
(1915) 04 MAD CK 0044
In the Madras High Court

Ramaswami Aiyar and Seshappier

APPELLANT

Vs

S. Sundaram Aiyar and Manager

RESPONDENT

Date of Decision : 29-04-1915

Acts Referred:

Citation : 30 Ind. Cas. 166

Hon'ble Judges : Tyabji, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—These twenty connected second appeals arose out of suits brought by 20 sets of tenants against the Receiver and

Manager of the Tanjore Palace Estate for recovery of the excess amount alleged to have been exacted"" as swatantrams (beyond the legitimate

rents) by the defendant in Fasti 1320, these swatantrams being alleged to be not part of the legitimate melvaram due for the landlord's share.

2. Section 143 of the Estates Land Act says ""that landlords shall not exact from the ryots under any name or under any pretence anything in

addition to the rent lawfully payable. All stipulations and reservations for such additional payment shall be void"". Then Section 144 provides that

every ryot from whom any sum of money or any portion of the produce of the land has been exacted by the landlord in excess of the rent lawfully

payable, shall be entitled to recover by a suit before the Collector, in addition to the amount or value of what has been so exacted, such sum be

way of penalty which the Collector deems fit, not exceeding double the amount of value so exacted and not exceeding also one hundred rupees.

The Deputy Collector in whose Court these, suits were instituted held that the amounts paid by these twenty sets of plaintiffs under four of the five

heads of swatantram did not constitute part of the legitimate rent, and that they were exacted from the plaintiffs for Fasli 1320 by the defendant and

lie, therefore, decreed the return of these illegal fees-along with the of the respective amount (so illegally collected) by way of penalty.

3. The learned District Judge on the appeals by the defendant held (a) that those four items formed part of the legitimate rent because, whatever

names be used for the fees in question, they were originally part of the demand made upon the tenant for the occupation of the land;" (b) and even

if they were not originally part of the rent, they were made such by the contracts between the parties, such contracts being embodied in the

registered documents, Exhibit II series, which are the muchilikas executed for the seven Fastis 1318 to 1324 by the tenants to the defendant. The.

District Judge, therefore, dismissed all the suits with costs. Hence these second appeals by the plaintiff's.

4. As regards 10 of these second appeals, I think they can be disposed of on the short ground that the plaintiffs (appellants) have not proved that

the excess payments had been exacted from them. Both Sections 143 and 144 of the Estates Land Act use the word exact" and not the word

receive." Now what is an exaction? Mere authoritative demand is also sometimes called exaction (See Webster's Dictionary), but that is clearly

not the sense in which the word is used here. "Exact means to compel payment or delivery of, to enforce the yielding of, to extort (as, to exact

tribute, fees, obedience and the like), to practise extortion, to demand and compel to pay or yield under colour of authority; or to levy by force. In

the present case, the finding of the Deputy Collector is that the plaintiffs in these 18 cases paid their dues as per their respective leases and

muchilikas before the issue Of any demand or attachment notice by the defendant, and yet he held that because the plaintiff in one of the 20 suits,

namely, Summary Suit No. 279 of 1911 (out of which Second Appeal No. 280 of 1913 has arisen) was served with a demand and attachment

notice for not paying his dues, the other plaintiffs who afterwards paid their dues must be deemed not to have paid such dues voluntarily but

through coercion. The reason given by the learned Deputy Collector is that if the other plaintiffs had not paid their dues they would have certainly

received similar notices of demand and attachment."" The learned District Judge in his judgment on appeal makes the following remarks on this

point: In his edition of the Bengal Act, Mr. Justice Rampini understands the word "exacted" to mean nothing more than collected after demand and

he quotes a ruling to the effect that money collected under a proceeding prescribed by law, though in excess of the demand amount, is not exacted.

From this it would appear that the important words of the section are "in excess of the rent lawfully payable" and that the application of the section

would have been the same if the word "collected" had been used in place of the less intelligible one actually employed." I am unable to agree with

the lower Courts on this point. It may be that if the money is paid after an authoritative demand (even though no coercive process was taken

before the payment and even though the authoritative demand was not accompanied by an express threat of coercive proceedings), the money

might be considered as exacted but on the finding that not even a demand had been made on any of the 18 sets of plaintiffs before the excess

amount was paid along with the amount really due (both amounts being payable according to the registered muchillikis executed by the plaintiffs), I

cannot hold that the money was exacted from the plaintiffs and that they were not voluntary payments. Even Mr. Justice Rampini does not say that

money paid without demand can be called money "exacted." The plaintiffs in 18 suits had, therefore, no cause of action under Sections 343 and

144 of the Estates Land Act and the dismissal of their suits by the District Judge was right and can be supported on this ground. The 18 second

appeals, therefore, substantially fail. I would, however, modify the order of the District Judge on the question of costs and direct the parties to bear

their respective costs throughout.

