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**(1916) 12 MAD CK 0021**  
**In the Madras High Court**

T.P. Kanthimathinatha Pillai

APPELLANT

Vs

Pugal Subramania Nadan and Others

RESPONDENT

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**Date of Decision :** 22-12-1916

**Acts Referred:**

**Citation :** 39 Ind. Cas. 144

**Hon'ble Judges :** William Ayling, J; Napier, J

**Bench :** Division Bench

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**Judgement**

Ayling, J.—It is contended on behalf of the appellant in all these second appeals that the lower Courts were wrong in holding on issue No. 2 that the tendered pattas were improper as regards (a) the charge of rent on uncultivated dry lands, (b) the charge of "sarasari" for dry cultivation on wet lands.

2. As regards the first point, the appellant, the landlord, relies on the wording of Section 4 of the Madras Estates Land Act, which runs thus: "Subject to the provisions of this Act, a landholder is entitled to collect rent in respect of all ryoti land in the occupation of a ryot. "

3. It has been suggested with some plausibility that it is by no means clear that this section was intended to be anything more than introductory to the succeeding section of the Act, and that the emphasis laid by the appellant on the word "all" is misplaced. But, however this may be, it has been held in recent cases by this Court that the sections should be read subject to the provisions of the Section 27 and that a custom of paying rent only on the area actually cultivated, if proved, may be set up against Section 4; vide *Arunachellam Chettiar v. Muthayanai Thevan* 25 Ind. Cas. 675. and *Udayal v. Arunachala Chettiar* 27 Ind. Cas. 872 Such a custom has been pleaded by the respondents in these suits and if properly established, must be allowed to prevail.

4. I cannot, however, accept the finding of the lower Appellate Court as deciding this point. I may remark that the evidence adduced is of the most meagre character, and that the tendered pattas have not even been exhibited, and that

before us, neither side could indicate exactly what modifications had been newly introduced. This, however, is by the way. The important point is that the District Judge has not found the existence of a custom in the legal sense of the term but, as I understand him, has simply found that the charge on dry waste is an innovation. This is not sufficient; for the presumption raised by Section 27 of the Madras Estates Land Act is a rebuttable one.

5. I must, therefore, call for a finding from the District Judge on the following issues:

I. Is any custom established whereby defendant is precluded from charging rent, (1) on all uncultivated dry land included in the pattas; or (2) on all such land which has been left uncultivated from causey beyond the ryots' control?

II. Is any portion of the demand in these suits illegal for this reason?

6. The second point arises in relation to wet land on which, owing to an insufficient supply of water, a dry crop has been raised instead of a wet one.

7. It is found, as a fact, that in all these cases the supply of water was insufficient for a wet crop; but here again I have no proper finding as to the existence of a custom whereby the landlord's demand was limited to something less than the full wet rate. I must, therefore, call for a finding on the further issues:

III. Is any custom established whereby the landlord is precluded from charging full wet rate on lands cultivated with dry crops, owing to insufficient supply of water, and if so, what is the proper charge?

IV. Is any portion of the demand in these suits illegal for this reason?

8. In view of the importance of the questions, the number of suits involved and the insufficient attention which the points have received in the lower Courts, I think it best to allow both sides to adduce fresh evidence if they desire to do so.

9. Findings should be submitted within two months from this date; and seven days will be allowed for filing objections.

Napier, J.

10. I agree, but I am inclined to go further than my learned brother and hold that Section 28 has also a bearing on this question. Sections 27 and 28 are the only general provisions to be found in the Act for the guidance of a Revenue Officer adjudicating on a suit to enforce acceptance of patta and muchilika and we are, therefore, in my opinion, compelled to give a wide meaning to the phrase "amount of rent" in those sections as distinguished from "rate of rent" in the same sections. In my view, a claim to pay a reduced amount of rent or a reduced "rent" on the whole holding in any particular year, by reason of the fact that some portion of the land in the holding has been left waste, can be considered under these sections and if a custom is proved to that effect, then that reduced

rent is lawfully payable within the meaning of the words in Section 28 and is also the "amount of rent" which shall be presumed to be correct u/s 27. It seems to me to be necessary to give this wide construction to the language of these two sections, in view of the fact that there has been a complete change in the method of arriving at the total amount of rent as well as the rate of rent under the present Act from the old Act. Under the old Act, there were provisions enabling the Revenue Officer to fix the rate of rent by reference to land of the same quality or adjoining land. Nothing of the sort is to be found here and, in my opinion, we have, therefore, to construe those two sections as giving the widest possible scope to the exercise by the Revenue Officer of his powers under the Act.

11. In compliance with the order contained in the above judgment, the District Judge of Tinnevely submitted the following

12. Findings.--It is ordered that findings be submitted on the following issues:

I. Is any custom established whereby defendant is precluded from charging rent on all uncultivated dry land included in the pattas or on all such land which has been left uncultivated from causes beyond the ryots' control?

II. is any portion of the demand in these suits illegal for this reason?

III. Is any custom established whereby the landlord is precluded from charging full wet rate on lands cultivated with dry crops owing to insufficient supply of water, and, if so, what is the proper charge?

13. IV. Is any portion of the demand in these suits illegal for this reason?

\* \* \* \* \* 14. I find on the first issue that the custom is established precluding the defendant from charging rent on uncultivated dry and included in the pattas.

15. On the second issue, I find that the portion of the demand in these suits, so far as it relates to the charge of rent for uncultivated dry land, is illegal.

16. I... find on the 3rd issue, interpreting "full wet rate" to mean "sarasari", that there is no such custom established to preclude the land-lord from charging such rate. It follows on the fourth issue that no portion of the demand in these suits is illegal for this reason.

17. These second appeals coming on for hearing, after the return of the findings of the lower Appellate Court upon the issues Referred by this Court for trial in Second Appeals Nos. 487, 517 to 529, 531 to 543, 545 to 565, 567 to 584 of 1915, the Court delivered the following

18. We accept the findings of the District Judge, subject to the following remarks. Mr. Devadoss points out that the District Judge has not considered the contingency of a tenant deliberately keeping waste dry lands year after year which he could cultivate, and which he will neither relinquish nor pay rent upon. This is a possible case, though no attempt is made to show that it applies to any of the respondents' holding in the suit fasli. It appears to be provided for by a

clause in the tendered patta authorising the levy of 2-1/2 times the usual rent for land allowed to be waste for over five years. Respondents' Vakil states that his clients have no objection to this clause.

19. As regards the cultivation of dry crops on wet lands, the respondents' Vakil points out that the phrase "full wet rate" may be understood as meaning something different from the definition of "sarasari" adopted by the Judge (the average calculated by dividing the melvaram by the extent of land cultivated). We do not think any difference is intended by the District Judge and we accept his finding with the definition of surasari just given.

20. As a result we find that the attachments should be held valid also to the extent of the sarasari charge on wet lands cultivated with dry crops. In other respects, the decrees of the lower Courts are confirmed. Each side will bear its own costs in this Court.

21. Appeals dismissed; Decrees modified.