
(1935) 02 MAD CK 0073
In the Madras High Court

V. Appa Rao

APPELLANT

Vs

Sreeramreddi Sanyasayya and Others

RESPONDENT

Date of Decision : 12-02-1935

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(10)

Citation : AIR 1935 Mad 583 : 157 Ind. Cas. 988 : (1935) 42 LW 29 : (1935) 69 MLJ 25

Hon'ble Judges : Horace Owen Compton Beasley, J; Cornish, J

Bench : Full Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—These three appeals can be disposed of together since the points for consideration are common to them all. The three suits under appeal, namely, O.S. Nos. 32, 33 and 34 of 1928 were suits to declare the plaintiffs' right to and recover possession of the plaint-scheduled lands and arrears of rent, mesne profits etc. The learned Subordinate Judge of Vizagapatam dealt with these three suits in one common order directing the return of the plaints for presentation to the proper Court, namely, the Revenue Court. He found that the lands in question were ryoti lands and that, therefore, the suits did not lie in the civil courts.

2. The plaintiffs' case was that the lands in question were "private lands" within the meaning of Section 3(10) of the Madras Estates Land Act which defines "private land" as follows:

Private land means the domain or homefarm land of a landholder by whatever designation known such as kambattam, khas, sir or pannai.

3. Section 185 lays down the rules for determining landholder's private land as follows:

When in any suit or proceeding it becomes necessary to determine whether any land is the landholder's private land, regard shall be had to local custom and to the question whether the land was before the first day of July, 1898 specifically

let as private land and to any other evidence that may be produced but the land shall be presumed not to be private land until the contrary is shown....

4. The old section had a proviso which reads as follows:

Provided that all land which is proved to have been cultivated as private land by the landholder himself by his own servants or by hired labour with his own or hired stock for twelve years immediately before the commencement of this Act, shall be deemed to be the landholder's private land.

5. The presumption, therefore, is that the land is not private land until the contrary is shown, the burden of proof of course being upon the plaintiff. In the Lower Court and here the plaintiffs put forward the claim in the alternative (1) that the land had all along been private lands so far as there are any records from 1850 or (2) that the lands in question were ryoti lands which the landholder converted into private lands as he was entitled to do prior to 1908. The lands in question are Nagacheruvu the subject-matter of O.S. No. 32, Gurannapolam, the subject-matter of O.S. No. 33 and Mettapadu, the subject-matter of O.S. No. 34. A large number of documents were relied upon by the plaintiffs. It is contended that the description in these documents given to the lands, namely, "sen" shows that the lands were private lands. I do not propose in this judgment to refer to any of these documents specifically although I and my learned brother Cornish, J. have, carefully examined them. They are all set out in the lower Court's judgment.

6. The short question which it seems to us has to be decided is whether the description "seri" is conclusive of the plaintiffs' claim or materially assists it. If the word "seri" means private land, then these lands in the documents bearing that description must be held to be private lands although in *Sreemanthu Raja Yarlagadda Mallikharjuna Nayadu Bahadur, Zamindar Garu of Chellapalli Vs. Rajalapati Somayya and Others*, Wallis, C.J. observes:

It does not seem to me that calling the lands Kambattam and letting them on terms which negative occupancy right with a view to prevent the assertion of such right is sufficient to convert them into private lands within the meaning of the definition.

7. That is to say, by a mere colourable assertion for the purpose of defeating occupancy rights of the tenants. The defendants-respondents, on the contrary, contend that the word "seri" is not synonymous with home-farm and that it merely means "cultivation" or "under cultivation". It is stated by the learned Subordinate Judge in his Judgment that in the Kistna district, which is not far removed from the suit district, "seri" is used as meaning land in the occupation of a ryot. In Wilson's Glossary of India, page 474, there is a definition of "seri" as follows:

The same word in Telugu is explained in a similar manner to denote land cultivated by the ryots on account of the state, paying usually at the rate of half

the nett produce of ordinary cultivation, or one-third of that, garden cultivation.

8. This is opposed to the appellants' contention certainly in relation to a Telugu district such as this is. In the Manual of the Administration of the Madras Presidency Vol. III, on page 821, "Sheri" is defined as "land let out by proprietor or zamindar to ryots or tenants". In Brown's Dictionary of Mixed Dialects and Foreign words used in Telugu, on page 126, it is stated:

In the Rajahmandri district sheri merely means land which is not inam.

