

(1957) 07 MAD CK 0043

In the Madras High Court

Case No : Appeal No. 540 of 1953 and Memorandum of Objections and C. M. P. No"s. 8909 and 9481 of 1955

Janab Vellathi and others

APPELLANT

Vs

Smt. K. Kadavel Thayammal

RESPONDENT

Date of Decision : 26-07-1957

Acts Referred:

Transfer of Property Act, 1882 — Section 114

Citation : AIR 1958 Mad 232

Hon'ble Judges : P.V. Rajamannar, C.J;Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : K.S. Naidu and S. Khadir Mohammed Nainan, for the Appellant; K.S. Ramamurthi and C. Ramanathan, for the Respondent

Final Decision : Dismissed

Judgement

Panchapakesa Ayyar, J.—The appeal is by the defendants in O. S. No. 58 of 1951. on the file of the Subordinate Judge, Dindigul, regarding the granting of a conditional decree for possession to the plaintiff and denying the defendants" right to occupancy in the suit lands, measuring some 472 acres. The memorandum of cross-objections is by the plaintiff regarding the learned Subordinate Judge"s granting the defendants relief against forfeiture and allowing their lease for 35 years under the Varthamanam. dated 9-5-1936 and the compromise decree, to continue, provided they paid up all the rents, including the barred rents and costs.

2. The facts were briefly these : The plaintiff, Thayammal, had filed the suit for possession of the suit properties, measuring 800 kuzhis or, 472 acres, and situated in the hill in Erasakkanaickanur in the Erasakkanaickanur Zamindari and growing cardamom and other hill crops now, from the defendants, who were the representatives of one Sultan Ahmed Badruddin Rowther the first defendant being his widow, the second & third defendants his children, and the fourth defendant, the agent of defendants 1 to 3, the heirs of Badruddin. The plaintiff

claimed occupancy rights in the suit lands on the strength of an unregistered cowle dated 25-3-1934 (not produce) granted in her favour by the Zamindarini of Erasakkanaickanur. Akkulu Ammal, the grandmother of her husband.

The defendants claimed under a varthamanam letter dated 9-5-1936 the original of Ex. A-1, executed by the plaintiff's husband, Kadrivel Naicken, as agent of Akkulu Ammal, in favour of Badruddin, for 35 years, paying rent at varying rates on the 30th June of every year. The defendant's contention was that the alleged cowle of 1934 in the plaintiffs favour was bogus owe executed by the Zamindarini in favour of her grandson's wife in order to bypass the Prakasam Report, which was then on the anvil and was expected to be passed soon, and that the varthamanam letter in favour of Badruddin was real and was granted by the plaintiff's husband, as the agent of the Zamindarini.

So, they claimed that Badruddin and they had occupancy rights in the suit lands. The plaintiffs case was that this contention of the defendants was stale and untenable in view off the fact that Badruddin had filed O. S. No. 14 of 1939 on the file of the lower Court for specific performance of the contract of lease evidenced by the varthamanam letter, the original of Ex. A-I, and had made the zamindarini the first defendant, the plaintiff's husband the second defendant, the plaintiff the third defendant, and that the suit was finally compromised on 26-10-1939, and that, under clause 10 of the compromise decree, Badruddin had specifically stated that he would pay the rents stipulated under the Varthamanam to the plaintiff, the third defendant, and that the third defendant should confirm the lease agreement and act up to it, though that agreement was with the second defendant, her husband, as the agent of the zamindarini.

3. The defendants set up some unconvincing story of mistake of law and fact vitiating the compromise. But the fourth defendant, as D.W. 1, had to admit "I found nothing objectionable in the compromise when I read it." The lower Court held the compromise decree to be clinching and conclusive and, therefore, held that the plaintiff was the person entitled to the occupancy rights in the suit lands and not the defendants who were merely her tenants, though they had been granted the lease for 35 years on the same rents as stipulated in the cowle to the plaintiff.

The plaintiff had sued not only for possession but also for damages of Rs. 8,496 being the rent of six years past at Rs. 1,416 per year, the admitted rent, under the decree and the varthamanam alleging that it had not been paid and that the rights of the defendants to a lease till 9-5-1971 had become forfeited. The defendants had claimed that they had paid the entire arrears in cash and by delivery of a Ford Car worth Rs. 6,000 and that, in any event, they should be granted relief from forfeiture even if there were some arrears unpaid, under S. 114 of the Transfer of Property Act or on analogous principles in justice, equity and good conscience.

