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**(1917) 11 MAD CK 0004**  
**In the Madras High Court**

Ramasami Servaigaran and Another APPELLANT  
Vs  
Athivaraha Chariar and Others RESPONDENT

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**Date of Decision :** 01-11-1917

**Acts Referred:**

Madras Estates Land Act, 1908 — Section 4

**Citation :** AIR 1918 Mad 222 : 44 Ind. Cas. 663 : (1918) 7 LW 471

**Hon'ble Judges :** Spencer, J;Sadasiva Aiyar, J

**Bench :** Division Bench

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**Judgement**

Sadasiva Aiyar, J.—The defendants Nos. 1 and 2 are the appellants in this case. The plaintiffs are landlords and the defendants are tenants

under the Madras Estates Land Act. The only questions involved in the second appeal and in the connected memorandum of objections are : (1)

whether the plaintiffs are entitled to claim rent on the lands left waste in the defendants' holding if the defendants do not establish that the lands

were so left waste without their default, (2) whether the defendants are bound to pay ordinary dry rate of rent on the area of a house site included

in the defendants' holding and whether that question is res judicata in favour of the defendants (as the defendants contend) or in favour of the

plaintiffs (as the plaintiffs contend), and whether the plaintiffs are entitled to claim rent for the house site, item 70, at Nanja rates and not merely at

Punja rates.

2. As regards the, first point, I have come to the conclusion (after the beat consideration that I have,, been able to give to the question) that the law

on this point has been correctly expressed in the judgment in Arunachallam Chettiar v. Mangalam 35 Ind. Cas. 329 where all the principal

authorities have been carefully considered. u/s 4 of the Madras Estates Land Act, the land-holder is entitled to collect rent in respect of all Ryoti

land in the occupation of a Ryot and it does not make this right subject to any custom. Prima facie, Section 4 entitles the landlord to collect rent on

the land left waste by the tenant. See Segu Rowthen v. Alagappa Chetty (1914) M.W.N. 340. The intention of the parties was, however, held in

the above case to override Section 4. In the case in In Re: Arunachalam Chettiar 30 Ind. Cas. 679, the custom of allowing a reasonable portion of

land in a tenant's holding to be left fallow without being sharped rent on it was held a valid custom. In Imandi Appalaswami v. Rajah of

Vizianagdrum 20 Ind. Cas. 838: (1913) M.W.N. 806 it was held that if the tenant chooses to build on the agricultural site instead of using it for

agricultural purposes, he cannot escape payment of rent on the basis of its continuing to be agricultural land. I think the observations in the

judgment in Arunachallam Chettiar v. Mangalam 35 Ind. Cas. 329 establish that the tenant is bound to pay rent on land left waste, unless he

establishes an agreement or custom allowing a reasonable extent in area to lie fallow for reasonable periods or some other reasonable custom or a

contract for consideration exempting him from payment of rent on lands left waste put of the lands in his holding.

3. In Vedanta Chariar v. Ayyasami Mudali 1 Ind. Dec. 1060 Innes and Kindersley, JJ. express an opinion that the landlord had the right to collect

the whole rent notwithstanding that (1911) 1 M.W.N. 6 it was held that for the protection of the "just interests of the Zamindar" it is reasonable to have a provision in a Pattah that the

Ryot must pay Melwaram or Theerwa if through his fault the lands are not cultivated. I do not think that a custom to let lands lie waste (without

regard to reasonable area and without regard to good or bad seasons and existence or absence of facilities for irrigation) for indefinite periods at

the tenant's sweet will and pleasure, with absolute freedom from liability to nonpayment of any rent, is a reasonable custom which can be

recognised by Courts. In the present case, it is such a custom that seems to have been set up. I think the learned District Judge was right in

throwing on the Ryots the burden of proving that the lands were left waste not through the default of the Ryots. I would, therefore, decide the first

point in plaintiffs' favour.

