
(1987) 09 MAD CK 0025
In the Madras High Court

Rajalakshmi Ammal	Vs	APPELLANT
Duraiswamy Gounder and Others		RESPONDENT

Date of Decision : 09-09-1987

Acts Referred:

Citation : (1988) 2 MLJ 457

Hon'ble Judges : S.A. Kadar, J

Bench : Division Bench

Judgement

S.A. Kadar, J.—These two appeals arise out of the judgment and decree of the court of the Subordinate Judge of Udumalpet in O.S.No.

339 of 1978. The plaintiff is the appellant in A.S.No. 653 of 1980 while the defendants are the appellants in A.S.No. 75 of 1984.

2. This is a suit for recovery of arrears of rent from the defendants for the periods 1974-75, 1975-76 and 1976-77 on the following averments.

The schedule properties of a total extent of Ac.6-94 in S.Nos. 84 and 85-A of Vadaboothinatham village in Udumalpet taluk belong to the plaintiff

by virtue of a deed of settlement executed in her favour on 2-12-1959 by the plaintiffs brother Muthusami Nadar. One Krishnaswami Gounder,

father of defendants 1 to 7 and husband of the 8th defendant, was the tenant of the scheduled properties on an annual rent of Rs. 1,000. The said

Krishnaswami died in August, 1973 and the defendants being his heirs have become the statutory tenants. The scheduled lands were leased out for

raising paddy crop, but, the said Krishnaswamy began to cultivate sugarcane and the defendants also have continued to cultivate sugarcane crops.

The plaintiff has been demanding equitable rent as the defendants were deriving a large income utterly disproportionate to the rent agreed upon. As

the defendants failed to pay fair and equitable rent or reasonable compensation, the plaintiff filed a suit in O.S.No. 157 of 1976 on the file of the court below demanding equitable rent or reasonable compensation for the year 1973-74 for raising sugarcane crops. The learned Subordinate Judge decreed the suit for Rs. 8,341.20 as the equitable rent for the year 1973-74. Both, the parties preferred appeals before this Court in A.S.Nos. 709 of 1978 and 392 of 1979 (the said appeals have since been disposed of and this Court has fixed the reasonable compensation at Rs. 13,265 for the year 1973-74).

3. This suit is laid for recovery of equitable rent or reasonable compensation for the years 1974-75, 1975-76 and 1976-77. According to the plaintiff, the defendants raised sugarcane crops in Ac.5.80 during the period 1974-75 and claims equitable rent or reasonable compensation at Rs. 20,610 at the then market value of the jaggery. For the year 1975-76 the defendants are said to have raised sugarcane in 4 acres and the equitable rent claimed by the plaintiff is Rs. 14,376. For the year 1976-77 the defendants are alleged to have raised sugarcane crops in Ac.6-65 and the plaintiff has claimed the equitable rent at Rs. 15,734. The total amount claimed by the plaintiff comes to Rs. 52,720. The claim is not barred as the rent for these two years is payable at the end of August, 1975, August, 1976 and August, 1977 respectively, and the suit is laid before the end of August, 1978.

4. The claim is resisted by the defendants. It is admitted that the annual rent agreed upon is Rs. 1,1.00. But, it is denied that the plaintiff was demanding equitable rent in view of the fact that sugarcane crops were raised. The late Krishnaswami Gounder was always raising sugarcane crops and paddy as he liked as the land was not leased for the sale purpose of raising paddy only. It is not denied that in O.S.No. 157 of 1976 a decree has been passed against the defendants for payment of Rs. 8,341.20 as equitable rent for 1973-74. The defendants have preferred appeals (as already pointed out the appeals have since been disposed of). It is further submitted by the defendants that they are raising sugarcane crops in the suit land every year but not in the entire extent. The Sugarcane crop is raised only in a portion of the lands. They denied and disputed the plaintiff's claim that sugarcane crops were raised in Ac.5-60 in 1974-75, 4 acres

in 1975-76 nad Ac.6-65 in 1976-77. According to the defendants, sugarcane crops were raised only in Ac.2-70 in 1974-75 and claimed that they had incurred a net loss of Rs. 1,025 during that year.