4. The lower Court found on the evidence that the arrears had not been paid and

that the car, though worth Rs. 6.000 and delivered, was not delivered towards the suit arrears, but to arrears under prior decrees but still, it should under S. 114 of the Transfer of Property Act or on analogous principles, grant the defendants relief against forfeiture in justice, equity and good conscience, on condition that they paid the entire rent due on the lands, including the time barred rents, that is, in all rents from 26-10-1939 the date of the lease to 13-7-1953, the date of deposit fixed by it, at Rs. 1,418 per annum, and also the plaintiff's cost of Rs. 1,660-9-0, and directed that on such deposit being made the suit should stand dismissed; but that, in default of such payment, the defendants should put the plaintiff in possession of the suit properties and pay the plaintiff Rs. 8,496 on account of past damages, the future-damages to be ascertained in a petition to be filed under O. 20 , R. 12. C.P.C. and the defendants to pay the plaintiff her costs of Rs. 1,668-9-0 and to bear their own costs.

5. The defendants have paid as per the lower Court's decree but have appealed against the judgment and decree urging that the learned Subordinate Judge went wrong in denying them the occupancy rights in the lands and granting them to the plaintiff in rejecting their story of the entire discharge of the suit arrears in cash and by delivery of the car; and in decreeing even barred rents. The plaintiff has filed the Memorandum of cross objections against the learned, Subordinate Judge's granting the defendants relief against forfeiture even conditionally and allowing them to enjoy the lands till 9-5-1971, the term of the contract of lease in the varthamanam letter and the compromise decree, on the same old rates of rent, instead of even charging enhanced rent.

5A. In the appeal, the defendants filed ?M.P, No. 8,90.0 of 1955 for raising additional grounds of appeal. That is allowed without costs. They also filed C.M.P. No. 9481 of 1955 for admitting as additional document, marked as Ex. A by them, for showing that the prior decree dues due to the plaintiff regarding rent had been discharged by the payment of Rs. 3,273-6-4, out of the deposit of Rs. 5,000 made by them, and that, therefore, the giving of the Ford car, worth Rs. 6,000 to the plaintiff, in September, 1949 should have been only towards the suit arrears and not towards the arrears under the previous decree in O.S. No. 17 of 1943 or A.S. No. 9 of 1945. all of which had been fully settled under Ex. B-2, dated 2-9-1949, before the delivery of the Ford Car, which was only towards the suit arrears. That is also allowed without costs, and the document marked as Ex. B-11.

6. We have perused the records and heard Mr. K. S. Naidu, the learned counsel for the appellants, and Mr. K. S. Ramamurthi, the learned counsel for the plaintiff-respondent Only four points arise for determination. The first is whether the plaintiff is entitled to occupancy rights in the suit lands, or the defendants. The abortive attempt of Mr. Ramamurthi to contend that the suit lands consisted of hill slopes with cardamom and other plantations and would not, therefore, he agricultural lands in which occupancy rights could he acquired was given up the

moment he realised how dangerous it was for his own case of occupancy rights in the plaintiff. Nor was it argued by the other side. So. we need not consider this abortive contention which came to nothing.

7. Then the question is who is entitled to the occupancy rights in the suit lands on the basis that they are ryoti and agricultural lands. We are of the opinion that the lower Court is right in holding that the plaintiff is the person entitled to the occupancy rights in the lands and that the defendants cannot question this after the compromise and the decree dated 26-10-1933 in O. S. No. 14 of 1939 in which the plaintiff was expressly mentioned as the pattadar for these lands rent was agreed to be paid to her, though it was the same rent as stipulated for in the varthamanam letter and the cowle.

It may be that had matters stood intact with out this compromise, Badruddin Saheb, a stranger, might very well have been contended to be the occupancy ryot under the Zamindarini and the lease and patta granted to the plaintiff, a near relative, attacked as bogus and nominal and in order to by-pass the Prekasam Report and the expected Act implementing it, relying on the ruling of a Bench of this Court in Brundavana Chandra v. Ramayya. 26 Mad LJ 600: (AIR 1915 Mad 21) (A), though we cannot say what the ultimate fate of that contention would have been. "We need not speculate about the fate of that contention in view of the compromise and the express admission that the plaintiff was the pattadar under the zamindarini under the cowle and was the person to whom the defendants holding under the varthamanam had to pay the rents.

