
(1944) 02 MAD CK 0005
In the Madras High Court

Madura Devasthanams

APPELLANT

Vs

Solai Alagu Kudumban and Others

RESPONDENT

Date of Decision : 17-02-1944

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(ii)

Citation : AIR 1944 Mad 442 : (1944) 57 LW 359

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—A preliminary objection has been raised to the maintainability of these second appeals; and the question, the answer to which

determines whether second appeals lie or not, is whether the suits are of a small cause nature.

2. The appellant is the land-holder of the inam village of Moolakurichi, whereas the respondents are minor inamdars. Under their grant, they are

entitled to water for a single crop; but they have been taking water from the appellant's tank for a second crop. The appellant brought the suits for

damages for the use of his water, for poruppu, for cess paid under the Madras Estates Land Act to Government on the land of the respondents,

and for interest on the various amounts due under the other heads.

3. The respondents are not the tenants of the appellant; and so what is paid for the taking of water to which they are not entitled cannot be rent.

The plaintiff can claim only damages for the unauthorised use of his water. The learned advocate for the appellant relies on the decision in Madura

Kallalagar Devasthanam v. Subbiah Ambalam AIR 1940 Mad. 455, which followed Venkatraju v. Maharaja, Pittapur AIR 1938 Mad. 342, in

which it was held that a claim for water was rent; but learned Judges based their decision on the peculiar definition of rent in Section 3 (ii), Madras

Estates Land Act, where "rent" bears not only the ordinary meaning but also includes "whatever is lawfully payable... to a land-holder by a ryot...

on account of water... taken without his permission" This definition of rent is seen to apply only to what is lawfully due by a ryot to his land-

holder. it cannot therefore apply to what is due by one "who is not a ryot of the land-holder.

4. The cess that the appellant claims is not only on the water taken unauthorisedly but also on the assessable value of the whole of the land in the possession of the minor inamdars. The cess on land held by an intermediate land-holder has to be paid, under the Madras Local Boards Act, by

the land-holder and can be recovered by him from those for whom he pays. In such a case, it can be recovered from the intermediate landholder

as rent. If, in fact, the respondents are intermediate land-holders, then there can be no doubt that this suit may be regarded in part as a suit for rent,

in which case there would be reason for thinking that the suit with regard to that particular part of the claim is not of a small cause nature. But the

question whether the respondents are intermediate land-holders or not is a question of fact. Proviso 1 to Section 88, Madras Local Boards Act,

seems to define an intermediate land-holder as one who holds the land on an under tenure created, continued or recognized by a land-holder.

Where the minor inam is an under tenure of this kind, decisions of this "Court have held that the minor inamdar is an intermediate land-holder; but

obviously the contention of the learned advocate for the appellant [that all minor inamdars are intermediate landholders cannot be correct.

Supposing, for example, a minor inam had been granted even before the village, then the older inam could not be held as an under-tenure of

something which was created afterwards. The minor inamdar would then hold his land directly under the grantor (in this case the Government).

This distinction is recognized in *Rajah of Vizianagaram v. Thammanna* AIR 1937 Mad. 217 where the learned Judges say:

The schedule of the Local Boards Act is that when the inam lands have not been included in the assets of the zamindari, the inamdar is himself a

land-holder holding directly under the Government. But if the assets include the inam lands as well, he has no direct relation with the Government,

but the "Government collects the cess from the land-holder and the land-holder reimburses himself from the inamdar treating him as an intermediate

landholder.

I have been asked to call for a finding from the lower Courts, whether, as a fact, the respondents are intermediate land-holders or not; but I cannot

do so in view of the admissions made by the appellant in the lower appellate Court. The learned Judge says:

Proviso 1 to Section 88 does not apply, because it is conceded that the defendants are not intermediate land-holders... The land is held by the

defendant on a tenure quite independent of the plaintiff. (That is not disputed)

If, as was conceded in the lower appellate Court, the respondents are not intermediate landholders, it would follow that the zamindar is not bound

to pay to Government the cess due by the respondents. They must pay it themselves. The cess cannot therefore be regarded as rent.

5. That poruppu is not rent was held by Curgenven J. in S.P.R.M. Ramasami Chettiar Vs. (Raja Sreemathu) Muthu Vijaya Ragunatha

Doraisingam, , so that a claim for poruppu is of a small cause nature. The learned Judge compared poruppu to jodi and followed Venkatagiri Raja

v. Venkata Rao (1998) 21 Mad. 243, a decision of a Bench of this Court. He also pointed out that in Musafkanni Ravuthar and Others Vs.

Doraisingam and Others, , and in Seetharama Iyer v. Fischer (1907) 17 M.L.J. 487, it had been conceded as a matter beyond argument that a

claim for poruppu was one of a small cause nature.

6. If the principal claims are of a small cause nature, it follows that interest on the sums due on those claims will also be of a small cause nature.

7. As the suits relate to very small sums of money, no second appeal lies. All the six appeals are dismissed. The respondents will receive their costs

from the appellant in S. A. Nos. 46, 48 and 49; but in S. A. Nos. 46 and 48 of 1943, there will be only one advocate's fee (one half in each).