

(1922) 11 MAD CK 0003
In the Madras High Court

Para Dekkan alias Peria Pachai and Another	APPELLANT
Vs	
Khan Bahadur T. Ameeruddin Sahib	RESPONDENT

Date of Decision : 13-11-1922

Acts Referred:

Citation : AIR 1923 Mad 306 : 72 Ind. Cas. 131 : (1923) 17 LW 169

Hon'ble Judges : Walter Schwabe, C.J.;Wallace, J

Bench : Division Bench

Judgement

Walter Schwabe, C.J.—This is an appeal from the judgment of the District Judge of North Arcot who reversed the decision of the Sub-

Collector of Tirupattur, Mr. V.P. Row. The suit was by raiyats to compel the mittadar under whom they held the land to grant them patta at a rent

of Rs. 12-1-3 per annum. The defendant's claim was that they were only entitled to have the land at a rent of Rs. 25-7-10.

2. It appeared on the evidence that, so far as could be traced back, the amount actually paid has always been Rs. 12-1-3 and not Rs. 25-7-10.

But it also appeared from certain documents produced that the Rs. 12-1-3 was arrived at by a deduction from the sum of Rs. 25-7-10. The

mittadar set up that the reason of this was that the land had originally been held by a karnam or a gomashta, and that in consideration of services

rendered in those capacities the full rent of Rs. 25-7-10 had been reduced to Rs. 12-1-3. The mittadar wholly failed to prove any such case. In

fact it was established quite clearly in the evidence that this lower amount of rent had been paid by persons, who were not in the position either of

karnams or gumashlahs who enjoyed the land. Another reason for the payment of lower amount was given in the evidence on behalf of the

plaintiffs. Their account was that a considerable part of the land owing to its saline nature, was not under cultivation and never had been under

cultivation and that throughout the terms of the occupancy were that, although the full amount of rent for the whole land at the local current rate for

cultivable lands would be Rs. 25-7-10, so long as the part remained, owing to its saline nature, un-cultivable, the amount payable should be Rs.

12-1-3. The learned Sub-Collector who heard the case and heard the evidence accepted that view and, in my judgment, he was perfectly right to

accept it on the evidence, that he received, of the value and the condition of the land and the way in which this lower rate has been received for a

very long time.

3. It was then contended on behalf of the mitiadar that in certain documents apparently of a recent date, the word used for describing the

deduction was "Riyuyat" and that this word means, and can only mean, a ""voluntary remission by the land-holder or by Government."" As to this,

the learned Sub-Collector did not attach any weight to the use of the word. He said that the exact meaning was not beyond doubt and that to

translate it as ""remission"" was to prejudice its nature, for remission is prima facie a matter of grace and indulgence. He said he would prefer to

translate it as " deduction". When the case came before the District Judge, he based his whole judgment on the meaning of this word, and in order

to ascertain the meaning of it he turned to Maclene's Manual of Administration in Madras, whether word is somewhat differently spelt, and stated

to be derived from Arabic "rau" meaning "to abstain" and is then translated ""favour, specially a remission of the Government claim."" The District

Judge read that to mean a voluntary remission. Having so satisfied himself that it was the only meaning of the word, he decided the case

accordingly. A little further investigation into other recognised works of reference might have resulted in his considering that the point was not quite

so clear, for in the ""Manual of North Arcot District"" the word is merely translated as ""an abatement of assessment"", and in Wilson, the words used

are capable of meaning an ""abatment"" either in the sense of voluntary or compulsory remission of rent. In any view, there is no help to be gained in

the proper decision of this case from the use of the word "Riyayat".

4. There were then two other words which appeared in the document of 1885,

the words being "istamulia varayil" (meaning ""so long as it pleases"") and they are put with the words "riyayat" against the figure showing the whole amount of remission allowed in the case of this village. The only evidence as to this document is that of the writer of part of it. It was an account of the rents of this village written in Telugu and a summary of these was written in Tamil by the witness, D.W. No. 2, who says that he wrote it while he was sixteen years old and was learning with his father to be a kamam, the father at that time being the kamam in charge. That he or his father had any knowledge of these remissions or deductions or that they ever considered whether any and which of these were voluntary or involuntary does not appear and I agree with the view taken by the Sub-Collector that the use of those words in that particular document does not carry the matter any further.

5. It was then argued before 11s and our attention has been called to cases in support of this argument that u/s 26(1) and (3) of the Madras

Estates Land Act, it was not open to the plaintiffs in (this case to prove the agreement they alleged, namely, that the rent should be so much so long

as the land remained saline and so much more if it became cultivable. I do not think that the cases cited to, us, Karuppa Goundan v. Narajana

Chettiar 45 Ind. Cas. 406 : (1918) M.W.N. 188 : 24 M.L.T. 35 and Palani v. Paramasiva 18 M. 479 : 4 Ind. Dec. 1046 decide any thing of the

kind. Nor do I think that that is the proper interpretation of the section in the Madras Estates Land Act of 1908. Section 26 is dealing with cases

where there has been an actual prior rent greater than the rent claimed by the tenant and does not deal with a case where a raiyat is setting up that

ab initio the rent payable was the lower rent and setting up that the terms of tenancy always had been the lower rent but to be increased to the

higher rent in certain eventualities. In my judgment, it makes no difference that in various documents it is described as a higher rent reduced to a

lower amount, those eventualities not having happened.

6. A point was taken under the limitation clause of the Madras Estates Land Act but the point was not raised by the pleadings or in the Court of

first instance. An attempt was made to raise the point before the District Judge and the District Judge, in my judgment, perfectly rightly refused to

go into it, for he pointed out that if it had been raised, the plaint might perhaps

have been amended, or the suit withdrawn at once and a fresh suit filed then and there. Now, I do not wish unnecessarily to discuss to what extent this Court ought to listen to points under the Limitation Act not taken in the Court below. We must strongly be inclined not to do so, but where a point of limitation of this nature, which is a mere objection to the suit then before the Court, does not in the least affect the rights of the parties, because it is admitted in this case that if the point had been taken and succeeded a fresh suit could have been brought the next day, I should hesitate very much before I should allow the point to be taken, because the presumption that I should make is this : that for some reason of which we have no knowledge, it has been definitely decided by the appellant in the first instance not to raise the point knowing either that a good answer might be made to it if taken to knowing that if he takes it and succeeds he will have to face a fresh suit the next day with the same result but that additional costs will have to be incurred by both parties. In these circumstances, I do not think it is a proper case for us to allow the raising of such points at this stage.

7. It follows from the view that we take of this case that if the saline portion of"" 1 the land becomes cultivable it will be open to the mittadar to take proper steps to have the rent increased.

8. For these reasons, in my judgment, the judgment of the Sub-Collector was right and the judgment of the District Judge was wrong. This appeal must be allowed with costs.

Wallace, J.

9. I agree.

10. I only wish to say as regards the interpretation of Section 26(3) that it does not seem to me that ""the lawful rate payable"" is necessarily or invariably the faisal rate fixed by Government, but may be a contract rate on which the occupancy is based. This is a matter which has to be proved, and in this case, on the evidence, it appears to me that the lawful rate payable was the contract rate, viz., Rs. 12-1-3, a permanent deduction from what would have been the rent if the whole land was cultivable having been allowed because it was saline and so long as it remained so.

11. I, therefore, agree the patta is a proper patta in terms of Exhibit B and the plaintiff's suit must be allowed.