
(1914) 04 MAD CK 0056
In the Madras High Court

Ganapathi Mudali

APPELLANT

Vs

Venkatalakshminarasayya and Others

RESPONDENT

Date of Decision : 21-04-1914

Acts Referred:

Limitation Act, 1963 — Section 28

Citation : AIR 1915 Mad 345 : 25 Ind. Cas. 109

Hon'ble Judges : Sadasiva Aiyar, J; Miller, J

Bench : Division Bench

Judgement

1. We are satisfied that there has been some confusion created in the decision of the two appeals out of the two suits by the lower Appellate Court. The lease on which the plaintiff relied in the plaint in one, of the suits was a lease or muchilika from year to year alleged to have been created in the plaintiff's father's favour for a premium of Rs. 10 and a yearly rent of Rs. 7. The right in dispute in that suit was the mirasi right in certain lands.

2. The lease on which the plaintiff relied in the other suit was a lease or muchilika alleged to have been created in favour of one Krishnaswami Iyer who is alleged to have transferred his rights as lessor to the plaintiff by sale-deed, Exhibit G.

3. The lower Appellate Court relies on the evidence of the plaintiff's 2nd witness to find in the plaintiff's favour that the defendant was the plaintiff's tenant in respect of both the mirasi lands and the shrotriem lands. On a perusal of the plaintiff's 2nd witness's evidence, it is clear to us that he refers to a muchilika for one year certain relating to the mirasi land alone in the plaintiff's father's favour "and does not speak about the alleged lease in favour of Krishnaswami Iyer. The learned Judge has also overlooked the circumstance that while the plaint in the mirasi land suit relies on a yearly tenancy, the evidence of the plaintiff's 2nd witness relates to a tenancy for one year certain.

4. We might further say as regards the alleged letting of the mirsai land under a

muchilika, secondary evidence should not have been allowed till the loss of the document alleged to have embodied the terms of the lease was proved. Realizing this, the evidence of one witness was let in on the plaintiff's side about the loss, but the District Judge does not state whether he believes the evidence of that witness as to the alleged loss of the original.

5. We are unable to accept the finding in either suit on the question of letting and we request the District Court to submit fresh findings in both suits on the evidence on record on the question of tenancy having regard to the above observations.

6. The finding should be submitted within four weeks from the date of receipt of the records from this Court and ten days will be allowed for filing objections.

7. In compliance with the order contained in the above judgment the District Judge of Chingleput submitted the following

FINDING

1. I am directed to submit findings as to an alleged letting of the shrotriem and mirasi right in certain lands. The lands consist of a half pangu in Kil Kadirpur village comprising kanis 5-7-10 wet, kanis 1-14-0 dry and kani 0-6-0 garden. In Original Suit No. 233 of 1909 (Appeal Suit No. 275 of 1910) the plaintiff sued to establish his mirasi (or kudivaram) right and in Original Suit No. 64 of 1910 (Appeal Suit No. 274 of 1910) he sued to establish his shrotriem (or melvaram) right.

2. In the mirasi suit the issue which is referred to me is, (2), whether the plaintiff let the land to the defendant and whether the suit is in time. My predecessor has found that under Exhibit B dated 4th March 1891, Devalla Subramania Iyer obtained the mirasi right in the half pangu and sold it by Exhibit E on the same date to the plaintiff's father for the plaintiff. The plaintiff's father is said to have leased it to the defendant in 1897, and it is alleged in the plaint that this was a lease from year to year for a premium of Rs. 10 and a yearly rent of Rs. 7. It is admitted on both sides that Polampalli Krishnasami Iyer was in possession of the lands as usufructuary mortgagee of the "mirasi right, and Exhibit B shows that under compromise of Original Suit No. 136 of 1890 of the Tiruvallur Court, he gave it over to Devalla Subramania Iyer, who sold it to plaintiff's father. Possession presumably passed then. The defendant, on the other hand, while admitting the usufructuary mortgage to Krishnasami Iyer, asserts that the mortgage was redeemed but cannot say by whom or when; and he contradicts himself as to how long he has himself been in possession, first saying twelve years and then saying nine years. He has stated distinctly that prior to the date of his sale-deed, Exhibit XII (4th February 1901), he had no concern with the suit land, and he does not know who enjoyed it before that, so he clearly has not been in adverse possession for twelve years, and the presumption ought to be that previous possession was with the plaintiff, who has established title. As regards the alleged lease to the defendant, the plaintiff, as P. W. No. 4 stated

