
(1978) 11 MAD CK 0049
In the Madras High Court

Govindasami Padayachi and Others

APPELLANT

Vs

Kalyanasundaram

RESPONDENT

Date of Decision : 24-11-1978

Acts Referred:

Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act, 1990 — Section 3

Citation : (1979) 2 MLJ 296

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The defendants in O.S. No. 388 of 1970 on the file of the District Munsif, Valangiman, who failed in both the Courts below, are the appellants. The respondent herein filed the said suit for recovery of a sum of Rs. 3000 as damages from the defendants who are his lessees on the ground that the lease deeds prohibit them from raising any crop other than paddy but that they had raised, contrary to the terms of the lease deeds, sugarcane in the suit property in the year 1969 and cut and carried away the sugarcane crop without giving the lessor's share. According to the plaintiff on account of the sugarcane cultivation, the utility of the soil has been much impaired and the defendants have enriched themselves unlawfully by raising sugarcane crops in the lands contrary to the terms of the leased deeds. The plaintiff therefore claimed damages at the rate of Rs. 1000 per year for three faslis from 1377 to 1379.

2. The substantial defence to the suit was that there Was no prohibition in the lease deeds for raising sugarcane crops in the leasehold lands, that the sugarcane crop Was raised with the knowledge, acquiescence and consent of the plaintiff, that by raising sugarcane crop, the fertility of the soil had not been impaired and that in any event, the plaintiff is entitled to collect only the rent agreed under the lease deeds.

3. While the said suit was pending, Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act XXI of 1972 came to be passed. Section 3 of that Act provided that if the rent due for Fasli 1381 is paid, all the earlier arrears of rent prior to

that fasli year will stand Wiped out. Such a benefit can be claimed even in respect of a suit or proceeding pending on the date of publication of that Act for recovery of arrears of rent or for eviction of the tenant u/s 3(2). Taking advantage of the provisions of the said Act, the defendants filed an additional written statement stating that they had paid rent lawfully due by them for fasli 1381 before the competent authority under that Act in P. No. 2357 of 1971, that by reason of that payment all the prior arrears had been wiped off, that the plaintiff's suit Which is in effect a suit to recover, arrears of rent was not maintainable, and that they are not liable to pay any rent or damages which are due prior to fasli 1381 by-virtue of the provisions of that Act. The plaintiff filed a reply statement-stating that the suit which is one for damages cannot be treated as a suit for recovery of rent and that therefore the provisions of Tamil Nadu Act XXI of 1972 have no application to the facts of the case.

4. On the above pleadings, the parties went to trial and adduced evidence in support of their respective contentions. The trial Court held that the lease deed. Exhibits B-4, B-5 and B-6 under which the defendants are cultivating the lands permit the lessee to raise only punja crops in the land, that sugar-cane crop is not punja crop and that the defendants have raised sugarcane crop in the leasehold lands contrary to the terms of the lease deeds. It also found that the raising of sugarcane crop by the defendants was without the knowledge and consent of the lessor, the plaintiff, and that, therefore the defendants had incurred a liability to pay damages for unauthorised user of the property by raising sugarcane crop, at the rate of Rs. 1,000 per year claimed by the plaintiff on the basis of the admission contained in Exhibit A. 9, a notice issued by the defendants that the value of the sugarcane crop was Rs. 6,000. On the question as to whether the defendants are entitled to the benefit of Section 3 of Tamil Nadu Act XXI of 1972 the trial Court took the view that the suit being one for damages the defendants are not entitled to invoke the provisions of the said Act which will apply only to suits for arrears of rent or proceedings for eviction on the ground of non-payment of rent. In this view, the trial Court decreed the plaintiff's suit as prayed for. On appeal, the lower appellate Court substantially had agreed with the findings given by the trial Court and affirmed except for the variation in the amount, the judgment and decree of the trial Court.

5. In this second appeal by the defendants, the findings of the Courts below that as per the terms of the lease deeds the defendants are not entitled to raise sugarcane crops and that therefore they are liable to pay damages to the plaintiff for breach of the terms of the lease deeds have been challenged. But having regard to the terms of the lease deeds and the oral evidence in the case which indicate that raising of sugarcane crop was without the knowledge and consent of the lessor and that the same was contrary to the terms of the lease deeds, those concurrent findings cannot successfully be challenged. The quantum of damages fixed by the Courts below has not been seriously challenged having regard to the fact that the defendants themselves have estimated the value of sugarcane crop at Rs. 6,000 in Exhibit A-9. Therefore the quantum of damages fixed by the

Courts below cannot also be said to be unreasonable. Thus the only question that remains to be considered is as to whether the appellants are entitled to claim the benefits of Tamil Nadu Act XXI of 1972.

