(1929) 07 MAD CK 0013

In the Madras High Court

Muthuvira Reddi Rami Reddi and Others APPELLANT

Vs

Mayandi Venkatesa Mudali, Receiver RESPONDENT

Date of Decision : 29-07-1929

Acts Referred:

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

Citation : (1929) ILR (Mad) 967 : (1929) 30 LW 713 : (1929) 57 MLJ 668

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 the

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 Chandragiri 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 an 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 Karvetnagar, the Privy Council on 21st

May, 1922, 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 and time for

preferring the appeal w6uld expire before the High Court which appointed the Receiver could be moved to pass orders on the reopening 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 Subba-raya 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 landholder, 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 40, Rule 1(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 Vs. S. Sundaram Iyer, 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 rights shall be paid to the landholder who is the owner of the Estate, and any

application or proceeding under the section shall be made only to or against such landholder. 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 to 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 Sara-vana 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 Subbaraya Pillai are not binding on the Receiver, who represents the

proprietor of the village.

9. We accordingly dismiss the Second Appeal with costs.

10. Second Appeals Nos. 349 to 381 of 1925 follow.

11. 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.

12. These second appeals coming on for hearing, this day, having been set down to be spoken to, on the question of costs, the Court made the

following.

ORDER

13. The above order has to be modified, as the 1st repondent is a party for only one of the appeals. He will get Rs. 35 and the other repondents

Rs. 211-8-0.