

(1973) 01 MAD CK 0025

In the Madras High Court

Case No : App. No. 130 of 1967 and C.M.P. 6425 to 6426/73

Gopalakrishna Mudaliar and others

APPELLANT

Vs

Rajan Kattalai of Sri Thiagarajaswami Devasthanam and
others

RESPONDENT

Date of Decision : 01-01-1973

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(2)(d)

Citation : (1973) 01 MAD CK 0025

Hon'ble Judges : Natarajan, J;Ismail, J

Bench : Division Bench

Advocate : R.G. Rajan and A.R. Krishnan, for the Appellant; V. Vedantachari and W.C. Thiruvengadam, for the Respondent

Judgement

Ismail, J.—The defendants in O.S.16 of 1962, on the file of the Court of the Subordinate Judge, Nagapattinam, are the appellants herein. Since the facts are not in controversy, and the appeal itself was argued before us on a very narrow ground, we do not propose to elaborately refer to the pleadings of the parties and the numerous issues raised by the trial court. Admittedly, the suit lands of an extent of 89. 58 acres in Pallankoil village belonged to the respondent herein. The said lands were lease out to the appellants herein for five faslis, from fasli 1365 to fasli 1369 under Ex. A 1 dated 31st December 1955, a registered lease deed. The annual rent fixed was 711 kalams of paddy and Rs. 200 in cash. On the allegation that the appellants herein were in arrears of rent for the five faslis in different amounts, the suit was instituted for the recovery of a sum of Rs. 29117-28 with a charge on the secured properties either for the whole amount or for a sum of Rs. 5500. The prayer with regard to the charge in the alternative form came to be made in view of the fact that the first appellant alone was the lessee and the second appellant joined in the execution of the lease deed only as a surety and he stood surety only for Rs. 8500, which represented one year's rent. We are not giving the details of the arrears for the simple reason that they were not disputed. The appellants herein raised various defences such as the

lands constituting an estate and therefore the civil court not having jurisdiction, there having been a severe cyclone in 1955-56 and thereby they having been relieved of their obligation to pay the entire rent and their not being able to take possession of the lands in view of the fact that the cultivating tenants were in occupation of the lands even on the date of the lease. During the pendency of the suit Madras Act XXVI and XXX of 1963 were enacted and brought into force. Therefore, in the additional written statement filed by them the appellants put forward the contention that the civil court had no jurisdiction in view of the provisions of the Act as well. The Subordinate Judge's court, by order dated 8th July 1963, referred the matter to the Estates Abolition Tribunal, Thanjavur, which by its order dated 12 March 1964, in O.A. No. 1 of 1963, held that the properties leased by the respondent formed only part of a village, that they did not constitute a named village and that Pallankoil in which the properties were situate was not an inam estate or an estate within the meaning of Sec.3(2)(d) of the Madras Estates Land Act 1 of 1908, as amended by subsequent Acts and it was only a minor inam. Finally, the matter was argued before the trial court only on the basis of the lands being minor inam and the learned Subordinate Judge by judgment and decree dated 11th August 1968, overruled the objections of the appellants and decreed the suit as prayed for by creating a charge over the secured properties for a sum of Rs. 5590 only. It is against this judgment and decree, the present appeal has been filed. Though various defences had been taken before the trial court, Mr. R.G. Rajan, the learned counsel for the appellants, addressed only four arguments before us. One was that, having regard to the provisions contained in S.41 of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Act XXX of 1963), the appellants were not liable to pay the arrears of rent for all the five faslis and that if they had paid arrears in respect of any three faslis, the entire arrears must be deemed to have been wiped out. The second argument was that there had been a cyclone in 1955-56 and the appellants were not able to collect the full rent from the tenants who were in occupation of the lands and that consequently they were not bound to pay the entire rent stipulated for. The third argument was that even in 1956 the appellants offered to surrender the lands to the respondent, but he did not accept the surrender and having failed accept the surrender, it was not open to the respondent to collect the arrears of rent for all the five faslis. The last argument was that the arrears for the period in excess of three years immediately preceding the suit were barred by limitation and that therefore the trial court could not have passed a decree in respect thereof.

