

(1925) 07 MAD CK 0031
In the Madras High Court

Nanchappa Koundan and Others

APPELLANT

Vs

Vetesseri Tarwad Karnavan and Another

RESPONDENT

Date of Decision : 27-07-1925

Acts Referred:

Citation : AIR 1927 Mad 47 : 97 Ind. Cas. 453

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—The question at issue in these appeals is, what is the amount of rent payable by the defendants. They held on a permanent lease

and the question for consideration is, what are the terms of that lease. The District Judge has held that under their contract defendants have

undertaken to pay rent for the new land assessed to revenue and he has held that the words ""lands assessed to revenue"" do not necessarily mean

lands permanently assessed in accordance with the Settlement Register but include lands which have been once assessed to revenue by the

Government, and that it is immaterial that assessment is not shown in the Government Settlement Register. It is clear from the terms of the

document that the payment of rent to the plaintiff is to commence as soon as the lands are assessed. The lease is an improvement lease under

which the lands are to be gradually brought under cultivation and until they are so brought under cultivation nothing would be payable either to the

Government or to the jenmi.

2. It is contended for the appellant that the meaning of ""assessed"" must be permanently assessed, although, as a matter of fact, there is no

permanent assessment in the Malabar District, but it is contended that it must be

permanent in so far as the Government registers the assessment due, and for this interpretation reliance is placed upon the judgment of this Court in A. S. No. 206 of 1914, etc. There are expressions used in that judgment which support the appellant's contention such as the one that "payment was to be made when Government assessed on a permanent basis", but in construing these words we have to consider the whole of the judgment and it appears that in using these words "permanent basis" the learned Judges intended to differentiate between that and assessment on what they call "fugitive cultivation" which is cultivation of a very temporary nature and does not continue for more than one or two years at the most. That this is the distinction that they draw, I think, is clear from the fact that they held that the rent is leviable on unoccupied dry land whether it is cultivated as wet land or not.

3. In the present case, the learned District Judge has found as a fact that those lands for which rent is claimed were actually brought under wet

cultivation and paid rent for a period of 22 years, and accordingly he has held that all such lands come within the meaning of the clause in the lease,

under which the tenant agrees to pay, from the year in which Government revenue is paid, rent at the rate of 3/4 of a para for one para seed area.

It is suggested that this clause means that the rent is payable only in the years when revenue is actually paid to Government, but inasmuch as the

rent is made payable from the year in which such revenue is first assessed this contention cannot be sustained. The District Judge is right in holding

that the rent becomes due from the first time that the land is assessed. The fact that at the Settlement the Government has omitted to include some

of these lands in the assessed area cannot affect the liability of the tenants which had been incurred before the Settlement came into force On the

construction of this document, I agree with the learned District Judge and consequently the appellant's contention fails.

4. The argument was mainly based on the documents in S. A. No. 137 of 1922 and it was conceded that so far as S. A. Nos. 138 and 139 are

concerned the documents were not so favourable to the appellant's contention and consequently if the argument in S. A. No. 137 does not prevail,

S. A. Nos. 138 and 139 must also fail. A similar remark applied to S. A. Nos. 140 to 143.

5. A memorandum of objections is filed in S. A. No. 137 in which objection is taken to the remark of the District Judge in para. 3 of his judgment,

namely:

Defendants are not liable to pay janmabhogam in respect of occupied dry lands, supposing that they have never been put under wet crop.

6. It is possible that the document construed in that particular case would support the learned Judge's conclusion but, as this finding is unnecessary

for the decision of the appeals, I think that it must be treated entirely as an obiter dictum, and I do not express any opinion as to whether it is right

or not.

S. A. Nos. 1409 to 1412 of 1921.

7. These appeals have been filed by the landlord in respect of interest. The lower appellate Court has disallowed interest on the ground that there is

no stipulation for interest in the document and it does not come within the terms of the interest Act. It is contended for the second plaintiff

(appellant) that in this the learned Judge is wrong. So far as the question whether the amount sought to be recovered is a sum certain recoverable

at a certain time within the meaning of the Interest Act is concerned, I think that the District Judge is right.

