
(1912) 03 MAD CK 0008
In the Madras High Court

Saminatha Iyer and Others

APPELLANT

Vs

Marimuthu and Others

RESPONDENT

Date of Decision : 28-03-1912

Acts Referred:

Citation : 14 Ind. Cas. 689

Hon'ble Judges : Sundara Aiyar, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Abdur Rahim, J.—One of the questions on which the Subordinate Judge was asked to return a finding was, whether the defendants held the back-yard of his house under the plaintiffs or their ancestors as Kasavargam tenants. The finding is in the negative. But Mr. Ramachandra Iyer, who appears for the defendants, contends that we ought not to accept the finding because the Subordinate Judge has not given proper weight to Exhibit D, the document filed by his client, and that the reasoning of the Subordinate Judge in dealing with the evidence is not satisfactory. I may mention t.hat the District Munsif who tried this suit had also found this point in favour of the defendants, and so did the Subordinate Judge in appeal. We did not consider the judgment of the lower Appellate Court satisfactory because no reference was made to Exhibits A and B, the Paymash and the Village Register. Both the documents have now been considered by the Subordinate Judge. He states in one place in his judgment that they show that the defendants, or rather their ancestors, occupied the back-yard under Subbaramier a,3 the plaintiffs" ancestor. But, as a matter of fact, both these documents only show that Subbaramier was the holder of the pattah. And this is really what the Subordinate Judge

means, for he afterwards goes on to point out that it is not shown that the defendants or their ancestors held the land as Kasavargam tenants of

Subbaramier or his ancestors. His conclusion upon the evidence is that the defendants or their ancestors might have held the land as Kasavargam

tenants, but. it is not proved that they so held under the plaintiffs. He also considers Exhibit, D and is of opinion that under Exhibit D, which is a

partition deed of 1885 entered into by the members of the defendants' family, the back-yard in dispute is included in the first item of the properties

divided. That is apparently so. But Mr. Ramachandra Iyer contends that Exhibit D contains an admission that the back-yard belongs to Subbarama

Iyer. But it seems to me that even supposing that the boundaries given in Exhibit D are merely of the house, the description of the backyard as

Subbaramier's would not carry the plaintiffs' case any further than Exhibits A and B. The description might be explained by the fact that the pattah

stood in the name of Subbaramier. The Subordinate Judge points out that there is no evidence to show whether this Subbaramier or any of his

ancestors let the defendant or his ancestor into possession of the land. Then he considers also the oral evidence. He finds upon the oral evidence

that it. is not proved that the defendant or his family ever rendered services to the plaintiff in lieu of any grant made to them. He finds that whenever

the defendant or any member of his family rendered services to the plaintiffs, they were given fall wages. And he also points out that, whatever

manure was supplied to the plaintiff was paid for by them.

2. It seems to me that the conclusion at which the Subordinate Judge arrived after considering the oral and documentary evidence in the case must

be upheld in second appeal.

3. I, therefore, dismiss the second appeal with costs.

Sundara Aiyar, J.

4. I concur in the conclusion arrived at by my learned brother. The plaintiff sued to recover possession of the house site in question from the

defendants alleging that it was the ancestral property of his family and that Subbaramier, the grandfather of the plaintiff, allowed the grandfather of

the 2nd defendant to occupy the land and that, in lieu of the occupation, that is, in consideration of the permission given to the 2nd defendant's

grandfather to occupy the land, it, was agreed that the 2nd defendant's

grandfather should render service as barber to Subbaramier. I take it that if the 2nd defendant's grandfather came into possession of the land on the terms set out in the plaint, the defendant might be presumed to occupy on the same terms as his grandfather did. The Subordinate Judge has found that the plaintiff has failed to make out, the case set out in the plaint.

