
(1932) 08 MAD CK 0051
In the Madras High Court

S. Subramania Ayyar

APPELLANT

Vs

Al. Ar. Rm. Arunachalam Chettiar

RESPONDENT

Date of Decision : 05-08-1932

Acts Referred:

Citation : AIR 1933 Mad 95 : 140 Ind. Cas. 329

Hon'ble Judges : Sundaram Chetty, J

Bench : Division Bench

Judgement

Sundaram Chetty, J.—This second appeal has been preferred by defendant 2 and arises out of a suit brought by plaintiff-respondent 1 for the recovery of Rs. 1,167 from defendants 1 and-2 alleged to be the balance of, rent and cesses payable by them for Faslis 1332 to 1336 under a registered lease deed dated 18th July 1922 (Ex. A). Plaintiff and defendants 3 to 6 are the owners of two Dharmasanam villages called Anjamadai and Kachan. These villages were enfranchised by the Inam Commissioner and comprise 130 pangsus. The inams consisted of both warams at the time of the enfranchisement and the present claim by the plaintiff is based upon the lease deed, Ex. A. The main dispute between the plaintiff and defendant 2 is as regards the liability to pay the cesses in respect of the aforesaid inams. On the plaintiff's side, the contention is that the lessee under Ex. A was bound to pay the entire amount of the cesses payable in respect of the villages whereas the contention on behalf of defendant 2 is that the lessee was only bound to pay such portion of the cesses as is recoverable from him under the provisions of Section 88, Madras Local Boards Act. There is no doubt that the plaintiff is a landholder in respect of these villages within the meaning of Section 3, Clause 9 of the Act. The term land-holder as defined in this Act includes the landholder as defined in the Estates Land Act and also other kinds of landholders not contemplated in the Madras Estates Land Act. The dispute in this case is whether the position of the lessee under Ex. A, namely, the father of defendants 1 and 2, was that of an intermediate landholder or a tenant. The term "intermediate landholder" has not been defined in the Madras Local Boards Act, whereas, the word "tenant" is said to include all persons who,

whether personally or by an agent occupy a land under a landholder or an intermediate landholder. As the inamdar presumably held both the warams in these villages at the time of the grant, the lessee of such villages must be deemed to be more a tenant than an intermediate landholder.

2. Reference was made to Clause 9 in Ex. A which refers to the existence of some tenants who are in occupation of some portions of these villages; and in view of the existence of such raiyats or tenants, it is argued that the position of the lessee under Ex. A would more appropriately be that of an intermediate landholder. It is not known whether the plots in occupation of such tenants form the bulk of the lands comprised in the villages or only a small fraction thereof. There is no doubt that the inamdars are owners of both the warams in these villages, although the actual extent of the lands in which they hold both the warams is not known: vide also Clause 15 of Ex. A. Considering the real nature of these inams at the time of the grant, it seems to me that the position of the lessee of such villages under Ex. A would be more appropriately that of a tenant than that of an intermediate landholder. In this view the lessee's liability for the payment of cesses u/s 88, Madras Local Boards Act, would come under Prov. 2 and not under Prov. 1. Both the Courts below have also accepted the position of the lessee under Ex. A as that of a tenant within the meaning of Prov. 2 of the said section. I am in agreement with that view. That being so, the lessee under Ex. A would be legally bound to pay one-half of the cesses payable by the landholder in respect of these villages. (His Lordship then considered the document Ex. A and held). I consider that on a reasonable construction of Clause 7 in Ex. A, the lessee must be deemed to have stipulated to pay what was legally payable by him to the landholder. (His Lordship then held that it was necessary for the lower appellate Court to decide whether the overpaid cesses could be adjusted and concluded). This appeal is accordingly remanded to the Court of the Subordinate Judge of Ramnad for fresh hearing and disposal in the light of the observations made above. The costs of this appeal will abide the final result and should be provided for in the revised decree to be passed by the lower appellate Court. The court-fee paid by the appellant on the memorandum of appeal will be refunded to him.