

(1945) 07 MAD CK 0023
In the Madras High Court

K. Vaidynatha Mudaliar

APPELLANT

Vs

M. Vedachala Mudaliar

RESPONDENT

Date of Decision : 27-07-1945

Acts Referred:

Citation : AIR 1946 Mad 49

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—Second Appeals Nos. 328 to 330 of 1944 arise out of suits filed by the plaintiffs who happen to be certain ryots in the village of Annamalai Putheri, of which the respondent is the landholder. The -amounts for the recovery of which proceedings were taken u/s III, Madras Estates Land Act, are alleged to be due for water taken to the backyards of the plaintiffs' houses. The plaintiffs contest the right of landholder to bring the holding to sale for recovery of these sums which accrued due in respect of the backyards. I called for findings as it was not clear whether the backyards are ryoti lands. I also called for a finding on the question whether there was an exchange of patta and muchilika in respect of these backyards. The findings are that the backyards are not ryoti lands and that there has been no exchange of pattas and muchilikas with reference to the backyards. True, the plaintiffs have executed muchilikas and accepted pattas with reference to ryoti lands of which they are the ryots. But with respect to the backyards it is clear that there is no patta and no muchilika and that they are not ryoti lands. A very ingenious argument has been attempted on behalf of the respondent. His learned advocate urges that u/s 77 a landholder is given a right of recovering an arrear of rent either by a suit or by distraint and sale of moveable property or by sale of a ryot's holding and that, therefore, if the amount in question is an arrear of rent in respect of the backyard the landholder may proceed to recover it by sale of the ryot's holding, that is, ryoti land included in the patta. This does not appear to me to be correct. The expression "rent" is defined in Section 3(11) to mean whatever is lawfully payable in money or in kind or in both to a landholder by a ryot and the term "ryot" is defined in

Section 3 (15) to mean a person who holds for the purpose of agriculture ryoti land on condition of paying to the landholder the rent which is legally due upon it. It is admitted that backyards are not ryoti lands. If backyards are not ryoti lands, then what is payable in respect of them is not an amount which has to be paid by a ryot and does not satisfy the definition of "rent" in Section 3(11). Attention is drawn to the provisions of Section 3(11)(a), by which an amount which is payable by way of a local tax, cess, etc., payable to a landholder by a ryot is made rent. The terms of this clause appear to me to be against the respondent's contention. An amount payable by a ryot by way of a local cess or other sum lawfully payable is not in every case made "rent." It is made "rent" only where it is payable by a ryot as such, according to the law or usage having the force of law. Then and then alone the local cess or tax or fee is included in the definition of "rent." Section 3(11)(a) is an enlargement by a specific enactment of what otherwise would not be included in Section 3(11). If Section 3(11) had stood alone, the amounts that are set out in Section 3(11)(a) would not be rent but they are made "rent" by an express enactment. This shows that the mere fact that a person who happens to be a ryot is under an obligation to pay some amounts to the landholder in respect of certain non-ryoti lands in the estate does not make those amounts payable "rent" under the Act. The result is that the proceedings taken by the landholder must be held to be misconceived and the appeals allowed and the suits decreed.

2. Coming to S.A. No. 327 it is agreed that the suit must be decreed in respect of rupees 15-6-2. That is, the landholder is not entitled to recover Rupees 15-6-2 which is the amount levied on the property included in this suit. But he is entitled to recover the balance, namely, Rs. 0-8-3 which is now admitted to be a sum levied in respect of what is clearly ryoti land in the holding of this particular ryot. Subject to this modification the suit is decreed. It is said that the admitted amounts have been paid. No further proceedings will be taken by the landholder. The appellants are entitled to their costs throughout in all the Courts. No leave.