

(1934) 03 MAD CK 0028
In the Madras High Court

(Chennuri) Appalanarasiah Chetty Garu	APPELLANT
Vs	
Makka Chittavadu	RESPONDENT

Date of Decision : 22-03-1934

Acts Referred:

Madras Estates Land Act, 1908 — Section 24

Citation : AIR 1934 Mad 454

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The rent at one time payable on the suit lands was Rs. 132-3-6. In Fasli 1334 the defendant executed a muchilika

agreeing to pay increased rent (the increase being at the rate of 2 as. per rupee), on the understanding that the plaintiff would repair his irrigation

sources. The rent at the increased rate would amount to Rs. 148-12-1. The finding is, that the defendant executed the muchilika voluntarily and

received, better irrigation facilities in return for the enhanced rent. The defendant urges that the agreement to pay increased; rent is not enforceable,

being opposed to : Section 24, Madras Estates Land Act. Both the lower Courts have held that this contention must be upheld and in my opinion

rightly. Section 24 says, ""the rent of a raiyat shall not be enhanced except as provided by this Act."" That shows that we must turn to the provisions

of the Act to ascertain what course it prescribes for getting the rent enhanced. Section 30 enacts that a landholder may for that purpose file a suit

before the Col-lector. Among the grounds available to him in such a suit it mentioned that

during the currency of the existing rent the productive powers of the land held by the raiyat have been increased by an improvement effected by, or

at the expense of, the landholder.

2. The case directly falls within this section. The rent is, in the present case, enhanced on the ground that the land will become more productive by

reason of the irrigation work to be executed by the landholder. It is argued for the appellant that an increased payment in return for an additional

advantage cannot be aptly termed an enhancement. This contention would make Section 30(2) unmeaning, or, in the words of the learned District

Judge, that provision would be simply otiose." Appama v. Raja Yerlagodda AIR 1918 Mad. 563, relied on for the plaintiff, does not apply. In that

case, there was no increase in the amount to be paid by the defendant; he was called on to pay to the zamindar the water rate of Rs. 5, which till

then he had paid to the Government; the amount remained the same but the right to collect it was transferred from the Government to the

zamindar. But there is this observation:

We do not think that an extra payment due for additional advantage is necessarily an enhancement. Whereas now circumstances have come into

existence which require new adjustments, there is no question of enhancement.

3. These observations are obiter and cannot outweigh the plain and unequivocal terms of the statute. Venkatachalam Chetty v. Ayyamperumal

Tevan AIR 1919 Mad. 36, refers to a charge for water taken and is clearly distinguishable.

4. What was held there was, that the charge for water in excess of the prior dry rent is not an enhancement of rent. Nor does Doraiswami

Gurukkal v. Subramania Gurukkal AIR 1928 Mad. 419, apply to the facts of the present case. That case is similar to Appama v. Raja Yerlagodda

AIR 1918 Mad. 563 already cited, which in fact it follows. In Raghunatha Desikaohariar v. Rangaswami Pillai AIR 1932 Mad. 729, the

enhancement was due to a rise in local prices and to repairs to the irrigation works. The learned Judges observe:

On the facts the landholder may or may not have had good grounds for a suit u/s 30 of the Act. But, could he, and this is the question, enhance the

rent without a suit, and independently of the Act, by agreement with his tenant.

5. The question was answered in the negative, and this case supports my view. The lower Court's conclusion therefore that the agreement to pay

enhanced rent is unenforceable is correct. It is next contended for the appellant

that the decision in the suit to be referred to, operates as res judicata on the question of the rate of rent. The land-holder filed, while this second appeal was pending, a suit for the recovery of rent for faslis 1339 to 1341 (the present suit being in respect of faslia 1335 to 1337). In that suit he claimed rent at the enhanced rate, no written statement was filed and a decree by consent was passed for the amount claimed. It is argued that this decree is binding on the raiyat as res judicata.

