

(1938) 08 MAD CK 0048
In the Madras High Court

K.M. Palaniappa Mudaliar and Others

APPELLANT

Vs

Abdul Subhan Sahib

RESPONDENT

Date of Decision : 24-08-1938

Acts Referred:

Citation : AIR 1939 Mad 92 : (1938) 48 LW 549 : (1938) 2 MLJ 977

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The plaintiffs, landholders under the Madras Estates Land Act, brought a suit u/s 77 of that Act for rent relying upon Sections 25 and 26 of the Madras Estates Land Act and claiming the right to demand rent at the faisal rate though in fact that no rent has been paid on the suit land so far as there is any record. It is common ground that the suit land has been held free of rent by virtue of a maintenance gift made before 1858 by one of the plaintiffs' predecessors. Both the lower Courts have held that Section 26 has no application to the circumstances of this case. The plaintiffs therefore appeal.

2. So far as I am aware, there is no specific authority to support the appellant's case that Section 26, Sub-section (3) will apply, to a case in which there has been a gift of land free of rent and not merely a grant subject to favourable terms with reference to rent. Mr. Venkatachari argues that if a landholder is not bound by the remissions of his predecessor when these remissions consist of the major portion of the land revenue, still less will he be bound by the remissions of his predecessor when these remissions consist of the whole of the land revenue and he argues that the wording of Section 26(3) would justify the view that the landholder for the time being has the right even when no rent has ever been paid to revert to the faisal rate which is the rate lawfully payable on the land in the estate in the absence of evidence to the contrary. The nearest thing to an authority for the view for which Mr. Venkatachari contends, is found in the case of Duraiswami Pillai v. Venkatarama Pillai (1935) 42 L.W. 626 wherein Madhavan Nair, J., had to deal with the case of a rent-free grant of land within the ambit of

a Zamindari, and held that from the evidence of long standing enjoyment of the land free of rent, the Court would presume a legal origin for the right enjoyed and that a claim to apply Section 26, Clause (3) involves the establishment of certain facts by the landholder and could only be entertained on an express plea by the person who has to prove the applicability of that clause. Thus Madhavan Nair, J., had to deal with a contention similar to that which is now put forward, and negated it on the ground that it was not pleaded at the original trial. There is, however, no decision that such a plea would be good in law on such facts if taken at the right time.

3. For the respondent, it is contended that Section 26(3) has no application unless it is first shown that the relationship of landlord and ryot subsists with reference to the land in suit and that there cannot be any such relationship unless the defendant is a ryot within the definition in Section 3(15), that is to say, it must be shown that the defendant is a person who holds, for the purpose of agriculture, ryoti land in an estate on condition of paying to the landholder a cent which is legally due upon it. The argument is that in the present case there is no evidence that the defendant ever held this land on condition of paying any rent and that in fact the gift of both warams to the defendant's predecessor by the plaintiffs' predecessor converted the tenant himself into a landholder. It does not seem to me to be necessary for the purpose of this case to go so far as to say that the defendant is a landholder in respect of this land; but it does seem to me to be clear that no relationship of landholder and ryot has been established between the plaintiffs and the defendant. It is true that there has been an exchange of pattas and muchilikas with reference to the cases payable on the suit land, but that is the result of a liability under the Local Boards Act, which has no relevancy in establishing the status of the defendant under the Estates Land Act. There is no evidence that the defendant or his predecessors ever held land under the plaintiffs or their predecessors on condition of paying any rent at all. It must, therefore, I think, be taken not to have been established that the defendant is a ryot. As I read Section 26, it has no application to any case in which the relations of landholder and ryot do not subsist. Not only the third clause but the earlier clauses contemplate a rent-paying relationship between the landholder and the tenant and the section lays down the terms on which the rent may or may not be augmented. The section, to my mind, has no application when there has been a complete surrender by the landholder of the right to collect any rent whatever on the suit land. In fact, though it does not appear that the grant to the defendant's predecessor has ever been expressly described as an inam, I am unable to see any legal difference between the tenure on which defendant holds and the ordinary tenure of a post-settlement inamdar. The grant was certainly not for service so that even applying the criteria which govern the resumption of post-settlement inams, it could not be presumed that the grant is resumable. But if it is an out-and-out grant of both the warams as it appears to be, there are no grounds, to my mind, for applying Section 26 of the Estates Land Act at all, for there is no longer any relationship of landlord and tenant

subsisting between the parties.

4. In this view, I dismiss the appeal with costs.

5. Leave to appeal is refused.