
(1924) 09 MAD CK 0020
In the Madras High Court

Appaswami Moithai Rao

APPELLANT

Vs

Gopalswami Chetty and Others

RESPONDENT

Date of Decision : 19-09-1924

Acts Referred:

Citation : AIR 1925 Mad 1087

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The simple question in these second appeals is whether the plaintiff is entitled to get the pagudi from the defendants. Various

contentions were raised in the Courts below. The District Judge found that the plaintiff was a landholder within the meaning of that word as used in

the Estates Land Act. Granting that the plaintiff is a land-holder, the question is whether he is entitled to get pagudi from the defendants.

2. The contention on behalf of the appellant is that the defendants are kasavargam tenants and therefore, they are bound to pay the pagudi to the

plaintiff. In the first place the tenure known as kasavargam tenure has not been the subject of any decision. The incidents of such a tenure are not

known though Sadasiva Iyer, J., in A.S.N. Naina Pillai Marakayar Vs. T.A.R.A.R.M. Ramanathan Chettiar and Others, thinks that kasavargam

tenants are tenants newly introduced into a village by the land-holder for cultivation purposes on condition that they would give up their dwelling

sites to the landholder when they ceased to do cultivation. With due respect to the learned Judge I am unable to accept this as the incident of

kasavargam tenure.

3. The plaintiff relies upon a paimaish account in which the word kasavargam is

used. That would not decide the point for the land in dispute was occupied for several generations as house site. I am informed that there are 700 houses in this village and all of them seem to be on the same kind of tenure as the defendants in the present suit. Whatever may be the nature of the kasavargam tenure the question is whether the plaintiff is entitled to get pagudi from the defendants. The Deputy Collector who tried the case thought that kasavargam tenure meant service tenure and the services having been dispensed with, the land-holder is entitled to money rent. There is no evidence as to the nature of the services and as to how long they were performed and when they ceased. There is no warrant for the assumption that money rent was imposed in lieu of services. Mr. Vinayaka Rao relied upon Ex. F as supporting his contention. Exhibit E is an agreement entered into between some of the persons who owned houses on the village site and the landholder. It is suggested by Mr. Vinayaka Rao that all persons who owned houses in the village were parties to the document. Granting that that was so, this document cannot be relied upon for the purpose of enforcing the present claim. Under that document the householders undertook to pay a number of cesses or honorary payments to the landlord. Under the present Estates Land Act such cesses and voluntary payments could not be enforced as rent. Apart from that the question is whether pagudi can be called rent. Rent is defined in the Estates Land Act as what is lawfully payable in money or in kind or in both to a landlord for the use or occupation of land in his estate for the purpose of agriculture and in other words whatever is payable on account of the use and enjoyment of land taken for cultivation. There is no evidence that these house sites were ever agricultural land. Mr. Vinayaka Rao's argument is, it must have been dry or punjah land and persons who owned houses must have built them on such dry land. There is no evidence that the sites of houses were raiyati land or were used for purposes of agriculture. The onus is upon the landholder to prove that his land was a raiyati land and that it was afterwards converted into house sites.

4. Much reliance is placed upon the presumption which the Courts have to raise u/s 23 and u/s 185. In the case of Section 23 that presumption will arise only when there is a dispute whether the land is raiyati land or waste land; in the case of Section 185 the presumption would arise when the

contest is. whether the land is private land or raiyati land. A raiyati land does not include tank H beds, threshing floors, cattle stands, village sites, etc. Here we find there are a number of houses in the village. It is necessary to prove that the people built on land which was used for agricultural purposes before the plaintiff could claim rent from them. Reliance is naturally placed on the fact that the backyards are used for the purpose of raising kitchen vegetables and plantains etc. Any one who is acquainted with the habits of the people of this Presidency would know that plantain leaf is a necessary thing and every backyard however small, always has a few plantain trees and a few cocoanut trees. The raising of kitchen vegetables or planting a few plantain trees or cocoanut palms would not convert a nattem or a house site or a backyard of the houses. It is quite clear that the owners of the houses were weavers and the backyards were used for weaving purposes and these people have been there for several generations and the backyards having been so used for all those years, the onus is heavy upon the plaintiff to make out that the backyards were not used for any other purpose than for the purpose of spreading the loom on them Mr. Vinayaka Rao wanted to rely upon the decisions in several cases to which the plaintiff and some of the defendants as well as some of the people who owned houses were parties. But those decisions do not stand in the way of the defendants raising their present contention. As I have already observed the Estates Land Act makes only rent recoverable from a tenant and BO long as what is claimed is not rent, it does not matter whether they have been plying pagudi for a number of years or not. It has been held in several cases that the mere fact that the tenants were paying illegal cesses or that a landlord was able to exact something from the tenants for a number of years, would not give & right to the landlord to collect them. Whatever may be the ritfht of the landlord against the defendants, certainly what he now claims is not rent and the District Judge was perfectly right in holding that the Revenue Court had no jurisdiction to entertain the suit for the enforcement of pagudi. I think the District Judge ought to have returned the complaints to be presented to the proper Court. Evidently the plaintiff did not ask for the return of the complaints and the fault is entirely on him. I think, in the circum-stances the proper order would be to direct, that the complaints be returned to the plaintiff for presentation to the proper Court, but inasmuch as all this litigation has been

the result of the plaintiff filing a suit in the Revenue Court and carrying it on appeal to the District Court and here, I think, he is bound to pay the defendants the costs incurred by them in all the suits in all the Courts up till now. Vakil's fee Rs. 300.