

(1914) 06 BOM CK 0001
In the Bombay High Court

Ravi Veeraraghvula

APPELLANT

Vs

Raja Bomma Devara Venkata Narsinha and Naidu Bahadur
Zemindar Garu

RESPONDENT

Date of Decision : 18-06-1914

Acts Referred:

Citation : (1914) 16 BOMLR 853

Hon'ble Judges : Moulton, J;John Edge, J;Dunedin, J;Ameer Ali, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Ameer Ali, J.—These consolidated appeals from certain decrees of the High Court of Madras arise out of a number of suits brought by the plaintiff-respondent in the Court of the Head Assistant Collector of the Bezwada Division, under the provisions of Section 9 of the Madras Rent Recovery Act (Act VIII of 1865). The object of all the actions was to enforce by legal process the acceptance by the defendants of the Pattas or leases he had tendered to them.

2. The scope of the material sections of Madras Act VIII of 1865 was considered by their Lordships in 14 CWN 938 (Privy Council) ; it is sufficient, therefore, to say in this case that under this Act the landlords are required to enter into written engagements with their tenants, in default of which no suit is maintainable to enforce the terms of the tenancy, and that in case of the refusal by the tenant to accept a Patta such as the landlord is entitled to impose," the landlord can proceed u/s 9 to enforce the acceptance by a summary suit before the Collector.

3. It has to be remarked that in the Madras Presidency, or certain parts thereof, irrigated lands on which are grown what are called " wet crops," are generally subject to a higher rate of rent, either in kind or in cash, than those which yield only "dry crops," and that it is usual for the zamindars to enter into yearly engagements by tendering Pattas from year to year and obtaining Muchilikas or

counter-parts executed by the tenants evidencing he acceptance of the terms of the lease.

4. Shortly stated, the respondent's case, a3 made in his plaint, is that the ryots, the defendants in the suits, prior to Fasli 1283 (approximately corresponding to 1876), paid rent for the lands in their occupation on the Asara or produce-sharing system, that in that year an arrangement was come to between them and the zamindar by which a money payment "was substituted for the share of the procedure," that this arrangement, however, was subject to the condition that whenever " the lands were fit for wet cultivation the wet rates would be settled." And he went on to add in paragraph 3 of the plaint:-

The lands mentioned in the tendered patta hereunto annexed having been newly brought-under wet cultivation, and on the plaintiff's officials demanding defendant to accept the agreement as in the surrounding villages in respect of wet crop cist, he (the defendant) having refused to do so, the Asara patta with the rates prevailing under the immemorial system of sharing the grain heap (Palambaram system) was tendered for the wet land cultivated by him (defendant) for this year. As the defendant, taking advantage of this, refused to come to any agreement in respect of the dry land also for which there was no dispute at all, the rates and babats in respect not only of the said wet land, but also of the remaining dry land, were as usual entered in the said patta. All the terms of the tendered patta so far as they are connected with the Asara system are applicable to the Asara system, and the remaining ones to the Veesabadi system.

5. The ryots in their defence alleged that the arrangement introducing the Veesabadi or cash system into their villages was intended to be and was in fact permanent in character; that some years later (Fasli 1292) when the money rates were revised, the Veesabadi system was accepted as the basis of the new settlement; that recently they had been able, without any assistance or contribution from the plaintiff, to make their lands irrigable and fit for wet cultivation, and that the plaintiff was not entitled to revert to the sharing-system and thus indirectly to enhance their rents without the interposition of the Collector's Court.

6. On these allegations of fact the parties went to trial. The issues framed by the Head Assistant Collector are not very clearly worded, but they sufficiently indicate the main points for determination, viz., whether the substitution of the Veesabadi for the Asara system in the defendant's villages was permanent in its character or, in other words, was the plaintiff zamindar entitled to revert to the sharing system on the lands being made irrigable by the tenants.

7. The Collector on the evidence held in substance that the conversion of the Asara rates into cash payment in 1283, which was confirmed in 1292, and had been acted upon ever since, was a permanent arrangement, and that the plaintiff 1914 was not entitled to impose on the tenants Pattas on the Asara basis. He

accordingly dismissed the plaintiff's suits without entering into the questions raised in the latter part of Paragraph 3 of his plaint.

8. On appeal by the zamindar the District Judge affirmed the decrees of the Collector in respect of the finding of fact, relative to the character of the arrangement of 1283, and upheld the orders dismissing the suits.

9. From the decrees of the District Judge the plaintiff preferred second appeals to the High Court of Madras. It is necessary to set out that portion of the High Court judgment which forms, in their Lordships' opinion, the key to the decision of the learned Judges. They say :

Till Fasli 1283 the Asara system was in force. In Fasli 1284 money rents were introduced and the rates of such rents were permanently fixed in Fasli 1292. At that time all the lands were dry. Wet cultivation began in Fasli 1314, and the pattahs now in dispute were then tendered, as the tenants refused to pay more than the rates fixed in 1292 which they had previously been paying for the lands as dry. Nothing had been done by the plaintiff to provide facilities for irrigation. In the Muchilikas executed by the tenants for Fasli prior to 1314 there are clauses to the effect that the plaintiff may make an extra charge if wet or garden crops are raised on dry lands. The amount of such extra charge is not however stated. If the plaintiff is entitled to demand Asara rates, the rates mentioned in the pattahs tendered are correct. The Courts below have taken the view that the plaintiff has tendered Asara pattahas as a means of enhancing the rent and that as he has not done anything to justify an enhancement of the rent and has not obtained the sanction of the Collector for the enhancement, he is only entitled to the rents fixed in Fasli 1292.

