

(1935) 10 MAD CK 0064
In the Madras High Court

Muhammad Gosukani and Others

APPELLANT

Vs

(Muhammad) Sekka Maracayar and Others

RESPONDENT

Date of Decision : 18-10-1935

Acts Referred:

Citation : AIR 1936 Mad 301

Hon'ble Judges : Burn, J

Bench : Division Bench

Judgement

1. The main question now for decision is whether the rent sales of the suit lands, whether for arrears of fasli 1320 or fasli 1321, were valid or void. If they were valid, or void until set aside, Article 12, Lim. Act, will apply, and the plaintiff's claim is barred. If they were void, the Article applicable will be Article 142, and, as I have already held, the suit will be within time. The learned District Judge has found that the sales were for arrears actually due, and that notice of them was given to the tenant; and Mr. Varadachariar does not wish to dispute these findings. He takes certain other points, which I will now consider. The first point applies to all the eight items, and depends upon the fact that the lessee from the proprietor who exercised the power of sale conferred by the Madras Estates Land Act, was an ijaradar or farmer of rent. It appears that there were no bidders for these holdings, and that they were bought in by the ijaradar, as land holder, and subsequently regranted to the predecessors-in-title of defendants 3 and 4. The plea raised depends upon the terms of Sub-section 6 of Section 6 of the Act, which runs as follows:

A person holding land as an ijaradar or farmer of the rent shall not while so holding acquire otherwise than by inheritance or device a right of occupancy in any land, comprised in the ijara or farm.

2. It is contended that while such an ijaradar, as land holder, may sell the holdings in a rent sale under the Act to others, who thereby obtain an occupancy right in them, he cannot himself buy them, because what is sold is no more than the defaulter's occupancy right, which he cannot himself acquire. It appears to

me that this is not a correct statement of the position. It is true that it is the general policy of the Act not to permit any person occupying the position of a land holder to acquire an occupancy right. The ordinary case is met by the terms of Section 8(1), which provides that where a merger of interests would otherwise occur, the holder of these interests "shall have no right to hold the land as a raiyat, but shall hold it as a land holder." In the same way, the terms of Section 6(6) preclude an ijaradar, whether or not he be a "land holder", from holding land as a raiyat. If he is a land holder his position in this respect, is the same whether we apply to him Section 6(6), or Section 8(1), and if he cannot buy in a land, no more can any other land holder. He can in fact buy it in as is expressly provided by Section 130; but what happens is that the defaulting tenant loses his holding, in which he held an occupancy right, while the ijaradar acquires the holding, but without acquiring the occupancy right. He has the rights of a land holder over it, which include the right to dispose of it to another tenant who, when admitted to possession, obtains a permanent right of occupancy in it. If this view of the operation of the Act is correct, the objection has no foundation and I disallow it. The next point relates to items 1 to 3, which were sold for arrears of fasli 1320 by the ijaradar, Mahalinga Ayyar. It is said that the lease granted to him by the proprietor was invalid, and that therefore he was not a land holder within the meaning of the Act, because under Clause (5), Section 3 a land holder, if not as owner,

includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor-in-title or of any order of a competent Court or of any provision of law,

and if the lease was invalid, no transfer in fact took place. The facts are that he was granted a lease for one year by means of an unregistered lease deed, which has been marked as Ex. XL for identification, that he was given possession of the estate as land holder, and that the tenants attorned to him by accepting pattas and in general, paying rent. In a deposition (Ex. 19) the plaintiffs' father stated that he had accepted pattas from Mahalinga Ayyar. The fact of attornment has not been disputed. The question is whether the lease for this fasli is to be held valid upon the evidence afforded by this document and of delivery of possession. u/s 107, T.P. Act, a lease of this description may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. The question is whether it may be taken to have been made by the latter of these two methods upon proof of an unregistered lease deed accompanied by delivery. The terms of Section 54, T.P. Act, with regard to sale, have given rise to a similar question-whether sale of Immovable property of value less than one hundred rupees can be effected by delivery under an unregistered document. The first point for consideration is whether the document, which u/s 91, Evidence Act, is alone admissible to prove the agreement between the parties, that is to say, the nature of the transaction under which possession was delivered, may be admitted for this purpose. I will refer first to a Bombay case, *Dawal Piranshah v. Dharma Rajaram* 1917 41 Bom 550 because in the view taken of it by a Full

Bench of this Court, *Ram Sahu v. Gowro Ratho* 1921 44 Mad 55 it appears to me to decide the whole question. The sale in question was for a sum of Rs. 40 and was effected by an unregistered deed of sale and delivery of possession. The learned Judges, Beaman and Macleod, JJ., differed on the question whether the document could be adduced in evidence to show what was the character of the possession, Beaman, J., holding against this view and Macleod, J., in favour of it.