5. In the remaining Second Appeals, Nos. 279 and 280 of 1913, the swatantram fees in question were collected after demand and attachment

notice and hence if they were illegal, they were clearly exacted. The question, therefore, is whether those four items of fees do form part of the

legitimate wrelvaram or whether they are unlawful additions to the rent lawfully payable. The documentary evidence clearly shows that the

legitimate melvaram is only 48 per cent, of the net outturn, that an additional 21/8 per cent, has been demanded for a long time by the Palace

authorities (and paid by the tenants) under three heads: (1) Crania Pichai, being 6 marakah per 100 kalams of the tenant's hudivaram of 52 per

cent, of the gross produce, (2) Kaval, 1 Icalam and Sinarakals and (3) Mahamai, 31 inarakals; that besides these three collections in grain, two

other collections namely, (4) Nazar Bheti, for 1,000 kalams of the tenant's tidaivaram, 2 kalams and 5y marakals i.e., 4 annas 4 pies and (5)

Kajana Thackarar, for one hundred rupees of melvaram paddy, 8 annas. Out of these five fees, the second, namely, for kaval was found to be part

of the rent by the Deputy Collector and there was no appeal filed against that decision and that is not the subject of the second appeal before us.

The other four as their very names indicate are not part of the rent. Grama Pichai means donations to the village beggars, Mahamai mean offerings

to the village deity. Nazar Bheti means presents for allowing the visitor to see the face of the visited. Kajana Thackarar means insurance money on

account of the risk of a few bad coins being mixed up in the money paid towards rent. The following observations occur in *Devanai v. Raghunatha*

Row 18 Ind. Cas. 298 : (1913) M.W.N. 886: It is a well-known fact that the zamindars frequently added to their income by collecting cesses of various kinds.

6. The practice of making demands which were not legally maintainable was evidently not confined to this Presidency. In Bengal abwabs or legal

cesses had to be put a stop to by the Legislature. * * * * We must not forget the fact that ryots were formerly less influential and less educated

than they might be now. It must also be remembered that mamool is departed from with more difficulty in this country than elsewhere * * *, We

cannot say that mere payment for a long time would in all cases justify the presumption of a legally enforceable contract to pay for ever. Very

often, positive evidence is not available to prove the circumstances under which the payment commenced. Substantial light is often thrown by the

name of the cess, although the payment may have ceased to be applied for the purpose indicated by the name." There would be no justification for

holding that the cess must be held to be obligatorily leviable against the ryot unless the zamindar can show that after the object for which it was

originally intended failed, there was a fresh contract founded on fresh consideration to continue to make the payment. I think that these fees, as their

very names indicate, clearly did not form part of the melvaram rent when they were first levied and it is, therefore, on the landlord to show that after

the objects for which such payments were originally intended failed (as they have admittedly failed in this case), there was a fresh contract founded on a fresh consideration to continue to make the payments. The learned District Judge says casually at the very end of his judgment (as apart of one sentence) that the evidence shows that the items objected to are part of the consideration for the easy terms granted by the landlord in respect of commutation,"" that the rate fixed to ascertain the value of the grain rent when commuted into money rent during the seven years" lease period. It must be established by evidence that Re. 1-3-0 (the commutation rate agreed upon between the parties), which superseded the Rs. 1-1-8 rate which prevailed for 14 years before the date of Exhibit II, was admitted by the plaintiff as unduly favourable to the plaintiff and that the plaintiff, therefore, agreed to the inclusion of these unauthorized cesses as part of the rent in consideration of the defendants not insisting on fixing a higher rate of commutation than Rs. 1-3-0. The speculative opinion of a witness examined on the defendant's side that the defendant Would not have consented to the Re. 1-3-0 rate if lie had known that the plaintiff would afterwards object to the payment of these cesses (it is contended), is not legal evidence of a contract, (that is) an agreement supported by consideration on the part of the plaintiff to pay these cesses, and the learned District Judge will consider the question again when, dealing with this matter on remand. As, however, there might be other evidence on the record not brought to our notice it is desirable to have a fresh finding on the 6th issue in Second Appeals Nos. 279 and 280 of 1913 on the evidence on record.

