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KATIKARA CHINTAMANI DORA & ORS.

v.

GUNTREDDI ANNAMNAIDU & ORS.

December 11, 1973.

B [D. G. PALEKAR, V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

Madras Estates (Abolition and Conversion into Ryotwari) Act 1948—s. 9(1)—Jurisdiction of the Settlement Officer and Civil Court—Whether finding of Settlement Officer could be questioned in a Civil Court—Effect of Amending Act on pending actions.

C The Settlement Officer under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 *suo motu* made an inquiry as to whether a particular village notified by the State Government was an estate or not within the contemplation of s. 9(2) of the Act and held that it was not an "inam estate" within the meaning of s. 2(7) of the Abolition Act but that the village became an estate by virtue of Madras Estates Land (3rd Amendment) Act, 1936. The appellants unsuccessfully appealed to the Estate Abolition Tribunal. The appellant then instituted a suit (O.S. 47 of 1953) against the State Government for a declaration that the village was not an "estate" under s. 3(2)(d) of the Madras Estates Land Act, 1908 and consequently Madras Estate (Reduction D of Rent) Act, 1947 and the Abolition Act were not applicable to it. The trial court decreed the suit. The State preferred an appeal. During the pendency of the appeal the appellant filed a suit (O.S. No. 101 of 1954) against the respondents for recovery of certain amount as rent or damages in respect of lands cultivated by them in the village in dispute. The respondents contended that the village was an estate within the meaning of the Act and that it had been so held by the Settlement Officer. Ultimately both the parties filed a joint memo on 26th March, 1958 that they would abide by the decision E of the High Court or the Supreme Court in the appeal or revision arising out of the suit (O.S. 47/53) on the question whether the village was or was not an "estate" under s. 3(2)(d) of the Madras Estates Land Act. The High Court (in A.S. No. 668 of 1954 which was an appeal arising out of O.S. 47 of 1953) confirmed the decree of the trial court that the village in dispute was not an 'estate'. The State did not appeal, with the result that the High Court's decision became final and the decree dated 28th March, 1958 became effective.

F Against the decree of 28th March, 1958 the appellants preferred an appeal (A.S. 239 of 1961) to the High Court. The appeal related only to the extent of the land in the possession of the respondents and the quantum of rent or damages. The appellants' claim was that the entire land was under cultivation of the respondents and so the lower court was wrong in not decreeing the appellants' claim for rent or damages *in toto*. The respondents raised a preliminary objection at the time of hearing of the appeal that the suit itself was incompetent as the Civil Court had no jurisdiction to decide whether the suit G village was an estate or not and, therefore, any decision given by the High Court would not bind the parties and the decree in O.S. 101 of 1954 would be without jurisdiction rendering it null and void and that the Settlement Officer was the competent authority to decide the tenure of the village and his decision had become final in view of the introduction of s. 9A by Act 20 of 1960. The High Court upheld the preliminary objection of the respondents and rejected the contentions of the appellants that since s. 9A was inserted by an amendment which came into force on 23rd June, 1960, it could not affect the compromise decree of the court passed on March 28, 1958 or the decree of H the High Court by which both the parties agreed to abide by the decision of the High Court or the Supreme Court in appeal or revision arising out of O.S. 47 of 1953. The High Court held that the Civil Court was not the forum for the suit as framed by the appellants and the questions raised in the suit

including the claim for arrears of rent or damages, were outside the jurisdiction of the Civil Court, and so dismissed the appeal. A

Allowing the appeal,

HELD : 1(a) There is no doubt that the question was within the competence of the Civil Court. Under the Abolition Act, as it stood at the material date, the inquiry of the Settlement Officer could legitimately be confined to the ascertainment of only two disputes of fact, *viz.*, (i) Was the village an "inam village" ? (ii) If so, was it an 'Inam Estate' as defined in s. 2(7) of the Abolition Act ? Once issue (ii) was determined, the inquiry would be complete and the limits of his exclusive jurisdiction circumscribed by s. 9(1) reached; if he went beyond those limits to investigate and determine something which is unnecessary or merely incidental or remotely related to issue No. (ii), then such incidental or unnecessary determination could be questioned in a Civil Court. [668FG] B

(b) Any finding recorded by the Settlement Officer regarding the property in question being an 'inam village' or not, is not final or conclusive it being a finding of a jurisdictional fact only, the pre-existence of which is a *sine qua non* to the exercise of his exclusive jurisdiction by the Settlement Officer. [668H] C

(c) The legislature must have visualised that under the cloak of an erroneous finding as to the existence or non-existence of this pre-requisite, the Settlement Officer may illegally clutch at jurisdiction not conferred on him or refuse to exercise jurisdiction vesting in him. Perhaps that is why the statute does not leave the final determination of this preliminary fact to the Settlement Officer/Tribunal and his erroneous finding on that fact is liable to be questioned in a Civil Court. Once it is held that determination of this fact is not a matter of the exclusive jurisdiction of the Settlement Officer, the appellants cannot be debarred on the basis of any doctrine of *res judicata* from getting the matter fully and finally adjudicated by a court of competent jurisdiction. [669B-C; E] D

Addanki Tiruvenkata Tata Desika Charyulu v. *State of Andhra Pradesh* A.I.R. 1964 S.C. 807 followed.

District Board, Tanjore v. *Noor Mohammed*, (1952) 2 M.J. 586 (S.C.) referred to. E

(2) It is well settled that ordinarily when the substantive law is altered during the pendency of an action, rights of the parties are decided according to law, as it existed when the action was taken unless the new statute shows a clear intention to vary such rights. A plain reading of the impugned Act would show that there was nothing of this kind which expressly or by necessary intendment affects pending actions. [670C-D] F

(b) There is no *non-obstante* clause in the amending Acts 17 and 18 of 1957 with reference to pending or closed civil actions. These amending Acts were published in the government gazette of December 23, 1957 and will therefore be deemed to have come into force from that date only. They could therefore be construed as having prospective operation only. [670G-H]

(c) In the Amending Act 20 of 1960 also no back date for its commencement has been mentioned. It will, therefore, be deemed to have commenced on June 23, 1960 which is the date on which it was published in the Government gazette. [674E] G

Section 9A takes in its retrospective sweep only those decisions of the Settlement Officer or the Tribunal which at the comencement of the Amending Act 20 of 1960 were subsisting and had not been totally vacated or rendered *non-est* by a decree of a competent court. [675-F]

In the instant case the decision of the Settlement Officer dated September 2, 1950 was not such a decision. It had ceased to exist as a result of the interlinked decree in O.S. 47 of 1953 and O.S. 101 of 1954 passed before the enactment of the Amending Act. The Amending Act of 1960, therefore, does not in any way affect the finality or the binding effect of those decrees. [675G] H

A (d) Order 23 rule 3 C.P.C. not only permits a partial compromise and adjustment of a suit by a lawful agreement, but further gives a mandate to the court to record it and pass a decree in terms of such compromise or adjustment in so far as it relates to the suit. If the compromise agreement was lawful the decree to the extent it was a consent decree was not appealable because of the express bar in s. 96(3) of the Code. [672E]

Raja Sri Sailendra Narayan Bhanja Deo v. *State of Orissa* [1956] S.C.R. 72, *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality* [1970] 1 S.C.R. B 388 and *Reid* v. *Reid* [1886] 31 Ch.D. 403 at 408, followed.