that he was present when the defendant gave a muchilika for Rs. 7 rent and paid Rs. 10 as an advance, and that this muchilika used to be amongst his father's records in Madras; but he has been unable to find it now. One witness Gurusami Iyer (P. W. No. 2) states that he recommended the defendant as a cultivator to the plaintiff's father, and he attested the muchilika which the defendant gave. In view of the other evidence as to title and possession, I see no reason to doubt this evidence as to the execution and the loss of the muchilika, and I find accordingly. There is an apparent discrepancy in that P. W. No. 2 says it was a muchilika for one year, whereas the plaint says it was a lease from year to year, but I attach no importance to this discrepancy, because it does not appear to have been elicited whether P. W. No. 2 knows the difference. Sub-tenancies or leases of kudivaram right are usually for one year only, though such tenants may be allowed to hold over from year to year, so that such a muchilika would most probably have been for a year only....

3. As regards the shrotriem or melvaram right, the issue is whether the defendant entered into possession as lessee tender Krishnasami Iyer and paid rent. The only possession that the land-holder's right admits of, is the right to collect rent from the ryot or holder of the mirasi right. The plaintiff in this suit is shown to have title to the shrotriem or land-holder's interest, and in the absence of a lease or other contract, he must have an inherent right to collect the melvaram rent from the ryot. It is said that Krish-nasami Iyer leased the shrotriem right to the defendant for Its. 24, and that this lease was transferred when the shiotriem right was sold under Exhibit G on 7th January 1898 to the plaintiff's father. Prior to Exhibit G the position was that P. Krishnasami Iyer held the shrotriem right and was entitled to Rs. 24 as melvaram from the holder of the mirasi right, the plaintiff (by his father) owned the mirasi right but had let the cultivation to the defendant for a rent of Rs. 7. It is evident that the defendant had to pay also the Rs. 24 for the mirasidar could not have been.... Rs. 17 out of pocket annually for the pleasure of being an owner of property and, moreover, Rs. 7 would be an absurdly inadequate rent for 7 kanis of land mostly wet. A lease of shrotriem right would simply mean that the defendant had to pay the melvaram direct to the land-holder instead of its passing through the hands of the mirasidar, and it seems to me immaterial whether such a lease existed or not. Further, when the plaintiff's father acquired the shrotriem right in 1898 the position ordinarily would have been that the sub-tenant paid the melvaram Rs. 24 plus kudivaram rent Rs. 7 to the plaintiff's father as mirasidar, and the latter transferred - Rs. 24 to his other pocket as shrotriemdar, but owing to the existence of the alleged lease the sub-tenant as lessee of the shrotriem right had to pay Rs. 24 to the plaintiff's father as shrotriemdar and Rs. 7 hudivaram rent to the plaintiff's father as mirasidar. I must admit that I cannot see the material importance of the alleged lease. There is no evidence of the lease, and I must find the issue in the negative.

4. The Vakil for the plaintiff has some documents which he says will explain Exhibit H, the entry in the suit register for Small Cause Suit No. 752 of 1899, and

show that the suit was in respect of rent for the plaint shrotriem interest. I have, however, no authority to admit them and the Vakil must apply to the High Court.

5. My findings are, therefore, that the suit lands were let to the defendant as a sub-tenant under the plaintiff as mirasidar, but that the shrotriem right was not leased to him.

6. This second appeal coming on for final hearing on the 20th April 1914 and having stood over for consideration till this day, after the return of the finding of the lower Appellate Court upon the issue referred by this Court for trial, the Court delivered the following

JUDGMENT

Miller, J.

8. As to the title we must take it that the first compromise was valid, as both Krishnasami Ayyar and the predecessors of the defendants have dealt with it on that footing in previous proceedings and transfers. That being so, both as regards the mirasi half pangu in question and the shrotriem half pangu Krishnasami Iyer's title must be taken to have been that of usufructuary mortgagee and the plaintiff derived title from him as usufructuary mortgagee. Accepting the District Judge's finding that there was a lease of the mirasi half pangu, and no lease of the shrotriem half pangu, the plaintiff is in these circumstances entitled to possession from the defendant of the mirasi half pangu and to a declaration in respect of the other that he is usufructuary mortgagee of the shrotriem pangu, and to the profits thereof. The decree of the District Judge in Appeal Suit No. 275 of 1910 will accordingly be modified so as to show that the plaintiff is entitled to possession of the "mirasi half pangu as usu-fructuary mortgagee, and the decree in Appeal Suit No. 274 of 1910 must be modified also: the declaration will show that the plaintiffs are entitled to the usufructuary mortgage right in the half shrotriem pangu, and the decree will direct the defendants to pay them the profits of that half pangu from the year before suit to delivery of possession of the mirasi pangu or three years from date of decree as the case may be. The District Munsif will hold the necessary inquiry and pass the final decree for mesne profits in both suits. There will be no order as to the costs in this Court.