9. None of these meanings assist the plaintiffs-appellants. On the contrary, they strongly support the defendants' case. Furthermore, in a number of the documents the lands are described as "Jeroiti". This description the defendants contend is synonymous with "ryoti". To meet this contention the plaintiffs argue that "jeroiti" land merely means land which is not inam and rely upon Sri Ramachandra Mardaraja Raja Deo v. Dukko Podhano (1915) 31 I.C. 852 where in the judgment it is stated:

It is true that in both these documents the land is described as "jeroiti" land, and it is upon the use of that word that the learned pleader for the respondents has based his arguments and asked us to say that the defendants are ryots and that the land is their occupancy holding and so on. These inferences do not, it seems to us, necessarily arise from the use of the word "jeroiti". "Jeroiti" may mean cultivable land but it is also used in this Presidency as opposed to inam land.

10. This case, in my opinion, does nothing more than show that the land is not inam land but it has still to be shown by the appellants that it is private land and not ryoti land. Another case is Sri Ravu Seshayya Garu Vs. The Rajah of Pittappur, Sri Raja Ravu Venkata Kumara Mahipati Surya Rao Bahadur Varu, . There, it was stated that the word "jeroiti" is used in some parts of the Telugu country as meaning merely "non-inam" and hence the mere fact that land has been called "jeroiti" land does not necessarily show it is ryoti land. In this case, however, it was stated, bearing upon the question of the meaning of the word "seri", that, in view of the presumption laid down in Section 185 of the Madras Estates Land Act, the description of land as "seri" and "separated from the seri" is not of much value in deciding whether it is "private land" within the meaning of the Act. Another case is Lingayya Ayyavaru v. Gangiah AIR 1928 Mad. 58. There it is stated that the term "jeroyatidar" does not necessarily imply permanent occupancy right or that the executant was occupancy ryot. In another case in the same volume, viz., Dadamudy Tatayya and Others Vs. Kelachina Venkatasubbarayya Sastri, it was held that the word "jeroiti" land may mean cultivable or arable land but it may also mean "assessable or assessed land" as opposed to inam land and that it is only the context that must decide which meaning is to be given to the word. In that case, it was also held, on findings being called for, that the word "seri" is always used in the Kistna district in the sense in which the word "ryoti" is used in the Madras Estates Land Act and that "seri land" always means "land in which the tenant has an occupaney right". I

accordingly agree with the View of the learned Subordinate Judge that the plaintiffs have not shown that the lands in question were home-farm from the very beginning. Then the question is whether they were subsequently converted into private lands. With regard to this, there must be very clear and satisfactory evidence and, here again, I agree with the learned Subordinate Judge that there is no such clear and satisfactory evidence. A cash book was produced which it was contended showed that disbursements had been made by the proprietor for the purposes of cultivation. The book appears to be merely a cash book which relates to other matters as well as the cultivation of the lands and there are only a few stray entries which in the least degree indicate that some money was being spent on the cultivation of the lands in question. In my view, this evidence cannot be accepted as establishing the position that the proprietor was cultivating the lands himself. No other account books were produced in which there were entries supporting the plaintiffs' contention. There must have been estate account books kept and these would have shown whether or not money was being spent by the proprietor for the cultivation of the lands. No such account books, however, were produced. There is, therefore, nothing to show that the proprietor was himself cultivating the lands for 12 years before the Act came into force as provided for in the proviso to Section 185 nor at any time; nor does the documentary evidence support the plaintiffs' case that the lands were specifically let as private lands before the 1st July, 1898 as provided for in the same section. All that the documents show is that the lands were let as "seri" land which, in my opinion, means "ryoti" land. I agree with the lower Court's view of the matter and hold that the plaintiffs failed to establish their claim. These lands were, therefore, "ryoti" lands and the order of the lower Court directing that the plaints should be returned for re-presentation to the Revenue Court was correct. These appeals must, accordingly be dismissed with costs. Two weeks from to-day will be allowed for re-presentation to Revenue Court.

Cornish, J.

11. I agree.