(e) In any suit the parties, in order to avoid unnecessary expenses and botheration, could legitimately make an agreement to abide by a determination on the same point in issue in another pending action in an advanced stage. There was nothing unlawful and improper in such an arrangement particularly when the interests of the respondents were sufficiently safeguarded by the State. By no stretch of reasoning it could be said that the agreement was collusive C or was an attempt, to contract out of the statute. In the instant case as soon as the parties made the agreement to abide by the determination in the appeal (A.S. 668) and induced the court to pass a decree in terms of that agreement the principle of estoppel underlying s. 96(3) C.P.C. became operative and the decree to the extent it was in terms of that agreement became final and binding between the parties. It was as effective in creating an estoppel between the parties as a judgment on contest. [672F-G & 673C]

In the instant case that part of the decree in suit No. 101 of 1954 and D the appeal from that decree could not be said to be a continuation of that part of the claim which had been settled by agreement. The combined effect of the two integrated decrees was to completely vacate and render *non-est* decision dated September 2, 1950 of the Settlement Officer. [673F]

Raja Sri Sailendra Narayan Bhanja Deo v. *State of Orissa* [1956] S.C.R. 72 applied.

Per Krishna Iyer, J. concurring :

E Courts have to be anchored to well-known canons of statutory construction and if they are out of tune with the law maker's meaning and purpose the legitimate means of setting things right is to enact a new Interpretation Act. [678B]

The Indian Constitution, adopting the fighting faith of equal protection of the laws to all citizens, necessarily contemplates a new jurisprudence where vested rights may be, and often-times are, extensively interfered with for achieving the founding fathers' social goals. Legislative exercises directed to- F wards distributive justice as in the present case, cannot be considered in the light of dated value system, though sanctified by bygone decisions of Courts. [677H]

In the present case the Act in question is clear about its intent and its application gives little difficulty.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1936 of 1967

G From the Judgment and Decree dated the 14th October, 1966 of Andhra Pradesh High Court in Appeal No. 239 of 1961 and Memo of Cross Objections therein arising out of the judgment and decree dated 28th March 1958 of the Subordinate Judge, Srikakulam in Original Suit No. 101 of 1954.

M. Natesan, K. Jayaram and R. Chandrasekhar, for the appellant,

P. Parmeshwara Rao and *T. Satyanarayana*, for the respondent.

H The Judgment of D. G. PALEKAR, and R. S. SARKARIA JJ. was delivered by SARKARIA, J. V. R. KRISHNA IYER, J. gave a separate Opinion.

SARKARIA J.—This appeal by certificate involves an examination of the limits of the respective jurisdictions of the Settlement Officer/Tribunal and the Civil Court in relation to an inquiry under s. 9(1) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, Abolition Act) and the effect of the Amending Acts 17 and 18 of 1957 and Act 20 of 1960 on cases regarding such an inquiry pending in or decided by the Civil Courts. It arises out of the following facts :

The lands in dispute are situated in village Kadakalla, Taluk Palakonda. On June 13, 1950, the then State Government issued and published a notification under the Madras Estates (Reduction of Rent) Act, 1947 (for short, Rent Reduction Act) in respect of this village. Subsequently, the Settlement Officer of Srikakulam *suo motu* made an enquiry as to whether this village was an "estate" or not within the contemplation of s. 9(2) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, called Abolition Act) and by an order, dated September 2, 1950, held that it was not an 'inam estate' within the meaning of s. 2(7) of the Abolition Act. The Settlement Officer further recorded a finding that village Kadakalla became an estate by virtue of the Madras Estates Land (3rd Amendment) Act, 1936. Against that order of the Settlement Officer, the appellants herein carried an appeal to the Estates Abolition Tribunal, Vizianagaram. The Tribunal by its order, dated September 16, 1952, dismissed the appeal *in limine*, with the observation that the decision of the Settlement Officer being in their favour the appellants had no right of appeal.

The appellants then instituted O.S. 47 of 1953 in the Court of the Subordinate Judge, Srikakulam against the State Government for a declaration that Kadakalla village was not an 'estate' under s. 3(2)(d) of 1908 Act, and consequently, the Rent Reduction Act and the Abolition Act were not applicable to it. The trial court decreed the suit. Aggrieved by the decree, the State preferred an appeal (A.S. 668 of 1954) to the High Court of Andhra Pradesh.

During the pendency of the said appeal, the appellants instituted Original Suit No. 101 of 1954 (out of which the present appeal has arisen) in the Court of Subordinate Judge Srikakulam, against the respondents herein and others for the recovery of Rs. 15,681/19 as rent or damages for the year 1953 in respect of the lands cultivated by them in the area of village Kadakalla.

The suit was resisted by the respondents *inter alia* on the ground that the suit village was an 'estate' as defined in s. 3(2)(d) of the 1908 Act, and that it had been so held by the Settlement Officer as per his Order dated September 2, 1950. It was further averred that the defendants not being parties to O.S. 47 of 1953, were not bound by the decision in that case. It was added that the question as to whether this village was an estate or not, was pending in the High Court of Andhra Pradesh in appeal from the decision in O.S. 47 of 1953, and as such, was *sub judice*. The jurisdiction of the Subordinate

A Judge to try the suit (O.S. 101 of 1954) was also questioned. The claim for rent or damages was also resisted.

On January 22, 1958, the respondents herein made an application for permission to file an additional written statement for adding the plea that the suit village is an 'inam estate'. On March 17, 1958, the trial court dismissed this application holding that the question B sought to be raised, was already covered by Issue No. 1.

The trial court framed as many as eleven issues, out of which Issues 1, 6 and 8 were as follows :

(1) Whether the suit village is an estate within the meaning of Section 3(2)(d) of the Madras Estates Land C Act ?

(6) Whether the plaintiffs are barred and estopped to claim rents in view of prior pattas and rent decrees that were previously obtained ?

(8) Whether this Court has no jurisdiction to try the suit ?

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On March 26, 1958, the Advocates for the parties filed a joint memo to the effect that "both parties agree to abide by the final decision whether in the High Court or in the Supreme Court, as the case may be, in the appeal or revision, arising out of O.S. No. 47 of 1953 on the file of this Court on the question whether the suit village Kadakalla is not an estate under s. 3(2)(d) of the Madras E Estates Land Act, as amended upto date". As a result of this compromise, it was held that the decision of Issues 1, 6 and 8 would follow the final decision in O.S. 47 of 1953. The remaining Issues were tried and decided on merits. On March 28, 1958, the trial court keeping in view the joint memo filed by the parties and its findings on the other Issues, passed a decree in these terms :

F "In case it is ultimately decided by the High Court or the Supreme Court, as the case may be, in the appeal or revision arising out of O.S. No. 47 of 1953 on the file of this Court that the suit village Kadakalla is not an estate within the meaning of s. 3(2)(d) of the Estates Land Act, the defendants to pay to the plaintiffs the sum of Rs. 3,000/- with interest at 5½ per cent per annum from 26-3-1958 with interest G thereon and for costs, and that otherwise suit should stand dismissed with costs and that the decree should take effect from the date of the final decision of O.S. No. 47 of 1953 referred to above."

