
(1927) 03 MAD CK 0089
In the Madras High Court

Gurijala Pedda Venkatayya

APPELLANT

Vs

Komerla Kistappa

RESPONDENT

Date of Decision : 17-03-1927

Acts Referred:

Madras Estates Land Act, 1908 — Section 77

Citation : AIR 1928 Mad 340

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—The defendant is the appellant in this second appeal which has arisen from proceedings under the Estates Land Act. The plaintiff in substance sued the defendant for the recovery of certain water rates on the ground that the defendant illegally used water of the shrotriendar, to which he (the plaintiff) was entitled as the shrotriendar, for irrigating dry land belonging to the defendant. Because the plaint is headed as a suit u/s 77 of the Act the learned vakil for the appellant has taken the contention that this cannot be regarded as a suit for arrears of rent and therefore the suit was not maintainable. At one stage of his argument I was not certain whether his argument was going to be that the revenue Court has no jurisdiction to entertain the suit, but apparently the question of jurisdiction was not taken in the lower Courts and was not in that form even suggested in the written statement. The way in which the learned vakil for the appellant put his argument was this Section 77 of the Act says:

At any time after an arrear of rent has become due the landholder may institute, a suit.

2. The expression "arrears of rent " is defined by Section 60 of the Act as follows:

An instalment of rent not paid on the day on which it falls due becomes on the following day an arrear of rent.

3. In passing, I might observe that it is difficult to understand or appreciate the appropriateness of language employed in Section 77 of an arrear of rent which

has become due. The expression " arrear of rent" would itself, even apart from any definition, clearly indicate what has fallen or become due already and remains unpaid. That, however, is only by the way. And then we have the definition of rent in Section 3, Clause 11:

Rent means whatever is lawfully payable in money or in kind or in both to a landholder for the use or occupation of land in his estate for the purpose of agriculture and includes whatever is payable on account of the use and enjoyment of water supplied or taken for cultivation of land, where the charge for such water has not been consolidated with the rent payable for the land.

4. It is clear that the expression " rent " as defined by this clause would undoubtedly include the claim in the present case, because it is clearly claimed as money payable to the landholder for the use and enjoyment of water taken for cultivation of land and it is also clear that this is not a case in which it can be said that the money payable for such use of water has been included in the consolidated rent in respect of the lands.

5. In fact, the learned vakil for the appellant frankly told me that he was not going to contend that the claim was not for rent as defined by Clause 11, Section 3. His contention, however, was strenuous that it cannot be regarded as an arrear of rent. If I understand him correctly, his argument was that nothing can be said to be an arrear of rent which the tenant is not under an agreement to pay at a particular time as an instalment and in this case there being clearly no agreement for the payment of the amount, much less for the payment of the amount on a particular date, the expression " arrears of rent " is inapplicable to the claim in the present suit and that therefore it cannot be claimed as it was not properly made u/s 77 of the Act. Though Section 60 of the Act speaks of an instalment of rent, still it is impossible to agree with any suggestion that if the rent in respect of any holding was not liable to be paid by instalments, but was liable to be paid on the other hand in its entirety on a particular date, the section would not apply. The instalment must then be regarded as the whole of the amount of rent and then the arrear of rent will have reference to the failure or omission to pay the whole amount of rent on that date.

6. But the other point that was argued was that it is not the plaintiff's case that there was any special agreement by and between the parties with regard to the actual amount payable by the defendant to the plaintiff in respect of this use of water and that the expression arrear of rent " would not be suitable or applicable to a claim which in its very nature is not definite, more specially having regard to the use of the word "arrear" in the section. No doubt, if there was no agreement at all between the parties, either express or implied, with regard to the payment by the tenant to the landlord of any amount whether ascertained, definite or not in respect of the use or enjoyment of water supplied or taken for the use of land to which it is not entitled, then it may be that the claim may not be regarded as rent but can properly be regarded only as a claim for compensation or damages. Though Clause 11 of Section 3 of the Act defining rent is not very explicit on the

point, it seems to me that, having regard to the language employed and considering the whole of that clause, the expression "rent" must be regarded as having reference only to something that is payable not as compensation or damages but under or by virtue of a contract. To that extent I certainly agree with the contentions of the learned vakil for the appellant.

7. My attention has also been called to the case of Venkatachellam Chetty v. Aiyaperumal Thevan [1919] 42 Mad. 702, and to the observation in that case that no one can sue for damages as rent for water taken when, as a matter of fact, he has consented to the tenant taking the water. That observation by the learned Judges in that case would seem clearly to point to the fact that a claim for water used or enjoyed by the tenant may sometimes be only in the nature of a claim for compensation or damages and that in other cases the claim could only be on the footing of an agreement express or necessarily implied. If, therefore, in this case, though there was no question directly taken as regards the jurisdiction of the Court, I should have come to the conclusion that, having regard to the nature of the claim, it was one really for compensation or damages for unlawful use of water, I might have given effect to my view by non suiting the plaintiff. But in this case my attention has been drawn not only to the fact that there was no defence to that effect raised, but also to Ex. C which is a patta granted to the defendant where there is a provision as follows:

If you fail to pay the cist described hereunder on our patta in our shrotriem for the aforesaid fasli as also the miscellaneous taxes such as *teerwa jasthi*, *fasli jasthi* and road fund and railway cess according to the instalments mentioned in the margin and obtain receipts for the same, the same will be recovered according to law inclusive of interest and costs.