7. The findings should be submitted within six weeks from the receipt of records and 10 days will be allowed for filing objections.

Tyabji, J.

8. The suits out of which this batch of appeals arises were instituted by tenants u/s 144 of the Estates Land Act for recovery of alleged illegal cesses exacted by the landlord. The contentions of the parties are shortly but sufficiently and clearly set out by the learned District Judge in the first two paragraphs of his judgment.

9. The points argued before us were that the payments in question formed part of the rent under a contract implied from long payments or

expressed in pattas and muchilikas and that even if they did not so form part, they had not been exacted"" within the meaning of Section 143 of the Estates Land Act, and that unless they had been so exacted they could not be recovered back.

10. The payments fall under the following five heads.

Kalam, Marakal.

1. Gramapichai (paddy given to the poor out of udaivaram

paddy under the Amani System) per 100 Kalams... 0 6

2. Kaval (Paddy given to the village watchman... 1 8

3. Mahamai (paddy given to the temple)... 0 31/8

4. Nazar Bheti (present given to the Maharajah of Tanjore on Dasara) for 1000 Kalam of udaivaram, 2 Kalam and 51/8 marakals. Rs. 4 4 4

5. Kajana Thackarar for conis received which were not current or for compensation to the Shroff for shortage in remittance sent to the Treasury. Rs. 0 8 0

For one hundred rupees

worth of melvaram paddy

11. The present appeal does not refer to the second of these items (kaval). This was held by the Deputy Collector to be part of the rent, and his

decision was not appealed against. The question that remains is whether the 1st, 3rd, 1th and 5th items above were ""something in addition to the

rent lawfully payable,"" and if so, whether they can be recovered back u/s 144 of the Madras Estates Land Act.

12. What is ""rent lawfully payable"" is laid down in Section 3(11) of the Madras Estates Land Act. The terms of Section 3(11) with a slight change

in the collection of words may be set out as follows:

Rent means-

Whatever is lawfully payable in money or kind, or both,

(1) to a land-holder,

(2) for the use or occupation of land in his estate,

(3)for the purpose of agriculture,--and includes,

where the charge for the use and enjoyment of water supplied or taken for the cultivation of land has not been consolidated with the rent payable

for the land,

(i) whatever is payable on account of the use and enjoyment of such water;

Rent also includes for the purposes of Sections 59 to 72, 77 to 131, 143 to 148,165, 210 and 211, and the schedule,

(a) any local tax, cess, fee or sum payable

(a) by the ryot as such,

(b) in addition to the rent due in respect of land, (e) according to law, or usage having the force of law, and also

(iii) money recoverable under any enactment for the time being in force, as if it were rent,

(iv) sums payable by a ryot as such on account of pasturage fees and fishery rents.

The scheme of Clause 11 of Section 3 is, therefore, as follows : In the first place it is stated what rent ""means,"" This portion of the clause has

reference to the three matters that are numbered (1), (2) and (3) above. Then the clause proceeds to provide what rent ""includes,"" the four classes

of payments particulars of which are numbered by me (i), (ii), (iii) and (iv) are so included.

13. If the four heads under which payments have been made, and which are in question in these appeals, are for the use and occupation of land for

the purpose of agriculture, then they fall within the meaning"" of rent. The learned District Judge in the last sentence of the paragraph of his

judgment, which is numbered 3(2), holds that these payments are fees, and were originally part of the demand made upon the tenant for

occupation of the land."" According to this finding, the fees would be within the ""meaning"" of rent. The preceding portion of the paragraph,

however, shows that the learned Judge has apparently based this finding on the mere fact that the sums in question are shown in the jamabandi

accounts of 1858 (Exhibit III) as having been recovered from the tenants, and are mentioned in the patta for Fasli 1305 (Exhibit A8). These

circumstances do not furnish any evidence for the finding. But there are some other circumstances in the case to which I must advert in this

connection, though they are not alluded to by the learned Judge in the paragraph which I am now considering.