In 1975-76 they raised sugarcane only in an extent of Ac.2-58 and incurred a less of Rs. 3,200 that year. In 1976-77 sugarcane crops were raised only in Ac.2-58 and the less was Rs. 2,380. They therefore contended that they are not liable to pay any amount to the plaintiff. It was also contended that the claim for the year 1974-75 and 1975-76 is barred by time as the rent is payable on the first of August and to suit laid on 23-8-1978 is out of time. The claim in respect of 1976-77 alone is not barred. The defendants also challenged the maintainability of the suit. They contended that the main crop raised is paddy and hence the plaintiff has to make a claim for fixation of fair rent under the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956. They also contended that in view of the recent Ordinance prohibiting the action for collection of rent, the suit is not maintainable.

5. On the above pleadings, the following issues have been framed for trial:

1. Whether the suit claim for the years 1974-75 and 1975-76 is barred by limitation?
2. What is the fair and equitable rent payable by the defendants in respect of the portion where sugarcane crops are raised for the years 1974-75, 1975-76 and 1976-77?
3. Whether the suit is not maintainable for the reasons stated in paras 15 and 17 of the written statement?
4. To what relief is the plaintiff entitled?

6. On issue No. 1 the learned Subordinate Judge held that no portion of the claim was barred by time. He found that the rent for every year is payable before the end of August and not on the first of August as claimed by the defendants and hence the suit filed on 23-8-1975 is not barred by time in respect of the claim for 1974-75 or 1975-76. Issue No. 3 was also found against the defendants and it was held that the plaintiffs are claiming only equitable rent or reasonable compensation and the suit is not barred either by virtue of the Tamil Nadu Act 24 of 1956 or the Ordinance prohibiting collection of arrears of rent. In respect of issue No. 2 the learned Subordinate Judge found that during the year 1974-75 the

defendants had raised sugarcane crops in Ac.5.80, that the total yield was 174 pothis at 30 pothis per acre, that the total income was Rs. 43,600

at Rs. 250 per pathi and after deducting the expense of Rs. 22,997 the net income was Rs. 19,603 and the plaintiff was entitled to 40% of the

same viz., Rs. 7,841 as equitable rent or reasonable compensation. For the year 1975-76 it was held that the defendants raised sugarcane crops in

4 acres, that the total yield was 120 pothis, that the total value of the jaggery was Rs. 30,000 and excluding the expense of Rs. 15,860 the net

income was Rs. 14,140 and the plaintiff was held entitled to 40% of the same viz. Rs. 5,658 as equitable rent or reasonable compensation. For the

year 1976-77 the learned Subordinate Judge found that the defendants raised sugarcane crops in Ac.2-58, that the total yield was 77.4 pothis and

the gross income was Rs. 19,350, the expense were Rs. 10,229.70 the net income was Rs. 9,120.30 and 40% of the same viz., Rs. 3,640 as

equitable rent payable to the plaintiff. In all the suit was decreed for Rs. 17,145. Aggrieved thereby the plaintiff has come in appeal in A.S.No. 653

of 1980 and the defendants have preferred cross-appeal in A.S.No. 75 of 1984.

7. The points that arise for consideration in these appeals are:

1. Whether the suit claiming equitable rent or reasonable compensation for raising sugarcane crops in the suit lands is maintainable in law?

2. To what amount of equitable rent or reasonable compensation is the plaintiff entitled?

3. Whether any portion of the suit claim is barred by time?

8. POINT 1:- There is no dispute about the jural relationship of the landlord and tenant between the plaintiff and the defendants. The defendants

are the tenants of the suit lands belonging to the plaintiff on an annual rental of Rs. 1,100 for raising the normal paddy crop; but the defendants have

been raising sugarcane crops and are refusing to pay any enhanced rent to the landlady. The plaintiff has, therefore, filed the suit claiming equitable

rent or reasonable compensation for raising sugarcane crops in the suit lands for the years 1974-75. 1975-76 and 1976-77 the maintainability of

which is the matter in issue.

9. The Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, hereinafter referred to as the Act, as it stood before the Amendment Act 17 of

1980 had no application when the land is used for raising sugarcane crops.