The appeal (A.S. 668 of 1954) arising out of O.S. 47 of 1953 was decided by the High Court on February 12, 1959 whereby the H decree of the trial court declaring that village Kadakalla was not an estate, was confirmed. The application of the State for issuance of a certificate of fitness for appeal to the Supreme Court was dismissed by the High Court. The State did not prefer any Special Leave Peti-

tion in this Court, with the result, that the High Court's decision in that case became final and the decree, dated March 28, 1958, of the Subordinate Judge in O.S. 101 of 1954 also became effective. After the disposal of its appeal (A.S. 668 of 1954), the Government issued G.O.R.T. No. 619-Rev. dated June 30, 1966, cancelling the earlier notifications in respect of this village notwithstanding the fact that prior to such denotification, section 9-A had been inserted in the Abolition Act by the Amending Act 20 of 1960.

Appellants preferred an appeal (A.S. 239 of 1961) against the said decree, dated March 28, 1958, of the Subordinate Judge, to the High Court. Though in the Memorandum of Appeal, it was said, as usual, in general terms, that the "decision of the lower court is against law, weight of evidence and probabilities of the case", and that its decree was "worthless and did not conform to the requirements of section 2(2) of the Civil Procedure Code, yet, in substance, the appeal related only to the extent of the land in the possession of the respondents and the quantum of rent or damages. The appellants' claim was that the entire suit land, as alleged in the plaint, was under the cultivation of the respondents, and consequently, the lower court was wrong in not decreeing the appellants' claim for Rs. 15,681/19 as rent or damages, *in toto*.

On April 6, 1962, the respondents filed cross-objections contending that the question as to whether Kadakalla village is or is not an 'estate' as defined in s. 3(2)(d) of the 1908 Act, should have been gone into by the trial court and that the rent should have been decreed only in the sum of Rs. 551/29.

The High Court posted the appeal and the cross-objections for hearing in July, 1965. At that stage, on July 19, 1965, an application was made by the respondents praying that Exhts. B-196 and B-197, being copies of the order, dated September 2, 1950, of the Settlement Officer and the order dated September 16, 1952, of the Estate Abolition Tribunal, respectively, be read as additional evidence. It was contended that the Amending Act 20 of 1960 had added s. 9A to the Abolition Act, as a result of which, the order of the Settlement Officer had acquired 'statutory validity'; and since the appellants did not file an appeal within two months from the commencement of the Amendment Act, the decision of the Settlement Officer became final and binding on all the parties including the appellants. In spite of opposition by the appellants, the High Court by its order, dated August 23, 1956, allowed this additional evidence and the setting up of the new plea.

The appeal and the cross-objections were heard together in August, 1966. The respondents raised a preliminary objection that the suit itself was incompetent as the Civil Court had no jurisdiction to decide whether the suit village is an estate or not and, therefore, any decision given by the High Court in appeal (A.S. 668 of 1954) would not bind the parties and the decree in the present suit (O.S. 101 of 1954) on the basis of the judgment and decree in A.S. 668

A of 1954, would be without jurisdiction rendering it null and void, that the Settlement Officer was the competent authority to decide the tenure of the village and his decision had become final in view of the introduction of Section 9A by Act 20 of 1960.

The preliminary objection of the respondents was upheld. The contention of the appellants, that since s. 9A was inserted by an B amendment which came into force on June 23, 1960, it could not affect the compromise decree of the Court passed earlier on March 28, 1958 or the decree of the High Court whereby both the parties agreed to abide by the decision of the High Court or the Supreme Court in appeal or revision arising out of O.S. 47 of 1953, was rejected in these terms :

C "We see no force in this contention as Section 9A is designed to meet such of the decisions where it has been held that the village is not an inam estate as it stood after the 1936 Act and certainly the respondents can take advantage of change in statute, if it is to their benefit and there could be no estoppel against a statute and the rights accrued under a statute. It cannot reasonably be contend- D ed that the suit filed by the appellants and the decree obtained have reached any finality as an appeal is only the continuation of the proceedings instituted by the plaintiffs."

In the result, it dismissed the appeal holding that the Civil Court was not the forum for the suit as framed by the appellants and the questions raised in the suit including the claim for arrears of rent or E damages, were outside the jurisdiction of the Civil Court.

Before dealing with the contentions canvassed, it will be useful to have a clear idea of the relevant statutory provisions, including the expressions "inam village", "inam estate" and "estate" as defined therein.

F S. 3(2)(d) of the Madras Estates Land Act, 1908, as it originally stood, defined "estate" as "any village of which the land revenue alone (*i.e.* melwaram alone) has been granted in inam to a person not owing the kudiwaram (rights in soil) thereof, provided the grant has been made, confirmed or recognised by the British Government or as separated part of such village." In this definition, it was not clear whether the inamdar had the melwaram alone or both G melwaram and kudiwaram. To remove this obscurity, the Madras Estates Land (Third Amendment) Act, (18 of 1936), substituted for the original sub-clause (d) in s. 3(2), this new clause :

"(d) any inam village of which the grant has been made, confirmed or recognised by the Government notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors-in-title of the grantee H or grantees."

Section 3(2)(d) was further amended by Madras Estates Land Amendment Act II of 1945 with retrospective effect from the date

on which the Third Amendment Act 18 of 1936 came into force. It inserted (among others) Explanation I, to this clause, which reads :

> "Where a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name would have already been granted on service or other tenure or been reserved for communal purposes."

Explanation I makes it clear that (apart from being made, confirmed, or recognised by the Government), an inam grant in order to come within the purview of "estate" under s. 3(2)(d) has to be a grant *expressly* made of a named village or *whole* village, and not only of a part of the village or of some defined area in a village. However, it remains and is deemed to be a grant of a whole village notwithstanding the exclusion of certain lands already granted on service or other tenure or reserved for communal purposes; nor does it cease to be a grant of an entire village merely because the village has been subsequently partitioned amongst the grantees or their successors.

The interpretation of "estate" has behind it the authority of a beadroll of decisions, including that of this Court in *District Board, Tanjore,* v. *Noor Mohammed*(1)

Next, in chronological order, is the Madras Estates (Abolition and Conversion into Ryotwari) Act, (XXVI of 1948). Section 1(3) thereof provided that "it applies to all estates as defined in section 3, clause (2) of the Madras Estates Land Act, 1908 (except inam villages which became estates by virtue of the Madras Estates Land (Third Amendment) Act, 1936. The material part of s. 2 of this Act says :

> (3) "Estate" means a zamindari or an under-tenure or an undertenure of an inam estate.
>
> (7) "Inam Estate" means an estate within the meaning of section 3, clause (2)(d), of the Estates Land Act, but does not include an inam village which became an estate by virtue of the Madras Estates Land (Third Amendment) Act, 1936".

Thus, to begin with, this Act did not take in its fold post-1936 inam estates. Its operation remained confined to pre—1936 inam estates till the commencement of Act 18 of 1957, which we shall presently notice.

