

(2002) 01 MAD CK 0017
In the Madras High Court
Case No : C.M.S.A. No. 24 of 1996

The District Forest Officer Gudalur Forest Division Gudalur,
The Nilgiris

APPELLANT

Vs

Nadugani Plantations Ltd. and Assistant Settlement Officer
Coonoor, The Nilgiris

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 — Section 10, 17, 5(2), 9

Citation : (2002) 01 MAD CK 0017

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : Selvi George, for V.S. Sethuraman, Spl. G.P. Forests, for the Appellant; V. Manohar, for the Respondent

Judgement

Prabha Sridevan, J.—The entitlement of the 1st respondent to a ryotwari patta u/s 9 of Gudalur Janmam Estates (Abolition and Conversion

into Ryotwari) Act, 1969 (Act 24 of 1969) (hereinafter referred to as "the Act".) is challenged by the appellant.

2. The Director of Survey and Settlement, by his order dated 21-12 -1987, exercising the powers delegated u/s 5(2) read with Section 17 of the

Act, directed the Assistant Settlement Officer to examine the case of the 1st respondent and pass specific orders. The 1st respondent was granted

ryotwari patta by the officer u/s 9 of the Act. This was confirmed by the District Judge, who is the appellate authority. Therefore, this second

appeal has been filed.

3. According to the 1st respondent, one K.Gopalakrishnan Nair obtained the leasehold rights over an extent of 200 acres of land in S. No.I and

104 of Devala village for a consideration of Rs.1,400/-. The lease deed was executed by Nilambur Thacharakavil Manaveden Thirumalpad Raja

of Nilambur Kovilagam under registered document dated 29-08-1938. Again, on 26-05-1942, the said Raja executed another deed granting

leasehold rights to one V.Joseph for a period of 12 years. The 1st respondent claims that the lease was for cultivation purpose.

There was an inordinate delay in passing orders. The Director of Survey and Settlement called for a report. A detailed report was furnished,

wherein it was stated that since the leases are time expired leases, enquiry u/s 17 cannot be conducted. It was pointed out by the 1st respondent

that for an application u/s 17, the intention of the Janmi to lease the land for plantation purposes is important and if there is no such intention, the

land may have to be dealt with u/s 9 and that the intention could be inferred not only from documents, but also from oral evidence. The authorised

person of the 1st respondent gave evidence as P.W.1. Through him, several lease deeds were marked. It was his case that the 1st respondent was

cultivating cash crops like ginger, turmeric and bananas on rotation. Certain exhibits showing bills for sale were filed. In the evidence, it was stated

that the 1st respondent was put in possession by the Janmis even prior to 1961. From 1974 onwards, they started cultivating cardamom and

coffee after the Government took over the Janmam rights. P.W.2 working as Supervisor under the 1st respondent also corroborated the evidence of

P.W.1 and so did P.W.3. C.W.1 gave evidence that the entire area which is subject matter of this second appeal was cultivated with tea, coffee,

cardamom and coco.

4.The Joint Receivers had no objection to the petition.

5. The District Forest Officer filed his objection stating inter alia that most of the leased lands are forest lands and that the 1st respondent had not

planted cardamom, coffee and coco; that these lands had been notified under the provisions of Tamil Nadu Protection of Private Forests Act,

1949 and that the ecology of the area will be affected if the land is declared u/s 9, 10 and 17 of the Act causing felling of the trees.

6. The Assistant Settlement Officer accepted the evidence of P.Ws 1, 2 and 3. It was held that the original lease was not for plantation purposes

and therefore, Section 17 of the Act will not apply and the claimant is entitled for

grant of patta u/s 9. It was also held that ""it has to be construed that the lease is for cultivation purposes and not for plantation crops."" Since the Joint Receivers had not disputed the continuance of tenancy, it was held that the tenancy was subsisting. So patta was granted u/s 9 of the Act. The appellate authority confirmed this decision.

7. Ms. Selvi George appearing for the appellant would submit that the appellate authority had failed to consider the effect of the provisions of the Act.

8. It was pointed out that the appellate authority had not considered the objection raised by the appellant that such of those lands which are forest lands shall be excluded from grant of patta. Since the appellate authority is the final Court of fact, the failure to consider this is an error of law. It

was also submitted that when the communication of the Director of Survey and Settlement is to the effect that the claim of the 1st respondent should be considered u/s 17, there was no justification for granting patta u/s 9. On both grounds, it was prayed that the grant of patta be set aside.

9. Mr.G.M.Nathan, learned counsel for the respondents on the other hand would submit that determination as to whether any land situate in a janmam estate is a forest is done by the Settlement Officer. Against a determination in this regard made by the Settlement Officer, there is an appeal to the Director and also revision to the