
(1953) 02 MAD CK 0002

In the Madras High Court

Case No : Second Appeal No's. 1005 to 1009 of 1949 and C.M.P. No's. 1138 to 1142 of 1953

Deva Venkatakrishna Reddi and Others

APPELLANT

Vs

G. Govindaraja Mudaliar

RESPONDENT

Date of Decision : 13-02-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 100

Citation : AIR 1953 Mad 854 : (1955) ILR (Mad) 552 : (1953) 2 MLJ 814

Hon'ble Judges : Rajamannar, C.J

Bench : Single Bench

Advocate : Kasturi Seshagiri Rao and Kasturi Sivaprasada Rao, for the Appellant; A.K. Muthuswami Ayyar, for the Respondent

Final Decision : Allowed

Judgement

Rajamannar, C.J.—These second appeals arise out of a batch of suits filed by one of the landholders of Sri Vilasapuram in Tiruttani Division

in the Chittoor District against the tenants of the village for the recovery of his share of the rent for faslis 1353 to 1355. The main dispute between

the parties in the courts below and before us was in respect of two matters: (1) whether the plaintiff who was only one of the co-sharers was

entitled to sue for his share of the rent due, and (2) what is the proper rate of rent, whether it was payable cropwar or in cash. The Special Deputy

Collector of Chandragiri as well as the learned District Judge of Chittoor decided against the tenants-defendants on both the points. They are the

appellants before me.

2. The first contention of the learned counsel for the appellants was that as the plaintiff was admittedly only entitled to 29/40th in a portion of the

village which remains undivided between the five sharers including him, he cannot maintain the suit for recovery of a proportionate rent without making the other co-sharers parties. He relied on the decision in -- C. Ethiraja Mudaliar Vs. N. Murugesu Mudaliar and Others, , in support of his contention. That decision, however, does not directly govern the present case. There, an elder brother in a divided family commenced proceedings under Sections 111 and 112, Madras Estates Land Act, against the tenants in the village belonging to the family without making his minor younger brother a party to the proceedings. He wanted to bring the entire holding to sale for the arrears of rent due. It was held that it was not competent for him to initiate such proceedings without making the other co-sharers parties. The principle laid down in that decision is to be found in the following passage:

If there is more than one landholderit 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.

In the present case, the plaintiff is not seeking to do any such thing. He is only seeking to recover his share of the rent due.

3. It must be taken as well established that a joint owner or a co-sharer is not entitled as such to sue for proportionate rent, but it has been held by

a Division Bench in -- "Srinivasa Varadachariar v. Sami Reddi", 23 Mad L. J. 161 (B), that though this is undoubtedly the established rule,

nevertheless if the parties, namely, the landholders and the tenant agree to accept and pay proportionate rent according to shares, there was

nothing illegal in such an arrangement. In that case, the agreement between the parties was evidenced by the execution of pattas and muchilikas in

respect of the particular share of the plaintiff landholder. There are no such pattas and muchilikas in the present case. But I consider that the "ratio

decidendi" of this decision is that there can be an exception to the general rule where there is an agreement between the parties, and presumably

this agreement can be proved in one or other of the ways known to law. Execution of pattas and muchilikas would, of course, be very good

evidence, but it may be possible for a court to find such an agreement even on other evidence, as for instance, continued practice and usage. The

view I take of the decision in -- 23 Mad L. J. 161 (B)", is also the view taken- in -- Raju Goundan Vs. Kuppu Goundan, . The learned Judge

observed as follows :

In--23 Mad LJ 161", it was held that though a joint owner is not entitled to sue for proportionate rent, if parties agree to accept and pay

proportionate rent according to shares, there is nothing illegal in it and that an owner of 5 1/8 in a shrotriam village was held entitled to tender a

patta for his 51/8 share. This decision therefore seems to assume that it is open by agreement between the several joint holders and the ryot to

apportion the rent payable to each landholder and that in respect of each landholder there can be a tender of pattas and muchilikas with reference

to that share.

The question is whether there is proof of such an agreement in this case. No doubt the courts below have discussed this question in dealing with the

issue of non-joinder. But I am not satisfied that they have appreciated the correct legal position in dealing with this question. Even the parties did

not approach the question in the proper way. It is therefore, necessary that there should be a fresh finding on this point, after giving an opportunity

to both the parties to adduce such evidence as they choose to on the question. I do not think it necessary to remand the case to the trial court. It is

sufficient if it is remanded to the appellate court with a direction that the learned District Judge may admit such additional evidence as the parties

may choose to adduce on this question. To make the position clear, I once more repeat the question which arises for decision, namely, whether in

this case there is an agreement between the several co-sharers and the ryots to apportion the rent payable to each landholder by each ryot.

4. It was next contended on behalf of the appellants that the finding of both the courts that the prevailing rents in respect of the suit lands is the

cropwar rate should be set aside, as it is not supported by the evidence. I do not think in second appeal it is open to me to reject the concurrent

finding of the courts below on what is really a question of fact. It cannot be said that there is no evidence whatever to support the finding of the

courts below. I therefore overrule this contention on behalf of the appellants.

5. The second appeals are allowed. There will be an order of remand of the appeals to the court of the District Judge of Chittoor for final disposal

of the appeals after deciding the question mentioned earlier on in the judgment as to the maintainability of the suits. The appellant will be entitled to

a refund of the court-fee paid on the memoranda of second appeals. The costs of the second appeals will abide and follow the result.

6. C. M. P. Nos. 1138 to 1142 of 1953 : These applications filed under the provisions of Madras Act 26 of 1948 shall be transmitted to the court of the District Judge for disposal.