Section 9 of the Abolition Act indicates the authorities empowered to determine Inam estate. It says :

> "(1) As soon as may be after the passing of this Act, the Settlement Officer may *suo motu* and shall, on application enquire and determine whether an inam village in his jurisdiction is an inam estate or not.

(1) (1952) 2 M. J 586 (S. C.)

A (2) Before holding the inquiry, the Settlement Officer shall cause to be published in the village in the prescribed manner, a notice requiring all persons claiming an interest in any land in the village to file before him statements bearing on the question whether the village is an inam estate or not.

B (3) The Settlement Officer shall then hear the parties and afford to them a reasonable opportunity of adducing all such evidence either oral or documentary as they may desire to examine all such documents as he has reason to believe are in the possession of the Government and have a bearing on the question before him and give him decision in writing.

C (4) (a) Any person deeming himself aggrieved by a decision of the Settlement Officer under sub-section (3) may within two months from the date of the decision or such further time as the Tribunal may in its discretion allow, appeal to the Tribunal.

D (b) Where any such appeal is preferred, the Tribunal shall cause to be published in the village in the prescribed manner a notice requiring all persons who have applied to the Settlement Officer under sub-section (1) or filed before him before it, and after giving them a reasonable opportunity of being heard, give its decision.

E (c) The decision of the Tribunal under this sub-section shall be final and not be liable to be questioned in any court of law.

(5) No decision of the Settlement Officer under sub-section (3) or of the Tribunal under sub-section (4) shall be invalid by reason of any defect in the form of the notice referred to in sub-section (2) or sub-section (4) as the case may be, or the manner of its publication.

F (6) Every decision of the Tribunal and subject to such decision, every decision of the Settlement Officer under this section shall be binding on all persons claiming an interest in any land in the village, notwithstanding that any such person has not preferred any application or filed any statement or adduced any evidence or appeared or participated in the proceedings before the Settlement G Officer or the Tribunal as the case may be.

(7) In the absence of evidence to the contrary the Settlement Officer and the Tribunal may presume that an inam village is an inam estate".

H Madras Amendment Act 17 of 1951, introduced s. 64-A, which runs thus :

"64-A.(1) The decision of a Tribunal or Special Tribunal in any proceeding under this Act, or of a Judge of the

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High Court hearing a case under Section 51(2), on any matter falling within its or his jurisdiction shall be binding on the parties thereto, and persons claiming under them, in any suit of proceeding in a Civil Court in so far as such matter is in issue between the parties or persons aforesaid in such suit or proceeding.

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(2) The decision of a Civil Court (not being the Court of Small Causes) on any matter within its jurisdiction shall be binding on the parties thereto and persons claiming under them in any proceeding under this Act before a Tribunal or Special Tribunal, or a Judge of the High Court under section 51(2) in so far as such matter is in issue between the parties or persons aforesaid in such proceeding."

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In 1957, two Amending Acts, both of which came into force on December 23, 1957, were passed. One was Andhra Pradesh Act 17 of 1957, which substituted the following clause for clause(a) in sub-section (4) of s. 9 of the Abolition Act, 1948 :

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(a) (i) Against a decision of the Settlement Officer under sub-section (3), the Government may, within one year from the date of the decision or if such decision was given before the commencement of the Madras Estates (Abolition and Conversion into Ryotwari) (Andhra Pradesh Amendment) Act, 1957, within one year from such commencement and any persons aggrieved by such decision may within two months from the date of the decision or such further time as the Tribunal may in its discretion allow, appeal to the Tribunal.

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(ii) If, before the commencement of the Madras Estates (Abolition and Conversion into Ryotwari) (Andhra Pradesh Amendment) Act, 1957, any order has been passed by the Government against a decision of the Settlement Officer on the ground that the Government were not competent to file an appeal under this clause or that such appeal was time-barred, the Tribunal shall on an application filed by the Government within one year from the commencement of the Amendment Act aforesaid, vacate the order already passed by it and pass a fresh order on merits."

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In clause (b) of s.9(4) of the Abolition Act, after the words "where such appeal is preferred", the words "by an aggrieved person, the Tribunal shall give notice to the Government and in the case of all appeals whether by the Government or by an aggrieved person" were inserted.

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The second Amending Act was Andhra Pradesh Act 18 of 1957, section 2 of which substituted the following section for sub-section (3) of s. 1 of the Abolition Act :

A "It applies to all estates as defined in section 3, clause (2), of the Madras Estates Land Act, 1908, (Madras Act I of 1908)."

This Act further substituted the following clause for clause (7) of s.2 of the principal Act:

B "In an estate" means an estate within the meaning of section 3, clause (2) (d) of the Madras Estates Land Act, 1908 (Madras Act I of 1908)".

In s.9 of the principal Act, after the words "Inam village" or "the village", wherever they occurred, the words "or hamlet or khandriga granted as inam" were inserted.

C It will be seen that Act 18 of 1957, made the Abolition Act applicable even to villages that became estates under the 1936 Amendment of the 1908 Act. For the purpose of the Abolition Act that distinction between pre-1936 and post-1936 inam grants disappeared, and this Act became applicable to all estates falling under the definition in section 3(2) of the 1908 Act.

D Andhra Pradesh Act No. 20 of 1960, which came into force on the 23rd of June, 1960 inserted in the Abolition Act, s.9-A, which provides :

" *Inquiry under section 9 not necessary in certain cases* : If before the commencement of the Madras Estates (Abolition and Conversion into Ryotwari) (Andhra Pradesh Second Amendment) Act, 1957 (Andhra Pradesh Act XVIII of 1957) (any decision was given under section 9 in respect of any village that it was not an inam estate as it stood defined before such commencement, and that decision was based on the finding that the inam village became an estate by virtue of the Madras Estates Land (Third Amendment) Act, 1936 (Madras Act XVIII of 1936) then :

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(a) if the decision based on the finding aforesaid was given by the Tribunal under sub-section(4) of section 9, no fresh inquiry under that section shall be necessary for taking any proceedings under this Act on the basis of that finding; and

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(b) if the decision based on the finding aforesaid was given by the Settlement Officer, and no appeal was filed to the Tribunal, the Government or any person aggrieved, may appeal to the Tribunal against the decision and finding within two months from the commencement of the Madras Estates (Abolition and ment) Act, 1960 and if no such appeal is filed, the finding of the Settlement Officer shall be final and no fresh inquiry shall be necessary for taking any proceedings under this Act on the basis of that finding."