It has been held by a Bench of this Court, to which one of us was a party, in Eranki Narasimham Vs. Penumutchu Atchayya and Others, , that such a compromise decree recognising the patta and occupancy rights of the other side would preclude persons, like the defendants, from agitating again the question of occupancy rights. Mr. K. S. Naidu was unable to cite any decision to the contrary. But he urged that under several rulings of this Court and according to a well known text book writer, Mr. Sundararaja Aiyangar, a cowledar or lessee from the Zamindaiini, like the plaintiff, would also be a landholder under the Estates Land Act and that, therefore, the defendants, in spite of recognising the plaintiff cowledar-lessee as the pattadar and the person to whom the rent was to be paid, will still be entitled to the occupancy rights, especially as the rent stipulated to be paid to her was the same rent as the rent stipulated to the Zamindarini under the varthamanam and the cowle.

We cannot agree. The rulings relied on by Mr. K. S. Naidu relate to cases where the lessee from the zamindar had all the landholder's rights for the period of lease and so were landholders, like the ijaradars or renters or middle men, very common in zamindaris in those days. The cowledar in Tungala Mailanna v. Gottumukkala Ramaraju, 23 Ind Cas 531 : (AIR 1914 Mad 639 (2)) (C). the transferee under the zamindar in Vinjamuru Veera Venkayya v. Yenamarthi Veerabadrudu, 26 Ind Cas 735: (AIR 1916 Mad 525) (D), the lessee from the zamindar in Sundaram Ayer Vs. Kulathu Iyer and Others, , and the lessee from

the zamindar in S. A. Nos. 535. 536 and 622 of 1951 (Mad) (F), decided by Govinda Menon J. were all persons who had all the rights the zamindar had and so could confer occupancy rights on their tenants, as expressly stated by Govinda Menon J. thus clarifying the catena of decisions relied on by Mr. K. S. Naidu. None of them were pattadars. But in this case, the plaintiff was only a pattadar from the zamindarini and had not the same rights as her lessor, the zamindarini had, and so, had the occupancy rights in herself could not and aid not confer occupancy rights on Badruddin, her tenant under the compromise decree.

It will be ridiculous to say that landholder can also be the pattadar in respect of the same land. Mr. K. S. Naidu recognised the absurdity of this. He still urged that the rent stipulated to be paid to the plaintiff under the compromise decree was the same as the rent stipulated under the varthamanam, and the cowle. But this will not make any difference in this case Any pattadar can rent out his land for any rent he likes. Often the rent is higher than the rent he pays to his landlord. But sometimes it does happen that the rent he can get from his lessee is only the same or even less than what he has to pay his landlord. This adventitious circumstance has nothing to do with the question of occupancy rights. It will be monstrous indeed if a tenant from a pattadar having occupancy rights gets the same occupancy rights in those lands himself by virtue of the tenancy. That will make occupancy rights under the Estates Land Act meaningless.

8. So, we hold that the plaintiff had the occupancy rights in the suit lands and not Badruddin and his legal representatives, who were only ordinary tenants under a pattadar, though, of course, they had a long tenancy of 35 years on the same favourable rent the plaintiff had to pay the zamindarini, and the lands have greatly appreciated in value and will fetch much higher rents now. One other fact will show that Badruddin and the appellants themselves knew that they were only tenants under the pattadar and not occupancy ryots. They gave Rs. 3,500 to the plaintiff in order to keep the godowns built by them on the suit lands, and they would never have done this if they had occupancy rights. The pretence that the payment was made ex gratia sounded thin and unconvincing.

9. The next question for determination is whether the appellants had paid the arrears covered by the suit, in whole or in part, and whether the learned Subordinate Judge was justified in disbelieving the whole story of the payment of the arrears, including the payment of Rs. 6,000 by delivery of a Ford car to the plaintiff in September, 1949 or so, and valued by her at Rs. 6,000 Mr. Naidu conceded that it was impossible for him in the light of the evidence on record to contend that any of the arrears covered by the suit had been paid, except the Rs. 6,000/- covered by the delivery of the Ford car. This he did because it was impossible for him to contend otherwise in the light of the evidence.

The fourth defendant as D.W. 1 was the main witness regarding the payment of arrears to the plaintiff, and D.W. 2 was the only other witness. D.W. 1 stated that

he did not know what payments Badruddin made in respect of the arrears and to whom. He added that Badruddin would "certainly have obtained receipts for his payments. But no receipts were filed to evidence the payments; nor were accounts produced; nor were witnesses, who saw the payments made to the plaintiff, examined. D.W. 2 did not improve the position. So, the lower Court was undoubtedly right in disbelieving all the payments except the payment of Rs. 6,000 evidenced by the delivery of the Ford car in September, 1949.

