

(1935) 10 MAD CK 0030
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:

Madras Estates Land Act, 1908 — Section 6(6)

Citation : (1936) ILR (Mad) 779 : (1936) 43 LW 486 : (1936) 70 MLJ 146

Hon'ble Judges : Burn, J

Bench : Division Bench

Judgement

Burn, J.—This is an appeal from the decision of Curgenvén, J. in Section A. No. 35 of 1929. The facts need not be stated again. The points

taken on behalf of the appellants are four in number.

2. The first is based upon Section 6 Sub-section 6 of the 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"". It is not disputed that when these holdings were brought to sale for arrears of rent the landholder 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 land holder 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 Curgenvén, 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 I purchase the holding or a part thereof". 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 comprised 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 ryot in any land in the holding have 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". 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". We see no reason to differ from the view of the learned Judge on this point.

3. 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 another 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.

4. The third point also relates to items 1, 2 and 3 and is based upon the fact that the ijaradar"s lease for fasli 1320 was by an unregistered

document. It is contended that the ijaradar was not in law a lessee at all since his lease-deed, Ex. XL was unregistered. We do not see any force in

this contention.

5. Ex. XL 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 the ninth defendant in 1910 and 1911. Since

the plaintiffs" predecessor-in-title accepted a patta from the ninth defendant it was not open to them to contend that the ninth defendant was not a

landholder. In any case even if Ex. XL were considered to be a document required by law to be registered we agree with the view of Curgenvén,

J., that it was admissible in evidence to prove the nature of the transaction between the ninth defendant and his lessor. There was no dispute about

the fact of delivery and the existence of Ex. XL could, we think, certainly be taken as evidence of an oral agreement in pursuance of which delivery

was made. This point also therefore fails.

6. The fourth and 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" document 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 Curgenvén, J., treated it in the same way and we agree with

them. There is no point of law connected with this item.

7. The result is that the Letters Patent Appeal fails and is dismissed with costs.