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The same Act 20 of 1960 introduced this section in the present Act : A

"12(1) No notification issued under sub-section (4) of section 1 of the principal Act during the period between the 23rd December, 1957, and the commencement of this Act, on the basis of finding recorded in any decision given before the said date by the Settlement Officer, or the Tribunal under section 9 of the principal Act (such finding being to the effect that the inam village become an estate by virtue of the Madras Estates Land (Third Amendment) Act, 1936 (Madras Act XVIII of 1936), shall be deemed to be invalid or ever to have been invalid merely on the ground : B

(a) that before issuing the notification no fresh inquiry was made by the Settlement Officer under the said section 9 after the said date; or C

(b) that the landholder or other person aggrieved had no occasion to appeal to the Tribunal against the decision and finding of the Settlement Officer; and all such notifications issued and actions taken in pursuance thereof during the period aforesaid shall be deemed always to have been validly issued and taken in accordance with law. D

(2) No suit or other proceeding challenging the validity of any such notification or action or for any relief on the ground that such notification or action was not validly issued or taken shall be maintained or continued in any court, and no court shall enforce any decree or other holding any such notification or action to be invalid or grant any relief to any person." E

The first question that falls for decision is : To what extent and in what circumstances the Civil Court is competent in a suit to go into the question whether a particular village is an "estate"? F

By virtue of s. 9 of the Code of Civil Procedure, the Civil Courts have jurisdiction to decide all suits of a civil nature excepting those of which their cognizance is either expressly or impliedly barred. The exclusion of the civil court's jurisdiction, therefore, is not to be readily assumed unless the relevant statute expressly or by inevitable implication does so. The question thus further resolves itself into the issue : How far s.9(1) of the Abolition Act confers exclusive jurisdiction on the Settlement Officer to determine inam estates? G

This matter is not *res integra*. In *Addenki Tiruvenkata Thata Desika Charyulu* v. *State of Andhra Pradesh*, (1) this Court held that there is an express bar to the jurisdiction of the civil court to adjudicate upon the question, whether "any inam village" is an "inam H

1. A.I.R. 1964 S. C. 807

A estate" or not, and that "to the extent of the question stated in s. 9(1), the jurisdiction of the Settlement Officer and of the Tribunal are exclusive". It was pertinently added that this exclusion of the jurisdiction of the civil court would be subject to two limitations. First, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of B judicial procedure. The second is as regards the exact extent to which the powers of statutory tribunals are exclusive. The question as to whether any particular case falls under the first or the second of the above categories would depend on the purpose of the statute and its general scheme, taken in conjunction with the scope of the enquiry entrusted to the tribunal set up and other relevant factors.

C Applying the above principles, the Court clarified the limits of the respective jurisdictions of the Settlement Officer/Tribunal and the civil court, thus :

> "... the object of the Act is to abolish only "inam estates". This determination involves two distinct matters in view of the circumstances that every "inam village" is not D necessarily "an inam estate" *viz.*, (1) whether a particular property is or is not an "inam village" and (2) whether such a village is "an inam estate" within the definition of s. 2(7). The first of these questions whether the grant is of an "inam village" is referred to in s. 9(1) itself as some extrinsic fact which must pre-exist before the Settlement Officer can embark on the enquiry contemplated by that provision E and the Abolition Act as it stood at the date relevant to this appeal, makes no provision for this being the subject of enquiry by the Settlement Officer ...
>
> Where therefore persons appearing in opposition to the proceedings initiated before the Settlement Officer under s. 9 question the character of the property as not falling within F the description of an "inam village", he has of necessity to decide the issue, for until he holds that this condition is satisfied he cannot enter on the further enquiry which is the one which by s. 9(1) of the Act he is directed to conduct. On the terms of s. 9(1), the property in question being an "inam village" is assumed as a fact on the existence of which the competency of the Settlement Officer to determine the G matter within his jurisdiction rests and as there are no words in the statute empowering him to decide finally the former, he cannot confer jurisdiction on himself by a wrong decision on this preliminary condition to his jurisdiction. Any determination by him of this question, therefore, is (subject to the result of an appeal to the Tribunal) binding on the parties only for the purposes of the proceedings under the Act, but H no further. The correctness of that finding may be questioned in any subsequent legal proceeding in the ordinary courts of the land where the question might arise for decision."

Now let us approach the problem in hand in the light of the principles enunciated in *Desika Charyulu's case* (*supra*). A

Mr. Natesan, learned Counsel for the appellants, contends that in the instant case, the decision, dated September 2, 1950, of the Settlement Officer fell within the second category of cases pointed out in *Desika Charyulu's case* (supra) which could be challenged in the civil court, because, firstly, Kadakalla village was not an "inam village" as the grant was not of the whole village, and the Settlement Officer had grievously erred in assuming it to be so; secondly, as soon as the Settlement Officer reached the finding that the village was not an "inam estate" within the then extant definition in s. 2(7) of the Abolition Act, he became *functus officio* and had no further jurisdiction under s. 9(1) to proceed with the enquiry and hold that it was an "estate" under s. 3(2)(d) of the Estates Land Act, 1908. B C

In reply, Mr. P. Rameshwara Rao, learned Counsel for the respondents, maintains that under s. 9(1), the Settlement Officer had the jurisdiction to determine all the three facts, namely: (1) whether Kadakalla was an 'inam village'; (2) if so, whether it was a pre-1936 'inam estate' falling under the definition in s. 2(7) of the Abolition Act, or (3) a post-1936 'inam estate' under s. 3(2)(d), of the 1908 Act. The decision of the Settlement Officer, according to the learned Counsel, as to fact No. (1) was conclusive and operated as *res judicata* under s. 64-A, of the Abolition Act, between the parties, because before the Settlement Officer, it was no-body's case that Kadakalla was not an "inam village". In these circumstances, the decision of the Settlement Officer not being in excess of his jurisdiction, could not be questioned in a civil court. The argument, though seemingly attractive, does not stand a close examination and we are unable to accept it. On the other hand, we find force in what has been contended from the appellants' side. D E

Under the Abolition Act, as it stood at the material date, the enquiry by the Settlement Officer could legitimately be confined to the ascertainment of only two issues of fact, *viz.*(1) Was Kadakalla an "inam village"? (2) if so, was it an 'inam estate' as defined in s. 2(7) of the Abolition Act? Once issue (2) was determined, the enquiry would be complete and the limits of his exclusive jurisdiction circumscribed by s. 9(1) reached; and, if he went beyond those limits to investigate and determine further something which was unnecessary or merely incidental or remotely related to issue (2), then such incidental or unnecessary determination, could be questioned in the civil court. F G

Again, any finding recorded by the Settlement Officer regarding the property in question being an 'inam village' or not, is not final or conclusive it being a finding of a jurisdictional fact, only, the pre-existence of which is a *sine qua non* to the exercise of his exclusive jurisdiction by the Settlement Officer. Investigation as to the existence or otherwise of this preliminary fact is done by the Settlement Officer to ascertain whether or not he has jurisdiction to determine that the particular property is an 'inam estate'. If upon such investigation, he H

finds that the property is an 'inam village', the foundation for the exercise of his exclusive jurisdiction is laid, and he can then, and then only, embark upon the enquiry envisaged by the statute. If such investigation reveals that the property is not an 'inam village', the condition precedent to the exercise of such jurisdiction by him, would be lacking.

The Legislature must have visualised that under the cloak of an erroneous finding as to the existence or non-existence of this prerequisite, the Settlement Officer may illegally clutch at jurisdiction not conferred on him, or, refuse to exercise jurisdiction vesting in him. Perhaps, that is why the statute does not leave the final determination of this preliminary fact to the Settlement Officer/Tribunal and his erroneous finding on that fact is liable to be question in civil court.

The contention of Mr. Rao that before the Settlement Officer the fact of Kadakalla village being an "inam village" was not disputed, does not appear to be borne out by the record. A perusal of the Settlement Officer's order dated September 2, 1950, would show that it was contended before him on behalf of the Inamdars "that there was no village at all at the time of grant" and "that there were more than one grant as Inam in the village".

