

(1942) 02 MAD CK 0012
In the Madras High Court

Izaradar R. Muniswami Goundan and Another	APPELLANT
Vs	
A.K. Hanumantha Roya Goundar	RESPONDENT

Date of Decision : 19-02-1942

Acts Referred:

Citation : AIR 1943 Mad 8 : (1942) 55 LW 526 : (1942) 2 MLJ 283

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This civil revision petition raises a somewhat curious point under Act IV of 1938. It arises out of a small cause suit brought

by the present "petitioner as assignee from a Zamindar of the right to collect jodi on inam lands within the Zamindari. The defendant pleaded that

he was entitled to the benefits of the Madras Agriculturists' Relief Act and sought to scale down the arrears u/s 15 of that Act. This plea was met

by a contention that the plaintiff was not a landholder under the Madras Estates Land Act and that therefore the jodi could not be scaled down. A

landholder under the definition in the Madras Estates Land Act includes a person entitled to collect the rents of the whole or any portion of an

estate by virtue of any transfer from the owner. The term "rent" under the Madras Estates Land Act does not include jodi, although the same term

when used in the Madras Agriculturists' Relief Act does include jodi. The lower Court has held" that because "rent" as defined in Act IV of 1938,

includes jodi, the tenant who pays that rent to an assignee from a landholder is entitled to the benefit of Section 15 of the Act. A similar contention

with reference to rent payable to an assignee from a jenmi under the Malabar Tenancy Act was rejected by a Bench of which I was a member in

the case of Amad Koya and Another Vs. Appu and Another, . In that decision it was pointed out that the terms "Jenmi" and "intermediary" as

defined in the Malabar Tenancy Act, do not include an assignee of the right to collect rents and although the omission of any provision for the

scaling down of rent due in Malabar to an assignee from the Jenmi may well be a lacuna under the Act, the Act being an expropriatory measure, its

language could not be extended so as to expropriate more persons than those actually affected by its terms. It seems to me that the position is

exactly the same with reference to an assignee of the right to collect jodi. "Jodi" is rent according to the definition in the Agriculturists' Relief Act,

but an assignee of the right to collect jodi is not a landholder according to the definition in the Madras Estates Land Act and since that which can

be scaled down u/s 15 of Act IV of 1938 is rent payable to a landholder under the Madras Estates Land Act, this section will not cover that which

is rent under Act IV of 1938, but is not payable to a landholder as defined in the Madras Estates Land Act. No doubt the result is anomalous, for

the payment being in the nature of rent will not be a debt and therefore it cannot be scaled down under any provision of the Act. But as remarked

in the case already cited, it is the function of the Legislature to fill up the gaps in the Act and this is especially so in so far as they relate to

substantive relief and not to mere matters of procedure. In this view I allow the revision petition and give the plaintiff a decree as prayed with costs

here and in the Court below.

2. The connected civil revision petition No. 868 of 1940, arises out of a suit by the Zamindar himself and it is dismissed with costs.