(1940) 09 MAD CK 0010

In the Madras High Court

Athipatte Manakkal Karnavan and Manager Krishnan Nambudri's son Itteeri Nambudiri — APPELLANT

Vs

Pachilangottil Narayana Amma's son Sankunni Nair and Others — RESPONDENT

Date of Decision : 12-09-1940

Acts Referred:

Citation : AIR 1941 Mad 303 : (1940) 52 LW 737 : (1940) 2 MLJ 820

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This revision petition raises questions under Sections 15 and 16 of Madras Act IV of 1938. The petitioner here is the

jenmi. The application filed in the lower Court was made by a number of persons claiming to represent the whole of the interest in the kanom right.

The original kan9m demise was made On 10th June, 1919, under Ex. A to the tarwad of which some of the present applicants were then

members. There was a partition in the tarwad of the kanomdars and various tavazhis became entitled to portions of the kanom right. Some of these

tavazhis alienated their rights and the present application u/s 15 was made by all the persons interested in the kanom right whether as representing

the tavazhis of the original kanomdars'' tarwad or as alienees from such tavazhis. The trial Court held that the application was valid and reduced the

rent payable in accordance with the terms of Section 15.

2. Two contentions were argued on behalf of the jenmi before us. Firstly, it was contended that the application was bad in that it was a joint

application made by a number of persons some of whom were alienees of portions of the land from the original kanomdars, while others were interested in the kanom right as a result of the partition. We have had to deal with a similar question in disposing of C.R.P. No. 854 of 1939 in

which judgment is to be pronounced shortly and we are of opinion that an alienee of the whole of the tenant''s interest in a portion of his holding is a

person who is liable to pay rent in respect of that portion and provided that he is an agriculturist, is entitled to deposit the arrears of the holding for

faslis 1346 and 1347 and obtain the benefits of Section 15.

3. A further contention raised was based on the provisions of Section 16 on the strength of which it was argued that the deposit to be made u/s 15

should include not only the rent for the two faslis named but also any arrears of land revenue paid by the landholder which the tenant was bound to

pay by reason of contract. It seems to us that this contention, in the way in which it was put, has no merits. Section 16 saves the landholder''s right

to recover from his tenant anything which the landholder has paid which should have been paid by the tenant. But it does not make these sums part

of the deposit contemplated in Section 15. All that it does is to safeguard the landholder''s right to recover these sums in addition to that which is

recoverable u/s 15. It does not provide a machinery for the recovery but it leaves the landholder to his ordinary right of suit.

4. In the course of arguments, however, it was suggested that though Section 15 relates only to that which is payable as rent and requires a deposit

only of the rent for faslis 1346 and 1347, having regard to the definitions in Madras Act IV of 1938 and the Malabar Tenancy Act, the rent

payable by a kanomdar includes the land revenue which the kanomdar has undertaken to pay on behalf of the jenmi. The arguments may be put in

this way. By Section 3(iv) of Madras Act IV of 1938 ''rent'' means, among other things, rent or michavaram as defined by the Malabar Tenancy

Act, 1929. ''Michavaram'' is defined in Section 3(q) of the Malabar Tenancy Act as ""whatever is agreed by a kanomdar in a kanom deed to be

paid periodically, in money or in kind, or in both, to or on behalf of the jenmi."" By the terms of Ex. A the kanom deed in the present suit, it is clear

that the kanomdar is required to pay the land revenue on behalf of the jenmi and that the amount of this land revenue is deducted in arriving at the

balance payable to the jenmi who is given a right to charge the kanomdar''s interest for arrears of sircar kist recovered from the jenmi himself. It does not appear that we are concerned with a case of the kind contemplated in Sections 14 and 15 of the Malabar Land Registration Act under

which the kanomdar may be registered as a joint pattadar and be given a direct liability to pay the rent to Government. We will assume that the

rent in this case has been calculated on the basis that the landlord is liable for the land revenue but that this is to be paid on behalf of the landlord by

the tenant out of the produce of the land and a deduction is made on this account from the rent actually paid in kind to the landlord. It seems to

follow that the michavaram payable by the kanomdar includes the land revenue which he has undertaken in the kanom deed to pay on behalf of his

jenmi.

5. It has been argued by Mr. Govinda Menon for the respondent that the definition of ''michavaram'' must be taken to exclude payments of land

revenue made on behalf of the jenmi by the kanomdar. The argument is based mainly on the terms of Section 17 of the Malabar Tenancy Act

which provides for a calculation of the renewal fee on the basis of deductions (1) of the revenue payable by the kanomdar under the deed, (2) of

the interest, and (3) of the michavaram. The argument is that in this section, ''michavaram'' is clearly used as excluding the revenue and that from

this fact, we must read into the definition in Section 3(q) the words, ''except land revenue''. This seems to us rather a drastic way of dealing with

the statute particularly as the definition Section 3 begins with the words ''unless there is something repugnant in the subject or context''. The

repugnancy in the context can be clearly seen in Section 17 of that Act and it seems to us quite unnecessary to make an interpolation in the

definition section as the saving clause at the beginning of the definition section is sufficiently effective to deal with the apparent discrepancy. It does

appear from the definition in the Malabar Tenancy Act that ''michavaram'' would include a payment of Government revenue agreed by the

kanomdar in the kanom deed to be made on behalf of the jenmi and it would therefore seem that the deposit which is to be made u/s 15 of the

Agriculturists'' Relief Act must be a deposit of arrears of rent for the specified faslis including any arrears of Government revenue payable by the

kanomdar in respect of those faslis.

6. It remains to consider whether the application has to be rejected on the

ground that a deposit has not been made on the terms of Section 15,

when this result is reached by means of an interpretation of the Act which was only suggested in the course of arguments on this revision petition.

The counter-affidavit filed by the jenmi in the lower Court states in para. 10:

Government revenue of the properties is in arrears for a long time. Failure to deposit the same is not proper. The said arrears have also to be

deposited.

7. It seems to us quite clear from the arguments addressed to us here and from the wording of this paragraph, that it was intended to cover a plea

that by reason of Section 16 of the Act, the deposit under that section must include the whole of the arrears of revenue payable by the tenant on

behalf of the landlord. That is quite a different contention from the contention that the rent payable by the tenant which has to be deposited u/s 15

includes any arrears of revenue payable by the tenant under the terms of his agreement in respect of the particular faslis mentioned in that section.

We must, we think, take it that the point now under consideration was not raised in the Court below nor was it raised here until the arguments had

progressed some way. The result of permitting the jenmi to succeed on this contention would be that the application would have to be rejected,

unless Rule 1(a) of the rules framed under the Act can be taken to authorise an extension of time owing to the failure of the agriculturist to pay the

full rent by reason of a mistaken comprehension of the law as to what was the rent. It is extremely doubtful whether under Rule 1(a) such an

extension of time could be granted. Assuming that it could not, the effect of allowing the petitioner to succeed in revision on this belated contention

would be to deprive the respondent of a remedy which would have been available to him had the contention been taken at the proper time in the

Court below. The Court below disposed of this matter on the 22nd of June, 1939. If it had then been decided that the applicants had to deposit

not only the rent payable in cash to the jenmi for fasli 1347 but also any arrears of land revenue payable by them in respect of that fasli as a

condition precedent to receiving the benefits of this section, there would have been time for the applicants to make good the deficiency before the

statutory date 30th September, 1939. That is no longer the position and it seems to us very undesirable in revision to give effect to a contention which would now result in the complete defeat of the application, a result which would not have been achieved had the contention been taken at

the proper time in the trial Court.

8. In this view, we dismiss the petition with costs.