Assuming for the sake of argument that the appellants had failed to contest or adduce proof before the Settlement Officer that Kadakalla was not an 'inam village', then also, we fail to appreciate how, on principle, that would make the case any different so as to preclude the appellants from reagitating that matter in the civil court. Once it is held that determination of this fact is not a matter of the exclusive jurisdiction of the Settlement Officer, the appellants cannot be debarred on the basis of any doctrine of *res-judicata* from getting the matter fully and finally adjudicated by a court of competent jurisdiction.

In view of the above discussion, it is clear that under the law in force at the material time, a suit for a declaration that the decision of the Settlement Officer/Tribunal holding certain properties to be an 'estate' under s. 3(2)(d) of the 1908 Act was void, was maintainable on the ground that the suit property was not an 'inam village'.

There can be no dispute that Suit No. 47 of 1953 is of that category and falls well nigh within the ratio of *Gosukonda Venkata. Narasayya* v. *State of Madras,*(1) which was approved by this Court in *Desika Charyulu's case* (supra). The main contention of the appellants in this suit was that the village Kadakalla was not in 'inam village' as the grant did not comprise the whole village and consequently, it is not an 'estate' within the definition in s.3(2)(d) of the 1908 Act. The trial court accepted this contention and decreed the suit. The High Court confirmed that decision, holding that when the grant was made (in 1774), it was neither of the whole village nor of a named village within the meaning of Explanation 1 to s.3(2)(d) of the 1908 Act. In Original Suit 101 of 1954, also, the relief of rent or damages

(1) A. I. R. 1953 Madras 60.

is conditional and dependent upon and linked up (by an agreement between the parties) with the determination of the main question involved in the former suit. A

We have, therefore, no hesitation in coming to the conclusion that the common question in both these suits regarding Kadakalla being an estate or not, on the ground that it was not an inam village, was within the competence of the civil court. B

Further point to be considered is : whether the jurisdiction of the civil courts to proceed with and determine the aforesaid suits was, in any way, affected by the enactment of Amending Acts 17 and 18 of 1957. For reasons that follow, the answer to this question, in our opinion, must be in the negative.

It is well settled that ordinarily, when the substantive law is altered during the pendency of an action, rights of the parties are decided according to law, as it existed when the action was begun unless the new statute shows a clear intention to vary such rights (Maxwell on Interpretation, 12th Edn. 220). That is to say, in the absence of anything in the Act, to say that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act is passed. C D

Let us, therefore, see whether there is anything in the Amending Acts 17 and 18 of 1957 which in clear language gives them a retrospective effect. A plain reading of these Amending Acts would show that there is nothing of this kind in them, which, expressly or by necessary intendment, affects pending actions. The only major change introduced by Act 17 of 1957 was that it gave to the Government a right to file an appeal to the Tribunal, if it felt aggrieved against the decision of Settlement Officer under sub-s. (3) of s.9 of the Abolition Act, within one year from the date of the decision, or, if such decision was rendered before December 23, 1957 *i.e.* the commencement of Act 17 of 1957, within one year from such date. It further entitled the Government to get its appeal, if any, dismissed, as incompetent, by the Tribunal restored within one year of the commencement of the Amending Act. Likewise, the only effect of the Amending Act 18 of 1957 was that it enlarged the definition of 'inam estate' for the purpose of Abolition Act by taking in post-1936 Inams. E F

There is no *non-obstante* clause in these Amending Acts of 1957 with reference to pending or closed civil actions. Nor is there anything in the scheme, setting or provisions of these Amending Acts which fundamentally alters the conditions on which such actions were founded. No back date or dates of their commencement have been specified in the body of these statutes as was done in Madras Estates Land Amendment Act II of 1945 which was expressly enforced with effect from the date of the commencement of Act 18 of 1936. These Amending Acts were published in the Government Gazette on December 23, 1957, and will therefore be deemed to have come into force G H

A from that date only. The provisions of these Amending Statutes are not merely procedural but affect substantive rights, and impose new obligations and disabilities. In them, the Legislature has not spoken in clear language that they would unsettle, settled claims or take away or abridge rights already accrued, or cause abatement of pending actions. These Amending Acts, therefore, can be construed as having a prospective operation only. They cannot be interpreted as B taking away the rights of the litigants in Suits O.S. 47 of 1953 and O.S. 101 of 1954 (which were at the commencement of these Amendments pending at the appellate or original stage) to have their respective claims determined in accordance with the law in force at the time of the institution of the actions.

Before we come to the Amending Act 20 of 1960, it is necessary C to examine whether the decrees in O.S. 47 of 1953 and O.S. 101 of 1954 had attained finality. And, if so, when and to what extent?

So far as the decree of the High Court (in A.S. 668 of 1954 arising out of O.S. 47 of 1953) is concerned, there is no dispute that it had become final and conclusive between the parties to that action, namely, the State Government and the present appellants on D February 12, 1954. Learned Counsel are, however, not agreed as to whether the decree, dated March 28, 1958, passed by the civil court in Suit No. 101 of 1954 had also assumed such a character.

Mr. Natesan, vehemently contended that this decree in so far as it, pursuant to the agreement between the parties, incorporated in it, the final determination of the High Court in A.S. 668 of 1954—that E Kadakalla was not an estate—was a consent decree, and as such, was final and non-appealable in view of s. 96(3) of the Code of Civil Procedure.

On the respondents' side Mr. Rao argued that no part of this decree was final and conclusive between the parties on the ground of estoppel or otherwise, because—(a) the appellants had in grounds 1 F and 2 of the Memo of Appeal presented in the High Court, challenged the decree in its entirety; (b) the joint memo filed by the Advocates, concerned legal issues, including that of jurisdiction, and as such the agreement was not lawful that would bind the parties; (c) the respondents were not a party to the proceedings in A.S. 668 of 1954 and (d) the arrangement arrived at by the Advocates, being dependent on the happening of a future event, did not amount to a lawful adjustment G of the claim, and the decree based on it, was inchoate.

None of the points urged by Mr. Rao appears to hold water.

The allegations in grounds 1 and 2 of the Memo of Appeal (which have been referred to in a foregoing part of this judgment) are too vague and general to amount to an averment. They appear to have H been introduced just as a matter of form and habit by the draftsman. From the Memo of Appeal, read as a whole, it is clear that, in substance and truth, the challenge was directed only against that part of

the decree which fixed the quantum of rent and damages. In fact, before the High Court it was vigorously contended on behalf of the appellants that that part of the decree which, in effect, declared that the village is not an 'estate' under s. 3(2)(d), having been imported with the consent of the parties, was not appealable under s. 96(3), Code of Civil Procedure, and, in reality, had not been appealed against. In support of this contention, reliance was placed on the Division Bench decision in *Srinivasa* v. *Tathachariar*(1). The High Court did not discuss or distinguish this decision. Nor did it say in so many words that the whole of the decree including the part based on compromise, was under challenge in the appeal. It rejected the contention with the remark that it had already "observed that the appeal is but a continuation of the suit and there could be no estoppel against a statute". Perhaps, it was assumed that in the Memo of Appeal, every bit of the decree was being challenged by the appellants. We think, with all respect, that such an assumption was contrary to the well-established principle that in construing a pleading or a like petition, in this country, the court should not look merely to its form, or pick out from it isolated words or sentences; it must read the petition as a whole, gather the real intention of the party and reach at the substance of the matter. Thus construed, the Memo of Appeal in this case could not be said to contain a challenge to that part of the decree which was in terms of the compromise agreement between the parties.

