

(1935) 09 MAD CK 0017
In the Madras High Court

Basudeva Doss

APPELLANT

Vs

Sree Sree Sree Chandra Chudamani Raja Harischand
Jagaddeva Garu

RESPONDENT

Date of Decision : 10-09-1935

Acts Referred:

Madras Estates Land Act, 1908 — Section 3

Citation : AIR 1936 Mad 126 : (1936) ILR (Mad) 408 : 159 Ind. Cas. 1092 :
(1935) 42 LW 851 : (1935) 69 MLJ 917

Hon'ble Judges : Stone, J; Pandrang Row, J

Bench : Full Bench

Judgement

Stone, J.—These second appeals raise a point of some difficulty, namely, whether fees charged over and above the rent for the cost of

collecting rent and not shown in the record of rights or in any patta either issued by the landlord or by the land settlement officer can be deemed to

be ""rent "" within the extended meaning of that term as defined in Section 3 of the Madras Estates Land Act. If it is not, then such fee cannot be

recovered it being struck at by Section 143 of the said act.

2. The Sub-Collector has said that:

There seems little doubt that this is a customary and established payment.

3. The District Judge has adopted that statement. It is said that that is a finding of fact that should not be disturbed in second appeal.

4. The Sub-Collector relying on points of law derived from Chapter XI of the Estates Land Act has disallowed this part of the claim. The District

Judge has allowed it.

5. The Principal question arises u/s 3(ii)(a). Section 3(ii) defines ""rent"". Section 3(ii)(a) includes for the purpose of certain sections certain payments

which apart from from this statutory inclusion would not be ""rent"". The material words of Section 3(ii)(a) are as follows:

Any fee or sum payable by a ryot as such in addition to the due...according to law or usage having the force of law....

6. The question of what these words include has been considered by the Courts in a number of cases. I put on one side cases under the Bengal

Act such as Mahomed Fayez v. Jamoo Gazee I.L.R.(1883) 8 Cal. 730 and Radha Charan Ray v. Golak Chandra Ghose I.L.R.(1904) 31 Cal.

834. Apart from the fact that those cases would appear to be in conflict with a later decision of the Privy Council in 32 CWN 260 (Privy Council)

they are concerned with a different act. I do not think it could be seriously contended that a charge for collecting rent (as here) can be regarded as

actual rent"". Nor can it be; regarded as ""rent"" in the sense as defined in Section 3(ii) i.e., apart from 3(ii)(a). If it were so regarded then this claim

would fail because the rent has been settled and does not include these charges. See Sections 168 and 176.

7. There remains a number of cases that are concerned with charges similar to these. The nearest to this case are those concerned with the so-called ""stationery charges"".

8. That line of cases begins with an unreported decision of a Bench composed of the then Chief Justice Sir Arthur Collins and Benson, J.) (S.A.

No. 57 of 1896). The fee in question there was one called Sadalwar. I quote from the judgment:

The payment for Sadalwar is a reasonable fee to cover the expenses of preparing the pattahs each year. It has been entered in the pattah and has

been paid for at least 30 or 40 years by the tenant along with the rent. The inclusion of such a fee in the pattah is contemplated by Section 4 of the

Rent Recovery Act, and the long continued payment of it raises a strong presumption of a contract between the parties that the fee should be paid.

9. In Venkata Perumal Raja v. Ramudu I.L.R.(1914) 39 Mad. 84 : 28 M.L.J. 81 the question (inter alia) was whether Sadalwar (a charge for

stationery) customarily paid along with the rent for a long number of years was to be treated as ""rent"". The only part of the judgment dealing with

this point is to be found at page 90.

10. It is as follows:

I am prepared to follow the decision in Second Appeal No. 57 of 1896 and to hold that Sadalwar...forms part of the rent of the lands and (is) not

(an) additional illegal cess.

11. In *Sree Sankarachari Swamiar v. Varada Pillai* I.L.R.(1903) 27 Mad. 332 a fee payable to the Village Accountant was allowed. The learned

Judge (Subramania Ayyar, J.) observes:

According to the immemorial custom of the country, these fees are generally payable out of the produce of the land, and in the majority of cases, it

is the landlord that has to collect and pay them over to the servants concerned. Though not rent in the sense in which he could appropriate them

himself yet in so far as their recovery is concerned, that they are to be treated as part of the rent is clear from Section 4 of the Act which provides

for the mention in the patta of the amount and nature of the rent ""including any fees or charges payable with it according to established usage"".