14. I can conceive of circumstances in which sums that were in their origin illegal, and were collected for unauthorised objects, come to be

legalised by being incorporated at a subsequent period into the rent and thus becoming a part of the rent. This may take place in some such way as

is alleged here by respondent. For his case is that in fixing the commutation rate for computing the sum payable by way of rent, it was agreed

between the parties that the commutation rate should be lower in consideration of the inclusion of these fees as part of that which was to be

payable as rent. "The respondent thus relies upon an express contract. Similarly it may be that an implied contract may be inferred from a course of

conduct followed for many years. I must point out, however, that the incidents of rent collected from tenants with occupancy rights, are very

different from those of rent payable under a contract of tenancy. In the former case the rights in their inception do not spring from contract, and it is

much more difficult to infer an implied contract from the mere fact that payments have been made in the past. That, however, in a question of

sufficiency of evidence. All that is necessary at present is to allude to the possibility of the tenants having agreed expressly or impliedly to pay a

definite sum of money or portion of the produce to the landlord; it being a matter of indifference to them, under what name they have to pay their

duo to the landlord, so long as all the payments together in fact represent the consideration, and nothing" more than the consideration, which is

lawfully payable to the land-holder for the use or occupation of land in his estate for the purpose of agriculture." The present case must, therefore,

be examined from this point of view.

15. The learned Judge in the second paragraph of his judgment, to which have referred, does not allude to the express contract set up by the

respondent "which I have just mentioned. Neither does that paragraph deal with an implied contract. But it proceeds on the basis that the mention

of the payments in the accounts and patta above referred to proves that the payments were for rent; and that the names under which they were

made did not affect their legality. I am unable to follow this process of reasoning. The names of the cesses, as pointed out in *Devanai v.*

Raghunatha Row (1913) M.W.N. 886, throw substantial light on the object for which they were levied, though it may be that the payments have

ceased to be applied to the purpose indicated by the name. There may be cases in which sufficient explanation is offered why the rent is collected

under a different name, or how and when a sum originally levied for a different purpose came (by an implied contract) to be transmuted into rent.

But the learned Judge does not refer to any explanation for the change.

16. I am, therefore, of opinion that the finding contained in the aid paragraph of the learned District Judge's judgment was not meant to be a finding

that by an implied agreement these payments became lawfully payable as rent. If he meant to find to that effect, there was no evidence on which he

could do so and the finding cannot be accepted.

17. The express agreement relied upon by the respondent is referred to in the last words of the 3rd paragraph of the District Judge's judgment.

He, however, does not examine the evidence and seems to refer to the matter merely incidentally. The view he casually expresses is opposed to

that of the Deputy Collector. It seems to me that he must give a definite finding on the sixth issue with reasons for his finding.

18. To addition to the argument that there was an express or implied agreement to pay rent [which would bring it within the "meaning" of rent in

Section 3(11) of the "Madras Instates Land Act], the learned Pleader for the respondent contended that the payment fell under one of the heads

which the clause "includes" within rents. The portions of Section 3(11) that have reference to this part of the argument are numbered (i), (ii), (iii)

and (iv) by me.

18. None of the payments in question are (i) on account of the use and enjoyment of water or of (iv) pasturage fees or fishery rents; nor do any of

them, fall within the description of (m) money recoverable as rent under any enactment. It remains to consider whether they are "included" within

(ii) above as; a sum payable.

(a) by the ryot as such

(b) in addition to the, rent in repect of land

(c) according to law or usage having the force of law.

19. The sum so payable must, I apprehend from the frame of the clause, be,

something ejusdem generis with "local tax" "cess" something paid by the ryot as such i.e., paid by a person who holds, for the purpose of agriculture, ryoti land in an, estate, and paid by him as such holder. The obligation to pay it must have, arisen by law or usage having the force of law. I find great difficulty in the application of these provisions and in defining what they connote with any precision. I see much less difficulty, however, in saying that the particular payments with which we have to deal do not, in my opinion, satisfy all the conditions that are required by the clause. I do not think that they can be classed with local taxes, cesses and fees, or that they can be said to be payable by the ryot as such, or payable according to law or usage having the force of law.

20. It is argued, however, for the respondent that even if the payments in question cannot be shown to be payable as rent by an express or implied contract or otherwise form part of rent u/s 3(11), still the appellants are precluded by Sections 143 and 144 of the Madras Estates Land Act from recovering back the sums paid, unless it is shown that they were "exacted." It is also contended that there is no evidence on which it can be held that these payments were exacted.

21. The word exact" (which occurs in Section 143 and 144) has not, so far as I am aware, any special meaning as a term of law distinct from, or more precise than, its ordinary meaning. It is not free from that indefiniteness from which terms of law, recognised as such and made precise by long usage in law and by repeated analysis and definition, are free. That by the use of the term exact" it was meant to express something different from mere collection or receipt, seems to me to be clear from the fact that the Legislature has avoided the use of those more usual words. It seems also clear that it could not have been intended by the Legislature, that the mere receipt of money which was not legally due should bring upon the receiver the penalties referred to in Section 144.