Order 23, Rule 3, Code of Civil Procedure, not only permits a partial compromise and adjustment of a suit by a lawful agreement, but further gives a mandate to the court to record it and pass a decree in terms of such compromise or adjustment in so far as it relates to the suit. If the compromise agreement was lawful—and, as we shall presently discuss, it was so—the decree to the extent it was a consent decree, was not appealable because of the express bar in s. 96(3) of the Code.

Next point is, whether this agreement was lawful? We have already discussed that the Amending Acts of 1957 did not affect pending actions in which a declaration is sought that a particular property is not an estate, on the ground that it is not an 'inam village'. This issue which was intertwined with that of jurisdiction, was very largely a question of fact. It follows therefrom that in any such suit, the parties in [illegible] to avoid unnecessary expense and botheration, could legitimately make an agreement to abide by a determination on the same point in issue in another pending action in an advanced stage. There was nothing unlawful and improper in such an arrangement particularly when the interests of the respondents were sufficiently safeguarded by the State which was hotly controverting the decree of the trial court regarding Kadakalla being an estate. By no stretch of reasoning it could be said that this agreement was collusive or was an attempt to contract out of the statute.

There can be no doubt that as soon as the Court accepted the compromise agreement between the parties, and, acting on it, passed a

(1) A. I. R. 1918 Mad. 546.

A decree in terms thereof, the compromise, to the extent of the matter covered by it, was complete. Nothing further remained to be done by the parties in pursuance of that agreement. The decree had become absolute and immediately executable on February 12, 1959 when the High Court in A.S. 668 of 1954 finally decided that Kadakalla was not an estate.

B Be that as it may, the bar to an appeal against a consent decree, in sub-s. (3) of s. 96 of the Code is based on the broad principle of estoppel. It presupposes that the parties to an action can, expressly or by implication, waive or forego their right of appeal by any lawful agreement or compromise, or even by conduct. Therefore, as soon as the parties made the agreement to abide by the determination in the C appeal (A.S. 668) and induced the court to pass a decree in terms of that agreement, the principle of estoppel underlying 1. 96(3) became operative and the decree to the extent it was in terms of that agreement, became final and binding between the parties. And it was as effective in creating an estoppel between the parties as a judgment on contest. Thus, the determination in A.S. 668—that Kadakalla was not an 'estate'—became as much binding on the respondents, as on the D parties in that appeal.

In the view we take, we can derive support from the ratio of this Court's decision in *Raja Sri Sailendra Narayan Bhanja Deo* v. *State of Orissa*(1). In that case, there was a compromise decree between the predecessors-in-title of the appellant therein on the one hand, and the Secretary of State on the other, that Kanika Raj was an 'estate' as E defined by Orissa Estates Abolition Act of 1951. This Court held that the appellant was estopped by the compromise decree from denying that the Raj was not such an 'estate'.

In the light of the above discussion, we would hold that that part of the decree in Suit No. 101 of 1954 which was in terms of the compromise agreement had become final between the parties, and the F appeal from that decree could not be said to be a continuation of that part of the claim which had been settled by agreement. The combined effect of the two integrated decrees in Suit No. 47 and Suit No. 101, in so far as they declared that Kadakalla, not being an 'inam villlage', was not an estate under s. 3(2)(d) of the 1908 Act, was to completely vacate and render *non-est* the decision dated September 2, 1950 of the Settlement Officer.

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Against the above background, we have to consider whether the Amending Act 20 of 1960 operates retrospectively to nullify final decrees of civil courts which had before its commencement, declared such decisions of Settlement Officer totally void and non-existent? Does the Act expressly or by necessary intendment bring into life again all such dead decisions of the Settlement Officer?

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In approaching these questions, two fundamental principles of interpretation have to be kept in view. The *first* is, that if the Legislature,

(1) [1956] S.C.R. 72.

acting within its legislative competence, wants to neutralise or reopen a court's decision, "it is not sufficient"—to use the words of Hidaytullah C.J. in *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality*(1)—"to declare merely that the decision of the Court shall not bind, for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances." Thus, the first test to be applied is, whether the Amending Act 20 of 1960 has so radically altered the conditions on which the said decrees proceed, that they would not have been passed in the altered circumstances? The point is that the law which was the basis of the decision must be altered and then, the foundation failing, the binding value of the decision fails when the *non obstante* clause is superadded. As shall be presently seen, by this test, the answer to this question must be in the negative.

The second principle—to recall the words of Bowen L.J. in *Reid* v. *Reid*(2)—is, that in construing a statute or "a section in a statute which is to a certain extent retrospective, we ought nevertheless to bear in mind the maxim (that is, except in special cases, the new law ought to be construed so as to interfere as little as possible with vested rights as applicable whenever we reach the line at which the words of the section cease to be plain. That is a necessary and logical corollary of the general proposition that you ought not to give a larger retrospective power to a section, even in an Act which is to some extent intended to be retrospective, than you can plainly see the Legislature meant."

With the above principle in mind, let us now examine the provisions of the Amending Act 20 of 1960. In this Act, also no back date for its commencement has been mentioned. It will, therefore, be deemed to have commenced on June 23, 1960, which is the date on which it was published in the Govt. Gazette. It does not say (excepting in s. 12 inserted by it which obviously does not apply to the facts of this case) that the amendment would have effect and would be deemed always to have had effect from the inception of the parent Act, nor does it use any equivalent expressions or similar words which are usually found in Amending Acts intended to have retrospective operation without any limit. Section 9-A inserted by this Amending Act in the parent Act, does not begin with any *non-obstante* cause, whatever having reference to decrees or orders of civil courts. In terms, it concerns itself only with a certain category of decisions given before the commencement of Act 18 of 1957 by the Settlement Officer/Tribunal, under s. 9 of the Abolition Act. Such decisions are those which were based on the finding that a particular Inam village had become estate by virtue of the Madras Estates Land (Third Amendment) Act, 1936.

The Order, dated September 2, 1950, of the Settlement Officer in the instant case, was a decision of this category, inasmuch as he held that Kadakalla was not an 'inam estate' because it was a post-1936

(1) [1970] 1 S.C.R. 388. (2) (1886) 31, Ch. D 402 at 408.

A inam, and as such, was not covered by the definition in s. 2(7) of the Abolition Act. But, before the commencement of the Amending Act, 1960, this decision as a result of the High Court's decree, stood finally vacated. It is not at all clear from the language of this Amending Act, that the intention was to revive even such legally non-existent decisions of the Settlement Officer. On the contrary, definite indications are B available that the section was not intended to have unlimited retrospective operation. The first of such indications is available from the marginal heading of s. 9-A, itself, which is to the effect: "Inquiry under section 9 not necessary in certain cases". The heading discloses the purpose as well as the extent of the new provision. It envisages only such cases in which the decision of the Settlement Officer was not successfully challenged in the civil court on the ground that the parti- C cular property was not an inam village; for, it would be pointless, only in such cases, to hold a further inquiry into the matter.

