
(1939) 02 MAD CK 0017
In the Madras High Court

Sree Mullapudi Venkatarayudu, Zamindar
Vs
President, District Board and Others

APPELLANT
RESPONDENT

Date of Decision : 13-02-1939

Acts Referred:

Madras Estates Land Act, 1908 — Section 77

Citation : AIR 1939 Mad 689 : (1939) 49 LW 765 : (1939) 2 MLJ 93

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—These three Revision Petitions arise out of three Small Cause Suits decided by the District Munsif of Kowur, West Godavari

District. In all the three suits, the plaintiff was the Zamindar and the plaintiffs asked that the defendants should pay water-tax in respect of the water

taken for the second crop to the suit lands. Of the three suits, the lands involved in Small Cause Suits Nos. 402 and 406 are Pre-settlement Inams

and the land involved in Small Cause Suit No. 403 is a subsequent inam, that is, one granted subsequent to the Permanent Settlement. Decrees

have been granted in all the three suits against the tenants who cultivated the lands and actually took the water from the plaintiff's tank. The first

defendant in each suit is the Inamdar who is also sought to be made liable jointly with the cultivating tenants. The lower Court refused a decree

against the first defendant in each suit and these Revision Petitions are directed against the exoneration of the first defendant in each suit from joint

liability along with the other defendants.

2. It is contended by the petitioner that viewed as a claim for damages for wrongful use of the water of the plaintiff's tank, the liability would be

one on a tort committed by the defendants and the learned Counsel argues that even if the cultivating tenants took water, they were authorised to

do so by the first defendant in each suit and that therefore they are also jointly liable along with the other defendants. It is also argued that viewed

as a claim on an implied contract, the contract to be inferred or implied would be one between the Zamindar and the Inamdar that whenever the

Inamdar or the person who is let into the land as his cultivating tenant takes water for a second crop, he the Inamdar would pay the water-tax to

the Zamindar. From Ex. D, a judgment in a prior suit in which the Zamindar claimed water-tax under similar circumstances from the Inamdar alone,

it appears that the tank was improved considerably by the Zamindar at a cost of over Rs. 10,000. It also appears that it is only by reason of these

improvements that water supply was assured for the first crop and also for the second crop. The ordinary jeroyati ryots and the Inamdar have all

been benefited and have been taking water for the first crop and also whenever available for the second crop. What is the proper legal basis for a

claim by the Zamindar in such cases? After hearing both the learned Advocates, I am of opinion that it is wrong on the facts of this case to view it

as a claim on a tort. In such a case, the proper basis, in my opinion, is that there is an implied engagement between the Zamindar and the Inamdar

that whenever there is water available, the Inamdar might take the water but on condition of paying for it. The Inamdar in these cases leased the

inams to his tenants on the basis of there being a possibility of a second crop whenever there is water available for it. All the parties know that after

the extensive repairs effected by the Zamindar, in ordinary seasons there would be enough water for both the first and the second crops and the

rent demanded by the Inamdar from his tenants was fixed on the basis that there would be enough water for the first crop and also for a second

crop unless rains fail. We have got in this case Exs. 1 to 4 muchilikas executed by the cultivating tenants in favour of the Inamdar for prior Faslis.

From those documents, it appears clear that the Inamdar stipulated for a consolidated rent taking into account the possibility of the tenants raising a

second crop and the rent was fixed on such basis. There is no reason to suppose that the terms are any different for the suit Faslis. We have also

Ex. B in which the Inamdar expressly authorises the tenants to take water for the second crop and to raise a second crop. The true basis of the

liability of the Inamdar to the Zamindar being, as I said, an implied engagement or implied contract, it follows that the Inamdar is equally liable

along with the tenants to pay for the water tax for the second crop whenever water is taken for such a crop. The fact that as between the Inamdar

and the cultivating tenants, the entire liability is thrown on the tenants is no concern of the Zamindar and he is not bound by any such stipulation as

between the Inamdar and his tenants. For these reasons, I hold that the first defendant in each suit is jointly liable along with the other defendants.

There is no distinction in the application of this principle between a pre-settlement and a subsequent Inam. Even in the case of a subsequent Inam,

the same result follows because, as I said, it is on the basis of an implied engagement between the Zamindar and the Inamdar that the liability to

pay the water tax for the second crop arises.

3. Another contention which is raised by Mr. Appa Rao, who appears in the case of the subsequent Inam, that is, the land involved in C.R.P. No.

296 of 1936 (S.C.S. No. 403 of 1934) is that the suit ought to be laid in the Revenue Court. The argument is that for the purpose of the Estates

Land Act, the expression "rent" includes what is payable for water taken even unauthorisedly as laid down by the decision of the Full Bench in

Venkatarama Garu v. Maharaja of Pittapuram (1936) 71 M.L.J. 812 : ILR (1938) Mad. 381. The suit here, so far as the Inamdar is concerned is

not for recovery of rent from a "ryot" as defined u/s 77 of the Estates Land Act. Section 77 refers only to suits as against ryots in which case the

Zamindar would have to go to the Revenue Courts even for the recovery of water tax for unauthorised user. But the suit here being against the

Inamdar, it does not lie in the Revenue Court. The cultivating tenants are not the ryots of Zamindar; they are the ryots of the Inamdar. It may be

that if the Inamdar wants to file a suit as against his cultivating tenants, he may have to go to a Revenue Court but on that question, I do not express

any opinion but so far as the suit against the first defendant the Inamdar or against the other tenants who are the cultivating tenants under the first

defendant there can be no question of the Zamindar being obliged to resort to a Revenue Court.

4. These Revision Petitions are accordingly allowed and there will be a decree against the first defendant in each suit jointly along with, the other

defendants. I am asked by the respondents" counsel to give a direction that the plaintiff should proceed in the first instance against the defendants

other than the first defendant and then to proceed against the first defendant. Mr. Raghava Rao is agreeable that such a direction may be given. I

order accordingly. Each party will bear his own costs throughout.