
(1925) 04 MAD CK 0028
In the Madras High Court

Nallakakkan Ambalam

APPELLANT

Vs

Sri Kallalagar Devasthanam

RESPONDENT

Date of Decision : 24-04-1925

Acts Referred:

Madras Estates Land Act, 1908 — Section 46

Citation : AIR 1926 Mad 156 : (1925) 22 LW 622 : (1925) 49 MLJ 628

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The first point urged in this second appeal is that the District Judge was not justified in finding that the land in dispute was old

waste on the ground that the defendant Devasthanam did not raise the question specifically in the written statement. No doubt the written statement

does not raise the question but there is evidence on record to justify the finding of the learned District Judge and this being a question of fact I am

bound by the finding. Even though the point was not specifically raised in the written statement, in the pleading or in issues, yet both the parties

seem to have adduced evidence as regards that and the matter was evidently argued, before the learned Judge and he came to the conclusion that

the land was old waste. That being so I do not think the plaintiff has been prejudiced by the finding of the Judge.

2. The next point urged by Mr. Ramaswami Aiyar is that the plaintiff acquired occupancy right by reason of Section 46 of the Estates Land Act.

His contention is that one Sundararama Sastri was the trustee at the time and he took a Nuzzar of Rs. 175 and granted the land to the plaintiff with

occupancy right. There is nothing specific in the evidence to show that Sundararama Sastri gave occupancy right. Granting for the sake of argument

that he did intend to give occupancy right to the plaintiff, the question is whether he had the right to dispose of the Devasthanam land in a manner

prejudicial to the interests of the Devasthanam. Sundararama Sastri happened to be the Acting Manager on account of the suspension of the

Manager one Anantakrishna Naidu. Anantakrishna Naidu filed a suit contesting the validity of the suspension order and the suspension of

Anantakrishna Naidu was held to be illegal by the Civil Courts. During the pendency of the proceedings in the Civil Court, Sundararama Sastri

placed the plaintiff in possession of the plaint land. That he received a Nuzzar is not seriously disputed and though the defendant does not admit

that proper pattahs were tendered, yet there is the fact that some pattahs, Ex. A series, were tendered to the plaintiff. But the real question is

whether Sundararama Sastri had the right to grant occupancy right over the Devasthanam lands in favour of the plaintiff. u/s 46 the landlord could

confer occupancy right in respect of non-ryoti land on receiving 2 1 2 times the rent. But Clause 5 of Section 46 says : "" The sums payable under

this section for the acquisition of the occupancy right shall be paid to the landholder who is the owner of the estate or part thereof and any

application or proceeding under this section shall be made only to or against such landholder."" Though the term "landholder" may, for certain

purposes, include Sundararama Sastri who was collecting the rents and who was recognised by the Collector and the Board, yet in order to enable

the ryot to get occupancy right u/s 46 the act must be the act of the landholder who is also the owner of the estate. Under the definition of the term

" landholder" one need not be the owner of the estate in order to be landholder, for a person authorised to collect rents of the whole or portion of

the estate by virtue of any transfer from the owner is landholder within the meaning of the term "landholder" used in Section 3. But there are certain

things which can be done only by the landholder who is also the owner. Section 200 is an example of this. I therefore hold that though

Sundararama Sastri was landholder for certain purposes he was not the owner of the estate and he could not therefore have given occupancy right

to the plaintiff. The argument of Mr. Ramaswami Aiyar is that somebody must represent the Devasthanam and at that time Sundararama Sastri

represented the Devasthanam and therefore he must be taken, to be the owner. The contention overlooks the fact that Sundararama Sastri could

not properly represent the Devasthanam as its Manager for the time being, as the suspension of Anantakrishna Naidu was held to be invalid by the

Civil Courts. When there is the proper manager or trustee, a person who is appointed improperly in his place cannot be the real trustee and cannot

represent the estate. That being so, the act of Sundararama Sastri in favour of the plaintiff could not confer any right as against the Devasthanam. In

the result the appeal is dismissed with costs.