
(1905) 07 MAD CK 0003
In the Madras High Court

Elumalai Chettiar

APPELLANT

Vs

Natesa Mudaliar and Another

RESPONDENT

Date of Decision : 25-07-1905

Acts Referred:

Citation : (1906) ILR (Mad) 81

Hon'ble Judges : S. Subrahmania Ayyar, O.C.J.;Boddam, J

Bench : Division Bench

Judgement

1. The facts upon which the decision of this case depends are practically undisputed. The place of land for which rent is claimed and a patta is tendered was unassessed poramboke land forming part of the gramanattam or village site. Prior to the purchase of the property by the defendant from the former occupant, there was a house on part of the land, the remainder being used as a backyard. The house came down, and since then the property has been in the occupation of the defendant under the purchase. It is not alleged that the defendant has raised any cultivation upon the land for which rent is ordinarily leviable. The District Judge talks of the land as being used as an orchard, this view being based upon the last that there are a few trees on it including a mango and a margosa tree. The existence of such trees is quite common in backyards of houses in this country and such a circumstance cannot be treated as any evidence whatsoever of the conversion of the land occupied as house-site, free of rent, into cultivated land for which rent is payable. The plaintiffs were therefore not entitled to enforce the acceptance of a patta treating the land as liable to payment of rent. In this view it is unnecessary to consider the point raised on behalf of the defendant that, he having upon demand refused to pay

any rent for the land since 1888, the plaintiffs are precluded from demanding rent for the land on his showing that the land was being used for a purpose not contemplated by the grant of poramboke land as house site. We set aside the decree of the District Judge and restore that of the Deputy Collector with costs in this and in the lower Appellate Court.