

(1953) 01 MAD CK 0027

In the Madras High Court

Case No : Second Appeal No"s. 949 and 950 of 1949

Pyda China Venkatramanna and Another

APPELLANT

Vs

Gummididala Gopala Rao Garu and Another

RESPONDENT

Date of Decision : 29-01-1953

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(15), 3(16), 4

Citation : AIR 1953 Mad 976 : (1953) 2 MLJ 247

Hon'ble Judges : Satyanarayana Rao, J

Bench : Single Bench

Advocate : P. Somasundaram, for the Appellant; D. Narasaraju and K.B. Krishnamurthy, for the Respondent

Final Decision : Allowed

Judgement

Satyanarayana Rao, J.—These two second appeals arise out of suits instituted by the land-holder u/s 77, Madras Estates Land Act for recovery of rents from the defendants. The item of property in respect of which rent was claimed was in the occupation of the defendants for a long time. There was an earlier litigation between the zamindar and the tenant in respect of this land and other items in O. S. No. 49 of 1906 on the file of the Peddapur District Munsif's Court. In that suit it was pleaded by the predecessors of the present defendants that this land was in their occupation for over the statutory period and that they were enjoying it without payment of rent of the zamindar. The zamindar attempted to claim this land in that suit as part of a grant which he made to one Bhavayyammaraogaru. The finding was that this land was not included in the zamindari jeroyti lands granted under the gift deed of Bhavayyammaraogaru. It was also further found that there was no evidence to show that the defendants or any of them were let into possession of the lands either by Bhavayyamma or her agents on her behalf or even by the plaintiff in that action. It was, therefore, found that the defendants' possession was adverse to the plaintiff and having continued for over 12 years without payment of rent to the landholder the plaintiff's claim was

barred by limitation. This decision was affirmed on appeal.

2. In the present suit the contention raised by the defendants was that the issue in the prior litigation would operate as "res judicata" and that he would be entitled to hold the land rent free. The finding, no doubt, in that suit would operate as "res judicata" between the parties and the case must, therefore, proceed on the footing that the occupation of the land by this defendant was unauthorised and that he was in continuous possession of the land without payment of rent to the landholder. But this finding is not sufficient to enable the defendant to escape from his liability to pay rent to the landholder. If the Madras Estates Land Act stood without any amendment in 1934 the defendant would have escaped from his liability because as the law then stood, he was not a "ryot" who held the land for the landholder for purposes of agriculture and therefore he could not be made liable to pay rent in respect of ryoti land in his occupation u/s 4, Madras Estates Land Act. The position, however, was altered by the Amending Act of 1934 (Act 8 of 1934) which introduced an explanation to Sub-clause 15 of S. 3, "Definition of ryot". That explanation is "A person who has occupied ryoti land for a continuous period of 12 years shall be deemed to be a ryot for all the purposes of this Act." Under this explanation, a person who is in continuous possession of a ryoti land for a period of 12 years is deemed to be a ryot even if the occupation was adverse to the landholder. If he became a ryot by virtue of the explanation his liability to pay rent in respect of the land in his possession is undoubted because Section 4 of the Act declares

"Subject to the provisions of the Act a landholder is entitled to collect rent in respect of all ryoti land in *"the occupation of a ryot."* (Italics (here into " ") are mine).

The right, therefore, of the landholder to collect rent cannot be extinguished by non-payment of rent for a period of 12 years. It is a recurring right and so long as the ordinary period of limitation for institution of a suit for recovery of rent for a particular year had not expired, he is entitled to recover the rent for that year from the ryot. The defendant, therefore, under the Act as now amended is liable to pay rent to the landholder notwithstanding the finding in the earlier litigation that he was holding the land adversely to the landholder without payment of rent.

3. It was contended by Mr. Narasaraju, learned counsel, for the respondent that I should presume a grant and that a rent free grant in favour of the defendant as the defendant was for a long time keeping the land in his possession without paying any rent to the landholder. This contention is intended to enable the debtor to invoke the provisions in Section 26 (3), Madras Estates Land Act, but it is difficult to accept the position for the reason that in the earlier litigation no such plea was raised and it was definitely found that his title was founded upon adverse possession and not upon possession whose origin could not be traced. The further attempt of the learned counsel for the respondent was to contend that the land in the possession of the defendant for continuous period of over 12 years even before the Madras Estates Land Act came into force excluded it from

the category of "ryoti land" or at any rate should not be treated as part of the permanently settled estate. Both these contentions proceed, in my opinion on the erroneous view of the provisions of the Act and the effect of the permanent settlement. The division of the lands under the Estates Land Act before the Amendment of 1934 was broadly into private land and ryoti land. Ryoti land was again subdivided into ryoti land which was old waste and which was not old waste. Under the present Act after the Amendment of 1934, the distinction between ryoti land which was old waste and which was not old waste is abolished and there exists only the broad division of ryoti land and private land. Section 3(16) excludes from the category of ryoti land certain items of communal lands & lands granted on service tenure. The suit land not being private land and not being land falling within Section 3(16) of the Act must necessarily be deemed to be ryoti land and the presumption is also in favour of so holding. Merely because the defendant kept the land without payment of rent to the zamindar it does not thereby cease to be a part of a permanently settled estate and it continues to be liable for payment of peishkush along with other lands comprised in the estate. It is not possible under law to exclude or to add to the land in a permanently settled estate by act of parties. The land, therefore, continues to be part of a permanently settled estate and is undoubtedly ryoti land. The defendant who is in occupation of the land continuously for more than 12 years became a ryot, by virtue of Explanation to Section 3 (15) of the Act and therefore became liable to pay rent to the landholder u/s 4 of the Act. The Courts below have, not determined the rate of rent and, therefore, it is not possible to grant a decree in favour of the plaintiff for rent. The suit must, therefore, be remanded to the trial Court for determination of other issues, in the case. The second appeals are allowed. The decrees of the Courts below are vacated and the suits are remanded to the trial Court for fixing the rate of rent. The appellant is entitled to his costs throughout and the further costs will be provided for by the trial Court. No leave.