

(1917) 08 MAD CK 0001
In the Madras High Court

Karuppa Goundan and Others

APPELLANT

Vs

Narayana Chettiar

RESPONDENT

Date of Decision : 07-08-1917

Acts Referred:

Madras Estates Land Act, 1908 — Section 26(3)
Madras Rent Recovery Act, 1865 — Section 11

Citation : AIR 1918 Mad 312 : 45 Ind. Cas. 406 : (1918) 7 LW 376

Hon'ble Judges : Phillips, J;Bakewell, J

Bench : Division Bench

Judgement

Phillips, J.—This is a rent suit and the point for determination is the amount of rent payable by plaintiff: to defendant. Prior to 1859 a faisal

rate was fixed on the land by Government, but admittedly plaintiff has for many years, certainly for more than 35 and possibly for 40 years, been

paying a lower rate called in the muchilika the jamabandi rate. In the ntuchilika the faisal rate is also mentioned and the road cess payable is

calculated on it. It has not been proved that the jamabandi rate was in force prior to 1859 and consequently u/s 11 of Act VIII of 1865 the proper

rate payable on the land would be the faisal rate. This provision of the Rent Recovery Act (1865) is not reproduced in the Estate's Land Act.

1908, and it is contended for the appellant-plaintiff that there is now no presumption that the faisal rate is the proper rate. Although there is no such

presumption raised by the Statute, yet I think that the existence of a faisal rate is a very strong piece of evidence as to what the proper rate should

be Tine faisal rate is fixed by Government as the fair rental of the land, and upon the faisal rates the peshkush and cesses are calculated and conse

quently the faisal rate should ordinarily be taken as the proper rent that can be

levied on the land, and we see that in *Palani v. Paramasiva* 4 Ind.

Dec. 1046. it was held that a purchaser at a revenue sale was prima facie entitled to demand the faisal rate, although the tenants pleaded a contract

with the former landholder at a lower rate. In the present case we find the faisal rate specifically mentioned in the pattas and muchilikas, and the

road cess payable by the tenant is calculated upon it. Notwithstanding the omission from the Estates Land Act of the provision in Section 11 of Act

VIII of 1865, I would hold that the faisal rate is the proper rate of rent for the lard. This being so, is defendant entitled to charge that rate in spite of

the contract between plaintiff and defendant's predecessor to charge lower rate? u/s 26 (3) of the Estates Land Act ""Except as provided by Sub-

section (1) no rate of rent at which land may have been granted by a landholder shall be binding upon the person entitled to the rent after the

lifetime of the landholder if such rate is lower than the lawful rate payable by the ryot before the date of the grant upon the land or upon land of

similar description and with similar advantages in the neighbourhood."" Unless therefore the lower rate has been granted to the tenant for some

reason specified in Clause (1) of the section, the lower rate is not binding on defendant. Plaintiff has failed to show that the lower rate was granted

for any of the reasons specified in Clause (1) and even if any presumption could be drawn that such reasons existed when the rent was originally

reduced, plaintiff has failed to show that such reasons still exist. I, therefore, hold that the lower rate is not binding on defendant.

2. In some of the appeals connected with this one, a question of res judicata arises. There were formerly two mittadars of the suit estate, one of

whom died. The surviving mittadar and the heir of the deceased mittadar Sled suits in 1885 claiming rent at the faisal rate and in Second Appeal

No. 400 of 1891 this Court made the following order: ""The plaint does not allege that the cowle rates were terminated and that plaintiffs are now

entitled under, the original agreement to levy the faisal rates. The suit is not framed nor have issues been taken on any such cause of action. The

plaintiffs simply claimed the faisal rates. The defendants answered that by contract presumable from uniform payment for 50 years they were

entitled to pay other rates.

3. Both Courts have found that there is an implied contract to that effect.

4. The appeal fails and we dismiss it with costs.

5. From this it would appear that the then plaintiffs were not allowed to charge faisal rates, because a contract to pay lower rates had been found

to exist by both the lower Courts. The question whether the then plaintiffs were entitled to enhance the existing favourable rate was not considered,

because no such claim had been put forward in the plaint. The question is whether this decision as to the rate leviable is binding on the present

defendant, and the answer depends upon whether the then plaintiffs were the pre-decessors-in interest of the defendant. Undoubtedly, as

matadors, they were predecessors in-interest of the present mittadar, but u/s 26 (3) of the Estates Land Act, a special privilege is conferred on the

successor to a landholder, not possessed by the original landholder himself, i.e., the right to enhance an unduly low rate of rent agreed to by the

latter. In respect of this right of enhancement, defendant's claim is peculiar to himself and it cannot be said that the prior mittadars are persons

under whom defendant claims, litigating under the same title.

6. It is further contended that the plaintiffs in the suit of 1889 were the successors-in-interest of the landholders who granted the lower rate, and

consequently defendant is in the same position as they were. The answer to this is that one of the former plaintiffs was himself a party to the

favourable grant, and consequently could not claim the benefit of any privilege conferred by Section 26(3). I would, therefore, hold that the

question is not res judicata.

7. In view of the above I would dismiss the appeal with costs.

8. Second Appeals Nos. 1789 to 1799 follow.

9. Bakewell, J.--I agree that the faisal rate must be presumed to be the proper rent and that the appellants have failed to rebut this presumption.

10. With regard to the question of res judicata I think that the appellant should have shown that the plaintiffs in the previous suit had an absolute

interest in the property in order that they might be held to be the predecessors-in-title of the, present defendant.

11. It is quite possible that those persons, the then landholders, had only a limited interest and that u/s 26 (3) of the Madras Estates Land Act, a

grant by them would not be binding upon the persons entitled to the rents after the lifetime of the landholder. In that case the present defendant

would derive title from the successor of the landholders and would not be bound by the grant made by the latter. The appeal is, therefore, dismissed with costs.