There is admittedly no direct evidence of the terms on which the 2nd defendant's grandfather or any predecessor of his was let into possession of the land. The Subordinate Judge comes to the conclusion that, as a matter of fact, no services were rendered by the members of the defendants' family in consideration of their occupation of the land. It was open to him to infer from this conclusion that the land was not occupied by the defendants' family in consideration of services to be rendered to plaintiffs' family and that their right to occupy it had no connection with the rendering of any services by their family. If there were clear evidence of the terms of the original letting, then, no doubt, the mere failure to render services would not affect the plaintiffs' right to recover. But, as already pointed out, there is no direct evidence of the terms of the letting. These terms are sought to be proved by Exhibits A and B. Exhibit A is dated 1830 and Exhibit B is probably of the same year. The former document Exhibit A is the paymash and Exhibit B is the register of lands in the village. These two documents, taken together, show that the land in question was held on Kasavargam tenure. They also show that the ryot or pattadar under Government was Sub-baramier. Exhibit B states that the land in question was barber Kattayan's manaihollai. The documents, however, do not establish that the occupant Kattayan was bound to render any services to the pattadar Subbaramier. The Subordinate Judge observes that these documents prove that Kattayan was holding the land under Subbaramier. All that they show, however, is that Subbaramier was the pattadar, and Kattayan the occupant. There is nothing on record to show who let Kattayan or any predecessor of his into possession. If, as a matter of fact, the possession of the occupant was prior to the issue of the patta, then the documents would not show that possession was derived from the pattadar or his family, or that on account of the tenure on which the land was held, namely, Kasavargam tenure, any service was due to the pattadar's family. It is often the case with respect to Kasavargam

tenure that service is due to all the people of the village in which the land was situated; and, as far as my information goes, this is usually the case

though it is quite likely that in imitation of grants made for services to the whole village, individual owners may also have made grants for

performance of services to their own families. But It was incumbent on the plaintiffs to prove that the services were due to the family as a condition

for the occupation of the land by the defendants' family. Of this I. can find no evidence. Then there is a document of some importance on which

much stress was laid by Mr. T.R. Ramachandra Iyer, the learned Vakil for the appellant. This document was put in by the plaintiff, apparently to

show that in 1885 Subbaramier's title to the land was acknowledged by the defendant. But it has been mainly relied on by the lower Courts as

strong evidence against the plaintiffs. I am disposed to agree with the appellant that this document does contain an admission of some sort of the

plaintiffs' title. I have scanned the document carefully and have come to the conclusion that the northern boundary of the house, which is part of the

subject-matter of this suit is described as "Subbaramier's kollai." It is also clear to me that the measurement given for item I in Exhibit B relates

only to the building and the measurement is said to relate to the house within the boundaries mentioned. I think the District Munsif made a mistake

in supposing that the kollai or the backyard was also included within the boundaries given. It may be that there is some land other than the land in

question which might have been described as Subbaramier's land, even if the back-yard be taken to be included within the boundaries. But I am

unable to entertain any doubt that, as a matter of fact, the boundaries did not include the back-yard. Now, taking the correct construction of the

document to be in plaintiffs' favour, what inference does it lead to? I am of opinion that it really does not improve the plaintiffs' case. In other

words, it does not carry his case beyond Exhibits A and B. It may mean, as my learned brother has observed, merely that Subbaramier was the

pattadar. But even going further and taking it to mean an acknowledgment of right, what is the right acknowledged? That can only be determined

by deciding what are the terms of the defendant's tenure. And if the plaintiff apart from Exhibit D has not succeeded in proving that the rendering

of any services to him was a condition of the defendant's right to occupy the land, then, Exhibit D is really of no great service to him. The

acknowledgment might mean merely that the reversion in the land belonged to Subbaramier who would be entitled to enter on possession of it whenever the defendant's right as Kasavargam holder should determine. The result, therefore, is this that the plaintiff has not succeeded in proving that on account of the defendant's denial of service to him, the plaintiff is entitled to recover. It was argued for the appellant that, although the service may not have been rendered in consideration of the occupation of the land and although any services rendered by the defendant might always have been paid for, it would be in accordance with the incidence of Kasavargam tenure that the tenant should forfeit his right to occupy the land if he refuses to perform service. I agree that it is quite possible that such may be the case but the argument is really not in accordance with the case set out in the plaint. Apart from this fact, however, I think that for the reason which I have already mentioned, namely, that it is not proved that any services were due to the plaintiff's family, the second appeal must fail. It is remarkable that the plaintiff has no evidence, beyond the revenue accounts already referred to, in support of this case. This is in accordance with my experience of claims made against tenants in occupation in the Tanjore District in many cases on the allegation that they hold their homesteads on condition of service. The revenue history of the District, no doubt, shows that homesteads were given to cultivating ryots which they were entitled to occupy so long as they cultivated any land in the village. And sometimes homesteads were given so long as they pursued some profession for the benefit of the villagers at large. But in many cases, these conditions were not adhered to and I have very often come across cases where mirasdars have little better than paper-titles not actually enforced and maintained. At any rate, I am quite clear that in this case the plaintiff has failed to prove the allegations with which he came into Court. I, therefore, agree that the second appeal should be dismissed with costs.