

(1959) 12 MAD CK 0002
In the Madras High Court
Case No : C.R.P. No. 2001 of 1958

T. Krishnaswami Iyengar

APPELLANT

Vs

Rengaraju and another

RESPONDENT

Date of Decision : 05-12-1959

Acts Referred:

Citation : (1959) 12 MAD CK 0002

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : K. Raman, for the Appellant; G.R. Jagadisan, for the Respondent

Judgement

Rajagopalan, J.—The first respondent in the proceedings before me, Rengaraju, claimed that he was a tenant of the pensioner, T.

Krishnaswami Iyengar, of S. F. Nos. 106/2 and 104/3; and Rengaraju, to whom I shall refer in the rest of this judgment as the respondent, applied

to the Rent Court, Tiruchirapalli, for fixing the fair rent for these lands under the provisions of the Madras Act XXIV of 1956. To those

proceedings, Velayudham, the second respondent, was also made a party on the ground that he claimed to be the tenant of S.F. No. 104/3. The

contention of the owner of the lands, to whom I shall refer in the rest of this judgment as the petitioner was that Velayudham was the tenant of S. F.

No. 104/3, and that with reference to S. F. No. 106/2 the position of the respondent, Rengaraju, was not that of a tenant but only a pannaiyal or

farm servant of the petitioner. Ex. B-1 was tendered in evidence in support of that plea. The Rent Court accepted the contention of the petitioner

and dismissed the petition of Rengaraju. On appeal the learned District Munsif came to the conclusion, that despite the tenor of Ex. B-1 the

respondent Renga Raju was a tenant of the petitioner and that Renga Raju was also a cultivating tenant. The learned District Munsif set aside the

order of the Rent Court and remanded the proceedings for disposal afresh.

2. The petitioner applied under S. 11 of the Madras Act XXIV of 1956 to set aside in revision the order of the appellate Court.

3. The learned District Munsif does not appear to have kept in view that the claim and the defences with reference to S.F. Nos. 106/2 and 104/3

were different, and that Ex. B-1 and the claim founded thereon related only to S. F. No. 106/2.

4. I shall first deal with the question, whether in relation to S. F. No. 106/2 the position of the respondent Renga Raju was that of a lessee, or

tenant, or whether the petitioner's contention was well founded, that Ex. B-1 only evidenced an agreement for engaging Rengaraju as the pannaiyal

or farm servant of the petitioner to cultivate S. F. No. 106/2, subject to the conditions recited in Ex. B-1.

5. Ex. B-1 was taken on a printed form, apparently standardised by the petitioner. Ex facie the document it is an agreement for engaging the

services of a pannaiyal. In Paragraph J. the name of the respondent was given, and he was described as the pannaiyal. Paragraph 2 specified the

period during which the respondent was to serve as a pannaiyal. Paragraph 3 specified S-F. No. 106/2, measuring 1.6 acres, as the land on which

Rengaraju was to work. Paragraph 4 set out details of the work that Rengaraju was engaged to do in S-F. 106/2.

6. In Paragraph 5 were set out the details of what the respondent had to pay to the owner from out of the produce of the lands. Paragraph 4, it

should be remembered, specifically referred to Paragraph 5 and the provision in Paragraph 4 was that after paying the owner whatever was set out

in Paragraph 5 from out of the produce of the land, the rest of the produce Rengaraju was to keep as his remuneration. Under Paragraph 5 what

Rengaraju had to pay the owner was 18 plus 19 kalams of paddy, 8 bundles of straw and one-half of the net produce if gingelly, blackgrana or

green gram was raised in the land. Then there was Paragraph 6 with which the agreement ended and which ran:

7. The finding of the learned District Munsif was:

I find that though the appellant has described himself as pannai servant in Ex.

B-1, he is the person who actually carried on cultivation in the properties in question under an agreement to pay stipulated amount of paddy at a specified time. Hence, I find that the lower Court has erred in

holding that the appellant is not a cultivating tenant of the properties in question. I find that the appellant is a cultivating tenant.....

