

(1941) 09 MAD CK 0058
In the Madras High Court

C. Ethiraja Mudaliar

APPELLANT

Vs

N. Murugesha Mudaliar and Others

RESPONDENT

Date of Decision : 04-09-1941

Acts Referred:

Citation : AIR 1942 Mad 282 : (1941) 2 MLJ 1088

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is a batch of appeals arising out of suits filed by the tenants of Zamin Devaranjeri village, Ponneri Taluk u/s 112 of the Madras Estates Land Act for raising the attachment of the holdings effected by the appellant. Several grounds were alleged in the plaint of which three require notice:

(1) There was no proper exchange of patta and muchilika between the plaintiff and the defendant for the fasli 1343 and there was no proper tender of patta. Therefore the attachment proceedings were not proper and valid.

(2) It is not competent for the appellant to initiate the proceedings for sale under the Estates Land Act on the ground that he was not the sole proprietor of the village and that there were other co-sharers who ought to have joined in the proceedings.

(3) The merais claimed in the demand notice were not legally enforceable.

2. The defendant in the written statement urged that there were valid pattas and muchilikas in force, that he was competent to take proceedings under the Estates Land Act and bring the holdings of the tenants to sale and that the merais. were legally enforceable.

3. The Deputy Collector who tried these suits held that pattas and muchilikas were exchanged in some cases and tendered in other cases and therefore he would hold that there was exchange of pattas and muchilikas continuing in force and that though the defendant had a brother, Kesava Mudaliar, he was only a

minor and that the defendant was competent to take proceedings without joining his brother. With regard to the merais he held some of them enforceable and some not.

4. Appeals were preferred against these decisions in the various suits. The learned District Judge of Chingleput reversed the decisions and disposed of the suits on two grounds viz., (1) that the managing member of a joint undivided Hindu family was not Competent to tender a patta without his undivided brother being also a party to the tender and (2) that he would not be competent to exercise the right of sale under the Estates Land Act without his brother joining in the proceedings.

5. When these appeals were argued before me I wanted to find out what were the various pattas which must be deemed to be in force in the several suits, on the strength of which the learned District Judge came to the conclusion which he arrived at. In the course of the hearing, the deposition of D.W. 3 was brought to my notice in which reference was made to a suit for partition in the family of the defendant and the appointments of receiver or receivers in that suit. As the suit was one on the file of this Court (C. S. No. 307 of 1928), I caused the papers to be produced, as without reference to them it would not be satisfactory to dispose of these appeals. On a reference to them I found that the suit was one for partition of the joint family properties instituted by the defendant against his father Venugopala Mudaliar and his undivided brother Kesava Mudaliar. There was a preliminary decree for partition in and by which all the properties of the joint family including the suit village were directed to be partitioned and each of the parties was held entitled to 1/3rd share therein. There was a final decree subsequently in the same suit in which the properties including the suit village were partitioned in two equal shares because at that time the father was dead. So far as the suit village is concerned, the appellant herein and Kesava Mudaliar were each given one half share in it. One Kumariah was appointed a receiver in that suit and thereafter one Panchakshara Mudaliar was appointed. These facts establish that the assumption on which the learned District Judge decided, viz., that the parties were members of a joint Hindu family, was wrong. Therefore the question arises as to whether one co-sharer can tender a patta without the consent of the other. On a reference to the evidence in the suits I find that some pattas were tendered by the receiver and muchilikas in his favour executed by the tenants, and that subsequent to the partition suit, pattas were tendered in some faslis by the appellant and refused by the tenants. On these facts the question which naturally arises is whether the patta tendered by the receiver could not be said to be continuing in force if no patta was subsequently exchanged between the parties. Mr. K. Rajah Aiyar's contention is that the pattas issued by the receiver must be deemed to be in force if no subsequent pattas were issued or if the pattas were issued such pattas are held to be invalid. But specific attention was not directed to this aspect of the matter in the lower Courts and the learned Deputy Collector simply stated that there were valid pattas issued in force without specifically adverting to the evidence in the case. If

the matter had rested there, I should have set aside the finding of the learned District Judge and remanded the suits for re-hearing. There was another question in the case, namely whether the proceedings initiated by the defendant in bringing the holdings of the tenants to sale were valid, and if they were not valid whether the tenants had not the right to set aside the attachment u/s 112 of the Estates Land Act. The learned District Judge gave a decision against the appellant and decreed the suits. Therefore this question arises pointedly for consideration.

6. Mr. Rajah Aiyar contends that Kesava Mudaliar being a minor it would be competent on the part of the appellant alone to take proceedings and at any rate he must be deemed to have done so as the guardian of Kesava Mudaliar. It cannot be said that the appellant can be the legal guardian of Kesava Mudaliar in view of the Full Bench decision in *Karinagiseti Chennappa Vs. Karinagiseti Onkarappa*, . But however, I find in 1936 that so far as Kesava Mudaliar is concerned, his name was registered as represented by the appellant herein as his legal guardian. In that case it might be that apart from the Full Bench decision, for the purpose of the Estates Land Act it would be competent for the appellant to tender a patta or initiate proceedings for sale on behalf of his brother as his guardian. That question, however, does not fall to be decided in these suits because proceedings were taken before 1936. Mr. Rajah Aiyar relied on the Common Law rule in England whereby one co-sharer can distrain the tenants on behalf of the other co-sharer for arrears of rent. The said rule cannot be relied on in the face of the provisions of the Estates Land Act by which the question has to be decided. Under Sections 77(a) and 111 of the Act it will be competent for the landholder to proceed against the ryot for the recovery of arrears of rent by the sale of his holding. Both the sections use the expression "landholder" but the singular would include the plural. If there is more than one landholder we must read in the section for the expression "landholder" "landholders". If there is more than one landholder, particularly in this case where the landholder's interest is vested in several sharers, it would not be competent for one landholder to exercise the power of sale or initiate proceedings in regard thereto without the other landholder or landholders being made parties to such proceedings. Mr. Rajah Aiyar pointed out several inconveniences and anomalies which might result by adopting this view. I have to construe the provisions of the statute as they are. Such anomalies have to be met by an amending legislation. I must point out in this connection that in such cases as the present there apparently appears to be no provision by which one of the co-sharers can get himself recognised as a landholder within the meaning of Section 3 (5) of the Act. Taking this specific case the Full Bench of the Madras High Court has held in *Karinagiseti Chennappa Vs. Karinagiseti Onkarappa*, , that none but a father or mother can be the natural guardian of his or her minor child and therefore unless the appellant gets himself appointed as guardian of his brother under the Guardians and Wards Act he cannot act for his brother. The plain language of Section 3 (5) indicates that the Collector can recognise one

person as a landholder if there is more than one landholder only if there is a dispute. Mr. Jagadisa Aiyar contends that it is open to the Collector to register a person as a landholder even if there is no dispute between the landholders, but the dispute raised was only by a ryot and he relied upon a decision in *Sona Alaga Kudunban v. Sivarama Aiyar* (1915) 29 I.C. 31 in support of this contention. The case does not lay down any such proposition. The facts are entirely different. To hold in favour of the contention urged by Mr. Jagadisa Aiyar would be against the plain language of the section which says that the dispute must be between the landholders. At any rate the section needs an amendment in the interests of the landholders and ryots.

7. In the result on the view I have taken, namely, it is not competent for the appellant to initiate the proceedings to exercise the power of sale under Sections 111 and 112 of the Estates Land Act, I dismiss these appeals. But in the circumstances of the case I direct each party to bear his own costs.