Section 15 which lays down the exemption runs thus:

Nothing in this Act shall apply to any land during the period when such land is used for raising as main crops sugarcane, plantain or betel vines or

any crop which does not give any yield for a continuous period of two years or more from the time of cultivation or to any contract merely for

collection or harvesting of the produce of any kind.

This section has been amended by the Act 17 of 1980 deleting the word "sugarcane". Plantain or betel vines and other crops which do not give

any yield for a continuous period of two years or more are still outside the purview of the Act. As the suit claim is for periods prior to the

amendment no fair rent can be fixed under the provisions of the Act for the said periods and hence the suit.

10. It does not admit of any doubt that sugarcane crops yield larger income and the point is, whether the tenant, who raised sugarcane crops in the

land leased out for raising paddy crops is entitled to unjustly enrich himself and deny the benefit to the landlord. The point came up directly for

consideration before Ramaprasada Rao, J., (as he then was) in *Annavi Moopan and Another Vs. Munia Moopan*, . That was also a case where

the tenant raised sugarcane crops in the lands leased out for raising the normal paddy crops. The learned judge, after referring to various authorities

on the matter, observed thus:

It is an accepted cannon of justice, equity and good conscience that no one can enjoy other's properties to the detriment of that other. Courts are

zealous to checkmate such notorious aggrandisement and improper negation of the normal benefits to which the owner of a property would be

entitled from his tenant. We also find illustration of this equitable principle in Section 70 of the Contract Act as well.

On the principles laid down by the learned authors as above, in a case where the tenancy does not expressly can note the rent payable by the

tenant to the landlord, then the courts have jurisdiction, as in the United Kingdom, a jury has, to fix what is known as reasonable market rent for

the property and avoid unjust enrichment to the tenant. I have already stated that it would be the very negation of the rights of the landlord, if the

tenant were to continue in occupation of the holding and raise a main crop like sugarcane to the detriment of the landlord and without his authority,

and yet would refuse the lawful demand for payment of increased rent by the landlord as prevailing in the locality. Mr. Justice Natesan, in an unreported decision in C.R.P. 1894 of 1962 (Mds), had occasion to consider a very similar question, and was of the view that courts could in such circumstances consider what can be the fair rent for the land in question.

This decision of Ramaprasad Rao, J. (as he then was) has been followed by Raghavan, J. in Thangiah Naidu and Anr. v. Ulaganatha Pillai 1972

T.L.N J.371. The learned judge held that the fair rent can be fixed by the civil court when factually the crops covered by Section 15 of the Act

have been cultivated and that particular case pertained to the raising of plantain crops.

11. It may also be pointed out that the plaintiff has filed the suit against the self-same defendants claiming equitable rent or reasonable

compensation for raising sugarcane for the years 1973-74 in O.S.No. 157 of 1976 on the file of the court below. The suit has been decreed

awarding equitable rent or reasonable compensation to the plaintiff. Both the parties preferred appeals before this Court in A.S.No. 709 of 1978

and 392 of 1979. Venugopal, J., in his judgment dated 7-2-1983 has confirmed the decree of the court below granting equitable rent at the

average of 40% and 25% of the gross produce. As against this decision the plaintiff-landlady has preferred a Letters Patent Appeal claiming

equitable rent at 40% and the same is pending. The defendants have not preferred any appeal. The question of liability of the tenants to pay

equitable rent or reasonable compensation for raising sugarcane crops has become final and conclusive between the parties and it is no longer open

to the defendants to contend that they are liable to pay only the contract rent and not the equitable rent. The suit filed by the plaintiff is, therefore,

perfectly maintainable and the point is found against the defendants.

12. POINT 2:- the determination of equitable rent or reasonable compensation for raising sugarcane crops in the suit lands depends upon four

factors viz.,

(1) The extent of land cultivated with sugar cane crops;

(2) The normal yield of jaggery per acre;

(3) The landlord's share of the yield; and

(4) The price of jaggery.

Factors 1 and 4 are variable and I shall deal with them when dealing with the equitable rent or reasonable compensation payable for each of the

three years for which the claim is made in this suit. Factors 2 and 3 may be taken as static for these three years and I shall now determine the same.