8. It should be obvious from the definition of the expression "'cultivating tenant'" that while every tenant or lessee may not be a cultivating tenant,

every cultivating tenant has to prove in the first instance that he is a tenant, and that that tenancy is under an agreement, express or implied, with the

owner of the land. It is true, as pointed out by the learned District Munsif, that Ex. B-1 and particularly Paragraph 5 thereof provided for the

payment of specified quantities of the produce of the land, S.F. No. 106/2, to the owner of the land. But that by itself may not be conclusive of the

question, whether the relationship created by the agreement evidenced by Ex. B-1 was that of lesser and lessee, i.e., landlord and tenant. I have

already pointed out that Ex-Facie the document it purported to be only an agreement to engage Rengaraju as a pannaiyal or farm servant of the

petitioner. The description however may not conclude the question whether it was an agreement to engage Rengaraju as a servant or whether it

was in reality a transaction of lease. That question will have to be answered with reference to all the terms of the agreement, Ex. B.1. It should also

be remembered that Ex.B.1 came into existence after the tenancy legislation had been in force for a time, which would have a bearing on the

question whether it could have been the intention of the contracting parties to bring about a tenancy agreement for the year in question limiting it to

one year, when the tenancy legislation secured the tenant immunity from eviction despite the contract to the contrary. The intention of the parties

however, has to be gathered from the terms of the agreement themselves. I am unable to find anything in the agreement, Ex. B-1 to indicate that the

parties intended that to be an agreement of lease, and not what it purported to be, an agreement to provide for the engagement of the services of

Rengaraju to work as a pannayal under the petitioner with the remuneration specified in Ex. B-1.

9. I have already referred to the provision in Para 5 of Ex. B-1, which specifically directed the respondent to pay specified quantities of the

produce of the land to the owner. Para 5, however, will have to be read with Para 4 and para 4 specifically provided that whatever was left after

paying the owner the quantities specified in Para 5, was to be retained by the respondent as his remuneration. The recitals in Paras 4 and 5 were

quite consistent with the agreement being only for the engagement of a pannaiyal, and Paras 4 and 5 prescribed the mode for determining the

contractual remuneration payable to the respondent. No doubt, it is more usual to find a fixity about remuneration even where the remuneration is

in kind payable out of the produce of the land. But that under Ex. B-1 it was what the owner got that was fixed and not what the respondent got is

not by itself enough to make Ex. B-1 a contract of lease. The principal features of a lease, that it confers an interest in the land itself on the lessee

or tenant, and that it gives him a right to exclusive possession of the land during the period of lease, are really lacking in Ex. B-1. For example there

was nothing in Ex. B-1 to prevent the petitioner, as the owner of the land, from engaging the services of one or more servants to work in the same

field besides the respondent. The respondent was not engaged as a general farm servant but he was engaged as a pannaiyal only to work on a

specified plot of land, S. F. No. 106/2. That stipulation again is quite consistent with the view, that the agreement was only to engage the

respondent as a pannaiyal, and that it did not amount to a lease. Taking the whole of Ex. B-1 it seems clear to me that it was not intended to be a

lease, and that it did not operate as a lease. It was not an agreement express or implied, of tenancy, and therefore under Ex. B-1 the respondent

could not claim the status of a lessee or tenant. Therefore, he could not be viewed as a cultivating tenant of S. F. No. 106/2.

10. The learned District Munsif observed:

Ex. B-1 is an ingenious document obtained from the appellant in order to circumvent the benefits of the Madras Cultivating Tenants Protection

Act conferred upon the cultivating tenants,

11. It is not the ingenuity that is a really relevant factor in deciding the question at issue. The question at issue did Ex. B-1 amount to a lease has to

be determined on the terms of Ex. B-1. The learned District Munsif's attention was invited to Shaikh Pokan and Others Vs. Rajani Kamal

Chakravarty and Another, the principle laid down in which the learned District

Munsif appears to have overlooked. The terms of the agreement the learned Judge of the Calcutta High Court had to construe were set out in the judgment and the learned Judges pointed out that the executant of the document got no interest to the land and that he was only a labourer. The learned District Munsif failed to appreciate that Ex. B-1 did not confer any interest in S. F. No. 106/2 on the respondent, and that there was nothing in Ex. B-1 inconsistent with what it purported to be an agreement for engaging the services of the respondent as a pannaiyal.

12. I allow the petition and set aside the order of the learned District Munsif in relation to S. F. 106/2. With reference to S.F. 106/2 the finding of the Rent Court is restored, that is, that the respondent is not a cultivating tenant of that land, and that therefore he is not entitled to have any fair rent fixed for S. F. 106/2. I have already pointed out that the learned District Munsif did not specifically decide with reference to S. F. 104/3 whether it was the respondent Rengaraju or the 2nd respondent Velayudharo that was the tenant. The appeal will be remanded to the learned District Munsif for disposal afresh after deciding the question whether Rengaraju was a tenant and a cultivating tenant of S.F. 104/3. As the respondent Rengaraju has substantially failed he will pay the costs of the petition in the proceedings before me.