
(1891) 02 MAD CK 0011
In the Madras High Court

Mahadevi and Another

APPELLANT

Vs

Vikrama

RESPONDENT

Date of Decision : 24-02-1891

Acts Referred:

Limitation Act, 1963 — Section 12

Citation : (1891) ILR (Mad) 365

Hon'ble Judges : Wilkinson, J; Muttusami Ayyar, J

Bench : Division Bench

Judgement

1. The plaintiff is the Maharajah of Jeypore in the Vizagapatam district. He instituted the present suit to recover possession of the Kalyana

Singapore Pergunnah with arrears of rent. The plaint set forth that the pergunnah was granted by the plaintiff's ancestors to the father-in-law of the

first defendant on condition of service tenure, and the payment of rent; that in consequence of the denial of the plaintiff's title by the first

defendant's husband, the plaintiff instituted Original Suit No. 22 of 1864 to establish his right to the pergunnah, and to recover rent at the rate of

Rs. 5,000 per annum, that the suit was decided in his favour, and that Rs. 5,000 were paid annually until the death of the first defendant's husband

in 1884; that in July 1885 the plaintiff gave notice to the first defendant that her services were no longer required, and that she should either execute

an agreement to take the pergunnah on lease for the annual sum of Rs. 20,000, or give up possession, and that the defendant had neglected and

taken no notice of the said notice. The first defendant (the second defendant is her adopted son and a minor) pleaded inter alia that the plaintiff was

only entitled to recover Rs. 5,000 per annum by executing the decree in Original Suit No. 22 of 1864; that the pergunnah was not held on service

tenure, but on a permanent lease, and that the plaintiff had no right to eject.

2. The lower Court gave the plaintiff a decree for possession and mesne profits at the rate of Rs. 20,000 per annum from fasli 1295 to date of possession.

3. The defendants appealed to the Governor-in-Council who has, under Rule XXII of the revised rules, framed by Government under Act XXIV of 1839, referred the appeal for the decision of this Court.

4. The learned Government Pleader, on behalf of the minor plaintiff (the original plaintiff having died during the course of the suit), who is

represented by his guardian the Collector of Vizagapatam, raises the preliminary objection that the appeal is out of time. His argument is that the

time allowed for an appeal being three months, and there being no provision in the rules for the deduction of the time requisite for obtaining a copy

of the decree and judgment (a copy of the judgment not being in fact necessary for an appeal) this appeal is out of time. The argument proceeds on

the assumption that Rules XXI and XXII must be read together and that the proviso in Rule XXI applies also to Rule XXII, it being unreasonable,

it is argued, to suppose that no limit would be fixed for the presentation of an appeal to the Governor-in-Council, when a limit is prescribed for the

presentation of an appeal to this Court. On the other side, it is contended that the Governor-in-Council having admitted the appeal, and referred it

to this Court for decision, the question as to whether the appeal is in time, does not arise, that there is no time fixed by Rule XXII within which an

appeal must be presented to the Governor-in-Council, and that, even if it be held that the appeal must be preferred within three months after the

Agent's decision the general provisions of the Limitation Act apply, and the time necessary for obtaining copies of decree and judgment must be

deducted. The decree bears date 18th March 1889. The copy was applied for on the same date, and was furnished on the 28th March. The

appeal was presented to Government in the usual way in which petitions are presented on the 26th June 1889. If the time occupied in obtaining

copy be deducted, the appeal was presented within three months after the Agent's decision.

5. As remarked in *Kullayappa v. Lakshmipathi* ILR 12 Mad. 467 "it has been several times decided that the general sections of the Limitation Act

from 5 to 25 are applicable to suits for which periods of limitation are prescribed other than those described in the second schedule to the

Limitation Act," and, if the period in this case is three months, we are of opinion that, u/s 12 of the Limitation Act, the time requisite for obtaining a copy of the decree must be excluded.