Sadasiva Ayiar, J.

9. I entirely agree. I might, however, be permitted to make some observations on the points of law which have been argued in this case. I am inclined to hold (a) that a subsequent trespasser whose title has not been perfected by 12 years' possession cannot successfully resist a suit in ejectment brought by a plaintiff who had been in lawful possession of the suit land for however short a time before the defendant's possession (which is proved or admitted to be unlawful) commenced. Lawful possession, however short is presumptive evidence of title as owner and of the title to possession and such presumption should be

rebutted by the defendant see *Bala Kushaba v. Abai Amrita Vaghmode* 4 Ind. Cas. 246 : 11 Bom. L.R. 1093 and *Ramzan Khan v. Muhammad Yakub Khan* 11 Ind. Cas. 537; (b) that while the observations in *Subraveti Ramiah v. Gundala Ramanni* 4 Ind. Cas. 1080 : 33 M. 260 : 7 M.L.T. 289 : 19 M.L.J. 732 : (1910) M.W.N. 145 against "the fiction of a tenancy by sufferance" might apply to cases governed by the Transfer of Property Act, they should not be applied to those agricultural leases which are not governed by that Act. In *Kummatha Vittil Kunhi Kuthalai Haji v. Reverend Antoni Goveas* 19 Ind. Cas. 563 : (1913) M.W.N. 339 : 13 M.L.T. 350 : 24 M.L.J. 472, Benson and Bakewell, JJ., refused to treat a Malabar Kuzhikam tenant holding over as in adverse possession even after the 12 years' lease term had expired ; (c) that seeing that it is very common in this Presidency for illiterate tenants to be let in as occupiers of small bits of lands and tenements by illiterate landlords, on oral leases nominally for a single year and that almost as a matter of course, the tenants and his representatives continue in possession under the same terms as tenants from year to year till quarrels arise, I should like that the observations in *Subraveti Ramiah v. Gundala Ramanni* 4 Ind. Cas. 1080 : 33 M. 260 : 7 M.L.T. 289 : 19 M.L.J. 732 : (1910) M.W.N. 145, and even those in *Vadapalle Narasimha v. Dronamaraju Seetharama Moorthy* 31 M. 163 : 18 M.L.J. 26 : 3 M.L.T. 256, which decision is criticised adversely in *Subraveti Ramiah v. Gundala Ramanni* 4 Ind. Cas. 1080 : 33 M. 260 : 7 M.L.T. 289 : 19 M.L.J. 732 : (1910) M.W.N. 145 so far as those observations tend to treat a tenant holding over or the legal representative of a tenant whose term has expired as in adverse possession and so far as they incline to the view that a tenant by sufferance even of agricultural land is a trespasser in adverse possession should be re-considered and confined within narrow limits; (d) that while the clear words of Article 139 of the Limitation Act should be given effect to, there is no reason why Courts should not, having regard to the usual course of events and probabilities, view with favour evidence adduced to show that though the original tenancy for a fixed period had expired, the relationship as between a landlord and a tenant from year to year had been afterwards created by conduct between the parties to the original contract of letting; (e) that where a tenant has been let into possession by a landlord, he or his legal representative Cannot be permitted to dispute the land-lord's title even after the expiry of the lease term till he or his legal representative first surrenders possession to the landlord *Usman Koya v. Chidria Mokkausa Akoth* 15 M.L.J. 368, and that if he does not so surrender possession he cannot resist a suit in ejectment by the landlord unless Article 139 of the Limitation Act comes in the way of the landlord. The title, in such a case, vests in the tenant, not by reason of any adverse possession of such tenant for 12 years (which can only be if and from the time that the tenant holding over gives clear notice to the landlord that he intends to be in adverse possession) but by reason of Section 28 of the Limitation Act which extinguishes the title of the landlord and converts the tenant's possession after such extinguishment of the landlord's title into possession in the tenant's own right as he cannot thereafter be considered a tenant by sufferance under the landlord who had so lost his rights.