For the plaintiff it is contended that inasmuch as there is no contract as to the rates of rent payable on lands cultivated with wet crops, he is entitled under Clause 3 of section n of Act VIII of 186s to claim Varam rates, it being admitted that no money assessment; Las been fixed under Clause 2 of that section.

That there is no contract as to the rates of rent payable for wet cultivation is clear from the admitted Muchilikas, the material clauses of which have already been referred to. The only rates fixed were for dry cultivation. The rates to be charged for wet cultivation were left undetermined. This being so, the contention for the plaintiff seems to be well-founded.

10. They accordingly set aside the orders of the District Judge, and holding that "the pattahs tendered by the plaintiff were proper pattahs and that the defendants must accept them," they decreed the second appeals with costs in all the Courts.

11. On an application for review of judgment, the learned Judges appear, however, to have thought that "the contract between the parties is contained in the admitted Muchilikas and must be gathered from the construction of those Muchilikas." They therefore rejected the application for review.

12. The ryot defendants have appealed to His Majesty in Council and two points have been urged on their behalf against the validity of the judgment of the High Court.

13. It is contended in the first place that no appeal lay to the High Court u/s 69 of the Act which provides for one appeal only from the order of the Collector to the Zillah Judge. This contention, however, ignores the provisions of Section 3 2 of Act VIII of 1859, which, at the time the Madras Rent Recovery Act of 1865 was enacted, was the law regulating the procedure of the civil Courts in India outside the Presidency towns. Under that section a special appeal lay to the Sudder Court from all decisions passed in regular appeal by the Courts subordinate to the Sudder Court. It is not disputed that the Zillah Judge's Court was subordinate to the Sudder Court, nor that the appeal to the Zillah Judge from the Collector's Court was a "regular appeal"-an appeal on law and facts. Later legislation substituted the High Court for the Sudder Court, and the District Judge for the Zillah Judge, but the subordination of the one to the other was maintained. The provisions of Act XIV of 1882, the law in force at the time when these suits were instituted, are clear on the point that an appeal lies from the order of the District Judge to the High Court, unless that right is taken away by express legislation or by some express provision of law.

14. The point that a second appeal lies to the High Court in cases arising under Act VIII of 1865, has been expressly decided in *Veeraswamy v. Manager, Pittapur Estate* ILR (1902) Mad. 518, and the practice appears to have been ever since the passing of the Act for such appeals to be preferred to the High Court. Their Lordships would not be disposed to interfere with such a longstanding practice, even if they thought there was an implied rule against second appeal lying from the decisions of the District Judge with respect to adjudications under the Act by the Collector. Their Lordships must, therefore, over-rule the first objection.

15. In the second place, it is contended for the appellants that the High Court was not competent u/s 584 of the CPC (Act XIV of 1882) to set aside a finding of fact which had been concurrently arrived at by the two inferior Courts.

16. Sections 584 and 585 of the CPC are in these terms :-

584. Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court an appeal shall lie to the High Court on any of the following grounds, namely :-

(a) The decision being contrary to some specified law or usage having the force of law ;

(b) The decision having failed to determine some material issue of law or usage having the force of law ;

(c) A substantial error or defect in the procedure as proscribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merit.

585. No second appeal shall lie except on the grounds mentioned in Section 584.

17. This distinctly prohibits second appeals on questions of fact and confines the competency of the High Court to deal with questions of law and procedure.

18. In the present case the sole question for determination was whether the arrangement entered into in 1283, and confirmed in 1292, was permanent. The plaintiff's allegation was that he was entitled under the circumstances to revert to the system that existed prior to 1283. The Collector and the first appellate Court, who alone were competent to deal with the facts, came to the conclusion that the arrangement was permanent. The Muchilikas were only a part of the evidence on which they acted. It seems to their Lordships that the learned Judges, acting in inadvertence of Section 584 of the Code, assumed a jurisdiction which they did not possess. The rule relative to second appeals which was laid down by this Board in *Mussummat Durga Choudhrai v. Jawahir Singh Choudhri* (1890) L.R. 17 IndAp 122 is clearly applicable to the present cases.

19. On the whole their Lordships are of opinion that the judgments and decrees of the High Court cannot stand. Sir Erie Richards has, however, submitted that the simple dismissal of the suits would seriously prejudice the rights of the zamindar with regard to the matters referred to in paragraph 3 of the plaint which were not dealt with by the Collector.

20. Their Lordships are of opinion that the best course under the circumstances would be to set aside the judgment and decrees of the High Court with a declaration that the plaintiff is not entitled to enforce the acceptance by the tenants of the pattahs tendered by him, and that the cases should be sent back to be remitted to the Collector's Court for the drawing up of proper decrees and dealing with any other questions that may be outstanding in these actions between the parties. And their Lordships will humbly advise his Majesty accordingly.

21. The plaintiff-respondent will pay the costs of this appeal Mr. Ameer and of the proceedings in the Courts of India.