6. But, in our judgment, no time is fixed within which an appeal must be preferred to the Governor-in-Council. Rules XXI and XXII of the rules above referred to are as follow:

7. Rule XXI.--"From all decrees upon original suits passed by the Agent (with the single exception specified in the next following rule), an appeal shall lie to the Sadr Court to be disposed of as provided in Section 6, Act XXIV of 1839; provided such appeal is preferred either to the Agent or the Sadr Court within three months after the Agent's decision; or after that period, if sufficient cause can be assigned to the Sadr Court for any delay, which may have occurred by petition on the prescribed stamp, and subject to the other rules required in other appeals to the Sadr Court, as provided in the Madras Code and Acts applicable to that Presidency.

8. Rule XXII.--"From decrees of Agents in suits wherein the landed possession of a zamindar, bissoye, or other feudal hill chief may have formed the subject of litigation, an appeal will lie to the Governor-in-Council alone, who may refer any such appeal for the decision of the Sadr Court, provided that the decree of the latter Court shall not be carried into execution without the permission of the Governor-in-Council.

9. A distinction is clearly drawn between suits in which the landed possession of zamindar forms the subject of litigation, and other suits cognizable by the Agent. In the former the appeal lies to the Governor-in-Council, in the latter to this Court. Appeals to this Court will not lie unless presented within three months after the Agent's decision. But there is no such proviso with reference to appeals to the Governor -in- Council. We can see no reason why the proviso to rule XXI should be held applicable to rule XXII. It is not denied that in this suit the landed possession of the zamindar forms the subject of litigation. Government, in the exercise of the power conferred on them in rule XXII, have admitted the appeal and referred it to this Court for decision.

10. The preliminary objection must be overruled.

11. On behalf of the appellants it is argued that the Agent was in error in holding that the defendants appellants are ""yearly tenants at will."" There appears to have been some slight confusion in the mind of the Judge as to the nature of the defendants' tenure.

12. In the former suit between the parties (Original Suit No. 22 of 1864), it was found by the Agent that there had been no hostile possession on the part of the defendants, who had made payments in acknowledgment of tenancy, and that "" the plaintiff's father granted the pergunnah to the defendant's father, partly for the grantee's maintenance, and partly on rent; that the grant was further conditioned for service, and that such service was, from the circumstances of the country, a bond fide requirement."" On appeal, the High Court concurred in the view taken by the Agent of the evidence, and considered that there was satisfactory proof of a holding as tenant under the plaintiff. The case then went, on appeal to the Privy Council, who held that it was proved that the grantee obtained possession as an act of favour from the zamindar, and that rent and service were paid upon that footing, It follows, therefore, that the defendants' tenure is not that of a ""yearly tenant at will"" but has been rightly described in the plaint as one granted on condition of service and payment of rent. This, it appears clearly from the judgment of the Privy Council (page 16 of the printed papers), was the plaintiff's case in the former suit, and there the Privy Council held that "" after it appeared that the zamindari included the pergunnah among its revenue-paying lands, it lay upon defendant to establish the grounds on which he disputed the zamindar's claim to an enhanced rent."" Enhancement of rent was not claimed in that suit on the ground that service was dispensed with, but because the revenues of the zamindar had been diminished in consequence of Government having prevented him from levying certain cesses or taxes. In this Court it has been advanced that no service was rendered by first defendant's husband; but, although it was denied in the written statement that the pergunnah was held on service tenure, no issue was recorded, nor was any evidence let in on that point. It has been suggested by the appellant's pleader that in the previous case the Privy Council decided that plaintiff was entitled to enhance his money rent, because he had relieved the defendant from service. We do not think that the Privy Council did so decide. They put, as a hypothetical case, what has now actually occurred. The plaintiff has

dispensed with the defendants' obligation to keep up a number of paiks or armed men, and claims, in consequence, to raise the rent. It lay upon

the defendants to prove that service had been dispensed with in 1864, or that the increased rent paid between 1864 and the date of this suit was

paid in place of service. No such evidence has been adduced.

