
(1892) 03 MAD CK 0026
In the Madras High Court

Suryanarayana

APPELLANT

Vs

Appa Rau

RESPONDENT

Date of Decision : 15-03-1892

Acts Referred:

Citation : (1893) ILR (Mad) 40

Hon'ble Judges : Wilkinson, J; Arthur J.H. Collins, J

Bench : Division Bench

Judgement

1. The first question argued in this second appeal is whether the plaintiff is a tenant within the meaning of Act VIII of 1865. It is contended that, as the plaintiff is an inamdar and not a cultivator of the land, he cannot be regarded as a tenant of the zamindar. The argument is founded upon a misconception of the decision of the Privy Council in *Bamasami v. Bhaskarasami* ILR 2 Mad., The sole question before the Privy Council is whether a certain document required registration. On behalf of the appellant (defendant in the case), it was argued that the document was a patta and that therefore it was exempted from registration. All that the Privy Council decided, with reference to the construction of Sections 3, 8 and 9* of Act VIII of 1865, was that the provisions were made upon the assumption that there is an existing relation which would warrant the application for a written patta. The ease of *Bama v. Venkatachalam* ILR 8 Mad. 576 is distinguishable as; in that case, what the renter claimed to collect was the kattubadi and road-cess payable to Government, a deduction being allowed as a remuneration for his trouble. In the present case the jodi, which the zamindar seeks to collect, was included by the sanad in the assets of the zamindari and is payable direct to the zamindar. The definition

of a tenant in Act VIII of 1865 is ""a person who is bound to pay rent to a landholder."" It is not denied that the zamindar is a landholder and it is

conceded that plaintiff is bound to pay to the zamindar jodi or quit-rent upon his inam. We think, therefore, that the lower Courts were right in

holding that the plaintiff was a tenant, and that the zamindar was entitled to proceed against him under Act VIII of 1865. The relation of landlord

and tenant undoubtedly has long existed between the zamindar and the plaintiff and his predecessors in title. With reference to the contention that

the zamindar can only claim the amount of jodi entered in the patta granted by the Inam Commissioner, it is conceded that, since the decision of

this Court in Sobhanadn Appa Rau v. Gopala-kristnamma see ante p. 34, the finding of the lower Appellate Court cannot be questioned.

2. It is not contended by the respondent that the opinion of the District Judge, that the inam title-deed is such a document as is contemplated by

Section 13, Act VIII of 1865, can be upheld, and we have no doubt that the Judge was in error. The plaintiff does not claim to be an intermediate

landlord. He admits that he is an inamdar, an holder of land with a right of occupancy and merely contends that he sublets the land to others. This

will not confer on him any higher status than that of a tenant.

3. It does not appear that the other points raised in the memorandum of appeal presented to the lower Appellate Court were argued or pressed

upon the attention of the Judge, and no issue was recorded on these points in the Court of First Instance. We cannot, therefore, allow any weight

to them here.

4. The appeal fails and is dismissed with costs.