The second hint of legislative intent is available in s. 64-A (2) which has not been touched by the Amending Act. Section 64-A(2) provides that the decision of the civil court on any matter within its jurisdiction shall be binding on the parties thereto and persons claim- D ing under them in any proceeding under the Abolition Act before the Tribunal or the Special Tribunal. If the intention was to exclude the jurisdiction of the civil court altogether, s.64-A(2) would either have been deleted or drastically amended so as to alter the basic conditions with effect from the very inception of the parent Act, that in the altered conditions those decisions could not have been rendered by the civil courts. For instance, it could say that the decision of the Settlement E Officer on the question whether a particular property is an 'inam village' or not, would be conclusive and final and would always be deemed to have been so."

In view of what has been said above, we are of the opinion that s. 9-A takes in its retrospective sweep only those decisions of the Settlement Officer or the Tribunal which at the commencement of the F Amending Act 20 of 1960 were *subsisting* and had not been totally vacated or rendered *non-est* by a decree of a competent court. The decision dated September 2, 1950 of the Settlement Officer in the instant case, was not such a decision. It had ceased to exist as a result of the inter-linked decree in O.S. 47 of 1953 and O.S. 101 of 1954, passed before the enactment of this Amending Act. The G Amending Act of 1960, therefore, does not in any way, affect the finality or the binding effect of those decrees.

Quite a number of authorities were cited by the learned Counsel on both sides, but it is not necessary to notice all of them because in most of them the facts were materially different. Only one of those cases in which the interpretation of ss. 9-A and 64-A was involved H deserves to be noticed. It is reported in *Yeliseth Satyanarayana* v. *Aditha agannadharab and ors.*(1)

(1) [1966] I.L.R. A.P. 729.

The writ petitioners in that case had challenged the order of the Estates Abolition Tribunal which had held (1) that the previous order of the Civil Court holding the suit lands to be an estate by virtue of the Amending Act XVIII of 1936 to the Madras Estates Land Act, 1908, was not *res judicata* under s. 64-A of the Abolition Act and (2) that the land-holder had a right of appeal under s. 9-A of the said Act, and that the inam was not of the whole village and, consequently, was not an 'estate'.

The first question for consideration by the High Court was, whether the appeal filed by the land-holder before the Estates Abolition Tribunal was maintainable notwithstanding the fact that such an appeal was not entertained earlier by the Tribunal on the ground of its being incompetent. On the construction of s. 9-A(b), this question was answered in the affirmative.

The second question before the High Court was, whether the previous judgments of the Civil Court were *res judicata under* s. 64-A. The Bench analysed and explained the circumstances in which the first or the second sub-s of s. 64-A operates. It will be useful to extract those observations here :

> "The bar under s. 64-A is applicable in two sets of circumstances; one, where the decision was of a Tribunal or Special Tribunal or of a Judge of the High Court hearing a case under section 51; (2) the other, where it is a decision of a Civil Court on any matter falling within its jurisdiction. The decisions mentioned in the first category are binding on the Civil Courts and the decisions mentioned in the second category are binding on the Tribunal or Special Tribunal or a Judge of the High Court when he hears a case under s. 51(2). In so far as the facts of this case are concerned, it is sub-section (2) of section 64-A that is applicable."

On the second question, the learned Judges held that the previous decisions of the Civil Court could not operate as *res judicata* because the issue as to whether the suit property was an estate under the Amending Act of 1957, was *not under contest*. Both the parties as a matter of concession, had *conceded* that fact and the Government was not a party to the proceeding. In these peculiar circumstances, it was held that the concession or assumption made in the previous proceedings, was not a 'decision' within the meaning of s. 64-A(2). In the case before us, as already observed, the State had contested this issue regarding Kadakalla being an estate or not, right upto the High Court. It would, therefore, operate as *res judicata* between the State and the land-owners. The same binding effect is produced by estoppel raised by the consent decree in the suit out of which the present appeal has arisen. Thus, this ruling does not advance the case of the respondents.

For all the foregoing reasons, we allow this appeal, reverse the judgment of the High Court and send the case back to it for decision

A on the remaining issues in accordance with law. We make no orders as to the costs of this Court.

KRISHNA IYER, J.—The judgment just delivered has my concurrence. But a certain juristic thought expressed therein and consecrated in an authoritative passage which has fallen from Bowen, L.J., in *Reid* v. *Reid*(1) persuades me to break my silence not so much in dissent but B in explanatory divagation. The proposition there expressed and here followed relates to the presumption against vested rights being affected by subsequent legislation. Certainly this legal creed of Anglo-Indian vintage has the support of learned pronouncements, English and Indian. But when we apply it in all its sternness and sweep, we err. Precedents should not be petrified nor judicial dicta divorced C from the socio-economic *mores* of the age. Judges are not prophets and only interpret laws in the light of the contemporary ethos. To regard them otherwise is unscientific. My thesis is that while applying the policy of statutory construction we should not forget the conditions and concepts which moved the judges whose rulings are cited, nor be obsessed by respect at the expense of reason. Justice Gardozo(2) has in felicitous words made the same point :

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> "There should be greater readiness to abandon an untenable position....when in its origin it was the product of institutions or conditions which have gained a new significance or development with the progress of the years. In such circumstances, the words of Wheeler, J., in *Dwy* v. *Connecticut Co.*, 89 Conn. 74, 99, express the tone and temper in E which problems should be met : "That court best serves the law which recognizes that the rules of law which grew up in a remote generation may, in the fulness of experience, be found to serve another generation badly, and which discards the old rule when it finds that another rule of law represents what should be according to the established and settled judgment of society, and no considerable property rights F have become vested in reliance upon the old rule. It is thus great writers upon the common law have discovered the source and method of its growth, and in its growth found its health and life. It is not and it should not be stationary, Change of this character should not be left to the legislature." If judges have woefully misinterpreted the *mores* of their day, or if the *mores* of their day are no longer those G of ours, they ought not to tie, in helpless submission, the hands of their successors."

The Indian Constitution, adopting the fighting faith of equal protection of the laws to all citizens, necessarily contemplates a new jurisprudence where vested rights may be, and often-times are, extensively interfered with for achieving the founding fathers' social goals. H

(1) [1886] 31 Ch.D.402;408.

(2) Cardozo The Nature of Judicial Process; PP. 151-52.

Legislative exercises directed towards distributive justice, as in the present case, cannot be considered in the light of a dated value system, though sanctified by bygone decisions of Courts. A

However, in the present case, let me hasten to repeat, the Act in question is clear about its intent and its application gives little difficulty. I have said these words only to enter a mild caveat, on the lines indicated, so as to obviate future misapprehensions about B the rule of interpretation—not to add a new element of judicial subjectvism. Speaking generally, courts have to be anchored to well-known canons of statutory construction and if they are out of time with the law-makers' meaning and purpose the legitimate means of setting things right is to enact a new Interpretation Act.

C

P.B.R. *Appeal allowed.*