
(1935) 11 MAD CK 0037
In the Madras High Court

Raju Goundan

APPELLANT

Vs

Kappu Goundan

RESPONDENT

Date of Decision : 21-11-1935

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(3)

Citation : 163 Ind. Cas. 463

Hon'ble Judges : Venkataramana Rao, J

Bench : Single Bench

Judgement

Venkataramana Rao, J.—The suit out of which this second appeal arises was instituted by the plaintiff for possession of the suit properties " on the ground that he purchased them from one Subba Reddi who purchased them at a rent sale. The suit lands are comprised in Morappathangal village which belongs to two Mokkassadars, Sundararaja Rao Saheb and Ramchandra Rao Saheb. They owned and passed the same in two undivided halves. From the evidence in the case it appears that these two mokkassadars were issuing separate pattas to the same tenant each for his undivided half, (vide the evidence of P. Ws Nos. 1 and 2). The patta mention the entire survey numbers which are owned by the two mokkassadars jointly and the amount of rent which the various survey numbers will have to bear and the total rent, and in the end, it is stated that the amount due in respect of the pattadar's half is Rs. 19-4-7. For arrears due to Sundararaja Rao Saheb as per the patta issued by him for Fasli 1331 the suit properties were brought to sale and were purchased on November 28, 1923, by one Subba Reddi. He conveyed the suit properties by a sale deed dated July 25, 1927, to the plaintiff. When he proceeded to take possession he was obstructed by defendants Nos. 1 and 2 who are the tenants of the suit land. They are the brothers of Muruga Goundan (since deceased), in whose name the patta was issued. The defendants impeach the rent sale as invalid on various grounds, namely, that there was no proper notice or publication, that the sale was not effected by both the mokkassadars and that in any event the sale could not convey more than the undivided moiety which belonged to Sundararaja Rao

Saheb and the plaintiff is not entitled to recover possession of the entire land.

2. The learned District Munsif who tried the suit held there was proper notice and publication but that under the rent sale only half the undivided share in the various items of the suit lands passed to the purchaser and the plaintiff is entitled to possession only of the undivided half. The learned Subordinate Judge reversed the decision holding that the entire lands must be deemed to have been sold and gave a decree in favour of the plaintiff.

3. It is contended in appeal that the rent sale was invalid on the ground that no notice was given by both the mukkassadars, nor was the property brought to sale at the instance of both the mukkassadars and in any event the undivided moiety only could have passed under the rent sale.

4. There can be no question that under the Estates Land Act if there is more than one landholder, all the joint landholders must concur in enforcing the rights or remedies provided under the Act. Therefore, the question arises, is it open to one of the joint landholders to bring the properties jointly owned by him or any portion thereof to sale u/s 111 or 112 of the Estates Land Act? In *Sreenivasa Varadachariar v. Swami Reddi* 23 M.L.J. 161 : 16 Ind. Cas. 458, it was held that though a joint owner is not entitled to sue for proportionate rent, if parties agree to accept and pay proportion at rent according to shares, there is nothing illegal in it and that an owner of 5 15/16th share in a shrotriem village was held entitled to tender a patta for his 5 1/8th share. This decision, therefore, seems to assume that it is open by agreement between the several joint holders and the ryot to apportion the rent payable to each landholder and that in respect of each landholder there can be tender of pattas and muchilikkas with reference to that share. If, therefore, there can be apportionment of rent and separate exchange of pattas and muchilikkas and they can be enforced in a Court of law, it stands to reason that all the other remedies should also be available. Is there anything in the Estates Land Act to prevent such a thing being done? "Holding" is defined in Section 3(3) of the Estates Land Act as a parcel or parcels of land held under a single patta or engagement in a single village provided that the land holders and ryots so agree in writing any portion of a holding as above defined shall be treated as a separate holding. Under a corresponding section of the Bengal Tenancy Act there was a conflict of opinion before the Act was amended recently as to whether the undivided share would form the subject of a holding. The reason assigned for the view that it could not be was that:

a parcel of land is a land defined by metes and bounds and consequently a share in a parcel of land cannot be deemed to be a parcel of land within the meaning of the definition of the term "holding."

5. See per Mookerjee, J. in *Parbati Debi v. Mathura Nath Banerji* 40 C. 29 15 Ind. Cas. 453 : 16 C.W.N. 877 : 16 C.L.J. 9. Banerji, J. took the same view in *Baidya Nath De Sarkar v. Ilim* 25 C. 917

raiya holding, which from the very definition of a raiyat in Section 5, Sub-

section 2 of the Bengal Tenancy Act, means land occupied by a raiyat for the purpose of cultivation, can be ordinarily held only in its entirety, and the cultivation of an undivided fractional share of a parcel of land will be ordinarily meaningless.