2. We shall consider these arguments in the order in which we have referred to them above. As far as the first argument is concerned, as we pointed out already, the suit is of the year 1962. The Acts were of the year 1963 and consequently they came into force only during the pendency of the suit. In view of this alone, an additional written statement was filed before the trial court and even with reference to S.41 of Act XXX of 1963 the defence was not taken in the form in which it is taken before us. Before us the contention of the learned

counsel is that the language of S.41 prohibit the respondent-landlord from collecting anything in excess of arrears for three fasli years and that even though the appellant had not offered to pay the arrears for three fasli years before the trial court, in the grounds of appeal before this court they have made such an offer and that in view of this, it must be held that the entire arrears must be deemed to have been discharged. For the purpose of considering this argument, it is necessary to extract S.41 of Madras Act XXX of 1963 in full:

(1) Notwithstanding anything contained in this Act, in the case of a minor inam all arrears of rent payable by a person to an inamdar in respect of any land in such inam and outstanding on the appointed day shall, to the extent to which such arrears are in excess of the rent due for three fasli years in respect of that land, be deemed to be discharged whether or not a decree had been obtained therefore ,if such person pays to the inamdar the arrears of rent due for a period of any three fasli years.

(2) In any suit or proceeding for the recovery of any arrears of rent referred to in sub-S.(1), the court or authority concerned shall, upon deposit in the court or before the authority, on upon proof by the ryot of the payment, of arrears of such rent for three fasli years, dismiss the suit or proceeding.

(3) If before the appointed day any decree or order has been passed in any suit or proceeding for the recovery of any arrears of rent due from a ryot, which is inconsistent with the provisions of this section, the court or authority concerned shall, upon deposit in the court or before the authority, or upon proof of the payment of the arrears of rent due from the ryot for any three fasli years and on the application of any person affected by such decree or order, whether or not he was a party thereto, vacate the decree or order;

Provided that nothing contained in this section shall apply to any suit or proceeding in which the decree or order has been satisfied in full, before the appointed day.

(4) The provisions of this section shall have effect notwithstanding anything inconsistent there with contained in the Madras Estates Land (Reduction of Rent) Amendment Act, 1963.

Explanation--For the removal of doubt it is hereby declared that the payment or deposit of arrears of rent for three fasli years referred to in this section shall be payment or deposit made after the appointed day.

It will be seen that Sub-S.(1) of S.41 uses the expression "arrears of rent payable by a person", while Sub-Ss.(2) and (3) use the expression "the ryot" with reference to the arrears of rent. In this case, admittedly, the appellants are not ryots and the lands which were the subject matter of the lease, are not ryoti lands. Notwithstanding this, the argument of Mr. Rajan is that Sub-S.(1) of S.41 does not use the expression "ryot", but uses the expression "a person" and consequently, that provision is not confined only to a ryot, but will apply to any

person who is in arrears of rent in respect of any land in the minor inam. We are unable to accept this argument. Sub-S. (2) uses the expression "any arrears of rent referred to in Sub-S.(1)" and it also uses the expression "the ryot" with reference to the person in arrears. Therefore, even though Sub-S.(1) uses the expression "a person" Sub-S (2) makes it clear that the person referred to and contemplated in Sub-S.(1) is only a ryot and not any other person. In view of this, it is unnecessary for us to consider any other aspect of the case in this behalf. So long as the appellants before us are not ryots and the lands in respect of which arrears are due are not ryoti lands, S.41 has no application and therefore it is unnecessary for us to consider the other aspect of the case, whether the appellants can claim the benefit of S.41 in not having offered to pay the arrears for three faslis before the trial court. Consequently, the first contention of the learned counsel fails.