13. The plaintiff has claimed that the normal yield will be 40 pothis of jaggery per acre of sugarcane cultivation and she relies on the earlier decision

between the plaintiff and the defendants in O.S.No. 157 of 1976 in respect of 1973-74. According to the defendants, the yield varied from 15 to

20 pothis per acre during these years. The learned Subordinate Judge has fixed the average yield at 30 pothis per acre. During the pendency of the

earlier suit a Commissioner has been appointed by the court, who has visited the suit lands and found sugarcane crops in Ac.2-70. He has worked

out the yield and found that the yield was only 25 pothis per acre. But, this report of the Commissioner has not been accepted by the learned

Subordinate Judge in the earlier suit and he has fixed the average yield at 40 pothis per acre. Both the parties have preferred appeals there against

before this Court in A.S.Nos. 709 of 1978 and 392 of 1979 and these appeals have since been disposed of and this Court has, by its judgment

dated 7-2-1983, confirmed the finding of the learned Subordinate judge in O.S.No. 157 of 1976 and held that the average yield was 40 pothis per

acre of sugarcane cultivation. The defendants have not preferred any further appeal there against. Hence the finding in the earlier suit between the

same parties that the average yield is 40 pothis of jaggery per acre has become final and conclusive between the parties. I therefore fix the average

yield of jaggery at 40 pothis per acre of sugarcane cultivation.

14. The plaintiff claims 40% of the gross income as her share of equitable rent or reasonable compensation. The learned Subordinate judge has

fixed her share at 40% of the net income i.e., after deducting the expenses from out of the gross income. It is this conclusion that is challenged by

the learned Counsel for the plaintiff as untenable. According to the learned Counsel for the plaintiff, the landlord's share has to be determined with

reference to the gross income and not with reference to the net income. That is also the principle laid down in the Act 24 of 1956 before and after

its amendment by the Act 17 of 1980. This court in the aforesaid appeals A.S.709 of 1978 and 392 of 1979 has also followed this principle that

the landlord's share has to be worked out of the gross produce and not the net produce and this conclusion has also become final between the

parties. I have, therefore, no hesitation in holding that the landlord's share must be worked out from out of the gross produce and not the net

produce and this conclusion has also become final between the parties. I have, therefore, no hesitation in holding that the landlord's share must be

worked out from out of the gross income and not the net income.

15. Then to the question of landlord's share of the gross income, this Court in the aforesaid appeals A.S.Nos. 709 of 1978 and 392 of 1979 has

fixed the landlord's share at the average between 40% of the gross income, which was the law in force under the Act before its amendment by the

Act 17 of 1980 and 25% of the gross produce as laid down by the Amendment Act 17 of 1980. The plaintiff has preferred a Letters Patent

Appeal against this portion of the judgment and the same is pending. No doubt, the provisions of the Act XXIV of 1956 as it stood prior to the

amendment under the Act 17 of 1980 was not applicable to the cultivation of sugarcane crops. But, the principle underlying the Act has to be kept

in mind in fixing equitable rent or reasonable compensation. Prior to the amendment of the Act XXIV of 1956 by Act 17 of 1980 the fair rent is

payable in respect of the crops other than the sugarcane, plantain or betel wines or any crop which does not give any yield for a continuous period

of two years or more was 40% of the gross produce. After the amendment introduced by Act 17 of 1980 under which sugarcane is removed from

the exemption, the fair rent is 25% of the gross produce for all crops including sugarcane (plantain, betel vines or any crop which does not give any

yield for a continuous period of two years are still outside the purview of the Act. The legislature has thus fixed the landlord's share at 25% of the

gross yield whether the crop raised is paddy or sugarcane. Hence, the same principle must apply for period prior to the introduction of this

amendment and the landlord's share must be fixed at 40% of the gross produce for sugarcane crops as was the case in respect of paddy and other

crops. In my view, therefore, the landlord is entitled to 40% of the gross produce of the sugarcane crops raised by the defendants.