12. This it will be observed is a decision under the old Rent Recovery Act. That act is differently worded from the present Act. Section 4 deals

with what the pattas may contain and by implication makes it clear that a fee customarily paid and which may be and is included in the patta may

be recovered in addition to the rent. There is nothing requiring such fee to be payable by the ryot as such. *Lakshmanan v. Appa Rau* I.L.R.(1893)

17 Mad. 73 is also under the old Act and decides merely that a patta is not inseparable by reason of its providing for the payment of fees to village

artisans when such fees are customary and are included in the patta. It bases the obligation on contract. *Arunachalam Chettiar v. Mangalam* I.L.R.

(1915) 40 Mad. 640 : 31 M.L.J. 168 is a case where the fee levied was a charge for supervising the harvest. It was held that it was a charge

payable by the ryot as such and fell within Section 3(ii)(a).

13. In *Karri Peddi Reddy v. Receiver, Nidadavole and Medur Estates* (1915) 18 M.L.T. 171 it was held that fees collected for payment to the

karnam in lieu of salary can be included in the patta under the power conferred by Section 51 and when so included are fees to be included in the

term rent for the purposes of Section 148.

14. It is said that this line of authorities is conclusive of the point now in debate. It is also urged that such cases as *Sundaram Aiyar v. Theetharappa*

Mudaliar (1916) 40 I.C. 159 and *Sri Mahant Prayaga Doss Jee v. Venkama Naidu*

(1917) 7 L.W. 477 show that a contract to pay Should be implied from a long continued practice of paying.

15. I propose to consider these contentions.

16. It will be noticed that three of the above decisions are decisions under the old Rent Recovery Act. Another purports, simply to follow one of

those decisions as though no change whatever had occurred in the law. This group includes all the cases that are similar to this case on the facts.

Most of these cases turn on the fact that the fees in question were included in the patta and are payable with the rent. Not one, except Arunachlam

Chettiar v. Mangalam I.L.R.(1915) 40 Mad. 640 : 31 M.L.J. 168 where the nature of the fee and the facts of the case were different from the

facts here, considered the words ""payable by the ryot as such"" in Section 3(ii) (a).

17. These words in our opinion are fundamental. As was pointed on in Devanai v. Raghunatha Row (1912) 18 I.C. 298 : 13 M.L.T. 531 even

under the old Act the fee must be payable along with the rent. It must be one that has been made an incident of the tenure. Now under the Act as it

stood at all relevant times it is clear that the fee must be payable not merely with the rent and by the ryot but by the ryot as such i.e., it must be

payable by him as an incident of his holding.

18. It further must be payable by him and payable by him to the landlord before the landlord can claim it. I have sought in vain to find here on what

ground the alleged obligation is based. Counsel urged custom. There is no finding of a legally binding custom and I do not know how a custom

could grow up even in 60 years between a landlord and his tenants which would legally bind the tenants to pay, say double rent, as a consequence

of the binding force of the custom. I can understand its being said, as it has been said in several of the cases cited, that a contract can be implied

from a long continued usage when the term in question is included in the patta. But that is not found here and is not, as I understand it, argued here.

It is not said that the obligation to pay is based on a contract to be implied from long continued usage and it would be difficult to imply such a

contract in the circumstances here present. Many of the receipts given do not include this charge. The entries in the books relating to this fee are in

a different ink and therefore presumably made at a different time from the

entries relating to the rent. The fee is not entered in any patta. The patta as settled by the settlement Officer does not include this fee.

19. The later point also raises a doubt as to whether these payments were to be made, or were made at the same time as the rent or were to be

made to the landlord or merely to the landlord's servants for the benefit not of the landlord but of the servants.

20. It is also a most material fact that here there have been disputes as to the obligation to pay this fee or percentage and that at the time of the

settlement of rents these fees were not entered, as they should have been entered were they to be included in the term "rent", as required by

Section 165. The last point has not in our opinion the great weight given to it by the Sub-Collector for the reasons given by the learned District

Judge, but it goes a very long way to show that even the landlord did not regard this as a fee payable by the ryot as such.

21. It is, indeed, difficult for me to see how a charge for collecting rent can be regarded as a payment payable by the tenant as tenant. It was urged

by Counsel that the act imposes on the ryot the obligation to go to the landlord and pay him. A picture was drawn of a kindly landlord saving the

tired legs of his ryots by sending his servant to collect, the landlord, of course, in consideration of that service, making a charge for collection. Let it

be so. What does this amount to. It amounts to a collateral contract that for the service of sending a collector to collect the rent the ryot will pay a

sum of money. Apart from the fact that there is no finding that any such contract was made and assuming it was made the money payable under

such a contract would not be payable by the ryots as ryot but by the ryot as being a party to that contract which contract has nothing whatever to

do with tenure.

22. In my opinion therefore these appeals succeed and the judgment arrived at by the Sub-Collector should be restored though for reasons other

than those given by him. The appellant is entitled to his costs throughout in each case.

Pandrang Row, J.

23. I agree that the fee in question is not rent and that the appeals should be allowed.