3. As far as the second contention is concerned the lease itself makes it absolutely clear that the rent stipulated therein is an unconditional rent and it is not subject to acts of State and God, and that under no condition whatever, any remission in the rent shall be given. In view of these express provisions contained in the lease deed, it is not open to the appellants to put forward the contention that they must be relieved of their obligation to pay the stipulated rent either on account of the cyclone or on account of the alleged presence of the cultivating tenants on the lands. That was the view taken by Ramaswami, J. in *Velur Devasthanam by Sole trustee, Srila Sri Subramanya Desika Gnanosambanda Pandora Sannadhi Avl. v. Sundara Nainar* (1959) 1 M.L.J. 244 , by Jagadisan, J. in *Sri Mahalingaswami Devasthanam, Tiruvadamardur by its hereditary trustee Sri Lasri Subramania Pandora Sannadhi Adheenakartha, Thiruvaduthurai Mutt v. A.T. Sambanda Mudaliar* AIR 1962 Mad. 122; 74 L.W. 716, by a Bench of this Court (Jagadisan and Venkatadri, JJ.) in *Sri Amurvt Perumal Devasthanam v. K.R. Sabapathi Pillai* AIR 1962 Mad. 132; 74 L.W. 723 (D.B.), and another Bench of this court (Rajamannar, C.J. and Ramachandra Iyer, J.) in an unreported decision in *Sri Kampahareswaraswami Devasthanam of Tribhuvanam* represented by its sole and hereditary trustee Sri Lasri Subramania Desika Gnanasambanda Pandora Sannadhi Avl. *Adhinakartha of Dharmapuram Mutt v. Appasami Padayachi* A.S. 1172 of 1953, and by yet another Bench of this Court (Ganapathla Pillai and Venkataraman, JJ.) in *Sri Parimala Ranganathaswami Devasthanam by Executive Officer, P.S. Gopalaswamy Vs. S. Muthuswami Iyer*, . In view of this position, as settled by this Court, the appellants are not entitled to any relief on this score.

4. As far as the third argument is concerned, the written statement of the appellants itself did not proceed on the basis that they were not able to take possession of the lands. There is nothing to show that under the contract between the parties the respondent herein could not and did not deliver possession of the lands to the appellants. On the other hand, the offer of surrender itself was made only subsequent to the cyclone in 1955 after the lease had actually commenced and taken effect. In view of this, the appellants were

not entitled to unilaterally surrender possession of the lands before the expiry of the period stipulated for under Ex. A. 1. If there had been any failure on the part of the respondent to carry out any of the covenants it had entered into or which the law had imposed upon it, there may be something to be said in favour of the appellants, that they offered to surrender possession of the lands to the land lord on a breach of the covenant, that the landlord did not accept the surrender and the consequently the landlord was not entitled to enforce the terms of the contract. That no being the case, the landlord-respondent was not bound to accept the unilateral surrender offer made by the appellants and therefore of this ground the appellants are not entitled to any relief.

5. Then there remains the last ground. Admittedly, the lease deed in the present case, Ex.A-1, was a registered one. Under Art. 116 of the Schedule I to the Limitation Act, 1908, the period of limitation for a suit for compensation for the breach of a contract in writing and registered is six years. The arrears claimed in the present case is only for a period of live years. The period of limitation being six years, certainly, the respondent was entitled to claim the arrears for the entire period of five years covered by the lease deed. Under the circumstances, we are of the opinion that there are no merits in the appeal and the same fails and is dismissed. Having regard to the fact that the appellants themselves appear to have incurred a loss in the venture, we make no order as to costs. However, we make it clear that since the second appellant second defendant died during the pendency of this appeal and his legal representatives have been brought on record, the decree as far as the second appellant is concerned can be executed only as against the assets of the deceased second appellant in the hands of his legal representatives.

C.M.P. No. 6425 of 1973 ordered; C.M.P. 6426 of 1973 dismissed.