16. For the year 1974-75, according to the plaintiff, the defendants raised sugarcane crops in Ac.5.80 out of Ac.6.94. The defendants have contended in their written statement, that they raised sugarcane crops only in Ac.2-70 and they rely upon Ex.E-4 report of the Commissioner appointed in the earlier suit in which he reported that he found sugarcane crops in Ac.2.70. The learned subordinate Judge has not accepted the Commissioner's report on the ground that by the time he visited the lands some crops might have been harvested. He had also relied on the fact that in the written statement filed in the earlier suit in O.S. No. 157 of 1976 the defendants have admitted that they had then raised sugarcane crops in an extent of Ac.5-00 i.e., for the period 1974-75. After seeing the commissioner's report they have come forward with the present case that they raised sugarcane crops only in Ac.2.70 as pointed out by the learned Subordinate Judge. Ex.A-2 is the adangal extract filed by the plaintiff which shows that cultivation of sugarcane crops has been done in Ac.5.80 in 1974-75. The learned Subordinate Judge has, therefore, rightly accepted the adangal extract and held that the defendants had raised sugarcane in Ac.5.80. The total yield will come to 232 pothis at 40 pothis per acre. Now to the price of jaggery during this period, according to the plaintiff, the jaggery was selling at Rs. 305 per pothi. The defendants contended that the then prevailing price was only Rs. 175 per pothi. The court below has fixed the price at Rs. 250 per pothi. Exe.B-1 to B-3 are the receipts produced by the defendants to show that jaggery was selling at Rs. 110 per bag in 1976, Rs. 122 per bag in 1974 and Rs. 113 per bag in 1975. One pathi consists of two bags and hence as per Exe.B-1 to B-3, the price was Rs. 220 per pothi in 1976, Rs. 244 per pothi in 1974 and Rs. 226 per pothi in 1975. The learned Subordinate Judge has rejected Exe.B-1 to B-3 on the ground that they do not relate to the suit properties. These are bills for purchase of jaggery which cannot be expected to show the lands from which this jaggery has been produced. Ex.A-7 in the communication from the Assistant Director of Statistics, Coimbatore under which one quintal of cane gur of the first sort (100 kg.) was sold at Rs. 246 in the months of August, 1975 during which the rent is payable for the year 1974-75. One pathi consists of 130 kg. and hence the value of one pathi works out at Rs. 319.80. The second sort was sold at Rs. 238-46 per quintal which works out at Rs. 307 per pathi. As there

are different sorts of jaggery we cannot rely on Ex.A-7 communication to fix the value of jaggery produced in the suit lands. Ex.B-1 to B-3 which

are vouchers for the sale of jaggery by the defendants is more reliable in my view and they can be safely taken for fixing the price of jaggery. Ex.B-

3 is dated 15-7-1975 which is relevant for the period 1974-75 as the rent is payable in the month of August 1975. As per Ex.B-3 the price of

jaggery per pothi which consists of two bags is Rs. 113 x 2 = Rs. 226. The value of 332 pothis comes to Rs. 52,432 and the plaintiff's share of

40% came to Rs. 20,972-80.1 therefore fix the value of the landlord's (Plaintiffs) share of jaggery for 1974-75 at Rs. 20972-80.

17. For the year 1975-76, according to the plaintiff, the defendants raised sugarcane crops in Ac.4-00 of land, the defendants would contend that

they raised sugarcane crops only in Ac.2-58. Ex. A-3 is the adangal extract which shows that the defendants have raised sugarcane in 4 acres. The

court below has rightly accepted ExA-3 and held that the defendants have raised sugarcane in 4 acres of land. The normal yield of jaggery will be

4 x 40 = 160 pothis. Ex.B-1 is the purchase bill of jaggery dated 22-5-1976 at Rs. 110 per bag, which works out at Rs. 220 per pothi. This is

relevant to period 1975-76 and may be accepted as the price of jaggery. The value of 160 pothis at Rs. 220 per pothi will come to Rs. 35,200/-.

The plaintiffs share of 40% will come to Rs. 14,080/-. I fix the plaintiffs share of produce for 1975-76 at Rs. 14,080.