6. That a consent decree can operate as res judicata, there can be no question; but on the facts of each case, the Court must determine whether the decree properly construed does so or not. Did the parties, while consenting to the decree, advert to the point at issue and apply their minds to it? And further, did they intend by the agreement, on which the decree is based, to settle the question finally and did the consent decree actually so settle it? This, it seems to me, is the correct principle to be deduced from the numerous cases dealing with the point : In re South American & Mexican Co. (1895) 1 Ch. D. 37, Thompson v. Moore (1889) 23 Ir. R. 599 and Mahalinga Sundara Thevan v. Krishna Thevan AIR 1916 Mad.

411. I am not prepared to hold that Venkata Perumal Baja Bahadur v. Ramaswami Chetti (1912) 35 Mad. 75, lays down a different test.

7. The learned Judges in that case, it is suggested, dissent from the statement in Halsbury's Laws of England that there can be no estoppel where a defendant consents to judgment before the delivery of the pleading. The true rule, in my view, is that neither the delivery of the pleading nor the raising of the issue is decisive of the matter, but in arriving at a conclusion as to whether or not the parties intended to settle a particular issue, it would be both relevant and useful to inquire whether the pleading had been delivered and the question had been put in issue. I must however point out that the view expressed in Halsbury is supported by authority. In Gouchar v. Glayen (1865) 34 L.J. Ch. 239, there was a judgment by consent before the declaration was filed and Wood, V.C., held that, as there was nothing to show that the question had ever been put in issue, the consent decree would not be an estoppel at law; indeed, he went so far as to say in order to effect an estoppel, it was necessary that it should appear on the record that the question had been put in issue : see Govinda Krishna

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where this sole test was applied. This, at any rate, shows that the Court on the facts proved must come to a clear conclusion that the parties intended that the consent decree should have the effect of deciding finally the question raised; for, the fact that there was an active contest and the matter was actually put in issue, furnishes a valuable test. In the light of these principles, the consent decree in question cannot operate as res judicata. This is what happened. The raiyats' crops had been attached for the peishcush due by the landholder.

8. The consent decree refers to this fact and goes on to say that, as the plaintiff has agreed to get the crops released, the defendant consents to a decree being passed against him for the full amount. It is impossible to infer from this, that the parties agreed to the question as to the rate of rent being finally settled. The ryot had already succeeded in two Courts and a second appeal filed by the landholder was then pending. Is it lightly to be assumed that the ryot was willing to forego the benefit of the adjudication in his favour and admit the propriety of the enhancement? Moreover, where a recurring right of liability is involved, as in the case of rent, it must be clearly shown that the agreement, which in terms is only in regard to the amount, extends in fact to the rate also. In the case already referred to, a defendant may submit to a decree either because he desires to avoid the litigation or he thinks it not worth his while to have the question tried. I have not the slightest doubt that in the present case the consent decree is not binding on the defendant as res judicata.

9. One further point remains. The defendant paid Rs. 160 in January 1926, and the question is, in respect of what period is the amount to be credited? The defendant made further payments in 1927 and 1928 of various sums amounting to Rs. 147-9-8. The lower appellate Court has applied this latter sum towards the, rent for fasli. 1335, holding at the same time that Rs. 160 paid earlier was to be applied for the rent for the later period, namely faslis 1336 and 1337. Apart from this, the learned Judge has overlooked that the defendant paid Rs. 160 in faslis 1333 and that he could not have therefore appropriated it for rent for a period which was yet to commence. The plaintiff's "accounts, Ex. B Series, contain a full and detailed statement and they seem somehow to have escaped the learned Judge's attention. The statement that the plaintiff has given no details

for Rs. 147-9-8, is therefore not correct. I am not prepared to infer from the ambiguous evidence of the Truine officer, that when the defendant

made the payment of the sum of Rs. 160, he gave any specific direction as to its appropriation. In the result, I pass a decree for the plaintiff for Rs.

232-8-3, arrived at thus : according to the plaintiff's ledger Ex. B-4 the amount shown to be due from the defendants Rs. 298-10-7; that includes

an excess of Rs. 66-2-4 debited on the footing that the enhanced amount is due for four faslis, 1334 to 1337. That sum being deducted from Rs.

298-10-7 for the balance of Rs. 232-8-3 I pass a decree with interest at 6 per cent per annum from 6th February 1929 to date of realization. The

order as to costs made by the lower appellate Court will stand; in this Court each party will bear his costs.