

(1925) 02 MAD CK 0009
In the Madras High Court

Kuppuswami Iyer and Others

APPELLANT

Vs

B. Raja Rajeswara Sethupathi alias Muthuramalinga
Sethupathi Avergal

RESPONDENT

Date of Decision : 13-02-1925

Acts Referred:

Madras Local Boards Act, 1884 — Section 73

Citation : 90 Ind. Cas. 973

Hon'ble Judges : Ramesam, J; Charles Gordon. Spencer, J

Bench : Division Bench

Judgement

1. These appeals arise out of suits, brought by the Rajah of Ramnad to recover quit rent (or poruppu) as well as road-cess and rail-cess and

mahamai from the defendants, who are in occupation of the village of Nedunthulasi in Rajasingamangalam Taluk of the Ramnad District.

2. Original Suit No. 33 of 1917 out of which A.S. No. 314 of 1922 arises, is a suit to recover what is due from the defendants for Faslis 1321 to

1325. This suit stood over for decision pending the issue of a suit (O.S. No. 157 of 1913) brought by the plaintiff for recovering possession of the

village of Nedunthulasi, which he alleged had been obtained from his father as an absolute gift, free from all payments or liabilities through undue

influence. The claim of the Rajah to recover the village from the possession of the defendants, was finally rejected by the judgment of the High

Court in Raja Rajeshwara, Sethupathi Avergal v. Kuppusami Iyer 68 Ind. Cas. 352 : 41 M.L.J. 474 : (1921) M.W.N. 722. The decision, to

which one of us was a party, was dated 3rd May 1921. After this there was an attempt to obtain leave to appeal to the Privy Council, but leave

was refused both here and in England. By our decision, we held that the Rajah

could not recover the village from the defendants because he was bound by a compromise entered into during his minority by the trustee of his estate Venkatarangayyar and certain Nattkottai Chettis to whom the estate was leased. On September 17, 1894, the Rajah's father gave a 40 years' lease to the first defendant of the village of Nadunthulasi on poruppu (or favourable rent) of Rs. 804 in consideration of his having rendered services as a trusted gumashta of the estate. On 2nd June 1895, the plaintiff's father made an absolute and hereditary grant of the same village on sarvamanya tenure, i.e., free from all liability for rent or tax. On 24th April 1902 the Dewan trustee of the estate and the Chetty lessees entered into an agreement with the first defendant by which the first defendant obtained a permanent lease of the village on payment of poruppu at the rate of Rs. 402 a year instead of Rs. 804 fixed under the lease of 1894. The Dewan trustee gave up his intentions of instituting proceedings to set aside the gift of the property made under the sarvamanya grant of 1895. Under this arrangement the defendants are bound to pay poruppu of Rs. 402-1-10 and mahamai and road-cess every fasli.

3. The main defence, to these suits is that the plaintiff, having brought O.S. No. 157 of 1913 to recover possession of the village, has shown his intention of not being bound by the compromise of 1902 and that, therefore, the defendants are entitled to treat the agreement as being rescinded and to refuse to pay poruppu.

4. Reliance is placed on Clause 13 of the agreement which runs thus: "'As an arrangement has been effected in this manner and this agreement entered into, the said Kuppuswami Iyer and his representative-in-interest, the said Dewan trustees Rao Bahadur Venkatarangayyar Avergal, and his representatives-in-interest and the said lessees and their representatives in-interest and the Rajah who gets the said samasthanam shall conduct themselves in accordance with the provisions contained herein.

5. In *Srish Chandra Roy v. Banomali Roy* 31 C. 584 : 8 C.W.N. 594 : 6 Bom. L.R. 501 : 14 M.L.J. 185 : 2 A.L.J. 31 : 31 I.A. 103 : 8 Sar.

P.C.J. 677, there was a compromise of a suit under which one party acknowledged the title of the other as an adopted son and the other party promised to execute a lease of certain mouzas, and afterwards the former party brought a suit to set aside the adoption and caused the other side

to incur costs in litigation, and after having failed in this suit he sued for the specific performance of the agreement. The learned Judges of the Calcutta High Court (Hill J., with whom was Brett, J.) held that the Court of first instance rightly exercised its discretion in refusing to grant specific performance in favour of one party whose previous conduct had amounted to an abandonment of the agreement sought to be enforced. On appeal to His Majesty, the Judicial Committee confirmed the decision of the Calcutta High. Court.

6. I think that there is a real different between the facts of that case and the present one. The Calcutta High Court was dealing with a suit for specific performance, pure and simple. The present suit, which is before us in appeal, is a suit for recovery of rent by a landlord and the learned Judge in the Court below is mistaken when he speaks of it as a suit to direct the defendant to pay a certain amount. The suit would not be maintainable except on the footing that the parties are still in the relationship of landlord and tenant. If the defendants had relinquished possession of the village or if the Rajah had ceased to be the owner of the estate, there could be no suit for recovery of rent. At the time, when the trustee of the estate and the first defendant settled their disputes by the agreement of 24th April 1902, the trustee was threatening to bring a suit to set aside the absolute gift of June 2, 1895. It was an amicable settlement of a disputed claim. If the gift deed by the former Rajah had been declared in a suit brought for that purpose to be voidable owing to undue influence, the defendant would still have had a right to occupy the village on payment of poruppu of Rs. 804 under the 40 years" lease of 1894.

