(1949) 10 MAD CK 0029

In the Madras High Court

Penjuri Govindappa APPELLANT

Vs

D- Chayyappa RESPONDENT

Date of Decision : 04-10-1949

Acts Referred:
Madras Estates Land Act, 1908 — Section 77

Citation : (1949) 2 MLJ 770

Hon'ble Judges : Viswanatha Sastri, J

Bench : Division Bench

Judgement

Viswanatha Sastri, J.—These two second appeals arise out of two suits instituted by a landlord, one for rent and the other for acceptance of

patta by the ryot. S.S. No. 1 of 1941, from which S. A. No. 1474 of 1946 arises was a suit by the landholder, an Inamdar, for recovery of rent

for fasli 1349 instituted u/s 77 of the Madras Estates Land Act. S.S. No. 3 of 1943 from which S. A. No. 2113 arises was a suit instituted by the

same landholder against the same ryot as in S. S. No. 1 of 1941 for enforecement of acceptance of patta by the ryot. There was a second appeal

to this Court (S.A. No. 1033 of 1943) from S. S. No. 1 of 1941 in which it was held by Byers, J., that the landholder was not entitled to charge

water cess in addition to the rent payable by the ryot, because the water that was used by the ryot was not the landholder''s water but that of the

Government. S. S. No. 1 of 1941 was remanded to the trial Court by the learned Judge for determining the dry rate of rent payable on the lands in

question. After the remand, the Revenue Divisional Officer who tried the suit and the learned District Judge who he^rd the appeal have held that

the dry rate payable on the lands was at the rate of Re. 1-13-10 per acre for all the items except item 11 for which the rent was fixed at Re. 0-8-6 per acre. In S. S. No. 3 of 1943 which was a suit for acceptance of patta, the same rate of rent as had been determined in S. S. No. 1 of 1941

was held to be the proper rate of rent to be specified in the patta which had to be accepted by the ryot. The ryot has now preferred these two

second appeals and the main objection of Mr. Suryanarayana, the learned advocate for the appellant, is that the Courts below erred in fixing the

rate of rent payable at a sum of Re. 1-13-10 per acre. The contention of the ryot in the Courts below was that he was liable to pay only at the rate

of four annas per acre for cist and seven pies per acre in respect of land cess and the rest of the claim of the landholder was illegal and untenable.

2. It appears from the evidence of the appellant himself that for a period of 20 years preceding fasli 1349 he had been paying rent to the landholder

at the rate now decreed by the two Courts. Consequently, u/s 27 of the Madras Estates Land Act, a presumption arises that he holds at the same

rate and under the same conditions as he did in the preceding revenue year. Of course, it is open to the ryot to show that the rent charged or paid

for the preceding year was not a fair or an equitable rent or that it included several items of illegal levy which the landholder was not entitled to

collect from the ryot. u/s 28 of the Madras* Estates Land Act, whether it is a suit for rent or a suit to enforce acceptance of patta, the rent or rate

of rent for the time being lawfully payable by a ryot shall be presumed to be fair and equitable until the. contrary is shown. It is no doubt true that in

or about the year 1862 the neighbouring rate of dry assessment was about four annas per acre, but this is by no means, decisive of the rights of

parties. Where for about SO years even according to the admission of the defendant, a rent higher than what was paid in 1861 has been paid, it

cannot be said that the rent so paid during these latter years was not fair rent within the meaning of Section 28 of the Madras Estates Land Act.

Mr. Suryanarayana argues that even u/s 28, the rent or rate of rent claimed by the landholder must be shown to be lawfully payable before the

presumption in Section 28 can "" be applied to the case. He contends that the component parts of the claim made by the landlord shows that except

a sum of Re. 0-4-7, the rest of the items claimed by him cannot be legally claimed as rent within the meaning of Section 3 (11) of the Act. Among

the items objected to by the appellant are a sum of Re. 1-0-0 per acre charged as mera, a sum of Re. 0-8-0 per acre charged as fishing rent and a sum of Re. 0-1-3 per acre charged for the amenities provided in the shape of a thrashing floor and other aids to good husbandry. It is contended

that mera is a sum payable as a perquisite to hereditary village officers and that the ryot is not bound to pay the whole or any part of this sum

especially when it is not paid as consideration for the beneficial use and occupation of the land. There is no doubt considerable force in the

argument, but Section 3, Clause (n) includes in the category of rent any sum lawfully payable to a landholder by a ryot as such in addition to the

rent due according to law or usage having the force of law. It has been held in Sree Sankarachari Swamiar v. Varada Pillai (1903) I L.R. 27 Mad.

332 at 336 that mera of this kind can be lawfully claimed by a landholder from a ryot along with the rent u/s 4 of the old Rent Recovery Act. It is

no doubt pointed out by Stone, J., in Basudeva Doss Vs. Sree Sree Sree Chandra Chudamani Raja Harischand Jagaddeva Garu, that there is a

difference between the language employed in Section 4 of the old Rent Recovery Act and Section 3, Clause (n) of Madras Act I of 1908. I do

not, however, consider that there is any substantial difference between the language of the two provisions and it is significant that Pandrang Row,

J., who was also a party to the decision in Basudeva Doss Vs. Sree Sree Sree Chandra Chudamani Raja Harischand Jagaddeva Garu, did not

express his concurrence with this part of the reasoning of Stone, J. The payment having been made for a series of years and being connected with

the agricultural economy of the village, it cannot be said that it is in the nature of an illegal levy.

3. The next item that is objected to is a sum of Re. 0-8-0 per acre payable as fishery rent. '' u/s 3, Clause (1), Sub-clause (b) of the Estates Land

Act, fishery rents are also deemed to be rent and realisable as such by the landholder. There is the evidence of the plaintiff that the ryots enjoy

fishery rights in the village. Therefore, no objection can be taken to the inclusion of this sum in the claim for rent. As regards the sum of Re. o-1-3

charged for the provision of amenities like thrashing floor, etc., there is the authority of this Court in Vadamalai Thiru-vanatha Sevuga Pandia

Thevar v. Sankaramoorthi Naidu (1918) 36 M.L.J. 109 : ILR 42 Mad 197 that the cess has to be paid by the ryot who owing to the want of a

thrashing floor belonging to him uses the thrashing floor provided by the landlord. If, however, the tenant has a thrashing floor of his own which he is using, the cess is not leviable. In the present case, there is no evidence that the ryot has got a thrashing floor of his own which he is using and

therefore does not stand in need of the thrashing floor provided by the landlord. For these reasons, I hold that the rate of Re. 1-13-10 per acre

fixed as rent payable by the ryot to the landholder in these two suits fixed for item 11 for which a rate of Re. 0-8-6 has been fixed must be

accepted.

4. The result is that these two second appeals fail and must be dismissed with costs.

5. There is a memorandum of cross-objections in S. A. No. 2113 which relates to the water cess payable by the landholder and which is sought to

be recovered from the ryot. There being no evidence that the landholder has paid any amount as water cess, the claim is unsustainable. The

memorandum of objections is therefore dismissed with costs.