18. For the year 1976-77, the plaintiff claims that the defendants had raised sugarcane crops in Ac.6.65 during 1976-77. The defendants' case is

that they raised sugarcane only in Ac.2-58. The learned Subordinate Judge has accepted the defendants' claim and held that sugarcane crop has

been raised only in Ac.2.58. In Ex.A-6 adangal Periya Karumbu is said to have been raised in Ac.6.65, but, as pointed out by the learned

Subordinate Judge, there are some corrections and Ex.A-6, cannot, therefore, be relied upon. The plaintiff herself has given a petition under Ex.B-

5 in 1977 before the Tahsildar wherein it is stated that the defendants have raised paddy crops in about 4 acres. The total extent of the land is only

Ac.6.94. If paddy had been raised in 4 acres, the balance available for raising sugarcane can only be Ac.2.95. Excluding the area of kalam, well

and shed, it is quite probable that the defendants have raised sugarcane crops only in Ac.2.58. The court below has rightly held that the sugarcane

crops have been raised only in Ac.2.58 and I agree with the same. The normal gross yield of the same in Ac.2-58 $\times 40 = 103.20$ pothis and there

is no purchase bills pertaining to this period. I am therefore inclined to accept the purchase bill for the immediately preceding period covered by

Ex.B-1 under which one bag has been sold at Rs. 110 i.e., Rs. 220 per pothi. The total value of jaggery will come to Rs. $103.20 \times 220 =$ Rs.

22,704 and the plaintiff's share of 40% will come to Rs. 9,081-60. The total value of the plaintiff's share in all the three years will come to Rs.

44,134-40.

19. POINT 3:- The plaintiff has claimed the equitable rent or reasonable compensation for three years viz., 1974-75, 1975-76 and 1976-77. The

sugarcane crop is raised from August of one year to the end of July of the next year, and according to the plaintiff, the rent is payable before the

31st August of the succeeding year. This is stated very clearly in para 8 of the plaint, which reads that the rent for three years is payable at the end

of August, 1975, August, 1976 and August, 1977. This statement in the plaint is not rebutted in the written statement. It is however claimed that

the rent is payable before the first of August and hence the claim for the year 1974-75 is barred as the suit is filed on 23-8-1978. But in view of

the clear statement made in the plaint which is not rebutted, I hold that the rent is payable for 1974-75 only before the end of August, 1975 and

the suit filed on 23-8-1978 is well in time. As the rent for 1975-76 is payable on or before 31-8-1976 and the rent for 1976-77 is payable on or

before 31-8-1977, the claim for these two years is undoubtedly in time.

20. It is then contended by the learned Counsel for the plaintiff that the scheduled-lands had been leased out for raising paddy crops; but, the

defendants have raised sugarcane crops and have thus diverted the lands to other purpose and hence Article 34 of the Limitation Act applies, that

the period of limitation is only two years when the diversion becomes known to the plaintiff, and the claim for 1974-75 and 1975-76 is therefore

barred by time. Article 84 runs thus:

Against one, having a right to When the perversion first

use the property for specific Two years becomes known to the person

purpose perverts it to other injured thereby.

purposes.

It may at once be pointed that this is not the plea put forward by the defendants in the written statement or in the court below. For the first time

they have raised this plea only in this Court and that too at the lime of arguments. They cannot be allowed to do so. Secondly the raising of

sugarcane crops in the lands leased out for raising paddy crops cannot amount to perversion within the meaning of Article 84 of the Limitation Act.

The lease is for raising agricultural produce and the mere change in the crop cannot amount to perversion. The perversion contemplated under

Article 84 arises where the tenant puts up any building in agricultural land and changes the character of the land into a non-agricultural one and

cases of like nature. I therefore held that Article 84 has no application.

21. In the result, the appeal in A.S.No. 653 of 1980 filed by the plaintiff is allowed in part, the judgment and decree of the court below are

modified and there will be a decree for Rs. 44,134-40, being the equitable rent or reasonable compensation payable by the defendants to the

plaintiff for years 1974-75, 1975-76 and 1976-77 with proportionate costs throughout. The appeal in A.S.No. 75 of 1984 filed by the defendants

fails and is dismissed. No costs.