

(1913) 08 MAD CK 0013
In the Madras High Court

Sree Balusu Buchi Saravagarudu Garu	APPELLANT
Vs	
Kovvuri Venkata Raju and Others	RESPONDENT

Date of Decision : 01-08-1913

Acts Referred:

Madras Estates Land Act, 1908 — Section 23

Citation : (1913) 25 MLJ 617

Hon'ble Judges : Tyabji, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—Section 23 of the Madras Estates Land Act says that a land "" shall be presumed to be ryoti land other than old waste

until the contrary is proved. The important question in issue in this case is whether the plaint land is ryoti land coming under the definition of old

waste or ryoti land not coming under the definition of "" old waste "". For, if it was not "" old waste"". Section 6 gives the ryot in possession on the

date of the passing of the Act an occupancy right in the land; and this suit by the landlord (appellant before us) in ejectment was rightly dismissed

by the lower courts. Old waste is defined in Section 3 Clauses 7. Clause 7 contains two sub-clauses Nos. 1 and 2. The plaint land admittedly does

not come under Sub-clause (1). As regards Sub-clause (2) there are two parts in it. The land in question does not come under the description of

the land in the second part, that is, land in respect of which an ejectment decree against the ryot has been obtained before the coming into force of

the Act. As regards the first part of Sub-clause (2), it refers to a land which has remained without occupancy rights , being held therein at any time

within a period of not less than 10 years immediately prior to letting by the landholder after the passing of the Act. To find out whether a land was

old waste" or not at the time of the passing of the Act, a definition which says that a land shall be considered as old waste at the time of a letting

after the passing of the Act, if certain conditions are then fulfilled cannot be resorted to, because Section 6 applied at once on the passing of the

Act, and when once occupancy rights are vested in a ryot at the time of the passing of the Act, the land ceases to be old waste.

2. Hence, it seems to me, that the plaint land, which was clearly ryoti land (that is, cultivable land other than private land according to the definition

in Section 3 Clause 16) on the date of the coming into force of the land Act and which land the landlord could not then prove to be "" old waste

under either of the sub-clauses of Section 3 must be held to have then been ryoti land other than old waste. If so, the defendant got a right of

occupancy then u/s 6 and could not be ejected thereafter.

3. As to the argument that the addition made to Section 153 by the amendment Act of 1909, namely ""nothing shall affect the liability of a non-

occupancy ryot to be ejected on the ground of the expiry of the term of a lease granted before the passing of this Act,"" that this addition would

become useless if all non-occupancy ryots in possession got occupancy rights on the passing of the Act, there are certain kinds of non-occupancy

ryots included in Section 6 Clauses 3,4 and 5 of the Act, who do not obtain occupancy rights even if they were in possession on the date of the

coming into force of the Act. The additional clause, inserted by the amending Act in S- 153 would apply to such lands. On these grounds I would

dismiss this second appeal with costs.

4. If the land was "" old waste,"" Section 157 of the Act as interpreted in Chaganti Atchaparaju Vs. Raja Velugoti Krishnayachendraluvaru, will bar

this suit. But it is unnecessary to base my decision on that ground, as the correctness of that decision has been attacked in the arguments before us.

Tyabji, J.

5. The plaintiff prays for an order of ejectment against the defendant, his tenant; the tenant alleges on the other hand that he is a ryot in possession

of the land at the date when the Madras Estates land Act came into question having been admitted by the plaintiff into the possession of the land

which he alleges is ryoti land not being old waste and on this ground the defendant contends that he has the right of permanent occupancy in his

holding. The first question therefore we have to decide is whether the land is ryoti, land not being old waste. The defendant relies upon Section 23 of the Madras Estates Land Act which raises the presumption that any land the nature of which it is necessary to determine is ryoti land other than old waste, until the contrary is proved. The onus therefore is on the plaintiff to establish that the land in question is old waste land. He seeks to do so by establishing that the land falls within the terms of Section 3 Sub-section 7 Clause (2). That clause according to the learned pleader for appellant is applicable to the facts of this case, his contention being that the land in question is old waste because at the time of the taking of the land in 1909 by the landholder it had remained without any occupancy rights being held therein within a continuous period of 10 years, namely, from 1899 to 1909. It is admitted by the respondent that up to 1904 the land in question was not subject to any occupancy rights; and that it had been let to tenants under leases of varying terms the last of which expired 1904. In that year the present tenant obtained a lease for 5 years and took possession of the land under his lease. It is also admitted that, up to the time when the Act came into operation, namely, 1st July 1908, the land was not subject to any occupancy rights; but the respondent contends that on the 1st July 1908 while he was in occupation of the land in question it became impressed with occupancy rights by the operation of the Act and he relies on Section 6 for this contention. The question therefore at this stage is whether the land was impressed with occupancy rights on the 1st July 1908 by reason of the provisions of any section of the Act.

6. Now, Section 6 on which reliance is placed by the respondent does not deal directly with the question in what way occupancy rights may be acquired in lands which up to the coming into operation of the Act were without occupancy rights. Nor does it say in what way lands such as would come within the description of "old waste" may be turned into ryoti land. But the section proceeds on the assumption that the lands to which it appears are ryoti lands not being old waste. It is therefore to my mind rather unsatisfactory that when we have to determine the question whether the particular piece of land which at one time was not subject to occupancy rights became subsequently impressed with such rights, we

should fall back upon a section which deals with land, which : ex hypothes is subject to occupancy rights. I feel constrained however not without a great deal of hesitation to come to the conclusion that in such a case also the person claiming that the land is old waste must affirmatively establish that the land in question comes within the definition of old waste contained in some provision of the Act such as Section 3 Sub-section 7 Clause 1 and as a consequence must if necessary prove that there are no occupancy rights in the land. I come to this conclusion on a consideration of the presumption raised u/s 23 and the definition contained in Section 3 Clause 16 of "ryoti land" together with the provisions of Section 3 Clause 7 relating to the definition of " old waste."

7. Turning then to the definition of old waste in Section 3(7) and to the means which are provided in it for establishing that any land is "old waste"

after the Act came into operation, it is admitted that the plaintiff has not obtained a final decree of a competent civil Court establishing that the ryot

has no occupancy right before the passing of the Act. It is also admitted that the land in question was not possessed by the landholder or his

predecessor in title for a continuous period of not less than 10 years.. Nor has it continuously remained uncultivated during that time so that the two

modes of affirmatively establishing that the land is old waste which are referred to in the 6th clause of Section 3 cannot avail the plaintiff. It follows

that the lower courts have not erred in holding that it was for the plaintiff to establish that the land in question was " old waste " and that they had

not succeeded in discharging their burden. For these reasons I agree that this appeal must be dismissed with costs.