6. Admittedly the provisions of the said Act can be invoked only in respect of suits or proceedings for recovery of arrears of rent or for eviction for non-payment of arrears of rent. Mr. Sankaran, the learned Counsel for the appellants submits that though the suit purports to be one for recovery of damages, it is in substance a suit for rent, that what is sought to be recovered in the suit is the compensation due to the landlord for the cultivation of sugarcane crops by the defendants, and that the damages fixed by the Courts below being a share of the crops raised by the defendants it should be taken to be rent. According to the learned Counsel the word "rent" not having been defined in Tamil Nadu Act XXI of 1972 it should be understood in a wider and popular sense and not in restricted sense to mean the actual rent agreed between the parties, and if constituted in that light, the amount sought to be recovered in the suit is only in the nature of penal rent for the raising of sugarcane crop in the lease-hold land.

7. The learned Counsel for the respondent however submits that the amount sought to be recovered from the defendants in the suit is to compensate the landlord in respect of an unauthorised set on the part of the defendants in raising a crop contrary to the terms of the lease deeds, that such a claim is one for damages for breach of lease agreement and that though the damages have been calculated with reference to the yield of the sugarcane, the suit cannot be said to be one for rent. The learned Counsel, in support of his submission, refers to the decision of Suryamurthy, J., in *Ramswamy Udayar v. Ponniak Pillai* (1978) 2 M.L.J. 331 : 91 L.W. 506 wherein the learned Judge has held on identical facts that the defendants are not entitled to claim the benefit of Section 3 of Tamil Nadu Act XXI of 1972. That was also a case for recovery of damages for raising sugarcane crops without the consent of the lessor and the defendants sought the benefit of the provision of the said Act, on payment of the current rent. It was held by Suryamurthy, J. that the provisions of Section 3(2) of Tamil Nadu Act XXI of 1972 can be invoked only in a suit or a proceeding pending for the recovery of arrears of rent or for eviction of a cultivating tenant for non-payment of the arrears of rent and not to any suit for recovery of damages for use and occupation or damages for misuse. There is no doubt that the said decision squarely applies to the facts of this case which are the same as in that case.

8. Mr. Sankaran, learned Counsel for the appellants would say that no reasons have been given by the learned Judge for reaching the Conclusion he did, and that the only reason apparent from the decision that a suit for use and occupation or for misuse of a land will not be a suit for rent cannot legally be sustained. According to him damages for use and occupation is only a penal rent though it is usually called damages and that so long as the jural relationship continues between the tenant and the landlord whatever is paid by the tenant for the user of the land has to be taken as rent. In support of his submission the

learned Counsel referred to the following decisions. In *State of Punjab and Another Vs. British India Corporation Ltd.*, it is observed:

In its wider sense rent means any payment made for the use of land or buildings and thus includes the payment by a licensee in respect of the use and occupation of any land or building. In its narrower sense it means payment made by tenant to landlord for property demised to him.

In *Konchada Ramamurthy Subudhi and Another Vs. Gopinath Naik*, The Supreme Court, while construing the word "rent" occurring in a compromise decree in a suit for ejectment held that from the mere use of the word "rent" it cannot be assumed that a fresh tenancy is created and the word "rent" can also be used in a wider sense of any payment by a licensee in respect of the use and occupation of the land or building and need not necessarily mean the amount paid by the tenant to landlord for the property demised to him. The learned Counsel also refers to the decision in *The Madras Piece-goods Merchants Charitable Trust Vs. Moolchand Gupta and Another*, wherein Kunhamed Kutti, J., has observed:

"Rent" has not been defined in the Act and the use of this word is not conclusive of the matter that relation of landlord and tenant is created between the owner and occupier. In the legal sense, it may be used as recompense paid by the tenant to the landlord for the exclusive possession of the premises occupied by him; it may also be used in the generic sense without importing the legal significance aforesaid of compensation for the use and occupation. "Rent" in the legal sense can only be reserved on a demise of immovable property. Hence the use of the term "rent" cannot preclude the landlord from pleading that there is no relationship of landlord and tenant.

9. Sri Thiruvengkatachari for the respondent emphasised that what is payable by the applicant subsequent to the decree cannot be characterised as "rent" but has to be construed as mesne profits defined in the Civil Procedure Code, Section 2(12) as "profits which the person in wrong ful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest as such profits". This circumstance again is not conclusive for the reason that if the applicant by reason of the aforesaid legislation can be deemed to be a statutory tenant, what is payable by him as mesne profits has, or that reason to be also construed as "rent".

