
(1950) 08 MAD CK 0040

In the Madras High Court

Case No : Second Appeal No's. 1061 and 1962 of 1947

Koneru Satyanarayana

APPELLANT

Vs

Vempati Kodandarama Sastri and Another

RESPONDENT

Date of Decision : 08-08-1950

Acts Referred:

Madras Estates Land Act, 1908 — Section 27, 28

Citation : AIR 1951 Mad 770 : (1950) 2 MLJ 665

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : B.V. Ramanarasu, for the Appellant; M.S. Ramachandra Rao and M. Krishna Rao, for the Respondent

Final Decision : Dismissed

Judgement

Raghava Rao, J.—These two second appeals arise out of two summary suits for rent on the file of the Special Deputy Collector, Bezwada & Bandar division. The lands in respect of which rents were claimed are situate in the inam village of Kuchipudi in the district of Krishna which, according to the line of argument adopted in this Ct. must be taken to have become an estate for the first time under the Madras Estates Land (Third Amendment) Act XVIII [18] of 1936. At the time that the Act came into force there was Ex. C, a khat of 12-4-1932 in force between the Agraharamdars, the pltfs. & the tenant, the deft. The Deputy Collector held that the rent fixed by that document had to be altered suitably to the fact of permanent occupancy right which the Act for the first time conferred upon the deft. & that a fair & equitable rent payable should be ascertained by him by substituting for the bags of paddy stipulated under that document what might represent half of the net income of the land as proved by evidence. This he did following the decision of Chandraaekkhara Aiyar J. in S. A. No. 1SG6 of 1942 (not reported). Kefer-ring to that decision he says :

"In S. A. No. 1366 of 1942 on the file of the H. C. the question of fixing a fair & equitable rent in respect of lands in another inam village of this dist. arose for

consideration. There also, kattubadi was being paid at so many bags per acre as in the present case. His Lordship observed that in fixing the rent the conferment of occupancy rights should be taken into account & adopted the rate under the waram system where the landlord & the tenant would take half & half in the net income."

Against this judgments there were appeals to the Ct. of the Dist. J. of Krishna at Masulipatam who held reversing him that

"the rent payable by the deflt. shall be as stipulated under Ex. C, the terms of which shall be presumed to enure for the suit faslis under the presumption enacted by Section 27 of the Act."

The point arising for decision on the argument here is whether the rate of the Special Deputy Collector or of the Dist. J. should be accepted by me.

2. In the initial stages of the argument I was inclined to think that the Special Deputy Collector did right & the learned Dist. J. did wrong, although at the close of the argument my mind was not made up one way or the other. I have, since reservation of judgment, carefully considered the matter & have come to the conclusion that these appeals should fail.

3. The argument of Mr. Ramanarasu that what the Special Deputy Collector did was right has been attempted to be supported by reference to a decision of this Ct. in *Raja of Pithapuram v. Venkatasubba Rao*, 31 I. C. 93: AIR 1916 Mad. 1092 as well as to the unreported decision of Chandrasekhara Ayyar J. above mentioned. In *Raja of Pithapuram v. Venkatasubba Rao*, 31 I. C. 93: A. I. R. 1916 Mad. 1092 Seshagiri Aiyar & Napier JJ. held that an agreement to pay an increased rate of rent entered into before the Madras Estates Land Act came into force by a person who was a yearly tenant did not bind him after the Act came into force, as his status became changed by the Act. Dealing with Section 52, Madras Estates Land Act, relied upon in support of the argument that the agreement would bind the tenant notwithstanding the change of status created by the Act, the learned Judges held that the section applied only to pattas & muchilikas exchanged since the Act came into force, & that no retrospective effect could be given to that section so as to bring within its operation patta & muchilikas executed under the Rent Recovery Act, VIII [8] of 1865 & tenable for a year only. It must be noted, however, that this view did not commend itself to a Bench of this Ct. (Oldfield & Phillips JJ.) in a later case reported in *Radhakrishna Aiyar v. Swaminatha Aiyar*, 40 I. C. 587 : AIR 1918 Mad. 1152. There the Ct. observed ;

