

(1919) 01 MAD CK 0003
In the Madras High Court

Segu Rowthen and Others

APPELLANT

Vs

Muthu K.R.V. Alagappa Chetty and Others

RESPONDENT

Date of Decision : 16-01-1919

Acts Referred:

Madras Estates Land Act, 1908 — Section 77

Citation : 22 Ind. Cas. 834 : (1914) 26 MLJ 269

Hon'ble Judges : Tyabji, J; Charles Arnold White, J

Bench : Full Bench

Judgement

Charles Arnold White, Kt., C.J.—This is a suit for rent. The claim is in respect of 2 faslis before the Madras Estates Land Act 1908, came

into operation, and one after. The question is, is the defendant liable to pay rent in respect of the entire area of his holding or is he only liable to pay

rent in respect of so much of his holding as was in fact cultivated during the period for which rent is claimed by the plaintiffs. The patta which is in

evidence bears date the 30th June 1907 a date prior to the coming into operation of the Madras Estates Land Act. It is not clear whether there has

been any formal acceptance of the patta by the defendant--it is not suggested by him there has not been, and the plaintiff's case is that the patta

has been accepted. The plaintiffs do not suggest that the patta is not binding on them. In paragraph 2 of the patta we have a provision that for the

lands whether cultivated or left waste by the defendant's default, rent at a certain rate has to be paid. That standing alone clearly suggests that rent

is only payable on lands in fact cultivated or on lands which might in fact have been cultivated but were left uncultivated by reason of the

defendant's neglect. We have a later provision in the patta, Clause 6, that if the defendant finds it impossible to cultivate or does not want any

portion of the lands comprised in his holding he should apply for relinquishment, I shall have to refer to that in a moment all that is necessary to say

now is that so far as that particular provision in the patta goes it does help the plaintiffs' contention. Now the issue and the only issue with regard to

the question and it is an issue of fact--is this. "" Is the whole lands comprised in the account cultivable and is waste due to the neglect of the ryots.

The issue seems to have been framed on the assumption that the defendant was only liable to pay the rent in respect of land which was cultivable,

and which was not cultivated by reason of the neglect of the defendant. According to the form of the issue-- and it has not been suggested the issue

is wrong--the plaintiff had to prove two things, first that the land in respect of which he claims rent was cultivable, secondly, that it was on account

of the neglect of the defendant that cultivable land had not been cultivated. That this was the plaintiff's case--at any rate in the Court of first

instance, is clear from the opening words of the judgment of the Deputy Collector: ""the plaintiff's allege that the defendants have left the lands to lie

waste and this was due to their neglect, and that rent is consequently payable for the same."" There is no finding that the lands were allowed to

remain uncultivated by reason of the neglect of the defendants. Inferentially the findings are all the other way. The findings of the District Judge are:

The lower Court found that the lands are peculiarly unproductive and that the same field cannot be cultivated every year and I see no reason to

disagree."" Again, "" there is also no doubt that until fasli 1316 the custom Was to charge only for the areas actually cultivated each year. "" Now,

what have we to guide us to what was really meant when this patta was accepted ? First, we have the admitted fact that up to the granting of this

patta the plaintiffs only charged for the areas actually cultivated. Unless there was some indication to the contrary there is a presumption that the

parties intended that their respective obligations should continue to be the same. That that was the intention as it seems to me, is borne out by the

provision in the patta itself contained in cause (2) to which I have already referred. It seems clear that in the Court of first instance no reliance was

placed upon the provisions of the Estates Land Act. In the District Court an attempt was made to set up a case under the act which had been

passed subsequently to the granting of the patta which is in evidence. The plaintiffs relied upon Section 4 and the definition of "" rent "" contained in

Section 3 Sub-section 11. Section 4 says that the landlord is entitled to collect rent in respect of all ryoti land in the occupation of a ryot. Prima facie it is so, but if the evidence shows that it was not the intention of the parties that he should collect rent in respect of all land in occupation of the ryot but should collect rent only in respect of the land in fact cultivated by the ryot, of course the intention of the parties overrides the provision of the act. This section of the Act merely lays down the general rule, in my opinion, can be displaced by evidence as to what the parties meant and intended.

2. As regards Clause 6 of the patta, that no doubt supports the plaintiff's contention. We were referred to a case reported in Vedantachariar v.

Iyyasami Mudali ILR (1881) M. 322 where a provision similar to this was objected to, The Court took the view that such a provision was unreasonable and they went on to observe the removal of the clause would not, of course affect the landlord's right to collect the whole rent notwithstanding that lands are left uncultivated.

3. In that case the report does not state all the terms of the patta Here, reading the patta as a whole, the intention of the parties seems reasonably clear. I think the conclusion arrived at by the Deputy Collector is right, and that the decree of the lower Court should be set aside and that of the Deputy Collector restored with costs here and in the Court below.