8. The amount which has to be recovered as rent varies with other circumstances which are necessary to be proved, such as the extent of the land

cultivated in any particular year and also the amount of the assessment levied by Government in that year, and again no definite period is fixed for

the payment of rent. Although there is a clause that in default of payment within a proper time certain events are to happen, the document itself

does not state what is the proper time and I think the authorities on this point are such that it cannot be deemed to fix a certain time within the

meaning of the Act.

9. The appellant, however, relies on three cases of this Court Govindan Nair v. Cheral [1915] 38 Mad. 464 Muhammad Abdul Gaffur Rowthar v.

Hamida Beevi Ammal [1919] 42 Mad. 661 and Arunachalam Chettiar v. Baja of Ramnad A. I. R. 1922 Mad. 55. So far as the first of these is

concerned, I think it is unnecessary to consider it at length, for in that case there was a certain sum fixed as rent and the case was held to come

within the terms of the Interest Act. In the latter cases they treated the matter

on a different ground and in both these last two cases, the judgment is largely based on the decision of the Privy Council in *Miller v. Barlow* [1871] 3 P. C. 733 where it was held, that the High Courts in India having the powers both of a Court of equity and a Court of law they could award interest in cases which are not provided for by the Interest Act.

10. It is argued for the respondents in these appeals that the decision in *Rajah of Pittapur v. Ballapragada Pallamaraju* A. I. R. 1921 Mad. 76

holds a contrary view and that in all cases of contract the provisions of the Interest Act must be strictly applied and, therefore, unless the cases

come within the ambit of that Act, no interest can be awarded. The learned Judges in this latter cases make no reference to the case of *Miller v.*

Barlow [1871] 3 P. C. 733 although one of them was a party to *Muhammad Abdul Gaffur Rowthar v. Hamida Beevi Ammal* [1919] 42 Mad.

661. The decision in *Muhammad Abdul Gaffur Rowthar v. Hamida Beevi Ammal* [1919] 42 Mad. 661 is referred to and distinguished on the

ground that it was not a case of contract and reference is made to the prior decisions which state that such interest is awardable under the Act in

the case of a contract and no interest can be awarded otherwise.

11. In none of these cases is *Miller v. Barlow* [1871] 3 P. C. 733 considered with reference to Courts in India and as that case does not purport

to refer only to cases not relating to contract and as it has never been suggested that this is a Court of equity only, in cases not relating to contract,

it is impossible to say that equitable principles should be applied in cases not relating to contract, and should not be applied in cases of contract. A

question of equity must apply to all cases. This, I think, is the basis of the later decisions of this Court and consequently I feel that I should follow

them. In the present case there is no doubt that the plaintiffs have been kept out of their money for a very unreasonable period and on equitable

principles they are entitled to some compensation. Therefore, I allow interest at 6 per cent. until the date of payment into Court. In the result S. A.

Nos. 137 to 143 are dismissed with costs and S. A. Nos. 1409 to 1412 are allowed with costs.

12. So far as the Memorandum of Objections in S. A. No. 137 is concerned there will be no order as to costs. The question of interest has been

raised in S. A. Nos. 138 and 139 by way of Memorandum of Objections which are

accordingly allowed in this respect but I pass no order as to

costs. Upon perusing the judgment of this Court dated the 22nd April 1925, and the order dated the 8th October 1924, on C. M. P. Nos. 2516

to 2519 in S. A. Nos. 1409 to 1412 of 1921, declaring 5th respondent therein, i. e., 4th appellant in S. A. Nos. 137 to 143 of 1922 and 4th

petitioner in C. R. P. No. 121 of 1922, a major and discharging his guardian the Court made the following

ORDER

13. Fourth appellant in S. A. No. 137 of 1922, etc. (S. A. Nos. 137 to 143 of 1922) and in the connected proceedings (C. R. P. No. 121 of 1922) also. The judgment (above) will be amended by adding (the figure) 137 before ""138 and 139"" in the last sentence.