

(1938) 09 MAD CK 0040
In the Madras High Court

Sri Maharani Adilakshmi Devamma Garu by her authorised
agent Kancherla Ramakrishniah

APPELLANT

Vs

Rao Kumara Raya Appa Rao Garu

RESPONDENT

Date of Decision : 19-09-1938

Acts Referred:

Citation : AIR 1939 Mad 94 : (1938) 48 LW 701 : (1938) 2 MLJ 934

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The plaintiff who is the appellant in this appeal purchased a zamindari in Court auction and he filed a suit to recover rent from the defendant on the suit land which admittedly has never paid any rent within living memory, though it is shown in the zamindari records as a land in respect of which a rate of rent has been fixed. It would appear that the defendant belongs to the family of a former zamindar and it is conjectured that his immunity from rent is due to this fact. In 1903 when the Court of Wards was in charge of the estate, a similar claim was put forward to levy rent on this same land and, the then occupant of the land contended that the land had been granted rent free. This contention was upheld and there is a specific finding that the lands are rent-free lands. It appears to me that this decision bars the present suit.

2. In the first place I am of opinion that it operates as res judicata, for if there was a pre-existing rent-paying relationship to which the landholder had a right to revert the existence of that relationship could have been put forward as a ground for reverting to the previous rates of rent under the Rent Recovery Act which prevailed at the time of the 1903 suit (vide Section 11, Sub-section 4) just as u/s 26 of the Estates Land Act which substantially re-enacts the same provision. Moreover quite apart from res judicata this judgment is certainly the starting point for adverse possession in favour of the defendant. From the date of this judgment it must be recognised that the defendant was claiming successfully to hold this land free of all liability to rent present or future; and in my opinion even

if the judgment did not operate as res judicata from the date of the judgment, the defendant must be deemed to have held the land rent free for a sufficient period to establish his rent-free tenure by adverse possession. Further more, I am extremely doubtful whether Section 26j Sub-section 3 of the Madras Estates Land Act has any application to lands held free of rent. When there is no rent at all, it cannot to my mind be held that the land has been granted on a rate of rent lower than the lawful rate payable. Moreover, when land is held free of rent it is very difficult to see how the person who holds that land could be a ryot within the definition of Section 3(15) which defines a ryot as a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due updn it. This ease is almost precisely similar to that with which I had to deal in K.M. Palaniappa Mudaliar and Others Vs. Abdul Subhan Sahib, in which I came to a similar conclusion. This appeal is dismissed with costs.

3. Leave to appeal is refused.