded to the Tahsildar for effecting a division of the property.

2. The suit in OS No.9 of 2002 is filed for partition and separate possession of the 2/3rd share of the plaintiffs. The suit came to be decreed on 23.06.2011. The respondents herein filed an application in IA No.112 of 2016 for passing a final decree under Order 26 Rule 13 of the Code of Civil Procedure by appointing an Advocate Commissioner. The same was resisted on various grounds.

3. The learned Subordinate Judge, Athur by order dated 29.04.2017 concluded that since the land is assessed to payment of revenue to the Government, the partition of the estate and separation of shares will have to be made by the Collector or a Gazetted Subordinate of the Collector deputed by the Collector, in this regard under Section 54 of the Code of Civil Procedure. She also referred to Order 20 Rule 18 (1) of the Code of Civil Procedure in

support of her conclusion. Reliance was also placed on the judgment of the Hon'ble Supreme Court in ***Shub Karan Bubna @ Shub Karan Prasad Bubna v. Sita Saran Bubna & others***, reported in **2009 (9) SCC 689**. Aggrieved by such reference made to the Tahsildar, the first respondent before the Trial Court has come with this Civil Revision Petition.

4. I have heard Mr.T.Murugamanickam, learned Senior Counsel appearing for Ms.Zeenath Begum, for the petitioner and Mr.A.Rajkumar, learned counsel appearing for the respondents 1 to 3.

5. Mr.T.Murugamanickam, learned Senior Counsel appearing for the petitioner would submit that Section 54 of the Code of Civil Procedure not apply to Ryotwari tenures. He would also contend that Section 54 would apply only to Whole Estates as defined under the various abolition laws. He would draw my attention to the following judgments of this Court:

(i) ***Muttuvayyanganar v. Kudalalagayyanganar***, reported in **(1883) ILR 6**

Mad 97;

(ii) ***Muttuchidambara v. Karuppa***, reported in **ILR (7) M 382**

(F.B.);

(iii) ***K.V.Srinivasathathachar v. Naravalur srinivasathathachar***,

reported in **(1933) 1 MLJ 63; and**

(iv) ***Kankanala Raju Bai v. Kankanala Peshireddy***, reported in

AIR 1982 AP 62;

The learned Counsel appearing for the respondents would submit that the respondents are ready to abide by any decision of this Court.

6. Section 54 of the Code of Civil Procedure reads as follows:

Section 54: Partition of estate or separation of share:

Where the decree is for partition of an undivided estate assessed to the payment of revenue to the Government or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the collector or may gazetted subordinate of the Collector deputed by him in this behalf, in accordance with law (if any) for the time being in force relating to the partition or the separate possession of shares of such estates.

This provision was there even in the older Codes as Section 225 in Act 8 of 1959 and Section 265 in the Code of Civil Procedure, 1882. It is in its third avatar as Section 54 in the Code of 1908. In ***Muttuvayyanganar v.***

Kudalalagayyengar, reported in (1883) *ILR 6 Mad 97*, a Division Bench of this Court had held that Section 265 of the Code of Civil Procedure would not apply to Ryotwari estate and would apply only to a permanently settled estate. The same question arose again before another Division Bench consisting of *Hon'ble Chief Justice Charles A. Turner and Hon'ble Justice Muttusami Ayyar*, in **Muttuchidambara v. Karuppa**, reported in *ILR (7) M 382 (F.B.)*, the Hon'ble Division Bench referred the matter to a Larger Bench by order dated 28.07.1883.

7. Upon the said reference, the matter was placed before a Five Judge Bench of this Court, and the Hon'ble Full Bench in **Muttuchidambara v. Karuppa**, reported in *ILR (7) M 382 (F.B.)* ruled as follows:

“The Division Bench (Turner, C.J., and Muttusami Ayyar, J.,) referred the case to a Full Bench for decision on the 28th July 1883.

Balaji Rau, for appellant.

[384] There was a razinama decree for partition.

The Court refused to divide, and the Collector also.

The Court should either appoint the Collector to divide or itself divide.

There is no machinery provided by Section 265 as by the Sections relating to the Collector's selling, Sections 320, 329. Under these sections the Government must authorize by order published in the Gazette.

Section 225 of Act VIII of 1859 was construed by the Sadr Court (21st July 1862) not to be applicable to raiyatwari estates. This was followed in Muttu v. Kudalalaga (1). In the case of permanently settled estates the Collector has to apportion the peshkash.

Quit-rent in Madras is equivalent to revenue.

Reference was made to Ramanuja v. Virappa (2), Chundernath Nundi v. Hur Narain Deb (3), Damoodur Misser v. Senabathy Misrain (4), Mchadeay Kooer v. Haruk Narain (5).

The respondent was not represented.

The Full Bench (TURNER, C.J., KERNAN, KINDERSLEY, MUTTUSAMI AYYAR, AND HUTCHINS, JJ.) delivered the following.

JUDGMENT

The question for decision is whether the provisions of Section 265 of the Code of Civil Procedure, requiring that a decree for the partition of an estate paying revenue to Government be executed through the Collector of the District, are applicable to raiyatwari holdings. This section corresponds with Section 225 of the Code of 1859. It was held by the Sadr Court that raiyatwari holdings were not estates paying revenue to Government, and this construction has always been acted upon in this Presidency. It would unsettle a large number of titles to adopt a different construction now, and whatever we might have thought if the matter had come before us as res integra, we are not prepared to disturb a practice so long established.

The orders of the District Judge and the Munsif must be set aside and the Munsif directed to pass fresh orders.