4. As regards points 2 and 3, I am clear that the former decision (see Exhibits A, B, C and D) establishes and declares the plaintiffs' right to get a reasonable rate of rent on the site on which the tenants chose to build houses.
5. If the judgment in the former suit, which was instituted in a Civil Court, merely contained a finding on the question of the plaintiffs' right, such a finding may not be res judicata in the present "suit for rent brought in a Revenue Court which has now exclusive jurisdiction over such a suit. But the plaintiffs' said right was embodied in the decree (see Exhibit B) in the former suit and a decree of a competent Court is clearly res judicata between the parties as regards the rights established thereby.
6. Sites which are capable of being used for house building are presumably dry holdings and not wet holdings, and I do not think I could interfere with the lower Court's view that the plaintiffs are entitled only to claim the dry rate of rent on such sites.
7. It follows from the preceding that the memorandum of objections filed by the plaintiffs and which relates solely to the rate at which the rent due on the house sites has to be calculated has to be dismissed with costs.
8. As regards the second appeal, I was at first inclined to take the view that we might dismiss the second appeal also at once, accepting the findings of the District Judge (1) that the defendants had failed to prove a contract or a custom that they are entitled to let any lands lie waste at their pleasure without liability to pay rent thereon, and (2) that the defendants had failed to prove that the lands lay waste without any default on their part.
9. But my learned brother is not satisfied that the District Judge did not arrive at his second finding of fact above referred to more on presumptions than after duly considering the whole evidence in the case and I shall, therefore, concur with him in remanding the case for a fresh and definite finding on this question. In submitting such a finding, the District Judge is requested to indicate whether or not all the lands left waste were so left uncultivated for identical reasons in each of the two Faslis in question.
- Spencer, J.
10. The main question in this second appeal is whether the appellants were liable to pay rent for lands in their holding left uncultivated, the tenure

upon which they hold being "varam" tenure, according to which the crop is divided between the land-holders and the Ryots.

11. The District Judge observed that if there had been a fixed money rent or a fixed grain rent on the lands, the Ryots would have been bound by

Section 4 of the Act to pay rent so long as the land was in their holding.

12. If he meant by this observation that where a money assessment is fixed on the lands the provisions of Section 4 would override any custom or

agreement not to charge rent upon portions left waste, he was wrong; vide *Segu Rowthen v. Alagappa Chetty* 22 Ind Cas. 834; *Udayal v.*

*Arunochala Chettiar* 27 Ind. Cas. 872: (1915) M.W.N. 190; *In Re: Arunachalam Chettiar* 30 Ind. Cas. 679 : 2 L.W. 828 and *Arunachallam*

*Chettiar v. Mangalam* 35 Ind. Cas. 329 For the holdings concerned in this suit the Varam system admittedly prevails, and as regards such lands the

2nd plaintiff and his 2nd, 4th, 5th and 6th witnesses admitted in their evidence that hitherto Varam had only been collected for lands cultivated and

not for lands left waste.

13. The District Judge was conscious of this.. For he says: "'It is true that Varam has never been paid for waste lands, but I do not think this fact

establishes a custom not to pay for waste under any circumstances. I, therefore, find the appellants are entitled to Varam for the waste lands.

14. If he was of opinion that certain circumstances would justify the non-payment of rent and that certain other circumstances would not do so, it

was his duty to find what the special circumstances were that differentiated the defendants' case from others.

15. Now in the plaint it was alleged that items Nos. 28 to 69 were wantonly left waste in Faslis 1321 and 1322, owing to defendants' carelessness

and bad intention. In the written statement it was alleged that some of these lands were not fit for cultivation and that the rest had been left waste

for over twelve years owing to want of proper rain and water.

16. Which of these versions is true is not found by either of the lower Courts.

17. The District Judge notices that in Fasli 1271 the lack of Ryots was the cause of non-cultivation and he states that there is really no evidence in

this case that the lands could not be cultivated. He then proceeds to the presumption that the Ryots have deliberately omitted to cultivate the waste

lands

18. There must be some foundation either in law or in fact for such a presumption being made, but the judgment does not refer to any.