6. The reason assigned for the view that it could be was stated by Petheram C.J. thus (at p. 924 Pages of 25 C.[Ed.]):

The owner of an undivided fractional share in a parcel of land is the owner of that share in every part of it, and a tenant in possession of such an undivided share is the holder of an undivided share in every part of it, and is, I think, properly described as the holder of the parcel, because he is holder of an undivided share in every part of it.

7. That conflict is now set at rest by amending the section by-the inclusion of "the undivided share." (Section 3, Clause 5 of Bengal Tenancy Act). It may be mentioned that the view that the undivided share cannot be a part of a holding, and that it cannot be the subject of a separate tenancy did not prevail in this High Court. In *Purushottamma v. Raju* 11 M. 11, one of two joint shrotriendars was held entitled to enforce the acceptance of a patta and the execution of a muchilikka and a suit for arrears of rent in respect of his half share. Their Lordships Muthuswamy Ayyar and Brandt, J.J., observe:

It is urged by the appellant's Pleader and admitted for the respondent that for Fasli 1288 the respondent accepted a patta from the appellant, and executed a muchilikka in respect of the half share of the shrotriem claimed in the present suit. This being so, there was a distinct contract and holding in respect of that share.

8. This is apparently the view taken in *Sreenivasa Varadachariar v. Swami Reddi* 23 M.L.J. 161 : 16 Ind. Cas. 458. In *Sri Raja Simhadu Appa Rao v. Prattipathi Ramayya* 29 M. 29, ubramania Ayyar, Officiating C.J. was inclined to the view that a tenant-in common may have ejectment as against the lessee to the extent of his undivided interest following *Cutting v. Derby* (1776) Ir. W. BI. 1075 96 E.R. 633, and *Doe de Whayman v. Chaplain* 3 Taunton 120 : 12 R.R. 615 : 128 E.R. 49, a view which found acceptance in *Korapalu v. Narayana* 25 M.L.J. 315 : 20 Ind. Cas. 930 : (1913) M.W.N. 655 : (1913)38 M. 445. In *Doe de Whayman v. Chaplain* 3 Taunton 120 : 12 R.R. 615 : 128 E.R. 49, it was held where in a lease by four joint tenants three of them were entitled to recover a three-fourth share from the demise on giving a notice to quit and Mansfield, J. observed:

Although the title as well as the estate be undivided, yet each hath so much as his portion is; and when they all join in a feoffment each conveys only, his part. So, if all join in a demise, in law, it is the demise by each of his portion. If so, and if each demises only his own share, it cannot be said, that he cannot put an end to that demise, whether his companion join with him or not.

9. This is under the general law. The question is whether there is anything in the

Estates Land Act which is against this view. Under the Estates Land Act there cannot be an ejectment of a part of the holding unless perhaps it is a separate holding, though there can be sale of a part. As I understand Section 3, Clause 3 of the Estates Land Act, it is permissible by agreement between joint landholders and a ryot to treat the undivided share of a landholder as a separate holding and it would be a portion of the holding within the meaning of the proviso. It may be noticed that there is no provision corresponding to the proviso to Section 3, Clause 3, in the Bengal Tenancy Act, before the amendment and there was further a distinct prohibition u/s 188 of the Bengal Tenancy Act against one of joint landlords functioning separately. In the present case the entire lands must be deemed to constitute one holding under two joint mukkassadars and by agreement with reference to each undivided half share there is a separate holding.

10. Under Sections 111 and 112 it is open to a landholder to bring the holding or a part thereof to sale for arrears of rent. The undivided moiety will be a part of the holding and by virtue of the patta issued in this case a separate holding having been constituted in respect of a part of the holding it would be open to the landholder to bring that separate holding to sale but he would not be entitled to bring the entire lands to sale. What passed under the rent sale must be deemed to have been only the undivided moiety mentioned in the patta which was issued by Sundararaja Rao Saheb.

