
(1969) 09 MAD CK 0029
In the Madras High Court

Sri Satyapromoda Theertha Swamigal of Uttaradi Mutt
through his authorised agent G.V. Gopalachar

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 05-09-1969

Acts Referred:

Madras Local Boards Act, 1884 — Section 88

Citation : (1970) 83 LW 134 : (1970) 2 MLJ 606

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The appellant in this second appeal filed the suit O.S. No. 219 of 1962, on the file of the District Munsif of Manamadurai, for recovery of Rs. 548-6-6 as money wrongly adjusted by the defendant while fixing the quit rent and cess under the provisions of the Rent Reduction Act (XXX of 1947). According to the plaintiff the suit claim represents Rs. 399-6-6 by way of cess and Rs. 189 by way of peishcush, which the defendant is said to have illegally collected by way of adjustment. The defendant, State of Madras resisted the suit on the ground that the plaintiff Mutt is liable to pay the sum by way of quit rent and tat it has been paying the same in the past all along even prior to the notification under the Rent Reduction Act. The defendant also averred that the plaintiff had not collected any part of the cess from any of the ryots ostensibly on some agreement with them. The defendant also did not collect any cess from the ryots concerned after the introduction of the Rent Reduction Act. It was stated the non-collection of cess by the plaintiff from his ryots will not stand in the way of the defendant's right to collect the entire cess from the plaintiff-landholder by adjustment and that the suit was unsustainable in law.

2. The trial Court went into the question as to whether there was any arrangement between the plaintiff and its ryots and held that there was no such arrangement as alleged by the defendant. As regards the further contention of the defendant that it is not entitled to collect cess from the ryots under the Rent

Reduction Act, 1947, as the word "rent" will not include cess, the trial Court held that cess will come under the definition of "rent" under the Madras Estates Land Act, 1908 read with Section 88 of the Madras Local Boards Act and that as such it is only the defendant who has to collect cess from the ryots as the plaintiff is precluded from making any collection from the ryots under the Rent Reduction Act, 1947. The further contention of the defendant was that even assuming that it has not collected the cess from the ryots which it is bound to collect, there is no limitation for recovery of the same from the ryots by the defendant and as such its failure to collect the cess will not give any cause of action to the plaintiff to come forward with this suit. In support of that contention the decision in *State of Madras v. Krishnaswamy Iyengar* (1963) 76 L.W. 59, was relied on. The trial Court distinguished the said decision as being inapplicable to the facts of the present case. According to the trial Court the right to collect rents from the ryots is only on the defendant and the plaintiff-landholder has been prevented from collecting any rent from the ryots by the statute and as such the plaintiff cannot proceed to recover half of the amount of cess from the ryots having regard to the bar imposed by the Rent Reduction Act. It has also found that the defendant has not collected half the cess from the ryots which it is bound to do. Hence the plaintiff's claim that half the amount of cess was not due from him but that the same has been wrongly adjusted by the defendant has been found to be tenable. In the view taken by the trial Court, the plaintiff's suit was decreed.

3. On appeal by the defendant, the learned Subordinate Judge of Sivaganga allowed the appeal in part so far as it related to the plaintiff's claim for refund of cess of Rs. 359-6-6 said to be wrongly adjusted, but confirmed the decree of the trial Court so far as it related to the amount of Rs. 183-15-0 by way of peishcush. The learned appellate Judge took the view that the decision in *State of Madras v. Krishnaswami Iyengar* (1963) 76 L.W. 59, applied to the facts of this case and that the suit as framed was not maintainable as the duty of the State to collect cess cannot be said to be based on agency. According to the learned Subordinate Judge the reasons given by the trial Court for holding the State liable for the claim relating to cess are not convincing. According to him, the landholder-plaintiff could certainly move the State for proceeding against the ryots for the cess payable by them by way of distraint proceedings treating the cess as arrears of revenue. As and when the State collects cess from the ryots, it will be time enough for the landholder to file a suit against the defendant on the foot of money had and received on the basis of the decision of this Court in *The State of Madras represented by the Collector of Salem v. K. Sivasankara Mudaliar* C.M.A. No. 108 of 1960. But so long as the defendant has not collected the amount of cess from the ryots, the plaintiff has no cause of action in this suit.

4. I am not in a position to agree with the decision of the lower appellate Court so far as it relates to half the amount of cess recovered from the plaintiff by way of adjustment. Though the plaintiff is primarily liable to pay the cess to the Government he had a right to recover half the amount of cess payable or paid by him to the Government from the ryots. The scheme of Section 88 of the Madras

Act (XIV of 1920) seems to be that though the whole of the cess is recoverable from the landholder, yet half of the same has to be borne ultimately by the tenant. The plaintiff has been prevented by the statute from collecting any cess from the ryots, and the duty of collecting the same rests with the defendant. If, as held by the lower appellate Court, the plaintiff has to pay the full amount now and recover half of it at a latter stage when the defendant collects the amount from the ryots, I do not see any reason as to why the defendant cannot collect half the amount of cess straightaway from the ryots without imposing that liability on the defendant at this stage by collecting the amount from the landholder by way of adjustment. Having regard to the fact that the special arrangement between the landholder and the ryots pleaded by the defendant has been held against by the Courts below, and on the face of the admitted fact that the defendant has not collected half the amount of cess from the ryots as it is bound to do under the statute, the plaintiff cannot be made responsible for half the amount of cess due from the ryots as per Section 88 of the Madras Local Boards Act, (XIV of 1920) as he has been prevented from collecting it from the ryots by the provisions of the Rent Reduction Act, 1947. The view of the trial Court that "cess" will come under the definition of "rent" under the Madras Estates Land Act, 1908 and as such the duty of collecting the same rests with the Government has not been challenged before me.

5. I agree with the trial Court that the decision in State of Madras V. Krishnaswami Iyengar (1963) 76 L.W. 59, cannot stand in the way of the plaintiff getting a decree in the present suit which is one for recovery of a specified sum and not one for accounts against the State as in State of Madras v. Krishnaswami Iyengar (1963) 76 L.W. 59. In my opinion the lower appellate Court is not correct in its view that there is no legal basis for the suit claim. The suit is one for recovery of a specified sum said to have been wrongly adjusted by the defendant out of the amounts due to the plaintiff.

6. In the result, the second appeal is allowed, the decree and judgment of the lower appellate Court are set aside and the decree and judgment of the trial Court are restored. The appellant will be entitled to his costs in this Court. No leave.