19. I think the case should be remanded for a definite finding as to what was the cause of the lands, which were left waste in the suit Faslis, not being cultivated in those years.

20. Either side may adduce fresh evidence on this point. Two months for finding and ten days for objections.

21. Item No. 70, Schedule 17, is occupied by house. I am of opinion that the District Judge was right in allowing rent to be paid for this land at the

Punjab rate So long as the Ryots' right to use the land for agricultural purposes subsists, they can-not claim to be exempted from paying rent by

reason only of their having put it to some other use: vide Imandi Appalaswami v. Rajah of Vizianagaram (1913) M.W.N. 806. The memorandum

of objections must be dismissed with costs.

22. In compliance with the order contained in the above judgment, the District Judge of Tanjore submitted the following

#### FINDING.

1. The High Court has remanded this suit for a finding as to "what was the cause of the lands, which were left waste in the suit Faslis, not being cultivated in those years.

2. Fresh evidence has been taken. The evidence on both sides, however, is so vague that it is difficult to come to any conclusion. The plaintiff's

case is that the defendant has left the lands waste in order to spite him and to compel him to dispose of the Melwaram right also to him. This

explanation seems to me a little far-fetched. The defendant's case is that the lands are unfit for cultivation except at considerable cost, the Punja

being overgrown with prickly pear and the Nanja buried in mud and sand; that the tanks are in bad repair and cannot hold water for a larger extent

than the present cultivation and that this deficiency affects both Nanja and Punja, as the only crop suitable for the Punja land is Ragi which also

requires water to be baled from the tanks. No definite evidence has been given as to the reason for any particular field lying waste. But it is at least

evident, I think, that much of the present waste has been waste for many years (see the evidence of the 1st plaintiff under cross-examination and

that of P.W. No. 6 and P.W. No. 1 at the original trial). The statement of P.W. No.

2 in the original trial that there is no immemorial waste is

clearly false. The evidence of P.W. No. 7, the Village Munsif, so far as the reason for waste is concerned, is hearsay and of no assistance. P.W.

No. 8 is a fellow Melwaramdar of the plaintiff and clearly interested in the plaintiff's case. He admits, however, that there is waste even in the lands

wholly owned by the Melwaramdar and that the tanks have not been properly repaired. He asserts that the tanks will fill without a dam being

constructed in the river, but the Village Munsif contradicts him on this point. It is admitted that no dam has been put up for several years. The

evidence on the plaintiff's side is wholly insufficient to show that the waste is due to neglect by the defendants with a deliberate purpose to spite

him. The defence witnesses examined state that the tank is badly out of repair and that on that account and on account of lack of labour the lands

lie waste. The defence witnesses Nos. 6 and 7 seem to me disinterested.

3. It is the duty of the Melwaramdars to have the tanks put into order and it is, therefore, their neglect if the tanks are not repaired. On such

evidence as there is, I record a finding that the lands left waste in the suit Faslis were left waste chiefly because the tanks are out of repair and

partly perhaps because of the lack of labour. No distinction is made by any witness between the conditions affecting each suit Fasli and, therefore,

the finding applies equally to both Faslis.

4. This second appeal coming on for final hearing after the return of the finding of the lower Appellate Court upon the issue referred by this Court

for trial, the Court delivered the following

5. We accept the finding that the omission to cultivate items Nos. 28 to 69 was not due to the fault of the appellants.

6. They are, therefore, not liable to pay rent on those items. The appeal is allowed so far as the lower Appellate Court's decree makes the

appellants liable to pay such rent also and the lower Appellate Court's decree will be modified accordingly.

7. The respondents will pay 3/4ths of the appellants' costs in this Court and in the lower Appellate Court and bear their own. The order of the first

Court as to costs of that Court will stand.