10. The only point to be decided, therefore, regarding this matter is whether the Ford car valued at Rs. 6,000 was delivered towards the arrears covered by this suit, as contended by Mr. K. S. Naidu, or towards the arrears in O. S. No. 17 of 1943 and A. S. No. 9 of 1945 and arrears flowing from the directions therein, as contended by Mr. Ramamurthi. We have heard both sides at length. The learned counsel on both sides have also taken us exhaustively through the entire oral and documentary evidence. We have no doubt whatever that the Ford car, admittedly worth Rs. 6,000 and admittedly delivered to the plaintiff in September, 1949, was delivered towards the arrears covered by this suit and not towards the arrears in O. S. No. 17 of 1943 and A. S. No. 9 of 1945 or matters connected therewith.

The delivery of the car was in September, 1949 as is now clear from the evidence of D.W. 1, who emphatically swore, "In September, 1949 I paid Rs. 6,000 by car to the plaintiff for the suit land", and was not shaken in cross-examination. The delivery of the car was admitted by the plaintiff. P.W. 2 swore, "Rents for two years inclusive of interest would be Rs. 6,000. Defendant 4 gave a Ford car." P.W. 1, the plaintiff, swore, "The Ford car was valued at Rs. 6,000." The only thing Mr. Ramamurthi could contend was that in the written statement of the fourth defendant, D.W. 1, it was stated that the Ford car was delivered in December, 1949. But that was most probably a slip due to lapse of more than two years, or it may be an attempt to ward off the arguments that it was delivered towards Ex. B-2, dated 2-9-1949. Mr. Ramamurthi could not give any earlier date for the delivery of the Ford car.

The plaintiff who got the car, and the registry transferred in her name, and began to ply the car, could certainly have given the correct date of delivery if September, 1949 given out by D.W. 1, was not the correct date. The point of this is that if the delivery was in September, 1949, it would probabilise the case of the appellants that it was towards the suit arrears and not towards any previous arrears, since on 2-9-1949, in Ex. B-2, the plaintiff and the defendants unequivocally stated that they had settled and agreed that they did not owe anything to each other in respect of O. S. No. 17 of 1943 and A. S. No. 9 of 1945 and that there were no arrears whatsoever in respect thereto and no subsequent claim also. Mr. Ramamurthi wanted to say that the delivery of the Ford car might have been taken into account in Ex. B-2, especially as the delivery is now admitted to have been made in September, 1949. We cannot agree.

If the price of that car was taken into account when Ex- B-2 was executed, the

delivery of the car would have been mentioned, as also its price, when several other details were mentioned in it. Calculations also show that the price of the car would not have been necessary for the settlement under Ex. B-2. It seems to us that Mr. Ramamurthi is simply taking advantage of the proved fact that the car was delivered in September, 1949, to trot out his theory of connected arrears under the decrees in O. S. No. 17 of 1943 and A. S. No. 9 of 1915 on the 125 acres and the 350 acres and enhanced rent etc. It is clear to us that after the arrears in O. S. No. 17 of 1943 and A. S. No. 9 of 1945 were settled under Ex. B-2 on 2-9-1949, the plaintiff began pressing for the arrears due under the compromise decree in respect of the suit lands which were due from 26-10-1939 onwards and that then this car, worth Rs. 6,000, was delivered towards the suit arrears, and was accepted by the plaintiff as such.

11. P. W. 2 pretended that the car would cover only two years' arrears, and the appellants pretended that it covered four years arrears. Nobody could give any conclusive calculations to us to show that the Rs. 6,000. the value of the car, represented two years' arrears or four years arrears, though in view of the rent having been fixed at Rs. 1,416 per annum under the lease and in the lower Court's decree, it is probable that it was represented roughly, but only roughly, four years' rent. The allegation of P.W. 2 that the rent was doubled by them cannot be accepted. Mr. Ramamurthi asked why the rent of only four years was collected. The reply is obvious. When rent for 10 years was pending, rent for four years would have been accepted easily as a substantial instalment of the arrears. It will also be noticed that in the suit the plaintiff claimed only arrears of rent for six years not knowing that as the compromise decree was registered and as relief from forfeiture was claimed, she could claim the entire arrears.

12. The next point is whether the lower Court was right in decreeing the time barred arrears also. Mr. Naidu urged that it should not have decreed time barred arrears, especially when they were not claimed in the suit, Mr. Ramamurthi urged that when granting the extraordinary relief against forfeiture, the lower Court had certainly jurisdiction, as it held, to decree the time barred arrears also, and relied on the ruling in *Gurpur Vamana Pai Vs. Venkatu (Venkatesh) Naika*, We agree, as the decree regarding such time barred arrears was fully warranted by considerations of justice, equity and good conscience under which the relief against forfeiture was granted.