3. The answer depended upon the construction to be placed upon Section 4, T.P. Act, which provides that Sections 54(2) and (3) and 107 of the Act are to be read as supplemental to the Registration Act. I need say no more here than that our Full Bench has ruled that Macleod, J.'s, view was correct, and that the result is that a document of this description is not rendered inadmissible by Section 49, Registration Act. If it is admissible, it is then for consideration what effect may be given to it. Being unregistered it is of course inoperative as a sale deed, but may it not be used to prove the oral agreement between the parties which, together with delivery, is sufficient to effect a sale? As I read the Bombay decision, both the learned Judges were of opinion that, once the question of admissibility was at rest, it would have this effect, and the sale so made would be valid. It is said that a contrary view has been taken by Srinivasa Ayyangar and Anantakrishna Ayyar, JJ., in *Kuppuswami v. Chinnaswami* 1928 Mad 546. The former learned Judge does indeed say:

The expression "sale by delivery of property" should properly be construed only as referring to and comprising a case where the parties agree that the transaction of sale should be effected by delivery of property and only in that way and cannot possibly be construed so as to include a case where the parties agree to reduce to the form of a document the terms of the sale. The moment the parties for some reason consider that it is not sufficient to effect the transaction of sale by mere delivery of property, but require that as evidence of such a transaction there should be a deed or document, the transaction can scarcely be correctly described as one effected by mere delivery of property.

4. The expression "mere delivery of property" does not, of course, find a place in Section 54; and with respect I am unable to see why, if the property is such as may be sold by delivery, it is any the less so sold because the parties, upon agreeing to the sale, unnecessarily have recourse to the execution of a document. Nor am I able to understand why the incontestable proof afforded by such a document of an agreement between the parties may not be accepted as such. It is true that, in the case of a lease, Section 107 speaks of an "oral agreement," but this only means, I take it, that if the parties are shown to be *ad idem*, no writing is necessary. However, the decision of the case cited above really proceeded, I think upon a different footing, that the plaintiff had set up a new case which could not be allowed. A Bench of the Patna High Court has held in *Keshwar Mahton v. Sheonandan Mahton* 1929 122 IC 533 that where there is an unregistered sale deed followed by possession of land sold for less than Rs. 100, title will pass:

The defendants' title in this case is not based upon the unregistered sale deeds, which are used only as evidence of the transaction and of the contract between the parties evidencing the terms upon which the properties were conveyed to the defendants by delivery of possession.

5. For these reasons, I conclude that the lease for fasli 1320 was valid. This objection also therefore fails. The next point also relates to items 1 to 3. It is urged that the sale of these items took place after the ijaradar's lease, for that fasli had expired, so that he was not, so far as that lease went, a land holder," within the meaning of Section 111 of the Act, when the sale was held. One answer to this objection might be based upon the circumstance that a new lease was granted with effect from the expiry of the old one, and that it would be an unreasonably narrow construction of the Act to draw an impassable line between the land holder under the old lease and the land holder under the new. But the argument may, I think, be repelled upon grounds which are perhaps more acceptable to the legal theorist. The cognate question of the jurisdiction of a revenue Court to try a suit for rent due to a land holder, even though the plaintiff had ceased to occupy that position at the date of his plaint, was decided in the affirmative by a Full Bench in Venkata Lakshamma Garu v. Achi Reddi 1921 44 Mad 433 Sadasiva Ayyar, J., expressing the view that the definition of "land holder" was wide enough to include a bare assignee of an arrear of rent from owner. So here, by renewing the lease and leaving the collection of arrears under the former lease in the leasee's hands, the owner constituted him landholder for this purpose, and as landholder he was competent to avail himself of the power of sale under the Act.

6. The only remaining point relates to the extent of item 7 which passed under the rent sale. The District Munsif (para. 29 of his judgment) has found that the entire area of 11 mahs and 98 kulis was sold, and that the smaller area of 4 mahs and 86 kulis given in the delivery account "(Ex. 10) and some other documents is a mistake. The learned District Judge (para. 7 of his finding) has, as I read his observations, agreed with this view. The finding is one of fact, and is therefore final. The result is that the appellants have failed upon all the points. I dismiss the second appeal with costs of respondents 1, 2 and 6 to include the costs of the proceedings on remand.

Burn, J.