"The more important objection is that Ex. C. 1 was obtained for fasli 1311 under Act VIII [8] of 1865 in a Ct. which would not be competent to try the suit, in which it is now proposed to plead it, &, therefore, it cannot be res judicata u/s 11, C. P. C. The answer is that the general doctrine of res judicata is not in question, but the appln. of the special rule stated in Section 52 (3), Estates Land Act, under which muchilikas decreed for any revenue year remain in force until

the beginning of the year for which fresh ones are exchanged or decreed, & that there is no reason for restricting the scope of the general reference to muchilikas decreed to those decreed by any particular description of Ct. Such, a restriction was, no doubt, imposed on the interpretation of the section in Jagannadha Bhupati Deo v. Appalasami, 23 I. C. 576 : AIR 1914 Mad. 206 on the ground that pattas it muchilikas under Act VIII (8) of 1865 were current for one year only & that the Legislature cannot be supposed to have intended to enlarge their currency. But the words of the Section are clear, as they stand, & there is, in my opinion, no necessity or justification for reference to extrinsic considerations in order to their construction. In Raja of Pithapuram T. Venkatambba, 31 I. C. 93 : A. I. R. 1916 Mad. 1092 the restricted interpretation was supported also on the ground that any other would have given retrospective operation to the section, in the sense presumably that the effect of the exchange of patta & muchilika would be extended beyond the period originally contemplated by the parties to it. But, if that ease cannot be distinguished on the ground that, unlike the present, it deals with non-occupancy tenants, there is still no reason for treating this objection as decisive. For the presumption against a retrospective construction is not applicable, simply because apart of the requisite for the action of the Statute is drawn from the time antecedent to its passing (Maxwell's Interpretation of Statutes, 3rd Edn. p. 307) or where the Statute affects only the procedure of the Cts. (p. 313); & in the present case, the unrestricted effect of the section is only to recognise a relation, which existed before the Act, & to direct its continuance until it is terminated by the method for which the Act provides."

It is significant too that the decision in Radhakrishna, Aiyar v. Swaminatha Aiyar, 40 I. C. 587: AIR 1918 Mad. 1152 was affirmed by the P. C. in Radhakrishna Aiyar v. Sundaraswamier, 45 Mad. 475: AIR 1922 P. C. 257. Lord Shaw in the P. C. expresses the full agreement of the Board with this view at p. 484 of the report. I may add however, that the position before me is not strictly one covered by the rulings of the H. C. in Rajah of Pithapuram v. Venkatasubba Rao, 31 I. C. 93: AIR 1916 Mad. 1092 & Radhakrishna Aiyar v. Swaminatha Aiyar, 40 I. C. 587: A.I.R.1918 Mad. 1152 or the decision of the P. C. in Radhakrishna Aiyar v. Sundaraswamier, 45 Mad. 475: AIR 1922 P. C. 207.

4. The question really is how the proviso to Section 28, Madras Estates Land Act of 1908, introduced by the Madras Estates Land (Third Amendment) Act of 1936 is to be understood. The language of the proviso is, in my opinion, sufficiently clear that in the case of an estate within the meaning of Sub-clause (d) of Clause (2) of Section 3 the rent or the rate of rent lawfully payable by a ryot or tenant on 1-11-1933 shall be presumed to be fair & equitable at the commencement of the Madras Estates Land (Third Amendment) Act, XVIII [18] of 1936 until the contrary is proved. The sole & simple question for determination is whether the rate stipulated by Ex. C which was current on 1-11-1933 is or is not to be regarded as the rent lawfully payable within the proviso. No ground has been suggested for the invalidation of the bargain between the parties as evidenced by Ex. C except that it must prima facie be unfair to regard the rent obtaining

between the parties prior to the coming into force of the Act of 1936 as the lawful rent after conferment of occupancy right on the tenant by that Act. That, in my opinion, is not a consideration which can enter into the construction of the Statute which is perfectly clear. Of course, where no rent is found to have been fixed by a bargain between the parties continuing in operation on 1-11-1933 the Ct. may have to fix the rent & in so doing it may have to adopt a basis like the one adopted by Chandrasekhara Aiyar J. in the unreported decision referred to in the foregoing. As observed by Somayya J. in *Pillalamarri Ramakrishnasomayajulu Vs. Yarranedi Krishnayya and Others*, :

"Where it is not a case in which there was no rent payable on the land on the date when the Amending Act came into force & the villages in question became converted into estates, whether the terms expired before the Act came into force or whether they were still running, Section 57, Estates Land Act would apply, namely, that the rent payable for previous years would be presumed to be the fair rent under the Act."

There, no doubt, the question of the proviso to Section 28 & the proper construction of the words "lawfully payable occurring in the proviso did not arise for determination; but the principle which to my mind seems to be obvious is that a distinction must of course be made between cases in which on 1-11-1933 there is no rent obtaining under a lawful bargain between the parties & cases in which there is rent going on obtaining. "Lawfully payable" in the proviso can mean nothing more than payable under a lawful bargain between the parties on the date in question.

5. For these reasons these second appeals must be dismissed with costs. (No leave.)