13. The last point for determination is whether the lower Court was right in granting relief against forfeiture in the circumstances of this case. The memorandum of cross-objections is directed against this. Mr. K. S. Naidu urged that the lower Court was perfectly right in granting relief against forfeiture in the circumstances of this case. Mr. Ramamurthi contended that S. 114 of the Transfer of Property Act would not entitle the appellants in the circumstances of this case to relief against forfeiture, as the deposit was not made within the time prescribed or even before the decree.

He relied on the ruling of Mustaq Ahmed J. in *Northern India Coal Co. v. Mst. Bitti*

Kuer, ILR 1950 All 523 (H), where the learned Judge has held that the benefits of the provisions of S. 114 of the Transfer of Property Act can be availed of by payment of the arrears only at a stage prior to the decree of the trial Court. Mr. K. S. Naidu countered it by relying on the ruling of a Bench of this Court in Thirihasswamiar v. Rangappayya, 25 Mad L.J 486 (I), where it has been held that the High Court in second appeal is not precluded from granting relief against forfeiture because a tenant did not make an application for it in the Courts below. Of course, the Bench ruling of this Court must prevail over the single Judge's ruling of the Allahabad High Court, relied on by Mr. Ramamurthi.

14. Mr. Ramamurthi then urged that S. 114 of the Transfer of Property Act will not apply to agricultural leases like this, as held by a Bench of this Court in Eranki Narasimham Vs. Penumutthu Atchayya and Others, and in Ramakrishna Martoba Rao Kasbekar Vs. I. P. Fernandez and Others, and the lower Court went wrong in granting relief against forfeiture under S. 114 of the Transfer of Property Act. But, his laid down in the ruling in Ramakrishna Martoba Rao Kasbekar Vs. I. P. Fernandez and Others, the lower Court had power to give relief against forfeiture independently of the provisions of S. 114 of the Transfer of Property Act, if justice, equity and good conscience required it and though an agriculture lease does not come within the purview of S. 114 of the Transfer of Property Act a Court exercising the power which it had possessed even previous to the Act, will relieve against forfeiture for non-payment of rent on such conditions as may appear equitable on the facts of each particular case.

In granting relief against forfeiture in such a case, the Court is not bound by the conditions laid down in S. 114 of the Transfer of Property Act. In this case, the lower Court exercised its powers independently of S. 114 of the Transfer of Property Act and has given relief against forfeiture because of two vital circumstances, viz., that the rents had not been paid owing to the dispute as to who was the occupancy ryot, whether Badruddin or the plaintiff, and to whom the rents were payable, to the Zamindarini or to the plaintiff, and also because Badruddin had made improvements to the extent of Rs. 13,000 by raising cardamom and other plantations on the lands, erecting buildings, etc, and it would be against justice, equity and good conscience to order the appellants to be evicted, instead of granting relief against forfeiture on suitable terms.

An additional circumstance has now arisen for granting relief against forfeiture, viz, that the tenant had paid Rs. 6000 towards the suit arrears by handing over the Ford car in September 1949, and we have found in its favour, though the lower court did not Mr. Ramamurthi's contention that relief against forfeiture should not be granted to a tenant who set up a false claim of having paid the arrears cannot be accepted as universally applicable. It all depends on the circumstances of each case. Besides, in this case, the plaintiff had also falsely denied the receipt of the car worth Rs. 6,000 towards the suit arrears.

15. Lastly, Mr. Ramamurthi contended that the lower Court went wrong in holding that a Court should grant relief against forfeiture in all cases where third party's

interest had not interfered, though it is now clearly settled by the Supreme Court in *Namdeo v. Narmadabai*, AIR 1953 SC 223 (K), that it is wrong to say that the Court should exercise its discretion and grant relief against forfeiture, except in cases where third party's interests intervene, and that the conduct of the tenant must be taken into account, and that relief against forfeiture may be refused if the conduct and circumstances warranted it, though third party's interests had not intervened. The lower Court did not, in our opinion, grant relief against forfeiture solely because third party's interests had not intervened. It acted only on the circumstances disclosed by the evidence entitling the defendants relief against forfeiture on the principles of justice, equity and good conscience.

It also imposed suitable terms, like payment of time barred arrears, before granting the relief against forfeiture. In the end. therefore, we modify clause 1 of the decree of the lower Court by deducting from the amount of arrears mentioned there as payable to the plaintiff Rs. 6000 covered by the price of the Ford car delivered in September, 1949 and confirm the judgment and decree otherwise and direct all the parties to the appeal to bear their own costs. The memorandum of cross objections is dismissed, but, in the circumstances, without costs.