

(1925) 02 MAD CK 0073
In the Madras High Court

Kuppuswamy Aiyer 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 : AIR 1925 Mad 1282 : (1925) 22 LW 258

Judgement

1. These appeals arise out of suits, brought by the Raja 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 taluq of the Ramnad estate.

2. O.S. No. 33 of 1917, out of which Appeal No. 314 of 1922 arises, is a suit to recover what is due from the defendants for faslis 1321 - 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 Rajawjeswam Sethupathi v. Kuppuswami Aiyar AIR 1921 Mad. 394. 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 Nattukottai Chettis, to whom the estate was leased. On 14th September 1894, the Rajah's father gave a forty years" lease to the 1st defendant of the village of Nedunthulasi on poruppu (or favourable rent) of Rs. 804 in consideration of his having rendered services, as a trusted gumastah 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 1st defendant, by which the 1st 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 intention 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 cesa 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 Kuppuswamy Aiyar and his representative-in-interest, the said Dewan Trustee, Rao Bahadur Venkatarangayyar Avl., and his representatives-in-interests 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* (1904) 31 Cal. 584, 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 mauzas, 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 difference 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 1st 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 2nd, 1895. It was an amicable settlement of a disputed claim. If the gift deed by the former Rajah has 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 forty years" lease of 1894.

7. The parties compromised, on the understanding that the 1st 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* (1904) 31 Cal. 584.

8. 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 rental 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 1st defendant having agreed to pay poruppu of Rs. 402. In *Srish Chandra Roy v. Banomali Roy* (1904) 31 Cal. 584 there was a promise to execute a lease of the suit mouzabs 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 upon.

9. When the plaintiff brought O.S. No. 157 of 1913, to recover possession of the village, the defendants, in their written statement paragraph 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* (1904) 31 Cal. 584 which was a case of an executory contract and a suit for specific performance. In *Ganga Varapu Krishna Venamma v. Naraparaju Venkata Mukhunda Row* (1909) 7 M.L.T. 33 where there was a compromise, which finally settled the rights 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* (1904) 31 Cal. 584 was distinguished.

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

11. 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 2nd defendant, D.W. 1). 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 unwilling to pay : Vide paragraph 5 of the plaint in O.S. No. 33 of 1917.

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

13. 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 landholder 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 *Muthuramalinga Sethupathi v. Mahalinga Raju* (1919) 9 L.W. 287. The appellant's contention fails.

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