

(1940) 09 MAD CK 0022
In the Madras High Court

Ponnappalli Venkatappayya and Another	APPELLANT
Vs	
Pushadapu Ramaswami and Others	RESPONDENT

Date of Decision : 30-09-1940

Acts Referred:

Citation : AIR 1941 Mad 36 : (1941) ILR (Mad) 212 : (1940) 52 LW 876 : (1940) 2 MLJ 984

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—These appeals can conveniently be disposed of in one judgment. They arise out of two suits, O.S. No.

209 of 1922 and O.S. No. 212 of 1922 of the Court of the District Munsif of Repalle. The appellants were the plaintiffs. They asked for the

ejectment of the respondents from lands which the Respondents had held as their tenants, notices to quit having been served upon them. It was the

case of the appellants that the notices terminated all right of occupancy. The respondents strongly contested this contention. Their case was that the

lands constituted part of an estate within the meaning of the Madras Estates Land Act, 1908. The District Munsif rejected the respondents' plea

and decreed the suits. The District Munsif's judgment was concurred in by the Subordinate Judge of Tenali and by this Court in second appeals.

The respondents, however, carried the matter to the Privy Council and the Judicial Committee reversed the decisions of this Court and of the

Courts below on the ground that the lands did form part of an estate within the meaning of the Act. Consequently the appellants were only entitled

to the melwaram right, the kudiwaram right being vested in the respondents.

2. As the result of the decree passed by the District Munsif, the appellants went into possession on the 3rd July, 1923, but by reason of the

decision of the Privy Council the respondents were entitled to resume possession, which they did soon after judgment had been pronounced by

Judicial Committee. Notwithstanding this the respondents did not apply for restitution until 1936. Having won in the Privy Council they were

entitled under the provisions of Section 144 of the CPC to be placed in the position which they would have occupied but for the decrees passed

by the District Munsif. Therefore they were entitled to recover from the appellants what they had lost by being deprived of the kudiwaram right.

They claimed, however, that they were entitled to the whole of the mesne profits of the lands from the 30th September, 1922, the date on which

the suits were decreed, to the date in 1931 when they regained possession, without any deduction in respect of rent. In the course of the hearing of

the restitution application before the District Munsif the respondents abandoned their contention that they were entitled to restitution as from the

30th September, 1922, and accepted the 3rd July, 1923, the date on which the appellants went into possession, as being the proper starting point,

as it obviously was. The District Munsif held that the period expired in 1929 when the respondents regained possession and not in 1931, but he

upheld their main contention that they were entitled to the whole of the profits of the lands without any deduction for rent. In this connection the

District Munsif relied on *Lakshmi Narasimha Rao v. Seetharamaswami* (1916) 3 L.E. 405. The appellants appealed to the Subordinate Judge of

Tenati, who also felt himself bound by "that decision and therefore concurred in the judgment of the District Munsif. The present appeals are from

the decrees of the Subordinate Court. They have been placed before a Full Bench as King, J., before whom the appeals came in the first instance

was of the opinion that the decision in *Lakshmi Narasimha Rao v. Seetharamaswami* (1916) 3 L.W. 405 required re-consideration.

3. In *Lakshmi Narasimha Rao v. Seetharamaswami* (1916) 3 L.W. 405, Sadasiva Aiyar and Moore, JJ., held in similar circumstances that the

tenants who had been dispossessed as the result of proceedings taken by the landholder were entitled to the mesne profits of the lands for the

period for which they were out of possession, without any deduction of rent. The basis of this decision was that the expression "mesne profits"

meant those profits which the person in wrongful possession of such property actually received. The learned Judges, however, overlooked the real

position. The tenants were only entitled to restitution and therefore they are merely entitled to be put in the position which they would have been in

had they been enjoying the kudiwaram right throughout the period of dispossession. The value of the kudiwaram right is represented by the net

value of the produce, less the portion which must be delivered to the landholder as the holder of the melwaram right. It is not a matter of the

awarding of mesne profits in the sense ordinarily meant. As already indicated the tenants are merely entitled to recover the value of that part of the

produce of the land which would have been theirs had they been allowed to remain in possession. We consider that the decision in Lakshmi

Narasimha Rao v. Seetharamaswami (1916) 3 L.W. 405 is clearly wrong and should be overruled. It may be added that the correct view was

taken by another Bench of this Court (Oldfield and Venkatasubba Rao, JJ.) in Golkonda Ramachendrudu and Others Vs. Inuganti Venkata

Narasimha Rowgaru and Others, . A similar decision was given by the Calcutta High Court in P.C. Tagore v. Mathura Kanta Das 41 C.W.N.

1015. It follows that the appellants are entitled to succeed in their appeals.

4. The respondents have filed memoranda of cross-objections. They raise two questions. The first one is whether the Subordinate Judge has

correctly calculated the yield from the lands. The second one is whether the respondents are entitled to more interest than was granted to them.

There is no substance in the first contention. The Subordinate Judge after a detailed examination of the evidence came to the conclusion that the

District Munsif was right in the figures at which, he arrived. As there was evidence to support the finding of the Subordinate Judge it is conclusive.

The first point therefore goes, but there is substance in the second contention. The Subordinate Judge refused to allow the respondents interest on

the amounts which they were entitled to by way of restitution after the date of the institution of the applications. Here he was wrong. It is true that

the respondents were guilty of delay, but having succeeded they were entitled to an order requiring the appellants to pay interest from the date of

the order to the date, of payment or realization.

5. The two cases will be remanded to the trial Court with the direction to

calculate in the light of this judgment the sums to which the respondents are entitled and they will receive interest at the Court rate on the amounts due from the date of the, order of the District Munsif on the restitution applications to the date of payment or realization.

6. The appellants have filed applications for the scaling down of the debts under the Madras Agriculturists' Relief Act. These applications will also be remanded to the trial Court for disposal.

7. The parties will pay and receive proportionate costs throughout.