11. It is contended on behalf of the respondent that it is not open to the defendants to contend that there not sale is invalid by virtue of Section 189 of the Estates Land Act on the ground that no suit has been filed u/s 112 of the Estates Land Act. He relies very strongly on the decision in *Irulappan Servai Vs. Veerappan alias Kaluvandan Servai and Others*, if the ryot does not avail himself of the remedy provided by Section 112, he has no other remedy in the Civil Court. 12. It would be difficult to support this proposition in its entirety in view of the later Full Bench decision in *Rajah of Ramnad v. Venkatarama Iyer* (1922) 45 M. 890 : 69 Ind. Cas. 923 : 16 L.W. 274 : (1922) M.W.N. 501 : 31 M.L.T. 158 : 43 M.L.J. 264 : AIR 1923 Mad. 6. In that case property was sold at a rent sale without the requisite notice being served as required by Section 112 of the Act. Objection was taken as no suit was filed u/s 112 of the Act, Civil Courts have no jurisdiction to try the suit. The contention was negatived and the opinion of the Full Bench was that the suit lay in a, Civil Court Schwabe, C.J, delivering the opinion of the Full Bench observed as follows:

The only suit which is referred to in Article 12, Part A of the Schedule, is namely a suit by the ryot within 30 days of the service on him of the notice to contest the right of sale. This suit is nothing of the kind. This is a suit by the ryot, who says that his property has been unlawfully sold and there is nothing in the Act or in the schedules of the Act to take away the jurisdiction of the Civil Courts to try such suits.

13. The principle underlying this decision seems to be that if the rent sale is

wholly without jurisdiction, the sale must be treated as not one under the Act and the right of suit conferred under the general law is not taken away from a person aggrieved by such sale. In fact in *Chidambaram Pillai v. Muthammal* (1922) 38 M. 1042 : 23 Ind. Cas. 524 : 1 L.W. 414 : 15 M.L.T. 340, Ayling, J. who is a party to the decision in *Irulappan Servai v. Veerappan* 42 M.L.J. 113 : 69 Ind. Cas. 918 : (1922) M.W.N. 67 : 15 L.W. 99 : 31 M.L.T. 71, held that a suit for a declaration that the sale of a holding u/s 111 was void in consequence of the landholder's failure to apply for sale within 45 days as prescribed by Section 115 of the Act will lie in the Civil Court. In that case he observed as follows:

A suit for declaration like the present one is not one of those set forth in the schedule to the Act. It may seem anomalous to give jurisdiction to award damages for the illegality to the Revenue Court which ordered the sale, and the jurisdiction of setting it aside to the civil tribunal. But if the view taken by the lower Court is correct, then in spite of the mandatory directions of Section 115, an order of a Collector for sale which was passed, without jurisdiction, must stand and cannot be questioned; for admittedly, no suit to set aside the sale will lie in a Revenue Court.

14. In *Aiyya Mudali Velalan Vs. Sourimuthu Odayan and Another*, , Jackson, J. distinguished the Full Bench case thus:

The question resolved itself into one whether a ryot who alleged that his holding has been unlawfully sold and had never been given an opportunity of availing himself of a remedy under the Act, could sue in the ordinary Civil Court. "That being so", the Bench answered the question in the affirmative. Therefore, this ruling is not an authority for the very question which it propounded but it did not answer whether the fact that a remedy lay by a summary suit to prevent the sale would bar a subsequent civil suit to set it aside.

15. and he held that in that case a suit would not lie in a Civil Court to set aside a sale on the ground that a patta had not been tendered as it was a matter in respect of which a suit might have been brought u/s 112. Section 189 is in these terms:

A Collector or other Revenue Officer specially authorised under this Act shall hear and determine as a Revenue Court all suits and applications of the nature specified in Parts A and B of the Schedule and no Civil Court in the exercise of its original jurisdiction shall take cognizance of any dispute or matter in respect of which such suit or application might be brought or made.

16. Giving the plain and natural meaning to the words of the section, the intention is manifest that the jurisdiction of the Civil Court is taken away only in respect of a dispute or matter which could have been urged in a suit u/s 112, i.e., to contest the right of sale. The correct view, in my opinion, is that no suit will lie in a Civil Court to set aside a sale on any of the grounds which could have been urged to contest the right of sale in a suit u/s 112, whether it relates to jurisdiction or mere irregularity in procedure. But where there is no notice of sale

or where the ground of attack relates only to matters arising out of or consequent on the sale and generally could not be urged in a suit u/s 112, the jurisdiction of the Civil Court is not taken away. In this case whether the entire holding will be sold or only an undivided half can only be known after the landholder applies for sale after the expiry of 30 days from the date of the service of the notice and obviously that only the undivided half should have been sold and not the entirety, could not have been urged by way of suit u/s 112. Therefore, Section 189 is no bar to the cognizance of the plea. Further, in the view I have taken that the holding was a separate holding in respect of an undivided half, what could have passed under the rent sale was only the undivided half and the plaintiff acquired only title to that half. I, therefore, reverse the decree of the learned Subordinate Judge and restore the decree of the learned District Munsif. I direct each party to bear his own costs throughout.