10. However, I do not see how the observations made in the said decisions will help the petitioners in these cases. In the first case though the word "rent" in wider sense may mean any payment made for the use of the land or place, that word was found to have been used in the Punjab Urban Immovable Property Rules in a limited sense of a payment made by the tenant to the landlord for property demised to him, even though the word "rent" has not been defined in the Rules. Such a restricted meaning has been given to the word "rent" having regard to the object of the Rules. In the second case that word "rent" occurring in a compromise decree has been understood in a wider sense meaning any

payment made for the use of the land or building including a payment by a licensee in building. The decision in *Madras Piece goods Merchants Charitable Trust Vs. Moolchand Gupta and Another*, cannot also help the petitioner as the said decision is based on the fact that there was a statutory tenancy between the landlord and tenant and therefore, whatever is paid by the tenant for use and occupation should be taken to be as one for rent. Apart from the fact that the reasoning in this decision runs counter to the later observations of the Supreme Court in *Konchada Ramamurthy Subudhi and Another Vs. Gopinath Naik*, the decision itself is based on the fact that the compromise decree between the landlord and tenant cannot affect the statutory tenancy created under the Act.

11. It is true, the word "rent" has not been defined under the Act. But it cannot be said that the word "rent" has always to be understood in the wider sense, whenever there is no definition. The meaning of the word "rent" has to be gathered from the object of the Act and with reference to the provisions thereof. The Act is intended to give relief to cultivating tenants in respect of certain arrears of rent. The preamble to the Act says that whereas due to default in the payment of arrears of rent and lords have taken action against cultivating tenants for eviction and for recovery of arrears of rent it is necessary in public interest to give relief to cultivating tenants from the burden of discharging arrears of rent, on condition of payment of the current rent to landlords. Section 3 speaks of all arrears of rent payable by a cultivating tenant to the landlord. This seems to suggest that the word "rent" has been used to mean either agreed rent or any rent fixed as fair rent under the Cultivating Tenants (Fixation of Fair Rent) Act. That cannot contemplate payment by the tenant for misuse of the land or for a different user than the one authorised by the lease agreement, which payment will arise only on certain contingencies arising out of the conduct of the tenant. Therefore "rent" should be taken to have been used in a restricted sense of payment made by a tenant for the occupation of the land either on the basis of the lease agreement or on the basis of the fixation of fair rent by the Rent Court, and it will not cover damages paid by the tenant for unauthorised user of the land.

12. Mr. Sankaran for the petitioners would submit that damages for unauthorised use of the demised property is in the nature of a penal rent and therefore, it should be taken to come within the meaning of the word "rent". The learned Counsel will be right in his submission if the lease deed itself provides for a penal rent in the case of cultivation of unauthorised crops. But where the lease deed itself contains a prohibition and does not provide for any penal rent, the amount determined as payable by the Court for such an unauthorised user of the property demised cannot be treated as a penal rent. As a matter of fact this aspect is dealt with in paragraph 1201 of Halsbury's Laws of England, third Edition, Volume 23 under the head "nature of penal rents" as follows:

An increased rent may be reserved in case the tenant commits a breach of the

covenants of his lease. Such a rent is commonly known as penal rent; in general, however, it is not in the nature of a penalty, but is a liquidated sum or succession of sums payable by way of satisfaction. If the increased rent is made payable as "rent" and if it has once become payable, it will continue to be payable periodically during the residue of the term, and none the less that the breach of covenant has been ploughed up has been laid down to grass again, unless the terms of the lease as a Whole show that the rent is to be payable only While the breach continues. A receipt of the original rent is not a waiver of the landlord's claim to the additional rent.

13. In this case, the lease deed does not provide for any penalty or liquidated damages for the tenant's breach of the covenants of the lease. It merely contains a prohibition that the lands should not be used except for raising punja crops. I cannot, therefore, construe the amount payable by way of damages is penal rent.

14. Rent is usually the compensation paid by the tenant to the landlord for the exclusive possession of a demised premises. The modern conception of rent is a payment which the tenant is bound by his contract to make to his landlord for the use of the property. Rent need not necessarily represent the annual produce of the land. Any payment, to be taken as rent, must be certain or can be ascertained with certainty. Therefore a payment Which would arise on the happening of an uncertain event such as the tenant's breach of the lease agreement, cannot be taken to be certain. Therefore the amount which the tenant is made to pay for his breach of the covenant in the lease cannot be taken as rent, for the payment depends upon the actual, damages suffered. If payment for damages is treated as rent, it should not have any relation to the damage suffered by the landlord as a result of the breach. Then alone it will become a penal rent. In these circumstances, I am of the view that the suit for damages in this case cannot be taken to be a suit for rent. The provisions of the Act will have therefore no application and the petitioner is not entitled to any relief based on Sections (2) of the Act.

15. In the result, the second appeal fails and is dismissed. No costs.