
(1925) 09 MAD CK 0066
In the Madras High Court

Solai Pillai

APPELLANT

Vs

A. Vedaji Baskara Tirumala Rao Sahib

RESPONDENT

Date of Decision : 25-09-1925

Acts Referred:

Madras Estates Land Act, 1908 — Section 112

Citation : AIR 1926 Mad 756 : 95 Ind. Cas. 250 : (1926) 23 LW 625

Hon'ble Judges : Viswanatha Sastri, J;Odgers, J

Bench : Full Bench

Judgement

Odgers, J.

1 This was a suit u/s 112 of the Madras Estates Land Act instituted by the plaintiff who was a tenant of a certain holding in the Arni Jaghir, from Fasli 1318 to 1326. The appellant and the Jaghirdar had exchanged pattas and in Fasli 1327, corresponding to 1917, and the Jaghirdar in Fasli 1328, tendered a patta with an altered rent and diminished acreage. The tenant refused to accept it. The landlord then, u/s 112 purported to bring the holding to sale. Hence, the tenant brought this suit under the same section. The land was brought to sale for rent due for Fasli 1328. Both Courts have held that the patta tendered by the Jaghirdar to the appellant is proper and correct, and it has been found that the previous pattas were wrong both as to rent and extent owing to the fraud and collusion of the karnam of the estate with the appellant. It is argued in second appeal before us that the sale of the holding by the landlord cannot be upheld unless he has brought a suit u/s 56 of the Act for the acceptance of a patta, and reliance is placed on the words of the Act in Section 52(3) that pattas are to remain in force until the commencement of the revenue year for which fresh pattas and muchilikas are accepted, exchanged or decreed. It is said in this case that none of those three things has taken place. On the other hand, it is said that the terms of Section 53, which, it is to be noted, applies in terms to Ch. VI of the Act under which these proceedings are taken, debar the landholder from proceeding against the ryot by distraint and sale of his moveable property or by

sale of his holding under Ch. VI unless the patta or muchilika tendered to him was such as he was bound to accept or unless valid patta or muchilika continues in force. It has been held in both the Courts as a fact that the patta tendered is such a patta as the tenant was bound to accept and it, I may add, is extremely doubtful whether it can be said that a valid patta or muchilika continues in force, the previous pattas having been held to be vitiated by fraud though it is contended that they must be in full force and effect until they have been actually declared unenforceable or of no effect. I fail to see why we should accede to the argument put forward by the appellant which compels a landlord in every case of an altered patta to bring a suit for its acceptance. It seems to me, confining myself to the provisions of Ch. VI and Section 53, that all that a landlord has to do to justify proceedings under Ch. VI is to tender the ryot such a patta as the latter was bound to accept. There is undoubtedly some difference between the words in Section 52(3) and those in Section 53(1) ; but I think it is sufficient to say that Section 53 is confined to proceedings "under Ch. VI and that those proceedings are controlled by the conditions set out in Section 53(1). This suit is one under that chapter. There is no doubt that the Estates Land Act has for one of its objects to facilitate the recovery of rent in arrears by means of summary remedies such as distress. That will account for the insertion of Section 53(2) which is not to be found in the old Rent Recovery Act where, unless the patta was entirely correct, all the remedies pursued by the landlord fall to the ground. In *Sreenivasa Aiyangar v. Abdul Rahim Sahib* [1917] 6 L.W. 108 which was a suit for enhanced rent and heard by Ayling and Napier, JJ., Ayling J. decided the case on the short ground that a suit would not lie for an enhanced rent until the landlord obtained the order of the Collector u/s 42, Sub-clause (2). He refused to decide the question as to whether a suit for enhanced rent (in this case before us, the rent is less than it was in the previous faslis) can be brought without first enforcing the acceptance of patta. Napier, J., was inclined to think that the terms of a new patta must be altered either by exchange of muchilika or by a decree u/s 56 before the landlord is entitled to sue for rent. He thought:

That the old patta remains in force fresh pattas neither having been accepted, exchanged or decreed.

2. This of course was not a suit for sale of the holding for arrears or for enforcing the landlord's right to distraint. For the reasons that I have given, I am of opinion that the dictum of Napier, J., is wrong. As pointed out, it was not necessary for the decision of the appeal before him which proceeded on another ground. I, therefore, think that the judgment of the learned District Judge was right. It may be mentioned that this point apparently was not raised before the Collector and it seems to me to have been not very strenuously argued before the District Judge. In paragraph 4 of his judgment, he expressed his inability to accept the contention largely on the ground of the circumstance under which the previous pattas had been brought about. There seems to have been no argument on the sections of the Act such as we have heard to-day. For these reasons, I am of opinion that the second appeal must be dismissed with costs.

Viswanatha Sastri, J.

3. I agree with my learned brother. In my mind there is no inconsistency between Section 52, Clause(3) and Section 53. Even assuming that the two sections have to be reconciled, it appears to me that the word "decreed" in Clause3 of Section 52 may be taken to include the decision on the validity of the patta in a contested suit like the present u/s 112 of the Act.