

(1929) 07 MAD CK 0027
In the Madras High Court

Muthu Vira Reddi Rami Reddi and Others	APPELLANT
Vs	
Mayandi Venkatesa Mudali, Receiver and Others	RESPONDENT

Date of Decision : 29-07-1929

Acts Referred:

Madras Estates Land Act, 1908 — Section 26(3)

Citation : AIR 1930 Mad 67 : 120 Ind. Cas. 563

Hon'ble Judges : Waller, J;Anantakrishna Aiyar, J

Bench : Division Bench

Judgement

1. Second Appeal No. 348 of 1925: The defendant is the appellant in this second appeal. The Receiver of Melappudi village sued for enforcement of pattah on the defendant, a ryot of the village. There was the usual dispute between the parties as to what the proper terms of pattah should be. The defendant's plea was that one Subbaraya Pillai, who, it was alleged, was owner of the suit village agreed with the defendant to commute the rents into a fixed money rent permanently and once for all, and issued pattah in Fasli 1328 embodying the rates agreed upon. The Special Deputy Collector of Chandra-giri Division who tried the Summary suit upheld the contention of the defendant and came to the conclusion that the proper rates of rent were the cash rates and that the commutation was bona fide, and binding on the plaintiff. He accordingly directed that the pattah should be amended by insertion of the cash rates as contended by the defendant.

2. On plaintiff's appeal the learned District Judge of Chittoor disagreed with the findings of the first Court and held that the rates in the tendered pattah were the proper rates, and he directed the defendant to accept the tendered pattah and execute a muchilika in exchange with similar terms.

3. The defendant has preferred the second appeal and on his behalf it was first contended that the appeal to the lower Appellate Court filed by the Receiver was incompetent. To appreciate the contention, it is necessary to state that the Rajah of Karvetnagar had filed a suit to recover possession of the suit village among

others, that in the appeal preferred by him to the High Court against the decree of the Subordinate Judge of North Arcot dismissing the suit, the High Court appointed a Receiver in respect of the suit village, and that on appeal preferred by Subbaraya Pillai and others to the Privy Council against the decree of the High Court passed in favour of the Rajah of Karvet pagar. the Privy Council on 21st May, 1922 see 68 Ind. Cas. 172.--[Ed.] reversed the decision of the High Court and dismissed the Rajah's suit on the ground that the suit was barred by the Law of Limitation.

4. The appeal to the lower Appellate Court was presented by the Receiver on 12th June, 1922. The appellant contends that as soon as the Privy Council dismissed the suit on 21st May, 1922, the receivership came to an end and that the Receiver had no locus standi to prefer the appeal on 12th June, 1922. We are unable to accept the contention. The Receiver, had not been discharged by the Court which appointed him, time for preferring the appeal would expire, before the High Court which appointed the Receiver could be moved to pass orders on the re-opening of the High Court in July, 1922, and in the circumstances we think that the Receiver's appeal could not be said to be incompetent, as contended by the appellant. We accordingly overrule this objection.

5. The next objection raised by the appellant was that Subbaraya Pillai was the owner of the suit village and that the commutation arrangement made by him with the ryot was bona fide and binding on the plaintiff and that the proper rates of rent are the cash rates agreed to between Subbaraya Pillai and the ryot. The respondent in answer to this contention relied on Section 26, Sub-section (3) of the Madras Estates Land Act, under which no rate of rent at which land may have been granted by a landholder shall be binding upon the person entitled to the rent after the lifetime of the land-holder, if such rate is lower than the lawful rate payable by the ryot, before the date of the grant upon the land. The finding of the lower Appellate Court is that the new rates fixed by Subbaraya Pillai are lower than the rates payable by the ryot before. As the present case is not sought to be brought within the exception contained in Sub-section (1) of the section, it is clear, having regard to the admitted fact that Subbaraya Pillai died before the Fasli in respect of which the present suit was brought, that the rates of rent agreed to, by Subbaraya Pillai, would not be binding upon the person entitled to the rent after the death of Subbaraya Pillai. It was, however, argued by the learned Advocate on behalf of the appellant that it could not be said that the Receiver was "a person entitled to the rent" within the meaning of the sub-section. Having regard to the definition of "landholder" in Section 3 Clause 5 of the Estates Land Act, and having regard to the fact that the Court granted permission to the Receiver, under Order XL, Rule (1) (d) of the CPC to file these suits, and also dismissed the application subsequently filed by the ryots to cancel the order granting the said permission for the institution of these suits, we think that the plaintiff--the Receiver--comes within the provisions of Sub-section 3 of Section 26 of the Estates Land Act. The decision in Swaminatha Odayar v. Sundaram Aiyar 60 Ind. Cas. 18 : 44 M. 274 : 12 L.W. 555 : (1920) M.W.N.

703 : 28 M.L.T. 276 : 39 M.L.J. 711 relied on by the appellant, is distinguishable, as it turned on the wordings of Section 46 of the Estates Land Act, Sub-section 5 of which specifically provides that sums payable under that section for the acquisition of occupancy ryots shall be paid to the land-holder who is the owner of the estate and any application or proceeding under the section shall be made only to, or against such land-holder. The Court accordingly held that the application by a non-occupancy ryot u/s 46 of the Act could be made only to the "owner" of the estate and not the Receiver in charge of the estate. The word "owner" does not occur in Section 26 which is the section with which we are here concerned.

6. On the merits, the lower Appellate Court held that Subbaraya Pillai was not the sole proprietor of the village that he was only one of the legal representatives of the deceased Saravana Pillai and that the other legal representatives did not join Subbaraya Pillai in the act of commutation of rents relied on by the ryots. It also held that Subbaraya Pillai was in needy circumstances at the time that the new rates fixed by him fell short of the old rates and that "there was no evidence as to the circumstances under which a lower set of rates was charged by Subbaraya Pillai" and further that "the grounds on which the so-called commutation was made were not really tenable and that they were hardly real."

7. We think that the learned District Judge's findings being findings of fact, should be accepted by us in second appeal.

8. We hold that u/s 26 (3) of the Estates Land Act the rates fixed by Sub-baraya Pillai are not binding on the Receiver, who represents the proprietor of the village.

9. We accordingly dismiss the second appeal with costs. Second Appeals Nos. 349 to 381 of 1925 follow.

10. We fix the Pleader's fee payable to the respondents in these Second Appeals at the consolidated amount of Rs. 250 and direct that the same be apportioned equally among the appellants in those appeals. Rs. 100 out of the costs to go to the 1st respondent and Rs. 150 to the other respondents.

11. These second appeals came on for hearing having been set down to be spoken to on the question of costs and the Court made the following

ORDER

12. The above order has to be modified as the 1st respondent is a party for only one of the appeals. He will get Rs. 35 and the other respondents Rs. 211-8-0.