13. Then it is argued that if the grant was a grant for maintenance, it is not resumable. It is true that in the former suit the Agent regarded the grant

as made "partly for the grantee's maintenance," but this view was not supported by the judgment of this Court, nor was it the view taken by the

Privy Council. The grant was one for service and payment of rent. It may be that in fixing the rent the relationship of the grantee was taken into

account and a more favourable rent fixed than would have been the case had the grant been to a stranger, but there is no evidence on the record to

support the contention that the grant was made with a view to maintenance. On the other hand everything points to the conclusion that the grant

was one for payment of a low rent on the condition of certain service being rendered. Now it is admitted, on behalf of the appellants, that, if the

land was held on service tenure, it is resumable at the will of the zamindar for the time being in possession, *Unide Rajaha Raje Bommarauze*

Bahadur v. Pemmasamy Venkatadry Naidoo 7 M.I.A. 128, *Sitaramarazu v. Bamachendrarazu* ILR 3 Mad. 367, *Sanniyasi v. Salur Zamindar* ILR

7 Mad. 268. It was alleged in the plaint that the respondent was entitled to determine the tenure when he dispensed with the appellant's services.

The appellants, in their written statement, denied that the land was held on service tenure and the ninth issue ran as follows: "Whether the plaintiff

has the right to recover the pergunnah." "It was incumbent upon the appellants to adduce evidence in support of their plea, but they failed to do so,

and we are therefore of opinion (though not for the reasons assigned by the lower Court) that the lower Court was right in holding that the

respondent was entitled to resume. The appellants were offered the option of holding the pergunnah as tenants paying an enhanced rent in lieu of

services which were dispensed with, but that offer the appellants rejected.

14. It is then contended that the suit is barred by limitation, the appellants' possession being adverse to respondent for more than twelve years,

because in 1864 and since the appellants have asserted a right to hold on

payment of rent free from the liability to be ejected. We cannot see that any question of limitation arises. The first appellant has paid rent regularly as a tenant in accordance with the decision in the former suit. There is nothing to show that the first appellant or her predecessors in title ever set up a right to hold on permanent tenure until the institution of the present suit. In the former suit, the first appellant's proprietary right was negatived and her position as tenant affirmed, and as tenant rent has been paid ever since.

15. It is then contended that, as the plaintiff has acquiesced in the decision in the former suit and collected Rs. 5,000 per annum from that date, there is an implied contract that plaintiff would collect that sum and no more, and that therefore there is no cause of action for the present suit, plaintiff not claiming increased rent in consequence of improvements effected by himself.

16. The cause of action in the present suit arises from the respondents having dispensed with the appellants' services, and having given notice to the appellants either to take a lease at an enhanced rent or to give up possession. The respondent received rent at the rate of Rs. 5,000 per annum from the date of the decree in the former suit, because that was the amount of rent claimed and decreed; but the receipt of rent at a certain rate for so many years cannot be construed to imply a contract always to receive rent at the same rate, or a contract not to raise the rent under altered circumstances.

17. Finally, it is contended that the Judge was in error in finding that the present income of the estate is Rs. 40,000, and that he should have found that the annual income did not exceed Rs. 20,000 and that the increase was due to improvements effected by appellants' predecessor. The Agent relied on the evidence of the plaintiff's first witness, V. Sitaramayya, a Government servant, who has been manager of the pergunnah for nineteen months, corroborated, as it was, by the evidence of the plaintiff's second witness, who had been dewan of the estate for five years during the first appellant's husband's lifetime, of the plaintiff's third witness who had been a gumastah in the estate for about fifteen years, and by the demand accounts, Exhibits G--J, of which Exhibit G, the demand account for 1884-85 was written by the defendants' third witness, an accountant of the

estate. From the oral and documentary evidence, it appears that the total demand in money and kind amounts to about Rs. 37,000. There is, however, no evidence as to the collections, the plaintiff's first witness stating that no collection accounts are forthcoming. Against the demand has to be set off the expenses which appear to amount to about Rs. 10,000. This would only leave a margin of Rs. 7,000, supposing the whole demand were collected and the defendant's rent raised to Rs. 20,000. Better evidence should have been forthcoming as to the actual income and charges of the estate, but, from the evidence on record, we think, the rent demanded was too high and would reduce the mesne profits awarded from Rs. 20,000 to Rs. 15,000 per annum. In other respects we would confirm the decree of the Agent. The plaintiff will get proportionate costs on the sum allowed and the defendants on the sum disallowed.