

(1921) 01 MAD CK 0032
In the Madras High Court

T.V. Kothandarama Reddiar and Others	APPELLANT
Vs	
Chinnaswami Reddy and Others	RESPONDENT

Date of Decision : 10-01-1921

Acts Referred:

Citation : 64 Ind. Cas. 740

Hon'ble Judges : Spencer, J; Ramesam, J

Bench : Division Bench

Judgement

1. In these suits there were two questions between the landlord and his tenants, which arose for determination, viz.,

1. Whether the tenants should be made liable to pay rent on dry lands wilfully left waste?

2. Whether the tenants should be made liable to pay wet rents at the highest neighbouring Waram rent, when dry crops are raised on wet lands when there is a sufficiency of water in the irrigation source for raising wet crops?

2. The District Judge has found both these points in favour of the tenants and has directed the proposed terms to be omitted from the pattas.

3. We are unable to support his judgment.

4. In sates where waste is due to the neglect of the raiyats, this Court has held in Ramasami Servaigaran v. Athivaraha Chariar 44 Ind. Cas. 663 and in Second Appeals Nos. 2052 to 2062 of 1917 that the landlord is entitled to claim rent for lands left uncultivated.

5. The respondents rely on the decision of a former District Judge in prior suits of 1897, which they claim to have the force of res judicata. But from a perusal of that judgment we find that in that litigation the defendant set up a custom to cultivate only in alternate years. The decision, therefore, on the issue in those suits, whether rent should be paid for punjah lands when they are not cultivated,

was only a decision upon the liability of the tenants in the conditions then put forward, which did not cover the cases of wilful waste or waste by default or negligence. It is not res judicata upon the question arising in these suits.

6. Upon the second point the ruling in *Arunachallam Chettiar v. Mangalam* 35 Ind. Cas. 329 and Second Appeals Nos. 2094, 2095 and 2097 of 1917 are clearly against the respondents, and we must follow them.

7. Accordingly we allow the appeals with costs throughout, calculated on an aggregate fee of Rs. 20 per case in all the Courts, and allow the clauses to stand in the pittas with the modification that for the words "wilfully left waste" we direct the words "left waste through the raiyat's wilful neglect" to be substituted, and for the words "facility for raising wet crops" we substitute the words "sufficient water in the tanks for raising wet crops."

8. The memorandum of cross-objections is not pressed and is dismissed with costs.