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(1954) 08 MAD CK 0003

In the Madras High Court

Case No : S.A. No. 250 of 1950

Subramania Guruekal — APPELLANT

Vs

Subra Mania Chetty and others — RESPONDENT

Date of Decision : 12-08-1954

Acts Referred:
Madras Estates Land Act, 1908 — Section 21

Citation : (1954) 08 MAD CK 0003

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Advocate : D. Ramaswami Ayyangar and P.R. Voradarajan, for the Appellant; T. Krishna Rao, for the Respondent

Final Decision : Allowed

Judgement

Krishnaswami Nayudu, J.—This appeal arises out of a suit to set aside the order of eviction passed by the Deputy Collector of Salem in

M.P. No. 2 of 1944 under S. 21 of the Madras Estates Land Act, The lands comprised in T.S. Nos. 28, 29, and 55 of Salem town are situated in

Annadanapatti mitta, an estate coming within the scope of the Madras Estates Land Act. The first defendant is the owner of T.S. No. 57, which is

irrigated by the water, which collects in T.S. Nos. 29 and 55 and the surplus water from T.S. Nos. 29 and 55 Hows along the channel situate in

T.S. No. 28. One V.P. Varadappa Chetti, the first plaintiff''s predecessor in title obtained an assignment of land measuring 9 cents in T.S. No. 28

and the second defendant, the mittadar by means of patta No. 188. One M. V. Varadappa Chetti, also obtained an assignment of portions of the

land in T.S. Nos. 29 and 55 under patta Nos. 191 and 195. Both the plaintiffs are the present owners of these T. S. Nos. The first defendant filed

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M. P. No. 2 of 1944 before the Deputy Collector, Salem, under Ss. 20 and 21 of the Madras Estates Land Act. The Deputy Collector by his

order dated 29th September 1945, held that T.S. Nos. 29 and 55 are tank and bunds of tank and T.S. No. 28 is a surplus channel falling within

the category of lands described in S. 3 (16) (a) of the Madras Estates Land Act. The assignments were, therefore, declared invalid and steps were

directed to be taken to evict the plaintiffs, under S.21 of the Act. The suit out of which this appeal arises, was instituted for setting aside the said

order.

2. Ex. A.1 is patta No. 191, granted to M. V. Varadappa Chetti, which refers to T.S. Nos. 29 and 55. It is an assignment of land without

mentioning any purpose but there is a condition attached which says that the pattadar will not obstruct the water flowing into the lake and that he

would not do any harm whatsoever to the cultivator. Patta No. 188 refers to T. S. No. 28, The conditions mentioned in Ex.A.1 are also found in

Ex.A.5. Both the Courts below upheld the contention of the plaintiffs and the learned appellate Judge, applying the decision in Mira Mohidin

Rowthen and Another Vs. Nallaperumal Pillai and Another, , held that since neither S. 20 A nor S. 21 of the Madras Estates Land Act affect the

proprietary rights of landholders, in the tank beds provided that irrigation rights are not thereby affected, the landholder can certainly assign the

land for cultivation and any ryot affected by such an assignment can seek his remedy only if and when his irrigation rights are affected by such

assignment. The learned Judge also found that the assignments being conditional are perfectly valid in any event.

3. S. 20-A relates to the powers of Collectors to divert disused communal lands. S. 20 A (1) provides that the District Collector may, on the

application of the landholder, a ryot or any other person interested, declare that any land or any portion of any land, which is set apart for any of

the purposes referred to in Sub-Cls. (a) and (b) of Cl. (16) of S. 3 may be devoted to other purposes if it is not any longer required for its original

purpose. Cl. 2 provides that without the written order of the District Collector under Cl. (b) of Sub-S. (1), no land which is set apart for any of the

purposes referred to in Sub-Cl (a) and (b) of Cl. (16) of S. 3, shall be assigned or used for any other purpose. It further states that nothing

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contained in this sub-section shall affect or take away or be deemed to affect or take away the customary rights of the landholder or the ryots in

the user of any such land.

4. The assignments in these cases are not for any of the purposes mentioned in Cls. (a) and (b) of S. 3 (16). The purpose for which the land has

been assigned is not mentioned in the assignment. As there is no specification of the purposes to which the land may be put, the assignee may use it

for any purpose he finds the land is capable of being utilised. The condi the lands assigned are lands which come within Cl. (a) of S. 3 (16) and that

was why the pattadar is directed not to obstruct the flow of water into the lake and not to do any harm whatever to the cultivation. As the lands

were primarily intended for the purpose of supplying water for cultivation purposes, the assignment by means of the patta, could not be said to be

for the same purpose but for a purpose other than that for which it was intended and that was the reason why the reservation has been made in the

pattas that the purposes for which they were originally used should not be affected. Prima facie therefore Cl. (2) would apply as it is not suggested

that there is any written order of the District Collector in this case. The assignment is not for a purpose mentioned in Cls. (a) and (b) of S. 3 (16)

but it is for some other purpose. So, the assignment is invalid. But the contention is that since the landholder has got full proprietary rights in respect

of the tank and the tank bunds so long as the rights of ryots to their use for the purposes mentioned in Cls. (a) and (b) of S.3 (16) are not

interfered with, it will be open to the landholder to make such use of it as he thinks fit by himself or by others to whom he might assign. The only

exception under Cl. 2 is that the customary rights of the landholder or the ryots in regard to the user of any such land should not be interfered with.

It cannot be said that the right of a proprietor to assign land is a customary right. The right to assign property is incidental to the right to own

property and in no view could it be said to be a customary right. The only reservation being in respect of customary rights and the assignment by

the proprietor not being a customary right, the exception or the reservation of the rights in favour of the landlord or ryots under Cl. 2 could not be

applicable to cases of assignment.

5. The following observations of Leach C.J. in Ramaswami Goundar v.

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Ramaswami Goundar ILR 1918 Mad. 381, are relied upon:

When a person owns land, he is entitled to use it for any legitimate purpose and we can find no provision in the Madras Estates Land Act, which

deprives the landholder of his right to utilise the bed of the tank vested in him so long as by so doing he does not interfere with the right of others.

These observations cannot however be understood to mean that the landholder has unlimited powers of disposal of his land. It is limited only for

the use of the land by the landholder or ryot in pursuance of any customary rights and not to the disposal, assignment or transfer of the land for

purposes other than those mentioned in Cls. (a) and (b) of S. 3 (16). Nothing prevented the landholder from using the land himself by virtue of the

customary rights he might have acquired but he would not be competent to allow this land to be used by others for purposes other than legitimate.

The learned Chief Justice has summed up the position in the last paragraph of the judgment thus:

Now let us sum up the position, The proprietary rights of the appellants in the bed of this tank are unaffected by custom. The ryots of the village

have no interest in these lands, apart from the right to use, for the purpose of cultivating their holdings, the water contained on the land. The

proprietary rights of the appellants can only be cut down by a statutory provision expressed in unambiguous language and there is no such

provision. Therefore they are entitled to cultivate such parts of the bed of the tank as become exposed when the water recedes in the dry season,

provided that the cultivation does not prevent the water spreading when the rains come.

The objection taken in that case was as to the right of the landholder to cultivate parts of the bed of the tank and it was held that there was no

statutory prohibition. But under Ss. 20-A and 21 such lands cannot be used for the purpose other than those specified in S. 3 (16). There is

therefore an express statutory provision in this case against the landholder prohibiting him from making any assignment and so it is not open to him

to assign the land. In the result, the appeal is allowed. Appellant will recover the costs from the plaintiffs throughout.

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