
(1955) 10 MAD CK 0019
In the Madras High Court

Sheik Davood Rowther

APPELLANT

Vs

Rajasri Prathasimha Rajah Sahib

RESPONDENT

Date of Decision : 04-10-1955

Acts Referred:

Madras Estates Land Act, 1908 — Section 27, 77

Citation : (1956) 69 LW 49 : (1956) 1 MLJ 316

Hon'ble Judges : Krishnaswamy Nayudu, J

Bench : Division Bench

Judgement

Krishnaswamy Nayudu, J.—The appellant-defendant is a ryot against whom the plaintiff landholder instituted Summary Suit No. 75 of 1949 u/s 77 of Act I of 1908 in the Deputy Collector's Court, Tanjore, for recovery of arrears of rent for faslis 1355 and 1356. The plaintiff claimed the melwaram or rent at 11/1 2 kalams for the first crop on double crop wet lands and 13 kalams for the first crop on single crop wet lands on the basis of muchilika executed by the first defendant for faslis 1336-1340, Exhibit A-1 dated 10th September, 1928. There was an issue of a patta for fasli 1341 under Exhibit A-2 according to which the first crop charge on single crop wet land was 12 kalams per acre and there was no change in respect of double crop lands. There was an earlier summary suit for the previous faslis 1352-1354 in Summary Suit No. 6 of 1946, where the plaintiff claimed at the same rate at which he claimed in the present suit. The Deputy Collector then reduced it 10 6/7 kalams for both crops on double crop wet lands and 4/1 2 kalams per acre for first crop on single crop wet land and half of it for fasli jasthi. This order of the Deputy Collector was upheld in appeal by the District Judge of Tanjore in A.S. No. 32 of 1948. The plaintiff supported his claim in the present suit on the basis of the patta and muchilika and as regards the decision in the previous suit it was pointed out that as there was no evidence by way of patta and muchilika, the Deputy Collector fixed at a lower rate. In the present suit, the Deputy Collector applying Section 27 of the Estates Land Act granted a decree at the rates decreed in the earlier proceedings, Summary Suit No. 6 of 1946. It is common ground that after fasli 1341 there was no exchange

of muchilika and pattas between the parties. In appeal, the learned District Judge of West Tanjore took the view that the decree in Summary Suit No. 6 of 1946 had not the effect of varying the contract between the parties which was embodied in Exhibits A-1 and A-2 and the contract between the parties had not become extinguished in any event and therefore since the pattas and muchilikas had been filed in the present suit, the landlord could rely on the patta and ask for a decree for rent as provided in the patta and muchilika.

2. The point for determination is whether it would be open to a Court in fixing rent in a suit u/s 77 of the Madras Estates Land Act to go behind the terms of the contract entered into between the parties as per the patta and muchilikas exchanged between them. Prima facie there can be no doubt that the view taken by the Deputy Collector is correct, especially in applying Section 27 to the present case and proceeding on the basis of the principle laid down in that section, where it is provided that

if a question arises as to the amount of rent payable by a ryot or the conditions under which he holds in any revenue year, he shall be presumed, until the contrary is shown, to hold at the same rate and under the same conditions as in the last preceding revenue year.

For the last preceding revenue year, viz., fasli 1354, there was no exchange of patta and muchilika and the rate of rent for that year was as decreed in Summary Suit No. 6 of 1946 and, therefore, in ascertaining the amount of rent payable for faslis 1355 and 1356, which are the periods covered by the present suit, the ryot shall be presumed to hold only at the same rate, namely, at the rate decreed, unless the contrary is shown. It was open to the ryot to show to the contrary which could only be done by showing the patta granted to him if any and there being no patta for the preceding year, the Deputy Collector properly relied on the principle laid down in Section 27 and applied it to the facts of the present case.

3. It is however urged by reference to Section 52 of the Act that pattas and muchilikas may be exchanged for periods of one or more revenue years, but no landholder is bound to tender and no ryot to accept a patta for a period of more than one revenue year and when once muchilikas have been granted and exchanged they shall remain in force u/s 52(3) until the commencement of the revenue year for which fresh pattas and muchilikas are accepted, exchanged or decreed, provided that where a patta or muchilika has continued in force for more revenue years than one, no fresh patta or muchilika for the same holding shall take effect until the commencement of the revenue year next succeeding that in which it is tendered, accepted, exchanged or decreed.

4. The effect of Section 52 and in particular Section 52(3) was the subject-matter of consideration in *R. Foulkes and Another Vs. Kandasami Pillai alias Karuppiyah Pillai and Others*, , where it was held that the only effect of there being a patta which remains in force by virtue of Section 52(3) so far as suits for

rent are concerned is that, except in special cases falling under Sections 25, 30, 42 and 45 which require the order of the Collector for determination of rent, the rent mentioned in the patta will, under Sections 27 and 28, be presumed to be the proper rent until the contrary is shown and that, in other words, except in those excepted cases it is open to the landholder without tendering or exchanging or getting decreed a fresh patta to show to the Court in which the suit for rent is filed that he is legally entitled to a different amount or rate from that mentioned in the old patta. This is no doubt a case where the landholder wanted to go behind the patta issued for a previous period and I do not see any difference in the application of the principle to the case of a ryot. It is therefore seen that the rate of rent agreed upon and mentioned in the patta and muchilika is not at any rate conclusive as to the rate of rent for any period subsequent to the period for which the pattas and muchilikas have been exchanged and when a question arises as to what would be the proper rent in a suit u/s 77 of the Act, where especially the rate of rent is not fixed by any patta and muchilika for the period of the suit, it will be open to the Court to fix a reasonable rate of rent. In the present case after fasli 1341 there has been no exchange of pattas and muchilikas and it is also in evidence that the landholder has collected at varying rates. In view of that, the rate fixed for the previous year by the Deputy Collector in Summary Suit No. 6 of 1946 must in the circumstances be taken as the proper basis for arriving at the rate of rent for 1336-1340. The lower appellate Court erred in ignoring the decree in Summary Suit No. 6 of 1946 and relying on the patta and muchilika issued for a period much earlier to the period of the suit.

5. Reference is made to two decisions of this Court in *Gopalakrishna Bhatta Vs. Gururajacharya*, , and *Rajah of Vizianagaram Vs. Perumetcha Appalaraju*, . In the former case, it was held that where in a prior suit for arrears of rent the Court simply passes an ex parte decree in favour of the plaintiff for an amount claimed by him and the judgment and decree in that suit do not show that the question as to the rate of rent was adjudicated upon by the Court, the decision would not operate as res judicata with regard to the rate of rent in a subsequent suit between the parties even if the rate of rent can be deduced by calculation from the previous decree. Similar was the view taken in the latter case.

6. It is not by the application of the principle of res judicata that in the present case it could be held that the view taken by the Deputy Collector is correct; but it is on the basis that in a case where there is no contract as to the rate of rent for a particular period as evidenced by pattas and muchilikas, it will be open to the Court to fix the rent relying on Section 27 of the Madras Estates Land Act, as the Deputy Collector has proceeded to do in the present case. Therefore the application of the principle of res judicata has not been relied upon by either of the Courts below and no question of res judicata arises in the present case.

7. The result is, the appeal is allowed with costs.