7. The parties compromised on the understanding that the first defendant should pay Rs. 402-1-10, as poruppu, i.e., about half the amount which he was paying previously. The agreement was not of the nature of an executory contract like that in *Srish Chandra Roy v. Banomali Roy* 31 C.

584 : 8 C.W.N. 594 : 6 Bom. L.R. 501 : 14 M.L.J. 185 : 2 A.L.J. 31 : 31 I.A. 103 : 8 Sar. P.C.J. 677 . Clause VIII of the agreement, referring

to Act VIII of 1865, which was then the rent law in force, provides that no pattas or muchilikas need be executed. The document was stamped as

a permanent lease for a rent of Rs. 402 and a release of the rights under the gift deed of 1895. There was no defeasance clause providing for

divestment of the rights in the event of either party breaking any of the terms of the agreement. The consideration was executed consideration, the

trustee having abstained from bringing a suit for recovery of possession and the first defendant having agreed to pay poruppu of Rs. 402. In *Srish*

Chandra Roy v. Banomali Roy 31 C. 584 : 8 C.W.N. 594 : 6 Bom. L.R. 501 : 14 M.L.J. 185 : 2 A.L.J. 31 : 31 I.A. 103 : 8 Sar. P.C.J. 677,

there was a promise to execute a lease of the suit mauzas and in that respect, the agreement was executory; but the settlement in the present case

left nothing to be done by the parties in future except to pay and receive poruppu at the rate agreed.

8. When the plaintiff brought O.S. No. 157 of 1913 to recover possession of the village the defendants, in their written statement para. 37,

immediately asserted that they were no longer bound to pay poruppu under the terms of the agreement of 24th April 1902, as the plaintiff had

broken the agreement by bringing that suit. In that suit, however, neither party was willing to abide by the compromise. The defendants relied upon

the absolute gift made by the Rajah's father and the plaintiff relied on that gift being voidable on account of undue influence. In the decision of the

suit it was made clear that the contentions of neither party were correct and that both sides were bound by the settlement As the settlement was

not an executory contract I am of opinion that the plaintiff is entitled to sue to enforce its terms and that he is not disqualified by having sued for a

greater relief in O.S. No. 157 of 1913 as his previous claim that he was entitled to poruppu at the rate of Rs. 804 does not prevent him from now

claiming that he can recover at least Rs. 402 per annum. The suit is thus distinguishable from that in *Srish Chandra Roy v. Banomali Roy* 31 C. 584

: 8 C.W.N. 594 : 6 Bom. L.R. 501 : 14 M.L.J. 185 : 2 A.L.J. 31 : 31 I.A. 103 : 8 Sar. P.C.J. 677 which was a case of an executory contract and

a suit for specific performance. In *Ganga Varapu Krishna Venamma v. Naraparaju Venkata Mukunda Row* 4 Ind. CAS. 303 : 7 M.L.T. 33. 33

M. 216, where there was a compromise which finally settled the right of the parties and nothing more had to be done to give effect to it, it was held

by this Court, that the conduct of the executant in acting in a manner inconsistent with the compromise did not justify the other Party in repudiating

it and *Srish Chandra Roy v. Banomali Roy* 31 C. 584 : 8 C.W.N. 594 : 6 Bom. L.R. 501 : 14 M.L.J. 185 : 2 A.L.J. 31 : 31 I.A. 103 : 8 Sar.

P.C.J. 677 was distinguished.

9. In this view the lower Court was right in holding that the plaintiff was entitled to succeed and in giving him a decree for recovery of poruppu for the faslis in suit.

10. Two minor points remain to be decided The lower Court's decrees allow interest at 12 per cent. from the date of suit till the date of the decree

and 6 per cent thereafter till payment. During the pendency of O.S. No. 157 of 1913 and until the appeal was decided on 13th May 1921, the

defendant did not tender payment and the plaintiff did not demand it probably with the idea that if he accepted rent, he would not be able to

successfully impugn the defendant's title On one occasion Rs. 10 was Paid not by the defendants but by a friend named Venkatachari (vide Ex. X

and the evidence of the second defendant D.W. No. I). This payment will not affect the rights of the parties since it was not a transaction between

themselves. The fact remains, that during the pendency of the former litigation, the plaintiff was unwilling: to receive and the defendants were

unwilling to pay (vide para. 5 of the plaint in O.S. No. 33 of 1917).

10. Under these circumstances interest should not be charged until the former suit was finally decided by our decision in appeal on 13th March 1921.

11. The lower Court's decree will be amended by allowing interest only from May 14th, 1921. As regards road-cess, the appellant claims that he

is, only liable to pay half the road-cess, but it is clear from Section 73 of the Local Boards Act that, as he is an intermediate land-holder, the

landholder is entitled to recover from him the whole of the tax paid in respect of the land held by him less half the tax assessable on the amount of

the poruppu. For this the limitation period is six years under Article 120, vide Rajeswara Muthuramalinga Sethupathi v. Mahalinga Raju 52 Ind.

Cas. 468 : 9 L.W. 287 : (1919) M.W.N. 365. The appellant's contention fails.

12. Subject to the modifications above stated the appeals are dismissed with proportionate costs.