22. Section 143 consists of two sentences. By the first it is provided that no unauthorised payment in addition to the rent shall be exacted--without the free consent of the tenant. By the second, that, even if the tenant consents to make such additional payments, the stipulation or reservation for making the payments shall be void--payments made under a void agreement will not be exactions" if made without any coercion. The object of

Section 144 of the Madras Estates Land Act does not affect the right (if any exists) to recover back the additional payments under the law as it stood at the time when Section 143 was passed, e.g., u/s 65 of the Indian Contract Act, to have the advantage restored." What Section 144 provides is that in cases where the landlord has exacted additional payments independently of any right that there might be to have the advantage restored, the ryot shall have the newly created right to recover a penalty, and that both these rights shall be adjudicated upon by the Collector. The question, therefore, whether or not the payments have been exacted becomes relevant in three ways: (1) the question, which is not free from doubt whether payments made under an agreement which is void by reason of Section 143 of the Estates Act fall within the terms of Section 65 of the Indian Contract Act does not arise if they are exactions; (2) suits u/s 144 must be instituted before the Collector; his jurisdiction must be determined by reference to Section 144 and the 15th item of part A to the schedule, which refer to "illegal exactions," and it may be doubtful whether assuming that the payments can be recovered u/s 65, they can be recovered in a suit before the Collector unless they are proved to have been exactions; (3) for deciding whether any penalty shall be enforced. The third aspect of the case seems to afford an adequate explanation for the use by the Legislature of an indefinite term like "exact." It leaves a discretion in the Collector to order or not to order the payment of a penalty; and to fix the amount of the penalty with reference to the gravity of the offence.

23. The plaintiffs have not brought the suit on the basis of Section 65 of the Indian Contract Act. That section or the principle involved in it was not referred to in the plaints or in arguments before us. The applicability of that section is, as I have already said, not free from doubt both as to whether any rights arise under it in such circumstances as we have to deal with, and if any rights do arise, whether the Collector has jurisdiction to enforce them u/s 144. It seems to me, therefore, to be supererogatory to deal with the question from that aspect.

24. Hence the plaintiffs cannot succeed in these suits without proving that the sums which are sought to be recovered back were exacted from them. Two of the plaintiffs were served with a demand and attachment notice for not paying the sums in question. In these cases it seems to me that

there was exaction. The plaintiffs in the other 18 cases made the payments without any demand. It is argued on their behalf that they paid under the apprehension (and implied threat) of similar treatment, and consequently that payments by them were no less exactions. The expression "exaction" should not, in my opinion, be construed with stringency except for the purpose of enforcing the penalty. Had, therefore, the Court which has to decide questions of fact, come to the conclusion that the payments were exacted, I am not prepared to say that I should have considered the circumstance relied upon by the 18 tenants to furnish no evidence of the payments having been exacted. There is, however, no finding of the District Judge on the point and in arriving at one myself, I cannot shut out from my mind that the circumstances relied upon by the appellants are not all the facts on which the decision must be based. It is not clear to my mind that these payments were not made under an agreement. I have already given my reasons for desiring to have a finding on that point. It seems to me that balancing the two sets of circumstances and taking them in connection with the other facts which were placed before us at the hearing (to which I need not refer in detail), the proper decision to arrive at is that the payments were not exacted from the 18 tenants.

25. If the payments were not exacted, then in regard to the 18 tenants in question the suits will fail irrespective of the question on which I desire to have a finding. The decision of the remaining appeals (Second Appeals Nos. 279 and 280 of 1913) must depend on whether the payments had become part of the rent by agreement between the parties. For these reasons I agree in the order proposed by my learned brother.

26. In compliance with the order contained in the above judgments the District Judge of Tanjore submitted the following.

Finding, J.

27. I find, therefore, on the 6th issue, that while, no doubt, the Sillaraikududal were part of the consideration for the new muchilikas they had always been part of the consideration for earlier ones, the altered or enhanced rate was not imposed in consideration of plaintiffs' paying these charges.

28. These second appeals coming on for final hearing after the return of the finding from the lower Appellate Court upon the issue referred to it for

trial, the Court delivered the following.

JUDGMENT

Second Appeal No. 279 of 1913.

29. We accept the finding and restore the decision of the Deputy Collector in the suit out of which this second appeal has arisen. The defendant

will pay the plaintiff's costs in this and in the lower Appellate Court.

30. This judgment governs Second Appeal No. 280 of 1913.