8. A contention was sought to be pressed with reference to this clause that it provides only for the payment of the cist as per particulars set out below and has no reference to any other claims. Such a contention is clearly unsustainable because the clause itself refers not only to the cist but also to the miscellaneous taxes, such as *teerwa jasthi*. It is not disputed that the expression "*teerwa jasthi*" appropriately refers to such a claim as that made by the plaintiff in this case for use or excessive use of water in respect of land.

9. As regards the contention that the amount is not made definite and what the patta requires to be paid by instalments is only the cist, it falls to be observed that what is required by the clause to be paid in instalments is not merely the cist but also the *teerwa jasthi*, we may take it, if and when payable. Therefore the clause is clearly to the effect that if and when *teerwa jasthi* is payable it should be paid in the instalments set out in the margin. Then it was argued. Assuming that there was this liability on the part of the defendant to pay the *teerwa jasthi*, the amount is not definite; how can it be said that there is an arrear in respect of it when it is not definite, when there is no agreement about it and when therefore it cannot be said that there was any obligation to pay that particular amount on a particular date? I have already referred to the date

indicated with regard to the instalments. Therefore it follows that whatever was liable to be paid in respect of the use of the water should have been paid in those very instalments, that is, in such proportion and on those dates. Then as regards the amount, it is not necessary for the purpose of every valid agreement that the amount payable under the agreement should either be ascertained or definitely agreed to between the parties. In the absence of any agreement the provision for the payment towards such a claim must be regarded in its nature as either according to usage or what may be regarded as reasonable. In either view, if there was an obligation on the part of a person to pay to another a certain amount which may be regarded as reasonable in the circumstances or according to usage, then it follows that such payment should be made as the Court would be in a position to regard either as being according to usage or as reasonable, and on failure to pay that on the prescribed date there is an arrear of rent accruing. I am, therefore, clearly of opinion that the claim of the plaintiff in this case was under a general clause in the patta itself under which the defendant had become liable to pay to the plaintiff as rent whatever he may be under liability to pay for water for the use of which he or the land was not entitled. As in most cases, the Courts may have to determine what the reasonable amount may be or what the amount is according to usage, the mere fact that the Court has to determine such a thing will not in my judgment affect the question in any way or make it any the less rent payable and will not make it any the less arrear of rent if it should fail to be paid.

10. The learned vakil for the appellant also referred to the fact that with reference to one of the pieces of land in question, paimash land No. 15 there was no patta produced. No plea seems to have been raised with regard to this item as distinguished from the other two items 5 and 6 on the basis that there was no patta in respect of this land. Both the lower Courts have proceeded on the footing that the conditions of the holding with regard to paimash No. 15 were the same as those with regard to the other two properties. I have therefore come to the conclusion that the claim in this case was clearly one for arrear of rent within the meaning of Section 60 of the Act and that therefore this is not a case which can be said not to fall u/s 77 of the Act.

11. It remains for me only to advert to one other argument which the learned vakil for the appellant put forward, and that was that the plaintiff has not been proved to be the owner of the tank or of the water therein for the use of which water the claim has been made. With regard to this it seems to me sufficient to state that both the lower Courts have, though not for identical reasons, come to the conclusion that the water which has been used was water belonging to the plaintiff. The argument submitted by the learned vakil for the appellant was that this was a tank the obligation to repair which was, as the tank was called a dasabandham tank, not on the shrotriendar but on certain inamdars to whom inams had been granted by the Government for the purpose of effecting periodical repairs. It seems to me that, the mere fact that certain persons in connexion with certain tenures of land are under an obligation to repair a

particular tank is no indication whatever as to the ownership of the tank itself or of the property in the water in the tank. The general presumption being that all the general tanks within the ambit of the shrotriem belong to the shrotriemdar it follows that unless and until such presumption is, rebutted by very clear and cogent evidence the presumption should be given effect to. In this case there is no such evidence. On the other hand the finding of both the Courts below is in favour of the plaintiff. I have, therefore, to reject this contention also on behalf of the appellant.

12. The learned vakil for the appellant also desires that having regard to my finding that the claim was for payment of a reasonable rent for the use of the water and the fact that there is no finding by the lower appellate Court that the rate awarded was reasonable, I must send the case back for a finding to the lower appellate Court. The Court of first instance has found the rate to be just and reasonable. It does not appear that this question was agitated in the lower appellate Court. The point is not also taken in the grounds of appeal to this Court. I have no reason whatever to suppose that the lower Courts regarded the rate at which the decree was passed as anything other than reasonable and I do not feel called upon to remand the case. The second appeal is, therefore, dismissed with costs.