The costs of the appeal will abide and follow the result.”

8. In **K.V.Srinivasathathachar v. Naravalur Srinivasathathachar**, reported in (1933) 1 MLJ 63, another Division Bench of this Court considered

Section 54 of the present Code itself and held that Section 54 would apply only to a case where the decree comprehends the partition of the whole of the estate paying revenue to the Government and it does not apply where the decree is for separate possession of a share of a portion of an undivided estate. While doing so, the Division Bench referred to the judgment of the *Calcutta High Court* in ***Moulvi Abdul Razak v. Sreenath Ghose***, reported in *ILR 58 Cal 152*, and the judgment of the Full Bench of *Calcutta High Court* in ***Jogodishury Debea v. Kailash Chundra Lahiry***, reported in *ILR 24 Cal 725 (F.B.)*. ***Jogodishury Debea v. Kailash Chundra Lahiry and others***, reported in *ILR 24 Cal 725 (F.B.)*, was again a case of reference made by a Division Bench of the *Calcutta High Court* on the scope of Section 265 of the Code of Civil Procedure, 1882. The Hon'ble Full Bench concluded that Section 265 of the Code of Civil Procedure, 1882, would not apply to partition of the revenue paying estate when no separate allotment of revenue is asked for and the Full Bench concluded that a Civil Court will have jurisdiction to divide the property in question. The Hon'ble Division Bench concluded that the provisions of Section 54 which would stand attracted only when a partition is sought for of the whole estate and not part of the estate. This view of this Court was followed by the Andhra Pradesh High Court in ***Kankanala Raju Bai v. Kankanala Peshireddy***,

reported in AIR 1982 AP 62, wherein the Andhra Pradesh High Court referred to the judgment of the Full Bench of this Court in *Muthuchidambara v. Karupa, reported in ILR (7) M 382 (FB)*, and concluded that Section 54 would not apply to Ryotwari Land tenures.

9. The issue can be approached from another angle also. The decisions of the full bench of this court in ILR 7 Madras 382 and Calcutta High Court in ILR 24 Calcutta 725 turned on the meaning assigned to the word '*estate*' occurring in Section 265 of the the Code of Civil Procedure 1882. The same word '*estate*' has been used in in Section 54 of the Code of 1908. In *Ex parte Campbell reported in LR 5 CH 703* James. L.J reiterated the well established principle to be applied in consideration of Acts of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it. James.L.J expresses the rule in the following terms,

"Where once certain words in an act of parliament have received the judicial construction in one of the superior courts and the legislature has repeated them without alteration in a subsequent statute I conceive that the

legislature must be taken to use to them according to the meaning which a court of competent jurisdiction has given to them."

This pronouncement in Ex parte Campbell was relied upon by Lord Buckmaster in Barras -Vs- Aberdeen Steam Trawling and Fishing Company, Limited reported in 1933 A.C 402.

This doctrine was reiterated by the Hon'ble Supreme Court Bengal Immunity Company Limited -Vs- State of Bihar reported A.I.R 1955 SC 661. Hon'ble Justice T.L.Venkatrama Iyer speaking for the the bench observed as follows:

"Then we come to the constitution. Articles 245 (1) and 246 which deal with the subject reproduce section 99 (1) and 100 with only alterations of a formal character. They confirm the parliament's and the state legislatures' power to enact laws in respect of the topics mentioned in the respective lists to be exercised for the territory over which they have jurisdiction. It is well settled rule of construction that when a statute is repealed and re-enacted and words in the repealed statute or reproduced the news statute come they should be interpreted in the sense which had been judicially put on them under the repealed act, because the legislature is presumed to be acquainted with the construction which the courts have put upon the words, and when they repeat the same words, they must be taken to

have accepted the interpretation put on them by the court as correctly reflecting the legislative mind”.(Emphasis Supplied)

If the above rule of construction is applied to the case on hand, there can be no doubt that, the phrase '*estate*' occurring in Section 54 of the Code of Civil Procedure 1908 will have to be assigned the same meaning that was assigned to it by the the full benches of this court and the Calcutta High Court referred to *supra*. In that case there can be no doubt that Section 54 in its terms cannot be apply to ryotwari tenures.

10. We should not also lose sight of the fact that after the introduction of the various Estate Abolition Laws, the concept of permanent estate itself was abolished and Ryotwari tenures have been introduced in this part of the Country. The judgment of the Hon'ble Supreme Court relied upon by the learned Subordinate Judge is not from this region as it arises out of an order from the *High Court of Patna* and the Hon'ble Supreme Court did not lay down as of law that in all cases where a land paying revenue to the Government is to be partitioned, the partition is to be effected by the District Collector or any Gazetted Officer authorized by the District Collector.

11. In view of the law declared, it can be stated without fear of contradiction that this Court has been consistent in excluding the applicability

of Section 54 to division of Ryotwari estates. I therefore conclude that the learned Subordinate Judge was not right in forwarding the application for passing a final decree to the District Collector.

12. Hence, the Civil Revision Petition is **allowed**, the order dated 29.04.2017 made by the learned Subordinate Judge is set aside and IA No.112 of 2016 is remitted to the Sub Court, Athur to be disposed of in accordance with law by appointing an Advocate Commissioner to divide the suit properties in terms of the preliminary decree. No costs. Consequently the connected miscellaneous petition is closed.

18.08.2020

jv
Index: Yes
Internet: Yes
speaking order

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To

The Sub Judge,
Attur.

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R.SUBRAMANIAN

jv



Pre Delivery Order

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