7. This is an appeal from the decision of Curgenvin, J., in Second Appeal No. 35 of 1929. The facts need not be stated again. The points taken on behalf of the appellants are four in number. The first is based upon Section 6, Sub-section 6, Madras Estates Land Act. By that it is provided that

A person holding land as an ijaradar or farmer of the rent shall not, while so holding, acquire otherwise than by inheritance or devise a right of occupancy in any land comprised in the ijara or farm.

8. It is not disputed that when these holdings were brought to sale for arrears of

rent the land holder was an ijaradar and that he bought them in for want of bidders. The argument is that at such a sale of the holdings under the provisions of the Madras Estates Land Act there is nothing for the landholder to purchase except the occupancy right of the tenant. Since Section 6, Sub-section 6 forbids an ijaradar to acquire a right of occupancy it is contended that the sales were void. We agree with Curgenven, J., that this argument is not well founded. There is no doubt that an ijaradar is a land holder for the purpose of the Madras Estates Land Act and Section 130 expressly provides that

a land holder who has brought to sale a ryot's holding or part thereof for an arrear may bid for or purchase the holding or a part thereof.

9. We do not accept the contention that Section 130 is a general provision to which Section 6, Sub-section 6 is an exception. We do not see any necessary conflict between these two provisions. It is quite true that u/s 6, Sub-section 6, an ijaradar cannot purchase a right of occupancy in any land compromised in his ijara. But the simple answer to this is that in the present case the ijaradar has never pretended to purchase the occupancy right. What he purchased is the holding which is the sum total of the ryot's interests in the land. By Section 8(1) of the Act it is provided that when

the entire interests of the land-holder and the occupancy right in any land in the holding become united by transfer, succession or otherwise in the same person, such person shall have no right to hold the land as a ryot, but shall hold it as a land-holder.

10. This means that in such a case the land-holder does not own the occupancy right in the land but nevertheless when he lets the land again to a ryot that ryot acquires an occupancy right by operation of law. As Curgenven, J., has put it, when an ijaradar purchases the land as he might do under the provisions of Section 130 what happens is that the defaulting tenant loses his holding, in which he held an occupancy right while the ijaradar acquires the holding but without acquiring the occupancy right.

11. We see no reason to differ from the view of the learned Judge on this point. The second point is that a lessee cannot bring the holdings to sale after the expiry of his lease. This is concerned with items 1, 2 and 3 of the disputed lands. It is based upon the fact that the ijaradar held a lease for a single fasli (1320) and that the proceedings by which he purchased items 1, 2 and 3 in the sale were held after the expiry of fasli (1320). This point is sufficiently met in our opinion by the fact that the ijaradar continued to be a landholder after the close of fasli 1320 for a further period under an-other lease, the validity of which is not questioned. There is no doubt whatever "that at the time when the sales were held the ijaradar was a landholder within the meaning of the Act. And we are not prepared to hold that merely because the lease for the fasli in which the arrears accrued had expired he was therefore debarred from bringing the holdings to sale. On this point also we can find no reason to disagree with the decision of

Curgenven, J. The third point also relates to item 1, 2 and 3 and is based upon the fact that the ijaradar's lease for fasli 1320 was an unregistered document. It is contended that the ijaradar was not in law a lessee at all since his lease deed, Ex. 40 was unregistered. We do not see any force in this contention. Ex. 40 was a lease for one year only and therefore, was not in our opinion necessarily registrable. This contention was as a matter of fact not raised in the plaint at all. It was raised only in the argument before the learned District Munsif. That it is a wholly academic contention is proved by the fact that the plaintiffs' father who was a ryot in Fasli 1320 admitted that he had taken a patta from defendant 9 in 1910 and 1911. Since the plaintiffs' predecessor-in-title accepted a patta from defendant 9 it was not open to them to contend that defendant 9 was not a landholder. In any case even if Ex. 40 were Considered to be a document required by law to be registered, we agree with the view of Curgenven, J., that it was admissible in evidence to prove the nature of the transaction between defendant 9 and his lessor. There was no dispute about the fact of delivery, and the existence of Ex. 40 could we think certainly be taken as evidence of an oral agreement in pursuance of which delivery was made. This point also therefore, fails.

12. The fourth and the last point is with regard to the extent of item 7 and we agree with the learned Judge that this was a mere question of fact and not a point of law. There was no question raised in the plaint with regard to the extent of item 7, the plaintiff had no case with regard to it until he saw the defendants' documents when he found that in the sale certificate the extent was given as 4 mahs and 86 kulis whereas the real extent of item 7 is 11 mahs and 98 kulis. The learned District Judge treated this as a mere mistake and Curgenven, J., treated it in the same way and we agree with them. There is no point of law connected with this item. The result is that the Letters Patent appeal fails and is dismissed with costs.