

(1938) 08 MAD CK 0052
In the Madras High Court

Thirumalai Tirupathi Devasthanams Committee	APPELLANT
Vs	
Pujali Komarappa Mudali and Others	RESPONDENT

Date of Decision : 16-08-1938

Acts Referred:

Citation : (1938) 48 LW 611 : (1938) 2 MLJ 829

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—These three appeals arise out of suits under the Madras Estates Land Act for rent on land which according to the common case of both parties is now occupied by houses, though it is alleged by the landholder (the plaintiff) to be ryoti land available for cultivation.

2. Second Appeal No. 179 has to be allowed, for it is established that the respondent who was the appellant in the District Court, died on 10th June, 1935, that is to say, some two months before the appeal was heard by that Court and no legal representative was brought on record. The appeal therefore had abated at the time when the learned District Judge heard it and his judgment must be treated as void and the decree of the Deputy Collector has to be restored. I make no order as to costs in this Court.

3. With reference to the other two second appeals, there is no real dispute as to the facts established by the evidence. The question is rather as to the inference to be drawn regarding those matters upon which the evidence is silent. It is established that in fasli 1310, that is to say, approximately the year 1900, the suit lands were cultivated and that at some subsequent date houses were built upon the lands and streets were formed. The plaintiff's witness the karnam says that the houses were built more than twenty years ago; the defendant's witnesses put the period as about 25 or 30 years ago. There is no record of any rent having been collected in respect of the suit lands in recent years nor of any pattas having been exchanged. In point of fact this estate has been involved in litigation for many years until recently, a fact which may be an explanation for

the vagueness of the evidence with regard to the suit lands. The position therefore is that for at least 20 years past the suit lands have been occupied by houses and no rent has been paid for them nor has any patta been tendered. There is no record of the suit lands ever having been reserved expressly as village site, but the plaintiff's witness is unable to say positively that the former landholder did not give permission for the construction of houses. It will be seen on this state of the evidence that no one can say with any certainty whether the lands in suit were or were not occupied by houses at the time when the Act came into force, namely, 1st July, 1908, or whether the use of these lands for residential purposes was with or without the consent of the then landholder. Now what is the legal position on these facts? The definitions with which we are concerned are those of "rent", "ryot" and "ryoti land", in Section 3 of the Estates Land Act. Rent is that which is lawfully payable to a landholder for the use or occupation of land in his estate for the purpose of agriculture. A ryot is a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent. Ryoti land is cultivable land in an estate other than private land, but does not include village sites or other lands situated in any estate which are set apart for the common use of the villagers. u/s 6 of the Act a permanent right of occupancy is conferred upon a ryot in possession of ryoti land not being old waste on the date on which the Act comes into force. These provisions have been frequently considered in judicial decisions and it has been established vide *Imandi Appalaswami and Another Vs. The Rajah of Vizianagaram*, and *Ramasami Servaigaran v. Athivaraha Chariar* (1918) M.W.N. 340, that the definition of "rent" does not require that the land shall be actually used for agriculture at the time when the money claimed in the suit accrues due and that it is sufficient that the land is ryoti land and that the ryot has the right to use it for agricultural purposes, though he may choose to use it for some other purpose. It is also established in a series of cases *Ramachandra Mardaraja Deo v. Dukko Podhano* (1915) 31 I.C. 852 *Venugopala Rice Mill v. Rajah of Pittapuram* (1929) 59 M.L.J. 74 : ILR 1929 Mad. 367 and *Srimath Jagathguru Sringeri Sri Satchithanantha Chandrasekhara Bharati Swamigal by Agent T.C. Nataraja Mudali Vs. C.P. Duraiswami Naidu (dead) and Others*, , that when land which was once ryoti land has with the consent of the landholder, express or implied, been devoted to some purpose other than agricultural purposes, whatever is payable for that land is not rent within the definition in Section 3 (11) of the Madras Estates Land Act. In the present case we have a position which is not, so far as I know, covered by precise authority. The land was cultivable land some eight years prior to the passing of the Madras Estates Land Act. Either at the time when the Act came into force or very shortly afterwards it ceased to be used for agricultural purposes but was occupied by houses. There is no proof of the consent of the landholder to this arrangement. But the fact that for at least twenty years no rent has been paid for this land in my opinion goes a long way to support an inference that the occupation of this land by houses was with the consent of the then landholder. Now it is incumbent upon the plaintiff, in order to establish his claim for rent, to prove that the land is ryoti land and that the

money which he claims is rent. If, as here, the land is admittedly not now used for agricultural purposes and can only be notionally regarded as land held for the purpose of agriculture, the plaintiff is bound to establish those facts which would justify the conclusion that the occupant of these lands is a ryot holding them for the purpose of agriculture, though he does not actually use them for that purpose. I doubt very much whether the Court would be justified in drawing such an inference merely because it has been proved that the lands were cultivable lands in the remote past. After all the plaintiff's claim and the jurisdiction of the Revenue Court to adjudicate upon it, both depend upon the statute which came into force on the 1st July, 1908, superseding a law which was in many respects quite different. I do not consider that it is right to draw a presumption that the purpose for which the land was held in 1900 continued in 1908 and that the persons who occupied the land on the 1st July, 1908, probably occupied it purely for the purpose of residence in the houses built thereon, acquired the statutory position of occupancy ryots liable to pay rent by reason of an alleged right to use the land for agricultural purposes. In my opinion in order to get the benefit of the rule in *Appalaswami v. Rajah of Vizianagaram*¹ the plaintiff should at least show that the lands have been ryoti lands at some period while the Act has been in force in order to justify the inference that the occupant has the right to use these lands for an agricultural purpose and is liable to pay rent for them within the definition in Section 3 (11) of the Madras Estates Land Act.

4. It has been suggested that if the suit is held to be one which is not cognizable by the Revenue Court, the plaint should have been returned for presentation in a Civil Court under the provisions of Order 7, Rule 10, Civil Procedure Code. To my mind that contention is erroneous, for the plaint as framed proceeds purely on the footing that the defendant is a ryot holding lands for which rent is payable by virtue of the provisions of the Madras Estates Land Act. If the suit were to be converted into one for damages for use and occupation or some similar claim, the plaint would have to be entirely redrafted. In such circumstances it is not in my opinion proper to return the plaint for presentation to a Court which certainly would have no jurisdiction to entertain the claim as it has been put forward in the plaint.

5. In the result, Second Appeals Nos. 177 and 178 of 1936 are dismissed with costs.

6. Leave to appeal is granted.