4. This judgment will govern Second Appeals Nos. 511 to 522 of 1912.
Tyabji, J.

5. I agree in the order proposed by the learned Chief Justice.

6. This appeal arises out of a suit for rent u/s 77 of the Estates Land Act. The question that is involved seems to me to be, on what basis the rent of the land in the occupation of the defendants is to be calculated. The special Deputy Collector proceeded on the basis that the rent should be calculated in respect of the years in question,--namely faslis 1316, 1317 and 1318, in the same manner in which the rent had been calculated for the previous faslis and he therefore came to the conclusion that the plaintiff was entitled to a decree for Rs. 42-6-3. The basis on which the rent was calculated in the previous faslis was that the plaintiff was paid by way of rent a sum of money determined with reference to the land actually

cultivated by the tenant: it was not determined with reference to the extent of the land occupied by the tenant. In appeal, the District Judge gave to the plaintiff a decree for Rs. 111-5-7 in respect of arrears of rent and the basis on which he proceeded was that rent should be calculated in other respects in the same way in which it was calculated in previous years, but that though in the previous years it was calculated with respect only to the portion actually cultivated by the tenant, it should in respect of the arrears in dispute be calculated as though the whole land in the occupation of the tenants had been cultivated. The District Judge, was of opinion that Section 4 of the Madras Estates Land Act required him to do so. From the penultimate paragraph of his judgment it would appear that the learned District Judge was 10th to come to the conclusion he did but that he thought that the Act left him no option. With all respect to the learned District Judge it seems to me that he has misunderstood the provisions of the Madras Estates Land Act. Section 4 gives the right to the landholder to collect rent in respect of all the ryoti land in the occupation of a ryot. That section by itself does not suffice for the determination of the total amount of rent that has to be collected. The amount of the rent to be collected can be determined only if both the extent of the land in respect of which rent is to be charged and the rate at which the rent is to be calculated are known.

7. The way in which the rate of the rent is to be calculated is fixed by Chapter III of the Act. The first section of that chapter is Section 24 which lays down that "" the rent of a ryot shall not be enhanced except as provided by this Act"". It is evident that if in respect of the same land the ryot is made to pay a higher rent, then there is an enhancement of the rent. The learned Judge's error seems to me to have arisen from his considering that the rent paid in the previous years was not in respect of all the land in the occupation of the ryot, It was in fact in respect of all the land though the mode in which the amount payable was determined in the past was by reference not to the extent of all the land in the occupation of the tenant but to the extent of land cultivated. There is nothing in the Act which makes it necessary to alter this method of determining the amount of rent payable nor does the Act provide that the landholder may exact a higher rent from the tenant for the same piece of land because he is entitled to obtain rent

in respect of all the land in the occupation of the ryots. On the other hand the provisions of Chapter III of the Act lay down explicitly that the basis

on which the rate of rent is to be determined is to be presumed to be the same as that on which it has been recovered by the landlord in the

previous faslis. Now, the basis on which the rent has been recovered in the past in respect of the lands in question seems to me to be perfectly

clear and legal. On the facts found, it is not questioned that the lands could not all be cultivated and it seems to have been clearly understood and

agreed upon between the landlord and the tenant that the rent had to be paid by a calculation based on the land actually cultivated by the tenant.

That is a basis of calculation which is capable of being made perfectly certain and capable of being adhered to. I see no reason why the same basis

should not be continued to be utilized for the purpose of calculating the rent and it seems to me the act expressly provides that the same basis shall

be continued in the absence of another agreement being proved.

8. The plaintiff also relied on Exhibit C which purports to be a patta tendered to the defendants. The plaint refers to this patta as having been

tendered. It is not alleged in the plaint that the patta was accepted. There is no reference in the judgment of either Court to the fact of the patta

having been accepted, at least so far as our attention has been drawn to the judgments, still less is it alleged that there is any finding to the effect

that the patta has been accepted. It is true that the learned District Judge refers to the patta and apparently considers that the rights of the parties

are to be determined with reference to the contents of the patta but that could only be so if the patta was in the nature of a contract entered into

between the parties and valid under the Estates Land Act. The plaintiff has not proved those facts which are necessary in order that such a contract

may result. It is not contended before us that the patta can affect the rights of the parties without being accepted, and it is admitted that the rights of

the parties must continue to be what they were before, unless there is a patta tendered and accepted which alters the relation between the parties.

We have clear findings as to what the rights of the parties were, previous to the tender of the patta. Both the Courts are agreed as to that, and

those findings are, as I have indicated above, entirely in favour of the decree passed by the Special Deputy Collector. It seems to me therefore to

be unnecessary to deal with the construction of the pattas, but I see no difficulty in reconciling Clauses 2 and 6 of the patta Clause 2 lays down that

when the land is left waste by the neglect of the tenant, rent shall be charged in respect of such land apparently not otherwise. Clause 6 lays down

that in case the tenant wishes to relinquish any land then he should apply to the landlord. These two clauses seem to me to be reconcilable on the

basis that failure to cultivate under circumstances which would be neglect on the part of the tenant under Clause 2 can be prevented from being so

considered by giving previous intimation to the landlord under Clause 6 to the effect that the tenant does not intend cultivating the land.

9. I consider however that the rights of the parties have to be determined irrespective of Exhibit C. For these reasons I agree that the appeal

should be allowed with costs.

10. This Judgment will govern Second Appeals Nos. 511 to 522.