
(1949) 10 MAD CK 0044

In the Madras High Court

Case No : Second Appeal No's. 1474 and 2113 of 1946

Penujuri Govindappa

APPELLANT

Vs

D. Chayappa

RESPONDENT

Date of Decision : 04-10-1949

Acts Referred:

Madras Estates Land Act, 1908 — Section 27, 28, 3, 3(11)

Citation : AIR 1950 Mad 277

Hon'ble Judges : Viswanatha Sastri, J

Bench : Single Bench

Advocate : Suryanarayana Rao, for the Appellant; K. Srinivasa Rao, for the Respondent

Final Decision : Dismissed

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 1911 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, 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 enforcement 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 heard the appeal have held that the

dry rate payable on the lands was at the rate of Rs. 1-13-10 per acre for all the items except item 11 for which the rent was fixed at Rs. 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 Rs. 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 7 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, 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,, 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 20 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, 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 Rs. 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 per acre charged as mera, a sum of annas eight per acre charged as fishing rent and a sum of one anna three pies 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(11) 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*, 27 Mad. 332 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 *Basudevadas v. Raja Harischand*, (1936) 69 M. L. J. 917 : A. I. R. 1936 Mad. 126, that there is a difference between the language employed in Section 4 of the old Rent Recovery Act and Section 3, clause (11) of Madras Act, I [1] 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 *Basudevadas v. Raja Harischand*, (1936) 69 M. L. J. 917 : A. I. R. 1936 Mad. 126, 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 annas eight per acre payable as fishery rent. u/s 3 clause (1) Sub-clause (b), 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 one anna three pies charged for the provision of amenities like thrashing floor etc., there is the authority of this Court in *Vadamalai Thiruva-ntha Sevuga Pandia Thevar*

v. Sankaramoorthi Naidu, 42 Mad. 197 : A. I. R. 1919 Mad. 535, 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

docs not stand in need of the thrashing floor provided by the landlord. For these reasons, I hold that the rate of Rs. 1/13/10 per acre fixed as rent

payable by the ryot to the landholder in these two suits fixed for all the items except item 11 for which a rate of Rs. 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. 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.